

BOARDS AND COMMISSIONS

Board of Cosmetology

(Amendment)

201 KAR 12:190. Complaint and disciplinary process.

RELATES TO: KRS 317A.070, 317A.140, 317A.145

STATUTORY AUTHORITY: KRS 317A.060, 317A.145

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317A.145 authorizes the board to investigate complaints and, where appropriate, take disciplinary action for violations of KRS Chapter 317A and the administrative regulations promulgated by the board. KRS 317A.070 requires the board to hold hearings to review the board's decision upon the request of any licensee or applicant affected by the board's decision to refuse to issue or renew a license or permit, or to take disciplinary action against a license or permit. This administrative regulation establishes the board's complaint and disciplinary process.

Section 1. Definitions.

(1) "Complaint" means any writing received or initiated by the board alleging conduct by an individual or entity that may constitute a violation of KRS Chapter 317A or 201 KAR Chapter 12.

(2) "Respondent" means the person or entity against whom a complaint has been made.

Section 2. Complaint Committee. The board may appoint a committee of no more than two (2) board members to review complaints, initiate investigations, participate in informal proceedings to resolve complaints, and make recommendations to the board for disposition of complaints. The board staff and board counsel may assist the committee.

Section 3. Complaint Procedures.

(1) Complaints shall be submitted on the board's Complaint Form, signed by the person making the complaint, and describe with sufficient detail the alleged violation(s) of KRS Chapter 317A, or 201 KAR Chapter 12. The Complaint Form shall be made available on the board's Web site at <http://kbc.ky.gov>.

(2) A copy of the complaint shall be provided to the respondent. The respondent shall have ten (10) days from the date of receipt to submit a written response. The complaints committee or the executive director~~[board administrator]~~ may extend these timelines as appropriate.

(3) The complaint committee shall meet at regular intervals~~[once a month]~~. A complaint and any written response shall arrive ten (10) days prior to the meeting to meet the~~[that month's]~~ deadline for making a recommendation to the board. The complaint committee shall review the complaint, the response, and any other relevant information or material available, and recommend that the board:

- (a) Dismiss the complaint;
- (b) Order further investigation;
- (c) Issue a written admonishment for a minor violation; or
- (d) Issue a notice of disciplinary action informing the respondent of the following:
 1. The statute(s) or administrative regulation(s) violated;
 2. The factual basis for the disciplinary action;
 3. The penalty to be imposed; and
 4. The licensee's or permittee's right to request a hearing.

(4) A written admonishment shall not be considered disciplinary action by the board, but may be considered in any subsequent disciplinary action against the licensee or permittee. A copy of the written admonishment shall be placed in the licensee or permittee's file at the board office.

(5) If the board determines that a person or entity is engaged in the unlicensed practice of cosmetology, esthetics practices, or nail technology, the board may:

(a) Issue to the person or entity a written request to voluntarily cease the unlicensed activity; or

(b) Seek injunctive relief in a court of competent jurisdiction pursuant to KRS 317A.020(7).

(6) Any board member who has participated in the investigation of a complaint or who has substantial personal knowledge of facts concerning the complaint, which could influence an impartial decision, shall disqualify himself or herself from participating in the adjudication of the complaint.

Section 4. Settlement by Informal Proceedings.

(1) The board, through its complaints committee or counsel, may, at any time during this process, resolve the matter through informal means, including an agreed order of settlement or mediation.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the respondent and board chair, or the chair's designee.

Section 5. Hearings.

(1) A written request made by the respondent for a hearing shall be filed with the board within thirty (30) days of the date of the board's notice that it intends to refuse to issue or renew a license or permit, to deny, suspend, probate, or revoke a license or permit, or to impose discipline~~[a fine]~~ on a licensee or permittee.

(2) If no request for a hearing is filed, the board's refusal to issue or renew a license or permit, or the board's notice of disciplinary action, shall become effective upon the expiration of the time to request a hearing.

Section 6. Incorporation by Reference.

(1) "Complaint Form", July 2022~~[April 2018]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Board of Cosmetology, 1049 US Hwy 127 S. Annex #2,~~[111 St. James Court, Suite A,]~~ Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARGARET MEREDITH, Board Chair

APPROVED BY AGENCY: July 12, 2022

FILED WITH LRC: July 12, 2022 at 2:40 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2022, at 11:30 am, at the Kentucky Board of Cosmetology office. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Julie M. Campbell, Executive Director, 1049 US Hwy 127 S. Annex #2, Frankfort, Kentucky 40601, (502) 564-4262, email julie.campbell@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie M. Campbell

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation sets forth the complaint and investigations process.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to provide the needed investigation and complaint process to be followed.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation is being drafted to clarify complaints and investigation processes as set forth in Chapter 13 of KRS.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation outlines the details of the complaint form and process for concerns with licensees.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment will clarify complaint processes and investigation details

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary to clarify details and compliance standards as required in KRS 317A for complaint processes.

(c) How the amendment conforms to the content of the authorizing statutes:

This regulation provides guidelines for complaint details as required in current statutory requirements in KRS 317A.

(d) How the amendment will assist in the effective administration of the statutes:

This amendment will specify clearer details on complaint compliance to promote continuity across board changes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

There will be no impact to licensees, businesses, organizations, or state or local governments.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

This amendment does not impose any requirements on regulated entities.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There is no anticipated cost to licensees because of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

The details of esthetic restrictions.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

No additional funds are necessary initially to implement this administrative regulation.

(b) On a continuing basis:

No additional funds are necessary on an ongoing basis to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Current funding will not change.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No changes or increases in fees is required by this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

No fees are created or increased directly or indirectly by this regulation.

(9) TIERING: Is tiering applied?

Tiering is not applied as this administrative regulation does not impose any requirements on current or prospective licensees.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

Kentucky Board of Hairdressers and Cosmetologists.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 317A.050, KRS 317A.060.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

No funds will be raised.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

No funds will be raised.

(c) How much will it cost to administer this program for the first year?

None.

(d) How much will it cost to administer this program for subsequent years?

None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):Not applicable.

Expenditures (+/-):Not applicable.

Other Explanation:

Not applicable

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

(c) How much will it cost the regulated entities for the first year?

(d) How much will it cost the regulated entities for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):Not applicable.

Expenditures (+/-):Not applicable.

Other Explanation:

Not applicable.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This regulation does not create a major economic impact.