

BOARDS AND COMMISSIONS

Board of Veterinary Examiners

(Amendment)

201 KAR 16:610. Procedures for grievances, investigations, and administrative charges.

RELATES TO: KRS Chapter 13B, 61.870 - 61.884, 321.190, 321.235(2), 321.351, 321.353, 321.360

STATUTORY AUTHORITY: KRS 321.235(2), (3), 321.240(5), 321.351, 321.353, 321.360

NECESSITY, FUNCTION, AND CONFORMITY: KRS 321.235(2) authorizes the Kentucky Board of Veterinary Examiners to investigate an allegation of a practice that violates the provisions of KRS Chapter 321. KRS 321.235(3) and 321.240(5) authorize the board to promulgate administrative regulations to implement KRS Chapter 321. This administrative regulation establishes the procedures for handling grievances, investigations, and administrative charges.

Section 1. Definition. "Grievance" means a complaint ~~[, grievance,]~~ or ~~[other]~~ any allegation of misconduct that might constitute a violation of KRS Chapter 321 or 201 KAR Chapter 16.

Section 2. Intake of Grievances.

(1)

(a) A grievance may be submitted by any individual, organization, credential holder, or entity.

(b) The board or its chair or its executive director may submit a grievance on its own initiative based on information in its possession that the board concludes~~[believes]~~ is sufficiently credible to justify a request for a response from the credential holder~~[licensee]~~ (or other individual named in the grievance).

(2) The grievance shall be in writing on a Grievance Form or online equivalent form provided by the board, and shall include the complaining party's name, address, telephone number, and signature. Electronic signatures shall be accepted.

(3) At any time, the board may investigate or seek further information about any subject regarding a grievance filed with the board, or upon information received which may lead to a grievance filed with or by the board. ~~[The board's chair, or the chair's designee, shall perform an initial screen of any grievance that was submitted without identifying the complaining party. The chair, or the chair's designee, shall determine whether the grievance contains sufficient details or other indicators of credibility to justify a request for a response from the licensee (or other individual named in the grievance). If sufficient details or other indicators of credibility are lacking, then the grievance shall be discarded without further action or notice to the licensee or other named individual.]~~

(4) The board shall send a copy of each~~[the]~~ grievance to the credential holder~~[licensee]~~ (or other individual named in the grievance) along with a request for a response. The response shall be required within twenty (20) days~~[thirty (30) days]~~ from the date of when the board sent a copy of the written grievance. Failure to respond in writing within twenty (20)~~[thirty (30)]~~ days may constitute a violation of KRS Chapter 321 and 201 KAR Chapter 16~~[the Code of Ethical Conduct pursuant to 201 KAR 16:500]~~.

Section 3. Initial Review of Grievances.

(1) After the time period for the credential holder's~~[licensee's]~~ (or named individual's) response has elapsed, at the next scheduled board meeting the Grievance~~[Complaints]~~

~~Screening~~] Committee shall consider the grievance, the response if one was received, and other relevant information that is available to the Committee.

(2) The Grievance~~[Complaints Screening]~~ Committee shall determine if an investigation is warranted after reviewing the information that is available. ~~[An investigation shall be warranted if the committee determines, based on upon a totality of the circumstances, that a reasonable probability exists that the grievance has merit.]~~

(3) If, in the opinion of the Grievance~~[Complaints Screening]~~ Committee, a grievance does not warrant an investigation, then the board shall notify the complaining party and the respondent that the grievance is being dismissed ~~[without investigation]~~.

(4) The dismissal of a grievance ~~[without an investigation]~~ shall constitute a final action of the board. Following the dismissal, the grievance, the response from the individual named in the grievance, and correspondence that is intended to give notice of the dismissal shall be subject to disclosure pursuant to the Kentucky Open Records Act, KRS 61.870 through 61.884.

(5) If, in the opinion of the committee~~[board]~~, a grievance warrants an investigation, then the board shall open an investigation into the matter.

Section 4. Investigations.

(1) The Grievance~~[Complaints Screening]~~ Committee shall have the authority to direct an investigation and shall exercise those powers possessed by the board in regard to investigations as provided by KRS 321.235.

(2) The Grievance~~[Complaints Screening]~~ Committee shall have the authority to request the participation of any person in an investigation. The refusal or failure of any board credential holder~~[licensee or certificate holder]~~ to participate when requested, or to provide information and documents requested by the committee within the requested timeframe, shall be considered a violation of KRS Chapter 321 and 201 KAR Chapter 16~~[201 KAR 16:500]~~.

(3) Investigative reports shall be reviewed at a meeting of the committee.

Section 5. Reports and Recommendations Following Investigation.

(1) If the committee~~[board]~~ determines that the results of an investigation do not warrant the issuance of an administrative charge against the individual named in the grievance, then the board shall notify the complaining party and the individual that the grievance is being dismissed without further action.

(2) The dismissal of a grievance following an investigation shall constitute a final action of the board. Following the dismissal, the grievance, the response from the individual named in the grievance, correspondence that is intended to give notice of the dismissal, and any other documents obtained or generated during the investigation (other than those documents that are subject to a legitimate claim of privilege or otherwise exempt from disclosure by law) shall be subject to disclosure pursuant to the Kentucky Open Records Act, KRS 61.870 through 61.884.

(3) If the committee~~[board]~~ determines that the results of an investigation warrant the issuance of an administrative charge against a credential holder~~[licensee]~~, then the board may seek settlement or file a notice of administrative hearing under KRS Chapters 13B and 321~~[shall cause an administrative charge to be prepared]~~.

(4) If the committee~~[board]~~ determines that the results of an investigation warrant proceedings against a person who is not a credential holder~~[licensee]~~, then the board shall cause a civil action to be prepared for filing in the Franklin Circuit Court or other court of competent jurisdiction.

~~Section 6.] [Administrative Charges.]~~

~~[(1)] [The administrative charge shall:]~~

~~[(a)] [Be signed and dated by a member of the board or the board's authorized representative;]~~

~~[(b)] [Be designated with an administrative charge number; and]~~

~~[(c)] [State:]~~

~~[1.] [The board's jurisdiction in regard to the subject matter of the administrative charge; and]~~

~~[2.] [In numerical paragraphs, sufficient information to apprise the named licensee or individual of the general nature of the charges.]~~

~~[(2)] [A licensee's written response shall be due within thirty (30) days after the issuance of the administrative charge. Failure to respond within that time period may be taken by the board as an admission of the charges.]~~

~~[(3)] [Each notice shall be issued in accordance with KRS 13B.050.]~~

Section 6. ~~[Section 7.]~~ Proceedings Following the Issuance of an Administrative Charge.

(1) The board shall arrange for the appointment of a hearing officer in accordance with KRS 13B.030 and 13B.040.

(2) The board's legal counsel shall act as the prosecuting attorney in regard to any disciplinary proceeding unless the board appoints a special prosecuting attorney.

(3) The board may appoint a representative of the Attorney General's office or another attorney to act as advisory counsel to the board in regard to any deliberations of the board following the issuance of an administrative charge.

(4) The provisions of KRS Chapter 13B shall govern the conduct of the proceeding.

(5) The board shall order the respondent to file an Answer to the Notice of Administrative Hearing within twenty (20) days of the date the Notice of Administrative Hearing was served on the respondent.

Section 7. At the conclusion of the case, the board shall notify the complainant of the outcomes.

Section 8. Incorporation by Reference.

(1) "Grievance Form", 12/2022~~[2/2020]~~, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subjected to applicable copyright law, at the Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:30~~[8:00]~~ a.m. to 4:30 p.m. This material may also be obtained at www.kybve.com.

(46 Ky.R. 1747, 2620; eff. 6-30-2020; 49 Ky.R. 1480; eff. 7-5-2023.)

STEVEN J. WILLS, DVM, Board Chair

APPROVED BY AGENCY: December 15, 2022

FILED WITH LRC: December 15, 2022 at 11:45 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on February 23, 2023 at 9:00 a.m., at the Kentucky Department of Agriculture, 109 Corporate Drive, Frankfort, Kentucky 40601. 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 prior to the end of the hearing. 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 February 28, 2023. 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: Michelle Shane, Executive Director, Kentucky Board of Veterinary Examiners, 107 Corporate Drive, Second Floor, Frankfort, Kentucky 40601, phone (502) 782-0273, fax (502) 695-5887, email michelle.shane@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Michelle Shane, Executive Director

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the complaint, or “grievance” procedures following by the board, including response protocols and the board’s ability to investigate as needed to gather information.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish the standard protocols and procedures that the agency shall follow for handling grievances and violations of KRS Chapter 321, including investigations and administrative charges.

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

KRS 321.235, 321.351, 321.360, 321.990 specifically direct the board enforce the provisions of KRS Chapter 321 and impose penalties, where appropriate. KRS 321.235 authorizes the board promulgate administrative regulations to carry out the provisions of the chapter.

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

This administrative regulation shall assist in effective administration by clearly detailing procedures the board shall follow when addressing grievances, conducting investigations, and issuing penalties.

(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:

This amendment clarifies that grievances, investigations, and penalties may apply to any board credential holder, clarifies that the board may conduct investigative activities to determine if a grievance has merit, removes the requirement for the Chairman to screen every potential grievances, reverts the response time for credential holders back to the original twenty (20) days, changes the name of the “Complaints Screening Committee” to the “Grievance Committee”, and adds the requirement for respondents to file an Answer to the Notice of Administrative Hearing, where appropriate.

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

The Kentucky Board of Veterinary Examiners has determined this amendment is necessary in response to lag time in current grievance procedures, limitations on the board to gather factual information prior to official grievance filings, and the need to identify that grievances may be filed on any board credential holder.

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

KRS 321.235, 321.351, 321.360, 321.990 specifically direct the board enforce the provisions of KRS Chapter 321 and impose penalties, where appropriate. KRS 321.235 authorizes the board promulgate administrative regulations to carry out the provisions of the chapter.

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

This amendment shall assist in effective administration by clearly detailing procedures the board shall follow when addressing grievances, conducting investigations, and issuing penalties.

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

2,650 veterinarians, 535 licensed veterinary technicians, 50 animal control agencies, and 161 animal euthanasia specialists, and future applicants; this may also impact individuals operating without a license in contravention of KRS Chapter 321.

(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:

All individuals responding to a grievance filed with the board shall have twenty (20) days to respond in writing to the allegations.

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

There shall be no additional costs imposed as a result of this amendment.

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

Administrative ease of clear communications of the approved requirements.

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

(a) Initially:

No costs are anticipated.

(b) On a continuing basis:

No costs are anticipated.

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

This administrative regulation does not establish fees. Funding for the KBVE comes from licensure and certification fees.

(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:

There is no anticipation of an increase in fees or needed funding to implement this administrative regulation, as the KBVE is already running an administrative program to process applications and an investigative program to investigate grievances.

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

No fees are established or increased by this administrative regulation.

(9) TIERING: Is tiering applied?

No. All regulated entities have the same requirements.

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?

The Kentucky Board of Veterinary Examiners.

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

KRS 321.235, 321.351, 321.360, 321.990.

(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.

(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 revenue will be generated from this filing.

(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 revenue will be generated from this filing.

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

This is not a new program. Staff time will be required for record keeping.

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

Staff time will be required for record keeping. Costs will be very minimal.

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

Revenues (+/-):None.

Expenditures (+/-):None or negligible.

Other Explanation:

n/a

(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?

There will be no cost savings; this amendment simply codifies the requirements, making them easily accessible for regulated entities.

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

There will be no cost savings.

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

There will be no additional costs involved.

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

There will be no additional costs involved.

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

Cost Savings (+/-):None.

Expenditures (+/-):None or negligible.

Other Explanation:

n/a

(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 amendment shall not have a "major economic impact", as defined in KRS 13A.010(13).