

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, 317.070, 317A.145

CERTIFICATION STATEMENT: This is to certify that this administrative regulation complies with 2025 RS HB 6, Section 8.

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 signed 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 at least~~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 but are not considered members of the committee, nor shall staff or counsel be permitted to cast votes during the committee meetings.

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. Anonymous complaints will not be accepted. 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 thirty (30)~~ten (10)~~ calendar days from the date of receipt to submit a written response. The complaints committee or the executive director may extend these timelines as appropriate.

(3) The complaint committee may~~shall~~ meet at regular intervals as determined by the board.~~[A complaint and any written response shall arrive ten (10) days prior to the meeting to meet the deadline for making a recommendation to the board.]~~ At its meetings, the complaint committee shall review the complaint, the response, and any other relevant information or material available, and may 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:
 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; or~~[-]~~

- (e) Refer the matter to the full board for its consideration.
- (4) Should the complaint committee be unable to agree on a recommendation, the matter shall be forwarded to the full board for its consideration.
- (5) ~~[(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.
- (6) ~~[(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).
- (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) calendar 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 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", March 2025, ~~July 2022,~~ 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, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. or on the board's Web site at <http://kbc.ky.gov>.

KERRY HARVEY, Chair

JONI UPCHURCH, Executive Director

APPROVED BY AGENCY: March 10, 2025

FILED WITH LRC: April 14, 2025 at 8:08 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on Monday, June 30th, 2025 at 2:00 p.m. EST at the Kentucky Board of Cosmetology. 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 June 30th, 2025. 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: Joni Upchurch, Executive Director, 1049 US-HWY 127, Annex #2, Frankfort, Kentucky 40601, (502) 564-4262, joni.upchurch@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Joni Upchurch

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This regulation establishes the complaint process and disciplinary process authorized by KRS 317A.

(b) The necessity of this administrative regulation:

It provides what is required when filing the complaint, the process for the licensee that is the subject of the complaint, and the disciplinary process if a violation is found.

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

This administrative regulation conforms to the content of the authorizing statutes by setting up guidelines for the complaint and disciplinary process.

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

This administrative regulation assists or will assist in the effective administration of the statutes by expanding the time for a licensee to respond if they have had a complaint filed against them and the referral process by the complaint committee to the board.

(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 change this existing administrative regulation by adding the additional time for a reply and clarifying what happens if the complaint committee cannot agree on a disciplinary action for a violation.

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

The amendment is necessary to ensure and improve the due process afforded the licensees.

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

The amendment conforms to the content of the authorizing statutes by providing a manageable way to realize the Board's charge of keeping the public safe.

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

The amendment will assist in the effective administration of the statutes by its clarity.

(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 licensee, businesses, organizations 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:

No actions will be needed to comply with this amendment.

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

mNo cost for this amendment.

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

Entities will have a much more straightforward inspection.

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

(a) Initially:

N/A

(b) On a continuing basis:

N/A

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

No source of funding is needed for the implementation and enforcement beyond what is already allocated by statute.

(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 IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation:

Kentucky Board of Cosmetology is the only agency affected. No other areas of state or local government are affected by this regulation.

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act:

This administrative regulation is expressly authorized by an act of the General Assembly

(3)(a) Identify the promulgating agency and any other affected state units, parts, or divisions:

The promulgating agency is the Kentucky Board of Cosmetology. There are no other affected state units, parts, or divisions.

(b) Estimate the following for each affected state unit, part, or division identified in (3)(a):

1. Expenditures:

For the first year:N/A

For subsequent years:N/A

2. Revenues:

For the first year:N/A

For subsequent years:N/A

3. Cost Savings:

For the first year:N/A

For subsequent years:N/A

(4)(a) Identify affected local entities (for example: cities, counties, fire departments, school districts):

No local entities are affected.

(b) Estimate the following for each affected local entity identified in (4)(a):

1. Expenditures:

For the first year:N/A

For subsequent years:N/A

2. Revenues:

For the first year:N/A

For subsequent years:N/A

3. Cost Savings:

For the first year:N/A

For subsequent years:N/A

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a):

No other regulated are affected.

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:

For the first year:N/A

For subsequent years:N/A

2. Revenues:

For the first year:N/A

For subsequent years:N/A

3. Cost Savings:

For the first year:N/A

For subsequent years:N/A

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a)

(a) Fiscal impact of this administrative regulation:

There will be a balanced cost to expenditures and revenues to the regulating agency that oversees the items in this regulation.

(b) Methodology and resources used to reach this conclusion:

N/A

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a “major economic impact”, as defined by KRS 13A.010(13):

There is no negative or adverse major economic impact to anyone.

(b) The methodology and resources used to reach this conclusion:

N/A