

## **201 KAR 20:161. Investigation and disposition of complaints.**

RELATES TO: KRS Chapter 13B, 218A.205, 314.011, 314.031, 314.071(4), 314.091, 314.107, 314.475, 314.991(3)

STATUTORY AUTHORITY: KRS 218A.205, 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations to effect the provisions of KRS Chapter 314. This administrative regulation establishes the procedures for the investigation and disposition of complaints received by the board.

### **Section 1. Receipt of Complaints.**

(1) The board shall receive and process each complaint made against a licensee, holder of a multistate licensure privilege pursuant to KRS 314.475, or applicant or unlicensed individual if the complaint alleges acts that may be in violation of the provisions of KRS Chapter 314.

(2)

(a) A complaint shall be in writing and shall be dated and fully identify the individual by name. The complaint may be submitted electronically, by fax, or mail.

(b) The president of the board or the executive director or designee shall file a complaint based upon information received by oral, telephone, or written communications if the facts of the complaint are found to be accurate and indicate acts that may be in violation of the provisions of KRS Chapter 314.

(3) A certified copy of a court record for a misdemeanor or felony conviction or a certified copy of disciplinary action in another jurisdiction shall be considered a valid complaint.

(4) A complaint shall be investigated.

(a) If the complaint establishes a potential violation or the conduct falls within the statutory instances which shall be investigated, the board shall send a copy of the complaint to the licensee, holder of a multistate privilege, or applicant to the address of record by United States Postal Service regular mail. If the board is aware of the person's email address, it may send a copy by email as well.

1. For licensees, the address of record is the last known address in accordance with KRS 314.107.

2. For applicants, the address of record is the last known address in accordance with 201 KAR 20:370, Section 1(10).

3. For holders of a multistate privilege, the address of record is the last known mailing address of record reported by the primary state of residence board of nursing to the NURSUS database.

4. All further mailings to the respondent subsequent to the complaint shall be mailed by U.S. Postal Service regular mail to the address of record, except a notice of hearing pursuant to KRS 13B.050 and a final order pursuant to KRS 13B.120, both of which shall be mailed by U.S. Postal Service certified mail to the address of record.

(b) A written, legible, verified response shall be filed with the board within thirty (30) days of receipt by the individual against whom the complaint has been made.

(c) The staff may request an informal conference with the individual against whom the complaint has been made.

(5)

(a) A complaint shall be evaluated to find if a violation of the provisions of KRS Chapter 314 has been alleged.

(b) The credentials review panel or the executive director or designee shall make the determination as to the disposition of the complaint pursuant to Section 2 of this

administrative regulation.

(6)

(a) All preliminary information shall be treated as confidential during the investigation and shall not be disclosed to board members or to the public, except as provided by KRS 314.475. The board shall make available to the public the fact that an investigation is pending.

(b) If a board member has participated in the investigation or has substantial knowledge of facts prior to a hearing on the complaint that may influence an impartial decision by the member, that member shall not participate in the adjudication of the complaint.

(7)

(a) When the board receives a report of improper, inappropriate, or illegal prescribing or dispensing of a controlled substance by an advanced practice registered nurse (APRN), it shall notify, within three (3) business days:

1. The Department of Kentucky State Police;
2. The Office of the Attorney General; and
3. The Cabinet for Health and Family Services, Office of the Inspector General.

(b) An investigation concerning a complaint filed against an APRN pertaining to the improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall be commenced within seven (7) days of the filing of the complaint.

(c) The investigation shall be completed and a determination as to the disposition of the complaint shall be made within 120 days of the receipt of the complaint, unless an extension of time is requested by a law enforcement agency due to an ongoing criminal investigation.

## Section 2. Disposition of Complaints.

(1) Disposition of complaints shall be as follows:

(a) If there is a determination by the executive director or designee that there is insufficient evidence of a violation or that a violation has not occurred, there shall not be further action unless warranted by future evidence;

(b)

1. The complaint may be referred to the credentials review panel of the board by the executive director or designee for disposition pursuant to this section or for issuance of a letter of concern; or
2. It may be found that there is probable cause that a violation of KRS 314.091 has occurred.

(c) In cases involving practice as a nurse on the privilege pursuant to KRS 314.475, the case may be referred to the home state.

(2) Upon determination that there is probable cause that a violation of KRS 314.091 has occurred, the complaint shall be handled as follows:

(a) An administrative hearing may be scheduled pursuant to subsection (3) of this section;

(b) An agreed order may be offered pursuant to subsection (4) of this section; or

(c) A consent decree may be offered, pursuant to subsection (5) of this section.

(3) Administrative hearings.

(a) Hearings shall be held pursuant to KRS 314.091, Chapter 13B, and 201 KAR 20:162.

(b) Notice of the hearing and charges shall be signed by the executive director or designee.

(4) Agreed order.

(a) The board may enter into an agreement with an individual for denial, revocation, voluntary surrender, suspension, probation, reinstatement, limitation of license or

reprimand, and to impose a civil penalty, if the individual agrees to waive the right to a hearing. The terms of the agreement may include other conditions or requirements to be met by the individual, including those listed in Section 4 of this administrative regulation.

(b) The agreed order may contain terms that ensure protection of public health and safety or that serve to educate or rehabilitate the individual.

(c) The agreed order, if approved by the board, shall terminate the investigation of a specific complaint.

(d) If the agreed order is not approved by the board, charges may be brought pursuant to KRS 314.091, and the matter shall be resolved as directed therein.

(5) Consent decree.

(a) If an individual agrees to waive the right to a hearing, the board may issue a consent decree in accordance with the provisions of KRS 314.991 to impose a civil penalty and other terms and conditions as listed in Section 4 of this administrative regulation against an individual who has:

1. Practiced as a nurse in the Commonwealth of Kentucky without a temporary work permit, multistate licensure privilege pursuant to KRS 314.475, or a current license or provisional license issued by the board;

2. Practiced as an advanced practice registered nurse in the Commonwealth of Kentucky without current licensure issued by the board prior to filing an application for licensure;

3. Practiced as an advanced practice registered nurse after expiration of the current certification granted by the appropriate national organization or agency;

4. Rectified noncompliance with continuing education requirements, as established in 201 KAR 20:215, Section 3;

5. Tested positive on a drug screen for a nonprescribed drug or illicit substance and obtained a substance use disorder evaluation that does not indicate a diagnosis of substance use disorder;

6. Failed to report a criminal conviction or disciplinary action against any professional license or credential in Kentucky or in another jurisdiction on an application;

7. Committed a substandard nursing act where:

a. The continuing practice by the nurse does not pose a risk of harm to the client or another;

b. The potential risk of physical, emotional, or financial harm to the client due to the incident is minimal;

c. The nurse subsequently exhibits a conscientious approach to and accountability for his or her practice; and

d. The nurse subsequently has demonstrated the knowledge and skill to practice safely; or

8. As an advanced practice registered nurse (APRN) with a Collaborative Agreement for Prescriptive Authority for Controlled Substances (CAPA-CS):

a. Failed to register with KASPER;

b. Failed to report a DEA registration number to the board; or

c. Failed to notify the board of the CAPA-CS.

(b) The issuance of a consent decree shall be restricted to only those individuals described in paragraph (a) of this subsection who have not previously been issued a consent decree for the same or substantially similar violation and who have not violated any other provision of KRS Chapter 314 or any other laws of the Commonwealth of Kentucky or of the United States.

(c) The license may be issued by board staff after the individual meets all requirements for licensure upon ratification of the consent decree by the board.

- (d) Upon ratification by the board of the consent decree, the investigation of the specific complaint shall be terminated.
  - (e) If the consent decree is not ratified by the board, charges may be brought pursuant to KRS 314.091, and the matter shall be resolved as directed therein.
  - (f) Consent decrees that have been ratified by the board shall not be reported to other state boards of nursing, the national council of state boards of nursing, or other organizations, unless required by law.
- (6) Special standards for an Advanced Practice Registered Nurse (APRN) with a Collaborative Agreement for Prescriptive Authority for Controlled Substances (CAPA-CS).
- (a) An APRN licensed in Kentucky or an applicant for licensure in Kentucky who has been convicted of any felony offense after July 20, 2012 relating to controlled substances in any state shall be permanently banned from prescribing controlled substances.
  - (b) An APRN licensed in Kentucky or an applicant for licensure in Kentucky who has been convicted of any misdemeanor offense after July 20, 2012 relating to prescribing or dispensing controlled substances in any state shall have their authority to prescribe controlled substances suspended for at least three (3) months and further restricted as established by the board.
  - (c) The board shall mirror in time and scope any disciplinary limitation placed on an APRN licensed in Kentucky by a licensing board of another state if the disciplinary action resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances.
  - (d) An applicant for licensure in Kentucky as an APRN who has disciplinary action by a licensing board of another state which resulted from improper, inappropriate, or illegal prescribing or dispensing of controlled substances shall have his or her application denied.
  - (e) Cases that come under KRS 314.011(21)(c) shall not be considered convictions for the purpose of this subsection.

Section 3. The executive director or designee shall notify the complainant and the person against whom the complaint was made of the final disposition of the case.

Section 4. The restrictions or conditions imposed by the board on a temporary work permit, holder of a multistate licensure privilege, or license or provisional license may include the following:

- (1) Prohibiting the performance of specific nursing acts including access to, responsibility for, or the administration of controlled substances; administration of medication; supervisory functions; or any act that the individual is unable to safely perform;
- (2) Requiring the individual have continuous, direct, on-site supervision by a licensed nurse, physician, or another specifically identified classification of professional licensure in Kentucky;
- (3) Specifying the individual's practice setting;
- (4) Specifying the types of patients to whom the individual may give nursing care;
- (5) Requiring the individual to notify the board in writing of a change in name, address, or employment;
- (6) Requiring the individual to have his or her employer submit to the board written reports of performance or compliance with the requirements established by the board;
- (7) Requiring the individual to submit to the board evidence of physical, mental health, neuropsychological, psychosocial, psychosexual, or substance use disorder evaluations, counseling, therapy, or drug screens;
- (8) Meeting with representatives of the board;
- (9) Issuing the license or temporary work permit for a specified period of time;

- (10) Requiring the individual to notify the board in writing of criminal arrests, charges, or convictions;
- (11) Requiring the individual to be employed as a nurse for a specified period of time; or
- (12) Requiring the individual to complete continuing education in a specific subject.

Section 5. Anonymous Complaints. Section 1(2)(a) of this administrative regulation notwithstanding, the board shall accept an anonymous complaint if the complaint is accompanied by sufficient corroborating evidence as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint is meritorious.

Section 6. In accordance with federal law, the board shall submit all disciplinary actions to the National Practitioner Data Bank of the United States Department of Health and Human Services either directly or through a reporting agent.

Section 7.

- (1) The board may conduct a random audit of the prescribing practices of an advanced practice registered nurse (APRN) through a review of KASPER data, patient records, pharmacy records, or other relevant material.
- (2) An APRN who is audited shall cooperate with the audit. Failure to cooperate may subject the APRN to disciplinary action pursuant to KRS 314.091.
- (3) The board may initiate disciplinary action pursuant to this administrative regulation for any potential violation of the law.

(11 Ky.R. 1694; eff. 6-4-1985; 14 Ky.R. 578; 1068; eff. 11-6-1987; 2192; eff. 8-5-1988; 15 Ky.R. 838; eff. 10-14-1988; 17 Ky.R. 2758; eff. 4-11-1991; 19 Ky.R. 2667; 20 Ky.R. 304; eff. 8-6-1993; 32 Ky.R. 292; 620; eff. 10-19-2005; 33 Ky.R. 863; 1288; eff. 11-15-2006; 34 Ky.R. 2341; 2527; eff. 6-18-2008; 35 Ky.R. 1505; eff. 2-18-2009; 36 Ky.R. 1978; eff. 5-7-2010; TAm eff. 7-15-2010; 38 Ky.R. 297; 10-19-11; 39 Ky.R. 538; eff. 2-1-2013; 40 Ky.R. 2602; 41 Ky.R. 22; eff. 8-1-2014; 45 Ky.R. 1739, 2580; eff. 3-13-2019; 47 Ky.R. 555; eff. 12-15-2020.)