

## **201 KAR 23:150. Complaint procedure, disciplinary action, and reconsideration.**

RELATES TO: KRS 335.030, 335.070(1)(a), (2)-(8), 335.150, 335.155

STATUTORY AUTHORITY: KRS 335.070(1)(a), (2), (3), 335.150, 335.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.070(1)(a) requires the board to administer and enforce the provisions of KRS 335.010 to 335.160 and 335.990. KRS 335.070(3) authorizes the board to promulgate administrative regulations to carry out the provisions of KRS 335.010 to 335.160 and 335.990. KRS 335.070(2) authorizes the board to issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating KRS 335.010 to 335.160 and 335.190. KRS 335.150 authorizes the board to regulate the conduct of individuals, including to investigate alleged violations and take appropriate disciplinary action. KRS 335.160 authorizes the board to enjoin violations. This administrative regulation establishes the procedures to be followed in handling formal and informal disciplinary proceedings before the board in the imposition of sanctions and disciplinary action of a licensee or individual in violation of KRS 335.030 or KRS 335.150.

### **Section 1. Definitions.**

- (1) "Board" is defined by KRS 335.020(1).
- (2) "Charge" means a specific allegation contained in a document issued by the board or hearing panel alleging a violation of a specified provision of KRS 335.010 to 335.160 or 201 KAR Chapter 23.
- (3) "Complaint committee" means a committee of the board that:
  - (a) Reviews an initiating complaint; and
  - (b)
    1. Recommends dismissal or further investigation of the complaint; or
    2. Determines the existence of sufficient evidence to bring a formal complaint.
- (4) "Formal complaint" means a formal administrative pleading or notice of administrative hearing authorized by the board that sets forth charges against a license holder, an applicant, or an unlicensed person engaging in the practice of social work or holding himself or herself out to the public by any title regulated by the board, and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.
- (5) "Initiating complaint" means an allegation alleging misconduct by a licensee or applicant or alleging that an unlicensed person is engaging in the practice of social work, or is using the title "Certified Social Worker", "Licensed Social Worker", or "Licensed Clinical Social Worker".
- (6) "Order" means the whole or part of a final disposition of a hearing.
- (7) "Respondent" means the person against whom an initiating or formal complaint has been made.

### **Section 2. Composition of Complaint Committee.**

- (1) The complaint committee shall consist of at least two (2) board members appointed by the board chair, one (1) of whom may be the board chair; and
- (2) The complaint committee may be assisted by the board staff and counsel to the board.

### **Section 3. Initiating Complaint.**

- (1) An initiating complaint may be made by:
  - (a) An individual;
  - (b) An individual who is authorized to act on the behalf of an employer of a licensee or applicant;
  - (c) A government agency; or
  - (d) The board.
- (2) An initiating complaint shall be:

- (a) Made by a complainant in writing to the board on a Kentucky Board of Social Work Complaint Form along with an Authorization for Release of Medical and Hospital Records form, if applicable and describe with sufficient detail the alleged violations or violations of KRS Chapter 335 or 201 KAR Chapter 23; and
- (b) Received in the board office by mail, hand delivery, fax, electronic mail, or by an online complaint submitted through the board's Web site at <https://bsw.ky.gov>.
- (3) The board may conduct an investigation and initiate any necessary complaint on its own initiative without receipt of a written complaint if the board has reasonable cause to believe that there may be a violation of KRS 335.010 to 335.160 or 201 KAR Chapter 23.
- (4) A certified copy of a court record for conviction of a misdemeanor or felony shall be considered a valid initiating complaint against a licensee or temporary permit holder.
- (5) Redaction.
  - (a) Upon recommendation of the complaint committee and consent by majority vote of the board, the board may direct that an initiating complaint be redacted of personal names, identification numbers, and contact information.
  - (b) The board shall keep the original initiating complaint free of redactions and store the document in the complaint case file.

#### Section 4. Notice to Respondent.

- (1)
  - (a) The board shall notify a respondent in writing of the receipt of an initiating complaint and send a copy of the initiating complaint to the respondent at his or her mailing address or electronic mail address provided to the board.
  - (b) The board shall send a redacted copy of an initiating complaint to the respondent. A respondent may inspect records related to him or her, or in which he or she is mentioned by name pursuant to KRS 61.884.
  - (c) The board may keep the complainant's name and contact information confidential until completion of the investigation if any.
- (2) A respondent shall file a written response to an initiating complaint with the board by mail, hand delivery, fax, or electronic mail within twenty (20) days after receipt of notice of the initiating complaint, unless an extension is requested and granted in accordance with subsection (4) of this section.
- (3) Failure of a respondent to file a timely response to the initiating complaint shall constitute a violation of a board order and this administrative regulation and shall be grounds for disciplinary action under KRS 335.150(1)(f).
- (4) Request for extension of time.
  - (a) A respondent, or his or her legal representative may request an extension of time or additional time to file a response by submitting a written request to the board on or before the expiration of the twenty (20) day due date established in subsection (2) of this section.
  - (b) The complaint committee or the board administrator may grant an extension of time if requested to obtain legal counsel, provide ample time for preparation of a detailed response, or for other good cause shown.

#### Section 5. Recommendations of Complaint Committee.

- (1) Based on consideration and review of the initiating complaint, the response, and any other relevant information or material available, the complaint committee may recommend that the board:
  - (a) Dismiss the initiating complaint and find the matter closed if:
    - 1.
      - a. The board lacks jurisdiction over the person named in the initiating complaint;
      - b. There is insufficient evidence to support the initiating complaint;

- c. There are no violations of laws, rules, or administrative regulations governing the practice of social work; or
  - d. The conduct complained of does not warrant disciplinary or other remedial action.
2. Upon reaching a decision to dismiss the initiating complaint, the board shall notify the respondent and complainant of the disposition of the matter in writing, by personal service, regular mail, or electronic mail address provided to the board.
  3. Dismissal of an initiating complaint shall be a final board action and shall not be subject to further investigation by the board or appeal under KRS 335.155.
- (b) Further investigation of the initiating complaint. If the board approves an investigation, the board may be assisted by board staff, an agent of the board, the Office of the Attorney General, or other appropriate local, state, or federal agency;
  - (c) Refer the initiating complaint to another committee of the board;
  - (d) Request an Authorization for Release of Medical and Hospital Records form from a party;
  - (e) Resolve the initiating complaint through informal proceedings pursuant to KRS 335.150(4);
    1. At any time during the complaint process, the board may authorize the board attorney or executive director of the board to enter into discussions or negotiations with a respondent and his or her attorney, if any, for the purpose of settling and informally dispensing with the initiating complaint.
    2. An agreed order or assurance of voluntary compliance shall be approved by a majority vote of the board and be signed by the chairperson of the board, the respondent, and the respondent's attorney, if any. Copies shall be placed in the licensee's file, and be provided to the complainant.
    3. The board may employ mediation as a method of resolving the matter informally.
    4. A mediated agreement shall be handled in the same manner as an agreed order in subsection (1) of this section.
  - (f) Issue a formal complaint and provide notice of hearing to the respondent in accordance with KRS Chapter 13B and KRS 335.155;
  - (g) Refer the matter to another government agency; or
  - (h) Initiate a proceeding in its own name in Franklin Circuit Court to restrain and enjoin a violation in accordance with KRS 335.160.
- (2) If at any time a complaint committee member becomes aware of having a possible conflict of interest, the member shall disclose the existence of the conflict to the complaint committee and the member may be excused by the board.

#### Section 6. Board Action upon Recommendation of Complaint Committee.

- (1) The board shall review the committee's recommendations and shall approve or reject by majority vote the recommendations in whole or in part.
- (2) A board member having a known conflict of interest or if at any time becomes aware of a possible conflict of interest shall disclose the existence of the conflict in writing to the board and may be excused, if warranted.
- (3) The board shall notify a respondent and complainant of the resolution of the complaint in writing, by personal service, by the regular mail, or electronic mail address provided to the board.

#### Section 7. Motion to Reconsider.

- (1) A respondent may file a motion to reconsider, modify, or reverse the final disposition of a disciplinary hearing to the board within thirty (30) days of notification of final disposition, in writing, and received in the board office by mail, hand delivery, fax, or electronic mail.
- (2) The motion to reconsider shall provide evidence of the following:

- (a) Grounds and reasons for reconsideration, modification, or reversal;
  - (b) Rehabilitation or restitution, if applicable; and
  - (c) Status of probation, parole, or supervision by any state or federal government agency or board.
- (3) The complaint committee shall consider any such motion to reconsider at the next regularly scheduled committee meeting and any change in disposition shall be approved by a majority vote of the board.
- (4) The board shall notify a respondent and complainant of the disposition of the reconsideration in writing, by personal service, by the regular mail, or electronic mail address provided to the board.
- (5) The board shall consider no more than one (1) motion to reconsider from a respondent in a final matter.

**Section 8. Formal Response.**

- (1) Within twenty (20) days of service of the notice of administrative hearing, the respondent shall file with the board a written response to the specific allegations set forth in the notice of administrative hearing.
- (2) Allegations not properly responded to shall be deemed admitted.
- (3) The board shall, if there is good cause, permit the late filing of a response.

**Section 9. Composition of the Hearing Panel. Disciplinary actions shall be heard by a hearing officer and:**

- (1) The full board or a quorum of the board;
  - (2) A hearing panel consisting of at least one (1) board member appointed by the board;
- or
- (3) The hearing officer alone in accordance with KRS 13B.030(1).

**Section 10. Administrative Disciplinary Fine. If the board finds against the respondent on a charge, an administrative disciplinary fine in accordance with KRS 335.150 shall be assessed against the respondent.**

**Section 11. Unlicensed Practice.**

- (1) If the complaint committee concludes that an initiating complaint is substantiated to show that a person is practicing social work without a license, or is holding himself or herself out to the public by any title regulated by the board, then the committee shall prepare a letter signed by the board chair or an authorized representative, and notify the person of the committee's belief that the person is engaging in this behavior and request that the person cease practicing without a license, or from holding himself or herself out by utilizing a regulated title.
- (2) The board may forward the complaint to the appropriate county attorney or Commonwealth's attorney with a request that appropriate action be taken in accordance with KRS 335.990.
- (3) The board may initiate an action for injunctive relief in Franklin Circuit Court to restrain and enjoin violations in accordance with KRS 335.160.

**Section 12. Incapacity of Respondent.**

- (1) If the board receives an initiating complaint alleging that a licensee or an applicant has been legally declared mentally incompetent or may be mentally incapable of providing social work services in a competent, safe, ethical, or professional manner, the board shall follow the procedures established in this administrative regulation;
- (2) The board may order the licensee or applicant to submit to an examination by a psychologist, physician, or certified alcohol and drug counselor designated by the board to determine whether the licensee or applicant is capable of providing social work

services in a competent, safe, ethical, or professional manner in accordance with KRS 335.010 to 335.160 and 201 KAR Chapter 23.

(3) The board shall pay the cost for an examination initiated and recommended by the board. The respondent shall pay the cost of the examination if he or she seeks an independent examination.

Section 13. Emergency Action. (1) Nothing in this administrative regulation shall be construed to prevent the board from taking emergency action if authorized by KRS 13B.125.

Section 14. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "KY Board of Social Work Complaint Form", 4/2021; and

(b) "Authorization for Release of Medical and Hospital Records", 4/2021.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Social Work, 125 Holmes Street, Suite 310, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

(47 Ky.R.1503, 2012, 2357; eff. 6-16-2021.)