201 KAR 39:100. Complaint procedure.

RELATES TO: KRS 309.304(7), 309.316, 309.318
STATUTORY AUTHORITY: KRS 309.304(3), 309.316(2)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.316(2) authorizes the board to establish procedures for receiving and investigating complaints. KRS 309.318 delineates the causes for which disciplinary action may be taken against a licensee. This administrative regulation establishes procedures for the filing, evaluation, and disposition of administrative complaints.

Section 1. Receipt of Complaints. (1) A complaint:
(a) May be submitted by an:
1. Individual;
2. Organization; or
3. Entity.
(b) Shall:
1. Be in writing or contained on a videotape or digital media; and
2. Include the signature or stated name, address, and telephone or videophone number of the person submitting the complaint; and
(c) May be filed by the board or board member based upon information in its possession.
(2) Upon receipt of the complaint a copy of the complaint shall be sent to the licensee named in the complaint along with a request for the licensee's response to the complaint. The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written, videotaped, or other digital media response.

Section 2. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the licensee's response, the case manager or the complaint screening committee shall consider the complaint, the licensee's response, and any other relevant material available and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.
(2) If the board determines before formal investigation that a complaint is without merit, it shall:
(a) Dismiss the complaint; and
(b) Notify the complainant and licensee of the board's decision.
(3) If the board determines that a complaint warrants a formal investigation, it shall:
(a) Authorize an investigation into the matter; and
(b) Order a report to be made to the case manager or the complaint screening committee at the earliest opportunity.

Section 3. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the investigator shall submit a written report to the case manager or the complaint screening committee of the facts regarding the complaint. The case manager or the complaint screening committee shall review the investigative report and make a recommendation to the board. The board shall determine whether there has been a prima facie violation of KRS 309.300 to 309.319 or the administrative regulations promulgated thereunder and if a formal complaint should be filed.
(2) If the board determines that a complaint does not warrant issuance of a formal complaint, it shall:
(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a violation has occurred but is not serious, the board may issue a written admonishment to the licensee in accordance with KRS 309.316(4).

(4) If the board determines that a complaint warrants the issuance of a formal complaint against a respondent, the board attorney in conjunction with the case manager or the complaint screening committee shall prepare a formal complaint which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chairman and served upon the individual as required by KRS Chapter 13B.

(5) If the board determines that a person may be in violation of KRS 309.301(1), it shall:

(a) Order the individual to cease and desist from further violations of KRS 309.301(1);

(b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 309.301(1) with a request that appropriate action be taken under KRS 309.319; or

(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 309.301(1) pursuant to KRS 309.304(7).

Section 4. Settlement by Informal Proceedings. (1) The board through counsel and the case manager or the complaint screening committee may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 5. Notice and Service of Process. A notice required by KRS 309.300 to 309.319 or this administrative regulation shall be issued pursuant to KRS Chapter 13B.

Section 6. Notification. The board shall make public:

(1) Its final order in a disciplinary action under KRS 309.316(3); and

(2) An action to restrain or enjoin a violation of KRS 309.301(1).

Section 7. Incorporation by Reference. (1) "Complaint Form", 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (28 Ky.R. 1266; Am. 1611; eff. 1-14-2002; 38 Ky.R. 1654; 1850; eff. 6-1-2012; TAm 6-1-2012.)