

201 KAR 44:070. Complaint process and disciplinary action procedure.

RELATES TO: KRS 319B.040(2) - (5), 319B.110, 319B.140(1)-(3)

STATUTORY AUTHORITY: KRS 319B.030(1)(e), (h), 319B.040(2) – (5), 319B.110, 319B.140

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319B.110 requires the board to prohibit unlicensed persons from engaging in the practice of Prosthetics, Orthotics, or Pedorthics or using the title of, Licensed Prosthetist, Licensed Orthotist, Licensed Pedorthist, or Licensed Fitter-orthotics. KRS 319B.140(3) authorizes the board to seek injunctive relief to stop the unlawful practice of prosthetics, orthotics, or pedorthics by unlicensed persons. This administrative regulation establishes provisions to protect and safeguard the health and safety of the citizens of Kentucky and to provide procedures for filing, evaluating, and disposing of complaints.

Section 1. Definitions. (1) "Act" means Chapter 319B of the Kentucky Revised Statutes.

(2) "Board" is defined by KRS 319B.010(1).

(3) "Charge" means a specific allegation contained in a document issued by the board or hearing panel alleging a violation of a specified provision of the KRS Chapter 319B or 201 KAR Chapter 44.

(4) "Complaint Committee" means the committee appointed pursuant to Section 2 of this administrative regulation.

(5) "Formal complaint" means a formal administrative pleading or notice of administrative hearing authorized by the board that sets forth charges against a licensed holder or applicant and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.

(6) "Initiating complaint" means an allegation alleging misconduct by a licensee or applicant or alleging that an unlicensed person is engaging in the practice of prosthetics, orthotics, or pedorthics, or using the title prosthetist, orthotist, pedorthist, or orthotic fitter.

(7) "Order" means the whole or a part of a final disposition of a hearing.

(8) "Presiding officer" means the person appointed by the board to preside at a hearing pursuant to KRS 319B.140(2) and Chapter 13B, and shall include either a hearing officer or a member of the hearing panel.

(9) "Respondent" means the person against whom an initiating or a formal complaint has been made.

Section 2. Initiating Complaint. (1) Source of initiating complaint. An initiating complaint may be initiated by the board, by the public, or by a governmental agency. A certified copy of a court record for a misdemeanor or felony conviction shall be considered a valid initiating complaint.

(2) Form of initiating complaint. Initiating complaints shall:

(a) Be in writing;

(b) Clearly identify the person against whom the initiating complaint is being made;

(c) Contain the date;

(d) Identify by signature the person making the initiating complaint; and

(e) Contain a clear and concise statement of the facts giving rise to the initiating complaint.

(3) Receipt of initiating complaint. An initiating complaint may be received by:

(a) A board member;

(b) The Office of the Attorney General; or

(c) A staff member of the board.

(4) Reply of respondent. A copy of the initiating complaint shall be mailed to the respondent. The respondent shall file with the board a written response to the initiating complaint:

(a) Within fifteen (15) days of the date on which the initiating complaint was mailed; or
(b) Within thirty (30) days upon written request of the respondent documenting good cause for an extension of time to respond.

(5) Complaint Committee.

(a) The Complaint Committee shall consist of no more than two (2) board members appointed by the chair of the board to:

1. Review initiating complaints, responses, and investigative reports;
2. Participate in informal proceedings to resolve formal complaints; and
3. Make recommendations for disposition of initiating complaints and formal complaints to the full board.

(b) The Complaint Committee may be assisted by the board staff and counsel to the board.

(6) Consideration of initiating complaint. At the next regularly-scheduled meeting of the board or as soon thereafter as practicable, the board or the complaint committee shall review the initiating complaint and response. The board shall determine if an investigation is warranted, and if so, the board shall appoint an agent or representative of the board to conduct an investigation of the initiating complaint.

(7) Order for status examination.

(a) If there is reasonable cause to believe that a licensee or applicant for a license may be physically or mentally impaired, and may not be able to practice with reasonable skill and safety to the public, the board shall order the licensee or applicant to submit to an examination by a psychologist or a physician designated and paid by the board in order to determine the licensee's or applicant's mental or physical health to practice prosthetics, orthotics, or pedorthics.

(b) The board shall then consider the findings and conclusion of the examination and the final investigative report, if any, at the board's next regularly-scheduled meeting or soon thereafter.

(8) Investigation.

(a) The person about whom the initiating complaint has been considered shall be contacted. With the consent of the respondent, a meeting may be scheduled at which time the person about whom the initiating complaint has been made may respond further to the allegations of the initiating complaint. The board and the respondent shall have the right to be represented at the meeting by legal counsel.

(b) Report of investigation. Upon the completion of the investigation, the person or persons making that investigation shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.

(c) Consideration of complaint and investigative report. Based on consideration of the complaint; the investigative report, if any; and the psychological or physical examination, if any, the board shall determine if there has been a prima facie violation of the Act.

1. If it is determined that the facts alleged in the initiating complaint or investigative report do not constitute a prima facie violation of KRS Chapter 319B or 201 KAR Chapter 44, the board shall notify the person making the initiating complaint and the respondent that no further action shall be taken at the present time.

2.a. If it is determined that there is a prima facie violation of KRS Chapter 319B or 201 KAR Chapter 44, the board shall issue a formal complaint against the licensee or applicant.

b. In the case of a prima facie violation of KRS 319B.110 and the respondent is not a licensee or an applicant, the board shall:

- (i) Issue a cease and desist order;
- (ii) File suit to enjoin the violator pursuant to KRS 319B.040(3); and
- (iii) Seek criminal prosecution pursuant to KRS 319B.150.

Section 3. Formal Complaint. If the board votes to file a formal complaint, a notice of administrative hearing shall be filed as required by KRS 13B.050.

Section 4. 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 5. Composition of the Hearing Panel. (1) Disciplinary actions shall be heard by a hearing officer and:

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

Section 6. Administrative Disciplinary Fine. If the board finds against the respondent on a charge, an administrative disciplinary fine in accordance with KRS 319B.040(5) shall be assessed against the respondent.

Section 7. Notification of Action Taken. The board shall make public:

- (1) Its final order in a disciplinary action; and
- (2) Action, if any, taken pursuant to Section 2(8)(c)2.b.(i) - (iii) of this administrative regulation. (38 Ky.R. 1514; Am. 1854; eff. 6-1-2012.)