

1 BOARDS AND COMMISSIONS

2 KENTUCKY BOARD OF EXAMINERS OF PSYCHOLOGY

3 (Amendment)

4 201 KAR 26:130. Grievances and administrative complaints.

5 RELATES TO: KRS 319.005, 319.032, 319.082, 319.118, 319.990

6 STATUTORY AUTHORITY: KRS 319.032(1)(k)

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(k) requires the board to
8 promulgate administrative regulations that establish the procedure for investigating complaints or
9 suspected violations of KRS Chapter 319 and notifying proper law enforcement authorities. KRS
10 319.005 prohibits unlicensed persons from engaging in the practice of psychology or using the
11 title of psychologist, licensed psychologist, certified psychologist, licensed psychological
12 practitioner, or licensed psychological associate. KRS 319.082 delineates the causes for which
13 disciplinary action may be taken against a credential holder. KRS 319.118 authorizes the board
14 to institute and maintain actions to restrain or enjoin violations of applicable statutes,
15 administrative regulations, and orders of the board. KRS 319.990 sets forth the criminal penalty
16 for violations and authorizes prosecution of violators. KRS 319.032 authorizes the board to
17 develop guidelines for use in complaints involving alleged sexual misconduct by a licensed
18 holder, and for training of investigators in these matters. This administrative regulation is
19 established to protect and safeguard the health and safety of the citizens of Kentucky and to
20 provide procedures for filing, evaluating, and disposing of administrative complaints asserted
21 against credential holders or applicants for licenses.

1 Section 1. Definitions. (1) "Administrative complaint" means a formal administrative
2 pleading authorized by the board that sets forth charges against a credential holder or applicant
3 and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.

4 (2) "Board" is defined in KRS 319.010(2), and for purposes of this administrative regulation,
5 shall also mean a hearing panel.

6 (3) "Charge" means a specific allegation contained in any document issued by the board or
7 hearing panel alleging a violation of a specified provision of the KRS Chapter 319 or 201 KAR
8 Chapter 26.

9 (4) "Grievance" means any allegation alleging misconduct by a licensed holder or applicant or
10 alleging that an unlicensed person is engaging in the practice of psychology or using the title of
11 psychologist.

12 (5) "Order" means the whole or any part of a final disposition of a hearing.

13 (6) "Person" means any individual, partnership, corporation, association, or public or private
14 organization of any character other than an agency.

15 (7) "Respondent" means the person against whom a grievance or administrative complaint has
16 been made.

17 Section 2. Grievance. (1) Source. A grievance may be initiated by:

18 (a) The board;

19 (b) The public; or

20 (c) Any governmental agency.

21 (2) Form.

22 (a) A grievance shall:

23 1. Be in writing through use of hard copy or digital forms provided by the board;

- 1 2. Clearly identify the licensee against whom the grievance is being made;
- 2 3. Contain the date the grievance is initiated;
- 3 4. Clearly identify the complainant through printed name, contact information, and signature;
- 4 5. Contain a clear and concise statement of the facts giving rise to the grievance, including the
- 5 relationship of the complainant to the licensee;
- 6 6. Indicate if the grievance arises out of a court-involved evaluation, consultation, treatment, or
- 7 psychoeducation of a person;
- 8 7. Provide consent, or a means of acquiring consent, from the legal guardian for investigations
- 9 involving minors or adults under guardianship; and
- 10 8. Provide a waiver of confidentiality for the complainant and the complainant's minor children
- 11 or wards, if applicable.
- 12 (b) A certified copy of a court record for a misdemeanor or felony conviction relating to the
- 13 practice of psychology shall be considered a valid grievance.
- 14 (c) The board shall not accept or process anonymous grievances or administrative complaints.
- 15 (3) A grievance shall be filed with the board at its designated office or place of business, or by e-
- 16 mail.
- 17 (4) Response. The board shall provide a copy of the grievance to the respondent in a timely
- 18 manner along with additional information and documents supplied by the complainant
- 19 throughout the administrative process.
- 20 (5) The respondent shall have twenty (20) days to file with the board a written response to the
- 21 grievance.
- 22 (6) Initial review of the grievance by the complaint screening committee:
- 23 (a) All grievances shall be assigned an identification number and be referred to as such to ensure

1 anonymity.

2 (b) At the next subsequent regularly-scheduled meeting of the board's designated complaint
3 screening committee, or as soon thereafter as practicable, the complaint screening board or a
4 panel committee of the board shall review the grievance and response as well as determine if the
5 matter is within the board's jurisdiction. At that time, and if all necessary information for
6 decision making is available, the complaint screening committee may recommend:

7 1. Dismissal of the grievance if the complaint screening committee determines there is no
8 evidence of a violation of law or ethics as provided by the statutes or administrative regulations
9 pertaining to the practice of psychology; if it is determined that the facts alleged in the grievance
10 or investigative report do not constitute a prima facie violation, the complaint screening
11 committee shall notify the complainant and the respondent that no further action shall be taken at
12 the present time.

13 2. Investigation;

14 3 Tabling the decision to allow for acquisition of additionally requested information, which may
15 include a fitness for duty evaluation;

16 4. Referral of the grievance to the full board for further review and action; or

17 5. Issuing a voluntary assurance of compliance to unlicensed individuals whom engage in the
18 practice of psychology.

19 (7) Investigation. The board shall provide investigators to explore the ethical and professional
20 conduct of respondents related to the filing of grievances.

21 (a) The investigator shall review the factors and variables within the grievance that are pertinent
22 to the practice of psychology and consider the circumstances for which the board's review is
23 required.

1 (b) The respondent shall be contacted by the investigator or board administrator to begin the
2 investigation. With the consent of the respondent, a meeting may be scheduled at which time the
3 respondent may further respond to the allegations of the grievance. The board and the respondent
4 shall have the right to be represented at the meeting by legal counsel.

5 (c)~~(b)~~1. If the grievance pertains to a minor or any person under legal guardianship as a
6 consumer, collateral, or participant of the investigation, the investigator shall acquire consent
7 from all-involved legal guardians of the minor or ward prior to proceeding with the investigation,
8 unless otherwise ordered by a court of law.

9 2. If the grievance arises out of a court-involved evaluation, treatment, or psychoeducation of a
10 person whereby the respondent's engagement was affiliated with a legal action, the investigator
11 shall secure information from all involved parties, as well as judicial officers and other involved
12 professionals, concerning the role of the respondent and the purpose and scope of the
13 respondent's court-affiliation. The investigator shall also secure information from opposing
14 parties and other stakeholders in the legal process when assessing the role of the respondent in
15 legal proceedings and how the role is related to the grievance.

16 3. Investigators shall consider information from multiple data-gathering methods to increase
17 accuracy and objectivity.

18 4. Investigators shall strive to use a balanced and fair process of investigation through collection
19 of valid collateral source information that demonstrates sufficiency and reliability.

20 5. In the investigation of the grievance, the investigator shall review all data provided from both
21 the complainant and the respondent as well as answer to all requested information from the
22 board.

23 6. Investigators shall perform reasonable inquiry when confronted with information about a

1 possible violation of law or ethics; however, the scope of the investigation shall be delineated by
2 grievance.

3 7. Investigators shall be free from multiple relationships and conflicts of interest prior to
4 acceptance and through completion of the investigation.

5 8. If the investigator is a member of the board, the investigating member shall not vote on
6 disposition of the grievance.

7 9. Investigators shall complete the investigation in less than sixty (60) days from the
8 respondent's final interview. If an extension is needed, the investigator shall inform the
9 complaints screening committee of the reason for the extension as well as an estimated date of
10 completion in fourteen (14) day intervals.

11 (8) Report of investigation. Upon the completion of the investigation, the person or persons
12 making the investigation shall submit a written report to the[~~board~~] complaints screening
13 committee containing a succinct statement of the facts disclosed or discovered by the
14 investigation. The investigator shall also acknowledge incomplete, unreliable, or missing data.

15 (9) After consideration of the grievance and investigative report by the complaint screening
16 committee, the committee may consider the options in paragraph (6)b of this section. If referred
17 to the board, the board shall determine, with the weight it sees fit, if there has been a prima facie
18 violation of KRS 319.082 based on consideration of the:

19 (a) Grievance;

20 (b) Response;

21 (c) Investigative report, if an investigation was warranted; and

22 (d) Fitness for duty examination, if an examination was warranted

23 (10) If it is determined that the facts alleged in the grievance or investigative report do not

1 constitute a prima facie violation, the board shall notify the person making the grievance and the
2 respondent that no further action shall be taken at the present time.

3 (11) If it is determined that there is a prima facie violation, the board shall:

4 (a) Issue an administrative complaint against the credential holder or applicant;

5 (b) File suit to enjoin the violator; or

6 (c) Seek criminal prosecution pursuant to KRS 319.990.

7 Section 3. Administrative Complaint. If the board determines that the grievance shall be made
8 an administrative complaint, the administrative complaint shall be adjudicated pursuant to KRS
9 Chapter 13B.

10 Section 4. Administrative Response. Within twenty (20) days of service of the formal
11 administrative complaint, the respondent shall file with the board a written response to the
12 specific allegations set forth in the administrative complaint. Allegations not properly responded
13 to shall be deemed admitted, and may form the basis for a default adjudication against the
14 respondent subject to the administrative complaint if the requisite elements of a violation are
15 admitted. The board may, for good cause, permit the late filing of a response.

16 Section 5. Allegations of Sexual Misconduct by a License Holder. (1) To assure
17 confidentiality for the complainant, the alleged victim's name shall not be used in any written
18 document. This individual shall be identified by initials only or by some other mechanism for
19 identification adopted by the board.

20 (2) Upon request, the testimony of the alleged victim may be taken by deposition in order to
21 assure his or her confidentiality.

22 (3) To protect the confidentiality of all parties, the board may issue an order restraining all
23 parties and their representatives, including counsel, from any discussion or release of information

1 about the allegations outside of the investigative and hearing processes.

2 (4) In accordance with the provisions of KRS 319.032(1)(d), the board may hold some or all of
3 the hearing procedures in closed session.

4 Section 6. Fitness for Duty Examination. (1) If there is reasonable cause to believe that a
5 credential holder or applicant for a license is physically or mentally incapable of practicing
6 psychology with reasonable skill and safety to clients, the board may order the credential holder
7 or applicant to submit to an examination by a psychologist or other health care provider
8 designated by the board to determine the credential holder's or applicant's fitness and competence
9 to practice psychology.

10 (2) The expense of this examination shall be borne by the board.

11 (3) The board shall then consider the findings and conclusion of the examination.

12 (4) The board shall provide a copy of the examination to the respondent. The respondent may file
13 with the board a written response to the examination within fifteen (15) days of the date on
14 which the findings and conclusion of the examination was provided to the respondent.

15 (5)(a) Based on consideration of the psychological or physical examination, the board shall
16 determine if there has been a prima facie violation of KRS 319.082.

17 (b) If it is determined that the findings and conclusion of the examination do not constitute a
18 prima facie violation of KRS 319.082, the board shall notify the respondent and complainant, if
19 any.

20 (c) If it is determined that there is a prima facie violation of KRS 319.082, the board shall issue
21 an administrative complaint against the credential holder or applicant.

22 Section 7. Board Member Training for Cases of Sexual Misconduct. (1) Within six (6) months
23 of their appointment, all board members and investigators shall undergo specialized training to

- 1 cover the content specified by KRS 319.032(1)(e).
- 2 (2) An investigator shall not be assigned to cases where sexual misconduct has been alleged until
- 3 the required training has been completed.
- 4 (3) Training shall consist of a three (3) hour course that includes the content specified by KRS
- 5 319.032(1)(e) and may be delivered by means of either live presentation, individual tutorial, or
- 6 electronic media.

201 KAR 26:130

Jean A. Deters, Psy. D.

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BOARD CHAIR

APPROVED BY AGENCY: November 8, 2021

PUBLIC HEARING AND PUBLIC COMMENT PERIOD:

A public hearing on this administrative regulation shall, if requested, be held on January 31, 2022 at 3:00 pm EST in Room 133, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android:

<https://us06web.zoom.us/j/89307082752?pwd=YnRKN3BtaStYNHZZOSSt2ZU5RY3VmZz09>
Password: 889205

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 931924

Find local AT&T Numbers:

<https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=8888227517&accessCode=931924>

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 893 0708 2752
Password: 889205

SIP: 89307082752@zoomcrc.com
Password: 889205

Individuals interested in attending this hearing shall notify this agency in writing by January 24, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. 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 this proposed administrative regulation until 11:59 pm EST on January 31, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

Contact Person: Kevin Winstead
Title: Commissioner, Department of Professional Licensing
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Email: KevinR.Winstead@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 201 KAR 26:130

Contact Person: Kevin Winstead
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Email: KevinR.Winstead@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does:

KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation provides procedures for filing, evaluating, and disposing of administrative complaints asserted against credential holders or applicants for licenses.

(b) The necessity of this administrative regulation:

This administrative regulation is required by KRS 319.032.

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

KRS 319.032 authorizes the Kentucky Board of Examiners of Psychology to promulgate administrative regulations consistent with KRS Chapter 319, regulating the practice of psychology. This administrative regulation provides procedures for filing, evaluating, and disposing of administrative complaints asserted against credential holders or applicants for licenses.

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

This regulation assists in the effective administration of KRS Chapter 319 by carrying out the legislative mandate for the board to establish regulations for the practice of psychology.

(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: This amendment corrects some misnumbering.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This regulation will affect 1,772 licensed psychologists practicing in the Commonwealth of Kentucky.

(4) Provide an analysis of how the entities identified in the previous question 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 each of the regulated entities have to take to comply with this regulation or amendment: This regulation will provide updated procedures for clinical supervision of certified psychologist, licensed psychological associate, candidate for licensure, a credential holder sanctioned by the board, or a credential holder under disciplinary action, and clarifies that this type of supervision is clinical, not administrative or business supervision..

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: This regulation should add no additional cost to the licensed psychologist.

(c) As a result of compliance, what benefits will accrue to the entities: This amendment corrects misnumbering.

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

(a) Initially: This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis: This administrative regulation does not create a cost for the administrative body

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The Kentucky Board of Examiners of Psychology is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

(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 increases in fees or funding is necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No increases in fees or funding is necessary to implement this administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 201 KAR 26:130

Contact Person: Kevin Winstead
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(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This administrative regulation impacts the Kentucky Board of Examiners of Psychology.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 319.032(1).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation does not generate revenue for the Board.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: