

1 GENERAL GOVERNMENT CABINET

2 Board of Licensed Professional Counselors

3 (Amendment)

4 201 KAR 36:050. Complaint management process.

5 RELATES TO: KRS 335.540, 335.545

6 STATUTORY AUTHORITY: KRS 335.515(3), (7)

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(3) requires the board to
8 promulgate administrative regulations necessary to carry out and enforce the provisions of KRS
9 335.500 to 335.599. This administrative regulation establishes the procedures for filing,
10 investigating, and addressing a complaint filed against a professional counselor.

11 Section 1. Receipt of Complaints.

12 (1) A complaint:

13 (a) May be submitted by an:

14 1. Individual;

15 2. Organization; or

16 3. Entity;

17 (b) Shall be:

18 1. In writing and provided on the Complaints Form, DPL-LPC-12; and

19 2. Signed by the person offering the complaint; and

20 (c) May be filed by the board based upon information in its possession.

1 (2)

2 (a) Upon receipt of a complaint, a copy of the complaint shall be sent to the individual
3 named in the complaint along with a request for that individual's response to the complaint.

4 (b) The individual shall be allowed a period of twenty (20) days from the date of receipt to
5 submit a written response.

6 (3)

7 (a) Upon receipt of the written response of the individual named in the complaint, a copy
8 of his response shall be sent to the complainant.

9 (b) The complainant shall have seven (7) days from the receipt to submit a written reply to
10 the response.

11 Section 2. Initial Review.

12 (1) After the receipt of a complaint and the expiration of the period for the individual's
13 response or reply, the complaint screening committee shall consider the individual's response,
14 complainant's reply to the response, and any other relevant material available, and make a
15 recommendation to the board. The board shall determine whether there is enough evidence to
16 warrant a formal investigation of the complaint.

17 (2) If the board determines before formal investigation that a complaint is without merit, it shall:

18 (a) Dismiss the complaint; and

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

20 (3) If the board determines that a complaint warrants a formal investigation, it shall:

21 (a) Authorize an investigation into the matter; and

22 (b) Order a report to be made to the complaint screening committee at the earliest
23 opportunity.

1 Section 3. Results of Formal Investigation; Board Decision on Hearing.

2 (1) Upon completion of the formal investigation, the investigator shall submit a report to
3 the complaint screening committee of the facts regarding the complaint. The committee shall
4 review the investigative report and make a recommendation to the board. The board shall
5 determine whether there has been a prima facie violation of KRS 335.500 to 335.599 or the
6 administrative regulations promulgated thereunder and a complaint should be filed.

7 (2) If the board determines that a complaint does not warrant issuance of a formal
8 complaint, it shall:

9 (a) Dismiss the complaint or take action pursuant to KRS 335.540(3); and

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

11 (3) If the board determines that a complaint warrants the issuance of a formal complaint
12 against a respondent, the complaint screening committee shall prepare a formal complaint, which
13 states clearly the charge or charges to be considered at the hearing. The formal complaint shall be
14 reviewed by the board and, if approved, signed by the chair~~[chairman]~~ and served upon the
15 individual as required by KRS Chapter 13B.

16 (4) If the board determines that a person may be in violation, it shall:

17 (a) Order the individual to cease and desist from further violations of KRS 335.505;

18 (b) Forward information to the county attorney of the county of residence of the person
19 allegedly violating KRS 335.505 with a request that appropriate action be taken under KRS
20 335.599; or

21 (c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS
22 335.505.

23 Section 4. Settlement by Informal Proceedings.

1 (1) The board, through counsel and the complaint screening committee, may, at any time during
2 this process, enter into informal proceedings with the individual who is the subject of the complaint
3 for the purpose of appropriately dispensing with the matter.

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

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

7 Section 5.

8 (1) If the complaint screening committee determines that a violation has occurred but is not
9 serious, the complaint screening committee may recommend the issuance of a private written
10 reprimand to the board. If the board accepts the recommendation, the board shall issue a private
11 written reprimand to the credential holder.

12 (2) A copy of the private written reprimand shall be placed in the permanent file of the credential
13 holder.

14 (3) A private written reprimand shall not:

15 (a) Be subject to disclosure to the public under KRS 61.878(1)(l); or

16 (b) Constitute disciplinary action.

17 (4) A private written reprimand may be used by the board for statistical purposes or in any
18 subsequent disciplinary action against the credential holder or applicant.

19 Section 6. If the board determines that there is reasonable cause to believe that a license holder
20 or applicant for a license is physically or mentally incapable of practicing professional counseling
21 with reasonable skill and safety to clients, the board may order the license holder or applicant to
22 submit to an examination by a mental health professional or a physician designated by the board

1 to determine the license holder's or applicant's mental health or physical status to practice
2 professional counseling.

3 Section 7. Notice and Service Process. A notice required by KRS 335.500 to 335.599 or this
4 administrative regulation shall be issued pursuant to KRS Chapter 13B and 201 KAR 36:090.

5 Section 8. Notification. The board shall make public:

6 (1) Its final order in a disciplinary action under KRS 335.540 with the exception of a written
7 admonishment issued pursuant to KRS 335.540(3); and

8 (2) An action to restrain or enjoin a violation of KRS 335.505. 201 KAR 36:050.

9 Section 9. Incorporation by Reference.

10 (1) "Complaint Form, DPL-LPC-12 July 2023 is incorporated by reference.

11 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at
12 the Board of Licensed Professional Counselors, 500 Mero St, Frankfort, Kentucky 40601, from
13 8:00 AM to 4:00 PM, Monday through Friday. This material is also available on the board's
14 website at lpc.ky.gov.

201 KAR 36:050

APPROVED BY AGENCY:

Dr. Hannah Coyt
Chair, Board of Licensed Professional Counselors

Date: _____

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on November 28, 2023 at 1:00 PM EST in Room 127CW, The Mayo-Underwood Building, 500 Mero Street, Frankfort, Kentucky 40601. Members of the public may also utilize the following link to attend the meeting by video conference:

Topic: LPC Regulation Public Hearing
Time: Nov 28, 2023 01:00 PM Eastern Time

Join from PC, Mac, Linux, iOS or Android:
<https://us06web.zoom.us/j/87588899726?pwd=ME5WeXp6dk9xRXJmMnl1K0ZDd3M5dz09>
Password: 186265

Or Telephone:
Dial:
USA 713 353 0212
USA 8888227517 (US Toll Free)
Conference code: 387980

Individuals interested in attending this hearing shall notify this agency in writing no later than 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 on November 30, 2023.

Written notification of intent to attend the public hearing or written comments on the proposed administrative regulation should be made by using the Public Protection Cabinet website at the follow address: https://ppc.ky.gov/reg_comment.aspx. 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: Sara Boswell Janes
Title: Staff Attorney III
Agency: Department of Professional Licensing, Office of Legal Services
Address: 500 Mero Street, 2 NC WK#2
Phone Number: (502) 782-2709 (office)
Fax: (502) 564-4818
Email: Sara.Janes@ky.gov
Link to public comment portal: https://ppc.ky.gov/reg_comment.aspx

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 201 KAR 36:050

Contact Person: Sara Boswell Janes
Phone Number: (502) 782-5245 (office)
Email: sara.janes@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the complaint and administrative hearing process to address alleged violations brought before the board.

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish a complaint and administrative hearing process to address alleged violations brought before the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements for the administrative hearing process to address alleged violations brought before the board.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing the complaint, investigation, and administrative hearing process of alleged violations brought before the board.

(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: The amendment includes housekeeping changes to recognize the reply time given in the regulations and to clarify the complaint must be filed on the prescribed form.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to recognize the reply and clarify that the complaint be filed on the prescribed form to assist in the efficient administration of the complaint process.

(c) How the amendment conforms to the content of the authorizing statutes: The regulation is in conformity as the authorizing statute gives the board the ability to promulgate regulations regarding the requirements discipline and investigation by the board.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist the board in the complaint process to ensure there is sufficient information to pursue an inquiry into the complaint.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are presently 2692 active and 39 inactive licensed professional clinical counselors (LPCCs) and 1325 active and 17 inactive licensed professional clinical counselor associates (LPCAs) who will be impacted by the renewal, late renewal, and reinstatement fees. This regulation will affect the 4017 active and 56 inactive licensees in some capacity, and will also affect new applicants for licensure.

(4) Provide an analysis of how the entities identified in question (3) 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 that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: A licensee will have to take no additional action to comply with the amendments if a disciplinary action ensues against the licensee.
- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no new cost associated to the amendments.
- (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendment recognizes the reply and clarifies that the initiating complaint be filed on the prescribed form.
- (5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
- (a) Initially: No new costs will be incurred by the changes
- (b) On a continuing basis: No new costs will be incurred by the changes.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The board's operations are funded by fees paid by credential holders and applicants.
- (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 increase in fees or funding will be required to implement the changes made by this regulation.
- (8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any new fees.
- (9) TIERING: Is tiering applied? (Explain why or why not): This regulation does not distinguish between similarly situated individuals on the basis of any factor.

FISCAL NOTE

Regulation No. 201 KAR 36:050

Contact Person: Sara Boswell Janes
Phone Number: (502) 782-2709 (office)
Email: sara.janes@ky.gov

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? Kentucky Board of Licensed Professional Counselors.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 335.515(3), KRS 211.332, KRS 211.334, KRS 211.335, and KRS 211.336.

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, fires, or school districts) for the first year? None.

(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 to administer this program.

(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: N/A

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? None.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? None.

(c) How much will it cost the regulated entities for the first year?

(d) How much will it cost the regulated entities for subsequent years?

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

Cost Savings (+/-): None

Expenditures (+/-):

Other Explanation: N/A

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. "Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This administrative regulation will not have a major economic impact.

SUMMARY OF MATERIALS INCORPORATED BY REFERENCE

201 KAR 36:050

There were previously no materials incorporated by reference in this regulation.

SUMMARY OF CHANGES TO MATERIALS INCORPORATED BY REFERENCE

201 KAR 36:050

The "Complaint Form, DPL-LPC-12 July 2023 is now being incorporated by reference to ensure a more consistent procedure is followed for complaints.