

1 GENERAL GOVERNMENT CABINET

2 Board of Licensed Professional Counselors

3 (Amendment)

4 201 KAR 36:090. Administrative hearings for denials and revocation of probated sanction
5 [~~probation~~].

6 RELATES TO: KRS 335.515(3), (4), 335.545

7 STATUTORY AUTHORITY: KRS 335.515(3), (4), (7)

8 NECESSITY, FUNCTION AND CONFORMITY: KRS 335.515(3) requires the board to
9 promulgate administrative regulations necessary to carry out and enforce the provisions of KRS
10 335.500 to 335.599. KRS 335.515(4) requires the board to conduct administrative hearings as
11 necessary pursuant to KRS Chapter 13B. This administrative regulation establishes the procedures
12 for an individual to request an administrative hearing from the denial of or refusal to renew or
13 reinstate a license, or revocation of a probated sanction.

14 Section 1. Right of Administrative Hearing from a Denial of or Refusal to Renew or Reinstate
15 a License.

16 (1) The board shall issue written notice of the denial informing the applicant:

17 (a) Of the specific reason for the board's action, including:

18 1. The statutory or regulatory violation; and

19 2. The factual basis on which the denial is based; and

1 (b) That the applicant may appeal the pending denial to the board within twenty (20) calendar
2 days after receipt of this notification, excluding the day he or she receives notice, or the date that
3 the notification is returned to the board as unclaimed.

4 (2) A written request for an administrative hearing shall be filed with the board within twenty
5 (20) calendar days after receipt of this notification, excluding the day he or she receives notice, or
6 the date that the notification is returned to the board as unclaimed. The request shall identify the
7 specific issues in dispute and the legal basis on which the board's decision on each issue is believed
8 to be erroneous.

9 (3) If the request for an appeal is not timely filed, the notice of denial shall be effective upon
10 the expiration of the time for the certificate holder to request an appeal.

11 (4) The documentary evidence shall be limited to the application and supporting documents
12 submitted to the board during the application process and that was considered as part of the denial
13 of the application.

14 (5) A renewal applicant may petition the board, in writing, for a stay of the denial of the license
15 until completion of the administrative hearing process.

16 Section 2. Revocation of Probated Sanction [~~Probation~~].

17 (1) If the board moves to revoke a probated sanction [~~probation~~], the board shall issue written
18 notice of the revocation and inform the probationee:

19 (a) Of the factual basis on which the revocation is based;

20 (b) Of each probation term violated;

21 (c) Of the sanction to be imposed; and

22 (d) That the probationee may appeal the revocation to the board within twenty (20) calendar
23 days after receipt of this notification, excluding the day he or she receives notice, or the date that

1 the notification is returned to the board as unclaimed. The notification shall be sent to the last
2 known address on file with the board for the certificate holder.

3 (2) A written request for an administrative hearing shall be filed with the board within twenty
4 (20) calendar days after receipt of this notification, excluding the day he or she receives notice, or
5 the date that the notification is returned to the board as unclaimed. The request shall identify the
6 specific issues in dispute and the legal basis on which the board's decision on each issue is believed
7 to be erroneous.

8 (3) If the request for an administrative hearing is not timely filed, the revocation shall be
9 effective upon the expiration date for the certificate holder to request an appeal.

10 Section 3. A request for an administrative hearing shall be sent to the Kentucky Board of
11 Licensed Professional Counselors by mail to P.O. Box 1360, Frankfort, Kentucky 40602 or by
12 hand-delivery to 500 Mero Street~~[911 Leawood Drive]~~, Frankfort, Kentucky 40601.

13 Section 4. An administrative hearing shall be governed in accordance with KRS Chapter
14 13B.

15 Section 5. If the final order of the board is adverse to a licensee or applicant, or if the hearing
16 is scheduled at the request of a licensee or applicant for relief from sanctions previously
17 imposed by the board, the costs in an amount equal to the cost of stenographic services, the cost
18 of the hearing officer, and the board's attorney fees may ~~[shall]~~ be assessed against the licensee or
19 applicant. In a case of financial hardship, the board may waive all or part of the fee.

201 KAR 36:090

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 36:090

Contact Person: Sara Boswell Janes
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Email: sara.janes@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the due process procedures for a denial of, refusal to renew, or reinstate a license and revocation of a probated sanction. It also sets out the scope of what a hearing officer may consider and imposes costs on an individual who fails to reverse the decision of the board on a denial of, refusal to renew, or reinstate a license and revocation of a probated sanction

(b) The necessity of this administrative regulation: The necessity of this regulation is to establish due process procedures.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The regulation is in conformity with KRS 335.515(3) which authorizes the board to promulgate regulations the denial, renewal, reinstatement, and revocation of a probation.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist in establishing and clarifying the procedure and requirements for the denial, renewal, reinstatement, and revocation of a probation.

(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 is a minor amendment to clarify terminology relating to probation of a disciplinary sanction, to make application of a fine discretionary, and a technical amendment to correct the physical address of the Board.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to clarify the board's usage of the term probation, to make imposition of a fine discretionary versus mandatory and to make a technical correction to the address of the Board.

(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: Licensees will understand the term probation in the context of board discipline, clarify the board's discretion in imposing fines and have the current physical address of the Board.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 4017 active and 56 inactive licensees who may be affected by the terminology relating to probated sanctions and the physical address of the board,

and also any member of the public who may have redress over the actions or inactions of licensees of the board who will know the physical location of the Board.

(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 regulation.

(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): Stakeholders will know the current location of the Board.

(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 establishes no new fee.

(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 36:090

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), (4), (7)

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:

(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:

(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.