



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), 45 C.F.R. Section 164.512(a), (d), and (e).
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 Complaint Form, DPL-LPC-12; and
19 2. Signed by the person submitting the complaint; and
20 (c) May be filed by the board based upon information in its possession.
21 (2)

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

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

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

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

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

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

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

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

19 (c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS
20 335.505.

21 Section 4. Settlement by Informal Proceedings.

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

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

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

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

7 Section 9. If your complaint relates to services provided to you by a licensee, the board or its
8 authorized representative may contact you and request that you sign an authorization for release
9 of medical and client records. This involves health oversight activities and administrative
10 proceedings of the board and disclosure is permitted under 45 C.F.R. Section 164.512(a), (d), and
11 (e), the regulations implementing the Health Insurance Portability Accountability Act (HIPAA).

12 Section 10. Incorporation by Reference.

13 (1) "Complaint Form with Information Sheet", DPL-LPC-11", [~~DPL-LPC-12~~], August 2024 [~~July~~
14 ~~2023~~], is incorporated by reference.

15 (2) "Authorization for Release of Medical and Client Records", DPL-LPC-12, August 2024, is
16 incorporated by reference.

17 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the
18 Board of Licensed Professional Counselors, 500 Mero Street, Frankfort, Kentucky 40601, from
19 8:00 a.m. to 4:00 p.m., Monday through Friday. This material is also available on the board's Web
20 site at lpc.ky.gov.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on Friday, December 27, 2024, at 1:00 PM, at the Mayo-Underwood Building, Room 127CW, 500 Mero Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. 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 the proposed administrative regulation. Written comments shall be accepted through December 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person by using the PPC public comment portal at the address listed below.

CONTACT PERSON:

Name: 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)

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Link to PPC public comment portal: https://ppc.ky.gov/reg_comment.aspx

available for board sanctions; and will help complainants understand the complexities of filing a complaint and what to expect, including the potential need for a HIPAA release.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 4564 active and 61 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 will clarify the disciplinary options and allow the board to issue a private admonishment that will not be considered disciplinary in nature.

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

(a) Initially: It will not cost the administrative body any additional funds to implement this administrative regulation.

(b) On a continuing basis: It will not cost the administrative body any additional funds to implement this administrative regulation.

(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 is necessary to implement this administrative regulation change.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees or directly or indirectly increase any 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.

(b) Methodology and resources used to determine the fiscal impact: Methodology and resources was a review of the existing budget by the board's fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate). This administrative regulation will not have an overall negative or adverse major economic impact to the entities identified.

(b) The methodology and resources used to reach this conclusion: Methodology and resources was a review of the existing budget by the board's fiscal administrator as well as consideration of the amendment and whether staff time and costs will be increased.

SUMMARY OF MATERIALS INCORPORATED BY REFERENCE
201 KAR 36:050

The following materials are incorporated by reference:

The "Complaint Form, DPL-LPC-12 July 2023, consisting of one (1) page, is incorporated by reference.

SUMMARY OF CHANGES TO MATERIALS INCORPORATED BY REFERENCE
201 KAR 36:050

The following materials incorporated by reference have been changed as follows:

The "Complaint Form with Information Sheet", DPL-LPC-11, consisting of three (3) pages, has been changed to include a detailed instruction sheet for complainants to ensure they are aware of the process and cut down on staff time needed to explain the process, and to include the correct form number in the regulation.

The "Authorization for Release of Medical and Client Records", DPL-LPC-12, August 2024, consisting of one (1) page, is new material incorporated by reference, since the complaint may involve health oversight activities and administrative proceedings of the board and disclosure is permitted under 45 C.F.R. Section 164.512(a), (d), and (e), the regulations implementing the Health Insurance Portability Accountability Act (HIPAA).