

**The Disciplinary Process Under  
The Nursing Laws of Kentucky:  
KRS Chapter 314 and Title 201 KAR Chapter 20**

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**I. *Introduction To The Disciplinary Process***

**A. Kentucky Revised Statutes Chapter 314**

1. Chapter 314 is the governing statutory chapter for the practice of nursing in the Commonwealth of Kentucky.
2. This Chapter contains the specific statutes, enacted by the state General Assembly.
3. Primary focus in disciplinary matters is KRS 314.091.

**B. Administrative Regulations**

1. Regulations are promulgated by the Board to clarify and put into effect the statutes; regulations also govern the practice of nursing and have the force of law.
2. The regulations relate to specific statutes, interpreting them.
3. Regulations are authorized by the General Assembly to give more detail to the statute and allow flexibility to the Board.
4. 201 KAR 20 is the regulatory section for Chapter 314.
5. The two regulations that deal primarily with disciplinary actions are 201 KAR 20:161, which deals with the investigation of complaints; and 201 KAR 20:162, which deals with the procedures for disciplinary hearings before the Board.

**C. Administrative Law**

1. The disciplinary process under KRS Chapter 314 is governed by principles of administrative law, and is neither “civil” nor “criminal.”
2. In addition to KRS Chapter 314 and 201 KAR 20, the disciplinary procedures are governed by the Kentucky Administrative Procedures Act, KRS Chapter 13B.

**II. *Purposes of Disciplinary Actions***

**A. Public Protection**

1. KRS 314.021(1) states that the purpose of the Board regulation of the nursing profession is “to protect and safeguard the health and safety of the citizens of the Commonwealth of Kentucky.”

B. Integrity of the Profession

1. While the main goal of the Board is the protection of the public, disciplinary action against nurses who violate the Kentucky nursing law serves to protect the integrity of nurses and the nursing profession.

**Specifics of the Disciplinary Process**

III. ***Mandatory Reporting of Code Violations***

- A. KRS 314.031(4) requires the reporting to the Board of violations of KRS Chapter 314.
- B. KRS 314.031(4) sets forth who is required to report violations:
  1. "Any Nurse," which would include colleagues, as well as the possible violator;
  2. "Employer of nurses," which would include facility administrators, nursing agency personnel, or individual employers such as physicians or dentists; or
  3. "Any person having knowledge."
- C. Penalty for failure to report violations to the Board would apply to licensees under the punitive statute, KRS 314.091(1)(j).
- D. What must be reported under KRS 314.031?
  - Any violations of Kentucky nursing laws, as described in Section VI, below.

IV. ***Evaluation***

- A. KRS 314.085(1) provides authority to the Board to order a licensee or license applicant to undergo, at the individual's own expense, a mental health, neuropsychological, psychosocial, psychosexual, substance use disorder, or physical evaluation
- B. The basis for issuing such an order is "reasonable cause" to believe that the individual is unable to practice with reasonable skill or safety, or that the individual has abused alcohol, drugs, or controlled substances.
- C. Implied Consent: KRS 314.085(2) provides that the licensee or applicant has "deemed to have given consent" to such examination.

- D. As stated above, the expense for such an evaluation is assumed by the licensee or applicant; it is also the responsibility of the licensee or applicant to select the appropriate evaluator.
- E. KRS 314.085(1) provides that the willful failure of the licensee or applicant to comply with the Order may result in an Immediate Temporary Suspension, KRS 314.089.

V. ***Immediate Temporary Suspensions***

A. General

- 1. The Immediate Temporary Suspension is an emergency action, taken **ex parte** by the Board, against an individual's license where there is an urgent need to protect the health and safety of the public.

B. Provisions of KRS 314.089

- 1. KRS 314.089(1) provides that the President of the Board may determine that an Immediate Temporary Suspension of a license is to be issued.
- 2. The standard is (a) when "disciplinary action or an investigation is pending," and (b) such immediate or emergency action is "necessary in order to protect the public."
- 3. The Executive Director of the Board, or designee, is to issue the Order of Immediate Temporary Suspension.

C. Other Immediate Temporary Suspensions

- 1. Dishonor of check in payment of license fee, KRS 314.075;
- 2. Failure to pay court ordered child support, KRS 205.712; and
- 3. Failure to obtain required evaluation, KRS 314.085.

D. Rights of the Licensee

- 1. Under all statutes mentioned above, and KRS 13B.125, the licensee may seek prompt review of this emergency action.
- 2. The affected licensee may request an emergency hearing "to determine the propriety of the Order."
- 3. An emergency hearing is to be scheduled within ten (10) "working days" of the request for hearing, not including the day of receipt.
- 4. The Board has the burden of proof to affirm the propriety of the Order by "substantial evidence."
- 5. If the Order of Immediate Temporary Suspension is affirmed by the Hearing Panel at the emergency hearing, it is a "Final Order" and the licensee affected may appeal to the Jefferson Circuit Court.

6. The cost of the emergency hearing, including but not limited to the cost of the transcript, may be imposed upon the licensee. See, 201 KAR 20:162 §7.

VI. ***The Punitive Statute: KRS 314.091***

- A. KRS 314.091(1) provides the punitive provisions, and thereby the basis for disciplinary action, of the Code of Nursing.
- B. Specific Punitive Provisions involving the following:
  1. use of fraud or deceit in procuring or attempting to procure a license, KRS 314.091(1)(a);
  2. conviction of a misdemeanor or felony of the applicant or licensee involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty, under the laws of any state or of the United States, KRS 314.091(1)(b);
    - a. The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence;
    - b. “conviction” means but is not limited to pleading no contest, entering an Alford plea, a plea of guilty pursuant to a pretrial diversion agreement, or the entry of a court order suspending the imposition of a criminal penalty to a crime; and
    - c. The conviction must “directly relate” to the practice of nursing, considering: (a) The nature and seriousness of the crime for which the individual was convicted and the passage of time since its commission; (b) The relationship of the crime to the purposes of regulating the nursing profession; (c) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of a nurse, KRS 335B.020.
  3. conviction of a misdemeanor or felony offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510, 530.064(1)(a), or 531.310, or has been found by the Board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the nurse, KRS 314.091(1)(c);
  4. negligent or willful conduct in a manner inconsistent with the practice of nursing, KRS 314.091(1)(d);
  5. being unfit or incompetent to practice nursing with reasonable skill or safety due to negligence or other cause, KRS 314.091(1)(e);
  6. abuses controlled substances, prescription medications, illegal substances, or alcohol, KRS 314.091(1)(f);
  7. misuse or misappropriation of any drug placed in the custody of the nurse for the use of others or administration to others, KRS 314.091(1)(g);

8. falsification, the making of, or the omission of essential entries in essential medical records, KRS 314.091(1)(h);
9. disciplinary action taken against the licensee or applicant by another jurisdiction, KRS 314.091(1)(i);
10. violation of any provision of KRS Chapter 314, KRS 314.091(1)(j);
11. violation of any lawful Order or directive previously entered by the Board, KRS 314.091(1)(k);
12. violation of any administrative regulation promulgated by the Board, KRS 314.091(1)(l);
13. the listing of the licensee or applicant on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property, KRS 314.091(1)(m);
14. violation of patient confidentiality, except as authorized or required by law, KRS 314.091(1)(n);
15. use or possession of a Schedule I controlled substance, KRS 314.091(1)(o);
16. impairment while on duty as a consequence of the use of alcohol or drugs, KRS 314.091(1)(p); and
17. insurance fraud, KRS 314.091(1)(q-r).

## VII. ***Forms of Disciplinary Actions***

- A. A case may be found to be unsubstantiated.
- B. The Board may issue a Letter of Concern, which expresses concern regarding an issue discovered during the investigation.
- C. The Consent Decree, 201 KAR 20:161 § 2(5).
  1. The Board may enter into a Consent Decree with the licensee or applicant.
  2. Limited to non-intentional and minor violations.
  3. A civil penalty and continuing education hours are usually imposed.
  4. Not considered as “disciplinary” action.
  5. The licensee or applicant waives the right to a formal hearing.
- D. The Agreed Order, 201 KAR 20:161 §2(4).
  1. The Board may resolve disciplinary matters through an Agreed Order with the licensee or applicant.
  2. This is a settlement under which the licensee or applicant admits the violation of the Code, and negotiates with the Board staff the specific terms of the discipline.
  3. The Agreed Order, once approved and executed by the Executive Director, has the full force and effect of an order arrived through the hearing process.

4. The licensee or applicant waives her or his right to a formal hearing, and all of the due process rights afforded under KRS Chapter 13B; as such, generally, the Board does not issue formal Statement of Charges and Notice of Hearing.
- E. Terms of Agreed Orders/Consent Decrees
1. The terms of all Agreed Orders and Consent Decrees are based on Board approved templates and guidelines. Requests for any significant deviation from the approved guidelines are taken to the Credentials Review Panel for approval.
  2. All Agreed Orders and Consent Decrees provide that if the nurse does not comply, their license will be suspended or denied reinstatement. The nurse expressly agrees to this penalty as part of the settlement they enter to avoid discipline.
- F. Formal Administrative Hearing
1. The initiation of the formal hearing process is through the issuance of the Notice of Hearing and Statement of Charges.
  2. The statutory bases for the formal hearing process are:
    - (a) KRS 314.091(2);
    - (b) KRS Chapter 13B, specifically KRS 13B.050 and KRS 13B.080; and
    - (c) 201 KAR 20:162.
  3. The Hearing Panel consists of two (2) Board Members and the Hearing Officer.
  4. The Board Members on the Hearing Panel act as the “finders of the fact” (i.e., jurors), basing their decision in the case solely upon the evidence properly admitted at the hearing.
  5. The Hearing Officer is a licensed attorney, whose primary role is to conduct the hearing by making rulings on legal issues, considering motions of the parties, deciding the scope of examinations, addressing the rules of evidence, and providing instructions to the Board Panel Members on the law to be applied in the case. The Hearing Officer votes only in the case of a tie between the Board Panel Members.
  6. The prosecuting attorney is the counsel for the Board responsible for bringing the Statement of Charges and presenting the case before the Hearing Panel, as well as any post-hearing process.
  7. Board staff, investigators, and witnesses may also be present at the formal hearing.
  8. The licensee (often referred to at this stage as the “Respondent”) and counsel for the Respondent have a right to be present at all times except during deliberations of the Hearing Panel.
  9. Open Hearings: all formal hearings are open to the public in the same manner as all other courts in the state.

- G. The Hearing Process
1. The formal Hearing process is governed by the Kentucky Administrative Procedures Act found at KRS Chapter 13B.
  2. KRS Chapter 13B.050 sets forth the mandatory provisions for the legal notification of the Respondent in the Notice of Hearing.
  3. The Notice of Hearing must inform the Respondent of the date, time, and location of the hearing, the inclusion or incorporation of the specific Charges or violations of law, and a statement of legal rights. KRS 13B.050.
  4. Subpoena Power: The Board's Executive Director has authority to issue subpoenas, and the Hearing Officer also has authority to issue subpoenas during the formal hearing process. This subpoena power is the same as that possessed by the courts of the state, and may be enforced in the circuit court in the county where the relevant records and/or witnesses are located.
  5. Response: The Respondent is required to file a response or answer to the charges; the failure to do so may result in an admission of those unanswered charges. 201 KAR 20:162 § 3.
  6. Default Orders: In the event that the Respondent fails to respond or participate in the Hearing Process, the Hearing Officer has the authority to grant a Default Order in favor of the prosecution. KRS 13B.080(6).

VIII. ***Conduct of Hearings and Administrative Procedures***

- A. Governing Law
1. The conduct of the formal hearing is governed by KRS 13B.080; KRS 314.091; and 201 KAR 20:162.
- B. Rules of Evidence
1. The Kentucky Rules of Evidence, which apply in the civil court cases in the state, do not apply in the Board's disciplinary hearings. For example, hearsay evidence is admissible at the discretion of the Hearing Officer.
- C. Due Process of Law
1. The rights of the Respondent are guaranteed by the strict adherence to the constitutional principles of Due Process.
  2. The Respondent has the right to be represented by an attorney of his or her own choice and retention, the right to confront and cross examine witnesses called on behalf of the Board, the right to present witnesses and evidence, and the right to present rebuttal.
  3. The Board has the "Burden of Persuasion", requiring it to prove its case by a "preponderance of evidence." The Board does not have

to prove a violation under the criminal law standard of “beyond a reasonable doubt.”

D. Deliberation and Recommended Order

1. The Hearing Panel deliberates in a closed session after the conclusion of all of the evidence.
2. The Hearing Panel will issue a “recommended order,” which is not final until it has been reviewed and “ratified” (i.e., approved) by the full Board at the next regular Board meeting.
3. The Hearing Officer is the person who actually prepares the recommended Findings of Fact, Conclusions of Law, and Order, which must be submitted within 60 days of receipt of the Transcript of Hearing.
4. The parties have 15 days after the Hearing Officer has mailed the Recommended Order to them in which to file “exceptions” with the Board to the recommended order.

E. Final Order

1. The Recommended Order, along with any exceptions filed by the parties, is submitted to the full Board for review, and ratification. The Board has 90 days after the receipt of the Recommended Order in which to issue its Final Order.
2. The Final Order must be based solely on the record, found in the Transcript of Hearing and exhibits introduced as evidence at hearing.

F. Right to Appeal

1. The Respondent has the right to appeal the Final Order to the Jefferson Circuit Court.
2. This is an appeal, based solely on the record of the Hearing and on legal issues. It is not a new trial or hearing, and no new evidence is presented.
3. A party must file the appeal within thirty (30) days after the Final Order is mailed to the parties.
4. Further appeals may be sought before the Kentucky Court of Appeals and the Kentucky Supreme Court.

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