

1 GENERAL GOVERNMENT CABINET

2 Board of Nursing

3 (Amendment)

4 201 KAR 20:162. Disciplinary proceedings.

5 RELATES TO: KRS Chapter 13B, 314.011, 314.031, 314.071(4), 314.091, 314.161, 314.991

6 STATUTORY AUTHORITY: KRS 314.091(8), 314.131(1)

7 CERTIFICATION STATEMENT: This is to certify that this administrative regulation complies with
8 the requirements of 2025 RS HB 6, Section 8, because the amendments to this regulation will
9 not have a major economic impact.

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to
11 promulgate administrative regulations to implement KRS Chapter 314. KRS 314.091(2) requires
12 that an administrative hearing for the denial, limitation, probation, suspension, or revocation of
13 the license of a registered or practical nurse be conducted in accordance with KRS Chapter 13B.
14 KRS 314.091(8) authorizes the board, by administrative regulation, to provide for the recovery
15 of costs of an administrative hearing. This administrative regulation establishes procedures for
16 conducting an administrative hearing relating to disciplinary action.

17 Section 1. An administrative hearing shall be conducted in accordance with KRS Chapter 13B.

18 Section 2. Composition of the Hearing Panel. (1)(a) Except as established in paragraph (b) of
19 this subsection, a disciplinary action shall be heard by a hearing panel consisting of two (2)

members of the board, one (1) of whom shall be a registered nurse, and a hearing officer
qualified in accordance with KRS 13B.040, who shall be:

1. An assistant attorney general; or
2. Other attorney appointed by the board.

~~(b)[A hearing officer and one (1) member of the board may conduct a hearing for
consideration of:~~

- ~~1. Reinstatement of a revoked or suspended license; or~~
- ~~2. Removal of a license from probationary status.;~~

A hearing officer meeting the requirements described in this section shall conduct the
hearing without a hearing panel:

1. At an emergency hearing pursuant to KRS 13B.125(3); or
2. At a hearing pursuant to KRS 131.1817(5)(e).

(c) A hearing officer meeting the requirements described in this section may conduct the
hearing without a hearing panel

1. For consideration of reinstatement of a license or credential;
2. For consideration of removal of a license or credential from limited or probationary status
or alternative program monitoring upon a notice of hearing filed by the board pursuant to KRS
13B.050;
3. For consideration of suspension or revocation of a license or credential for violating the
terms of a decision, agreed order, or monitoring agreement; or
4. If each party agrees.

(2) Pursuant to KRS 13B.040, [A]a board member shall not sit on a panel or participate in the adjudication of a matter at hearing in which the member has:

- (a) Discussed the merits of the action with agency staff;
- (b) Personal knowledge of the facts giving rise to the disciplinary action; or
- (c) Participated in the investigation of a disciplinary action.

(3) Notwithstanding subsection (2) of this administrative regulation, a board member may participate in the consideration and ratification of a recommended order that has been submitted to the full board pursuant to KRS 13B.110 and this administrative regulation.

(4) The hearing shall be transcribed by a court stenographer or video recorded.

Section 3. Response to Charges. The licensee or applicant shall file with the board a written answer to the specific allegations contained in the notice of charges within twenty (20) days of receipt of the charges. An allegation not properly answered shall be deemed admitted. Failure to file an answer may result in the issuance of a ~~[default]~~recommended order by the hearing officer pursuant to KRS 13B.080(6). ~~[The hearing officer shall]~~After the entry of a recommended order, the board may for good cause permit the late filing of an answer.

Section 4. Rulings by a Hearing Officer. (1) The hearing officer shall rule upon each objection or motion, including an objection to evidence.

(2) A decision of the hearing officer may be overridden by a unanimous vote of the board members of the hearing panel.

Section 5. Recommendation by the Hearing Panel. (1) Upon the conclusion of the hearing, the panel shall retire into closed session for purpose of deliberations. Each board member of

the panel shall be eligible to cast one (1) vote. In case of a tie vote, the tie shall be broken by the hearing officer.

(2) At the conclusion of the panel's deliberations, it shall propose an order based upon the evidence presented. The hearing officer shall draft a recommended order, as required by KRS 13B.110(1) that shall be:

(a) Consistent with the panel's deliberations; and

(b) Submitted to the full board.

(3) This section does not apply to an emergency hearing conducted pursuant to KRS 13B.125(3).

Section 6. Continuances; Proceedings in Absentia. (1) The board shall not postpone a case that has been scheduled for a hearing absent good cause. A request by a licensee or applicant for a continuance shall be considered if communicated to the board reasonably in advance of the scheduled hearing date and based upon good cause.

(2) The decision of whether or not to grant a continuance shall be made by the hearing officer.

(3) The burden shall be upon the licensee or applicant to be present at a scheduled hearing.

(4) Failure to appear at a scheduled hearing for which a continuance has not been granted in advance shall be deemed a waiver of the right to appear and the hearing ~~may~~shall be held as scheduled without the participation of the absent party, or the hearing officer may adjourn the proceedings and issue a recommended order granting or denying relief as appropriate.

Section 7. Hearing Costs. (1) If the order of the board is adverse to a licensee or applicant or if the hearing is scheduled at the request of a licensee or applicant for relief from sanctions

1 previously imposed by the board pursuant to the provisions of KRS Chapter 314, the board may
2 impose the following costs:

3 (a) The cost of stenographic services;

4 (b) The cost of the hearing officer as determined by subsection (2) of this section; and

5 (c) Other costs listed in subsection (3) of this section as applicable.

6 (2) The cost of the hearing officer shall be determined as established in paragraphs (a)
7 through (c) of this subsection. The cost of a:

8 (a) Disciplinary hearing shall be \$400 per day;

9 (b) Reinstatement hearing shall be \$350; and

10 (c) Default shall be \$300.

11 (3) Other costs may include:

12 (a) Expert witness costs, including travel, lodging and per diem at the rate applicable to
13 Kentucky Executive Branch employees pursuant to 201 KAR 2:006;

14 (b) Travel for other witnesses, including lodging and per diem at the rate applicable to
15 Kentucky Executive Branch employees pursuant to 201 KAR 2:006 ;

16 (c) Document reproduction costs; and

17 (d) The cost of a certified copy of laboratory testing records.

18 Section 8. Reconsideration of ~~[default]~~ Recommended Orders Entered Pursuant to KRS
19 13B.080(6).

20 (1) A recommended order entered ~~[default order issued]~~ by the hearing officer pursuant to
21 KRS 13B.080(6)[board] may be~~[-reconsidered]~~;

22 (a) Accepted and adopted by the board as the agency's final order,

1 (b) Modified by the board; or

2 (c) Remanded by the board to the hearing officer for reconsideration or other proceedings as
3 appropriate.

4 (2) ~~[The party in default]~~Either party may file exceptions to the hearing officer's
5 recommended order pursuant to KRS 13B.080(6) with the agency head in accordance with KRS
6 13B.110(4)~~[-submit a written motion to the hearing officer requesting reconsideration.]~~

7 (3) ~~[The hearing officer shall schedule a hearing on the motion for reconsideration.]~~ The
8 board [hearing officer] may order that the recommended order be set aside if the exceptions
9 filed by the party [in default present] demonstrate good cause.

10 (4) If a ~~[default]~~recommended order entered pursuant to KRS 13B.080(6) is set aside, the
11 provisions of 201 KAR 20:161 shall apply.

12 (5) The hearing officer may issue a recommended order pursuant to KRS 13B.080(6) without
13 a motion from the parties after notice.

14 Section 9. Prescribing or Dispensing Controlled Substance Cases. (1) An investigation
15 pertaining to prescribing or dispensing of a controlled substance shall produce a charging
16 decision by the board within 120 days of the receipt of the complaint unless the circumstances
17 of a particular complaint make it impractical~~impossible~~ to timely produce the charging
18 decision.

19 (2) The board may hold an investigation pertaining to prescribing or dispensing of a
20 controlled substance in abeyance for a reasonable period of time in order to permit a law
21 enforcement agency to perform or complete essential investigative tasks, following a request by
22 the requesting law enforcement agency.

(3) If an investigation pertaining to prescribing or dispensing of a controlled substance does not produce a charging decision within 120 days of the receipt of the complaint, and if the investigative report ~~[shall]~~ plainly states~~[state]~~ the circumstances of that particular investigation or complaint that made timely production of a charging decision impractical~~[impossible]~~, the inability to meet the 120-day deadline shall not constitute a defense to a finding of wrongdoing by a licensee, applicant, or person privileged to practice.

Section 10. Change in Licensure Status. (1) Pursuant to the Nurse Licensure Compact, KRS 314.475, if a nurse whose primary state of residence is Kentucky and who holds a Kentucky license with multistate privileges incurs a disqualifying event, the license shall be converted to a single state license valid only in Kentucky.

(2) The disqualifying events that may cause this change in status shall be:

(a) Conviction or found guilty of or entered into an agreed disposition of a felony offense;

(b) Conviction or found guilty of or entered into an agreed disposition of a misdemeanor offense related to the practice of nursing;

(c) Current enrollment in an alternative program; or

(d) An encumbered nursing license or privilege to practice due to disciplinary action.

(3)(a) The board shall inform the nurse in writing of its intent to change the status of the Kentucky license.

(b) The nurse may request an administrative hearing on this action. A request shall be made in writing to the board within twenty (20) days.

(c) Failure to request an administrative hearing within twenty (20) days shall constitute a waiver of the right to a hearing.

- 1 (4) The procedure established in this section shall not be in lieu of but may be in addition to
- 2 any potential disciplinary action the board may seek based on the disqualifying event.

Amended Administrative Regulation

201 KAR 20:162. Disciplinary proceedings.

Adopted: June 26, 2025

Audria Denker, DNP, RN, FAAN

Audria Denker, President
Kentucky Board of Nursing

June 26, 2025

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on September 23, 2025, at 10:00 AM at Kentucky Board of Nursing, 312 Whittington Parkway, Ste 300, Louisville, KY 40222. Individuals interested in being heard at this hearing shall notify this agency in writing by September 16, 2025, five 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 September 30, 2025. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person or submit a comment at:
<https://secure.kentucky.gov/formservices/Nursing/PendReg>.

CONTACT PERSON:

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Louisville, KY 40222
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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

201 KAR 20:162

Contact Person: Jeffrey Prather

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Email: Jeffrey.prather@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets proceedings for hearings on disciplinary cases that are in addition to KRS Chapter 13B.

(b) The necessity of this administrative regulation: This administrative regulation is necessary because of KRS 314.091.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by setting disciplinary proceedings

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting disciplinary proceedings.

(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 amendments provide: for circumstances and case types when a hearing may be held by the hearing officer without a panel; that a board member with prior knowledge may be present with the full board to ratify a case after it has been presented at hearing; the hearing officer may issue a recommended order due to the respondent's failure to participate in the proceedings; the Board, not the hearing officer, may reconsider a late filing once the recommended order has been submitted to it for adoption; that the failure of board staff to reach a charging decision within 120 days shall not constitute a defense to wrongdoing by the licensee.

(b) The necessity of the amendment to this administrative regulation: The administrative regulation is necessary to assure due process is afforded nurses who would be affected.

(c) How the amendment conforms to the content of the authorizing statutes: By providing hearing regulatory standards.

(d) How the amendment will assist in the effective administration of the statutes: By setting forth the process that the Board will follow in these cases.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All licensees and credential holders subject to the Board's regulatory authority, approximately 150,000, as well as those nurses privileged to practice pursuant to the nursing compact under KRS 314.475.

(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: If the subject of an alleged violation, they will have to request a hearing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): If the hearing is adverse to the respondent there may be a hearing fee; however, the amount varies with each matter.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be following the administrative regulation.

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

(a) Initially: There is no additional cost.

(b) On a continuing basis: There is no additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(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 new fees are necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are created.

(9) TIERING: Is tiering applied? Tiering is not applied.

FISCAL IMPACT STATEMENT

201 KAR 20:162

Contact Person: Jeffrey Prather

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Email: Jeffrey.prather@ky.gov

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 314.091(8), 314.131(1)

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:
The Kentucky Board of Nursing.

(a) Estimate the following for the first year:

Expenditures: No expenditures to estimate.

Revenues: No revenues to estimate.

Cost Savings: No cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? They will not differ.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

(a) Estimate the following for the first year:

Expenditures: No expenditures to estimate.

Revenues: No revenues to estimate.

Cost Savings: No cost savings.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? They will not differ.

(4) Identify additional regulated entities not listed in questions (2) or (3):

(a) Estimate the following for the first year:

Expenditures: N/A.

Revenues: N/A.

Cost Savings: N/A.

(b) How will expenditures, revenues, or cost savings differ in subsequent years? There will be no difference to expenditures, revenues, or cost savings. N/A.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: None.

(b) Methodology and resources used to determine the fiscal impact: None.

(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 regulation will not have an overall adverse economic impact.

(b) The methodology and resources used to reach this conclusion: N/A.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a “major economic impact”, as defined by KRS 13A.010(13): This regulation will not have a major economic impact.

(b) The methodology and resources used to reach this conclusion: This regulation does not have a major impact on the entities identified in 3(a), 4(a), and 5(a).