

311.591 Inquiry and hearing panels -- Grievances -- Review by inquiry panel -- Complaints -- Hearing by hearing panel -- Final order -- Discipline -- Release of information -- Privacy.

- (1) The president of the board shall divide the membership of the board, excluding himself, into two (2) panels of seven (7) members, each panel to include at least one (1) consumer member. Each panel shall have the power to act as an inquiry or a hearing panel. The president shall not be a permanent member of either panel, but shall have the power to render the deciding vote whenever a tie vote is rendered by either panel and shall have the power to serve as a member of either panel when necessary to achieve a quorum by majority.
- (2) Grievances may be submitted by an individual (including board members), organization, or entity. Each grievance shall be investigated as necessary and the executive director shall assign each grievance to an inquiry panel. All inquiry panels and the executive director shall have the power to issue investigatory subpoenas for the appearance of any person or production of any record, document, or other item within the jurisdiction of the Commonwealth. The panel or executive director may seek enforcement of investigatory subpoenas and search warrants in the courts of the Commonwealth as may be necessary.
- (3) Upon completion of its inquiry, the inquiry panel shall make a finding that:
 - (a) There is no evidence of a violation of any medical practice act and no further action is necessary;
 - (b) There is insufficient evidence of a violation to warrant the issuance of a complaint, but that there is evidence of a practice or activity that requires modification and the panel may issue a letter of concern under KRS 311.550(22). The letter of concern shall be a public document and may be used in future disciplinary actions against the physician;
 - (c) The grievance discloses an instance of misconduct which does not warrant the issuance of a complaint; in these instances, the panel may admonish the physician for his misconduct; or
 - (d) The grievance discloses one (1) or more violations of the provisions of this chapter which warrant the issuance of a complaint; in these instances, the panel shall cause a complaint to be prepared, signed by the presiding officer, which shall contain sufficient information to apprise the named physician of the general nature of the charges.
- (4) The inquiry panel shall cause a complaint to be served on the charged physician by personal delivery or by certified mail to the physician's last address of which the board has record. The physician shall submit a response within thirty (30) days after service. Failure to submit a timely response or willful avoidance of service may be taken by the board as an admission of the charges.
- (5) Upon the issuance of the complaint, the executive director shall assign the matter for an administrative hearing by a hearing panel. No member who served on the inquiry panel may also serve as a member of the hearing panel. The hearing panel or

the hearing officer on behalf of the panel shall preside over all proceedings pursuant to the issuance of a complaint.

- (6) The board may promulgate administrative regulations regarding the informal disposition of any complaint, and an informal disposition may be made at any stage of the proceeding.
- (7) Upon completion of an administrative hearing, the hearing panel shall issue a final order that:
 - (a) Dismisses the complaint upon a conclusion that the provisions of this chapter have not been violated;
 - (b) Finds a violation of the provisions of this chapter, but does not impose discipline because the panel does not believe discipline to be necessary under the circumstances; or
 - (c) Imposes discipline upon the licensee; in these instances, the panel may revoke, suspend, restrict, deny, or limit a license, or may reprimand a licensee or place a licensee on probation under terms the panel may establish to protect the licensee, his patients, or the general public. The hearing panel may impose a fine whenever it finds that a violation of this chapter has occurred. If the board substantiates that sexual contact occurred between the physician and the patient while the patient was under the care of or in a professional relationship with the physician, the physician's license may be revoked or suspended with mandatory treatment of the physician as prescribed by the board. The board may require the physician to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact. The hearing panel's order shall be considered the final order of the board regarding the matter.
- (8) Regardless of the restrictions on public disclosure of information established in subsection (9) of this section, the board may order information derived from any investigation or inquiry be released to the physician licensure authority of another state or to any health care or mental health care facility licensed and regulated by the Commonwealth of Kentucky upon a showing that the information is necessary to determine the propriety of a physician practicing in a particular state or facility.
- (9) The presiding officer at any proceeding held pursuant to a complaint or show cause order shall take whatever measures are necessary to protect the privacy interests of individuals other than the charged physician upon a showing that evidence is to be introduced, the public disclosure of which would constitute a clear invasion of personal privacy. It is the general policy of the Commonwealth that administrative proceedings should be open to the public. Therefore, in applying this subsection, the presiding officer shall balance the competing interests and employ the least restrictive measures available to protect the privacy interests involved.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 130, sec. 13, effective July 15, 2002. -- Amended 1996 Ky. Acts ch. 318, sec. 255, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 190, sec. 6, effective July 15, 1994; ch. 265, sec. 4, effective July 15, 1994; and ch. 470, sec. 4, effective July 15, 1994. -- Amended 1986 Ky. Acts ch. 302, sec. 8,

effective July 15, 1986. -- Created 1984 Ky. Acts ch. 251, sec. 4, effective July 13, 1984.

Legislative Research Commission Note (7/15/94). This statute was amended by 1994 Ky. Acts chs. 265 and 470, which were companion bills and are substantively identical. These Acts have been codified together. For the few minor variations between the Acts, Acts ch. 470 prevails under KRS 446.250, as the Act which passed the General Assembly last. 1994 Ky. Acts ch. 190, sec. 6 is not in conflict with these two Acts and has been codified together with them.