

Investigation Policy

Revised and Approved by the Board on January 6, 2023

I. Initial Process

A. An investigation may be initiated by a Report of Alleged Violation (RAV) which is received by the Behavioral Sciences Regulatory Board (Board):

1. Which may be a complaint lodged by a person;
2. Other reasonably reliable written information (e.g., court decision, newspaper article, yellow pages ad, etc.);
3. Information that a licensee has failed to comply with the conditions of a lawful order or directive of the Board; or
4. Information indicating a possible violation received during the process of the initial issue of a license, renewal of a license, or reinstatement of a license.

B. Request for RAV Forms:

1. Upon receiving a request for a RAV/complaint form, staff shall comply with the requestor's preference of whether the form should be mailed, e-mailed, or the requestor may download the form from the Board's website.
2. Anyone wishing to file a complaint by electronic means shall be informed that the RAV form should be completed in full and returned to the Board.

C. Receipt of Information: Receipts of RAVs or other reasonably reliable written information, information regarding non-compliance with a lawful order or directive of the Board, or information indicating a possible violation received during the process of the initial issue of a license, renewal of a license, or reinstatement of a license:

1. Staff will date stamp the first page of the RAV or verify date of receipt of the other information received.
2. Staff will place the RAV or other information in the lead Special Investigator's inbox.
3. The Special Investigators will:
 - a. Assign a Case Number in sequence
 - b. Add the information to the Investigations Database.

- c. Prepare a case file folder.
- d. Notify the licensee in a timely manner of the receipt of the complaint, provide a brief description of the information contained therein, and the identity of the complainant.
- e. Notify the complainant or other reporter of the receipt of the information.

II. Complaint Review Committee

A. The review and evaluation of the investigated RAVs will be performed by a standing Complaint Review Committee comprised of the following persons who will serve in a decision-making capacity:

- 1. a psychologist Board member,
- 2. a social worker Board member,
- 3. a public Board member,
- 4. one member who is:
 - a. a marriage and family therapy Board member;
 - b. a professional counseling Board member;
 - c. a master's level psychology Board member; or
 - d. an addiction counseling Board member.
- 5. one member who is:
 - a. a marriage and family therapy Board member;
 - b. a professional counseling Board member;
 - c. a master's level psychology Board member;
 - d. an addiction counseling Board member; or
 - e. a public board member.

B. The Chair of the Board shall appoint a Chair of the Complaint Review Committee.

C. The Chair of the Board shall appoint Board members to the Complaint Review Committee to terms lasting one or two years, to assist with staggering of terms. Terms begin on July 1 and correspond to state fiscal years.

D. The following persons shall serve as members of the Complaint Review Committee in an advisory capacity:

- 1. the Board's Special Investigators; and

2. the Board's Executive Director.

E. Additionally, the Board's Disciplinary Counsel will be requested to serve as a member of the Complaint Review Committee in an advisory capacity.

F. The remaining Board members will be available to serve on hearing panels (preferably 3-person hearing panels) for any case that the Complaint Review Committee determines may be appealed to a panel for a potential administrative disciplinary hearing. The Executive Director is authorized to appoint hearing panel members who will be Board members not associated with the investigative phase and who do not have any conflict of interest. If the Complaint Review Committee does not elect to utilize a hearing panel in case of an appeal, requests for appeals will be considered through the Office of Administrative Hearings.

G. The Board delegates the authority to take the following actions to the Complaint Review Committee:

1. To issue Summary Proceeding Orders:

(a) to revoke, suspend, condition, or limit a license;

(b) to assess fines up to the statutory maximum, per violation;

(c) to censure a licensee; and/or

(d) to revoke the license or registration of any licensee or registrant who voluntarily surrender such person's license or registration pending investigation of misconduct or while charges of misconduct against the licensee or registrant are pending;

2. To issue cease and desist orders to any person who has practiced without a valid license in a profession for which practitioners are required by law to be licensed;

3. To apply to any court of competent jurisdiction for an order enjoining any licensed or unlicensed person who has engaged, or is about to engage, in any acts or practices that will constitute a violation of any practice act under the Board's jurisdiction; and

4. To approve any settlement agreements (including Consent Agreements, Final Orders, and Diversion Agreements) over the signature of the Chair of the Complaint Review Committee.

III. Initial Review and Determination

A. When the Behavioral Sciences Regulatory Board receives a completed RAV, the Special Investigators and/or the Executive Director reviews the complaint and an initial determination is made as to whether to proceed with opening the case for investigation.

B. Making the initial jurisdictional determination:

1. For a RAV against a person licensed by BSRB, two criteria are used to determine whether the BSRB has jurisdiction:

a. The complaint pertains to a profession or scope of practice regulated by the Board; and

b. The complaint alleges facts constituting non-compliance with, or violations of the rules, regulations, and/or statutes, and/or Board ordered conditions governing the practice or conduct of the professional on whom the report is being filed.

2. If the Special Investigators and/or Executive Director find that jurisdictional criteria are met, the case shall be docketed and an investigation shall be initiated.

3. When the Special Investigators and/or the Executive Director need consultation to determine jurisdiction, the following procedure shall apply:

a. If during the initial jurisdictional determination process the Special Investigators and/or the Executive Director are uncertain whether one or both of the two criteria are met, the Special Investigators shall consult with the Chair of the Complaint Review Committee. The consultation may be in person, by telephone, or by e-mail. The Special Investigators shall document the decision made in consultation.

b. If, through consultation with the Chair of the Complaint Review Committee, a determination is made that the Board has jurisdiction, the case shall be docketed and an investigation shall be initiated.

c. If there is still uncertainty regarding jurisdiction, legal counsel for the Board will be consulted and the matter will be discussed at a Complaint Review Committee meeting. If the Committee determines that the Board does not have jurisdiction, the case shall not be docketed. If the Committee determines that the Board has jurisdiction, the case shall be docketed and an investigation shall be initiated.

4. If a determination is made that the Board does not have jurisdiction, the Special Investigators shall notify the complainant and licensee of the jurisdictional determination and the disposition of the complaint. If another Board or agency may have jurisdiction in the matter, the complainant will be notified which Board or agency may have jurisdiction. If the complaint is of sufficient concern, the Special Investigators can forward the information available directly to the Board or agency which may have jurisdiction.

5. The Special Investigators shall update all information charts and logs.

C. Review and Determination of Possible Violations:

1. The Special Investigators will docket the case.

2. The Special Investigators will add relevant case information to the Investigative Database.

3. When appropriate, the Special Investigators will add disciplinary information in the licensing database.

IV. Investigation Process

A. Licensee Notification

1. The purpose of an administrative investigation is to uncover facts and to facilitate the Board's regulatory goals and compliance with the law. In consideration of that goal and the nature of the

investigative function, the Special Investigators are hereby given discretionary procedural authority in determining which manner a licensee under investigation is be notified of the allegations charged against them.

2. Licensee Notification can include but is not limited to:

- a. An initial notification of complaint, if there will be a delay between the receipt of the complaint and the request for a written response.
- b. Notification in writing with a request for a written response due in the Board office on or before a date indicated by the Special Investigators, usually a period of 30 days from the date of notification.
- c. At the conclusion of a personal interview with the licensee at which time the licensee is presented with written notification of the allegations.
- d. A combination of (b) and (c).

3. The respondent/licensee shall be notified of the allegations in writing and asked to provide a written response to the Board.

4. At the discretion of the Executive Director and/or Special Investigators, the respondent may receive a 30-day extension to prepare the response. Upon a showing of extenuating circumstances, additional extensions may be provided.

5. Special Investigators may allow additional time for an investigation, if there is evidence of a pending civil case, criminal case, or other investigation pending resolution.

B. During the investigation process, the Special Investigators should explore the strengths of the case, along with the weaknesses.

C. The Special Investigators should interview witnesses, collect documents and other evidence relevant to the allegation, including the basis or motive of the complaint.

D. If warranted, during the course of the investigation the Special Investigators may provide copies of documents obtained in the investigation and consult with a Complaint Review Committee member.

E. The Special Investigators should possess a working knowledge of the rules, regulations, and State statutes governing the professions licensed by the Board.

F. Written Reports:

1. The Special Investigators shall generate a written narrative report outlining the facts of the case as found in the investigation in relation to applicable statutes and/or regulations.

2. Supplemental reports can be generated when necessary.

G. The Special Investigators will notify the licensee by letter when the RAV is scheduled to be heard by the Complaint Review Committee.

H. Investigative subpoenas will be signed by the Chair of the Complaint Review Committee or another member of the Complaint Review Committee if the Chair is unavailable.

I. Pursuant to K.S.A. 74-7508(c)(3), the Special Investigators may advise proper authorities or state agencies of information gathered during the investigation.

V. Complaint Review Committee Procedure

A. Upon completion of the investigation, the Special Investigators shall:

1. Prior to the Complaint Review Committee's meeting, provide a copy of the completed Narrative Report to each member of the Committee.
2. Have the complete investigation file available at Complaint Review Committee meetings.

B. Complaint Review Committee Evidentiary Determinations:

1. Prior to the Complaint Review Committee's meeting, each member of the Committee should read and preliminarily evaluate whether the narrative summary indicates that non-compliance or violation(s) of statute(s), regulation(s), or Board ordered conditions have occurred.
2. At its meetings, the Complaint Review Committee will discuss, evaluate, and determine whether sufficient evidence exists to support a determination of non-compliance or a violation of statute(s) and/or regulation(s), and/or Board ordered conditions. (In making this determination, Committee members should bear in mind that a preponderance of the evidence, which is easily understood and conclusive in nature, is needed to establish violation(s) of statute or regulation at any subsequent disciplinary hearing.)
3. The Committee may direct the Special Investigators to conduct further interviews and/or to obtain additional documents.
4. At its discretion, the Committee may invite the licensee to a Committee meeting to discuss the RAV and/or terms of any proposed settlement offer.
5. For a disciplinary case, if the Committee determines sufficient evidence exists to support a determination of a violation of statute(s) and/or regulation(s), Committee members may consider aggravating/mitigating factors when determining the proposed disposition of a case.
6. For a case involving asserted non-compliance or violation of a Board ordered condition, Committee members will assess the seriousness of the non-compliance or violation(s). The purpose of this assessment is to guide the Committee in forming a basis for terms and conditions of any proposed settlement offer that may be offered to the licensee and/or to serve as recommendations to Disciplinary Counsel for appropriate discipline should the case proceed to hearing.

C. Complaint Review Committee action determinations:

1. If at least 3 members of the Complaint Review Committee determine the evidence does not show that a violation of the statutes or regulations has occurred:

- a. The Special Investigators will close the case.
 - b. The Complaint Review Committee may authorize sending an educational letter or non-disciplinary letter of caution in order to alert the licensee that he/she may want to modify his/her conduct to avoid further complaints.
 - c. The Special Investigators will notify the complainant and the respondent of the determination.
2. If at least 3 members of the Complaint Review Committee determine there is sufficient evidence that a violation of statute(s) or regulation(s) has occurred:
- a. Disciplinary Counsel may be directed to initiate discipline by either a Summary Proceeding Order or file a Petition in Discipline.
 - b. Disciplinary Counsel may be directed to propose resolution of the case by either a public or non-public settlement agreement upon such terms and conditions as determined by the Committee.
 - c. If authorized by law, the Committee may recommend a county or district attorney initiate criminal proceedings.
 - d. For minor or technical violations, the Complaint Review Committee may authorize a sending an educational or non-disciplinary letter of caution to the licensee.
 - e. In the event of (2)(a) or (b), the Special Investigators shall provide a copy of the completed Narrative Report and all documents obtained during the investigation to the Board's Disciplinary Counsel.
 - f. The Special Investigators will monitor the progress of cases referred to the Board's Disciplinary Counsel.

D. Emergency procedures: In the event the Board's Special Investigators believes emergency procedures are warranted, the Special Investigators shall consult with the Chair of the Complaint Review Committee and may consult with the Board's disciplinary counsel. After such consultation and if warranted, the Chair of the Complaint Review Committee may authorize emergency proceedings pursuant to K.S.A. 77-536.

VI. Settlement Agreement Process

A. Disciplinary Counsel and the Executive Director will prepare a settlement agreement and forward the agreement to the licensee, or the licensee's attorney if represented, along with correspondence outlining the approval process and the date upon which the signed settlement agreement should be returned. Any negotiations regarding the terms of the settlement agreement will be done by the Disciplinary Counsel in consultation with the Complaint Review Committee or its designee.

B. Upon receipt of the signed settlement agreement, the Disciplinary Counsel will present the agreement to the Chair of the Committee or the Chair's designee on the CRC for signature.

C. The signed settlement agreement will be provided to the Special Investigators who will then execute the settlement agreement.

D. If settlement agreement negotiations are not successful in resolving the case, the matter will be returned to the CRC for further consideration.

E. The Special Investigators will monitor the receipt of reports as required by the CAO and take steps to obtain those reports if not received as ordered.

F. The Special Investigators will monitor terms and/or conditions and the receipt of reports as required by the CAO or Final Order and take steps to obtain these reports if not received as ordered.

VII. Case Disposition Authority

A. The Complaint Review Committee retains the authority to negotiate or settle the case until the close of the presentation of evidence in the hearing.

B. If utilized by the Complaint Review Committee, the Hearing Panel assumes authority regarding the disposition of the case after the close of the presentation of evidence in the hearing.