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# Behavioral Sciences Regulatory Board

## Investigations: Policy and Procedures

Revised and approved by the  
Board on July 13, 2009

Update after  
edits resolved

### I. Initial Office Process

Report of Alleged Violation

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. ~~disciplinary or non-disciplinary consent agreement and order, or initial or final order.~~
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.

Delete "-"

social media post?

B. Request for Forms:

staff

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,~~ may ~~faxed,~~ or if the requestor will download the form from the Board's website.
2. Anyone wishing to file a complaint by electronic means shall be informed that the ~~Report of Alleged Violation~~ form should be completed in full and returned to the Board.

e-mailed

RAV



Insert new title  
"Receipt of  
Information:"

Add "When in..."

RAVs

C.

Receipt of ~~report of alleged violation~~, other reasonably reliable written information, information regarding non-compliance with a ~~disciplinary or non-disciplinary consent agreement and order, or initial or final order~~, 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:

lawful order or directive of the Board

Staff will date

verify date of receipt of

Rationale:  
Info could  
be audio/  
video, etc.

1. ~~Date~~ stamp the first page of the RAV or of the other information received.
2. ~~Place~~ the RAV or other information in the Special Investigator's ~~IN~~ box.
3. The Special Investigator will:
  - a. Assign a Case Number in sequence
  - b. Add the information to the Investigations ~~Data Base~~.
  - c. Prepare a case file folder.
  - d. Notify the licensee in a timely manner of the receipt of the complaint, 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.

Staff will place

(delete space)

inbox

Database

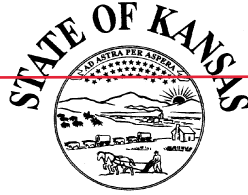
## II. COMPLAINT REVIEW COMMITTEE

A. The review and evaluation of the investigated ~~reports of alleged violations (RAV)~~ will be performed by a standing Complaint Review Committee comprised of the following persons who will serve in a decision making capacity:

RAVs

1. a psychologist Board member,

licensed



licensed

Questions on  
composition of CRC:  
1. Add LAC/LMAC/  
LCAC?  
2. Keep Two Public  
Members or One and  
Another Rotating  
Board Member?  
3. 6th Member?

2. a social worker Board member,
3. a Board member who is:
  - a. a marriage and family therapist ~~or clinical marriage and family therapist,~~ or
  - b. a professional counselor ~~or a clinical professional counselor,~~ or
  - c. a masters level psychologist or clinical psychotherapist

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2. 2 public Board members.

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

1. the Board's Special Investigators
2. the Board's Executive Director, as needed.

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

D. The terms of the Complaint Review Committee for Board members shall be two years on a staggered basis. begin on ~~Terms are from July 1st to June 30th.~~

E. The remaining ~~six~~ Board members will be available to serve on hearing panels (preferably 3-person hearing panels) for any case that proceeds to an 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.

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

Discussion Item



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Summary Proceeding Orders

1. To issue ~~summary proceeding orders~~:
  - (a) to revoke, suspend, condition, or limit a license,
  - (b) to assess fines in the amount of ~~the maximum~~ **up to the statutory maximum** of \$ 1,000. ~~per violation~~, **delete period**
  - ~~(c) to assess costs in the amount of \$ 200. maximum,~~ **Board may only assess costs related to cases before OAH**
  - (c)** ~~(d)~~ to censure a licensee, and/or
  - (d)** ~~(e)~~ 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; and
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. **settlement agreements (including Consent Agreements, Final Orders, and Diversion Agreements)**
- Discussion Item** 4. To approve any ~~consent agreement and order~~ over the signature of the ~~chair~~ **Chair** of the Complaint Review Committee.



### III. Initial Review and Determination

- A. When the Behavioral Sciences Regulatory Board receives a completed RAV Report of ~~Alleged Violation~~, the Special Investigator 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 ~~an~~ 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.
    - 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 Investigator 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 Investigator 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 Investigator and/or the Executive Director find that one or both of the two criteria are not met, the Special Investigator shall consult with ~~a~~



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the Chair

helpful

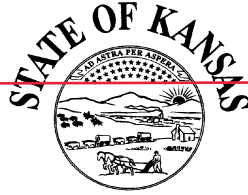
the RAV was filed  
against

~~member~~ of the Complaint Review Committee. When ~~possible~~ the Committee member ~~shall~~ <sup>may</sup> be of the same profession as the person ~~complained against~~. <sup>c</sup> The Consultation may be in person, by telephone, fax or by E-mail. The Special Investigator shall document the decision made in consultation.

- b. If the Committee member determines that the Board has jurisdiction, the case shall be docketed and an investigation shall be initiated.
- c. If the Committee ~~member concurs with an assessment made by the Special Investigator and/or Executive Director that the Board does not have jurisdiction, or if the Committee~~ member is uncertain of jurisdiction, ~~the Special Investigation will forward a copy of all relevant documents to the Complaint Review Committee for review and determination as to whether the Board has jurisdiction.~~ 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.

legal counsel for the Board will be consulted and the matter will be discussed at a Complaint Review Committee meeting.

- 4. If a determination that the Board does not have jurisdiction is made, the Special Investigator shall notify the complainant and licensee of the jurisdictional determination and the disposition of the complaint. If another Board or Agency ~~has~~ <sup>may have</sup> jurisdiction in the matter, the complainant will be notified which Board or Agency ~~has~~ <sup>may have</sup> jurisdiction. If the complaint is of



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Special Investigator

sufficient concern, the special investigator can forward the information available directly to the Board or Agency which ~~has~~ <sup>may have</sup> jurisdiction.

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

of

Violations:

D. Review and Determination: Possible Violation

1. Docket case.

~~2. Begin Investigation Worksheet.~~

2

Database

3. Add relevant case information to Investigative Data Base.

3

disciplinary information

Database

4. Update ~~Disciplinary Information~~ in Licensure Data Base.

#### 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 Investigator is 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 Investigator, usually a period of 30 days from the date of notification.



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c. At the conclusion of a personal interview with the licensee at which time the licensee is presented with written notification of the allegations.

Discussion Item - should language be added to allow for a stay on BSRB review if there is a pending criminal/civil case or investigation?

d. A combination of (b) and (c).

3. ~~In any case, the~~ **The** respondent/licensee shall be notified of the allegations in writing and asked to provide a written response to the Board.

Discussion Item

4. At the discretion of the Executive Director and/or Special Investigator, the respondent may receive one 15-day extension to prepare the response. At the discretion of the Executive Director, the respondent may receive a second 15-day extension on a showing of good cause.

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

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C. The Special Investigator should interview witnesses, collect documents and other **including** evidence relevant to the allegation, ~~and explore all avenues for the basis or motive of the complaint.~~

D. If warranted, during the course of the investigation the Special Investigator may provide copies of documents obtained in the investigation and consult with:

1. a Complaint Review Committee member,
2. ~~a member of the Board who is not on the Complaint Review Committee,~~
3. ~~a former Board member of the profession involved, and/or~~
4. ~~another professional who has specialized expertise.~~

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- E. The Special Investigator should possess a working knowledge of the rules, regulations, and State ~~Statutes~~ statutes governing the professions licensed by the Board.
- F. Written Reports:
1. The Special Investigator 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 Investigator will notify the ~~complainant and~~ licensee by letter when the RAV ~~enters each next stage in the process.~~ is scheduled to be heard by the Complaint Review Committee
- H. Investigative subpoenas will be signed by the ~~Executive Director or by the Board Chairperson if the Executive Director is unavailable.~~ Chair of the Complaint Review Committee
- I. Pursuant to K.S.A. 74-7508(c)(3), the Special Investigator may advise proper Discussion item authorities or state agencies of information gathered during the investigation.

## V. Complaint Review Committee Procedure

- A. Upon completion of the investigation, the Special Investigator 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.
  3. ~~Have Consent Agreement and Order Referral forms available at Complaint Review Committee meetings, for completion at the Committee's direction if warranted.~~



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 establish violation(s) of law at any subsequent disciplinary hearing).  

↑  
to

↑  
statute or regulation
3. The Committee may direct the Special Investigator 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 ~~report of alleged violation~~ **RAV** and/or terms of any proposed ~~Consent Agreement and Order.~~ **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), **may consider aggravating/mitigating factors** Committee members ~~will complete the Aggravating/Mitigating Factors form~~ **when determining the proposed disposition of a case** to assess the seriousness of the violation(s). ~~The purpose of this assessment is to guide the Committee in forming a basis for terms and conditions of any~~



~~proposed Consent Agreement and Order 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.~~

~~6. The Committee may direct the Special Investigator to obtain a Victim Impact Statement prior to finalizing the Aggravating/Mitigating Factors form.~~

6. 7. 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 **or settlement agreement** ~~extended Consent Agreement and Order~~ 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 that **the** ~~there is insufficient evidence to proceed:~~ **does not show that a violation of the statutes or regulation has occurred**
  - a. The Special Investigator 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 Investigator will notify complainant and respondent of the determination.



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2. If at least 3 members of the Complaint Review Committee determine that there is sufficient evidence to proceed:
- that a violation of statute(s) or regulation(s) has occurred:
- Disciplinary Counsel may be directed
- Petition in Discipline
- a. ~~Direct disciplinary counsel to initiate an administrative hearing by disciplinary action by either a Summary Proceeding Order or filing a disciplinary petition or show cause petition, as applicable.~~
- Disciplinary Counsel may be directed
- b. ~~Direct disciplinary counsel to propose resolution of the case by a Consent Agreement and Order (CAO) upon such terms and conditions as determined by the Committee.~~
- either a public or non-public settlement agreement
- c. ~~If authorized by law, recommend county or district attorney initiate criminal proceedings.~~
- the Committee may
- 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 Investigator 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 Investigator will monitor the progress of cases referred to the Attorney General's Office ~~for resolution by Consent Agreement and Order or for hearing.~~

- D. Emergency procedures: In the event the Board's Special Investigator believes emergency procedures are warranted, ~~he~~ shall consult with the ~~chair~~ of the Complaint Review Committee and may consult with the Board's disciplinary counsel. After
- the Special Investigator
- Chair



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such consultation and if warranted, the Chair of the Complaint Review Committee may authorize emergency proceedings pursuant to K.S.A. 77-536.

Settlement

## VI. ~~Consent~~ Agreement Process

A. The Disciplinary Counsel prepares the ~~formal Consent Agreement and Order~~ and forwards it to the ~~respondent~~, or the ~~respondent's lawyer~~ if represented, along with correspondence outlining the approval process and the date upon which the signed CAO should be returned. Any negotiations regarding the terms of the CAO will be done by the Disciplinary Counsel in consultation with the Complaint Review Committee or its designee.

settlement agreement

licensee

licensee's attorney

settlement agreement

settlement agreement

B. Upon receipt of the signed CAO, the Disciplinary Counsel will present the agreement to the ~~Complaint Review Committee~~ for ~~final approval~~ at the ~~Committee's next scheduled meeting~~.

settlement agreement

Chair of the

or the Chair's designee on the CRC

Discussion Item

signature

C. ~~Approval: A designee of the Complaint Review Committee will sign and return the CAO to the Executive Director or other designated Board staff who will then mail a copy of the CAO, along with a letter of correspondence, to the licensee.~~

The signed settlement agreement will be provided to the Special Investigator

who will then execute the settlement agreement

D. ~~CAO not approved: If Consent Agreement and Order negotiations are not successful in resolving the case, a petition will be filed and the case scheduled for hearing.~~

the matter will be returned to the CRC for further consideration.

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

settlement agreement

F. The Special Investigator 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. The Hearing Panel assumes authority regarding the disposition of the case after the close of the presentation of evidence in the hearing.