

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

DIRECTOR'S OFFICE

PUBLIC HEALTH CODE – DISCIPLINARY RULES

Filed with the secretary of state on April 15, 2021

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(6) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the executive director of the department of licensing and regulatory affairs by section 33(3) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, section 16141 of the public health code, 1978 PA 368, MCL 333.16141, and Executive Reorganization Order Nos. 1991-9, 1996-2, 2003-1, and 2011-4, MCL 338.3501, 445.2001, 445.2011, and 445.2030)

R 338.1603, R 338.1604, R 338.1608, R 338.1630, R 338.1631, and R 338.1632 of the Michigan Administrative Code are amended, R 338.1601a, R 338.1601b, R 338.1602a, R338.1607a, and R 338.1632a are added, and R 338.1605, R 338.1606, R 338.1607, R 338.1609, R 338.1612, and R 338.1615 are rescinded, as follows:

PART 1. GENERAL RULES

R 338.1601a Definitions.

Rule 1a. (1) As used in these rules:

- (a) "Board" means that term as defined in section 16103(1) of the public health code, 1978 PA 368, MCL 333.16103.
- (b) "Bureau" means the bureau of professional licensing.
- (c) "Code" means the public health code, 1978 PA 368, MCL 333.1101 to 333.25211.
- (d) "Department" means the department of licensing and regulatory affairs.
- (e) "Disciplinary subcommittee" means that term as defined in section 16104(5) of the code, MCL 333.16104.
- (f) "Official record of the hearing," includes those records required in section 86 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.286.
- (g) "Person" means that term as defined in section 1106(4) of the code, MCL 333.1106.
- (h) "Respondent" means a person against whom an administrative complaint has been issued or filed.
- (i) "Surrendered" means the permanent relinquishment of a license or registration to practice a health profession by a licensee or registrant as a disciplinary sanction in lieu of or in resolution of further disciplinary proceedings.
- (j) "Task force" means that term as defined in section 16109(3) of the code, MCL 333.16109.

(2) Except as otherwise defined in these rules, the terms defined in the code have the same meaning when used in these rules.

R 338.1601b Disciplinary action; unlicensed or unregistered person.

Rule 1b. An unlicensed or unregistered person is subject to disciplinary action without regard to whether that person becomes licensed or registered or whether the department knew of the violation when the license or registration was issued or reinstated.

R 338.1602a Continuing duty to report name, address, or electronic mail address change.

Rule 2a. In addition to complying with section 16192(1) of the code, MCL 333.16192, a licensee or registrant whose license or registration has expired, lapsed, or been suspended, revoked, or surrendered must notify the department of a change of name, postal address, or electronic mail address within 30 days until the later of 1 of the following occurs:

- (a) Seven years after a change in license or registration status occurs.
- (b) Three years after all administrative complaints against the license or registration filed with the department have been closed.
- (c) The licensee or registrant is in full compliance with all final orders issued against the licensee or registrant.

PART 2. HISTORICAL RECORDS

R 338.1603 Historical records.

Rule 3. In addition to the information required to be maintained in the historical record of a licensee or registrant pursuant to section 16211 of the code, MCL 333.16211, the department may obtain and maintain all of the following in a licensee's or registrant's individual historical record:

- (a) Reports or information disclosed by a health facility or agency consistent with sections 20175 and 21515 of the code, MCL 333.20175 and 333.21515.
- (b) Reports, information, or a final order from a state department or agency.
- (c) Reports or information from a professional association or professional society.
- (d) Reports or information from a national practitioner databank.
- (e) Reports or information from the secretary of state's office.
- (f) Reports or information related to prior allegations made against the licensee or registrant.
- (g) Reports or information from any federal, state, or local law enforcement agency.
- (h) Reports, information, or a final order from any federal, state, or local court or other adjudicating body.
- (i) Reports or information related to the individual's failure to satisfactorily participate in or complete a treatment plan under the health professional recovery program (HPRP).
- (j) For a period of 5 years following the individual's successful completion of the HPRP, records pertaining to the individual's participation in the HPRP, in compliance with section 16170a(3) of the code, MCL 333.16170a.

PART 3. INVESTIGATIONS

R 338.1604 Investigations.

Rule 4. The department's investigation conducted as required or permitted by section 16221 of the code, MCL 333.16221, may encompass possible violations other than those specifically identified when the investigation was initiated if the possible violations arise from the same conduct or incident described when the investigation was initiated.

R 338.1605 Rescinded.

R 338.1606 Rescinded.

R 338.1607 Rescinded.

PART 4. PLEADINGS

R 338.1607a Pleadings.

Rule 7a. (1) Until a notice of hearing has been issued, all original pleadings and related attachments must be filed with the department or office of the attorney general as set forth in the administrative complaint or notice of compliance conference.

(2) After a notice of hearing has been issued, all original pleadings and any related attachments must be filed with the Michigan office of administrative hearings and rules as required in the notice of hearing. A copy of all original pleadings and any related attachments must be transmitted to all other parties listed on the notice.

(3) An answer to an administrative complaint must be filed within 30 days from the date of receipt of the administrative complaint.

(4) An amended administrative complaint may be filed 31 or more days before the hearing or at any time with leave from the administrative law judge. A respondent must be given a reasonable time to file an amended answer and to prepare a defense before hearing if the allegations in the administrative complaint are substantially amended.

(5) All pleadings and any related attachments that are properly filed become a part of the official record of the hearing.

PART 5. COMPLIANCE CONFERENCE, REQUEST FOR ADJOURNMENT, AND HEARING TO ESTABLISH AN OFFICIAL RECORD FOR DETERMINATION OF DISCIPLINARY ACTION

R 338.1608 Compliance conference; request for adjournment; hearing to establish record for disciplinary action only.

Rule 8. (1) The department may conduct a compliance conference held pursuant to section 16231(5) of the code, MCL 333.16231, informally and not as an evidentiary hearing. A licensee or registrant may submit a written statement before the date of the compliance conference.

(2) A respondent may request and may be granted an adjournment of the compliance conference for good cause. As used in this subrule, "good cause" means that the respondent submitted a written request for adjournment to the department that provides

legally sufficient grounds to warrant the adjournment, such as circumstances beyond the respondent's control.

(3) If the parties agree on all issues except the terms of the appropriate disciplinary action, the department must schedule a hearing to establish an official record for consideration by the disciplinary subcommittee of the appropriate board or task force in making its determination of the appropriate disciplinary action. The disciplinary subcommittee must consider the parties' agreement and the official record of the hearing when determining the appropriate disciplinary action.

R 338.1609 Rescinded.

R 338.1612 Rescinded.

R 338.1615 Rescinded.

PART 6. FINAL ORDER, RECONSIDERATION OF FINAL ORDER, AND DUTY TO COMPLY WITH FINAL ORDER

R 338.1630 Final order; remand for additional evidence; revisions to findings; majority vote required; department review.

Rule 30. (1) If an agreement has been reached at an informal conference, the disciplinary subcommittee may accept the proposed disposition and enter a final order, suggest other terms, or require that administrative proceedings be commenced.

(2) In a contested case, the disciplinary subcommittee, board, or task force may enter a final order after reviewing the official record of the hearing.

(3) If the disciplinary subcommittee, board, or task force determines that additional testimony or evidence is necessary, it must issue an order remanding the case to the administrative law judge.

(a) The order remanding the case to the administrative law judge must specify what witnesses, evidence, or questions are to be addressed on remand without limiting the witnesses or evidence the parties may present.

(b) After the administrative law judge has held a hearing on the remanded matter, the administrative law judge must issue a proposal for decision on remand with findings of fact and conclusions of law to the disciplinary subcommittee, board, or task force having jurisdiction over the case.

(4) The disciplinary subcommittee, board, or task force may make revisions to the findings of fact and conclusions of law based on the evidence in the official record of the hearing. The revision must specifically identify the findings of fact or conclusions of law, or both, being modified or rejected and identify the evidence from the official record of the hearing that supports the revision.

(5) In its final order, a disciplinary subcommittee, board, or task force may adopt, modify, or reject, in whole or in part, the opinion or proposal for decision of the administrative law judge. If the disciplinary subcommittee, board, or task force modifies or rejects the opinion or proposal for decision, the reasons for that action must be stated in the final order.

(6) Except as provided in section 16221(b)(x) of the code, MCL 333.16221, a disciplinary subcommittee must not rely on any prior final order in determining whether grounds for discipline exist in the case under consideration. In determining an appropriate disciplinary action, a disciplinary subcommittee, board, or task force may review any prior final order, and the underlying administrative complaint, that imposed disciplinary action on the applicant, licensee, or registrant.

R 338.1631 Request for reconsideration of a final disciplinary subcommittee, board, or task force order.

Rule 31. (1) A person may file a written request for reconsideration of a final disciplinary subcommittee, board, or task force order.

(2) The bureau must receive the written request for reconsideration within 30 calendar days after the effective date of the final order. The bureau must deny an untimely request.

(3) The written request must state with specificity the material error claimed and the relief requested. A request for reconsideration that presents the same issues ruled on, either expressly or by reasonable implication, must not be granted.

(4) A properly submitted request must be forwarded to the appropriate disciplinary subcommittee, board, or task force for reconsideration. A request for a modification of a consent order may only be granted after agreement by the parties.

R 338.1632 Duty to comply with final order.

Rule 32. An applicant, licensee, or registrant must comply with a final order issued by a disciplinary subcommittee, board, or task force.

PART 7. APPLICATION DENIAL, REQUEST FOR HEARING, SURRENDERED LICENSE

R 338.1632a Denial of application; hearing; surrendered license or registration ineligible.

Rule 32a. (1) If the department determines that an applicant for licensure, relicensure, license renewal, registration, reregistration, or registration renewal has not met the requirements for licensure or registration, the department must serve upon the applicant a notice of intent to deny (NOID) the application for licensure or registration.

(2) An applicant may request a hearing to show that he or she has fulfilled the requirements for licensure or registration. The applicant's request for a hearing must be filed within 30 days after a NOID is served on the applicant. If the applicant fails to request a hearing within 30 days of service, the NOID becomes a final order of the board, disciplinary subcommittee, or task force denying the application for licensure or registration.

(3) The department may request that the attorney general prepare and present the grounds believed to support a denial of the application at the hearing.

(4) An applicant who has previously surrendered a license or registration to practice in this state is ineligible to apply for licensure, relicensure, registration, or reregistration in the same profession.