

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

DIRECTOR'S OFFICE

PUBLIC HEALTH CODE – DISCIPLINARY RULES

Filed with the secretary of state on February 23, 2022

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(9) 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 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 338.1601b, R 338.1602a, R 338.1604, R 338.1607a, and R 338.1630 of the Michigan Administrative Code are amended and R 338.1610 is added, as follows:

PART 1. GENERAL RULES

R 338.1601b Disciplinary action for conduct before licensure, registration, relicensure, or reregistration.

Rule 1b. (1) A disciplinary subcommittee may take action against a licensee or registrant for conduct that occurred before the license or registration was issued without regard to whether the department knew of the violation when the license or registration was issued or reinstated.

(2) If relicensure or reregistration is granted and it is determined that a sanction has been imposed by another state, the United States military, the federal government, or another country, the disciplinary subcommittee may impose appropriate sanctions under section 16174(5) of the code, MCL 333.16174.

R 338.1602a Continuing duty to report name, address, or electronic mail address change; criminal convictions; duty to report license, registration, or certification in a health profession or specialty for relicensure or reregistration; disciplinary proceedings.

Rule 2a. (1) 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.
- (2) In addition to complying with section 16222(3) of the code, MCL 333.16222, a licensee or registrant whose license or registration has expired or lapsed for 3 months or less shall notify the department of any criminal conviction within 30 days after the conviction.
- (3) In addition to complying with section 16222(3) of the code, MCL 333.16222, a licensee or registrant whose license or registration has been suspended, revoked, or surrendered for 6 months or less shall notify the department of any criminal conviction within 30 days after the conviction.
- (4) If a licensee or registrant applies for relicensure or reregistration, the applicant shall comply with both of the following:
 - (a) Disclose each license, registration, or certification in a health profession or specialty issued by any other state, the United States military, the federal government, or another country on the application form.
 - (b) Satisfy the requirements of section 16174(2) of the code, MCL 333.16174, which include verification from the issuing entity showing that disciplinary proceedings are not pending against the applicant and sanctions are not in force at the time of application.

PART 3. INVESTIGATIONS

R 338.1604 Investigations.

- Rule 4. (1) The department may conduct a review of all allegations or historical records as necessary to determine if reasonable grounds for an investigation exists.
- (2) The department's investigation conducted as required or permitted by the code may encompass possible violations other than those specifically identified when the investigation was initiated.

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 administrative complaint may be amended at any time. 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, CEASE AND DESIST HEARING, FINAL ORDER, AND INFORMAL CONFERENCE

R 338.1610 Cease and desist hearing request; final order; informal conference.

Rule 10. (1) If an individual fails to request a hearing as permitted in section 16233(3) of the code, MCL 333.16233, within 30 days after the effective date of the cease and desist order, the order becomes a final order without further proceedings.

(2) Either party may request that an informal conference be scheduled before the date scheduled for the hearing if the parties determine that a conference will assist in the resolution of the matter.

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 shall 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 shall 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 revise 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 sections 7311(1)(b), 16221(b)(x), 16221(h), and 17768(2) of the code, MCL 333.7311, MCL 333.16221, and MCL 333.17768, a disciplinary subcommittee shall 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.