

**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**

**MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

**DISCIPLINARY PROCEEDINGS**

(By authority conferred on the executive director of the Michigan administrative hearing system by section 16141 of 1978 PA 368, MCL 333.16141, and Executive Order Nos. 2005-1, 2011-4, MCL 445.2021, and 445.2030)

**R 338.1601 Rescinded.**

History: 1996 AACCS; 2015 AACCS.

**R 338.1602 Rescinded.**

History: 1996 AACCS; 2015 AACCS.

**R 338.1603 Allegation; investigations; historical files.**

Rule 3. (1) An allegation shall be processed in accordance with the applicable provisions of the code. An investigation is initiated upon authorization of the chairperson or his or her designee. However, if the chairperson or his or her designee fails to grant or deny the authorization within 7 days after receipt of a request for authorization, the investigation is initiated.

(2) In addition to the information set forth in section 16211 of the code, the bureau may maintain all of the following historical information regarding a licensee:

- (a) Reports from professional peer review organizations.
- (b) Final orders issued by the department of social services.
- (c) Reports from professional associations and societies.
- (d) Information obtained from the national practitioner databank.
- (e) Information obtained from the secretary of state's office.
- (f) Prior investigations which were closed by the department and in which no action was taken.
- (g) Information obtained from federal, state, and local law enforcement agencies.

(3) The department shall conduct any screening or review of the allegation or historical record as necessary to determine if reasonable grounds for investigation exist.

(4) An investigation may encompass possible violations other than those specifically identified as such in the allegation.

History: 1996 AACCS.

**R 338.1604 Persons participating in investigation or allegation process prohibited from deciding contested case; exceptions; disclosure of participation in investigation or allegation process; waiver.**

Rule 4. Any member of the department, a board, or task force who takes an active part in the investigatory or allegation process shall not participate in deciding the contested case, unless necessary to assure the availability of the forum, in which event disclosure of the individual's participation in the investigatory or allegation process shall be made on the record. This prohibition may be waived by stipulation of the parties.

History: 1996 AACCS.

**R 338.1605 Disciplinary subcommittee; selection.**

Rule 5. (1) After the filing of an administrative complaint, the chairperson of the board or task force or his or her designee shall assign a disciplinary subcommittee. The subcommittee shall have jurisdiction over the case until there is a final disposition.

(2) After the issuance of a final order, the disciplinary subcommittee that had jurisdiction shall be reconvened if the case is remanded by a court of competent jurisdiction.

(3) If a vacancy is created on a disciplinary subcommittee or a member of the subcommittee is unable to participate, the board or task force chairperson shall appoint a replacement from the membership of the board or task force.

History: 1996 AACCS.

**R 338.1606 Issuance of license or registration not a bar to disciplinary action.**

Rule 6. The issuance of a license or registration does not diminish a disciplinary subcommittee's authority to take disciplinary action based upon conduct that occurred before the issuance of a license or registration without regard to whether the department knew of the alleged grounds for discipline at the time the license or registration was issued.

History: 1996 AACCS.

**R 338.1607 Denial of application; hearing; complaint filed against renewal applicant.**

Rule 7. (1) If an applicant for a new or renewal license or registration or for relicensure or reregistration is found not to have fulfilled the requirements for the license or registration, the applicant shall be given an opportunity for a hearing.

(2) If a hearing is requested by the applicant, a hearing shall be scheduled and notice of the hearing shall be served on the parties. The department, a board, or a task force may request that the attorney general prepare and present the grounds believed to support a denial of the application.

(3) If a complaint is filed against a renewal applicant, the procedures set forth in R 338.1608 shall be followed. The procedures set forth in R 338.1608 shall not be followed if a complaint is filed against an applicant for a new license or registration or for reissuance of a lapsed license or registration.

History: 1996 AACCS.

**R 338.1608 Opportunity to show compliance with requirements for retention of license; voluntary disposition.**

Rule 8. (1) Before the issuance of a notice of hearing upon a complaint, the department shall serve on the licensee or registrant a copy of the complaint and notice of an opportunity to show compliance with all lawful requirements for retention of the license pursuant to section 92 of the administrative procedures act.

(2) The notice of opportunity to show compliance shall set forth the date, time, and location of the compliance conference.

(3) The compliance conference shall be conducted informally and not as an evidentiary hearing. The licensee or registrant, licensee's or registrant's attorney, 1 member of the department staff, the complaining party, and any other individuals designated by the department may participate in the conference. A licensee or registrant may exercise the opportunity to show compliance by submitting a written statement before the date of the compliance conference noticed pursuant to subrule (2) of this rule.

(4) If, after a compliance conference or review of a written statement, the parties determine that a lawful requirement was not violated by the licensee or registrant, the parties shall so notify the disciplinary subcommittee of the appropriate board or task force. If the disciplinary subcommittee is satisfied that a lawful requirement was not violated, it shall enter its order dismissing the complaint.

(5) If, after a compliance conference or review of a written statement, disputed issues of law or fact remain and the parties do not agree that a lawful requirement was not violated, the matter shall be a contested case. Unless a voluntary resolution is reached, a hearing shall be scheduled and notice of the hearing shall be served on the parties.

(6) If the licensee or registrant is unable to demonstrate compliance with all lawful requirements for retention of the license or registration, the parties shall attempt to voluntarily resolve the case without a formal hearing. If the parties agree upon a disposition of the case, the parties shall file a document evidencing the agreement for consideration by the disciplinary subcommittee of the appropriate board or task force. The disciplinary subcommittee may accept the proposed disposition, suggest other terms, or require that formal proceedings be commenced.

(7) If the parties agree on all issues except the terms of appropriate disciplinary action, they shall be provided an opportunity to make a record for consideration by the disciplinary subcommittee of the appropriate board or task force in its determination of appropriate disciplinary action. Before making the presentation, the parties shall file a document evidencing the agreement. After considering the agreement and presentation, the disciplinary subcommittee shall determine appropriate disciplinary action.

History: 1996 AACS.

**R 338.1609 Summary suspension of license.**

Rule 9. (1) Except as provided in this rule, after consultation with the chair of the appropriate board or task force, or his or her designee, the department may issue an ex parte order summarily suspending a license if the public health, safety, or welfare requires emergency action. The complaint shall attest to the fact that the department has consulted with the chair of the appropriate board or task force or his or her designee before issuing the ex parte order summarily suspending a license.

(2) The department shall issue an ex parte order summarily suspending a license based upon a licensee's having been convicted of a felony; a misdemeanor punishable by imprisonment for a maximum of 2 years; or a misdemeanor involving the illegal delivery, possession, or use of a controlled substance.

(3) The department may issue an ex parte order summarily suspending a license based upon a licensee's having been convicted of a misdemeanor involving the illegal delivery, possession, or use of alcohol that adversely affects the licensee's ability to practice in a safe and competent manner if the public health, safety, or welfare requires emergency action.

(4) After the issuance of a summary suspension order, contested case proceedings shall be promptly commenced and decided. The procedures set forth in R 338.1608 need not be followed.

(5) The taking of emergency action shall not affect the impartiality of the disciplinary subcommittee of the appropriate board or task force in its receipt and consideration of the evidence.

History: 1996 AACS.

**R 338.1610 Rescinded.**

History: 1996 AACS; 2015 AACS.

**R 338.1611 Rescinded.**

History: 1996 AACS; 2015 AACS.

**R 338.1612 Cease and desist hearings; informal conference; service; scheduling hearings.**

Rule 12. (1) Pursuant to section 16233 of the code, the department may issue a cease and desist order based upon an investigation.

(2) The department shall serve the cease and desist order upon the individual and provide notice that the individual may request an immediate hearing.

(3) A person who has been issued an order to cease and desist shall request a hearing on dissolution of the order before seeking judicial review.

(4) If the individual fails to request a hearing within 30 days of the date of the cease and desist order, the order shall become a final order without further proceedings.

(5) 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.

(6) Upon receiving the request for hearing, the department shall promptly schedule an administrative hearing. After the hearing, the administrative law judge shall submit findings of fact and conclusions of law to the disciplinary subcommittee.

History: 1996 AACS.

### **R 338.1614 Rescinded.**

History: 1996 AACS; 2015 AACS.

### **R 338.1615 Filing pleadings; answers and amendments.**

Rule 15. (1) Until a notice of hearing has been issued, all original pleadings and related materials shall be filed with the department as set forth in the notice of compliance conference.

(2) After a notice of hearing has been issued, all original pleadings and related materials shall be filed with the department as set forth in the notice of hearing. A copy shall be transmitted to the attorney general and to all other parties.

(3) An answer to a complaint shall be filed within 30 days from the date of receipt of the complaint.

(4) A complaint may be amended at any time. A party shall be given sufficient time to prepare a defense if the charges are substantially amended.

(5) All pleadings and related materials that are properly filed shall be a part of the record of the hearing.

History: 1996 AACS.

### **R 338.1616 Rescinded.**

History: 1996 AACS; 2015 AACS.

### **R 338.1617 Rescinded.**

History: 1996 AACS; 2015 AACS.

### **R 338.1618 Rescinded.**

History: 1996 AACCS; 2015 AACCS.

**R 338.1619 Rescinded.**

History: 1996 AACCS; 2015 AACCS.

**R 338.1620 Rescinded.**

History: 1996 AACCS; 2015 AACCS.

**R 338.1621 Rescinded.**

History: 1996 AACCS; 2015 AACCS.

**R 338.1622 Rescinded.**

History: 1996 AACCS; 2015 AACCS.

**R 338.1623 Rescinded.**

History: 1996 AACCS; 2015 AACCS.

**R 338.1624 Rescinded.**

History: 1996 AACCS; 2015 AACCS.

**R 338.1625 Rescinded.**

History: 1996 AACCS; 2015 AACCS.

**R 338.1626 Rescinded.**

History: 1996 AACCS; 2015 AACCS.

**R 338.1627 Rescinded.**

History: 1996 AACCS; 2015 AACCS.

### **R 338.1628 Rescinded.**

History: 1996 AACCS; 2015 AACCS.

### **R 338.1629 Rescinded.**

History: 1996 AACCS; 2015 AACCS.

### **R 338.1630 Final order from opinion or proposal for decision; exceptions.**

Rule 30. (1) After reviewing the entire record and the opinion of the administrative law judge, the disciplinary subcommittee, board, or task force may enter its final order.

(2) Alternatively, after reviewing the proposal for decision of the administrative law judge containing findings of fact and conclusions of law, together with any exceptions and replies filed by a party and any parts of the record that the disciplinary subcommittee, board, or task force deems necessary, the disciplinary subcommittee, board, or task force may enter its final order.

(3) If, after reviewing the findings of fact and conclusions of law, the disciplinary subcommittee, board, or task force determines that additional testimony or evidence is necessary, it shall remand the case to the administrative law judge to take additional evidence. If the case pending before the disciplinary subcommittee, board, or task force is remanded, the disciplinary subcommittee, board, or task force shall enter an order remanding the case to the administrative law judge with instructions

regarding the additional testimony or evidence deemed necessary by the disciplinary subcommittee, board, or task force. The administrative law judge may conduct a hearing pursuant to the order of the disciplinary subcommittee, board, or task force, after which the administrative law judge shall submit findings of fact and conclusions of law to the disciplinary subcommittee, board, or task force having jurisdiction over the case.

(4) After reviewing the findings of fact and conclusions of law, the disciplinary subcommittee, board, or task force may make revisions. In making revisions, the disciplinary subcommittee, board, or task force shall specifically identify those portions of the findings of fact or conclusions of law, or both, that it is modifying or rejecting and identify evidence from the record that supports its revisions.

(5) A disciplinary subcommittee, board, or task force, in its final order, 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 shall be stated in the final order.

History: 1996 AACCS.

### **R 338.1631 Determination of disciplinary action.**

Rule 31. In determining appropriate action, a disciplinary subcommittee, board, or task force may review any prior final orders that imposed disciplinary action on the applicant, licensee, petitioner, or registrant. Except as provided in section 16221(b)(x) of the code, a disciplinary subcommittee shall not rely on any prior final order in determining whether grounds for discipline exist in the case under consideration.

History: 1996 AACS.

**R 338.1632 Violation of final order; effect.**

Rule 32. Violation of a final order issued by a disciplinary subcommittee, board, or task force constitutes a violation of this rule.

History: 1996 AACS.

**R 338.1633 Rescinded.**

History: 1996 AACS; 2015 AACS.

**R 338.1634 Rescinded.**

History: 1996 AACS; 2015 AACS.

**R 338.1635 Rescinded.**

History: 1996 AACS; 2015 AACS.

**R 338.1636 Rescinded.**

History: 1996 AACS; 2015 AACS.

**R 338.1637 Rescinded.**

History: 1996 AACS; 2015 AACS.