

DEPARTMENT OF LABOR AND ECONOMIC GROWTH

DIRECTOR'S OFFICE

OCCUPATIONAL BOARDS

(By authority conferred on the director of the department of labor and economic growth by section 308 of 1980 Act 299, MCL 339.308, and Executive Reorganization Orders No. 1996-2, MCL 445.2001 and No. 2003-1, MCL 445.2011)

PART 7. DISCIPLINARY PROCEEDINGS

R 339.1701 Definitions.

Rule 701. (1) As used in these rules:

(a) "Adjournment" means an adjournment, stay, continuation, or delay of a contested case hearing at any time after the issuance of a formal complaint.

(b) "Administrative procedures act" means 1969 PA 306, MCL 24.201, et seq.

(c) "Compliance conference" means the conference provided for in accordance with section 92 of the administrative procedures act, MCL 24.292.

(d) "Days" means calendar days.

(e) "Department" means the department of labor and economic growth.

(f) "Informal conference" means the conference defined in section 504 of the occupational code, MCL 339.504, but does not mean a compliance conference provided in accordance with section 92(1) of the administrative procedures act, MCL 24.292.

(g) "Licensing law" means a law under which the department issues a license, registration, or other authorization to practice an occupation or profession or render other services, and includes the occupational code.

(h) "Occupational code" means 1980 PA 299, as amended, MCL 339.101 et seq.

(i) "Party" means a person, agency, or designated agent of the department named, admitted, or properly seeking and entitled of right to be admitted, as a party in a contested case.

(j) "Presiding officer" means an administrative law judge who is employed by the state office of administrative hearings and rules (SOAHR) who is designated by SOAHR to conduct a contested case hearing.

(k) "Respondent" means a person against whom a formal complaint has been issued.

(l) "Lapsed" license or registration means a license or registration a person did not renew, as defined in section 411 of the occupational code, MCL 339.411.

(m) "Expired" license or registration means a license or registration a person failed to renew on or before the expiration date.

(n) "Revoked" license or registration means that a person's authorization or privilege to engage in an occupation or profession regulated under the occupational code is terminated and shall not be restored, reinstated, or renewed, except that an application for a new license or reinstatement of a license may be considered by the department and board as permitted under the occupational code.

(o) "Suspended" license or registration means that a person's authorization or privilege to engage in an occupation or profession regulated under the occupational code is temporarily withdrawn and shall not be restored, reinstated, or renewed until a term, condition, or requirement imposed upon the person by the department or board has been met or until a specified period of time has elapsed.

(p) "Surrendered" license or registration means a license or registration that a person voluntarily returns to the department, or a license or registration that was returned to the department before, during, or after an investigation as defined in article 5 of the occupational code, MCL 339.501 to MCL 339.559.

(2) Except as provided in subrule (1) of this rule, a term defined in the administrative procedures act or the occupational code shall have the same meaning when used in these rules.

History: 1990 AACCS; 1997 AACCS; 2006 AACCS.

R 339.1703 Applicability of law and rules.

Rule 703. Compliance conferences, the processing of complaints, contested case hearings, and other related proceedings shall be conducted in accordance with the provisions of the licensing law, these rules, rules promulgated by a board or the department governing specific circumstances unique to the occupation, profession, facility, or service being regulated, and the administrative procedures act.

History: 1990 AACCS.

R 339.1705 Issuance of license or change in licensure status not a bar to discipline.

Rule 705. (1) The board or department may take disciplinary action based upon conduct which occurred before the issuance of a license without regard to whether the department or a board had notice of the alleged grounds for discipline at the time the license was issued.

(2) The expiration, surrender, lapse, suspension, or revocation of a license or registration does not terminate the department's authority to proceed against a person under article 5 of the occupational code or a board's authority under articles 5 and 6 of the occupational code to impose sanctions on a person whose license has expired, lapsed, or been surrendered, suspended, or revoked for the following, whichever occurs later:

(a) For a period of 7 years after the license or registration status change occurs.

(b) For a period of 3 years after all complaints against the license or registration filed with the department have been closed.

(c) Until the licensee or registrant, qualifying officer, or manager of a licensee is in full compliance with all final orders issued to the licensee or registrant, qualifying officer or manager of a licensee.

(3) A "person" has the same meaning as defined in section 105 of the occupational code, MCL 339.105(5).

History: 1990 AACCS; 2006 AACCS.

R 339.1706 Reporting changes.

Rule 706 (1) A licensee or registrant, or qualifying officer, or manager of a licensee shall report to the department a change of name or address within 30 days after the change occurs.

(2) If a license or registration has expired, is surrendered, lapsed, suspended, or revoked, then the licensee or registrant, qualifying officer, or manager of a licensee shall report a change of name or address to the department within 30 days until 1 of the following, whichever occurs later:

(a) For a period of 7 years after the license or registration status change occurs.

(b) For a period of 3 years after all complaints against the license or registration filed with the department have been closed.

(c) Until the licensee or registrant, qualifying officer, or manager of a licensee is in full compliance with all final orders issued to the licensee or registrant, qualifying officer, or manager of a licensee.

History: 2006 AACCS.

R 339.1707 Rescinded.

History: 1990 AACCS; 1997 AACCS.

R 339.1709 Determination of compliance with, or violation of, licensing law, rule, or order.

Rule 709. In determining a violation of, or compliance with, the licensing law, a rule promulgated pursuant to the licensing law, or an order issued pursuant to the licensing law, the determination shall be made on the basis of compliance or violation at the time of the alleged violation.

History: 1990 AACCS.

R 339.1711 Rescinded.

History: 1990 AACS; 1997 AACS.

R 339.1713 Time computations.

Rule 713. In computing a period of days prescribed or allowed by these rules, by order of a board or the department or the director, or by any applicable statute, the first day is excluded and the last day is included. If the last day of any period or a fixed or final day is a Saturday, Sunday, or legal holiday, the period or day is extended to include the next day which is not a Saturday, Sunday, or legal holiday.

History: 1990 AACS.

R 339.1715 Rescinded.

History: 1990 AACS; 1997 AACS.

R 339.1721 Complaints; consolidation; withdrawal.

Rule 721. (1) The department may consolidate multiple complaints against a single respondent in 1 formal complaint.

(2) The department may withdraw a formal complaint at any time.

History: 1990 AACS.

R 339.1725 Rescinded.

History: 1990 AACS; 1997 AACS.

R 339.1726 Settlement of complaints.

Rule 726. (1) Parties may confer informally at any time to attempt to settle a complaint.

(2) A settlement shall be in the form of a proposed stipulation signed by all parties. The proposed stipulation shall be transmitted to the appropriate board for acceptance. If the board accepts the stipulation, a final order shall be issued. If the board does not accept the stipulation, the matter shall proceed to a contested case hearing.

History: 1990 AACS.

R 339.1727 Rescinded.

History: 1990 AACS; 1997 AACS.

R 339.1728 Rescinded.

History: 1990 MR 7, Eff. Aug. 1, 1990; rescinded 1997 MR 11, Eff. Dec. 4, 1997.

R 339.1731 Written statement in place of compliance conference; conduct and adjournment of compliance conference; failure to demonstrate compliance.

Rule 731. (1) If a respondent selects a compliance conference, the respondent may submit a written statement with a request that the statement be considered in place of appearing for a compliance conference.

(2) A compliance conference shall be conducted informally by the department and shall not be conducted as an evidentiary hearing.

(3) A compliance conference may be adjourned by the department for good cause shown.

(4) If the department determines that the respondent has not demonstrated compliance, or if the respondent has waived his or her opportunity to show compliance, the matter shall proceed to a contested case hearing.

History: 1990 AACS.

R 339.1741 Answers and amendments to formal complaint.

Rule 741. (1) A party may file an answer to a formal complaint.

(2) A formal complaint may be amended. If a formal complaint is amended, a presiding officer may find that the charges have been sufficiently altered as to warrant granting a respondent additional time to prepare a defense.

History: 1990 AACS; 1997 AACS.

R 339.1743 Consolidation of cases; procedure.

Rule 743. (1) Upon the request of a party or upon the presiding officer's own motion, the presiding officer may order a joint hearing of pending cases that involve substantial and controlling common questions of law or fact involving 1 or more respondents and 1 or more boards or other agencies of government.

(2) A party's request for the consolidation of cases shall be filed not more than 15 days after service of the notice of hearing. Copies of the request shall be served upon each party to the cases that would be consolidated. Not more than 10 days after service of the request for consolidation, the other parties may file a response. Unless a request for oral argument is made and granted, a determination on consolidation shall be made solely upon the written pleadings.

(3) Cases consolidated under this rule shall be joined for hearing to address the common questions of law and fact and to receive commonly relevant testimony and other evidence. Testimony or evidence that does not pertain to all of the consolidated cases may be received with an appropriate limitation on its use.

History: 1990 AACS; 1997 AACS.

R 339.1745 Appearance by counsel and service.

Rule 745. (1) The department may be represented by an assistant attorney general or by a duly authorized agent. A respondent may be represented by an attorney or may appear on his or her own behalf.

(2) After a notice of hearing has been served, an attorney or agent who represents the department or an attorney representing the respondent shall file a written appearance indicating that he or she represents a party. Thereafter, service made upon an attorney or agent of record who has filed an appearance shall be deemed service upon a party. If a written appearance is not filed, then service shall be made upon the party.

History: 1990 AACS; 1997 AACS.

R 339.1746 Rescinded.

History: 1990 AACS; 1997 AACS.

R 339.1747 Prehearing conference.

Rule 747. (1) After a notice of hearing has been served and upon the request of a party, or upon his or her own authority, a presiding officer may order the parties to conduct a prehearing conference for the purpose of facilitating the disposition of a contested case.

(2) At the prehearing conference, the parties shall attempt, through agreement, to do all of the following:

(a) State and simplify the factual and legal issues to be litigated.

(b) Admit matters of fact and the authenticity of documents and resolve other evidentiary matters to avoid unnecessary proof.

(c) Exchange lists of witnesses.

(d) Estimate the time required for the hearing.

(e) Resolve other matters that may aid in the disposition of the case.

(3) The presiding officer shall participate in the prehearing conference unless the order scheduling the conference indicates otherwise. The parties may request rulings pertaining to matters of evidence, law, and procedure to the extent that such rulings may be made without the presentation of testimony, except that testimony may be presented upon agreement by the parties. A presiding officer's rulings at a prehearing conference shall govern the proceedings to the same extent as rulings made during a hearing. A record of requests for rulings, the response by the parties to requests for rulings, and the decisions thereon shall be made and shall become a part of the hearing record.

(4) The parties to a contested case are encouraged to voluntarily confer for the purpose of facilitating the disposition of the case.

(5) Upon the request of a party, or upon his or her own authority, a presiding officer may order a hearing reporter to attend and record a prehearing conference.

History: 1990 AACS.

R 339.1751 Official notice of facts; notice; objection.

Rule 751. (1) The presiding officer may take official notice of facts pursuant to section 77 of the administrative procedures act upon the request of a party or on his or her own authority in accordance with this rule.

(2) If a noticed fact pertains to a material, disputed issue which is being adjudicated, the party who requested that official notice be taken shall notify all parties of the request not less than 15 days before the hearing, unless good cause is shown for the failure to give notice. A party may file objections to the taking of official notice not less than 10 days before the hearing if the party disputes the fact or its materiality. The objections shall set forth the basis for the dispute. Upon expiration of the time for the filing of objections, the presiding officer shall rule on the request and give notice thereof to the parties.

(3) If the presiding officer takes official notice of a fact on his or her own initiative, the parties shall be so notified if the fact pertains to a material disputed issue which is being adjudicated. A party may file objections to the taking of official notice within 10 days after service of the notice thereof if the party disputes the fact or its materiality. The objection shall set forth the basis for the dispute. Upon the expiration of the time for the filing of objections, the presiding officer shall sustain or overrule the objections and give notice thereof to the parties, at which time the decision becomes final.

(4) If an objection to the taking of official notice is not filed in a timely manner, official notice may be taken.

History: 1990 AACS.

R 339.1753 Rescinded.

History: 1990 AACS; 1997 AACS.

R 339.1755 Format of hearing; opening statement; closing statement.

Rule 755. (1) The format of a hearing in a contested case shall be as set forth in this rule.

(2) The parties shall be provided an opportunity to make an opening statement before the presentation of proofs. Either party may decline the opportunity and the respondent may defer the opening statement until after the proofs of the complaining party are presented.

(3) At the conclusion of the presentation of proofs by the respondent, the complaining party may present rebuttal evidence.

(4) At the conclusion of the presentation of proofs, the parties may present closing arguments. The party who bears the burden of proof shall present the first argument and may present rebuttal argument. If so stipulated by the parties or required by the presiding officer, closing arguments may be submitted in writing if submitted within 10 days of the conclusion of the presentation of proofs.

(5) The parties may submit briefs within such time as may be agreed upon or as determined by the presiding officer.

History: 1990 AACS.

R 339.1757 Hearing decorum.

Rule 757. At a hearing, the presiding officer shall insure decorum within the confines of legitimate advocacy and the assertion of opposing views. A person may be excluded or the hearing adjourned, when necessary, to avoid undue disruption of the proceedings.

History: 1990 AACS.

R 339.1759 Evidence; objections; rulings.

Rule 759. (1) Evidence may be retained in the custody of a person who is designated by the presiding officer if the retention is deemed necessary to preserve the evidence without undue interference with other legal proceedings.

(2) Objections to the admissibility of evidence shall be made solely by the parties and on stated grounds. The proponent of the evidence shall be afforded an opportunity to respond.

(3) The presiding officer shall rule on objections with respect to the admissibility of evidence. A ruling on an evidentiary question shall be made on the record or reduced to a written opinion.

History: 1990 AACS; 1997 AACS.

R 339.1761 Evidence; prior adjudication of misconduct.

Rule 761. Proof of an adjudication of misconduct in a civil or disciplinary proceeding or of a judgment of guilt in a criminal proceeding may be used as evidence when relevant to establishing a violation of the licensing law, a rule promulgated pursuant to the licensing law, or an order issued pursuant to the licensing law. A copy of the court or agency record that verifies the adjudication of misconduct or judgment of guilt shall be admitted as evidence where there is no objection to its accuracy or authenticity.

History: 1990 AACS.

R 339.1763 Formal complaint allegations; burden of proof.

Rule 763. The complaining party shall have the burden of proving, by a preponderance of the evidence, the matters alleged in the formal complaint.

History: 1990 AACS.

R 339.1765 Stipulations.

Rule 765. (1) The parties may enter into stipulations on questions of fact and issues of law, subject to the approval of the presiding officer.

(2) The parties may enter into stipulations on matters of procedure, subject to approval by the presiding officer.

History: 1990 AACS; 1997 AACS.

R 339.1767 Witnesses.

Rule 767. (1) Upon a request and a showing of good cause, a prospective witness other than a party may be excluded from a hearing.

(2) Upon a request and a showing of good cause, a witness who has testified may be instructed not to communicate with a prospective witness regarding that testimony.

History: 1990 AACS.

R 339.1771 Findings of fact and conclusions of law; submission; recommendations.

Rule 771. (1) Unless the parties have otherwise agreed to a disposition of the matter or as otherwise provided in the licensing law, the presiding officer, at the close of the record on the matter, shall make findings of fact and conclusions of law. The presiding officer shall submit the findings to the appropriate board for the assessment of penalties if a violation of the code is found.

(2) If the presiding officer finds that the department has failed to meet its burden of proof or has otherwise not complied with the law or rules pertaining to the matter, he or she shall make findings of fact and conclusions of law to that effect.

History: 1990 AACS; 1997 AACS.