DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

OFFICE OF HEALTH SERVICES

HEALTH CODE BOARDS

DISCIPLINARY PROCEEDINGS

(By authority conferred on the department of consumer and industry services by section 16141 of Act No. 368 of the Public Acts of 1978, as amended, being §333.16141 of the Michigan Compiled Laws)

R 338.1601 Definitions.

Rule 1. As used in these rules:

(a) "Allegation" means a document filed by a person or governmental entity which alleges conduct that may be in violation of the code or a rule.

(b) "Administrative law judge" means a hearing examiner as provided in article 7, part 73, and article 15, part 161, of the code.

(c) "Administrative procedures act" means Act No. 306 of the Public Acts of 1969, as amended, being §24.201 et seq. of the Michigan Compiled Laws.

(d) "Applicant" means a person seeking an initial license or registration under the code.

(e) "Board" means a board created pursuant to article 15 of the code. When applied to a particular circumstance, "board" means the particular board that has jurisdiction or responsibility.

(f) "Bureau" means the bureau of occupational and professional regulation within the department.

(g) "Code" means Act No. 368 of the Public Acts of 1978, as amended, being §333.1101 et seq. of the Michigan Compiled Laws.

(h) "Complaining party" means the director of the department, or his or her designee, who files a complaint with the department.

(i) "Complaint" means a formal pleading entitled "administrative complaint" which is filed by a complaining party and which sets forth the allegations of fact and law upon the proof of which 1 or more sanctions may be imposed on a licensee, registrant, or applicant.

(j) "Department" means the department of commerce or an employee of the department who is lawfully authorized by the director to act on behalf of the department.

(k) "Petitioner" means a person seeking the reinstatement or reclassification of a license or registration under the code.

(l) "Task force" means the task force on physicians' assistants created pursuant to article 15 of the code.

History: 1996 AACS.

R 338.1602 Applicability; applicable law and rules, application to documents filed on or after certain date.

Rule 2. (1) Administrative hearings in contested cases and related proceedings shall be conducted in accordance with these rules, the code, and the administrative procedures act.

(2) These rules apply to matters in which allegations, applications, and petitions were filed on or after April 1, 1994.

History: 1996 AACS.

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 AACS.

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 AACS.

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 AACS.

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 AACS.

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 AACS.

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 Petition to dissolve suspension order; hearing; record.

Rule 10. (1) A person whose license has been summarily suspended shall petition for dissolution of the order before seeking judicial review. Upon receiving a petition, the department shall immediately schedule a hearing before an administrative law judge. Immediately after the hearing on the petition, the administrative law judge shall decide whether to grant or deny the requested relief.

(2) The administrative law judge shall grant the relief unless he or she finds that sufficient evidence has been produced to support a finding that the public health, safety, or welfare requires emergency action and a continuation of the suspension order.

(3) The record created at the hearing shall become a part of the record at any subsequent hearing in the contested case.

History: 1996 AACS.

R 338.1611 Compulsory mental or physical examination; objection.

Rule 11. (1) In a hearing or investigation in which mental or physical inability is alleged, a disciplinary subcommittee, administrative law judge, or the department with the approval of the disciplinary subcommittee may order that an applicant, licensee, petitioner, or registrant submit to a mental or physical examination in accordance with this rule and the code.

(2) If a summary suspension is ordered, an order to submit to a mental or physical examination may be issued immediately.

(3) If the applicant, licensee, petitioner, or registrant objects to being compelled to submit to examination, the objections shall be submitted in writing.

(4) Objections to a request that an applicant, licensee, petitioner, or registrant be compelled to submit to an examination shall be filed within 10 days after service of the notice of hearing. Objections to an order compelling examination shall be filed within 10 days after the issuance of the order. In a case involving summary suspension, objections to an order compelling examination shall be filed not less than 5 days before the first scheduled hearing date or 10 days after service of the complaint, whichever is later.

(5) If the licensee or registrant does not show compliance with all lawful requirements for retention of the license or registration pursuant to R 338.1608, the administrative law judge shall consider the complaint and any objections and shall determine whether to require the licensee to submit to a mental or physical examination.

(6) In a case involving a summary suspension in which an order to compel examination has issued and objections have been filed, the administrative law judge shall review the objections and determine whether to set aside the order.

(7) An applicant, licensee, petitioner, or registrant may be required to submit to a mental or physical examination if the administrative law judge is satisfied, after reviewing the request and any objections, that a reasonable basis has been shown to believe that a mental or physical examination is warranted.

(8) The applicant, licensee, petitioner, or registrant shall be given reasonable notice and opportunity to submit to a required examination. Failure to submit to the examination constitutes a ground for suspension or denial of the license or registration until the examination is taken.

History: 1996 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 Notice of conference or hearing; service of documents.

Rule 14. (1) Notice of a hearing may be served in accordance with the code not less than 20 days before the hearing. Notice of a compliance conference shall be served not less than 5 days before the conference. Notice shall be in a form deemed appropriate by the department.

(2) An order for seizure of controlled substances or an order of summary suspension shall be served by personal service or any other method permitted by law.

(3) Service of all other documents on an applicant, licensee, petitioner, or registrant may be made by first-class mail addressed to the applicant, licensee, petitioner, registrant, or attorney of record at the last known address on file with the bureau. It is the responsibility of an applicant, licensee, petitioner, registrant, or attorney of record to assure that the address on file is accurate and to immediately notify the bureau and the complaining party of a change in address.

(4) Service is effective upon personal service or 3 days after mailing if service is made by mail.

History: 1996 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 Appearance by counsel; withdrawal from proceeding.

Rule 16. (1) An attorney who files an appearance, motion, or other document on behalf of an applicant, licensee, petitioner, or registrant shall be deemed the attorney of record for that party. Thereafter, service upon the attorney of record shall be deemed service upon a party.

(2) The assistant attorney general in the health professionals division of the department of attorney general who is assigned to a case may be identified in the pleadings without the filing of a formal appearance.

(3) The appearance of an attorney on behalf of an applicant, licensee, petitioner, or registrant constitutes an appearance of every other member of the law firm. An appearance by an assistant attorney general is deemed an appearance by the health professionals division of the department of attorney general.

(4) An attorney who has appeared on behalf of an applicant, licensee, petitioner, or registrant in a contested case proceeding may withdraw from the proceeding only by an order of the administrative law judge.

History: 1996 AACS.

R 338.1617 Prehearing conference.

Rule 17. (1) Upon the request of a party, an administrative law judge may order the parties to conduct a prehearing conference for the purpose of facilitating the disposition of a contested case. A party may request that an administrative law judge participate in the prehearing conference.

(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) If an administrative law judge participates in the prehearing conference, the parties may request rulings on motions 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. An administrative law judge's rulings on motions at a prehearing conference shall govern the proceedings to the same extent as rulings made during a hearing. A record of the motions and rulings on motions shall be made and shall become a part of the hearing record.

(4) The parties to a contested case shall attempt to voluntarily resolve the case without a formal hearing.

(5) Upon the request of a party or the administrative law judge, a hearing reporter shall attend and record a prehearing conference.

History: 1996 AACS.

R 338.1618 Adjournment.

Rule 18. (1) A compliance conference may be adjourned once by the department at the request of a party for good cause shown.

(2) The applicant, licensee, or registrant who is the subject of a complaint or the department each may request and be granted not more than 1 adjournment of a hearing by the administrative law judge for good cause shown.

(3) A request by a party for an adjournment shall state the reasons for the adjournment, be in writing, and be filed not less than 5 days before the date of the scheduled hearing or compliance conference, except when the department or administrative law judge finds that good cause has been shown for the failure to file within 5 days. Notice of action on a request for adjournment shall be given to the parties.

History: 1996 AACS.

R 338.1619 Format of hearing; opening argument; closing argument.

Rule 19. The format of a hearing in a contested case shall be as follows:

(a) 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 responsive party may defer the opening statement until after the proofs of the first party are presented.

(b) At the conclusion of proofs by the responsive party, the first party may present rebuttal evidence.

(c) At the conclusion of the proofs, the parties may present oral closing argument. The party bearing the burden of proof shall present the first argument and may present rebuttal argument. Closing arguments may be submitted in writing within 15 days from the conclusion of the hearing only by stipulation of the parties.

History: 1996 AACS.

R 338.1620 Consolidation; procedure.

Rule 20. (1) Upon the request of a party, or in the administrative law judge's discretion, an administrative law judge may order a joint hearing of pending cases which involve substantial and controlling common questions of fact or law and which involve 1 or more applicants, petitioners, registrants, or licensees and 1 or more boards or task forces.

(2) A motion for the consolidation of cases shall be filed within 10 days after service of the notice of hearing on each party to the cases that would be consolidated. Within 5 days after service of the motion, the other parties may file a response to the motion. Unless a request for oral argument is made and granted, a determination on the motion shall be made on the pleadings.

(3) Cases consolidated under this rule shall be joined for hearing to address the common questions of fact and law 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: 1996 AACS.

R 338.1621 Evidence; objections; rulings.

Rule 21. (1) Evidence in a contested case may be received, maintained, distributed, subpoenaed, and admitted in accordance with the administrative procedures act.

(2) Evidence may be retained in the custody of a person designated by the administrative law judge where retention is deemed necessary to preserve the evidence without undue interference with other legal proceedings.

(3) An objection to the admissibility of evidence shall be made by opposing counsel on stated grounds. The proponent of the evidence shall be afforded an opportunity to respond. A ruling on an evidentiary question shall be made on the record.

(4) The administrative law judge shall rule on motions and on the admissibility of evidence. The rulings are subject to review by the appropriate disciplinary subcommittee, board, or task force.

History: 1996 AACS.

R 338.1622 Depositions; interrogatories; requests for admissions.

Rule 22. (1) A deposition, written interrogatory, or deposition on written interrogatories may be taken in a contested case pursuant to the general court rules for use as evidence only and not for purposes of discovery. Only admissible evidence shall be taken.

(2) A written request for the admission by a designated party of the genuineness of any relevant documents described in, and exhibited with, the
request, or of the truth of any relevant matters of fact set forth in the request, may be served upon all other parties in a contested case in accordance with the general court rules. Each of the matters for which an admission has been requested shall be deemed admitted, unless the designated party responds to the request in the manner set forth in the general court rules.

History: 1996 AACS.

R 338.1623 Official notice of facts; notice; objections.

Rule 23. (1) The administrative law judge and the appropriate disciplinary subcommittee, board, or task force may take official notice of facts pursuant to section 77 of the administrative procedures act upon the request of a party or on its own motion in accordance with this rule.

(2) If a noticed fact pertains to a material, disputed issue that is being adjudicated, the party requesting that official notice be taken shall notify all parties of that action not less than 10 days before the hearing, unless good cause is shown for failure to comply. A party may file objections to the taking of official notice not less than 5 days before the hearing if the party disputes the fact or its materiality. The objections shall set forth the basis for the dispute. After the expiration of the time for the filing of objections, the administrative law judge shall rule on the request.

(3) If an administrative law judge takes official notice of a fact on his or her own motion, the parties shall be notified of the taking of official notice if the fact pertains to a material disputed issue that is being adjudicated. A party may file objections to the taking of official notice within 5 days after service of the notice of taking official notice 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 administrative law judge shall sustain or overrule the objections and shall give notice of sustaining or overruling the objections 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 shall be taken.

History: 1996 AACS.

R 338.1624 Burden of proof.

Rule 24. (1) The complaining party shall have the burden of proving, by a preponderance of the evidence, that grounds exist for the imposition of a sanction on a licensee, registrant, or applicant.

(2) A petitioner for reinstatement or reclassification of a license or registration shall have the burden of proving, by clear and convincing evidence, that the requirements and conditions for reinstatement or reclassification have been satisfied.

(3) An applicant for a license or registration shall have the burden of proving, by a preponderance of the evidence, that the pertinent requirements for the license or registration have been satisfied.

(4) The complaining party shall have the burden of proving, by a preponderance of the evidence, that grounds exist for the continuation of a cease and desist order.

History: 1996 AACS.

R 338.1625 Stipulations, motions, briefs, and defaults.

Rule 25. (1) The parties may enter into stipulations on questions of fact, issues of law, and matters of procedure. Stipulations on issues of law are not binding upon the agency.

(2) A party who receives a motion may file a written answer to the motion within 7 days after the motion is filed.

(3) In a contested case, the administrative law judge may require the filing of briefs. The administrative law judge shall set a reasonable deadline for the filing of either simultaneous or consecutive briefs.

(4) After proper service of process, an administrative law judge may take action by default in a contested case if neither the respondent nor his or her legal counsel appears for a scheduled hearing on a complaint or order to show cause.

(5) If a party does not file an answer to a motion as provided in these rules, the administrative law judge may enter an order granting the requested relief.

History: 1996 AACS.

R 338.1626 Presiding officers; impartiality.

Rule 26. (1) A hearing shall be conducted by an administrative law judge designated by the department. The administrative law judge shall remain impartial and shall avoid even the appearance of partiality.

(2) A member of a board, task force, or disciplinary subcommittee who participates in the decision and the administrative law judge shall be deemed presiding officers for the purpose of affidavits filed alleging personal bias or disqualification.

History: 1996 AACS.

R 338.1627 Hearing decorum; public right to attend; media coverage.

Rule 27. (1) The administrative law judge at a hearing shall ensure 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.

(2) Except as provided in subrule (1) of this rule, and to the extent necessary to comply with section 16244 of the code, members of the public are entitled to attend a hearing.

(3) The media's right to attend and film a hearing is subject to Michigan supreme court administrative orders governing film or electronic media coverage of court proceedings.

History: 1996 AACS.

R 338.1628 Witnesses.

Rule 28. (1) Upon motion and a showing of good cause, a prospective witness may be excluded from a hearing.

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

(3) An individual designated by the department director may attend a reinstatement or reclassification hearing and may ask questions of witnesses. A party may object to a question asked of a witness. The administrative law judge shall rule on the objection or the question shall be withdrawn as is appropriate.

History: 1996 AACS.

R 338.1629 Submission of findings of fact and conclusions of law; disciplinary action.

Rule 29. (1) An administrative law judge in a contested case shall submit a proposal for decision or opinion containing findings of fact and conclusions of law to the disciplinary subcommittee, board, or task force as soon as practicable after the hearing.

(2) If a license has been summarily suspended, the administrative law judge shall give filing of the findings of fact and conclusions of law priority over other cases.

(3) An administrative law judge shall not recommend disciplinary action in a contested case.

(4) The parties may file exceptions to a proposal for decision within 15 days after the proposal for decision is issued and entered. An opposing party may file a response within 5 days after exceptions are filed. The pleadings, exhibits, proposal for decision, exceptions, and responses shall then be forwarded to the disciplinary subcommittee, board, or task force.

History: 1996 AACS.

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 AACS.

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 Rehearing or reconsideration.

Rule 33. (1) A party may file a written request for a rehearing pursuant to section 87 of the administrative procedures act. The request shall expressly set forth the reasons for the rehearing and the scope of the requested relief. After a reasonable opportunity for the opposing party to respond, the request shall be granted or denied and the parties shall be notified of the decision.

(2) If a final order has not been issued, the request shall be filed with the presiding administrative law judge. If a final order has been issued, the request shall be filed with the appropriate board, task force, or disciplinary subcommittee.

(3) If a rehearing is granted, it shall be noticed and conducted in the same manner as an original hearing.

(4) A consent order entered by a disciplinary subcommittee pursuant to an agreement between the parties may only be modified by the disciplinary subcommittee upon agreement of the parties.

History: 1996 AACS.

R 338.1634 Time computation.

Rule 34. (1) Except as provided in subrule (2) of this rule, in computing any period of time prescribed or allowed by these rules, by order of the board, task force, disciplinary subcommittee, or administrative law judge, or by any applicable statute, the day of the act, event, or default after which the designated

period of time begins to run is not included. The last day of the period is included unless it is a Saturday, Sunday, or state legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or state legal holiday.

(2) Orders of a board, task force, or disciplinary subcommittee may take effect on a Saturday, Sunday, or state legal holiday.

History: 1996 AACS.

R 338.1635 License; registration; duration of suspension; standards and procedures for reinstatement after revocation or suspension.

Rule 35. (1) The suspension of a license or registration shall continue until the expiration of the period of suspension set forth in the order or until the license or registration is reinstated pursuant to this rule, whichever is later. The period of suspension set forth in the order is a minimum period.

(2) A petition for reinstatement of a license or registration that has been suspended or revoked shall be made in accordance with this rule.

(3) If a license or registration has been suspended for 6 months or less, it will be presumed that the petitioner meets the requirements of section 7316, 16247(l), or 16248 of the code, unless 1 of the following applies:

(a) The order imposing the suspension provides otherwise.

(b) Another complaint has been filed and is pending at the end of the minimum suspension period.

(c) A subsequent disciplinary order has been entered.

(d) A petition with supporting affidavit has been filed by a complaining party alleging that the petitioner has failed to fulfill a term of the suspension order.

(4) The presumption described in subrule (3) of this rule is made solely for the issue of reinstatement and shall not be used in any subsequent or collateral proceedings.

(5) If a license or registration has been suspended for more than 6 months, or if the petitioner is not entitled to a presumption pursuant to subrule (3) of this rule, the license or registration shall not be reinstated until the board or task force finds that the petitioner meets the requirements of section 7316, 16247, or 16248 of the code, as follows:

(a) The petitioner shall file a petition for reinstatement not sooner than 90 days before the end of the minimum suspension period. The petition shall be accompanied by supporting affidavits.

(b) Within 30 days after the petition has been filed, a complaining party may file a response to the petition. If the response opposes the reinstatement, a hearing shall be scheduled. If the petitioner fails to appear at the scheduled hearing, either in person or by counsel, the petitioner shall be deemed in default. If a response is not filed, or if the response does not oppose reinstatement, the board or task force shall review the petition with supporting affidavits and shall determine whether the requirements of section 7316, 16247, or 16248 of the code have been met.If it is found that the requirements have not been met, the petitioner shall be notified and, within 30 days after service of the notice, may request a hearing. The petition for reinstatement shall be deemed denied if the petitioner does not file a timely request for a hearing.

(6) A petition for reinstatement of a revoked license or registration shall be considered in accordance with the standards and procedures set forth in subrule (5) of this rule. The petition shall not be accepted sooner than 3 years after the effective date of the revocation, except that where the license or registration was revoked pursuant to section 16221(b)(vii) or (c)(iv) of the code for a felony conviction or was revoked for any other felony conviction involving controlled substances, the petition shall not be accepted sooner than 5 years after the effective date of the revocation. A period of summary suspension is not included in calculating the revocation period.

(7) Before reinstating a license or registration, the board or task force shall consider the following in assessing a petitioner's ability to practice and the public interest:

(a) The board or task force shall determine whether the petitioner has complied with the guidelines adopted by the department pursuant to section 16245(6) of the code. If, in reinstating the license or registration, the board or task force deviates from the guidelines, it shall state in its order the reasons for the deviation.

(b) If the disciplinary subcommittee's final order included corrective measures, remedial education, or training as a condition of reinstatement, the board or task force shall consider the extent of the petitioner's compliance with the conditions set forth in the final order. In addition, the board or task force may impose other requirements for reinstatement as deemed appropriate, including additional training, education, or supervision.

(c) If the final order of the disciplinary subcommittee did not address corrective measures, remedial education, or training as a condition of reinstatement, the board or task force, in determining a petitioner's ability to practice safely and competently, may consider the need for additional training and education in determining if the petitioner has met the criteria established in section 16247(l) of the code.

(8) After a hearing has been completed, the board or task force shall determine whether the petitioner has satisfied section 7316, 16247, or 16248 of the code. The board or task force may deny the petition or grant the petition subject to terms and conditions that it deems appropriate.

(9) A subsequent petition for reinstatement may not be filed with the bureau for at least 1 year after the effective date of the order denying reinstatement.

History: 1996 AACS.

R 338.1636 Limited license; reclassification; standards and procedures.

Rule 36. (1) The limitations on a license shall continue until the expiration of the period of limitation set forth in the order or until the license is reclassified pursuant to this rule, whichever is later. The period of limitation set forth in the order is a minimum period.

(2) A petition for reclassification of a license that has been limited shall be made in accordance with this rule.

(3) If a license is limited for 1 year or less, it will be presumed that the petitioner meets the requirements of section 7316 or 16249 of the code, unless 1 of the following provisions applies:

(a) The order imposing the limitations provides otherwise.

(b) Another complaint has been filed and is pending at the end of the period of limitation.

(c) A subsequent disciplinary order has been entered.

(d) A response in opposition to reclassification has been filed by a complaining party alleging that the petitioner has failed to fulfill a term of the order imposing the limitations.

(4) If a license is limited for an unspecified period of time or for more than 1 year, or if the petitioner is not entitled to a presumption pursuant to subrule (3) of this rule, then the license shall not be reclassified until the disciplinary subcommittee finds that the petitioner meets the requirements of section 7316 or 16249 of the code.

(5) A petition, with supporting affidavits, shall not be filed for at least 1 year after the effective date of the order imposing the limitations, unless otherwise provided in the order.

(6) Within 30 days after the petition is filed, a complaining party may file a response to the petition. If the response opposes the reclassification, a hearing shall be scheduled. If the petitioner fails to appear at the scheduled hearing, either in person or by counsel, the petitioner shall be deemed in default. If a response is not filed or if the response does not oppose reclassification, the disciplinary subcommittee shall review the petition with supporting affidavits and shall determine whether the requirements of section 7316 or 16249 of the code have been met.If it is found that the requirements have not been met, the petitioner shall be notified and, within 30 days after service of the notice, may request a hearing. The petition for reclassification shall be deemed denied if the petitioner does not file a timely request for a hearing.

(7) After a hearing has been completed, the disciplinary subcommittee shall determine whether the petitioner has satisfied section 7316 or 16249 of the code. The disciplinary subcommittee may deny the petition or grant the petition subject to such terms and conditions as it may deem appropriate.

(8) A subsequent petition for reclassification shall not be filed with the department for at least 1 year after the effective date of the order denying reclassification, unless otherwise ordered by the disciplinary subcommittee.

History: 1996 AACS.

R 338.1637 Affidavits.

Rule 37. (1) An affidavit in support of a petition for reinstatement or reclassification shall set forth the facts which would support a finding that the requirements and conditions have been satisfied and shall be executed by a person who is able to competently testify to the facts.

(2) Affidavits submitted in support of a petition for reinstatement or reclassification are not considered as evidence in an administrative hearing unless offered and accepted as evidence.

History: 1996 AACS.