

## DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

### MARIJUANA REGULATORY AGENCY

#### MARIHUANA HEARINGS

(By authority conferred on the executive director of the marijuana regulatory agency by section 206 of the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27206, sections 7 and 8 of the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27957 and 333.27958, and Executive Reorganization Order No. 2019-2, MCL 333.27001)

#### **R 420.701 Definitions.**

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

(a) “Acts” refers to the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801, and the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27951 to 333.27967, when applicable.

(b) “Administrative procedures act” means the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(c) “Agency” means the marijuana regulatory agency.

(d) “Contested case hearing” means an administrative hearing conducted by an administrative law judge within the Michigan office of administrative hearings and rules on behalf of the agency in accordance with the acts and these rules.

(e) “MAHS general hearing rules” means the administrative hearing rules set forth in R 792.10101 to R 792.10137 of the Michigan administrative code.

(f) “Marihuana business” means a marihuana facility under the medical marihuana facilities licensing act or a marihuana establishment under the Michigan Regulation and Taxation of Marihuana Act, or both.

(g) “Marihuana establishment” means a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, marihuana designated consumption establishment, or any other type of marihuana-related business licensed by the agency under the Michigan Regulation and Taxation of Marihuana Act.

(h) “Marihuana facility” means a location at which a licensee is licensed to operate under the medical marihuana facilities licensing act.

History: 2020 AACs; 2022 MR 5, Eff. Mar. 7, 2022.

#### **R 420.702 Hearing procedures; scope and construction of rules.**

Rule 2. (1) These rules apply to hearings under the jurisdiction of the agency involving 1 or more of the following:

(a) The denial of a marihuana license.

(b) Formal complaints against a license.

(c) A complaint by a licensee.

(d) The denial of the renewal of a marihuana license.

(2) These rules are construed to secure a fair, efficient, and impartial determination of the issues presented in a manner consistent with due process.

(3) If the rules do not address a specific procedure, the MAHS general hearing rules, the Michigan court rules, and the contested case provisions of sections 71 to 87 of the administrative procedures act, MCL 24.271 to 24.287, apply.

History: 2020 AACCS; 2022 MR 5, Eff. Mar. 7, 2022.

### **R 420.703 Public investigative hearing.**

Rule 3. (1) An applicant that is denied a marihuana license by the agency may request a public investigative hearing in writing within 21 days of service of notice of the denial.

(2) After the agency receives notice of an applicant's request for a public investigative hearing, the agency shall provide an opportunity for this hearing at which the applicant may present testimony and evidence to establish suitability for a marihuana license.

(3) The applicant must be given reasonable notice of the public investigative hearing in writing.

(4) Not less than 2 weeks before the hearing, the agency shall post notice of the public investigative hearing at its business office in a prominent place that is open and visible to the public.

(5) The agency, or 1 or more administrative law judges designated and authorized by the agency, shall conduct and preside over the public investigative hearing and do all of the following:

(a) Administer oaths or affirmations to witnesses called to testify at the hearing.

(b) Receive evidence in the form of testimony and exhibits.

(c) Establish and regulate the order of presentation and course of the public investigative hearing; set the time and place for continued hearings; and fix the time for filing written arguments, legal briefs, and other legal documents.

(d) Accept and consider relevant written and oral stipulations of fact and law that are made part of the hearing record.

(6) Upon timely request of the applicant or the agency in accordance with the Michigan court rules, the agency or the agency's designated administrative law judge may issue subpoenas duces tecum for the production of books, ledgers, records, memoranda, electronically retrievable data, and other pertinent documents and issue subpoenas for witnesses to appear and testify as appropriate to exercise and discharge the powers and duties under the act.

(7) During the public investigative hearing, the applicant and the agency must be given a full opportunity to present witnesses, cross-examine witnesses, and present all relevant evidence regarding the applicant's eligibility and suitability for licensure.

(8) The applicant shall at all times have the burden of establishing, by clear and convincing evidence, its eligibility and suitability for licensure under the acts and these rules.

(9) The agency shall record the public investigative hearing stenographically or by other means, to ensure preservation of an accurate record of the hearing.

(10) Following the public investigative hearing, the executive director of the agency shall affirm, reverse, or modify in whole or in part the denial of a marihuana license.

(11) The agency's decision to affirm, reverse, or modify in whole or in part the denial of a marihuana license must be based on the whole record before the agency and not be limited to testimony and evidence submitted at the public investigative hearing.

(12) The agency's decision to affirm, reverse, or modify in whole or in part the denial of a marihuana license must be reduced to writing and served upon the applicant and agency within a reasonable time.

History: 2020 AACCS; 2022 MR 5, Eff. Mar. 7, 2022.

**R 420.704 Hearing on disciplinary actions.**

Rule 4. (1) A licensee who has been notified of a marihuana license violation, or of the agency's intent to suspend, revoke, restrict, or refuse to renew a marihuana license or impose a fine, may be given an opportunity to show compliance with the requirements before the agency takes action as prescribed by these rules.

(2) A licensee aggrieved by an action of the agency to suspend, revoke, restrict, or refuse to renew a marihuana license, or to impose a fine, may request a contested case hearing in writing within 21 days after service of notice of the intended action.

(3) Upon receipt of a timely request, the agency shall provide the licensee an opportunity for a contested case hearing in accordance with sections 71 to 87 of the administrative procedures act, MCL 24.271 to 24.287, and the MAHS general hearing rules.

(4) The contested case hearing must be conducted by an administrative law judge within the MOAHR.

(5) Upon timely request of the licensee or the agency in accordance with the Michigan court rules, an assigned administrative law judge may issue subpoenas duces tecum for the production of books, ledgers, records, memoranda, electronically retrievable data, and other pertinent documents, and administer oaths and affirmations to witnesses as appropriate to exercise and discharge the powers and duties under the acts and these rules.

(6) The agency has the burden of proving, by a preponderance of the evidence, that sufficient grounds exist for the intended action to suspend, revoke, restrict, or refuse to renew a marihuana license, or to impose a fine.

History: 2020 AACCS; 2022 MR 5, Eff. Mar. 7, 2022.

**R 420.704a Hearing on exclusion of individuals or employees.**

Rule 4a. (1) An individual who has been notified of the agency's intent to exclude him or her from being employed by or being a supplemental applicant of a marihuana business may request a hearing in writing within 21 days of service of the notice of intent to exclude.

(2) Upon receipt of a timely request, the agency shall provide the individual an opportunity for a contested case hearing pursuant to sections 71 to 87 of the administrative procedures act, MCL 24.271 to 24.287, and the MAHS general hearing rules.

(3) The contested case hearing must be conducted by an administrative law judge within the MOAHR.

(4) Upon timely request of the licensee or the agency pursuant to the Michigan court rules, an assigned administrative law judge may issue subpoenas duces tecum for the production of books, ledgers, records, memoranda, electronically retrievable data, and other pertinent documents, and issue subpoenas for witnesses to appear and testify as appropriate to exercise and discharge the powers and duties under the acts and these rules.

(5) The agency has the burden of proving, by a preponderance of the evidence, that sufficient grounds exist for the intended action to exclude an individual from being employed by or being a supplemental applicant of a marihuana business.

History: 2022 MR 5, Eff. Mar. 7, 2022.

**R 420.705 Summary suspension.**

Rule 5. (1) If the agency summarily suspends a marihuana license without notice or hearing upon a determination that the safety or health of patrons or employees is jeopardized by continuing the marihuana business's operation, a post-suspension hearing must be held promptly to determine if the suspension should remain in effect, in accordance with section 92 of the administrative procedures act, MCL 24.292, and the MAHS general hearing rules.

(2) At the post-suspension hearing, the agency has the burden of proving by a preponderance of the evidence that the summary suspension should remain in effect because the safety or health of patrons or employees is jeopardized by continuing the marihuana business's operation.

(3) Immediately after the post-suspension hearing, the administrative law judge shall issue a written order granting or denying dissolution of the summary suspension.

(4) If the licensee fails to appear at the post-suspension hearing, the administrative law judge shall find that the safety or health of patrons or employees is jeopardized by continuing the marihuana business's operation and continue the order of summary suspension.

(5) The record created at the post-suspension hearing becomes a part of the record at any subsequent hearing in the contested case.

History: 2020 AACCS.

**R 420.706 Complaint by licensee.**

Rule 6. (1) Pursuant to the MMFLA and these rules, a licensee may file a written complaint with the agency regarding any investigative procedures of this state that he or she believes to be unnecessarily disruptive of the marihuana facility operations, as provided in section 302 of the act, MCL 333.27302.

(2) The agency may delegate authority to an administrative law judge to hear a licensee's complaint as a contested case in accordance with sections 71 to 79 of the administrative procedures act, MCL 24.271 to 24.279, and the MAHS general hearing rules.

(3) As the complaining party, a licensee has the burden of proving by a preponderance of the evidence that the investigative procedures of the agency unnecessarily disrupted its marihuana facility operations.

History: 2020 AACCS; 2022 MR 5, Eff. Mar. 7, 2022.

**R 420.707 Proposal for decision.**

Rule 7. Following an opportunity for a public investigative hearing or contested case hearing and closure of the record after submission of briefs, if any, the administrative law judge shall prepare and serve upon the parties a proposal for decision containing proposed findings of fact and conclusions of law, in accordance with section 81 of the APA, MCL 24.281.

History: 2020 AACCS.

**R 420.708 Final order.**

Rule 8. (1) The agency shall consider the entire public investigative or contested case record and may affirm, reverse, or modify all or part of the proposal for decision.

(2) The agency's decision must be reduced to writing and served upon the licensee within a reasonable time.

(3) The review decision or order of the agency following an opportunity for hearing is deemed to be the final agency decision or order for purposes of judicial review under chapter 6 of the APA, MCL 24.301 to 24.306.

History: 2020 AACCS.

**R 420.709 Severability.**

Rule 9. If any rule or subrule of these rules, in whole or in part, is found to be invalid by a court of competent jurisdiction, such decision will not affect the validity of the remaining portion of these rules.

History: 2020 AACCS.