

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MARIJUANA REGULATORY AGENCY

MARIHUANA HEARINGS

Filed with the secretary of state on June 22, 2020

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(6) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the 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, R 420.702, R 420.703, R 420.704, R 420.705, R 420.706, R 420.707, R 420.708, and R 420.709 are added to the Michigan Administrative Code as follows:

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 promulgated by the Michigan office of administrative hearings and 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 license" means a state operating license issued under the medical marihuana facilities licensing act or a state license issued under the Michigan regulation and taxation of marihuana act, or both.

(h) "MOAHR" means the Michigan office of administrative hearings and rules within the department of licensing and regulatory affairs.

(i) "Public investigative hearing" means a hearing in which an applicant has an opportunity to present testimony and evidence to establish eligibility for a marihuana license.

(j) “These rules” means the administrative rules promulgated by the agency under the authority of the medical marihuana facilities licensing act, the marihuana tracking act, the Michigan regulation and taxation of marihuana act, and Executive Reorganization Order No. 2019-2, MCL 333.27001.

(2) Terms defined in the acts have the same meanings when used in these rules unless otherwise indicated.

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) Licensing actions.
- (c) A complaint by a licensee.

(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.

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 parties shall be given reasonable notice of the public investigative hearing in writing. The notice must include all of the following information:

- (a) A statement of the date, hour, place, and nature of the hearing.
- (b) A statement of the legal authority and jurisdiction under which the hearing is to be held.
- (c) A short and plain statement of the issues involved, and reference to the pertinent sections of the act and rules involved.
- (d) A short description of the order and manner of presentation for the hearing.

(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 shall 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 administer oaths and affirmations to witnesses 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 adequately ensure preservation of an accurate record of the hearing.

(10) Following the public investigative hearing, 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.

#### R 420.704 Hearing on disciplinary proceedings 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 taking 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 Michigan office of administrative hearings and rules.

(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 state license, or to impose a fine, or summarily suspend a state license.

#### 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.

#### R 420.706 Complaint by licensee.

Rule 6. (1) In accordance with the Michigan medical marihuana facilities licensing act, 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 to a subcommittee of the agency the authority to hear, review, or rule on a licensee complaint.

(3) The agency or its subcommittee 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 APA, MCL 24.271 to 24.279, and the MAHS general hearing rules.

(4) 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.

#### 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.

#### 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.

#### 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.