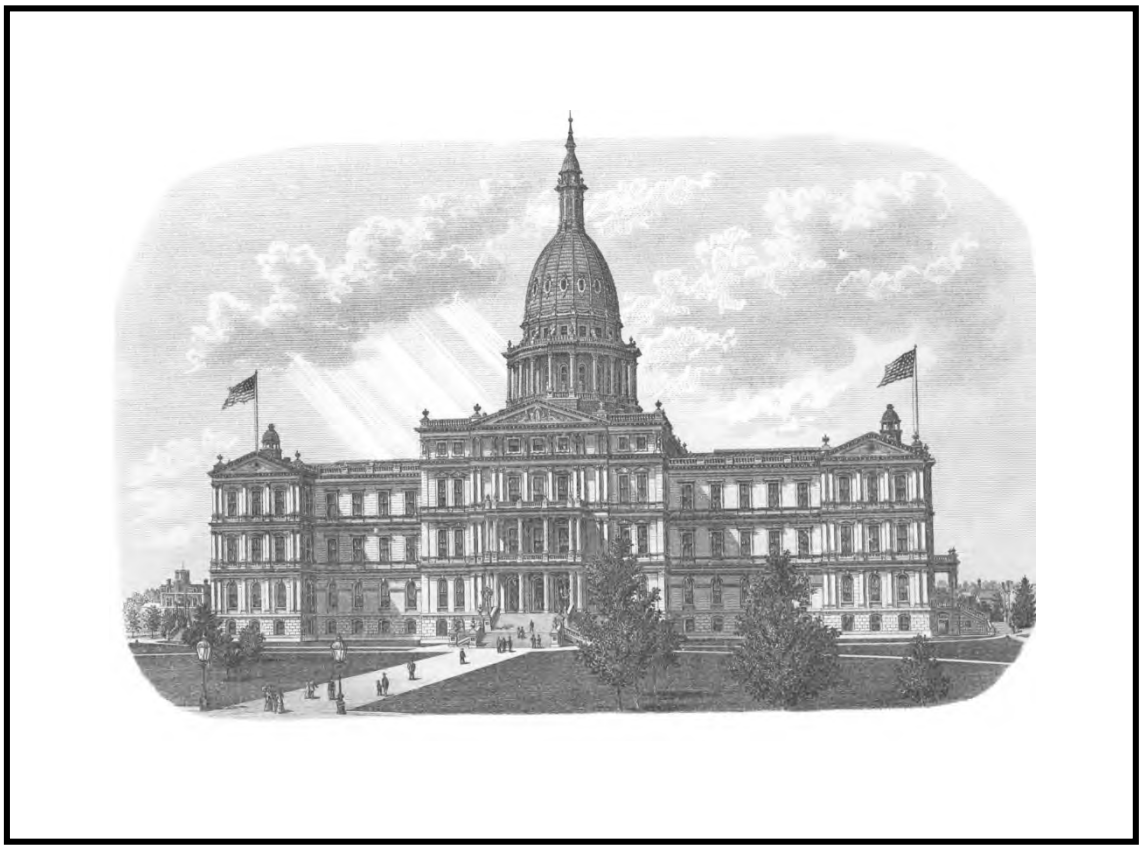
Michigan Register

Issue No. 9 – 2023 (Published June 1, 2023)



GRAPHIC IMAGES IN THE

MICHIGAN REGISTER

COVER DRAWING

Michigan State Capitol:

This image, with flags flying to indicate that both chambers of the legislature are in session, may have originated as an etching based on a drawing or a photograph. The artist is unknown. The drawing predates the placement of the statue of Austin T. Blair on the capitol grounds in 1898.

(Michigan State Archives)

PAGE GRAPHICS

Capitol Dome:

The architectural rendering of the Michigan State Capitol's dome is the work of Elijah E. Myers, the building's renowned architect. Myers inked the rendering on linen in late 1871 or early 1872. Myers' fine draftsmanship, the hallmark of his work, is clearly evident.

Because of their size, few architectural renderings of the 19th century have survived. Michigan is fortunate that many of Myers' designs for the Capitol were found in the building's attic in the 1950's. As part of the state's 1987 sesquicentennial celebration, they were conserved and deposited in the Michigan State Archives.

(Michigan State Archives)

East Elevation of the Michigan State Capitol:

When Myers' drawings were discovered in the 1950's, this view of the Capitol – the one most familiar to Michigan citizens – was missing. During the building's recent restoration (1989-1992), this drawing was commissioned to recreate the architect's original rendering of the east (front) elevation.

(Michigan Capitol Committee)

Michigan Register

Published pursuant to § 24.208 of
The Michigan Compiled Laws

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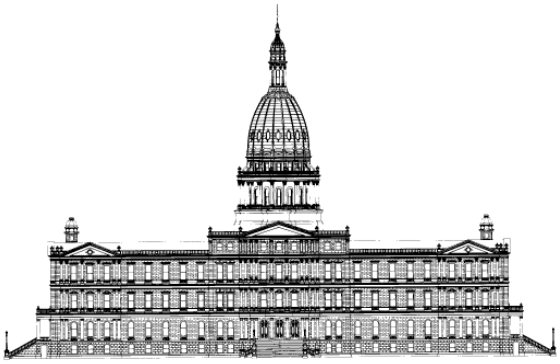
Katie Wienczewski, Administrative Rules Division Director, Michigan Office of Administrative Hearings and Rules; Deidre O'Berry, Administrative Rules Specialist for Operations and Publications.

Gretchen Whitmer, Governor



Garlin Gilchrist, Lieutenant Governor

PREFACE

PUBLICATION AND CONTENTS OF THE MICHIGAN REGISTER

The Michigan Office of Administrative Hearings and Rules publishes the *Michigan Register*.

While several statutory provisions address the publication and contents of the *Michigan Register*, two are of particular importance.

24.208 Michigan register; publication; cumulative index; contents; public subscription; fee; synopsis of proposed rule or guideline; transmitting copies to office of regulatory reform.

Sec. 8.

(1) The office of regulatory reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

(a) Executive orders and executive reorganization orders.

(b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.

(c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year.

(d) Proposed administrative rules.

(e) Notices of public hearings on proposed administrative rules.

(f) Administrative rules filed with the secretary of state.

(g) Emergency rules filed with the secretary of state.

(h) Notice of proposed and adopted agency guidelines.

(i) Other official information considered necessary or appropriate by the office of regulatory reform.

(j) Attorney general opinions.

(k) All of the items listed in section 7(m) after final approval by the certificate of need commission under section 22215 of the public health code, 1978 PA 368, MCL 333.22215.

(2) The office of regulatory reform shall publish a cumulative index for the Michigan register.

(3) The Michigan register shall be available for public subscription at a fee reasonably calculated to cover publication and distribution costs.

(4) If publication of an agency's proposed rule or guideline or an item described in subsection (1)(k) would be unreasonably expensive or lengthy, the office of regulatory reform may publish a brief synopsis of the proposed rule or guideline or item described in subsection (1)(k), including information on how to obtain a complete copy of the proposed rule or guideline or item described in subsection (1)(k) from the agency at no cost.

(5) An agency shall electronically transmit a copy of the proposed rules and notice of public hearing to the office of regulatory reform for publication in the Michigan register.

4.1203 Michigan register fund; creation; administration; expenditures; disposition of money received from sale of Michigan register and amounts paid by state agencies; use of fund; price of Michigan register; availability of text on internet; copyright or other proprietary interest; fee prohibited; definition.

Sec. 203.

(1) The Michigan register fund is created in the state treasury and shall be administered by the office of regulatory reform. The fund shall be expended only as provided in this section.

(2) The money received from the sale of the Michigan register, along with those amounts paid by state agencies pursuant to section 57 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.257, shall be deposited with the state treasurer and credited to the Michigan register fund.

(3) The Michigan register fund shall be used to pay the costs of preparing, printing, and distributing the Michigan register.

(4) The department of management and budget shall sell copies of the Michigan register at a price determined by the office of regulatory reform not to exceed the cost of preparation, printing, and distribution.

(5) Notwithstanding section 204, beginning January 1, 2001, the office of regulatory reform shall make the text of the Michigan register available to the public on the internet.

(6) The information described in subsection (5) that is maintained by the office of regulatory reform shall be made available in the shortest feasible time after the information is available. The information described in subsection (5) that is not maintained by the office of regulatory reform shall be made available in the shortest feasible time after it is made available to the office of regulatory reform.

(7) Subsection (5) does not alter or relinquish any copyright or other proprietary interest or entitlement of this state relating to any of the information made available under subsection (5).

(8) The office of regulatory reform shall not charge a fee for providing the Michigan register on the internet as provided in subsection (5).

(9) As used in this section, "Michigan register" means that term as defined in section 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.205.

CITATION TO THE MICHIGAN REGISTER

The *Michigan Register* is cited by year and issue number. For example, 2023 MR 1 refers to the year of issue (2023) and the issue number (1).

CLOSING DATES AND PUBLICATION SCHEDULE

The deadlines for submitting documents to the Michigan Office of Administrative Hearings and Rules for publication in the *Michigan Register* are the first and fifteenth days of each calendar month, unless the submission day falls on a Saturday, Sunday, or legal holiday, in which event the deadline is extended to include the next day which is not a Saturday, Sunday, or legal holiday. Documents filed or received after 5:00 p.m. on the closing date of a filing period will appear in the succeeding issue of the *Michigan Register*.

The Michigan Office of Administrative Hearings and Rules is not responsible for the editing and proofreading of documents submitted for publication.

Documents submitted for publication should be delivered or mailed in an electronic format to the following address: MICHIGAN REGISTER, Michigan Office of Administrative Hearings and Rules, Ottawa Building – Second Floor, 611 W. Ottawa Street, Lansing, MI 48933.

RELATIONSHIP TO THE MICHIGAN ADMINISTRATIVE CODE

The *Michigan Administrative Code* (1979 edition), which contains all permanent administrative rules in effect as of December 1979, was, during the period 1980-83, updated each calendar quarter with the publication of a paperback supplement. An annual supplement contained those permanent rules, which had appeared in the 4 quarterly supplements covering that year.

Quarterly supplements to the Code were discontinued in January 1984, and replaced by the monthly publication of permanent rules and emergency rules in the *Michigan Register*. Annual supplements have included the full text of those permanent rules that appear in the twelve monthly issues of the *Register* during a given calendar year. Emergency rules published in an issue of the *Register* are noted in the annual supplement to the Code.

SUBSCRIPTIONS AND DISTRIBUTION

The *Michigan Register,* a publication of the State of Michigan, is available for public subscription at a cost of $400.00 per year. Submit subscription requests to: Michigan Office of Administrative Hearings and Rules, Ottawa Building –Second Floor, 611 W. Ottawa Street, Lansing, MI 48933. Checks Payable: State of Michigan. Any questions should be directed to the Michigan Office of Administrative Hearings and Rules (517) 335-2484.

INTERNET ACCESS

The *Michigan Register* can be viewed free of charge on the website of the Michigan Office of Administrative Hearings and Rules – Administrative Rules Division: www.michigan.gov/ard.

Issue 2000-3 and all subsequent editions of the *Michigan Register* can be viewed on the Michigan Office of Administrative Hearings and Rules website. The electronic version of the *Register* can be navigated using the blue highlighted links found in the Contents section. Clicking on a highlighted title will take the reader to related text, clicking on a highlighted header above the text will return the reader to the Contents section.

Executive Director,
Michigan Office of Administrative Hearings and Rules

2023 PUBLICATION SCHEDULE

Issue No.	Closing Date for Filing or Submission Of Documents (5 p.m.)	Publication Date
1	January 15, 2023	February 1, 2023
2	February 1, 2023	February 15, 2023
3	February 15, 2023	March 1, 2023
4	March 1, 2023	March 15, 2023
5	March 15, 2023	April 1, 2023
6	April 1, 2023	April 15, 2023
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CUMULATIVE INDEX

BILLS SIGNED INTO LAW OR VETOED

ADMINISTRATIVE RULES
FILED WITH THE SECRETARY OF STATE

MCL 24.208 states in part:

"Sec. 8. (1) The Office of Regulatory Reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(f) Administrative rules filed with the secretary of state."

ADMINISTRATIVE RULES

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

DIRECTOR'S OFFICE

PHYSICAL THERAPY – GENERAL RULES

Filed with the secretary of state on May 1, 2023

These rules become effective immediately after filing with the secretary of state unless adopted under section 33, 44, or 45a(9) 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 director of the department of licensing and regulatory affairs by sections 16141, 16145, 16148, 16174, 16201, 16204, 16205, 16206, 16215, 16287, and 17823 of the public health code, 1978 PA 368, MCL 333.16141, 333.16145, 333.16148, 333.16174, 333.16201, 333.16204, 333.16205, 333.16206, 333.16215, 333.16287, and 333.17823 and Executive Reorganization Order Nos. 1991-9, 1996-2, 2003-1, and 2011-4, MCL 338.3501, 445.2001, 445.2011, and 445.2030)

R 338.7121, R 338.7122, R 338.7126, R 338.7131, R 338.7132, R 338.7133, R 338.7134, R 338.7135, R 338.7136, R 338.7137, R 338.7139, R 338.7141, R 338.7142, R 338.7145, R 338.7146, R 338.7147, R 338.7148, R 338.7149, R 338.7161, and R 338.7163 of the Michigan Administrative Code are amended, as follows:

PART 1. DEFINITIONS

R 338.7121 Definitions.

Rule 21. (1) As used in these rules:

(a) "APTA" means the American Physical Therapy Association.

(b) "Board" means the Michigan board of physical therapy created under section 17821 of the code, MCL 333.17821.

(c) "CAPTE" means the Commission on Accreditation in Physical Therapy Education.

(d) "Code" means the public health code, 1978 PA 368, MCL 333.1101 to 333.25211.

(e) "Continuous instruction" means education or presentation time that does not include breakfast, lunch, or dinner periods, coffee breaks, or other breaks in the activity or program.

(f) "Department" means the department of licensing and regulatory affairs.

(g) "Direct supervision" means that the physical therapist is physically present and immediately available for direction and supervision when patients or clients are present when the act, task, or function is performed, and that the physical therapist has direct contact with the patient or client during each visit.

(h) "FSBPT" means the Federation of State Boards of Physical Therapy.

(i) "NPTE" means the National Physical Therapy Examination.

(j) “Patient or client of record” means a patient or client that is receiving physical therapy services from a licensed physical therapist or from a licensed physical therapist assistant under the direction and supervision of a physical therapist.

(k) “PDR” means professional development requirement.

(l) “Prescription” is a written or electronic order for physical therapy.

(2) A term defined in the code has the same meaning when used in these rules.

PART 2. GENERAL PROVISIONS

R 338.7122 Prescription.

Rule 22. (1) A prescription must include all the following information:

(a) The name of the patient.

(b) The patient's medical diagnosis.

(c) The signature of either an individual that is licensed and authorized to prescribe physical therapy in this state or an individual that has an equivalent license issued by another state, as provided in section 17820(1) of the code, MCL 333.17820.

(d) The date that the authorized licensee wrote the prescription.

(2) A prescription is valid for 90 days after the date that the authorized licensee writes the prescription unless the authorized licensee specifies a different termination date on the prescription.

R 338.7126 Training standards for identifying victims of human trafficking; requirements.

Rule 26. (1) Under section 16148 of the code, MCL 333.16148, the individual seeking licensure or who is licensed shall have completed training in identifying victims of human trafficking that satisfies all the following standards:

(a) Training content must cover all the following:

(i) Understanding the types and venues of human trafficking in the United States.

(ii) Identifying victims of human trafficking in healthcare settings.

(iii) Identifying the warning signs of human trafficking in healthcare settings for adults and minors.

(iv) Identifying resources for reporting the suspected victims of human trafficking.

(b) Acceptable providers or methods of training include any of the following:

(i) Training offered by a nationally-recognized or state-recognized, health-related organization.

(ii) Training offered by, or in conjunction with, a state or federal agency.

(iii) Training obtained in an educational program approved for initial licensure or by a college or university.

(iv) Reading an article related to the identification of victims of human trafficking that satisfies the requirements of subdivision (a) of this subrule and is published in a peer-reviewed journal, healthcare journal, or professional or scientific journal.

(c) Acceptable modalities of training include any of the following:

(i) Teleconference or webinar.

(ii) Online presentation.

(iii) Live presentation.

(iv) Printed or electronic media.

(2) The department may select and audit an individual and request documentation of proof of completion of training. If audited by the department, the individual shall provide an acceptable proof of completion of training, including either of the following:

(a) Proof of completion certificate issued by the training provider that includes the date, provider name, name of training, and individual's name.

(b) A self-certification statement by the individual. The certification statement must include the individual's name and 1 of the following:

(i) For training completed under subrule (1)(b)(i) to (iii) of this rule, the date, training provider name, and name of training.

(ii) For training completed under subrule (1)(b)(iv) of this rule, the title of article, author, publication name of the peer-reviewed journal, healthcare journal, or professional or scientific journal, and the date, volume, and issue of publication, as applicable.

(3) Under section 16148 of the code, MCL 333.16148, the requirements specified in subrule (1) of this rule apply for license renewals beginning with the 2017 renewal cycle and for initial licenses issued beginning January 6, 2022.

PART 3. PHYSICAL THERAPISTS

R 338.7131 Program accreditation standards; physical therapist; adoption of standards by reference.

Rule 31. (1) The standards and evaluative criteria for accreditation of physical therapist educational programs set forth by CAPTE, 3030 Potomac Avenue, Suite 100, Alexandria, Virginia 22305-3085, in the publication titled "PT Standards and Required Elements" revised November 3, 2020, which are available at no cost on the commission's website at https://www.capteonline.org, are approved and adopted by reference. An educational program for physical therapists accredited by CAPTE satisfies the qualifications for an approved physical therapist educational program.

(2) Copies of the standards and evaluative criteria adopted by reference in subrule (1) of this rule are also available for inspection and distribution at a cost of 10 cents per page from the Board of Physical Therapy, Bureau of Professional Licensing, Department of Licensing and Regulatory Affairs, 611 West Ottawa, P.O. Box 30670, Lansing, Michigan 48909.

R 338.7132 Licensure by examination; physical therapist; requirements.

Rule 32. An applicant for a physical therapist license by examination shall satisfy the requirements of the code and the rules promulgated under the code, as well as all the following requirements:

(a) Provide the required fee and a completed application on a form provided by the department.

(b) Provide proof, as directed by the department, verifying completion of 1 of the following:

(i) An accredited physical therapist educational program that satisfies the standards under R 338.7131(1).

(ii) A substantially equivalent physical therapist educational program under R 338.7135.

(c) Provide proof, as directed by the department, verifying a passing score on the examination adopted under R 338.7133(1).

(d) Provide proof, as directed by the department, verifying a converted score of not less than 75 on the Michigan Physical Therapist Jurisprudence Exam approved under R 338.7133(2).

R 338.7133 Examinations; physical therapist; adoption and approval.

Rule 33. (1) The NPTE for physical therapists developed, administered, and scored by FSBPT is approved and adopted. The passing score recommended by FSBPT is approved and adopted.

(2) The Michigan Physical Therapist Jurisprudence Exam on laws and rules related to the practice of physical therapy in this state, which is administered by a third-party approved by the department, is approved and adopted.

R 338.7134 Physical therapist examination; eligibility.

Rule 34. (1) To be eligible for the NPTE for physical therapists, an applicant shall satisfy 1 of the following requirements:

(a) Provide proof, as directed by the department, verifying the completion of an accredited physical therapist educational program that satisfies the standards under R 338.7131(1).

(b) Satisfy the requirements under R 338.7135.

(c) Provide proof, as directed by the department, verifying current enrollment in the final semester, term, or quarter of an accredited physical therapist educational program that satisfies the standards under R 338.7131(1) and the expected date of graduation.

(2) An applicant shall take the NPTE for physical therapists consistent with the FSBPT testing standards. An applicant requesting an appeal of the 6-time lifetime limit policy or the 2 very low scores policy shall first satisfy all other licensing requirements and complete the following requirements before the board shall consider the request. The department shall reject a request to the board if the applicant does not provide all the following information in writing:

(a) A completed NPTE appeal form, including the information under subdivisions (b) to (j) of this subrule.

(b) The candidate’s name.

(c) Whether the request relates to the physical therapist or physical therapist assistant examination level.

(d) Whether the 6-time lifetime limit policy or the 2 very low scores policy is being appealed.

(e) The state where the applicant is seeking licensure.

(f) The reason for the appeal, including why the applicant believes the 6-time lifetime limit policy or the 2 very low scores policy should not apply to the applicant.

(g) A list of all physical therapist or physical therapist assistant examination level examinations taken by the applicant, including the date of the examinations, province or state where taken, and the scores on the examinations.

(h) A list of any disciplinary action taken against the applicant by the FSBPT or by a province of Canada or another state, including the date, the province or state, and an explanation of the circumstances surrounding the discipline.

(i) The applicant’s signature.

(j) The date the applicant completed the form.

(3) An applicant that does not achieve a passing score on the Michigan Physical Therapist Jurisprudence Exam may retake the examination without limitation.

R 338.7135 Graduate of non-accredited postsecondary institution; physical therapist; examination; eligibility.

Rule 35. To ensure eligibility for examination, an applicant that graduated from a non-accredited physical therapist educational program shall provide the required fee and a completed application on a form provided by the department. To be eligible for the NPTE for physical therapists, an applicant shall provide proof, as directed by the department, verifying the completion of a physical therapist educational program that is substantially equivalent to an accredited physical therapist educational program that satisfies the standards under R 338.7131(1). Proof of having completed a substantially equivalent physical therapist educational program must include an evaluation of the applicant's non-

accredited education through an evaluation that uses the current FSBPT Coursework Tool for Foreign Educated Physical Therapists.

R 338.7136 Licensure by endorsement of physical therapist; requirements.

Rule 36. (1) An applicant for a physical therapist license by endorsement shall satisfy the requirements of the code and the rules promulgated under the code, as well as all the following requirements:

(a) Provide the required fee and a completed application on a form provided by the department.

(b) Provide proof, as directed by the department, verifying a current and full physical therapist license in another state or in a province of Canada.

(c) If the applicant is licensed as a physical therapist in a province in Canada, provide proof, as directed by the department, verifying the completion of the educational requirements in Canada or in the United States for licensure as a physical therapist in Canada or in the United States.

(d) Provide proof, as directed by the department, verifying a passing score on either of the following examinations for a physical therapist license in another state or in a province of Canada:

(i) The NPTE for physical therapists required under R 338.7133(1).

(ii) The Canadian Alliance of Physiotherapy Regulators Physiotherapy Competency Examination.

(e) Provide proof, as directed by the department, verifying a converted score of not less than 75 on the Michigan Physical Therapist Jurisprudence Exam approved under R 338.7133(2).

(2) An applicant that is or has been licensed, registered, or certified in a health profession or specialty by another state, the United States military, the federal government, or another country shall disclose that fact on the application form. The applicant shall satisfy the requirements of section 16174(2) of the code, MCL 333.16174, including verification from the issuing entity showing that disciplinary proceedings are not pending against the applicant and sanctions are not in force at the time of application. If licensure is granted and it is determined that sanctions have been imposed, the disciplinary subcommittee may impose appropriate sanctions under section 16174(5) of the code, MCL 333.16174.

R 338.7137 Requirements for relicensure; physical therapist.

Rule 37. (1) An applicant whose physical therapist license has lapsed may be relicensed within 3 years after the expiration date of the license under section 16201(3) of the code, MCL 333.16201, if the applicant satisfies the requirements of the code and the rules promulgated under the code, as well as all the following requirements:

(a) Provides the required fee and a completed application on a form provided by the department.

(b) Establishes good moral character as that term is defined in, and determined under, 1974 PA 381, MCL 338.41 to 338.47.

(c) Provides proof, as directed by the department, verifying a converted score of not less than 75 on the Michigan Physical Therapist Jurisprudence Exam approved under R 338.7133(2).

(d) Provides proof, as directed by the department, verifying either of the following:

(i) Accumulation of not less than 24 PDR credits that satisfy the requirements under R 338.7161 and R 338.7163 during the 2 years immediately before the date of the application for relicensure.

(ii) Employment as a licensed physical therapist in another jurisdiction recognized by FSBPT for a minimum of 500 hours during the 2-year period immediately before the date of application for relicensure.

(2) An applicant whose physical therapist license has lapsed may be relicensed more than 3 years after the expiration date of the license under section 16201(4) of the code, MCL 333.16201, if the applicant satisfies the requirements under the code and the rules promulgated under the code, as well as all the following requirements:

(a) Provides the required fee and a completed application on a form provided by the department.

(b) Establishes good moral character as that term is defined in, and determined under, 1974 PA 381, MCL 338.41 to 338.47.

(c) Provides fingerprints as required under section 16174(3) of the code, MCL 333.16174.

(d) Provides proof, as directed by the department, verifying a converted score of not less than 75 on the Michigan Physical Therapist Jurisprudence Exam approved under R 338.7133(2).

(e) Provides proof, as directed by the department, verifying either of the following:

(i) Employment as a licensed physical therapist in another jurisdiction recognized by FSBPT for a minimum of 500 hours during the 2-year period immediately before the date of application for relicensure.

(ii) A passing score on the examination adopted under R 338.7133(1) during the 2-year period immediately before the date of application for relicensure.

(3) An applicant that is or has been licensed, registered, or certified in a health profession or specialty by another state, the United States military, the federal government, or another country shall disclose that fact on the application form. The applicant shall satisfy the requirements of section 16174(2) of the code, MCL 333.16174, including verification from the issuing entity showing that disciplinary proceedings are not pending against the applicant and sanctions are not in force at the time of application. If licensure is granted and it is determined that sanctions have been imposed, the disciplinary subcommittee may impose appropriate sanctions under section 16174(5) of the code, MCL 333.16174.

R 338.7139 Delegation of acts, tasks, or functions to a licensed or unlicensed individual; direct supervision of a licensed or unlicensed individual; requirements.

Rule 39. (1) Under section 16215(6) of the code, MCL 333.16215, the requirements of this rule do not apply to a physical therapist who delegates to a physical therapist assistant if the physical therapist satisfies the requirements for delegation to a physical therapist assistant under R 338.7138.

(2) Except as provided under subrule (1) of this rule, a physical therapist who delegates the performance of selected acts, tasks, or functions to a licensed or unlicensed individual under section 16215 of the code, MCL 333.16215, shall supervise the individual under section 16109(2) of the code, MCL 333.16109, in addition to providing direct supervision of the individual.

(3) A physical therapist who delegates acts, tasks, or functions under subrule (2) of this rule shall also satisfy all the following:

(a) Ensure the qualifications of the individual under the physical therapist's direct supervision, including verification of the individual's training and education.

(b) Examine and evaluate the patient or client before delegating acts, tasks, or functions performed by the individual.

(c) Directly supervise the individual to whom acts, tasks, or functions are delegated.

(d) Provide predetermined procedures and protocols for acts, tasks, or functions delegated.

(e) Maintain a record of the names of the individuals to whom acts, tasks, or functions are delegated.

(f) Monitor the individual's practice and provision of assigned acts, tasks, or functions.

(g) Meet regularly and in-person with the individual to whom acts, tasks, or functions have been delegated to evaluate the individual's performance, review records, and educate the individual on the acts, tasks, or functions that have been delegated.

(4) A physical therapist shall not supervise more than 3 individuals under this rule at the same time.

(5) Under section 16171 of the code, MCL 333.16171, the requirements of subrule (3)(b) of this rule do not apply to a student enrolled in an accredited physical therapist or physical therapist assistant educational program approved by the board.

PART 4. PHYSICAL THERAPIST ASSISTANTS

R 338.7141 Program accreditation standards; physical therapist assistant; adoption of standards by reference.

Rule 41. (1) The standards and evaluative criteria for accreditation of physical therapist assistant educational programs set forth by CAPTE, 3030 Potomac Avenue, Suite 100, Alexandria, Virginia 22305-3085, in the publication titled "PTA Standards and Required Elements," revised November 3, 2020, which are available at no cost on the commission's website at https://www.capteonline.org, are approved and adopted by reference. An educational program for physical therapist assistants accredited by CAPTE satisfies the qualifications for an approved physical therapist assistant educational program.

(2) Copies of the standards and evaluative criteria adopted by reference in subrule (1) of this rule are also available for inspection and distribution at a cost of 10 cents per page from the Board of Physical Therapy, Bureau of Professional Licensing, Department of Licensing and Regulatory Affairs, 611 West Ottawa, P.O. Box 30670, Lansing, Michigan 48909.

R 338.7142 Licensure by examination; physical therapist assistant; requirements.

Rule 42. (1) An applicant for a physical therapist assistant license by examination shall satisfy the requirements of the code and the rules promulgated under the code, as well as all the following requirements:

(a) Provide the required fee and a completed application on a form provided by the department.

(b) Provide proof, as directed by the department, verifying completion of 1 of the following:

(i) An accredited physical therapist assistant educational program that satisfies the standards under R 338.7141(1).

(ii) A substantially equivalent physical therapist assistant educational program under R 338.7147.

(c) Provide proof, as directed by the department, verifying a passing score on the examination adopted under R 338.7145(1).

(d) Provide proof, as directed by the department, verifying a converted score of not less than 75 on the Michigan Physical Therapist Assistant Jurisprudence Exam approved under R 338.7145(2).

(2) An applicant that graduated on or before January 1, 2008, from an accredited educational program that satisfies the standards under R 338.7141(1) is presumed to satisfy the requirements of this rule.

R 338.7145 Examinations; physical therapist assistant; adoption and approval; passing score.

Rule 45. (1) The NPTE for physical therapist assistants developed, administered, and scored by FSBPT is approved and adopted. The passing score recommended by FSBPT is approved and adopted.

(2) The Michigan Physical Therapist Assistant Jurisprudence Exam on laws and rules related to the practice of physical therapy in this state, administered by a third party approved by the department, is approved and adopted.

R 338.7146 Physical therapist assistant examination; eligibility.

Rule 46. (1) To be eligible for the NPTE for physical therapist assistants, an applicant shall satisfy 1 of the following requirements:

(a) Provide proof, as directed by the department, verifying the completion of an accredited physical therapist assistant educational program that satisfies the standards under R 338.7141(1).

(b) Satisfy the requirements under R 338.7147.

(c) Provide proof, as directed by the department, verifying current enrollment in the final semester, term, or quarter of an accredited physical therapist assistant educational program that satisfies the standards under R 338.7141(1) and the expected date of graduation.

(2) An applicant shall take the NPTE for physical therapist assistants consistent with the FSBPT testing standards. An applicant requesting an appeal of the 6-time lifetime limit policy or the 2 very low scores policy shall first satisfy all other licensing requirements and complete the following requirements before the board shall consider the request. The department shall reject a request to the board if the applicant does not provide all the following information in writing:

(a) A completed NPTE Appeal form, including the information under subdivisions (b) to (j) of this subrule.

(b) The candidate's name.

(c) Whether the request relates to the physical therapist or physical therapist assistant examination level.

(d) Whether the 6-time lifetime limit policy or the 2 very low scores policy is being appealed.

(e) The state where the applicant is seeking licensure.

(f) The reason for the appeal, including why the applicant believes the 6-time lifetime limit policy or the 2 very low scores policy should not apply to the applicant.

(g) A list of all physical therapist or physical therapist assistant examination level examinations taken by the applicant, including the date of the examinations, province or state where taken, and the scores on the examinations.

(h) A list of any disciplinary action taken against the applicant by the FSBPT or by a province of Canada or another state, including the date, the province or state, and an explanation of the circumstances surrounding the discipline.

(i) The applicant's signature.

(j) The date the applicant completed the form.

(3) An applicant that does not achieve a passing score on the Michigan Physical Therapist Assistant Jurisprudence Exam may retake the examination without limitation.

R 338.7147 Graduate of non-accredited postsecondary institution; physical therapist assistant; examination; eligibility.

Rule 47. To ensure eligibility for examination, an applicant that graduated from a United States military or non-accredited physical therapist assistant educational program shall provide the required fee and a completed application on a form provided by the department. To be eligible for the NPTE for physical therapist assistants, an applicant shall provide proof, as directed by the department, verifying the completion of a physical therapist or physical therapist assistant educational program that is substantially equivalent to an accredited physical therapist assistant educational program that satisfies the standards under R 338.7141(1). Proof of having completed a substantially equivalent physical therapist assistant educational program must include an evaluation of the applicant's non-accredited education through an evaluation that uses the current FSBPT Coursework Tool for Foreign Educated Physical Therapist Assistants.

R 338.7148 Licensure by endorsement of physical therapist assistant; requirements.

Rule 48. (1) An applicant for a physical therapist assistant license by endorsement shall satisfy the requirements of the code and the rules promulgated under the code, as well as all the following requirements:

(a) Provide the required fee and a completed application on a form provided by the department.

(b) Provide proof, as directed by the department, verifying a current and full physical therapist assistant license in another state or in a province of Canada.

(c) Provide proof, as directed by the department, verifying the completion of the educational requirements in Canada or in the United States for licensure as a physical therapist assistant in Canada or in the United States if the applicant is licensed as a physical therapist assistant in a province in Canada.

(d) Provide proof, as directed by the department, verifying a passing score on the NPTE for physical therapist assistants required under R 338.7145(1) for a physical therapist assistant license in another state or in a province of Canada.

(e) Provide proof, as directed by the department, verifying a converted score of not less than 75 on the Michigan Physical Therapist Assistant Jurisprudence Exam approved under R 338.7145(2).

(2) An applicant that is or has been licensed, registered, or certified in a health profession or specialty by another state, the United States military, the federal government, or another country shall disclose that fact on the application form. The applicant shall satisfy the requirements of section 16174(2) of the code, MCL 333.16174, including verification from the issuing entity showing that disciplinary proceedings are not pending against the applicant and sanctions are not in force at the time of application. If licensure is granted and it is determined that sanctions have been imposed, the disciplinary subcommittee may impose appropriate sanctions under section 16174(5) of the code, MCL 333.16174.

R 338.7149 Requirements for relicensure; physical therapist assistant.

Rule 49. (1) An applicant whose physical therapist assistant license has lapsed may be relicensed within 3 years after the expiration date of the license under section 16201(3) of the code, MCL 333.16201, if the applicant satisfies the requirements of the code and the rules promulgated under the code, as well as all the following requirements:

(a) Provides the required fee and a completed application on a form provided by the department.

(b) Establishes good moral character as that term is defined in, and determined under, 1974 PA 381, MCL 338.41 to 338.47.

(c) Provides proof, as directed by the department, verifying a converted score of not less than 75 on the Michigan Physical Therapist Assistant Jurisprudence Exam approved under R 338.7145(2).

(d) Provides proof, as directed by the department, verifying either of the following:

(i) Accumulation of not less than 24 PDR credits that satisfies the requirements under R 338.7161 and R 338.7163 during the 2 years immediately before the date of the application for relicensure.

(ii) Employment as a licensed physical therapist assistant in another jurisdiction recognized by FSBPT for a minimum of 500 hours during the 2-year period immediately before the date of application for relicensure.

(2) An applicant whose physical therapist assistant license has lapsed may be relicensed more than 3 years after the expiration date of the license under section 16201(4) of the code, MCL 333.16201, if the applicant satisfies the requirements under the code and the rules promulgated under the code, as well as all the following requirements:

(a) Provides the required fee and a completed application on a form provided by the department.

(b) Establishes good moral character as that term is defined in, and determined under, 1974 PA 381, MCL 338.41 to 338.47.

(c) Provides fingerprints as required under section 16174(3) of the code, MCL 333.16174.

(d) Provides proof, as directed by the department, verifying a converted score of not less than 75 on the Michigan Physical Therapist Assistant Jurisprudence Exam approved under R 338.7145(2).

(e) Provides proof, as directed by the department, verifying either of the following:

(i) Employment as a licensed physical therapist assistant in another jurisdiction recognized by FSBPT for a minimum of 500 hours during the 2-year period immediately before the date of application for relicensure.

(ii) A passing score on the examination adopted under R 338.7145(1) during the 2-year period immediately before the date of application for relicensure.

(3) An applicant that is or has been licensed, registered, or certified in a health profession or specialty by another state, the United States military, the federal government, or another country shall disclose that fact on the application form. The applicant shall satisfy the requirements of section 16174(2) of the code, MCL 333.16174, including verification from the issuing entity showing that disciplinary proceedings are not pending against the applicant and sanctions are not in force at the time of application. If licensure is granted and it is determined that sanctions have been imposed, the disciplinary subcommittee may impose appropriate sanctions under section 16174(5) of the code, MCL 333.16174.

PART 5. PROFESSIONAL DEVELOPMENT REQUIREMENTS

R 338.7161 License renewals; requirements; applicability.

Rule 61. (1) An applicant for renewal shall satisfy the requirements of the code and the rules promulgated under the code.

(2) An applicant for license renewal who has been licensed in the 2-year period immediately before the expiration date of the license shall accumulate not less than 24 PDR credits in activities approved under these rules during the 2 years immediately before the expiration date of the license.

(3) Submission of an application for renewal constitutes the applicant's certification of compliance with the requirements of this rule. A licensee shall keep documentation of satisfying the requirements of this rule for 4 years after the date of applying for license renewal. Failure to satisfy this rule is a violation of section 16221(h) of the code, MCL 333.16221.

(4) The requirements of this rule do not apply to a licensee during the initial licensure cycle.

(5) The PDRs satisfy the PDRs under section 17823 of the code, MCL 333.17823.

(6) The department shall receive a request for a waiver of PDRs for the board's consideration not less than 30 days before the last regularly scheduled board meeting before the expiration date of the license.

R 338.7163 Acceptable PDR activities; requirements; limitations.

Rule 63. (1) The 24 PDR credits required under R 338.7161(2) for the renewal of a license must satisfy the following requirements, as applicable:

(a) No more than 12 PDR credits are allowed for approved online continuing education programs or activities completed in one 24-hour period.

(b) A licensee shall not earn PDR credit for a continuing education program or activity that is equivalent or substantially equivalent to a program or activity for which the licensee has already earned credit during that renewal period.

(c) Under section 16204(2) of the code, MCL 333.16204, a licensee shall earn at least 1 PDR credit in pain and symptom management by completing a continuing education program or activity. Credits in pain and symptom management may include, but are not limited to, courses in behavior management, psychology of pain, pharmacology, behavior modification, stress management, clinical applications, and drug interventions as they relate to the practice of physical therapy.

(2) The standards for recognition of accrediting organizations developed and adopted by the Council for Higher Education (CHEA), One Dupont Circle NW, Suite 510, Washington, D.C. 20036, in the publication titled "CHEA Standards and Procedures for Recognition," effective October 4, 2021, which are available at no cost on the council's website at https://www.chea.org, are approved and adopted by reference. If a higher education institution is accredited by the accrediting body of the region in which

the institution is located and the accrediting body satisfies the recognition standards of CHEA, then the institution is approved. Copies of the standards and criteria approved and adopted by reference in this subrule are available for inspection and distribution at a cost of 10 cents per page from the Board of Physical Therapy, Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, 611 W. Ottawa Street, P.O. Box 30670, Lansing, Michigan 48909.

(3) The criteria for recognition and the process for the secretary's recognition of accrediting agencies of the United States Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, Washington, D.C. 20202, in 34 CFR 602.10 to 602.39, effective July 1, 2020, which are available at no cost on the department's website at https://www2.ed.gov/about/offices/list/ope/index.html, are approved and adopted by reference. If a higher education institution is accredited by the accrediting body of the region in which the institution is located and the accrediting body satisfies the recognition criteria and process of the United States Department of Education, then the institution is approved. Copies of the standards and criteria approved and adopted by reference in this subrule are available for inspection and distribution at a cost of 10 cents per page from the Board of Physical Therapy, Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, 611 W. Ottawa Street, P.O. Box 30670, Lansing, Michigan 48909.

(4) Any of the following are considered acceptable PDR activities:

Activity Code	Activity	Number of PDR credits earned for activity
(a)	Completing an approved continuing education program or activity related to the practice of physical therapy or any non-clinical subject relevant to the practice of physical therapy. A continuing education program or activity is approved, regardless of the format in which it is offered, if it is approved or offered for continuing education credit by any of the following: • Another state board of physical therapy. • Another board or task force regulated under article 15 of the code, MCL 333.16101 to 333.18838. • FSBPT. • The APTA or its components. APTA components include the APTA Michigan and other APTA Chapters, APTA Sections, and APTA Academies. • An accredited physical therapist educational program that satisfies the standards under R 338.7131. • An accredited physical therapist assistant educational program that satisfies the standards under R 338.7141. If audited, a licensee shall provide a copy of a letter or certificate of completion showing the licensee's name, number of credits earned, sponsor name or the name of the organization that approved the program or activity for continuing education credit, and the date or dates the	The number of credits approved by the sponsor or the approving organization are granted. When the sponsor or approving organization calculates credit at a rate of 0.1 credit for every 50 to 60 minutes of continuous instruction, then 0.1 credit equals 1 PDR credit. A maximum of 20 PDR credits may be earned for this activity in each renewal period.

	program was held or activity completed.	
(b)	Passing a postgraduate academic course related to the practice of physical therapy offered by either of the following: • An accredited physical therapist educational program that satisfies the standards under R 338.7131. • A nationally accredited university or college that satisfies the standards in subrule (2) or (3) of this rule. If audited, a licensee shall provide a copy of the transcript showing credit hours of the academic courses related to physical therapy.	Fifteen PDR credits are granted for each semester credit earned and 10 PDR credits are granted for each quarter or term credit earned. A maximum of 20 PDR credits may be earned for this activity in each renewal period.
(c)	Reading an article related to the practice of physical therapy in a professional or scientific journal. This activity does not include articles approved for PDR credit under activity code 1. To receive credit, a licensee shall successfully complete an evaluation that was provided with the article or the general response form provided by the department as an evaluative component for this activity. If audited, a licensee shall provide documentation from the professional or scientific journal or a copy of the completed general response form to verify that the licensee completed an evaluation.	One PDR credit is granted for each article. A maximum of 6 PDR credits may be earned for this activity in each renewal period.
(d)	Viewing or listening to media devoted to professional education related to the practice of physical therapy, other than online programs not approved or offered for continuing education credit. To receive credit, a licensee shall successfully complete an evaluation that was provided with the educational media or the general response form provided by the department as an evaluative component for this activity. If audited, a licensee shall provide a copy of the completed evaluation or completed general response form to verify that the licensee completed an evaluation, and identify the title of the media, the name of the publisher of the media, the date the media was published or copyrighted, and the length of the media.	One half of 1 PDR credit is granted for every 30 minutes of continuous instruction. A maximum of 6 PDR credits may be earned for this activity in each renewal period.
(e)	Presenting a continuing education program related to the practice of physical therapy.	Two PDR credits are granted for every 50 minutes of continuous instruction. A presentation may

	To receive credit, the presentation must be approved or offered for continuing education credit by any of the following: • Another state board of physical therapy. • Another board or task force regulated under article 15 of the code, MCL 333.16101 to 333.18838. • FSBPT. • APTA or its components. APTA components include the APTA Michigan and other APTA Chapters, APTA Sections and APTA Academies. • An accredited physical therapist educational program that satisfies the standards under R 338.7131. • An accredited physical therapist assistant educational program that satisfies the standards under R 338.7141. If audited, a licensee shall provide a letter from the program sponsor confirming the licensee as the presenter and the presentation date and time, or a copy of the presentation notice or advertisement showing the date of the presentation, the licensee's name listed as a presenter, and the name of the organization that approved or offered the presentation for continuing education credit.	not be less than 50 minutes in length. A maximum of 12 PDR credits may be earned for this activity in each renewal period.
(f)	Presenting a scientific exhibit or scientific paper accepted for presentation through a peer-review process at a state, regional, national, or international physical therapy conference, or its components, or a related professional organization. If audited, a licensee shall provide a copy of the document presented with proof of presentation or a letter from the program sponsor verifying the exhibit or paper was accepted for presentation through a peer-review process and the date of the presentation.	Two PDR credits are granted for every 50 minutes of continuous instruction. A maximum of 12 PDR credits may be earned for this activity in each renewal period.
(g)	Authoring an article related to the practice, education, or research of physical therapy published in any of the following: • The journal of a national physical therapy association or its components. • A peer-reviewed journal. • A healthcare journal. • A professional or scientific journal. If audited, a licensee shall provide a copy of the	Six PDR credits are granted for each article. A maximum of 12 PDR credits may be earned for this activity in each renewal period.

	publication that shows the licensee as the author of the article or a publication acceptance letter.	
(h)	Writing a chapter related to the practice, education, or research of physical therapy published in a book. If audited, a licensee shall provide a copy of the publication that shows the licensee as the author of the chapter or a publication acceptance letter.	Six PDR credits are granted for each chapter. A maximum of 12 PDR credits may be earned for this activity in each renewal period.
(i)	Successfully completing 1 of the following: • An American Board of Physical Therapy Specialties (ABPTS) certification examination. • An ABPTS recertification examination. • The APTA's PTA Advanced Proficiency Pathways Program. If audited, a licensee shall provide proof of certification or recertification.	Twenty-three PDR credits are granted for each successful completion. A maximum of 23 PDR credits may be earned for this activity in each renewal period.
(j)	Participating as a student for a minimum of 1,000 hours in any of the following: • A postgraduate clinical training program related to the practice of physical therapy provided through or recognized by an accredited physical therapist educational program that satisfies the standards under R 338.7131. • A postgraduate clinical training program related to the practice of physical therapy provided through or recognized by an accredited physical therapist assistant educational program that satisfies the standards under R 338.7141. • A postgraduate clinical training program related to the practice of physical therapy offered through a healthcare organization accredited by an organization recognized by the Centers for Medicare and Medicaid Services. • A postgraduate clinical training program related to the practice of physical therapy accredited or credentialed by the APTA or an organization approved by the board. If audited, a licensee shall provide a letter from the program director verifying the number of hours the licensee participated in the clinical training program and that the program was provided, offered, or accredited by	Twelve PDR credits are granted for 1,000 hours of participation. A maximum of 12 PDR credits may be earned for this activity in each renewal period.

	an educational program or organization that satisfies the requirements of this rule.	
(k)	Participation in a healthcare organization committee, physical therapy or physical therapy assistant educational program, or task force dealing with patient care related issues, which may include physical therapy education, research, or practice or quality of patient care and utilization review. If audited, a licensee shall provide a letter from an appropriate official representing the committee, educational program, or task force verifying that the committee, educational program, or task force dealt with patient care related issues, which may include physical therapy education, research, or practice or quality of patient care and utilization review. The letter must also include the dates and the amount of time the licensee took part on each date.	One PDR credit is granted for every 50 minutes of participation. A maximum of 6 PDR credits may be earned for this activity in each renewal period.
(l)	Serving as a guest instructor of students, staff, or other licensees at any of the following: • A clinical training program related to the practice of physical therapy provided through or recognized by an accredited or developing physical therapist educational program that satisfies the standards under R 338.7131. • A clinical training program related to the practice of physical therapy provided through or recognized by an accredited or developing physical therapist assistant educational program that satisfies the standards under R 338.7141. • A clinical training program related to the practice of physical therapy offered through a healthcare organization accredited by an organization recognized by the Centers for Medicare and Medicaid Services. • A clinical training program related to the practice of physical therapy accredited or credentialed by APTA or an organization approved by the board. If audited, a licensee shall provide a letter from the program director verifying the licensee's role, the number of instructional sessions on specific subjects provided by the licensee, and the length of the instructional sessions. Also, the letter must verify that the clinical training program provided, offered, or accredited by an educational program or organization satisfies the	Two PDR credits are granted for every 50 minutes of continuous instruction. A maximum of 12 PDR credits may be earned for this activity in each renewal period.

	requirements of this rule.	
(m)	Serving as a clinical instructor or clinical supervisor for students completing an internship, residency, or fellowship program that recognized or approved by any of the following: • An accredited or developing educational program for physical therapists that satisfies the standards under R 338.7131. • An accredited or developing educational program for physical therapist assistants that satisfies the standards under R 338.7141. • APTA or an organization approved by the board. If audited, a licensee shall provide a letter from the educational program or clinical agency director verifying the licensee's role, the number of hours of instruction or supervision provided by the licensee, and that the internship, residency, or fellowship program is recognized or approved by an educational program or organization that satisfies the requirements of this rule.	Three PDR credits are granted for 40 hours of clinical instruction or supervision. A maximum of 12 PDR credits may be earned for this activity in each renewal period.
(n)	Identifying, researching, and addressing an event or issue related to professional practice. If audited, a licensee shall provide a completed experiential activity form provided by the department for each issue or event.	One PDR credit is granted for each separate event or issue. A maximum of 6 PDR credits may be earned for this activity in each renewal period.
(o)	Participating on an international, national, regional, state, state component, or local task force, committee, board, council, or association related to the field of physical therapy that is considered acceptable by the board. A task force, committee, board, council, or association is acceptable if it enhances the participant's knowledge and understanding of the field of physical therapy. If audited, a licensee shall provide documentation verifying the licensee's participation in not less than 50% of the regularly scheduled meetings of the task force, committee, board, council, or association.	Four PDR credits are granted for participation on each task force, committee, board, council, or association. A maximum of 12 PDR credits may be earned for this activity in each renewal period.
(p)	Participating as a surveyor for an external agency in a program involving the accreditation, certification, or inspection of an educational program for physical therapists or physical therapist assistants or a certification process for a clinical agency. If audited, a licensee shall provide a letter from the accreditation, certification, or inspection program	One PDR credit is granted for every 50 minutes of participation. A maximum of 12 PDR credits may be earned for this activity in each renewal period.

	verifying the licensee's participation, the location of the inspections, and the number of hours the licensee spent participating as a surveyor.	
(q)	Performing volunteer work related to the field of physical therapy without reimbursement. If audited, a licensee shall provide a letter from an official other than the licensee verifying the number of hours and the type of volunteer work performed by the licensee.	One PDR credit is granted for every 50 minutes of volunteer work performed. A maximum of 6 PDR credits may be earned for this activity in each renewal period.
(r)	Serving as a center or site coordinator of clinical education at an agency that provides clinical internships for students enrolled in programs that are recognized or approved by either of the following: • An accredited or developing educational program for physical therapists that satisfies the standards under R 338.7131. • An accredited or developing educational program for physical therapist assistants that satisfies the standards under R 338.7141. If audited, a licensee shall provide a letter from the educational program or clinical agency director verifying the licensee's role and that students were placed and participated in the internship program during the time for which the licensee is claiming PDR credit.	Two PDR credits are granted per year of serving as the coordinator. A maximum of 4 PDR credits may be earned for this activity in each renewal period.
(s)	Completing a self-review tool developed by FSBPT. To receive credit, a licensee shall provide documentation from FSBPT verifying completion of the self-review tool.	Three PDR credits are granted for each completion. A maximum of 3 PDR credits may be earned for this activity in each renewal period.

ADMINISTRATIVE RULES

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

DIRECTOR'S OFFICE

ARCHITECTS – GENERAL RULES

Filed with the secretary of state on May 1, 2023

These rules become effective immediately after filing with the secretary of state unless adopted under section 33, 44, or 45a(9) 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 board of architects by section 308 of the occupational code, 1980 PA 299, MCL 339.308; and on the director of the department of licensing and regulatory affairs by sections 205 and 2009 of the occupational code, 1980 PA 299, MCL 339.205 and 339.2009; and Executive Reorganization Order Nos. 1991-9, 1996-2, 2003-1, and 2011-4, MCL 338.3501, 445.2001, 445.2011, and 445.2030)

R 339.15101, R 338.15201, R 338.15202, R 338.15204, R 338.15304, R 338.15401, R 338.15404, R 338.15501, and R 338.15502 of the Michigan Administrative Code are amended, as follows:

PART 1. GENERAL PROVISIONS

R 339.15101 Definitions.

Rule 101. (1) As used in these rules:

(a) "CACB" means the Canadian Architectural Certification Board.

(b) "Code" means the occupational code, 1980 PA 299, MCL 339.101 to 339.2677.

(c) "Continuing education" means an instructional course or activity in an approved health, safety, and welfare subject that is designed to bring licensees up to date on a particular area of knowledge or skills relevant to the licensee's area of professional practice.

(d) "Course" means any qualifying activity with a clear purpose and goal that keeps, improves, or expands the skills and knowledge relevant to the licensee's area of professional practice. Regular duties for compensation are not considered activities, except for employer compensated continuing education activities.

(e) "Department" means the department of licensing and regulatory affairs.

(f) "Distance learning" means any of the following:

(i) Courses where an instructor and a licensee may be apart, and instruction takes place through online or electronic media.

(ii) Courses, which include, but are not limited to, instruction presented through interactive classrooms, at the job site, computer conferencing, and interactive computer systems.

(iii) Monographs, which are distant learning courses that examine or investigate current and emerging topics in architecture, that can be in the form of an online quiz or test offered by a sponsor, that may not require an instructor.

(g) "Health, Safety, and Welfare (HSW) subjects" means technical and professional subjects related to the practice of architecture that safeguard the public and include the continuing education subjects approved under R 339.15506.

(h) "NAAB" means the National Architectural Accrediting Board.

(i) "NCARB" means the National Council of Architectural Registration Boards.

(j) "Sponsor" means an individual that represents to the public that any of its courses fulfill the requirements of section 2009 of the code, MCL 339.2009, for continuing education.

(2) A term defined in the code has the same meaning when used in these rules.

PART 2. EDUCATION, EXPERIENCE, AND EXAMINATION STANDARDS

R 339.15201 Educational requirement; adoption by reference of educational standard.

Rule 201. (1) An applicant for licensure shall provide proof, as directed by the department, verifying 1 of the following to satisfy the educational requirements under the code:

(a) Transcripts verifying that the applicant received a first professional degree from an architectural program that is accredited by the NAAB or the CACB.

(b) An evaluation report from the Education Evaluation Services for Architects-NCARB that states the applicant for licensure has met the NCARB Education Standard established in the NCARB Education Guidelines.

(c) A credentials evaluation provided by a current member of the National Association of Credential Evaluation Services that verifies the applicant for licensure received a degree that satisfies all the categories, subject areas, and semester credit hour requirements established under the NCARB Education Standard adopted by reference under subrule (2) this rule.

(2) The NCARB Education Standard in the "NCARB Education Guidelines," effective January 6, 2021, is adopted by reference. This document is available for inspection and distribution at the cost of 10 cents per page from the Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, at 611 West Ottawa St., P.O. Box 30670, Lansing, Michigan 48909 and at no cost from NCARB at https://www.ncarb.org/ or at the National Council of Architectural Registration Boards, 1401 H Street NW, Suite 500, Washington, DC 20005.

R 339.15202 Experience requirement.

Rule 202. An applicant for licensure shall provide proof, as directed by the department, verifying 1 of the following to satisfy the experience requirements under the code:

(a) A valid certificate of completion of any internship program from NCARB.

(b) Current and continuous licensure in another state or a province of Canada of not less than 5 years.

R 339.15204 Examination requirement.

Rule 204. An applicant for licensure shall provide proof, as directed by the department, verifying a passing score as determined by NCARB on the NCARB Architectural Registration Examination.

PART 3. RELICENSURE

R 339.15304 Relicensure requirements.

Rule 304. (1) An applicant whose license has lapsed for less than 3 years after the expiration date of the last license may be relicensed under section 411(3) of the code, MCL 339.411, by satisfying all the following requirements:

(a) Provides a completed application on a form provided by the department.

(b) Pays the required fee to the department.

(c) Provides proof, as directed by the department, verifying that the applicant has completed not less than 24 hours of continuing education activities approved under R 339.15502 during the 2-year period immediately before the date of the relicensure application. If the department determines that the amount of continuing education hours provided with the application is deficient, the applicant has 1 year after the date of the application to provide proof of completing the deficient hours.

(2) An applicant whose license has lapsed for 3 years or more after the expiration date of the last license may be relicensed under section 411(4) of the code, MCL 339.411, by satisfying all the following requirements:

(a) Provides a completed application on a form provided by the department.

(b) Pays the required fee to the department.

(c) Establishes that the applicant has met all the requirements for initial licensure under the code and these rules.

(d) Providing proof, as directed by the department, verifying that the applicant has completed not less than 24 hours of continuing education activities approved under R 339.15502 during the 2-year period immediately before the date of the relicensure application. If the department determines that the amount of continuing education hours provided with the application is deficient, the applicant has 1 year after the date of the application to provide proof of completing the deficient hours.

PART 4. STANDARDS OF PRACTICE AND PROFESSIONAL CONDUCT

R 339.15401 Model rules of conduct; adoption by reference.

Rule 401. (1) A licensee shall follow the NCARB model rules of conduct adopted by reference in this rule.

(2) The NCARB model rules of conduct in the document “Model Rules of Conduct,” revised July 2018, is adopted by reference. This document is available for inspection and distribution at the cost of 10 cents per page from the Department of Licensing and Regulatory Affairs, Bureau of Professional Licensing, 611 West Ottawa Street, P.O. Box 30670, Lansing, Michigan 48909 and at no cost from NCARB at https://www.ncarb.org/ or at the National Council of Architectural Registration Boards, 1401 H Street NW, Suite 500, Washington, DC 20005.

R 339.15404 Seal design, use, security, and validation.

Rule 404. (1) The seal of an architect must include the licensee’s name and full license number, as shown on the licensee’s state-issued architect license and indicate “State of Michigan” and “Licensed Architect” in the legend surrounding the seal. The seal must have a design substantially equivalent to figure 404.

(2) A licensee's seal must be used by the licensee whose name appears on the seal for as long as the license is in effect. A licensee is responsible for the security of the licensee's seal.

FIGURE 404

PART 5. LICENSE RENEWAL AND CONTINUING EDUCATION

R 339.15501 License renewal requirement; continuing education waiver.

Rule 501. (1) An applicant for license renewal who has been licensed during the 2-year period immediately before the expiration date of the license shall obtain not less than 24 hours of continuing education in activities approved under R 339.15502, during the 2-year period immediately before the expiration date of the license.

(2) Submission of an application for renewal constitutes the applicant's certification of compliance with this rule and R 339.15502.

(3) A licensee shall maintain documentation of satisfying the requirements of this rule and R 339.15502 for a period of 4 years after the date of applying for license renewal.

(4) A licensee is subject to an audit under this part and may have to provide documentation as described under R 339.15502 on request of the department.

(5) The department shall receive a request for a waiver of continuing education requirements for the board's consideration not less than 30 days before the last regularly scheduled board meeting before the expiration date of the license.

R 339.15502 Acceptable continuing education.

Rule 502. (1) As used in this rule, "continuous instruction" means the time taking part in the activity, not including breakfast, lunch, or dinner periods, coffee breaks, or other breaks in the program. Except as provided under subrule (2) of this rule, 50 minutes of continuous instruction is equal to 1 continuing education hour.

(2) The department shall grant credit for continuing education hours that satisfy the requirements in the following chart:

Activity Code	Activity and Proof Required	Number of Credits Earned for Activity and Allowed for Renewal Cycle
(a)	Completing a continuing education program or activity, regardless of the format in which it is offered, if it is in an HSW subject under R 339.15506 and is approved or offered for continuing education by any of the following:	The number of credits approved by the sponsor or the approving organization.

	- Another state board of architects. - NCARB. - American Institute of Architects. - Construction Specifications Institute. - University of Michigan. - Lawrence Technological University. - University of Detroit Mercy. - Andrews University. - An NAAB accredited degree granting institution. - United States Green Building Council. If audited, a licensee shall provide a copy of a letter or a certificate of completion issued by the relevant above-referenced sponsor or organization showing the licensee's name, number of credits earned, sponsor name or the name of the organization that approved the continuing education program or activity, and the date or dates the program was held, or the activity completed.	
(b)	Passing a postgraduate academic course in an HSW subject under R 339.15506 that is offered by an architectural program that is accredited by NAAB or CACB. If audited, a licensee shall provide a copy of the transcript issued by the NAAB-accredited or CACB-accredited architectural program showing the number of completed credit hours for the academic courses.	Fifteen continuing education hours are granted for each semester credit, or 10 continuing education hours are granted for each quarter credit. A maximum of 15 continuing education hours are granted for this activity in each renewal period.
(c)	Attending a seminar, in-house course, workshop, or professional or technical presentation made at a meeting, convention, or conference in which the subject matter is an HSW subject under R 339.15506. If audited, a licensee shall provide a copy of a letter or a certificate of completion issued by the sponsor or	One continuing education hour is granted for every 50 minutes of continuous instruction. One-half (0.5 credit) of 1 continuing education hour is granted for every additional 25 minutes of continuous instruction that follows the initial 50 minutes of continuous instruction.

	organization of the seminar, in-house course, workshop, or professional or technical presentation made at a meeting, convention, or conference showing the licensee's name, sponsor name or the name of the organization, and the date or dates the activity was held and attended by the licensee.	
(d)	Teaching, instructing, or presenting on a subject that is an HSW subject under R 339.15506. If audited, a licensee shall provide a letter issued by the course or activity sponsor or organization confirming the licensee as the teacher, instructor, or presenter of a course or activity, together with a copy of the course syllabus, or other program documentation, showing that licensee is the instructor, the name of the course or activity, and the date or dates the course or activity took place.	One continuing education hour is granted for every 50 minutes continuous instruction. One-half (0.5 credit) of 1 continuing education hour is granted for every additional 25 minutes of continuous instruction that follows the initial 50 minutes of continuous instruction.
(e)	Publishing a peer-reviewed paper, article, or book on a subject that is an HSW subject under R 339.15506. If audited, a licensee shall provide a copy of the publication that identifies the licensee as the author of the publication and the publication acceptance letter showing the licensee's name, article name, and the date of publishing.	Six continuing education hours are granted for this activity. Credit for continuing education hours is not granted for multiple publications of the same peer-review paper, article, or book. A maximum of 12 continuing education hours are granted for this activity during each renewal period.
(f)	Serving as a voting member on a local, state, or national committee, board, council, or association, if it enhances the participant's knowledge and understanding of architecture. To receive credit, a licensee shall take part in not less than 50% of the regularly scheduled meetings of the committee, board, council, or association. If audited, a licensee shall provide documentation satisfactory to the department verifying the licensee's	Three continuing education hours are granted for each committee, board, council, or association that the licensee is a member. A maximum of 3 continuing education hours are granted for this activity during each renewal period.

	participation in not less than 50% of the regularly scheduled meetings of the committee, board, council, or association and provide verification of the licensee's status as a voting member on the committee, board, council, or association.	
(g)	Participating in a company-sponsored seminar or training that is on an HSW subject under R 339.15506. If audited, a licensee shall provide a copy of a letter or a certificate of completion issued by the company or organization presenting the seminar or training on its behalf, showing the licensee's name, company name or the name of the organization presenting the seminar or training on behalf of the company, subject of seminar or training, and the date or dates the seminar or training was held and completed by the licensee.	One continuing education hour is granted for every 50 minutes of continuous instruction. One-half (0.5 credit) of 1 continuing education hour is granted for every additional 25 minutes of continuous instruction that follows the initial 50 minutes of continuous instruction.

(3) Continuing education hours are not granted for a program or activity that has substantially the same content of a program or activity that the applicant has already earned continuing education credit during the renewal period.

ADMINISTRATIVE RULES

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

DIRECTOR'S OFFICE

PROFESSIONAL ENGINEERS – GENERAL RULES

Filed with the secretary of state on May 2, 2023

These rules become effective immediately after filing with the secretary of state unless adopted under section 33, 44, or 45a(9) 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 board of professional engineers by section 308 of the occupational code, 1980 PA 299, MCL 339.308; and on the director of the department of licensing and regulatory affairs by sections 205 and 2009 of the occupational code, 1980 PA 299, MCL 339.205 and 339.2009; and Executive Reorganization Order Nos. 1991-9, 1996-2, 2003-1, and 2011-4, MCL 338.3501, 445.2001, 445.2011, and 445.2030)

R 339.16001, R 339.16021, R 339.16022, R 339.16025, R 339.16026, R 339.16031, R 339.16032, R 339.16040, and R 339.16041 of the Michigan Administrative Code are amended, as follows:

PART 1. GENERAL PROVISIONS

R 339.16001 Definitions.

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

(a) "Board" means the board of professional engineers created under section 2002 of the code, MCL 339.2002.

(b) "CEAB" mean the Canadian Engineering Accreditation Board.

(c) "Code" means the occupational code, 1980 PA 299, MCL 339.101 to 339.2677.

(d) "Continuing education" means a course or activity designed to bring licensees up to date on a particular area of knowledge or skills relevant to the licensee's area of professional practice.

(e) "Course" means any qualifying activity with a clear purpose and goal that keeps, improves, or expands the skills and knowledge relevant to the licensee's area of professional practice.

(f) "Department" means the department of licensing and regulatory affairs.

(g) "EAC/ABET" means the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology, Inc.

(h) "NCEES" means the National Council of Examiners for Engineering and Surveying.

(2) A term defined in the code has the same meaning when used in these rules.

PART 2. LICENSURE

R 339.16021 Educational requirements.

Rule 21. An applicant for licensure shall provide proof, as directed by the department, verifying 1 of the following to satisfy the educational requirement under the code:

(a) Transcripts verifying that the applicant received a baccalaureate degree or higher in engineering from a program accredited by the EAC/ABET or the CEAB.

(b) Transcripts verifying that the applicant received a master's degree or doctorate in engineering from a school and program with an EAC/ABET-accredited or a CEAB-accredited baccalaureate degree program that is in the same engineering discipline as the applicant's master's degree or doctorate.

(c) A credentials evaluation from NCEES that verifies all the following:

(i) The applicant for licensure received either of the following:

(A) A baccalaureate degree in engineering from a non-United States-based program.

(B) A master's degree or doctorate in engineering from a non-EAC/ABET-accredited program.

(ii) The applicant for licensure completed not less than 32 college semester credit hours in the areas of mathematics and basic science.

(iii) The applicant for licensure completed not less than 48 college semester credit hours in engineering science or engineering design courses that satisfy the course requirements established under the NCEES Engineering Education Standard.

(d) A credentials evaluation that verifies the applicant received a baccalaureate degree in engineering from an educational program that is substantially equivalent to an EAC/ABET-accredited baccalaureate degree program in engineering. The credentials evaluation must be generated by a company that is a current member of the National Association of Credential Evaluation Services (NACES).

R 339.16022 Professional engineering experience; credit for work experience; credit for educational experience.

Rule 22. (1) Under section 2004(2)(a) of the code, MCL 339.2004, an applicant for licensure shall document not less than 8 years of professional experience in engineering work, including not more than 5 years of education granted under subrule (4) of this rule. An applicant shall satisfy the requirements of this rule to receive credit for professional experience.

(2) An applicant for licensure shall provide proof, as directed by the department, verifying either of the following to receive credit for professional experience in engineering work:

(a) Except as otherwise provided under subrules (1) and (4) of this rule, the applicant has obtained not less than 4 years of experience practicing as a licensed or registered professional engineer in another state or a province of Canada.

(b) All of the following:

(i) The dates of performing engineering work that qualifies as professional experience under subrule (3) of this rule.

(ii) The supervising individual's name and license or registration number and the state or province of Canada in which the supervising individual is licensed or registered as a professional engineer.

(iii) Documentation from the supervising individual attesting to the work experience, dates of work, and supervision.

(3) Engineering work that satisfies all the following requirements qualifies as professional experience:

(a) The work involves the use of engineering principles and data.

(b) The work is in the form of consultation, investigation, evaluation, planning, design, or review of materials or completed phases of work in the construction, alteration, or repair in connection with a public or private utility, structure, building, machine, equipment, process, work, or project.

(c) The work is performed while under the direction of a professional engineer licensed in this state or licensed or registered in another state or a province of Canada.

(4) The department shall grant not more than 5 years of professional experience credit to an applicant holding a degree that satisfies the requirements under R 339.16021. Credit is limited to the following amounts:

(a) Not more than 4 years of professional experience for a baccalaureate degree in engineering. Experience is granted for only 1 baccalaureate degree.

(b) Not more than 1 year of professional experience for a post-baccalaureate degree in engineering. Experience is granted for only 1 post-baccalaureate degree.

R 339.16025 Relicensure requirements.

Rule 25. (1) An applicant whose license has lapsed for less than 3 years after the expiration date of the last license may be relicensed under section 411(3) of the code, MCL 339.411, by satisfying all the following requirements:

(a) Provides a completed application on a form provided by the department.

(b) Pays the required fee to the department.

(c) Provides proof, as directed by the department, verifying that the applicant has completed 15 hours of continuing education in activities approved under R 339.16041, during the 12 months immediately before the date of filing the relicensure application. Of the 15 hours, at least 1 hour of continuing education must be earned in ethics, as it relates to professional engineering. If the department determines that the amount of continuing education hours provided with the application is deficient, the applicant has 1 year after the date of filing the application to provide proof of completing the deficient hours.

(2) An applicant whose license has lapsed for 3 years or more after the expiration date of the last license may be relicensed under section 411(4) of the code, MCL 339.411, by satisfying all the following requirements:

(a) Provides a completed application on a form provided by the department.

(b) Pays the required fee to the department.

(c) Establishes that the applicant has met all the requirements for initial licensure under the code and these rules.

(d) Provides proof, as directed by the department, verifying 1 of the following:

(i) The completion of 30 hours of continuing education in activities approved under R 339.16041, during the 24 months immediately before the date of filing the relicensure application. Of the 30 hours, not less than 2 hours of continuing education must be earned in ethics, as it relates to professional engineering. If the department determines that the amount of continuing education hours provided with the application is deficient, the applicant has 1 year after the date of filing the application to provide proof of completing the deficient hours.

(ii) The applicant holds or has held a valid and unrestricted license or registration in another state or a province of Canada during the 24 months immediately before the date of filing the relicensure application.

R 339.16026 Examination requirements.

Rule 26. An applicant for licensure shall provide proof, as directed by the department, verifying both of the following to satisfy the examination requirements under the code:

(a) The applicant achieved a passing score as determined by NCEES on either of the following examinations:

(i) The NCEES Principals and Practice of Engineering examination.

(ii) Both parts of the NCEES Structural Engineering examination, known as SE-I and SE-II.

(b) Either of the following:

(i) The applicant achieved a passing score as determined by NCEES on the NCEES Fundamentals of Engineering examination.

(ii) The applicant received a doctorate in engineering from a school and program with an EAC/ABET-accredited or a CEAB-accredited baccalaureate degree program that is in the same engineering discipline as the applicant's doctorate in engineering.

PART 3. STANDARDS OF PRACTICE AND PROFESSIONAL CONDUCT

R 339.16031 Professional conduct; requirements; restrictions.

Rule 31. (1) A licensee shall follow all the rules of conduct under this part.

(2) A licensee shall do all the following:

(a) If the licensee is the individual in responsible charge, the licensee shall notify the licensee's employer or client, and any other appropriate authority, when the licensee's judgment is overruled under circumstances that endanger life or property.

(b) If the licensee is not the individual in responsible charge, the licensee shall notify the individual in responsible charge when the licensee's judgment is overruled under circumstances that endanger life or property.

(c) Participate in phases of a project in which the licensee is competent.

(d) Undertake assignments in which the licensee is qualified by education or experience in the specific technical field or fields involved.

(e) Complete, sign, seal, or approve engineering documents that conform with the law and applicable professional standards.

(f) Be objective and truthful in professional reports, statements, or testimony and include all relevant information in these reports, statements, or testimony.

(g) Disclose to an employer, client, or public body that the licensee serves, all known or potential conflicts of interest that could influence or appear to influence the licensee's judgment or the quality of the licensee's services.

(3) A licensee shall not do any of the following:

(a) Disclose confidential information obtained in a professional capacity without the prior consent of the client or employer, unless authorized or required by law or these rules.

(b) Partner, practice, or offer to practice with any individual or firm or assist any individual or firm that the licensee knows is engaged in fraudulent or dishonest business or professional practices or the unlawful practice of professional engineering.

(c) Falsify the licensee's qualifications or the qualifications of the licensee's associates or allow misrepresentations of the licensee's qualifications or the qualifications of the licensee's associates.

(d) Misrepresent or exaggerate the licensee's experience or qualifications.

(e) Knowingly make statements containing a material misrepresentation of fact, omitting a material fact, or knowingly make statements that deceive the public.

(f) Attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other licensed professional engineers.

(g) Give or offer to give, directly or indirectly, to a client, potential client, the agent of a client, or the agent of a potential client, a commission, contribution, gift, or other valuable consideration to secure or retain engineering work. This restriction does not include payments to an employment agency for securing employment or employees for salaried positions.

(h) Solicit or accept a compensation, contribution, gift, or other valuable consideration, directly or indirectly, from more than 1 individual for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.

(i) Solicit or accept a commission, contribution, gift, or other valuable consideration, directly or indirectly, from other parties dealing with the licensee's clients or employers, or from outside agents who have no dealings with the licensee's client or employer, in connection with the work for which the licensee is responsible, unless the circumstances are fully disclosed and agreed to by all interested parties.

(j) Solicit or accept a commission, contribution, gift, or other valuable consideration, directly or indirectly, when the licensee's judgment may be compromised.

(k) Complete, sign, seal, or approve engineering documents that do not conform with the law or applicable professional standards.

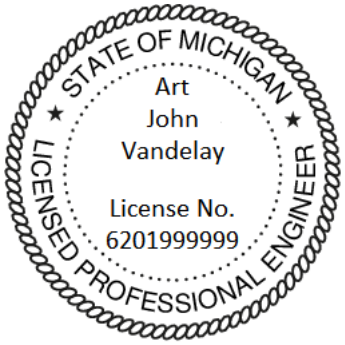
(4) Work for which the licensee is responsible, the procedures followed, and the decisions made by individuals under the licensee's supervision must be subject to sustained review and approval by the licensee.

R 339.16032 Professional engineer seal.

Rule 32. (1) The seal of a professional engineer must include the licensee's name and full license number, as shown on the licensee's state-issued professional engineer license and indicate "State of Michigan" and "Licensed Professional Engineer" in the legend surrounding the seal. The seal must have a design substantially equivalent to figure 32 below.

(2) A licensee's seal must be used by the licensee whose name appears on the seal for as long as the license is in effect. A licensee is responsible for the security of the licensee's seal.

FIGURE 32



PART 4. LICENSE RENEWAL AND CONTINUING EDUCATION

R 339.16040 Continuing education required for renewal; certification of compliance; document retention; continuing education waiver.

Rule 40. (1) An applicant for license renewal who has been licensed during the 2-year period immediately before the expiration date of the license shall obtain not less than 30 hours of continuing education in activities approved under R 339.16041, during the 2-year period immediately before the expiration date of the license. Of the 30 hours, not less than 2 hours of continuing education must be earned in ethics, as it relates to professional engineering.

(2) Submission of an application for renewal constitutes the applicant's certification of compliance with this rule and R 339.16041.

(3) A licensee shall maintain documentation of satisfying the requirements of this rule and R 339.16041 for a period of 4 years after the date of filing the application for license renewal.

(4) A licensee is subject to an audit under this part and may have to provide documentation as described by R 339.16041 on request of the department.

(5) The department must receive a request for a waiver of continuing education requirements for the board's consideration not less than 30 days before the last regularly scheduled board meeting before the expiration date of the license.

R 339.16041 Acceptable continuing education; limitations.

Rule 41. (1) The department shall grant credit for in-person or online continuing education hours that satisfy the requirements in the following chart:

Activity Code	Activity and Proof Required	Number of Continuing Education Hours Granted for Activity
(a)	Completing a continuing education program or activity related to professional engineering that is approved or offered for continuing education credit by any of the following: - Another state's board of engineers. - A professional engineering association, organization, or society. - NCEES. - ABET. If audited, a licensee shall provide documentation or a certificate of completion showing the licensee's name, total continuing education credits earned, sponsor name and contact information, program title, and the date the program was held or completed.	The number of continuing education hours approved by the approving entity are granted for this activity.
(b)	Passing an academic course related to professional engineering offered by a college or university that offers a baccalaureate degree or higher in an engineering program that is accredited by EAC/ABET or CEAB. If audited, a licensee shall provide a copy of the transcript showing the number of credit hours of the academic courses related to professional engineering.	Fifteen continuing education hours are granted for each semester credit or 10 continuing education hours are granted for each quarter credit.
(c)	Attending a seminar, in-house course, workshop, or professional or technical presentation related to professional engineering. If audited, the licensee shall provide a copy of the presentation notice or advertisement showing the date of the presentation, the licensee's name listed as a presenter or	One continuing education hour is granted for every 50 minutes attending the activity.

	attendee, and the name of the organization that approved or offered the presentation.	
(d)	Teaching, instructing, or presenting on a subject related to professional engineering. If audited, a license shall provide documentation by the college or university confirming the licensee as the teacher, instructor, or presenter of the academic course, the dates of the course or presentation, the number of classroom hours spent teaching, instructing, or presenting, and the course title.	Two continuing education hours are granted for every 50 minutes of teaching, instruction, or presenting. A maximum of 12 continuing education hours are granted for this activity during each renewal period.
(e)	Publication of a peer-reviewed paper, article, or book related to professional engineering. If audited, the licensee shall provide a copy of the publication that identifies the licensee as the author or a publication acceptance letter.	Six continuing education hours are granted for this activity. Credit is not granted for multiple publications of the same peer-review paper, article, or book. A maximum of 18 continuing education hours are granted for this activity during each renewal period.
(f)	Serving as a voting member on a state or national committee, board, council, or association related to professional engineering. To receive credit, a licensee must take part in not less than 50% of the regularly scheduled meetings of the committee, board, council, or association. If audited, a licensee shall provide documentation satisfactory to the department verifying the licensee's participation in not less than 50% of the regularly scheduled meetings of the committee, board, council, or association and provide verification of the licensee's status as a voting member on the committee, board, council, or association.	Three continuing education hours are granted for the year in which the licensee serves as a member. A maximum of 6 continuing education hours are granted for this activity during each renewal period.
(g)	Attending a Michigan board of professional engineers meeting. To receive credit, the licensee shall obtain a form provided by the department from a department employee present at the meeting and have that employee complete, sign, and date the form. The	One continuing education hour is granted for each meeting attended. A maximum of 6 continuing education hours

	licensee shall present a valid government-issued photo identification to the department employee for verification. If audited, the licensee shall provide a copy of the form completed, signed, and dated by the department employee who was present at the meeting.	are granted for this activity during each renewal period.
(h)	Serving as a school-sponsored mentor to an engineering student in a school-sponsored program. To receive credit, this activity must not be part of the licensee's regular job description. If audited, the licensee shall provide a letter from an authorized official from the school verifying the licensee's role and the number of mentoring hours the licensee provided.	Four continuing education hours are granted for this activity. A maximum of 8 continuing education hours are granted for this activity during each renewal period.
(i)	Participating in a company-sponsored or hosted seminar or training that is designed to enhance professional development in the licensee's area of professional practice. If audited, a licensee shall provide documentation or a certificate of completion issued by the company presenting the seminar or training showing the licensee's name, company name, subject of seminar or training, and the date the seminar or training was held.	One continuing education hour is granted for every 50 minutes of the seminar or training.
(j)	Studying an article related to professional engineering published in a peer-reviewed journal or professional or scientific journal that expands the licensee's knowledge of the professional engineering field. If audited, a licensee shall provide the title and author of the article, publication name of the peer-reviewed journal or professional or scientific journal, and the date, volume, and issue of publication, as applicable, and the date read.	Two continuing education hours are granted for each article studied. A maximum of 4 continuing education hours are granted for this activity during each renewal period.
(k)	Obtaining a patent related to professional engineering. If audited, a licensee shall provide a copy of the patent grant letters showing the licensee as the author of the patent and the date the patent was issued.	Ten continuing education hours are granted for each patent. A maximum of 20 continuing education hours are granted for this activity

		during each renewal period.

(2) Continuing education hours are not granted for a program or activity that has substantially the same content of a program or activity for which the applicant has already earned continuing education hours during the renewal period.

(3) Not more than 12 continuing education hours may be earned during a 24-hour period.

ADMINISTRATIVE RULES

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

DIRECTOR'S OFFICE

PROFESSIONAL SURVEYORS – GENERAL RULES

Filed with the secretary of state on May 2, 2023

These rules become effective immediately after filing with the secretary of state unless adopted under section 33, 44, or 45a(9) 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 board by section 308 of the occupational code, 1980 PA 299, MCL 339.308; and on the director of the department of licensing and regulatory affairs by sections 205 and 2009 of the occupational code, 1980 PA 299, MCL 339.205 and 339.2009; and Executive Reorganization Order Nos. 1991-9, 1996-2, 2003-1, and 2011-4, MCL 338.3501, 445.2001, 445.2011, and 445.2030)

R 339.17101, R 339.17201, R 339.17202, R 339.17301, R 339.17303, R 339.17401, R 339.17402, R 339.17403, R 339.17505, and R 339.17506 of the Michigan Administrative Code are amended, as follows:

PART 1. GENERAL PROVISIONS

R 339.17101 Definitions.

Rule 101. (1) As used in these rules:

(a) "ANSAC/ABET" means the Applied and Natural Science Accreditation Commission of the Accreditation Board for Engineering and Technology, Inc.

(b) "Code" means the occupational code, 1980 PA 299, MCL 339.101 to 339.2677.

(c) "Continuing education" means an instructional course or activity designed to bring licensees up to date on a particular area of knowledge or skills relevant to the licensee's area of professional practice.

(d) "Department" means the department of licensing and regulatory affairs.

(e) "EAC/ABET" means the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology, Inc.

(f) "ETAC/ABET" means the Engineering Technology Accreditation Commission of the Accreditation Board for Engineering and Technology, Inc.

(g) "NCEES" means the National Council of Examiners for Engineering and Surveying.

(2) A term defined in the code has the same meaning when used in these rules.

PART 2. EDUCATION, EXPERIENCE, AND EXAMINATIONS

R 339.17201 Educational requirements.

Rule 201. An applicant for licensure shall provide proof, as directed by the department, verifying 1 of the following to satisfy the educational requirements under the code:

(a) Transcripts verifying that the applicant received a baccalaureate degree or higher in a surveying program accredited by any of the following:

(i) The EAC/ABET.

(ii) The ETAC/ABET.

(iii) The ANSAC/ABET.

(b) A NCEES credentials evaluation that verifies the applicant received a baccalaureate degree or higher and satisfies the NCEES surveying core program requirements found in the NCEES Surveying Education Standard.

(c) A credentials evaluation that verifies the applicant received a baccalaureate degree or higher in surveying from an educational program that is substantially equivalent to a baccalaureate degree or higher program that is accredited by EAC/ABET, ETAC/ABET, or ANSAC/ABET. The credentials evaluation must be generated by a company that is a current member of the National Association of Credential Evaluation Services (NACES).

R 339.17202 Professional surveying experience; verification; educational credit for experience.

Rule 202. (1) Under section 2004(3)(a) of the code, MCL 339.2004, an applicant shall document not less than 8 years of professional experience in professional surveying, including not more than 5 years of education. An applicant shall satisfy the requirements of this rule to receive credit for professional experience.

(2) Professional surveying work that is performed while under the supervision of a professional surveyor licensed in this state or licensed or registered in another state or a province of Canada and involves work in 1 or more of the following areas qualifies as professional experience:

(a) Providing professional services such as consultation, investigation, testimony, evaluation, planning, mapping, assembling, and interpreting reliable scientific measurements and information relative to the location, size, shape, or physical features of the earth, improvements on the earth, the space above the earth, or any part of the earth, and the utilization and development of these facts and interpretations into an orderly survey map, plan, report, description, or project.

(b) Land surveying, which is the surveying of an area for its correct determination or description for its conveyance or for the establishment or reestablishment of a land boundary and the designing or design coordination of the plotting of land and the subdivision of land.

(c) Geodetic surveying, including surveying for a determination of the size and shape of the earth, both horizontally and vertically, and the precise positioning of points on the earth utilizing angular and linear measurements through spatially oriented spherical geometry.

(d) Utilizing and managing land information systems through the establishment of datums and local coordinate systems and points of reference.

(e) Engineering and architectural surveying for design and construction layout of infrastructure.

(f) Cartographic surveying for the making of maps, including topographic and hydrographic mapping.

(3) An applicant for licensure shall provide proof, as directed by the department, verifying 1 of the following to receive credit for professional experience in surveying work:

(a) Except as otherwise provided under subrules (1) and (4) of this rule, the applicant has obtained not less than 4 years of experience practicing as a licensed or registered professional surveyor in another state or a province of Canada.

(b) All of the following:

(i) The dates of performing surveying work that satisfies the requirements under subrule (2) of this rule.

(ii) The supervising individual's name and license or registration number and the state or province of Canada in which the supervising individual is licensed or registered as a professional surveyor.

(iii) Documentation from the supervising individual attesting to the work experience, dates of work, and supervision.

(4) The department shall grant not more than 5 years of professional experience credit to an applicant holding a degree that satisfies the requirements under R 339.17201. Credit is limited to the following amounts:

(a) Not more than 4 years of professional experience for a baccalaureate degree. Experience is granted for only 1 baccalaureate degree.

(b) Not more than 1 year of professional experience for a post-baccalaureate degree. Experience is granted for only 1 post-baccalaureate degree.

PART 3. PROFESSIONAL SURVEYOR SEAL AND RELICENSURE

R 339.17301 Professional surveyor seal.

Rule 301. (1) The seal of a professional surveyor must include the licensee's name and full license number, as shown on the licensee's state-issued professional surveyor license and indicate "State of Michigan" and "Licensed Professional Surveyor" in the legend surrounding the seal. The seal must have a design substantially equivalent to Figure 301 below.

(2) A licensee's seal must be used by the licensee whose name appears on the seal for as long as the license is in effect. A licensee is responsible for the security of the licensee's seal.

FIGURE 301

R 339.17303 Relicensure.

Rule 303. (1) An applicant whose license has lapsed for less than 3 years after the expiration date of the license may be relicensed under section 411(3) of the code, MCL 339.411, by satisfying all the following requirements.

(a) Providing a completed application on a form provided by the department.

(b) Paying the required fee to the department.

(c) Providing proof, as directed by the department, verifying that the applicant completed 15 hours of continuing education, 1 hour of which must be in professional ethics related to surveying, in activities

approved under R 339.17506, during the 1-year period immediately before the date of filing the relicensure application. If the department determines that the amount of the continuing education hours provided with the application is deficient, the applicant has 1 year after the date of filing the application to provide proof of completing the deficient hours.

(2) An applicant whose license has lapsed for 3 years or more after the expiration date of the license may be relicensed under section 411(4) of the code, MCL 339.411, by satisfying all the following requirements:

(a) Providing a completed application on a form provided by the department.

(b) Paying the required fee to the department.

(c) Establishing that the applicant has met all the requirements for initial licensure under the code and these rules.

(d) Providing proof, as directed by the department, verifying that the applicant completed 30 hours of continuing education, 2 of which must be in professional ethics related to surveying, in activities approved under R 339.17506, during the 2-year period immediately before the date of filing the relicensure application. If the department determines that the amount of the continuing education hours provided with the application are deficient, the applicant has 1 year after the date of filing the application to provide proof of completing the deficient hours.

PART 4. STANDARDS OF PRACTICE AND PROFESSIONAL CONDUCT

R 339.17401 Solicitation of employment; restrictions; exception.

Rule 401. (1) In the solicitation of employment, a licensee shall not falsify, or allow the misrepresentation of, the academic or professional qualifications of the licensee or the licensee's associates.

(2) A licensee shall not pay, give, or offer to pay or give, directly or indirectly, to a client or potential client or to the agent of a client or potential client, a commission, contribution, gift, or other substantial valuable consideration to secure or retain professional surveying work. This restriction does not include payments to an employment agency for the purpose of securing employment or employees for salaried positions.

(3) A licensee shall seek professional employment based on the licensee's qualifications, competence, and ability to properly accomplish the employment sought.

R 339.17402 Conflict of interest.

Rule 402. (1) To avoid a conflict of interest, a licensee shall promptly inform, in writing, an employer or client of the licensee or a public body that the licensee serves of any employment, business association, interest, duty, or circumstance if that relationship is with another and involves the current or prospective work assignment of the licensee with that employer, client, or public body.

(2) A licensee shall not accept compensation, financial or otherwise, from more than 1 individual for services performed on the same project or assignment, unless the circumstances are fully disclosed to all individuals that pay, or are required to approve payment, for the work performed by the licensee.

(3) A licensee shall not ask for or accept gratuities, directly or indirectly, from contractors, their agents, or other individuals dealing with the client or employer of the licensee in connection with work for which the licensee is responsible, or ask for or accept financial or other valuable consideration from another for specifying products or services.

R 339.17403 Participation in project; responsibilities; survey identification.

Rule 403. (1) A licensee shall undertake to take part only in those phases of a project in which the licensee is competent. In the areas of a project involving architecture or professional engineering in which the licensee lacks competence, the licensee shall retain licensed professional associates for those phases of that project.

(2) A licensee is responsible for clear, accurate, and complete development of plats, plans, drawings, specifications, survey reports, and other instruments of service as is customary in the practice of the licensee's profession, and the material must properly satisfy the need for which it is intended.

(3) Surveys and drawings not intended to delineate, monument, or define property boundaries and limits must be clearly identified as not being boundary surveys.

PART 5. CONTINUING EDUCATION

R 339.17505 Continuing education; license renewal; requirements.

Rule 505. (1) An applicant for license renewal who has been licensed during the 2-year period immediately before the expiration date of the license shall obtain not less than 30 hours of continuing education during the 2-year period immediately before the expiration date of the license and satisfy both of the following requirements:

(a) Obtain 2 of the 30 hours of continuing education in an activity that focuses on the area of professional ethics related to surveying. The professional ethics related to surveying is not required to focus on areas specific to the rules or statutes.

(b) Obtain all 30 hours of continuing education in activities that satisfy the requirements under R 339.17506.

(2) Submission of an application for renewal constitutes the applicant’s certification of compliance with this rule and R 339.17506.

(3) A licensee shall maintain documentation of satisfying the requirements of this rule and R 339.17506 for a period of 4 years after the date of filing the application for license renewal.

(4) A licensee is subject to an audit under this part and may have to provide documentation as described by R 339.17506 on request of the department.

(5) The department shall receive a request for a waiver of continuing education requirements for the board’s consideration not less than 30 days before the last regularly scheduled board meeting before the expiration date of the license.

R 339.17506 Acceptable continuing education; limitations.

Rule 506. (1) The department shall grant credit for continuing education hours that satisfy the requirements in the following chart:

Activity Code	Activity and Proof Required	Number of Continuing Education Credits for the Activity
(a)	Completing a continuing education program or activity related to professional surveying that is approved or offered for continuing education credit by another state board of professional surveyors. If audited, a licensee shall provide	The number of continuing education credits approved by the approving entity are granted for this activity.

	documentation or a certificate of completion showing the licensee's name, total continuing education credits earned, sponsor name and contact information, program title, and the date the program was held or completed.	
(b)	Passing an academic course related to professional surveying from a baccalaureate degree or higher in a surveying program that is accredited by EAC/ABET, ETAC/ABET, or ANSAC/ABET. If audited, a licensee shall provide a copy of the transcript showing credit hours of the academic courses related to surveying.	Fifteen continuing education credits are granted for each semester credit, or 10 continuing education credits must be granted for each quarter credit.
(c)	Attending a seminar, in-house course, workshop, or professional or technical presentation related to surveying. If audited, the licensee shall provide a copy of the presentation notice or advertisement showing the date of the presentation, the licensee's name listed as a presenter or attendee, and the name of the organization that approved or offered the presentation.	One continuing education credit is granted for every 50 minutes of continuous instruction.
(d)	Presenting a seminar, in-house course, workshop, or professional or technical presentation related to surveying. A licensee shall not receive credit for a presentation offered as part of their regular job description or duties. If audited, the licensee shall provide a copy of the presentation notice or advertisement showing the date of the presentation, the licensee's name listed as a presenter or attendee, and the name of the organization that approved or offered the presentation.	Two continuing education credits are granted for every 50 minutes of continuous instruction.
(e)	Teaching, instructing, or presenting on a subject related to professional surveying that is part of an academic course related to surveying that is offered at a college or university. If audited, a licensee shall provide documentation by the college or university confirming the licensee as the teacher, instructor, or presenter of the academic course, the dates of the course or presentation, number of classroom hours spent teaching, instructing, or presenting, and the course title.	Two continuing education credits are granted for every 50 minutes of continuous instruction.

(f)	Initial publication of a peer-reviewed paper, article, or book related to surveying. If audited, the licensee shall provide a copy of the publication that identifies the licensee as the author or a publication acceptance letter.	Six continuing education credits are granted for this activity.
(g)	Serving as a voting member on a state or national surveying committee, board, council, or association. To receive credit, a licensee shall take part in not less than 50% of the regularly scheduled meetings of the committee, board, council, or association. If audited, a licensee shall provide documentation satisfactory to the department verifying the licensee's participation in not less than 50% of the regularly scheduled meetings of the committee, board, council, or association.	Three continuing education credits are granted for the year in which the licensee serves as a member.
(h)	Attending a Michigan board of professional surveyors meeting. To receive credit, the licensee shall obtain a form provided by the department from a department employee present at the meeting and have that employee complete, sign, and date the form. The licensee shall present a valid government-issued photo identification to the department employee for verification. If audited, the licensee shall provide a copy of the form completed, signed, and dated by the department employee who was present at the meeting.	One continuing education credit is granted for each meeting attended.
(i)	Serving as a school-sponsored mentor to a surveying student in a school-sponsored program. To receive credit, this activity must not be part of the licensee's regular job description. If audited, the licensee shall provide a letter from an authorized official from the school verifying the licensee's role and the number of mentoring hours the licensee provided.	Four continuing education credits are granted for this activity.
(j)	Obtaining patents related to surveying.	Ten continuing education hours are granted for each approved patent.

(2) Continuing education credits must not be granted for a program or activity that has substantially the same content of a program or activity for which the applicant has already earned continuing education credits during the renewal period.

(3) Not more than 12 continuing education credits may be earned during a 24-hour period.

(4) As used in this rule, “continuous instruction" means the time spent completing an activity not including breakfast, lunch, or dinner periods, coffee breaks, or any other breaks in the program.

ADMINISTRATIVE RULES

DEPARTMENT OF NATURAL RESOURCES

FISHERIES DIVISION

USE OF TRAWLS

Filed with the secretary of state on May 4, 2023

These rules become effective immediately after filing with the secretary of state unless adopted under section 33, 44, or 45a(9) 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 director of the department of natural resources by section 47305 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.47305)

R 299.701, R 299.702, R 299.703, R 299.704, and R 299.705 of the Michigan Administrative Code are rescinded, as follows:

R 299.701 Rescinded.

R 299.702 Rescinded.

R 299.703 Rescinded.

R 299.704 Rescinded.

R 299.705 Rescinded.

PROPOSED ADMINISTRATIVE RULES, NOTICES OF PUBLIC HEARINGS

MCL 24.242(3) states in part:

"… the agency shall submit a copy of the notice of public hearing to the Office of Regulatory Reform for publication in the Michigan register. An agency's notice shall be published in the Michigan register before the public hearing and the agency shall file a copy of the notice of public hearing with the Office of Regulatory Reform."

MCL 24.208 states in part:

"Sec. 8. (1) The Office of Regulatory Reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(d) Proposed administrative rules.

(e) Notices of public hearings on proposed administrative rules."

PROPOSED ADMINISTRATIVE RULES

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

DIRECTOR'S OFFICE

PHARMACY - GENERAL RULES

Filed with the secretary of state on

These rules ~~take effect~~ **become effective** immediately ~~upon~~**after** filing with the secretary of state unless adopted under section 33, 44, or 45a(9) 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 director of the department of licensing and regulatory affairs by sections 16141, 16145, 16148, 16174, 16175, 16178, 16182, 16186, 16204, 16205, 16215, 16287, 17707, 17721, 17722, 17731, 17737, 17739, 17742a, 17742b, 17744f, 17746, 17748, 17748a, 17748b, 17748e, 17751, 17753, 17754a, 17757, 17760, 17767, and 17775 of the public health code, 1978 PA 368, MCL 333.16141, 333.16145, 333.16148, 333.16174, 333.16175, 333.16178, 333.16182, 333.16186, 333.16204, 333.16205, 333.16215, 333.16287, 333.17707, 333.17721, 333.17722, 333.17731, 333.17737, 333.17739, 333.17742a, 333.17742b, 333.17746, 333.17748, 333.17748a, 333.17748b, 333.17748e, 333.17751, 333.17753, 333.17754a, 333.17757, 333.17760, 333.17767, and 333.17775 and Executive Order Nos. 1991-9, 1996-2, 2003-1, and 2011-4, MCL 338.3501, 445.2001, 445.2011, and 445.2030)

R 338.486, R 338.501, R 338.505, R 338.511, R 338.513, R 338.515, R 338.517, R 338.519, R 338.521, R 338.523, R 338.525, R 338.531, R 338.531a, R 338.532, R 338.533, R 338.534, R 338.535, R 338.536, R 338.537, R 338.538, R 338.551, R 338.555, R 338.557, R 338.559, R 338.563, R 338.569, R 338.571, R 338.575, R 338.577, R 338.583, R 338.583a, R 338.584, R 338.585, R 338.586, R 338.587, R 338.588, R 338.589, and R 338.590 of the Michigan Administrative Code are amended, and R 338.534a, R 338.588a, R 338.588b, and R 338.591 are added, as follows:

~~ADMINISTRATIVE HEARINGS~~PHARMACY SERVICES IN MEDICAL INSTITUTIONS

R 338.486 “Medical institution” and “pharmacy services” defined; pharmacy services in medical institutions.

Rule 16. (1) As used in this rule:

(a) "Medical institution" means a hospital, skilled nursing facility, county medical care facility, nursing home, freestanding surgical outpatient facility, hospice, or other health facility that is licensed or approved by the state, which directly or indirectly provides or includes pharmacy services.

(b) "Pharmacy services" means the direct and indirect patient care services **for patients in a medical institution,** associated with the practice of pharmacy.

(2) Pharmacy services in a medical institution must be directed and provided by a licensed pharmacist.

(3) Pharmacy personnel who assist the pharmacist by performing delegated functions in the care of patients of a medical institution ~~shall be~~**are** supervised by a pharmacist who is on the premises of the medical institution.

(4) The pharmacist who directs the pharmacy services shall develop, implement, supervise, and coordinate the services provided, including, at a minimum, all of the following:

(a) Dispensing medications in a form that minimizes additional preparation before administration to the patient, including the admixture of parenterals.

(b) Obtaining the prescriber's original medication order, a direct carbonized copy, an electromechanical facsimile, or other electronic order transmission. Security measures must be in place to ensure that system access by unauthorized individuals is not allowed.

(c) Interpreting and reviewing the prescriber's medication orders and communicating problems with these orders to the prescriber before **the** administration of first doses. If the interpretation and review will cause a ~~medically unacceptable~~ delay **that would adversely affect a patient's medical condition,** ~~then~~ a limited number of medications may be stocked at the patient care areas for the administration of first doses. Medications must be provided in a manner that ensures security and immediate availability, ~~such as~~**including** sealed or secured medication kits, carts, or treatment trays. A pharmacist shall routinely inspect the medications and, after use, shall verify the contents and replace the medications as necessary.

(d) **Furnishing medications for administration to registered patients under R 338.588 and 338.588c.** ~~Delegating the stocking of an automated device. Technologies must be in place and utilized to ensure that the correct drugs are stocked in their appropriate assignment utilizing bar-coding or another board-approved error prevention technology that complies with R 338.3154.~~

(e) Monitoring medication therapy to promote positive patient outcomes while evaluating clinically significant chemical and therapeutic incompatibilities.

(f) Establishing the specifications for the procurement of all pharmaceuticals and related biologicals and chemicals approved for use in the medical institution.

(g) Inspecting all areas in the medical institution where medications are stored to verify compliance with the standards for the safe use and storage of the medications, not less than once every 6 months.

(h) Maintaining proper security for all medications stored or ~~kept~~ **maintained** within the medical institution.

(i) Providing educational programs ~~regarding~~ **that include, but are not limited to,** medications **used by the medical institution** and their safe use.

(j) Providing a ~~method~~**process** by which medications can be obtained during the absence of a pharmacist in a medical institution where a pharmacist is not available 24 hours a day. **The process must comply with all of the following:**

(i) ~~The method shall minimize~~**Minimize** the potential for medication error.

(ii) During the absence of a pharmacist, the services of a pharmacist must be available on an on-call basis.

(iii) Only a limited number of medications that are packaged in units of use must be available.

(iv) The medications must be approved and reviewed periodically as **determined** ~~deemed~~ necessary, but not less than once a year, by an appropriate interdisciplinary practitioner committee of the medical institution.

(v) The medication must be ~~kept~~ **maintained** in a securely locked, substantially constructed cabinet or its equivalent in an area of limited access in a centralized area outside the pharmacy.

(vi) Each medication must be labeled to include the name of the medication~~,~~**;** the strength~~,~~**;** the expiration date, if dated~~,~~**;** and the lot number.

(vii) A written order and a proof of removal and use document ~~must be~~**are** obtained for each medication unit removed **and** ~~The order and document shall be~~ reviewed by the pharmacist within 48 hours of removing medication from the cabinet or its equivalent.

(viii) The pharmacist who directs pharmacy services in the medical institution shall designate the practitioners who are ~~permitted~~ **allowed** to remove the medication.

(ix) A pharmacist shall audit the storage locations as often as needed to guarantee control, but not less than once every 30 days.

(5) ~~Upon~~ **On the** recommendation of an interdisciplinary practitioners' committee, the pharmacist who directs pharmacy services in the medical institution shall adopt written policies and procedures to promote safe medication practices, to conduct medication utilization review, to approve medications for the medical institution's formulary or medication list, and to promote positive patient outcomes. A pharmacist shall meet with the committee ~~at least~~**not less than** quarterly to conduct assigned responsibilities.

(6) A pharmacy shall ensure that every medication dispensed is identified with its name and strength labeled on the container in which it is dispensed or on each single unit package. A pharmacy that is engaged in drug distribution to medical institutions which use unit-of-use packaging shall place identification on the label of its package to allow the package to be readily traced. The name of the patient, or a unique identifier, must be labeled on the medication container. The container may be the individual patient's assigned medication drawer. The directions for use must be on the label of the container if the directions are not communicated in another effective manner. If the medication is to be self-administered, then directions for use must be on the container. The provisions of this subrule are minimum labeling standards only and do not supersede other applicable laws or rules.

(7) A pharmacist shall supervise the destruction of unused portions of prescription medication, other than controlled substances under part 71 of the code, MCL 333.7101 to 333.7125, dispensed to patients. However, medications in single-unit packages and intravenous solutions ~~which~~**that** are designed to be tamper-evident**,** and ~~which~~ show no evidence that tampering has occurred**,** may be returned to stock. Medications that leave the medical institution or its legal affiliates ~~may~~ **must** not be returned to stock for dispensing.

(8) The licensed pharmacist ~~who~~ **that** directs pharmacy services in the medical institution shall make the policies~~,~~ **and** procedures~~, and written reports~~ required by this rule available to **an agent of** the board, ~~up~~on request.

~~PHARMACY SERVICES IN MEDICAL INSTITUTIONS~~

PART 1. GENERAL PROVISIONS

R 338.501 Definitions.

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

(a) "ACPE" means Accreditation Council for Pharmacy Education.

(~~a~~**b**) "Approved education program" means a school of pharmacy that is accredited by or has candidate status by the ~~Accreditation Council for Pharmacy Education (~~ACPE~~)~~.

(~~b~~**c**) "Board" means the Michigan board of pharmacy, created in section 17721 of the code, MCL 333.17721.

(~~c~~**d**) "Code" means the public health code, 1978 PA 368, MCL 333.1101 to 333.25211.

(~~d~~**e**) "Compounding" means the preparation, mixing, assembling, packaging, and labeling of a drug or device by a pharmacist under any of the following circumstances:

(i) ~~Upon the~~ **On** receipt of a prescription for a specific patient.

(ii) ~~Upon the~~ **On** receipt of a medical or dental order from a prescriber or agent for use in the treatment of patients within the course of the prescriber's professional practice.

(iii) In anticipation of the receipt of a prescription or medical or dental order based on routine, regularly observed prescription**,** or medical or dental order patterns.

(iv) For the purpose of or incidental to research, teaching, or chemical analysis and not for the purpose of sale or dispensing.

(f)~~(e)~~ "Compounding" does not include any of the following:

(i) Except as provided in section 17748c of the code, MCL 333.17748c, the compounding of a drug product that is essentially a copy of a commercially available product.

(ii) The reconstitution, mixing, or other similar act that is performed ~~pursuant to~~**under** the directions contained in approved labeling provided by the manufacturer of a commercially available product.

(iii) The compounding of allergenic extracts or biologic products.

(iv) Flavoring agents added to conventionally manufactured and commercially available liquid medications. Flavoring agents must be nonallergenic and inert, not exceeding 5% of a drug product's total volume.

(g) "CPMP" means customized patient medication package that is prepared by a pharmacist for a specific patient and contains 2 or more prescribed solid oral dosage forms.

(h) "DEA" means the Federal Drug Enforcement Administration.

(i)(~~f~~) "Department" means the department of licensing and regulatory affairs.

(j)(~~g~~) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record. An electronic signature is a unique identifier protected by appropriate security measures that is only available for use by the intended individual and ensures non-repudiation so that the signature may not be rejected based on its validity.

(k)(~~h~~) "Error prevention technology" means machinery and equipment used in a pharmacy setting to reduce dispensing medication errors including, but not limited to, barcode verification and radio frequency identification.

(l) "FDA" means the United States Food and Drug Administration.

(m) "FEIN" means a federal employer identification number.

(n) "FPGEC" means the Foreign Pharmacy Graduate Examination Committee.

(o) "GED" means a general education development certificate.

(p) "Manual signature" means a signature that is handwritten or computer-generated if a prescription is electronically transmitted, as **that term is** defined in section 17703~~(8)~~ of the code, MCL 333.17703.

(q) "MPJE" means the Michigan multistate pharmacy jurisprudence examination.

(r) "NABP" means the National Association of Boards of Pharmacy.

(s) "NABP-VPP" means the NABP Verified Pharmacy Program.

(t) "NAPLEX" means the North American pharmacist licensure examination.

(u) "PIC" means pharmacist in charge.

(v)(~~j~~) "Practical experience" means professional and clinical instruction in, but not limited to, all of the following areas:

(i) Pharmacy administration and management.

(ii) Drug distribution, use, and control.

(iii) Legal requirements.

(iv) Providing health information services and advising patients.

(v) Pharmacist's ethical and professional responsibilities.

(vi) Drug and product information.

(vii) Evaluating drug therapies and preventing or correcting drug-related issues.

(w) "USP" means the United States Pharmacopeia.

(x)(~~k~~) "Virtual manufacturer" means a**n individual** ~~person~~ who engages in the manufacture of prescription drugs or devices and meets all of the following:

(i) Owns either of the following:

(A) The new prescription drug application or abbreviated new prescription drug application number.

(B) The unique device identification number, as available, for a prescription device.

(ii) Contracts with a contract manufacturing organization for the physical manufacture of the drugs or devices.

(iii) Is not involved in the physical manufacture of the drugs or devices.

(iv) At no time takes physical possession of or stores the drugs or devices.

(v) Sells or offers for sale to other **individuals** ~~persons~~, for resale, compounding, or dispensing of, drugs or devices, salable on prescription only.

(y)~~(l)~~ "Written" includes both paper and electronic forms.

(2) Unless otherwise defined in these rules, the terms defined in the code have the same meaning ~~whena~~**as** used in these rules.

R 338.505 Inspection of applicants and licensees.

Rule 5. (1) The board, board inspector, board agent, or an entity approved ~~pursuant to~~**under** R 338.532, may enter at reasonable times, any building, place, or facility that is owned or controlled by any applicant for, or holder of, a license to inspect to enable the board to determine if the applicant possesses the qualifications and competence for the license sought or to determine whether a license holder is and has been complying with the code and rules. The inspection must concern only matters relevant to the applicant's or license holder's practice of pharmacy, manufacturing, and wholesale ~~distributing~~ **distribution** of drugs and devices saleable by prescription only.

(2) Inspections in subrule (1) of this rule must not extend to any of the following information, however, the following information is subject to a disciplinary investigation:

(a) Financial data.

(b) ~~Sales data~~ **Purchasing data,** other than shipment data**, and the current and historical selling price of a drug**.

~~(c) Pricing data.~~

~~(d)~~**(c)** Personnel data**,** other than data as to the qualifications of personnel performing functions subject to the acts and rules enforced by the board.

~~(e)~~**(d)** Research data**, other than research data that confirms the appropriate use of controlled substances for research purposes, or research data for accountability for reconciliation of prescription drug inventories**.

(3) An applicant or license holder shall **allow** ~~permit~~ and cooperate with the inspection.

PART 2. PHARMACIST LICENSES

R 338.511 Training standards for identifying victims of human trafficking; requirements.

Rule 11. (1) ~~Pursuant to~~**Under** section 16148 of the code, MCL 333.16148, ~~an~~ **the** individual seeking licensure or **who** is licensed shall **have** complete**d** training in identifying victims of human trafficking that meets the following standards:

(a) Training content must cover all of the following:

(i) Understanding the types and venues of human trafficking in the United States.

(ii) Identifying victims of human trafficking in ~~health care~~**healthcare** settings.

(iii) Identifying the warning signs of human trafficking in ~~health care~~**healthcare** settings for adults and minors.

(iv) **Identifying** ~~Resources~~ **resources** for reporting the suspected victims of human trafficking.

(b) Acceptable providers or methods of training include any of the following:

(i) Training offered by a nationally recognized or state-recognized, health-related organization.

(ii) Training offered by, or in conjunction, with a state or federal agency.

(iii) Training obtained in an educational program that has been approved by the board for initial licensure, or by a college or university.

(iv) Reading an article related to the identification of victims of human trafficking that meets the requirements of subdivision (a) of this subrule and is published in a ~~peer reviewed~~ **peer-review** journal, ~~health care~~**healthcare** journal, or professional or scientific journal.

(c) Acceptable modalities of training may include any of the following:

(i) Teleconference or webinar.

(ii) Online presentation.

(iii) Live presentation.

(iv) Printed or electronic media.

(2) The department may select and audit **an individual** ~~a sample of individuals~~ and request documentation of proof of completion of training. If audited by the department, ~~an~~ **the** individual shall provide an acceptable proof of completion of training, including either of the following:

(a) Proof of completion certificate issued by the training provider that includes the date, provider name, name of training, and individual's name.

(b) A self-certification statement by ~~an~~ **the** individual. The certification statement must include the individual's name and ~~either~~ **1** of the following:

(i) For training completed ~~pursuant to~~**under** subrule (1)(b)(i) to (iii) of this rule, the date, training provider name, and name of training.

(ii) For training completed ~~pursuant to~~**under** subrule (1)(b)(iv) of this rule, the title of article, author, publication name of ~~peer review~~ **the peer-review** journal, ~~health care~~**healthcare** journal**,** or professional or scientific journal, and **the** date, volume, and issue of publication as applicable.

~~(3) Pursuant to section 16148 of the code, MCL 333.16148, the requirements specified in subrule (1) of this rule apply for license renewals beginning January 1, 2020 and for initial licenses issued after November 13, 2022.~~

R 338.513 Educational limited license; application and renewal; practices.

Rule 13. (1) An applicant for an educational limited license shall submit to the department a completed application on a form provided by the department with the requisite fee. In addition to satisfying the requirements of sections 16174 and 17737 of the code, MCL 333.16174 and ~~MCL~~ 333.17737, the applicant shall establish ~~either~~ **1** of the following:

(a) That the applicant is actively enrolled in, or is within 180 days of completing, an approved educational program.

(b) That the applicant has received a ~~Foreign Pharmacy Graduate Examination Committee (~~FPGEC~~)~~ certification from the ~~National Association of Boards of Pharmacy (~~NABP~~)~~ Foreign Pharmacy Graduate Examination Committee, 1600 Feehanville Dr**ive**~~.~~, Mount Prospect, Illinois, 60056, https://nabp.pharmacy/programs/fpgec/.~~)~~

(2) The educational limited license must be renewed annually as follows:

(a) At the time of renewal, the applicant shall submit verification to the department that ~~he or she~~ **the applicant** is actively enrolled in, or is within 180 days of completing, an approved educational program. The educational limited license is valid for 1 year.

(b) If an applicant is a graduate of a non-accredited college or school of pharmacy at the time of renewal, the applicant shall submit verification to the department from his or her preceptor that the applicant is currently in an internship program under the preceptor's supervision. The educational limited license is valid for 1 year and may be renewed 1 time.

(3) An educational limited licensee may engage in the practice of pharmacy only under the personal charge of a pharmacist.

(4) An educational limited licensee shall verify that ~~his or her~~ **the licensee's** pharmacy preceptor holds a valid preceptor license ~~prior to~~ **before** engaging in the practice of pharmacy if the internship hours will be submitted to the department for credit.

(5) An educational limited licensee shall notify the board within 30 days if ~~he or she~~ **the licensee** is no longer actively enrolled in an approved educational program.

(6) An applicant for an educational limited license shall meet the requirements of R 338.511.

R 338.515 Internship requirements.

Rule 15. (1) ~~An~~ **An applicant for a pharmacist license shall acquire a minimum** ~~internship must be a minimum~~ of 1,600 **internship** hours, **which may be completed through an educational program, under the personal charge of a preceptor, through a preapproved unconventional internship, or through an educational program outside of the United States under subrule (2) of this rule. An internship is** subject to all of the following:

(a) Not more than 40 hours per week may be earned.

(b) An unconventional internship requires prior board approval and is limited to a maximum of 400 hours, with a maximum of 16 hours earned per week, and not more than 40 hours earned per week when the intern's pharmacy school is not in session. ~~"Unconventional~~ **As used in this subdivision, "unconventional** internship" means an educational program of professional and practical experience involving the pharmacy or related pharmaceutical experiences which, through on-the-job training, provides knowledge useful to the practice of the profession of pharmacy.

(c) The licensed pharmacy preceptor, an approved education program, or other **individual** ~~person~~ previously approved by the board shall verify ~~the~~ **internship** hours.

(d) An individual participating in a preapproved unconventional internship shall annually submit to the department an affidavit from the internship supervisor that includes the type of activities performed and the number of internship hours completed.

~~(2)~~**(e)** The internship must provide professional and practical experience.

~~(3)~~**(2) An individual who graduated from a program outside the United States may petition the board for approval of a maximum of 1,400 internship hours** ~~If~~ **if** an internship is not completed through an approved educational program or under the personal charge of a preceptor licensed in this state~~, the individual shall petition the board for approval of hours~~. **The internship hours must be obtained through an educational program experience.**

~~(4)~~**(3)** An individual shall obtain an educational limited license ~~pursuant to~~**under** R 338.513 before starting an internship that includes the practice of pharmacy in this state.

R 338.517 Preceptor license and responsibilities.

Rule 17. (1) An applicant for licensure as a pharmacist preceptor shall submit to the department a completed application on a form provided by the department.

(2) The applicant shall satisfy both of the following:

(a) Have an unrestricted pharmacist license from this state that is in good standing for the past year.

(b) Have been engaged in the practice of pharmacy in this state for at least 1 year.

(3) A preceptor shall do all of the following:

(a) Ensure that the pharmacist on duty is supervising not more than 2 pharmacist interns at the same time. The approved preceptor is responsible for the overall internship program at the pharmacy.

(b) Determine the degree of the intern's professional skill on the topics listed in R 338.501(1)(~~j~~**u**) and develop a training program where~~by~~ the intern can improve ~~his or her~~ **the intern's** skill in these areas.

(c) Ensure sufficient time to instruct the intern on the topics in R 338.501(1)(~~j~~**u**) and review and discuss the intern's progress on the topics in R 338.501(1)(~~j~~**u**).

(4) ~~(d) Annually submit to the department training affidavits that include the number of internship hours completed by the intern in the practice of pharmacy.~~
Unless the hours are completed in an educational program, the preceptor shall submit to the department a training affidavit that includes the number of internship hours completed by the intern in the practice of pharmacy.

R 338.519 Examinations adoption; passing scores; reexamination.
Rule 19. (1) The board adopts the ~~North American pharmacist licensure examination (~~NAPLEX~~)~~ developed and administered by the NABP.
(2) The board adopts the ~~Michigan multistate pharmacy jurisprudence examination (~~MPJE~~)~~ that is developed and administered by NABP.
(3) The passing score for the NAPLEX or the MPJE accepted for licensure **is** ~~will be~~ the passing score established by the NABP.
(4) An applicant **that** ~~who~~ fails to pass the NAPLEX shall wait ~~at least~~**not less than** 45 days to retest or comply with the current waiting period established by NABP, whichever is longer. An applicant **that** ~~who~~ has not achieved a passing score on the NAPLEX may not take the NAPLEX more than 3 times in a 12-month period.
(5) An applicant **that** ~~who~~ fails to pass the MPJE shall wait ~~at least~~ **not less than** 30 days to retest or comply with the current waiting period established by NABP, whichever is longer.
(6) If an applicant for licensure fails to pass either of these examinations ~~,~~ within 3 attempts, the applicant shall request preapproval from the department, after consultation with a board member, if necessary, of a live or interactive examination preparation course, or instruction with an instructor with expertise on the subject matter, for the examination that ~~he or she~~ **the applicant** failed. After participating in the course or instruction the applicant shall provide the department with proof that ~~he or she~~ **the applicant** completed the course or instruction.
(7) An applicant may not sit for the NAPLEX specified in subrule (4) of this rule more than 5 times, unless ~~he or she~~ **the applicant** successfully repeats an approved education program, as specified in R 338.521(2)(a)(i) and provides proof of completion to the department.
(8) An applicant may not sit for the MPJE specified in subrule (5) of this rule more than 5 times, unless ~~he or she~~ **the applicant** successfully repeats an approved pharmacy law course in an educational program, as specified in R 338.521(2)(a)(i) and provides proof of completion to the department.

R 338.521 Pharmacist licensure by examination.
Rule 21. (1) An applicant for licensure as a pharmacist by examination shall submit to the department a completed application on a form provided by the department with the requisite fee.
(2) In addition to meeting the requirements of section 16174 of the code, MCL 333.16174~~,~~**; R 338.7001 to R 338.7005; and any other rules promulgated under the code,** an applicant for licensure shall satisfy all of the following requirements:
(a) ~~Have earned~~**Earn** either of the following:
(i) A professional degree from a school of pharmacy accredited by the ACPE.
(ii) A FPGEC certification from the NABP. An applicant **that** ~~who~~ has an FPGEC certification from NABP has met the English proficiency requirement as the applicant's credentials and English proficiency have been evaluated and determined to be equivalent to the credentials required in this state.
(b) ~~Passed~~**Pass** the MPJE and the NAPLEX.
(c) ~~Completed~~**Complete** an internship as set forth in R 338.515.
(d) ~~Completed~~**Complete** a 1-time training identifying victims of human trafficking as required in R 338.511 and section 16148 of the code, MCL 333.16148.

(e) ~~Completed~~**Complete** a 1-time training in opioids and other controlled substances awareness as required in R 338.3135.

(f) ~~Submitted proof to the department of meeting the English language requirement under R 338.7002b and the implicit bias training required in R 338.7004. An applicant who has an FPGEC certification from NABP has met the English proficiency requirement as the applicant's credentials and English proficiency have been evaluated and determined to be equivalent to the credentials required in this state.~~

(3) An applicant **that** ~~who~~ is or has ever been licensed, registered, or certified in a health profession or specialty by ~~any other~~**another** state, the United States military, the federal government, or another country, shall do both of the following:

(a) Disclose each license, registration, or certification on the application form.

(b) Satisfy the requirements of section 16174(2) of the code, MCL 333.16174, **including** ~~which includes~~ verification from the issuing entity showing that disciplinary proceedings are not pending against the applicant and sanctions are not in force at the time of application.

R 338.523 Pharmacist license by endorsement; requirements.

Rule 23. (1) An applicant **that has never held a pharmacist license in this state and is licensed in another state or Canada, may apply** for licensure as a pharmacist by endorsement ~~shall submit~~ **by submitting** to the department a completed application on a form provided by the department with the requisite fee. An applicant **that** ~~who~~ meets the requirements of this rule**, R 338.7001 to R 338.7005, and any other rules promulgated under the code** is presumed to meet the requirements of section 16186 of the code, MCL 333.16186.

(2) An applicant shall satisfy all of the following requirements:

(a) Establish 1 of the following:

(i) ~~He or she~~ **The applicant** holds a license in good standing as a pharmacist in another state and submits the NABP licensure transfer report to the department.

(ii) ~~He or she~~ **The applicant** holds a pharmacy license in Canada that is in good standing and meets all of the following:

(A) ~~He or she~~ **The applicant** has passed the NAPLEX or both part I and part II of the Pharmacy Examining Board of Canada ~~(PEBC)~~ Pharmacists Qualifying Examination.

(B) ~~He or she~~ **The applicant** completed educational requirements for a pharmacist license from a school of pharmacy accredited by the ACPE or accredited by the Canadian Council for Accreditation of Pharmacy Programs ~~(CCAPP)~~.

(C) If ~~he or she~~ **the applicant** held a pharmacist license for less than 1 year in Canada, ~~he or she~~ **the applicant** had acquired a minimum of 1,600 hours of pharmacy practice either through an approved internship or hours engaged in the practice as a pharmacist.

(b) ~~Pass the MPJE as required under R 338.519~~**Provide an attestation to the department that the applicant has sufficient knowledge of the code and the board's rules to competently practice pharmacy in this state.**

(c) An applicant **that** ~~who~~ is or has ever been licensed, registered, or certified in a health profession or specialty by ~~any other~~**another** state, the United States military, the federal government, or another country, shall do both of the following:

(i) Disclose each license, registration, or certification on the application form.

(ii) Satisfy the requirements of section 16174(2) of the code, MCL 333.16174, **including** ~~which include~~ verification from the issuing entity showing that disciplinary proceedings are not pending against the applicant and sanctions are not in force at the time of application.

(d) ~~He or she~~ **The applicant** meets section 16174 of the code, MCL 333.16174, and submits his or her fingerprints to the department of state police to have a criminal background check conducted by the state police and the ~~federal bureau of investigation~~**Federal Bureau of Investigation**.

(e) ~~He or she~~ **The applicant** completes a 1-time training identifying victims of human trafficking as required in R 338.511 and section 16148 of the code, MCL 333.16148.

(f) ~~He or she~~ **The applicant** completes a 1-time training in opioids and other controlled substances awareness as required in R 338.3135.

~~(g) He or she submits proof to the department of meeting the English language requirement under R 338.7002b and the implicit bias training required in R 338.7004.~~

~~(3)~~**(2)** An applicant **that** ~~who~~ has an FPGEC certification from NABP has met the English proficiency requirement. The applicant's credentials and English proficiency have been evaluated and determined to be equivalent to the credentials required in this state.

R 338.525 Relicensure of a pharmacist license; requirements.

Rule 25. (1) An applicant for relicensure whose pharmacist license has lapsed in this state, under sections 16201(3) or (4) and 17733 of the code, MCL 333.16201and ~~MCL~~ 333.17733, as applicable, may be relicensed by complying with the following requirements as noted by (x):

For a pharmacist who has let his or her license lapse in this state and ~~who~~ is not currently licensed in another state or a province of Canada:	License lapsed 0-3 years**.**	License lapsed more than 3 years, but less than 8 years**.**	License lapsed 8 or more years**.**
(a) ~~Application and fee: submit~~ **Submit** to the department a completed application on a form provided by the department~~,~~ with the requisite fee.	X	X	X
(b) ~~Good moral character: establish~~**Establish** that ~~he or she~~ **the applicant** is of good moral character as **that term is** defined **in, and determined** under**,** ~~sections 1 to 7 of~~ 1974 PA 381, MCL 338.41 to MCL 338.47.	X	X	X
(c) ~~Submit fingerprints: submit~~**Submit** fingerprints as required under section 16174(3) of the code, MCL 333.16174.		X	X
(d) ~~Continuing education: submit~~**Submit** proof of completing 30 hours of continuing education that satisfy R 338.3041 to R 338.3045 in the 2 years immediately ~~preceding~~ **before** the ~~date of~~ application for relicensure. However, if the continuing education hours submitted with the application are deficient, the applicant has 2 years ~~from~~**after** the date of the application to complete the deficient hours. The application ~~will~~ **must** be held and the license ~~will~~ **may** not be issued until the continuing education requirements **are** ~~have been~~ met.	X	X	X

(e) ~~Pass MPJE: r~~**R**etake and pass the MPJE as provided in R 338.519.		X	X
(f) Meet the English language requirement under R 338.7002b.	X	X	X
(~~f~~**g**) ~~Submit~~**Submit** proof of completing a 1-time training in identifying victims of human trafficking as required in R 338.511, a 1-time training in opioids and other controlled substances awareness as required in R 338.3135, and implicit bias training as required in R 338.7004.	X	X	X
(~~g~~**h**) ~~Practical experience: complete~~**Complete** 200 hours of practical experience under the personal charge of a **pharmacist** currently licensed ~~Michigan~~ **in this state who is located** ~~pharmacist~~ in or outside of ~~Michigan~~ **this state**, within 6 months ~~of of~~ **after** being granted a limited license.		X	
(~~h~~**i**) ~~Practical experience: complete~~**Complete** 400 hours of practical experience under the personal charge of a **pharmacist** currently licensed ~~Michigan pharmacist~~**in this state who is located** in or outside of ~~Michigan~~ **this state**, within 6 months ~~of of~~**after** being granted a limited license.			X
(~~i~~**j**) ~~Examination:~~**Retake and pass** the NAPLEX within 2 years before applying for relicensure, as provided in R 338.519.			X
(~~j~~**k**) An applicant **that** ~~who~~ is or has ever been licensed, registered, or certified in a health profession or specialty by ~~any other~~**another** state, the United States military, the federal government, or another country, shall do both of the following: (i) Disclose each license, registration, or certification on the application form. (ii) Satisfy the requirements of section 16174(2) of the code, MCL 333.16174, ~~which includes~~ **including** verification from the issuing entity showing that disciplinary proceedings are not pending against the applicant and sanctions are not in force at the time of application.	X	X	X

(2) ~~For purposes of~~ **As used in** subrule (1)(**gh**) and (~~hi~~**i**) of this rule, an applicant may be granted a non-renewable limited license to complete the practical experience.
(3) To demonstrate compliance with subrule (1)(**gh**) or (~~hi~~**i**), the supervising pharmacist shall provide verification to the department of the applicant's completion of the experience on a form provided by the department.

(4) For a pharmacist who has let his or her pharmacist license lapse in this state, but who holds a current and valid pharmacist license in good standing in another state or a Canadian province:	License lapsed 0-3 ~~Years~~**years.**	License lapsed more than 3 years, but less than 8 years**.**	License lapsed 8 or more years**.**
(a) ~~Application and fee: submit~~**Submit** to the department a completed application on a form provided by the department~~,~~ with the requisite fee.	X	X	X
(b) ~~Good moral character: establish~~**Establish** that ~~he or she~~ **the applicant** is of good moral character as **that term is** defined **in, and determined** under**,** ~~sections 1 to 7 of~~ 1974 PA 381, MCL 338.41 to MCL 338.47.	X	X	X
(c) ~~Submit fingerprints: submits~~**Submit** fingerprints as required under section 16174(3) of the code, MCL 333.16174.		X	X
(d) ~~Continuing education: submit~~ **Submit** proof of completing 30 hours of continuing education that satisfy R 338.3041 to R 338.3045 in the 2 years immediately ~~preceding~~ **before** the ~~date of~~ application for relicensure. However, if the continuing education hours submitted with the application are deficient, the applicant has 2 years ~~from~~**after** the date of the application to complete the deficient hours. The application **must** ~~will~~ be held and the license ~~will~~ **may** not be issued until the continuing education requirements **are** ~~have been~~ met.	X	X	X
(e) ~~Submit~~**Submit** proof of completing a 1-time training in identifying victims of human trafficking as required in R 338.511, a 1-time training in opioids and other controlled substances awareness as required in R 338.3135, and implicit bias training as required in R 338.7004.	X	X	X
(f) ~~Examination: retake and pass the~~		X	X

~~MPJE as provided in R 338.519519~~**Provide an attestation to the department that the applicant has sufficient knowledge of the code and the board's rules to competently practice pharmacy in this state**.			
(g) Meet the English language requirement under R 338.7002b.	X	X	X
(~~g~~**h**) An applicant **that** ~~who~~ is or has ever been licensed, registered, or certified in a health profession or specialty by ~~any other~~**another** state, the United States military, the federal government, or another country, shall do both of the following: (i) Disclose each license, registration, or certification on the application form. (ii) Satisfy the requirements of section 16174(2) of the code, MCL 333.16174, ~~which includes~~ **including** verification from the issuing entity showing that disciplinary proceedings are not pending against the applicant and sanctions are not in force at the time of application.	X	X	X

(5) If relicensure is granted and it is determined that a sanction has been imposed by another state, the United States military, the federal government, or another country, the disciplinary subcommittee may impose appropriate sanctions under section 16174(5) of the code, MCL 333.16174.

PART 3. PHARMACY LICENSES

R 338.531 Pharmacy license; remote pharmacy license; applications; requirements.

Rule 31. (1) An applicant for a pharmacy license or a remote pharmacy license shall submit to the department a completed application on a form provided by the department together with the requisite fee.

(2) An applicant shall submit all of the following information:

(a) Certified copies of articles of incorporation or partnership certificates and certified copies of assumed name certificates, if applicable.

(b) Submission of fingerprints for the purpose of a criminal history background check required under section 17748(6) of the code, MCL 333.17748.

(c) A ~~federal employer identification number (~~FEIN~~)~~ certificate.

(d) The name and license number of the pharmacist in this state designated as the ~~pharmacist in charge (~~PIC~~)~~ ~~pursuant to~~**under** section 17748(2) of the code, MCL 333.17748, who must have a valid and unrestricted license. **If a PIC is unable to fulfill his or her duties for 120 consecutive days, the pharmacy shall appoint a new PIC and notify the department as required in section 17748(4) of the code, MCL 333.17748.**

(e) The identity and address of each partner, officer, or owner, as applicable.

(f) A completed self-inspection form.

~~(g) If the applicant intends to provide compounding services, proof of application with an entity that satisfies the requirements of R 338.532.~~

(~~h~~**g**) ~~An~~**If the applicant is an out-of-state pharmacy that will not provide sterile compounding services, an** inspection report that satisfies the requirements of R 338.534.

(~~i~~**h**) If the applicant is an in-state pharmacy that intends to compound **sterile** pharmaceutical products, the applicant shall submit to an inspection **under R 338.534a** ~~from an approved accrediting organization under R 338.532~~.

(~~j~~**i**) If the applicant is a governmental entity, an individual ~~must~~ **shall** be designated as the licensee. The licensee and the pharmacist on duty ~~shall be~~**are** responsible for complying with all federal and state laws regulating the practice of pharmacy and the dispensing of prescription drugs.

(~~k~~**j**) If the applicant is applying for a remote pharmacy license, the applicant shall submit the following:

(i) Ownership documents to demonstrate to the satisfaction of the department that the parent pharmacy and the proposed remote pharmacy share common ownership.

(ii) Copies of the policies and procedure manual required in section 17742b of the code, MCL 333.17742b.

(iii) A map showing all of the existing pharmacies within 10 miles of the proposed remote pharmacy if the remote pharmacy will not be located at a hospital or mental health facility.

(~~l~~**k**) If the applicant is or has ever been licensed, registered, or certified as a pharmacy by ~~any other~~**another** state, the United States military, the federal government, or another country, the applicant shall do both of the following:

(i) Disclose each license, registration, or certification on the application form.

(ii) Submit verification from the issuing entity showing that disciplinary proceedings are not pending against the applicant and sanctions are not in force at the time of application.

(3) The department shall issue only 1 pharmacy license per address. If an applicant has more than 1 location at which drugs are prepared or dispensed, each address location must obtain a separate license.

R 338.531a Remote pharmacy waiver from mileage requirement.

Rule 31a. (1) An applicant seeking a remote pharmacy license may apply to the board for a waiver from the prohibition of locating a remote pharmacy within 10 miles of another pharmacy in section 17742a(2)(c) of the code, MCL 333.17742a, by submitting a completed application to the department, on a form provided by the department.

(2) The applicant shall submit the following with the application:

(a) A map showing the location of any existing pharmacies within 10 miles of the proposed remote pharmacy if the remote pharmacy will not be located at a hospital or mental health facility.

(b) A list and explanation of the services or availability of services that will be offered at the remote pharmacy or otherwise not readily available to patients that are different from the services offered at a pharmacy located within 10 miles of the proposed remote pharmacy.

(c) A statement of facts to support the statement of 1 or more of the following:

(i) The proposed remote pharmacy is located in an area where there is limited access to pharmacy services.

(ii) The proposed remote pharmacy will offer a service or the availability of a service that is unique from other pharmacies in the 10-mile radius from the remote pharmacy and the service will satisfy an unmet need of the surrounding community.

(iii) There exists a limitation on travel that justifies waiving the requirement.

(iv) There are other compelling circumstances that justify waiving the requirement.

(3) If the waiver is denied, the application is considered closed unless within 30 days ~~of~~**after** receipt of the denial, the applicant notifies the department that it is requesting a hearing on the matter.

R 338.532 **Sterile** ~~Compounding~~ **compounding** accrediting organizations; board approval; inspection entities.

Rule 32. (1) The board shall approve, under section 17748a of the code, MCL 333.17748a, accrediting organizations or inspection entities for pharmacies that compound-pharmaceuticals according to standards adopted by reference in R 338.533.

(2) The department shall post on its website, the list of organizations approved under subrule (1) of this rule.

(3) An organization may petition the board for approval under subrule (1) of this rule. The petition must include, but **is** not ~~be~~ limited to, all of the following:

(a) Requirements for accreditation or compliance.

(b) Requirements for inspectors.

(c) Training provided to inspectors.

(d) Copy of the most current inspection form.

(e) The length of accreditation.

(f) Agreement and plan to share results of inspections with the department.

(4) If the board approves the petition, the approval is valid for 3 years ~~from~~**after** the date of approval. The organization may submit a petition that complies with subrule (3) of this rule to seek continuing approval.

(5) The board may rescind approval of an organization upon just cause. The rescission will not immediately affect the compliance of a pharmacy using the accreditation. Within 12 months ~~of~~ **after** the rescission date or by the next licensure renewal date, whichever is later, the accreditation is void, and a pharmacy shall obtain accreditation or an inspection from an organization that satisfies subrule (1) of this rule.

R 338.533 Compounding standards and requirements; outsourcing facilities; requirements.

Rule 33. (1) The board approves and adopts by reference the compounding standards of ~~the United States Pharmacopeia (~~USP~~)~~, published by the United States Pharmacopeial Convention, 12601 Twinbrook Parkway, Rockville, Maryland~~,~~ 20852-1790. This includes, but is not limited to, USP Chapters 795 **(revised 2014)** and 797 **(revised 2008)**.

(2) The standards adopted by reference in subrule (1) of this rule are available at no cost at http://www.usp.org/compounding, or at a cost of 10 cents per page from the Board of Pharmacy, Bureau of Professional Licensing, Michigan Department of Licensing and Regulatory Affairs, Ottawa Building, 611 West Ottawa, P.O. Box 30670, Lansing, Michigan~~,~~ 48909.

(3) A pharmacy that provides compounding services shall comply with all **applicable** current standards adopted in subrule (1) of this rule.

(4) An outsourcing facility located in this state or that dispenses, provides, distributes, or otherwise furnishes compounded pharmaceuticals in this state **shall** ~~must~~ be inspected and registered as an outsourcing facility by the ~~United States Food and Drug Administration (~~FDA~~)~~ ~~prior to~~ **before** applying for a pharmacy license in this state.

(5) A licensed outsourcing facility shall submit to the board a copy of the biannual report it provided to the FDA that identifies the drugs compounded in the previous 6-month period, including a drug's active ingredients, strength, and dosage form.

(6) An outsourcing facility shall do all of the following:

(a) Compound drugs by or under the supervision of a licensed pharmacist.

(b) Compound drugs ~~pursuant to~~**under** current good manufacturing practices for finished pharmaceuticals set forth in 21 CFR 211.1 to 211.208 (~~2021~~**2022**).

(c) Ensure that a pharmacist who conducts or oversees compounding at an outsourcing facility is proficient in the practice of compounding and has acquired the education, training, and experience to maintain that proficiency by doing any of the following:

(i) Participating in seminars.

(ii) Studying appropriate literature.

(iii) Consulting with colleagues.

(iv) Being certified by a compounding certification program approved by the board.

(d) Label compounded drugs **and compounded drugs that are patient specific in compliance with the requirements in R 338.582 and** ~~with all of the following and label compounded drugs that are patient specific with~~ **include** all of the following ~~and consistent with the requirements in R 338.582~~:

(i) Required drug and ingredient information.

(ii) Facility identification.

(iii) The following or similar statement: "This is a compounded drug. For office use only" or "Not for resale."

(e) Ensure that bulk drug substances used for compounding meet specified FDA criteria.

(7) An outsourcing facility may compound drugs that appear on an FDA shortage list, if the bulk drug substances used to compound the drugs comply with the criteria specified in this rule.

R 338.534 ~~Inspections~~ **Out-of-state pharmacy licensure inspection; in-state pharmacy licensure renewal inspection**.

Rule 34. (1) A pharmacy located outside of this state that applies for licensure in this state as a pharmacy that will not ship compounded sterile pharmaceutical products into this state shall submit to the department a copy of its most recent **resident state board of** pharmacy inspection **or an NABP-VPP inspection** that was performed within the last 2 years ~~from~~**before** the date of application.

~~(2) An applicant for a new pharmacy located in this state shall have an inspection conducted by the department or its designee prior to licensure.~~

~~(3)~~**(2)** Unless accredited by a national accrediting organization, recognized by the board, an applicant for ~~licensure or~~ renewal of an in-state **pharmacy license,** or **an applicant for an initial or renewal of an** out-of-state pharmacy **license,** that will provide sterile compounded pharmaceuticals in this state shall have an inspection and submit the inspection report to the department, completed no more than 18 months before the date of application, that demonstrates compliance with all applicable standards that are adopted by reference in R 338.533. The inspection must be conducted by 1 of the following:

(a) The department.

(b) The ~~NABP-Verified Pharmacy Program (~~NABP-VPP~~)~~.

(c) An accrediting organization according to R 338.532.

(d) A state licensing agency of the state in which the applicant is a resident and in accordance with the NABP's multistate pharmacy inspection blueprint program.

R 338.534a In-state initial pharmacy license inspections.

Rule 34a. (1) An in-state pharmacy that will not compound sterile pharmaceutical products that is applying for initial licensure shall be inspected by the department or its designee before licensure.

(2) An applicant for an in-state pharmacy license that intends to compound sterile pharmaceutical products shall complete both of the following:

(a) Obtain an inspection from the department or its designee for the purpose of meeting R 338.536 and R 338.537 for initial licensure.

(b) Within 6 months after initial licensure under this subrule, a pharmacy shall obtain, and provide to the department, a subsequent inspection to assess USP compliance or achieve accreditation from 1 of the entities listed in R 338.534(2)(a) to (c).

(3) Approval to engage in sterile compounding will end 6 months after initial licensure if a subsequent inspection to assess USP compliance or accreditation is not successful.

R 338.535 Discontinuing, starting, or resuming sterile compounding services; requirements to resume sterile compounding services.

Rule 35. (1) A sterile compounding pharmacy or outsourcing facility that ceases to provide sterile compounding services in this state shall notify the department within 30 days ~~of~~**after** ceasing to provide sterile compounding services.

(2) A pharmacy shall apply for approval to start or resume sterile compounding services by submitting to the department an application on a form provided by the department together with the requisite fee.

(3) A pharmacy shall not start or resume sterile compounding services in this state until the pharmacy submits to the department an inspection report**,** as required in R 338.534~~(3)~~**(2)**, is approved by the department, and is accredited**,** or an organization satisfying the requirements of R 338.532(1) verifies that the pharmacy is USP compliant.

(4) An outsourcing facility shall not start or resume providing sterile compounding services in this state until the outsourcing facility is approved by the department**,** and **the department** verifies that it is compliant with the requirements of R 338.533(4) to (7).

R 338.536 Housing of a pharmacy.

Rule 36. (1) All professional and technical equipment and supplies and prescription drugs must be housed in a suitable, well-lighted, and well-ventilated room or department with clean and sanitary surroundings.

(2) All pharmacies shall have a prescription department that is devoted primarily to the practice of pharmacy that occupies not less than 150 square feet of space, and that includes a prescription counter that provides not less than 10 square feet of free working surface. For each additional pharmacist ~~who is~~ on duty at any 1 time, the free working space must be increased by not less than 4 square feet. The prescription counter must be ~~kept~~ orderly and clean. The space behind the prescription counter must be sufficient to allow free movement within the area and must be free of obstacles.

(3) **Except as allowed in R 338.588a(2),** ~~All~~ pharmacies that occupy less than the entire area of the premises owned, leased, used, or controlled by the licensee **shall** ~~must~~ be permanently enclosed by partitions from the floor to the ceiling. All partitions must be of substantial construction and must be securely lockable so that drugs and devices that can be sold only by a pharmacist ~~will be~~ **are** unobtainable during the absence of the pharmacist. Only the area of the premises owned, leased, used, or controlled by the licensee may be identified by the terms “drugstore,” “apothecary,” or “pharmacy,” or by use of a similar term or combination of terms as listed in section 17711(2) of the code, MCL 333.17711. A pharmacy department must be locked when the pharmacist is not on the premises.

R 338.537 Professional and technical equipment and supplies.

Rule 37. **(1)** A pharmacy ~~must~~ **shall** be equipped with both of the following:

(a) The necessary facilities, apparatus, utensils, and equipment to **allow** ~~permit~~ the pharmacy to provide prompt and efficient services.

(b) Current print, electronic, or internet accessible editions of the ~~Michigan~~ pharmacy laws and rules **of this state**, and ~~at least~~**not less than** 2 current pharmacy reference texts that pertain to pharmacology, drug interactions, or drug composition.

(2) In addition to subrule (1) of this rule, a pharmacy that dispenses drugs shall maintain, at a minimum, all of the following equipment:

(a) A sink with running water.

(b) A refrigerator for the exclusive use of prescription drugs. Personal or food items must not be stored in the refrigerator. Refrigeration must be capable of maintaining temperature within a range compatible with the proper storage of drugs requiring refrigeration or freezing. Temperatures must be monitored at all times for out-of-range temperatures during business closure.

(c) A telephone.

R 338.538 Closing pharmacy.

Rule 38. (1) A pharmacy that is ceasing operations shall return to the department the pharmacy license and the controlled substance license, if applicable, and provide the department with written notification of all of the following ~~at least~~**not less than** 15 days ~~prior to~~ **before** closing:

(a) The effective date of closing.

(b) How controlled substances will be disposed.

(c) How non-controlled substances will be disposed.

(d) The location where records and prescription files will be stored.

(2) A pharmacy shall comply with all applicable federal requirements for discontinuing operation as a pharmacy that dispenses controlled substances.

(3) Records must be maintained for the same amount of time that is required if the pharmacy remained open.

PART 4. MANUFACTURER LICENSE

R 338.551 Manufacturer license; application.

Rule 51. (1) An applicant for a manufacturer license shall submit to the department a completed application on a form provided by the department with the requisite fee.

(2) An applicant shall provide all of the following information:

(a) A criminal history background check required ~~pursuant to~~**under** section 17748(6) of the code, MCL 333.17748.

(b) A FEIN certificate.

(c) Certified copies of articles of incorporation or certificates of partnership and assumed name certificates, if applicable.

(d) The identity and address of each partner, officer, or owner, as applicable.

(e) A completed compliance checklist for manufacturers.

(f) A list or a catalog of all drug products or devices to be manufactured by the facility.

(g) Unless exempt under section 17748(2) of the code, MCL 333.17748, the name and license number of the pharmacist designated as the PIC or the name of the facility manager. **If a PIC or facility manager is unable to fulfil his or her duties for 120 consecutive days, the pharmacy shall appoint a new PIC or facility manager and notify the department as required in section 17748(4) of the code, MCL 333.17748.** For an individual who is designated as a facility manager, the applicant shall provide proof, in the form of an affidavit, that the facility manager has achieved the following:

(i) A high school equivalency education, or higher, defined as 1 of the following:

(A) A high school diploma.

(B) A ~~general education development certificate (~~GED~~)~~.

(C) A parent-issued diploma for home schooled individuals.

(D) Completion of post-secondary education, including either an associate's ~~degree~~, ~~a~~ bachelor's ~~degree~~, or a master's degree.

(ii) Completion of a training program that includes, but is not limited to, all of the following subjects:

(A) Knowledge and understanding of laws in this state and federal laws relating to the distribution of drugs and devices.

(B) Knowledge and understanding of laws in this state and federal laws relating to the distribution of controlled substances.

(C) Knowledge and understanding of quality control systems.

(D) Knowledge and understanding of the USP standards relating to the safe storage and handling of prescription drugs.

(E) Knowledge and understanding of pharmaceutical terminology, abbreviations, dosages, and format.

(iii) Experience equal to either of the following:

(A) A minimum of 1 year of work experience related to the distribution or dispensing of prescription drugs or devices where the responsibilities included, but were not limited to, recordkeeping.

(B) Previous or current employment as a designated representative of a manufacturer.

(iv) Employment with the applicant.

(h) A copy of the FDA certification for the site to be licensed, if an applicant is a manufacturer of biologicals.

(i) An inspection from the **FDA, or** manufacturer's resident state board of pharmacy**, that is dated not more than 2 years before application** or ~~verified accredited wholesale distributors (VAWD)~~ **current NABP drug distributor accreditation**~~accreditation dated not more than 2 years prior to the application~~.

(j) An applicant that is or has ever been licensed, registered, or certified as a manufacturer by ~~any other~~**another** state, the United States military, the federal government, or another country, shall do both of the following:

(i) Disclose each license, registration, or certification on the application form.

(ii) Submit verification from the issuing entity showing that disciplinary proceedings are not pending against the applicant and sanctions are not in force at the time of application.

(3) A separate license is required for each location where prescription drugs or devices are manufactured.

(4) A manufacturer who changes its facility manager shall submit all of the information required in subrule (2)**(g)**~~(i)~~ of this rule to the department within 30 days ~~of~~**after** the change.

R 338.555 Federal regulation on good manufacturing practice for finished pharmaceuticals; adoption by reference; compliance.

Rule 55. (1) The board approves and adopts by reference the current good manufacturing practice for finished pharmaceuticals regulations set forth in 21 CFR 211.1 to 211.208 (~~2021~~**2022**).

(2) A manufacturer shall comply with the standards adopted in subrule (1) of this rule.

(3) The standards adopted by reference in subrule (1) of this rule are available at no cost at https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfCFR/CFRSearch.cfm?CFRPart=211, or at 10 cents per page from the Board of Pharmacy, Bureau of Professional Licensing, Michigan Department of Licensing and Regulatory Affairs, Ottawa Building, 611 West Ottawa, P.O. Box 30670, Lansing, Michigan~~,~~ 48909.

R 338.557 ~~Closure~~**Closing** of a manufacturer.

Rule 57. (1) A manufacturer that is ceasing operations shall return the manufacturer license and the controlled substance license, if applicable, to the department, and provide the department with written notification of all of the following ~~at least~~**not less than** 15 days **before** ~~prior to~~ closing:

(a) The effective date of closing.
(b) How controlled substances will be disposed.
(c) How non-controlled substances will be disposed.
(d) The location where records and prescription files will be stored.
(2) A manufacturer shall comply with all applicable federal requirements for discontinuing a controlled substance business.
(3) Records must be maintained for the same amount of time that is required if the manufacturer remains open.

R 338.559 Relicensure and renewal.
Rule 59. (1) An applicant with an expired license may apply for relicensure of a manufacturer license by submitting to the department a completed application on a form provided by the department, satisfying all the requirements for licensure in part ~~3~~**4** of these rules, ~~R 338.531 to R 338.539~~**R 338.551 to R 338.559**, and paying the requisite fee.
(2) A manufacturer that renews its license during the license renewal period shall submit to the department a completed application on a form provided by the department together with the requisite fee.

PART 5. WHOLESALE DISTRIBUTOR AND WHOLESALE DISTRIBUTOR-BROKER LICENSE

R 338.563 Wholesale distributor, wholesale distributor-broker; application for licensure; requirements.
Rule 63. (1) An applicant for a wholesale distributor or wholesale distributor-broker license shall submit to the department a completed application on a form provided by the department with the requisite fee. A wholesale distributor includes virtual manufacturers.
(2) An applicant shall comply with all of the following:
(a) Provide a criminal history background check required ~~pursuant to~~**under** section 17748(6) of the code, MCL 333.17748.
(b) Disclose on the application form each license, registration, or certification in a health profession or specialty issued by ~~any other~~**another** state, the United States military, the federal government, or another country.
(c) Satisfy the requirements of section 16174(2) of the code, MCL 333.16174, ~~which include~~ **including** verification from the issuing entity showing that disciplinary proceedings are not pending against the applicant and sanctions are not in force at the time of application.
(d) Provide certified copies of articles of incorporation or certificates of partnership and assumed names if applicable.
(e) Provide the identity and address of each partner, officer, or owner as applicable.
(f) Provide a completed compliance checklist.
(g) Provide a FEIN certificate.
~~(h) Provide a copy of the FDA certification, if a certification is required by the FDA, for the site to be licensed, if the applicant is distributing biologicals.~~
(~~i~~**h**) Unless exempt under section 17748(2) of the code, MCL 333.17748, provide the name and the license number of the pharmacist designated as the PIC or the name of the facility manager. **If a PIC or facility manager is unable to fulfil his or her duties for 120 consecutive days, the pharmacy shall appoint a new PIC or facility manager and notify the department as required in section 17748(4)**

of the code, MCL 333.17748. For individuals designated as a facility manager, the applicant shall provide proof, in the form of an affidavit, that the facility manager has achieved the following:

(i) A high school equivalency education, or higher, defined as 1 of the following:

(A) A high school diploma.

(B) A GED.

(C) A parent-issued diploma for home schooled individuals.

(D) Completion of post-secondary education, including an associate's, bachelor's, or master's degree.

(ii) Completion of a training program that includes, but is not limited to, all of the following subjects:

(A) Knowledge and understanding of laws in this state and federal laws relating to the distribution of drugs and devices.

(B) Knowledge and understanding of laws in this state and federal laws relating to the distribution of controlled substances.

(C) Knowledge and understanding of quality control systems.

(D) Knowledge and understanding of the USP standards relating to the safe storage and handling of prescription drugs.

(E) Knowledge and understanding of pharmaceutical terminology, abbreviations, dosages, and format.

(iii) Experience equal to either of the following:

(A) A minimum of 1 year of work experience related to the distribution or dispensing of prescription drugs or devices where the responsibilities included, but were not limited to, recordkeeping.

(B) Previous or current employment as a designated representative of a wholesale distributor certified by the ~~VAWD of~~ NABP **drug distributor accreditation** or of a wholesale distributor-broker.

(iv) Current employment with the applicant.

(**j~~i~~**) Provide a list or catalog of all drug products and devices to be distributed, if a wholesale distributor.

(**~~k~~j**) If a wholesale distributor-broker, ~~S~~submit an affidavit, at the time of the application for initial licensure, that the applicant facilitates deliveries or trades for ~~at least~~**not less than** 50 qualified pharmacies and that each pharmacy holds a license in good standing as a pharmacy from the state in which it is located at the time of application~~, if a wholesale distributor-broker~~.

(3) A wholesale distributor or wholesale distributor-broker that changes its facility manager shall submit all of the information required in subrule (2)(**~~i~~h**) of this rule to the department within 30 days ~~of~~**after** the change.

R 338.569 Wholesale distributor and wholesale distributor-broker recordkeeping and policy requirements.

Rule 69. (1) A wholesale distributor shall establish and maintain inventories and records of transactions regarding the receipt, if applicable, and the distribution or other disposition of prescription drugs or devices. These records must include all of the following information:

(a) The source of the prescription drugs or devices, including the name and principal address of the seller or transferor and the address from which the prescription drugs or devices were shipped.

(b) The identity and quantity of the prescription drugs or devices received, if applicable, and distributed or disposed of.

(c) The dates of receipt, if applicable, and distribution of the prescription drugs or devices.

(2) A wholesale distributor shall establish and maintain a list of officers, directors, managers, and other **individuals** ~~persons~~ who are in charge of wholesale drug distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

(3) A wholesale distributor shall have written policies and procedures that include all of the following:

(a) A procedure where~~by~~ the oldest stock of a prescription drug is distributed first. The procedure may ~~permit~~ **allow** deviation from this requirement if the deviation is temporary and appropriate.

(b) A procedure for handling recalls and withdrawals of the prescription drugs or devices. The procedure must deal with recalls and withdrawals due to any of the following:

(i) Any action initiated at the request of the FDA; other federal, state, or local law enforcement agency; or other governmental agency.

(ii) Any voluntary action by the manufacturer to remove defective or potentially defective prescription drugs or devices from the market.

(iii) Any action undertaken to promote public health and safety by replacing existing merchandise with an improved product or new package design.

(c) A procedure to ensure that a wholesale distributor prepares for, protects against, and handles~~,~~ any crises that affects security or operation of any facility**, including** ~~in the event of~~ employee strike, flood, fire, or other natural disaster, or other local, state, or national emergency.

(d) A procedure to ensure that any outdated prescription drugs or devices **are** ~~will be~~ segregated from other prescription drugs or devices and either returned to the manufacturer or destroyed. This procedure must include a provision for the written documentation of the disposition of outdated prescription drugs or devices that must be maintained for 2 years after the disposition of the outdated prescription drugs or devices.

(e) Procedures for identifying, recording, and reporting losses or thefts of prescription drugs or devices and for correcting errors and inaccuracies in inventory.

(4) A wholesale distributor-broker shall establish and maintain a list of officers, directors, managers, and other **individuals** ~~persons~~ who are in charge of wholesale drug delivery and trade, including a description of their duties and a summary of their qualifications.

(5) A wholesale distributor-broker shall maintain for ~~at least~~**not less than** 7 years the transaction history, transaction statements, and transaction information required by section 17748e of the code, MCL 333.17748e.

(6) The records described in subrules (1) to (5), and (8) of this rule and section of 17748e of the code, MCL 333.17748e, must be made available for inspection and photocopying by the department, board, authorized federal, state, or local law enforcement agency officials. The records that are **maintained** ~~kept~~ on-site or that are immediately retrievable by computer or other electronic means must be readily available for an authorized inspection during the retention period described in subrules (5) and (7) of this rule. Records that are **maintained** ~~kept~~ at a central location apart from the site must be made available for inspection within 2 working days ~~of~~**after** a request.

(7) A wholesale distributor shall retain the records described in this rule for a minimum of 2 years after the disposition of the prescription drugs or devices.

(8) A purchasing pharmacy using a wholesale distributor-broker to facilitate a transaction from a pharmacy that is not licensed in **this state** ~~Michigan~~ shall request the transaction history, transaction statement**,** or transaction information for the drugs supplied.

R 338.571 Facility requirements.

Rule 71. (1) A wholesale distributor that has physical custody or control of the prescription drugs or devices shall satisfy all of the following facility requirements:

(a) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations.

(b) Have storage areas that are designed to provide ~~for~~ adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions.

(c) Have a quarantine area for the storage of prescription drugs or devices that are outdated, damaged, deteriorated, misbranded, adulterated, or that are in immediate or sealed secondary containers that **are** ~~have been~~ opened.

(d) Be maintained in a clean and orderly condition.

(e) Be free from infestation by insects, rodents, birds, or vermin of any kind.

(f) Be secure from unauthorized entry by complying with all of the following:

(i) Access from outside the premises must be kept to a minimum and be well-controlled. The outside perimeter of the premises must be well-lighted. Entry into areas where prescription drugs or devices are held must be limited to authorized personnel.

(ii) Be equipped with an alarm system to detect entry after hours.

(iii) Be equipped with a security system that ~~will~~ provide**s** protection against theft and diversion. ~~When~~**If** appropriate, the security system must provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(2) All prescription drugs or devices must be stored at temperatures and under appropriate conditions ~~pursuant to~~**under** the label requirements ~~or~~ pursuant to the requirements set forth in the current edition of the USP compendium. If storage requirements are not established for a prescription drug, the drug may be held at a controlled room temperature to help ensure that its identity, strength, quality, and purity are not adversely affected. Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment devices, or logs must be utilized to document the proper storage of prescription drugs or devices.

R 338.575 Closing a wholesale distributor or wholesale distributor-broker.

Rule 75. (1) A wholesale distributor that is ceasing operations shall return the wholesale distributor license and controlled substance license, if applicable, to the department, and ~~shall~~ provide the department with written notification of all of the following ~~at least~~**not less than** 15 days **before** ~~prior to~~ closing:

(a) The effective date of closing.

(b) How controlled substances will be disposed.

(c) How ~~noncontrolled~~**non-controlled** substances will be disposed.

(d) The location where records and prescription files will be stored.

(2) A wholesale distributor shall comply with all applicable federal requirements for discontinuing a business that handles a controlled substance.

(3) A wholesale distributor-broker that is ceasing operations shall return the wholesale distributor-broker license and provide the department with written notification of the location where records will be stored ~~at least~~**not less than** 15 days **before** ~~prior to~~ closing.

(4) Records must be maintained for the same amount of time that is required if the wholesale distributor or wholesale distributor-broker remained open.

R 338.577 Relicensure and renewal of wholesale distributor and wholesale distributor-broker.

Rule 77. (1) An applicant with an expired license may apply for relicensure of a license by submitting to the department a completed application on a form provided by the department, satisfying all the requirements for licensure in part ~~3~~**5**of these rules, **R 338.563 to R 338.577,** and paying the requisite fee.

(2) An applicant that renews its license during the license renewal period shall submit to the department a completed application on a form provided by the department~~,~~ together with the requisite fee.

(3) A wholesale distributor-broker seeking renewal shall submit an affidavit, at the time of the application for renewal that the applicant facilitates deliveries or trades for ~~at least~~**not less than** 50 qualified pharmacies and that each pharmacy holds a license in good standing as a pharmacy from the state in which it is located at the time of renewal.

PART 6. PRACTICE OF PHARMACY

R 338.583 Prescription drug receipts.

Rule 83. (1) The purchaser of a prescription drug shall receive, ~~at the time~~**when** the drug is delivered to the purchaser, a receipt that contains all of the following information:

(a) The brand name of the drug dispensed, if applicable, unless the prescriber indicates "do not label."

(b) The name of the manufacturer or supplier of the drug if the drug has no brand name, unless the prescriber indicates "do not label."

(c) The strength of the drug, if significant, unless the prescribed indicates "do not label."

(d) The quantity dispensed, if applicable.

(e) The name and address of the pharmacy.

(f) The serial number of the prescription.

(g) The date the prescription was dispensed.

(h) The name of the prescriber.

(i) The name of the patient for whom the drug was prescribed.

(j) The price for which the drug was sold to the purchaser.

(2) Notwithstanding R 338.582, the information required in this rule must appear on either the prescription label or on a combination label and receipt.

(3) For prescription services that are covered by a third-party pay contract, the price included in the receipt is the amount paid by the patient.

(4) A pharmacist shall retain a copy of the receipt for a period of 90 days. The inclusion of the information required in this rule in the automated data processing system or on the written prescription form and the retention of the form constitutes retaining a copy of the receipt. The physical presence of the prescription form in the pharmacy or the ability to retrieve the information from the automated data processing system constitutes compliance with the requirement of having the name and address of the pharmacy on the form.

(5) This rule does not apply to pharmacy services provided in a medical institution.

R 338.583a Pharmacy acquisition and distribution records.

Rule 83a. (1) A pharmacy ~~must~~ **shall** keep and make available for inspection all acquisition and distribution records for prescription and non-prescription drugs and devices, ~~such as~~**including** invoices, packing slips or receipts, for 5 years. All records, which may be electronic, must be readily retrievable within 48 hours.

(2) Acquisition and distribution records must include the following information:

(a) The source of the prescription drugs or devices, including the name and principal address of the seller or transferor and the address from which the prescription drugs or devices were shipped.

(b) The identity and quantity of the prescription drugs or devices received, if applicable, and distributed or disposed of.

(c) The dates of receipt, if applicable, and distribution of the prescription drugs or devices.

R 338.584 ~~Noncontrolled~~**Non-controlled** prescriptions.

Rule 84. (1) A prescriber who issues a prescription for a ~~noncontrolled~~**non-controlled** prescription drug shall date the prescription; provide a manual signature on the prescription; and ensure that the prescription contains all of the following information:

(a) The full name of the patient for whom the drug is being prescribed.

(b) The prescriber’s preprinted, stamped, typed, or manually printed name and address.

(c) The drug name and strength, and dosage form if necessary.

(d) The quantity prescribed.
(e) The directions for use.
(f) The number of refills authorized.
(g) The date the prescription was issued.
(h) If the prescription is for an animal, ~~then~~ the species of the animal and the full name of the owner.
(2) A prescriber shall ensure that a prescription is legible**,** and that the information specified in subrule (1)(c) to (h) of this rule is clearly separated.
(3) A prescriber shall not prescribe more than ~~either~~ **1** of the following on a single prescription form as applicable:
(a) For a prescription prescribed in handwritten form, up to 4 prescription drug orders.
(b) For a prescription prescribed on a computer-generated form or a preprinted list or produced on a personal computer or typewriter, up to 6 prescription drug orders.
(4) A prescription is valid for 1 year ~~from~~**after** the date the prescription was issued.
(5) A pharmacy shall keep the original prescription record for 5 years. ~~After 2~~ **Two** years ~~from~~**after** the date of the prescription's issue date, a pharmacy may make an electronic duplicate of the original non-controlled paper prescription, which becomes the original prescription. A pharmacy shall present a paper copy of the electronic duplicate of the prescription to an authorized agent of the board **on** ~~upon~~ request.
(6) This rule does not apply to pharmacy services provided in a medical institution.

R 338.585 Customized patient medication package.
Rule 85. (1) A pharmacist may, with the consent of the patient, ~~or~~ the patient's caregiver, or a prescriber, provide a ~~customized patient medication package (~~CPMP~~).~~ ~~A CPMP is a package that is prepared by a pharmacist for a specific patient and that contains 2 or more prescribed solid oral dosage forms.~~ The CPMP is designed and labeled to indicate the day and time or period of time that the contents within each CPMP are to be taken. The **individual** ~~person~~ **that** ~~who~~ dispenses the medication shall instruct the patient or caregiver on the use of the CPMP.
(2) If medication is dispensed in a CPMP, all of the following conditions must be met:
(a) Each CPMP must bear a readable label that states all of the following information:
(i) A serial number for the CPMP and a separate identifying serial number for each of the prescription orders for each of the drug products contained in the CPMP.
(ii) The name, strength, physical description, and total quantity of each drug product contained in the CPMP.
(iii) The name of the prescriber for each drug product.
(iv) The directions for use and cautionary statements, if any, contained in the prescription order for each drug product in the CPMP.
(v) The date of the preparation of the CPMP.
(vi) An expiration date for the CPMP. The date must not be later than the earliest manufacturer's expiration date for any medication included in the CPMP or 60 days after the date of dispensing.
(vii) The name, address, and telephone number of the dispenser.
(viii) Any other information, statements, or warnings required for any of the drug products contained in the CPMP.
(b) A CPMP must be accompanied by any mandated patient information required under federal law. Alternatively, required medication information may be incorporated by the pharmacist into a single educational insert that includes information regarding all of the medications in the CPMP.
(c) At a minimum, each CPMP must comply with the ~~United States Pharmacopeia (~~USP~~)~~ and ~~national formulary~~**National Formulary**~~, as defined in section 17706(2) of the code, MCL 333.17706~~, for moisture permeation requirements for a class b single-unit or unit-dose container. Each container must

be either non-reclosable or so designed as to show evidence of being opened. Each CPMP must comply with all of the provisions of the poison prevention packaging act of 1970, 15 USC 1471 to 1477.

(d) ~~When~~**If** preparing a CPMP, the dispenser shall consider any applicable compendial requirements or guidelines, the physical and chemical compatibility of the dosage forms placed within each container, and any therapeutic incompatibilities that may attend the simultaneous administration of the medications. Medications must not be dispensed in CPMP packaging in any of the following situations:

(i) The USP monograph or official labeling requires dispensing in the original container.

(ii) The drugs or dosage forms are incompatible with packaging components or each other.

(iii) The drugs are therapeutically incompatible when administered simultaneously.

(iv) The drug products require special packaging.

(e) If 2 medications have physical characteristics that make them indistinguishable from each other, then the medication must not be packaged together in the same CPMP.

(f) Medications that **are** ~~have been~~ dispensed in CPMP packaging may not be returned to stock or dispensed to another patient when returned to the pharmacy for any reason. If a prescription for any drug contained in the CPMP is changed, then a new appropriately labeled CPMP must be prepared for the patient.

(g) In addition to all individual prescription filing requirements, a record of each CPMP dispensed must be made and filed. At a minimum, each record must contain all of the following information:

(i) The name and address of the patient.

(ii) The serial number of the prescription order for each drug product contained in the CPMP.

(iii) Information identifying or describing the design, characteristics, or specifications of the CPMP sufficient to allow subsequent preparation of an identical CPMP for the patient.

(iv) The date of preparation of the CPMP and the expiration date assigned.

(v) Any special labeling instructions.

(vi) The name or initials of the pharmacist who prepared the CPMP.

R 338.586 Prescription records; nonapplicability to inpatient medical institution service.

Rule 86. (1) Each prescription must be chronologically numbered, and the pharmacist performing final verification before dispensing ~~must~~ **shall** record, manually or electronically, the prescription number, dispensing date, and ~~his or her~~ **the pharmacist's** initials ~~at the time of~~ **when** the **prescription is** first ~~filling~~**filled** at the pharmacy.

(2) If final product verification is completed by a pharmacy intern under the supervision of a pharmacist, both the initials of the pharmacy intern and the delegating pharmacist must be recorded.

~~(2)~~**(3)** If final product verification is completed by a pharmacy technician**, under R 338.3665(b)**, both the initials of the pharmacy technician and delegating pharmacist must be recorded.

(~~3~~**4**) If the drug that is dispensed is other than the brand prescribed or if the prescription is written generically, the name of the manufacturer or supplier of the drug dispensed must be indicated on the prescription.

(~~4~~**5**) This rule does not apply to pharmacy services provided in a medical institution.

R 338.587 Prescription refill records; manual systems; profile systems; automated pharmacy data systems; nonapplicability to medical institution service; record confidentiality; and access.

Rule 87. (1) A pharmacist shall record prescription refills using only 1 of the systems described in subrule (2), (3), or (4) of this rule and in compliance with the provisions of subrule (2), (3), or (4) of this rule, as applicable.

(2) A pharmacy may utilize a manual system of recording refills if the system complies with both of the following criteria:

(a) The amount and date dispensed must be entered on the prescription in an orderly fashion and the dispensing pharmacist initials the entry. If the pharmacist only initials and dates the prescription, then the full-face amount of the prescription must be **considered** ~~deemed~~ dispensed.

(b) If the drug that is dispensed is other than the brand prescribed or if the prescription is written generically, then the name of the manufacturer or supplier of the drug dispensed must be indicated on the prescription.

(3) A pharmacy may utilize a uniform system of recording refills if the system complies with all of the following criteria:

(a) Records must be created and maintained in written form. All original and refill prescription information for a particular prescription appears on single documents in an organized format. The records are subject to inspection by the board or its agents.

(b) The following information for each prescription must be entered on the record:

(i) The prescription number.

(ii) The patient's name and address.

(iii) The prescriber's name.

(iv) The prescriber's ~~federal drug enforcement administration (~~DEA~~)~~ number, if appropriate.

(v) The number of refills authorized.

(vi) The "dispense as written" instructions, if indicated.

(vii) The name, strength, dosage form, quantity, and name of the manufacturer of the drug prescribed, and the drug dispensed originally and **after** ~~upon~~ each refill. If the drug dispensed is other than the brand prescribed or if the prescription is written generically, then the name of the manufacturer or supplier of the drug dispensed must be indicated.

(viii) The date of issuance of the prescription.

(ix) The date and identifying designation of the dispensing pharmacist for the original filling and for each refill. If a pharmacy technician performs final product verification, the identification of the delegating pharmacist and pharmacy technician must be recorded.

(c) Prescription entries must be made on the record ~~at the time~~**when** the prescription is first filled and at ~~the time of~~ each refill, except that the format of the record may be organized so that information already entered on the record may appear for a prescription or refill without reentering the information. The dispensing pharmacist is responsible for the completeness and accuracy of the entries and ~~must~~ **shall** initial the record each time a prescription is filled or refilled.

(d) The information required by subdivision (b) of this subrule must be entered on the record for all prescriptions filled at a pharmacy, including nonrefillable prescriptions. This requirement is in addition to the requirements set forth in R 338.586.

(4) A pharmacy may utilize a uniform automated data processing system of recording refills if the system complies with all of the following criteria:

(a) All information that is pertinent to a prescription must be entered on the record, including all of the following information:

(i) The prescription number.

(ii) The patient's name and address.

(iii) The prescriber's name.

(iv) The prescriber's ~~federal~~ DEA number, if appropriate.

(v) The number of refills authorized.

(vi) Whether the drug must be dispensed as written.

(vii) The name, strength, dosage form, quantity, and name of the manufacturer of the drug prescribed and the drug dispensed originally and **after** ~~upon~~ each refill. If the drug dispensed is other than the brand

prescribed or if the prescription is written generically, then the name of the manufacturer or supplier of the drug dispensed must be indicated.

(viii) The date of issuance of the prescription.

(ix) The date and identifying designation of the dispensing pharmacist for the original filling and for each refill. If a pharmacy technician performs final product verification, the identification of the delegating pharmacist and pharmacy technician must be recorded.

(b) Prescription entries must be made on the record ~~at the time~~**when** the prescription is first filled and at ~~the time of~~ each refill, except that the format of the record may be organized so that information already entered on the record may appear for a prescription or refill without reentering the information. The dispensing pharmacist is responsible for the completeness and accuracy of the entries. A pharmacy shall keep the original prescription record on site for 5 years. ~~After 2~~ **Two** years ~~from~~**after** the date of the prescription's issue date, a pharmacy may make an electronic duplicate of the original non-controlled paper prescription, which ~~will~~ become**s** the original prescription. The records are subject to inspection by the board or its agents. A procedure must be established to facilitate inspections.

(c) The required information must be entered on the record for all prescriptions filled at the pharmacy, including nonrefillable prescriptions. This requirement is in addition to the requirements set forth in R 338.586.

(d) The recording system must provide adequate safeguards against improper manipulation, the alteration of records, and the loss of records.

(e) The recording system must have the capability of producing a printout of all original and refilled prescription data, including a prescription-by-prescription and refill-by-refill audit trail for any specified strength and dosage form of a controlled substance by either brand or generic name or an audit trail of controlled substance prescriptions written for a particular patient or by a particular practitioner. A printout of an audit trail or other required information must be made available to an authorized agent of the board **on** ~~upon~~ request. The prescription data must be maintained for 5 years. Data older than 2 years must be provided within 72 hours of the time the request is first made by the agent. Prescription data for the most current 2 years must be readily retrievable on site and available for immediate review.

(f) If the automated data processing system is inoperative for any reason, then the pharmacist shall ensure that all refills are authorized and that the maximum number of refills is not exceeded. When the automated data processing system is restored to operation, the pharmacist shall enter the information regarding prescriptions filled and refilled during the inoperative period into the automated data processing system within 48 hours.

(g) A pharmacy shall make arrangements with the supplier of data processing services or materials to ensure that the pharmacy continues to have adequate and complete prescription and dispensing records if the relationship with the supplier terminates for any reason. A pharmacy shall ensure continuity in the maintenance of records.

(h) The automated data processing system must be an integrated system that ~~is capable of complying~~ **complies** with all of the requirements of these rules.

(5) This rule does not apply to pharmacy services provided in a medical institution.

(6) Records that are created under subrule (2), (3)**,** or (4) of this rule are subject to the same requirements regarding confidentiality and access that apply to original prescriptions.

R 338.588 Automated devices.

Rule 88. (1) "Automated device" means a mechanical system that performs an operation or activity, other than compounding or administration, relating to the storage, packaging, dispensing, or delivery of a drug and that collects, controls, and maintains transaction information.

(2) An automated device may be used only in the following locations:

(a) A pharmacy, or at the same physical address as the pharmacy ~~provided that~~ **if** the location of the automated device is owned and operated by the same legal entity as the pharmacy.

(b) A hospital.

(c) A county medical care facility.

(d) A hospice.

(e) A nursing home.

(f) Other skilled nursing facility**,** as **that term is** defined in section 20109~~(4)~~ of the code, MCL 333.20109.

(g) An office of a dispensing prescriber, **where the device is operated by the dispensing prescriber, not a pharmacy**.

(h) A location affiliated with a hospital, but not at the same physical address as the pharmacy, ~~that~~**which** is owned and operated by the hospital, consistent with section 17760 of the code, MCL 333.17760.

(i) A location other than subdivisions (a) to (h) of this subrule, where the automated device acts as an extension of a pharmacy. In addition to the requirements in this rule, the automated device must meet the requirements in R 338.588a.

(~~7~~**3**) Records and electronic data ~~kept~~ **maintained** by automated devices must meet all of the following requirements:

(a) All events involving access to the contents of the automated devices must be recorded electronically.

(b) Records must be maintained for 5 years by the pharmacy or dispensing prescriber and must be retrievable on demand for review by an agent of the board. The records must include all of the following information:

(i) The unique identifier of the automated device accessed.

(ii) Identification of the individual accessing the automated device.

(iii) The type of transaction.

(iv) The name, strength, dosage form, quantity, and name of the manufacturer of the drug accessed.

(v) The name of the patient for whom the drug was ordered.

(vi) Identification of the pharmacist responsible for the accuracy of the medications to be stocked or restocked in the automated device.

(~~8~~**4**) **Except for devices allowed under R 388.588a(2),** ~~Policy~~**policy** and procedures for the use of the automated device must include a requirement for pharmacist review of the prescription or medication order before ~~system profiling or~~ removal of any medication**.** ~~from the system for immediate patient administration.~~

This subrule does not apply to the following situations:

(a) The system is being used as an after-hours cabinet for medication dispensing in the absence of a pharmacist as provided in R 338.486(4)(j). **A pharmacist shall review the orders and authorize any further dispensing within 48 hours.**

(b) The system is being used in place of an emergency kit as provided in R 338.486(4)(c). **A pharmacist shall review the orders and authorize any further dispensing within 48 hours.**

(c) The system is being accessed to remove medication required to treat the emergent needs of a patient as provided in R 338.486(4)(c). A sufficient quantity to meet the emergent needs of the patient may be removed until a pharmacist is available to review the medication order. **A pharmacist shall review the orders and authorize any further dispensing within 48 hours.**

~~(d) In each of the situations specified in subdivisions (a) to (c) of this subrule, a pharmacist shall review the orders and authorize any further dispensing within 48 hours.~~

(~~e~~**d**) The automated device is located in a dispensing prescriber's office **to facilitate dispensing by the dispensing prescriber**.

(~~9~~5) A copy of all policies and procedures related to the use of an automated device must be maintained at the pharmacy responsible for the device's specific location or at the dispensing prescriber's office and be available for review by an agent of the board.

~~(3) A pharmacy that operates an automated device under this section only to deliver a non-controlled drug or device directly to an ultimate user or health care provider shall notify the department of the automated device's location on a form provided by the department. An automated device located within a licensed pharmacy must be under the control of a pharmacist or his or her pharmacy personnel under the personal charge of a pharmacist. A secured, lockable, and privacy enabled automated device located on the premise of the licensed pharmacy may be utilized as a means for a patient or an agent of the patient to pick up prescription medications.~~

~~(4) If an automated device is used in a dispensing prescriber's office, the device must be used only to dispense medications to the dispensing prescriber's patients and only under the control of the dispensing prescriber. A pharmacy shall not own, control, or operate an automatic dispensing device in a dispensing prescriber's office, unless the prescriber's office is affiliated with a hospital consistent with section 17760 of the code, MCL 333.17760, and subrule (2)(h) of this rule. All of the following apply to the use of an automated device in a dispensing prescriber's office:~~

~~(a) If a dispensing prescriber delegates the stocking of the automated device, then technologies must be in place and utilized to ensure that the correct drugs are stocked in their appropriate assignment utilizing a board-approved error prevention technology that complies with R 338.3154.~~

~~(b) A dispensing prescriber operating an automated device is responsible for all medications that are stocked and stored in that device as well as removed from that device.~~

~~(c) If any medication or device is dispensed from an automated device in a dispensing prescriber's office, then documentation as to the type of equipment, serial numbers, content, policies, procedures, and location within the facility must be maintained by the dispensing prescriber for review by an agent of the board. This documentation must include at least all of the following information:~~

~~(i) Manufacturer name and model.~~

~~(ii) Quality assurance policy and procedure to determine continued appropriate use and performance of the automated device.~~

~~(iii) Policy and procedures for system operation that addresses, at a minimum, all of the following:~~

~~(A) Accuracy.~~

~~(B) Patient confidentiality.~~

~~(C) Access.~~

~~(D) Data retention or archival records.~~

~~(E) Downtime procedures.~~

~~(F) Emergency procedures.~~

~~(G) Medication security.~~

~~(H) Quality assurance.~~

~~(5) An automated device that is to be used for furnishing medications for administration to registered patients in any hospital, county medical care facility, nursing home, hospice, or any other skilled nursing facility, as defined in section 20109(4) of the code, MCL 333.20109, must be supplied and controlled by a pharmacy that is licensed in this state. The use of an automated device in these locations is not limited to the provisions of subrule (3) of this rule. If a pharmacist delegates the stocking of the device, then technologies must be in place and utilized to ensure that the correct drugs are stocked in their appropriate assignment utilizing bar-coding or another board-approved error-prevention technology. Each automated device must comply with all of the following provisions:~~

~~(a) A pharmacy operating an automated device is responsible for all medications that are stocked and stored in that device as well as removed from that device.~~

~~(b) If any medication or device is dispensed from an automated device, then documentation as to the type of equipment, serial numbers, content, policies, procedures, and location within the facility must be maintained by the pharmacy for review by an agent of the board. The documentation must include at least all of the following information:~~

~~(i) Name and address of the pharmacy responsible for the operation of the automated device.~~

~~(ii) Name and address of the facility where the automated device is located.~~

~~(iii) Manufacturer name and model number.~~

~~(iv) Quality assurance policy and procedure to determine continued appropriate use and performance of the automated device.~~

~~(v) Policy and procedures for system operation that address, at a minimum, all of the following:~~

~~(A) Accuracy.~~

~~(B) Patient confidentiality.~~

~~(C) Access.~~

~~(D) Data retention or archival records.~~

~~(E) Downtime procedures.~~

~~(F) Emergency procedures.~~

~~(G) Medication security.~~

~~(H) Quality assurance.~~

~~(I) Ability to provide on demand to an agent of the board a list of medications qualifying for emergency dose removal without pharmacist prior review of the prescription or medication order.~~

~~(6) An automated device that is operated at a location affiliated with a hospital, but not at the same physical address as the pharmacy, that is owned and operated by the hospital, must comply with section 17760 of the code, MCL 333.17760.~~

R 338.588a Automated devices in non-inpatient settings.

Rule 88a. (1) A pharmacy that operates an automated device to deliver prescription medication directly to an ultimate user that is not included in R 338.588(2)(a) to (h) shall comply with all of the following requirements:

(a) The automated device may only deliver non-controlled drugs.

(b) The automated device is operated as an extension of a pharmacy, under the control of a pharmacist, however, a remote pharmacy may not operate an automated device.

(c) A pharmacist shall be available for the automated device to be operable.

(d) The automated device is secured, lockable, and privacy enabled.

(e) Prescriptions must contain a label that identifies the automated device where the medication was dispensed.

(f) A pharmacist shall be available to provide patient consultation through real-time audio and visual communication. The pharmacist may provide consultation from a remote location.

(g) Before the automated device is put into service, the pharmacy shall notify the department of the location of the automated device on a form provided by the department.

(h) Dispensing activities through the automated device must comply with all recordkeeping, drug utilization review, and patient counseling requirements that are applicable to a pharmacy.

(2) A pharmacy licensee may locate a non-dispensing storage and pick up device on the premises of the pharmacy that is used for a patient or agent of the patient to pick up prescription medication if the pharmacy meets both of the following:

(a) The automated device is secured, lockable, and privacy enabled.

(b) The automated device is located on the inside of the premises of the licensed pharmacy.

(3) If an automated device is used in a dispensing prescriber's office, and the automated device is not affiliated with a pharmacy, the device must be used only to dispense medications to the

dispensing prescriber's patients and only under the control of the dispensing prescriber. All of the following apply to the use of an automated device in a dispensing prescriber's office:

(a) If a dispensing prescriber delegates the stocking of the automated device, then technologies must be in place and utilized to ensure that the correct drugs are stocked in their appropriate assignment utilizing a board-approved error prevention technology that complies with R 338.3154.

(b) A dispensing prescriber operating an automated device is responsible for all medications that are stocked and stored in that device, as well as removed from that device.

(c) If any medication or device is dispensed from an automated device in a dispensing prescriber's office, then documentation as to the type of equipment, serial numbers, content, policies, procedures, and location within the facility must be maintained by the dispensing prescriber for review by an agent of the board. This documentation must include all of the following information:

(i) Manufacturer name and model.

(ii) Quality assurance policy and procedure to determine continued appropriate use and performance of the automated device.

(iii) Policy and procedures for system operation that addresses, at a minimum, all of the following:

(A) Accuracy.

(B) Patient confidentiality.

(C) Access.

(D) Data retention or archival records.

(E) Downtime procedures.

(F) Emergency procedures.

(G) Medication security.

(H) Quality assurance.

R 338.588b Automated devices in medical institutions.

Rule 88b. (1) An automated device used by staff to administer medications to registered patients in any hospital, county medical care facility, nursing home, hospice, or another skilled nursing facility, as that term is defined in section 20109 of the code, MCL 333.20109, must comply with all of the following:

(a) The automated device must be supplied and controlled by a pharmacy that is licensed in this state.

(b) If a pharmacist delegates the stocking of the automated device, then technologies must be in place and utilized to ensure that the correct drugs are stocked in their appropriate assignment utilizing bar-coding or another board-approved error-prevention technology that complies with R 338.3154.

(c) A pharmacy operating an automated device is responsible for all medications that are stocked and stored in that device, as well as removed from that device.

(d) If any medication or device is dispensed from an automated device, then documentation as to the type of equipment, serial numbers, content, policies, procedures, and location within the facility must be maintained by the pharmacy for review by an agent of the board. The documentation must include all of the following information:

(i) Name and address of the pharmacy responsible for the operation of the automated device.

(ii) Name and address of the facility where the automated device is located.

(iii) Manufacturer name and model number.

(iv) Quality assurance policy and procedure to determine continued appropriate use and performance of the automated device.

(v) Policy and procedures for system operation that address, at a minimum, all of the following:

(A) Accuracy.

(B) Patient confidentiality.

(C) Access.

(D) Data retention or archival records.

(E) Downtime procedures.

(F) Emergency procedures.

(G) Medication security.

(H) Quality assurance.

(I) Ability to provide on demand to an agent of the board a list of medications qualifying for emergency dose removal without pharmacist prior review of the prescription or medication order.

(2) An automated device that is operated at a location affiliated with a hospital, but not at the same physical address as the pharmacy, which is owned and operated by the hospital, must comply with section 17760 of the code, MCL 333.17760.

R 338.589 Professional responsibility; **patient counseling;** "caregiver" defined.

Rule 89. (1) A pharmacist has a professional responsibility for the strength, quality, purity, and the labeling of all drugs and devices dispensed under a prescription. In discharging this responsibility, a pharmacist shall utilize only those drugs and devices that are obtained from manufacturers and wholesale distributors licensed under section 17748 of the code, MCL 333.17748, or from other lawful channels of distribution.

(2) A pharmacist shall not fill a prescription order if, in the pharmacist's professional judgment, any of the following provisions apply:

(a) The prescription appears to be improperly written.

(b) The prescription is susceptible to more than 1 interpretation.

(c)The pharmacist has reason to believe that the prescription could cause harm to the patient.

(d) The pharmacist has reason to believe that the prescription ~~will~~ **may** be used for other than legitimate medical purposes.

(3) A prescription drug must be dispensed only when the pharmacy is open and under the personal charge of a pharmacist.

(4) To encourage intended, positive patient outcomes, a pharmacist shall communicate to the patient, or the patient's caregiver, necessary and appropriate information regarding safe and effective medication use ~~at the time~~**when** a prescription is dispensed. As used in this subrule, "caregiver" means the parent, guardian, or other individual who has assumed responsibility for providing a patient's care. All of the following provisions apply to communicating medication safety and effectiveness information:

(a) The information must be communicated orally and in person, except when the patient or patient's caregiver is not at the pharmacy or when a specific communication barrier prohibits oral communication. In either situation, providing printed or electronic/digital material designed to help the patient use the medication safely and effectively satisfies the requirements of this subrule.

(b) The information must be provided with each prescription for a drug not previously prescribed for the patient.

(c) If the pharmacist ~~deems~~ **determines** it appropriate, the information must be provided with prescription refills.

(d) The information must be provided if requested by the patient or patient's caregiver or agent for any prescription dispensed by the pharmacy. This subrule does not require that a pharmacist provide

consultation if a patient or a patient's caregiver refuses consultation. This subrule does not apply to prescriptions dispensed for administration to a patient while the patient is in a medical institution.

(5) Pharmacist delegation of acts, tasks, or functions ~~shall be in compliance~~ **must comply** with section 16215 of the code, MCL 333.16215, and **be** under the personal charge of the delegating pharmacist, except as provided in R 338.486. A pharmacist ~~who~~ **that** delegates acts, tasks, or functions to a licensed or unlicensed **individual** ~~person~~ shall do all of the following:

(a) Determine the knowledge and skill required to safely and competently complete the specific act, task, or function to be delegated.

(b) Before delegating an act, task, or function, ~~make a determination~~ **determine whether** ~~that~~ the delegate has the necessary knowledge and skills to safely and competently complete the act, task, or function.

(c) Provide written procedures or protocols, or both, to be followed by the delegatee in the performance of the delegated act, task, or function.

(d) Supervise and evaluate the performance of the delegatee.

(e) Provide remediation of the performance of the delegatee**,** if indicated.

(6) A delegating pharmacist ~~shall~~ bear**s** the ultimate responsibility for the performance of delegated acts, tasks, and functions performed by the delegatee within the scope of the delegation.

R 338.590 Hospice emergency drug box.

Rule 90. (1) A pharmacy that establishes a medication box exchange program for hospice emergency care services rendered in patients' homes ~~pursuant to~~**under** ~~the provisions of~~ section 17746 of the code, MCL 333.17746, shall establish drug boxes that ~~are in compliance~~ **comply** with this rule. Before providing drug boxes for a hospice emergency care system, the pharmacist in charge shall ensure that the hospice has developed policies and procedures that require all of the following:

(a) Maintenance by the hospice of a drug box exchange log that accounts for the hospice's receipt of the boxes from the pharmacy, assignment of the boxes to registered nurses or physicians' assistants, and return of the boxes to the pharmacy for restocking.

(b) A procedure to ensure that the drug boxes are inspected ~~at least~~**not less than** weekly to determine if they have expired or have been opened.

(c) Procedures for the storage and control of a drug box while it is assigned to, and being used by, the prescriber, a registered nurse, or a physician's assistant.

(d) A procedure for implementing the hospice medical director's responsibility for ensuring that ~~prescFriptions~~**prescriptions** for drugs removed from the drug boxes are obtained from an appropriate prescriber.

(2) A pharmacy shall stock drug boxes for a hospice emergency care system in accordance with the policies and procedures developed by the hospice and approved by the hospice medical director.

(3) The drugs contained in each drug box must be listed inside the front cover of the box. Each box must be equipped with only 1 nonreusable, tamper-evident seal or sealing system ~~which~~**that** is a color that designates that the box has not been opened and several nonreusable, tamper-evident seals or sealing systems ~~which~~**that** are a different color that designates that the box has been opened.

(4) A drug box must be numbered. A permanent record of all drug boxes must be maintained at the pharmacy.

(5) A label that contains all of the following information must be attached to the drug box so that it is visible from the outside of the box:

(a) The name and address of the pharmacy.

(b) The name and address of the hospice.

(c) The name of the pharmacist who last inspected and restocked the drug box.

(d) The date the drug box was last restocked.

(e) The date ~~on which~~ the drug box must be returned to the pharmacy for the replacement of expired drugs.

(f) The number of the drug box.

(6) After the drug box has been stocked and labeled, the pharmacist shall seal it with the nonreusable, tamper-evident seal or sealing system ~~which~~ **that** is the color that designates that the box has not been opened.

(7) A drug box must be ~~kept~~ **maintained** in a substantially constructed, securely locked storage compartment when not under the direct control of the pharmacist, prescriber, registered nurse, or physician's assistant. The box must be stored under conditions that ~~will~~ maintain the stability, integrity, and effectiveness of the drugs. Access to the storage compartment and to the drug box must be limited to individuals who are authorized to stock the drug box or to dispense drugs from the drug box on the order of an appropriate prescriber.

(8) The drug box must remain sealed at all times, except when in use. All drugs removed from the box must be recorded on a medication use form. After completing the form, the physician, registered nurse**,** or physician's assistant who removed the drug must place the form in the drug box and seal the box with a nonreusable, tamper-evident seal or sealing system ~~which~~ **that** is a color that designates that the box has been opened.

(9) Each drug box under the control of the pharmacy must be examined ~~at least~~**not less than** weekly to ensure that the seal**,** which designates that the box has not been opened is still intact and the expiration date**,** has not been exceeded. If the expiration date has been exceeded or the box has been opened, the box must be returned to the pharmacy. The written prescription for all drugs that have been administered from the drug box must accompany the drug box when it is returned to the pharmacy after opening.

(10) The pharmacy shall maintain a permanent record of drug box exchanges on a drug box exchange log. The record must contain all of the following information:

(a) The number of the box.

(b) The name of the hospice to which the box is released.

(c) The date the box is released to the hospice.

(d) The name and signature of the pharmacist who releases the box to the hospice.

(e) The expiration date assigned.

(f) The date the box is returned to the pharmacy for restocking.

(g) The name and signature of the pharmacist who received the box for restocking.

(11) ~~Upon~~ **On the** return of the drug box to the pharmacy, the pharmacist shall reconcile the drugs dispensed from the drug box with the prescriptions of the appropriate prescriber or medical director of the hospice. The pharmacist shall note that the prescriptions were dispensed from the hospice drug box on the back of the prescriptions. The prescriptions must be filed in the same manner as other prescriptions are maintained at the pharmacy.

R 338.591 Dispensing emergency supply of insulin.

Rule 91. (1) A pharmacist may dispense an emergency supply of insulin to an individual if the pharmacist complies with all of the following:

(a) The requirements in section 17744f of the code, MCL 333.17744f.

(b) An emergency supply of insulin may only be dispensed from a pharmacy with real time access to the qualified prescription for insulin.

(c) Only 1 emergency supply, as that term is defined in MCL 333.17744f, may be dispensed per qualified prescription.0

(2) If the smallest single package of insulin available exceeds a 30-day supply, dispensing the package of insulin that is available complies with this rule and section 17744f of the code, MCL 333.17744f.

NOTICE OF PUBLIC HEARING

Department of Licensing and Regulatory Affairs
Bureau of Professional Licensing
Administrative Rules for Pharmacy-General Rules
Rule Set 2022-8 LR

NOTICE OF PUBLIC HEARING
Friday, June 2, 2023
09:00 AM

Location: G. Mennen Williams Building Auditorium
525 W. Ottawa Street, Lansing, Michigan

The Department of Licensing and Regulatory Affairs will hold a public hearing to receive public comments on proposed changes to the Pharmacy-General Rules rule set.

The proposed rules will be modified as follows: except for disciplinary inspections, inspections at the direction of the department will not involve purchasing data, other than shipment data and the current and historical selling price of the drug, or some research data; applicants will only be able to submit intern hours that are acquired through an educational program, under the personal charge of a preceptor, through a preapproved unconventional internship, or through an educational program outside of the United States; graduates of programs outside of the United States will be able to submit up to 1400 hours earned in an educational program experience if the hours are not completed through an approved educational program or under the person charge of a preceptor licensed in this state; preceptors in an educational program will not have to submit annual affidavits of hours; applicants for licensure by endorsement will no longer have to take the MPJE and instead will submit knowledge of the laws and rules affidavit; a PIC or facility manager who is unable to fulfill their duties for 120 consecutive days will appoint a new PIC or facility manager; an out-of-state pharmacy that will not compound sterile pharmaceutical products in this state may submit an inspection from NABP-VPP or a resident state board of pharmacy; an in-state pharmacy that will compound sterile pharmaceutical products will have a two-step inspection process that requires an inspection from the department and, within 6 months, an inspection to assess USP compliance or accreditation; a pharmacy that dispenses drugs will have a sink with running water, a refrigerator for drugs, and a telephone; a manufacturer will have the option of submitting an inspection from the FDA, the manufacturer's resident state board of pharmacy, or NABP drug distributor accreditation; a pharmacy intern who provides final product verification will record both the initials of the intern and supervising pharmacist; a pharmacy may locate an automated device as an extension of a pharmacy in additional locations with limitations; a pharmacy may locate a non-dispensing storage and pick-up device on the premises of the pharmacy; and a pharmacist may dispense an emergency supply of insulin.

By authority conferred on the Department of Licensing and Regulatory affairs in consultation with the Michigan Board of Pharmacy, MCL 333.16141, 333.16145, 333.16148, 333.16174, 333.16175, 333.16178, 333.16182, 333.16186, 333.16204, 333.16205, 333.16215, 333.16287, 333.17707, 333.17721, 333.17722, 333.17731, 333.17737, 333.17739, 333.17742a, 333.17742b, 333.17744f, 333.17746, 333.17748, 333.17748a, 333.17748b, 333.17748e, 333.17751, 333.17753, 333.17754a, 333.17757, 333.17760, 333.17767, and 333.17775, and Executive Reorganization Order Nos. 1991-9, 1996-2, 2003-1, and 2011-4, MCL 338.3501, 445.2001, 445.2011, and 445.2030.

The proposed rules will take effect immediately after filing with the Secretary of State. The proposed rules are published on the State of Michigan's website at www.michigan.gov/ARD and in the 6/1/2023 issue of the Michigan Register. Copies of these proposed rules may also be obtained by mail or electronic mail at the following email address: BPL-BoardSupport@michigan.gov.

Comments on these proposed rules may be made at the hearing, by mail, or by electronic mail at the following addresses until 6/2/2023 at 05:00PM.

Attention: Departmental Specialist

Department of Licensing and Regulatory Affairs Bureau of Professional Licensing– Boards and Committees Section P.O. Box 30670 Lansing, MI 48909-8170

BPL-BoardSupport@michigan.gov

The public hearing will be conducted in compliance with the 1990 Americans with Disabilities Act. If the hearing is held at a physical location, the building will be accessible with handicap parking available. Anyone needing assistance to take part in the hearing due to disability may call 517-241-7500 to make arrangements.

PROPOSED ADMINISTRATIVE RULES

DEPARTMENT OF ~~LICENSING AND REGULATORY AFFAIRS~~**LABOR AND ECONOMIC OPPORTUNITY**

DIRECTOR'S OFFICE

GENERAL INDUSTRY SAFETY **AND HEALTH** STANDARD~~S~~

Filed with the Secretary of State on

These rules ~~take effect~~ **become effective** immediately ~~upon~~ **after** filing with the secretary of state unless adopted under section 33, 44, or 45a(~~6~~**9**) 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 director of the department of ~~licensing and regulatory affairs~~**labor and economic opportunity** by sections **14r,** 16**,** and 21 of the Michigan occupational safety and health act, 1974 PA 154, MCL **408.1014r**, 408.1016**,** and 408.1021, and Executive Reorganization Order Nos. 1996-2, 2003-1, 2008-4, ~~and~~ 2011-4, **and 2019-3,** MCL 445.2001, 445.2011, 445.2025, ~~and~~ 445.2030**, and 125.1998**)

R 408.17301, R 408.17305, R 408.17307, R 408.17309, R 408.17310, R 408.17312, R 408.17314, and R 408.17320 of the Michigan Administrative Code ~~is~~ **are** amended, R 408.17313 is added, and R 408.17302, R 408.17303, R 408.17315, R 408.17316, R 408.17317, and R 408.17318 are rescinded, as follows:

~~GENERAL INDUSTRY SAFETY AND HEALTH STANDARD~~
PART 73. FIRE BRIGADES

R 408.17301 Scope**, adoption, and referenced standards**.

Rule 7301. **(1)** This standard is applicable to fire brigades, industrial fire departments, and private or contractual-type fire departments when established by an employer, and provides for the organization, training, and personal protective equipment to be used. This standard does not apply to airport crash rescue operations or forest firefighting operations.

(2) The following National Fire Protection Association (NFPA) standards are adopted by reference in these rules and are available from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts, 02169-7471, or via the internet at the following website: www.nfpa.org, at a cost as of the time of adoption of these amendments, as stated in these rules:

(a) NFPA 1971: "Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting," 1997 edition. Cost: $79.50.

(b) NFPA 1971: "Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting," 2013 edition. Cost: $74.00.

(c) NFPA 1981: "Standard on Open-Circuit Self-Contained Breathing Apparatus (SCBA) for Emergency Services," 2007 edition. Cost: $63.50.

(d) NFPA 1982: "Standard on Personal Alert Safety Systems (PASS)," 2007 edition. Cost: $68.50.

(3) The standards adopted in these rules are also available for inspection at the Michigan Department of Labor and Economic Opportunity, MIOSHA Standards and FOIA Section, 530 W. Allegan Street, P.O. Box 30643, Lansing, Michigan, 48909-8143.

(4) Copies of the standards adopted in these rules may be obtained from the publisher or may be obtained from the Michigan Department of Labor and Economic Opportunity, MIOSHA Standards and FOIA Section, 530 W. Allegan Street, P.O. Box 30643, Lansing, Michigan, 48909-8143, at the cost charged in this rule, plus $20.00 for shipping and handling.

R 408.17302~~. Adopted and referenced standards~~**Rescinded**.

~~Rule 7302. (1) The National Fire Protection Association Standard NFPA 1971 "Standard on protective ensemble for structural fire fighting and proximity fire fighting," 1997 edition is adopted by reference in these rules and is available from IHS Global, 15 Inverness Way East, Englewood, Colorado, 80112, USA, telephone number: 1-800-854-7179 or via the internet at website: www.global.ihs.com; at a cost as of the time of adoption of these rules, of $27.00.~~

~~(2) The standards adopted in these rules are also available for inspection at the Department of Licensing and Regulatory Affairs, MIOSHA Regulatory Services Section, 7150 Harris Drive, Lansing, Michigan, 48909-8143.~~

~~(3) Copies of the standards adopted in these rules may be obtained from the publisher or may be obtained from the Department of Licensing and Regulatory Affairs, MIOSHA Regulatory Services Section, 7150 Harris Drive, P.O. Box 30643, Lansing, Michigan, 48909-8143, at the cost charged in this rule, plus $20.00 for shipping and handling.~~

~~(4) The following Michigan occupational safety and health standards (MIOSHA) are referenced in these rules. Up to 5 copies of these standards may be obtained at no charge from the Michigan Department of licensing and regulatory affairs, MIOSHA Regulatory Services Section, 7150 Harris Drive, P.O. Box 30643, Lansing, MI, 48909-8143 or via the internet at website: www.michigan.gov/mioshastandards.~~

~~For quantities greater than 5, the cost, at the time of adoption of these rules, is 4 cents per page.~~

~~(a) General Industry Safety Standard Part 8. "Portable Fire Extinguishers," R 408.10801 to R 408.10839.~~

~~(b) General Industry Safety Standard Part 33. "Personal Protective Equipment," R 408.13301 to R 40898.~~

~~(c) Occupational Health Standard Part 451. "Respiratory Protection," R 25.60051 to R 325.60052.~~

R 408.17303~~ Definitions; A to E.~~**Rescinded.**

~~Rule 7303. (1) "Approved" means approval by the director of the department of licensing and regulatory affairs or his or her duly designated representative.~~

~~(2) "Approved label" means a label or other identifying mark of a nationally recognized testing laboratory, such as underwriters laboratory, inc. or factory mutual research corp., that maintains a periodic inspection of production of labeled equipment or materials and by whose labeling indicates compliance with nationally recognized standards or tests to determine suitable usage in a specified manner.~~

~~(3) "Education" means the process of imparting knowledge or skill through systematic instruction. "Education" does not require formal classroom instruction.~~

~~(4) "Enclosed structure" means a structure that has a roof or ceiling and not less than 2 walls that may present fire hazards to employees, such as accumulations of smoke, toxic gases, and heat similar to those found in buildings.~~

R 408.17305 Definitions; ~~F~~**E** to I.

Rule 7305. **(1) "Education" means the process of imparting knowledge or skill through systemic instruction. Education does not require formal classroom instruction.**

(~~1~~**2**) "Fire brigade" means a private or industrial fire department consisting of an organized group of employees who are knowledgeable, trained, and skilled in at least basic firefighting operations.

(~~2~~**3**) ~~"Flame resistance" means the property of materials, or combinations of component materials, that retards ignition and restricts the spread of flame.~~**"Foam containing PFAS" means firefighting foam containing intentionally added perfluoroalkyl or polyfluoroalkyl substance.**

~~(3) "Helmet" means a head protective device consisting of a rigid shell, energy absorption system, and chin strap intended to be worn to provide protection of the head, or portion thereof, against impact, flying or falling objects, electric shock, penetration, heat, and flame.~~

(4) "Incipient stage fire" means a fire which is in the initial or beginning stage and which can be controlled or extinguished by portable fire extinguishers, class II standpipe, or small hose systems **without the need for protective ensemble or breathing apparatus.**

(5) "Interior structural firefighting" means the physical activity for fire suppression or rescue, or both, inside of buildings or ~~enclosed~~ structures ~~which are~~ involved in a fire situation beyond the incipient stage.

R 408.17307 Definitions; ~~L to~~ P.

Rule 7307. ~~(1) "Lining" means a material permanently attached to the inside of the outer shell of a garment for the purpose of thermal protection and padding.~~

~~(2) "Maintenance" means the performance of services on fire protection equipment and systems and fire fighting equipment to assure that they will perform as expected in the event of fire. Maintenance differs from inspection in that maintenance requires the checking of internal fittings, devices, and agent supplies.~~

~~(3) "Outer shell" means the exterior layer of material on the fire coat and protective trousers which forms the outermost barrier between the fire fighting and the environment. The outer shell is attached to the vapor barrier and lining and is usually constructed with a storm flap, suitable closures, and pockets.~~

(1) "PFAS" means a perfluoroalkyl or polyfluoroalkyl substance.

~~(4)~~**(2)** ~~"Positive-pressure breathing apparatus" means a self-contained breathing apparatus in which the pressure in the breathing zone is positive in relation to the immediate environment during inhalation and exhalation.~~**"Protective ensemble" means multiple elements of clothing and equipment designed to provide a degree of protection for employees from adverse exposures to the inherent risks of structural firefighting.**

R 408.17309 Definitions; ~~Q~~ **S** to ~~V~~ **T**.

Rule 7309. (1) ~~"Quick disconnect valve" means a device which starts the flow of air by inserting the hose from the facepiece into the regulator of the self-contained breathing apparatus and stops the flow of air by disconnecting the hose from the regulator.~~**"Small hose system" means a system of hose ranging in diameter from 5/8 " (1.6 cm) up to 1 ½" (3.8 cm) which is for the use of employees and which provides a means for the control and extinguishment of incipient stage fires.**

(2) "Structural firefighting" means activities of rescue, fire suppression, or property conservation inside or outside buildings, structures, equipment, vehicles, vessels, or like properties that are involved in a fire beyond the incipient stage.

~~(2)~~**(3)** "Training" means the process of making proficient through instruction and hands-on practice in the operation of equipment that is expected to be used and in the performance of assigned duties.

~~(3) "Vapor barrier" means the material used to prevent or substantially inhibit the transfer of water, corrosive liquids, or steam or other hot vapors from the outside of the garment to the wearer's body.~~

R 408.17310 Employer responsibilities.

Rule 7310. (1) The employer having a fire brigade shall prepare and maintain a statement or written policy that establishes the existence of a fire brigade; and the basic organizational structure; the type, amount, and frequency of training to be provided to fire brigade members; the expected number of members in the fire brigade; and the functions that the fire brigade is to perform at the workplace. The ~~organizational~~ statement **or written policy** shall be available for inspection by the director of the department of ~~licensing and regulatory affairs~~**labor and economic opportunity or his or her authorized representative** and by employees or ~~their designated~~ **his or her authorized** representatives.

(2) The employer shall ~~assure~~**ensure** that employees who are expected to do structural firefighting are physically capable of performing duties that may be assigned to them during emergencies. The employer shall not permit employees with known heart disease, epilepsy, or emphysema to participate in fire brigade emergency activities unless a physician's certificate of the employees' fitness to participate in such activities is provided. ~~For employees assigned to fire brigades before September 15, 1980, this rule is effective on September 15, 1985. For employees assigned to fire brigades after September 15, 1980, this rule applies.~~

(3) The employer shall provide training and education for all fire brigade members commensurate with those duties and functions that fire brigade members are expected to perform. Such training and education shall be provided to fire brigade members before they perform fire brigade emergency activities. Fire brigade leaders and ~~training~~ instructors shall be provided with training and education that is more comprehensive than that provided to the general membership of the fire brigade. **Training and education records must be maintained and be made available for inspection by the director of the department of labor and economic opportunity or his or her authorized representative and by an employee or his or her authorized representative.**

~~(4) The quality of training and education programs for fire brigade members shall be similar to the training and programs conducted by such fire training schools as any of the following:~~

~~(a) Maryland fire and rescue institute.~~

~~(b) Iowa fire service extension.~~

~~(c) West Virginia fire service extension.~~

~~(d) Georgia fire academy.~~

~~(e) New York state department, fire prevention and control.~~

~~(f) Louisiana state university firemen training program.~~

~~(g) Michigan's Macomb community college, fire, and emergency services training center.~~

~~(h) Washington state's fire service training commission for vocational education.~~

~~(5) The training and education program for oil refinery industry fire brigade members shall be similar in quality to the training and education program conducted by any of the following:~~

~~(a) Macomb community college of Michigan, fire, and emergency services training center.~~

~~(b) Texas A & M university.~~

~~(c) Lamar university.~~

~~(d) Reno fire school.~~

~~(e) Delaware state fire school.~~

~~(6) Training for incipient fires shall be similar to the training provided by the fire training schools listed in subrule (4) of this rule or to the fire training for incipient fires offered by the school of labor and industrial relations at Michigan state university.~~

~~(7)~~**(4)** An employer shall ~~assure~~**ensure** that training and education is conducted frequently enough to ensure that each member of the fire brigade is able to perform the member's assigned duties and functions satisfactorily and in a safe manner so as not to endanger fire brigade members or other employees. All fire brigade members shall be provided with training at least annually. In addition, fire brigade members who are expected to perform interior structural firefighting shall be provided with an education session or training at least quarterly.

~~(8)~~**(5)** An employer shall inform fire brigade members about ~~special~~ hazards, such as the storage and use of flammable liquids and gases, toxic chemicals, radioactive sources, and water reactive substances, to which they may be exposed during a fire and other emergencies. The fire brigade members shall also be advised of any changes that occur in relation to the ~~special~~ hazards.

~~(9)~~**(6)** An employer shall develop written procedures that describe the actions to be taken in situations involving ~~special~~ hazards and shall include these written procedures in the training and education program. An employer shall make the procedures available for inspection by fire brigade members.

R 408.17312 Firefighting equipment.

Rule 7312. (1) The employer shall maintain and inspect, at least annually, firefighting equipment to ~~assure~~ **ensure** the safe operational condition of the equipment.

(2) ~~The employer shall ensure that portable fire extinguishers are inspected, at least monthly, in accordance with General Industry Safety Standard Part 8. "Portable Fire Extinguishers," as referenced in R 408.17302.~~**Inspection records must be maintained for a minimum period of 24 months for firefighting equipment.**

(3) The employer shall ensure that firefighting equipment that is in damaged or unserviceable condition is removed from service and replaced.

R 408.17313 Proper use, handling, storage, and containment of firefighting foam concentrate.

Rule 17313. (1) An employer must follow the specific, manufacturer provided safety data sheets (SDSs) for all firefighting foam concentrate that employees may be exposed to and follow best practices regarding the proper use, handling, and storage information.

(2) An employer must prevent intentionally added PFAS containing foam concentrate or foam solution from entering ground water, surface water, or storm drains, as soon as possible. Manual containment strategies used for spills involving a hazardous liquid should be employed. These include blocking storm drains to prevent the contaminated foam/water solution from entering the wastewater system or the environment. Defensive tactics such as damming, diking, and diverting should be employed to get the foam/water solution to an area suitable for containment until it can be removed in accordance with local, state, and federal regulations. Immediately after the end of a fire or other incident at which an organized fire brigade uses firefighting foam containing intentionally added PFAS, the employer must report the incident to the Michigan pollution emergency alert system.

(3) An employer must dispose of materials contaminated by foam containing PFAS pursuant to the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106.

(4) An employer must ensure the decontamination of an employee's body and equipment as follows:

(a) Post fire response contaminated personal protective equipment (PPE) must be decontaminated as soon as practical. A mild detergent, with a pH of not less than 6 and not greater than 10.5, must be used. The use of chlorine bleach, chlorinated solvents, or other organic solvents is not permitted. Follow manufacturer's recommended cleaning procedures.

(b) An employee's exposed skin, including the neck, face, and hands, must be decontaminated, post fire response and whenever exposed to firefighting foam. Employees must wash exposed skin with a mild soap and rinse thoroughly with water.

(5) An employer must prohibit the use of firefighting foam concentrate containing intentionally added PFAS, by an employee for training purposes.

(6) An employer must prohibit the use of firefighting foam concentrate containing intentionally added PFAS, by an employee, for equipment calibration purposes, unless required by law or the facility where the calibration takes place has implemented appropriate measures.

R 408.17314 Personal protective equipment ~~generally~~ **for structural firefighting**.

Rule 7314. (1) The **protective ensemble** requirements in these rules apply to those employees who perform ~~interior~~ structural firefighting. The **protective ensemble** requirements do not apply to employees who ~~use fire extinguishers or standpipe systems to~~ **only** control or extinguish ~~fires only in the~~ incipient stage **fires**.

(2) An employer shall provide **a protective ensemble**~~, and ensure the use of protective clothing~~ that is in compliance with the requirements of this part~~. An employer shall provide the clothing~~ without cost to an employee. ~~An employer shall assure that protective clothing ordered or purchased after March 1, 1984, meets the requirements contained in this part. As new equipment is provided, a~~**A**n employer shall ~~assure~~**ensure** that all fire brigade members wear the **protective ensemble** when performing ~~interior~~ structural firefighting. ~~An employer shall provide foot and leg protection. An employer shall ensure that protective shoes or boots that are worn in combination with protective trousers meet the requirements of R 408.17316.~~

(3) The employer shall ~~assure~~**ensure** that **the** protective ~~clothing~~**ensemble** protects the head, body, and extremities, **from hazards that are present or are likely to be present** and consists of at least ~~the~~ all of the following components:

(a) Foot and leg protection.

(b) Hand protection.

(c) Body protection.

(d) Face, eye, and head protection.

(4) When performing interior structural firefighting, the protective ensemble must meet or exceed the requirements of NFPA 1971: "Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting," 1997 edition, as adopted in R 408.17301. Effective January 1, 2025, when performing interior structural firefighting, the protective ensemble must meet or exceed the requirements of NFPA 1971: "Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting," 2013 edition, as adopted in R 408.17301.

(5) The protective ensemble must be inspected and cleaned after each use.

(6) An employer shall implement procedures for the inspecting and servicing of the protective ensemble according to the manufacturer's recommendations.

(7) An employer shall implement a procedure for determining whether the protective ensemble must be repaired or replaced. All repairs must be made in compliance with the manufacturer's recommendations.

R 408.17315~~. Foot and leg protection.~~ **Rescinded.**

~~Rule 7315. (1) Foot and leg protection shall be provided and may be achieved by either of the following methods:~~

~~(a) Fully extended boots which provide protection for the legs.~~

~~(b) Protective shoes or boots worn in combination with protective trousers that meet the requirements of R 408.17316.~~

~~(2) An employer shall ensure that protective footwear meets the requirements of NFPA 1971 "Standard on protective ensemble for structural fire fighting and proximity fire fighting," 1997 edition, as adopted in R 408.17302.~~

R 408.17316~~. Body protection.~~**Rescinded.**

~~Rule 7316. (1) Body protection shall be coordinated with foot and leg protection to ensure full body protection for the wearer, which shall be achieved by 1 of the following methods:~~

~~(a) Wearing of a fire-resistive coat meeting the requirements of subrule (2) of this rule in combination with fully extended boots meeting the requirements of R 408.17315.~~

~~(b) Wearing of fire-resistive coat in combination with protective trousers both of which meet the requirements of subrule (2) of this rule.~~

~~(2) The performance, construction, and testing of fire-resistive coats and protective trousers shall be at least equivalent to the requirements of NFPA 1971 "Standard on protective ensemble for structural fire fighting and proximity fire fighting," 1997 edition, as adopted in R 408.17302.~~

R 408.17317~~. Hand protection.~~**Rescinded.**

~~Rule 7317. Hand protection shall consist of protective gloves or a glove system that will provide protection against cuts, punctures, and heat penetration. Gloves or a glove system shall meet the requirements of NFPA 1971 "Standard on protective ensemble for structural fire fighting and proximity fire fighting," 1997 edition, as adopted in R 408.17302.~~

R 408.17318~~. Head, eye, and face protection.~~**Rescinded.**

~~Rule 7318. (1) Head protection shall consist of a protective head device that has ear flaps and a chin strap that meet the performance, construction, and testing requirements of NFPA 1971 "Standard on protective ensemble for structural fire fighting and proximity fire fighting," 1997 edition, as adopted in R 408.17302.~~

~~(2) Protective eye and face devices that comply with General Industry Safety Standard Part 33. "Personal Protective Equipment," as referenced in R 408.17302, shall be used by fire brigade members when performing operations where the hazards of flying or falling materials are present and might cause eye and face injuries.~~

~~(3) Full facepieces, helmets, or hoods of breathing apparatus that meet the requirements of General Industry Safety Standard Part 33. "Personal Protective Equipment," as referenced in R 408.17302, are acceptable as meeting the eye and face protection requirements of this part.~~

~~(4) Protective eye and face devices provided as accessories to protective head devices, face shields are permitted if the devices meet the requirements of General Industry Safety Standard Part 33. "Personal Protective Equipment," as referenced in R 408.17302.~~

R 408.17320 Respiratory protection devices.

Rule 7320. (1) **Effective January 1, 2025, when performing interior structural firefighting** ~~A~~**a**n employer shall ensure ~~that respirators are provided to, and used by, each fire brigade member, and that the respirators meet the requirements of~~ **any self-contained breathing apparatus currently in use must meet or exceed the requirements of NFPA 1981: "Standard on Open-Circuit Self-Contained Breathing Apparatus (SCBA) for Emergency Services," 2007 edition, as adopted in R 408.17301.** ~~Occupational Health Standard Part 451. "Respiratory Protection," as referenced in R 408.17302, for each employee required to use a respirator~~.

(2) Effective January 1, 2025, an employer shall provide and enforce the use of a Personal Alert Safety Systems (PASS) device to each employee utilizing a self-contained breathing apparatus when performing interior structural firefighting. PASS devices shall meet or exceed the

requirements of NFPA 1982: "Standard on Personal Alert Safety Systems (PASS)," 2007 edition, as adopted in R 408.17301.

~~(2) Self-contained breathing apparatus shall be provided with an indicator that automatically sounds an audible alarm when the remaining service life of the apparatus is reduced to within a range of 20% to 25% of its rated service time.~~

~~(3) An employer shall ensure that self-contained breathing apparatus ordered or purchased after July 1, 1981, for use by fire brigade members performing interior structural fire fighting operations, are of the pressure-demand or other positive-pressure type. Effective July 1, 1983, only pressure-demand or other positive-pressure self-contained breathing apparatus shall be worn by fire brigade members performing interior structural fire fighting.~~

~~(4) Subrule (3) of this rule does not prohibit the use of a self-contained breathing apparatus if the apparatus can be switched from a demand mode to a positive-pressure mode. However, such apparatus shall be in the positive-pressure mode when fire brigade members are performing interior structural fire fighting operations.~~

NOTICE OF PUBLIC HEARING

Department of Labor and Economic Opportunity
MIOSHA
Administrative Rules for General Industry Safety and Health Standard Part 73. Fire Brigades
Rule Set 2022-44 LE

NOTICE OF PUBLIC HEARING
Wednesday, June 14, 2023
10:00AM

Ottawa Building, Upper Level, Conference Room 2
611 W. Ottawa St., Lansing MI, 48933

The Department of Labor and Economic Opportunity will hold a public hearing to receive public comments on proposed changes to the General Industry Safety and Health Standard Part 73. Fire Brigades rule set.

On July31, 2020, MCL 408.1014r was added to the Michigan Occupational Safety and Health Act, 1974 PA 154, to require the Director of LEO to promulgate rules regarding a firefighter's use of firefighting foam concentrates containing Polyfluoroalkyl Substances (PFAS). These new rules are included in the proposed changes.

Several of the current rules that reference older versions of NFPA standards have been updated to a newer version of the standards. These updated references and requirements can be viewed with other proposed amendments at the link provided below.

(By authority conferred on the director of the department of labor and economic opportunity by sections 14r, 16, and 21 of the Michigan occupational safety and health act, 1974 PA 154, MCL 408.1014r, 408.1016, and 408.1021, and Executive Reorganization Order Nos. 19962,2003 1,20084,2011 4, and 2019-3, MCL 445.2001, 445.2011, 445.2025, 445.2030, and 125.1998).

The proposed rules will take effect immediately after filing with the Secretary of State. The proposed rules are published on the State of Michigan's website at www.michigan.gov/ARD and in the 6/1/2023 issue of the Michigan Register. Copies of these proposed rules may also be obtained by mail or electronic mail at the following email address: MIOSHA-Standards@michigan.gov.

Comments on these proposed rules may be made at the hearing, by mail, or by electronic mail at the following addresses until 6/14/2023 at 05:00PM.

Department of Labor and Economic Opportunity MIOSHA, Technical Services Division, Standards and Freedom of Information Act (FOIA) Section

530 West Allegan Street – P.O. Box 30643 – Lansing MI 48909-8143

MIOSHA-Standards@michigan.gov

The public hearing will be conducted in compliance with the 1990 Americans with Disabilities Act. If the hearing is held at a physical location, the building will be accessible with handicap parking available. Anyone needing assistance to take part in the hearing due to disability may call 517-284-7740 to make arrangements.

OPINIONS OF THE ATTORNEY GENERAL

MCL 14.32 states in part:

"It shall be the duty of the attorney general, when required, to give his opinion upon all questions of law submitted to him by the legislature, or by either branch thereof, or by the governor, auditor general, treasurer or any other state officer"

MCL 24.208 states in part:

"Sec. 8. (1) The Office of Regulatory Reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(j) Attorney general opinions. "

OPINIONS OF THE ATTORNEY GENERAL

STATE OF MICHIGAN

DANA NESSEL, ATTORNEY GENERAL

CONST 1963, ART 1, § 2: U.S. CONST, AM XIV:	Constitutionality of 2022 PA 196, 197, amending Michigan Election Law.
AMERICANS WITH DISABILITIES ACT:	Modifications to 2022 PA 197 to accommodate individuals with a print disability.

On a facial review, Public Acts 196 and 197 of 2022 do not unconstitutionally burden the fundamental rights of overseas voters who do not possess a Department of Defense verified electronic signature.

Whether the Americans with Disabilities Act requires the Department of State to allow individuals with a print disability to use the secure web portal to be developed under Public Act 197 of 2022 cannot be determined without a request for an accommodation by a potential voter and the development of a factual record.

Opinion No. 7322 May 5, 2023

The Honorable Jocelyn Benson
Secretary of State
Richard H. Austin Building
430 W. Allegan
Lansing, MI 48918

You have asked whether Public Acts 196 and 197 of 2022, which amended the Michigan Election Law, 1954 PA 116, MCL 168.1 *et seq*., to allow overseas military personnel, but not other overseas voters, to return completed absent voter ballots electronically, violate the Equal Protection Clauses of the federal and state constitutions. You also ask whether the Americans with Disabilities Act requires the expansion of Public Act 197's provisions to individuals with a print disability.

Background

Public Acts 196 and 197 of 2022 were signed by the Governor and took immediate effect on October 7, 2022.[1]

Public Act 196 creates a new section in the Michigan Election Law, MCL 168.18a, which now defines a "United States Department of Defense verified electronic signature" as "the certificate-based digital identification code issued to qualified personnel by the United States Department of Defense as part of the Common Access Card, or its successor."

Public Act 197 amends MCL 168.759a to provide that—beginning on January 1, 2024—members of uniformed military services on active duty or members of the merchant marine who are absent from the United States by reason of their service and who do not expect to return to the United States to vote may be allowed to electronically return a voted ballot to the appropriate city or township clerk to be counted. MCL 168.759a(13). MCL 168.759a(17) authorizes the Secretary of State to develop and maintain a secure web portal on the Secretary of State's website to facilitate the electronic return of voted ballots by service members, and expressly limits the persons who may access the web portal to "[o]nly the secretary of state or the secretary of state's duly authorized agent, a city or township clerk, the clerk's deputy clerk, or a sworn member of the clerk's staff."

MCL 168.759a(17) also requires the Secretary of State to promulgate rules no later than January 1, 2024, that establish policies and procedures for the electronic return of

[1] Public Acts 196 and 197 were introduced as Senate Bills 8 and 311, respectively.

voted ballots by members of uniformed military service on active duty or by members of the merchant marine who are absent from the United States by reason of their service and who do not expect to return to the United States to vote.

MCL 168.759a(17) further provides that, in promulgating those policies and procedures, the Secretary "shall require an eligible member to use a United States Department of Defense verified electronic signature, as that term is defined in section 18a, so that the identity of the eligible member can be verified utilizing those policies and procedures." The statute expressly states that "[a] member who is unable or unwilling to provide a United States Department of Defense verified electronic signature is not eligible to electronically return a voted ballot." MCL 168.759a(17).

Although the Legislature's intent is not expressly stated, it is significant that Public Act 197 was tie-barred with Public Act 196, which, as mentioned, defined a Department of Defense "verified electronic signature" as "the certificate-based digital identification code issued to qualified personnel by the United States Department of Defense as part of the Common Access Card, or its successor." MCL 168.18a. Coupled with the requirement that members use their "verified signature" to return their voted ballot electronically, it is apparent that the Legislature intended to limit the return of ballots electronically based upon the security afforded by those "verified signatures."

Legal Principles

When addressing a constitutional challenge to a statute, the statute is "presumed to be constitutional" and there is a "duty to construe [the] statute as constitutional unless its

unconstitutionality is clearly apparent." *Taylor v Smithkline Beecham Corp,* 468 Mich 1, 6 (2003) (citations omitted). "Further, when considering a claim that a statute is unconstitutional . . . the wisdom of the legislation" is not part of the inquiry. *Id*. (citation omitted). "[I]t is only when invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution" that the statute's validity will not be sustained. *Phillips v Mirac, Inc,* 470 Mich 415, 423 (2004) (citations omitted).

Because the statutes amended or added by Public Acts 196 and 197 have yet to be applied or enforced as to any person, this office is limited to conducting a facial review of their constitutionality.[1] Generally, a statute will fail to withstand facial review only if "no set of circumstances exists under which the statute would be valid" and "the fact that the statute might operate unconstitutionally under some conceivable set of circumstances is insufficient" to render it invalid. *Council of Orgs & Others for Educ About Parochiaid, Inc v Governor*, 455 Mich 557, 568–569 (1997) (cleaned up). Indeed, "if any state of facts reasonably can be conceived that would sustain the statute, the existence of the state of facts at the time the law was enacted must be assumed" and the statute upheld. *Id.* (citation omitted).

Analysis

You first ask whether the Equal Protection Clause of the U.S. Constitution or the Michigan Constitution requires the Secretary of State to extend Public Act 197's provisions to all voters covered by the federal Uniformed and Overseas Citizens Absentee

[1] Moreover, the opinions process is generally confined to answering questions of law and not the resolution or finding of facts. MCL 14.32. See also *Mich Beer & Wine Wholesalers Ass'n v Attorney General,* 142 Mich App 294, 300–302 (1985).

Voting Act (UOCAVA), 52 USC 20301 *et seq*. You observe that UOCAVA, as amended by the Military and Overseas Voter Empowerment Act of 2009, requires that ballots be made available to members of the military, their eligible family members, and overseas citizens, and you question whether Public Act 197's limitation to only active-duty military service members and members of the merchant marine contravenes the equal-protection rights of military family members residing on overseas military bases and other voters living overseas. The Equal Protection Clause of the Michigan Constitution commands that "[n]o person shall be denied the equal protection of the laws . . .." Mich Const 1963, art 1, § 2. The Michigan Supreme Court has held that this constitutional provision is coextensive with that of its federal counterpart. *Crego v Coleman*, 463 Mich 248, 258 (2000). In *Crego,* the Court quoted *Doe v Dep't of Social Services,* 439 Mich 650, 670–671 (1992), which stated that "a review of the jurisprudence and constitutional history of this state suggests . . . that our Equal Protection Clause was intended to duplicate the federal clause and to offer similar protections." 463 Mich at 258. Accordingly, questions of equal protection under both the Michigan and U.S. constitutions may be considered together. See *People v James,* 326 Mich App 98, 105 (2018).

As the Sixth Circuit has previously observed, "voting is of the most fundamental significance under our constitutional structure." *Mays v LaRose,* 951 F3d 775, 783 (CA 6, 2020), quoting *Ill Bd of Elections v Socialist Workers Party*, 440 US 173, 184 (1979). "Other rights, even the most basic, are illusory if the right to vote is undermined." *Obama for Am v Husted*, 697 F3d 423, 428 (CA 6, 2012), quoting *Wesberry v Sanders*, 376 US 1, 17 (1964). Equal protection applies not only in the initial allocation of the franchise, but also

in the manner of its exercise. *Id.* at 428, quoting *League of Women Voters v Brunner,* 548 F3d 463, 477 (CA 6, 2008). "[A] citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." *Id.* at 428, quoting *Dunn v Blumstein*, 405 US 330, 336 (1972). Once a state grants the right to vote on equal terms, it "may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Id.* at 428, quoting *Bush v Gore,* 531 US 98, 104 (2000). The Sixth Circuit also noted that, "[o]ur Constitution leaves no room for classification of people in a way that unnecessarily abridges this right." *Id.,* quoting *Wesberry*, 376 US at 17–18.

"It does not follow, however, that the right to vote in any manner . . . [is] absolute." *Burdick v Takushi*, 504 US 428, 433 (1992), citing *Munro v Socialist Workers Party*, 479 US 189, 193 (1986). In *Mays,* the Sixth Circuit noted that the U.S. Constitution "explicitly provides State legislatures with authority to regulate the 'Times, Places, and Manner of holding Elections.'" *Mays,* 951 F3d at 783, quoting US Const, art 1, §4, cl 1. "So while States can regulate elections, they must be careful not to unduly burden the right to vote when doing so." *Id.* at 783. The Court also recognized that courts "must evaluate the burden on disparately treated voters considering all available opportunities to vote." *Id.* at 785, citing *Rosario v Rockefeller,* 410 US 752, 757 (1973).

In *Obama for America*, the Sixth Circuit held that "the Equal Protection Clause applies when a state either classifies voters in disparate ways, see *Bush,* 531 US at 104–105 (arbitrary and disparate treatment of votes violates equal protection), or places restrictions on the right to vote, see *League of Women Voters,* 548 F3d at 478 ("voting system that burdens the exercise of the right to vote violates equal protection"). 697 F3d

at 428. "The precise character of the state's action and the nature of the burden on voters will determine the appropriate equal protection standard." *Id.* If a plaintiff alleges only that a state treated him or her differently than a similarly situated voter—but without a corresponding burden on the fundamental right to vote—courts use a rational basis standard of review. Under rational basis review, a statute is valid if it rationally furthers a government interest, and the statute will be given a strong presumption of validity under which it will be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *LensCrafters, Inc v Robinson*, 403 F3d 798, 806 (CA 6, 2005).

"Under rational basis scrutiny, government action amounts to a constitutional violation only if it 'is so unrelated to the achievement of any combination of legitimate purposes that the court can only conclude that the government's actions were irrational.'" *Michael v Ghee,* 498 F3d 372, 379 (CA 6, 2007), quoting *Club Italia Soccer & Sports Org, Inc v Charter Twp of Shelby*, 470 F3d 286, 298 (CA 6, 2006). A court "will be satisfied with the government's 'rational speculation' linking the regulation to a legitimate purpose, even 'unsupported by evidence or empirical data.'" *Am Express Travel Related Servs Co v Kentucky*, 641 F3d 685, 690 (CA 6, 2011), quoting *Craigmiles v Giles*, 312 F3d 220, 224 (CA 6, 2002). "Thus, if a [government action] can be upheld under any plausible justification offered by the state, or even hypothesized by the court, it survives rational-basis scrutiny." *Id.*

In contrast, when a state's classification "severely" burdens the fundamental right to vote, as with poll taxes, strict scrutiny is the appropriate standard. *Obama for Am,* 697

F3d at 429, citing *Burdick*, 504 US at 434. Most cases, however, fall somewhere in between. *Id.* at 429. For such intermediate cases, where the burden on the right to vote is moderate, courts will weigh that burden against "'the precise interests put forward by the State as justifications for the burden imposed by its rule,' taking into consideration 'the extent to which those interests make it necessary to burden the plaintiff's rights.'" *Mays,* 951 F3d at 784, quoting *Burdick*, 504 US at 434. Only where the state's interests outweigh the burden on the plaintiff's right to vote do voting restrictions not offend the Equal Protection Clause. *Id.*

When a plaintiff alleges that a state has burdened voting rights through disparate treatment of voters, courts review the claim using the "flexible standard" outlined in *Anderson v Celebrezze*, 460 US 780 (1983), and *Burdick*, 504 US at 434. *Obama for Am*, 697 F3d at 429. The Sixth Circuit—quoting the *Burdick* decision—recited that standard as follows:

> A court considering a challenge to a state election law must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiffs' rights." [*Obama for Am*, 697 F3d at 429.]

So, with regard to Public Act 197, it must first be determined whether any voters' fundamental right to vote will be burdened. If there is a burden, then the standard applied would depend on the relative amount of burden imposed: moderate burdens are weighed against the state's interests and severe burdens are subject to strict scrutiny. If there is no burden imposed on non-serving family members or overseas voters, then Public

Act 197's different treatment of military service members would be reviewed under the rational basis standard discussed above.

Here, the Act creates a new method for active members of uniformed services and the merchant marine to return voted ballots that has never before existed in Michigan law. While electronic transmission of absent voter ballots *to* military and overseas voters was added to MCL 168.759a by 2010 PA 50, electronic return of those ballots has not previously been allowed. The analysis of equal protection here first requires consideration of whether there is any burden to overseas voters who are not active-duty unformed service members or members of the merchant marine and therefore have to continue returning their ballots by mail instead of having the new electronic-return option that has now been granted to those service members.

This precise question does not appear to have been addressed by the courts. There are, however, cases reviewing similar issues that may be instructive. In *McDonald v Board of Election Commissioners,* the Supreme Court considered an equal protection challenge to an Illinois statute that extended absentee voting privileges to those physically incapacitated because of medical reasons from appearing at the polls, but it did not grant the same privilege to persons unable to appear at the polls because they were "judicially incapacitated" by reason of their incarceration while unsentenced and awaiting trial. 394 US 802, 805–806 (1969). This case was decided years before the *Anderson-Burdick* standard was articulated by the Court, but the Court still appeared to struggle with "how stringent a standard to use in evaluating the classifications made" by the state law.

McDonald, 394 US at 806–807. The Court determined that an "exacting approach" was unnecessary in that case because the distinctions drawn by the statute were not based on wealth or race, and also because there was "nothing in the record to indicate that the Illinois statutory scheme has an impact on appellants' ability to exercise the fundamental right to vote." *Id.* at 807. Of particular interest is the following observation made by the Court in expressing its reasoning:

> It is thus not the right to vote that is at stake here but a claimed right to receive absentee ballots. Despite appellants' claim to the contrary, the absentee statutes, which are designed to make voting more available to some groups who cannot easily get to the polls, do not themselves deny appellants the exercise of the franchise; nor, indeed, does Illinois' Election Code so operate as a whole, for the State's statutes specifically disenfranchise only those who have been convicted and sentenced, and not those similarly situated to appellants. Faced as we are with a constitutional question, we cannot lightly assume, with nothing in the record to support such an assumption, that Illinois has in fact precluded appellants from voting. [*Id.* at 807 (citation omitted).]

The Supreme Court then applied a rational basis standard to the statute. *Id.* at 808–809. The Court ultimately concluded that, since there was nothing in the record showing that a pretrial detainee was "absolutely prohibited from exercising the franchise," it was reasonable for the state legislature to "treat differently the physically handicapped, who must, after all, present affidavits from their physicians attesting to an absolute inability to appear personally at the polls in order to qualify for an absentee ballot." *Id.* at 809.

Notably, *McDonald* was later clarified by the Supreme Court in two subsequent cases. In *Goosby v Osser*, the Court noted that—unlike the situation in *McDonald*—the statute at issue had expressly prohibited the pre-trial detainees from voting by absentee

ballot, and there was a record of requests to vote that had been denied. 409 US 512, 520–522 (1973). However, the Court did not reach the question of whether the petitioners were entitled to relief and instead referred the case to a three-judge panel for further hearing. A year later, the Supreme Court again considered its opinion in *McDonald* and stated that, "[e]ssentially the Court's disposition of the claims in *McDonald* rested on failure of proof." *O'Brien v Skinner*, 414 US 524, 529 (1974).

Also, in the *Obama for America* case discussed earlier, the Sixth Circuit reviewed a challenge to an Ohio law that—after a series of events involving an amendment, a referendum, and a repeal attempt by the state legislature—provided a more generous deadline for in-person early voting for military and overseas voters than was provided to other voters. 697 F3d at 426–427. This case did not address absent voting; instead, the issue was that military and overseas voters were allowed three extra days of in-person early voting. The controversy in that case began when the Ohio legislature attempted to shorten the then-existing deadline for early voting from the Monday before the election to the Friday before the election. *Id.* at 427. But efforts to repeal that law failed to address a separate statute that had attempted to correct the deadlines in the original law. *Id.* As a result, "even though the original bill . . . was repealed, the technical changes contained in [the replacement bill] remained in place, and Ohio voters were still left with inconsistent deadlines." *Id.* at 427. Non-military voters could cast ballots in-person only until 6:00 p.m. on the Friday before the election, but military and overseas voters had two deadlines: Friday at 6:00 p.m. and the close of the polls on election day. *Id.* In an attempt to resolve any confusion, the Ohio Secretary of State applied the more generous deadline to military

and overseas voters but denied attempts to apply that same deadline to non-military voters. *Id.*

Following a hearing and briefing by the parties that included voluminous exhibits including legislative history, expert reports, and declarations by military officers and government officials, the federal district court granted a preliminary injunction and ordered that all Ohio voters have the same opportunity for early voting that was available to them before the legislative attempt to shorten the deadline. *Id.* at 426. On appeal, the state argued that the district court should have applied rational basis review instead of the *Anderson-Burdick* framework. *Id.* at 430. In its arguments, the state relied heavily on the Supreme Court opinion in *McDonald*. *Id.* at 430. The Sixth Circuit—citing *O'Brien* and *Goosby*—held, however, that *McDonald* was based on the failure of the plaintiffs to present any evidence supporting their allegation that they were prevented from voting. *Id.* at 431. But in *Obama for America*, the plaintiffs "introduced extensive evidence that a significant number of Ohio voters will in fact be precluded from voting without the additional three days of in-person early voting." *Id.* at 431. The Sixth Circuit further held that plaintiffs "did not need to show that they were legally prohibited from voting, but only that 'burdened voters have few alternate means of access to the ballot.'" *Id.*, quoting *Citizens for Legislative Choice v Miller*, 144 F3d 916, 921 (CA 6, 1998).

The Sixth Circuit determined that—based on the evidence in the record—the federal district court's decision was not clearly erroneous where it concluded that, "because early voters have disproportionately lower incomes and less education than election day voters, and because all evening and weekend voting hours prior to the final weekend were

eliminated by Directive 2012-35, 'thousands of voters who would have voted during those three days will not be able to exercise their right to cast a vote in person.'" *Id.* at 431. Because the plaintiffs' right to vote was found to have been burdened, the Sixth Circuit held that the federal district court properly applied the *Anderson-Burdick* framework and concluded that, "if Plaintiffs can show that the State's burden on their voting rights is not sufficiently justified, they are likely to succeed on their claim that the State has violated the Equal Protection Clause." *Id.* at 431-432.

The Sixth Circuit then evaluated the justifications offered by the state—the difficulty of local county boards of elections to both prepare for Election Day and accommodate early voters during the weekend before the election, and the "unique challenges" faced by military members and their families justified in-person voting for them but not for other Ohio voters. *Id.* at 432. The court first concluded that the state's interest in "smooth election administration" it claimed to be advanced by the law was contradicted by evidence in the record and unsupported by other evidence. *Id.* at 433. The Sixth Circuit also held that under the *Anderson-Burdick* standard, it must weigh "the character and magnitude of the asserted injury against the 'precise interests put forward by the State . . . taking into consideration the extent to which those interests make it *necessary* to burden the plaintiff's rights.'" *Id.* at 433, citing *Burdick,* 504 US at 434 (quotation marks omitted).

The Sixth Circuit then concluded that, "[i]f the State had enacted a generally applicable, nondiscriminatory voting regulation that limited in-person early voting for all Ohio voters, its 'important regulatory interests' would likely be sufficient to justify the

restriction," but Ohio's statutory scheme was neither generally applicable to all voters, nor was the state's "vague interest in the smooth functioning of local boards of elections" a sufficient excuse of the discriminatory burden it placed on some—but not all—Ohio voters. *Id.* at 433–434.

Next, the Sixth Circuit recognized that although accommodating the unique situation of military members and their families, "who may be called away at a moment's notice in service to the nation," was a worthy and commendable goal, and while there was "a compelling reason to provide more opportunities for military voters to cast their ballot, there is no corresponding satisfactory reason to prevent non-military voters from casting their ballots as well." *Id.* at 434. The Sixth Circuit's holding, however, noted that there was "no relevant distinction between" military or overseas voters and other voters with respect to in-person early voting:

> The State and Intervenors worry about the logical extensions and practical implications of Plaintiffs' position. If states are forced to provide the same accommodations to every voter that they currently provide to military and overseas voters, such as added flexibility and extra time, states may simply eliminate these special accommodations altogether. However, virtually all of the special voting provisions in federal and Ohio law address problems that arise when military and overseas voters are *absent* from their voting jurisdictions. They are not similarly situated to all other voters in this respect, and states are justified in accommodating their particular needs. With respect to in-person voting, the two groups are similarly situated, and the State has not shown that it would be burdensome to extend early voting to all voters. Its argument to the contrary is not borne out by the evidence. [*Id.* at 435.]

Again, the Sixth Circuit's holding was rooted in the evidence presented and the specific circumstances of the interests asserted by the state. Having concluded that the state's asserted interests were insufficient to justify the limitation on in-person early

voting for non-military voters, the Sixth Circuit held that the plaintiffs were likely to prevail on the merits. *Id.* at 436.

More recently, in *Mays*, the Sixth Circuit applied the *Anderson-Burdick* standard to an Ohio statute that required all voters to request an absentee voter ballot by noon three days before election day, except for "unexpectedly hospitalized electors," who were allowed to request an absent voter ballot until 3 p.m. on Election Day. 951 F3d at 780. In that case, the law was challenged by persons who were arrested before Election Day and who alleged disparate treatment between unexpectedly hospitalized electors and unexpectedly jailed electors. *Id.* at 780. Evaluating the burden imposed on the plaintiffs, the Sixth Circuit held that, "[c]onsidering Ohio's absentee ballot request deadlines from the perspective of unexpectedly jail-confined electors and given the alternative voting opportunities that Ohio provides, the burden those laws place on Plaintiffs' right to vote is moderate." *Id.* at 786. But—although the plaintiffs had planned to vote on Election Day and did not foresee their arrest—the Sixth Circuit noted that any voter can be called away unexpectedly, and plaintiffs could have avoided any uncertainty by taking advantage of opportunities provided to vote early. *Id.* at 786–787. The Court thus concluded that the jailed plaintiffs were, "no more burdened than any other elector." *Id.* at 787. Because the Sixth Circuit concluded that the burden was moderate, the laws would survive review if the state's justifications outweighed the moderate burden. *Id.*

In *Mays,* the Sixth Circuit accepted the state's asserted interest in the orderly administration of elections, finding that the record before it supported the conclusion that the local election boards have a long list of responsibilities in the days before an election,

and that limited staff and resources prevented them from accommodating jailed voters the same as hospitalized voters because board staff delivering absentee ballots to jails would need advance planning to locate the elector in jail, pass through security, and verify that the jailed voter will be there when they arrive, while such advance planning was unnecessary for hospitalized voters. *Id.* at 787–788. The Sixth Circuit also took particular notice that "prisoners are not similarly situated to non-prisoners." *Id.* at 788.

Of special note is the Sixth Circuit's opinion distinguishing the holding in *Obama for America*. First, the Sixth Circuit emphasized that—while Ohio had attempted to roll back in-person early voting in *Obama for America*—it had never provided jail-confined voters a chance to request absentee voter ballots at the last minute. *Id.* at 790. The Sixth Circuit also distinguished *Obama for America* by noting that the plaintiffs in *Mays* had failed to counter the evidence put forth by the State showing that counties would have difficulty accommodating the jailed voters. *Id.* at 790. In short, the Sixth Circuit held that, "none of our *Obama for America* rationales apply." *Id.* at 790. The court held that the Secretary of State had "the burden of establishing that [the State's] disparate treatment of confined electors furthers the State's interest in orderly election administration," and that the Secretary had carried that burden. *Id.* at 790.

Turning back to the Michigan statute at issue here, Public Act 197 has only very recently been passed and it has not been implemented yet. Accordingly, there is no factual record showing what burden—if any—limiting electronic return of ballots to only the defined members of military services might have on non-member overseas voters. Still, even without a record, it is clear that non-military overseas voters are not "absolutely

prohibited" from the franchise since they may continue to return ballots by mail or a similar service. See *McDonald,* 394 US at 809. Also, unlike the Ohio law in *Obama for America,* Public Act 197 does not remove any ability or opportunity non-military overseas voters had before—it simply does not affect them at all. Public Act 197 does not, on its face, prohibit or foreclose any overseas voters from voting. Non-military voters have alternatives to returning their ballots electronically, including returning them by mail or similar service as they have previously done. Because the non-military members have not lost anything and may continue voting as they already have, there is arguably no burden imposed upon non-military overseas voters and Public Act 197 should be examined under the deferential rational basis standard. At worst, any burden imposed upon non-military overseas voters by Public Act 197 would be a moderate one, calling for the *Anderson-Burdick* analysis. Under either rational basis or *Anderson-Burdick,* it would be necessary to consider the state's asserted rationale for the law.

As mentioned, the rationale for treating military members differently is not stated in the law but appears based upon the security afforded by the "verified electronic signature" system operated by the U.S. Department of Defense. While military members are treated differently by being allowed to return ballots electronically, their ability to do so is explicitly contingent on the member using "a United States Department of Defense verified electronic signature." MCL 168.759a(17). Accordingly, it is reasonable to conclude that the Legislature sought to limit the return of ballots electronically not because of any race, sex, or economic-based classification, but upon the security afforded by those "verified signatures."

This interest would likely fall within the same "orderly administration of elections" justification offered by the State of Ohio in *Obama for America* and in *Mays*. Again, this office does not have the benefit of a factual record, but it seems probable that state interests in security and the prevention of fraud—assuming they can be supported factually—and the lack of an equivalent to the Department of Defense verified electronic signatures for non-military overseas voters would provide sufficient justification to outweigh any burden on non-military overseas voters of having to return voted ballots by mail.

This rationale would also be sufficient to satisfy the lower rational basis test. The use of the Department of Defense verified electronic signature might also be seen as comparable to the affidavit required of absentee voters who were "physically incapacitated" in the *McDonald* case, and so might be considered a factor that distinguishes military members from non-military overseas voters.

It is my opinion, therefore, that Public Acts 196 and 197 of 2022 do not unconstitutionally burden the fundamental rights of overseas voters who do not possess a Department of Defense verified electronic signature. This opinion is based upon a facial review of the statute, and the conclusion may change if new factual information becomes available.[1]

Your second question asks whether the Americans with Disabilities Act (ADA), 42 USC 12101 *et seq*., requires the Department of State to allow use of the secure web portal

to be developed under Public Act 197 by individuals with a print disability. While not expressly stated, your question is understood to refer to Title II of the ADA, which provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. 42 USC 12132.

The ADA is a broad remedial civil rights law enacted to provide uniform federal protections for the disabled and to address the historic and pervasive discrimination against people with disabilities in all areas of public life.[1] In enacting the ADA, Congress declared that "discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services," and, relevant to your question, "voting." 42 USC 12101(a)(3). This discrimination, Congress noted, "continue[s] to be a serious and pervasive social problem," 42 USC 12101(a)(2), that denies people with disabilities the opportunity to compete and pursue opportunities on an equal basis, 42 USC 12101(a)(8).

As an initial matter, the ADA does not "invalidate or limit the remedies, rights, and procedures of any other Federal laws, or State or local laws (including State common law) that provide greater or equal protection for the rights of individuals with disabilities or

[1] The request also asks whether, if the statute is unconstitutional, that unconstitutionality can be remedied if the Department of State simply interprets the amendments as applying to non-military overseas voters. It is unnecessary to address this question, however, because this opinion concludes the statute is not unconstitutional on its face.

individuals associated with them." 28 CFR 35.103(b). But the ADA does contemplate modification to, and thereby preemption of, state laws when necessary to effectuate the protections afforded under the ADA. *Mary Jo C v New York State & Local Ret Sys*, 707 F3d 144, 163 (CA 2, 2013).

Your request notes that under current law and practice, voters with print disabilities may receive and complete their ballots electronically, but must then print and return a paper ballot and are not permitted to return their ballots electronically.[2] In essence, you have asked whether the creation of a legal process for military members with verified electronic signatures to return their ballots electronically triggers an obligation under Title II of the ADA for the Department of State to make that program available to persons with print disabilities.

Under Title II, two types of claims are cognizable: claims for intentional discrimination and claims for a reasonable accommodation. *Ability Ctr of Greater Toledo v City of Sandusky*, 385 F3d 901, 907 (CA 6, 2004). It is the latter type – a claim for a reasonable accommodation – that most relates to your question.[3]

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[1] It should also be noted that Michigan's Persons with Disabilities Civil Rights Act, MCL 37.1101 *et seq.*, and the ADA "share the same purpose and use similar definitions and analyses." *Chiles v Machine Shop, Inc*, 238 Mich App 462, 472–473 (1999).

[2] As a result of litigation, the Department of State agreed to establish a process for voters with print disabilities to receive and complete an absentee voter ballot electronically and thereafter print and mail the ballot to their local clerk. See *Powell, et al v Benson*, Case No. 20-cv-11023 (ED Mich).

[3] With respect to concerns over intentional discrimination, the ADA requires the challenged discrimination "to occur *because* of disability, which is another way of saying that the plaintiff must establish a but-for relationship between the protested Act and the individual's disability." *Gohl v Livonia Pub Schools Sch Dist,* 836 F3d 672, 682 (CA 6, 2016), citing *Univ of Tex Sw Med Ctr v Nassar,* 133 S Ct 2517, 2527-28 (2013). Here, it is unclear that a disabled voter could establish the required "but-for" causation where the inability to access the military ballot return portal is based on whether a voter has a Department of Defense "verified electronic signature" instead of whether they have any print disabilities.

When seeking an accommodation to fully participate in the act of voting and returning a completed absentee voter ballot, a voter must show that the voter has a "disability" and that the voter is a "qualified individual with a disability" as those terms are understood under the ADA. The definition of "disability" includes "a physical . . . impairment that substantially limits one or more major life activities of such individual," which includes "seeing." 42 USC 12102(1)(A), (2)(A). And a "qualified individual with a disability" is "an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 USC 12131(2).

Assuming a request for an accommodation is received from a "qualified individual with a disability," the next step is to determine whether the requested accommodation is appropriate under the "reasonable-modifications regulation," *Olmstead v L C ex rel Zimring*, 527 US 581, 581 (1999); 28 CFR 35.130(b)(7). A modification or accommodation "is reasonable unless it requires 'a fundamental alteration in the nature of a program' or imposes 'undue financial and administrative burdens.'" *Smith & Lee Assoc, Inc v City of Taylor*, 102 F3d 781, 795 (CA 6, 1996), quoting *Southeastern Community College v Davis*, 442 US 397, 410, 412 (1979); 28 CFR 35.150(a)(3). An accommodation is not reasonable if it imposes a fundamental alteration in the nature of the program. *Jones v City of Monroe*, 341 F3d 474, 480 (CA 6, 2003). So, while a public entity may be required to make "reasonable modifications" to rules, policies, or practices, it is not necessary to do

so where the necessary modification would "fundamentally alter" the program or service. The public entity, however, bears the burden of proving that the modification would fundamentally alter the program. *Id.* at 480.

Thus, if a request for an accommodation is received from a qualified voter with a disability, the Department of State would have to consider whether it can modify the electronic process required by Public Act 197 without incurring an undue burden or fundamentally altering the nature of the process. And whether an undue burden or fundamental alteration exists is typically fact-based and not capable of determination as a legal question alone. See *Hindel v Husted*, 875 F3d 344, 347 (CA 6, 2017). Here, no potential voter has thus far requested an accommodation, and therefore there is no factual record on which to determine the reasonableness of the Department of State modifying the statutory process. I cannot, therefore, provide an opinion about whether the ADA requires the Department of State to allow use of the secure web portal to be developed under Public Act 197 by individuals with a print disability.

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ADMINISTRATIVE RULES
ENROLLED SENATE AND HOUSE BILLS
SIGNED INTO LAW OR VETOED
(2023 SESSION)

Mich. Const. Art. IV, §33 provides: "Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law . . . If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law. If he disapproves . . . he shall return it within such 14-day period with his objections, to the house in which it originated."

Mich. Const. Art. IV, §27, further provides: "No act shall take effect until the expiration of 90 days from the end of the session at which it was passed, but the legislature may give immediate effect to acts by a two-thirds vote of the members elected to and serving in each house."

MCL 24.208 states in part:

"Sec. 8. (1) The Office of Regulatory Reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

* * *

(b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.

(c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year."

2023 Michigan Public Acts Table

Legislative Service Bureau
Legal Division, Statutory Compiling and Law Publications Unit
124 W. Allegan, Lansing, MI 48909

May 23, 2023
Compiled through PA 38 of 2023

PA No.	ENROLLED		I.E.* Yes/No	Governor Approved	Filed Date	Effective Date	SUBJECT
	HB	SB					
0001		0007	Yes	1/31/2023	1/31/2023	1/31/2023	***Appropriations**; supplemental*; appropriations for multiple departments and branches for fiscal years 2021-2022 and 2022-2023; provide for. ***(Sen. Sarah Anthony)***
0002		0013	No	2/1/2023	2/1/2023	**	***Elections**; presidential primary*; presidential primary election date; revise. ***(Sen. Jeremy Moss)***
0003		0008	Yes	2/14/2023	2/14/2023	2/14/2023	***Appropriations**; supplemental*; supplemental appropriations in the school aid act for fiscal years 2021-2022 and 2022-2023; provide for. ***(Sen. Sarah Anthony)***
0004	4001		No	3/7/2023	3/7/2023	**	***Individual income tax**; retirement or pension benefits*; limitations and restrictions on deductions of certain retirement or pension benefits, revenue distributions, earned income tax credit, rebate payments, rebate and revitalization and placemaking funds; revise, increase, and provide for. ***(Rep. Angela Witwer)***
0005	4016		Yes	3/8/2023	3/8/2023	3/8/2023	***Appropriations**; supplemental*; appropriations for multiple departments for fiscal years 2021-2022 and 2022-2023; provide for. ***(Rep. Angela Witwer)***
0006		0004	No	3/16/2023	3/16/2023	**	***Civil rights**; general discrimination*; sexual orientation and gender identity or expression; include as categories protected under the Elliott-Larsen civil rights act. ***(Sen. Jeremy Moss)***
0007		0012	No	3/24/2023	3/24/2023	**	***Education**; elementary*; requirements related to the retention of certain grade 3 pupils; modify. ***(Sen. Dayna Polehanki)***
0008		0034	No	3/24/2023	3/24/2023	**	***Labor**; collective bargaining*; collective bargaining rights; revise to restore former provisions. ***(Sen. Darrin Camilleri)***

* - I.E. means Legislature voted to give the Act immediate effect.
** - Act takes effect on the 91st day after sine die adjournment of the Legislature.
*** - See Act for applicable effective date.
+ - Line item veto.
++ - Pocket veto.
# - Tie bar.

PA No.	ENROLLED		I.E.* Yes/No	Governor Approved	Filed Date	Effective Date	SUBJECT
	HB	SB					
0009	4004		No	3/24/2023	3/24/2023	**	***Labor***; *collective bargaining*; requirement for agency fee for nonunion members; allow in bargaining agreements and as condition of employment in public sector. ***(Rep. Regina Weiss)***
0010	4007		No	3/24/2023	3/24/2023	**	***Labor***; *hours and wages*; prevailing wage; reenact. ***(Rep. Brenda Carter)***
0011	4006		No	4/5/2023	4/5/2023	**	***Crimes***; *abortion*; penalty for administering with intent to procure miscarriage and advertisement or sale of certain drugs; repeal. ***(Rep. Laurie Pohutsky)***
0012		0002	No	4/5/2023	4/5/2023	**	***Crimes***; *abortion*; provision related to publication of cures for conceptive preventatives; repeal. ***(Sen. Erika Geiss)***
0013	4032		No	4/5/2023	4/5/2023	** #	***Criminal procedure***; *sentencing guidelines*; reference to crime of administering drugs to procure miscarriage; remove to reflect repeal. ***(Rep. Stephanie A. Young)***
0014		0082	No	4/13/2023	4/13/2023	**	***Use tax***; *exemptions*; firearm safety devices; exempt. ***(Sen. Kevin Hertel)***
0015		0081	No	4/13/2023	4/13/2023	**	***Sales tax***; *exemptions*; firearm safety devices; exempt. ***(Sen. Jeff Irwin)***
0016		0080	No	4/13/2023	4/13/2023	** #	***Crimes***; *weapons*; sentencing guidelines reference; update. ***(Sen. Kristen McDonald Rivet)***
0017		0079	No	4/13/2023	4/13/2023	**	***Crimes***; *weapons*; penalties for storing or leaving a firearm where it may be accessed by a minor; provide for. ***(Sen. Rosemary Bayer)***
0018	4142		No	4/13/2023	4/13/2023	** #	***Weapons***; *firearms*; references to pistol in penal code; update. ***(Rep. Brenda Carter)***

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PA No.	ENROLLED		I.E.* Yes/No	Governor Approved	Filed Date	Effective Date	SUBJECT
	HB	SB					
0019	4138		No	4/13/2023	4/13/2023	**	***Weapons***; *firearms*; license or background check for purchase of firearms; require. ***(Rep. Jaime Churches)***
0020	4039		Yes	4/26/2023	4/26/2023	4/26/2023	***Sales tax***; *exemptions*; delivery and installation; exempt from sales tax. ***(Rep. Pat Outman)***
0021	4253		Yes	4/26/2023	4/26/2023	4/26/2023	***Use tax***; *exemptions*; delivery and installation; exempt from use tax. ***(Rep. Kevin Coleman)***
0022	4143		No	4/26/2023	4/26/2023	** #	***Weapons***; *firearms*; references in sentencing guidelines; update. ***(Rep. Kristian Grant)***
0023	4045		Yes	4/26/2023	4/26/2023	5/1/2023	***Law enforcement***; *background check*; volunteer employee criminal history system; establish. ***(Rep. Kathy Schmaltz)***
0024	4219		Yes	4/26/2023	4/26/2023	4/26/2023	***Economic development***; *Michigan strategic fund*; membership on the Michigan strategic fund board; modify. ***(Rep. Matt Hall)***
0025		0259	Yes	5/1/2023	5/1/2023	5/1/2023	***Elections***; *absent voters*; tabulating absent voter ballots received up to 6 days after an election from an absent uniformed services voter or overseas voter; provide for. ***(Sen. Paul Wojno)***
0026		0063	Yes	5/8/2023	5/8/2023	8/6/2023	***Education***; *financing*; use of school sinking fund; allow for school transportation. ***(Sen. Dayna Polehanki)***
0027		0097	Yes	5/8/2023	5/8/2023	5/8/2023 #	***Use tax***; *exemptions*; industrial processing exemption; clarify. ***(Sen. Joseph Bellino)***
0028		0101	Yes	5/8/2023	5/8/2023	5/8/2023	***Insurance***; *other*; procedures for electronic meetings of private insurance companies; eliminate sunset. ***(Sen. Sarah Anthony)***

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PA No.	ENROLLED		I.E.* Yes/No	Governor Approved	Filed Date	Effective Date	SUBJECT
	HB	SB					
0029		0160	Yes	5/8/2023	5/8/2023	5/8/2023	***Taxation***; *other*; reporting estimate of amount of use tax forgone; modify to reflect change in use tax act. ***(Sen. Sam Singh)***
0030	4054		Yes	5/8/2023	5/8/2023	5/8/2023 #	***Sales tax***; *exemptions*; industrial processing exemption; clarify. ***(Rep. Greg VanWoerkom)***
0031		0147	No	5/17/2023	5/17/2023	**	***Civil rights***; *other*; certain references to nontherapeutic abortions in the Elliott-Larsen civil rights act; remove. ***(Sen. Erika Geiss)***
0032		0018	Yes	5/17/2023	5/17/2023	8/15/2023	***Holidays***; *other*; "Fred Korematsu Day"; designate as January 30 of each year. ***(Sen. Stephanie Chang)***
0033	4199		Yes	5/20/2023	5/22/2023	5/22/2023	***Military affairs***; *other*; Michigan National Guard tuition assistance program; expand eligibility for spouses and dependants. ***(Rep. Jennifer Conlin)***
0034	4166		No	5/22/2023	5/22/2023	**	***Education***; *school districts*; letter grade system for ranking public schools; eliminate. ***(Rep. Matt Koleszar)***
0035	4147		No	5/22/2023	5/22/2023	** #	***Civil procedure***; *service of process*; service of process for extreme risk protection order actions; provide for, and waive court fees. ***(Rep. Julie Brixie)***
0036	4148		No	5/22/2023	5/22/2023	** #	***Criminal procedure***; *sentencing guidelines*; guidelines for offenses under the extreme risk protection order act; enact. ***(Rep. Stephanie A. Young)***
0037	4146		No	5/22/2023	5/22/2023	** #	***Weapons***; *firearms*; purchase of firearms or obtaining a concealed pistol license; prohibit if individual has an extreme risk protection order. ***(Rep. Kelly Breen)***
0038		0083	No	5/22/2023	5/22/2023	** #	***Civil procedure***; *injunctions*; extreme risk protection order act; enact. ***(Sen. Mallory McMorrow)***

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