

Michigan Office of Administrative Hearings and Rules
MOAHR-Rules@michigan.gov

**AGENCY REPORT TO THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES (JCAR)**

1. Agency Information

Agency name:

Licensing and Regulatory Affairs

Division/Bureau/Office:

Bureau of Professional Licensing

Name of person completing this form:

Andria Ditschman

Phone number of person completing this form:

517-290-3361

E-mail of person completing this form:

DitschmanA@michigan.gov

Name of Department Regulatory Affairs Officer reviewing this form:

Elizabeth Arasim

2. Rule Set Information

MOAHR assigned rule set number:

2022-2 LR

Title of proposed rule set:

Pharmacy Technicians

3. Purpose for the proposed rules and background:

The purpose of the Board of Pharmacy - Pharmacy Technicians Rules is to regulate the prelicensure programs, examinations, licensure, licensure renewal, relicensure, continuing education, and delegation of activities and functions for pharmacy technicians. The proposed rules are intended to: address the shortage of pharmacy technicians; add a minimum examination passing score; clarify the licensure requirements; clarify the requirements for licensure by endorsement; clarify the requirements for a temporary license; review the date of program accreditation; add a process for rescinding approval of an examination or program; clarify the requirements for relicensure and add relicensure requirements for individuals licensed in another state; clarify the continuing education requirements; modify the process for review of continuing education for consistency with the pharmacist continuing education review process; delete the reference to American Society of Health-System Pharmacists (ASHP) when used to refer to continuing education; and clarify and broaden the activities and functions that may be delegated to a pharmacy technician's scope of practice.

4. Summary of proposed rules:

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The proposed rules include the following modifications: all existing board approved pharmacy technician examinations and programs in this state will be required to be reviewed by the board before December 31, 2023; all board approved pharmacy technician examinations in this state will have a 70% passing score; the board will review comprehensive curriculum-based pharmacy technician education and training programs conducted by a community college; a student in a pharmacy technician program who is less than 18 years of age may participate in practical training in a pharmacy; a deficient pharmacy technician program will not accept students until the deficiency is fixed; licensees may meet the pharmacy ethics and jurisprudence continuing education (CE) requirement by taking more than 1 course or program; licensees may use the human trafficking training and implicit bias training toward the required 20 CE hours; a licensee must apply for a waiver of CE pursuant to the required time requirements; a licensee will be able to use CE earned up to the date of the filing of the renewal of their license; the 5 hours of CE in live, synchronous, courses or programs may be earned in-person or virtual; a licensee may only earn 2 CE hours for the presentation of a CE program that is not a part of the licensee's regular job description; the review of pharmacy technician CE courses and programs and pharmacist CE courses and programs will be the same; a pharmacy technician may qualify to perform final product verification by either work experience or training; and a pharmacy technician will be allowed to work remotely in a limited capacity outside of the personal charge of a pharmacist.

5. List names of newspapers in which the notice of public hearing was published and publication dates:

The Flint Journal: March 12, 2023
The Grand Rapids Press: March 12, 2023
The Mining Journal: March 21, 2023

6. Date of publication of rules and notice of public hearing in Michigan Register:

4/1/2023

7. Date, time, and location of public hearing:

4/6/2023 09:00 AM at Location: 611 W. Ottawa Street, UL-5, Lansing, Michigan , 611 W. Ottawa Street, UL-5, Lansing, Michigan

8. Provide the link the agency used to post the regulatory impact statement and cost-benefit analysis on its website:

<https://ARS.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=1361>

9. List of the name and title of agency representative(s) who attended the public hearing:

Andria Ditschman, Departmental Specialist, Bureau of Professional Licensing
Kerry Przybylo, Manager of Board and Committees, Bureau of Professional Licensing

10. Persons submitting comments of support:

Jonathan McLachlan, Charlie Mollien, and Renee Smiddy submitted comments of support.

11. Persons submitting comments of opposition:

Rose Baran and Renee Smiddy submitted comments in opposition.

12. Persons submitting other comments:

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Rose Baran, Deeb Eid, Farah Jalloul, Jonathan McLachlan, Charlie Mollien, Renee Smiddy, and Maria Young submitted comments with suggested changes to the rules.

13. Identify any changes made to the proposed rules based on comments received during the public comment period:

	Name & Organization	Comments made at public hearing	Written Comments	Agency Rationale for Rule Change and Description of Change(s) Made	Rule number & citation changed
1	Jalloul		Change the reference from R 338.7005 to R 338.7004, as R 338.7005 was rescinded.	The Board agrees with the comment to update the reference to the General Rules as R 338.7005 was rescinded.	R 338.3651a (2)
2	Jalloul		Change the reference from R 338.7005 to R 338.7004, as R 338.7005 was rescinded.	The Board agrees with the comment to update the reference to the General Rules as R 338.7005 was rescinded.	R 338.3653 (2)

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3	Eid		<p>Strike (8) from the proposed rules.</p> <p>Referencing national standards, exams such as the PTCB or NHA certification exams, no longer use percentile-based scoring. More modern-day psychometric standards call for scaled scoring where a passing percentage is not stagnant. Holding other “board approved proficiency exams” to an arbitrary 70% standard is not consistent with other parts of the regulation which allow for national standards. To fall in line with these standards, it is suggested to remove and not include an arbitrary passing % number that is not backed by evidence or examination standards nationally.</p>	<p>The Board agrees with the comment to delete (8) for the reasons submitted by the commenter, and replaces the current proposed language with language that a pharmacy technician program must include a proficiency examination scoring procedure with their proficiency examination application, which will be reviewed by the Board with the examination, as the Board is concerned that the program has a scoring process in place, not that it has a specific minimum score.</p>	R 338.3654 (8)

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4	Smiddy		This provision states that a student in a board-approved pharmacy technician program is exempt from, and not eligible for, licensure while in the program. "Not eligible for" sounds like students are not eligible to receive temporary licenses while in a training program.	The Board agrees with the comment that (6) should be clarified by deleting "and not eligible for" to clarify that a student in a pharmacy program can apply for a temporary license.	R 338.3655 (6)
5	Mollien		I recommend the Board change this rule to align with DLEO to only permit individuals 16 or 17 years old to participate in practical training in the pharmacy.	The Board agrees with the comment to limit students to individuals 16 years or older to participate in training in a pharmacy technician program.	R 338.3655 (7)
6	Smiddy		Commenter requests a definition of practical training.	The Board agrees that "practical training" should be clarified to "practical hands-on training."	R 338.3655 (7)

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7	Smiddy		<p>Commenter recommends pharmacy technician programs be reevaluated within one-year of the rules set promulgation date. This will allow program administrators and community partners additional time to communicate the reevaluation timeframe with stakeholders.</p>	<p>The Board agrees with the comment that the date to require reevaluation of a program should be delayed until 1 year after promulgation of the rules to give programs more time to adjust to any new requirements in the rules.</p>	R 338.3655 (8)
8	Mollien		<p>Clarify how the program has an opportunity to demonstrate that it is not deficient to the Board, not just the Department.</p>	<p>The Board agrees with the comment that if the Department determines that the deficiencies are not resolved that the Board will determine if the deficiencies exist and if approval should be withdrawn.</p>	R 338.3655 (9)

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9	Baran		<p>Do not allow a limited licensee to provide final product verification. Clarify that only a full licensee can provide the function. By deleting the term "limited" in the rule, the Board is allowing a limited licensee to provide final product verification and a limited licensed technician is not equivalent to a full pharmacy technician license.</p>	<p>The rule should be clarified to make it clear that by proposing to delete "limited" the Board was intending that a licensee with a limited license could participate in final product verification. The language will be modified to state in the positive who can handle the function as follows: "The licensed pharmacy technician holds a current full or limited pharmacy technician license in this state." A limited licensee may have similar experience to someone with a full license and the decision to delegate is still made by the pharmacist who should evaluate whether the pharmacy technician can handle the function.</p>	R 338.3665 (b)(ii)(A)

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10	Baran		Do not allow a limited licensee to provide final product verification. Clarify and change to “holds a current full pharmacy technician license only.”	The rule should be clarified to make it clear that “licensed pharmacy technician,” consistent with the previous provision clarification, means both a full licensed pharmacy technician and a limited pharmacy technician.	R 338.3665 (b)(ii)(B)
11	Baran		Only allow a full licensee, not a temporary, limited or student, to acquire the hours or training necessary to provide final product verification. By deleting the terms “not” and “limited” in the rule, the Board is allowing the work hours to be acquired while the individual has any type of pharmacy technician license or is a student.	The rule should be clarified to make it clear that the 1,000 hours of work may be acquired while the licensee holds a full license, limited license, temporary license, or is a student in a pharmacy technician program.	R 338.3665 (b)(ii)(B)(1)
12	Mollien		Rule 338.3665(c)(ii)(B) says the supervising pharmacist is “fully responsible” for the remote technician’s practice and	The Board accepts the comment to delete (B) that the supervising pharmacist is “fully responsible” for the remote technician’s practice and	R 338.3665 (c)(ii)(B)

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			<p>accuracy. As written, this appears to permit the board to discipline a supervising pharmacist for an error or behavior of the pharmacy technician in all situations. This level of responsibility misapplies and exceeds statutory requirements under MCL 333.16215. The pharmacist's responsibility and the pharmacy technician's performance of a delegated task responsibility are not the same. Instead, line (c) (ii)(B) of this rule should be deleted since MCL333.16215 already applies or changed to reflect and not exceed the responsibilities under MCL 333.16215.</p>	<p>accuracy, as the pharmacist will be delegating to the pharmacy technician so they are responsible to be sure the pharmacy technician is trained to handle the function and the rule also speaks to the oversight required by the pharmacist.</p>	
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14.Date report completed:
5/25/2023