

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Health and Mental Hygiene
(DLS Control No. 14-121)**

Overview and Legal and Fiscal Impact

The proposed regulations update COMAR 10.32.10, which contains the general licensure regulations for physicians. Most of the changes are made in order to comply with statutory changes made in 2013.

These regulations present no legal issue of concern.

There is no fiscal impact on State or local agencies beyond that already accounted for in the fiscal and policy notes for Chapters 307 and 308 of 2013 (SB 690/HB 900) and Chapter 583 of 2013 (HB 1313).

Regulations of COMAR Affected

Department of Health and Mental Hygiene:

Board of Physicians: General Licensure Regulations: COMAR 10.32.01.02-.16

Legal Analysis

Background

In 2013, several changes to the Maryland Medical Practice Act were made that affect the licensure of physicians in the State. Chapter 307 of 2013 applied the penalty for a violation of the prohibition on practicing medicine without a license to a violation of the provision of law relating to misrepresenting one's self as a practitioner of medicine. The penalty includes a civil fine of no more than \$50,000 to be levied by the State Board of Physicians. The penalty does not apply to a licensee who has failed to renew a license if less than 60 days have elapsed since the license expired and the licensee has applied for renewal. Chapter 401 of 2013 made multiple changes to the Maryland Medical Practice Act as part of the sunset evaluation process. Most of the changes dealt with the board's disciplinary procedures; however, the Act did add a provision that allows physicians to receive continuing medical education credit for volunteer services. Finally, among other things, Chapter 583 of 2013 (1) added a definition of "board-certified,"; (2) gave the board the authority to approve certifying boards if certain conditions were met; (3) made changes to the provision regarding licensure for individuals who fail an examination or any part of the examination three or more times; and (4) allowed the board to send renewal notices by electronic mail.

Summary of Regulations

The proposed regulations update COMAR 10.32.01, which contains the general licensure regulations for physicians. A description of the substantive changes being made to the regulations is below. All other changes are technical.

Regulation .02 contains definitions for the chapter. It is amended to remove obsolete definitions for “certification,” “faculty,” and “Test of Spoken English.” New definitions also are added. “ABMS” is defined as the American Board of Medical Specialists. The definition of “board-certified” matches the definition in § 14-101(c) of the Health Occupations Article, as amended by Chapter 626 of 2014. Finally, “TOEFL” is defined as the Test of English as a Foreign Language.

Several changes are made to Regulation .03, which contains qualifications for initial licensure. The requirement that all levels of certain examinations be passed within ten years of passing at least one level is being removed. The examination of the Licentiate of the Medical Council of Canada is being added to the list of examinations that an individual can pass in order to fulfill the examination requirement for licensure. Current provisions regarding what happens if an applicant fails to meet the examination requirement are repealed and replaced. Under the new provisions, in order to qualify for a license, an applicant who fails any part, step, level, or component of the examinations or combination of examinations three or more times must (1) have successfully completed two or more years of a residency or fellowship accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association that meets certain conditions and have a minimum of five year of clinical experience or (2) be board-certified. The board must require an applicant to pass the Special Purpose Examination prepared by the Federation of State Medical Boards (SPEX) or the Comprehensive Osteopathic Medical Variable-Purpose Examination-USA (COMVEX-USA) if the applicant (1) last passed a medical licensing examination more than 15 years before the application; (2) has never had specialty board certification or last passed the certification examination more than 10 years before the application; (3) has not had a full, unrestricted medical license in at least one state of the United States or Canada within the 10-year period before the application; and (4) has not actively practiced clinical medicine in the United States or Canada for at least 7 of the 10 years before the application. Also, the board may require an applicant to pass the SPEX examination or the COMVEX-USA examination if the applicant does not meet all, but does meet one or more, of the conditions listed. The authority of the board to require an applicant for licensure to submit to a physical or mental examination is repealed. Finally, the regulation currently requires an applicant to submit to the board a chronological listing of certain events that may have occurred after the applicant’s graduation from medical school through the date of application and submit certain additional documentation relating to those events. The applicant also is required to notify the board if any of those events occur after the application is submitted. The regulation is amended to clarify that the applicant has the duty to inform the board by electronic or first class mail.

Regulation .04 governs documentation for initial licensure. The current requirements regarding English language competency are being repealed and replaced. The changes allow an applicant to demonstrate oral and written competency through documentation of a passing score on the United States Medical Licensing Examination step 2 Clinical Skills or documentation of receiving a score of at least 26 on the “Speaking Section” of the Internet-based TOEFL or a

score of Advanced or higher on the Oral Proficiency Interview. The rest of the options for demonstrating English competency remain the same.

Regulation .05 is amended so that the provisions apply only to inactive licenses, instead of both inactive and expired licenses. The regulation also is amended to clarify that a licensee must be in good standing to apply for inactive status. Additionally, the regulation now specifies that a licensee on inactive status has the duty to inform the board if certain events occur during the inactive status period. Notification must be given by electronic or first class mail within 30 days of the occurrence of or notification about the circumstance. Finally, the regulation specifies that a physician whose license is on inactive status and who wishes to practice medicine in the State must meet the requirements for reinstatement that are specified in Regulation .11, including the continuing medical education requirements.

Regulation .06 governs qualifications for limited license for postgraduate teaching. The regulation currently requires an applicant to submit to the board a chronological listing of certain events that may have occurred after the applicant's graduation from medical school through the date of application and submit certain additional documentation if any of those events did occur before the submission of the application. The applicant also is required to notify the board if any of those events occur after the application is submitted. Additionally, the regulation is amended to clarify that the applicant has the duty to inform the board by electronic or first class mail.

Regulation .07 specifies that all fees not set by statute will be set by the board and that a copy of the current fee schedule is in Regulation .12. The regulation is amended to also specify that fees paid to the board are nonrefundable.

Regulation .08 governs the renewal of licenses. The regulation is amended to clarify that the renewal notice can be sent to the last known address of record by electronic or first-class mail. Also, if the board chooses to send the notices exclusively by electronic mail, the board must send a renewal notice by first-class mail to a licensee on request of the licensee. The regulation currently requires an applicant to submit to the board a chronological listing of certain events that may have occurred after the applicant's graduation from medical school through the date of application and submit certain additional documentation if any of those events did occur before submission of the application. The applicant also is required to notify the board if any of those events occur after the application is submitted. The regulation is amended to clarify that the applicant has the duty to inform the board by electronic or first class mail. Additionally, the regulation now requires, during the renewal cycle, a licensee to inform the board of the occurrence of those same events under the same conditions. The regulation also is amended to specify that a licensee who does not renew the license before the expiration date must submit an application for reinstatement and documentation of continuing medical education credits. Finally, the current provisions regarding late renewal are repealed and the regulation is amended to authorize the board to impose a fine of up to \$50,000 for practicing without a license if a formerly licensed physician: (1) fails to submit an application and pay the requisite renewal fee within 60 days of the expiration of the license or (2) practices medicine 60 days after the expiration of the license or thereafter.

Regulation .09 is new and governs expired licensure. A licensee with an expired license is prohibited from practicing medicine, prescribing medicine, and conducting peer review of physicians within the State. A physician whose license is expired and who wishes to practice medicine in Maryland must apply for reinstatement on a form supplied by the board and meet the requirements for reinstatement, including the continuing medical education requirements. The

physician is not licensed to practice medicine until the license is reinstated. The following regulations are renumbered in light of this addition.

Regulation .10 governs continuing medical education. The regulation is amended to allow for a physician to receive credit for services that are performed voluntarily and without compensation. The applicant must provide the services in the practice of medicine and must demonstrate, by submitting certain documentation, the total number of voluntary, uncompensated hours provided, and the dates, times, and locations of the medical services provided. The applicant cannot receive more than five credits for voluntary services. The regulation also specifies that five hours of voluntary, uncompensated services are equal to one hour of Category 1 credit.

Regulation .11 contains requirements that must be met for the reinstatement of an expired or inactive license. The regulation provides that a physician applying for reinstatement may be required to pass the SPEX examination under certain conditions. Several changes are being made to the requirement. First, the COMVEX-USA examination is being added as an alternative examination that the physician may be required to pass. Second, the regulation currently provides that a physician may be required to pass an examination if certification and recertification examinations were completed over 15 years before application for reinstatement. This is being altered so that the physician may be required to take the examination if the physician has never had specialty board certification or last passed a specialty board examination given by a member board of the American Board of Medical Specialties or the American Osteopathic Board Bureau of Osteopathic Specialists more than 10 years before the application. Third, a physician may be required to pass an examination if the physician's active licensure has been interrupted in at least one state of the United States. This is being altered to provide that the physician may be required to pass the examination if the physician has not had a full, unrestricted medical license in at least one state of the United States or Canada within the 10-year period before the application. Finally, a new circumstance is being added which provides that a physician may be required to pass the examination if the physician has not actively practiced clinical medicine in the United States or Canada for at least seven of the ten years before the application.

Regulation .13 governs advertising by physicians. The regulation is amended to prohibit a physician who is not board certified from using the term "board certified" to describe the physician's qualifications or make any representation that the physician has received formal recognition as a specialist in any aspect of the practice of medicine. Additionally, the regulation also now prohibits a physician who is board certified from using the term "board certified" to indicate certification or expertise in a specialty or subspecialty area other than that in which the physician is certified by the certifying board.

Existing Regulation .16 which governs qualifications for medical licensing examinations is being repealed.

Legal Issue

These regulations present no legal issue of concern.

Statutory Authority and Legislative Intent

The Department of Health and Mental Hygiene cites §§ 14-101, 14-205 through 14-207, 14-302, 14-304 through 14-307, 14-310, 14-311, 14-314, 14-316, 14-318, 14-320, 14-401, 14-503, 14-505, and 14-606 of the Health Occupations Article as legal authority for the regulations. More specifically, § 14-101 contains definitions that are used in the Maryland Medical Practice Act. Section 14-205 requires the board to adopt regulations to carry out the provisions of the Maryland Medical Practice Act. Section 14-307 governs the qualifications applicants must meet to qualify for a physician license. The section includes an additional training requirement for applicants who failed the examination or any part of the examination three or more times. It also contains requirements regarding English language competency. Section 14-311 provides that an applicant who otherwise qualifies for a license is entitled to sit for an examination as provided under the section or any adopted regulations. Additionally, the section requires an applicant to meet one of the listed requirements as indications of proficiency. One of the items listed is holding a certificate of proficiency and professional standing of the Licentiate of the Medical Council of Canada. Under § 14-314, a license authorizes the licensee to practice medicine while the license is effective. Section 14-316 allows the board to send renewal notices by electronic mail. If the board chooses to send renewal notices exclusively by electronic mail, however, § 14-316 also requires that the board send renewal notices by first-class mail to a licensee on request of the licensee. Additionally, the section requires the board to adopt regulations that allow a licensee to receive up to five continuing education credits per renewal period for providing uncompensated, voluntary medical services. Section 14-318 allows the board to waive the examination requirements for and issue a limited license to an individual to practice medicine for postgraduate teaching. Under § 14-320, the board has the authority to place a licensee on inactive status. Also, the board is required to issue a license to an individual who is on inactive status if the individual submits evidence of compliance with the continuing, pays the reinstatement fee, and is otherwise entitled to be licensed. Section 13-503 prohibits a physician from representing to the public that the physician is board certified unless the physician actually is board certified and the physician discloses the full name of the board from which the physician is certified and the name of the specialty or subspecialty in which the physician is certified. The section also provides that a physician may advertise only as permitted by the rules and regulations of the board. Finally, § 14-606 contains penalties for violations of certain provisions of law. The section provides that a person who practicing medicine without a license or makes a misrepresentation that the person is licensed to practice medicine is guilty of a felony and is subject to a civil fine of not more than \$50,000 to be levied by the board. That provision does not apply to a licensee who failed to renew a license if less than 60 days have elapsed since the expiration of the license and the licensee has applied for license renewal.

The rest of the sections cited by the board are not needed as legal authority for the substantive changes made to the regulations. Section 14-206 governs the judicial powers of the board. Section 14-206.1 governs search warrants. Section 14-207 governs the Board of Physicians Fund and the establishment of fees. Section 14-302 contains general exceptions from the licensing requirements. Sections 14-304, 14-305, and 14-310 were repealed in 1992, 1997, and 2000, respectively. Section 14-306 governs duties delegated by a licensed physician. Section 14-401 governs disciplinary panels. Finally, § 14-505 governs the notice of burn treatments that physicians are required to give to certain persons.

In addition to the sections cited by the board, § 14-317 of the Health Occupations Article needs to be cited. Section 14-317 requires the board to reinstate the license of a physician who

has failed to renew the license if the physician meets the renewal requirements in § 14-316, pays the reinstatement fee, and submits evidence of compliance with the qualifications and requirements established under the Maryland Medical Practice Act for license reinstatements.

With the addition of the above-reference statutory provision, the authority is complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

The board was contacted regarding several issues with the regulations. First, the Statement of Purpose needed to be amended to include an accurate description of the changes made to Regulation .02 and Regulation .09. The board will be making those changes. Second, the definition of “board certified” that is being added did not match the definition contained in the Maryland Medical Practice Act. The regulatory definition was narrower and resulted in the possibility that a physician could be prosecuted under the regulations for conduct that is authorized under the statute. The board will be amending the definition so that it mirrors that of § 14-101 of the Health Occupations Article, as amended by Chapter 626 of 2014. Third, as discussed above, § 14-317 of the Health Occupations Article needed to be added as legal authority for the regulations. The board will be adding it. Fourth, Regulation .13(c) referred to “certification as defined in Regulation .02B(7).” However, that term and definition are being repealed. The board will correct it to refer to “board certified as defined in Regulation .02B(9).” Finally, there were several technical errors in the regulations, such as missing punctuation and incorrect numbering. The board will be correcting the technical errors.

Fiscal Analysis

There is no fiscal impact on State or local agencies beyond that already accounted for in the fiscal and policy notes for Chapters 307 and 308 of 2013 (SB 690/HB 900) and Chapter 583 of 2013 (HB 1313).

Agency Estimate of Projected Fiscal Impact

The regulations implement Chapters 307, 308, 401, and 583 of 2013, which alter licensing procedures and requirements for physicians licensed by the State Board of Physicians. The board advises that the regulations have no fiscal impact. The Department of Legislative Services notes that the regulations have no fiscal impact beyond that already accounted for in the fiscal and policy notes for Chapters 307/308 and 583 of 2013. The regulations impose a fine of up to \$50,000 for practicing without a license under specified circumstances as authorized under Chapters 307 and 308. The fiscal and policy note for Chapters 307 and 308 indicated that this authority may result in a potential minimal increase in special fund revenues for the board. Likewise, the fiscal and policy note for Chapter 583 acknowledged a minimal reduction in special fund expenditures for the board to the extent that licensees elect to have renewal notices sent by electronic mail.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The board advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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