

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Department of Health and Mental Hygiene  
(DLS Control No. 15-052)**

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**Overview and Legal and Fiscal Impact**

The proposed regulations authorize the State Board of Examiners in Optometry to assess a civil fine not exceeding \$50,000 on a person who violates specified provisions of law, including practicing optometry without a license.

The regulations present no legal issue of concern.

There is no fiscal impact on State or local agencies.

**Regulations of COMAR Affected**

**Department of Health and Mental Hygiene:**

Board of Examiners in Optometry: Civil Penalties:  
COMAR 10.28.13.01, .02, .05, and .06

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**Legal Analysis**

**Summary of Regulations**

The proposed regulations authorize the State Board of Examiners in Optometry to assess a civil fine not exceeding \$50,000 on a person who violates provisions of law that prohibit (1) practicing, attempting to practice, or offering to practice optometry without a license; (2) representing to the public by title, description of services, methods, procedures, or otherwise that an unlicensed person is licensed; or (3) knowingly selling or dispensing contact lenses or replacement contact lenses without a valid and unexpired prescription. In determining whether to assess a fine, and for what amount, the regulations require the board to consider (1) the cost of investigating and prosecuting the case; (2) the extent of public harm caused by the violation; (3) the extent to which a financial benefit was derived; (4) a history of prior violations; (5) the willfulness of the improper conduct; and (6) mitigating factors presented by the person. Once imposed, a person or licensee must pay a penalty within 30 days of the board's order.

**Legal Issue**

The regulations present no legal issue of concern.

## **Statutory Authority and Legislative Intent**

The Department of Health and Mental Hygiene cites §§ 11-205, 11-313, 11-314, 11-315, and 11-505 of the Health Occupations Article as statutory authority for the regulations. Section 11-205 authorizes the board to adopt regulations to carry out provisions of law that govern the practice of optometry in the State. Section 11-313 authorizes the board to take action against a licensee after the licensee is offered an opportunity to be heard (authorized under § 11-315) under specified circumstances. Section 11-314 authorizes the board to impose a civil penalty not exceeding \$5,000 after a finding under § 11-313. Section 11-505 subjects a person to a civil fine not exceeding \$50,000 if the person violates § 11-501 (practicing, attempting to practice, or offering to practice optometry without a license), § 11-502 (representing to the public by title, description of services, methods, procedures, or otherwise that an unlicensed person is licensed), or § 11-504 (knowingly selling or dispensing contact lenses or replacement contact lenses without a valid and unexpired prescription).

This authority is correct and complete. The regulations comply with the legislative intent of the law.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

## **Agency Estimate of Projected Fiscal Impact**

The department advises that the regulations have minimal or no impact on State or local governments. The Department of Legislative Services concurs and notes that the regulations implement, in part, Chapter 309 of 2014 (Senate Bill 587). In the fiscal and policy note for that bill, the Department of Legislative Services advised that the additional authority to issue a civil fine of up to \$50,000 for certain violation may result in increased general fund revenue, but that actual revenues depend on the number of violations and the actual civil fines imposed. Department of Legislative Services also advised that any additional workload could be handled with existing resources.

## **Impact on Budget**

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

## **Agency Estimate of Projected Small Business Impact**

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

## **Contact Information**

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