

MARYLAND REGISTER

**Proposed Action on Regulations**

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	04/23/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

**1. Desired date of publication in Maryland Register: 5/29/2015**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**  
10 28 13 01, .02, .05 and .06

**3. Name of Promulgating Authority**

Department of Health and Mental Hygiene

**4. Name of Regulations Coordinator Telephone Number**  
Michele Phinney 410-767-5623

**Mailing Address**

201 W. Preston Street

**City State Zip Code**  
Baltimore MD 21201

**Email**  
michele.phinney@maryland.gov

**5. Name of Person to Call About this Document Telephone No.**  
Kristen Neville 410-764-5978

**Email Address**  
kristen.neville@maryland.gov

**6. Check applicable items:**

- New Regulations

- Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: January 26, 2015.

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R

(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

**7. Is there emergency text which is identical to this proposal:**

Yes - No

**8. Incorporation by Reference**

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

**9. Public Body - Open Meeting**

- OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

- OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

**10. Children's Environmental Health and Protection**

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

**11. Certificate of Authorized Officer**

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Ari Elbaum, Assistant Attorney General, (telephone #410-767-1871) on March 4, 2015. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Van T. Mitchell

**Title**

Secretary

**Telephone No.**

410-767-6500

**Date**

April 23, 2015

**Title 10**  
**DEPARTMENT OF HEALTH AND MENTAL HYGIENE**  
**Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY**

**10.28.13 Civil Penalties**

Authority: Health Occupations Article, §§11-205, 11-505, 11-313, 11-314, and 11-315,  
Annotated Code of Maryland

**Notice of Proposed Action**

[]

The Secretary of Health and Mental Hygiene proposes to amend Regulations .01, .02, and .05 and adopt new Regulation .06 under COMAR 10.28.13 Civil Penalties. This action was considered at a public meeting on December 3, 2014, notice of which was given by publication on the Board's website at <http://dhmh.maryland.gov/optometry/SitePages/members-meetings.aspx#2002%20Board%20Meeting%20Calendar> pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to :

- 1) Authorize the Board to assess a civil fine, not to exceed \$50,000 on a person who violates §§11-501 (practicing without a license), 11-502 (misrepresentation as an optometrist), or 11-504 (dispensing contact lenses or replacement contact lenses without a valid and unexpired prescription or replacement contact lens prescription) of the Health Occupations Article;
- 2) Establishing factors which the Board shall consider in assessing a fine and the amount of the fine; and
- 3) Requiring that a person who is assessed a civil fine shall pay the fine within 30 days of the Board's order.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.**

To the extent that a licensee or a person is found to have violated statute, there will be a civil fine assessed by the Board and therefore, an economic impact to the licensee or person.

**II. Types of Economic Impact.**

Revenue (R+/R-)

Expenditure (E+/E-)

Magnitude

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A. On issuing agency:		
General Funds	(R+)	Indeterminate
B. On other State agencies:	NONE	
C. On local governments:	NONE	

Benefit (+)	Magnitude
Cost (-)	

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D. On regulated industries or trade groups:	(-)	Indeterminate
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

**III. Assumptions.** (Identified by Impact Letter and Number from Section II.)

- A. The Board cannot estimate the exact impact because it cannot estimate the number of licensees or persons found in violation of the law.
- D. See A.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to [dhmh.regs@maryland.gov](mailto:dhmh.regs@maryland.gov), or fax to 410-767-6483. Comments will be accepted through June 29, 2015. A public hearing has not been scheduled.

**Economic Impact Statement Part C**

- A. Fiscal Year in which regulations will become effective: FY 2016
- B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?
- C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

It is incumbent upon a licensee, not upon a small business, to pay a fine levied by the Board against the licensee.

G. Small Business Worksheet:

Attached Document:

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## Title 10

# DEPARTMENT OF HEALTH AND MENTAL HYGIENE

### Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY

#### 10.28.13 Civil Penalties

Authority: Health Occupations Article, §§11-205, 11-505, 11-313, 11-314, and 11-315, Annotated Code of Maryland

10.28.13.01 (downloaded January 26, 2015)

##### .01 Scope.

This chapter establishes the standards by which the Board may [impose]:

A. *Impose* an administrative monetary penalty not exceeding \$5,000 on an individual licensed under Health Occupations Article, Title 11, Annotated Code of Maryland, for an act or omission prohibited under Health Occupations Article, §11-313, Annotated Code of Maryland; *or*

B. *Assess a civil fine not exceeding \$50,000 on a person who violates Health Occupations Article, §11-501, §11-502, or §11-504, Annotated Code of Maryland.*

##### .02 Definitions.

A. (text unchanged)

B. Terms Defined.

(1) (text unchanged)

(2) "Licensee" means an individual licensed by the Board to practice optometry.

(3) "Violation" means [an] :

(a) *An act or omission prohibited under Health Occupations Article, §11-313, Annotated Code of Maryland;*

*or*

(b) *An act prohibited under Health Occupations Article, §11-501, 11-502, or 11-504, Annotated Code of Maryland.*

##### .05 Payment of Penalties.

[A. An individual shall pay to the Board the administrative monetary penalty imposed by the Board within 30 days of the date of the Board's order.]

A. *Within 30 days of the date of the Board's order,*

(1) *A licensee shall pay to the Board the administrative monetary penalty imposed; or*

(2) *A person shall pay the civil fine assessed by the Board*

B. (text unchanged)

C. If [an individual] a licensee fails to pay, in whole or in part, a penalty imposed by the Board, the Board may not restore, reinstate, or renew the license of the [individual] licensee until the [individual] licensee pays the penalty in full.

D. (text unchanged)

**.06 Civil Fines.**

A. After a hearing under Health Occupations Article, §11–315, Annotated Code of Maryland, and COMAR 10.28.04, the Board may assess a civil fine not to exceed \$50,000 against a person who:

(1) Practices optometry without a license in violation of Health Occupations Article, §11–501, Annotated Code of Maryland;

(2) Misrepresents to the public by title, by description of services, methods, or procedures, or otherwise, that the person practices optometry in violation of Health Occupations Article, §11–502, Annotated Code of Maryland; or

(3) Knowingly sells or dispenses contact lenses or replacement contact lenses without a valid and unexpired prescription or replacement contact lens prescription in violation of Health Occupations Article, §11–504, Annotated Code of Maryland.

B. In determining whether to assess a fine and the amount of the fine, the Board shall consider the following factors:

(1) The cost of investigating and prosecuting the case against the person;

(2) The extent of actual or potential public harm caused by the violation;

(3) The extent to which the person derived a financial benefit from the violation;

(4) The history of a previous violation or violations;

(5) The willfulness of the improper conduct; and

(6) Mitigating factors as presented by the person.

**VAN T. MITCHELL**

**Secretary of Health and Mental Hygiene**