

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of Health and Mental Hygiene
(DLS Control No. 15-288)**

Overview and Legal and Fiscal Impact

The regulation prohibits a pharmacist from associating as a partner, co-owner, or employee of a pharmacy that has 10% or more ownership by an authorized prescriber or group of prescribers.

The regulation presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulation of COMAR Affected

Department of Health and Mental Hygiene:

Board of Pharmacy: Pharmacist and Pharmacy Technician Code of Conduct:
COMAR 10.34.10.10

Legal Analysis

Background

Under § 12-313(b) of the Health – Occupations Article, the State Board of Pharmacy may deny a license to any applicant for a pharmacist’s license, reprimand any licensee, place any licensee on probation, or suspend or revoke a license of a pharmacist if the applicant or licensee associates as a partner, co-owner, or employee of a pharmacy that is owned wholly or substantially by an authorized prescriber or group of authorized prescribers. In addition, § 14-404(a) of the Health – Occupations Article prohibits a physician licensed in the State from associating with a pharmacist as a partner or co-owner of a pharmacy, employing a pharmacist, or contracting with a pharmacist, for the purpose of operating a pharmacy.

The board received a request for guidance on the board’s interpretation of the phrase “owned wholly or substantially by an authorized prescriber or group of authorized prescribers” in § 12-313(b) of the Health – Occupations Article. Although the Maryland Pharmacy Act does not specify a percentage that constitutes substantial ownership, the board has interpreted this provision to mean 10% or more ownership by an authorized prescriber or group of authorized prescribers, after researching the laws and regulations in other states.

Summary of Regulation

The regulation prohibits a pharmacist from associating as a partner, co-owner, or employee of a pharmacy that is owned wholly or substantially by an authorized prescriber or group of authorized prescribers. The regulation defines “owned wholly or substantially” to mean an ownership of 10% or more of a pharmacy.

Legal Issues

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The Department of Health and Mental Hygiene cites §§ 12-205 and 12-601 of the Health – Occupations Article as authority for the regulation. Section 12-205 authorizes the board to adopt regulations to carry out the provisions of law governing pharmacies and pharmacists, as well as regulations that are necessary to protect the public health, safety, and welfare and that establish standards for practicing pharmacy and operating pharmacies. Section 12-601 authorizes the board to deny a permit to distribute prescription drugs or devices to an applicant, reprimand a permit holder, place a permit holder on probation, or suspend or revoke a permit.

Although not cited by the department, § 12-313(b) of the Health – Occupations Article authorizes the board to deny a license to any applicant for a pharmacist’s license or take other disciplinary action against a license holder if the applicant or licensee associates as a partner, co-owner, or employee of a pharmacy that is owned wholly or substantially by an authorized prescriber or group of authorized prescribers.

With the addition of § 12-313(b) of the Health – Occupations Article, this authority is correct and complete. The regulation complies 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 regulation defines whole or substantial ownership of a pharmacy by an authorized prescriber as ownership of 10% or more of a pharmacy under the Pharmacist, Pharmacy Intern, and Pharmacy Technician Code of Conduct. Current law prohibits a pharmacist, with the exception of an association in continuous existence since July 1, 1963, from associating as a partner, co-owner, or employee of a pharmacy that is owned wholly or substantially by an authorized prescriber or group of authorized prescribers; however, current law does not define whole or substantial ownership. The board advises that, as the regulation imposes no fees and does not alter licensure processes (review of the owners of a pharmacy is already done as part of

the pharmacy permit application process), the regulation has no impact on State or local governments. The Department of Legislative Services concurs.

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 regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

Legal Analysis: Patrick D. Carlson – (410) 946/(301) 970-5350

Fiscal Analysis: Jennifer B. Chasse – (410) 946/(301) 970-5510