

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Health and Mental Hygiene
(DLS Control No. 15-337)**

Overview and Legal and Fiscal Impact

The regulations establish sanctioning guidelines for the Board of Morticians and Funeral Directors to use when imposing discipline on a respondent for violating the Maryland Morticians and Funeral Directors Act or COMAR 10.29.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Health and Mental Hygiene:

Board of Morticians and Funeral Directors: Hearing Procedures:
COMAR 10.29.01.01 and .10 through.13

Legal Analysis

Background

Each of the health occupations boards is relatively autonomous and has statutory authority to investigate complaints and conduct disciplinary hearings. While the grounds on which a board may deny, revoke, or suspend a license are relatively uniform from board to board, procedures for disciplinary action varied among the boards. Chapter 212 of the Acts of 2008 created the Task Force on the Discipline of Health Care Professionals and Improved Patient Care to issue recommendations regarding practices and procedures supporting the fundamental goals and objectives of the disciplinary programs of all the health occupations boards. Chapters 533 and 534 of the Acts of 2010 enacted several of the recommendations of the task force regarding sanctioning guidelines. Section 1-606 of the Health Occupations Article requires each health occupation board to adopt specific sanctioning guidelines.

Summary of Regulations

Scope

The regulations establish procedures for disciplinary matters and hearings before the State Board of Morticians and Funeral Directors. The regulations establish the standards for use

as a guide for the imposition of disciplinary sanctions against any of the following under the jurisdiction of the board: (1) a licensed mortician, funeral director, apprentice, surviving spouse, funeral establishment, corporation, crematory supervisor, or executor; (2) a courtesy card holder; (3) a holder of a permit to operate a crematory; (4) a certified crematory operator or crematory technician; (5) a holder of a mortuary transport permit; and (6) a registered transporter. If after a hearing, the board finds there are grounds to sanction a person by way of probation, reprimand, suspension, fine, or revocation, the board may consider aggravating and mitigating factors to determine sanctions.

Sanctioning Guidelines

The board is not required to make findings of fact with respect to any of the factors for determining the sanction indicated by the guidelines. A departure from the guidelines alone is not a ground for any hearing or appeal of a board action. Notwithstanding the guidelines, in order to resolve a disciplinary matter, the board and the offending person may agree to a surrender of a license, courtesy card, permit, or certificate, or agree to a Consent Order with terms, conditions, and sanctions agreed upon. In a case with multiple and distinct violations, the board may impose a sanction greater than the maximum indicated by the sanctioning guidelines for each individual violation. If probation is imposed, the board may impose appropriate terms and conditions of probation. Violations of the terms or conditions may cause the board to take further disciplinary action. If a violation does not fall within the sanction range, the board is required to indicate this finding and use its best judgment to determine the appropriate sanction and consider, to the extent possible, the factors in the sanctioning guidelines.

Range of Sanctions

The regulations establish a range of sanctions that include a minimum sanction, a maximum sanction, a minimum penalty, and a maximum penalty for 30 violations. For example, if a person fraudulently or deceptively obtains or attempts to obtain a license, permit, or registration for the applicant or licensee, permit holder, or registration holder, or for another, the minimum sanction is a reprimand, the maximum sanction is revocation/denial of license, the minimum penalty is \$0, and the maximum penalty is \$5,000. If a person advertises falsely or in a misleading manner, the minimum penalty is a reprimand, the maximum penalty is active suspension for 60 days, the minimum penalty is \$0, and the maximum penalty is \$500. If a person fails, after proper demand, to refund promptly any payments received under a pre-need contract with interest, the minimum sanction is active suspension for 30 days, the maximum sanction is revocation, the minimum penalty is \$1,000, and the maximum penalty is \$5,000.

Mitigating and Aggravating Factors

Depending on the facts and circumstances of each case, and to the extent that they apply, the board may consider specified mitigating and aggravating factors in determining whether the sanction in a particular case should fall outside of the range of sanctions established by the guidelines. Examples of mitigating factors include the absence of a prior disciplinary record, that the respondent reported the violation to the board, and the absence of potential harm to or adverse impact on the public. Examples of aggravating factors include previous criminal or administrative

disciplinary history, that the violation was committed deliberately or with gross negligence or recklessness, and that the violation had the potential for, or caused, serious harm.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The Department of Health and Mental Hygiene cites §§ 1-606, 7-205(a)(1) and (c), 7-316, and 7-604 of the Health Occupations Article as statutory authority for the regulations. Section 1-606 requires each health occupations board to adopt sanctioning guidelines. Section 7-205(a)(1) authorizes the board to adopt regulations to carry out specified provisions of law. Section 7-205(c) requires the board, in conjunction with the Office of Cemetery Oversight, to establish a process for regulating crematories that provides for grounds for discipline and penalties. Section 7-316 establishes grounds for discipline of an individual licensed by the board to practice mortuary science. Section 7-604 establishes grounds for discipline of a holder of a permit issued by the board to an owner of a mortuary transport service or a holder of a registration issued by the board to an individual employee of a mortuary transport service who has registered with the board to remove and transport human remains.

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 regulations establish sanctioning guidelines for disciplinary actions imposed by the State Board of Morticians and Funeral Directors. As the regulations do not expand existing grounds for disciplinary action or alter existing sanctions or fines, the department advises that the regulations have 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 regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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