

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	10/30/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 12/11/2015

2. COMAR Codification

Title Subtitle Chapter Regulation

10 29 01 01 and .10-.13

3. Name of Promulgating Authority

Department of Health and Mental Hygiene

4. Name of Regulations Coordinator

Michele Phinney

Telephone Number

410-767-5623

Mailing Address

201 W. Preston Street

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5. Name of Person to Call About this Document

Kristen Neville

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410-764-5978

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kristen.neville@maryland.gov

6. Check applicable items:

- New Regulations

Amendments to Existing Regulations

 Date when existing text was downloaded from COMAR online: .

- 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 Anthony DeFranco, Assistant Attorney General, (telephone #410-767-6935) on October 19, 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

October 30, 2015

Title 10
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 29 BOARD OF MORTICIANS AND FUNERAL DIRECTORS

10.29.01 Hearing Procedures

Authority: Health Occupations Article, §§1-606, 7-205(a)(1), 7-205(c), 7-316, 7-604,
Annotated Code of Maryland

Notice of Proposed Action

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The Secretary of Health and Mental Hygiene proposes to repeal and adopt new Regulation .01, adopt new Regulation .10, and recodify existing Regulations .10—.12 to be Regulations .11—.13 under COMAR 10.29.01 Hearing Procedures.

This action was considered at a public meeting on September 9, 2015, notice of which was given on the Board's website at <http://dhmh.maryland.gov/bom/SitePages/Home.aspx> pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to establish sanctioning guidelines for the Board to use when imposing discipline on a licensee for violating the Maryland Morticians and Funeral Directors Act or COMAR 10.29.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

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, or fax to 410-767-6483. Comments will be accepted through January 11, 2016. 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:
To the extent that a licensee, permit holder, or registrant is in compliance with the Board's practice act and COMAR subtitle, there will be no economic impact.
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.
- See E.
- G. Small Business Worksheet:

Attached Document:

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 29 – BOARD OF MORTICIANS AND FUNERAL DIRECTORS

10.29.01 Hearing Procedures

Authority: Health Occupations Article, §§1-606, 7-205(a)(1), 7-205(c), 7-316, 7-604, Annotated Code of Maryland

.01 Scope.

A. This chapter governs procedures for disciplinary matters and hearings before the Maryland State Board of Morticians and Funeral Directors and establishes the standards for use as a guide for the imposition of disciplinary sanctions against any of the following under 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; and
- (4) A certified crematory operator or crematory technician;
- (5) A holder of a mortuary transport permit; or
- (6) A registered transporter.

B. If after a hearing, the Board finds that there are grounds under Health Occupations Article, §§7-316 or 7-604, Annotated Code of Maryland, to sanction any person listed in §A of this regulation by way of probation, reprimand, suspension, fine, or revocation, the Board may consider aggravating and mitigating factors in determining sanctions.

.10 Sanctioning Guidelines.

A. General Application.

(1) This regulation shall be used by the Board as a guide for sanctioning pursuant to the Board's authority under Health Occupations Article, §§7-205, 7-316, and 7-604, Annotated Code of Maryland for violations of the Morticians and Funeral Directors Act and the Board's regulations.

(2) The Board is not required to make findings of fact with respect to any of the factors for determining the sanction indicated by the sanctioning guidelines.

(3) A departure from the sanctioning guidelines alone is not a ground for any hearing or appeal of a Board action.

(4) Notwithstanding these sanctioning guidelines, in order to resolve a disciplinary matter, the Board and the offending person may agree to surrender a license, courtesy card, permit, or certificate, or agree to a Consent Order with terms, conditions and sanctions agreed upon.

(5) In a case where there are multiple and distinct violations, the Board may impose a sanction greater than the maximum indicated by the sanctioning guidelines for each individual violation.

(6) 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.

(7) In the event a violation does not fall within the sanction range, the Board shall so indicate and use its best judgment to determine the appropriate sanction and consider, to the extent possible, the factors in the sanctioning guidelines.

B. Range of Sanctions.

<i>VIOLATION</i>	<i>MINIMUM SANCTION</i>	<i>MAXIMUM SANCTION</i>	<i>MINIMUM PENALTY</i>	<i>MAXIMUM PENALTY</i>
<i>(1) 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</i>	<i>Reprimand</i>	<i>Revocation/Denial of License</i>	<i>\$0</i>	<i>\$5,000</i>
<i>(2) Fraudulently or deceptively uses a license, permit, or registration</i>	<i>Active Suspension for 1 year</i>	<i>Revocation</i>	<i>\$0</i>	<i>\$5,000</i>
<i>(3) Commits fraud or misrepresentation: (a) In the practice of mortuary science; or (b) While removing or transporting human remains</i>	<i>Active Suspension for 1 year</i>	<i>Revocation</i>	<i>\$0</i>	<i>\$5,000</i>
<i>(4) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude</i>	<i>Probation for 1 year</i>	<i>Revocation/Denial of License</i>	<i>\$0</i>	<i>\$5,000</i>
<i>(5) Aids or abets an unauthorized person in the practice of mortuary science specifically: (a) In embalming without a license;</i>	<i>Active suspension for 90 days</i>	<i>Revocation</i>	<i>\$0</i>	<i>\$5,000</i>

(b) In making arrangements; (c) In the cremation of human remains; or (d) In the transporting or removal of human remains				
(6) Advertises falsely or in a misleading manner	Reprimand	Active suspension for 60 days	\$0	\$500
(7) Solicits mortuary science business: (a) Either personally or by an agent, from a dying individual; or (b) To remove or transport human remains	Active suspension for 30 days	Active suspension for 1 year	\$0	\$1,500
(8) Directly or indirectly pays or offers to pay to obtain: (a) Mortuary science business; or (b) Business to remove or transport human remains	Active suspension for 30 days	Active suspension for 1 year	\$0	\$1,500
(9) Solicits or accepts any payment or rebate for recommending any crematory, mausoleum, or cemetery or causing a dead human body to be disposed of there	Reprimand	Active suspension for 30 days	\$0	\$500
(10) Refuses to surrender custody of a human remains on the demand of a person who is entitled to its custody	Active suspension for 30 days	Revocation	\$2,500	\$5,000
(11) Sells or offers to sell any share, certificate, or interest, with a promise to offer to perform services to the buyer at a cost less than that offered to the general public, in: (a) A mortuary science business; or (b) A mortuary transport service	Reprimand	Revocation	\$0	\$2,500
(12) Fails, after proper demand, to refund promptly any payments received under a pre-need contract with interest	Active suspension for 30 days	Revocation	\$1,000	\$5,000
(13) At the time funeral arrangements are made, fails to give the contract required by Health Occupations Article, §7-404, Annotated Code of Maryland	Reprimand	Active suspension 15 days	\$0	\$250
(14) Violates any State, municipal, or county law, rule or regulation on the handling, custody, care or transportation of human remains or the disposal of instruments, materials and wastes relevant	Reprimand	Active suspension for 1 year	\$0	\$5,000

<i>to preparation of human remains for final disposition</i>				
<p>(15) Does one of the following:</p> <p>(a) Practices mortuary science under a name other than the name that appears on the license of that person or the name of a partnership in accordance with Health Occupations Article, §7-401, Annotated Code of Maryland</p> <p>(b) Removes and transports human remains under a name other than the name that appears on the permit or registration of that person</p>	<i>Reprimand</i>	<i>Probation</i>	<i>\$0</i>	<i>\$500</i>
(16) Violates any provision of this title, of the laws relating to cremation, or any other law relating to removing and transporting of human remains	<i>Reprimand</i>	<i>Revocation</i>	<i>\$0</i>	<i>\$5,000</i>
(17) Is disciplined by a licensing or disciplinary authority of any other state or country for an act that would be grounds for disciplinary action under the Board's disciplinary statutes	<i>Reprimand</i>	<i>Revocation</i>	<i>\$0</i>	<i>\$5,000</i>
<p>(18) Willfully makes or files a false report or record:</p> <p>(a) In the practice of mortuary science; or</p> <p>(b) For a mortuary transport service</p>	<i>Reprimand</i>	<i>Revocation</i>	<i>\$0</i>	<i>\$5,000</i>
(19) Willfully fails to file or record any report as required by law, willfully impedes or obstructs the filing or recording of the report, or induces another to fail to file or record the report	<i>Reprimand</i>	<i>Revocation</i>	<i>\$0</i>	<i>\$5,000</i>
(20) Submits a false statement to collect a fee	<i>Reprimand</i>	<i>Revocation</i>	<i>\$0</i>	<i>\$5,000</i>
(21) Provides professional services while under the influence of alcohol or using any narcotic or controlled dangerous substance, or other drug that is in excess of therapeutic amounts or without valid medical indication	<i>Probation</i>	<i>Revocation</i>	<i>\$250</i>	<i>\$5,000</i>
(22) Violates any rule, or regulation adopted by the Board	<i>Reprimand</i>	<i>Revocation</i>	<i>\$0</i>	<i>\$5,000</i>
(23) Is professionally, physically, or mentally incompetent	<i>Active suspension for 30 days</i>	<i>Revocation</i>	<i>\$0</i>	<i>\$5,000</i>

(24) Commits an act of unprofessional conduct: (a) In the practice of mortuary science; or (b) While removing and transporting human remains	Probation	Revocation	\$0	\$5,000
(25) Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the person is licensed, permitted, or registered and qualified to render because the individual is HIV positive;	Probation	Active suspension for 30 days	\$0	\$5,000
(26) Except in an emergency life-threatening situation where it is not feasible or practicable, fails to comply with CDC guidelines on universal precautions	Reprimand	Active Suspension for 30 days	\$0	\$5,000
(27) Fails to allow an inspection under Health Occupations Article, §7-205, Annotated Code of Maryland	Probation	Active suspension for 30 days	\$0	\$2,500
(28) Fails to comply with inspection requirements in the time specified by the Board	Reprimand	Probation	\$0	\$500
(29) Fails to comply with laws or regulations relating to § 5-513 of the Health – General Article, Annotated Code of Maryland	Probation	Active suspension for 30 days	\$250	\$5,000
(30) Removes human remains from a death scene, mortuary transport services, funeral establishment, or crematory, without the authorization of the entity in custody of the human remains	Reprimand	Revocation	\$250	\$5,000

C. *Mitigating and Aggravating Factors.* Depending on the facts and circumstances of each case, and to the extent that they apply, the Board may consider the following 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. These factors may include, but are not limited to the following:

(1) *Mitigating Factors:*

- (a) *Absence of a prior disciplinary record;*
- (b) *The licensee reported the violation to the Board;*
- (c) *The licensee voluntarily admitted violation, provided full disclosure to the Board, and cooperated during Board proceedings;*
- (d) *The licensee implemented remedial measures to correct or mitigate harm arising from the violation;*
- (e) *The licensee made a timely good-faith effort to make restitution or otherwise rectify the consequences of the violation;*
- (f) *Evidence of rehabilitation or potential for rehabilitation;*
- (g) *Absence of premeditation to commit the violation;*
- (h) *Absence of potential harm to or adverse impact on the public or adverse impact on the public;*
- (i) *Isolated incident and not likely to recur; and*
- (j) *The licensee's prior community service and present value to the community.*

(2) *Aggravating Factors:*

- (a) *Previous criminal or administrative disciplinary history;*
- (b) *The violation was committed deliberately or with gross negligence or recklessness;*
- (c) *The violation had the potential for, or caused, serious harm;*

- (d) The violation was part of a pattern of detrimental conduct;*
- (e) The licensee was motivated to perform the violation by his or her financial gain;*
- (f) The vulnerability of the bereaved;*
- (g) The licensee attempted to conceal the violation, falsified or destroyed evidence, or presented false testimony or evidence;*
- (h) The licensee failed to cooperate with the Board's investigation; and*
- (i) Previous attempts at rehabilitation were unsuccessful.*

VAN T. MITCHELL

Secretary of Health and Mental Hygiene