

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 791 (Delegate Bromwell)(By Request)
Health and Government Operations Education, Health, and Environmental Affairs

State Board of Examiners in Optometry - Cease and Desist Orders, Injunctive Relief, and Penalties

This bill authorizes the State Board of Examiners in Optometry to issue a cease and desist order or obtain injunctive relief for (1) a disciplinary violation by a licensed optometrist; (2) a violation of the prohibition against practicing, attempting to practice, or offering to practice optometry in the State without a license; (3) a violation of the prohibition against misrepresentation of the practice of optometry; or (4) knowingly selling or dispensing contact lenses without a valid and unexpired prescription. The board is authorized to assess a new civil fine of up to \$50,000 for practicing without a license, misrepresentation of the practice of optometry, or knowingly selling or dispensing contact lenses without a valid and unexpired prescription. Fines must be assessed in accordance with board regulations and paid to the general fund. The bill specifies that these prohibitions and penalties do not apply to licensed physicians or individuals supervised by physicians.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: Potential increase in general fund revenues due to the board's authority to issue civil fines. Any additional workload can be handled with existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: An action may be maintained in the name of the State or the board to enjoin (1) the unauthorized practice of optometry; (2) the misrepresentation of the practice of optometry; (3) the act of knowingly selling or dispensing contact lenses without a valid and unexpired prescription; or (4) conduct that is grounds for disciplinary action by the board. Such an action may be brought by the board (in its own name) or the Attorney General or a State's Attorney (in the name of the State). An action must be brought in the county where the defendant resides or engages in the act sought to be enjoined. Proof of actual damage or that any person will sustain any damage is not required. An action is *in addition to and not instead* of criminal prosecution.

Current Law: Subject to hearing provisions, the board may deny a license to practice optometry, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if a licensee violates any of the 27 grounds for disciplinary action.

Unless licensed by the board, a person may not (1) practice, attempt to practice, or offer to practice optometry in the State or (2) represent to the public by title, description of services, methods, or procedures, or otherwise that the person is authorized to practice optometry.

Knowingly selling or dispensing contact lenses without a valid and unexpired prescription is a violation of the Maryland Optometry Act. The board must investigate any alleged violations (as well as other specified requirements relating to contact lenses). The board is authorized to issue subpoenas, administer oaths, and examine witnesses. The board may enforce any provision of the Maryland Optometry Act by injunction or other appropriate proceedings. An action against an individual who knowingly sells or dispenses contact lenses without a valid and unexpired prescription (or violates other specified requirements relating to contact lenses) is *in addition to and not instead of* criminal prosecution.

A person who violates any provision of the Maryland Optometry Act is guilty of a misdemeanor and subject to a fine of up to \$500 or imprisonment for up to six months, or both. The board is also authorized to impose a penalty of up to \$5,000 instead of or in addition to disciplinary action.

Background: Five health occupations boards (pharmacy, physical therapy, physicians, podiatry, and psychologists) are authorized to assess a civil fine of up to \$50,000 for practicing without a license. In all instances other than podiatry, such fines are payable to each board's respective special fund.

Two health occupations boards (nursing home administrators and physicians) are authorized to issue cease and desist orders.

State Revenues: General fund revenues may increase as a result of the board's authority to assess a civil fine of up to \$50,000. Actual revenues depend on the number of violations and the actual civil fines imposed.

Additional Information: In response to ongoing challenges among the health occupations boards in addressing unlicensed practitioners, several bills have been introduced in the 2014 legislative session that authorize various boards to issue cease and desist orders, seek injunctive relief, and/or impose fines or penalties:

- **SB 379/HB 304** – State Acupuncture Board and State Board of Dietetic Practice – Action and Penalties for Violations of Practice Acts;
- **SB 380/HB 302** – State Board of Podiatric Medical Examiners – Cease and Desist Orders and Fines;
- **SB 448/HB 112** – State Board of Professional Counselors and Therapists – Cease and Desist Orders and Penalties for Misrepresentation and Practicing Without a License; and
- **SB 453/HB 403** – State Board of Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists – Cease and Desist Orders and Injunctive Relief.

Additional Information

Prior Introductions: None.

Cross File: SB 587 (Senator Conway) - Education, Health, and Environmental Affairs.

Information Source(s): Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), State's Attorney' Association, Department of Legislative Services

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