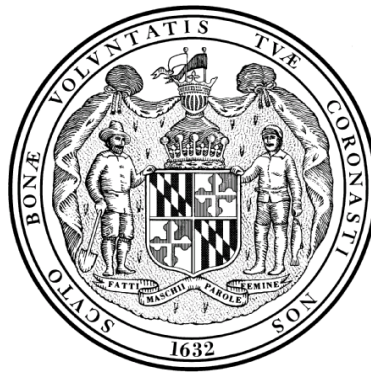


BOARD OF EXAMINERS IN OPTOMETRY

**ANNOTATED CODE OF MARYLAND
HEALTH OCCUPATIONS ARTICLE, TITLE 11**

**CODE OF MARYLAND REGULATIONS
TITLE 10, SUBTITLE 01
TITLE 10, SUBTITLE 28**



BOARD OF EXAMINERS IN OPTOMETRY

4201 Patterson Avenue
Baltimore, Maryland 21215

November 2021

For questions regarding these regulations, please contact
The Maryland Department of Health,
Maryland Board of Examiners in Optometry,
4201 Patterson Avenue, Baltimore, MD 21215
at 410-764-4710 or email mdh.optometry@maryland.gov

Annotated Code of Maryland
HEALTH OCCUPATIONS ARTICLE
TITLE 11
OPTOMETRISTS

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HEALTH OCCUPATIONS ARTICLE
TITLE 11
OPTOMETRISTS

Subtitle 1. Definitions; General Provisions.

§ 11-101. Definitions.

(a) *In general.* — In this title the following words have the meanings indicated.

(b) *Board.* — "Board" means the State Board of Examiners in Optometry.

(c) *Diagnostically certified optometrist.* — "Diagnostically certified optometrist" means a licensed optometrist who is certified by the Board to administer topical ocular diagnostic pharmaceutical agents to the extent permitted under § 11-404 of this title.

(d) *License.* — "License" means, unless the context requires otherwise, a license issued by the Board to practice optometry.

(e) *Licensed optometrist.* — "Licensed optometrist" means, unless the context requires otherwise, an optometrist who is licensed by the Board to practice optometry.

(f) *Optometrist.* — "Optometrist" means an individual who practices optometry.

(g) *Practice optometry.* — (1) "Practice optometry" means:

(i) Subject to §§ 11-404 and 11-404.2 of this title, to use any means known in the science of optics or eye care, except surgery:

1. To detect, diagnose, manage, and treat, subject to §§ 11-404 and 11-404.2 of this title, any optical or diseased condition in the human eye and the adnexa of the eye; or

2. To prescribe eyeglasses, lenses, or contact lenses to correct any optical or visual condition in the human eye;

(ii) To give advice or direction on the fitness or adaptation of eyeglasses or lenses to any individual for the correction or relief of a condition for which eyeglasses or lenses are worn; or

(iii) To use or permit the use of any instrument, test card, test type, test eyeglasses, test lenses, or other device to aid in choosing eyeglasses or lenses for an individual to wear.

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(2) Subject to §§ 11-404 and 11-404.2 of this title, "practice optometry" includes:

- (i) The administration of pharmaceutical agents;
 - (ii) The removal of superficial foreign bodies from the cornea and conjunctiva;
 - (iii) The diagnosis, treatment, and management of open-angle glaucoma;
 - (iv) The ordering of cultures and bloodwork testing;
- and
- (v) The ordering and performing of in-office, noninvasive, nonradiographic imaging.

(h) *Surgery*. — (1) "Surgery" means a procedure using any instruments, including lasers, scalpels, needles, cautery, a cryoprobe, or sutures in which human tissue is cut, burned, vaporized, removed, or otherwise permanently altered by any mechanical means, laser, ionizing radiation, ultrasound, or other means.

(2) "Surgery" does not include:

- (i) Preoperative and postoperative care provided in accordance with §§ 11-404 and 11-404.2 of this title;
- (ii) Nonsurgical light therapies used only for the treatment of meibomian gland disease and vision therapy but not for corneal collagen cross linking;
- (iii) Orthokeratology;
- (iv) A noninvasive procedure to remove a superficial foreign body in accordance with § 11-404.2(d) of this title;
- (v) Corneal scraping or conjunctival swabs for cultures in accordance with § 11-404.2(e) of this title;
- (vi) Epilating with forceps an eyelash from the eyelid, adnexa, or lacrimal system of a patient; or
- (vii) Noninvasive meibomian gland expression.

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(i) *Therapeutically certified optometrist.* — "Therapeutically certified optometrist" means a licensed optometrist who is certified by the Board to practice optometry to the extent permitted under § 11-404.2 of this title.

§ 11-102. Scope of title.

(a) *In general.* — This title does not limit the right of an individual to practice a health occupation that the individual is authorized to practice under this article.

(b) *Specific additional exemptions.* — This title does not affect the right of:

(1) An optician to provide glasses on the prescription of a licensed optometrist or a physician who is authorized to practice medicine under Title 14 of this article; or

(2) A dealer to sell eyeglasses or lenses if the dealer does not practice or claim to practice optometry.

Subtitle 2. State Board of Examiners in Optometry.

§ 11-201. Board established.

There is a State Board of Examiners in Optometry in the Department.

§ 11-202. Membership.

(a) *Composition; appointment of members; optometrist vacancies.* —

(1) The Board consists of 7 members.

(2) Of the 7 members:

(i) Five shall be licensed optometrists; and

(ii) Two shall be consumer members.

(3) The Governor shall appoint the optometrist members, with the advice of the Secretary, from a list submitted to the Secretary by the Maryland Optometric Association.

(4) The number of names on the list shall be three times the number of vacancies.

(5) For each optometrist vacancy, the Maryland Optometric Association shall:

(i) Notify all licensed optometrists in the State of the vacancy to solicit nominations to fill the vacancy; and

(ii) Conduct a balloting process where every licensed optometrist is eligible to vote to select the names of the licensed optometrists that will be submitted to the Governor.

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(6) The Governor shall appoint the consumer members with the advice of the Secretary and the advice and consent of the Senate.

(b) *Qualifications of optometrist members.* — For at least 5 years before appointment, each optometrist member of the Board shall have:

- (1) Resided in this State; and
- (2) Practiced optometry actively and continuously in this State.

(c) *Qualifications of consumer members — In general.*—The consumer members of the Board:

- (1) Shall be a member of the general public;
- (2) May not be or ever have been an optometrist or in training to become an optometrist;
- (3) May not have a household member who is an optometrist or in training to become an optometrist;
- (4) May not participate or ever have participated in a commercial or professional field related to optometry;
- (5) May not have a household member who participates in a commercial or professional field related to optometry; and
- (6) May not have had within 2 years before appointment a substantial financial interest in a person regulated by the Board.

(d) *Qualifications of consumer members – Restriction.* — While a member of the Board, a consumer member may not have a substantial financial interest in a person regulated by the Board.

(e) *Oath.* — Before taking office, each appointee to the Board shall take the oath required by Article I, § 9 of the Maryland Constitution.

- (f) *Tenure; vacancies.* — (1) The term of a member is 4 years.
- (2) The terms of members are staggered as required by the terms provided for members of the Board on July 1, 1982.
 - (3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.
 - (4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.
 - (5) To the extent practicable, the Governor shall fill any vacancy on the Board within 60 days of the date of the vacancy.
 - (6) A member may not serve more than 2 consecutive full terms.

(g) *Removal.* — (1) The Governor may remove a member for incompetence or misconduct.

(2) Upon the recommendation of the Secretary, the Governor may remove a member whom the Secretary finds to have been absent from 2 successive Board meetings without adequate reason.

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§ 11–203. Officers.

(a) *In general.* — From among its members, the Board every 2 years shall elect a president, a secretary, and a treasurer.

(b) *Elections; duties.* — The Board shall determine:

- (1) The manner of election of officers; and
- (2) The duties of each officer.

§ 11–204. Quorum; meetings; compensation; staff.

(a) *Quorum.* — A majority of the members then serving on the Board is a quorum.

(b) *Meetings.* — The Board shall meet:

- (1) At least twice a year, at the times and places that it determines; and
- (2) When requested by the Secretary.

(c) *Compensation and reimbursement for expenses.* — In accordance with the budget of the Board, each member of the Board is entitled to:

- (1) Compensation, at a rate determined by the Board, for each day on which the member is engaged in the duties of the member's office; and
- (2) Reimbursement for expenses at a rate determined by the Board.

(d) *Staff.* — The Board may employ a staff in accordance with the budget of the Board.

§ 11–205. Miscellaneous powers and duties.

(a) *Powers.* — In addition to the powers set forth elsewhere in this title, the Board has the following powers:

- (1) Each member of the Board may administer oaths and take affidavits for any matter under the jurisdiction of the Board; and
- (2) The Board may adopt rules and regulations to carry out the provisions of this title.

(b) *Duties.* — In addition to the duties set forth elsewhere in this title, the Board shall:

- (1) Keep a current list showing all:
 - (i) Licensed optometrists;
 - (ii) Optometrists who are on inactive status;
 - (iii) Diagnostically certified optometrists;
 - (iv) Therapeutically certified optometrists; and
 - (v) Optometrists against whom action has been taken under § 11–313 of this title;
- (2) Keep a full record of its proceedings;

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- (3) Adopt an official seal; and
- (4) Investigate an alleged violation of this title.

§ 11–206. Power to require physical or mental examination of licensee.

(a) *Request for examination by Board.* — In connection with any investigation of charges under § 11-313 of this title, the Board may request the licensee to submit to an appropriate physical or mental examination by a licensed physician designated by the Board.

(b) *Consent to examination.* — In return for the privilege given to a licensee to practice optometry in this State, the licensee is deemed to have:

(1) Consented to submit to an examination under this section, if requested by the Board in writing; and

(2) Waived any claim or privilege as to the testimony or examination reports of the examining physician.

(c) *Consequences of failure or refusal to submit to examination.* — At any disciplinary hearing before the Board, the failure or refusal of the licensee to submit to an examination under this section is prima facie evidence of the licensee's inability to practice optometry competently, unless the Board finds that the failure or refusal is beyond the control of the licensee.

(d) *Board to pay costs.* — The Board shall pay the costs of any examination made under this section.

(e) *Evidence presented by licensee.* — Notwithstanding any provisions of this section, a licensee may present evidence to the Board of mental or physical health that conflicts or is different from that presented as a result of an examination under this section.

§ 11–207. State Board of Examiners in Optometry Fund—Establishment of fees; disposition of funds.

(a) *State Board of Examiners in Optometry Fund established.* — There is a State Board of Examiners in Optometry Fund.

(b) *Establishment of fees.* — (1) The Board may set reasonable fees for the issuance and renewal of licenses and certificates and its other services.

(2) The fees charged shall be set so as to produce funds to approximate the cost of maintaining the Board.

(3) Funds to cover the compensation and expenses of the Board members shall be generated by fees set under this section.

(c) *Disposition of funds.* — (1) The Board shall pay all funds collected under this title to the Comptroller of the State.

(2) The Comptroller shall distribute the fees to the State Board of Examiners in Optometry Fund.

(d) *Fund — Uses; nature; reversion; funding.* — (1) The Fund shall be used to cover the actual documented direct and indirect costs of fulfilling the

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statutory and regulatory duties of the Board as provided by the provisions of this article.

(2) The Fund is a continuing, nonlapsing fund, not subject to § 7-302 of the State Finance and Procurement Article.

(3) Any unspent portions of the Fund may not be transferred or revert to the General Fund of the State, but shall remain in the Fund to be used for the purposes specified in this article.

(4) No other State money may be used to support the Fund.

(e) *Fund — Administration; expenditures.* — (1) A designee of the Board shall administer the Fund.

(2) Moneys in the Fund may be expended only for any lawful purpose authorized under the provisions of this article.

(f) *Fund — Audits.* — The Legislative Auditor shall audit the accounts and transactions of the Fund as provided in § 2-1220 of the State Government Article.

§ 11–208. Minimum optometric examination.

(a) *In general.* — A licensed optometrist shall perform a minimum optometric examination which shall include:

- (1) Reviewing a patient's history, past prescriptions and specifications when available;
- (2) Visual analysis;
- (3) Ophthalmoscopy of internal eye;
- (4) Tonometry without anesthetic when indicated or for a patient over 40 years of age;
- (5) Muscle balance examination;
- (6) Writing of lens formula and other prescription data when needed as well as specific instructions for future care; and
- (7) Subsequent progress evaluation when indicated.

(b) *Records to be maintained for three years.* — A licensed optometrist shall maintain thorough records of all testing procedures, results, and case dispositions in accordance with § 4-403 of the Health - General Article.

(c) *Instrumentation and equipment.* — A licensed optometrist shall have on hand all instrumentation and equipment, in good working condition, required to carry out the procedures for the minimum examination under this section.

§ 11–209. Good faith exemption from civil liability.

A person shall have the immunity from liability described under § 5-712 of the Courts and Judicial Proceedings Article for giving information to the Board or otherwise participating in its activities.

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Subtitle 3. Licensing.

§ 11-301. Licenses required; exception.

(a) *In general.* — Except as otherwise provided in this title, an individual shall be licensed by the Board before the individual may practice optometry in this State.

(b) *Exception.* — This section does not apply to a student while participating in a residency training program under the direct supervision of a licensed optometrist.

§ 11-302. Qualifications of applicants.

(a) *In general.* — To qualify for a license, an applicant shall be an individual who meets the requirements of this section.

(b) *Moral character.* — The applicant shall be of good moral character.

(c) *Age.* — The applicant shall be at least 18 years old.

(d) *Education.* — (1) The applicant shall submit to the Board satisfactory evidence of scholastic and professional education that is at least equal to the current standards set by the Board. However, an applicant who is licensed to practice optometry in any other state shall submit satisfactory evidence of scholastic and professional education that is at least equal to the standards set by the Board at the time of the applicant's completion of scholastic and professional education.

(2) On written request, the Board shall provide information as to the current scholastic and professional education standards that the Board sets. In the case of an out-of-state applicant the Board shall provide information on the educational and professional standards in effect at the time of an applicant's completion of scholastic and professional education.

(e) *Examination.* — Except as otherwise provided in this subtitle, the applicant shall pass an examination given by the Board under this subtitle.

§ 11-303. Applications for licenses.

To apply for a license, an applicant shall:

(1) Submit an application to the Board on the form that the Board requires; and

(2) Pay to the Board the application fee set by the Board.

§ 11-304. Examinations.

(a) *Right to examination.* — An applicant who otherwise qualifies for a license is entitled to be examined as provided in this section.

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(b) *Time and place of examination.* — Periodically, but not more often than once every 6 months, the Board shall give examinations to applicants at the times and places that the Board determines.

(c) *Notice of examination.* — The Board shall notify each qualified applicant of the time and place of examination.

(d) *Subjects and method of examination.* — (1) Except as otherwise provided in this subsection, the Board shall determine the subjects, scope, form, and passing score for examinations administered under this subtitle.

(2) The subjects examined shall include:

(i) The anatomy, physiology, and pathology of the human eye; and

(ii) The use of all instruments used for examination of the human eye.

(3) The examination may include any subject that relates to optics and optometry:

(i) Contained in any textbook; or

(ii) Taught at any accredited educational institution that teaches optics, optometry, and other related subjects.

(e) *Reexamination.* — (1) An applicant who fails the examination may take the next regularly scheduled examination.

(2) The applicant shall pay to the Board a reexamination fee set by the Board for each reexamination.

§ 11-305. Waiver of examination requirement.

(a) *In general.* — Subject to the provisions of this section, the Board may waive the examination requirements of this title for an individual who is licensed to practice optometry in any other state.

(b) *Conditions.* — The Board may grant a waiver under this section only if the applicant:

(1) Pays the application fee required by the Board under § 11-303 of this subtitle;

(2) Provides adequate evidence that the applicant:

(i) Meets the qualifications otherwise required by this title, including, for 3 years before applying, the continuing education requirements of the other state in which the applicant has been practicing optometry, or, if the other state does not have any continuing education requirement, the applicant shall meet the equivalent of 3 years of the continuing education requirements of this subtitle in courses approved by the Board;

(ii) Meets the terms and conditions that the Board establishes in subsections (c) and (d) of this section;

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(iii) At the time the applicant was licensed in the other state, was qualified to take the examination that then was required by the laws of this State; and

(iv) Qualified for a license in the other state by passing an examination given by the board of optometry in that state;

(3) Presents a copy of the license, certified by the issuing board; and

(4) Has not failed an examination given by the Board within the previous 5 years.

(c) *Additional conditions.* — (1) The Board may waive the examination requirements of this subtitle for an applicant who:

(i) If so required by the Board under subsection (d) of this section, passes an examination administered by the Board; and

(ii) For 3 years immediately before applying, has practiced optometry actively.

(2) The Board may waive the requirement of practicing optometry actively for an applicant who for 3 years:

(i) Was teaching optometry;

(ii) Was a military optometrist;

(iii) Was a supervisor or administrative optometrist; or

(iv) Was a researcher in optometry.

(d) *Examination.* — (1) Within 1 year of receipt of an application, the Board may require that the applicant pass an examination.

(2) The Board shall determine the scope, form, and passing score for examinations under this section.

§ 11–306. Issuance of license.

The Board shall issue a license to any applicant who:

(1) Meets the requirements of this title; and

(2) Pays to the Board the license fee set by the Board.

§ 11–307. Scope of license.

A license authorizes the licensee to practice optometry while the license is effective.

§ 11–307.1. Limited license.

(a) *Requirements.* — An applicant for a limited license shall submit to the Board:

(1) An application on the form the Board requires; and

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(2) A written confirmation of participation from the institution in which the applicant intends to participate in a postgraduate teaching, research, or training program.

(b) *Waiver of examination requirements.* — The Board may waive the examination requirements of this subtitle and issue a limited license to practice optometry to an individual who:

- (1) Is qualified for a postgraduate teaching, research, or training position;
- (2) Is applying to participate in a postgraduate teaching, research, or training program approved by the Board under this subsection;
- (3) Is eligible to sit for the Maryland licensure examination;
- (4) Is licensed, at the time of application, to practice optometry in another state; and
- (5) Pays the fee set by the Board.

(c) *Scope of license.* — A limited license authorizes the licensee for 1 year to practice optometry only:

- (1) At the institution that has been approved by the Board and is designated on the individual's license;
- (2) At other institutions that are affiliated with the designated institution; and
- (3) On the patients of the designated institution or its affiliates.

(d) *Renewal.* — The Board may renew a limited license once for an additional 1-year term if the holder:

- (1) Otherwise meets the requirements of this section;
- (2) Submits a renewal application to the Board on the form that the Board requires; and
- (3) Pays to the Board the limited license renewal fee set by the Board.

§ 11-308. Term and renewal of licenses.

(a) *Term of license.* — A license expires on the date set by the Board, unless the license is renewed for an additional term as provided in this section. A license may not be renewed for a term longer than 2 years.

(b) *Renewal notice.* — At least 1 month before a license expires, the Board shall send to the licensee, by electronic means or first-class mail to the last known electronic or physical address of the licensee, a renewal notice that states:

- (1) The date on which the current license expires;
- (2) The date by which the renewal application must be received by the Board for the renewal to be issued and mailed before the license expires; and

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(3) The amount of the renewal fee.

(c) *Applications for renewal.* — Before the license expires, a licensee periodically may renew it for an additional 2-year term, if the licensee:

- (1) Otherwise is entitled to be licensed;
- (2) Pays to the Board a renewal fee set by the Board; and
- (3) Submits to the Board:

(i) A renewal application on the form that the Board requires; and

(ii) Satisfactory evidence of compliance with the continuing education requirements set under this subtitle for license renewal.

(d) *Issuance of renewal.* — The Board shall renew the license of and issue a renewal certificate to each licensee who meets the requirements of this section.

(e) *Grace period.* — If an optometrist does not renew a license before its expiration date, the Board shall send to the optometrist a notice stating that the license will expire 30 days after the notice is sent unless the optometrist applies for renewal within the grace period.

§ 11-309. Continuing education.

(a) *In general.* — In addition to any other qualifications and requirements established by the Board, the Board shall establish continuing education requirements as a condition to the renewal of licenses and certificates under this title.

(b) *Continuing education requirements.* — (1) The continuing education required by the Board shall be in courses approved by the Board.

(2) The Board may not require a nontherapeutically certified optometrist to attend more than 50 hours in any licensing period.

(3) The Board shall require a therapeutically certified optometrist to attend at least 50 hours of continuing education in a licensing period.

(4) (i) In each licensing period, a therapeutically certified optometrist shall attend 30 hours of continuing education on the use and management of therapeutic pharmaceutical agents.

(ii) The 30 hours of continuing education required under subparagraph (i) of this paragraph shall be counted toward the total number of required hours of continuing education in a licensing period.

(c) *Certification of attendance.* — At the time a licensee applies for license renewal, the licensee shall submit to the Board, on a form provided by the Board, a certification that the licensee has attended the required courses.

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(d) *Failure to certify attendance.* — The Board may refuse to renew the license of a licensee who has failed:

- (1) To attend the required courses; or
- (2) To submit certification of attendance at the required courses.

(e) *Waiver.* — The Board may waive the continuing education requirements in cases of illness or other undue hardship on the licensee.

(f) *Use of funds.* — The Board may use any funds allocated to it for continuing education as State funds to match federal funds for providing continuing education.

§ 11–310. Inactive status; reinstatement of expired licenses.

(a) *Inactive status.* — (1) The Board shall place a licensee on inactive status, if the licensee submits to the Board:

- (i) An application for inactive status on the form required by the Board; and
- (ii) The inactive status fee set by the Board.

(2) The Board shall issue a license to an individual who is on inactive status if the individual:

- (i) Meets any continuing education requirements set by the Board; and
- (ii) Pays to the Board the reinstatement fee set by the Board.

(b) *Reinstatement of license expired for less than 5 years.* — The Board may reinstate the license of an optometrist whose license has been expired for less than 5 years and who has not been put on inactive status, if the optometrist:

- (1) Has met the continuing education requirements set by the Board;
- (2) Meets the renewal requirements of § 11-308 of this subtitle; and
- (3) Pays to the Board the reinstatement fee set by the Board.

(c) *Reinstatement of license expired for 5 years or more.* — The Board may not reinstate the license of an optometrist whose license has been expired for 5 years or more and who has not been put on inactive status, unless the optometrist:

- (1) Passes an examination administered by the Board; and
- (2) Otherwise meets the requirements of subsection (b) of this section.

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§ 11-311. Display of licenses; statement to be given to patient.

(a) *Display.* — Each licensee shall display the license conspicuously in the office of the licensee.

(b) *Statement to be given patient.* — A licensee practicing optometry away from the licensee's office shall give to the patient a statement that contains the licensee's home address, license number, and signature.

§ 11-312. Surrender of license.

(a) *In general.* — Unless the Board agrees to accept the surrender of a license, a licensed optometrist may not surrender the license nor may the license lapse by operation of law while the licensee is under investigation or while charges are pending against the optometrist.

(b) *Conditions.* — The Board may set conditions on its agreement with the optometrist under investigation or against whom charges are pending to accept surrender of the optometrist's license.

§ 11-313. Denials, reprimands, probations, suspensions, and revocation — Grounds.

Subject to the hearing provisions of § 11-315 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the applicant or licensee:

- (1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;
- (2) Fraudulently or deceptively uses a license;
- (3) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;
- (4) Abandons a patient;
- (5) Provides professional services while:
 - (i) Under the influence of alcohol; or
 - (ii) Using any narcotic or controlled dangerous substance, as defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of therapeutic amounts or without valid medical indication;
- (6) Promotes the sale of devices, appliances, or goods to a patient so as to exploit the patient for financial gain;
- (7) Willfully makes or files a false report or record in the practice of optometry;
- (8) Willfully fails to file or record any optometric report as required by law;
- (9) Willfully impedes or obstructs the filing or recording of any optometric report as required by law;

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- (10) Willfully induces another to fail to file or record any optometric report as required by law;
- (11) Fails to provide details of the optometric record of a patient to a physician or another optometrist on proper request by the patient;
- (12) Employs another person as a solicitor of business;
- (13) Splits or agrees to split a fee for optometric services with any person for bringing or referring a patient;
- (14) Makes a willful misrepresentation in treatment;
- (15) Aids an unauthorized person in the practice of optometry;
- (16) Grossly and willfully:
 - (i) Overcharges for optometric services; or
 - (ii) Submits false statements to collect fees for which services are not provided;
- (17) Behaves immorally in the practice of optometry;
- (18) Is professionally, physically or mentally incompetent;
- (19) Advertises in a false or misleading manner;
- (20) Has had a license to practice optometry denied, suspended or revoked in another state for an act which would be grounds for disciplinary action under this section;
- (21) Has violated any provision of this title;
- (22) Violates any rule or regulation adopted by the Board;
- (23) Commits an act of unprofessional conduct in the practice of optometry;
- (24) Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the licensee is licensed and qualified to render because the individual is HIV positive;
- (25) Willfully engages in conduct that is likely to deceive, defraud, or harm the public;
- (26) Knowingly fails to report suspected child abuse in violation of § 5-704 of the Family Law Article; or
- (27) Engages in conduct which exhibits an inappropriate standard of care.

§ 11-314. Penalty instead of suspension or in addition to suspension or revocation.

(a) *Imposition of penalty.* — If after a hearing under § 11-315 of this subtitle the Board finds that there are grounds under § 11-313 of this subtitle to suspend or revoke a license, the Board may impose a penalty not exceeding \$5,000:

- (1) Instead of suspending the license; or

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(2) In addition to suspending or revoking the license.

(b) *Board to establish standards.* — The Board shall adopt rules and regulations to set standards for the imposition of penalties under this section.

(c) *Disposition of funds.* — The Board shall pay any penalty collected under this section into the General Fund of this State.

§ 11–315. Hearings and investigations.

(a) *Right to hearing.* — Except as otherwise provided in the Administrative Procedure Act, before the Board takes any action under § 11-313 of this subtitle, it shall give the licensee against whom the action is contemplated an opportunity for a hearing before the Board.

(b) *Application of Administrative Procedure Act.* — The Board shall give notice and hold the hearing in accordance with the Administrative Procedure Act.

(c) *Right to counsel.* — The individual may be represented at the hearing by counsel.

(d) *Subpoenas.* — The Board may issue subpoenas in connection with any investigation of charges under § 11-313 of this subtitle or proceeding under this section.

(e) *Ex parte hearings.* — If after due notice the individual against whom the action is contemplated fails or refuses to appear, nevertheless the Board may hear and determine the matter.

§ 11–316. Findings and order of Board.

(a) *Action found warranted.* — If the Board finds that there are grounds under § 11-313 of this subtitle for action, the Board shall pass an order in accordance with the Administrative Procedure Act.

(b) *Action found unwarranted.* — If the Board finds that there are no grounds under § 11-313 of this subtitle for action, the Board:

- (1) Immediately shall dismiss the charges and exonerate the licensee;
- (2) Shall expunge all records that relate to the charges; and
- (3) May not take any further action on the charges.

§ 11–317. Order of suspension or revocation.

(a) *Contents of order.* — The Board shall include in any order of suspension or revocation the specific terms and conditions of the suspension or revocation.

(b) *Order effective on filing.* — Except as provided in § 11-318(c) of this subtitle for a stay pending review, when the Board files an order of suspension or revocation, it is effective, in accordance with its terms and conditions, immediately.

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(c) *Order to be kept as permanent record.* — The Board shall keep a copy of each order of suspension or revocation as a permanent record.

§ 11–318. Administrative and judicial review.

(a) *In general.* — Except as provided in this section for an action under

§ 11–313 of this subtitle, any person aggrieved by a final decision of the Board in a contested case, as defined in the Administrative Procedure Act, may petition for judicial review as allowed by the Administrative Procedure Act.

(b) *Action under § 11-313.* — Any person aggrieved by a final decision of the Board under § 11–313 of this subtitle may not appeal to the Secretary but may take a direct judicial appeal as provided in the Administrative Procedure Act.

(c) *Stay pending review.* — If an optometrist seeks judicial review of an order of suspension or revocation by the Board, the order shall be stayed until the optometrist's judicial remedies are exhausted.

§ 11–319. Reinstatement of suspended or revoked license.

The Board may reinstate the license of any individual whose license has been suspended or revoked under this title only in accordance with:

- (1) The terms and conditions of the order of suspension or revocation;
- (2) An order of reinstatement issued by the Board; or
- (3) A final judgment in any proceeding for review.

§ 11–320. Cease and desist order or injunction.

(a) *Scope of section.* — This section does not apply to:

- (1) An individual licensed under Title 14, Subtitle 3 of this article; or
- (2) An individual supervised by an individual licensed under Title 14, Subtitle 3 of this article.

(b) *In general* — The Board may issue a cease and desist order or obtain injunctive relief for a violation of any provision of § 11–313 of this subtitle or § 11–501, § 11–502, or § 11–504 of this title.

(c) *Action for injunction.* — (1) An action may be maintained in the name of the State or the Board to enjoin:

- (i) The unauthorized practice of optometry;
- (ii) The misrepresentation of the practice of optometry;

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(iii) The act of knowingly dispensing contact lenses or replacement contact lenses without a valid and unexpired prescription or a replacement contact lens prescription; or

(iv) Conduct that is grounds for disciplinary action under § 11–313 of this subtitle.

(2) An action under this subsection may be brought by:

(i) The Board, in its own name;

(ii) The Attorney General, in the name of the State; or

(iii) A State’s Attorney, in the name of the State.

(3) An action under this subsection shall be brought in the county where the defendant:

(i) Resides; or

(ii) Engages in the act sought to be enjoined.

(4) Proof of actual damage or that any person will sustain any damage if an injunction is not granted is not required for an action under this subsection.

(5) An action under this subsection is in addition to and not instead of criminal prosecution for disciplinary action under § 11–313 of this subtitle or the unauthorized practice of optometry under §§ 11–501, 11–502, and 11–504 of this title.

Subtitle 4. Miscellaneous Provisions.

§ 11–401. Government relations with optometrists.

(a) *Definitions.* — (1) In this section the following words have the meanings indicated.

(2) “Governmental unit” means any board, commission, authority, department, or other administrative agency of this State, a county, or a municipality.

(3) “Ocular practitioner” means any practitioner who is authorized to provide services within the scope of optometry.

(b) *Freedom of choice.* — (1) Except as provided in this subsection, a governmental unit may not interfere with the complete freedom of the public to choose any ocular practitioner.

(2) A governmental unit may make an agreement under which an ocular practitioner is to provide optometric services to the employees of a governmental unit.

(c) *Reports, statements, and services.* — A governmental unit shall honor and accept any report, statement, or service made or provided by a licensed optometrist within the scope of optometry to the same extent as if the report, statement, or service was made or provided by a physician.

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§ 11-402. Duty of referral.

(a) *Optometrist or diagnostically certified optometrist.* — If, while providing optometric services to a patient, an optometrist or diagnostically certified optometrist detects or diagnoses an active eye pathology which the optometrist is not licensed or certified to treat under § 11-404 or § 11-404.2 of this subtitle, the optometrist shall refer the patient to:

- (1) An ophthalmologist or a therapeutically certified optometrist, as appropriate;
 - (2) The patient's physician;
 - (3) A physician if required under a managed care contract;
- or
- (4) A hospital emergency room or ambulatory surgical center if necessary.

(b) *Therapeutically certified optometrist.* — If, while providing optometric services to a patient, a therapeutically certified optometrist diagnoses an active eye pathology that the optometrist is not certified to treat under § 11-404.2 of this subtitle, the optometrist shall refer the patient to:

- (1) An ophthalmologist;
 - (2) The patient's physician;
 - (3) A physician if required under a managed care contract;
- or
- (4) A hospital emergency room if necessary.

§ 11-403. Titles.

(a) *Permitted titles.* — A licensed optometrist may:

- (1) Use the title "optometrist";
- (2) If the optometrist holds the degree of doctor of optics or doctor of optometry from a college or university authorized to give the degree, use the title "Doctor" or the abbreviations "Dr." or "O.D." with the optometrist's name;
- (3) If the optometrist is certified under § 11-404 of this subtitle, use the title "diagnostically certified optometrist"; and
- (4) If the optometrist is certified under § 11-404.1 of this subtitle, use the title "therapeutically certified optometrist".

(b) *Prohibited titles.* — Except as otherwise provided in this section, a licensed optometrist may not attach to the optometrist's name or use as a title:

- (1) The words or abbreviations "Doctor", "Dr.", "M.D.", "physician", or "surgeon", or any other word or abbreviation that suggests that the optometrist practices medicine; or

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(2) Any word or abbreviation that suggests that the optometrist treats diseases or injuries of the human eye, including the words “eye specialist”, “eyesight specialist”, “oculist”, or “ophthalmologist”.

§ 11-404. Administration of drugs, medicine, etc.

(a) *Administration of topical ocular diagnostic pharmaceutical agents.* — Unless certified under this section, a licensed optometrist may not administer a topical ocular diagnostic pharmaceutical agent to a patient.

(b) *Certification -- Requirements generally.* — The Board shall certify a licensed optometrist as qualified to administer topical ocular diagnostic pharmaceutical agents if the licensed optometrist submits to the Board evidence satisfactory to the Board that the licensed optometrist:

(1) Meets the educational requirements that the Board establishes for certification of qualification to administer topical ocular diagnostic pharmaceutical agents; and

(2) Has within 7 years before certification completed a course in pharmacology that meets the requirements of subsection (c) of this section.

(c) *Certification — Pharmacology courses.* — The course in pharmacology required by subsection (b) of this section shall:

(1) Be of at least the length that the Board establishes but not less than 70 course hours;

(2) Place emphasis on:

(i) Topical application of ocular diagnostic pharmaceutical agents for the purpose of examining and analyzing ocular functions; and

(ii) Allergic reactions to ocular diagnostic pharmaceutical agents; and

(3) Be given by an institution that is:

(i) Accredited by a regional or professional accrediting organization that is recognized or approved by the United States Commissioner of Education; and

(ii) Approved by the Board.

(d) *Certification — Revocation.* — The Board shall revoke the certification of qualification to administer topical ocular diagnostic pharmaceutical agents of any licensed optometrist who does not annually take a course of study, approved by the Board, that relates to the use of those agents.

(e) *Certification — Authorized activities.* — Certification of qualification under this section authorizes the licensed optometrist who is certified under this section to administer a topical ocular diagnostic pharmaceutical agent to a patient for diagnostic purposes but not for purposes of treatment.

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(f) *Administration of drugs or medicine generally.* — Except as expressly authorized under this section for diagnostic purposes or under § 11-404.1 of this subtitle for therapeutic purposes, an optometrist may not administer drugs or medicine to any patient.

(g) *Reports.* — The Department shall collect and report statistical information on the incidences of negative reactions to the administration by optometrists of topical ocular diagnostic pharmaceutical agents.

§ 11-404.1. Therapeutically certified optometrists — Certification.

(a) *Conduct requiring certification.* — Unless certified under this section, a licensed optometrist may not administer or prescribe any therapeutic pharmaceutical agents or remove superficial foreign bodies from a human eye, adnexa, or lacrimal system.

(b) *Requirements for certification.* — (1) Except as provided in paragraph (2) of this subsection, the Board shall certify a licensed optometrist as a therapeutically certified optometrist if the licensed optometrist submits to the Board evidence satisfactory to the Board that the licensed optometrist:

(i) Has successfully completed at least 110 hours of a therapeutic pharmaceutical agents course approved by the Board;

(ii) Has successfully passed a pharmacology examination relating to the treatment and management of ocular disease, which is prepared, administered, and graded by the National Board of Examiners in Optometry or any other nationally recognized optometric organization as approved by the Secretary;

(iii) Is currently certified by the Board to administer topical ocular diagnostic pharmaceutical agents under § 11-404 of this subtitle; and

(iv) Has successfully completed an 8-hour course in the management of topical steroids approved by the Board.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, an optometrist who has graduated on or after July 1, 2005 from an accredited school of optometry recognized by the Board is not subject to the requirements of paragraph (1) of this subsection.

(ii) If an optometrist who has graduated on or after July 1, 2005 from an accredited school of optometry recognized by the Board is not certified under this section within 3 years of graduation, the optometrist shall successfully complete a therapeutic pharmaceutical agents course and successfully pass a pharmacology exam under paragraph (1) of this subsection before the Board may certify the optometrist.

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**§ 11-404.2. Therapeutically certified optometrists — Referrals;
administration of topical therapeutic and oral
pharmaceutical agents; restrictions.**

(a) *Administration of topical therapeutic pharmaceutical agents.* —

(1) Except as provided in this subsection and in subsection (d) of this section for the treatment of open-angle glaucoma, a therapeutically certified optometrist may administer and prescribe therapeutic pharmaceutical agents for the prevention, management, or treatment of conditions and diseases of the eye and ocular adnexa.

(2) (i) A therapeutically certified optometrist may not administer or prescribe:

1. Controlled dangerous substances;
2. Except as provided in subparagraph (ii) of this paragraph, nontopical systemic immunosuppressive and immunomodulatory agents;
3. Oral antifungal agents; or
4. Oral and topical antimetabolite agents.

(ii) A therapeutically certified optometrist may administer or prescribe oral corticosteroids for not more than 1 month unless the therapeutically certified optometrist consults with a physician.

(3) A therapeutically certified optometrist may not administer or prescribe pharmaceutical agents that are:

- (i) Delivered intravenously;
- (ii) Given by injection, except a therapeutically certified optometrist may give an injection of epinephrine in the appropriate dose for the treatment of acute anaphylaxis or emergency resuscitation;
- (iii) Given or delivered by a sustained delivery device, except for punctal plugs, contact lenses, or other extraocular devices that release medication into the tear film; or
- (iv) For the treatment of a systemic disease unless specific to the treatment of an ocular condition or disease.

(b) *Administration or prescription of oral pharmaceutical agent by therapeutically certified optometrist.* —

(1) Except as provided in paragraph (2) of this subsection, a therapeutically certified optometrist may not administer or prescribe any oral pharmaceutical agent to a patient under the age of 18 years.

(2) (i) After a therapeutically certified optometrist consults with a physician, the therapeutically certified optometrist may prescribe and administer oral antibiotics to a minor who is at least 16 years old and under the age of 18 years.

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(ii) A therapeutically certified optometrist shall provide the physician consulted in accordance with subparagraph (i) of this paragraph with a written report.

(c) *Administration of agents for glaucoma.* — (1) A therapeutically certified optometrist may administer and prescribe topical therapeutic pharmaceutical agents for glaucoma only for a patient who:

- (i) Is at least 18 years old; and
- (ii) Has open-angle glaucoma.

(2) (i) A therapeutically certified optometrist who treats a patient with open-angle glaucoma in accordance with this section shall refer the patient to an ophthalmologist for an examination within 3 months after the initial diagnosis or presentation to the therapeutically certified optometrist unless the intraocular pressure has been reduced 20% or more from the initial pressure.

(ii) A therapeutically certified optometrist who treats a patient with open-angle glaucoma in accordance with this section shall refer the patient to an ophthalmologist for an examination within 12 months after the initial diagnosis or presentation to the therapeutically certified optometrist unless clinical stability has been documented by visual field or imaging of the optic nerve structure.

(3) For a patient on glaucoma medications at the time of presentation to a therapeutically certified optometrist, if the therapeutically certified optometrist is unable to confirm either the date of initial open-angle glaucoma diagnosis or the intraocular pressure at the time the patient was initially diagnosed, the therapeutically certified optometrist may render treatment to a patient with open-angle glaucoma without referring the patient to an ophthalmologist if:

- (i) The intraocular pressure of the patient remains stable; and
- (ii) Clinical stability is documented by visual field or imaging of the optic nerve structure within 12 months after the patient is first examined by the optometrist.

(4) (i) For a patient who is at least 18 years old, a therapeutically certified optometrist may only administer or prescribe oral glaucoma medications for up to 24 hours after the patient presents in the office with uncontrolled intraocular pressure.

(ii) A therapeutically certified optometrist who administers or prescribes oral glaucoma medications under subparagraph (i) of this paragraph shall immediately consult with an ophthalmologist and refer the patient to an ophthalmologist.

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(d) *Removal of foreign bodies.* — A therapeutically certified optometrist may remove superficial conjunctival or corneal foreign bodies from the human eye only if:

(1) The foreign body:

(i) Has not penetrated beyond the Bowman's membrane of the cornea and is within 2.5 millimeters of the visual axis of the cornea; or

(ii) Is peripheral and anterior to the mid-stroma; and

(2) Removal will not require permanent alteration of tissue.

(e) *Orders for laboratory tests generally prohibited.* — (1) Except as provided in paragraphs (2) and (3) of this subsection, a therapeutically certified optometrist may not order any laboratory tests, genetic tests, extraocular imaging, or other testing for a patient.

(2) (i) A therapeutically certified optometrist may order:

1. A conjunctival or corneal culture; or
2. After consulting with a physician, a

nongenetic blood test.

(ii) A therapeutically certified optometrist who orders nongenetic blood tests shall send the written results to the physician consulted in accordance with subparagraph (i)2 of this paragraph.

(3) A therapeutically certified optometrist may order and perform in-office, noninvasive, nonradiographic imaging.

(f) *Child under age of 1 year.* — A therapeutically certified optometrist may not provide any therapeutic treatment listed in this section for a child under the age of 1 year.

(g) *Referrals.* — Unless the standard of care requires an earlier referral, if a therapeutically certified optometrist diagnoses a corneal ulcer or infiltrate, and the patient does not have the expected response within 48 hours, the optometrist immediately shall refer the patient to an ophthalmologist.

(h) *Standard of care.* — A therapeutically certified optometrist shall be:

(1) Held to the same standard of care as an ophthalmologist who is licensed under Title 14 of this article and who is providing similar services; and

(2) Required to comply with the notice requirement under § 14-508 of this article.

§ 11-404.3. Therapeutically certified optometrists — Quality assurance.

(a) *Guideline recommendations.* — The Board shall recommend to the Secretary quality assurance guidelines for therapeutically certified optometrists and optometric care.

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(b) *Regulations establishing quality assurance program.* — After considering the recommendations of the Board, the Secretary shall adopt regulations that establish standards of quality for therapeutically certified optometrists and optometric care.

§ 11-404.4. Contact lenses.

(a) *In general.* — (1) In this section the following words have the meanings indicated.

(2) “Replacement contact lens prescription” means a prescription prepared by a licensed optometrist containing the information specified in this section and written expressly for the purpose of providing lenses which have already been properly fitted.

(3) “Immediate follow-up care” is that period of contact lens fitting time required to reach a contact lens prescription that is appropriate to the documented clinical needs of the patient.

(b) *Contact lens prescriptions.* — A licensed optometrist shall ensure that each replacement contact lens prescription that the licensed optometrist prescribes for contact lenses:

(1) Contains all the information necessary for the replacement contact lens prescription to be properly dispensed, including but not limited to the:

- (i) Lens manufacturer;
- (ii) Type of lens;
- (iii) Power of the lens, including plano or zero-powered contact lenses;
- (iv) Base curve;
- (v) Lens size;
- (vi) Name of the patient;
- (vii) Date the prescription was given to the patient;
- (viii) Name and office location of the licensed optometrist who writes the replacement contact lens prescription; and
- (ix) Expiration date of the replacement contact lens prescription; and

(2) Is reduced to writing and placed in the patient’s permanent file.

(c) *Replacement prescriptions.* — (1) (i) After a licensed optometrist releases the patient from immediate follow-up care, the patient may request the replacement contact lens prescription from the licensed optometrist.

(ii) If, after examination, the patient’s prescription has not changed since the last examination, a licensed optometrist shall comply

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with the provisions of paragraph (2) of this subsection without requiring the patient to purchase contact lenses or to undergo immediate follow-up care.

(2) (i) Upon the request of a patient of a licensed optometrist, and without cost to the patient, the licensed optometrist shall provide the patient's replacement contact lens prescription to the patient or the patient's designee.

(ii) In responding to a request under paragraph (1)(i) of this subsection, a licensed optometrist shall transmit the contact lens prescription by mail, telephone, facsimile, e-mail, or any other means of communication that will, under normal circumstances, result in the designee receiving the information within 7 business days after the patient's request.

(iii) The replacement contact lens prescription that the licensed optometrist provides the patient under subparagraph (i) of this paragraph:

1. Shall contain the information necessary for the proper duplication of the current prescription of the patient;

2. Shall contain, subject to the provisions of subsection (d) of this section, an expiration date for the replacement contact lens prescription of not more than 24 months from the time the patient was first examined; and

3. May contain wearing guidelines or specific instructions for use of the contact lenses by the patient, or both.

(d) *Expiration dates.* — The licensed optometrist shall enter into the patient's medical record the valid clinical reasons for a shorter expiration date and shall provide the patient with a written and oral explanation of the clinical reasons for a shorter expiration date.

(e) *Liability.* — When a patient's prescription is dispensed by a person other than the licensed optometrist or a person associated directly or indirectly with the licensed optometrist, the licensed optometrist is not liable for any injury to or condition of a patient caused solely by the negligence of the dispenser.

(f) *Improper contact lenses.* — A licensed optometrist who releases a replacement contact lens prescription to a patient may provide the patient with a written statement that wearing improperly fitted contact lenses may cause harm to the patient's eyes and that the patient should have an eye examination if there are any changes in the patient's vision, including pain or vision loss.

(g) *Maintaining records.* — (1) A licensed optometrist who fills or provides a contact lens prescription shall maintain a record of that prescription in accordance with § 4-403 of the Health - General Article.

(2) A person other than a licensed optometrist who fills a contact lens prescription shall maintain a record of that prescription for 5 years.

(h) *Civil fine.* — The Board may impose a civil fine of no more than \$1,000 on a licensed optometrist who fails to provide a replacement contact lens

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prescription or who knowingly dispenses contact lenses without a valid and unexpired replacement contact lens prescription, or who otherwise fails to comply with this title.

§ 11-405. Optometrist rehabilitation committee.

(a) *"Optometrist rehabilitation committee" defined.* — In this section, “optometrist rehabilitation committee” means a committee that:

- (1) Is defined in subsection (b) of this section; and
- (2) Performs any of the functions listed in subsection (d) of

this section.

(b) *In general.* — For purposes of this section, an optometrist rehabilitation committee is a committee of the Board or a committee of the Maryland Optometric Association that:

- (1) Is recognized by the Board; and
- (2) Includes but is not limited to optometrists.

(c) *Scope of authority.* — A rehabilitation committee of the Board or recognized by the Board may function:

- (1) Solely for the Board; or
- (2) Jointly with a rehabilitation committee representing

another board or boards.

(d) *Duties.* — For purposes of this section, an optometrist rehabilitation committee evaluates and provides assistance to any optometrist, and any other individual regulated by the Board, in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

(e) *Discoverability and admissibility of proceedings, records and files.* — (1) Except as otherwise provided in this subsection, the proceedings, records, and files of the optometrist rehabilitation committee are not discoverable and are not admissible in evidence in any civil action arising out of matters that are being or have been reviewed and evaluated by the optometrist rehabilitation committee.

(2) Paragraph (1) of this subsection does not apply to any record or document that is considered by the optometrist rehabilitation committee and that otherwise would be subject to discovery or introduction into evidence in any arbitration or civil proceeding.

(3) For purposes of this subsection, civil action does not include a proceeding before the Board or judicial review of a proceeding before the Board.

(f) *Good faith exemption from civil liability.* — A person who acts in good faith and within the scope of jurisdiction of an optometrist rehabilitation committee is not civilly liable for any action as a member of the optometrist

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rehabilitation committee or for giving information to, participating in, or contributing to the function of the optometrist rehabilitation committee.

Subtitle 5. Prohibited Acts; Penalties.

§ 11–501. Practicing without a license.

Except as otherwise provided in this title, a person may not practice, attempt to practice, or offer to practice optometry in this State unless licensed by the Board.

§ 11–502. Misrepresentation as optometrist.

Unless licensed to practice optometry under this title, a person may not represent to the public by title, by description of services, methods, or procedures, or otherwise, that the person practices optometry.

§ 11–503. Restrictions on certain techniques.

Repealed by Acts 2019, ch. 344, effective March 1, 2020.

§ 11–504. Dispensing lenses without a valid and unexpired prescription.

(a) *Violation.* — Knowingly selling or dispensing contact lenses or replacement contact lenses without a valid and unexpired prescription or replacement contact lens prescription shall be considered a violation of this title.

(b) *Investigation of violations.* — The Board shall investigate any alleged violation of this section or § 11-404.4 of this title and may, notwithstanding § 11-205 of this title:

- (1) Issue subpoenas, administer oaths, and examine witnesses; and
- (2) Enforce any provision of this title by injunction or other appropriate proceedings.

(c) *Action.* — An action under this section is in addition to and not instead of criminal prosecution under § 11-505 of this subtitle.

§ 11–505. Penalties.

(a) *In general.* — A person who violates any provision of this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$500 or imprisonment not exceeding 6 months or both.

- (b) *Applicability; penalty.* — (1) This subsection does not apply to:
- (i) An individual licensed under Title 14, Subtitle 3 of this article; or
 - (ii) An individual supervised by an individual licensed under Title 14, Subtitle 3 of this article.

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(2) A person who violates § 11-501, § 11-502, or § 11-504 of this subtitle is subject to a civil fine not exceeding \$50,000 to be assessed by the Board in accordance with regulations adopted by the Board.

Subtitle 6. Short title; Termination of Title.

§ 11-601. Short title.

This title may be cited as the “Maryland Optometry Act”.

§ 11-602. Termination of title.

Subject to the evaluation and reestablishment provisions of the Program Evaluation Act, this title and all rules and regulations adopted under this title shall terminate and be of no effect after July 1, 2023.

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 01 PROCEDURES
Chapter 16 Retention and Disposal of Medical Records and
Protected Health Information

Authority: Health-General Article, §4-403, Annotated Code of Maryland;

.01 Scope.

A. This chapter applies to medical records and protected health information held by health care providers practicing in Maryland, their agents, and their records management service.

B. This chapter does not supersede any federal or State laws or regulations that exceed this chapter's requirements by requiring that a medical record:

- (1) Be retained for a longer period of time;
- (2) Be afforded greater security measures;
- (3) Be afforded more privacy measures; and
- (4) Be more easily accessible to the patient.

C. This chapter is not intended to address the disposition of abandoned medical records.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Divisible" means a medical record that is amenable to separation or division after the expiration of the retention time stated in Regulation .04 of this chapter.

(2) Health Care Provider.

(a) "Health care provider" means an acupuncturist, audiologist, chiropractor, dietician, dentist, electrologist, massage therapist, mortician, nurse, nutritionist, occupational therapist, optometrist, physical therapist, physician, podiatrist, professional counselor, psychologist, social worker, speech-language pathologist, or a health care facility or entity that is a:

(i) Freestanding, ambulatory care facility as defined in Health-General Article, §19-3B-01, Annotated Code of Maryland;

(ii) Freestanding medical facility as defined in Health-General Article, §19-3A-01, Annotated Code of Maryland;

(iii) Health maintenance organization as defined in Health-General Article, §19-701, Annotated Code of Maryland;

(iv) Hospital as defined in Health-General Article, §19-301, Annotated Code of Maryland;

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(v) Limited service hospital as defined in Health-General Article, §19-301, Annotated Code of Maryland;

(vi) Related institution as defined in Health-General Article, §19-301, Annotated Code of Maryland;

(vii) Residential treatment center as defined in Health-General Article, §19-301, Annotated Code of Maryland; and

(viii) Health care facility as defined in Health-General Article, §10-101, Annotated Code of Maryland.

(b) "Health care provider" includes an agent, officer, director, or employee of any entity listed in §B(2)(a) of this regulation.

(3) Medical Record.

(a) "Medical record" means any oral, written, or other transmission in any form or medium of information that:

(i) Is entered in the record of a patient;

(ii) Identifies or can readily be associated with the identity of a patient; and

(iii) Relates to the health care of the patient.

(b) "Medical record" includes any:

(i) Documentation of disclosures of the medical record to any person who is not an employee, agent, or consultant of the health care provider;

(ii) File or record maintained under Health Occupations Article, §12-403(b)(13), Annotated Code of Maryland, by a pharmacy of a prescription order for drugs, medicines, or devices that identifies or may be readily associated with the identity of a patient;

(iii) Documentation of an examination of a patient regardless of who requested the examination or is making payment for the examination;

(iv) File or record received from another health care provider that relates to the health care of a patient received from that health care provider, and identifies or can readily be associated with the identity of the patient; and

(v) To the extent not narrowed by §B(3)(a) and (b)(i)—(iv) of this regulation, "protected health information" as defined by 45 CFR §160.103, as amended.

(4) "Medical records series" means a set of medical records, as defined in §B(3) of this regulation, that is maintained on paper, microform, magnetic disk, magnetic tape, or other medium.

(5) "Patient" has the meaning stated in Health-General Article, §4-301(j), Annotated Code of Maryland.

(6) "Person in interest" has the meaning stated in Health-General Article, §4-301(k), Annotated Code of Maryland.

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(7) "Records management service" means any agent that has been procured by a health care provider to transport, handle, manage, maintain, store, or destroy medical records.

(8) "Records retention schedule" means a records management plan that includes:

- (a) A list and description of the medical records series of an office or unit;
- (b) The minimum retention period required to keep each medical record series;
- (c) The eventual disposition instructions;
- (d) If desired:
 - (i) Maintenance procedures, such as access or copy control, for each medical records series both in office and in storage;
 - (ii) Scanning or microfilming instructions; or
 - (iii) Disposal methods such as shredding or incineration; and
- (e) A signature of approval by an individual with authority over all the medical records series listed.

(9) "Sanitizing" means overwriting, degaussing, shredding, or burning electronic or other media.

.03 Incorporation by Reference.

In this chapter, the following documents are incorporated by reference:

- A. 45 CFR Part 160, as amended; and
- B. 45 CFR Part 164, as amended.

.04 Maintenance of Medical Records.

A. A health care provider shall develop and maintain a records retention schedule compatible with the requirements of Regulations .04—.07 of this chapter.

B. Except as provided in Regulations .06 and .07 of this chapter, a health care provider shall maintain medical records for all patients in the health care provider's care for a minimum of 5 years after the medical record is made or until the patient is 21 years old, whichever is longer.

C. Medical records are the personal property of the entity providing health care and are maintained for:

- (1) The patient;
- (2) The medical or treatment staff; and
- (3) Other treatment, payment, and health care operations.

D. A health care provider shall retain medical records in:

- (1) An office with access restricted to authorized staff;

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- (2) A computer or other device with appropriate security such as passwords or data encryption;
- (3) A commercial records storage site with appropriate environmental and security controls; or
- (4) Other storage options that ensure protection, security, and access control.

E. Maintenance of medical records may be contracted to a records management service that agrees to comply with and be subject to this chapter.

F. Medical records that have been placed in storage remain the responsibility of the health care provider, including:

- (1) Providing the patient or person in interest access to their medical records and authorized copies upon request in accordance with Health-General Article, §4-304, Annotated Code of Maryland, and 45 CFR §164.524, as amended;
- (2) Ensuring the confidentiality of the medical records;
- (3) Providing security and restricted access to the medical records; and
- (4) Protecting the medical records from:
 - (a) Damage;
 - (b) Loss; and
 - (c) Deterioration.

G. If a medical record is kept in electronic form, a health care provider shall:

- (1) Maintain or have access to compatible electronic hardware and software that will enable the health care provider to generate a legible copy of the record in order to comply with patient and governmental access needs; and
- (2) Prepare and maintain a current back-up copy of electronic medical record files.

.05 Disposal of Medical Records.

A. A health care provider shall maintain a medical record in accordance with the records retention schedule and may dispose of the record when the minimum retention requirements as described in Regulation .04B of this chapter have been met.

B. For purposes of destruction, a medical record is an indivisible entity unless, in the health care provider's professional judgment, the medical record is divisible.

C. A health care provider shall ensure confidentiality of medical records throughout the disposal process:

- (1) For paper records, by incineration, shredding, pulping, or other comparable process which renders the records permanently unreadable;

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- (2) For electronic or magnetic media, such as computer disks or magnetic tapes, by completely sanitizing the media, and not just by erasure or deletion;
- (3) For other media, such as film, photos, or compact discs, by destroying the media with no possibility of recovery; and
- (4) By complying with the HIPAA security provisions at 45 CFR §164.310(d), as amended.

.06 Instructions for Handling Medical Records Upon Discontinuation of Medical Practice.

A. At the time a health care provider discontinues medical practice, the health care provider shall immediately secure the medical records until one of the following options are taken:

- (1) Medical records may be transferred to a health care provider who will be assuming the medical practice;
- (2) Medical records may be given to the patient;
- (3) At the patient's direction, the medical record may be transferred to a new health care provider; or
- (4) Medical records may be destroyed in accordance with §B of this regulation, Regulation .07 of this chapter, or both.

B. On the death, retirement, surrender of license, or discontinuance of the practice or business of a health care provider, the administrator of the estate or a designee, who:

- (1) Agrees to provide for the maintenance of the medical records of the practice; and
- (2) States in writing to the appropriate health occupations board within a reasonable time that the medical records will be maintained in compliance with this chapter, shall:

(a) Publish a notice in a daily newspaper that is circulated locally for 2 consecutive weeks:

(i) Stating that the medical records will be destroyed or transferred; and

(ii) Designating a location, date, and time when the medical records may be retrieved by the person in interest; or

(b) Forward the notice required in §B(2)(a), of this regulation, to the patient in the following manner:

(i) In the case of an adult, the notification shall be sent by first-class mail to the last known address of the patient; or

(ii) In the case of a minor, notification shall be sent by first-class mail to the last known address of the parent or guardian, or if the medical care documented was provided under Health-General Article, §20-102(c) or 20-

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103(c), Annotated Code of Maryland, notification shall be given to the minor, by certified mail, addressee only.

.07 Prerequisites for Early Destruction of Medical Records.

Medical records that have not met the retention requirements of Regulation .04 of this chapter, may be destroyed only if:

A. In the case of an adult, notification is sent by first-class mail to the last known address of the patient which includes:

(1) The proposed date of disposal; and

(2) A statement that the record, or a synopsis of the record, may be retrieved at a designated location within 30 days of the proposed destruction; or

B. In the case of a minor, notification is sent by first-class mail to the last known address of the parent or guardian, or if the medical care documented was provided under Health-General Article, §20-102(c) or 20-103(c), Annotated Code of Maryland, notification is given to the minor, by certified mail, addressee only, which includes:

(1) The proposed date of disposal; and

(2) A statement that the record, or a synopsis of the record, may be retrieved at a designated location within 30 days of the proposed destruction.

.08 Enforcement.

A. For entities and individuals not regulated by the Office of Health Care Quality or the appropriate health occupations board, the Secretary shall have the authority to investigate any complaint concerning medical records that are covered by this chapter. By letter, the Secretary may delegate this authority to any unit of the Department, including a health occupations board, the Office of Health Care Quality, or the Office of the Inspector General.

B. To ensure compliance and enforce this chapter:

(1) The Office of Health Care Quality shall have authority over a health care facility; and

(2) A health occupations board shall have authority over an individual who is a health care provider.

C. The Office of Health Care Quality, the appropriate health occupations board, or both, shall investigate any complaint concerning medical records that are or were in the possession of a person or entity covered by this chapter.

D. After giving a person or entity an opportunity for a hearing to be held in accordance with the disciplinary hearing procedures that would be applicable to a health care provider who owned or possessed the medical records at issue, the Office of Health Care Quality, the appropriate health occupations board, or both, may impose any fines stated in Regulation .09B, of this chapter, as appropriate.

E. After giving a person or entity an opportunity for a hearing to be held in accordance with COMAR 10.01.03, the Secretary may impose any fines stated

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in Regulation .09B of this chapter for entities which are not regulated by the Office of Health Care Quality or an appropriate health occupations board.

.09 Penalties.

A. Damages. As provided in Health-General Article, §4-403(g)(1), Annotated Code of Maryland, a health care provider, record management service, or other person who knowingly violates any provision of Health-General Article, Title 4, Subtitle 4, is liable in court for actual damages.

B. Fines.

(1) A health care facility that knowingly violates this chapter is subject to an administrative fine not to exceed \$10,000 for all violations cited in a single day.

(2) In addition to any other penalties provided, an individual who is a health care provider, an agent, employee, officer, or director of a health care provider, or a records management service, who knowingly violates this chapter, is subject to administrative fines as follows:

(a) The first fine or set of fines assessed in a single day may not exceed \$1,000;

(b) The second fine or second set of fines assessed concurrently for all violations cited in a single day may not exceed \$2,500; and

(c) The third or subsequent fine assessed, or third or subsequent set of fines assessed concurrently, for all violations cited in a single day may not exceed \$5,000.

C. Factors to be Considered in the Assessment of Penalties. When considering whether to impose an administrative penalty and the amount of the penalty, the Secretary, the Office of Health Care Quality, or the appropriate health occupations board shall consider the following factors:

(1) The nature and seriousness of the violations;

(2) The willfulness of the violation or violations;

(3) The history of previous violations;

(4) The extent of the actual harm or potential risk of divulging confidential information;

(5) The efforts made to correct the violation or violations in a timely manner; and

(6) The existence of mitigating factors.

Administrative History

Effective date: March 24, 2008 (35:6 Md. R. 697)

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY
Chapter 01 Board Procedures — Repealed

Administrative History

Effective date: January 15, 1970
Chapter repealed effective March 4, 2002 (29:4 Md. R. 417)

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY
Chapter 02 Continuing Education Requirements

Authority: Health Occupations Article, §§11-205, 11-308(c), and 11-309, Annotated Code of Maryland

.01 Scope.

This regulation governs all optometrists licensed to practice in the State of Maryland.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Accredited" means continuing education activities produced and delivered by:

(a) COPE administrators in compliance with COPE accreditation criteria, standards for commercial support, and policies and procedures; or

(b) Non-COPE administrators in compliance with a program accepted as substantially equivalent to the Accreditation Council for Continuing Medical Education (ACCME) accreditation system.

(2) "Council on Optometric Practitioner Education (COPE)" means the program of the Association of Regulatory Boards of Optometry, which accredits continuing education courses and activities accepted as substantially equivalent to the Accreditation Council for Continuing Medical Education (ACCME) accreditation system for optometrists.

(3) "Credit hour" means the increment of educational instruction time.

(4) "Pro bono work" means work provided in Maryland within the scope of practice of the licensee without financial reimbursement or direct financial gain.

.03 Registration Renewal.

A. A licensee shall submit a signed form attesting to the licensee's completion of the required credit hours at the time of license renewal.

B. A licensee shall retain supporting documents for inspection by the Board for 4 years after the date of renewal.

C. If a licensee submits the renewal form after the deadline, the Board shall:

(1) Assess a late fee; and

(2) Audit the licensee.

D. Failure to meet continuing education requirements or failure to substantiate credit hours submitted upon request of the Board may result in suspension, revocation, or denial of licensure.

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.04 Continuing Education Audit Procedure.

A. At the time of renewal, the Board shall audit a minimum of 20 percent of the renewal applications.

B. The Board shall send notification of audit to licensees to be audited.

C. The licensee being audited shall submit to the Board, within 60 days, a report of the continuing education hours required for renewal on a form approved by the Board, along with the appropriate documentation.

.05 Required Credit and Other Course Credit.

A. Credit for continuing professional education shall be:

(1) Accredited; or

(2) Approved by the Board solely on whether or not it constitutes improvement, advancement, and extension of one's professional skill and knowledge relating to the practice of optometry.

B. In-Person Trainings.

(1) Except for those identified in §H of this regulation, an optometrist who is issued a license by the Board shall complete a minimum of 10 hours of continuing professional education per renewal cycle by attending in-person trainings conducted in Maryland by an accredited administrator. The in-person trainings may include:

(a) Courses given by:

(i) The Maryland Optometric Association;

(ii) Another Statewide association; or

(iii) A nonprofit organization approved by the Board;

(b) Observation of ophthalmic procedures at sites approved by the Board; or

(c) Other continuing professional education activities given by:

(i) The Maryland Optometric Association;

(ii) Another Statewide association; or

(iii) A nonprofit organization approved by the Board.

(2) If requested pursuant to Regulation .04 of this chapter, an optometrist shall provide to the Board a certificate of attendance or other method of verifying attendance at an event conducted by an accredited event administrator.

(3) In accordance with §A of this regulation, events conducted by an accredited event administrator shall have Board approval.

C. Other than those required in §B of this regulation, credit hours may be approved for the following:

(1) Scheduled post-graduate or continuing education courses given by schools or colleges of optometry which have been approved by the Board;

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(2) Courses, either in-person, online, or both, that have received accreditation; however, the Board reserves the right to refuse credit when its established criteria are not met;

(3) Courses, either in-person, online, or both, on Practice Management directly related to optometric care, up to a maximum of 4 hours per renewal cycle;

(4) Courses given by local optometric societies or health-related sponsors, or both, upon prior approval by the Board.

(5) Courses, seminars, and lectures prepared and given by Maryland licensed optometrists for which credit will be awarded at the rate of 2 hours for preparation and 1 hour for lecture, up to a maximum of 16 hours per renewal cycle;

(6) Published papers in professional journals, papers approved for publication, or papers that have been peer-reviewed for which credit will be awarded at 2 hours per paper, up to a maximum of 12 hours per renewal cycle;

(7) Courses given in optometric or other professional journals with a post test, or online courses with a post test, up to a maximum of 30 hours per renewal cycle; however, these courses are subject to approval by the Board;

(8) Observation of ophthalmic procedures at sites approved by the Board, up to a maximum of 8 hours per renewal cycle;

(9) Courses, either in-person, online, or both, in optometric ethics, Maryland optometric jurisprudence, or both, as approved by the Board, up to a maximum of 4 hours per renewal cycle;

(10) Pro bono work providing patient eye care as outlined in §I of this regulation;

(11) Public board meeting attendance as outlined in §J of this regulation;

(12) Courses, either in-person or online, and certification in cardiopulmonary resuscitation (CPR) up to a maximum of 3 hours per renewal cycle; and

(13) Courses in cultural competency, up to a maximum of 4 hours per renewal cycle.

D. Credit hours will be allowed on the basis of 50 minutes being equivalent to an hour, except for pro bono work. Fractional credit hours are allowed.

E. Credit may not be allowed when a specific product, technique, procedure, or company is promoted or promulgated for the economic benefit of a particular person, company, group, etc.

F. Unless there are extenuating circumstances, credit is allowed only in and for the license year in which the course was actually attended.

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G. The determination of whether or not a course meets these standards shall be entirely within the Board's province. The Board shall also determine whether or not credit for an entire course, or any lesser number of hours, may be granted.

H. The Board may waive continuing education requirements for, but not limited to, licensees who:

- (1) Have applied for licensure within 1 year of graduation from an accredited school or college of optometry; and
- (2) Are renewing their license for the first time.

I. Pro Bono Work.

(1) Pro bono work shall earn 1 credit hour for each 3 hours of approved continuing education activity, up to a maximum of 6 credit hours per renewal cycle.

(2) The licensee shall provide to the Board a written application for approval of pro bono work. The application shall include:

- (a) The place where the pro bono will be provided;
- (b) The type of work to be provided;
- (c) The number of hours of actual work provided for which the licensee desires credit hours; and
- (d) A statement guaranteeing that the work provided no financial benefit to the licensee.

(3) Upon completion of the work, the licensee shall obtain from the facility evidence of completion of pro bono hours.

(4) Credit hours for pro bono work are in the general category.

J. Public Board Meeting Attendance.

(1) Licensees may receive 2 credit hours for attending in its entirety an open session meeting of the Board of Examiners in Optometry.

(2) The Board shall issue to the licensee a certificate of proof of attendance.

(3) A licensee may not earn more than 4 credit hours in this area per renewal cycle.

.06 Proof of Education.

A. Each optometrist is responsible for obtaining proof of hour credits and maintaining this documentation for inspection by the Board for 4 years after the date of renewal.

B. To obtain credit, one's participation shall be attested to in writing by someone in charge of the program.

C. Failure to do so shall be grounds for nonrenewal of the license.

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.07 Change of Annual Requirements of Number of Hours.

The Board, by majority vote, may change the number of required hours of continuing education, subject to the requirements in Health Occupations Article, §11-309, Annotated Code of Maryland. An optometrist shall be notified of any change at the time of the renewal of the optometrist's license. The change is effective for the year following that renewal.

.08 Severability.

If any provision of these regulations or the application thereof to any person or circumstances is held invalid, this invalidity may not affect other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to this end, the provisions of these regulations are declared severable.

Administrative History

Effective date: September 9, 1974

Regulation .04 amended effective June 6, 1983 (10:11 Md. R. 975)

Regulation .04F adopted effective December 3, 1984 (11:24 Md. R. 2069)

Chapter revised effective April 8, 1996 (23:7 Md. R. 552)

Regulation .02 amended effective October 19, 2009 (36:21 Md. R. 1591)

Regulation .02B amended effective May 20, 2019 (46:10 Md. R. 488)

Regulation .04 amended effective October 19, 2009 (36:21 Md. R. 1591)

Regulation .04A amended effective May 20, 2019 (46:10 Md. R. 488)

Regulation .05 amended effective March 26, 2007 (34:6 Md. R. 627); October 19, 2009 (36:21

Md. R. 1591); October 1, 2012 (39:19 Md. R. 1237); May 20, 2019 (46:10 Md. R. 488)

Regulation .05B amended effective April 16, 2012 (39:7 Md. R. 493)

Regulation .05J adopted effective April 16, 2012 (39:7 Md. R. 493)

Regulation .06B, C amended effective October 19, 2009 (36:21 Md. R. 1591)

Regulation .07 amended effective May 20, 2019 (46:10 Md. R. 488)

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY
Chapter 03 Examination and Licensing of Optometrists

Authority: Health Occupations Article, §§11-205 and 11-302—11-308, Annotated Code of Maryland

.01 Definition.

"Board" means the Board of Examiners in Optometry.

.02 Requirements for Licensure.

A. Preprofessional education—completion of 2 years of pre-optometric college study in an accredited institution of higher learning or its equivalent.

B. Professional education — completion of 4 scholastic years at:

- (1) An accredited college of optometry;
- (2) An accredited university school of optometry; or
- (3) An equivalent of §B(1) or (2) of this regulation.

C. The Board will accept applications for examination from graduates of those colleges of optometry or university schools of optometry:

(1) Endorsed by the Association of Regulatory Boards of Optometry (ARBO); and

(2) Accredited by the Council on Optometric Education of the American Optometric Association.

.03 Application for Licensure.

A. An applicant shall complete and file an application on the form provided by the Board on request.

B. The applicant shall submit the following information:

- (1) Full name, residence, and date and place of birth;
- (2) A recent photograph of the applicant;
- (3) Letters of recommendation from three individuals, excluding immediate family members, who can attest to the applicant's character and reputation;
- (4) All final professional transcripts of colleges or university schools of optometry;
- (5) A fee, established by the Board, which shall accompany the application;
- (6) Preprofessional transcripts.

C. Application fees are not refundable.

D. Applicants shall be notified whether they meet the standards adopted by the Board and qualify for licensure.

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.04 Repealed.

.05 Form of the Examination.

A. The Board shall require and give any combination of written, oral, clinical, and practical examination.

B. Subjects for Examination. The following subjects may be included in the written, oral, clinical, and practical examinations:

- (1) Optometric jurisprudence;
- (2) Theoretic optics;
- (3) Ophthalmic optics;
- (4) Physiological and psychological optics;
- (5) Optometry—theoretic and practical;
- (6) Visual fields;
- (7) Clinical examination;
- (8) Anatomy (ocular and general);
- (9) Physiology (ocular and general);
- (10) Pathology (ocular and general);
- (11) Vision training and orthoptic training;
- (12) Contact lenses;
- (13) Low vision;
- (14) Tonometry;
- (15) Biomicroscopy;
- (16) Pharmacology;
- (17) Physiology;
- (18) Developmental vision;
- (19) Primary care.

C. The Board may require candidates for licensure to take all or part of the National Board of Examiners in Optometry's written examinations.

D. A candidate for licensure, other than a candidate qualified under Health Occupations Article, §11-305, Annotated Code of Maryland, shall obtain a score of 300 on the basic science part, a score of 300 on the clinical science part, and a score of 300 on the patient care part of the National Board of Examiners in Optometry (NBEO) examinations.

E. A candidate for licensure shall obtain a grade of 75 on the Maryland Board of Examiners in Optometry jurisprudence examination.

.06 Waiver of Examination.

Standards for licensure with partial waiver of examination are set forth in Health Occupations Article, §11-305, Annotated Code of Maryland.

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.07 License Renewal.

A license holder shall pay to the Board every 2 years, on or before July 1 of the renewal year, a fee for renewal to be established by the Board.

.08 Address of Record.

A. An optometrist shall notify the Board of the optometrist's principal address in Maryland.

B. An optometrist shall report a change of principal address within 30 days.

Administrative History

Effective date: March 21, 1980 (7:6 Md. R. 608)

Regulation .03B amended effective January 22, 1990 (17:1 Md. R. 70)

Regulation .04 amended effective February 13, 1984 (11:3 Md. R. 202); January 22, 1990 (17:1 Md. R. 70)

Regulation .05 amended effective January 22, 1990 (17:1 Md. R. 70)

Regulation .06 amended effective February 13, 1984 (11:3 Md. R. 202); January 22, 1990 (17:1 Md. R. 70)

Regulation .07 amended effective January 22, 1990 (17:1 Md. R. 70)

Regulation .09A, D amended effective January 22, 1990 (17:1 Md. R. 70)

Chapter revised effective November 7, 1994 (21:22 Md. R. 1876)

Chapter revised effective February 19, 2001 (28:3 Md. R. 206)

Regulation .02B, C amended effective July 31, 2017 (44:15 Md. R. 760)

Regulation .04 repealed effective March 31, 2003 (30:6 Md. R. 420)

Regulation .08 amended effective October 19, 2009 (36:21 Md. R. 1591)

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY
Chapter 04 Rules of Procedure for Board Hearings

Authority: Health Occupations Article, §§11-205, 11-313, and 11-315;
State Government Article, §10-206; Annotated Code of Maryland

.01 Scope.

This chapter governs procedures for disciplinary matters and hearings before the State Board of Examiners in Optometry.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Administrative law judge" means the hearing officer assigned to preside over a hearing in cases which the Board has delegated to the Office of Administrative Hearings.

(2) "Administrative Procedure Act" means State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, which governs contested cases arising from charges brought by the Board.

(3) "Administrative prosecutor" means the attorney assigned by the Office of the Attorney General to prosecute disciplinary charges for the Board.

(4) "Board" means the State Board of Examiners in Optometry.

(5) "Case resolution conference" means an informal, confidential meeting between the parties to a contested case and the Board's case resolution conference committee to discuss possible settlement of a disciplinary matter pending before the Board.

(6) "Case resolution conference committee" means a committee composed of one or more members of the Board who make recommendations to the Board regarding settlement of disciplinary matters.

(7) "Cease and desist letter" means an informal action consisting of a nonpublic letter issued by the Board ordering:

(a) A licensee to cease doing a specified activity; or

(b) An unlicensed individual to cease the unauthorized practice of optometry.

(8) "Charging document" means a nonpublic record issued by the Board which:

(a) Alleges conduct by a licensee which the Board believes constitutes a violation under the Maryland Optometry Act;

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(b) Sets forth sections of the Maryland Optometry Act that the Board believes were violated; and

(c) Provides notice to the licensee of disciplinary proceedings before the Board.

(9) "Complaint" means a written allegation received by the Board that a licensee may have violated the Maryland Optometry Act and which may be grounds for an investigation or disciplinary action by the Board.

(10) "Consent order" means a public record issued by the Board which is a final order of the Board that has been negotiated and agreed to by both the licensee and the Board to resolve a disciplinary matter.

(11) "Contested case" means a proceeding conducted pursuant to the Administrative Procedure Act.

(12) "Disposition agreement" means a formal nonpublic agreement, entered into with an impaired licensee in lieu of formal disciplinary action, where the licensee agrees to comply with certain conditions.

(13) "Final order" means a public record issued by the Board resolving a contested case either by consent or after an adjudication, which includes findings of fact, conclusions of law, and a disposition which:

(a) Denies a license;

(b) Sanctions by reprimand, probation, fine, or suspension or revocation of a license;

(c) Summarily suspends a license;

(d) Dismisses charges;

(e) Surrenders a license; or

(f) Takes any other action that the Board is authorized to do by law.

(14) "Imperatively requires emergency action" means a finding by the Board that an emergency action be taken against a licensee pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland, based on investigative facts that raise a substantial likelihood of risk of harm to the public health, safety, or welfare before a full evidentiary hearing can be held.

(15) "Informal action" means that the Board closes a case, without taking any formal disciplinary action or issuing a final order, by imposing a disciplinary sanction consisting of a:

(a) Letter of education;

(b) Letter of admonishment;

(c) Cease and desist letter; or

(d) Consent agreement.

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(16) "Investigation" means the gathering of information to assist the Board in determining whether there is reasonable cause to charge a licensee with a violation of the Maryland Optometry Act.

(17) Letter of Admonishment.

(a) "Letter of admonishment" means informal action consisting of a nonpublic letter issued by the Board closing the case, when the Board believes a licensee has engaged in conduct which violates the Maryland Optometry Act.

(b) "Letter of admonishment" includes admonishment of the licensee not to repeat the actions.

(c) "Letter of admonishment" may include an agreement that a licensee perform certain conditions in lieu of the Board taking formal disciplinary action.

(18) "Letter of education" means informal action consisting of a nonpublic letter:

(a) Issued by the Board when the Board does not believe that conduct rose to the level of a violation of the Maryland Optometry Act; and

(b) In which the Board educates the licensee concerning the laws and standards of the practice of optometry.

(19) "Letter of surrender" means a public letter accepted by the Board in which the licensee agrees to surrender the licensee's license to practice optometry, which may include conditions for the Board's acceptance of the surrender as a resolution of the case.

(20) "Licensure" means permission to engage in a health care profession regulated by the Board, which is in any form including a certificate, registration, or license.

(21) "Maryland Optometry Act" means Health Occupations Article, Title 11, Annotated Code of Maryland.

(22) "Notice of initial denial" means a nonpublic record issued by the Board by which an applicant or licensee is notified that the Board intends to deny a license, change in licensure status, or some other benefit sought by the licensee.

(23) "Penalty" means a monetary or administrative penalty imposed pursuant to Health Occupations Article, §11-314, Annotated Code of Maryland.

(24) "Post-deprivation hearing" means a contested case hearing scheduled by the Board after the Board has issued an order for summary suspension pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland, in which the licensee may challenge the Board's basis for issuing the order for summary suspension.

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(25) "Predeprivation hearing" means a non-evidentiary, show cause hearing held before the Board at which the licensee has an opportunity to demonstrate to the Board why it should not:

(a) Issue an order for summary suspension pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland; or

(b) Take some other action which the Board is authorized by law to take.

(26) "Preliminary investigation" means the gathering of information to be used by the Board to determine whether the Board should dismiss a complaint or conduct further investigation to determine if there is reasonable cause to charge a licensee with a violation of the Maryland Optometry Act.

(27) "Probation" means a sanction imposed by the Board in a public final order where the licensee is:

(a) Monitored by the Board for a period of time; and

(b) Required to comply with certain conditions in order to avoid further disciplinary action.

(28) "Prohibited act" means any conduct specified in the Maryland Optometry Act which can result in sanctions or penalties.

(29) "Public record" means a document that the Board is permitted or required to disclose to the public pursuant to the State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland.

(30) "Recommended decision" means a nonpublic record issued to the Board by an administrative law judge which sets out proposed findings of fact, proposed conclusions of law, and a proposed sanction, or any combination of these actions.

(31) "Recusal" means the disqualification of a member of the Board to participate in a proceeding because of interest, bias, or some other reason which may interfere with the Board member's participation in a case.

(32) "Respondent" means a licensee, subject to the jurisdiction of the Board, who has been:

(a) Given notice to answer allegations concerning violations of the Maryland Optometry Act;

(b) Notified as to a potential emergency suspension pursuant to State Government Article, §10-226(c), Annotated Code of Maryland; or

(c) Notified as to a potential violation of Health Occupations Article, §11-501, Annotated Code of Maryland.

(33) "Revocation" means the removal of an optometrist's license to practice optometry.

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(34) "Sanction" means an action by the Board which:

- (a) Reprimands;
- (b) Places on probation;
- (c) Fines;
- (d) Suspends or revokes a license; or
- (e) Disciplines by a consent order.

(35) "Show cause hearing" means a non-evidentiary hearing held before the Board in which the licensee has the opportunity to demonstrate to the Board why the Board should not issue a proposed order or take an action that the Board is legally authorized to take.

(36) "Stay" means the withholding of an action ordered by the Board which may be subject to certain conditions.

(37) "Summary suspension" means the indefinite suspension of a license pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland, where the Board believes that the action is necessary to protect the public health, safety, or welfare.

(38) "Surrender" means the voluntary relinquishing of a license to practice optometry which may be subject to certain conditions set by the Board.

(39) "Suspension" means a temporary denial of the right to use a license and is usually defined by:

- (a) A specific period of time;
- (b) Specific dates; or
- (c) Specific conditions.

.03 Confidentiality of Proceedings.

A. Except as otherwise provided by law, the proceedings of the Board are confidential and that confidentiality may not be waived by the parties.

B. The Office of Administrative Hearings' proceedings involving the adjudication of a Board contested case and the administrative law judge's recommended decision are confidential and the respondent may not waive the confidentiality of the proceedings or of the patients whose medical records or care are reflected in the record of the proceedings.

C. To the extent possible, even after a final order is entered into by the Board, the parties shall refrain from revealing legal documents, oral statements, or information that would reveal the identity of any patients referred to in the Board's order.

.04 Representation by Counsel.

A. A respondent may be represented by counsel in any matter before the Board and at any stage of the proceedings.

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B. If the matter goes to a hearing, the respondent shall be represented in proper person or by an attorney who has been:

(1) Admitted to the Maryland Bar; or

(2) Specially admitted to practice law pursuant to Maryland Rules, Rules Governing Admission to the Bar of Maryland, Rule 14, Annotated Code of Maryland.

C. The Board may be represented by and obtain advice of counsel assigned to it by the Office of the Attorney General in all proceedings.

.05 Proceedings under Health Occupations Article, §11-313, Annotated Code of Maryland.

A. Investigation of Complaints.

(1) The Board may:

(a) Make a preliminary review of each complaint; and

(b) Recommend that cases involving complaints over which the Board has no jurisdiction be closed.

(2) The Board may send a copy of the complaint, either in its entirety or redacted, to the licensee who is the subject of the complaint to obtain a response to the allegations made in the complaint.

(3) Board subpoenas may be issued by the Board over the signature of the administrator.

B. Prosecution of Complaint.

(1) For each complaint, after reviewing any completed investigative information or reports, the Board shall:

(a) Dismiss the complaint;

(b) Close the case with informal action;

(c) Issue a cease and desist order;

(d) Refer the matter for further investigation;

(e) Refer the matter to an administrative prosecutor; or

(f) Vote to:

(i) Charge a licensee with a violation of Health Occupations Article, §11-313, Annotated Code of Maryland;

(ii) Consider the matter as a basis for summary suspension pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland;

(iii) Initially deny licensure or reinstatement of a license; or

(iv) Accept the surrender of a license subject to conditions acceptable to the Board.

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(2) The Board may refer a complaint or other disciplinary matter to the administrative prosecutor at any time, whether or not it has voted to charge a licensee with violations of the Maryland Optometry Act.

C. Charges and Notice of Initial Denial.

(1) If the Board issues charges or a notice of initial denial, the document shall be:

(a) Served upon the respondent by certified mail at the address the respondent is required to maintain with the Board; or

(b) Hand delivered in person.

(2) Charges or a notice of initial denial shall:

(a) Inform the respondent of the statutory basis for the charges or denial of licensure;

(b) Allege sufficient facts which the Board believes constitute either a basis for:

(i) Violation of the Maryland Optometry Act; or

(ii) Denial of licensure;

(c) Notify the respondent of any proceedings scheduled before the Board or of an opportunity to request a hearing within a certain period of time and the consequences of failing to appear for those proceedings or to request a hearing; and

(d) Be accompanied by a letter of procedure notifying respondent of the applicability of the Administrative Procedure Act to the Board's proceedings.

(3) If the Board is unable to serve the charges or notice of initial denial upon the respondent as described in §C(1) of this regulation or attempt any other reasonable means to effect service, the Board may nevertheless proceed in prosecuting the case.

(4) If the Board issues a notice of initial denial to an applicant for a license, the applicant may not withdraw the application without approval of the Board.

D. Discovery.

(1) Discovery on Request. By written request served on the other party and filed with the Board or the Office of Administrative Hearings, as appropriate, a party may require another party to produce, within 15 days, the following:

(a) A list of the witnesses to be called;

(b) Copies of all documents intended to be produced at the hearing; or

(c) Both §D(1)(a) and (b) of this regulation.

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(2) Mandatory Discovery.

(a) Each party shall provide to the other party not later than 15 days before the prehearing conference, if scheduled, or 45 days before the scheduled hearing date, whichever is earlier:

(i) The name and curriculum vitae of any expert witness who will testify at the hearing; and

(ii) A detailed written report summarizing the expert's testimony, which includes the opinion offered and the factual basis and reasons underlying the opinion.

(b) If the Board, or the Office of Administrative Hearings, as appropriate, finds that the report is not sufficiently specific, or otherwise fails to comply with the requirements of this section, the Board or the Office of Administrative Hearings, as appropriate, shall exclude from the hearing the testimony of the expert and any report of the expert.

(c) The Board, or the Office of Administrative Hearings, as appropriate, shall consider and decide arguments regarding the sufficiency of the report:

(i) At the prehearing conference, if scheduled; or

(ii) Immediately before the scheduled hearing.

(d) If an expert adopts a sufficiently specific charging document as the expert's report, that adoption satisfies the requirements set forth in this section.

(3) Parties are not entitled to discovery of items other than those listed in §D(1) and (2) of this regulation.

(4) Both parties have a continuing duty to supplement their disclosures of witnesses and documents.

(5) Absent unforeseen circumstances which would otherwise impose an extraordinary hardship on a party, witnesses or documents may not be added to the list:

(a) After the prehearing conference, if scheduled; or

(b) Later than 15 days before the hearing, if no prehearing conference is scheduled.

(6) The prohibition against adding witnesses does not apply to witnesses or documents to be used for impeachment or rebuttal purposes.

(7) Construction.

(a) In hearings conducted by an administrative law judge of the Office of Administrative Hearings, this regulation shall be construed, whenever possible, as supplementing and in harmony with COMAR 28.02.01.

(b) In the event of a conflict between this regulation and COMAR 28.02.01, this regulation applies.

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E. Case Resolution Conference.

(1) After service of charges or notice of initial denial, the Board shall offer a respondent the opportunity for a case resolution conference.

(2) At any other time during disciplinary proceedings, the Board may offer or the respondent may request a case resolution conference to discuss a disciplinary matter.

(3) The Board may deny a respondent's request for a case resolution conference except as provided in §E(1) of this regulation.

(4) Matters admitted, revealed, negotiated, or otherwise discussed at a case resolution conference are without prejudice and may not be used by the respondent, administrative prosecutor, or the Board in any subsequent proceedings, unless the information is otherwise discovered or available through another source.

(5) The Board is not bound by the recommendations of the case resolution conference committee and may:

(a) Modify a proposed settlement;

(b) Require additional conditions; or

(c) Reject the recommendation and require the respondent to proceed to a hearing.

(6) If the respondent and the administrative prosecutor are unable to reach an agreement for settlement that is recommended by the case resolution conference committee and ratified by the Board, the matter shall proceed to a hearing on the charges or on a notice of initial denial.

(7) If the respondent disagrees with the recommendation of the case resolution conference committee, the respondent may elect to proceed to a hearing in the matter, regardless of whether or not the Board has ratified the recommendation of the case resolution conference committee.

(8) Participation in a case resolution conference is not ordinarily a basis for recusal of a Board member, Board counsel, or Board prosecutor from further proceedings in a case.

.06 Proceedings under Health Occupations Article, §11-313, Annotated Code of Maryland — Sanctions, Hearings, and Final Order.

A. Surrender of License.

(1) The Board may require conditions for surrender of a license, including, but not limited to:

(a) The admission of a violation of the Maryland Optometry Act;

(b) The admission of facts;

(c) A statement of the circumstances under which the surrender was offered or accepted;

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- (d) Restrictions on future licensure;
- (e) Conditions for reinstatement of the license; or

(f) An agreement that the respondent may not again apply for reinstatement of the license.

(2) A letter of surrender is a final order of the Board and is a public record pursuant to State Government Article, §10-611, Annotated Code of Maryland, unless the Board determines that disclosure of the surrender is not in the public interest.

B. Hearings on Charges or Notice of Initial Denial.

(1) Hearings shall be conducted pursuant to State Government Article, Title 10, Annotated Code of Maryland.

(2) The Board may delegate its authority to hear contested cases to the Office of Administrative Hearings.

(3) Proceedings are not open to the public and all records, including the recommended decision, shall be treated as confidential and sealed.

(4) If a matter has been delegated to the Office of Administrative Hearings, the administrative law judge presiding over the proceedings shall issue to the Board a recommended decision containing:

- (a) Proposed or final findings of fact;
- (b) Proposed or final conclusions of law;
- (c) A proposed sanction; or

(d) Any combination of §B(4)(a) — (c) of this regulation pursuant to the Board's delegation.

C. Burden of Proof.

(1) A licensee against whom the Board has issued a notice of initial denial has the burden to demonstrate by a preponderance of the evidence that the licensee is entitled to licensure or to receive the benefit sought which the Board has initially denied.

(2) The Board has the burden to demonstrate by a preponderance of the evidence that the licensee has committed a violation or violations of the Maryland Optometry Act.

D. Exceptions and Exceptions Hearing.

(1) If a matter has been delegated by the Board to the Office of Administrative Hearings, a party may file exceptions to the administrative law judge's proposed findings of fact, proposed conclusions of law, and proposed sanction, as set out in the recommended decision, before the Board makes a final decision.

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(2) Within 15 days after the issuance of the recommended decision, or as otherwise specified by the administrative law judge in the recommended decision, either party may file written exceptions with the Board.

(3) Unless otherwise permitted by the Board, a party's written exceptions may not be longer than 25 double-spaced pages. The exceptions shall state with particularity:

(a) The finding of fact, conclusion of law, or other matter excepted to; and

(b) The relevant portions of the record supporting the party's exception.

(4) Within 10 days after a party's exceptions are filed with the Board, the opposing party may file an answer to exceptions.

(5) Unless otherwise permitted by the Board, a party's answer to exceptions may not be longer than 25 double-spaced pages. The answer shall state with particularity a response to an exception and the relevant portions of the record supporting that response.

(6) Unless otherwise permitted, the Board may not consider a party's response to an answer to exceptions.

(7) Unless otherwise agreed by the parties and permitted by the Board, an exceptions hearing shall be scheduled for the next meeting of the Board following receipt of the parties' exceptions and any answer to exceptions.

(8) Exceptions Hearing.

(a) An exceptions hearing shall be held before the Board.

(b) The hearing shall be a non-evidentiary hearing to provide the parties with an opportunity for oral argument on the exceptions and answers to exceptions.

(c) The Board member presiding over the hearing shall determine all procedural issues and may impose reasonable time limits on each party's oral argument.

(d) The presiding Board member shall make any rulings reasonably necessary to facilitate the effective and efficient progress of the hearing.

(e) The party who filed the exceptions shall proceed first and may reserve part of the allotted time for rebuttal.

(9) Unless otherwise agreed by the parties and permitted by the Board, the parties may not, in any answer to exceptions, or in the hearing on exceptions, reference any document or other evidence or offer any exhibit that is outside the record of the evidentiary hearing before the administrative law judge.

(10) If neither party files exceptions within the time specified in §D(2) of this regulation, the Board shall consider only the recommended decision of the administrative law judge and the record of the evidentiary hearing in making its final decision.

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E. Board Final Decision and Order.

(1) After review of the record and deliberation, the Board shall issue a final order consisting of findings of fact, conclusions of law, and the sanction or disposition to be imposed.

(2) Upon a finding that there has been a violation of the Maryland Optometry Act, the Board may order that the licensee be fined, reprimanded, or placed on probation, or that the license be suspended or revoked.

.07 Summary Suspension of a License.

A. Pursuant to its authority under State Government Article, §10-226(c)(2), Annotated Code of Maryland, the Board shall order the summary suspension of a license if the Board determines that there is a substantial likelihood that a licensee poses a risk of harm to the public health, safety, or welfare.

B. Notice of Intent to Summarily Suspend.

(1) Based on information gathered in an investigation or otherwise provided to the Board, the Board may vote to issue:

- (a) A notice of an intent to summarily suspend a license; or
- (b) An order of summary suspension.

(2) If the Board votes to issue a notice of an intent to summarily suspend a license or an order of summary suspension, the Board shall refer the matter to an administrative prosecutor for prosecution.

(3) A notice of intent to summarily suspend a license shall include, but is not limited to:

(a) A proposed order of summary suspension which is unexecuted by the Board and which includes:

- (i) The statutory authority on which the action has been taken;
- (ii) Allegations of fact which the Board believes demonstrate a substantial likelihood that the licensee poses a risk of harm to the public health, safety, or welfare; and
- (iii) Notice to the respondent of the right to request a full hearing on the merits of the summary suspension if the Board executes the proposed order of summary suspension; and

(b) An order or summons to appear before the Board:

- (i) To show cause why the Board should not execute the order of summary suspension; and
- (ii) Which notifies the respondent of the consequences of failing to appear.

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(4) Service.

(a) The Board shall serve a respondent with a notice of intent to summarily suspend a license not later than 5 days before a predeprivation show cause hearing is scheduled before the Board.

(b) Service of the notice of intent to summarily suspend shall be made:

(i) Personally upon the respondent;

(ii) By certified mail to the address the respondent is required to maintain with the Board; or

(iii) By any other reasonable means to effect service.

(c) If the Board is unable to serve the notice of intent to summarily suspend a license upon the respondent as described in §B(4)(a) and (b) of this regulation, the Board may nevertheless proceed in prosecuting the case.

C. Predeprivation Opportunity to Be Heard.

(1) If the Board issues a notice of intent to summarily suspend a license, the Board shall offer the respondent the opportunity to appear before the Board to show cause why the respondent's license should not be suspended before the Board executes the order of summary suspension.

(2) Predeprivation Show Cause Hearing Before the Board.

(a) The hearing shall be a non-evidentiary hearing to provide the parties with an opportunity for oral argument on the proposed summary suspension.

(b) The Board member presiding over the hearing shall determine all procedural issues and may impose reasonable time limits on each party's oral argument.

(c) The presiding Board member shall make any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing.

(d) The respondent and the administrative prosecutor shall each be limited to 30 minutes in which to present oral argument.

(e) The respondent shall proceed first and may reserve part of the allotted time for rebuttal.

(3) The Board member who presides over the hearing:

(a) May allow either the respondent or the administrative prosecutor to present documents or exhibits which are relevant and material to the proceedings and which are not unduly repetitious when the presiding Board member believes that the documents or exhibits are necessary in order for a fair hearing; and

(b) May not allow testimony by any witness unless agreed to by the parties and approved by the Board in advance of the hearing.

(4) The members of the Board may be recognized by the presiding member to ask questions of either party appearing before the Board.

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D. Summary Suspension of a License Without Prior Notice or an Opportunity To Be Heard.

(1) In extraordinary circumstances, the Board may, after consultation with Board counsel, order the summary suspension of a license without first issuing a notice of intent to summarily suspend the license or providing a respondent with an opportunity for a predeprivation hearing if:

(a) The Board determines that the public health, safety, and welfare requires the immediate suspension of the license and that prior notice and an opportunity to be heard is not feasible;

(b) The order of summary suspension is served upon the respondent within 24 hours after its execution; and

(c) The respondent is provided with an opportunity for a hearing before the Board within 15 days after the effective date of the summary suspension.

(2) If the respondent requests a hearing pursuant to §D(1)(c) of this regulation, that hearing shall be conducted before the Board as provided in §C(2) of this regulation and shall provide the respondent with an opportunity to show cause why the Board should lift the summary suspension and reinstate the license.

E. Burdens of Production and Persuasion.

(1) In a show cause proceeding pursuant to §C of this regulation, the respondent may present argument in opposition to the allegations presented in the order for summary suspension or which otherwise demonstrate that the public health, safety, or welfare is not at risk.

(2) The administrative prosecutor bears the burden of demonstrating by a preponderance of the evidence that the health, safety, or welfare of the public imperatively requires the Board to summarily suspend the respondent's license.

F. Disposition.

(1) If the Board issues a notice of intent to summarily suspend a license before summarily suspending a license, the Board may, after the show cause hearing, vote to:

(a) Order a summary suspension;

(b) Deny the summary suspension;

(c) Enter into an order agreed upon by the parties; or

(d) Enter into any interim order warranted by the circumstances of the case, including one providing for stay of the summary suspension subject to certain conditions.

(2) If the Board orders a summary suspension before a show cause hearing, the Board may, at the conclusion of the hearing, vote to:

(a) Affirm its order of summary suspension;

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- (b) Rescind the order for summary suspension;
- (c) Enter into an order agreed upon by the parties; or

(d) Enter into any interim order warranted by the circumstances of the case, including one providing for a stay of the summary suspension subject to certain conditions.

(3) An order for summary suspension or any other order of the Board issued after the initiation of summary suspension proceedings are final orders of the Board and public records pursuant to State Government Article, §10-611, Annotated Code of Maryland.

G. Post-Deprivation Opportunity for an Evidentiary Hearing.

(1) If the Board orders the summary suspension of a license pursuant to §C or D of this regulation, the respondent shall be provided with the opportunity for an evidentiary hearing before the Board or before an administrative law judge, if the Board delegates the matter to the Office of Administrative Hearings.

(2) The respondent may request an evidentiary hearing within 10 days after the Board issues the order of summary suspension.

(3) Unless otherwise agreed by the parties, a hearing shall be provided within 45 days after the respondent's request.

(4) An evidentiary hearing may be consolidated with a hearing on charges issued by the Board which include the facts which form the basis for the summary suspension.

(5) An evidentiary hearing shall be conducted pursuant to the contested case provisions of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

(6) If the Board has delegated the matter to the Office of Administrative Hearings, the administrative law judge shall issue to the Board a recommended decision with:

- (a) Proposed or final findings of fact;
- (b) Proposed or final conclusions of law;
- (c) A proposed disposition; or
- (d) Any combination of §G(6)(a) — (c) of this regulation pursuant to the Board's delegation of the matter to the Office of Administrative Hearings.

(7) If the hearing is one combined with charges, the administrative law judge's determination as to the merits of the summary suspension shall be based only on those parts of the record that were available to the Board at the time it voted for the summary suspension.

(8) The parties may file exceptions to the recommended decision as provided in State Government Article, §10-216, Annotated Code of Maryland.

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(9) An order issued by the Board after a post-deprivation evidentiary hearing is a final order of the Board and is a public record pursuant to State Government Article, §10-611, Annotated Code of Maryland.

.08 Probation and Violation of Probation Proceedings.

A. If the Board imposes a period of probation as a sanction, the Board may impose conditions of probation which the Board deems appropriate, including:

- (1) Re-education or completion of approved courses;
- (2) Payment of a fine;
- (3) Providing free optometric services in a Board-approved program;
- (4) Practicing under supervision;
- (5) Monitoring by the Board or by an individual or entity approved by the Board with periodic reporting to the Board;
- (6) Periodic review of a licensee's clinical practices or billing;
- (7) Periodic audits of a licensee's billing practices;
- (8) An examination by a physician or other appropriate health care provider;
- (9) Limitation of the licensee's practice;
- (10) Obtaining a passing score on an appropriate examination; or
- (11) Any other condition the Board deems appropriate for the rehabilitation or retraining of a licensee.

B. A term of probation may be defined by a specific period of time or the successful completion of certain conditions or acts by the licensee.

C. A licensee seeking termination of probation shall do so only by petitioning the Board to lift the probation when the:

- (1) Specific period of time has passed; or
- (2) Licensee has successfully completed the conditions or acts required for termination.

D. If, at any time, the Board determines that the licensee is not in compliance with the conditions of probation, the Board shall:

- (1) Charge the licensee with a violation of probation;
- (2) Take any action provided for in the final order or consent order in the event of a violation of probation, including suspension of the license;
- (3) Consider a summary suspension of the license; or
- (4) Take any other action the Board deems appropriate and which the Board is authorized to take by law.

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E. Charges for Violation of Probation.

(1) If the Board issues charges for a violation of probation, the service shall be as provided for in Regulation .05C(1) and (3) of this chapter.

(2) The charging document for a violation of probation shall:

(a) Inform the respondent of the statutory provision, condition of probation, or provision of the Board's order which the Board believes has been violated;

(b) Allege facts that constitute a basis for a violation of probation; and

(c) Notify the respondent of any proceedings scheduled before the Board or of an opportunity to request a hearing within a certain period of time and the consequences of failing to appear for those proceedings or to request a hearing.

(3) If the respondent requests a hearing on the charge of a violation of probation, the Board shall, before the hearing, provide the respondent with a case resolution conference as provided in Regulation .05E of this chapter, to discuss settlement of the matter.

F. Violation of Probation Hearing. A hearing for a violation of probation shall be held as set out in Regulation .06B of this chapter.

G. If the Board determines that the respondent has violated probation, the Board shall:

(1) Take any action provided for in the consent order or final order in the event of a violation of probation;

(2) Impose additional conditions of probation; or

(3) Impose any sanction or take any other action that the Board deems appropriate and is authorized to take by law.

.09 Restoration of a License.

A. Reinstatement.

(1) A licensee shall petition the Board for a lifting of a suspension of a license or a reinstatement following revocation or surrender of a license.

(2) A licensee who petitions the Board for reinstatement pursuant to terms and conditions for reinstatement set out in a final order, letter of surrender, or other order of the Board shall apply for reinstatement only pursuant to those terms and conditions.

(3) A licensee whose license has been revoked or surrendered for 3 years or more before filing a petition for reinstatement is not eligible for reinstatement but instead shall apply for initial licensure.

(4) In addition to complying with any conditions for reinstatement ordered by the Board, an applicant for reinstatement shall:

(a) File an application for reinstatement with the Board;

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(b) Meet the requirements for reinstatement set out in COMAR 10.28.05; and

(c) Achieve a passing score on the Board's law examination.

B. Notice of Intent to Deny Reinstatement and Opportunity for a Hearing.

(1) If the Board issues a notice of intent to deny reinstatement, that notice shall be served as provided for in Regulations .05C(1) and (3) of this chapter.

(2) A notice of intent to deny reinstatement shall:

(a) Inform the applicant of the legal basis for the Board's belief that the applicant is not qualified for reinstatement, including any applicable statutory provision;

(b) Allege any facts which the Board believes support the Board's reasons for denying reinstatement; and

(c) Notify the respondent of any proceedings scheduled before the Board or of an opportunity to request a hearing within a certain period of time and the consequences of failing to appear for those proceedings or to request a hearing.

(3) If the applicant requests a hearing on the notice of intent to deny reinstatement, the Board shall, before the hearing, provide the applicant with a case resolution conference as provided in Regulation .05E of this chapter, to discuss settlement of the matter.

(4) A hearing on the notice of denial of reinstatement shall be held before the Board or be delegated to an administrative law judge and conducted pursuant to the contested case provisions of the Administrative Procedure Act.

C. If the Board grants reinstatement of a license, it may impose any restrictions or conditions on the license or the licensee's practice that it deems appropriate.

.10 Judicial Review.

A final order of the Board is subject to judicial review as provided in Health Occupations Article, §11-318, and State Government Article, §10-222, Annotated Code of Maryland.

.11 Imposition of Penalties.

The Board may impose a civil monetary penalty in lieu of or in addition to a disciplinary sanction authorized by Health Occupations Article, §11-313, Annotated Code of Maryland as provided in COMAR 10.28.13.

.12 Consideration and Notice of Board Files.

In any matter governed by this chapter, the Board may take official notice of any information contained in the Board's files.

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Administrative History

Effective date: April 11, 1983 (10:7 Md. R. 634)

Regulations .01 — .09 repealed and new Regulations .01 — .12 adopted effective September 3, 2001 (28:17 Md. R. 1556)

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY
Chapter 05 Inactive Status and Reinstatement of Expired Licenses

Authority: Health Occupations Article, §11-310, Annotated Code of Maryland

.01 Inactive Status.

The Board shall place a license on inactive status, if the licensee submits to the Board:

- A. An application for inactive status on the form required by the Board; and
- B. The inactive status fee required by COMAR 10.28.07.

.02 Application for Active Licensure by Optometrist on Inactive Status.

An optometrist who is on inactive status may apply for reinstatement of active licensure. The Board shall issue an active license if the optometrist:

- A. Submits to the Board satisfactory proof of completion of continuing education hours required of a practitioner on active status during the period of inactivity, not to exceed 125 hours; and
- B. Pays to the Board the reinstatement fee required by COMAR 10.28.07.

.03 Reinstatement of Expired License.

A. Any optometrist whose license has been expired for less than 5 years and who has not been put on inactive status may apply for reinstatement of his license. The Board may reinstate the license if the optometrist:

- (1) Submits to the Board satisfactory proof of having subsequently met the continuing education requirements required of a practitioner on active status during the period the license was expired, not to exceed 125 hours;
- (2) Otherwise meets the renewal requirements set forth in Health Occupations Article, §11-308, Annotated Code of Maryland; and
- (3) Pays to the Board the fee for the same number of years lapsed plus \$50.

B. The Board may reinstate the license of any optometrist whose license has been expired for 5 years or more and who has not been put on inactive status, or practiced optometry, only if the optometrist passes an examination recognized by the Board

Administrative History

Effective date: April 11, 1983 (10:7 Md. R. 634)
Regulations .03B amended effective March 4, 2002 (29:4 Md. R. 417)

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY
Chapter 06 Examination of Patients by Optometrists,
Maintenance of Records, and Keeping of Certain Instrumentation
and Equipment

Authority: Health Occupations Article, §§11-205 and 11-208, Annotated Code of Maryland

.01 Scope.

These regulations establish criteria the Board considers necessary to perform a minimum optometric examination, maintain certain records, and have on hand certain instrumentation and equipment required to carry out procedures for the minimum examination.

.02 Patient History.

An optometrist shall review the patient's history and shall create a written, oral, or electronic record of the following:

- A. Previous vision examinations, prescriptions, treatment programs;
- B. Patient's general health history including ocular health, familial involvements, current medications, and allergy history;
- C. Patient's primary complaint, symptoms, or other reason for consulting the practitioner;
- D. Other information bearing on visual tasks to be performed.

.03 Examination.

A licensee shall perform all necessary tests, evaluations, and observations in accordance with Health Occupations Article, §11-208(a), Annotated Code of Maryland, to ensure appropriate optometric management of the patient's ocular, systemic, visual, and psychosocial conditions.

.04 Records.

A licensed optometrist shall maintain thorough records of all testing procedures, results, and case dispositions in accordance with Health-General Article, §4-403, Annotated Code of Maryland. The optometrist shall record all tests, evaluations, and observations performed, along with assessment and plan.

.05 Equipment.

A licensed optometrist shall have on hand all necessary equipment in good working condition to perform the procedures as required in Regulations .03 and .04 of this chapter.

Administrative History

Effective date: June 4, 1984 (11:11 Md. R. 962)

Regulation .02 amended effective July 31, 2017 (44:15 Md. R. 760)

Regulation .03 repealed and new Regulation .03 adopted effective November 7, 1994 (21:22 Md. R. 1876)

Regulation .04 amended effective November 7, 1994 (21:22 Md. R. 1876)

Regulation .05 repealed and new Regulation .05 adopted effective November 7, 1994 (21:22 Md. R. 1876)

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY
Chapter 07 Fee Schedule

Authority: Health Occupations Article, §§11-205, 11-207, and 11-302—11-308,
Annotated Code of Maryland

.01 Scope.

These regulations govern all persons licensed as optometrists by the State.

.02 Fees.

The following fees are established by the Board:

- A. Application fee — \$300;
- B. Biennial renewal license fee (payable upon biennial notification) — \$600;
- C. Partial waiver application fee (applicants licensed in another state for 3 or more years) — \$300;
- D. Inactive license fee (those licensed in the State, but not in active practice). Fee to be placed on inactive status — \$250;
- E. Late fee (payable if renewal fee is received within the 30-day grace period) — \$100;
- F. Reinstatement fee (payable after failure to renew license for less than 5 years). Licensee shall also pay renewal fees for number of years lapsed — \$50;
- G. Reinstatement fee to active licensure (payable to change from inactive status to active status licensure) — \$100.

.03

Change of Fees.

Fees are subject to change by action of the Board of Examiners in Optometry. All licensees and applicants will be notified of the change.

Administrative History

Effective date: October 22, 1984 (11:21 Md. R. 1814)
Regulation .02 amended as an emergency provision effective August 18, 1992 (19:18 Md. R. 1653); amended permanently effective January 2, 1993 (19:25 Md. R. 2206)
Regulation .02 amended effective March 4, 2002 (29:4 Md. R. 417)
Regulation .02 amended as an emergency provision effective January 30, 2003 (30:4 Md. R. 314); amended permanently effective March 31, 2003 (30:6 Md. R. 420)
Regulation .02 amended effective December 11, 2003 (30:24 Md. R. 1741)
Regulation .02H repealed effective July 31, 2017 (44:15 Md. R. 760)
Regulation .02I, J repealed effective October 19, 2009 (36:21 Md. R. 1591)

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY
Chapter 08 Partial Waiver of Examination

Authority: Health Occupations Article, §§11-205 and 11-302 — 11-308, Annotated Code of Maryland

.01 Definition.

- A. In this chapter, the following term has the meaning indicated.
- B. Term Defined. "Active practice" means practices optometry for at least 500 hours within 3 consecutive years.

.02 Application.

- A. An applicant for licensure under these regulations:
 - (1) Shall complete an application;
 - (2) Shall pay the fee required by COMAR 10.28.07; and
 - (3) Shall submit proof that the applicant meets the requirements of Health Occupations Article, §11-305, Annotated Code of Maryland.
- B. An applicant shall submit the following documentation with the application:
 - (1) Copy of a current license from another state;
 - (2) An affidavit from the other state licensing board attesting that the applicant became licensed in the other state by passing an examination approved by the board of optometry in that state;
 - (3) An affidavit from a colleague, employer, or other source approved by the Board attesting that the applicant has:
 - (a) Engaged in active practice immediately before applying for licensure under this chapter; or
 - (b) Was a teaching optometrist, a military optometrist, a supervisor or administrative optometrist, or a researcher in optometry for 3 years immediately before applying for licensure under this chapter;
 - (4) An affidavit from the other state licensing board attesting that the applicant has met the continuing education requirements for the state in which the applicant has been practicing;
 - (5) Proof of the equivalent of 3 years of continuing education hours as required of optometrists in Maryland in courses approved by the Board if the other state does not require continuing education hours; and
 - (6) Documentation approved by the Board that at the time the applicant was licensed in the other state, the applicant met the educational standards then required to sit for the Maryland licensure examination.

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.03 Examination.

An approved applicant for licensure under these regulations shall be given a written jurisprudence examination in Maryland optometric law.

.04 Criteria.

Passing criteria shall be the same as those in effect and accepted by the Board for the current year.

Administrative History

Effective date: March 11, 1985 (12:5 Md. R. 483)

Regulation .01 repealed and new Regulation .01 adopted effective August 28, 1995 (22:17 Md. R. 1318)

Regulation .01A amended effective March 4, 2002 (29:4 Md. R. 417)

Regulation .02 amended effective August 28, 1995 (22:17 Md. R. 1318)

Chapter revised effective March 26, 2007 (34:6 Md. R. 627)

Regulation .02B amended effective October 19, 2009 (36:21 Md. R. 1591)

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY
Chapter 09 Advertising

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

.01 Scope.

These regulations govern advertising by optometrists in Maryland.

.02 Definitions.

A. The following terms have the meanings indicated.

B. Terms Defined.

(1) "Advertising" means calling to the attention of the public the services one has to offer, including, but not limited to, by written, oral, or electronic methods.

(2) "Board" means the State Board of Examiners in Optometry.

(3) "Optometrist" means an individual who holds a current license to practice optometry in Maryland.

.03 Advertising.

A. An optometrist may advertise the optometrist's services subject to the provisions of this regulation.

B. An advertisement may not contain statements:

(1) Containing misrepresentation of facts;

(2) Likely to mislead or deceive because in context the statements make only a partial disclosure of relevant facts;

(3) Intended to or likely to create false or unjustified expectations of favorable results;

(4) Relating to fees without reasonable disclosure of all relevant variables so that the statement would not be misunderstood or be deceptive to a layman;

(5) Conveying the impression that the optometrist could influence improperly any public body, official, corporation, or any person on behalf of a patient;

(6) Containing representations or implications that in reasonable probability can be expected to cause an ordinarily prudent person to misunderstand or be deceived;

(7) Containing representations that the optometrist is willing to perform any procedure which is illegal under the laws or regulations of Maryland or the United States;

(8) That fail to state that the practitioner is an optometrist.

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C. An optometrist shall also be accountable under this regulation if the optometrist uses an agent, partnership, professional association, or health maintenance organization to implement actions prohibited by this regulation.

.04 Solicitation.

A. An optometrist may not engage in solicitation, including but not limited to in-person, telephone, facsimile, internet, or direct mail solicitation which:

- (1) Amounts to fraud, undue influence, intimidation, or overreaching;
- (2) Contains statements which would be improper under Regulation .03B.

B. An optometrist shall also be accountable under this regulation if the optometrist uses an agent, partnership, professional association, or health maintenance organization to implement actions prohibited by this regulation.

.05 Penalties for Violation.

A violation of these regulations pertaining to the use of advertising shall constitute unprofessional conduct and may result in disciplinary action against the optometrist under Health Occupations Article, §§11-205 and 11-313, Annotated Code of Maryland.

Administrative History

Effective date: September 7, 1987 (14:18 Md. R. 1966)
Regulation .02B amended effective July 31, 2017 (44:15 Md. R. 760)
Regulation .04A amended effective March 4, 2002 (29:4 Md. R. 417)

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY
Chapter 10 Optometrist Accountability

Authority: Health Occupations Article, §§11-205(a) and 11-311, Annotated Code of Maryland

.01 Scope.

These regulations govern all optometrists licensed to practice in Maryland.

.02 Practitioner Identification.

Licensed practicing optometrists shall, in an appropriate manner, ensure that the patient knows the identity of the provider of optometric care by providing that:

- A. The names of the optometrists providing services are conspicuously posted in the office;
- B. The name of the licensed optometrist, or some other method of identifying the optometrist providing the optometric services, appears on any record required by law or regulation; and
- C. Treatment records are maintained and clearly identify the licensed optometrist who recommends, instructs, or prescribes vision care for the patient.

Administrative History

Effective date: September 7, 1987 (14:18 Md. R. 1967)
Regulation .02B amended effective July 31, 2017 (44:15 Md. R. 760)

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY
Chapter 11 Use of Diagnostic Pharmaceutical Agents

Authority: Health Occupations Article, §§11-101, 11-205, and 11-404, Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following term has the meaning indicated.

B. Term Defined. "Optometric management of ocular disease" means the use of optometric services and techniques to determine the most appropriate and timely referral for ocular disease.

.02 Diagnostic Pharmaceutical Agents.

A. An optometrist certified by the Board as qualified to administer diagnostic pharmaceutical agents may use the following agents:

(1) Agents directly or indirectly affecting the pupil of the eye, including, but not limited to, the mydriatics and cycloplegics listed below:

(a) Phenylephrine hydrochloride (2.5 percent);

(b) Hydroxyamphetamine hydrobromide (1.0 percent);

(c) Cyclopentolate hydrochloride (0.5—2.0 percent);

(d) Tropicamide (0.5 and 1.0 percent);

(e) Cyclopentolate hydrochloride (0.2 percent) with phenylephrine hydrochloride (1.0 percent);

(f) Dapiprazole hydrochloride (0.5 percent);

(g) Hydroxyamphetamine hydrobromide (1.0 percent) and tropicamide (0.25 percent); and

(2) Agents directly or indirectly affecting the sensitivity of the cornea, including, but not limited to, the:

(a) Topical anesthetics listed below:

(i) Proparacaine hydrochloride (0.5 percent); and

(ii) Tetracaine hydrochloride (0.5 percent);

(b) Diagnostic topical anesthetic and dye combinations listed below:

(i) Benoxinate hydrochloride (0.4 percent)—fluorescein sodium (0.25 percent); and

(ii) Proparacaine hydrochloride (0.5 percent)—fluorescein sodium (0.25 percent).

B. The optometrist may use the diagnostic pharmaceutical agents listed in §A of this regulation in strengths not greater than the strengths indicated unless clinically indicated.

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C. The optometrist may not dispense diagnostic pharmaceutical agents to patients for self-administration.

.03 Certification.

A. The Board will certify an optometrist licensed to practice in Maryland as qualified to administer diagnostic pharmaceutical agents if the licensed optometrist meets one of the following criteria:

(1) Graduation from an accredited school of optometry within 7 years before applying for certification in Maryland.

(2) Certification to use diagnostic pharmaceutical agents in another state which included completion of not less than 70 credit hours in diagnostic pharmaceutical agents if the optometrist:

(a) Submits to the Board proof of certification to use diagnostic pharmaceutical agents in the other state.

(b) Submits to the Board documentation that the original certification included at least 70 credit hours in diagnostic pharmaceutical agents. This documentation may be from either:

(i) The state board that granted the original certification;

(ii) The college, university, association, or other sponsors of the 70 credit hours in diagnostic pharmaceutical agents; or

(iii) Any other organization approved by the Board.

(3) Successful completion of a course in diagnostic pharmaceutical agents of at least 70 credit hours given by an accredited college or faculty approved by the Board within 7 years before applying for certification in Maryland.

B. The credit hours taken for initial certification in diagnostic pharmaceutical agents may be included as part of the hours of continuing education required for biennial license renewal.

C. To complete the certification process, the optometrist shall submit proof of current certification in cardiopulmonary resuscitation to the Board.

.04 Renewal of Certification.

A. An optometrist certified under this chapter shall complete 6 credit hours of continuing education every 2 years in the use of diagnostic pharmaceutical agents in the diagnosis and optometric management of ocular disease.

B. The 6 credit hours of continuing education relating to the use of diagnostic pharmaceutical agents required every 2 years to maintain certification may be included as part of the hours of continuing education required for biennial license renewal.

C. An optometrist is responsible for maintaining proficiency with the current CPR procedures as recommended by the American Heart Association.

D. The Board shall grant continuing education credit for CPR recertification courses.

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.05 Reporting.

An optometrist certified to use diagnostic pharmaceutical agents shall report to the Board, on the form provided by the Board, any incident of adverse reaction to the administration of diagnostic pharmaceutical agents.

Administrative History

Effective date: May 14, 1990 (17:9 Md. R. 1090)

Regulation .01 amended effective July 31, 2017 (44:15 Md. R. 760)

Regulation .02A, B amended effective November 20, 1994 (21:33 Md. R. 1933); July 31, 2017 (44:15 Md. R. 760)

Regulation .03 amended effective March 4, 2002 (29:4 Md. R. 417)

Regulation .04 amended effective November 20, 1994 (21:33 Md. R. 1933)

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY
Chapter 12 Therapeutic Pharmaceutical Agents

Authority: Health Occupations Article, §§11-101, 11-205, 11-302—11-309, 11-401.1, 11-404, and 11-404.1, Annotated Code of Maryland

01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Adverse drug reaction" means a physical or psychological reaction experienced by a patient which:

(a) Results from the administration of diagnostic or therapeutic pharmaceutical agents;

(b) Poses a threat to the health of the patient; and

(c) Requires treatment or medical intervention.

(2) "Adverse reaction" means the unintended or unexpected effect of treatment on a patient caused by or resulting from:

(a) An adverse drug reaction;

(b) The removal of a superficial foreign body from the eye; or

(c) The ordering of a laboratory test.

(3) "Board" means the Board of Examiners in Optometry.

(4) "Diagnostic pharmaceutical agent (DPA)" means a medication that:

(a) Directly or indirectly affects the pupil of the eye as defined in COMAR 10.28.11;

(b) Directly or indirectly affects the sensitivity of the cornea as defined in COMAR 10.28.11; or

(c) Stains the ocular surface.

(5) "Ophthalmologist" means a physician who practices in the specialty of ophthalmology and who is licensed by the Maryland Board of Physicians.

(6) "Primary open angle glaucoma" means glaucomatous changes characterized by:

(a) Adult onset;

(b) The presence of open, normal appearing angles as demonstrated by gonioscopy, and not otherwise explained; and

(c) One or more of the following:

(i) The appearance of optic disc damage or optic nerve fiber layer damage as evidenced by the size or shape of the optic disc cup, thinning or notching of the optic disc rim, progressive changes in the appearance of the optic disc cup, optic disc hemorrhage, or nerve fiber layer defects, seen clinically or via imaging;

(ii) The presence of abnormalities in the visual field including arcuate defect, nasal step, paracentral scotoma, or general depression, in the absence of other causes or explanations for a visual field defect; or

(iii) Intraocular pressure that is thought to pose a threat to the health of the optic nerve.

(7) "Secretary" means the Secretary of Health.

(8) "Therapeutic pharmaceutical agent (TPA)" means a medication used for the treatment of a disease or condition of the eye as specified in Health Occupations Article, §11-404.2, Annotated Code of Maryland.

(9) "Therapeutically certified optometrist" means a licensed optometrist who has fulfilled the requirements of the Board and is certified by the Board to use therapeutic pharmaceutical agents in the practice of optometry and provides therapeutic services to patients in Maryland.

(10) "TPA record" means the optometrist's documentation of a patient's visit, the result of which involved the prescribing of medication or the performance of a procedure for treatment of a medical eye condition by a therapeutically certified optometrist.

(11) "Universal precautions" has the meaning stated in COMAR 10.06.01.02B(10).

.02 Requirements for Certification.

A. Except for an optometrist who qualifies under §B or C of this regulation, the Board

shall certify an optometrist licensed to practice in Maryland as qualified to use TPAs if the licensed optometrist submits to the Board evidence satisfactory to the Board that the optometrist:

(1) Has successfully completed at least 110 hours of Board-approved TPA education before applying for certification to use TPAs;

(2) Has successfully passed the National Board of Examiners in Optometry's (NBEO) Treatment and Management of Ocular Disease (TMOD) Examination;

(3) Is currently certified by the Board to administer topical ocular DPAs; and

(4) Has successfully completed 8 hours of Board-approved and accredited courses in the management of topical steroids, which includes anterior segment pharmacological treatment.

B. The Board shall certify an optometrist who has graduated from an accredited school of optometry within 3 years before applying for certification to use TPAs if the optometrist:

(1) Submits proof of current certification in cardiopulmonary resuscitation (CPR) to the Board; and

(2) Completes the process to become certified to use TPAs within 3 years of the date of graduation from an accredited school of optometry.

C. If an optometrist who has graduated on or after July 1, 2005, from an accredited school of optometry recognized by the Board, is not certified within 3 years of graduation, the Board shall certify the optometrist to use TPAs if the optometrist:

(1) Has successfully completed at least 110 hours of Board-approved TPA education before applying for certification to use TPAs;

(2) Has successfully passed a pharmacology exam under §A(2) of this regulation; and

(3) Submits proof of current certification in cardiopulmonary resuscitation (CPR) to the Board.

D. The Board may consider pharmacology courses that an optometrist successfully completed during a course of study at an accredited school of optometry recognized by the Board when calculating the 110 hours of Board-approved TPA education required under §§A(1) and C(1) of this regulation. If accepted by the Board, then each:

(1) Semester credit hour will equal 15 hours of TPA education; and

(2) Quarter credit hour will equal 10 hours of TPA education.

E. The credit hours taken for initial certification in TPAs may be included as part of the

hours of continuing education required for biennial license renewal.

.03 Requirements for Renewal of Certification.

A. An optometrist certified by the Board under this chapter shall complete 50 hours of continuing education during the 2 year licensure period in order to renew the optometrist's license.

B. An optometrist certified by the Board under this chapter shall complete 30 hours of continuing education in the use and management of TPAs, during the 2-year licensure period.

C. The Board shall count the 30 hours of continuing education in TPAs toward the 50 hours of continuing education required for biennial renewal.

D. A therapeutically certified optometrist shall be certified in CPR and shall verify this certification on request by the Board.

E. Unless there are extenuating circumstances acceptable to the Board, the Board shall revoke the TPA certification of an optometrist who does not fulfill the requirements for renewal of the TPA certification.

F. TPA Self-Assessment. At the time of license renewal, the therapeutically certified optometrist shall complete a self-assessment checklist provided by the Board to evaluate the following aspects of the optometrist's practice utilizing TPAs, including but not limited to:

- (1) Legibility and completeness of TPA records;
- (2) Documentation of patient visits, services rendered, and communications;
- (3) Documentation of subjective complaints, objective findings, clinical assessments relating to the findings of the diagnosis, and the plan;
- (4) A written office plan for handling emergencies;
- (5) A system for patients to reach the optometrist, or to access care, in the event of an ocular emergency;
- (6) A systematic discarding of expired medications;
- (7) Documentation of current CPR certification;
- (8) An infection control policy;
- (9) Patient confidentiality;

(10) A patient tracking system that enables identification and follow-up to ensure treatment of patients who:

(a) Are being followed or referred out for emergency sight or life-threatening conditions; or

(b) Fail to keep appointments;

(11) Procedures for appropriate termination of the doctor-patient relationship when necessary;

(12) Satisfactory explanation of the treatment plan so that the patient knows and understands the nature of the patient's problem or problems and the goals of the treatment regimen; and

(13) Advice to patients regarding the importance of progress examinations and follow-up care.

.04 Standards of Quality for Therapeutically Certified Optometrists and Optometric Care.

A. The therapeutically certified optometrist shall provide clinical therapeutic eye care consistent with published, universally accepted practice or clinical guidelines and standards of care.

B. The therapeutically certified optometrist shall adhere to the additional guidelines and standards of care given in §§C—T of this regulation.

C. The therapeutically certified optometrist shall ensure that:

(1) TPA records are consistent with the Subjective, Objective, Assessment, and Plan (SOAP) format;

(2) Assessment and plans are consistent with the patient's subjective and clinical findings; and

(3) TPA records are complete and legible.

D. The therapeutically certified optometrist shall document the following data, if applicable, for each TPA patient visit or communication:

(1) Date of service;

(2) Current Procedural Terminology (CPT) Code, most recent edition;

- (3) International Classification of Diseases (ICD) Code, most recent edition;
- (4) Medication/treatment provided; and
- (5) Follow-up recommendation.

E. The therapeutically certified optometrist shall document the following data as part of the patient's permanent file:

- (1) Name;
- (2) Date of birth;
- (3) Name of the doctor to whom the patient is referred, appointment date, and documentation that the patient or guardian preferred to schedule the referral appointment on their own;
- (4) Record of tests administered and the results of the tests;
- (5) Written reports of other consultations, referrals received, or both; and
- (6) Documentation of the occurrence of any adverse reaction.

F. The therapeutically certified optometrist shall provide for 24-hour emergency coverage.

G. The therapeutically certified optometrist shall have a medical kit for treating anaphylactic emergencies available at each location where patients are seen.

H. The therapeutically certified optometrist shall be certified in CPR.

I. The therapeutically certified optometrist shall have a written plan for responding to emergencies, including specific plans for referral to hospital emergency rooms, emergency ambulatory centers, ophthalmologists, or other appropriate medical doctors when necessary at each location where patients are seen.

J. The therapeutically certified optometrist shall comply with:

- (1) Applicable national and State standards of infection control at each office; and
- (2) Principles of universal precautions as defined in COMAR 10.06.01.02B(10).

K. The therapeutically certified optometrist shall maintain a written tracking system to identify patients who are being followed or referred for emergency sight or life-threatening conditions and who fail to keep appointments.

L. The therapeutically certified optometrist shall document that a patient who fails to keep an appointment for an emergency sight or life-threatening condition was contacted

by:

- (1) Telephone;
- (2) Electronic mail or other electronic means;
- (3) Text message; or
- (4) Mail.

M. The therapeutically certified optometrist shall report all adverse reactions to the Board. An adverse drug reaction may be indicated by symptoms which include, but are not limited to, painful eye, pruritus, urticarial lesions, wheals, skin rash of periorbital tissues, nausea, vomiting, fainting, confusion, cessation of respiration, wheezing, clinically significant change in heart rate, or chest pain.

N. The therapeutically certified optometrist shall prescribe and administer all therapeutic pharmaceutical agents in accordance with the applicable standards of care established under Health Occupations Article, Title 11, Annotated Code of Maryland.

O. The therapeutically certified optometrist shall remove superficial foreign bodies from the eye in accordance with the applicable standards of care established under Health Occupations Article, Title 11, Annotated Code of Maryland.

P. A therapeutically certified optometrist may not prescribe or administer a therapeutic pharmaceutical agent unless specifically authorized by law or these regulations.

Q. The therapeutically certified optometrist shall report to the Board, on the form provided by the Board, within 10 working days of the occurrence, an adverse reaction. The therapeutically certified optometrist shall include in the report, at a minimum, the following:

- (1) The optometrist's name, address, and license number;
- (2) Patient information including:
 - (a) Presenting problem;
 - (b) Diagnosis;
 - (c) Agent administered; and
 - (d) Method of administration;
- (3) The adverse reaction; and

(4) Subsequent action taken.

R. Glaucoma Management.

(1) In accordance with Health Occupations Article, §11-404.2, Annotated Code of Maryland, a therapeutically certified optometrist shall perform the procedures and tests necessary to diagnose primary open angle glaucoma appropriately.

(2) A therapeutically certified optometrist may administer and prescribe topical pharmaceutical agents for glaucoma only as authorized by law.

S. In developing a glaucoma treatment plan that ensures the maximum effectiveness for the patient, the therapeutically certified optometrist shall consider the following:

(1) Types of agents to be administered and potential side effects;

(2) Status of the optic nerve structure, function, and its relationship to intraocular pressure;

(3) Identification of a target intraocular pressure at or below the target level in which further optic nerve damage is unlikely to occur;

(4) Maintenance of intraocular pressure at or below the target level by initiating appropriate therapeutic intervention;

(5) Monitoring of the optic nerve and resetting the target intraocular pressure if deterioration occurs;

(6) Minimization of the side effects of treatment and their impact on the patient's vision, general health, and quality of life;

(7) Education of the patient in the management of primary open angle glaucoma disease;

(8) Reference to accepted clinical guidelines for glaucoma follow-up management; and

(9) Criteria for surgical intervention.

T. Laboratory Tests. Laboratory tests shall be ordered by a therapeutically certified optometrist only as provided by law.

.05 Monitoring of Complaint Investigation.

A. The Board shall review complaints against optometrists relating to ocular therapeutics, management of primary open angle glaucoma, removal of superficial foreign

bodies, and other aspects of practice by a therapeutically certified optometrist.

B. The Board's procedures for handling complaints are governed by Health Occupations Article, Title 11, Annotated Code of Maryland, COMAR 10.28.04, and State Government Article, §§10-201—10-227, Annotated Code of Maryland.

Effective date:

Regulations .01—.08 adopted as an emergency provision effective May 17, 1996 (23:12 Md. R. 867); adopted permanently effective October 21, 1996 (23:21 Md. R. 1467)

Regulation .01B amended effective October 19, 2009 (36:21 Md. R. 1591)

Regulations .02 amended as an emergency provision effective December 7, 2001 (28:26 Md. R. 2270); amended permanently effective March 4, 2002 (29:4 Md. R. 417)

Regulation .02 amended effective October 19, 2009 (36:21 Md. R. 1591); May 20, 2019 (46:10 Md. R. 488)

Regulations .06 amended effective October 15, 2001 (28:20 Md. R. 1783)

Regulation .06A, C amended effective October 19, 2009 (36:21 Md. R. 1591)

Regulations .08 repealed effective October 15, 2001 (28:20 Md. R. 1783)

Chapter revised effective November 15, 2021 (48:23 Md. R. 980)

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY
Chapter 13 Civil Penalties

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

.01 Scope.

This chapter establishes the standards by which the Board may:

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. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Board" means the Board of Examiners in Optometry.

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

(3) "Violation" means:

(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.

.03 Authority to Impose an Administrative Monetary Penalty.

A. After a hearing under Health Occupations Article, §11-315, Annotated Code of Maryland, and COMAR 10.28.04, the Board may impose an administrative monetary penalty of \$5,000 or less on a licensee who is found to have committed a violation.

B. The Board may impose a penalty under §A of this regulation:

(1) For each occasion the licensee commits a violation, not to exceed a maximum of \$5,000;

(2) In addition to suspension or revocation of a license; or

(3) Instead of suspension of a license.

.04 Factors to be Considered in the Assessment of Penalties.

In determining whether to impose a penalty and the amount of the penalty, the Board shall consider the following factors:

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- A. The cost of investigating and prosecuting the case against the individual;
- B. The extent of actual or potential public harm caused by the violation;
- C. The extent to which the individual derived a financial benefit from the violation;
- D. The history of a previous violation or violations;
- E. The willfulness of the improper conduct; and
- F. Mitigating factors as presented by the licensee.

.05 Payment of Penalties.

- 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. The Board shall pay into the General Fund of the State all monies collected under this chapter.
- C. If 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 licensee until the licensee pays the penalty in full.
- D. The Board may refer all cases of delinquent payment to the Central Collection Unit of the Department of Budget and Management to institute and maintain proceedings and ensure prompt payment.

.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;

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- (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.

Administrative History

Effective date: April 20, 1998 (25:8 Md. R. 597)
Regulation .01 amended effective August 17, 2015 (42:16 Md. R. 1055)
Regulation .02B amended effective August 17, 2015 (42:16 Md. R. 1055)
Regulation .05A, C amended effective August 17, 2015 (42:16 Md. R. 1055)
Regulation .06 adopted effective August 17, 2015 (42:16 Md. R. 1055)

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY
Chapter 14 Code of Conduct

Authority: Health Occupations Article, §§1-212 and 11-205, Annotated Code of Maryland

.01 Scope.

This chapter governs all optometrists licensed by the State Board of Examiners in Optometry to practice in the State.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Board" means the Board of Examiners in Optometry.

(2) "Inappropriate sexual language" means:

(a) A sexualized harassing comment;

(b) An eroticized or sexually provocative comment not reasonably associated with a health care matter; or

(c) An inappropriate discussion of a sexually related matter.

(3) "Patient" means the individual to whom the licensee is rendering professional service.

(4) "Sexual behavior" means:

(a) A sexual act as specified in Criminal Law Article, §3-301(e) and (g), Annotated Code of Maryland; and

(b) Sexual contact as specified in Criminal Law Article, §3-301(f), Annotated Code of Maryland.

(5) "Sexual exploitation" means a situation in which the licensee takes advantage of the unequal relationship between the licensee and a patient, a student, or an employee to obtain sexual favors.

(6) "Sexual harassment" means a deliberate or repeated comment, advance, gesture, solicitation, request, or physical contact of a sexual nature.

.03 General Conduct.

A. The licensee shall:

(1) Apprise the patient of the risks, opportunities, and obligations associated with services available to the patient;

(2) Make the fee for service clear, maintain adequate financial records, and confirm arrangements for financial reimbursement with the patient;

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(3) Notify the patient promptly and seek the transfer, referral, or continuation of service in relation to the patient's need or preference if the licensee anticipates the termination or interruption of service to the patient;

(4) Obtain voluntary and informed consent from a patient for participation in research, without direct or implied deprivation or penalty for refusal to participate;

(5) Inform the Board of unethical conduct by a licensed optometrist; and

(6) Inform the Board about an individual who is not licensed by the Board but who represents that the individual is an optometrist and is practicing, attempting to practice, or offering to practice optometry.

B. In the capacity of or identity as a licensed optometrist, the licensee may not:

(1) Participate or condone dishonesty, fraud, deceit, or misrepresentation;

(2) Misrepresent professional qualifications, education, experience, or affiliation;

(3) Exploit a relationship with a patient for personal advantage or satisfaction;

(4) Practice, condone, facilitate, or collaborate with discrimination on the basis of race, color, sex, sexual orientation, age, religion, national origin, marital status, political belief, mental or physical handicap, or other preference or personal characteristic, condition, or status;

(5) Engage or participate in an action that violates or diminishes the civil or legal rights of a patient; or

(6) Share a fee or accept or give something of value for receiving or making a referral.

.04 Sexual Misconduct.

A. An optometrist may not engage in sexual misconduct in the practice of optometry.

B. Sexual misconduct includes, but is not limited to:

(1) Sexual behavior with a client or patient in the context of a professional evaluation, treatment, procedure, or service to the client or patient, regardless of the setting in which the professional service is provided;

(2) Sexual behavior with a client or patient under the pretext of diagnostic or therapeutic intent or benefit;

(3) Requesting sexual favors of a client or patient;

(4) Inappropriate touching of a client or patient in a sexual manner;

(5) Therapeutically unnecessary discussion of sexual matters or other verbal conduct of a sexual nature while treating a patient;

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(6) Taking photographs or video tapes of a client or patient for sexual purposes;

(7) Sexual harassment of staff or students;

(8) Sexual exploitation; or

(9) Inappropriate sexual language.

C. Concurrent Sexual Relationships. The licensee may not engage in either consensual or forced sexual behavior with:

(1) A patient;

(2) A student or supervisor over whom the licensee exercises professional authority or with whom the licensee maintains direct supervision or education while the professional relationship continues to exist; or

(3) An individual with whom the patient has a close personal relationship, including but not limited to a relative or a significant individual in the patient's life, if there is a risk of exploitation or potential harm to the patient.

D. Relationships with Former Patients.

(1) Except as set forth in §D(3) of this regulation, the licensee may not engage in sexual behavior with a former patient.

(2) The licensee may not terminate professional services or a professional relationship with a patient in order to enter into a nonprofessional, social, or sexual relationship with the patient or an individual with whom the patient has a close personal relationship.

(3) The licensee may enter into a relationship with an individual with whom the licensee's prior professional contact was of a brief, peripheral, consultative, or indirect nature, and did not constitute a therapeutic relationship.

E. Prior Sexual Relationships. The licensee may not provide professional services to an individual with whom the licensee has previously engaged in sexual behavior.

F. Sexual Harassment.

(1) The licensee may not sexually harass a:

(a) Patient;

(b) Student; or

(c) Employee.

(2) If sexually harassed by a patient, the licensee shall:

(a) Seek professional consultation with another licensed health professional;

(b) Document all action taken in the patient's record; and

(c) Terminate treatment and assist in a referral to another health care provider.

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G. Deceit During Evaluation, Treatment, Procedure, or Service. The licensee may not suggest, recommend, or encourage the patient to engage in a sexually provocative act, including but not limited to:

- (1) Sexual contact with the licensee;
- (2) Genital stimulation by or of the patient or licensee;
- (3) Undressing by or of the licensee in the presence of the patient, or of the patient in the presence of the licensee; and
- (4) Discussion or disclosure of a sexually provocative or erotic nature, not necessitated by treatment or treatment protocol.

.05 Penalties.

Violation of this chapter may result in the Board taking action to reprimand a licensee, place the licensee on probation, or suspend or revoke the licensee's license. The Board may also impose a penalty not exceeding \$5,000.

Administrative History

Effective date: June 26, 2000 (27:12 Md. R. 1140)

Chapter revised effective July 31, 2006 (33:15 Md. R. 1281)

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY
Chapter 15 Compelling Purpose Disclosure

Authority: General Provisions Article, §4-333; Health Occupations Article, §§11-205;
Annotated Code of Maryland

.01 Scope.

A. This chapter permits the Board to disclose investigative information to other agencies or other entities, or both, under certain circumstances.

B. A custodian may disclose information in a certification, licensing, or investigative file if the custodian determines that a compelling public purpose exists to warrant disclosure.

.02 Disclosure for Compelling Public Purpose.

The custodian may find that a compelling public purpose warrants disclosure of information in a certification, licensing, or investigative file, regardless of whether there has been a request for the information, if the information concerns:

A. Possible criminal activity, and is disclosed to a federal, state, or local law enforcement or prosecutorial official or authority;

B. A possible violation of law, and is disclosed to a federal, state, or local authority that has jurisdiction over the individual whose conduct may be a violation, and the information disclosed is limited to information relevant to the possible violation by that individual; or

C. Conduct by an individual which the Board reasonably believes may pose a risk to the public health, safety, or welfare, and is disclosed to a law enforcement authority, administrative official, or agency that regulates the individual, or to a hospital or other health care facility where the individual has privileges.

.03 Other Disclosures.

This chapter does not prevent or limit the ability of the Board to disclose general licensing information as provided in General Provisions Article, §4-333, Annotated Code of Maryland, or any information which the Board may otherwise disclose by law.

Administrative History

Effective date: January 7, 2002 (28:26 Md. R. 2273)

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY
Chapter 16 Selling and Dispensing of Contact Lenses

Authority: Health-General Article, §24-301.1;
Health Occupations Article, §§11-101, 11-205, and 11-404.4; Annotated Code of Maryland

.01 Definitions.

- A. In this chapter, the following terms have the meanings indicated.
- B. Terms Defined.

(1) "Contact lens" means a medical device of any material or power, including plano or zero-powered, that is placed directly on:

- (a) The cornea; or
- (b) The cornea and sclera.

(2) "Contact lens prescription" means "replacement contact lens prescription" as defined in Health Occupations Article, §11-404.4, Annotated Code of Maryland, and any federal statute and regulations that may supersede this Health Occupations citation.

.02 Sales and Dispensing of Contact Lenses.

Contact lens prescriptions and contact lenses are prescribed, sold, dispensed, and otherwise regulated as stated in Health Occupations Article, §11-404.4, Annotated Code of Maryland, and any federal statute and regulations that may supersede this Health Occupations citation.

Administrative History

Effective date: January 16, 2006 (33:1 Md. R. 36)

Title 10
MARYLAND DEPARTMENT OF HEALTH
Subtitle 28 BOARD OF EXAMINERS IN OPTOMETRY
Chapter 17 Disciplinary Sanctions and Monetary Penalties

Authority: Health Occupations Article, §§1-606 and 11-314, Annotated Code of Maryland

.01 Scope.

This chapter establishes standards for sanctions and monetary penalties not exceeding \$5,000 against any optometrist in the State if, after a hearing, the Board finds that there are grounds under Health Occupations Article, §11-314, Annotated Code of Maryland, to impose a sanction or monetary penalty.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Board" means the State Board of Examiners in Optometry.

(2) "License" means a license issued by the Board to practice optometry.

(3) "Licensee" means an optometrist who is licensed by the Board to practice optometry.

(4) "Penalty" means monetary penalty.

(5) "Sanction" means a formal disciplinary action against a license such as a reprimand, probation, suspension, or revocation.

.03 Imposition of a Penalty — General.

Imposition of a Penalty After a Hearing. If, after a hearing under Health Occupations Article, §11-315, Annotated Code of Maryland, the Board finds that there are grounds under Health Occupations Article, §11-313, Annotated Code of Maryland, to suspend or revoke a license, the Board may impose a penalty as set forth in this chapter:

A. Instead of, or in addition to, suspending the license; or

B. In addition to revoking the license.

.04 Guidelines for Disciplinary Sanctions and Imposition of Penalties.

A. Subject to the provisions of this section, the Board may impose sanctions and penalties for violations of the Maryland Optometry Act and its regulations according to the guidelines set forth in the following chart:

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VIOLATION	MINIMUM SANCTION/PENALTY	MAXIMUM SANCTION/PENALTY
(1) Fraudulently or deceptively obtains or attempts to obtain a license	Active suspension for 90 days \$1,000	Denial of a license application or revocation \$5,000
(2) Fraudulently uses a license	Active suspension for 90 days \$1,000	Denial of a license application or revocation \$5,000
(3) Is convicted of or pleads guilty or nolo contendere to a felony or crime of moral turpitude	Probation for 1 year \$500	Denial of a license application or revocation \$5,000
(4) Abandons a patient	Reprimand \$100	Revocation \$5,000
(5) Provides professional services while under the influence of alcohol or using any narcotic or controlled dangerous substance	Probation for 1 year \$1,000	Revocation \$5,000
(6) Promotes sales to exploit for financial gain	Reprimand \$1,000	Revocation \$5,000
(7) Willfully makes or files a false report in the practice of optometry	Probation for 1 year \$1,000	Revocation \$5,000
(8) Willfully fails to file or record any report as required by law or impedes, obstructs, or induces the failure to file	Reprimand \$100	Revocation \$5,000
(9) Fails to provide details of optometric patient record to a physician or another optometrist on proper request by a patient	Reprimand \$100	Revocation \$5,000

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VIOLATION	MINIMUM SANCTION/PENALTY	MAXIMUM SANCTION/PENALTY
(10) Employs another person as a solicitor of business or splits or agrees to split a fee for optometric services for bringing or referring a patient	Reprimand \$1,000	Revocation \$5,000
(11) Makes a willful misrepresentation in treatment	Probation for 1 year \$1,000	Revocation \$5,000
(12) Aids an unauthorized person in the practice of optometry	Reprimand \$500	Revocation \$5,000
(13) Grossly and willfully overcharges for optometric services or submits a false statement to collect a fee	Probation for 1 year \$1,000	Revocation \$5,000
(14) Behaves immorally in the practice of optometry	Active suspension for 1 year \$1,000	Revocation \$5,000
(15) Professional, physical, or mental incompetence	Probation for 1 year	Denial of a license application or revocation
(16) Advertising in a false or misleading manner	Reprimand \$100	Active suspension for 1 year \$1,000
(17) Reciprocal discipline by an optometry board in another state	Reprimand \$100	Denial of a license application or revocation \$5,000
(18) Violates any provision of Health Occupations Article, Title 11, Annotated Code of Maryland, or rule or regulation adopted by the Board	Reprimand \$100	Revocation \$5,000
(19) Commits an act of unprofessional conduct in the practice of optometry	Reprimand \$100	Revocation \$5,000

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VIOLATION	MINIMUM SANCTION/PENALTY	MAXIMUM SANCTION/PENALTY
(20) Discrimination	Reprimand \$100	Probation for 2 years \$1,000
(21) Willfully engages in conduct likely to deceive, defraud, or harm the public	Reprimand \$1,000	Revocation \$5,000
(22) Knowingly fails to report suspected child abuse in violation of Family Law Article, §5-704, Annotated Code of Maryland	Reprimand \$100	Revocation \$5,000
(23) Engages in conduct which exhibits an inappropriate standard of care	Probation for 1 year \$500	Revocation \$5,000

B. If a licensee is found in violation of more than one category enumerated in this chapter, the category or categories containing the highest maximum sanction and penalty shall prevail.

C. Notwithstanding the guidelines set forth in this chapter, in order to resolve a pending disciplinary action, the Board and licensee may agree to a surrender of license or a consent order with terms, sanction, and penalty agreed to by the Board and the licensee.

D. A departure from the guidelines set forth in this chapter alone is not grounds for any hearing or appeal of a Board action.

.05 Mitigating and Aggravating Factors to Be Considered in the Assessment of the Sanction.

Depending upon the facts and circumstances of each case, and to the extent that they apply, the Board may consider the following aggravating and mitigating factors in determining whether the sanction in a particular case should fall outside the range of sanctions established by the guidelines. These factors may include, but are not limited to, the following:

A. Mitigating Factors:

- (1) The licensee's lack of a prior disciplinary record;
- (2) The licensee self-reported the violation to the Board;
- (3) The licensee's full and voluntary admissions of misconduct to the Board and cooperation during Board proceedings;

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- (4) Implementation of remedial measures to correct or mitigate harm arising from the misconduct;
- (5) Timely good-faith effort to make restitution or to rectify consequences of misconduct;
- (6) Evidence of rehabilitation or rehabilitative potential;
- (7) Absence of premeditation to commit the misconduct;
- (8) Absence of potential harm or adverse impact to the public; and
- (9) The licensee's conduct was an isolated incident and not likely to recur.

B. Aggravating Factors:

- (1) The licensee has a previous criminal or administrative disciplinary history;
- (2) The violation was committed deliberately or with gross negligence or recklessness;
- (3) The violation had the potential for, or caused, serious patient or public harm;
- (4) The violation was part of a pattern of detrimental conduct;
- (5) The licensee was motivated to perform the violation for financial gain;
- (6) The vulnerability of the client or clients;
- (7) The licensee lacked insight into the wrongfulness of the conduct;
- (8) The licensee committed the violation under the guise of treatment; and
- (9) Previous attempts at rehabilitation of the licensee were unsuccessful.

C. The existence of one or more of these factors does not impose on the Board or an Administrative Law Judge any requirement to articulate its reasoning for not exercising its discretion to impose a sanction outside of the range of sanctions set forth in this chapter.

D. Nothing in this regulation requires the Board or an Administrative Law Judge to make findings of fact with respect to any of these factors.

.06 Payment of Penalty.

A. A licensee shall pay to the Board a penalty imposed under this chapter as of the date the Board's order is issued, unless the Board's order specifies otherwise.

B. Filing an appeal under State Government Article, §10-222, Annotated Code of Maryland, or Health Occupations Article, §11-318, Annotated Code of Maryland, does not automatically stay payment of a penalty imposed by the Board under this chapter.

C. If a licensee fails to pay, in whole or in part, a penalty imposed by the Board under this chapter, the Board may not restore, reinstate, or renew a license until the penalty has been paid in full.

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D. In its discretion, the Board may refer all cases of delinquent payment to the Central Collection Unit of the Department of Budget and Management to institute and maintain proceedings to ensure prompt payment.

E. The Board shall pay all monies collected under this chapter into the State's General Fund.

Administrative History

Effective date: October 1, 2012 (39:19 Md. R. 1237)

