

Title 10 MARYLAND DEPARTMENT OF HEALTH

Subtitle 29 BOARD OF MORTICIANS AND FUNERAL DIRECTORS

Chapter 01 Hearing Procedures

10.29.01.00 Hearing Procedures

Authority: Health Occupations Article, §§1-606, 7-205(a)(1) and (c), 7-316, 7-318, and 7-604, Annotated Code of Maryland

10.29.01.01 Scope.

- A. This chapter governs procedures for disciplinary matters and hearings before the Maryland State Board of Morticians and Funeral Directors and establishes the standards for use as a guide for the imposition of disciplinary sanctions against any of the following under jurisdiction of the Board:
 - 1. A licensed mortician, funeral director, apprentice, surviving spouse, funeral establishment, corporation, crematory supervisor, or executor;
 - 2. A courtesy card holder;
 - 3. A holder of a permit to operate a crematory;
 - 4. A certified crematory operator or crematory technician;
 - 5. A holder of a mortuary transport permit; and
 - 6. A registered transporter.
- B. If, after a hearing, the Board finds that there are grounds under Health Occupations Article, §7–316 or 7–604, Annotated Code of Maryland, to sanction any person listed in §A of this regulation by way of probation, reprimand, suspension, fine, or revocation, the Board may consider aggravating and mitigating factors in determining sanctions

10.29.01.02 Notice of Hearing.

- A. All interested parties shall be afforded an opportunity to be present at formal hearings.
- B. Written notice of the hearing shall be sent by the Secretary of the Board to all interested parties at least 30 days before the hearing. The notice shall state the date, time and place of the hearing. It shall also state the issues or charges involved in the proceeding. However, if by reason of the nature of the proceeding, the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issue is necessary, they shall be fully stated as soon as practicable.

10.29.01.03 Parties and Representation.

- A. "Party" includes any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in formal hearings. Any person or agency may be admitted as a party for limited purposes.
- B. All parties appearing at formal hearings shall have the right to appear in proper person or by or with counsel. All parties shall have the right to be accompanied, represented and advised by counsel.

10.29.01.04 Prehearing Procedures.

- A. 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:
 - 1. A list of witnesses to be called;
 - 2. Copies of documents intended to be produced at the hearing; or
 - 3. Both.
- B. Mandatory Discovery.

1. 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:
 - a. The name and curriculum vitae of any expert witness who will testify at the hearing; and
 - b. A detailed written report summarizing the expert's testimony, which includes the opinion offered and the factual basis and reasons underlying the opinion.
2. 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 §B of this regulation, 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.
3. The Board or the Office of Administrative Hearings, as appropriate, shall consider and decide arguments regarding the sufficiency of the report:
 - a. At the prehearing conference, if scheduled; or
 - b. Immediately before the scheduled hearing.
4. If an expert adopts a sufficiently specific charging document as the expert's report, that adoption satisfies the requirements set forth in §B of this regulation.
- C. Parties are not entitled to discovery of items other than as listed in §§A and B of this regulation.
- D. Both parties have a continuing duty to supplement their disclosures of witnesses and documents.
- E. Absent unforeseen circumstances which would otherwise impose an extraordinary hardship on a party, witnesses or documents may not be added to the list after:
 1. The prehearing conference, if scheduled; or
 2. 15 days before the hearing, if no prehearing conference is scheduled.
- F. The prohibition against adding witnesses does not apply to witnesses or documents to be used for impeachment or rebuttal purposes.
- G. Construction.
 1. In hearings conducted by an administrative law judge of the Office of Administrative Hearings, this regulation shall, whenever possible, be construed as supplementing and in harmony with COMAR 28.02.01.
 2. In the event of a conflict between this regulation and COMAR 28.02.01, this regulation shall apply.

10.29.01.05 Records and Transcript.

- A. The Board shall prepare an official record, which shall include all pleadings, testimony, exhibits and other memoranda or material filed in the proceeding.
- B. Unless waived by all parties, a stenographic record of the proceedings shall be made at the expense of the Board. The record need not be transcribed, however, unless requested by a party, or by the Board. The cost of any typewritten transcripts of any proceeding, or part thereof, shall be paid by the party requesting the transcript.

10.29.01.06 Presiding Officer Duties.

Each hearing shall be held before a quorum of the Board. The president, or in his absence a member designated by him, shall be the presiding officer, and shall have complete charge of the hearing, permit the examination of witnesses, admit evidence, rule on the admissibility of evidence, and adjourn or recess the hearing from time to time.

10.29.01.07 Order of Procedure.

The order in which the parties shall present their case shall be determined by the presiding officer.

10.29.01.08 Examination of Witness and Introduction of Evidence.

- A. The rules of evidence in all hearings under these regulations shall be as set forth in State Government Article, §§10-208 and 10-209, Annotated Code of Maryland.
- B. Any party may submit evidence, examine and cross-examine witnesses, and file objections, exceptions and motions. However, when a party is represented by counsel, all submission of evidence, examination and cross-examination of witnesses, and filing of objections, exceptions and motions shall be done and presented solely by the counsel.
- C. The presiding officer, or any person designated by him for the purpose, may examine any witness called by any party. He may call as a witness any person in attendance at the hearing. Any member of the Board may examine any witness called by any party.

10.29.01.09 Briefs.

Any party may submit briefs of the issues of fact and law involved in the hearing. The briefs shall be filed in the form, with the number of copies, and at the time as the presiding officer may designate.

10.29.01.10 Sanctioning Guidelines.

A. General Application.

- 1. This regulation shall be used by the Board as a guide for sanctioning pursuant to the Board’s authority under Health Occupations Article, §§7–205, 7–316, and 7–604, Annotated Code of Maryland, for violations of the Morticians and Funeral Directors Act and the Board’s regulations.
- 2. The Board is not required to make findings of fact with respect to any of the factors for determining the sanction indicated by the sanctioning guidelines.
- 3. A departure from the sanctioning guidelines alone is not a ground for any hearing or appeal of a Board action.
- 4. Notwithstanding these sanctioning guidelines, in order to resolve a disciplinary matter, the Board and the offending person may agree to surrender a license, courtesy card, permit, or certificate, or agree to a consent order with terms, conditions, and sanctions agreed upon.
- 5. In a case where there are multiple and distinct violations, the Board may impose a sanction greater than the maximum indicated by the sanctioning guidelines for each individual violation.
- 6. If probation is imposed, the Board may impose appropriate terms and conditions of probation. Violations of the terms or conditions may cause the Board to take further disciplinary action.
- 7. In the event a violation does not fall within the sanction range, the Board shall so indicate and use its best judgment to determine the appropriate sanction and consider, to the extent possible, the factors in the sanctioning guidelines.

B. Range of Sanctions.

VIOLATION	MINIMUM SANCTION	MAXIMUM SANCTION	MINIMUM PENALTY	MAXIMUM PENALTY
(1) Fraudulently or deceptively obtains or attempts to obtain a license, permit, or registration for the applicant or licensee, permit holder, or registration holder or for another	Reprimand	Revocation/denial	\$0	\$5,000
(2) Fraudulently or deceptively uses a license, permit, or registration	Active suspension for 1 year	Revocation	\$0	\$5,000
(3) Commits fraud or misrepresentation: (a) In the practice of mortuary science; or	Active suspension for 1 year	Revocation	\$0	\$5,000

(b) While removing or transporting human remains				
(4) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude	Probation for 1 year	Revocation/denial	\$0	\$5,000
(5) Aids or abets an unauthorized person in the practice of mortuary science specifically: (a) In embalming without a license; (b) In making arrangements; (c) In the cremation of human remains; or (d) In the transporting or removal of human remains	Active suspension for 90 days	Revocation	\$0	\$5,000
(6) Advertises falsely or in a misleading manner	Reprimand	Active suspension for 60 days	\$0	\$500
(7) Solicits mortuary science business: (a) Either personally or by an agent, from a dying individual; or (b) To remove or transport human remains	Active suspension for 30 days	Active suspension for 1 year	\$0	\$1,500
(8) Directly or indirectly pays or offers to pay to obtain: (a) Mortuary science business; or (b) Business to remove or transport human remains	Active suspension for 30 days	Active suspension for 1 year	\$0	\$1,500
(9) Solicits or accepts any payment or rebate for recommending any crematory, mausoleum, or cemetery or causing a dead human body to be disposed of there	Reprimand	Active suspension for 30 days	\$0	\$500
(10) Refuses to surrender custody of a human remains on the demand of a person who is entitled to its custody	Active suspension for 30 days	Revocation	\$2,500	\$5,000
(11) Sells or offers to sell any share, certificate, or interest, with a promise to offer to perform services to the buyer at a cost less than that offered to the general public, in: (a) A mortuary science business; or (b) A mortuary transport service	Reprimand	Revocation	\$0	\$2,500
(12) Fails, after proper demand, to refund promptly any payments received under a pre-need contract with interest	Active suspension for 30 days	Revocation	\$1,000	\$5,000
(13) At the time funeral arrangements are made, fails to give the contract required by Health Occupations Article, §7-404, Annotated Code of Maryland	Reprimand	Active suspension 15 days	\$0	\$250
(14) Violates any State, municipal, or county law, rule, or regulation on the handling,	Reprimand	Active suspension for 1 year	\$0	\$5,000

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

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

C. Mitigating and Aggravating Factors. Depending on the facts and circumstances of each case, and to the extent that they apply, the Board may consider the following mitigating and aggravating factors in determining whether the sanction in a particular case should fall outside of the range of sanctions established by the guidelines. These factors may include, but are not limited to the following:

1. Mitigating Factors:

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

2. Aggravating Factors:

- a. Previous criminal or administrative disciplinary history;
- b. The violation was committed deliberately or with gross negligence or recklessness;
- c. The violation had the potential for, or caused, serious harm;
- d. The violation was part of a pattern of detrimental conduct;
- e. The respondent was motivated to perform the violation by the respondent's financial gain;
- f. The vulnerability of the bereaved;
- g. The respondent attempted to conceal the violation, falsified or destroyed evidence, or presented false testimony or evidence;
- h. The respondent failed to cooperate with the Board's investigation; and
- i. Previous attempts at rehabilitation were unsuccessful

10.29.01.11 Counsel to the Board.

The presiding officer may request the Office of the Attorney General to participate in any hearing as counsel for the Board. Upon that request, the counsel shall have all of the rights with regard to the submission of evidence, examination and cross-examination.

10.29.01.12 Decision and Order.

Every decision and order rendered by the Board shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed promptly to each party or his attorney of record.

10.29.01.13 Rehearings.

Any party aggrieved by the decision and order rendered in the particular case may apply for rehearing within 10 days after service on him of the decision and order. Action on the application shall lie in the discretion of the Board.

- A. Unless otherwise ordered, neither the rehearing nor the application for rehearing shall stay the enforcement of the order or excuse the persons affected by it for failure to comply with its terms.
- B. The Board may, on rehearing, consider facts not presented in the original hearing, including facts arising after the date of the original hearing, and may by new order abrogate, change, or modify its original order.

10.29.01.9999 Administrative History

Effective date: May 14, 1968

Preface amended effective December 15, 1986 (13:25 Md. R. 2660)

Regulation .01 recodified to .01-1 and the Preface recodified to Regulation .01, July 1991

Chapter revised effective March 5, 2001 (28:4 Md. R. 418)

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