

Sunset Recommendation #12

MARYLAND REGISTER

**Proposed Action on Regulations**

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

**1. Desired date of publication in Maryland Register:**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

10 32 02 02-16

**3. Name of Promulgating Authority**

Department of Health and Mental Hygiene

**4. Name of Regulations Coordinator**

Michele Phinney

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410-767-5623

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**5. Name of Person to Call About this Document**

Robin Bailey

**Telephone No.**

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**6. Check applicable items:**

- New Regulations

- Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: November 1, 2011.

- Repeal of Existing Regulations

- Recodification

Incorporation by Reference of Documents Requiring DSD Approval

- Reproposal of Substantively Different Text:

39: 11 Md. R 702-717 June 1, 20  
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: 12-117-P.

**7. Is there emergency text which is identical to this proposal:**

Yes - No

**8. Incorporation by Reference**

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

**9. Public Body - Open Meeting**

- OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

**10. Children's Environmental Health and Protection**

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

**11. Certificate of Authorized Officer**

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Thomas Keech, Assistant Attorney General, (telephone #410-767-5578) on 8/29/12. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Joshua M. Sharfstein, M.D.

**Title**

Secretary

**Date**

**Telephone No.**

410-767-6500

**Title 10**  
**DEPARTMENT OF HEALTH AND MENTAL HYGIENE**  
**Subtitle 32 SUBTITLE 32 BOARD OF PHYSICIANS**

**10.32.02 10.32.02 Hearings Before the Board of Physicians**

Authority: Health Occupations Article, §§1-307, 1-401, 1-402, 14-205, 14-317, 14-404, 14-405, 14-405.1, 14-406, 14-407, 14-408, 14-411, 14-505, 14-5A-16, 14-5A-17, 14-5A-17.1, 14-5A-19, 14-5B-13, 14-5B-14, 14-5B-14.1, 14-5B-16, 14-5C-16, 14-5C-17, 14-5C-19, 14-5D-13—14-5D-16, 14-601, 14-606, 15-314, 15-315, and 15-316; State Government Article, §§10-206, 10-216, and 10-226; Annotated Code of Maryland

**Notice of Proposed Action**

□

The Secretary of Health and Mental Hygiene proposes to repeal existing Regulations .02, .03, .06, and .09, to adopt new Regulations .02-.07, .10, .11, .13, and .14, to recodify and amend existing Regulations .04, .05 and .07 to be Regulations .08, .09, and .12, respectively, and to recodify existing Regulations .08 and .10 to be Regulations .15 and .16, respectively, under COMAR 10.32.02 Hearings Before the Board of Physicians.

At this time, the Secretary of Health and Mental Hygiene is also withdrawing the repeal of existing Regulations .02, .03, .06, and .09, new Regulations .02—.07, .10, .11, .13, and .14, recodify and amendments of existing Regulations .04, .05, and .07 to be Regulations .08, .09, and .12, respectively, and the recodification of existing Regulations .08 and .10 to be Regulations .15 and .16, respectively, under COMAR 10.32.02 Hearings Before the Board of Physicians as proposed in the 39:11 Md.R. 702-717 (June 1, 2012).

This action was considered by the Board of Physicians at a public meeting held on August 22, 2012, notice of which was given by publication on the Board of Physicians web site <http://www.mbp.state.md.us/forms/aug12agenda.pdf> from August 8, 2012 – August 22, 2012, pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to update the chapter based on operational changes resulting from revisions of the Medical Practice Act and changes in operating procedures. The proposal includes sanctioning guidelines for disciplining a physician for a violation of the Medical Practice Act or COMAR 10.32, and the imposition of administrative fines for failure to earn the requisite number of continuing medical education credits.

The regulations were originally developed through a deliberative and inclusive process. The Board considered the action at public meetings held on January 25 and April 25, 2012, notice of which was given by publication pursuant to State Government Article, §10-506(c)(1), Annotated Code of Maryland. The Board researched the laws of other states and reviewed other publicly available materials. The Proposed Regulations were published in the Maryland Register for formal comment from June 1, 2012 through July

2, 2012. The Board received 3 letters and 2 emails containing approximately 35 comments during the formal comment period. Substantive comments were received from 2 individuals and 3 organizations. All comments were closely examined.

The following is a summary of the substantive categories of comments received during that formal comment period (June 1, 2012 through July 2, 2012), and the Board's assessment and decision. As a result of the changes made during this process, the Board has decided to withdraw and submit these revised regulations as a new proposal.

#### DEFINITIONS.

Comment: The definition of "administrative prosecutor" does not contain a statement that the administrative prosecutor be an assistant attorney general, and general concern regarding the separation of the administrative prosecutors from Board counsel.

Response: The Office of the Attorney General has already reorganized its staff and updated guidelines regarding separate functions, which are available on the Board's website. The regulations already state the administrative prosecutor is a party to the case. The Board has also added language to COMAR 10.32.02.03E(7) reflecting its current practice of delegating the issuance and service of the charges to the administrative prosecutor.

Comment: The Board did not specify the number of Board members on the Disciplinary Committee for Case Resolution (DCCR). The current language is "...generally, 3 or 4...".

Response: Though the law does not require that a specified minimum of Board members serve in this capacity, the Board has revised the language to reflect that the "Disciplinary Committee for Case Resolution (DCCR)" will be comprised of a minimum of 3 members.

Comment: The new definition of "proposed decision" indicates the Board will not uniformly delegate questions of law and proposed sanctions to the Office of Administrative Hearings (OAH).

Response: "Proposed decision" actually relates to Board's choice of whether to delegate proposed findings of fact, conclusions of law, and sanctions, a combination of all three, or some subset of those three elements, to the OAH. This increases the flexibility of the parties to reach an agreement after the Disciplinary Committee for Case Resolution (DCCR) but before the start of the hearing.

Comment: The definition of "peer review" now includes "special qualifications to judge the matter at hand" and gives the Board broad discretion regarding who qualifies as a peer reviewer.

Response: The Board consists of 21 members, which includes 14 physicians and 1

physician assistant, and is uniquely qualified to make such a selection. The language is intended to guide the Board's selection of peer reviewers while maintaining its discretion. However, the Board has further included the language "professionally involved in the specialty or specialties" to add clarity to the credentials of peer reviewers, while maintaining flexibility to select appropriate peer reviewers.

Comment: The definition of "summary suspension" should not include an "indefinite period of time".

Response: The definition of "summary suspension" should not include information about possible future actions. The use of "indefinite period of time" reflects the commenter's suggestion that the definition not specify a time period, and distinguishes between a suspension and summary suspension.

## PREHEARING PROCEEDINGS

Comment: The Board has not developed standards for reviewing subpoenas of patient mental health records when investigating allegations relating to psychiatrists.

Response: The Board is particularly sensitive to issues surrounding mental health records and has already agreed to go beyond the requirements of Maryland law by allowing the psychiatrist to send a letter regarding why such a record review should not occur, and by establishing the proposed Board review of the letter and proposed subpoena. Otherwise, the Board will follow the directives of the Health-General Article of the Code that specifically address the Board's authority in these matters [Health-General Article, §4-307(K)(1)(v)(1), Annotated Code of Maryland].

Comment: The timeframe in which the respondent may provide, on a voluntary basis, a response to the peer review reports the Board obtained during investigation does not include additional time for service by U.S. Mail.

Response: The response time of ten (10) business days is taken directly from Health Occupations Article, §1-604(a). Since the measure counts only business days, the number of days to respond would be a least 12, and generally 14. However, the Board has added 3 additional days to respond when peer review reports are delivered to the licensee by regular U.S. Mail to the regulation.

Comment: The Board should place some limitations on permitting a complainant's attendance at the Case Resolution Committee conference (CRC) and prohibiting a complainant from using information obtained at the conference in other proceedings.

Response: The requirement to offer the complainant an opportunity to attend the CRC was adopted in uncodified law (Chapter 252, 2003, Section 7). Under Maryland law, this information is not discoverable or admissible for use in other proceedings [Health Occupations Article, §14-410(a)]. Complainants rarely attend the CRC even though each is invited to do so. However, the Board has added language prohibiting the respondent,

administrative prosecutor, and complainant from releasing any information obtained during CRC proceedings.

Comment: An agreement between the parties should not be required prior to being offered a CRC.

Response: The CRC conference date is generally set by the administrative prosecutor in the charging document, which should encourage the parties to negotiate an agreement soon after service of the charges. Every respondent is offered a CRC conference. If no agreement is reached, the case necessarily proceeds to a hearing.

#### ADJUDICATION OF ALLEGATIONS IN A CHARGING DOCUMENT

Comment: Language refers to “allegations which are disputed according to §C of this regulation” without a specific §C.

Response: Regulation .04B and C both reflected this error, which was apparently included in an earlier draft. The Board has deleted the phrase “on allegations which are disputed according to §C of this regulation” in both Regulation .04B(2)(a) and Regulation .04B(3)(a).

Comment: The regulation requires a licensee to notify the administrative prosecutor within 45 days of statements or documents not included in the medical records, without a corresponding duty of the administrative prosecutor.

Response: The requirements in Regulation .04C(2), relating to disclosure of statements and consultations not in the medical records obtained during discovery, are “recovered memories” that cannot be found in the medical records, regardless of the time interval for supplying the information. The administrative prosecutor could not have “recovered memories” of records created by the licensee. Additionally, the regulation requires – only in standard of care cases – that statements not included in the medical records be disclosed 45 days after charging. In these cases, licensees have already produced and summarized the records submitted for peer review. Statements not included in those records need to be disclosed early so that they may be considered by the CRC, and potentially by the peer reviewers and the Board, in resolving the case. This measure is potentially helpful to the licensee since timely disclosure may lead to an earlier settlement or other resolution of the case. Both parties already have a continuing duty to notify the other and the OAH of any updates to discovery [COMAR 10.32.02.03(E)(6)].

Comment: A determination regarding legal sufficiency of the licensee’s expert reports should be made within a timeframe that would allow the licensee to correct any issues.

Response: The Board has added language to the regulation that gives the Administrative Law Judge the authority to require timely amendment of any report deemed to be insufficient and allowing ample opportunity for the opposing party to prepare for the hearing.

Comment: The Board should not be allowed to introduce evidence not recited in the charging document.

Response: Proper notice to comply with due process does not require that the charging document recite all the evidence intended to be introduced at the hearing. The evidence to be introduced at the hearing is properly addressed by the Administrative Law Judge at the prehearing conference and the hearing itself, not in the charging documents. To do otherwise ignores discovery and other processes designed to elicit the information relevant and necessary for both parties to present their respective cases.

Comment: The Board's regulations sometimes conflict with OAH hearing regulations.

Response: The existing regulation contains specific, unchanged language that "in the event of conflict between §E of [the Board's] regulation and COMAR 28.02.01, §E of this regulation shall apply". COMAR 10.32.02.03E(9)(b). In other words, the Board's regulation controls and shall apply in cases of conflict between the Board's and OAH regulations.

#### BOARD EXCEPTION PROCESS AND FINAL ORDER

Comment: The proposed text makes attachments part of the 15-page limit of written exceptions.

Response: This section should read: "If a party attaches any part of the record to the exceptions, response, or reply, the attached pages are not to be encompassed within the applicable page limit." The Board has corrected this language. The Board has also included language regarding potential submission of record extracts to provide uniformity for the Board and the parties.

Comment: The 90-day time limit for the issuance of a Final Order of the Board was removed.

Response: The time limit for issuance of a final order by the Board is stated in law (State Government Article, §10-216), however, the Board has added the language back into the regulation.

Comment: The proposed regulation increases the default revocation period from 1 year to 3 years.

Response: The new default is 3 years only if the order does not otherwise specify another timeframe (which can be less, or more, than 3 years). Specifying a timeframe for reapplication saves both the licensee and the Board time and resources in preparation, review and processing of premature reinstatement applications.

## SANCTIONING AND IMPOSITION OF FINES

Comments: Many of the comments about the sanctioning guidelines relate to provisions established in law (Health Occupations Article, §1-606), including the non-binding nature of the guidelines, the range of sanctions, and distribution of fines.

Response: An advisory letter is not a “sanction”; hence, it does not appear on the chart. The Board is sensitive to mental health issues that may lead to or be involved in prohibited conduct, and by conscious decision of the Board during its discussion of this regulation, has a zero minimum fine.

With respect to fines, any fines collected as a result of findings under Health Occupations Article, §14-404, are deposited to the General Fund, as specified in Health Occupations Article, §14-405(1)(b), and not to the Board Fund. The fines listed are a range of amounts appropriate to the violation, while giving the Board flexibility to consider mitigating circumstances when imposing a fine. Minimum fines are not required – the regulation clearly states that fines may be imposed in addition to a sanction, but cannot be imposed independent of a sanction. However, the Board has removed the second sentence in COMAR 10.32.10A(3)(d) to make clear that imposing a fine in any case is within its discretion, but is not mandatory.

The Board declines at this time to design or develop an “algorithm” for the imposition of sanctions. Currently, the entire Board meets to impose sanctions and needs to maintain its discretion and flexibility in designing sanctions – within the guidelines - that provide effective and meaningful discipline, while maintaining its ability to consider the enumerated mitigating and aggravating factors in doing so. The Board often imposes sanctions based on its past actions in similar cases, though it remains flexible to adjust the sanctions for any particular case. The Board must be able to impose stiff penalties for especially egregious conduct, while maintaining the flexibility to impose lesser discipline for offenses that do not warrant such action. Should the Board begin to operate under the 2-panel system recommended by Dr. Jay Perman’s independent review team, the Board will consider forming a committee to discuss further revisions to the guidelines to strike a balance between flexibility and consistency between the two panels.

The Board has, however, added language to the regulation that requires the Board to articulate a reason for imposing any sanction that falls outside the guidelines.

## OTHER

Comment: The Board should include a licensee’s mandatory duty to report other practitioners suspected of being unfit to practice and/or unprofessional conduct, and a mandatory duty to report suspected child abuse.

Response: The regulation under consideration addresses the Board’s procedures for investigatory and disciplinary matters before the Board. These regulations are promulgated under authority of the Medical Practice Act, Health Occupations Article,

Titles 14 and 15. The Board does not have the legal authority to mandate reporting in regulation. The existing statute already contains a provision for the Board to take disciplinary action against a physician who fails to report suspected child abuse [Health Occupations Article, §14-404(a)(25)].

### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

### Estimate of Economic Impact

#### I. Summary of Economic Impact.

These regulations give the Board explicit authority to fine a licensee for failure to obtain continuing medical education credits (CME) required for licensure renewal. The sanctioning guidelines, however, will serve as a guide to the Board when imposing discipline upon a licensee and will have no economic impact, except to the extent that a licensee is found guilty of a violation.

II. Types of Economic Impact.	Revenue (R+/R-) Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(R+)	\$10,000
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	(-)	\$10,000
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

#### III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. The Board of Physicians audits approximately 100 licensees per year to verify that they have earned their continuing medical education credits (50 required every 2 years for physicians; number varies per category of allied health practitioner). This estimate assumes that 10 percent of the sample will be lacking one or more credits and that, on the average, each licensee will lack 10 credits. Therefore, the fine imposed would be:  $100 \times 10 \times .10 \times \$100 = \$10,000$ . This will produce revenue to the Board and an expense on the licensees.

D. Same as A

### Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

### **Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

### **Opportunity for Public Comment**

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 W. Preston Street, Room 512, Baltimore, Maryland 21201, or call 410-767-6499 (TTY800-735-2258), or email to [dhmh.regs@maryland.gob](mailto:dhmh.regs@maryland.gob), or fax to 410-767-6483. Comments will be accepted through . A public hearing has not been scheduled.

### **Economic Impact Statement Part C**

- A. Fiscal Year in which regulations will become effective: FY 2013
- B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?
- C. If 'yes', state whether general, special (exact name), or federal funds will be used:
- D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:
- E. If these regulations have no economic impact under Part A, indicate reason briefly:
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.  
This proposal has no impact on small businesses because fines and disciplinary sanctions are imposed upon the individual licensees, not on a business entity.
- G. Small Business Worksheet:

Attached Document:

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## **TITLE 10**

## **DEPARTMENT OF HEALTH AND MENTAL**

## **HYGIENE**

### **Subtitle 32 BOARD OF PHYSICIANS**

## 10.32.02 Hearings Before the Board of Physicians

Authority: Health Occupations Article, §§1-307, 1-401, 1-402, 14-205, 14-317, 14-404, 14-405, 14-405.1, 14-406, 14-407, 14-408, 14-411, 14-505, 14-5A-16, 14-5A-17, 14-5A-17.1, 14-5A-19, 14-5B-13, 14-5B-14, 14-5B-14.1, 14-5B-16, 14-5C-16, 14-5C-17, 14-5C-19, 14-5D-13—14-5D-16, 14-601, 14-606, 15-314, 15-315, and 15-316; State Government Article, §§10-206, 10-216, and 10-226; Annotated Code of Maryland

### BEGIN NEW

#### .02 Definitions.

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

B. Terms Defined.

(1) "Administrative law judge (ALJ)" means a hearing officer delegated the duty of conducting evidentiary hearings for the Board.

(2) "Administrative Procedure Act" means State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

(3) "Administrative prosecutor" means the attorney assigned from the Office of the Attorney General to prosecute administrative charges.

(4) Administrative Reinstatement.

(a) "Administrative reinstatement" means the reactivation of an inactive or expired license.

(b) "Administrative reinstatement" does not include postdisciplinary reinstatement.

(5) "Advisory letter" means a nonpublic letter issued by the Board which informs, educates, or admonishes an individual licensed or certified by the Board in regard to the practice of medicine or an allied health profession under the Medical Practice Act.

(6) "Applicant" means an individual who has submitted to the Board an application for initial licensure or for administrative or postdisciplinary reinstatement.

(7) "Board" means the Maryland State Board of Physicians.

(8) "Board counsel" means the attorney assigned from the Office of the Attorney General for the purpose of advice on legal matters before the Board.

(9) "Cease and desist order" means an order of the Board prohibiting an individual from practicing medicine without a license.

(10) "Charging document" means a document issued by the Board which sets forth charges or an intent to deny an application for initial licensure or for simple reinstatement on grounds authorized by the medical practice act or other statute granting the Board disciplinary authority.

(11) Complaint.

(a) "Complaint" means an allegation or report that:

(i) A health care provider has committed a prohibited act for which the Board can take disciplinary action, impose a fine, or deny licensure; or

(ii) An individual is practicing medicine without a license.

(b) "Complaint" includes, but is not limited to, the following:

(i) Issuance of a certificate of merit in a malpractice claim;

(ii) A report from a hospital or related institution, or an alternative health system, pursuant to Health Occupations Article, §14-413 or 14-414, Annotated Code of Maryland;

(iii) A law enforcement report;

(iv) A report from another country, state, or jurisdiction or the armed services of the United States;

(v) A malpractice insurance report;

(vi) A report from another federal or state agency or court in any country, state, or jurisdiction;

(vii) Consumer complaints;

(viii) Media publications;

(ix) Statements on applications for licensure, renewal, or reinstatement; and

(x) Other information, from whatever source, which warrants investigation.

(12) "Contested case" has the meaning stated in State Government Article, §10-202(d), Annotated Code of Maryland.

(13) "Disciplinary Committee for Case Resolution (DCCR)" means a committee composed of a minimum of 3 Board members who make recommendations to the Board for proposed disposition of matters prior to a hearing.

(14) "Disposition agreement" means a formal nonpublic agreement by which the health care provider agrees to comply with certain conditions and the Board stays further investigation or forgoes further action on a matter based on compliance with those conditions.

(15) "Final order" means:

(a) The final written decision of the Board which results from a contested case proceeding or other formal proceeding and which contains findings of fact, conclusions of law, and a disposition which:

(i) Denies a license;

(ii) Sanctions by reprimand, probation, fine, consent order, suspension, or revocation;

- (iii) Dismisses charges;
  - (iv) Accepts a surrender of a license; or
  - (v) Denies administrative reinstatement of a license;
  - (b) An order that denies postdisciplinary reinstatement of a license; or
  - (c) An order to cease and desist from the practice of medicine.
- (16) "Fine" means a monetary penalty.
- (17) "Imperatively requires" means that an action shall be undertaken pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland, as a result of factual contentions which raise a substantial likelihood of risk of serious harm to the public health, safety, or welfare before an evidentiary hearing governed by the Administrative Procedure Act is likely to be completed and result in a final order.
- (18) Investigation.
- (a) "Investigation" means the gathering of the information necessary for the Board to determine one or more of the following:
    - (i) Whether there is reasonable cause to charge the respondent with a violation of the Medical Practice Act or another statute which gives the Board disciplinary authority;
    - (ii) Whether an applicant is eligible for licensure or administrative reinstatement;
    - (iii) The facts necessary for the Board to issue a declaratory ruling; or
    - (iv) Whether an individual has complied with any Board order.
  - (b) "Investigation" includes:
    - (i) A preliminary investigation; and
    - (ii) A full investigation.
- (19) "Investigative Review Panel (IRP)" means a disciplinary subcommittee composed of Board members, advised by staff, Board counsel, and others, which is designated by the Board to:
- (a) Review complaints;
  - (b) Recommend for full investigation or closure; and
  - (c) Make recommendations as to action on cases under investigation.
- (20) "Involved medical specialty" means the area of medical specialty whose practitioners, in the Board's opinion:
- (a) Treat the medical or surgical ailment, symptom, or problem in question; and
  - (b) Would likely be familiar with the risks and benefits of treatments provided for that ailment, symptom, or problem.
- (21) Licensure.
- (a) "Licensure" means permission to engage in a health care profession regulated by the Board.
  - (b) "Licensure" includes certification and registration.
- (22) "Medical Practice Act" means Health Occupations Article, §§14-101—14-702 and 15-101—15-502, Annotated Code of Maryland.
- (23) "Peer review" means an evaluation by a physician or physicians with special qualifications to judge the matter at hand, based on professional involvement within the involved medical specialty or specialties, of an act or acts of medical or surgical care, or other acts connected with medical practice, by an applicant or licensee.
- (24) "Postdeprivation hearing" means a Board hearing scheduled after the Board has issued an order for summary suspension pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland, and at which the respondent has the opportunity to explain why the Board should rescind the order of summary suspension.
- (25) "Postdisciplinary reinstatement" means:
- (a) The reactivation of a revoked or suspended license; or
  - (b) The reactivation of a license surrendered while the licensee was under investigation or subject to disciplinary charges.
- (26) "Predeprivation hearing" means a Board hearing at which the respondent has the opportunity to explain why the Board should not issue an order for summary suspension pursuant to State Government Article, §10-226(c)(2), Annotated Code of Maryland.
- (27) "Preliminary investigation" means the gathering of the information necessary for the Board to determine whether it should dismiss a complaint, or conduct further investigation to determine reasonable cause to charge the respondent with a violation of the Medical Practice Act or to find an applicant ineligible for licensure or simple reinstatement and begins with the receipt of a complaint.
- (28) "Prohibited act" means any conduct for which the Board can issue a sanction.
- (29) "Proposed decision" means the proposed findings of fact and, where required by the delegation order from the Board, the proposed conclusions of law and proposed disposition issued by the administrative law judge.
- (30) "Recusal" means disqualification by a Board member from participating in a proceeding because of a legal interest or prejudice in the case before the Board.
- (31) "Reinstatement inquiry panel" means a committee of Board members who may meet informally and confidentially with applicants for postdisciplinary reinstatement and make recommendations to the Board.
- (32) "Respondent" means an individual who has been:
- (a) Given notice to answer allegations concerning violations of a statute over which the Board has jurisdiction;

- (b) Notified as to a potential summary suspension pursuant to State Government Article, §10-226(c), Annotated Code of Maryland;
- (c) Given notice to answer allegations concerning violations of a Board order; or
- (d) Given notice that the Board is investigating good moral character or the commission of an act that could be the subject of discipline if committed by a licensee, in relation to an application for licensure.
- (33) "Revocation" means the removal of a health care provider's license to practice a health occupation.
- (34) "Sanction" means an action by the Board which:
  - (a) Reprimands;
  - (b) Places on probation;
  - (c) Fines;
  - (d) Suspends or revokes a license;
  - (e) Disciplines by a consent order; or
  - (f) Accepts a letter of surrender in lieu of charges or further investigation or prosecution.
- (35) "Sanctioning guidelines" means guidelines, adopted by the Board and set out in Regulation .11 of this chapter, indicating the minimum and maximum penalty associated with each ground for discipline and mitigating or aggravating circumstances which could result in imposition of a penalty below the minimum or above the maximum.
- (36) "Show cause" means a demand by letter or order issued by the Board, which directs the respondent to:
  - (a) Respond either in writing or by an appearance before the Board; and
  - (b) Present reasons and argument why a particular order should not be entered.
- (37) "Special qualifications to judge the matter at hand" means those credentials which qualify a peer reviewer as a member of the involved medical specialty in a particular case.
- (39) "Stay" means the withholding of Board action against a health care provider.
- (39) "Stet" means the act of staying further action in a proceeding, subject to the proceeding being reopened at a later date.
- (40) "Summary suspension" means a denial for an indefinite period of the right to use a license.
- (41) "Surrender" means the voluntary relinquishing of a license to the Board by a health care provider.
- (42) "Suspension" means a denial of the right to use a license.

### **.03 Prehearing Proceedings.**

A. This regulation applies to:

- (1) Proceedings under Health Occupations Article, §1-307, 14-405, 14-5A-17(b), 14-5B-14(b), 14-5C-17(b), 14-5D-15, or 15-315, Annotated Code of Maryland; and
- (2) To the extent specifically provided in this regulation, cease and desist orders.

B. This regulation does not apply to procedures pursuant to Health Occupations Article, §14-404(b), 14-5A-17(c), 14-5B-14(c), 14-5C-17(c), 14-5D-14(b), or 15-314(b), Annotated Code of Maryland.

C. Investigation of Complaints.

(1) Designated staff shall undertake a preliminary investigation of each complaint as appropriate to the nature of the complaint.

(2) The Board's Investigative Review Panel (IRP) shall review a complaint in light of the preliminary investigation and may direct further investigation, referral for peer review, dismissal, or dismissal with an advisory letter.

(3) Participation in the IRP is not ordinarily a basis for recusal of a Board member from further proceedings in the case.

(4) Investigative Subpoenas.

(a) Except as provided in §C(4)(b) of this regulation, upon the receipt of a timely written request from a psychiatrist who is the subject of a complaint concerning the quality of the psychiatric care provided by that psychiatrist, a quorum of the Board shall review a subpoena for mental health records made or held by that psychiatrist before the subpoena is enforced.

(b) Section C(4)(a) of this regulation does not apply to:

- (i) Any subpoena other than an investigative subpoena;
- (ii) A subpoena issued in response to an investigation opened based upon a patient complaint;
- (iii) A subpoena issued as a result of a complaint or action by a law enforcement agency;
- (iv) A subpoena issued as a result of a complaint from a health care professional;
- (v) A subpoena for records if the executive director or the deputy director determines that there is a reasonable possibility that the records will be destroyed, secreted, lost, or altered if the subpoena is not promptly enforced; or

(vi) A subpoena if the executive director or deputy director determines that there is a reasonable possibility of imminent harm to the public health, safety, or welfare, including the health, safety, or welfare of an individual patient.

(c) Section C(4)(b) of this regulation does not affect any rights which an individual may have under Health-General Article, Annotated Code of Maryland, to contest a subpoena in court.

D. Review by the Peer Reviewers.

(1) The Board shall contract for peer review services if a question of standards of quality care in the practice of medicine arises.

(2) The Board shall obtain reports from at least two different peer reviewers in each case.

(3) If one or both peer reviewers conclude that a violation of the standard of care has occurred, the Board shall make the final peer review report, consisting of the reports of each individual peer reviewer, available to the respondent for review before the Board considers whether to issue charges. The Board shall redact the names of the peer reviewers before making the report available under this section.

(4) The respondent may provide a written response to the peer review report within 10 business days after the report was sent to the respondent by electronic mail or 13 business days if the report was sent via U.S. postal service.

(5) The Board shall:

(a) Consider both the final peer review report and any written response submitted within the time period specified in §D(4) of this regulation; and

(b) Determine whether there is reasonable cause to charge a respondent with failure to meet appropriate standards of quality care.

E. Prosecution of Complaint.

(1) Except as provided in §E(2) of this regulation, the Board may not bring charges against a licensee based solely on events contained in a complaint the Board received more than 6 years after:

(a) The day the complainant actually discovered the facts that form the basis of the complaint; or

(b) The day when a reasonable person exercising due diligence should have discovered the facts that form the basis of the complaint.

(2) The prohibition in §E(1) of this regulation does not apply to complaints that are based on any of the following:

(a) Criminal convictions;

(b) Sexual misconduct;

(c) Other boundary violations;

(d) Reciprocal actions under Health Occupations Article, §14-404(a)(21), Annotated Code of Maryland;

(e) Ongoing substance abuse;

(f) Fraudulent concealment of material information; or

(g) Acts that occurred while a patient was a minor.

(3) After reviewing the completed investigative information and reports, the Board shall make its determination to:

(a) Dismiss the complaint;

(b) Take informal action by issuing a nonpublic advisory letter;

(c) Request the respondent to enter into a disposition agreement with the Board if the respondent suffers from substance abuse or a physical, mental, or emotional condition which may otherwise jeopardize medical care;

(d) Issue an initial cease and desist order, subject to:

(i) §E(4) and (5) of this regulation; and

(ii) The procedures set out in Regulation .13 of this chapter;

(e) Except as provided in §E(1) of this regulation, vote to charge a respondent with a violation of the Medical Practice Act or COMAR 10.32.07;

(f) Vote to deny initial licensure or administrative reinstatement; or

(g) Accept a surrender on terms acceptable to the Board.

(4) Summary Suspension.

(a) In addition to charging, the Board may vote an intent to summarily suspend the license of the respondent pursuant to State Government Article, §10-226(c), Annotated Code of Maryland.

(b) A vote to summarily suspend the license of the respondent may be taken before the Board charges the respondent.

(5) After a vote to take formal action under §E(2)(d), (e), or (f) of this regulation, the Board shall refer the matter to the administrative prosecutor for prosecutorial action.

(6) Based upon a review of the case, the prosecutor may refer the matter back to the Board for further consideration.

(7) If the Board issues charges or a notice of an intent to deny an application for initial licensure or for administrative reinstatement, the Board shall serve it upon the respondent by regular mail or hand delivery at the address the respondent maintains for purposes of licensure notice. The Board may delegate the issuance and service of the charges to the administrative prosecutor.

(8) The Board, in the notice of intent to deny an application for initial licensure or administrative reinstatement, shall provide the respondent with an opportunity to request a hearing within 30 days from receipt of service.

(9) Disciplinary Committee for Case Resolution (DCCR).

(a) After service of the charging document, the Board shall offer the respondent a meeting with the DCCR. This is a voluntary, informal settlement proceeding to explore the possibility of a consent order or other resolution of the matter.

(b) If there is no agreement between the respondent and the administrative prosecutor, the matter proceeds to a hearing.

(c) Except for the Board's consideration of a proposed resolution of a case achieved through the conference with the DCCR, neither the Board, the parties, nor the complainant may make use of any commentary, admissions, facts revealed, or positions taken, including any disposition recommended by the DCCR, in the subsequent stages of the disciplinary proceedings unless the subject matter is available from other sources or is otherwise discovered. The respondent, administrative prosecutor, and complainant are prohibited from revealing this material.

(d) The complainant may attend and participate as authorized by statute. The complainant may be accompanied by Board staff but not by any other person.

(e) Participation in a DCCR is not ordinarily a basis for recusal of a Board member from further proceedings in the case.

#### F. Representation; Parties.

(1) The respondent may appear in proper person or be represented by counsel in any matter before the Board and during any stage of the disciplinary proceedings. The respondent may be represented only by an attorney admitted to the Maryland Bar or specially admitted to practice law in Maryland under Rule 14 of the Maryland Rules Governing Admissions to the Bar found in the Maryland Rules.

(2) The administrative prosecutor shall present evidence and argument at an evidentiary hearing on the charges and arguments before the Board in the exceptions process as specified in Regulation .05 of this chapter.

(3) The administrative prosecutor is a party to the administrative proceedings:

(a) As soon as formal charges are issued; and

(b) Until the Board's final decision is issued.

(4) The Board is not a party to the proceedings before an administrative law judge.

#### .04 Adjudication of Allegations in a Charging Document.

##### A. Application.

(1) This regulation applies to cases under Health Occupations Article, §§1-307, 14-405, 14-5A-17(b), 14-5B-14(b), 14-5C-17(b), 14-5D-15, and 15-315 Annotated Code of Maryland.

(2) This regulation does not apply to cases under Health Occupations Article, §14-404(b), 14-5A-17(c), 14-5B-14(c), 14-5C-17(c), 14-5D-14(b), or 15-314(b), Annotated Code of Maryland, or to cease and desist orders issued under Health Occupations Article, §14-206(e), Annotated Code of Maryland.

##### B. Delegation.

(1) The Board shall initially delegate to an administrative law judge responsibility to make:

(a) Proposed findings of fact;

(b) Proposed findings of fact and proposed conclusions of law; or

(c) Proposed findings of fact, proposed conclusions of law, and proposed disposition.

(2) If the Board has delegated the case to the Office of Administrative Hearings for the issuance of proposed findings of fact only, the following apply:

(a) The delegation to the Office of Administrative Hearings is limited to making proposed findings of fact on allegations which are disputed;

(b) The Board may rescind the delegation if:

(i) The parties jointly notify the Board prior to the prehearing conference, or the administrative law judge notifies the Board prior to the occurrence of the factors set out in State Government Article, §10-205(d)(2), Annotated Code of Maryland, that there are no substantial factual allegations in dispute;

(ii) The notification recites the facts which are undisputed; and

(iii) The Board determines that the facts agreed upon are sufficient to decide the issue; and

(c) If a delegation to the Office of Administrative Hearings has been rescinded pursuant to §B(2)(b) of this regulation, the Board shall set the case on the Board docket for the Board to issue conclusions of law and a disposition based on the undisputed material facts, after giving the parties a reasonable opportunity for written and oral argument.

(3) If the Board has delegated the case to the Office of Administrative Hearings for the issuance of proposed findings of fact and conclusions of law only, the following apply:

(a) The delegation to the Office of Administrative Hearings is limited to making proposed findings of fact and conclusions of law on allegations which are disputed; and

(b) The Board may rescind the delegation if:

(i) The parties jointly notify the Board prior to the prehearing conference, or the administrative law judge notifies the Board prior to the occurrence of the factors set out in State Government Article, §10-205(d)(2), Annotated Code of Maryland, that there are no substantial factual allegations or conclusions of law in dispute;

(ii) The notification recites the facts and conclusions of law which are undisputed; and

(iii) The Board determines that the facts and conclusions of law agreed upon are sufficient to decide the issue.

(c) If a delegation to the Office of Administrative Hearings has been rescinded pursuant to §B(3)(b) of this regulation, the Board shall set the case on the Board docket for the Board to issue a disposition based on the undisputed material facts and conclusions of law, after giving the parties a reasonable opportunity for written and oral argument.

(4) The Board may rescind a delegation to an administrative law judge if prior to the start of the evidentiary hearing:

- (a) The parties execute a proposed consent order settling all aspects of the case; and
- (b) The Board formally executes an approval of that proposed consent order.

C. Discovery.

(1) Discovery on Request. In addition to any disclosures required by §C(2) or (3) of this regulation, by written request served on the other party and filed with the administrative law judge, a party may require another party to produce, within 15 calendar days, the following:

- (a) A list of witnesses to be called; and
- (b) Copies of documents intended to be produced at the hearing.

(2) Mandatory Notice of Specific Defenses in Cases Involving the Standard of Quality Care.

(a) The respondent shall notify the administrative prosecutor not later than 45 days after the issuance of charges of any statement made to the respondent by the patient which was not recorded in the respondent's medical record of the patient, and which affected the patient's course of treatment, including but not limited to:

- (i) Any refusal of hospitalization or treatment;
- (ii) Any report of symptoms;
- (iii) Any report of the effects of medication;
- (iv) Any report by the patient of consultations or treatment by other health care providers; and
- (v) Any expressions by the patient of a preference for one course of treatment over another.

(b) The respondent shall notify the administrative prosecutor not later than 45 days after the issuance of charges of:

- (i) Any consultation concerning the patient, formal or informal, with any other health care provider, which is not recorded in the patient's medical record; or
- (ii) Any communication with family members of the patient which affected the patient's course of treatment, and which is not recorded in the patient's medical record.

(c) The notices required by §C(2)(a) and (b) of this regulation shall be in writing and shall state:

- (i) The name of the declarant or consultant;
- (ii) The substance of the declaration or consultant report; and
- (iii) The date on which each communication took place.

(d) Unless the respondent has provided the notice required by §C(2) of this regulation, the administrative law judge shall exclude from the hearing any evidence described in §C(2)(a) or (b) of this regulation.

(3) Mandatory Discovery.

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

- (i) The name and curriculum vitae of any expert who will testify at the hearing; and
- (ii) A detailed written report prepared and signed by the expert summarizing the expert's testimony, which includes the opinion offered and the factual basis and the reasons underlying the opinion.

(b) If the administrative law judge finds that the report is not sufficiently specific, or otherwise fails to comply with the requirements of this section, the administrative law judge shall exclude from the hearing:

- (i) The testimony of the expert; and
- (ii) Any report of the expert.

(c) The administrative law judge shall consider and decide arguments concerning the sufficiency of the report at the prehearing conference and may require that the report be timely amended, if insufficient, to allow the opposing party ample opportunity to prepare for hearing.

(d) If an expert adopts the written report of the Board peer reviewer or reviewers, or adopts a sufficiently specific charging document as the expert's report, that adoption is considered to satisfy the requirements set forth in §C(3) of this regulation.

(4) Parties are not entitled to discovery of items except as listed in §C(1), (2), or (3) of this regulation.

(5) Subject to §C(7) of this regulation, both parties have a continuing duty to supplement their disclosures of witnesses and documents.

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

- (a) The prehearing conference, if scheduled; or
- (b) If no prehearing conference is scheduled, 15 days prior to the hearing.

(7) The prohibition from adding witnesses subsequent to the prehearing conference does not apply to witnesses or documents to be used for impeachment or rebuttal purposes.

D. Hearing.

(1) Unless the delegation has been rescinded according to §B(2), (3), or (4) of this regulation, the administrative law judge shall conduct an evidentiary hearing governed by the Administrative Procedure Act and COMAR 28.02.01.

(2) Evidence otherwise admissible under COMAR 28.02.01 may not be excluded solely on the ground that the evidence is not recited in the charging document.

(3) During these proceedings, the administrative law judge shall treat all records except for a charging document issued by the Board as confidential and sealed.

(4) Construction.

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

(b) In the event of a conflict between §C of this regulation and COMAR 28.02.01, §C of this regulation shall apply.

(5) The administrative law judge shall issue to the Board a written proposed decision including, where applicable, proposed findings of fact, proposed conclusions of law, and a proposed disposition after the conclusion of the hearing.

**.05 Board Exceptions Process and Final Order.**

A. Application.

(1) This regulation applies to cases under Health Occupations Article, §§1-307, 14-405, 14-5A-17(b), 14-5B-14(b), 14-5C-17(b), 14-5D-15, and 15-315 Annotated Code of Maryland.

(2) This regulation does not apply to cases under Health Occupations Article, §14-404(b), 14-5A-17(c), 14-5B-14(c), 14-5C-14(c), 14-5D-14(b), or 15-314(b), Annotated Code of Maryland, or to cease and desist orders issued under Health Occupations Article, §14-206(e), Annotated Code of Maryland.

B. Exceptions.

(1) Written Exceptions.

(a) Any party may file with the Board exceptions to a proposed decision of an Administrative Law Judge within 15 days of its issuance. A party may file a response to any exceptions within 15 days of the date the exceptions are filed. The Board may extend the period for filing exceptions and responses. The Board may grant a party filing exceptions the opportunity to file a reply to a response within a stated period of time as determined by the Board in any specific case. No further exceptions or responses of any kind may be accepted.

(b) Format.

(i) Written exceptions and responses to exceptions are limited to 15 pages in length, double-spaced and in at least 12-point type, and with margins of at least 1 inch.

(ii) Any reply to responses to exceptions is limited to five pages in the same format.

(iii) If a party attaches any part of the record to the exceptions, response, or reply, the attached pages are not to be encompassed within the applicable page limit. The Board may require the attachment of those parts of the record cited in the exceptions in a form designated by the Board.

(c) Exceptions, responses, and replies may refer to the record by citing the exhibit number or the transcript page.

(d) The Board chair or the Board chair's designee may in each case rule on specific procedural issues with respect to written exceptions.

(e) The Board may not accept additional evidence through the written exceptions process.

(2) Oral Exceptions Hearing.

(a) If either party files exceptions, the Board shall schedule a hearing, ordinarily 30 days after the receipt of responses to the exceptions, after which the Board shall issue an order containing the Board's findings of fact, conclusions of law, and disposition.

(b) The presiding Board member, usually the Board chair, shall:

(i) Determine all procedural issues that are governed by this section;

(ii) Make any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing; and

(iii) Ordinarily limit oral presentation by the respondent and the administrative prosecutor to 20 minutes each.

(c) The party who filed the first exceptions shall ordinarily proceed first.

(3) Additional Evidence. At the oral exceptions hearing, the Board may not accept additional evidence unless:

(a) Both parties consent to the admission of additional documentary evidence and the Board determines that acceptance of the additional evidence would promote the just and efficient completion of the process; or

(b) The Board determines that either:

(i) A compelling reason exists that would create an obvious injustice if the additional documentary evidence were not considered and the evidence can be admitted without compromising the rights of the other party, including the other party's opportunity to see the proffered evidence in a timely manner or cross-examine the source of the proffered document and present evidence to the contrary; or

(ii) The evidence has been timely proffered before the administrative law judge and the administrative law judge abused his or her discretion in refusing to admit the evidence.

(4) If the parties do not file exceptions, the Board shall consider the record, including the proposed decision of the administrative law judge, and issue its order based on the Board's findings of fact and conclusions of law.

(5) A Board staff member who testified at the hearing before the administrative law judge may not be present during Board deliberations.

C. Board Action.

- (1) Final Order. The Board shall issue a final order within 90 days after the conclusion of:
  - (a) An exceptions hearing; or
  - (b) Other formal Board proceedings.
- (2) Effect of Revocation Order.
  - (a) When a time period is not stated in an order for revocation, the Board may not entertain an application for postdisciplinary reinstatement until at least 3 years after the date of the order.
  - (b) A revocation of a license may not be for less than 1 year and may be permanent.
  - (c) The Board may not entertain an application for postdisciplinary reinstatement after an order of revocation unless:
    - (i) Any time period stated in the order has expired;
    - (ii) Any condition set out in the order has been fulfilled;
    - (iii) The applicant has filed a formal application and paid the fee; and
    - (iv) The applicant meets all of the requirements for reinstatement set out in COMAR 10.32.01.10.
  - (d) The Board shall entertain applications for reinstatement pursuant to the procedures and standards of Regulation .06B of this chapter.
- (3) Denial of Licensure. If the Board issues a final order of denial of an application for initial licensure on disciplinary grounds or on grounds of lack of moral character, the respondent may not reapply for a minimum of 3 years or for a longer period as set out in the order.
- (4) Tolling.
  - (a) Except as a Board order directs otherwise in a specific case, if a licensee subject to probation or suspension fails to renew a license:
    - (i) The failure to renew the license does not remove the suspension or probation from the licensee's disciplinary record during the period of nonrenewal;
    - (ii) Any condition of probation or condition precedent to terminating a suspension that is dependent on possessing a license is tolled until the probationer or suspended licensee again possesses a license; and
    - (iii) The time period of probation or suspension, if any, is tolled until the probationer or suspended licensee again possesses a license.
  - (b) Section C(4)(a) of this regulation does not:
    - (i) Apply to fines; or
    - (ii) Require the Board to reinstate any former licensee.

**.06 Postdisciplinary Reinstatement of a License.**

- A. Postdisciplinary reinstatement after an order of suspension is subject to the following conditions:
  - (1) If an order suspends a license for a certain period of time, the respondent may petition the Board for postdisciplinary reinstatement only pursuant to that order;
  - (2) The Board may not entertain early termination of the suspension;
  - (3) If termination of a suspension is made contingent on the happening of an event, the respondent shall establish the occurrence of the event to the satisfaction of the Board; and
  - (4) If a health care practitioner whose license is suspended fails to renew the suspended license when that license expires, the health care practitioner may petition the Board for termination of suspension only after applying for and meeting the requirements for reinstatement set out in COMAR 10.32.01.10.
- B. Postdisciplinary reinstatement of a revoked or surrendered license is subject to the following conditions:
  - (1) A petitioner for postdisciplinary reinstatement of a revoked or surrendered license shall submit the following:
    - (a) A written application for reinstatement on a form prescribed by the Board;
    - (b) The appropriate fee;
    - (c) Written responses to any questions the Board may propose concerning the reasons the license was revoked or surrendered and the petitioner's current fitness to practice; and
    - (d) Evidence of the completion of continuing medical education credits to the same extent as if the petitioner had been continuously licensed;
  - (2) If a license was revoked or surrendered while the licensee was under investigation or subject to disciplinary charges, the Board may not consider the application for postdisciplinary reinstatement unless:
    - (a) If the letter of surrender indicates that the surrender or the revocation order is for a certain length of time, the time period has expired;
    - (b) If the letter of surrender or revocation order does not indicate a time certain, 3 years have passed since the date of the order; and
    - (c) If the letter of surrender makes reinstatement contingent on certain conditions, those conditions have occurred;
  - (3) The Board may grant postdisciplinary reinstatement of a revoked or surrendered license only in accordance with the terms of the order of revocation or the letter of surrender;
  - (4) The Board may grant postdisciplinary reinstatement subject to any terms and conditions the Board considers appropriate for public safety and the protection of the integrity and reputation of the profession;
  - (5) The Board may convene a reinstatement inquiry panel which:

(a) May conduct an informal inquiry which shall include, if requested, an opportunity for the petitioner to have a personal interview with the panel;

(b) May consider the petitioner's history;

(c) May consider presentations from both the petitioner and the administrative prosecutor's office; and

(d) Shall make a recommendation to the full Board;

(6) The full Board shall consider the application form, the petitioner's responses to the written questions, and the supporting documentation and written arguments, if any, submitted by the petitioner and the administrative prosecutor's office, as well as the reinstatement inquiry panel's recommendation;

(7) The Board shall determine in its discretion if postdisciplinary reinstatement is in the interest of the health and welfare of the general public and consistent with the best interest of the profession; and

(8) A Board decision denying reinstatement may set out when, if ever, a subsequent petition may be submitted.

C. The Board shall issue a final written order on the postdisciplinary reinstatement application that:

(1) Reinstates the license of the petitioner without conditions;

(2) Reinstates the license of the petitioner with one or more of the following conditions:

(a) Probation;

(b) Requirements for supervision;

(c) Further review of competence or performance;

(d) Limitations on practice; or

(e) Other conditions that the Board considers necessary; or

(3) Denies reinstatement.

D. An order granting or denying postdisciplinary reinstatement is an order resulting from formal disciplinary action.

E. A petition for postdisciplinary reinstatement may be withdrawn only with the permission of the Board. The Board may not refund the fee except for extraordinary cause.

#### **.07 Judicial Review.**

A. A respondent whose license has been sanctioned by a final order of the Board after a contested case proceeding may seek judicial review of the Board's decision as provided under Health Occupations Article, §14-408(b), Annotated Code of Maryland.

B. An individual whose application for initial licensure or administrative reinstatement has been denied by a final Board order after a contested case proceeding may appeal the decision as provided under Health Occupations Article, §14-408(b), 14-5A-17.1, 14-5B-14.1, 14-5D-15, or 15-315(b), Annotated Code of Maryland.

#### **END NEW**

#### **[.04] .08 Proceedings under Health Occupations Article, §§14-404(b), 14-5A-17(c), [and] 14-5B-14(c), 14-5C-17(c), 14-5D-14(b), and 15-314(b), Annotated Code of Maryland.**

A. In this regulation, "health care provider" means an individual who is a:

(1)—(2) (text unchanged)

(3) [Certified medical radiation technologist; or] *Licensed radiographer*;

(4) [Certified] *Licensed nuclear medical technologist*[.];

(5) *Licensed radiation therapist*;

(6) *Licensed radiologist assistant*;

(7) *Licensed polysomnographic technologist*;

(8) *Licensed athletic trainer*; or

(9) *Licensed physician assistant*.

B. Health Occupations Article, §§14-404(b), 14-5A-17(c), [and] 14-5B-14(c), 14-5C-17(c), 14-5D-14(b), and 15-314(b), Annotated Code of Maryland, [governs] *govern* mandatory actions of the suspension or revocation of a license on the filing of certified docket entries, if the health care provider is convicted of or pleads guilty, *including by an Alford plea, or a plea of nolo contendere to a crime involving moral turpitude.*

C. Procedures.

(1) The Office of the Attorney General through Board counsel shall provide to the Board certified docket entries of the criminal court proceeding and the following documents from the court record:

(a) (text unchanged)

(b) For a plea of guilty, *including an Alford plea, or a plea of nolo contendere*, at least one of the following:

(i)—(iv) (text unchanged)

(2) When the Board determines that documents provided to it indicate that the respondent comes within the language and intent of Health Occupations Article, §14-404(b), 14-5A-17(c), [or] 14-5B-14(c), 14-5C-17(c), 14-5D-14(b), or 15-314(b), Annotated Code of Maryland, and the Board has a basis for finding preliminarily that it applies to the respondent, the Board shall vote to issue an order requiring the respondent to show cause why the Board should not take action under this section.

(3)—(4) (text unchanged)

D. (text unchanged)

E. Opportunity to Be Heard.

(1)—(2) (text unchanged)

(3) The respondent may also, within 30 days of service of the show cause order, request an opportunity to address the Board by a limited evidentiary hearing on the same issues. However, this argument may not be as of right, but is discretionary based on the existence of genuine issues of material fact or law *as determined by the Board*.

(4) The presiding Board member, usually the Board chair, shall determine all procedural issues that are governed by this section, and may impose reasonable time limitations. The presiding Board member shall make any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing. Ordinarily, the respondent and the administrative prosecutor shall limit their oral presentation to [30] 20 minutes each. The respondent shall proceed first.

(5)—(6) (text unchanged)

F. (text unchanged)

G. Burdens of Production and Persuasion.

(1) (text unchanged)

(2) The administrative prosecutor bears the burden of persuasion by [clear and convincing evidence] *a preponderance of the evidence* that the respondent was convicted of or pled guilty or nolo contendere to a crime of moral turpitude.

H. Board Action.

(1) (text unchanged)

(2) A pending appeal of the conviction or plea does not operate as a bar to the Board's acting under Health Occupations Article, §14-404(b)(1), 14-5A-17(c)(1), [or] 14-5B-14(c)(1), 14-5C-17(c), 14-5D-14(b)(1), or 15-314(b), Annotated Code of Maryland.

(3) A respondent suspended pursuant to Health Occupations[,] Article, §§14-404(b), 14-5A-17(c), [or] 14-5B-14(c), 14-5C-17(c), 14-5D-14(b)(1), or 15-314(b), Annotated Code of Maryland, shall be reinstated immediately upon the filing of a certified docket entry that the conviction has been reversed. The reinstatement does not terminate any other disciplinary action or investigation pending against the respondent.

#### [.05] .09 Summary Suspension.

A.—C. (text unchanged)

D. Predeprivation Hearing Before the Board.

(1) The presiding Board member shall determine all procedural issues that are governed by this section, and may impose reasonable time limitations. The presiding Board member may make any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing, and shall limit the oral presentation by the respondent and the administrative prosecutor to [30] 20 minutes each. The respondent shall proceed first.

(2)—(3) (text unchanged)

E.—I. (text unchanged)

J. Evidentiary Hearing Before the Administrative Law Judge.

(1) (text unchanged)

(2) After a full evidentiary hearing, the administrative law judge shall provide the Board with proposed findings of fact and conclusions of law and proposed disposition. The administrative prosecutor and respondent may file exceptions in accordance with Regulation [.03F] .05B of this chapter. After the Board issues its final order, the respondent may appeal this decision in accordance with Regulation [.03H] .07 of this chapter.

#### ALL NEW

#### .10 Sanctioning and Imposition of Fines.

A. General Application of Sanctioning Guidelines.

(1) Sections A and B of this regulation and Regulation .11A and B of this chapter do not apply to offenses for which a mandatory sanction is set by statute or regulation.

(2) Except as provided in §B of this regulation, for violations of the sections of the Medical Practice Act listed in the sanctioning guidelines, the Board shall impose a sanction not less severe than the minimum listed in the sanctioning guidelines nor more severe than the maximum listed in the sanctioning guidelines for each offense.

(3) Ranking of Sanctions.

(a) For the purposes of this regulation, the severity of sanctions is ranked as follows, from the least severe to the most severe:

- (i) Reprimand;
- (ii) Probation;
- (iii) Suspension; and
- (iv) Revocation.

(b) A stayed suspension in which the stay is conditioned on the completion of certain requirements is ranked as probation.

(c) A stayed suspension not meeting the criteria for §A(3)(b) of this regulation is ranked as a reprimand.

(d) A fine listed in the sanctioning guidelines may be imposed in addition to but not as a substitute for a sanction.

(e) The addition of a fine does not change the ranking of the severity of the sanction.

(4) The Board may impose more than one sanction, provided that the most severe sanction neither exceeds the maximum nor is less than the minimum sanction permitted in the chart.

(5) Any sanction may be accompanied by conditions reasonably related to the offense or to the rehabilitation of the offender. The inclusion of conditions does not change the ranking of the sanction.

(6) If a licensee has violated more than one ground for discipline as set out in the sanctioning guidelines:

(a) The sanction with the highest severity ranking should be used to determine which ground will be used in developing a sanction; and

(b) The Board may impose concurrent sanctions based on other grounds violated.

(7) Notwithstanding the sanctioning guidelines set forth in Regulation .11 of this chapter, in order to resolve a pending disciplinary action, the Board and the licensee may agree to a surrender of license or a consent order with terms, sanction, and fine agreed to by the Board, the administrative prosecutor, and the licensee.

(8) Depending on the facts and circumstances of each case, and to the extent that the facts and circumstances apply, the Board may consider the aggravating and mitigating factors set out in §B(4) and (5) of this regulation and may in its discretion determine, based on those factors, that an exception should be made and that the sanction in a particular case should fall outside the range of sanctions listed in the sanctioning guidelines.

(9) If the Board imposes a sanction that departs from the sanctioning guidelines set forth in Regulation .11 of this chapter, the Board shall state its reasons for doing so in its final decision and order.

#### B. Aggravating and Mitigating Factors.

(1) Depending on the facts and circumstances of each case, and to the extent that the facts and circumstances apply, the Board may consider the aggravating and mitigating factors set out in §B(4) and (5) of this regulation and may in its discretion determine, based on those factors, that an exception should be made and that the sanction in a particular case should fall outside the range of sanctions listed in the sanctioning guidelines.

(2) Nothing in this regulation requires the Board or an Administrative Law Judge to make findings of fact with respect to any of these factors.

(3) A departure from the sanctioning guidelines set forth in Regulation .11 of this chapter is not a ground for any hearing or appeal of a Board action.

(4) 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 out in the sanctioning guidelines.

(5) Mitigating factors may include, but are not limited to, the following:

(a) The absence of a prior disciplinary record;

(b) The offender self-reported the incident;

(c) The offender voluntarily admitted the misconduct, made full disclosure to the Board and was cooperative during the Board proceedings;

(d) The offender implemented remedial measures to correct or mitigate the harm arising from the misconduct;

(e) The offender made good faith efforts to make restitution or to rectify the consequences of the misconduct;

(f) The offender has been rehabilitated or exhibits rehabilitative potential;

(g) The misconduct was not premeditated;

(h) There was no potential harm to patients or the public or other adverse impact; or

(i) The incident was isolated and is not likely to recur.

(6) Aggravating factors may include, but are not limited to, the following:

(a) The offender has a previous criminal or administrative disciplinary history;

(b) The offense was committed deliberately or with gross negligence or recklessness;

(c) The offense had the potential for or actually did cause patient harm;

(d) The offense was part of a pattern of detrimental conduct;

(e) The offender committed a combination of factually discrete offenses adjudicated in a single action;

(f) The offender pursued his or her financial gain over the patient's welfare;

(g) The patient was especially vulnerable;

(h) The offender attempted to hide the error or misconduct from patients or others;

(i) The offender concealed, falsified or destroyed evidence or presented false testimony or evidence;

(j) The offender did not cooperate with the investigation; or

(k) Previous attempts to rehabilitate the offender were unsuccessful.

#### C. Fines for Unauthorized Practice of Medicine.

(1) The Board may impose a fine as provided in §C(3) of this regulation for

(a) Practicing medicine without a license in violation of Health Occupations Article, §14-601, Annotated Code of Maryland; or

(b) A violation of an order of cease and desist from practicing medicine without a license.

(2) Factors in determining the amount of a fine include, but are not limited to the following:

(a) The extent to which the respondent derived any financial benefit from the improper conduct;

(b) The willfulness of the improper conduct;

(c) The extent of actual or potential public harm caused by the improper conduct, and

(d) The deterrent effect of the fine.

(3) Range of Fines Imposed.

(a) Except as specified in §C(3)(b) of this regulation, the Board may impose fines as follows:

(i) For the first violation, not less than \$1,000 and not more than \$30,000;

(ii) For the second violation, not less than \$10,000 and not more than \$40,000; and

(iii) For the third violation, not less than \$15,000 and not more than \$50,000.

(b) If the conduct resulted in harm to any patient, the Board may consider each patient seen to be a separate violation when imposing a fine listed in §C(3)(a) of this regulation.

(4) The Board shall pay all monies collected pursuant to this section into the Board's fund.

D. Other Fines.

(1) The Board shall impose a fine of \$100 for a violation of Health Occupations Article, §14-505, Annotated Code of Maryland, and a fine of \$100 for a violation of Health Occupations Article, §14-316(f), Annotated Code of Maryland.

(2) The Board shall pay all monies collected pursuant to §D(1) of this regulation into the Board's fund.

E. Offenses Related to Continuing Medical Education Credits.

(1) First Offense of Failure to Document Credits.

(a) Except as provided in §E(2) or (3) of this regulation, if a licensee has submitted an application claiming the completion of continuing medical education credits and the licensee fails to document the completion of such continuing medical education credits when audited by the Board, the Board may impose a civil fine under Health Occupations Article, §14-316(d)(4), 14-5A-13(d)(2), 14-5B-12(d)(2), 14-5D-12(g), or 15-307(f), Annotated Code of Maryland, of up to \$100 per missing continuing medical education credit in lieu of a sanction under Health Occupations Article, §14-404, 14-5A-17, 14-5B-14, 14-5D-14, or 15-314, Annotated Code of Maryland.

(b) Section E(1)(a) of this regulation does not limit the Board's authority to require completion of the missing continuing medical education credits.

(2) Willful Falsification.

(a) If a licensee has willfully falsified an application with respect to continuing medical education credits, the licensee may be charged under one or more of the following, as appropriate:

(i) Health Occupations Article, §14-404(a)(3), 14-5A-17(a)(3), 14-5B-14(a)(3), 14-5D-14(a)(3), or 15-314(a)(3), Annotated Code of Maryland;

(ii) Health Occupations Article, §14-404(a)(11), 14-5A-17(a)(10), 14-5B-14(a)(10), 14-5D-14(a)(10), or 15-314(a)(11), Annotated Code of Maryland; and

(iii) Health Occupations Article, §14-404(a)(36) or 15-314(a)(36), Annotated Code of Maryland.

(b) Upon a finding of a violation, the Board may impose any discipline authorized under Health Occupations Article, §14-404(a), 14-405.1, 14-5A-17, 14-5B-17, 14-5D-14, 15-314, or 15-316, Annotated Code of Maryland, and the sanctioning guidelines.

(3) Licensees Previously Disciplined Under §E(1) or (2) of this Regulation.

(a) If a licensee has been previously fined or otherwise disciplined under §E(1) or (2) of this regulation, the Board may, for a subsequent offense relating to continuing medical education credits, charge a licensee under one or more of the following, as appropriate:

(i) Health Occupations Article, §14-404(a)(3), 14-5A-17(a)(3), 14-5B-14(a)(3), 14-5D-14(a)(3), or 15-314(a)(3), Annotated Code of Maryland;

(ii) Health Occupations Article, §14-404(a)(11), 14-5A-17(a)(10), 14-5B-14(a)(10), 14-5D-14(a)(10), or 15-314(a)(11), Annotated Code of Maryland; and

(iii) Health Occupations Article, §14-404(a)(36) or 15-314(a)(36), Annotated Code of Maryland.

(b) Upon a finding of a violation, the Board may impose any discipline authorized under Health Occupations Article, §14-404(a), 14-405.1, 14-5A-17, 14-5B-17, 14-5D-14, 15-314, or 15-316, Annotated Code of Maryland, and the sanctioning guidelines for a subsequent offense.

(c) The Board may not apply the sanction described in §E(1) of this regulation in determining a sanction for a licensee previously fined or disciplined for an offense related to continuing medical education credits.

(4) The Board shall pay all monies collected pursuant to this section into the State's General Fund.

F. Payment of Fines.

(1) An individual shall pay to the Board any fine imposed under this regulation within 15 calendar days of the date of the order, unless the order specifies otherwise.

(2) Filing an appeal under State Government Article, §10-222, Annotated Code of Maryland, does not stay payment of a fine imposed by the Board pursuant to this regulation.

(3) If an individual fails to pay, in whole or in part, a fine imposed by the Board pursuant to this regulation, the Board may not restore, reinstate, or renew a license until the fine has been paid in full.

(4) 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.

**.11 Sanctioning Guidelines for Physicians.**

A. Subject to provisions of Regulation .10A and B of this chapter, the Board may impose sanctions as outlined in §B of this regulation on physicians for violations of Health Occupations Article, §14-404(a), Annotated Code of Maryland.

B. Range of Sanctions.

Ground	Maximum Sanction	Minimum Sanction	Maximum Fine	Minimum Fine
(1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another	Revocation	Reprimand with 2 years' probation	\$50,000	\$10,000
(2) Fraudulently or deceptively uses a license	Revocation	Probation	\$50,000	\$10,000
(3) Is guilty of immoral or unprofessional conduct in the practice of medicine, consisting of:				
(a) Sexual impropriety as defined by the Board's regulations at COMAR 10.32.17.02	Revocation	Reprimand	\$50,000	\$10,000
(b) A sexual violation as defined in the Board's regulations at COMAR 10.32.17.02	Revocation	1 year probation	\$50,000	\$10,000
(c) Ethical violations that are not sexual in nature	Revocation	Reprimand	\$50,000	\$5,000
(d) Attesting to earning but failing to earn required number of continuing medical education (CME) credits	Revocation	Reprimand	\$50,000	\$10,000
(4) Incompetence				
(a) Is professionally incompetent	Revocation	Suspension until professional incompetence is addressed to the Board's satisfaction.	\$50,000	\$5,000
(b) Is physically or mentally incompetent	Revocation	Suspension until physical or mental incompetence is addressed to the Board's satisfaction.	\$50,000	\$0
(5) Solicits or advertises in violation of Health Occupations Article, §14-503, Annotated Code of Maryland	Reprimand with probation	Reprimand	\$50,000	\$5,000
(6) Abandons a patient	Revocation	Reprimand	\$50,000	\$10,000
(7) Habitually is intoxicated	Revocation	Suspension until physician is in treatment and has been abstinent for 6 months	\$50,000	\$0
(8) Is addicted to, or habitually abuses, any narcotic or controlled dangerous substance as defined in Criminal Law Article, §5-101, Annotated Code of Maryland	Revocation	Suspension until physician is in treatment and has been abstinent for 6 months	\$50,000	\$0

(9) Provides professional services: (a) While under the influence of alcohol; or (b) While using any narcotic or controlled dangerous substance, as defined in Criminal Law Article, §5-101, Annotated Code of Maryland, or other drug that is in excess of therapeutic amounts or without valid medical indication	Revocation	Suspension until physician is in treatment and has been abstinent for 6 months	\$100,000	\$10,000
(10) Promotes the sale of drugs, devices, appliances, or goods to a patient so as to exploit the patient for financial gain	Suspension for 5 years	Reprimand	\$50,000	\$10,000
(11) Willfully makes or files a false report or record in the practice of medicine	Revocation	Reprimand	\$50,000	\$10,000
(12) Willfully fails to file or record any medical report as required under law, willfully impedes or obstructs the filing or recording of the report, or induces another to fail to file or record the report	Revocation	Reprimand	\$50,000	\$10,000
(13) On proper request, and in accordance with the provisions of Health - General Article, Title 4, Subtitle 3, Annotated Code of Maryland, fails to provide details of a patient's medical record to the patient, another physician, or hospital	Suspension	Reprimand	\$10,000	\$1,000
(14) Solicits professional patronage through an agent or other person or profits from the acts of a person who is represented as an agent of the physician	Suspension for 1 year	Reprimand	\$50,000	\$5,000
(15) Pays or agrees to pay any sum to any person for bringing or referring a patient or accepts or agrees to accept any sum from any person for bringing or referring a patient	Revocation	Reprimand	\$100,000	\$10,000

(16) Agrees with a clinical or bioanalytical laboratory to make payments to the laboratory for a test or test series for a patient, unless the licensed physician discloses on the bill to the patient or third-party payor: (a) The name of the laboratory; (b) The amount paid to the laboratory for the test or test series; and (c) The amount of procurement or processing charge of the licensed physician, if any, for each specimen taken	Suspension for 1 year	Reprimand	\$50,000	\$10,000
(17) Makes a willful misrepresentation in treatment	Revocation	Reprimand	\$50,000	\$10,000
(18) Unauthorized Persons				
(a) Practices medicine with an unauthorized person or aids an unauthorized person in the practice of medicine	Revocation	Reprimand	\$50,000	\$10,000
(b) When the offense under §B(18)(a) of this regulation: (i) Consists solely of a physician permitting an unlicensed allied health professional to work in a hospital (ii) The allied health professional is employed by the hospital, not the physician; (iii) The physician is not employed by the hospital; and (iv) The recruitment, hiring, scheduling, and credentialing of the allied health professional is performed by the hospital and not the physician	Suspension for 1 year	Reprimand	\$50,000	\$0
(19) Grossly overutilizes health care services	Revocation	Reprimand and probation for 2 years	\$50,000	\$10,000
(20) Offers, undertakes, or agrees to cure or treat disease by a secret method, treatment, or medicine	Revocation	Reprimand	\$50,000	\$10,000

(21) Is disciplined by a licensing or disciplinary authority or convicted or disciplined by a court of any state or country or disciplined by any branch of the United States uniformed services or the Veterans' Administration for an act that would be grounds for disciplinary action under this section	Penalty comparable to what MBP imposes under equivalent Maryland ground for discipline	Penalty equivalent to that imposed by original licensing authority if this is lesser than MBP sanction would be.	Fine comparable to what MBP imposes under equivalent Maryland ground for discipline	Fine equivalent to that imposed by original licensing authority if this is lesser than MBP sanction would be
(22) Fails to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State	Revocation	Reprimand	\$50,000	\$5,000
(23) Willfully submits false statements to collect fees for which services are not provided	Revocation	Reprimand	\$50,000	\$10,000
(24) Was subject to investigation or disciplinary action by a licensing or disciplinary authority or by a court of any state or country for an act that would be grounds for disciplinary action under this section, and the licensee: (a) Surrendered the license issued by the state or country to the state or country; or (b) Allowed the license issued by the state or country to expire or lapse	Penalty comparable to what MBP imposes under equivalent Maryland ground for discipline	Penalty equivalent to that imposed by original licensing authority if this is lesser than MBP sanction would be	Fine comparable to what MBP imposes under equivalent Maryland ground for discipline	Fine equivalent to that imposed by original licensing authority if this is lesser than MBP sanction would be
(25) Knowingly fails to report suspected child abuse in violation of the Family Law Article, §5-704, Annotated Code of Maryland	Revocation	Reprimand	\$50,000	\$5,000
(26) Fails to educate a patient being treated for breast cancer of alternative methods of treatment as required by of Health-General Article, §20-113, Annotated Code of Maryland	Reprimand and probation of 1 year with mandatory CMEs	Reprimand	\$50,000	\$5,000

(27) Sells, prescribes, gives away, or administers drugs for illegal or illegitimate medical purposes	Revocation	Reprimand and probation for 3 years with practice oversight	\$100,000	\$10,000
(28) Fails to comply with the provisions of Health Occupations Article, §12-102, Annotated Code of Maryland, regarding dispensing prescriptions	Suspension for 2 years	Reprimand	\$50,000	\$2,500
(29) 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	Suspension for 1 year	Reprimand	\$50,000	\$5,000
(30) Except as to an association that has remained in continuous existence since July 1, 1963: (a) Associates with a pharmacist as a partner or co-owner of a pharmacy for the purpose of operating a pharmacy; (b) Employs a pharmacist for the purpose of operating a pharmacy; or (c) Contracts with a pharmacist for the purpose of operating a pharmacy	Suspension for 3 years	Reprimand	\$50,000	\$5,000
(31) Except in an emergency life-threatening situation where it is not feasible or practicable, fails to comply with the Centers for Disease Control and Prevention's guidelines on universal precautions	Revocation	Reprimand	\$100,000	\$10,000
(32) Fails to display the notice regarding CDC universal precautions, as required under Health Occupations Article, §14-415, Annotated Code of Maryland	Suspension	Reprimand	\$10,000	\$1,000
(33) Fails to cooperate with a lawful investigation conducted by the Board	Revocation	Reprimand	\$50,000	\$10,000

(34) Is convicted of insurance fraud as defined in Insurance Article, §27-801, Annotated Code of Maryland	Revocation	Suspension for 6 months	\$50,000	\$10,000
(35) Is in breach of a service obligation resulting from the applicant's or licensee's receipt of State or federal funding for the licensee's medical education	Revocation	Reprimand	\$100,000	\$10,000
(36) Willfully makes a false representation when seeking or making application for licensure or any other application related to the practice of medicine	Revocation	Reprimand	\$50,000	\$10,000
(37) By corrupt means, threats, or force, intimidates or influences, or attempts to intimidate or influence, for the purpose of causing any person to withhold or change testimony in hearings or proceedings before the Board or those otherwise delegated to the Office of Administrative Hearings	Revocation	Suspension for 3 years	\$50,000	\$10,000
(38) By corrupt means, threats, or force, hinders, prevents, or otherwise delays any person from making information available to the Board in furtherance of any investigation of the Board	Revocation	Suspension for 3 years	\$50,000	\$10,000
(39) Intentionally misrepresents credentials for the purpose of testifying or rendering an expert opinion in hearings or proceedings before the Board or those otherwise delegated to the Office of Administrative Hearings	Revocation	Probation for 3 years	\$50,000	\$10,000
(40) Fails to keep adequate medical records as determined by appropriate peer review	Suspension for 1 year	Reprimand	\$50,000	\$2,500

(41) Performs a cosmetic surgical procedure in an office or a facility that is not: (a) Accredited by: (i) The American Association for Accreditation of Ambulatory Surgical Facilities; (ii) The Accreditation Association for Ambulatory Health Care; or (iii) The Joint Commission on the Accreditation of Health Care Organizations; or (b) Certified to participate in the Medicare program, as enacted by Title XVIII of the Social Security Act	Revocation	Reprimand	\$50,000	\$10,000
(42) Fails to comply with the provisions of Health Occupations Article, §14-504, Annotated Code of Maryland, regarding acupuncture	Revocation of acupuncture registration	Reprimand	\$1,000	\$0
(43) Fails to comply with the provisions of Health Occupations Article, Title 1, Subtitle 3, Annotated Code of Maryland, regarding patient referrals	Revocation	Suspension for 6 months	\$100,000	\$25,000

**END NEW**

**[.07] .12 Recusal in Board Proceedings.**

A.—C. (text unchanged)

D. Participation by a Board member in an investigation, DCCR, [WRP,] *IRP*, or other administrative proceeding involving a respondent does not constitute a basis for recusal in a contested case proceeding unless the Board member has:

(1)—(2) (text unchanged)

**ALL NEW**

**.13 Cease and Desist Orders.**

A. An initial Board order to cease and desist from the unauthorized practice of medicine:

- (1) Is a public document; and
- (2) Is effective immediately unless the order states otherwise.

B. The Board shall serve the initial order by hand delivery, certified mail, or first-class mail.

C. Challenge.

(1) A respondent may challenge the factual or legal basis of the initial order by filing a written opposition within 30 days of its issuance, and may include a request for a hearing.

(2) The Board shall consider that opposition and shall provide a hearing if requested.

(3) After considering the written opposition and the presentations at the hearing, if any, the Board may issue a final order to rescind, modify, or affirm the cease and desist order.

(4) The Board shall serve the final order by hand delivery, certified mail, or first-class mail to the last known address of the respondent.

(5) The respondent may seek judicial review of the Board's final order as provided in the Administrative Procedure Act.

D. Violations of a Cease and Desist Order.

(1) The Board may impose a fine as provided in Regulation .10C of this chapter on any individual who violates a cease and desist order.

(2) Before imposition of a fine for violation of a cease and desist order, the Board shall give notice of the alleged violation, and an opportunity for a hearing.

(3) The hearing may not concern issues:

(a) That were not raised under §C of this regulation; or

(b) That were raised under §C of this regulation, but for which the Board did not grant the relief or modification requested.

(4) The only issues to be considered at the hearing are:

(a) Whether the individual violated the cease and desist order; and

(b) The amount of any fine to be imposed.

(5) The Board shall issue a final order stating whether a violation occurred and if so, the amount of the fine.

(6) The respondent may seek judicial review of the Board's final order as provided in the Administrative Procedure Act.

E. Nothing in this regulation prohibits the Board from delegating any hearing to the Office of Administrative Hearings as permitted by State Government Article, §10-205, Annotated Code of Maryland.

**.14 Proposed Orders; Show Cause Hearings.**

A. Nothing in this chapter prohibits the Board from issuing a charging document with a proposed order which will go into effect if the respondent fails to request a hearing.

B. Nothing in this chapter prohibits the Board from conducting a show cause hearing to determine if there has been:

(1) A violation of probation;

(2) A violation of a condition under which any portion of a disciplinary order was stayed; or

(3) Any other violation of a Board order.

C. The Board may terminate a show cause hearing if it determines that there are material facts in dispute which cannot reasonably be determined in that venue. The Board may then convene an evidentiary hearing or delegate such a hearing to an administrative law judge.

**END NEW**

**JOSHUA M. SHARFSTEIN, M.D.**  
**Secretary of Health and Mental Hygiene**