

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 29 BOARD OF MORTICIANS AND FUNERAL DIRECTORS

Chapter 10 Monetary Penalties

Authority: Health Occupations Article, §§1-212 and 7-317, Annotated Code of Maryland

10.29.10.01

.01 Scope.

These regulations establish standards for the imposition of penalties not exceeding \$5,000 against any mortuary science practitioner licensee in the State if, after a hearing, the Board finds that there are grounds under Health Occupations Article, §7-316, Annotated Code of Maryland, to suspend or revoke a license.

10.29.10.02

.02 Definitions.

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

B. Terms Defined.

(1) "Board" means the State Board of Morticians and Funeral Directors.

(2) "Licensee" means, unless the context requires otherwise, a holder of a license issued by the Board to practice mortuary science in Maryland to the extent permitted under Health Occupations Article, Title 7, Annotated Code of Maryland.

(3) "Penalty" means monetary fine.

10.29.10.03

.03 Imposition of Penalties on Licensees.

A. A penalty of not less than \$100 or more than \$2,500 may be imposed by the Board on a licensee found in violation of any of the following:

(1) Advertising falsely;

(2) Advertising in a misleading manner;

- (3) Employing, paying, or offering to pay an individual to obtain business, either in general or for a particular mortician, funeral director, surviving spouse, or funeral establishment.
- (4) Directly or indirectly paying or offering to pay to obtain mortuary science business;
- (5) Soliciting or accepting any payment or rebate for recommending any crematory, mausoleum, or cemetery;
- (6) Soliciting or accepting any share, certificate, or interest in a mortuary science business with a promise or offer to perform services to the buyer at a cost less than that offered to the general public.
- (7) Selling or offering to sell any share, certificate, or interest in a mortuary science business with a promise or offer to perform services to the buyer at a cost less than that offered to the general public.
- (8) Practicing mortuary science under a name other than the name:
 - (a) That appears on the license of that person, or
 - (b) Of a partnership in accordance with Health Occupations Article, §7-401, Annotated Code of Maryland; or
- (9) Violating any provision of Health Occupations Article, §7-316(a)(18), Annotated Code of Maryland.
- (10) Violating any regulation adopted by the Board.

B. A penalty of not less than \$200 or more than \$3,500 may be imposed by the Board on a licensee found in violation of any of the following:

- (1) Soliciting mortuary science business, either personally or by an agent, from a dying individual or the relatives of a dead or dying individual, other than through general advertising;
- (2) Refusing to surrender custody of a dead human body on the demand of a person who is entitled to its custody;
- (3) Failing to give the written statement required by Health Occupations Article, §7-404, Annotated Code of Maryland, at the time funeral arrangements are made;
- (4) Violating any State, municipal, or county law, rule, or regulation on the handling, custody, care, transportation, or the disposal of dead human bodies, as required by Health Occupations Article, §7-316(a)(15), Annotated Code of Maryland;
- (5) Signing an application for a funeral establishment license if the signer knew or should have known that grounds existed for which the funeral establishment license later was denied, suspended, or revoked;
- (6) Is disciplined by a licensing or disciplinary authority of any other state or county or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under the Board's disciplinary statutes;
- (7) Willfully failing to file or record a report as required under law;
- (8) Willfully impeding or obstructing the filing or recording of a report;
- (9) Inducing another to fail to file or record the report;
- (10) Providing professional services while:

- (a) Under the influence of alcohol; or
 - (b) Using any narcotic or controlled dangerous substance, as defined in Criminal Law Article, Annotated Code of Maryland, or other drug that is in excess of therapeutic amounts or without valid medical indication; or
 - (11) Failing to allow an inspection under Health Occupations Article, §7-205(8), Annotated Code of Maryland.
- C. A penalty of not less than \$500 or more than \$5,000 may be imposed by the Board on a licensee found in violation of any of the following:
- (1) Fraudulently or deceptively obtaining or attempting to obtain a license for the applicant or licensee or for another;
 - (2) Fraudulently or deceptively using a license;
 - (3) Committing fraud or misrepresentation in the practice of mortuary science;
 - (4) Conviction of or plea of guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether any appeal or other proceeding is pending to have the conviction or plea set aside;
 - (5) Aiding or abetting an unauthorized person in the practice of mortuary science;
 - (6) Failing, after proper demand, to refund promptly any payments received under a preneed contract;
 - (7) Willfully making or filing a false report or record in the practice of mortuary science;
 - (8) Submitting a false statement to collect a fee;
 - (9) Being professionally, physically, or mentally incompetent;
 - (10) Committing an act of unprofessional conduct in the practice of mortuary science;
 - (11) Refusing, withholding from, denying, or discriminating 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;
 - (12) Except in an emergency life-threatening situation where it is not feasible or practicable, failing to comply with the Centers for Disease Control's guidelines on universal precautions;
 - (13) Failing to comply with inspection requirements in the time specified by the Board; or
 - (14) Sexual misconduct that includes, but is not limited to:
 - (a) Sexual behavior with a consumer in the context of a professional service to the consumer, regardless of the setting in which the professional service is rendered,
 - (b) Sexual behavior with a consumer of funeral services under the pretext of a benefit,
 - (c) Solicitation of a sexual relationship, whether consensual or nonconsensual, with a consumer of funeral services,
 - (d) Sexual advances requesting sexual favors,

- (e) Inappropriate or intentional touching of a sexual nature,
- (f) A verbal comment of a sexual nature,
- (g) Physical contact of a sexual nature with a consumer of funeral services,
- (h) Discussion of unnecessary sexual matters while providing funeral services,
- (i) The taking of photographs of consumers of funeral services for a sexual purpose,
- (j) Sexual harassment of staff or students,
- (k) An unnecessary sensual act or comment, or
- (l) Sexual contact with an incompetent or unconscious consumer of funeral services.

10.29.10.04

.04 Factors to be Considered in the Assessment of a Penalty.

In those cases in which the Board determines that the imposition of a penalty is appropriate, the Board shall take into consideration the following factors, without limitations, in determining the amount of penalty:

- A. The extent to which the licensee derived any financial benefit from unprofessional or improper conduct;
- B. The willfulness of the unprofessional or improper conduct;
- C. The extent of actual or potential public harm caused by the unprofessional or improper conduct; and
- D. The cost of investigating and prosecuting the case against the licensee.

10.29.10.05

.05 Payment of a Penalty.

- A. A licensee shall pay to the Board a penalty imposed under these regulations as of the date the Board's order is issued, unless the Board's order specifies otherwise.
- B. Filing an appeal under State Government Article, §10-215, Annotated Code of Maryland, or Health Occupations Article, §7-320, Annotated Code of Maryland, does not automatically stay imposition of a penalty imposed by the Board pursuant to these regulations.
- C. If a licensee fails to pay, in whole or in part, a penalty imposed by the Board pursuant to these regulations, the Board may not restore, reinstate, or renew a license until the penalty has been paid in full.
- D. In its discretion, the Board may refer all cases of delinquent payment to the Central Collection Unit of the Department of Budget and Fiscal Planning to institute and maintain proceedings to ensure prompt payment.
- E. The Board shall pay all monies collected pursuant to these regulations into the State's General Fund.

10.29.10.9999

Administrative History

Effective date: January 1, 1996 (22:26 Md. R. 2029)

Regulation .02B amended as an emergency provision effective November 5, 2007 (34:24 Md. R. 2154); amended permanently effective February 25, 2008 (35:4 Md. R. 514)

Regulation .03C amended effective March 5, 2001 (28:4 Md. R. 418)