

# **Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

## **Subtitle 40 BOARD OF PODIATRIC MEDICAL EXAMINERS**

### **Chapter 01 Examination and Post-Graduate Training**

**Authority: Health Occupations Article, §§16-205(a)(1), 16-302(f), and 16-304, Annotated  
Code of Maryland**

*10.40.01.01*

#### **.01 Definitions.**

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

B. Terms Defined.

- (1) "Board" means the Maryland State Board of Podiatric Medical Examiners.
- (2) "Maryland Board Examination" means the test administered by the Maryland State Board of Podiatric Medical Examiners.
- (3) "Maryland Licensing Examination" means the test the Maryland State Board of Podiatric Medical Examiners administers to applicants for licensure.
- (4) "National Board Examination" means the test American Podiatric Medical Licensure Examinations administered by the National Board of Podiatric Medical Examiners.
- (5) "Practiced podiatry actively" means for the immediately preceding 5 years has been actively engaged in the practice of podiatric medicine for at least 400 hours on average per year.

*10.40.01.02*

#### **.02 Examinations.**

A. Only graduates of podiatric medical colleges which at the time of the applicant's graduation had standards equivalent to the standards for colleges approved by the Council on Education of the American Podiatric Medical Association are eligible for examination.

B. The Board requires the following examinations for licensure:

- (1) The National Board Examinations, parts I, II, and III;
- (2) The Maryland Board Examination.

C. The examinations specified in §B(2) of this regulation may be prepared by the Board or by a recognized national or state testing or licensing agency, with the approval of the Board.

D. On each of the National Board Examinations, an applicant shall obtain a passing score as set by the National Board of Podiatric Medical Examiners. This result is required in order to be eligible to take the Maryland Board Examination and, after that, to be licensed by the Board.

E. On the Maryland Board Examination, an applicant shall obtain a passing score, as set by the Board.

F. The examination shall be taken within 1 year of the date of the application.

G. The Maryland Board Examination may include, but is not limited to, the following subject areas:

- (1) Physiology;
- (2) Pharmacology;
- (3) Diagnostic techniques;
- (4) Pathology;
- (5) Patient management;
- (6) Surgical procedures;
- (7) Biomechanics;
- (8) Dermatology;
- (9) Orthopedics;
- (10) Podopediatrics.

H. An individual found by the Board to have engaged in conduct which subverts or attempts to subvert the licensing examination may, at the discretion of the Board, have the results of his licensing examination withheld, or declared invalid, or both. In addition, an individual who has subverted or attempted to subvert the licensing examination may be found ineligible for future licensure following a determination that the individual lacks good moral character as required by Health Occupations Article, §16-302(b), Annotated Code of Maryland, or is guilty of a violation of Health Occupations Article, §16-311(a)(1), Annotated Code of Maryland. Conduct which subverts or attempts to subvert the licensing examination includes, but is not limited to:

- (1) Conduct which violates the security of the examination materials, including but not limited to:
  - (a) Removing from the examination room any of the examination materials;
  - (b) Reproducing a portion of any past or future licensing examination;
  - (c) Aiding by any means in the reproduction of any portions of a past or future licensing examination; or
  - (d) Selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future or current licensing examination;

(2) Conduct which violates the standard of test administration, including, but not limited to:

(a) Communicating with any other examinee during the administration of the licensing examination;

(b) Copying answers from another examinee or permitting one's answers to be copied by another examinee during the administration of the licensing examination; or

(c) Having in one's possession during the administration of the licensing examination any books, notes, written or printed materials or data of any kind, other than the examination materials distributed;

(3) Conduct which violates the credentialing process, including but not limited to:

(a) Falsifying or misrepresenting education credentials or other information required for admission to the licensing examination;

(b) Impersonating an examinee; or

(c) Having an impersonator take the licensing examination on one's behalf.

*10.40.01.03*

### **.03 Applications.**

A. Applications should be filed not later than 30 days before the date of the examination.

B. Application fees are not refundable or transferrable.

*10.40.01.04*

### **.04 Location of Exams.**

A. Board examinations may be given in any locality in the State as determined by the Board of Podiatric Medical Examiners.

B. The applicant will be notified of the location of the examination when his application is approved.

*10.40.01.05*

### **.05 Post-Graduate Clinical Training.**

A. Except as otherwise provided in this regulation, an applicant who submits an application for a license after January 1, 1990 shall demonstrate satisfactory completion of 2 years in a post-graduate medical education program in podiatric medicine and surgery approved by the Council on Education of the American Podiatric Medical Association, or its successor, and approved by the Board, in order to be eligible for the examination.

B. This regulation does not apply to applicants who apply for a limited license.

C. The Board may waive the requirement of this regulation at the request of an applicant who has practiced podiatry actively in another state for at least 5 years immediately before applying for a license in Maryland.

*10.40.01.06*

## **.06 Speech Impairment.**

A. An applicant who claims a speech impairment shall submit a written request to the Board:

- (1) With the applicant's initial licensure application; or
- (2) Within 1 year of development of the impairment.

B. The Board retains the right to waive the 1-year time limit.

C. An applicant may claim a speech impairment only if:

- (1) A speech impairment exists; and
- (2) The Board:
  - (a) Was properly notified of the impairment at the time of initial licensure; or
  - (b) Determines that a medical or surgical event created the impairment after licensure.

D. If an applicant has a properly claimed and documented speech impairment, the Board may grant or renew a license only if the applicant is able to effectively communicate with health care providers and patients.

E. The Board recognizes the following as proof of the applicant's ability to communicate effectively:

- (1) Documentation from:
  - (a) A speech-language pathologist who is currently licensed to practice speech pathology in the United States indicating that the applicant can communicate in a professionally competent manner with patients and other health care providers; or
  - (b) Three Maryland licensed podiatrists that attest to the fact that the applicant can communicate in a professionally competent manner with patients and other health care providers; and
- (2) A personal hearing before the Board during which the applicant relays the manner in which the applicant would:
  - (a) Obtain a history;
  - (b) Conduct a physical examination;
  - (c) Order additional tests;
  - (d) Obtain consultations; and
  - (e) Relay the results of the examination and treatment plan to a patient.

# **Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

## **Subtitle 40 BOARD OF PODIATRIC MEDICAL EXAMINERS**

### **Chapter 02 Licensing and Continuing Education Requirements**

**Authority: Health Occupations Article, §§16-205(a), 16-301, 16-307 and 16-308, Annotated Code of Maryland**

*10.40.02.01*

#### **.01 Scope.**

These regulations govern all podiatrists licensed to practice in the State.

*10.40.02.02*

#### **.02 Definitions.**

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

B. Terms Defined.

(1) "Board" means the Board of Podiatric Medical Examiners.

(2) "Credit hour" means 1 program hour.

*10.40.02.03*

#### **.03 Initial Licensing and License Renewal.**

A. Initial Licensing.

(1) To qualify for licensure, an applicant shall:

(a) Meet all of the requirements as identified in Health Occupations Article, §§16-302—16-305, Annotated Code of Maryland, including submit to a State and national criminal history records check in accordance with Health Occupations Article, §16-302.1, Annotated Code of Maryland; and

(b) Except as provided in §A(2) of this regulation, at the time of application, possess a current cardiopulmonary resuscitation (CPR) certification that was attained through completion of a Board-approved cardiopulmonary resuscitation (CPR) course that includes a hands-on practical component.

(2) The Board may waive, modify, or waive and modify the cardiopulmonary resuscitation (CPR) certification required in §A(1)(b) of this regulation if the applicant submits a written request and documentation that sufficiently demonstrates an extraordinary hardship.

(3) The Board may not issue a license if the criminal history record information required under Health Occupations Article, §16-302.1, Annotated Code of Maryland, has not been received.

#### B. License Renewal.

(1) Biennial renewal of each practitioner's license is contingent upon the submission, upon request of the Board, of satisfactory proof of completion of the required number of credit hours of continuing education programs approved by the Board.

(2) The Board shall establish the required number of credit hours. Except as set forth in §B(5) of this regulation, the required number of credit hours may not exceed 50 hours for 2 years.

(3) The Board may refuse to renew the license of any podiatrist who fails to comply with these regulations.

(4) The licensee shall earn the required number of credit hours on or before December 1 of the license renewal year.

(5) If by December 1 of the license renewal year, the licensee fails to earn the required number of credit hours, the licensee may request an extension of time until December 31 of the license renewal year to earn the required number of credit hours plus an additional number of credit hours as established by the Board. The Board at its discretion, upon good cause shown, may grant an extension of time up to or beyond December 31, and may impose a requirement that the licensee earn up to double the number of required credit hours still to be earned. For example, if on December 1 the licensee has earned only 40 of the 50 required credit hours, the licensee may be required to earn 20 credit hours to meet the continuing education requirement.

(6) To qualify for renewal, a licensee shall possess a current cardiopulmonary resuscitation (CPR) certification that was attained through completion of a Board-approved cardiopulmonary resuscitation (CPR) course that:

(a) Includes a hands-on practical component; and

(b) Is worth 3 credit hours.

(7) The Board may waive, modify, or waive and modify the cardiopulmonary resuscitation (CPR) certification required in §B(6) of this regulation if:

(a) The licensee submits a written request and documentation that sufficiently demonstrates an extraordinary hardship; and

(b) The Board receives the licensee's request not later than October 1 of the license renewal year.

(8) A licensee applying for renewal may earn 1 credit hour for every 5 hours of pro bono podiatric services provided and pre-approved by the Board on a case-by-case basis with a maximum of 5 credit hours per renewal cycle;

C. Unless granted a waiver by the Board in accordance with §B(7) of this regulation, a licensee may not allow the required cardiopulmonary resuscitation (CPR) certification to lapse at any time while licensed by the Board.

D. Of the 50 credit hours required under §B(2) of this regulation:

(1) 25 credit hours:

- (a) Shall be completed in person;
- (b) Shall be directly related to the practice of podiatric medicine; and
- (c) May include:
  - (i) The cardiopulmonary resuscitation (CPR) certification required in §B(6) of this regulation;
  - (ii) Attendance at programs offered at professional or scientific meetings of local, State, regional, national, or international professional or scientific organizations; or
  - (iii) Attendance at regularly scheduled Board meetings;
- (2) No more than 25 credit hours shall be completed online or via other sources;
- (3) All credit hours shall be pre-approved by the Board; and
- (4) The Board may not accept a submission for continuing education credit of less than 0.5 hours.

*10.40.02.04*

#### **.04 Accreditation.**

A. Accreditation by the Board of continuing education programming will be based solely upon the content of the programs. These programs shall be directed toward improvement, advancement, and extension of professional skill and knowledge relating to the practice of podiatry.

B. Upon review of program content by the Board, credit shall be approved for the following:

- (1) Continuing education programs given by a college of podiatric medicine approved by the Council on Education of the American Podiatric Medical Association;
- (2) Lectures and scheduled courses at national and regional meetings of the American Podiatric Medical Association;
- (3) Continuing education programs given or arranged by the Education Committee of the Maryland Podiatric Medical Association.

C. Upon review of program content by the Board, credit may be approved for local, state, regional, or national continuing education courses including postgraduate studies, institutes, seminars, lectures, conferences, workshops, extension studies, home study, approved residency programs, or other forms of continuing education approved by the Board.

D. After review of program content, the Board may withdraw its approval of a previously accredited program, and shall notify all attendant State practitioners of this action as soon as possible.

E. Approved credits may be applied toward fulfillment of the continuing education requirement only in the renewal period in which they are earned.

*10.40.02.05*

## **.05 Substantiation of Credits.**

A. It is the responsibility of each podiatrist to keep accurate records of attendance at approved continuing education programs and to substantiate those records for the current licensing period upon request. Each podiatrist shall maintain records of attendance for a 5-year period.

B. The Board may at any time request that within 10 working days a podiatrist substantiate the credits earned by providing satisfactory proof of completion of approved continuing education programs.

C. The licensee shall show satisfactory proof of completion of approved continuing education programs.

D. The Board shall disallow the requested credits in question, if the licensee is unable to substantiate the required credit hours. The Board may not renew a license if the required continuing education criteria are not met as specified in §§B—C of this regulation. Violation of this regulation may result in revocation or suspension of license or the imposition of other appropriate sanctions.

E. Willful submission of fraudulent information to the Board constitutes a violation of these regulations and may result in revocation or suspension of license or the imposition of other appropriate sanctions.

F. The Board may verify any information received regarding content, certification, and completion of a continuing education program.

*10.40.02.06*

## **.06 Change of Credit Requirement.**

The Board, by majority vote, may vary the number of required credit hours, but except as set forth in Regulation .03E of this chapter, these may not exceed 50 hours every 2 years. The Board shall notify each podiatrist of the change at the time of renewal, which is effective in the year following that renewal, and remains in effect until further notice.

*10.40.02.07*

## **.07 Reinstatement.**

A. This regulation applies to any practitioner who:

(1) Has been on inactive status; or

(2) Applies to the Board for reinstatement of the license and has failed to renew the license for one licensing cycle or a 2-year period, whichever is longer.

B. A practitioner may obtain reinstatement by submitting the following:

(1) Evidence of completion of continuing education requirements equal to those required for the period during which the individual has not held an active license, if this requirement does not exceed 125 hours;

(2) A licensure affidavit;

(3) An acceptable response to an inquiry to the National Healthcare Integrity and Protection Data Bank;

(4) An acceptable history of malpractice cases;

(5) Proof of out-of-State practice preceding the request for reinstatement that is sufficient to demonstrate current clinical proficiency such as:



- (a) De-identified billing records;
- (b) Sworn affidavits from colleagues; or
- (c) Activity log from a hospital or other appropriate agency;

(6) Proof of passing the Jurisprudence Examination as administered by the Board within the last licensing cycle preceding the reinstatement application; and

(7) Reinstatement processing and licensure fees as set forth in COMAR 10.40.03.

*10.40.02.08*

### **.08 Severability.**

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

# **Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

## **Subtitle 40 BOARD OF PODIATRIC MEDICAL EXAMINERS**

### **Chapter 03 Collection of Fees**

**Authority: Health Occupations Article, §§12-102.2 and 16-206, Annotated Code of  
Maryland**

*10.40.03.01*

### **.01 Scope.**

These regulations govern all persons licensed as podiatrists in the State.

*10.40.03.02*

## **.02 Fees.**

The following fees are established by the Board:

### A. License fees:

- (1) Application fee . . . \$50;
- (1-1) Eligibility verification for PM Lexis examination . . . \$50;
- (1-2) Original license fee:
  - (a) January issue . . . \$1,050;
  - (b) July issue . . . \$850;
- (2) Limited license fee . . . \$100;
- (3) Inactive license fee (initial application) . . . \$150;

### B. License renewal fees:

- (1) Biennial license renewal fee (payable in \$525 annual payments) . . . \$1,050;
- (2) Inactive license renewal fee (payable annually) . . . \$50;
- (3) Late renewal fee . . . \$250;

### C. Reinstatement fees:

- (1) Reinstatement of inactive license processing fee . . . \$300;
- (2) Reinstatement of expired license processing fee . . . \$500;
- (3) Reinstatement of inactive or expired license fees:
  - (a) January issue . . . \$1,050;
  - (b) July issue . . . \$850;

### D. Other fees:

- (1) Certification of license fee . . . \$30;
- (2) Duplicate license fee . . . \$50;
- (3) Registration of professional corporation fee . . . \$100;
- (4) Dispensing prescription drug permit fee (payable every 5 years) . . . \$1,050 (\$50 Board processing fee + \$1,000 mandated Division of Drug Control inspection fee for permit to dispense prescription drugs);

(5) Penalty for failure to maintain correct address with the Board . . . \$300;

(6) Roster of licensees fee . . . \$500;

(7) Request for copy of public orders . . . \$50;

E. If an individual pays the original license fee under §A(1-2) of this regulation in a year of renewal, the Board shall charge one installment of the license renewal fee under §B(1) of this regulation.

*10.40.03.03*

### **.03 Change of Fees.**

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

# **Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

## **Subtitle 40 BOARD OF PODIATRIC MEDICAL EXAMINERS**

### **Chapter 04 Code of Ethics**

**Authority: Health Occupations Article, §§1-212, 16-205, and 16-206, Annotated Code of Maryland**

*10.40.04.01*

### **.01 Scope.**

This chapter applies to licensed podiatrists in Maryland.

*10.40.04.02*

### **.02 Sexual Misconduct.**

A. A podiatrist may not engage in sexual misconduct.

B. Sexual misconduct includes, but is not limited to:

(1) Sexual behavior with a patient in the context of a professional evaluation, treatment, procedure, or other service to the patient, regardless of the setting in which the professional service is provided;

(2) Sexual behavior with a patient on the pretense of therapeutic intent of benefit;

- (3) Sexual acts, sexual conduct, vaginal intercourse, or any genital contact, as defined in Criminal Law Article §3-301(e)—(g), Annotated Code of Maryland;
- (4) Solicitation of a sexual relationship, whether consensual or nonconsensual, with a patient;
- (5) Sexual advances requesting sexual favors;
- (6) Therapeutically inappropriate or intentional touching of a sexual nature;
- (7) A verbal comment of a sexual nature;
- (8) Physical contact of a sexual nature with a patient;
- (9) Discussion of unnecessary sexual matters while treating a patient;
- (10) The taking of photographs of patients for a sexual purpose;
- (11) Sexual harassment of staff or students;
- (12) An unnecessary sensual act or comment; or
- (13) Sexual contact with an incompetent or unconscious patient.

*10.40.04.03*

### **.03 Penalties.**

Violation of Regulation .02 of this chapter may result in the Board taking action to reprimand a licensee or place the licensee on probation, or suspend or revoke the licensee's license. The Board may also impose a penalty not exceeding \$50,000.

*10.40.04.9999*

### **Administrative History**

**Effective date: October 2, 2000 (27:19 Md. R. 1726)**

**Regulation .03 amended effective December 22, 2003 (30:25 Md. R. 1848)**

# **Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

## **Subtitle 40 BOARD OF PODIATRIC MEDICAL EXAMINERS**

### **Chapter 05 Hearing Procedures**

**Authority: Health Occupations Article, §§16-313 and 16-314; State Government Article, §10-206; Annotated Code of Maryland**

*10.40.05.01*

#### **.01 Scope.**

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

*10.40.05.02*

#### **.02 Definitions.**

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

B. Terms Defined.

(1) “Administrative law judge” means the hearing officer assigned to preside over a hearing in a case the Board has delegated to the Office of Administrative Hearings.

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

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

(4) “Board” means the State Board of Podiatric Medical Examiners.

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

(6) “Case resolution conference committee” means a committee composed of one or more members of the Board that makes recommendations to the Board regarding settlement of disciplinary matters.

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

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

- (b) An unlicensed individual to cease the unauthorized practice of podiatry.
- (8) “Charging document” means a nonpublic record issued by the Board which:
- (a) Alleges conduct by a licensee which the Board believes constitutes a violation under the Maryland Podiatry Act;
  - (b) Sets forth provisions of the Maryland Podiatry Act that the Board believes were violated; and
  - (c) Provides notice to the licensee of disciplinary proceedings before the Board.
- (9) “Complaint” means a written allegation received by the Board that a licensee may have violated the Maryland Podiatry Act and which may be grounds for an investigation or disciplinary action by the Board.
- (10) “Consent order” means a public record issued by the Board that is a final order of the Board that has been negotiated and agreed to by both the licensee and the Board to resolve a disciplinary matter.
- (11) “Contested case” means a proceeding conducted under the Administrative Procedure Act.
- (12) “Disposition agreement” means a nonpublic agreement entered into with a licensee instead of formal disciplinary action, in which the licensee agrees to comply with certain conditions.
- (13) “Final order” means a public record issued by the Board resolving a contested case either by consent or after an adjudication, which includes findings of fact, conclusions of law, and a disposition which:
- (a) Denies a license;
  - (b) Sanctions by reprimand, probation, fine, or suspension or revocation of a license;
  - (c) Summarily suspends a license;
  - (d) Dismisses charges;
  - (e) Surrenders a license; or
  - (f) Takes any other action that the Board may do by law.
- (14) “Imperatively requires emergency action” means a finding by the Board that an emergency action be taken against a licensee under State Government Article, §10-226(c)(2), Annotated Code of Maryland, based on investigative facts that raise a substantial likelihood of risk of harm to the public health, safety, or welfare before a full evidentiary hearing can be held.
- (15) “Informal action” means that the Board closes a case without taking formal disciplinary action or without issuing a final order, by imposing a disciplinary sanction consisting of a:
- (a) Letter of education;
  - (b) Letter of admonishment;
  - (c) Cease and desist letter; or
  - (d) Disposition agreement.

(16) “Investigation” means the gathering of information to assist the Board in determining if there is reasonable cause to charge a licensee with a violation of the Maryland Podiatry Act.

(17) Letter of Admonishment.

(a) “Letter of admonishment” means informal action consisting of a nonpublic letter issued by the Board closing a case, if the Board believes a licensee has engaged in conduct that violates the Maryland Podiatry Act, admonishing the licensee not to repeat the conduct.

(b) “Letter of admonishment” may include an agreement that the licensee perform certain conditions instead of the Board taking formal disciplinary action.

(18) “Letter of education” means informal action consisting of a nonpublic letter to a licensee:

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

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

(19) Letter of Surrender.

(a) “Letter of surrender” means a public letter accepted by the Board in which the licensee agrees to surrender the license to practice podiatry.

(b) “Letter of surrender” may include conditions for the Board’s acceptance of the surrender as a resolution of the case.

(20) “Licensure” means permission to engage in the practice of podiatry which is evidenced by a license issued by the Board.

(21) “Maryland Podiatry Act” means Health Occupations Article, Title 16, Annotated Code of Maryland.

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

(23) “Preliminary review” means the gathering of information to be used by the Board to determine if the Board should dismiss a complaint or conduct further investigation to determine if there is reasonable cause to charge a licensee with a violation of the Maryland Podiatry Act.

(24) “Probation” means a sanction imposed by the Board in a public final order in which the licensee is:

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

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

(25) “Public record” means a document that the Board is permitted or required to disclose to the public under General Provisions Article, Title 4, Annotated Code of Maryland.

(26) “Recommended decision” means a nonpublic record issued to the Board by an administrative law judge that sets out proposed findings of fact, proposed conclusions of law, a proposed sanction, or any combination of them.

(27) “Recusal” means the disqualification of a member of the Board to participate in a proceeding because of interest, bias, or some other reason that may interfere with the Board member’s participation in a case.

(28) “Respondent” means a licensee, subject to the jurisdiction of the Board, that has been:

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

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

(c) Notified as to potential violation of Health Occupations Article, §16-501 or 16-502, Annotated Code of Maryland.

(29) “Revocation” means the removal of a podiatrist’s license to practice podiatry.

(30) “Sanction” means an action by the Board, including a:

(a) Reprimand;

(b) Placement on probation;

(c) Fine; or

(d) Suspension or revocation of a license.

(31) “Show cause hearing” means a nonevidentiary hearing before the Board in which the licensee has the opportunity to demonstrate to the Board why the Board should not issue a proposed order or take an action that the Board may take.

(32) “Summary suspension” means the indefinite suspension of a license under State Government Article, §10-226(c)(2), Annotated Code of Maryland, taken if the Board believes the action is necessary to protect the public health, safety, or welfare.

(33) “Surrender” means the voluntary relinquishing of a license to practice podiatry that may be subject to certain conditions set by the Board.

(34) “Suspension” means a temporary denial of the right to use a license and is usually defined by:

(a) A specific period of time;

(b) Specific dates; or

(c) Specific conditions.

(35) “Violation” means an act or omission prohibited under Health Occupations Article, §16-311, Annotated Code of Maryland.

*10.40.05.03*



### **.03 Confidentiality of Proceedings.**

A. Except as otherwise provided by law, the proceedings of the Board are confidential. The parties may not waive the confidentiality provided by this regulation.

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

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

*10.40.05.04*

### **.04 Representation by Counsel.**

A. A respondent may be represented by counsel at any stage of a formal disciplinary action.

B. If a hearing is held on a matter, the respondent shall be represented:

(1) In proper person; or

(2) By an attorney who has been:

(a) Admitted to the Maryland Bar; or

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

C. The Board may request the Office of the Attorney General to participate in a hearing to present the case on behalf of the State.

D. The member of the Office of the Attorney General presenting the case on behalf of the State has the same rights as any party with regard to:

(1) Submission of evidence, examination, and cross-examination of witnesses; and

(2) The filing of objections, exceptions, and motions.

E. The Board may request a member of the Office of the Attorney General to act as legal advisor to the Board on questions of:

(1) Procedure;

(2) Evidence; and

(3) Law.

*10.40.05.05*

## **.05 Proceedings under Health Occupations Article, §16-311, Annotated Code of Maryland.**

### A. Investigation of Complaints.

(1) The Board may:

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

(b) Recommend that cases involving complaints over which the Board lacks jurisdiction be closed.

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

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

### B. Prosecution of Complaint.

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

(a) Dismiss the complaint;

(b) Close the case with informal action;

(c) Issue a cease and desist order;

(d) Refer the matter for further investigation; or

(e) Vote to:

(i) Charge a licensee with a violation of Health Occupations Article, §19-311, Annotated Code of Maryland;

(ii) Consider the matter as a basis for summary suspension if the Board finds that the matter imperatively requires emergency action under State Government Article, §10-226(c)(2), Annotated Code of Maryland;

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

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

(2) The Board may refer a complaint or other disciplinary matter to the administrative prosecutor at anytime, regardless of whether it has voted to charge a licensee with violations of the Maryland Podiatry Act.

### C. Charges and Notice of Initial Denial.

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

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

(b) Hand-delivered in person; or

(c) Served by other means reasonable to effect service.

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

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

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

(i) Violation of the Maryland Podiatry Act; or

(ii) Denial of licensure;

(c) Notify the respondent of:

(i) Any proceedings scheduled before the Board or of an opportunity to request a hearing within a certain period of time; and

(ii) The consequences of failing to appear for scheduled proceedings or failing to request a hearing; and

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

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

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

D. Discovery.

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

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

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

(c) Both §D1(a) and (b) of this regulation.

(2) Mandatory Discovery.

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

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

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

(b) If the Board or the Office of Administrative Hearings, as appropriate, finds that the report is not sufficiently specific, or otherwise fails to comply with the requirements of §D(2)(a) of this regulation, the Board or the Office of

Administrative Hearings, as appropriate, shall exclude from the hearing the testimony of the expert and any report of the expert.

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

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

(ii) Immediately before the scheduled hearing.

(d) If an expert adopts a sufficiently specific charging document as the expert's report, that adoption satisfies the requirements set forth in §D(2)(a)(ii) of this regulation.

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

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

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

(a) The prehearing conference, if scheduled; or

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

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

(7) Construction.

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

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

E. Case Resolution Conference.

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

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

(3) Except as provided in Regulation .05E(1) of this chapter, the Board may deny a respondent's request for a case resolution conference.

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

(5) Recommendations of the case resolution conference are not binding on the Board, which may:

(a) Modify a proposed settlement;

- (b) Require additional conditions; or
- (c) Reject the recommendation and require the respondent to proceed to a hearing.
- (6) If the respondent and the administrative prosecutor are unable to reach an agreement for settlement that is recommended by the case resolution conference committee and ratified by the Board, the matter shall proceed to a hearing on the charges or notice of initial denial.
- (7) If the respondent disagrees with the recommendation of the case resolution conference committee, the respondent may elect to proceed to a hearing in the matter, regardless of whether the Board has ratified the recommendation of the case resolution conference committee.
- (8) Participation in a case resolution conference is not ordinarily a basis for recusal of a Board member, Board counsel, or Board prosecutor from further proceedings in a case.

*10.40.05.06*

## **.06 Sanctions, Hearings, and Final Order.**

### **A. Surrender of License.**

- (1) The Board may require conditions for surrender of a license, including:
  - (a) An admission of a violation of the Maryland Podiatry Act;
  - (b) An admission of facts;
  - (c) A statement of the circumstances under which the surrender was offered or accepted;
  - (d) Restrictions on future licensure;
  - (e) Conditions for reinstatement of the license; or
  - (f) An agreement that the respondent may not apply for reinstatement of the license.
- (2) Unless the Board determines that disclosure of the surrender is not in the public interest, a letter of surrender is a final order of the Board and is a public record under the General Provisions Article, §4-101 et seq., Annotated Code of Maryland.

### **B. Hearings on Charges or Notice of Initial Denial.**

- (1) Hearings shall be conducted under State Government Article, Title 10, Annotated Code of Maryland.
- (2) The Board may delegate its authority to hear contested cases to the Office of Administrative Hearings.
- (3) Proceedings may not be open to the public.
- (4) All records, including the recommended decision, shall be confidential and sealed.
- (5) If a matter has been delegated to the Office of Administrative Hearings, the administrative law judge presiding over the proceedings shall issue to the Board a recommended decision containing:

- (a) Proposed or final findings of fact;
- (b) Proposed or final conclusions of law;
- (c) A proposed sanction; or
- (d) A combination of §B(5)(a)—(c) of this regulation pursuant to the Board’s delegation.

C. Burden of Proof.

- (1) A licensee to whom the Board has issued a notice of initial denial has the burden to demonstrate by a preponderance of the evidence that the licensee is entitled to licensure or to receive the benefit sought which the Board has initially denied.
- (2) The Board has the burden to demonstrate by a preponderance of the evidence that the licensee has committed a violation or violations of the Maryland Podiatry Act.

D. Exceptions and Exceptions Hearing.

- (1) If a matter has been delegated by the Board to the Office of Administrative Hearings, a party may file exceptions to the administrative law judge’s proposed findings of fact, proposed conclusions of law, and proposed sanction, as set out in the recommended decision, before the Board makes a final decision.
- (2) Unless otherwise permitted by the Board, within 15 days after the issuance of the recommended decision, or as otherwise specified by the administrative law judge in the recommended decision, either party may file written exceptions with the Board.
- (3) Unless otherwise permitted by the Board, a party’s written exceptions may not be longer than 25 double-spaced pages, and shall state with particularity the finding of fact, conclusion of law, or other matter excepted to, and the relevant portions of the record supporting the party’s exception.
- (4) Unless otherwise permitted by the Board, within 10 days after a party’s exceptions are filed with the Board, the opposing party may file an answer to exceptions.
- (5) Unless otherwise permitted by the Board, a party’s answer to exceptions may not be longer than 25 double-spaced pages, and shall state with particularity a response to an exception and the relevant portions of the record supporting that response.
- (6) Unless otherwise permitted, the Board may not consider a party’s response to an answer to the exceptions.
- (7) Unless otherwise agreed by the parties and permitted by the Board, an exceptions hearing shall be scheduled for the next meeting of the Board after receipt of the parties’ exceptions and any answer to exceptions.
- (8) Exceptions Hearing.
  - (a) An exceptions hearing shall be held before the Board.
  - (b) The hearing shall be a nonevidentiary hearing to provide the parties with an opportunity for oral argument on the exceptions and answers to exceptions.
  - (c) The Board member presiding at the hearing shall determine all procedural issues and may impose reasonable time limits on each party’s oral argument.

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

(e) The respondent and the administrative prosecutor each may not exceed 30 minutes to present oral argument.

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

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

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

#### E. Board Final Decision and Order.

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

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

*10.40.05.07*

### **.07 Probation and Violation of Probation Proceedings.**

A. If the Board imposes a period of probation as a sanction, the Board may impose conditions of probation which the Board considers appropriate, including but not limited to:

(1) Reeducation or completion of approved courses;

(2) Payment of a fine;

(3) Providing free podiatry services in a Board-approved program;

(4) Practicing under supervision;

(5) Monitoring by the Board or by an individual or entity approved by the Board, with periodic reporting to the Board;

(6) Periodic review of a licensee's clinical practices or billing;

(7) Periodic audits of a licensee's billing practices;

(8) An examination by a physician or other appropriate health care provider;

(9) Limitation of the licensee's practice;

(10) Obtaining a passing score on an appropriate examination; or

(11) Any other condition the Board considers appropriate for the rehabilitation or retraining of a licensee.

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

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

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

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

- (1) Charge the licensee with a violation of probation;
- (2) Take any action the final order or consent order provides for a violation of probation, including suspension of the license;
- (3) Consider a summary suspension of the license; or
- (4) Take any other action the Board considers appropriate and may take by law.

E. Charges for Violation of Probation.

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

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

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

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

(c) Notify the respondent of:

(i) Any proceedings scheduled before the Board or of an opportunity to request a hearing within a certain period of time; and

(ii) The consequences of failing to appear for those proceedings or failing to request a hearing.

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

F. Violation of Probation Hearing. A hearing for a violation of probation shall be held as set out in Regulation .05E of this chapter.

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

- (1) Take any action the consent order or final order provides for a violation of probation;
- (2) Impose additional conditions of probation; or



(3) Impose a sanction or take any other action the Board considers appropriate and may take by law.

*10.40.05.08*

## **.08 Post-Disciplinary Reinstatement of a License.**

### **A. Reinstatement.**

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

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

(3) A licensee whose license has been revoked or surrendered for 5 or more years before filing a petition for reinstatement is ineligible for reinstatement but may apply for initial licensure.

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

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

(b) Meet the requirements for reinstatement.

### **B. Consideration of a Petition for Reinstatement**

(1) In considering a petition for reinstatement, the Board may review the licensee's entire Board file, including any information the Board received after the licensee's suspension, revocation, or surrender.

(2) The Board may require the licensee to undergo medical, psychological, psychiatric evaluations, and/or require drug and alcohol testing to determine the licensee's fitness to have their license reinstated.

(3) It is the licensee's burden, as an applicant for reinstatement, to demonstrate that the licensee meets all of the Board's requirements for reinstatement of the license at the time of the submission of the petition for reinstatement.

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

*10.40.05.09*

## **.09 Judicial Review.**

A final order of the Board is subject to judicial review as provided in Health Occupations Article, §16-315 and State Government Article, §10-222, Annotated Code of Maryland.

*10.40.05.10*

## **.10 Cost Recovery.**

If after a hearing, a licensee is found to have violated any of the provisions of Health Occupations Article, §16-311, Annotated Code of Maryland, the Board shall be entitled to reimbursement of costs by the licensee including any or all of the following items:

- A. Services rendered by court reporters;
- B. Transcription of the hearing record by court reporters;
- C. Expenses related to witnesses appearing for the State;
- D. Obtaining or reproducing documents, exhibits, or other evidentiary items;
- E. Hearing-related per diems and expenses for Board members; and
- F. Other expenses directly related to the investigation and prosecution of the disciplinary action against the licensee.

# **Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

## **Subtitle 40 BOARD OF PODIATRIC MEDICAL EXAMINERS**

### **Chapter 06 Advertising**

**Authority: Health Occupations Article, §§16-205(a)(1) and 16-311(a)(20), Annotated Code of Maryland**

*10.40.06.01*

### **.01 Scope.**

These regulations govern advertising by all podiatrists in Maryland.

*10.40.06.02*

### **.02 Definitions.**

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

B. Terms Defined.

(1) "Advertising" means calling to the attention of the public the services one has to offer.

(2) "Board" means the State Board of Podiatric Medical Examiners.

(3) "Podiatrist" means an individual who holds, or is required to hold, a current license to practice podiatry in Maryland.

*10.40.06.03*

### **.03 Advertising.**

A. A podiatrist may advertise the services offered by the podiatrist subject to the provisions of this regulation.

B. Advertisements. Subject to Regulation .04 of this chapter, a podiatrist may:

(1) Place advertisements in any form of print or electronic media; or

(2) Refer to himself or herself as a:

(a) "Podiatrist";

(b) "Foot and ankle specialist"; or

(c) "Foot and ankle surgeon".

C. An advertisement may not include statements:

(1) Containing misrepresentation of facts;

(2) Likely to mislead or deceive because in context the statement makes only a partial disclosure of relevant facts;

(3) Likely to create false or unjustified expectations of favorable results;

(4) Relating to fees without reasonable disclosure of all relevant variables so that the statement would not be misunderstood or be deceptive to a layman;

(5) Conveying the impression that the podiatrist could influence improperly a public body, official, corporation, or a person on behalf of a patient;

(6) Containing representations or implications that in reasonable probability can be expected to cause an ordinarily prudent person to misunderstand or be deceived; or

(7) Containing representations that the podiatrist is willing to perform any procedure which is illegal under the laws or regulations of Maryland or the United States.

D. A podiatrist shall be accountable under this regulation if the podiatrist uses an agent, partnership, professional association, or health maintenance organization to implement actions prohibited by this regulation.

*10.40.06.04*

## **.04 Solicitation.**

A. A podiatrist may not engage in solicitation, including but not limited to, in person, telephone, or direct mail solicitation which:

- (1) Amounts to fraud, undue influence, intimidation or over reaching; or
- (2) Contains statements which would be improper under Regulation .03C of this chapter.

B. A podiatrist shall be accountable under this regulation if the podiatrist uses an agent, partnership, professional association, or health maintenance organization to implement actions prohibited by this regulation.

*10.40.06.05*

## **.05 Advertisement of Free, Discounted, or Reduced Fee Podiatric Goods or Services.**

A. It is false and misleading advertising for a podiatrist to advertise or otherwise represent that any goods or services (for example, examination or X-rays) shall be offered or performed for:

- (1) Free when the podiatrist in fact requests or receives a fee for reimbursement, directly or indirectly, for providing those goods or services; or
- (2) A discounted or reduced fee when the podiatrist in fact requests or receives, directly or indirectly, a higher fee or reimbursement for providing those goods or services.

B. In addition to the free, discounted, or reduced price goods or services, a podiatrist, who has not obtained the written informed consent of the patient in the form as shown in §C of this regulation, may not for a fee offer or provide any podiatric goods or services to a patient within 72 hours of the date the patient presents a coupon, voucher, similar document, or advertisement offering:

- (1) "Free" podiatric goods or services; or
- (2) Podiatric goods or services for a discounted or reduced fee.

C. The podiatrist shall use the following Consent to Treatment Form and shall retain the form in the patient's file:

### **PLEASE READ WITH CARE CONSENT TO TREATMENT IMMEDIATELY AFTER RECEIPT OF FREE/DISCOUNTED/REDUCED PRICE GOODS OR SERVICES INTRODUCTION**

The Board of Podiatric Medical Examiners wishes to inform you that, under the law of Maryland, you may not be charged a fee for podiatric goods or services which have been advertised as "free". Nor may you be charged more than the "reduced or discounted" fee advertised for particular podiatric goods or services. In addition, before a podiatrist may charge you a fee to treat immediately or within 72 hours a problem diagnosed at the time you received free, reduced, or discounted podiatric goods or services, you shall consent in writing to accept that treatment. The podiatrist shall explain to you whether he or she thinks that you need the treatment immediately or within 72 hours, or whether your condition does not require immediate treatment. The decision to accept treatment immediately or at a later date is always your decision. If you desire to accept treatment immediately or within 72

hours of today, please sign this document as required by law. Please be aware that you may be financially responsible for payment for the goods or services you receive.

## INFORMATION PROVIDED

//This podiatrist has explained to me the diagnosis of my condition and I understand it. //This podiatrist has explained the treatment alternatives and their risks to me and I understand them. //This podiatrist has explained the likely cost of each of the treatment alternatives and I understand it. //This podiatrist has explained to me the treatment he or she believes I need and I understand it. //This podiatrist has explained to me why I need the treatment immediately (within 72 hours of today) and I understand it.

## CONSENT TO TREATMENT

I have received my free, reduced, or discounted goods or services. I am accepting treatment today or within 72 hours of today's date and I fully understand that I may be charged for the treatment rendered.

\_\_\_\_\_ Date Patient's Signature  
\_\_\_\_\_ Witness' Signature  
\_\_\_\_\_ Podiatrist's Signature

10.40.06.06

### **.06 Penalties for Violation.**

The Board may enforce this chapter against the podiatrist by any appropriate ground for disciplinary action, under Health Occupations Article, §16-311, Annotated Code of Maryland.

# **Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

## **Subtitle 40 BOARD OF PODIATRIC MEDICAL EXAMINERS**

### **Chapter 07 Civil Penalties**

**Authority: Health Occupations Article, §§16-205, 16-311, and 16-505(b), Annotated Code of Maryland**

10.40.07.01

### **.01 Scope.**

This chapter establishes the standards by which the Board may impose an administrative monetary penalty not exceeding \$50,000 on any individual licensed under Health Occupations Article, Title 16, Annotated Code of

Maryland, for an act or omission proscribed under Health Occupations Article, §16-311(a), Annotated Code of Maryland.

*10.40.07.02*

## **.02 Definitions.**

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

B. Terms Defined.

(1) "Board" means the Board of Podiatric Medical Examiners.

(2) "Licensee" means an individual licensed by the Board to practice podiatry including the holder of a limited license.

(3) "Violation" means an act or omission proscribed under Health Occupations Article, §§16-311(a) and 16-501, Annotated Code of Maryland.

*10.40.07.03*

## **.03 Authority to Impose Civil Monetary Penalty.**

A. After a hearing under Health Occupations Article, §16-313, Annotated Code of Maryland, and COMAR 10.40.05, the Board may impose a civil monetary penalty of no less than \$1,000 and no more than \$50,000 under this chapter against an individual who commits a violation.

B. A penalty under §A of this regulation may be imposed:

(1) In addition to any reprimand, probation, suspension, or revocation; and

(2) For each occasion the licensee commits a violation.

C. The Board may impose a civil monetary penalty against an individual who practices podiatry without a license in violation of Health Occupations Article, §16-501, Annotated Code of Maryland.

D. The Board may not impose a fine under §C of this regulation against a podiatrist for practicing podiatry on an expired license if the:

(1) Podiatrist's license is reinstated within 30 calendar days of the expiration date of the license; and

(2) The licensee complies with COMAR 10.40.02.

*10.40.07.04*

## **.04 Factors to be Considered in the Assessment of Penalties.**

The Board shall consider the following factors in determining whether to impose a penalty and the amount of any penalty:

A. The extent to which the individual derived any financial benefit from the violation;

- B. The willfulness of the improper conduct;
- C. The extent of actual or potential public harm caused by the violation;
- D. The cost of investigating and prosecuting the case against the individual;
- E. The individual's history of any previous violation; and
- F. If the penalty being imposed is for unauthorized practice, the length of time in which the individual engaged in the unauthorized practice.

*10.40.07.05*

### **.05 Payment of Penalties.**

- A. The individual shall pay to the Board, on the date of its order, any administrative monetary penalty imposed under this chapter.
- B. Filing an appeal does not stay payment of any penalty imposed by the Board under this chapter.
- C. If an individual fails to pay, in whole or in part, any penalty imposed by the Board under this chapter, the Board may not restore, reinstate, or renew the license of the individual until the penalty has been paid in full.
- D. 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 and ensure prompt payment.
- E. The Board shall pay into the General Fund of the State all monies collected under this chapter.

# **Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

## **Subtitle 40 BOARD OF PODIATRIC MEDICAL EXAMINERS**

### **Chapter 08 Interpretation of Terms in the Maryland Podiatry Act**

**Authority: Health Occupations Article, §16-205, Annotated Code of Maryland**

*10.40.08.01*

### **.01 Scope.**

These regulations define and interpret certain terms used in the Maryland Podiatry Act, Health Occupations Article, Title 16, Annotated Code of Maryland.

*10.40.08.02*

## **.02 Definitions.**

A. In the Maryland Podiatry Act, the following words have the meanings indicated.

B. Terms Defined.

(1) "Abandons a patient" includes but is not limited to the failure to treat a patient with whom the podiatrist has had a continual patient-podiatrist relationship, for any reason, including nonpayment of a bill, without giving the patient reasonable notice that the relationship is terminated.

(2) "Foot appliance" means orthotics or prosthetics.

(3) "Postgraduate clinical training" means training beyond the Doctor of Podiatric Medicine degree in a program that is accredited by the Council on Podiatric Medical Education of the American Podiatric Medical Association and approved by the Board.

(4) "Practiced podiatry actively" means for the immediately preceding 5 years has been actively engaged in the practice of podiatric medicine for at least 400 hours on average per year.

(5) "Unprofessional conduct" includes but is not limited to:

(a) Willful or grossly negligent failure to comply with substantial provisions of federal or State laws, rules, or regulations governing the practice of podiatric medicine;

(b) Exercising undue influence on a patient including the promotion or the sale of services, goods, appliances, or drugs in such manner as to exploit the patient for the financial gain of the practitioner or a third party;

(c) Conduct in the practice of podiatric medicine which evidences moral unfitness to practice the profession;

(d) Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities which the podiatrist knows or has reason to know the podiatrist is not competent to perform;

(e) Delegating podiatric medical responsibilities to a person when the podiatrist delegating these responsibilities knows or has reason to know that the person is not qualified by training, experience, or licensure to perform them;

(f) Performing podiatric medical services which have not been duly authorized by the patient or the patient's legal representative;

(g) Ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient;

(h) Claiming or using any secret or special method of treatment which the podiatrist refuses to divulge to the Board upon request; or

(i) Fragmentation of a general procedure to increase the reimbursement.

*10.40.08.03*

## **.03 Examples of Fragmentation of Billing.**



A. By way of illustration, but not limitation, fragmentation of billing in Regulation .02B(3)(i), of this chapter, includes breaking the following general procedures into the following listed specific procedures:

(1) Keller bunionectomy — a multi-step procedure, which may include any or all of the following:

(a) Resection of medial eminence 1st metatarsal head;

(b) Resection base of proximal phalanx;

(c) Capsulotomy/capsulorrhaphy;

(d) Z-plasty of extensor tendon; and

(e) Sesamoidectomy.

(2) Lesser metatarsal osteotomy — a multi-step procedure, which may include any or all of the following:

(a) Tenoplasty;

(b) Capsulotomy/capsulorrhaphy;

(c) Osteotomy; and

(d) Fixation.

B. Fragmentation of billing is especially egregious when the licensee bills for both the general and specific procedures.

# **Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

## **Subtitle 40 BOARD OF PODIATRIC MEDICAL EXAMINERS**

### **Chapter 09 Compelling Purpose Disclosure**

**Authority: Health Occupations Article, §16-205; State Government Article, §10-617(h)(3);  
Annotated Code of Maryland**

*10.40.09.01*

#### **.01 Scope.**

A. This chapter permits the Board to disclose investigative information to other agencies, or other entities, or both, under certain circumstances.

B. A custodian may disclose information in a licensing or investigative file if the custodian determines that a compelling public purpose exists to warrant disclosure.

*10.40.09.02*

## **.02 Disclosure for Compelling Public Purpose.**

The custodian may find that a compelling public purpose warrants disclosure of information in a licensing or investigative file, regardless of whether there has been a request for the information, and may disclose the information under the following circumstances:

A. The information concerns possible criminal activity, and is disclosed to a federal, state, or local law enforcement or prosecutorial official or authority;

B. The information concerns a possible violation of law, and is disclosed to a federal, state, or local authority that has jurisdiction over the individual whose conduct may be a violation, and the information disclosed is limited to information relevant to the possible violation by that individual; or

C. The information concerns conduct by an individual which the Board reasonably believes may pose a risk to the public health, safety, or welfare, and is disclosed to a law enforcement authority, administrative official or agency that regulates the individual, or to a hospital or other health care facility where the individual has privileges.

*10.40.09.03*

## **.03 Other Disclosures.**

This chapter does not prevent or limit the ability of the Board to disclose general licensing information as provided in State Government Article, §10-617(h), Annotated Code of Maryland, or any information which the Board may otherwise disclose by law.

*10.40.09.9999*

### **Administrative History**

Effective date: April 15, 2002 (29:7 Md. R. 621)

# **Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

## **Subtitle 40 BOARD OF PODIATRIC MEDICAL EXAMINERS**

### **Chapter 10 General Provisions**

**Authority: Health Occupations Article, §§16-101(f), 16-102, and 16-205, Annotated Code of  
Maryland**

10.40.10.01

### **.01 General.**

A. Unless licensed by the Board, an individual may not examine, diagnose, or surgically, medically, or mechanically treat:

- (1) The human foot or ankle;
- (2) The anatomical structures that attach to the human foot; or
- (3) The soft tissue below the mid-calf.

B. Only a licensed podiatrist may examine, diagnose, and determine the medical necessity to prescribe a foot appliance.

C. This subtitle does not:

- (1) Limit the right of an individual to practice a health occupation that the individual is authorized to practice under Health Occupations Article, Annotated Code of Maryland; or
- (2) Affect the commercial sale or fitting of shoes or foot appliances.

# **Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

## **Subtitle 40 BOARD OF PODIATRIC MEDICAL EXAMINERS**

### **Chapter 11 Sanctioning Guidelines**

**Authority: Health Occupations Article, §§1-606, 16-205, and 16-311, Annotated Code of Maryland**

10.40.11.01

### **.01 Scope.**

This chapter establishes standards for use as a guide for the imposition of disciplinary sanctions against any Maryland licensed podiatrist, if after a hearing the Board finds that there are grounds under Health Occupations Article, §16-311, Annotated Code of Maryland, to place a licensee on probation, reprimand, suspend, fine, or revoke a license. The Board may consider aggravating and mitigating factors in determining sanctions.

10.40.11.02

## **.02 Definitions.**

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

B. Terms Defined.

(1) “Board” means the Board of Podiatric Medical Examiners.

(2) “Licensee” means an individual who holds a license or a limited license to practice podiatry in Maryland.

*10.40.11.03*

## **.03 General Application.**

A. This chapter shall be used by the Board as a guide for sanctioning licensees.

B. The Board is not required to make findings of fact with respect to any of the factors for determining the sanction indicated by the sanctioning guidelines.

C. A departure from the sanctioning guidelines alone is not a ground for any hearing or appeal of a Board action.

D. Notwithstanding this chapter, in order to resolve a disciplinary matter, the Board and the licensee may agree to a surrender of license or a consent order with terms, conditions, and sanctions agreed to by the Board and the licensee.

E. In a case where there are multiple and distinct violations, the Board may impose a sanction greater than the maximum indicated in Regulation .04 of this chapter for each individual violation.

F. If probation is imposed, the Board may impose appropriate terms and conditions of probation, and if a licensee violates the terms or conditions of probation, the Board may take further disciplinary action against the licensee.

G. In the event the licensee’s violation does not fall within the sanction range, the Board shall so indicate and use its best judgment to determine the appropriate sanction and shall consider, to the extent possible, the factors in Regulation .05 of this chapter.

*10.40.11.04*

## **.04 Range of Sanctions.**

Tier	Conduct	Sanction Range	
		Minimum	Maximum
A. Sexual misconduct	(1) Sexual misconduct with a patient	Suspension with conditions	Revocation
	(2) Lewd and immoral conduct within practice	Suspension with conditions	Revocation
B. Minimal standards of care	(1) Departure from or failure to conform to appropriate standards of care	Reprimand with conditions, subsequent probation as appropriate	Revocation

	(2) Failure to keep adequate medical records	Reprimand with conditions, subsequent probation as appropriate	Revocation
	(3) Failure to educate a patient about appropriate alternative methods of treatment in violation of law or the standard of care.	Reprimand with conditions, subsequent probation as appropriate	Revocation
	(4) Failure to obtain informed consent	Reprimand with conditions, subsequent probation as appropriate	Revocation
	(5) Incompetence	Reprimand with conditions	Revocation
C. Knowingly submitting to a third party any claim form, bill, or statement which contains any misleading, deceptive, false, incomplete, or fraudulent representation asserting a fee which is greater than the fee usually accepted as payment in full for any given procedure or service	(1) Overutilization of billing and/or false claims reporting	Reprimand with conditions, subsequent probation as appropriate	Revocation
	(2) Billing fraudulently	Reprimand with conditions, subsequent probation as appropriate	Revocation
	(3) Health care fraud	Reprimand with conditions, subsequent probation as appropriate	Revocation
D. DEA or controlled dangerous substance violation, or improper prescribing, dispensing or administering of drugs	(1) Prescribing, dispensing, or administering of controlled substances for excessive periods of time and/or excessive amounts	Probation 6 months with conditions	Revocation
	(2) Improper prescribing, dispensing, or administering of any drug	Reprimand with conditions	Revocation
	(3) Prescribing, dispensing, or administering of controlled substances without appropriate examination	Reprimand with conditions, subsequent probation as appropriate	Revocation
	(4) Failure to keep adequate patient records of substances prescribed, dispensed, or administered	Reprimand with conditions, subsequent probation as appropriate	Revocation
	(5) Failure to use acceptable methods in selection of drugs or other modalities	Reprimand with conditions, subsequent	Revocation

		probation as appropriate	
	(6) Selling, prescribing, giving away, or administering of any drugs for illegal or illegitimate medical purposes	Suspension 6 months with conditions, subsequent probation as appropriate	Revocation
	(7) Prescribing, dispensing, or administering of any drugs without medical indication to detriment of the patient	Reprimand with conditions, subsequent probation as appropriate	Revocation
	(8) Prescribing, dispensing, or administering of drugs for sexual favors	Suspension 1 year with conditions, subsequent probation as appropriate	Revocation
	(9) Taking back any drug from a patient that was prescribed	Reprimand with conditions, subsequent probation as appropriate	Revocation
E. Unprofessional or unethical conduct	(1) Willfully betraying a professional confidence	Reprimand with conditions, subsequent probation as appropriate	Revocation
	(2) Abandoning a patient	Reprimand with conditions, subsequent probation as appropriate	Revocation
	(3) Failure to provide a patient's medical record as required by law	Reprimand with conditions, subsequent probation as appropriate	Revocation
	(4) Failure to cooperate with a Board investigation	Reprimand with conditions, subsequent probation as appropriate	Revocation
	(5) By corrupt means, threats, or force, intimidating, influencing, or attempting to influence a person to change or withhold testimony in hearings or before the Board or the Office of Administrative Hearings	Suspension with conditions, subsequent probation as appropriate	Revocation
	(6) By corrupt means, threats, or force, hindering, preventing, or	Suspension with conditions,	Revocation

	otherwise delaying a person from making information available to the Board in the furtherance of a Board investigation.	subsequent probation as appropriate	
F. Substance abuse (using any narcotic or controlled dangerous substance or other drug that is in excess of therapeutic amounts or without valid medical indication)	(1) Self-referral	Reprimand with conditions	Revocation
	(2) Complaint initiated	Reprimand with conditions, subsequent probation as appropriate	Revocation
	(3) Impaired ability to practice by reason of substance abuse	Reprimand with conditions	Revocation
G. Other Acts	(1) Practicing outside scope	Reprimand with conditions, subsequent probation as appropriate	Revocation
	(2) Practicing while Maryland podiatry license is suspended or revoked	Suspension	Revocation
	(3) Committing or having committed a felony	Suspension with conditions	Revocation
	(4) Willfully making a false report or record in the practice of podiatry	Reprimand with conditions	Revocation
	(5) Knowingly filing a falsified license renewal or falsifying a license renewal	Reprimand with conditions	Revocation
	(6) Practicing with a condition, illness, or disease that may impair the ability of the individual to perform podiatric services	Reprimand with conditions	Revocation
	(7) Credentialing fraud	Probation with conditions	Revocation
	(8) Other violations of the Act	Reprimand	Revocation

10.40.11.05

### **.05 Mitigating and Aggravating Factors.**

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

A. Mitigating factors:

- (1) Absence of a prior disciplinary record;

- (2) The licensee having reported the violation to the Board;
- (3) The licensee having voluntarily admitted violation, provided full disclosure to the Board, and cooperated during Board proceedings;
- (4) The licensee having implemented remedial measures to correct or mitigate harm arising from the violation;
- (5) The licensee having made a timely good-faith effort to make restitution or otherwise rectify the consequences of the violation;
- (6) Evidence of rehabilitation or potential for rehabilitation;
- (7) Absence of premeditation to commit the violation;
- (8) Absence of potential harm to or adverse impact on the public;
- (9) Isolated incident and not likely to recur; and
- (10) The licensee's prior community service and present value to the community; and

**B. Aggravating factors:**

- (1) Previous criminal or administrative disciplinary history;
- (2) The violation was committed deliberately or with gross negligence or recklessness;
- (3) The violation had the potential for, or caused, serious patient harm;
- (4) The violation was part of a pattern of detrimental conduct;
- (5) The licensee was motivated to perform the violation by his or her financial gain;
- (6) The vulnerability of the patient;
- (7) The licensee attempted to conceal the violation, falsified or destroyed evidence, or presented false testimony or evidence;
- (8) The licensee failed to cooperate with the Board's investigation; and
- (9) Previous attempts at rehabilitation were unsuccessful.

*10.40.11.9999*

**Administrative History**

**Effective date: April 16, 2012 (39:7 Md. R. 494)**