

10.32.03 Employment Prohibitions and Mandated Reports by Employers

.01 Scope.

This chapter governs certain employer requirements concerning health care practitioners regulated by the Maryland Board of Physicians under this subtitle.

.02 Definitions.

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

B. Terms Defined.

(1) "Administrative suspension" means an action imposed by an employer restricting a health care practitioner's privileges or hours or scope of employment for failure of the health care practitioner to comply with the bylaws, rules, policies, or procedures of the employer.

(2) "Allied health practitioner" means an individual who is licensed by the Board under Health Occupations Article, Titles 14 or 15, Annotated Code of Maryland.

(3) "Board" has the meaning stated in Health Occupations, §14-101, Annotated Code of Maryland;

(4) Employer.

(a) "Employer" means:

(i) The meaning stated in Health Occupations, §14-101, Annotated Code of Maryland;

(ii) An entity that grants a licensee the ability to practice or treat patients; or

(iii) An entity that grants a licensee privileges or credentials to perform duties;

(5) "Failure to report" means the failure of an employer to file a report with the Board as mandated by this chapter.

(6) "Good standing" means the health care practitioner is not suspended, on probation, under restrictions, or subject to any pending disciplinary proceedings.

(7) "Health care facility" has the meaning stated in Health-General Article, §19-114, Annotated Code of Maryland.

- (8) *“Health care practitioner” means a licensee or registrant.*
- (9) *“Involuntarily terminated or restricted” means a termination, relinquishment, restriction, or reduction of a health care practitioner’s privileges, employment, or a contract with an employer after:*
- (a) *The employer notified the health care practitioner that discharge or termination of privileges, employment, or a contract, or that proceedings possibly leading to discharge or termination of privileges, employment, or a contract, would occur if the health care practitioner would not resign;*
- (b) *Being notified that an investigation by the employer may begin; or*
- (c) *Being asked to respond to a complaint made to the employer.*
- (10) *“Physician” means an individual licensed to practice medicine under Health Occupations, Title 14, Annotated Code of Maryland.*
- (11) *“Privileges” means authorization granted by an employer or health care facility to a health care practitioner to provide specific care, treatment, diagnostic services, or other services to patients.*
- (12) *“Registrant” means an individual to whom the Board issues a registration.*
- (13) *“Registration” means limited permission to perform certain health care duties.*
- (14) *“Voluntary resignation” means the relinquishment of privileges, employment, or a contract with an employer taken by a health care practitioner in good standing.*

.03 Employment Prohibitions

A. Except as otherwise provided in this subtitle, an employer may not employ an individual without a license or registration when a license or registration is required by State or federal law or regulation.

B. Violations.

(1) With respect to physicians, an employer is subject to a civil penalty not exceeding \$10,000 for a violation of this section.

(2) With respect to allied health practitioners, an employer is subject to a civil penalty not exceeding \$5,000 for a violation of this section.

(3) With respect to individuals, an employer is subject to a civil penalty not exceeding \$5,000 for a violation of this section.

C. This section does not apply to individuals who are exempt from licensure or registration under Health Occupations Article, Annotated Code of Maryland or this subtitle.

.04 Mandated Reporting for Employers

A. An employer shall submit a report to the Board if:

(1) The employer:

(a) Reduced, suspended, revoked, restricted, denied, conditioned, or did not renew the licensee's clinical privileges, employment, or other ability to practice or treat patients;

(b) Involuntarily terminated or restricted the licensee's employment or staff membership; or

(c) Asked the licensee to voluntarily resign because of the licensee's conduct or while the licensee is being investigated; and

(2) The action described under (1) of this paragraph was taken:

(a) For reasons that might be grounds for disciplinary action under Health Occupations, Title 14 or Title 15, Annotated Code of Maryland;

(b) Because the licensee may have engaged in an act that may constitute unprofessional conduct;

(c) Because the licensee may be unable to practice with reasonable skill and safety because of a physical or mental condition or professional incompetence; or

(d) Because the licensee may have harmed or placed one or more patients or the public at unreasonable risk of harm by engaging in an act that creates an immediate or continuing danger.

B. Specific Actions Not Reportable. The following actions do not require reporting by an employer:

(1) Voluntary leaves of absence that:

(a) Are taken by a health care practitioner who is in good standing; and

(b) May be caused by, but are not limited to:

(i) Employer-approved Family Medical Leave;

(ii) Family problems of a medical or other personal nature;

(iii) Medical problems that do not implicate the health care practitioner's mental or emotional ability to provide competent care;

(iv) Employer-approved leave as reasonable accommodation under the American with Disabilities Act, State law, or the employer's sick leave policy;

(v) Military deployment;

(vi) Sabbaticals;

(vii) Extended vacations; or

(viii) Absences for professional training;

(2) Voluntary resignations that:

- (a) Are submitted by a health care practitioner who is in good standing; and*
- (b) May be caused by, but are not limited to:*
 - (i) A job or career change;*
 - (ii) The health care practitioner's desire to relocate from Maryland;*
 - (iii) The health care practitioner's desire to retire; or*
 - (iv) Low volume of clinical interaction.*
- (3) The initial denial of employment or privileges for reasons not reportable under .04A;*
- (4) Administrative suspensions, if the sum total does not cumulatively exceed 30 days in any one calendar year, imposed on or agreed to by the health care practitioner.*

C. Reporting Requirement Exemption.

- (1) If an employer knows that the conduct of a licensee is because the licensee is impaired by alcohol or another substance, the employer is not required to report the licensee to the Board if:*
 - (a) The action or condition of the licensee has not caused injury to any person while they were practicing the licensed profession; and*
 - (a) The employer knows that the licensee is:*
 - (i) In a substance use disorder treatment program that is accredited by the Joint Commission or is certified by the Maryland Department of Health; or*
 - (ii) Under the care of a health care practitioner who is competent and capable of dealing with substance use disorders; and*
 - (iii) The employer is able to verify that the licensee remains in the treatment program until successful discharge.*

D. Report Contents.

- (1) Each report submitted under this regulation shall be submitted in a format determined by the Board.*
- (2) Each report shall include:*
 - (a) The action taken by the employer;*
 - (b) An unredacted and detailed explanation of the reasons for the action, including references to specific patient medical records, if any, that informed the employer's action;*
 - (c) The steps taken by the employer to investigate the conduct of the licensee;*
 - (d) The employer tax identification number;*
 - (e) A designated employer representative familiar with the matters in the report for correspondence with the Board; and*
 - (f) A designated employer email for correspondence with the Board.*
- (3) The Board may request from the employer additional information regarding an action under this regulation that was taken by the employer.*

(4) If an employer receives a request made under subsection (3) of this paragraph, the employer shall provide the additional information promptly within 10 business days.

E. Time Frame.

(1) An employer required to make a report to the Board under this regulation shall submit the report within 10 business days after the action requiring the report.

(2) Upon written request of the employer, the Board may extend the reporting time for good cause shown.

F. An employer is not required to make any report that would be in violation of any federal or state law, rule, or regulation concerning the confidentiality of substance use disorder patient records.

G. With respect to allied health practitioners, a disciplinary panel may impose a civil penalty up to \$5,000 per incident for a report made in bad faith.

H. With respect to physicians, a disciplinary panel may impose a civil penalty up to \$10,000 per incident for a report made in bad faith.

.05 Enforcement of Mandated Employer Reports.

A. The Board shall conduct a preliminary investigation and a disciplinary panel shall hold a hearing as described in COMAR 10.32.02.

B. If a disciplinary panel votes to issue a notice of failure to file a report, the disciplinary panel shall post on its website and mail the notice of failure to file a report to the employer involved in accordance with COMAR 10.32.02.03.

C. If the employer does not request a hearing within 30 days of the date the notice of failure to file a report was mailed, the notice of failure to file a report shall become final and shall constitute a final disposition of the disciplinary panel.

D. The issues at the hearing are limited to whether an employer complied with the requirements of .04 of this chapter.

E. It is not a defense to the allegation of a failure to report that:

(1) The employer was not aware of the obligation to report;

(2) The employer was conducting its own proceeding to further evaluate the action or the reasons for the action;

(3) An employer did not report because the employer thought the action had already been reported; or

(4) An employer did not report due to communication failure.

F. If the disciplinary panel finds after the hearing that the employer did not fail to file any report required by this chapter, the disciplinary panel shall issue a final disposition dismissing the notice of failure to file a report.

G. If the disciplinary panel finds after a hearing that an employer knowingly failed to file any report required by this chapter, the disciplinary panel shall issue and post on its website a final disposition with findings of fact, conclusions of law, and civil penalty.

H. In its final disposition, the Board may impose a civil penalty as follows:

(1) With respect to failure to file a report concerning physicians, up to \$10,000.

(2) With respect to failure to file a report concerning allied health practitioners, up to \$5,000.

I. An employer that is dissatisfied with a final disposition of the disciplinary panel may seek judicial review of the disciplinary panel's final disposition as provided in the Administrative Procedure Act. The disposition of the disciplinary panel may not be stayed pending judicial review.

J. The Board shall pay all monies collected pursuant to this chapter into the State's General Fund. The Board may refer any uncollected civil penalties under this regulation to the Central Collection Unit of the State.

.06 Confidentiality of Mandated Employer Reports.

A report made to the Board under this chapter is privileged, not subject to inspection under the Public Information Act, and not subject to subpoena or discovery in any civil action other than a proceeding arising out of a hearing and the final disposition of the Board or disciplinary panel.