

STATEMENTS OF POLICY

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties, Guidelines for Imposition of Civil Penalties; Procedures for Appeal

The Commissioner of Professional and Occupational Affairs (Commissioner) by this notice adopts a schedule of civil penalties for operating without a current license, registration, certificate or permit or for violations of acts or regulations pertaining to the conduct or operation of a business or facility licensed by a licensing board or commission within the Bureau of Professional and Occupational Affairs (Bureau).

Section 5(a) of the act of June 2, 1993 (P. L. 345, No. 48) (63 P. S. § 2205(a)) (act) authorizes the Commissioner, after consultation with licensing boards and commissions in the Bureau, to adopt a schedule of civil penalties for (1) operating without a current and valid license, registration, certificate or permit; and (2) violating a licensing board or commission act or regulation relating to the conduct or operation of a business or facility licensed by a licensing board or commission.

Section 5(a) of the act further permits the Commissioner to publish in the *Pennsylvania Bulletin* the schedule of penalties, guidelines for imposition and procedures for appeal of the imposition of civil penalties to be followed by the promulgation of regulations finalizing a schedule of civil penalties, guidelines and procedures.

The Commissioner has previously adopted a schedule of civil penalties under section 5(a) of the act with respect to six licensing boards and commissions. These schedules as well as guidelines and procedures for their implementation have been promulgated as final regulations in accordance with the act in Chapter 43b (relating to Commissioner of Professional and Occupational Affairs). The Commissioner, herein, intends to add schedules of civil penalties for the following five other boards and commissions: State Registration Board for Professional Engineers, Land Surveyors and Geologists; State Board of Accountancy; State Architects Licensure Board; State Board of Auctioneer Examiners; and State Board of Dentistry. The Commissioner also, herein, adds new penalty provisions for the State Board of Pharmacy.

In establishing the schedule for penalties, the Commissioner and the Division of Prosecution for the Bureau and the Bureau of Enforcement and Investigation for the Department of State met with each board, at a minimum, at two regularly scheduled meetings this spring and summer. The Commissioner implemented the Board's suggestions in developing these schedules. Following that exchange of information, the boards approved the schedule of civil penalties in Annex A. The schedule of penalties incorporates provisions for increased penalties for second offenses and for the seriousness of the violation with respect to the threat to the public health, safety and welfare.

In addition to consulting with the licensing boards, the Commissioner notified various professional associations of the civil penalty provisions of the act and invited them to provide comments and suggestions regarding its implementation.

Based upon consultations with the licensing boards, the Commissioner hereby adopts a schedule of penalties, guidelines and procedures for their implementation and for appeals.

This statement of policy is effective upon publication in the *Pennsylvania Bulletin* and applies to inspections on and after November 28, 1998.

DOROTHY CHILDRESS,
Commissioner

(Editor's Note: The regulations of Department of State, 49 Pa. Code Chapter 43b, are amended by amending statement of policy § 43b.7a and by adding statements of policy §§ 43b.10—43b.14 to read as set forth in Annex A with ellipses referring to the existing text.)

Fiscal Note: 16-19. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL PENALTIES AND PROCEDURES FOR APPEAL

§ 43b.7a. Schedule of civil penalties—pharmacists and pharmacies—statement of policy.

STATE BOARD OF PHARMACY

Violation under 49 Pa. Code Chapter 27

Section 27.31

Title/Description

Biennial renewal—(c) Practicing on a lapsed license or permit

Civil Penalty

0-4 months—\$50 per month; over 4 months-8 months—\$100 per month; Over 9 months-12 months—\$200 per month; Over 1 year—formal action

§ 43b.10. Schedule of civil penalties—accountants—statement of policy

STATE BOARD OF ACCOUNTANCY

Violation under 63 P. S.	Title/Description	Civil Penalty
Section 9.8b(b)	Completion of continuing education hours after end of reporting period but before start of next license biennium (assumes no other continuing education violation)	1st offense—\$150 2nd offense—formal action
Section 9.12(a)	Unlawful use of “certified public accountant,” “CPA” or similar representation by person never licensed	1st offense—\$500* 2nd offense—formal action
	Unlawful use of “certified public accountant,” “CPA” or similar representation by person not currently licensed	1st offense—up to 90 days past renewal deadline—warning 90 days-180 days past renewal deadline—\$500 2nd offense—formal action
Section 9.12(c)	Unlawful use of “certified public accountant,” “public accountant,” “CPA,” “PA” or similar representation by a firm never licensed	1st offense—\$500* 2nd offense—formal action
	Unlawful use of “certified public accountant,” “public accountant,” “CPA,” “PA” or similar representation by a firm not currently licensed	1st offense—up to 90 days past renewal deadline—warning 90 days-180 days past renewal deadline—\$500 2nd offense—formal action
Section 9.12(j)	Unlawful use of “public accountant,” or “PA” or similar representation by person never licensed	1st offense—\$500* 2nd offense—formal action
	Unlawful use of “public accountant,” or “PA” or similar representation by person not currently licensed	1st offense—up to 90 days past renewal deadline—warning 90 days-180 days past renewal deadline—\$500 2nd offense—formal action
Section 9.12(o)	Unlawful representation of membership in professional society, association, or organization of CPAs or PAs by person or firm never licensed	1st offense—\$250* 2nd offense—formal action
	Unlawful representation of membership in professional society, association, or organization of CPAs or PAs by person or firm not currently licensed	1st offense—up to 90 days past renewal deadline—warning 90 days-180 days past renewal deadline—\$250 2nd offense—formal action
Violation under 49 Pa. Code, Chap. 11		
Section 11.62(a)(2)	Failure to complete 20 hours of continuing education each year (assumes no other continuing education violation)	1st offense—\$150 2nd offense—formal action
Section 11.68(b)	Failure to timely submit documentation of continuing education during Board audit (assumes no other continuing education violation)	1st offense—\$500 2nd offense—formal action

*The first offense provision does not apply to a situation involving multiple occurrences or a pattern or practice of misconduct.

§ 43b.11. Schedule of civil penalties—architects—statement of policy.

STATE ARCHITECTS LICENSURE BOARD

Proposed Schedule

Violation under 63 P. S.	Violation under 49 Pa. Code Chapter 9	Description of Violation	Penalties
Section 34.12(a)	N/A	Architect impressing his seal or knowingly permitting it to be impressed on drawings, specifications or other design documents which were not prepared by him or under his personal supervision.	1st offense—\$1,000 2nd offense—formal

Violation under 63 P. S.	Violation under 49 Pa. Code Chapter 9	Description of Violation	Penalties
Section 34.12(a)	N/A	Anyone impressing an architect's seal or knowingly permitting it to be impressed on drawings, specifications or other design documents after the architect's certificate has expired, or has been revoked, annulled or suspended.	1st offense—\$1,000 2nd offense—formal
Section 34.13(h)	Section 9.163	Engaging in the practice of architecture as a professional association, partnership, professional corporation, or business corporation without first receiving the written approval of the Board.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
Section 34.18(a) and (b)	Section 9.171	Use of the word "architect" or "architects" in the surname, word or business title implying that an individual or business is engaged in the practice of architecture, without possessing current and proper licensing by the Board.	1st offense—\$1,000 2nd offense—formal

§ 43b.12. Schedule of civil penalties—auctioneers, apprentice auctioneers, auction houses and auction companies.

STATE BOARD OF AUCTIONEER EXAMINERS

Proposed Schedule

Violation under 63 P. S.	Violations under Title 49 Chapter 1	Description of Violation	Penalties
Sections 734.3(a) and 734.20(a)(9)	N/A	Auctioneer or apprentice auctioneer operating on a lapsed license in PA.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
Sections 734.3(a) and 734.20(a)(9)	N/A	Engaging in unlicensed auctioneering activities in PA.	1st offense—\$1,000 2nd offense—formal
Sections 734.9(a) and 734.20(a)(9)	N/A	Operating an unlicensed auction house in PA.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
Sections 734.10(a) and 734.20(a)(9)	N/A	Operating as an unlicensed auction company in PA.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
Sections 734.9(d) and 734.20(a)(9)	N/A	A licensed auctioneer operating an unregistered auction house in PA.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
Sections 734.10(d) and 734.20(a)(9)	N/A	A licensed auctioneer operating an unregistered auction company in PA.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
Sections 734.9(a) and 734.20(a)(9)	N/A	Operating an auction house on a lapsed license in PA.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
Sections 734.10(a) and 734.20(a)(9)	N/A	Operating an auction company on a lapsed license in PA.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
Section 734.20(a)(12)	N/A	Failure of an auctioneer to establish or maintain an escrow account.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
Sections 734.21 and 734.20(a)(9)	N/A	Failure of an auctioneer to immediately deposit gross auction sale proceeds into an escrow account.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
Sections 734.17(a) and 734.20(a)(9)	N/A	Failure of an auctioneer to enter into a written contract with the owner or consignor of the property to be sold at auction prior to the auction sale.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal

Violation under 63 P. S.	Violations under Title 49 Chapter 1	Description of Violation	Penalties
Sections 734.17(a) and 734.20(a)(9)	N/A	Failure of an auctioneer to keep contracts on file in the office of the auctioneer.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
Sections 734.16(b) and 734.20(a)(9)	N/A	Failure or refusal of an auctioneer to permit inspection of auction sale records at all reasonable times by BEI inspectors or investigators.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
Sections 734.18(a) and 734.20(a)(9)	N/A	Failure of an auctioneer to display auctioneer license in the auctioneer's office.	1st offense—\$250 2nd offense—\$500 3rd offense—formal
Sections 734.18(b) and 734.20(a)(9)	N/A	Failure of an apprentice auctioneer to display the apprentice auctioneer license in the apprentice auctioneer's office.	1st offense—\$250 2nd offense—\$500 3rd offense—formal
Section 734.20(a)(10)	Section 1.31(c) and (d)	Failure of a sponsor to either directly supervise the apprentice while the apprentice is conducting an auction or to provide for appropriate substitute supervision of the apprentice by a qualified auctioneer.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal
Section 734.20(a)(10)	Section 1.31(e)	Apprentice auctioneer conducting an auction sale without direct supervision by either the sponsor or an authorized substitute sponsor.	1st offense—\$500 2nd offense—\$1,000 3rd offense—formal

§ 43b.13. Schedule of civil penalties—engineers, land surveyors and geologists.

STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

Violation under 63 P. S.	Title/Description	Penalties
Section 150(b)	Representing himself to be an engineer, land surveyor or geologist without being licensed or registered: (1) By sign. (2) By advertisement. (3) By letterhead. (4) By card.	1st offense—\$1,000 2nd offense—formal action 1st offense—\$1,000 2nd offense—formal action 1st offense—\$1,000 2nd offense—formal action 1st offense—\$1,000 2nd offense—formal action
Section 151(e)	Biennial renewal—Practicing on a lapsed license or registration	1st offense—Up thru 5 months—\$500 6 months thru 1 year—\$1,000 Over 1 year—formal action 2nd offense—formal action

§ 43b.14. Schedule of civil penalties—dentists, dental hygienists and expanded function dental assistants.

STATE BOARD OF DENTISTRY

Violation under 49 Pa. Code	Title/Description	Civil Penalty
Section 33.105(b)	Practicing on a lapsed license/certificate	1st offense— Dentists—\$100/month Dental hygienists—\$50/month Expanded function dental assistants—\$25/month 2nd offense—formal action

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