

STATEMENTS OF POLICY

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties—Nurses

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to rescind § 43b.18 (relating to schedule of civil penalties—nurses—statement of policy) and replace it with § 43b.18a (relating to schedule of civil penalties—nurses) to read as set forth in Annex A.

Effective Date

The proposed rulemaking will be effective upon final publication in the *Pennsylvania Bulletin*.

Statutory Authority

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards and commissions in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of the licensing boards or commissions.

Background and Purpose

Act 48 authorizes agents of the Bureau to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's boards and commissions. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation retain their due process right of appeal prior to the imposition of discipline. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts, with approximately 30% of all sanctions imposed by the Boards and Commissions being accomplished through the Act 48 citation process.

Annex A sets forth amendments to the civil penalty schedule of the State Board of Nursing (Board). The proposed rulemaking was drafted following discussions with a representative of the Commissioner and the Board at regularly scheduled public meetings. The schedule of civil penalties for lapsed license violations was previously published as a statement of policy at 34 Pa.B. 5809 (October 23, 2004). It is the intent of this proposed rulemaking to codify the schedule of civil penalties as a regulation.

In addition, the proposed schedule of civil penalties establishes new civil penalties for violation of the continuing education requirement recently enacted in section 12 of the Professional Nursing Law (63 P. S. § 222). Section 12 of the Professional Nursing Law requires professional nurses to complete 30 hours of continuing education

during each biennium. The Board is proposing comprehensive regulations implementing the mandate of section 12 of the Professional Nursing Law through separate rulemaking. The Commissioner is proposing a civil penalty schedule for violation of the continuing education requirements for professional nurses because with over 200,000 professional nurses who will be subject to continuing education requirements, the Commissioner and Board believe the Act 48 citation process will be a much more efficient method of handling violations, while still ensuring licensees due process.

Description of Proposed Rulemaking

The Commissioner, in consultation with the Board, proposes a \$250 civil penalty for the first offense of failing to complete 1 to 10 hours of continuing education in a biennial period; a \$500 civil penalty for failing to complete 11 to 20 hours of continuing education in a biennial period; and a \$1,000 civil penalty for failing to complete 21 to 30 hours of continuing education in a biennial period. Second and subsequent offenses would not be subject to an Act 48 citation, but rather, would proceed through the formal disciplinary process.

The Board considered and approved the proposed rulemaking at regularly scheduled public meetings. The proposed rulemaking addresses a compelling public interest as described in this preamble.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking would have no adverse fiscal impact on the Commonwealth or its political subdivisions and would reduce the paperwork requirements of both the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements and adjudications/orders for violations subject to the Act 48 citation process.

Sunset Date

Professional licensure statutes require each board and commission to be self-supporting. Therefore, boards and commissions continually monitor the cost effectiveness of regulations affecting their operations. As a result, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 18, 2007, the Commissioner submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior

to final publication of the rulemaking, by the Commissioner, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Basil L. Merenda, Commissioner, Professional and Occupational Affairs, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

BASIL L. MERENDA,
Commissioner

(Editor's Note: For a document relating to this proposed rulemaking, see 37 Pa.B. 1980 (April 28, 2007).)

Fiscal Note: 16-38. 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

(Editor's Note: As part of this proposed rulemaking, the Commissioner is proposing to delete the text of the statement of policy in § 43b.18, which appears in 49 Pa. Code page 43b-31, serial page (325211), and replace it with § 43b.18a, which is printed in regular type to enhance readability.)

§ 43b.18. (Reserved).

§ 43b.18a. Schedule of civil penalties—nurses.

STATE BOARD OF NURSING

| Violation under 63 P. S. | Title/Description | Civil Penalty |
|---------------------------------|--|---|
| Section 225.4 | Practicing professional nursing on a lapsed license | 1st offense—0—12 mos.—\$100 per month up to \$1,000 Over 12 months—Formal action 2nd offense—Formal action |
| Section 664(4) | Practicing practical nursing on a lapsed license | 1st offense—0—12 mos.—\$75 per month Over 12 months— Formal action 2nd offense—Formal action |
| Section 225.4 | Holding oneself out as a licensed dietitian-nutritionist on a lapsed license | 1st offense—0—12 months—\$100 per month up to \$1,000 Over 12 months—Formal action 2nd offense—Formal action |
| Section 222(b) | Failure to complete 30 hours of approved continuing education | 1st offense—Deficiency of 1—10 hours—\$250 Deficiency of 11—20 hours—\$500 Deficiency of 21—30 hours—\$1,000 2nd offense—Formal action |

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