

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF CHIROPRACTIC [49 PA. CODE CH. 5] Continuing Education Violations

The State Board of Chiropractic (Board) amends § 5.77 (relating to failure to meet continuing education requirements) to read as set forth in Annex A.

Description and Need for the Rulemaking

Section 507(a) of the Chiropractic Practice Act (act) (63 P. S. § 625.507(a)) requires each licensee to complete at least 24 hours of continuing education during each biennial renewal period. Under section 506(a)(13) of the act (63 P. S. § 625.506(a)(13)), the Board may take disciplinary action against a licensee who fails to perform any statutory obligation placed upon a licensed chiropractor. Section 703 of the act (63 P. S. § 625.703) authorizes the Board to levy a civil penalty of up to \$1,000 on a licensee who violates any provision of the act. Disciplinary actions for failing to complete the continuing education requirement in a timely manner invariably result in the licensee being required to pay a civil penalty proportionate to the amount of deficiency and to make up the deficiency promptly. Accordingly, the Board proposed to utilize the more streamlined procedures under section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)), wherein the Commissioner of Professional and Occupational Affairs, after consultation with licensing boards in the Bureau of Professional and Occupational Affairs (BPOA), may promulgate a schedule of civil penalties for violations of the acts or regulations of these licensing boards.

The Board proposed permitting a licensee to renew despite not having completed the required amount of continuing education. However, the licensee would be required to pay a civil penalty by citation in § 43b.22 (related to schedule of civil penalties—chiropractors) and to make up the deficient hours of continuing education and to provide proof to the Board within 6 months of the beginning of the renewal cycle. A licensee who does not do so will be subject to discipline under section 506(a)(9) of the act, which authorizes the Board to discipline a licensee for violating a regulation of the Board. Second and subsequent violations of failing to complete all required continuing education will be subject to formal action.

Summary of Comments and Responses to Proposed Rulemaking

The Board published notice of proposed rulemaking at 39 Pa.B. 5594 (September 26, 2009) with a 30-day public comment period. The Board did not receive written comments from the public. The Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) as part of its review of proposed rulemaking under the Regulatory Review Act (71 P. S. §§ 745.1—745.12). The Board did not receive comment from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

In developing this final-form rulemaking, the Board envisioned a scheme of enforcement by which a licensee who did not complete the required amount of continuing education would be able to renew the license but would have to pay a civil penalty under an Act 48 schedule based upon the amount of deficiency and to make up the entire deficiency within 6 months. It was intended that all professional licensing boards within the BPOA that require continuing education would use a similar enforcement scheme. However, due to subsequently-raised concerns about statutory authority to renew the license of one who acknowledges not having completed the required amount of continuing education, the Board ultimately has abandoned this scheme. Instead, completion of the required amount of continuing education will remain a condition of renewal and a licensee who acknowledges not having completed the required amount of continuing education will not be renewed. Those licensees who are discovered, such as through the postrenewal random audit, to have failed to complete the required amount of continuing education will be subject to imposition of a proportionate civil penalty by means of a citation and will be required to make up the deficiency. However, because it will take time to complete the post-renewal audit process, the time limitation by which the deficiency shall be cured will not be determined by the renewal date, but by the date disciplinary action is initiated by the issuance of a citation. Because continuing education is required to maintain competence, the failure to complete continuing education is not a violation if the licensee no longer practices until the continuing education deficiency is cured. Therefore, the Board has also provided in § 5.77(d) that a licensee who permits the license to expire and then ceases practice until completing the required amount of continuing education and then reactivates the license upon a demonstration that the deficiency has been cured should not be subject to disciplinary action for failing to initially complete the required amount of continuing education. A licensee who did not renew and continued to practice, despite having failed to complete the required continuing education, would be subject to disciplinary action both for failing to complete continuing education (under this subsection) and for practicing while the license was lapsed (under § 5.17(g) (relating to biennial registration; unregistered status and inactive status; failure to renew; address of record)).

The HPLC first requested an explanation for the jeopardy of a licensee who has not completed continuing education having to certify on the biennial renewal form that the licensee has complied with the mandatory continuing education requirements. As previously discussed, the Board will not renew the license of a licensee who has acknowledged failing to complete the required amount of continuing education. The HPLC also questioned whether a licensee who falsely states on the renewal form that the licensee has completed the continuing education requirement would be disciplined for practicing fraud or deceit in obtaining a license to practice chiropractic. A licensee who makes a false statement would be discovered through the audit process. A prosecuting attorney would have discretion to bring formal disciplinary action in deviation from application of the Act 48 schedule due to the licensee's apparent deceitful act, charging both the failure to complete continuing education and obtaining the license by deceit. The Board would determine an appropriate sanction, possibly including a reprimand or suspension as well as a civil penalty, for any violation that is proved. But, in

the exercise of prosecutorial discretion, the prosecuting attorney alternatively could choose only to issue the appropriate citation, such as when the licensee in good faith believed that the licensee had complied with the continuing education requirement.

The HPLC next requested an explanation as to how a licensee would make up a continuing education deficiency after renewing, but shall provide proof of attendance at continuing education courses during the previous biennial renewal period. In drafting this provision, it was the Board's intention to refer to the continuing education requirement of the previous biennium, not attendance during the previous biennium. The Board revised this provision to phrase this more clearly and to explicitly acknowledge that continuing education may be completed in the current biennium, subject to the limitation of § 5.77(b) that attendance at continuing education to reactivate an unregistered license cannot be applied to the requirement for the current biennium.

Finally, because when published as proposed the Board intended to renew the license of a licensee who had not completed the required amount of continuing education subject to imposition of a civil penalty via citation and the obligation to make up the deficiency within 6 months, the HPLC asked how the Board will monitor the grace period during which a licensee shall make up a deficiency in continuing education. As previously discussed, the Board has chosen to abandon this method of enforcement. Instead, the Board will continue the current practice under which a licensee shall verify that the licensee has complied with the continuing education requirements. If the licensee does not verify completion, the Board will not renew the license and, without license renewal, there is not a grace period to monitor. However, as past audits have demonstrated, some licensees who have verified compliance will not have actually completed the required amount of continuing education. As previously discussed, these licensees will be subject to citation and the obligation to cure the deficiency within 6 months of issuance of the citation. Because legal proceedings have begun, the legal office will track cited licensees for submission of proof of completion of the required amount of continuing education.

IRRC shared the concerns expressed by the HPLC as previously described. IRRC correctly noted that the only reference to continuing education in § 5.14 (relating to certification to use adjunctive procedures) concerns initial qualification to be certified to use adjunctive procedures, not any ongoing continuing education requirement. Accordingly, the Board has revised § 5.77(d) to omit the reference to § 5.14.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will not have an adverse fiscal impact on the Commonwealth, its political subdivisions or the private sector. The final-form rulemaking will not impose additional paperwork requirements upon the Commonwealth, its political subdivisions or the private sector.

Effective Date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

This rulemaking is authorized by section 302(3) of the act (63 P.S. § 625.302(3)) and sections 506(a)(9) and 507(a) of the act.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 11, 2009, the Board submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 5594, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

On September 3, 2010, the Board delivered final-form rulemaking to IRRC, the HPLC and the SCP/PLC. Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on September 21, 2010, the final-form rulemaking was approved by the HPLC. On October 6, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 7, 2010, and disapproved the final-form rulemaking. As described in its disapproval order, IRRC disapproved the rulemaking because it concluded that the Board does not have statutory authority to renew the license of a licensee who acknowledged failing to complete the required amount of continuing education, as previously intended.

In response to IRRC's disapproval, the Board revised the final-form rulemaking to remove the provisions for renewal despite failure to complete required continuing education, resulting in the final-form rulemaking as discussed previously. The Board delivered the revised final-form rulemaking, together with the supporting report required by section 7(c) of the Regulatory Review Act (71 P.S. § 745.7(c)), to IRRC, the HPLC and the SCP/PLC on November 24, 2010.

Under section 7(d) of the Regulatory Review Act, on March 1, 2011, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 7(c.1) of the Regulatory Review Act, IRRC met on December 16, 2010, and approved the final-form rulemaking.

Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7200, st-chiro@state.pa.us.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The amendments to this final-form rulemaking do not enlarge the scope of proposed rulemaking published at 39 Pa.B. 5594.

(4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the act.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 5, are amended by amending § 5.77 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

KATHLEEN G. MCCONNELL, DC,
Chairperson

(Editor's Note: See 41 Pa.B. 2856 (June 4, 2011) for the BPOA's final-form rulemaking relating to this final-form rulemaking.)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 118 (January 1, 2011).)

Fiscal Note: Fiscal Note 16A-4318 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 5. STATE BOARD OF CHIROPRACTIC

Subchapter G. CONTINUING EDUCATION

§ 5.77. Failure to meet continuing education requirements.

(a) Unless granted a waiver, a licensee who fails to satisfy continuing education requirements for a biennial registration period will have his license classified as unregistered and will be prohibited from practicing chiropractic until the licensee satisfies continuing education requirements and renews registration in accordance with § 5.18 (relating to reporting of other licenses, certifies or authorizations to practice, disciplinary sanctions and criminal dispositions).

(b) A licensee attending a continuing education course to reinstate an unregistered license will not have the same credit hours applied toward the continuing education requirement for the next biennial registration period.

(c) A licensee is not required to satisfy continuing education requirements for a biennial period in which a license has been classified as inactive and the licensee has not practiced in this Commonwealth for the entire biennial period.

(d) Unless otherwise excused by the act or this chapter, a licensee who fails to complete the minimum required amount of continuing education during the applicable renewal period is subject to discipline under § 43b.22 (relating to schedule of civil penalties—chiropractors). Within 6 months after the issuance of a citation under § 43b.22 for failing to complete the required amount of continuing education, the licensee shall make up the deficiency and provide proof of attendance at continuing education courses as necessary to satisfy the require-

ments in section 507 of the act (63 P. S. § 625.507) for the previous biennial registration period. The additional continuing education may be completed during the current biennial registration period, subject to the limitation of subsection (b). In addition to any civil penalty assessed under this subsection, failure to provide the Board with proof of the required amount of continuing education within 6 months after the issuance of a citation under § 43b.22 for failing to complete the required amount of continuing education shall subject the licensee to disciplinary action under section 506(a)(9) of the act (63 P. S. § 625.506(a)(9)). Failure to complete all of the required amount of continuing education within 6 months after the issuance of a citation under § 43b.22 for failing to complete the required amount of continuing education shall subject the licensee to disciplinary action under section 506(a)(13) of the act. This subsection does not apply to a licensee who permitted the license to expire at the conclusion of the biennial renewal period for which the licensee did not complete the required amount of continuing education and did not practice the profession prior to reactivating that license under § 5.17(j) (relating to biennial registration; unregistered status and inactive status; failure to renew; address of record) upon a demonstration that the licensee subsequently completed all required deficient continuing education.

[Pa.B. Doc. No. 11-935. Filed for public inspection June 3, 2011, 9:00 a.m.]

STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS
[49 PA. CODE CH. 37]
Continuing Education

The State Registration Board for Professional Engineers, Land Surveyors and Geologists (Board) amends §§ 37.1 and 37.18 (relating to definitions; and reactivation of licensure status) and adds §§ 37.19 and 37.111 (relating to biennial renewal of licensure status; and continuing education) to read as set forth in Annex A.

Description and Need for the Final-Form Rulemaking

The act of November 29, 2006 (P. L. 1534, No. 170) (Act 170) added section 4.5 of the Engineer, Land Surveyor and Geologist Registration Law (act) (63 P. S. § 151.5) to direct the Board to promulgate regulations establishing requirements of continuing education to be fulfilled by its licensees. Beginning with the renewal period designated by regulation, each licensee would be required to complete 24 hours of mandatory continuing education during each biennial renewal period as a condition of license renewal. A licensee in the first biennium of licensure would be exempt from the continuing education and, upon written request demonstrating good cause to do so, the Board could waive all or a portion of the requirements for a licensee who was unable to complete the requirements due to serious illness, military service or other demonstrated hardship. A licensee seeking to reactivate an expired license would be required to show proof of compliance for the preceding biennium. Finally, the Board would be responsible to approve all courses, locations, instructors and providers of mandatory continuing education, but credit could not be awarded for courses in practice building or office management.

The Board published a proposed rulemaking at 39 Pa.B. 2218 (May 2, 2009) to implement Act 170. After the proposed rulemaking was published, the act was again amended. The act of May 12, 2010 (P. L. 192, No. 25) (Act 25) deleted the existing provisions of the act addressing continuing education. In their place, Act 25 provided requirements for continuing education modeled upon the model law and rules of the National Council of Examiners in Engineering and Surveying, the National group of state licensing boards for engineers and land surveyors. Under section 4.5(c) of the act as amended by Act 25, each licensee shall now complete at least 24 professional development hours (PDH) of continuing education during each biennial renewal cycle and up to 12 PDH units may be carried forward into the subsequent renewal period. Continuing education should maintain, improve or expand skills and knowledge obtained prior to initial licensure, including law and ethics applicable to the profession, or develop new and relevant skills and knowledge. Credit may not be awarded for courses in practice building or office management. Continuing education may be earned for successful completion of college courses relevant to professional practice; completion of continuing education courses relevant to professional practice; completion of correspondence, televised, videotaped and other short courses or tutorials relevant to professional practice; completion of seminars, employer-sponsored courses, workshops or professional or technical presentations made at meetings, conventions or conferences relevant to professional practice; teaching, presenting or instructing the previously-identified activities; authoring published papers, articles or books relevant to professional practice; or obtaining patents relevant to professional practice. Section 4.5(d) of the act provides a conversion of hours of activity into PDH units and also provides that a licensee teaching those activities would earn double the amount of credit normally available to participants. The Board may not require courses to be preapproved, but does have final authority regarding approval of courses, credit, PDH value for courses and other methods of earning credit under section 4.5(e) of the act. The Board will accept credit earned in another jurisdiction for an activity that otherwise complies. The licensee is responsible to maintain records to support credits claimed, including a log of activities and attendance verification records such as completion certificates under section 4.5(f) of the act. Under section 4.5(g) of the act, a licensee serving on temporary active duty in the armed forces of the United States for a period of time exceeding 120 consecutive days in a year is exempt from completing continuing education during that year. The Board may grant an exemption to a licensee who is unable to complete the required continuing education due to physical disability, illness or other extenuating circumstances. In addition, a licensee in the first renewal cycle of licensure is not required to complete continuing education. A licensee seeking to reactivate an inactive license shall obtain all delinquent PDH units, up to a maximum of the biennial renewal requirement under section 4.5(h) of the act. Finally, section 5 of Act 25 requires licensees to first complete the continuing education requirements during the 2009-2011 biennium.

Based upon this statutory change and consideration of the comments received regarding the rulemaking as originally proposed, the Board has substantially amended the final-form rulemaking. The Board concluded that it should not review and approve any continuing education courses or providers and deleted references to course or provider approvals. With minor exceptions as discussed as

follows, this final-form rulemaking retains only the mechanism of enforcement of the continuing education requirement.

Summary of Comments and Responses to Proposed Rulemaking

The Board published a proposed rulemaking at 39 Pa.B. 2218 with a 30-day public comment period. The Board received numerous comments from a variety of members of the public. The Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) as part of its review of proposed rulemaking under the Regulatory Review Act (71 P. S. §§ 745.1—745.12). The Board did not receive any comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

The public comments raised many questions about particular courses, providers and the method of approving courses and providers, as well as determination of hours of credit. Because under Act 25 the Board will not be approving courses or providers and because the amended act addresses the questions of what activity format and content are acceptable, the Board believes these comments are moot. Except as discussed as follows with regard to comments from the HPLC and IRRC, the public commenters did not otherwise address the procedural portions of the proposed rulemaking.

Though these requirements are not strictly procedural enforcement provisions, the Board has retained the requirement in proposed § 37.113(b) that credit may not be given for any activity in practice building or office management as provided in section 4.5(e) of the act and the requirement in proposed § 37.113(c) that a licensee may not receive credit for attending a course more than once or participating more than once in another specific activity during the same biennium. These provisions have been moved into § 37.111(a) and (b), respectively.

In its comments, the HPLC noted that Act 170 required the Board to promulgate regulations within 18 months. The Board acknowledges that this was not accomplished. The HPLC further advised the Board that the HPLC was currently working on legislation that would amend the continuing education requirements to be more consistent with current National standards of the specific profession than was the proposed rulemaking. Act 25 was the result of that effort. The HPLC and IRRC suggested that in § 37.1 the definition of “hour of continuing education” use a standard of 50 minutes, rather than 60 minutes, to be consistent with this National standard. Because section 2(t) of the act (63 P. S. § 149(t)) now defines a PDH to be 50 minutes of instruction or presentation relevant to professional practice, the Board deleted the proposed definition of “hour of continuing education” and instead has added to § 37.1 the statutory definition of PDH. Similarly, the HPLC suggested that the Board revise its proposed rulemaking to permit carryover of credits. Because section 4.5(c) of the act now permits a licensee to carryover up to 12 PDH units, the Board has also deleted this previously proposed restriction.

In developing its continuing education regulations, the Board envisioned a scheme of enforcement by which a licensee who did not complete the required amount of continuing education would be able to renew the license, but would have to pay a civil penalty under an Act 48 schedule based upon the amount of deficiency and to make up the entire deficiency within 6 months. It was intended that all professional licensing boards within the

Bureau of Professional and Occupational Affairs (BPOA) that require continuing education would use a similar enforcement scheme. However, due to subsequently-raised concerns about statutory authority to renew the license of one who acknowledges not having completed the required amount of continuing education, the Board ultimately has abandoned this scheme. Instead, completion of the required amount of continuing education will be a condition of renewal and a licensee who acknowledges not having completed the required amount of continuing education will not be renewed. Accordingly, the Board revised proposed § 37.19(b)(5) to delete the opportunity for a licensee who has not completed the required amount of continuing education to renew and acknowledge being subject to the sanctions of § 37.111(d).

The HPLC requested information on how the Board will monitor the 6-month period in proposed § 37.111(d) during which a licensee shall make up a deficiency in continuing education. As provided in renumbered § 37.111(f), the Board will audit licensees to verify compliance. If the licensee timely provides documentation showing that the licensee satisfied the continuing education requirement within the 6-month period, the licensee would be subject to a civil penalty based on the number of delinquent PDH units. If the licensee does not provide the documentation or does not complete all 24 PDH units of continuing education by the end of the 6-month period, the matter will be forwarded to the professional compliance office and the prosecution division to initiate formal disciplinary action.

While addressing these comments, the Board considered its audit process in more detail. In doing so, the Board realized that its regulations do not impose any specific obligation upon a licensee to comply with the audit. Accordingly, the Board added § 37.111(f) to retain the notice proposed in § 37.112(c) that the Board will audit licensees to verify compliance with the continuing education requirements and to also require a licensee who is being audited to fully respond to an audit request within 30 days or another time period specified in the audit request.

The HPLC and IRRRC questioned what is considered to be a certified record of continuing education as that term is used in proposed §§ 37.112(a) and 37.114(a). Because section 4.5(f) of the act requires licensees to maintain a log of continuing education activities and attendance verification records such as completion certificates, the Board deleted these proposed regulatory provisions. The Board added § 37.111(g) to repeat the statutory requirement that the licensee maintain records of continuing education for 5 years and to provide that the Board may infer from the failure to maintain records that the licensee did not complete continuing education. Obviously, this will require licensees to maintain records that substantiate compliance with the continuing education requirements and demonstrate that the licensee has earned specific amounts of credit in specific activities for which continuing education credit may be earned. The HPLC also requested an explanation of how the Board will implement proposed § 37.115(g) that would permit a licensee who attended a nonapproved course to seek approval. As the Board will not be approving courses, it has deleted this provision.

IRRC pointed to the Board's estimate that the regulated community may have costs on the order of \$18.6 million per year to complete continuing education and questioned the Board's statement that compliance with the rulemaking should not have an adverse fiscal impact

and will not impose additional paperwork requirements on the Commonwealth or the private sector. The Board's estimate was of the costs for licensees to complete continuing education as mandated by section 4.5 of the act. That obligation was imposed by the General Assembly through Act 170 and subsequently Act 25. The proposed rulemaking imposed minimal additional costs. The statement that compliance should not have an adverse fiscal impact was intended to address the impact of the Board's method of enforcement established by the proposed rulemaking, which should not impose additional burden on those licensees who comply. The recordkeeping requirement in this final-form rulemaking, which requires licensees to keep records for at least 5 years, should not impose fiscal or administrative burden beyond that already imposed by Act 25 to maintain records of completion.

IRRC also pointed to the Board's estimate that licensees would be required to comply with the continuing education requirements during the 2009-2011 renewal cycle and asked whether, if the rulemaking was not final by September 2009, the Board will modify the compliance date and notify licensees. Section 5 of Act 25 now requires licensees to complete continuing education during the 2009-2011 renewal cycle. There is not a provision to wait until regulations are promulgated. In May 2010, the Board notified its licensees of this requirement, both by direct mail and by e-mail. Additionally, in its newsletters beginning in July 2010, the Board reminded licensees that the continuing education requirements are already in effect. Additionally, to provide licensees with as much advance notice as possible, as provided in § 37.111(d), for the first renewal cycle only, the Board will not impose disciplinary sanction on a licensee who, though failing to complete the required amount of continuing education during the 2009-2011 biennium, fully makes up the deficiency within 6 months, that is by April 1, 2012. Additionally, because as drafted they included the same standard, IRRC suggested combining the two separate statements of the continuing education obligation for the 2009-2011 and 2011-2013 renewal cycles into one provision. The Board originally did this to allow that the regulation might not be final prior to the beginning of the 2009-2011 cycle and could easily revise it to phase in the continuing education requirement. Because by statute the full obligation begins with the 2009-2011 cycle, the Board followed IRRC's suggestion and combined these two provisions into one.

IRRC questioned whether the term "criminal charges" as used in § 37.19(c)(4) requiring a licensee renewing a license to disclose any criminal charges would include misdemeanors and summary offenses. Because 18 Pa.C.S. § 9124(b) (relating to use of records by licensing agencies) prohibits the Board from imposing a disciplinary sanction based upon a summary offense, the Board did not intend this term to include summary offenses. However, because the Board may impose a disciplinary sanction based upon a misdemeanor conviction, the Board does intend misdemeanor charges to be included, as well as felony charges. Accordingly, the Board revised § 37.19(c)(4) to refer specifically to misdemeanors and felonies to enhance clarity.

IRRC also asked why the Board included the phrase "as directed by the Board" in proposed § 37.111(b) when indicating that continuing education may sometimes be credited to a renewal cycle other than the one in which the continuing education was actually earned. This phrase was intended to allow the Board to order a licensee who did not complete continuing education on time to do so at the time of the subsequent disciplinary

action and have those hours be applied to the requirement for the earlier renewal cycle. To aid clarity, the Board revised this portion of proposed § 37.111(b) to read “as otherwise ordered by the Board in a disciplinary action.” Additionally, because section 4.5(c) of the act now permits carry-over of up to 12 PDH units into the next cycle, the Board also revised § 37.111(b) to include an exception for continuing education credits “carried over from the prior biennium as permitted by section 4.5(c) of the act (63 P. S. § 151.5(c)).” Further, because § 37.111(d) is no longer premised upon a licensee who did not complete the required amount of continuing education being permitted to renew subject to paying a civil penalty and making up the deficiency, the Board revised the references to that subsection in § 37.111(b) as “to correct a deficiency as required under subsection (d)” rather than “as permitted by subsection (d).”

Because when published as proposed the Board intended to renew the license of a licensee who had not completed the required amount of continuing education subject to imposition of a civil penalty by means of a citation and the obligation to make up the deficiency within 6 months, IRRRC also requested the Board to explain the status of a license while the licensee is making up continuing education deficiency. Because the Board now will not renew the license if the licensee acknowledges not completing the required amount of continuing education, this concern is limited to those licensees who report having completed continuing education but have not actually done so. As the license has been renewed in reliance upon the licensee’s representation that continuing education has been completed, that license is current and in good standing to the same extent as if the licensee had fully completed the continuing education requirement on time and will remain so unless the Board takes disciplinary action to suspend the license for failure to complete the required amount of continuing education on time and subsequent failure to make up the deficiency. While the audit process will begin upon notice following renewal, the time taken to audit the licensee and determine the amount of deficiency might result in the citation not issued and due until more than 6 months after the beginning of the renewal cycle—the previously-proposed 6-month period in which to cure the deficiency. Accordingly, the Board revised this provision to set the time limitation by which the deficiency must be cured not by the renewal date, but by the date disciplinary action is initiated by the issuance of a citation. Because continuing education is required to maintain competence, the failure to complete continuing education is not a violation if the licensee no longer practices until the continuing education deficiency is cured. Therefore, the Board also provided in § 37.111(d) that a licensee who permits the license to expire and then ceases practice until completing the required amount of continuing education and then reactivates the license upon a demonstration that the deficiency has been cured should not be subject to disciplinary action for failing to initially complete the required amount of continuing education. A licensee who did not renew and continued to practice, despite having failed to complete the required continuing education, would be subject to disciplinary action both for failing to complete continuing education (under this subsection) and for practicing while the license was lapsed under § 37.18(3).

IRRC raised a concern about the clarity of proposed § 37.111(e) for waiver and suggested explicitly providing that waiver is for serious illness, military service or other demonstrated hardship as provided in section 4.5(g) of the act. Because that statutory section has been replaced, the

Board has taken this suggestion and applied it with revised § 37.111(e) to use the new statutory language—“physical disability, illness or other extenuating circumstances.” Moreover, the Board revised this provision to require the licensee to explain why the licensee is not able to complete continuing education on time and why a waiver will not harm the public interest. Although the proposed rulemaking would require a licensee seeking a waiver to request it at least 90 days before the end of the renewal cycle, the Board is concerned that this is not truly workable for a licensee who plans to complete continuing education near the end of the renewal cycle but is interrupted by disability, illness or other extenuating circumstances. Instead, the Board simply provided that it might take up to 90 days to rule upon a request, giving the licensee who chooses to take the risk of interruption better notice of the consequences.

IRRC suggested that the Board clarify in its final-form rulemaking its position on distance learning activities in proposed § 37.114. Because the Board will not be approving courses, it has deleted this section. Because the statutory language does not provide a basis to categorically disallow online or other distance learning and instead section 4.5(c)(3) of the act specifically authorizes correspondence, televised, videotaped or other short courses or tutorials relevant to professional practice, the Board will permit licensees to complete continuing education in this manner. IRRRC also suggested actions to improve the clarity of proposed § 37.115. Because the Board will not be approving courses, it has also deleted this section.

IRRC also suggested revising the definition of “practice building” in § 37.1 to be gender neutral. The Board used the word “himself” as to a land surveyor because it was quoting the language of section 2(d) of the act and again used the same word in an equivalent provision for an engineer or geologist, though there was not a similar statutory provision. In response to IRRRC’s comment, the Board amended the provision to be gender neutral by using the term “the licensee” when referring to a licensed land surveyor, engineer or geologist. The Board added a definition for the open-ended term “office management” to § 37.1 to include mechanical office and business skills, such as typing, speed writing, preparation of advertising copy, development of sales promotion devices, word processing, calculator and computer operation, and internal operations and procedures that do not have a professional interest. Office management does not include the use of technology in delivering engineering, land surveying or geologic services.

Finally, under section 5 of Act 25, licensees shall begin to comply with the continuing education requirement during the 2009-2011 biennial renewal cycle. Because Act 25 did not become effective until July 11, 2010, approximately 8 1/2 months into the 24-month 2009-2011 renewal cycle, the Board concluded that it should give licensees additional time to complete the requirements for the 2009-2011 cycle. The Board determined that for the first cycle with mandatory continuing education, licensees who make up the deficiency in full within the first 6 months will not be subject to a civil penalty. Accordingly, § 37.111(c) both provides that the continuing education requirements will first take effect during the October 1, 2009, through September 30, 2011, biennial renewal cycle and also that a licensee who, by April 1, 2012, makes up all the deficiency in continuing education will not be subject to disciplinary action for failing to complete the required continuing education by September 30, 2011.

Because the Board will not renew the license when the licensee acknowledges not completing the required amount of continuing education, the Board normally would ask on the renewal form whether the licensee has completed the required amount of continuing education. Because the Board is extending the time period to complete the continuing education for the initial period, for the 2011-2013 renewal cycle the Board will ask whether the licensee has completed the required amount of continuing education or will complete it by April 1, 2012. This will not extend the time period to complete continuing education during the second renewal cycle; a total of 48 PDH shall be completed between October 1, 2009, and September 30, 2013.

Fiscal Impact and Paperwork Requirements

The continuing education requirements of the act as added by Act 25 require licensees to complete continuing education and maintain records and require the Board to audit licensees and take action when appropriate. Beyond the fiscal impact of the statutory requirements, the final-form rulemaking will have a minimal fiscal impact on the regulated community in the nature of administrative costs of records retention and audit compliance. The final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions and will not impose additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Effective Date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The final rulemaking is authorized under section 4.4 of the act (63 P. S. § 151.4).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 22, 2009, the Board submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 2218, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

On September 3, 2010, the Board delivered the final-form rulemaking to IRRC, the HPLC and the SCP/PLC. Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on September 21, 2010, the final-form rulemaking was approved by the HPLC. On October 6, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 7, 2010, and disapproved the final-form rulemaking. As described in its disapproval order, IRRC disapproved the rulemaking primarily because it concluded that the Board did not have statutory authority to renew the license of a licensee who acknowledged failing to complete the required amount of continuing education, as previously intended.

In response to IRRC's disapproval, the Board revised the final-form rulemaking to remove the provisions for renewal despite failure to complete required continuing education, resulting in the form as previously discussed.

The Board did not otherwise revise the rulemaking in response to IRRC's disapproval order. The Board delivered the revised final-form rulemaking, together with the supporting report required by section 7(c) of the Regulatory Review Act (71 P. S. § 745.7(c)), to IRRC, the HPLC and the SCP/PLC on November 24, 2010.

Under section 7(d) of the Regulatory Review Act, on March 1, 2011, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 7(c.1) of the Regulatory Review Act, IRRC met on December 16, 2010, and approved the final-form rulemaking.

Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7049, st-engineer@state.pa.us.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The amendments to this final-form rulemaking do not enlarge the scope of proposed rulemaking published at 39 Pa.B. 2218.

(4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the act.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 37, are amended by amending §§ 37.1 and 37.18 and adding §§ 37.19 and 37.111 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

ROBERT C. GRUBIC, P.E.,
President

(Editor's Note: The proposal to amend § 37.17 and to add §§ 37.112—37.115 included in the proposed rulemaking published at 39 Pa.B. 2218 has been withdrawn by the Board.)

(Editor's Note: See 41 Pa.B. 2853 (June 4, 2011) for the BPOA's final-form rulemaking relating to this final-form rulemaking.)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 118 (January 1, 2011).)

Fiscal Note: Fiscal Note 16A-4710 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 37. STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

GENERAL PROVISIONS

§ 37.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Hearing examiner—An individual appointed by the Board, with the approval of the Governor, to conduct hearings as may be required under the act in accordance with the act and this chapter.

Office management—

(i) The term includes mechanical office and business skills, such as typing, speed writing, preparation of advertising copy, development of sales promotion devices, word processing, calculator and computer operation, and internal operations and procedures that do not have a professional interest.

(ii) The term does not include the use of technology in delivering engineering, land surveying or geologic services.

PDH—*Professional development hour*—Fifty minutes of instruction or presentation relevant to professional practice as defined in section 2 of the act (63 P. S. § 149).

Practice building—

(i) Marketing or any other activity that has as its primary purpose increasing the business volume or revenue of a licensee or employer and does not involve the practice of engineering, land surveying or geology as defined in section 2 of the act.

(ii) The term includes procuring or offering to procure land surveying work for the licensee or others and managing or conducting as managers, proprietors or agents any place of business from which land surveying work is solicited, performed or practiced as included in the definition of “practice of land surveying” in section 2(d) of the act. This term includes procuring or offering to procure engineering or geologic work for the licensee or others and managing or conducting as managers, proprietors or agents any place of business from which engineering or geologic work is solicited, performed or practiced.

(iii) The term does not include education in a professional area merely because it would expand the licensee’s skills enabling the licensee to practice in an additional area.

Professional geological work—The performance of geological service or work, including technical completeness reviews or inspections of unfinalized work product, that requires the utilization, application and interpretation of fundamental and practical principles of the geological sciences in the practice of geology. The term does not include routine sampling, laboratory work or geological drafting.

* * * * *

QUALIFICATIONS FOR LICENSURE

§ 37.18. Reactivation of licensure status.

A licensed engineer, land surveyor or geologist who has allowed his licensure status to lapse by failing to register biennially with the Board may apply to the Board for reactivation of licensure status by satisfying the requirements of paragraph (1) on forms provided by the Board.

(1) A licensee applying for reactivation of licensure status is required to pay the current registration fee and submit a reactivation application verifying the period of time in which the licensee did not practice in this Commonwealth. Unless excused by the Board for good cause under section 4.5(g) of the act (63 P. S. § 151.5(g)), the Board will not reactivate any license until all delinquent continuing education, not to exceed 24 PDH, has been completed. Notwithstanding the general requirement in § 37.111(b) (relating to continuing education), an applicant for reactivation of an inactive license may complete this required continuing education during the biennial renewal period for which reactivation is sought. Completion of this previously-delinquent continuing education is in addition to the continuing education required for the biennium during which the license is reactivated.

(2) A licensee who seeks to reactivate his licensure status will not be assessed a late renewal fee for the preceding biennial registration periods in which the licensee did not engage in practice in this Commonwealth.

(3) With the exception of individuals who are engaged in the practice of engineering, land surveying or geology in a field which is exempt from licensure under section 5 of the act (63 P. S. § 152), a licensee whose licensure status has lapsed due to the failure to register biennially with the Board, is prohibited from the practice of engineering, land surveying or geology as applicable in this Commonwealth unless the licensure status is reactivated. If a licensee, who is not exempt from licensure, engages in practice in this Commonwealth during a period in which the licensee’s registration is not renewed, the licensee is required to pay a late fee of \$5 for each month or part of a month beyond the date specified for renewal, as provided in section 225 of the Bureau of Professional and Occupational Affairs Fee Act (63 P. S. § 1401-225), in addition to the prescribed biennial renewal fee. The payment of a late fee does not preclude the Board from taking disciplinary action against a licensee for practicing the profession of engineering, land surveying or geology as applicable in this Commonwealth without a current license.

§ 37.19. Biennial renewal of licensure status.

(a) A licensee shall register each biennial period to retain the right to practice in this Commonwealth. Initial registration shall automatically occur when a license is issued. Registration for a biennial period shall expire on September 30 of every odd numbered year.

(b) When a licensee changes the mailing address of record, the licensee shall notify the Board in writing within 10 days thereafter. Notice of renewal will be forwarded to the licensee’s last known address on file with the Board. Failure of the Board to send or of the licensee to receive a biennial registration application does not relieve the licensee of the biennial registration responsibility.

(c) A licensee applying for biennial license renewal shall:

(1) Complete and submit the renewal application, including payment of the biennial renewal fee in § 37.17 (relating to schedule of fees).

(2) Disclose any license to practice engineering, land surveying or geology in another state, territory, possession or country.

(3) Disclose any disciplinary action taken or pending before the appropriate licensing authority in another jurisdiction since the most recent application for renewal. A licensee shall disclose disciplinary action in another jurisdiction whether or not the licensee holds an active license to practice in the other jurisdiction.

(4) Disclose any pending felony or misdemeanor criminal charges and any finding or verdict of guilt, admission of guilt, plea of nolo contendere or other criminal conviction since the most recent application for renewal.

(5) Verify that the licensee has complied with the continuing education requirements mandated under section 4.5 of the act (63 P. S. § 151.5) during the biennial period immediately preceding the period for which renewal is sought in accordance with § 37.111 (relating to continuing education).

CONTINUING EDUCATION

§ 37.111. Continuing education.

(a) During each biennial renewal period, a licensee shall complete 24 PDH units of continuing education. A licensee who holds more than one license from the Board shall complete the required amount of continuing education to renew each license. A licensee who completes a continuing education activity applicable to more than one class of license may apply the credit to each license held by the licensee for which the course is applicable. Continuing education credit will not be given for a course in practice building or office management.

(b) Except as necessary to comply with § 37.18(1) (relating to reactivation of licensure status), carried over from the prior biennium as permitted by section 4.5(c) of the act (63 P. S. § 151.5(c)), to correct a deficiency as required under subsection (d) or as otherwise ordered by the Board in a disciplinary action, continuing education may satisfy the requirement of subsection (a) only for the biennium during which it was completed. A PDH unit may not be used to satisfy the requirement of subsection (a) for more than one biennium. Unless otherwise excused by the Board, continuing education completed to reactivate the license as provided in § 37.18(1), to correct a deficiency as required under subsection (d) or as otherwise ordered by the Board in a disciplinary action is in addition to the continuing education requirement for the biennium during which that activity is completed. A licensee may not receive credit for more than one presentation of a particular course or other specific activity in a given renewal period.

(c) The requirement of subsection (a) will first take effect during the October 1, 2009, through September 30, 2011, biennial renewal period. A licensee who corrects all deficiencies in continuing education during the 2009-2011 renewal cycle by April 1, 2012, will not have a disciplinary sanction imposed as provided in subsection (d) for having failed to complete the required amount of continuing education by September 30, 2011.

(d) Unless otherwise excused by the act or this chapter, failure to complete the minimum required amount of continuing education during the applicable renewal period will subject the licensee to discipline under section 11(b) of the act (63 P. S. § 158(b)) in accordance with the schedule of civil penalties in § 43b.13a (relating to schedule of civil penalties—engineers, land surveyors and geologists). Within 6 months after the issuance of a

citation under § 43b.13a for failure to complete the required amount of continuing education, the licensee shall make up the deficiency and provide proof of the entire required amount of continuing education in section 4.5(f) of the act. In addition to any civil penalty assessed under this subsection, failure to complete the required amount of continuing education and to provide the Board with proof of completion of the required amount of continuing education within 6 months after the issuance of a citation under § 43b.13a for failure to complete the required amount of continuing education shall subject the licensee to disciplinary action under section 4(g) of the act (63 P. S. § 151(g)). This subsection does not apply to a licensee who permitted the license to expire at the conclusion of the biennial renewal period for which the licensee did not complete the required amount of continuing education and did not practice the profession prior to reactivating that license under § 37.18(1) upon a demonstration that the licensee subsequently completed all required deficient continuing education.

(e) A licensee seeking exemption from the continuing education requirements as provided in section 4.5(g)(1)(II) of the act based upon physical disability, illness or other extenuating circumstances shall submit the request with all supporting documentation to the Board. The request must explain why the licensee is not able to complete mandatory continuing education on time and why exempting the licensee will not harm the public interest. The Board may take up to 90 days to rule upon a request for exemption. An exemption may include extending the deadline by which the required continuing education must be completed. The Board will consider a request for exemption from a licensee who has renewed the license, but a request for exemption may not be used to avoid a disciplinary sanction under subsection (d).

(f) The Board will audit licensees to verify compliance with continuing education requirements. A licensee who is being audited shall fully respond to each request for information within 30 days of the request or other time specified in the request.

(g) Each licensee shall maintain records verifying completion of continuing education for 5 years after completion of the activity. In any audit or disciplinary proceeding, the Board may infer from a licensee's failure to maintain records as provided in this subsection that the licensee did not complete the required continuing education.

[Pa.B. Doc. No. 11-936. Filed for public inspection June 3, 2011, 9:00 a.m.]

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties Engineers, Land Surveyors and Geologists

The Commissioner of Professional and Occupational Affairs (Commissioner) amends § 43b.13a (relating to schedule of civil penalties—engineers, land surveyors and geologists) to read as set forth in Annex A.

Description and Need for the Rulemaking

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes agents of the Bureau of Professional and Occupational Affairs (Bureau) to issue citations and impose civil penalties under sched-

ules adopted by the Commissioner in consultation with the Bureau's licensing boards. It further provides that any penalty will not exceed the sum of \$1,000 per violation. 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 have the right to a hearing and 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 licensing boards being accomplished through the Act 48 citation process. The State Registration Board for Professional Engineers, Land Surveyors and Geologists (Board) has had an Act 48 schedule of civil penalties since 2001. See 31 Pa.B. 1227 (March 3, 2001).

Section 4.5(a) of the Engineer, Land Surveyor and Geologist Registration Law (act) (63 P.S. § 151.5(a)) requires licensees to complete 24 hours of mandatory continuing education during each biennial renewal period as a condition of license renewal. Through a separate final-form rulemaking (16A-4710), the Board is adopting regulations to implement the mandatory continuing education requirements. As is being done for other licensing boards with continuing education requirements, the Commissioner is adopting in this final-form rulemaking a civil penalty schedule for violation of the continuing education requirements for licensees of the Board because 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. Payment of the civil penalty does not relieve a licensee of the obligation to complete the required amount of mandatory continuing education. Under a separate final-form rulemaking, the Board is requiring a licensee who fails to complete the required amount of mandatory continuing education during the biennial renewal period to complete the required continuing education during the next 6 months. Failure to complete the required continuing education by that deadline will subject the licensee to formal disciplinary action.

The Commissioner, in consultation with the Board, determined that a first offense violation of failing to complete the required amount of mandatory continuing education during the biennial renewal period would be subject to a civil penalty of \$50 for each hour that the licensee is deficient, up to a maximum of \$1,000. Second and subsequent offenses would not be subject to an Act 48 citation but rather would proceed through the formal disciplinary process. The Board's final-form rulemaking requires that the licensee also make up the deficiency within 6 months or face formal disciplinary action.

Summary of Comments and Responses to Proposed Rulemaking

The Commissioner published a notice of proposed rulemaking at 39 Pa.B. 2206 (May 2, 2009) with a 30-day public comment period. The Board did not receive written comments from the public. The Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) as part of its review of proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1—745.12). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

The HPLC noted that the act of November 29, 2006 (P.L. 1534, No. 170) (Act 170), which first added mandatory continuing education, required the Board to promulgate regulations implementing the continuing education requirement within 18 months of its effective date, that is, by July 28, 2008. The Board acknowledges that this date was not met. Subsequently, the act of May 12, 2010 (P.L. 192, No. 25) (Act 25) repealed this provision in Act 170. Instead, under section 5 of Act 25, licensees shall begin to comply with the continuing education requirement during the 2009-2011 biennial renewal cycle. Because the Act 25 amendments did not become effective until July 11, 2010, approximately 8 1/2 months into the 24-month 2009-2011 renewal cycle, the Board concluded that it should give licensees additional time to complete the requirements for the 2009-2011 cycle. As previously referenced and explained in greater detail in the Board's final-form rulemaking, licensees who have not completed the continuing education requirement by the end of the renewal period will be subject to citation for a civil penalty based upon the amount of deficiency and be required to make up the entire deficiency within 6 months; this does not apply to a licensee who permits the license to expire and makes up the deficiency prior to reactivating the license upon documentation of making up that deficiency. The Board determined that for the first cycle with mandatory continuing education, licensees who make up the deficiency in full within the first 6 months will not be subject to a civil penalty.

IRRC requested an explanation of how the proposed amount of civil penalty was determined. Under section 5(a) of Act 48, the maximum civil penalty that the Board may impose by citation for a violation of the act or Board regulations is \$1,000. To provide a significant deterrence against failing to complete continuing education in a timely manner, the Board concluded that this maximum amount is an appropriate civil penalty for a licensee who completes none of the mandatory continuing education. Those whose deficiency is less should be assessed a proportionately lesser civil penalty. Because 24 hours of continuing education are required, the Board calculated that the scheduled civil penalty should be \$1,000 divided by 24 hours, rounded up to \$50 per hour.

While addressing the previous questions, as well as other questions raised by the HPLC and IRRC in regard to the Board's rulemaking, the Board considered its audit process in more detail. In doing so, the Board realized that its regulations do not impose specific obligation upon a licensee to comply with the audit. Accordingly, in § 37.111(f) (relating to continuing education), the Board requires a licensee to respond to an audit request within 30 days or another time period specified in the audit request. The Commissioner, in consultation with the Board, added this violation to the schedule of civil penalties. The schedule provides a first violation civil penalty of \$100, increased to \$250 for a second violation and \$500 for a third violation and formal action for subsequent violations. The Board envisions that a licensee who fails to comply with an audit request will be given a citation and another audit request. The process may be repeated until the licensee's fourth refusal demonstrates that the Board should consider whether to suspend the licensee's license or impose other discipline for failure to provide proof of continuing education.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth, its political subdivisions or the private sector. The final-form rulemaking will not

impose additional paperwork requirements upon the Commonwealth, its political subdivisions or the private sector.

Effective Date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

This rulemaking is authorized by section 5(a) of Act 48.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 22, 2009, the Board submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 2206, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

On September 3, 2010, the Board delivered final-form rulemaking to IRRC, the HPLC and the SCP/PLC. Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on September 21, 2010, the final-form rulemaking was approved by the HPLC. On October 6, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 7, 2010, and disapproved the final-form rulemaking.

The Board did not revise the final-form rulemaking in response to IRRC's disapproval. The Board redelivered the final-form rulemaking, together with the supporting report required by section 7(b) of the Regulatory Review Act (71 P. S. § 745.7(b)), to IRRC, the HPLC and the SCP/PLC on November 24, 2010.

Under section 7(d) of the Regulatory Review Act, on March 1, 2011, the final-form rulemaking was approved by the HPLC and the SCP/PLC. section 7(c.1) of the Regulatory Review Act, IRRC met on December 16, 2010, and approved the final-form rulemaking.

Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7049, st-engineer@state.pa.us.

Findings

The Commissioner finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The amendments to this final-form rulemaking do not enlarge the scope of proposed rulemaking published at 39 Pa.B. 2206.

(4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the authorizing acts set forth in this preamble.

Order

The Commissioner, acting under Act 48, orders that:

(a) The regulations of the Commissioner, 49 Pa. Code Chapter 43b, are amended by amending § 43b.13a to read as set forth in Annex A.

(b) The Bureau shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Bureau shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

KATIE TRUE,
Acting Commissioner

(Editor's Note: See 41 Pa.B. 2847 (June 4, 2011) for the Board's final-form rulemaking relating to this final-form rulemaking.)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 118 (January 1, 2011).)

Fiscal Note: Fiscal Note 16-43 remains valid for the final adoption of the subject regulation.

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.13a. 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 oneself as an engineer, land surveyor or geologist on sign, advertisement, letterhead or card, without being licensed or registered	1st offense—\$1,000 2nd offense—formal action

Violation Under 63 P. S.	Title/Description	Penalties
Section 151(e)	Biennial renewal—Practicing on a lapsed license or registration	1st offense— Up through 5 months—\$500 6 months through 1 year—\$1,000 over 1 year—formal action 2nd offense—formal action
Section 151.5(a)	Failure to complete the required amount of continuing education	First offense—\$50 per hour of deficiency, not to exceed \$1,000 Subsequent offense—formal action
Violation Under 49 Pa. Code Chapter 37	Title/Description	Penalties
Section 37.111(f)	Failure to respond to continuing education audit request within 30 days or other time period in audit request	First offense—\$100 Second offense—\$250 Third offense—\$500 Subsequent offense—formal action

[Pa.B. Doc. No. 11-937. Filed for public inspection June 3, 2011, 9:00 a.m.]

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties—Chiropractors

The Commissioner of Professional and Occupational Affairs (Commissioner) adds § 43b.22 (relating to schedule of civil penalties—chiropractors) to read as set forth in Annex A.

Description and Need for the Final-Form Rulemaking

The act of July 2, 1993 (P.L. 345, No. 48) (Act 48) authorizes agents of the Bureau of Professional and Occupational Affairs (Bureau) to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's licensing boards. 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 have the right to a hearing and 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 licensing boards being accomplished through the Act 48 citation process. The State Board of Chiropractic (Board) has not previously had an Act 48 schedule of civil penalties.

Section 507(a) of the Chiropractic Practice Act (act) (63 P.S. § 625.507(a)) requires a licensed chiropractor to complete at least 24 hours of continuing education during each biennial renewal cycle. The Board's regulations in Chapter 5, Subchapter G (relating to continuing education) implement required continuing education. With the current regulatory scheme, a failure to comply with the continuing education requirements could lead to formal disciplinary action. Also, section 501(b) of the act (63 P.S. § 625.501(b)) requires a licensee to renew the license every 2 years. Under § 5.17(g) (relating to biennial registration; unregistered status and inactive status; failure to renew; address of record) of the Board's regulations, a licensee who has not renewed may not continue to practice while that license remains lapsed. As is being done for other licensing boards, the Commissioner proposed a civil penalty schedule for violation of the continu-

ing education requirements for licensees of the Board and practice on a lapsed license because the Commissioner and the Board believe the Act 48 citation process will be a much more efficient method of handling violations while still ensuring licensees retain their right to due process of law.

The Commissioner, in consultation with the Board, proposed for a first offense violation of failing to complete the required amount of mandatory continuing education during the biennial renewal period a civil penalty \$50 for each credit hour that the licensee is deficient, up to a maximum of \$1,000. Second and subsequent offenses would not be subject to an Act 48 citation but rather would proceed through the formal disciplinary process. A separate final-form rulemaking (16A-4318) published by the Board requires that licensees also make up the deficiency within 6 months or face formal disciplinary action.

Because failure to renew a license might be an attempt to avoid the continuing education or malpractice insurance requirements, use of an Act 48 citation for lapsed license practice will be limited to those first-time offenders who are in compliance with the continuing education requirements. The Commissioner therefore also proposed for a first offense violation of practicing on a lapsed license while in compliance with continuing education and professional liability insurance requirements a civil penalty of \$250 for practicing less than 6 months, \$500 for practicing 6 to 12 months and \$1,000 for practicing 12 to 24 months. Second and subsequent offenses, as well as those for more than the biennial renewal period of 24 months, would not be subject to an Act 48 citation but rather would proceed through the formal disciplinary process.

Summary of Comments and Responses to Proposed Rulemaking

The Board published notice of proposed rulemaking at 39 Pa.B. 5580 (September 26, 2009) with a 30-day public comment period. The Board did not receive written comments from the public. The Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) as part of its review of proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1—745.12). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

The HPLC first questioned how the amounts of the civil penalties were determined to assure that the goals are achieved. The maximum civil penalty that the Board may impose for a violation of the act or Board regulations is \$1,000. To provide a significant deterrence against failing to complete continuing education in a timely manner, the Board concluded that this maximum amount is an appropriate civil penalty for a licensee who completes none of the required continuing education. Those whose deficiency is less should be assessed a proportionately lesser civil penalty. Because 24 hours of continuing education are required, the Board calculated that the scheduled civil penalty should be \$1,000 divided by 24 hours, rounded up to \$50 per hour. Similarly, the Board concluded that a licensee who practices for most of a renewal cycle on a lapsed license should also be levied the maximum civil penalty of \$1,000, with lesser periods of lapsed license practice being assessed a proportionately lesser civil penalty. These scheduled civil penalties are consistent with those historically imposed by the Board.

Because when published as proposed the Board intended to renew the license of a licensee who had not completed the required amount of continuing education subject to imposition of a civil penalty by means of a citation and the obligation to make up the deficiency within 6 months, the HPLC also requested an explanation for the jeopardy of a licensee who has not completed continuing education having to certify on the biennial renewal form that the licensee has complied with the mandatory continuing education requirements. Similarly, the HPLC asked how the Board will monitor the grace period during which a licensee shall make up a deficiency in continuing education. The Board chose to abandon this method of enforcement. Instead, the Board will continue the current practice under which a licensee shall verify that the licensee has complied with the continuing education requirements. If the licensee does not verify completion, the Board will not renew the license and without license renewal, there is not a grace period to monitor. However, as past audits have demonstrated, some licensees who have verified compliance may not have actually completed the required amount of continuing education. These licensees will be subject to citation and the obligation to cure the deficiency within 6 months of issuance of the citation. Because legal proceedings have begun, the legal office will track cited licensees for submission of proof of completion of the required amount of continuing education.

The HPLC next requested an explanation for choosing not to include on the schedule a second offense of practice on a lapsed license in compliance with continuing education and professional liability insurance requirements. The Board chose to retain formal action as the means to address these repeat offenders who should have learned from the experience of the first Act 48 citation to renew the license timely or cease practice. The Board notes that the State Board of Barber Examiners (§ 43b.4), the State Board of Cosmetology (§ 43b.5), the State Board of Funeral Directors (§ 43b.6), the State Real Estate Commission (§ 43b.8), the State Board of Accountancy (§ 43b.10), the State Registration Board for Professional Engineers, Land Surveyors and Geologists (§ 43b.13a), the State Board of Dentistry (§ 43b.14a), the State Board of Certified Real Estate Appraisers (§ 43b.15), the State Board of Examiners in Speech-Language and Hearing (§ 43b.16), the State Board of Examiners of Nursing Home Administrators (§ 43b.17) and the State Board of Nursing (§ 43b.18a) all provide for formal action for a second offense violation of practice on a lapsed license.

The State Board of Auctioneer Examiners (§ 43b.12a) first provides for formal action for a third offense violation of practice on a lapsed license. The State Board of Pharmacy (§§ 43b.7 and 43b.7a), the State Architects Licensure Board (§ 43b.11a), the State Board of Occupational Therapy Education and Licensure (§ 43b.19) and the State Board of Veterinary Medicine (§ 43b.21) include practice on a lapsed license in their schedules of civil penalties but do not distinguish among first or any subsequent offenses. No other licensing board within the Bureau provides for an Act 48 citation for a second lapsed license practice offense. The State Board of Vehicle Manufacturers, Dealers and Salespersons (§ 43b.9) and the State Board of Medicine (§ 43b.20) do not include practice on a lapsed license on their schedules of civil penalties, therefore, even first offenses are subject to formal action.

IRRC shared the concerns expressed by the HPLC as previously described.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth, its political subdivisions or the private sector. The final-form rulemaking will not impose additional paperwork requirements upon the Commonwealth, its political subdivisions or the private sector.

Effective Date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

This rulemaking is authorized by section 5(a) of Act 48 (63 P. S. § 2205(a)).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 11, 2009, the Board submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 5580, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

On September 3, 2010, the Board delivered final-form rulemaking to IRRC, the HPLC and the SCP/PLC. Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on September 21, 2010, the final-form rulemaking was approved by the HPLC. On October 6, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 7, 2010, and disapproved the final-form rulemaking.

The Board did not revise the final-form rulemaking in response to IRRC's disapproval. The Board redelivered the final-form rulemaking, together with the supporting report required by section 7(b) of the Regulatory Review Act (71 P. S. § 745.7(b)), to IRRC, the HPLC and the SCP/PLC on November 24, 2010.

Under section 7(d) of the Regulatory Review Act, on March 1, 2011, the final-form rulemaking was approved by the HPLC and the SCP/PLC. Under section 7(c.1) of the Regulatory Review Act, IRRC met on December 16, 2010, and approved the final-form rulemaking.

Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7200, st-chiro@state.pa.us.

Findings

The Commissioner finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the act.

Order

The Commissioner, acting under Act 48, orders that:

- (a) The regulations of the Commissioner, 49 Pa. Code Chapter 43b, are amended by adding § 43b.22 to read as set forth in Annex A.
- (b) The Bureau shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.
- (c) The Bureau shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

KATIE TRUE,
Acting Commissioner

(Editor's Note: See 41 Pa.B. 2845 (June 4, 2011) for the Board's final-form rulemaking relating to this final-form rulemaking.)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 41 Pa.B. 118 (January 1, 2011).)

Fiscal Note: Fiscal Note 16-44 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND VOCATIONAL AFFAIRS

CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL PENALTIES AND PROCEDURES FOR APPEAL

§ 43b.22. Schedule of civil penalties—chiropractors.

STATE BOARD OF CHIROPRACTIC

Violation Under 63 P. S.

Section 625.507(a)

Title/Description

Failure to timely complete the required amount of continuing education

Penalties

First offense—\$50 per hour of deficiency, not to exceed \$1,000
Subsequent offense—formal action

Violation Under 49 Pa. Code Chapter 5

Section 5.17(g)

Title/Description

Practice on a lapsed license in compliance with continuing education and malpractice insurance requirements—first offense

Penalties

Less than 6 months—\$250
6 months to 12 months—\$500
12 months to 24 months—\$1,000

[Pa.B. Doc. No. 11-938. Filed for public inspection June 3, 2011, 9:00 a.m.]