

# PROPOSED RULEMAKING

## BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[ 49 PA. CODE CH. 43b ]

### Schedule of Civil Penalties—Optometrists

The Acting Commissioner of Professional and Occupational Affairs (Commissioner) proposes to add § 43b.25 (relating to schedule of civil penalties—optometrists) to read as set forth in Annex A.

#### *Effective Date*

The proposed rulemaking will be effective upon final-form 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 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.

#### *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, a licensee who receives an Act 48 citation retains due process rights to a hearing prior to the imposition of judgment. 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. Section 5(b)(4) of Act 48 authorizes the State Board of Optometry (Board), as a licensing board within the Bureau, to levy a civil penalty of not more than \$10,000 on any licensee or unlicensed person who violates a provision of the Optometric Practice and Licensure Act (act) (63 P. S. §§ 244.1—244.12) or Board regulations. However, section 5(a) of Act 48 limits the civil penalty levied by citation to no more than \$1,000 per violation.

This is the first time that the Board will participate in the Act 48 citation program. The Board believes that it is necessary to implement the civil penalties in this proposed rulemaking to streamline the disciplinary process to be more efficient and cost effective.

#### *Description of the Proposed Rulemaking*

The Commissioner, in consultation with the Board, proposes to set forth a schedule of civil penalties optometrists practicing on a lapsed license, a violation of section 8(d) of the act (63 P. S. § 244.8(d)). The proposed rulemaking provides a graduated civil penalty increasing based on the length of the lapse and increasing for second offenses. Third or subsequent offenses would require

formal action. In addition, this proposed rulemaking would implement a schedule of civil penalties for failure to complete 30 hours of approved continuing education in accordance with § 23.82(a) (relating to continuing education hour requirements). This schedule would likewise increase depending on the number of hours of deficiency and increase for second offenses. Third or subsequent offenses would require formal action.

#### *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking would not have adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking would reduce the paperwork requirements of the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements, and adjudications and orders for those violations subject to the Act 48 citation process. The only fiscal impact of the proposed rulemaking would be borne by those persons who violate the act or regulations of the Board and are subject to the civil penalties proposed by the new schedule.

#### *Sunset Date*

The Commissioner and the Board continuously monitor the effectiveness of their regulations. As a result, a sunset date has not been assigned.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 28, 2014, 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 the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and 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 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 Regulatory Counsel, Department of State, P.O. Box 2649, Harrisburg, PA 17105-2649, RA-STRegulatoryCounsel@pa.gov within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-5212 (schedule of civil penalties—optometrists) when submitting comments.

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*Acting Commissioner*

**Fiscal Note:** 16A-5212. No fiscal impact; (8) recommends adoption.

PROPOSED RULEMAKING

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.25. Schedule of civil penalties—optometrists.

STATE BOARD OF OPTOMETRY

<i>Violation under 63 P. S.</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 244.8(d)	Practicing or offering to practice optometry by person whose license is expired.	1st offense—less than 5 months—\$250; 5 months to 8 months—\$500; over 8 months-12 months—\$1,000; over 12 months—formal action 2nd offense—less than 6 months—\$500; 6 months to 12 months—\$1,000; over 12 months—formal action 3rd or subsequent offense—formal action
<i>Violation under 49 Pa. Code</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
§ 23.82(a)	Failure to complete required hours of continuing education during the 2 years preceding renewal or reactivation.	1st offense—20 or fewer hours of deficiency—\$50 per hour; more than 20 hours of deficiency—formal action 2nd offense—10 or fewer hours of deficiency—\$100 per hour; more than 10 hours of deficiency—formal action 3rd or subsequent offense—formal action

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