

# RULES AND REGULATIONS

## Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPA-  
TIONAL AFFAIRS  
[49 PA. CODE CH. 43b]

### Schedule of Civil Penalties; Procedures for Imposition of Civil Penalties and Procedures for Appeal

The Commissioner of Professional and Occupational Affairs (Commissioner) adopts Chapter 43b (relating to Commission of Professional and Occupational Affairs) to read as set forth in Annex A.

The amendments are made under the authority of section 5(a) of the act of June 2, 1993 (P. L. 345, No. 48) (act) (63 P. S. § 2205(a)).

Notice of proposed rulemaking was published at 27 Pa.B. 2745 (June 7, 1997) following which the Commissioner accepted public comment for 30 days. The only comment received was from the Independent Regulatory Review Commission (IRRC).

#### *Consideration of IRRC's Comments to Proposed Rulemaking*

Comments submitted by IRRC related to clarity of the proposed regulations. First, it was suggested that the term "formal action," as used in §§ 43b.4—43b.9, be either defined or replaced with another term. The Commissioner has added a definition of "formal action" to clarify the type of action that would be taken in some instances when there would be repeated violations.

Second, IRRC suggested that § 43b.3(b)(1) which refers to a civil penalty which "has been established under the following schedule" be changed to reflect the multiple schedules in §§ 43b.4—43b.9. The Commissioner has implemented this suggestion to better clarify the intent.

Finally, IRRC recommended that the provision for hearings in § 43b.3(c)(1) should reference the procedural rules of the particular licensing board with jurisdiction over the hearing. However, any procedural rules of the individual licensing boards pertaining to hearings only apply to those hearings which are initiated through the filing of an Order to Show Cause, not a citation. Therefore, a Board's procedural rules would not apply to citation hearings. In addition, the Commissioner noted that under § 43b.3(e), these provisions supplement the General Rules of Administrative Practice and Procedure, 1 Pa. Code Part II. The Commissioner is of the view that the General Rules do not need to be supplemented for citation hearings. The Commissioner does, however, understand the need to clarify the fact that these hearings are "citation hearings." Accordingly, § 43b.3(c)(1) has been amended to refer to "citation hearings."

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commissioner submitted a copy of these final-form regulations on October 8, 1997, to IRRC

and to the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the final-form regulations, the Commissioner has provided IRRC and the Committees with a copy of a Regulatory Analysis Form. A copy of this material is available to the public upon request.

The final-form regulations were approved by the House Committee on October 22, 1997. The Senate Committee approved the final-form regulations on October 28, 1997. IRRC met on November 6, 1997, and approved the final-form regulations.

#### *Fiscal Impact*

Professional licensing statutes require each board and commission to be self-supporting. Revenues must be generated by fees paid by licensees and must meet or exceed budgeted expenditures.

A board's disciplinary duties consist of investigating complaints, inspecting licensed facilities and meting out appropriate sanctions. Although the boards are not supported by General Fund tax revenues, members of the regulated community are assessed a biennial renewal fee which finances a board's operations, including the disciplinary function.

Licensees are impacted individually when they are found guilty of violating a board's act or regulations and a fine is levied. A licensee who disputes charges brought against him, including those filed as civil penalty citations under the act, may request a hearing before a hearing examiner or appeal a decision to the appropriate board. The more resources and time expended by personnel of the Department to dispose of disciplinary cases, the greater the impact of the disciplinary function upon a board's operating costs.

#### *Paperwork Requirements*

The regulations will not necessitate any legal, accounting, reporting or other paperwork requirements.

#### *Statutory Authority*

The regulations are authorized under section 5(a) of the act which provides the Commissioner with authority to adopt a schedule of civil penalties for: (1) operating without a current and valid license, registration, certification or permit; and (2) violating a licensing board or commission act or regulation relating to the conduct or operation of a business or facility licensed by a licensing board or commission.

#### *Contact Person*

Individuals who desire information are invited to submit inquiries to Commissioner Dorothy Childress, P.O. Box 2649, Harrisburg, PA 17105-2649.

#### *Order*

The Commissioner hereby orders that:

(a) The regulations of the Commissioner are amended by deleting §§ 43a.1—43a.11 and adding §§ 43b.1 and 43b.4—43b.9 to read as set forth at 27 Pa.B. 2745 (June 7, 1997) and by adding §§ 43b.2 and 43b.3 to read as set forth in Annex A.

(b) The Commissioner shall submit this order, 27 Pa.B. 2745 and Annex A to the Office of General Counsel and to the Office of Attorney General for approval as to legality as required by law.

(c) The Commissioner shall certify this order, 27 Pa.B. 2745 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall become effective immediately upon publication in the *Pennsylvania Bulletin*.

DOROTHY CHILDRESS,  
*Commissioner*

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 6128 (November 22, 1997).)

**Fiscal Note:** Fiscal Note 16-15 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 43a. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

##### §§ 43a.1—43a.11 (Reserved).

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

##### § 43b.2. Definitions.

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

*Act*—The act of July 2, 1993 (P. L. 345, No. 48) (63 P. S. §§ 2201—2207).

*Authorized agent*—An individual authorized by the Bureau to issue citations in accordance with the act.

*Bureau*—The Bureau of Professional and Occupational Affairs under the Commissioner within the Department of State.

*Commissioner*—The Commissioner of Professional and Occupational Affairs.

*Formal action*—Written charges initiated by the filing of an order to show cause as provided for under 1 Pa. Code § 35.14 (relating to orders to show cause).

##### § 43b.3. Procedures.

(a) *Inspections/investigations.* Authorized agents may conduct inspections and investigations for the purpose of ascertaining compliance with statutory provisions and regulations of licensing boards and commissions relating

to required licensure and the conduct or operation of a business or facility.

##### (b) Citations.

(1) If an inspection reveals a violation of a statute or a regulation for which a civil penalty has been established under the schedules in §§ 43b.4—43b.9, the authorized agent may prepare a citation indicating the violations found and the penalties imposed. A copy of the citation will be provided to the respondent.

(2) The citation shall be made on a form approved by the Bureau.

(3) Within 10 days of the date of the issuance of the citation, the respondent shall enter one of the following:

(i) A plea to admit to the violation and remit payment of the civil penalty to the Bureau.

(ii) A plea to deny the violation and request a hearing to contest the imposition of a civil penalty.

(4) Failure to respond to the citation in the manner specified in paragraph (3) within 10 days will result in the entry of a default judgment against the respondent for the full amount of the civil penalty and may result in additional disciplinary action.

(5) The civil penalties shall be paid by certified check or cashier's check or money order and made payable to the "Commonwealth of Pennsylvania," and mailed to: Commonwealth of Pennsylvania, Department of State, Complaints Office—Citations, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649.

##### (c) Citation hearings.

(1) Citation hearings shall be conducted by a hearing examiner in compliance with 2 Pa. C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law).

(2) If a violation is found, the hearing examiner shall impose the full amount of the civil penalty as charged in the citation and as authorized by the schedules in this chapter.

(d) *Appeals.* A decision by a hearing examiner may be appealed by any party by filing an application for review with the appropriate licensing Board within 20 days of the mailing date of the order. An application for review shall set forth with specificity the grounds for appeal. The Board will review the record established before the hearing examiner and in its discretion receive additional evidence.

(e) *Miscellaneous.* This section supplements 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedures).

[Pa.B. Doc. No. 97-1982. Filed for public inspection December 12, 1997, 9:00 a.m.]