

Regulatory Analysis Form

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INDEPENDENT REGULATORY REVIEW COMMISSION

11:06 AM

IRRC Number: *2609*

(1) Agency

Department of State, Bureau of Professional and Occupational Affairs

(2) I.D. Number (Governor's Office Use)

16-38

(3) Short Title

Schedule of Civil Penalties - Nurses

(4) PA Code Cite

49 Pa. Code §§ 43b.18 and 43b.18a

(5) Agency Contacts & Telephone Numbers

Primary Contact: **Cynthia Montgomery, Regulatory Counsel, Department of State (717) 783-7200**

Secondary Contact: **Joyce McKeever, Deputy Chief Counsel, Department of State (717) 783-7200**

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Policy Statement

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The regulation adopts amendments to the civil penalty schedule for the State Board of Nursing (Board).

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

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 the licensing boards and commissions in the Bureau of Professional and Occupational Affairs, to promulgate a schedule of civil penalties for violations of the acts or regulations of these boards and commissions.

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulation establishes a civil penalty schedule for violations of the continuing education regulations of the Board. Recent amendments to the Professional Nursing Law at 63 P.S. § 222 added a continuing education requirement for all professional nurses. With over 200,000 professional nurses, the summary process under Act 48 would be a much more efficient manner of handling violations than the formal disciplinary process, while still ensuring licensees due process.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Nonregulation would require each continuing education violation to be formally prosecuted, which involves greater cost for both the Board and the licensee. The Act 48 summary process would allow agents of the Bureau to issue citations for continuing education violations (first offense) and would reserve the formal disciplinary process for repeat offenders.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The Board, the bureau and the licensees will benefit from the more efficient, cost-effective handling of continuing education violations.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The Board has not identified any particular groups that will be adversely affected by the regulation.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The regulations would apply to all professional nurses, but it would only be applicable to those nurses who violate the continuing education requirement at 63 P.S. § 222. There are approximately 200,000 RNs who renew their licenses during each biennium. The Bureau conducts random audits of all licensees who are subject to continuing education requirements. Of those licensees audited, the violation rate is approximately 1%. The Board estimates that approximately 100 violators will be cited each year once the audit process begins.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The civil penalty schedules were discussed during public session at regular meetings of the State Board of Nursing. Several nursing organizations provided suggestions regarding the rulemaking. The only public comment received was from the Pennsylvania State Education Association, who believes that the civil penalties being implemented are too harsh.

Regulatory Analysis Form

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The Board estimates approximately 200 violations to be identified through the audit process each biennium or 100 per year (based on historical data across all boards that require continuing education). The average civil penalty for a continuing education violation would be \$583. So the projected costs to licensees who violate the continuing education regulations would be \$116,600 per biennium or \$58,300 per year. However, these licensees may also realize a savings in the form of time and reduced legal fees because of the less formal citation process.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

There are no costs or savings to local governments associated with complying with the regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

There are no costs or savings to state government because the Board is self-supporting. The Board will incur additional costs in enforcing the regulation. A percentage of the licensee population is audited for compliance. Historically, Bureau-wide among those boards with continuing education requirements, one percent of those audited are found to be noncompliant. The average cost of processing an Act 48 civil penalty is approximately \$100. Therefore, the Board anticipates additional expenses of \$2,500 in FY 2010-2011; \$5,000 in FY 2011-2012; \$7,500 in FY 2012-2013; and \$10,000 in FY 2013-2014. However these costs are significantly less than would be incurred through the formal disciplinary process.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY 06-07	FY +1 Year 07-08	FY +2 Year 08-09	FY +3 Year 09-10	FY +4 Year 10-11	FY +5 Year 11-12
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community					\$14,575	\$29,100
Local Government						
State Government/ Nurse Board					\$ 2,500	\$ 5,000
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

Due to the RN renewal cycle, it is expected that the first cohort of RNs that will be required to report their continuing education will be in October 2010. The Board anticipates that approximately 25 violators will be cited during the first round of audits in FY 2010-2011 at an average cost of \$100 to process the citations. The average civil penalty for violation of the continuing education regulations is \$583. The Board anticipates that approximately 50 violators will be identified in the FY-2011-2012 when two groups of nurses will be audited. Subsequently, the Board estimates 100 violators per year to be identified.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY – 03-04	FY – 04-05	FY – 05-06	BUDGETED FY 06-07
State Board of Nursing	\$5,382,111	\$5,946,037	\$6,388,169	\$7,985,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Both the Board and the licensees benefit by using the Act 48 citation process due to the reduction in the amount of time and money it takes to process a citation versus the expense of a formal disciplinary proceeding, which can be in the thousands of dollars.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No non-regulatory alternatives were considered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

The Board considered higher civil penalties, but determined that the civil penalties adopted are sufficient to deter first time offenders from repeat violations. Second and subsequent continuing education violations will be subject to the formal disciplinary process.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No federal standards apply.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The regulation will not put Pennsylvania at a competitive disadvantage with other states. All states that require continuing education as a condition of renewal of a license provide for discipline of violators.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation will not affect existing or proposed regulations of the Board or other state agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

There are no public hearings scheduled on the rulemaking. The Board and the Commissioner discussed the continuing education regulations and these civil penalty schedules at regular public meetings which were attended by a number of nursing organizations.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The regulation will reduce the paperwork requirements relating to disciplinary actions for continuing education violations (first offense). A one-page citation consisting of three copies is issued, which the licensee uses to respond by signing the plea section. In a formal disciplinary proceeding, an order to show cause would issue and the licensee would be required to file an answer. There could also be motions, stipulations, prehearing statements, etc. associated with the formal disciplinary process.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No groups with particular needs have been identified.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will become effective on publication of the final-form rulemaking in the Pennsylvania Bulletin.

(31) Provide the schedule for continual review of the regulation.

The Board continuously monitors its regulations at its meetings. Meeting dates are available on the Department of State's website, www.dos.state.pa.us.

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FACE SHEET
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2609

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Copy below is hereby certified to be a true and correct
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Executive or Independent
Agency

BY: _____
(DEPUTY ATTORNEY GENERAL)

Department of State
Bureau of Professional and Occupational Affairs
(AGENCY)

BY: 
Andrew C. Clark

DOCUMENT/FISCAL NOTE NO. 16-38

APR 15 2008

DATE OF APPROVAL

DATE OF ADOPTION: _____

DATE OF APPROVAL

BY: Basil L. Merenda
Basil L. Merenda

(Deputy General Counsel
(Chief Counsel,
Independent Agency
~~Strike inapplicable~~
title)

TITLE: Commissioner
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

- Check if applicable
Copy not approved.
Objections attached.
- Check if applicable. No Attorney
General approval or
objection within 30 day
after submission.

FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
49 PA. CODE § 43b.18a
SCHEDULE OF CIVIL PENALTIES - NURSES

The Commissioner of Professional and Occupational Affairs (Commissioner) hereby rescinds § 43b.18 (relating to schedule of civil penalties – nurses – statement of policy) and replaces it with § 43b.18a (relating to schedule of civil penalties - nurses) to read as set forth in Annex A.

Effective date

The amendments 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 and commissions in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of the licensing boards or commissions.

Background and purpose

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

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

In addition, the schedule of civil penalties is being amended to establish new civil penalties for violation of the continuing education requirement recently enacted at section 12 of the Professional Nursing Law (63 P.S. § 222). Section 12 of the Professional Nursing Law requires professional nurses to complete 30 hours of continuing education during each biennium. The Board is promulgating comprehensive regulations implementing the mandate of section 12 through separate rulemaking. The Commissioner is adopting a civil penalty schedule for violation of the continuing education requirements for professional nurses because with over 200,000 professional

nurses now subject to continuing education requirements, the Commissioner and Board believe the Act 48 citation process will be a much more efficient method of handling violations, while still ensuring licensees due process.

Description of the amendments

The Commissioner, in consultation with the Board, is establishing a \$250 civil penalty for the first offense of failing to complete 1 to 10 hours of continuing education in a biennial period; a \$500 civil penalty for failing to complete 11 to 20 hours of continuing education in a biennial period; and a \$1000 civil penalty for failing to complete 21 to 30 hours of continuing education in a biennial period. Second and subsequent offenses would not be subject to an Act 48 citation, but rather, would proceed through the formal disciplinary process.

Summary of comments to the proposed rulemaking and the Commissioner's response

Notice of Proposed Rulemaking was published on April 28, 2007, at 37 Pa.B. 1986. During the public comment period, the Commissioner received comments from the Pennsylvania State Education Association (PSEA). In addition, as part of their review under the Regulatory Review Act, the House Professional Licensure Committee (HPLC) submitted a comment. The Senate Consumer Protection and Professional Licensure Committee did not comment. On June 28, 2007, the Commissioner received a letter from the Independent Regulatory Review Commission indicating that the Commission had no objections, comments or recommendations to offer on this regulation. The following represents a summary of the comments received and the Commissioner's response.

PSEA expressed the opinion that the schedule of civil penalties for nurses who fail to complete mandatory continuing education is too harsh. In addition, PSEA commented that there did not appear to be any due process provisions in the regulations to allow the nurse to appeal the imposition of a fine.

As a result of these comments, the Commissioner discussed the civil penalty schedule with the Board and concluded that the civil penalties are not excessive; in fact, they are significantly lower than the fines imposed by many other licensing boards in the Bureau of Professional and Occupational Affairs for continuing education violations. For example, some boards routinely impose civil penalties of \$50 to \$100 per credit hour deficient. For ease of administration and due to the significantly larger licensee population of the Nurse Board, the Board and the Commissioner have determined that the civil penalties should be imposed in blocks of credits deficient rather than per credit hour. The Commissioner and the Board believe that these civil penalties are not excessive and will serve as a sufficient deterrent to prevent nurses from neglecting their mandatory continuing education requirement.

The procedures for appealing a civil penalty imposed by citation are set forth at § 43b.3 (relating to procedures). A nurse who wishes to dispute the imposition of a civil

penalty imposed by citation simply declares this intention and mails the citation form back to the Bureau. A hearing is then scheduled before a hearing examiner, for which the nurse is notified by first class mail. If the nurse disagrees with the decision of the hearing examiner, the nurse may appeal it to the Board. If the Board ultimately determines that the nurse has violated the regulations and is subject to the civil penalty, the nurse may appeal the Board's decision to the Commonwealth Court of Pennsylvania. The nurse's due process rights are fully protected by these procedures.

The HPLC noted that the schedule of civil penalties also includes a civil penalty for practicing on a lapsed license and that the continuing education requirement was imposed by the General Assembly as a condition for biennial renewal. Therefore, the HPLC asked whether a nurse would be subject to the civil penalties for both the failure to complete their continuing education and for practicing on a lapsed license. Because the Bureau's enforcement of the continuing education requirements for all of the health-related boards is accomplished by way of post-renewal audit which is not accomplished until after the biennial renewal is completed, all otherwise renewable licenses are renewed. The Nurse Board has elected to impose a 6-month compliance period following the end of the biennial renewal period in which all deficient continuing education must be made up. Those nurses who self-report or who are identified as having been deficient through the post-renewal audit will be subject to the civil penalty for violation of the continuing education requirements. Those nurses who falsely certified that they were in compliance when they renew their licenses may also be subject to disciplinary action for violation of section (a)(4) of the act (63 P.S. § 224(a)(4)), which prohibits fraud or deceit in securing admission to practice. In addition, nurses who fail to make up the continuing education during the 6-month compliance period, or have subsequent continuing education violations, will be subject to additional discipline, including additional civil penalties, reprimand or even suspension until the nurse comes into compliance. However, a nurse's license will remain active during the disciplinary process, therefore, the Board does not anticipate many circumstances where civil penalties for practicing on a lapsed license would be imposed in addition to the civil penalties for failure to complete the continuing education.

No amendments were made to the final rulemaking as a result of these comments.

Fiscal Impact and Paperwork Requirements

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

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 18, 2007, the Commissioner submitted a copy of the notice of proposed rulemaking, published at 37 Pa.B. 1986 (April 28, 2007), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (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.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, the final-form rulemaking was approved by the HPLC. On _____, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Basil L. Merenda, Commissioner of Professional and Occupational Affairs, P.O. Box 2649, Harrisburg, PA 17105-2649.

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) (45 P.S. §§ 1201 and 1202) and the regulations promulgated under those provisions at 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) This final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 37 Pa.B. 1986.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the act of July 2, 1993 (P.L. 345, No. 48).

Order

The Commissioner, acting under the authority provided by the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)), orders that:

(a) The civil penalty schedules promulgated by the Commissioner at 49 Pa. Code, Chapter 43b, are amended to read as set forth in Annex A.

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

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

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

Basil L. Merenda,
Commissioner

ANNEX A

PENNSYLVANIA ADMINISTRATIVE CODE

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.18. [Schedule of civil penalties – nurses -- statement of policy] (Reserved).

[STATE BOARD OF NURSING

Violation under	Title/Description	Civil Penalty
63 P.S.		
Section 225.4	Practicing professional nursing on a lapsed license	1 st offense – 0 – 12 mos. - \$100 per month up to \$1,000; over 12 months - formal action 2 nd offense – formal action

Section 664(4)	Practicing practical nursing on a lapsed license	1 st offense – 0 – 12 mos. - \$75 per month; over 12 months - formal action 2 nd offense – formal action
Section 225.4	Holding oneself out as a licensed dietitian-nutritionist on a lapsed license	1 st offense – 0 – 12 months - \$100 per month up to \$1,000; over 12 months – formal action 2 nd offense – formal action]

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

STATE BOARD OF NURSING

<u>Violation under</u>	<u>Title/Description</u>	<u>Civil Penalty</u>
<u>63 P.S.</u>		
<u>Section 225.4</u>	<u>Practicing professional nursing on a lapsed license</u>	<u>1st offense –</u> <u>0 – 12 mos. - \$100 per</u> <u>month up to \$1,000</u> <u>Over 12 months - Formal</u> <u>action</u>

2nd offense – Formal

action

Section 664(4)

Practicing practical nursing on a
lapsed license

1st offense –

0 – 12 mos. - \$75 per
month;

Over 12 months - Formal
action

2nd offense – Formal

action

Section 225.4

Holding oneself out as a licensed
dietitian-nutritionist on a lapsed
license

1st offense –

0 – 12 months - \$100 per
month up to \$1,000

Over 12 months – Formal
action

2nd offense – Formal

action

Section 222(b)

Failure to complete 30 hours of
approved continuing education

1st offense – Deficiency of

1 – 10 hours - \$250

Deficiency of 11 – 20

hours - \$500

Deficiency of 21 – 30

hours - \$1,000

2nd offense – Formal

action

* * * * *

STATEMENTS OF POLICY

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties—Nurses

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

Effective Date

The proposed rulemaking will be effective upon final-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 and commissions in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of the licensing boards or commissions.

Background and Purpose

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

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

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

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

Description of Proposed Rulemaking

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

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

Fiscal Impact and Paperwork Requirements

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

Sunset Date

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

Regulatory Review

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

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

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

Public Comment

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

BASIL L. MERENDA,
Commissioner

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

Fiscal Note: 16-38. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

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

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

§ 43b.18. (Reserved).

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

STATE BOARD OF NURSING

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

[Pa.B. Doc. No. 07-744. Filed for public inspection April 27, 2007, 9:00 a.m.]

PROPOSED RULEMAKING

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

[Correction]

Schedule of Civil Penalties—Nurses

The document which appeared at 37 Pa.B. 1986 (April 28, 2007) was inadvertently placed in the Statement of Policy section of the *Pennsylvania Bulletin*. It is a proposed rulemaking which is proposing a new rule in § 43b.18a to replace an existing statement of policy in § 43b.18. It should have appeared in the Proposed Rulemaking section of the *Bulletin*.

[Pa.B. Doc. No. 07-744. Filed for public inspection April 27, 2007, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Advance Notice of Proposed Rulemaking Regarding Implementation of the Public Utility Confidential Security Information Disclosure Protection Act; Doc. No. L-00070185; M-00072014

The Pennsylvania Public Utility Commission (Commission) is required to implement H.B. 854, Act 156 of 2006 (Act 156) (P. L. No. 1435, No. 156). The purpose of Act 156, which is called the Public Utility Confidential Security Information Disclosure Protection Act, is to create mechanisms for the safeguarding of confidential security information of public utilities that is provided to various State agencies such as the Commission from disclosure that may compromise security against sabotage or criminal or terrorist acts.

In creating this mandate of nondisclosure of confidential security information, Act 156 directs the Commission to develop, among other things: (1) filing protocols and procedures for public utilities to follow when submitting records containing confidential security information; and

(2) protocols and procedures to address challenges to the designations or requests to examine records containing confidential security information (P. L. 1435, No. 156, § 3(b) and (c)).

The Commission seeks comments on any and all issues relevant to developing appropriate filing requirements for confidential security information and procedures to address challenges to or requests to review confidentiality designations. We are particularly interested in seeking comments on: (1) the factors that should be used to determine whether a public utility's designation of a record or portion thereof as "confidential security information" should be upheld by the Commission in the face of a challenge; (2) when InfoMAP is implemented by the Commission, whether electronic filing of documents containing confidential security information should be allowed (or should only hard copies be filed), and if the answer is yes, whether any special rules need to be implemented for electronic filings; and (3) the procedures that should be followed, if the confidential security information designation is upheld by the Commission in a specific case, for the statutory advocates to obtain access to the confidential security information if they have a legitimate need to such access. Additionally, the commenting parties are requested to submit draft regulatory provisions, including any supporting justification, as they deem appropriate for consideration.

Interested persons wishing to submit comments must file an original and 15 copies with the Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, within 45 days of publication in the *Pennsylvania Bulletin* and reply comments within 30 days thereafter. Further, any public utility interested in remaining on the active service list in this matter must either file comments or provide written notification to the Secretary's Bureau at this docket that they wish to remain on the active service list. Other utilities not on the active service list on a going-forward basis may receive notice of any future orders entered in this proceeding through postings of orders on the Commission's website or through publication in the *Pennsylvania Bulletin*.

The contact person at the Commission is Carl S. Hisiro, Assistant Counsel, Law Bureau, (717) 783-2812.

JAMES J. MCNULTY,
Secretary

[Pa.B. Doc. No. 07-781. Filed for public inspection May 4, 2007, 9:00 a.m.]

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

DATE: February 22, 2008

SUBJECT: Final Rulemaking:
Commissioner of Professional and Occupational Affairs
16-38 – Schedule of civil penalties - Nurses

TO: Andrew Clark, Deputy General Counsel
Office of General Counsel

FROM: Cynthia K. Montgomery, Regulatory Counsel
Department of State



There are no significant legal and policy issues presented by this regulation which amends the civil penalty schedule for the State Board of Nursing at 49 Pa. Code § 43b.18a.

I certify that I have reviewed this regulation for form and legality, that I have discussed any legal and policy issues with the administrative officers responsible for the program, and that all information contained in the Preamble and Annex is correct and accurate.

CKM:rs

16-38: Schedule of Civil Penalties-Nurse

Commentators List

Carol L. Karl, Asst. Director
Pennsylvania State Educators Association
400 North Third Street
PO Box 1724
Harrisburg, PA 17105-1724



26009

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF NURSING
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7142

May 1, 2008

The Honorable Arthur Coccodrilli, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
State Board of Nursing
16-38: Schedule of Civil Penalties-Nurse

Dear Chairman Coccodrilli:

Enclosed is a copy of a final rulemaking package of the State Board of Nursing pertaining to Schedule of Civil Penalties-Nurse.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

Mary E. Bowen, RN, CRNP, Chairperson
State Board of Nursing

MEB/CKM:rs

Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Albert H. Masland, Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel & Senior Counsel in Charge
Department of State
Cynthia Montgomery, Counsel
State Board of Nursing
State Board of Nursing

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16-38
 SUBJECT: SCHEDULE OF CIVIL PENALTIES - NURSES
 AGENCY: DEPARTMENT OF STATE

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED

MAY - 1 REC'D

INDEPENDENT REGULATORY
REVIEW COMMISSION

11:06 AM

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
5/1/08	<i>Maudene Hemmed</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
5/1/08	<i>Maudene Hemmed</i>	MAJORITY CHAIRMAN <i>Mike Sturka</i>
5/1/08	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
		MAJORITY CHAIRMAN <i>Robert Tomlinson</i>
5/1/08	<i>Kathy Coops</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)