

# Regulatory Analysis Form

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

(1) Agency

**Department of State, Bureau of Professional and Occupational Affairs**

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

16-38

IRRC Number: 2609

(3) Short Title

**Schedule of Civil Penalties - Nurses**

(4) PA Code Cite

**49 Pa. Code § 43b.18**

(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 would adopt 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 proposed 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.**

## 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
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
<b>Total Savings</b>						
<b>COSTS:</b>						
Regulated Community					\$14,575	\$29,100
Local Government						
State Government/ Nurse Board					\$ 2,500	\$ 5,000
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Revenue Losses</b>						

(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 April 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
<b>State Board of Nursing</b>	<b>\$5,382,111</b>	<b>\$5,946,037</b>	<b>\$6,388,169</b>	<b>\$7,985,000</b>

(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.

**The public is given 30 days to comment after the publication of proposed rulemaking. No other public comment period will be provided.**

## 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](http://www.dos.state.pa.us).**



FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

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(Pursuant to Commonwealth Documents Law)

INDEPENDENT REGULATORY  
REVIEW COMMISSION

2609

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form and legality. Attorney General

Copy below is hereby certified to be a true and correct  
copy of a document issued, prescribed or promulgated by:

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to form and legality.  
~~Executive of Independent  
Agencies~~

BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

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

BY: \_\_\_\_\_  
Andrew C. Clark

APR 06 2007

DOCUMENT/FISCAL NOTE NO. 16-38

MAR 13 2007

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.

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

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to amend § 43b.18 (relating to schedule of civil penalties - nurses) to read as set forth in Annex A.

*Effective date*

The amendments will be effective upon publication of final-form rulemaking 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 (the Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of these 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 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. (See 34 Pa.B. 5809). It is the intent of this proposed rulemaking to codify the schedule of civil penalties as a regulation.

In addition, amendments to the schedule of civil penalties are being proposed 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 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 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 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 proposed amendments*

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 \$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.

*Compliance with Executive Order 1996-1*

The Board considered and approved the proposed amendments at regularly scheduled public meetings. The Commissioner reviewed the proposed amendments and considered their purpose and likely impact upon the public and the regulated community under the directives of Executive Order 1996-1. The proposed rulemaking addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

*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 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 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 shall specify the regulatory review criteria that 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 of 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

**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].**

**STATE BOARD OF NURSING**

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

Section 664(4)	Practicing practical nursing on a lapsed license	1 <sup>st</sup> offense – 0 – 12 mos. - \$75 per month; over 12 months - formal action 2 <sup>nd</sup> offense – formal action
Section 225.4	Holding oneself out as a licensed dietitian-nutritionist on a lapsed license	1 <sup>st</sup> offense – 0 – 12 months - \$100 per month up to \$1,000; over 12 months – formal action 2 <sup>nd</sup> offense – formal action
<u>Section 222(b)</u>	<u>Failure to complete 30 hours of approved continuing education</u>	<u>1<sup>st</sup> offense –</u> <u>Deficiency of 1 – 10 hours</u> <u>- \$250;</u> <u>Deficiency of 11 – 20</u> <u>hours - \$500;</u> <u>Deficiency of 21 – 30</u> <u>hours - \$1,000</u> <u>2<sup>nd</sup> offense – formal action</u>



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
Post Office Box 2649  
Harrisburg, Pennsylvania 17105-2649  
(717) 783-7192

April 18, 2007

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

Re: Proposed Regulation  
Bureau of Professional and Occupational Affairs  
16-38 - Schedule of Civil Penalties - Nurses

Dear Chairman Coccodrilli:

Enclosed is a copy of a proposed rulemaking package of the Bureau of Professional and Occupational Affairs pertaining to the Schedule of Civil Penalties - Nurses.

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

Sincerely,

A handwritten signature in black ink that reads "Basil L. Merenda".

Basil L. Merenda  
Commissioner  
Bureau of Professional and Occupational Affairs

CKM/pah

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  
Department of State  
Herbert Abramson, Senior Counsel in Charge  
Department of State  
Teresa Lazo, 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  
 BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

**TYPE OF REGULATION**

- X 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

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 REVIEW COMMISSION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
4/18/07	<i>Adeline Bau</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
4/18/07	<i>Vicki Hoffman</i>	
4/18/07	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
4/18/07	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
4/18/07	<i>Mayer Garas</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)