

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE

(1) Agency:

Department of State, Bureau of Professional and Occupational Affairs

(2) Agency Number:

Identification Number: **16-44**

IRRC Number:

2791.

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(3) Short Title:

Act 48 schedule of civil penalties - chiropractors

(4) PA Code Cite:

49 Pa. Code § 43b.22

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: **Thomas A. Blackburn, Regulatory unit counsel, Department of State;**
(717)783-7200; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-0251; tblackburn@state.pa.us

Secondary Contact: **Cynthia K. Montgomery, Regulatory Counsel, Department of State**
(717)783-7200; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-0251; cymontgome@state.pa.us

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5: **State Board of Chiropractic**

(717)783-7155; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-7769; st-chiro@state.pa.us

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
 - Certification by the Governor
 - Certification by the Attorney General

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(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This rulemaking amends the schedule of civil penalties of the State Board of Chiropractic (Board) to include failure to complete the required amount of mandatory continuing education and practice on a lapsed license.

(9) Include a schedule for review of the regulation including:

- | | |
|---|-------------------|
| A. The date by which the agency must receive public comments: | October 26, 2009 |
| B. The date or dates on which public meetings or hearings will be held: | N/A |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | By 9/1/11 renewal |
| D. The expected effective date of the final-form regulation: | Upon publication |
| E. The date by which compliance with the final-form regulation will be required: | Upon publication |
| F. The date by which required permits, licenses or other approvals must be obtained: | N/A |

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

The Commissioner and BPOA licensing boards continually review the efficacy of their regulations, as part of its annual review process pursuant to Executive Order 1996-1. More information can be found on the BPOA website (www.dos.state.pa.us/bpoa).

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

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 appropriate 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 these boards. Section 506(a)(9) of the Chiropractic Practice Act (act) (63 P.S. § 625.506(a)(9)) authorizes the Board to take disciplinary action against a licensee for violating any provisions of the regulations of the Board. Section 506(a)(13) of the act (63 P.S. § 625.506(a)(13)) authorizes the Board to take disciplinary action against a licensee for failing to perform any statutory duty 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 any licensee who

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violates any provision of the act or on any person who practices chiropractic without a license to do so.

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The rulemaking is not mandated by any federal or state law or court order.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The rulemaking establishes a civil penalty schedule for violations of the continuing education regulations of the Board or practicing on a lapsed license. Consistent with the practice of other licensing boards within the Bureau, 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.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

This rulemaking is not based upon any scientific data, studies, or references.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

The Commissioner and the Board have not identified any group of individuals or entities that will be adversely affected by the rulemaking.

(16) 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 rulemaking applies to all licensees of the Board, but it is only applicable to those licensees who fail to comply with the continuing education requirements or practice on a lapsed license. There are approximately 4,150 licensed chiropractors in this Commonwealth, with current licenses. The Bureau conducts random audits of all licensees who are subject to continuing education requirements, and the violation rate for existing boards has been on the order of 1%. The Board estimates that less than 100 violators each year will be identified and cited once the audit process begins.

SECTION III: COST AND IMPACT ANALYSIS

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. Explain how the dollar estimates were derived.

There are no costs to members of the regulated community associated with compliance with the rulemaking. Those few members of the regulated community who do not complete the required amount of continuing education on time will have a savings by being permitted to continue practicing for up to 6 months while completing the required amount of continuing education. Additionally, the Board and the Bureau and those few members of the regulated community who are charged with violating the mandatory continuing education requirements or practicing on a lapsed license will enjoy a savings as a result of compliance with this rulemaking, as a result of using the summary Act 48 citation process rather than full formal disciplinary action.

(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. Explain how the dollar estimates were derived.

There are no costs or savings to local governments associated with compliance with the rulemaking.

(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. Explain how the dollar estimates were derived.

The Bureau and the Board will enjoy a savings as a result of compliance with this rulemaking, as a result of using the summary Act 48 citation process rather than full formal disciplinary action. There are no other costs or saving to state government associated with implementation of the rulemaking.

(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 Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
Regulated Community						
Local Government						
State Government						
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						
Regulated Community						

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Local Government						
State Government						
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

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

Program	FY -3 2007-08	FY -2 2008-09	FY -1 2009-10	Current FY 2010-11
Pa. State Board of Chiropractic	\$397,552	\$538,000	\$565,000	\$593,000

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

No adverse effects or costs have been associated with compliance with the rulemaking. Therefore, the above-identified benefits outweigh any costs.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The Board did not solicit input for an exposure draft. The Board discussed the proposed rulemaking in public session during the Board's meetings in May and November, 2007. The Board discussed the final rulemaking in public session during the Board's meetings in January and March, 2010.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory schemes were considered.

(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 regulations.

The rulemaking does not overlap or conflict with any federal requirements.

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(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

All surrounding states that require continuing education for chiropractors also provide for sanction of violators. The regulation will not put Pennsylvania at a competitive disadvantage with these other states.

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

This rulemaking will have no effect on other regulations of the Board or other state agencies.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Because the rulemaking permits the use of Act 48 citations, rather than formal disciplinary action, to sanction first-time violators of the continuing education requirements and those who practice on a lapsed license, the Bureau, licensees and the Board will have a reduction in paperwork requirements for the disciplinary process.

(28) 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.

The Board has determined that there are no special needs of any subset of its applicants or licensees for whom special accommodations should be made.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

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(Pursuant to Commonwealth Documents Law)

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Copy below is hereby approved as to 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:

Copy below is approved as to form and legality. Executive or Independent Agencies.

BY: _____
(DEPUTY ATTORNEY GENERAL)

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

[Signature]
BY: _____
Andrew C. Clark

DATE OF APPROVAL

DOCUMENT/FISCAL NOTE NO. 16-44

NOV 23 2010
DATE OF APPROVAL

DATE OF ADOPTION:

Basil L. Merenda

BY: _____
Basil L. Merenda

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

Check if applicable
Copy not approved.
Objections attached.

TITLE: Commissioner
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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.22

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 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. Subchapter G of the Board's regulations implement required continuing education. With the current regulatory scheme, any 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) 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 continuing education requirements for licensees of the Board and practice on a lapsed license, 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 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. Separate rulemaking proposed by the Board at 16A-4318 (continuing education violations) would require that licensee also to 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 received no 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 their 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 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. In order 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 via 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 must make up a deficiency in continuing education. The Board has chosen to abandon this method of enforcement. Instead, it will continue the current practice under which a licensee must 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 no 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. 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 described above.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth, its political subdivisions, or the private sector. The rulemaking will impose no 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 the act of July 2, 1993 (P. L. 345, No. 48) (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.

As indicated above, no comments were received from the public or the SCP/PLC. In preparing the final-form rulemaking, the Board considered all comments received from the HPLC and IRRC.

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 disapproved 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(c.1) of the Regulatory Review Act (71 P.S. § 745.7(c.1)), IRRC met on December 16, 2010, and approved the final-form rulemaking. Under section 7(d) of the Regulatory Review Act (71 P.S. § 745.7(d)), the final-form rulemaking was deemed approved by the HPLC and by the SCP/PLC on February __, 2011.

Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Regulatory Unit Counsel, Department of State, by mail to P.O. Box 2649, Harrisburg, PA 17105-2649, by telephone at (717) 783-7200, or by e-mail at stchiro@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 Chiropractic Practice Act.

Order

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

- (a) The regulations of the Commissioner at 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*.

Basil L. Merenda
Commissioner of Professional and Occupational
Affairs

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

<u>63 P.S.</u>	<u>Title/Description</u>	<u>Penalties</u>
<u>Section 625.507(a)</u>	<u>Failure to timely complete the required amount of continuing education</u>	<u>First offense - \$50 per hour of deficiency, not to exceed \$1,000 Subsequent offense – formal action</u>

Violation Under

<u>49 Pa. Code</u>	<u>Title/Description</u>	<u>Penalties</u>
<u>§ 5.17(g)</u>	<u>Practice on a lapsed license in compliance with CE and malpractice insurance requirements – first offense</u>	<u>Less than 6 months - \$250 6 months to 12 months - \$500 12 months to 24 months - \$1,000</u>

(ii) If notification cannot be made after at least two telephone contact attempts, notification may be made by placing the written notification information on the front door of the listed residence or secondary location listed in the registry within 500 feet of the application site 12 to 72 hours prior to the application.

(iii) A record shall be kept of every [telephone] contact and contact attempt made under this paragraph.

(b) *Exceptions.* The following types of application do not require notification under this section:

(1) An application of a pesticide within a [single family residential] detached structure not listed as a secondary location.

* * * * *

(4) An application of a pesticide to a tree or utility pole by means of injection. [Prior notification requirements contained in § 128.83 (relating to ornamental or turf application) remain applicable.]

* * * * *

(6) Application of a pesticide in the care and maintenance of a swimming pool.

(c) *Recordkeeping.* A record of the notification information required under this section, including the time and method of notification, shall be made within 24 hours following the application and maintained for at least 3 years and shall be made immediately available to the Department upon request [or to medical personnel in an emergency].

[Pa.B. Doc. No. 09-1780. Filed for public inspection September 25, 2009, 9:00 a.m.]

DEPARTMENT OF STATE

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties—Chiropractors

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

Effective Date

The regulation will be effective upon publication of the 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 in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of these licensing boards. Section 506(a)(9) of the Chiropractic Practice Act (act) (63 P. S. § 625.506(a)(9)) authorizes the State Board of Chiropractic (Board) to take disciplinary action against a licensee for violating any provisions of the regulations of the Board. Section 506(a)(13) of the act (63 P. S. § 625.506(a)(13)) authorizes the Board to take disciplinary action against a licensee for failing to perform any statutory obligation placed upon a licensed chiropractor. Section 507(a) of the 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. Section 703 of the act (63 P. S. § 625.703) authorizes the Board to levy a civil penalty of up to \$1,000 on any licensee who violates any provision of the act.

Background and Need for the Regulation

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 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 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 Board has not previously had an Act 48 schedule of civil penalties.

As is being done for other licensing boards with continuing education requirements, the Commissioner is proposing 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 will not relieve a licensee of the obligation to complete the required amount of mandatory continuing education. Under the separate rulemaking being proposed by the Board, a licensee who fails to complete the required amount of mandatory continuing education during the biennial renewal period will also be required 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. See 39 Pa.B. (September 26, 2009).

Also, the Board's current regulation at 49 Pa. Code § 5.17(g) (relating to biennial registration; unregistered status and inactive status; failure to renew; address of record) prohibits a licensee whose license has lapsed from practicing chiropractic in this Commonwealth. As is being done for other licensing boards, the Commissioner is proposing a civil penalty schedule for practice on a lapsed or expired license, 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. 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. A licensee who practiced on a lapsed license without having complied with the continuing education or malpractice insurance requirements will instead be subject to formal disciplinary action where the Board has the authority to suspend or revoke a license.

Description of the Proposed Amendments

The Commissioner, in consultation with the Board, proposes 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. The Commissioner, in consultation with the Board, also proposes for a first offense violation of practicing on a lapsed or expired license while in compliance with continuing education and malpractice insurance requirements a civil penalty \$250 for practicing less than 6 months, \$500 for 6 to 12 months, and \$1,000 for 12 to 24 months. 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 regulation at regularly scheduled public meetings. The Commissioner reviewed the proposed regulation and considered the 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 should have no adverse fiscal impact on the Commonwealth, its political subdivisions, or the private sector. The proposed rulemaking will impose no additional paperwork requirements upon the Commonwealth, its political subdivisions, or the private sector. The proposed rulemaking will 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 to be self-supporting. Therefore, the Commissioner and the Boards continuously monitor the cost effectiveness of their regulations. 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 September 11, 2009, 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 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 which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final-form publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649 or by e-mail at st-chiro@state.pa.us, within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Use reference No. 16-44 (Act 48 chiro schedule of civil penalties), when submitting comments.

nia Bulletin. Use reference No. 16-44 (Act 48 chiro schedule of civil penalties), when submitting comments.

BASIL L. MERENDA,
Commissioner

Fiscal Note: 16-44. No fiscal impact; (8) recommends adoption.

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	Title/Description	Penalties
63 P. S.		
Section 625.507(a)	Failure to timely 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	Title/Description	Penalties
49 Pa. Code		
§ 5.17(g)	Practice on a lapsed license in compliance with CE and malpractice insurance requirements—first offense	Less than 6 months—\$250 6 months to 12 months—\$500 12 months to 24 months—\$1,000

[Pa.B. Doc. No. 09-1781. Filed for public inspection September 25, 2009, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 109]

Lead and Copper Rule Short Term Revisions

The Environmental Quality Board (Board) proposes to amend Chapter 109 (relating to safe drinking water). The amendments will provide for increased protection against, and consumer awareness of, exposure to lead in public water systems. The Lead and Copper Rule Short Term (LCR) Revisions (LCRSTR) build upon the existing Lead and Copper Rule and strengthens implementation of the monitoring, public education, customer awareness and lead service line replacement provisions.

This proposal was adopted by the Board at its meeting of June 16, 2009.

ARTHUR COCCODRILLI, CHAIRMAN
GEORGE D. BEDWICK, VICE CHAIRMAN
S. DAVID FINEMAN, ESQ.
SILVAN B. LUTKEWITTE III
JOHN F. MIZNER, ESQ.
KIM KAUFMAN, EXECUTIVE DIRECTOR
LESLIE A. LEWIS JOHNSON, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

October 15, 2010

Honorable Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
2601 North Third Street
Harrisburg, PA 17120

Re: Regulation #16-44 (IRRC #2791)
Department of State
Bureau of Professional and Occupational Affairs
Schedule of Civil Penalties - Chiropractors

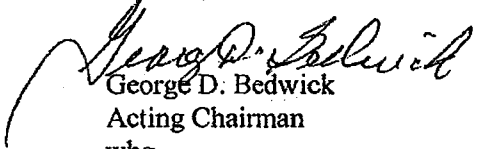
Dear Commissioner Merenda:

The Independent Regulatory Review Commission disapproved your regulation on October 7, 2010. Our order is enclosed and will be available on our website at www.irrc.state.pa.us.

Within 40 days of receipt of our order, Section 7(a) of the Regulatory Review Act requires you to select one of the following options: (1) proceed with promulgation under Section 7(b); (2) proceed with promulgation under Section 7(c); or (3) withdraw the regulation. If you do not take any action within this period, the regulation is deemed withdrawn.

If you or your staff have any questions, please contact Kim Kaufman, our Executive Director, at 783-5506.

Sincerely,


George D. Bedwick
Acting Chairman

wbg

Enclosure

cc: Honorable Robert M. Tomlinson, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee
Honorable Michael P. McGeehan, Majority Chairman, House Professional Licensure Committee
Honorable Julie Harhart, Minority Chairman, House Professional Licensure Committee

**INDEPENDENT REGULATORY REVIEW COMMISSION
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held October 7, 2010

George D. Bedwick, Acting Chairman
S. David Fineman, Esq., by Phone
Silvan B. Lutkewitte, III

Regulation No. 16-44 (#2791)
Department of State
Bureau of Professional and Occupational
Affairs
Schedule of Civil Penalties - Chiropractors

On September 11, 2009, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Department of State (Department). This rulemaking amends 49 Pa. Code § 43b.22. The proposed regulation was published in the September 26, 2009 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on September 3, 2010.

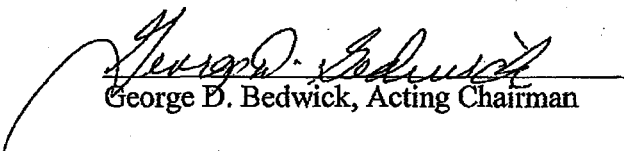
This final regulation would establish a civil penalty schedule for violations of the continuing education requirements of the State Board of Chiropractic (Board). This regulation is the companion piece to Regulation #16A-4318 (IRRC # 2792) from the Board entitled: "Continuing Education Violations."

Thomas A. Blackburn, Regulatory Unit Counsel for the Department, appeared at the public meeting on October 7, 2010. Attorney Blackburn represented that he was authorized to request, on behalf of the Department, that the Commission disapprove this final-form regulation, given that the companion Regulation #16A-4318 (IRRC #2792) had been disapproved at the same public meeting. Without support from the promulgating Department, this regulation does not meet the reasonableness criterion set forth in the Regulatory Review Act and is not in the public interest. 71 P.S. § 745.5b(b)(3).

BY ORDER OF THE COMMISSION:

This regulation is disapproved.




George D. Bedwick, Acting Chairman

**REPORT OF THE COMMISSIONER OF
PROFESSIONAL AND OCCUPATIONAL AFFAIRS:
RESPONSE TO IRRC’S ORDER DISAPPROVING FINAL RULEMAKING 16-44
(SCHEDULE OF CIVIL PENALTIES – CHIROPRACTORS)**

On September 3, 2010, the Commissioner of Professional and Occupational Affairs delivered final rulemaking 16-44 (Schedule of civil penalties – chiropractors) to the Independent Regulatory Review Commission (IRRC), the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). On September 21, 2010, the HPLC met and approved the final rulemaking, and on October 6, 2010, the SCP/PLC was deemed to have approved the final rulemaking. At its meeting on October 7, 2010, IRRC disapproved the final rulemaking. The Commissioner has determined that he should not revise the final rulemaking and now submits this report responding to IRRC’s disapproval order, as required by section 7(b) of the Regulatory Review Act (71 P.S. § 745.7(b)) and 1 Pa. Code § 311.3(3)).

As stated in its disapproval order of October 15, 2010, IRRC disapproved the final rulemaking upon request of the Commissioner because IRRC had disapproved companion rulemaking 16A-4318 (continuing education violations) of the State Board of Chiropractic (Board) and therefore the rulemaking was not in the public interest, under section 5.2(b)(3) of the Regulatory Review Act (71 P.S. § 745.5b(b)(3)). Contemporaneously with redelivery of this rulemaking, the Board delivered revised final rulemaking 16A-4318 under section 7(c) of the Regulatory Review Act. As the Board has delivered final rulemaking that fully responds to IRRC’s disapproval order, the Commissioner requests IRRC to approve this final rulemaking.

IRRC raised no objection to the final rulemaking other than as stated above.

As discussed above, the Commissioner has not revised this rulemaking under section 7(b) of the Regulatory Review Act (71 P.S. § 745.7(b)) and now redelivers the original final rulemaking to IRRC, the HPLC and the SCP/PLC.

Basil L. Merenda
Commissioner of Professional and
Occupational Affairs

COMMENTATORS LIST
Reg. 16-44

There were no commentators for this regulation.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
P.O. Box 2649
Harrisburg, PA 17105-2649
(717) 783-1389

November 24, 2010

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

Re: Final Regulation
Bureau of Professional and Occupational Affairs
16-44

Dear Chairman Coccodrilli:

Enclosed are the final rulemaking and the report of the Commissioner of Bureau of Professional and Occupational Affairs prepared in accordance with section 7(b) of the Regulatory Review Act, 71 P.S. § 745.7(b), following disapproval of the final form regulation by the Independent Regulatory Review Commission. The Commissioner has not revised the final form regulation and resubmits the rulemaking for approval in accordance with the Regulatory Review Act.

Sincerely,

A handwritten signature in cursive script that reads "Basil L. Merenda".

Basil L. Merenda

Commissioner

Bureau of Professional and Occupational Affairs

BLM/TAB:rs

Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Steven V. Turner, Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel & Senior Counsel in Charge
Department of State
Thomas A. Blackburn, Regulatory Unit Counsel
Department of State
Steven Wennberg, Counsel
State Board of Chiropractic
State Board of Chiropractic

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

I.D. NUMBER: 16-44
 SUBJECT: SCHEDULE OF CIVIL PENALTIES – CHIROPRACTORS
 AGENCY: DEPARTMENT OF STATE
 BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

TYPE OF REGULATION

- Proposed Regulation
- X 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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IRRC
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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
<u>11/24/10</u>	<u><i>Blaine D. Michie</i></u>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <u>Michael P. McGeehan</u>
<u>11/24/10</u>	<u><i>Mary Walmer</i></u>	SENATE COMMITTEE ON CONSUMER PROTECTION AND PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <u>Robert M. Tomlinson</u>
<u>11/24/10</u>	<u><i>K. Cooper</i></u>	INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL (for Final Omitted only) LEGISLATIVE REFERENCE BUREAU (for Proposed only)