

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency:

Department of State, Bureau of Professional and
Occupational Affairs

(2) Agency Number: 16A

Identification Number: 5212

IRRC Number:

3051

(3) PA Code Cite: 49 Pa. Code § 43b.25

(4) Short Title:

Schedule of civil penalties – optometrists

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

Primary Contact: Louis Lawrence Boyle, Assistant Counsel, Department of State, P.O. Box 2649,
Harrisburg, PA 17105-2649 (phone 717-783-7200) (fax 787-0251) llboyle@pa.gov.

Secondary Contact: Cynthia Montgomery, Regulatory Counsel, Department of State, P.O. Box
2649, Harrisburg, PA 17105-2649 (phone 717-783-7200) (fax 787-0251) cymontgome@pa.gov.

(6) 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

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

The Commissioner of Professional and Occupational Affairs (Commissioner), in consultation with the State Board of Optometry (Board), is adopting a schedule of civil penalties for two violations: 1) practicing or offering to practice optometry by a person whose license is expired and 2) the failure to complete 30 hours of approved continuing education in accordance with § 23.82 (relating to continuing education hour requirements).

(8) 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 to promulgate a schedule of civil penalties for violations of the acts or regulations of these boards.

(9) 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.

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(10) 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.

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 to a hearing prior to the imposition of judgment. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts.

Section 8 of the act (63 P.S. § 244.8(d)) provides that it shall be unlawful for any person to practice or attempt to offer to practice optometry without having at the time a valid, unexpired, unrevoked and unsuspended license issued under this act. In addition, optometrists are required by regulations of the Board to complete 30 hours of approved continuing education as a condition of biennial renewal and reactivation.

This regulation would progressively increase the civil penalties for continuing violations for the listed offenses based on the severity of the violation. For example, the penalty for practicing on a lapsed license would increase depending on the length of the lapse. Likewise, the penalty for failure to complete 30 hours of approved continuing education would increase depending on the number of hours a licensee is deficient in continuing education.

The civil penalty schedule for failure to complete the required hours of continuing education in accordance with § 23.82(a) (relating to continuing education hour requirements) is in addition to and not in lieu of the statutory requirement under section 5(b) of the act (63 P.S. § 244.5(b)) that licensees may not renew a license if the licensee has not completed the required hours of continuing education. That is, the Board will not renew a license unless the licensee certifies to the Board that all required continuing education has been completed. The Board intends to follow this rulemaking with its own rulemaking that, among other things, clarifies that a licensee who receives a citation for continuing education violations must make up the deficiency and that the hours of continuing education submitted to the Board to make up for a deficiency may not be used to satisfy the continuing education requirement for the current biennium.

(11) 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.

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

The regulation is similar to some surrounding states in that it distinguishes the type of violation with the specific civil penalty. Maryland has an extensive list of violations that describe the minimum and maximum penalty for each violation. The penalties range anywhere from suspensions to revocations as well as monetary penalties of not less than \$100 up to a \$5,000 maximum. Similarly, Ohio has "disciplinary guidelines" that provide information about the minimum and maximum sanction that the Ohio Board may impose based on the violation. New Jersey has statutory authority to impose civil penalties of up to \$10,000 for first offenses, and \$20,000 for second and subsequent offenses. New York's Professional Misconduct Enforcement System has a process for uncontested determinations in which a licensee is assessed a fine for committing an infraction of a minor and technical nature. Based on these regulations in surrounding states, the regulation will not place Pennsylvania at a competitive disadvantage.

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

The regulation will have no effect on other regulations of the Board or other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Board discussed schedules of civil penalties at meetings throughout 2012. In 2012, the Board tentatively approved the schedule of civil penalties and directed its regulatory counsel to send the proposed schedule out as an "exposure draft" to interested parties in compliance with Executive Order 1996-1. The Board did not receive any responses to the exposure draft. Therefore, the Board directed its regulatory counsel to prepare the proposed rulemaking package.

The proposed rulemaking was published on April 12, 2014. Only the Pennsylvania Optometric Association (POA) returned comments, stating that it did not have any objections. The POA's comments were submitted on May 8, 2014.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The rulemaking would apply to all licensees of the Board. There are approximately 2,903 optometrists with current licenses in the Commonwealth.

According to the Pennsylvania Department of Labor and Industry (L&I) in 2010, the majority of optometrists (53.2%) work in offices of other health practitioners. 17.6% of optometrists are self-employed, 2.6% work in health and personal care stores, and 0.7 % work for the Federal government. A few optometrists work in department stores, colleges and universities, offices of physicians, outpatient care centers, other hospitals and vocational rehabilitation services.

For the business entities listed above for the L&I statistics, small businesses are defined in Section 3 of Act 76 of 2012, which provides that a small business is defined by the U.S. Small Business Administration's (SBA) Small Business Size Regulations under 13 CFR Ch. 1 Part 121. Specifically, the SBA has established these size standards at 13 CFR § 121.201 for types of businesses under the North American Industry Classification System (NAICS). In applying the NAICS standards to the types of businesses where optometrists work, a small business in the categories of offices of optometrists, offices of all other miscellaneous health practitioners, and all other health and personal care stores are ones with \$7.0 million or less in average annual receipts. Also in the NAICS category of health and personal care stores, small businesses in pharmacies and drug stores as well as cosmetics, beauty supplies and perfume stores have \$25.5 million or less in average annual receipts. Other businesses in the NAICS small business category of health and personal care stores include optical goods stores with annual receipts of \$19 million or less and food (health) supplement stores with annual receipts of \$14 million or less. A small business for department stores (except discount department stores) is one with \$30 million or less in average annual receipts. Likewise, the threshold for discount department stores is \$27 million or less annually. For colleges, universities and professional schools, the annual threshold is \$25.5 million or less. The NAICS thresholds for offices of physicians (except mental health specialists) and vocational rehabilitation services is \$10 million or less annually. Small businesses in outpatient care centers are \$19 million or less annually. Finally, the threshold for small businesses in general medical and surgical hospitals is \$35.5 million. In considering all of these small business thresholds set by NAICS for the businesses in which optometrists work, it is probable that most of the licensed optometrists work in small businesses.

Only those licensees that practice on a lapsed license or fail to complete required continuing education are affected by the rulemaking. The effect of the rulemaking is only procedural – replacing formal disciplinary proceedings with the “summary” Act 48 citation process.

The Commissioner has not identified any group of individuals or entities that will be adversely affected by the rulemaking. Generally, Act 48 citations benefit both licensees and the Department. 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 to a hearing prior to the imposition of judgment.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

The rulemaking would apply to all licensees of the Board, which is approximately 2,903.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

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 to a hearing prior to the imposition of judgment. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts. Use of the simplified, summary proceedings for handling minor violations reduces the costs to both the licensee and the boards/Bureau.

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

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

(19) 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.

Those members of the regulated community who are charged with violating either of the provisions in this schedule of civil penalties will save legal costs by accepting the Act 48 civil penalty rather than participating in the full formal disciplinary action. At the same time, licensees who receive an Act 48 citation retain their due process right to a hearing prior to the imposition of judgment.

(20) Provide a specific estimate of the costs and/or savings to the **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.

(21) Provide a specific estimate of the costs and/or savings to the **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 with this rulemaking because the Act 48 citation process is much less expensive than formal disciplinary action. However, a specific estimate of savings is unavailable because this will be the first time the Board utilizes an Act 48 civil penalty schedule; therefore, the Board has no historical data that can inform this calculation.

(22) For each of the groups and entities identified in items (19)-(21) above, 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 would permit the use of Act 48 citations to sanction violators of the continuing education requirements and lapsed licenses, rather than formal disciplinary action, the Bureau, licensees and the Board will have a reduction in paperwork requirements for the disciplinary process.

(23) 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:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						
Regulated Community						
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

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 FY 11-12	FY -2 FY 12-13	FY -1 FY 13-14 (Projected)	Current FY FY 14-15 (Budgeted)
State Board of Optometry	\$204,492.82	\$191,527.02	\$195,000.00	\$208,000.00

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

As discussed above in the answers to questions 17 – 19 and 21 – 22, this regulation will not have an adverse impact on small businesses. All licensed optometrists will be subject to the regulation. There are no costs required for compliance with the rulemaking. The only impact would be on small businesses in which an optometrist violates other provisions of law/regulations. This is the least costly alternative method of handling minor violations of the law/regulations.

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

No affected groups or persons have been identified whose particular needs would necessitate the making of special accommodations.

(26) 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 provisions were considered. The Commissioner and the Board consider the Act 48 summary process to be the least burdensome means of handling minor violations of the law/regulations.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

As discussed above in the answers to questions 17 – 19 and 21 – 22, this regulation will not have an adverse impact on small businesses. There are no compliance or reporting requirements that need to be consolidated or simplified. The deadlines are the same for individuals receiving a citation in accordance with the civil penalty schedule regardless of the size of the business. There are no design or operational standards in the regulation. The regulation applies equally to all optometrists, without exemption.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

The rulemaking is not based on any data, studies, or references.

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

- | | |
|---|--|
| A. The date by which the agency must receive public comments: | 30 days after publication |
| B. The date or dates on which public meetings or hearings will be held: | A public meeting was held on July 17, 2014, when the Board discussed the rulemaking and voted to approve it as final. |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | By Spring 2015 |
| 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:

Effective date

F. The date by which required permits, licenses or other approvals must be obtained:

Effective date

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Commissioner and the Board continually review the efficacy of their regulations, as part of their annual review process pursuant to Executive Order 1996-1. More information can be found on the BPOA website (www.dos.state.pa.us/bpoa). All regulations are discussed by the State Board of Optometry in public meetings. Upcoming meetings are scheduled on November 20, 2014; and on the following dates in 2015: January 14, March 12, May 14, July 16, September 17, and November 19, 2015.

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FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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

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Executive or Independent
Agencies.

BY: _____
(DEPUTY ATTORNEY GENERAL)

Bureau of Professional and Occupational Affairs
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-5212

DATE OF ADOPTION: _____

4/14/15
DATE OF APPROVAL

DATE OF APPROVAL

BY: Travis N. Gery, Esq.

(~~Executive~~ Deputy General Counsel
Strike inapplicable title)

TITLE: Commissioner
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

☐ Check if applicable. No
Attorney General approval or
objection within 30 day after
submission.

☐ Check if applicable
Copy not approved.
Objections attached.

NOTICE OF FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

49 PA. CODE, CHAPTER 43b.25

SCHEDULE OF CIVIL PENALTIES - OPTOMETRISTS

The Commissioner of Professional and Occupational Affairs (Commissioner) hereby adds § 43b.25 (relating to schedule of civil penalties – optometrists) 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* and will apply to violations that occur on or after the effective date.

Statutory authority

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of the licensing boards.

Background and purpose

Act 48 authorizes agents of the Bureau to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's boards and commissions. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation retain their due process right to a hearing prior to the imposition of judgment. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts. Section 5(b)(4) of Act 48 authorizes the State Board of Optometry, as a licensing board within the Bureau, to levy a civil penalty of not more than \$10,000 on any licensee or unlicensed person who violates any provision of the Optometric Practice and Licensure Act (act) (63 P.S. §§ 244.1—244.12) or Board regulations. However, section 5(a) of Act 48 limits the civil penalty levied by citation to no more than \$1,000 per violation.

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

This schedule of civil penalties sets forth penalties for practicing on a lapsed license as well as for failure to complete the required 30 hours of approved continuing education. The civil penalty schedule for failure to complete the required hours of continuing education in accordance with § 23.82(a) (relating to continuing education hour requirements) is in addition to and not in lieu of the statutory requirement under section 5(b) of the act (63 P.S. § 244.5(b)) that licensees may not renew a license if the licensee has not completed the required hours of continuing education. That is, the Board will not renew a license unless the licensee certifies to the Board that all required continuing education has been completed. The Board intends to follow this rulemaking with its own rulemaking that, among other things, clarifies that a licensee who receives a citation for continuing education violations must make up the deficiency and that the

hours of continuing education submitted to the Board to make up for a deficiency may not be used to satisfy the continuing education requirement for the current biennium.

Summary of comments

The Commissioner published a notice of proposed rulemaking in the *Pennsylvania Bulletin* at 44 Pa.B. 2247 (April 12, 2014) requesting public comments within 30 days. On May 8, 2014, the Pennsylvania Optometric Association submitted a letter stating that they “have reviewed these proposed penalties and have no additional recommendations.” The Commissioner has not received any other public comments. On June 11, 2014, the Independent Regulatory Review Commission (IRRC) sent a letter to the Commissioner indicating that IRRC had no objections, comments or recommendations to offer on the proposal. Neither the House Professional Licensure Committee nor the Senate Consumer Protection and Public Licensure Committee submitted comments on the proposal.

Fiscal Impact and Paperwork Requirements

The final-form 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 and orders for those violations subject to the Act 48 citation process. The only fiscal impact of the proposal would be borne by those persons who violate the act or regulations of the Board and are subject to the civil penalties proposed by the new schedule.

Sunset Date

The Commissioner and the Board continuously monitor the effectiveness of their regulations. As a result, no sunset date has been assigned.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 28, 2014, the Commissioner submitted a copy of the notice of proposed rulemaking, published at 44 Pa.B. 2247, on April 12, 2014, 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 (SCP/PLC) and the House Professional Licensure Committee (HPLC) for review and comment.

In compliance with section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Commissioner also provided IRRC, HPLC and SCP/PLC with copies of the only public comment received.

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

section 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), the final regulation was deemed approved by IRRC on _____.

Contact Person

Further information may be obtained by contacting the Commissioner or the State Board of Optometry, by mail at P.O. Box 2649, Harrisburg, PA 17105-2649, or by email at RA-optometry@pa.gov.

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 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) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in this Preamble.

Order

The Commissioner, acting under the authority of Act 48, orders that:

(a) The regulations of the Commissioner, 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*.

Ian J. Harlow, Acting Commissioner of
Professional and Occupational Affairs

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 PROCEDURE FOR APPEAL**

§ 43b.25 Schedule of civil penalties – optometrists.

STATE BOARD OF OPTOMETRY

<u>Violation Under</u>	<u>Title/Description</u>	<u>Civil Penalty</u>
<u>63 P.S.</u>		
<u>Section 244.8(d)</u>	<u>Practicing or offering to practice</u>	<u>1st offense –</u>
	<u>optometry by person whose license</u>	<u>less than 5 months - \$250;</u>
	<u>is expired.</u>	<u>5 months to 8 months - \$500;</u>
		<u>over 8 months – 12 months - \$1,000;</u>
		<u>over 12 months – formal action</u>
		<u>2nd offense –</u>
		<u>less than 6 months - \$500;</u>
		<u>6 months to 12 months - \$1,000;</u>
		<u>over 12 months – formal action</u>
		<u>3rd or subsequent offense –</u>
		<u>formal action</u>

Violation Under

49 Pa. Code

<u>§ 23.82(a)</u>	<u>Failure to complete required hours of continuing education during the 2 years preceding renewal or reactivation.</u>	<u>1st offense – 20 or fewer hours of deficiency - \$50 per hour; more than 20 hours of deficiency – formal action</u> <u>2nd offense – 10 or fewer hours of deficiency - \$100 per hour; more than 10 hours of deficiency – formal action</u> <u>3rd or subsequent offense – formal action</u>
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PROPOSED RULEMAKING

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties—Optometrists

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

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of the licensing boards.

Background and Purpose

Act 48 authorizes agents of the Bureau to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's boards and commissions. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, a licensee who receives an Act 48 citation retains due process rights to a hearing prior to the imposition of judgment. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts. Section 5(b)(4) of Act 48 authorizes the State Board of Optometry (Board), as a licensing board within the Bureau, to levy a civil penalty of not more than \$10,000 on any licensee or unlicensed person who violates a provision of the Optometric Practice and Licensure Act (act) (63 P. S. §§ 244.1—244.12) or Board regulations. However, section 5(a) of Act 48 limits the civil penalty levied by citation to no more than \$1,000 per violation.

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

Description of the Proposed Rulemaking

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

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

Fiscal Impact and Paperwork Requirements

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

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 28, 2014, the Commissioner submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

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

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Regulatory Counsel, Department of State, P.O. Box 2649, Harrisburg, PA 17105-2649, RA-STRegulatoryCounsel@pa.gov within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-5212 (schedule of civil penalties—optometrists) when submitting comments.

TRAVIS N. GERY, Esq.,
Acting Commissioner

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

PROPOSED RULEMAKING

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL PENALTIES AND
PROCEDURES FOR APPEAL

§ 43b.25. Schedule of civil penalties—optometrists.

STATE BOARD OF OPTOMETRY

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

[Pa.B. Doc. No. 14-766. Filed for public inspection April 11, 2014, 9:00 a.m.]

May 8, 2014

Regulatory Counsel
Department of State
PO Box 2649
Harrisburg, PA 17105-2649

Good Morning,

The Pennsylvania Optometric Association is providing written comment regarding the proposed Optometry Civil Penalty Schedule.

We have reviewed these proposed penalties and have no additional recommendations.

Very truly yours,

PENNSYLVANIA OPTOMETRIC ASSOCIATION



Marianne E. Boltz, O.D., FAAO
President

MEB/iks

DOS Legal Counsel

MAY 12 2014

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JOHN F. MIZNER, ESQ., CHAIRMAN
GEORGE D. BEDWICK, VICE CHAIRMAN
W. RUSSELL FABER
LAWRENCE J. TABAS, ESQ.
DENNIS A. WATSON, ESQ.
DAVID SUMNER, EXECUTIVE DIRECTOR
LESLIE LEWIS JOHNSON, CHIEF COUNSEL

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

INDEPENDENT REGULATORY REVIEW COMMISSION

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

June 11, 2014

Travis N. Gery, Esq., Commissioner
Bureau of Professional and Occupational Affairs
2601 North Third Street
Harrisburg, PA 17110

Re: Regulation #16A-5212 (IRRC #3051)
Bureau of Professional and Occupational Affairs
Schedule of Civil Penalties - Optometrists

Dear Commissioner Gery:

The Independent Regulatory Review Commission has reviewed your proposed regulation. We have no objections, comments, or recommendations to offer on this regulation. If you deliver the final-form regulation without revisions, and the committees do not take any action, it will be deemed approved.

Very truly yours,

David Sumner
Executive Director
sfh

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 Julie Harhart, Majority Chairman, House Professional Licensure Committee
Honorable Harry A. Readshaw, Minority Chairman, House Professional Licensure Committee
Honorable Carol Aichele, Secretary, Department of State
Robert A. Mulle, Esq., Office of Attorney General
Shawn E. Smith, Esq., Office of General Counsel



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF OPTOMETRY**

**Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7155**

April 24, 2015

The Honorable John F. Mizner, Esq., Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101


Re: Final Regulation
State Board of Optometry
16A-5212: SCHEDULE OF CIVIL PENALTIES

Dear Chairman Mizner:

Enclosed is a copy of a final rulemaking package of the Commissioner of Bureau of Professional and Occupational Affairs pertaining to Schedule of Civil Penalties for Optometrists.

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

Sincerely,


Ian J. Harlow, Acting Commissioner
Bureau of Professional and Occupational Affairs

IJH/lb:aaw

Enclosure

cc: Patricia Allan, Director of Policy, Department of State
Steven Turner, Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Jacqueline Wolfgang, Counsel
State Board of Optometry
State Board of Optometry

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

I.D. NUMBER: 16A-5212

SUBJECT: Schedule of Civil Penalties - Optometrists

AGENCY: DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF OPTOMETRY

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 Disapproved Regulation

a. With Revisions b. Without Revisions

2015 APR 24 AM 10:50

RECEIVED
IRRC

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
<i>HOUSE COMMITTEE ON PROFESSIONAL LICENSURE</i>		
4/24/15	Michele Warren	MAJORITY CHAIR Julie Harhart
_____	_____	MINORITY CHAIR _____
<i>SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE</i>		
4/24/15	Lenny M. Blanch	MAJORITY CHAIR Robert M. Tomlinson
_____	_____	MINORITY CHAIR _____
<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>		
4/24/15	K Cooper	
_____	_____	
<i>ATTORNEY GENERAL (for Final Omitted only)</i>		
_____	_____	
<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>		

April 15, 2015