

Regulatory Analysis Form (Completed by Promulgating Agency)		INDEPENDENT REGULATORY REVIEW COMMISSION	
(All Comments submitted on this regulation will appear on IRRC's website)		<div style="border: 1px solid black; padding: 5px; text-align: center;"> RECEIVED JUN 30 2017 Independent Regulatory Review Commission </div>	
(1) Agency Department of State, Bureau of Professional and Occupational Affairs		IRRC Number: 3100	
(2) Agency Number: 16A Identification Number: 16A-4413			
(3) PA Code Cite: 49 Pa. Code § 43b.27			
(4) Short Title: Schedule of civil penalties – podiatrists			
(5) Agency Contacts (List Telephone Number and Email Address): Primary Contact: Cynthia Montgomery, Regulatory Counsel, Department of State, P.O. Box 69523, Harrisburg, PA 17106-9523 (phone 717-783-7200) (fax 787-0251) cymontgome@pa.gov. Secondary Contact: Teresa Lazo, Assistant Counsel, Department of State, P.O. Box 69523, Harrisburg, PA 17106-9523 (phone 717-783-7200) (fax 787-0251) tlazo@pa.gov.			
(6) Type of Rulemaking (check applicable box): <input type="checkbox"/> Proposed Regulation <input checked="" type="checkbox"/> FINAL REGULATION <input type="checkbox"/> Final Omitted Regulation		<input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> 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 Podiatry (Board), is adopting a schedule of civil penalties for various violations of the Podiatry Practice Act (63 P.S. §§ 42.1 – 42.21c) and the regulations of the Board. The final rulemaking implements a schedule of civil penalties for following two types of offenses: 1) practicing or offering to practice podiatry by a person whose license is expired, and 2) failing to complete required hours of continuing education during the 2 years preceding renewal in accordance with § 29.61(a) (relating to requirements for biennial renewal and eligibility to conduct educational conferences).			
(8) State the statutory authority for the regulation. Include <u>specific</u> 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.			

(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.

(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 12 of the Podiatry Practice Act (act) (63 P.S. § 42.12) provides that any person who is not licensed as a podiatrist shall not practice podiatric medicine. The Board's regulation at § 29.14(a) (relating to current registration) provides that engaging in the practice of podiatry while not maintaining a current registration constitutes a violation of the act and is grounds for discipline of a license to practice podiatry in this Commonwealth.

In addition, section 9.1 of the act (63 P.S. § 42.9a) states that no applicant for a renewal registration shall be granted a registration for the ensuing biennial licensing period unless the applicant shall furnish to the Board satisfactory evidence that he has attended not less than the required number of hours of approved educational conferences during the 2 intervening licensing years. The Board regulations at § 29.61(a) (relating to requirements for biennial renewal and eligibility to conduct education conferences) require a licensee applying for biennial renewal of a license to have completed 50 clock hours of continuing education in approved courses and programs during the preceding biennium. Section 29.61(a) further provides that at least 30 clock hours must be in courses and programs in podiatry that are approved by the Board of the Council on Podiatric Medical Education; and that a maximum of 10 hours may be in approved courses or programs that involve the use of the Internet or the reading of professional journals or magazine articles.

This rulemaking would also progressively increase the civil penalties for continuing violations for the listed offenses based on the length 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 required hours of approved continuing education would increase depending on the number of hours a licensee is deficient in continuing education. The penalty also increases for second offenses.

There are currently approximately 1,442 licensed podiatrists that would be subject to the regulation, but only those that commit the offenses listed in the schedule will benefit from the streamlined Act 48 procedures.

(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 differs with other states in that Pennsylvania breaks down the civil penalty per violation type as described. Although many surrounding states impose civil penalties, few have actual schedules that specify the penalty based on the violation that occurred. Ohio distinguishes between first and second offenses, as does Pennsylvania. First offenses are minimal monetary amounts, and second offenses bring higher monetary penalties. New Jersey is unique in that each violation is a \$250 penalty plus \$50 for each day after the 60th day. Surrounding states, such as Delaware, Maryland, Virginia, and West Virginia, may impose a monetary penalty not to exceed a certain amount for each violation. Delaware may not exceed \$500 for each penalty; Maryland may impose a monetary penalty of \$50,000 or less on a licensee who commits a violation; Virginia may not exceed \$5,000 for each penalty, and West Virginia may not exceed \$10,000 for each penalty. Based on a review these laws and regulations, 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.)

A representative of the Commissioner discussed the schedule of civil penalties with the Board at regularly scheduled public meetings. All meetings of the Board are open to the public. Michael Davis, Executive Director of the Pennsylvania Podiatric Medical Association (PPMA), attended these public sessions and participated in discussions relating to the continuing education requirements. Subsequent to the meetings, Mr. Davis, on behalf of the PPMA, informed the Board that the PPMA supports this regulation.

(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?

Currently, there are 1,442 actively licensed podiatrists in the Commonwealth. According to the Pennsylvania Department of Labor and Industry in 2014 (the most recent year for which data is available), the majority of podiatrists work in offices of other health practitioners (74.2%), while a minority of podiatrists work for colleges, universities and professional schools; in offices of physicians; in outpatient care centers; in general medical and surgical hospitals; in community care facilities for the elderly; and for the federal government. For the business entities listed above, small businesses are defined in Section 3 of the Regulatory Review Act, Act 76 of 2012, which provides that a small business is defined by the U.S. Small Business Administration's Small Business Size Regulations under 13 CFR Ch. 1 Part 121. These size standards have been established for types of businesses under the North American Industry Classification System (NAICS). In applying the NAICS standards to the types of businesses where podiatrists work, a small business in podiatrists' offices is one with \$7.5 million or less in total income annually. Likewise, those podiatrists who work in physicians' offices are considered to work in a small business if the business has \$7.5 million or less in total income annually. The NAICS threshold for general medical and surgical hospitals is \$38.5 million, and for outpatient care centers is \$20.5 million. For community care facilities for the elderly, a small business is one with \$11 million or less in annual income. Colleges, universities and professional schools are considered small businesses if their annual income is less than \$27.5 million. Based on the Department of Labor and Industry figures from 2014, the Board believes that most podiatrists work in small businesses.

This regulation specifies the civil penalties that licensed podiatrists may face, whether or not that licensee is employed by a small business. Thus, the size of the business is not relevant to this regulation.

(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.

Currently, there are 1,442 licensees of the State Board of Podiatry. However, only individuals who practice without a current license or licensees who fail to complete the required hours of approved continuing education will be subject to this regulation.

(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.

This regulation also progressively increases the civil penalties for continuing violations for the listed offenses based on the length 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 the required hours of approved continuing education would increase depending on the number of hours a licensee is deficient in continuing education. It also increases the penalty for second offenses.

Only individuals who practice without a current license or licensees who fail to complete the required hours of approved continuing education as set forth in § 29.61(a) (relating to requirements for biennial renewal and eligibility to conduct educational conferences) will be subject to this regulation. As noted in the preamble, section 5(a) of Act 48 limits the civil penalty levied by citation to no more than \$1,000 per violation. The \$1,000 maximum fine is much less than the \$10,000 maximum civil penalty which may be imposed by a board through formal administrative proceedings.

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

The Act 48 citation process streamlines the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. In addition, the maximum penalty that may be imposed by citation is lower than that which may be imposed by formal proceedings. 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. No adverse effects or increased costs have been associated with compliance with the proposed rulemaking. Therefore, the benefits 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 committing either of the offenses identified in this schedule of civil penalties will save legal costs through the summary process 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. Because this is the first schedule of civil penalties for this Board, it is difficult to determine the amount of the savings to the regulated community.

(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 associated with this rulemaking because the Act 48 citation process is much less expensive than formal disciplinary action. As noted in the answer to question 10 above, 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 present time, approximately 5% of the Podiatry Board's open complaint files involve either a continuing education or lapsed license violation.

(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 first-time and second-time violators of the continuing education requirements and those practicing on lapsed licenses, rather than formal disciplinary action, the Bureau, licensees and the Board will have a reduction in paperwork requirements for the disciplinary process.

(22a) Are forms required for implementation of the regulation?

The only form required to implement this schedule of civil penalties is the actual "citation" form issued by agents of the Bureau.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

Attached is a copy of a blank citation form that is used by the Bureau.

(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	Unknown	Unknown	Unknown	Unknown	Unknown	Unknown
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 2013-2014 (Actual)	FY -2 FY 2014-2015 (Actual)	FY -1 FY 2015-2016 (Projected)	Current FY FY 2016-2017 (Budgeted)
State Board of Podiatry	\$181,458.95	\$206,778.64	\$231,962.79	\$250,000.00

(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 set forth above, the Board/Bureau have determined that this rulemaking does not have an adverse impact on small business. Assuming that most podiatrists are either themselves “small businesses” or work for a small business, as many as 1,442 small businesses may be impacted. However, the regulation only applies to the procedures to be followed when a licensee is found to have violated the law or regulations of the Board. And because the probable effect of the promulgation of the regulation is a reduction in the paperwork, time and costs associated with processing these violations, no less intrusive or less costly alternative method was perceived.

(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.

Originally, the Commissioner/Board had proposed a schedule of civil penalties for lapsed license cases that, as IRRC pointed out, had unintended consequences resulting in inequitable civil penalties for first and second offenses. Therefore, that proposal was rejected and the final-form rulemaking includes a new schedule that increases the civil penalty that may be imposed for each month or part of a month during which a lapsed license violation continues and which increases for a second offense. The Commissioner and Board believe that the least burdensome acceptable alternative has been selected.

(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 performance 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.

This final-form rulemaking does not establish any compliance or reporting requirements, schedules or deadlines, design or operational standards which would require accommodations to be made for small businesses. The regulation simply permits the use of an alternate process for handling disciplinary matters involving continuing education and lapsed license violations for the State Board of Podiatry.

(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 length of the public comment period: **30 days**
- B. The date or dates on which any public meetings or hearings will be held: **The comments on the proposed rulemaking were discussed at a public meeting of the State Board of Podiatry on October 21, 2015. Thereafter, the Commissioner proceeded to promulgate the final rulemaking as discussed with the Board.**
- C. The expected date of delivery of the final-form regulation: **By July 6, 2017**
- D. The expected effective date of the final-form regulation: **Upon publication in the *Pennsylvania Bulletin*.**
- E. The expected date by which compliance with the final-form regulation will be required: **Upon publication. The schedule of civil penalties will apply to violations that occur on or after the publication date.**
- F. The expected date by which required permits, licenses or other approvals must be obtained: **N/A**

(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 under Executive Order 1996-1. Regulatory proposals are discussed at public meetings of the applicable board. The Board will meet on the following remaining dates in 2017: August 16, October 18 and December 20, 2017.

Commonwealth of Pennsylvania DEPARTMENT OF STATE HARRISBURG, PA 17105			<h1 style="margin: 0;">CITATION</h1>		CITATION NO. 5«lastfour»	
1. RESPONDENT «Full_Name»				2. FILE NO. «Complaint»		
3. SEX	4. D.O.B «DOB»	5. AGE «Age»	6. LICENSE NO. «License»			
7. RECORD ADDRESS «Address_1» «Address_2» «Address_3»		CITY «Address_City»	STATE «Add_St»	ZIP CODE «ZipCode»		
8. CHARGE						
9. STATUTE OR REGULATION VIOLATED		10. FACILITY ADDRESS «Address_1» «Address_2» «Address_3» «Address_City», «Add_St» 19086-3339				
Violation #1. 49 Pa. Code § Error! Reference source not found.	FINE \$					
Violation #2	FINE					
Violation #3	FINE					
11. TOTAL DUE	\$					
12. SEND PAYMENT TO:		PA. DEPARTMENT OF STATE ATTN: PROFESSIONAL COMPLIANCE OFFICE – CITATIONS PO BOX 69522 HARRISBURG PA 17106-9522				
13. RECEIPT OF CITATION ACKNOWLEDGED – SIGNATURE				14. DATE ISSUED February 15, 2017		
I Verify That The Facts Set Forth In This Citation Are True And Correct To The Best Of My Knowledge Or Information And Belief. This Verification Is Made Subject To The Penalties Of Section 4804 Of The Crimes Code (18 Pa C S. § 4804) Relating To Unsworn Falsification To Authorities.						
15. ISSUER SIGNATURE Error! Reference source not found.		16. ID NO.		17. REGION Harrisburg		
18. REMARKS						
READ THE NOTICE OF RIGHTS AND OBLIGATIONS ON THIS CITATION FOR AN EXPLANATION OF YOUR RIGHTS AND OBLIGATIONS FOR SETTLEMENT OF THIS MATTER. YOU MUST ELECT ONE OF THE PLEA OPTIONS AND FOLLOW THE APPROPRIATE DIRECTIONS WITHIN 10 DAYS TO AVOID FURTHER LEGAL ACTION AGAINST YOUR LICENSE.						
SHOULD YOU ELECT TO DEMAND A HEARING ON THIS MATTER, FOLLOW THESE INSTRUCTIONS CAREFULLY. YOUR HEARING DATE WILL BE ON <div style="text-align: center;"><DATE> AT 9:00 A.M.</div> ALL HEARINGS ARE HELD IN HARRISBURG IN THE OFFICE OF HEARING EXAMINERS, 2601 NORTH THIRD STREET, HARRISBURG, PA 17105						

NOTICE OF RIGHTS AND OBLIGATIONS

The original of this citation will be filed with the Professional Compliance Office of the Bureau of Professional and Occupational Affairs at the address listed herein.

YOU HAVE THE RIGHT TO HAVE AN INTERPRETER AT YOUR HEARING. YOU MUST NOTIFY US OF THIS REQUEST WHEN YOU RETURN YOUR PLEA.

WITHIN TEN (10) DAYS OF THE RECEIPT OF THIS CITATION, YOU MUST:

–**ADMIT TO THE VIOLATION(S)** by signing the appropriate plea below and mailing the entire RESPONDENT'S RETURN copy of this Citation along with an amount equal to the Total Due as specified in Box 11 to the Professional Compliance Office at the address listed in Box 12.

–**DENY THE VIOLATION(S)** by signing the appropriate plea below and mailing the entire RESPONDENT'S RETURN copy of this Citation to the Professional Compliance Office at the address in Box 12. If you deny the violation(s), a formal hearing will be scheduled in Harrisburg at which you may present evidence on your behalf. Failure to appear at the formal hearing will result in the entry of a default judgment against you for the full amount of the Civil Penalty ("Total Due") as specified in Box 11 of this Citation.

All payments must be made by certified or cashier's check or money order and made payable to the "Commonwealth of Pennsylvania," and mailed to the address on the reverse side. Please place the Citation Number on your certified or cashier's check or money order.

PERSONAL CHECKS WILL NOT BE ACCEPTED.

SUBMISSION OF PAYMENT CONSTITUTES AN ADMISSION OF THE VIOLATION

Failure to respond within the time specified above will result in the entry of a default judgment against you for the full amount of the Civil Penalty ("Total Due") as specified on this Citation. Failure to pay a civil penalty could result in additional fines and the revocation, suspension or other disciplinary action against any license which you may hold.

PLEA

Place the RESPONDENT'S RETURN copy of the Citation and your certified or cashier's check or money order in an envelope and mail to the address listed in Box 12.

I understand this notice of my rights and obligations. Further, I represent that I make this plea knowingly, voluntarily and intelligently. I understand that false statements herein are made subject to the Criminal Penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities. Failure to indicate a plea when forwarding an amount equal to the Total Due as specified on this Citation will result in a plea admitting to all violations being recorded.

1. I ADMIT to the violation(s) on this Citation

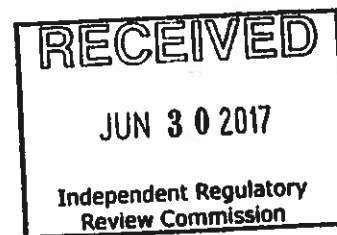
Signature _____ Date _____

2. I DENY the violation(s) on this Citation

Signature _____ Date _____

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)



DO NOT WRITE IN THIS SPACE

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)

State Board of Podiatry
(AGENCY)

BY: Marisa H. Z. Lehr

DOCUMENT/FISCAL NOTE NO. 16A-4413

JUN 28 2017

DATE OF APPROVAL

DATE OF ADOPTION: _____

DATE OF APPROVAL

BY: Ian J. Harlow

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

TITLE: Commissioner of Professional and Occupational Affairs
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

FINAL RULEMAKING

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

49 PA. CODE § 43b.27

SCHEDULE OF CIVIL PENALTIES – PODIATRISTS

The Commissioner of Professional and Occupational Affairs (Commissioner) hereby adds § 43b.27 (relating to schedule of civil penalties – podiatrists) 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 (63 P.S. § 2205(b)(4)) authorizes the State Board of Podiatry (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 any provision of the Podiatry Practice Act (63 P.S. §§ 42.1—42.21c) (act) or regulations of the Board. However, section 5(a) of Act 48 limits the civil penalty that may be 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 Commissioner and the Board believe that it is necessary to implement the civil penalties contained in this final rulemaking to streamline the disciplinary process for lapsed license and continuing education violations.

Summary and Responses to Comments

The Commissioner published a notice of proposed rulemaking in the *Pennsylvania Bulletin* at 45 Pa.B. 2704 (June 6, 2015) requesting public comments within 30 days. No public comments were received. The House Professional Licensure Committee (HPLC) responded on July 14, 2015, that it wishes to take no formal action until the final regulation is promulgated. The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not submit any comments. On August 5, 2015, the Independent Regulatory Review Commission (IRRC) submitted comments.

With regard to the proposed schedule of civil penalties for failure to complete required hours of continuing education during the 2 years preceding renewal or reactivation, IRRC asked whether the intent was to impose a civil penalty and not renew a license when a licensee fails to complete the required continuing education. Furthermore, IRRC also asked about how the Board intends to follow section 9.1 of the Podiatry Practice Act (act) (63 P.S. § 42.9a)) that licensees may not renew a license if the licensee has not completed the required hours of continuing education.

The civil penalty schedule for failure to complete the required hours of continuing education in accordance with § 29.61(a) (relating to requirements for biennial renewal and eligibility to conduct educational conferences) is in addition to, and not in lieu of, the statutory requirement under section 9.1 of the act 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, subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities), that all required continuing education has been completed in accordance with § 29.61(c). If the licensee cannot certify that the licensee has completed 50 clock hours of continuing education in approved courses by the renewal deadline, the Board does not renew the individual's license, and the license expires. Thereafter, the Board will reactivate the license only if the licensee subsequently proves compliance with the continuing education requirement. Upon review, it became apparent that because a license is not reactivated without proof of compliance, there could never be a situation where a citation would be issued for "failure to complete required hours of continuing education during the 2 years preceding...reactivation." For that reason, the final-form rulemaking was amended to apply only to renewal.

Conversely, it is possible that after a licensee has certified compliance with the continuing education requirements and been renewed, a post-renewal audit may demonstrate that a licensee failed to complete all 50 required clock hours, or failed to complete at least 30 clock hours in courses and programs in podiatry approved by the Board or the Council on Podiatric Medical Education, or perhaps exceeded the maximum of 10 hours that may be completed in courses and programs that involve the use of the Internet or the reading of professional journals or magazine articles. See § 29.61(a). It is a post-renewal audit that identifies such deficiencies that would trigger the issuance of a citation under this civil penalty schedule.

Additionally, the Commissioner is in the process of developing a system for all boards and commissions within the Bureau to track compliance with the continuing education requirements as part of the new Pennsylvania Licensing System (PALS). Initially, each licensee will be able to track completion of continuing education and upload certificates of completion to the licensee's "dashboard." The Bureau's intent is that ultimately, when the continuing education modules of PALS are fully implemented, completion of the continuing education requirements will be validated up front and a licensee will be unable to renew until full compliance has been verified, in much the same way that the Bureau currently validates completion of the mandatory continuing education in child abuse recognition and reporting required under section 6383(b)(2) of the Child Protective Services Law (CPSL) (23 Pa.C.S. § 6383(b)(2)).

With regard to the civil penalty schedule for practicing or offering to practice podiatry by a person whose license is expired, IRRC raised two concerns. First, IRRC asked whether, under a first offense, a licensee would be subject to a fine of \$500 or \$1,000 if the licensee practiced on a lapsed license for a period of 5 months and 1 day. IRRC also asked whether a month would mean a whole month and suggested that the Bureau clarify this in the final-form rulemaking. IRRC's second concern with the schedule was that first and second offenses were being treated differently such that a licensee who practiced on a lapsed license for 5 months and 1 day could receive a \$1,000 civil penalty for a first offense (5—12 months), and receive only a \$500 civil penalty for a second offense (less than 6 months). IRRC also observed that under the schedule, a licensee being charged with a first offense for practicing on an expired license for 3 or 4 months would pay the same civil penalty as a licensee being charged with a second offense for the same period of time (\$500). IRRC stated a belief that it would be more reasonable if the penalties for second offenses are higher than the penalties for first offenses.

To address IRRC's two concerns regarding civil penalties for expired licenses, the Commissioner, with approval of the Board, changed the schedule of civil penalties to set the civil penalty for each month or portion of a month of practice on an expired license. For a first offense, the penalty for practicing on an expired license would be \$50 per month or portion of a month, not to exceed \$1,000. Violations exceeding 20 months would result in formal disciplinary action. For a second offense, the penalty would be increased to \$100 per month or portion of a month, not to exceed \$1,000, with violations continuing more than 10 months resulting in formal disciplinary action. Finally, for subsequent offenses, the penalty would be determined through formal disciplinary action. In this way, the civil penalties could not result in the inequities identified by IRRC in its comments.

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/orders for those violations subject to the Act 48 citation process. The only fiscal impact of the regulation 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 Bureau and the Board continuously monitor the effectiveness of the 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 May 20, 2015, the Commissioner submitted a copy of the notice of proposed rulemaking, published at 45 Pa.B. 2704 (June 6, 2015), 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. A copy of this material is available to the public upon request.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, 2017 the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 2017, and approved the final-form rulemaking.

Additional Information

Further information may be obtained by contacting the Commissioner or the State Board of Podiatry, by mail at P.O. Box 2649, Harrisburg, PA 17105-2649, or by email at RA-podiatry@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 by adding § 43b.27 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 submit this order and Annex A to IRRC, the HPLC and the SCP/PLC as required by law.
- (d) The Commissioner shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (e) The regulations shall take effect on publication in the *Pennsylvania Bulletin*.

Ian J. Harlow
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 PROCEDURES FOR APPEAL

§ 43b.27. Schedule of civil penalties – podiatrists.

STATE BOARD OF PODIATRY

<u>Violation Under 63 P.S.</u>	<u>Violation Under 49 Pa. Code</u>	<u>Title/Description</u>	<u>Civil Penalty</u>
<u>Section 42.12</u>	<u>Section 29.14(a)</u>	<u>Practicing or offering to practice podiatry by a person whose license is expired</u>	<u>1st offense – less than 2 months – \$250; 2 – 5 months – \$500; over 5 – 12 months – \$1,000; over 12 months – formal action – \$50 PER MONTH, OR PORTION OF A MONTH, NOT TO EXCEED \$1,000; OVER 20 MONTHS – FORMAL ACTION</u> <u>2nd offense – less than 6 months – \$500; 6 – 12 months – \$1,000; over 12 months –</u>

~~formal action~~ \$100 PER MONTH,

OR PORTION OF A MONTH,

NOT TO EXCEED \$1,000;

OVER 10 MONTHS –

FORMAL ACTION

Subsequent offenses – formal
action

Section 42.9a

Section 29.61(a)

Failure to complete
required hours of
continuing education
during the 2 years
preceding renewal or
reactivation

1st offense – \$50 per hour of
deficiency, not to exceed
\$1,000; over 20 hours –
formal action

2nd offense – \$100 per hour
of deficiency, not to exceed
\$1,000; over 10 hours –
formal action

Subsequent offenses – formal
action

PUBLIC COMMENTATORS FOR 16A-4413

There were no public comments received relating to Regulation 16A-4413



**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7200**

June 30, 2017

The Honorable George D. Bedwick, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harrisstown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
Bureau of Professional and Occupational Affairs
16A-4413

Dear Chairman Bedwick:

Enclosed is a copy of a Final rulemaking package of the Commissioner of Professional and Occupational Affairs pertaining to the schedule of civil penalties for podiatrists.

The Commissioner 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, appearing to read "Ian J. Harlow".

Ian J. Harlow
Commissioner of
Professional and Occupational Affairs

IJH/CKM:aaw
Enclosure

cc: Kalonji Johnson, Deputy Director of Policy, Department of State
Timothy Gates, Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Teresa Lazo, Counsel
State Board of Podiatry
State Board of Podiatry

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

I.D. NUMBER: 16A-4413

SUBJECT: Schedule of Civil Penalties - Podiatrists

AGENCY: DEPARTMENT OF STATE
Bureau of Professional and Occupational Affairs

TYPE OF REGULATION

Proposed Regulation

X Final Regulation

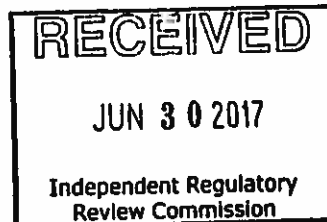
Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Re-Delivery of Disapproved Regulation

a. With Revisions b. Without Revisions



FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
<i>HOUSE COMMITTEE ON PROFESSIONAL LICENSURE</i>		
6/30/17		MAJORITY CHAIR <u>Mark T. Mustio</u>
6/30/17		MINORITY CHAIR <u>Harry A. Readshaw</u>
<i>SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE</i>		
6/30/17		MAJORITY CHAIR <u>Robt. Tomlinson</u>
6/30/17		MINORITY CHAIR <u>Lisa Boscola</u>
<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>		
<i>ATTORNEY GENERAL (for Final Omitted only)</i>		
<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>		