

## DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth under § 302 (14) of the District of Columbia Health Occupations Revision Act of 1985 (Act), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of his intent to take final rulemaking action to adopt the following amendments to Title 17 (Business, Occupations & Professions) (May 1990) of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The purpose of the amendments is to revise the administrative process utilized by the health licensing boards in dealing with complaints submitted to them on issues related to improper conduct or incompetence.

Chapter 41 (HEALTH OCCUPATIONS: ADMINISTRATIVE PROCEDURES) of Title 17 DCMR (Business, Occupations & Professions) (May 1990) is amended as follows:

**Section 4101.4 is amended to read as follows:**

4101.4 Upon receiving a complaint, a board may, in its discretion, order that the health professional complained of answer the complaint within ten (10) days of receipt of the complaint. The board shall attach a copy of the complaint to an order to answer or shall describe the acts alleged in the complaint. The health professional shall respond to an order to answer either personally or through his or her attorney. An answer shall address the substantive allegations set forth in the complaint or order.

**Section 4101.6 is amended to read as follows:**

4101.6 Upon receipt of a health professional's answer or at any point during the course of the investigation or inquiry into the complaint, the board may determine that there is not and will not be sufficient evidence to warrant further proceedings or that the complaint fails to allege incompetence or misconduct for which a health professional may be sanctioned by the board. In such event, the board shall dismiss the complaint.

**Section 4101.7 is amended to read as follows:**

4101.7 For purposes of a hearing on the substance of the complaint in accordance with § 4102 should a hearing occur, a board may draw an adverse inference from a respondent's failure to respond to an order to answer the complaint and shall weigh that inference together with all other evidence in determining whether or not a matter has been proved.

**Add a new section 4101.8 to read as follows:**

4101.8 If a health professional violates the board's order and fails to answer within the ten (10) day period, or if the board determines that there is otherwise reason to believe that the acts alleged occurred and constitute a violation pursuant to D.C. Official Code § 3-1205.14, the board may take one (1) of the following actions:

- (a) Refer the complaint to the Director for investigation;
- (b) Set the matter for a hearing in accordance with § 4102 on the substance of the complaint or on the health professional's violation of the board's order to answer; or
- (c) Request that the licensee or respondent attend a settlement conference in accordance with § 4108.

**Add a new section 4101.9 to read as follows:**

4101.9 If a board dismisses a complaint, it shall give the complainant notice in writing, sent first class mail, of the dismissal of the complaint within ten (10) days of the action.

**Section 4102.2 is amended to read as follows:**

4102.2 If a board proposes to take an action of the type set forth in § 4102.1, it shall give written notice to the respondent in accordance with § 4105. The notice shall contain:

- (a) One of the following statements:
  - (1) A statement that the board has sufficient evidence, which, if proven to be true, establishes that the respondent has failed to answer the complaint when ordered to do so by a board pursuant to § 4101.4; or
  - (2) A statement that the board has sufficient evidence in support of the complaint, which, if proven to be true, justifies taking the proposed action, and setting forth the nature of the evidence that serves as the basis for the underlying complaint;
- (b) One of the following statements:
  - (1) That the board may take the proposed action, unless the applicant requests a hearing before the board by a letter addressed to the board, sent by certified mail or delivered in person, within twenty

- (20) days after service of the notice, and that the board may take the proposed action if the respondent fails to appear at a scheduled hearing; or
- (2) That the board has scheduled a hearing on the proposed action, setting forth the date, time and place of the hearing, and that the board may take the proposed action if the respondent fails to appear at the hearing; and
- (c) A description of the rights of the respondent at a hearing as specified in § 4109.3.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of the publication of this notice in the *D.C. Register*. Comments should be sent to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4<sup>th</sup> Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained from the Department at the same address during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays.

JUL 28 2006

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The Director of the Department of Health, pursuant to the authority set forth under § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 ("Act"), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02 (14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of his intent to take final rulemaking action to adopt the following amendments to Chapter 41 of Title 17 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

This rulemaking will make Chapter 41 § 4123 of Title 17 of the District of Columbia Municipal Regulations, which sets forth the procedural guidelines for the administrative appeal of a decision of an administrative law judge ("ALJ") to the health occupations board responsible for regulating that profession, applicable to persons aggrieved by an order of an ALJ issued pursuant to D.C. Official Code § 2-1831.16(b) as permitted by D.C. Official Code §§ 2-1831.03(i) and D.C. Official Code § 2-1831.16(b).

**The following rulemaking action is proposed:**

17 DCMR Chapter 41, HEALTH OCCUPATIONS: ADMINISTRATIVE PROCEDURES, is amended as follows:

**Section 4123.1 is amended to read as follows:**

- 4123.1 This section shall apply to appeals from decisions of ALJ's under this chapter by the following persons:
- (a) Persons found by an ALJ to have committed an infraction involving a violation of this subtitle, the Act, or any other act regulating health professionals pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, D.C. Law 6-42, D.C. Code § 2-1801.01 (2001);
  - (b) Persons against whom a cease and desist order has been entered pursuant to § 516 of the Act, D.C. Code § 3-1205.16 (2001); and
  - (c) Persons aggrieved by an order of an ALJ issued pursuant to D.C. Official Code § 2-1831.16(b).

**A new section 4123.14 is added to read as follows:**

- 4123.14 A party aggrieved by a final decision of a board may seek review of the decision by the District of Columbia Court of Appeals in accordance with the District of Columbia Administrative Procedure Act, D.C. Code §§ 2-501 to D.C. Official Code § 2-511 (2001).

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All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the D.C. Register, to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4<sup>th</sup> Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 9:00 a.m. and 5:00 p.m. at the address listed above.

## DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED RULEMAKING

DOCKET NUMBER 06-36-TS

The Acting Director of the Department of Transportation, pursuant to the authority in sections 3, 5(3), and 6 of the Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.02, 50-921.04(3) and 50-921.05), and sections 6(a)(1), 6(a)(6) and 6(b) of the District of Columbia Traffic Act, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code § 50-2201.03(a)(1), (a)(6) and (b)), hereby gives notice of the intent to amend Chapter 40 of the Vehicle and Traffic Regulations (18 DCMR). Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The following rulemaking action is proposed:

Title 18 DCMR, Section 4014, "NO RIGHT TURN" RESTRICTIONS, (b) Northeast Section, is amended by adding a new Subsection to read as follows:

4014.7 No truck shall make a right turn so as to proceed in the direction indicated at any of the locations listed in this subsection.

Title 18 DCMR, Section 4014, "NO RIGHT TURN" RESTRICTIONS, Subsection 4014.7, is amended by adding the following to the list of locations where truck traffic is restricted from making right turns:

"The public alley with its egress along the south side of H Street, N.E., between 13<sup>th</sup> Street and 14<sup>th</sup> Street, for eastbound traffic only".

All persons interested in commenting on the subject matter in this proposed rulemaking action may file comments in writing, not later than thirty (30) days after the publication of this notice in the D.C. Register, with the Department of Transportation, Traffic Services Administration, 2000 14<sup>th</sup> Street, N.W., 7<sup>th</sup> Floor, Washington, D.C. 20009 (Attention: Docket No. 06-36-TS). Copies of this proposal are available, at cost, by writing to the above address.