



NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

BOARD OF HEALTH

Notice of Adoption of Amendments to Article 3 of the New York City Health Code

In compliance with §1043(b) of the New York City Charter and pursuant to the authority granted to the Board of Health (“Board”) by § 558 of said Charter, a notice of intention to amend Article 3 of the New York City Health Code (“Health Code”) was published in the City Record on June 22, 2017 and a public hearing was held on July 26, 2017. No comments on the proposal were received. At its meeting on September 12, 2017, the Board adopted the following resolution.

Statement of Basis and Purpose

Health Code §3.11 currently limits the monetary penalty that can be imposed for a violation of the Health Code to \$2,000. In egregious cases, where dangerous conduct is repeated or a violation results in serious harm, a more severe penalty is warranted. New York State Public Health Law § 12, for instance, authorizes the New York State Department of Health to impose a penalty of \$5,000 against recidivists who violate rules in cases where the violation poses a serious threat to health or safety. The Public Health Law also authorizes a penalty of \$10,000 if the violation of a rule results in serious physical harm to a patient.

The Board is amending Health Code §3.11 to add two new subdivisions to enhance penalties in similar circumstances. New subdivision (d), similar to Public Health Law § 12, allows a maximum penalty of \$5,000 for a repeat violation of any section of the Health Code that poses a serious risk of harm to others. New subdivision (e) authorizes a penalty of up to \$10,000 in cases where a violation of the Health Code causes serious physical injury to any person, also similar to Public Health Law § 12.

The Board is also amending subdivision (c) of §3.11 to delete a reference to Article 7 of the Health Code, which has been repealed since 2012 and making other technical edits to the section.

New material is underlined.

Deleted material is in [brackets].

“Shall” and “must” denote mandatory requirements and may be used interchangeably in Department rules, unless otherwise specified or the context clearly indicates otherwise.

The amended rule changes are as follows:

RESOLVED that section 3.11 of article 3 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, be amended to read as follows:

§3.11 Civil Enforcement of the Code.

(a) Except as provided in subdivisions (b), [and] (c), (d) and (e) herein, any person who is determined to have violated this Code or any other applicable law or regulation that the Department is authorized to

enforce, shall, unless otherwise specified in such other law or regulation, be subject to a fine, penalty and forfeiture of not less than [two-hundred] two hundred and not more than two thousand dollars for each violation of a provision of this Code or any other such applicable law or regulation. Each such violation may be treated as a separate and distinct offense, and in the case of a continuing violation, each day's continuance thereof may be treated as a separate and distinct offense.

(b) Any person who is determined to have conducted, carried on, or in any way engaged in an activity without a permit, license, registration, or other authorization required by this Code shall be subject to a fine, penalty and forfeiture of not less than one thousand and not more than two thousand dollars.

(c) Where a person fails to appear in a proceeding brought [pursuant to Article 7 of] to enforce this Code, the penalties imposed for each sustained violation shall be double the amount that would otherwise be assessed by the hearing examiner, but shall not exceed the maximum penalty specified in subdivision (a), [or] (b) or (d) of this section.

(d) The penalty provided for in subdivision (a) of this section may be increased to an amount not to exceed five thousand dollars for a subsequent violation if the person committed the same violation within twelve months of the initial violation for which a penalty was assessed pursuant to subdivisions (a) or (c) of this section and the violation was a serious threat to the health of an individual or individuals.

(e) The penalty provided for in subdivision (a) of this section may be increased to an amount not to exceed ten thousand dollars if the violation directly results in serious physical harm to any person.

Notes:

At its meeting on September 12, 2017, the Board of Health amended Health Code §3.11 to add a new subdivision (d) to enhance the penalties for subsequent violations of the Health Code that seriously threaten an individual's health; to add a new subdivision (e) to enhance the penalty for a violation that causes serious physical harm to another person; and to amend subdivision (c) to delete a reference to Article 7 of the Health Code, which was repealed in 2012.