

## New York City Department of Consumer and Worker Protection

### Notice of Adoption

Notice of Adoption of procedural amendments to the rule prohibiting injurious conduct by licensees towards Department employees. These amendments outline the procedural steps that the Department and the Office of Administrative Trials and Hearings (“OATH”) will follow in enforcing and adjudicating violations of the injurious conduct rule.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Department of Consumer and Worker Protection by Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Department is amending Title 6 of the Rules of the City of New York.

This rule was proposed and published on July 12, 2022. A public hearing was held on August 15, 2022.

### Statement of Basis and Purpose

The Department of Consumer and Worker Protection (“DCWP” or “Department”) is adopting procedural amendments to the rule prohibiting injurious conduct by licensees towards Department employees. These amendments outline the procedural steps that the Department and the Office of Administrative Trials and Hearings (“OATH”) will follow in enforcing and adjudicating violations of the injurious conduct rule.

The injurious conduct rule prohibits licensees and employees of licensees from assaulting, menacing, unlawfully imprisoning, or harassing employees of the Department. The rule allows the Department to immediately suspend a license for violation of the rule, subject to a prompt post-suspension hearing, and to request continued suspension or revocation of the license.

The amendments make clear that, at the prompt post-suspension hearing, continued suspension of the license must be ordered if the Department is found to have alleged facts that, if true, would constitute a violation of the rule. The amendments also clarify that the alleged violations, and any continued suspension or revocation requested by the Department, will then be adjudicated at a trial to be held within 45 days of the decision following the first prompt post-suspension hearing.

These amendments also add a prohibition on intentionally damaging property of the Department. The Department has recently experienced incidents in which property of the Department, such as technology being used during an inspection, was intentionally damaged by employees of the business subject to inspection.

Finally, these amendments clarify that the injurious conduct rule applies to all businesses and their employees. Employees of the Department have been the victim of violations of this rule committed by licensees and non-licensees.

Sections 1043 and 2203(f) of the New York City Charter, and sections 20-104(b) and 20-104(e) of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to promulgate these rules.

New material is underlined.

[Deleted material is in brackets.]

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

Section 1. Section 1-21 of Title 6 of the Rules of the City of New York is amended to read as follows:

**§ 1-21 Injurious Conduct by Licensees.**

(a) No [licensee, or employee or agent of a licensee,] person shall assault, menace, unlawfully imprison, or harass, or attempt to assault, menace, unlawfully imprison, or harass, any employee of the Department engaged in carrying out any duty for the Department. No person shall intentionally damage any property of the Department. A licensee found in violation of this subdivision, or a licensee whose employees or agents are found in violation of this subdivision, is subject to suspension and/or revocation of its licenses as provided for in this section.

(b) In addition to any of the powers that may be exercised by the commissioner pursuant to any other provision of law or rule, upon the issuance of a summons alleging a violation of subdivision (a) by a licensee, or employee or agent of a licensee, the commissioner may immediately suspend any license held by the licensee, subject to a prompt post-suspension hearing to be held no more than 7 business days after the commencement of the suspension. In a summons alleging a violation of subdivision (a), the Department may request suspension or revocation of any license issued by the Department and held by the licensee, in addition to alleging any other violations.

(c) [At the post-suspension hearing prescribed by subdivision (b) of this section, the Department may request continued suspension or revocation of any license held by the licensee.] Post-suspension hearing and trial.

(1) At the post-suspension hearing prescribed by subdivision (b), continued suspension of a license must be ordered if the Department is found to have alleged facts which, if true, are sufficient to establish a violation of subdivision (a) of this section and the Department establishes by a preponderance of the evidence that continued licensure poses a risk to public safety or the Department's ability to perform enforcement. Suspension ordered pursuant to this subdivision must be continued until a final determination is issued pursuant to paragraph (2) of this subdivision.

(2) Following the post-suspension hearing prescribed by subdivision (b) of this section, a trial will be held to adjudicate all violations alleged in the summons as well as any continued suspension or revocation requested by the Department. At such trial, the Department must prove by a preponderance of the evidence that the licensee's continued licensure poses a risk to safety or the Department's ability to perform enforcement. Such trial must commence within 45 days of the decision rendered in the post-suspension hearing.

(d) As used in this section, the following terms shall be defined as follows:

(1) "Assault" shall mean to intentionally or recklessly cause physical injury to another person.

(2) "Menace" shall mean to intentionally place another person in reasonable fear of physical injury.

(3) "Unlawfully imprison" shall mean to restrict a person's movements intentionally and unlawfully in such manner as to interfere substantially with his or her liberty by moving him or her from one place to another, or by confining him or her either in the place where the restriction commences or in a place to which he or she has been moved, without consent and with knowledge that the restriction is unlawful. A person is so moved or confined "without consent" when such is accomplished by physical force, intimidation or deception.

(4) "Harass" shall mean to intentionally and repeatedly harass another person by following such person in or about a public place or places or by engaging in a course of conduct or by repeatedly committing acts which places such person in reasonable fear of physical injury.

(5) "Person" shall have the same meaning as found in Section 20-102 of Title 20 of the New York City Administrative Code.