

Section 4. A new title D-24 is hereby added to chapter XXI of the Nassau County Administrative Code as follows:

Title D-24
HEALTH CLUB OPERATORS

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§ 21-32.1. Definitions.

1. "Contract for services." As used in this title, a contract for services means a contract for consumer services for instruction, training or assistance in bodybuilding, exercising, weight reducing, figure development, the martial arts to include, judo, karate and self-defense, or any similar course of physical training to be provided for the future use by a consumer of the facilities providing the foregoing instruction, training or assistance; or for membership in any group, Club, association or organization for any of the above purposes; except however, that a contract for services shall not mean or include:

- (a) Membership in any group, Club, association or organization which provides any of the foregoing services and which is organized pursuant to the provisions of the not-for-profit corporation law; or
- (b) Boarding accommodations; or

- (c) Travel arrangements contracted for less than one year in advance; or
- (d) Contracts which incorporate warranties of services or repair given in conjunction with appliances or other goods, where the sale of goods is the primary object of the contract; or
- (e) Services by a college or university chartered by the university of the state of New York, a secondary school, an elementary school, a nursery school or kindergarten; and
- (f) Contracts for services to provide instruction, training or assistance to acquire a vocation or skill conducted in a training school or by home study.
- (g) Contracts for programs which provide instruction for improving tennis skills, and are of eight weeks duration or less where the full fee does not exceed two hundred fifty dollars.
- (h) Contracts relating solely to the seasonal use of tennis facilities.

2. "Health Club" as used in this title means any person, firm, corporation, partnership, unincorporated association, or other business enterprise offering instruction, training or assistance or the facilities for the preservation, maintenance, encouragement or development of physical fitness or well being. Such term shall include but shall not be limited to health spas, sports, tennis, racquet ball, platform tennis and Health Clubs, figure salons, health studios, gymnasiums, weight control studios, martial arts and self-defense

schools or any other similar course of physical training.

3. "Secretary" as used in this title shall mean the secretary of state.

4. "Seller" as used in this title means any person, firm, corporation, partnership, unincorporated association or other business enterprise which operates or intends to operate a Health Club.

5. "Buyer" as used in this title means any individual who enters into a contract for services with a Health Club.

6. "Cardiopulmonary resuscitation" or "CPR" as used in this title means measures, as specified in regulations promulgated by the commissioner of health, to restore function or support ventilation in the event of a cardiac or respiratory arrest. Cardiopulmonary resuscitation shall not include measures to improve ventilation and cardiac functions in the absence of an arrest.

7. "Automated external defibrillator" or "AED" as used in this title means a medical device approved by the federal food and drug administration that (a) is capable of recognizing the presence or absence in a patient of ventricular fibrillation and rapid ventricular tachycardia; (b) is capable of determining, without intervention by an operator, whether defibrillation should be performed on the patient; (c) upon determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to the patient's heart; and (d) upon action by an operator, delivers an

appropriate electrical impulse to the patient's heart to perform defibrillation.

§21-32.2 Escrow Required. All moneys received by a seller pursuant to a contract for services for use by a buyer of a Health Club prior to the full operation of such Health Club shall be placed in escrow.

1. Such funds shall be kept and maintained in an account separate and apart from any account maintained by or for the seller's personal use or for use in the construction or operation of the Health Club or for the payment or benefit of employees of the seller.

2. The escrow account shall be established in a bank or trust company doing business in this state.

3. The escrow account shall provide that the purpose of the account is to protect the consumer in the event that the seller fails to complete substantially and to open the facility within one year following establishment of the account. Any buyer who has advanced moneys on deposit in the escrow account may maintain a representative action pursuant to the provisions of the civil practice law and rules to close the account and to release such moneys pro-rata to all buyers similarly situated if such Health Club facility has not been substantially completed and opened within one year of establishment of the account or if the buyer has not had the full

use of another similar facility during this period.

4. Within three business days of a request therefor, a monthly statement of the escrow account is to be furnished to consumers who have advanced funds or obligation until such account is no longer required by this Title.

5. The escrow account shall provide that funds deposited therein may be withdrawn by the seller upon the completion of the proposed construction in the following manner: (i) one-third of the funds may be distributed to the seller upon completion of one-half of the proposed construction; (ii) not more than two-thirds of the funds which have been deposited in escrow may be released upon the completion of three-fourths of the proposed construction; (iii) the escrow agent may accept as evidence of partial completion certification of any architect or engineer licensed pursuant to the provisions of the education law that the proposed construction has been completed in accordance with the plans and specifications.

6. The escrow account shall be released by the escrow agent to the seller not more than thirty days following full operation of the facility and certification of completion from any architect or engineer licensed pursuant to the provisions of the education law.

7. In lieu of the escrow provisions required by this section, the Health Club may furnish information as required by the secretary, executed under penalty

of perjury by an officer or owner of the Health Club which reasonably demonstrates financial responsibility that will enable the Health Club to satisfy the possible claims against the escrow required by this section. In the event the Health Club is controlled by, under common control, or controls another corporation and the other corporation agrees in writing to satisfy the claims against the escrow required by this section, then the financial responsibility of the other corporation shall be considered in determining the applicability of this section. In determining whether the Health Club has the requisite financial responsibility the secretary may consider the operating and business history and reputation of the Health Club and its management within and without the state as well as the operating and business history and reputation of any business controlled by, under common control with, or controlling the Health Club.

§21-32.3 Bond , Letter of Credit or Certificate of Deposit Required

1. Every Health Club, except as provided in subdivision ten of this section, before it enters into any contract for services for use by a buyer of a Health Club, shall file and at all times maintain with the secretary, in form, amount as prescribed herein and substance satisfactory to him:

(a) A bond with a corporate surety, from a company authorized to do

business in this state; or

(b) An irrevocable letter of credit or a certificate of deposit from a New York state or federally chartered bank, trust company, savings bank or savings and loan association qualified to do business in New York state and insured by the federal deposit insurance corporation.

2. The principal sum of the bond, letter of credit, or certificate of deposit shall be;

(a) Fifty thousand dollars if the Health Club sells contracts for services for a term not greater than twelve months; or

(b) Seventy-five thousand dollars if the Health Club sells contracts for services for a term more than twelve months and up to twenty-four months; or

(c) One hundred fifty thousand dollars if the Health Club sells contracts for services for a term more than twenty-four months and up to thirty-six months.

3. For Health Clubs with three or more locations, or for multiple franchises of a common franchisor, the following amounts shall be added to the sum required in subdivision two of this section for the bond, letter of credit, or certificate of deposit:

(a) For three to four locations an additional fifty thousand dollars,

- (b) For five to six locations an additional one hundred thousand dollars,
 - (c) For seven to nine locations an additional one hundred fifty thousand dollars,
 - (d) For ten or more locations an additional two hundred thousand dollars.
4. The bond, letter of credit or certificate of deposit shall be payable in favor of the people of the state of New York for the benefit of any buyer injured in the event that the seller goes out of business prior to the expiration of the buyer's contract for services, or otherwise fails to provide a refund to the buyer after cancellation of the buyer's contract for services as provided for in section 21-32.5 of this Administrative Code.
5. The aggregate liability of the surety upon the bond or the banking organization upon the letter of credit or certificate of deposit to all persons for all breaches of the conditions of the bond shall in no event exceed the amount of the bond, letter of credit or certificate of deposit.
6. The bond, letter of credit or certificate of deposit filed and maintained pursuant to this section shall not be cancelled, revoked, or terminated except after notice to, and with the consent of, the secretary at least forty-five days in advance of such cancellation, revocation, or termination.
7. Any person claiming against the bond, letter of credit or certificate of deposit may bring and maintain an action against the seller and the surety or

bank, trust company, savings bank or savings and loan association.

8. For the purposes of this section, a Health Club shall be considered to be a new Health Club subject to the requirements of a bond, letter of credit or certificate of deposit as provided herein, at the time the Health Club changes ownership, or, in the case of corporate ownership, at the time thirty percent or more of the stock changes or has changed ownership. A change in ownership of a Health Club shall not release, cancel or terminate liability under this section under any bond, letter of credit or certificate of deposit filed for a Health Club as to any buyer who purchases a Health Club contract while such bond, letter of credit or certificate of deposit is in effect unless the transferee, purchaser, successor, or assignee of such Health Club obtains a bond, letter of credit or certificate of deposit under this section for the benefit of such buyer.

9. No contract for services shall be enforceable against the buyer if the seller has failed to comply with any requirements of this section.

10. Health Clubs shall be excluded from the requirement to file a bond, letter of credit, or certificate of deposit if all payments for which the buyer is obligated including, but not limited to down payments, initiation fees, enrollment fees, membership fees or any other direct payments to the Health Club do not exceed one hundred fifty dollars. A Health Club shall also be

excluded from the requirement to file a bond, letter of credit or certificate of deposit, if it offers its buyers a monthly dues payment option for each dues payment plan it offers to customers, provided that: (a) both the annual and the monthly membership options are disclosed to customers prior to entering into any membership contract; (b) that the monthly dues, including any initiation fee or other charge, do not exceed one hundred fifty dollars; (c) that the paid in full fee is not discounted by more than ten percent of the sum of the initiation fee and the monthly dues payments; and (d) that the term of either option be no more than twelve months and that the membership contract not contain an automatic renewal provision. Additionally, any Health Club which owns five or more acres of real property which is used directly for the purpose for which the Club is formed, and any Health Club the use of which is exclusively restricted to residents of a homeowners' association, cooperative or condominium and which is owned by and operated on the premises of such homeowners' association, cooperative or condominium, shall be excluded from the requirement to file a bond, letter of credit or certificate of deposit.

11. (a) Every Health Club shall post, in at least two conspicuous areas within the Club, including, if applicable, an entrance area where buyers are required to register, a sign no smaller than nine inches by fourteen inches that sets

forth the following notice clearly and conspicuously:

IMPORTANT NOTICE FOR HEALTH CLUB MEMBERS

New York State law requires certain Health Clubs to have a bond or other form of financial security to protect members in the event the Club closes.

This Club (insert whichever term is applicable)

has posted the financial security required by law.

or

is exempt from this requirement.

YOU MAY ASK A REPRESENTATIVE OF THE CLUB FOR PROOF OF THE CLUB'S COMPLIANCE WITH THIS LAW. YOU MAY ALSO OBTAIN THIS INFORMATION FROM THE NEW YORK STATE DEPARTMENT OF STATE, DIVISION OF LICENSING SERVICES, 162 WASHINGTON AVENUE, ALBANY, N.Y. 12231.

(b) Health Clubs that operate at two or more locations shall post notices in compliance with paragraph (a) of this subdivision at each such location.

12. The notice required by subdivision eleven of this section shall be incorporated into any contract for services executed by a Health Club in at least ten point bold type.

13. Every contract for services which offers the consumer the option to pay in installments shall contain the following notice, written in at least ten point

bold type and placed directly above the space reserved for the signature of the buyer:

**THIS NOTICE PROVIDES IMPORTANT INFORMATION ABOUT
YOUR PAYMENT OPTIONS**

You may make payments on an installment basis or in a single payment. Paying the full amount may be less expensive, but may involve financial risks to you. Read this notice carefully before making a decision.

New York State law requires certain Health Clubs to post a bond or other financial security to protect members in the event the Club closes. This Club is exempt from this requirement since it gives members the option of paying on an installment basis, therefore it need not post a bond or other form of financial security.

In deciding whether to make your payments on an installment basis, you should be aware that if the Club closes, although the Club will remain legally liable for a refund, you may risk losing your money if the Club is unable to meet its financial obligations to members.

§21-32.4 Contract Restrictions

1. No contract for services shall require payment by the person receiving service or the use of the facilities of a total amount in excess of three

thousand six hundred dollars per annum, provided, however, that this subdivision shall not apply to contracts relating solely to the use of tennis, platform tennis or racquet ball facilities.

2. No contract for services shall provide for a term longer than thirty-six months. No contract for services shall require payments or financing by the buyer over a period in excess of thirty-seven months from the date the contract is entered into, nor shall the term of any such contract be measured by or be for the life of the buyer. Provided, however, that the services to be rendered to the buyer under the contract may extend over a period not to exceed three years from the date the contract is entered into with the right to renew, at the option of the buyer for a like period. The buyer may have thirty days after the expiration to renew the contract. The installment payments shall be in substantially equal amounts exclusive of the down payment and shall be required to be made at substantially equal intervals, not to exceed one month.

3. No contract for services may contain any provisions whereby the buyer agrees not to assert against the seller or any assignee or transferee of the Health Club services contract any claim or defense arising out of the Health Club services contract.

4. No contract for services may require the buyer to execute a promissory

note or series of promissory notes which, when negotiated, cuts off as to third parties a defense which the buyer may have against the seller.

5. No contract may be assigned by one Health Club to another Health Club not located on the same premises without written consent of the buyer.

§ 21-32.5 Right of Cancellation of Contracts for Services

1. Every contract for services at a planned Health Club or a Health Club under construction shall, at the option of the buyer, be voidable in the event that the Health Club and the services to be provided pursuant to such contract are not available within one year from the date the contract is executed by the buyer.

2. Every contract for services shall provide that such contract may be cancelled within three business days after the date of receipt by the buyer of a copy of the written contract. Notice of cancellation shall be delivered by certified or registered United States mail at the address specified in the contract. Such contract shall contain the following written notice in at least ten point bold type: CONSUMERS RIGHT TO CANCELLATION. YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR FURTHER OBLIGATION WITHIN THREE (3) DAYS FROM THIS DATE Notice of cancellation shall be in writing subscribed by the buyer

and mailed by registered or certified United States mail to the seller at the address specified in such form. Such notice shall be accompanied by the contract forms, membership cards and any other documents or evidence of membership previously delivered to the buyer. All moneys paid pursuant to such contract shall be refunded within fifteen business days of receipt of such notice of cancellation. If the buyer has executed any credit or loan agreement to pay for all or part of Health Club services, any such negotiable instrument executed by the buyer shall also be returned within fifteen days.

3. Every contract for services shall provide that after such three day period for cancellation as provided in subdivision two of this section, the buyer's estate may cancel a contract for services if the buyer dies. The buyer may also cancel after three days if the buyer becomes significantly physically disabled for a period in excess of six months, or moves his residence to a location more than twenty-five miles from a Health Club operated by the seller, or after the services are no longer available or substantially available as provided in the contract because of the seller's permanent discontinuance of operation or substantial change in operation. Nothing contained herein shall restrict or prohibit the seller from offering or providing in such contract additional or broader reasons for cancellation. The seller may require reasonable evidence for a cancellation pursuant to this subdivision. Such

contract shall contain the following notice captioned in at least ten point bold type:

ADDITIONAL RIGHTS TO CANCELLATION:

You may also cancel this contract for any of the following reasons:

If upon a doctor's order, you cannot physically receive the services because of significant physical disability for a period in excess of six months.

If you die, your estate shall be relieved of any further obligation for payment under the contract not then due and owing.

If you move your residence more than twenty-five miles from any Health Club operated by seller.

If the services cease to be offered as stated in the contract.

All moneys paid pursuant to such contract cancelled for the reasons contained in this subdivision shall be refunded within fifteen days of receipt of such notice of cancellation; provided however that the seller may retain the expenses incurred and the portion of the total price representing the services used or completed, and further provided that the seller may demand the reasonable cost of goods and services which the buyer has consumed or wishes to retain after cancellation of the contract. In no instance shall the seller demand more than the full contract price from the buyer. If the buyer has executed any credit or loan agreement to pay for all or part of Health

Club services, any such negotiable instrument executed by the buyer shall also be returned within fifteen days.

§21-32.6 Assignment of Contracts for Services

1. No assignee who takes a note or other obligation as consideration for a contract containing the disclosure requirements of 21-32.5 of this Administrative Code shall fail to honor the consumer's right of cancellation as provided in this Title.

2. No creditor holding a note or other obligation, to which a consumer has obligated himself in order to purchase a contract shall fail to honor the consumer's right of cancellation under this Title if:

(a) the creditor is a person related to the seller of services; or

(b) the seller prepares documents used in connection with the loan; or

(c) the creditor supplies forms to the seller used by the consumer in obtaining the loan; or

(d) the creditor makes twenty or more loans in any calendar year, the proceeds of which are used in transactions with the same seller or with a person related to the same seller; or

(e) the consumer is referred to the creditor by the seller; or

(f) the creditor, directly or indirectly, pays the seller any consideration

whether or not it is in connection with the particular transactions; or

(g) the creditor participated in or was connected with the sale.

3. No assignee of a contract shall fail to give notice of the assignment to the consumer. A notice of assignment shall be in writing addressed to the consumer at the address shown on the contract and shall identify the contract.

§21-32.7 Deceptive Acts Prohibited. It is hereby declared to be an unfair and deceptive trade practice and unlawful for a seller to:

1. Misrepresent directly or indirectly in its advertising, promotional materials, or in any manner the size, location, facilities or equipment of its studio, or place of business or the number or qualifications of its personnel;
2. Use or refer to fictional organization divisions or position titles or make any representation which has the tendency or capacity to mislead or deceive consumers as to the size or importance of the business, its divisions, or personnel, or in any other material respect;
3. Misrepresent directly or indirectly the size, importance, location, facilities, or equipment of the business through use of photographs, illustrations, or any other depictions in catalogs, advertisements, or other promotional materials;

4. Misrepresent the location or locations at which its services will be offered;
5. Misrepresent the nature of its courses, training devices, methods or equipment or the number, qualifications, training, or experience of its personnel, whether by means of endorsements or otherwise;
6. Misrepresent the nature and extent of any personal services, guidance, assistance, or other attention the business will provide for consumers;
7. Designate or refer to his sales representation using terms that misrepresent in any other manner, the titles, qualifications, training, experience or status of his salesmen, agents, employees, or other representatives; and
8. Misrepresent in any manner by the seller or his assignee the buyer's right to cancel under this Title.

§21-32.8 Contracts Void and Unenforceable.

1. Any contract for services which does not comply with the applicable provisions of this Title shall be void and unenforceable as contrary to public policy.
2. Any waiver by the buyer of the provisions of this Title shall be deemed void and unenforceable by the seller as contrary to public policy.

§21-32.9 Automated External Defibrillator Requirements

1. Every Health Club as defined under paragraph b of subdivision one of section 3000-d of the Public Health Law whose membership is five hundred persons or more shall have on the premises at least one automated external defibrillator and shall have in attendance, at all times during staffed business hours, at least one individual performing employment or individual acting as an authorized volunteer who holds a valid certification of completion of a course in the study of the operation of AEDs and a valid certification of the completion of a course in the training of cardiopulmonary resuscitation provided by a nationally recognized organization or association.

2. Health Clubs and staff pursuant to subdivision one of this section shall be deemed a "public access defibrillation provider" as defined in paragraph (c) of subdivision one of section 3000-b of the Public Health Law and shall be subject to the requirements and limitation of such section.

3. Pursuant to sections 3000-a and 3000-b of the Public Health Law, any public access defibrillation provider, or any employee or other agent of the provider who, in accordance with the provisions of this section, voluntarily and without expectation of monetary compensation renders emergency medical or first aid treatment using an AED which has been made available pursuant to this section, to a person who is unconscious, ill or injured, shall be liable only pursuant to section 3000-a of the Public Health Law.

§ 21-32.10 Private Right of Action

1. Any buyer damaged by a violation of this Title may bring an action for recovery of damages. Judgment may be entered in an amount not to exceed three times the actual damages plus reasonable attorney fees.
2. Nothing in this Title shall be construed so as to nullify or impair any right or rights which a buyer may have against a seller at common law, by statute, or otherwise.

§ 21-32.11 Violations.

1. Any seller or his assignees who violate any provision of this Title, or who shall counsel, aid or abet such violation shall be liable for a civil fine of not more than twenty-five hundred dollars for each violation. The provisions of this Title are not exclusive and do not relieve the seller or his assignees or the contracts subject to this Title from compliance with all other applicable provisions of law.
2. In addition to the provisions of subdivision one of this section, any seller or his assignees who violate section 21-32.3 of this Administrative Code shall be guilty of a misdemeanor.

§ 21-32.12. **Supplemental definitions.** In sections 21-32.13 through 22-32.21 the following definitions shall apply:

- a. "Commissioner" means the Nassau County Commissioner of Consumer Affairs or the Commissioner's designated agent.
- b. "Applicant" shall include all natural persons who are sole proprietors, partners in the business, corporate officers and anyone owning more than ten percent of the stock of an applicant or licensee corporation.

§ 21-32.13. **License required.**

1. After January 1, 2017, no person shall, within the County of Nassau, operate a Health Club either separately or in conjunction with some other business, without first having obtained a license in accordance with and subject to the provisions of this Title.
2. Such license shall be displayed in a conspicuous place at the designated place of business of the licensee.
3. Such license shall not in any way supplant the licensing and display

requirements of any applicable Federal, State, other County, Town, Village or City laws or regulation.

§ 21-32.14 Application for License; Fee

1. Applications for Health Club operator licenses shall be made to the Commissioner. The application shall contain the following information:

a. Name and description of the applicant's business enterprise. Natural persons using their own name or a trade name must present a certified copy of the business certificate on file in the Nassau County Clerk's Office. A partnership conducting business must submit a certified copy of the partnership certificate on file in the Nassau County Clerk's Office. A corporation must furnish a copy of the Secretary of State's Filing receipt. A Corporation operating under an assumed name (or "DBA") must submit an Assumed Name Certificate that has been filed with New York State authorizing the use of that name in Nassau County. All corporations must furnish the original and current corporate structure naming all principals, officers, directors and stockholders including all minutes showing changes made to the corporate structure.

b. All applicants or the natural person submitting the application, must submit acceptable evidence of identity. This proof must be a state issued Department of Motor Vehicles Driver License or Non-Driver Identification Card. Only persons 18 years old or older may submit proof of identity.

c. The applicant's legal home address and address of all places of business within Nassau County and the address of a designated agent for service of process. In the cases of a corporation, the names and home addresses of all officers, directors and shareholder owning ten percent of corporate stock.

d. The name and address of the owner or owners of the location at which the Health Club is to operate and the nature of the right of occupancy of the applicant to use said premises and a copy of lease or deed for that premises.

e. A description of the nature of the business to be conducted and/or being conducted by the applicant in Nassau County, including but not limited to a description of all services to be or offered by the Health

Club and the equipment and facilities available.

f. A statement as to whether or not the applicant has been convicted of a crime or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefore and such other facts or evidence as is deemed necessary by the Commissioner to establish that the applicant is a person fit and capable of properly conducting the activity or business for which the license is sought.

g. Two photographs of the applicant or the president or principals of the applicant, taken not more than sixty (60) days prior to the date of application, which clearly depict the head and shoulders of the applicant and which shall be 2 inches wide by 2 inches tall.

h. Copies of such certificates, permits, diplomas, licenses or similar documentation regarding the qualification of the applicant or the applicant's employees to render the services offered by the Health Club.

2. Every application for a Health Club operator's license shall be

accompanied by a non-refundable application fee. The amount of the fee shall be set by ordinance.

3. No applicant for a license or license renewal shall have any un-negotiated judgments, liens, tax warrants or unpaid child support orders.

4. Every license issued hereunder shall be valid for the operation of one location. Licensees may request additional licenses to operate additional locations from the Commissioner upon the payment of a fee, the amount of which shall be set by ordinance. Each separate corporation and/or DBA must apply for its own license.

§ 21-32.15. Issuance of License

1. Upon receipt of the license application, fee and bonds required of the applicant, the Commissioner shall review the application and, if appropriate, issue a license to the applicant.

2. The Commissioner shall keep a record of all licenses issued, suspended and/or revoked, as well as any other matters herein described.

§ 21-32.16. **Expiration and Renewal of License.** Every license shall expire two years after its issuance. Every license may be renewed upon payment of the required renewal fee and filing a renewal application with the Commissioner no earlier than thirty (30) days before expiration. The applicant shall certify that no changes have occurred with respect to any of the facts or information required or supplied on the original application, or, if there have been any changes, the applicant shall furnish the facts and information relating to such changes and shall comply with the requirements of this law. The amount of the renewal fee shall be set by ordinance. Failure to make application for renewal within fifteen days after the expiration of a license shall subject the licensee to a penalty which shall be paid prior to the issuance of the renewal. The amount of this fee shall be set by ordinance.

§ 21-32.17 **Powers of the Commissioner.** In addition to the powers and duties elsewhere prescribed in this Title, the Commissioner shall have power:

1. To examine into the qualifications and fitness of applicants for

licenses under this title;

2. To keep records of all licenses issued, suspended or revoked;
3. To adopt such rules and regulations not inconsistent with the provisions of this title as may be necessary with respect to the form and content of applications for licenses, the receipt thereof, the investigation and examination of applicants and their qualifications, and the other matters incidental or appropriate to his powers and duties as prescribed by this title and for the proper administration and enforcement of the provisions of this title, and to amend or repeal any of such rules and regulations:
4. In the event that an applicant has outstanding examinations, hearings, investigations, complaints or proceedings with the Office of Consumer Affairs, the Commissioner shall be authorized, after review, to issue a temporary license. Said temporary-license shall be for a period and under conditions to be determined by the Commissioner. Said temporary license shall have no effect upon the merits of the outstanding matters of the applicant pending in the Office of Consumer Affairs.

5. The Commissioner or Commissioner's designee shall be authorized to suspend the license of any person pending payment of such fine, penalty or pending compliance with any order of the Commissioner or the Office of Consumer Affairs or with any other lawful order of the office.

6. The Commissioner or the Office of Consumer Affairs may arrange for the redress of injuries or damage caused by any violation of this article and may otherwise provide for compliance with the provisions and purposes of this article.

§ 21-32.18 **Refusal, suspension and revocation of license; grounds A**

Health Club license may be refused, suspended or revoked by the Commissioner for anyone or more of the following causes:

1. Fraud, misrepresentation or bribery in securing a license.
2. The making of any false statement as to a material matter in any application for a license.
3. The person or the management personnel of the licensee are

untrustworthy or not of good character.

4. The willful manipulation of assets or accounts by the licensee.
 5. Failure to display the license as provided in this title.
 6. Failure to resolve a valid complaint registered in the Office of Consumer Affairs.
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7. Violation of any provision of this title, or of any rule or regulation adopted hereunder.
 8. A licensee who has had a license suspended and/or revoked in another jurisdiction shall report said suspension or revocation to the Office of Consumer Affairs within ten (10) days of said action. Upon receipt of notification, the Commissioner, or his designee, may order a hearing to determine the continued validity of the licensee's ability to operate in Nassau County. Any failure on the part of a licensee to report another jurisdiction's actions, shall be deemed a willful failure to report and will result in the immediate suspension and/or revocation of the licensee's license in Nassau

County.

9. A license may be denied, suspended, or revoked when the applicant or licensee, or any of its principals, officers, or directors, or any of its stockholders owning more than 10 percent of its outstanding stock of the corporation has been convicted of a crime which, in the judgment of the Commissioner, has a direct relationship to such person's fitness or ability to perform any of the activities for which a license is required under this Title, or has been convicted of any other crime which, in accordance with Article 23-a of the Correction Law, would provide a justification for the Commissioner to refuse to issue or renew, or to suspend or revoke, such license.

10. A license may be denied, suspended, or revoked when the applicant or licensee, or any of its principals, officers or directors, or any of its stockholders owning more than ten percent of its outstanding corporate stock has omitted or misrepresented the facts or circumstances underlying any information contained in the license or renewal application.

11. A license may be denied, suspended or revoked when a person has

been found by a court of any state to have practiced civil fraud, deceit, misrepresentation in conjunction with a Health Club business or other business.

§ 21-32.19. Denial, Suspension or Revocation of License; Appeals

1. The initial determination to deny, suspend, or revoke a license under this Title shall be made in writing by the Commissioner.

2. Within sixty (60) calendar days of the initial determination to deny or revoke a license under this Title, an aggrieved applicant or licensee may request a formal hearing. Such request shall be addressed via certified mail to the Commissioner of Consumer Affairs. Within a reasonable time thereafter, the Commissioner shall appoint a hearing officer with the authority to compel the attendance of witnesses, administer oaths, take the testimony of any person under oath and in connection therewith require the production of any evidence relating to any matters affecting the determination. The applicant shall be advised of the hearing date and the right to be represented by counsel at said hearing. The hearing officer shall render a Decision and Recommendation to the Commissioner within thirty

(30) calendar days of the hearing. The Commissioner will notify the applicant/licensee within a reasonable time thereafter of the Final Determination with respect to the disposition of the license/application for license.

§ 21-32.20. Penalties for offenses

1. Notwithstanding any provisions to the contrary contained in this Chapter, the Nassau County Charter, the Nassau County Administrative Code or any other local law, a failure to comply with any of the provisions of this Title shall constitute a violation and shall be punishable by a fine not exceeding five thousand dollars (\$5,000), or imprisonment for a period not exceeding fifteen (15) days, or by both such fine and imprisonment. The continuation of an offense shall constitute a separate and distinct violation hereunder for each day the offense is continued. Each such violation shall be deemed a separate offense.

2. In addition to the penalties provided by paragraph 1 of this section and those provided by sections 21-10.2 of this code, any person who violates any of the provisions of this Title shall be liable for a civil penalty of not more than five thousand dollars (\$5,000) for each such violation.

3. In addition to the penalties provided by paragraphs 1 and 2 of this section and those provided by sections 21-10.2 of this code, any person who

uses a false or invalid license number, or falsely states or implies that he or she is licensed, under this title, in any advertisements or in dealings with consumers whether oral or written, shall be subject to a penalty for a deceptive trade practice, in accordance with the provisions of section 21-10.2 of this code.

4. The County Attorney may bring an action in the name of the County to restrain or prevent any violation of this subdivision or any continuance of any such violation.

§ 21-32.21 Imposition of penalties.

1. No penalty shall be imposed under this Title until after a hearing before an officer or employee of the Commissioner designated for such purpose by the Commissioner upon notice to the licensee of at least ten (10) days. The notice shall be served by registered or certified mail and shall state the date and place of hearing and set forth the ground or grounds constituting the charges against the licensee. If the licensee fails to attend the hearing, the Commissioner shall impose the proper penalty within the Commissioner's discretion under section 21-33.6. The licensee shall be heard in his defense either in person or by counsel and may offer evidence on his behalf. The person conducting the hearing shall make a written report

of that person's findings and a recommendation to the Commissioner for decision. The Commissioner shall review such findings and the recommendation and, after due deliberation, shall issue an order accepting, modifying or rejecting such recommendation. For the purpose of this title, the Commissioner or any officer or employee of the department designated by him may administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records and documents deemed pertinent to the subject of the investigation.

2. In addition to the penalties provided above, any offense against the provisions of this Title shall subject the person committing the offense to a further penalty in the amount of one thousand dollars (\$1000) for each day that the offense shall continue, collectible by and in the name of the County of Nassau.

3. A fine may imposed after a hearing before an officer or employee of the Commissioner designated for such purpose by the Commissioner upon notice to the licensee of at least ten (10) days except as otherwise provided in this section. The notice shall be served by registered or certified mail and shall state the date and place of hearing and set forth the ground or grounds constituting the charges against the licensee, and if the licensee fails to attend such hearing, the Commissioner shall revoke the license of said

licensee. The licensee shall be heard in his defense either in person or by counsel and may offer evidence on his behalf. For the purpose of this title, the Commissioner or, any officer or employee of the department designated by him may administer oaths, take testimony, subpoena witnesses and compel the production of books, papers, records and documents deemed pertinent to the subject of investigation.

4. Any fine or civil penalty authorized by this section may be waived or compromised by the Commissioner or the Commissioner's designated representative.

§ 21-32.21. Non-Transferability of License. No license shall be assignable or transferable except as hereinafter provided. A license to conduct business issued to an individual may be assigned or transferred for the remainder of the license period to a partnership or corporation if such individual is a member of such partnership or a stockholder of such corporation owning not less than twenty-five (25) percent of the outstanding stock at the time of such assignment or transfer. A license issued to a partnership may be assigned or transferred for the remainder of the license period to any one member of such partnership provided he obtains the consent of all of the

other members of such partnership. The application of such transfer or assignment must be accompanied by proof satisfactory to the Commissioner that there has been compliance with the requirements specified herein. No assignment or transfer shall become effective unless and until the endorsement of the transfer or assignment has been made on the face of the license by the Commissioner and such license, so endorsed, has been returned to the assignee or transferee. All such endorsements shall be made upon a payment of a fee the amount of which shall be set by ordinance.