

# PROPOSED RULEMAKING

## BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[ 49 PA. CODE CH. 43b ]

### Schedule of Civil Penalties—Social Workers, Marriage and Family Therapists and Professional Counselors

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to add § 43b.24 (relating to schedule of civil penalties—social workers, marriage and family therapists and professional counselors) to read as set forth in Annex A.

#### *Effective Date*

The proposed civil penalties will be effective upon final-form publication 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 and commissions in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate regulations setting forth a schedule of civil penalties, guidelines for their imposition and procedures for appeal for: (1) operating without a current and valid license, registration, certificate or permit; and (2) violating an act or regulation of a licensing board or commission regarding the conduct or operation of a business or facility licensed by a board or commission.

#### *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 Act 48 citations retain their due process right of appeal prior to the imposition of discipline. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented. Act 48 citations have become an important part of the Bureau's enforcement efforts.

Upon consultation with a representative of the Commissioner, the State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) determined that it should utilize the Act 48 citation process to decrease costs to its licensees and more efficiently conduct its duties.

#### *Description of the Proposed Amendments*

The proposed rulemaking would add § 43b.24 to add a schedule of civil penalties for three general categories of matters that routinely arise before the Board: cases involving unlicensed individuals holding out as licensed; lapsed license cases; and cases involving violations of the continuing education requirements.

First, the Commissioner proposes to establish a schedule of civil penalties for unlicensed individuals who hold

themselves out as licensed or who use letters, words or symbols indicating or tending to indicate licensure without first having obtained a license from the Board. For this offense, the Commissioner is proposing a civil penalty of \$500 for first offenses. For second and subsequent offenses, formal administrative action would be required.

Additionally, section 20(a.1) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act) (63 P. S. § 1920(a.1)) makes it unlawful for an individual to hold oneself out as a social worker, use the title "social worker" or use the abbreviation "S.W." unless the individual either holds a current license or has received a bachelor's, master's or doctoral degree from an accredited school or program of social work or social welfare. Accordingly, the Commissioner is proposing a similar schedule of civil penalties for individuals who violate this section of the act. For first offenses, the penalty would be \$500. Second and subsequent offenses would be subject to formal administrative action.

With regard to lapsed licenses, the Commissioner proposes a civil penalty of \$100 per month, up to the maximum \$1,000, for licensees who continue to hold themselves out as licensed social workers, licensed clinical social workers, licensed marriage and family therapists or licensed professional counselors, without a valid, unexpired license for 12 months or less. Second and subsequent offenses, or offenses continuing for over 12 months, would be subject to formal administrative action.

Finally, the Commissioner is proposing a schedule of civil penalties for violations of the Board's continuing education regulations. Failure of a licensed social worker, licensed clinical social worker, licensed marriage and family therapist, or licensed professional counselor to complete 30 clock hours of continuing education in acceptable courses offered by approved providers during the preceding biennium, including at least 3 clock hours in ethical issues would subject the licensee to a warning letter for less than 3 hours deficient, and a civil penalty of \$100 for each hour up to the maximum \$1,000, for 3 to 10 hours deficient. Deficiencies of more than 10 hours and second and subsequent offenses would result in formal administrative action. Notwithstanding disciplinary action taken for a continuing education violation, whether resulting in the issuance of a warning letter, issuance of a citation, or the imposition of formal discipline, licensees will be required, through a companion rulemaking of the Board, to make up deficiencies within 6 months.

#### *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking would not have 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.

#### *Sunset Date*

Professional licensure statutes require each board and commission to be self-supporting. Therefore, boards and commissions continually monitor the cost effectiveness of regulations affecting operations. As a result, a sunset date has not been assigned.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August, 28, 2012, the Commissioner submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commissioner, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Cynthia K. Montgomery, Regulatory Counsel, Department of State, Bureau of Professional and Occupational Affairs, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-6917, Schedule of Civil Penalties—Social Workers, Marriage and Family Therapists and Professional Counselors, when submitting comments.

KATHERINE TRUE,  
*Commissioner*

*(Editor's Note: See 42 Pa.B. 5744 (September 8, 2012) for a proposed rulemaking by the Board relating to this proposed rulemaking.)*

**Fiscal Note:** 16A-6917. No fiscal impact; (8) recommends adoption.

**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.24. Schedule of civil penalties—social workers, marriage and family therapists and professional counselors.**

**STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS**

*Violation under  
63 P. S.*

*Title/Description*

*Penalties*

Sections 1904 and 1916

Holding oneself out as a licensed social worker, using the letters L.S.W. in connection with one's name or using words or symbols indicating or tending to indicate that one is a licensed social worker without first having obtained a license from the Board

1st offense—\$500  
2nd and subsequent offenses—formal action

Sections 1904 and 1916.1

Holding oneself out as a licensed clinical social worker, using the letters L.C.S.W. in connection with one's name or using words or symbols indicating or tending to indicate that one is a licensed clinical social worker without first having obtained a license from the Board

1st offense—\$500  
2nd and subsequent offenses—formal action

Sections 1904 and 1916.2

Holding oneself out as a licensed marriage and family therapist, using the letters L.M.F.T. in connection with one's name or using words or symbols indicating or tending to indicate that one is a licensed marriage and family therapist without first having obtained a license from the Board

1st offense—\$500  
2nd and subsequent offenses—formal action

Sections 1904 and 1916.3

Holding oneself out as a licensed professional counselor, using the letters L.P.C. in connection with one's name or using words or symbols indicating or tending to indicate that one is a licensed professional counselor without first having obtained a license from the Board

1st offense—\$500  
2nd and subsequent offenses—formal action

*Violation under  
63 P. S.*

Section 1920(a)

*Title/Description*

Holding oneself out as a licensed social worker, licensed clinical social worker, licensed marriage and family therapist or licensed professional counselor on a lapsed or expired license

*Penalties*

1st offense—0 to 12 months—\$100 per month up to \$1,000; over 12 months—formal action  
2nd and subsequent offense—formal action

Section 1920(a.1)

Holding oneself out as a social worker, using the title of “social worker” or using the abbreviation “S.W.” without meeting the definition of “social worker” in 63 P. S. § 1903

1st offense—\$500  
2nd and subsequent offenses—formal action

*Violation under  
49 Pa. Code*

Section 47.32(a)

*Title/Description*

Failure of a licensed social worker to complete 30 clock hours of continuing education in acceptable courses and programs in social work offered by approved providers during the preceding biennium as a condition of renewal, including at least 3 clock hours in ethical issues

*Penalties*

1st offense—less than 3 hours deficient—warning; 3 to 10 hours deficient—\$100 per hour; over 10 hours deficient—formal action  
2nd and subsequent offenses—formal action

Section 47.32(b)

Failure of a licensed clinical social worker to complete 30 clock hours of continuing education in acceptable courses and programs in social work offered by approved providers during the preceding biennium as a condition of renewal, including at least 3 clock hours in ethical issues

1st offense—less than 3 hours deficient—warning; 3 to 10 hours deficient—\$100 per hour; over 10 hours deficient—formal action  
2nd and subsequent offenses—formal action

Section 48.32

Failure of a licensed marriage and family therapist to complete 30 clock hours of continuing education in acceptable courses and programs offered by approved providers during the preceding biennium as a condition of renewal, including at least 3 clock hours in ethical issues

1st offense—less than 3 hours deficient—warning; 3 to 10 hours deficient—\$100 per hour; over 10 hours deficient—formal action  
2nd and subsequent offenses—formal action

Section 49.32

Failure of a licensed professional counselor to complete 30 clock hours of continuing education in acceptable courses and programs offered by approved providers during the preceding biennium as a condition of renewal, including at least 3 clock hours in ethical issues

1st offense—less than 3 hours deficient—warning; 3 to 10 hours deficient—\$100 per hour; over 10 hours deficient—formal action  
2nd and subsequent offenses—formal action

[Pa.B. Doc. No. 12-1733. Filed for public inspection September 7, 2012, 9:00 a.m.]

## STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

[ 49 PA. CODE CHS. 47, 48 AND 49 ]

### Continuing Education Audit and Enforcement

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) proposes to amend §§ 47.37, 48.38 and 49.38 (relating to reporting by licensee of hours spent in continuing education; continuing education audit and enforcement) to read as set forth in Annex A.

*Statutory Authority*

Section 18(a) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (63

P. S. § 1918(a)) authorizes the Board to promulgate regulations regarding continuing education.

*Background and Purpose*

The Board has determined that to be more efficient and cost-effective in handling certain classes of disciplinary matters, including those regarding some continuing education violations, the Board should make use of the citation process provided by section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)). A companion proposed rulemaking by the Commissioner of Professional and Occupational Affairs would set forth a schedule of civil penalties to allow agents of the Bureau of Professional and Occupational Affairs (Bureau) to issue citations imposing monetary civil penalties for continuing education violations involving deficiencies of 10 hours or less. Violations of more than 10 hours would still be handled through formal disciplinary proceedings. Historically, when the Board determined a continuing education violation had occurred, the Board would issue an order imposing discipline and directing that the deficiency be made up within 6 months. The Board has now determined that it is necessary to codify this practice to be able to make use of the more streamlined citation process and still assure that continuing education deficiencies are remedied in a timely manner.

*Description of the Amendments*

Sections 47.37, 48.38 and 49.38 are proposed to be amended to clarify that the Board will audit licensees to ensure compliance with the continuing education requirements. A licensee who, as a result of that audit, is determined to be deficient in acceptable continuing education hours is subject to disciplinary action, either through formal disciplinary proceedings or through the issuance of a citation. These sections are also proposed to be amended to provide that continuing education deficiencies identified through the audit shall be made up within 6 months from the issuance of a warning letter or citation or the imposition of discipline. Hours of continuing education used to make up for a deficiency may not be used to satisfy the continuing education requirement for the current biennium. Finally, proposed amendments clarify that the failure to make up deficiencies within that time frame will subject a licensee to additional disciplinary action.

*Fiscal Impact and Paperwork Requirements*

The proposed rulemaking should not result in additional legal, accounting or reporting requirements for the Commonwealth or the regulated community.

*Sunset Date*

The Board continuously monitors the effectiveness of its regulations on a fiscal year and biennial basis. Therefore, a sunset date has not been assigned.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 28, 2012, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Cynthia K. Montgomery, Regulatory Counsel, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-6918, Continuing Education Audit and Enforcement, when submitting comments.

DONNA A. TONREY, LMFT,  
*Chairperson*

*(Editor's Note: See 42 Pa.B. 5742 (September 8, 2012) for a proposed rulemaking by the Bureau relating to this proposed rulemaking.)*

**Fiscal Note:** 16A-6918. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 47. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS**

**CONTINUING EDUCATION**

§ 47.37. Reporting by licensee of hours spent in continuing education; **continuing education audit and enforcement.**

\* \* \* \* \*

**(b) The Board will randomly audit licensees to ensure compliance with the continuing education requirements.** A licensee selected for audit shall provide information to document the licensee's [ **certification** ] **completion of required continuing education**, which information [ **shall** ] **must** include the following:

\* \* \* \* \*

**(c) A licensee who, as a result of an audit, is determined to be deficient in continuing education hours is subject to formal disciplinary action under section 11 of the act (63 P. S. § 1911) or the issuance of a citation under section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (63 P. S. § 2205(a)).**

**(d) Notwithstanding other action taken as set forth in subsection (c), a licensee who is determined to be deficient in continuing education hours is required to make up deficient hours of continuing education and submit documentation containing the information in subsection (b) to the Board within 6 months from the issuance of a warning letter, the issuance of a citation or the imposition of discipline. Hours of continuing education submitted to the Board to make up for a deficiency may not be used by the licensee to satisfy the continuing education requirement for the current biennium.**

**(e) Failure to make up the deficiencies in subsection (d) will subject the licensee to additional disciplinary action under section 11 of the act.**

**CHAPTER 48. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF MARRIAGE AND FAMILY THERAPISTS**

**CONTINUING EDUCATION**

§ 48.38. Reporting by licensee of hours spent in continuing education; **continuing education audit and enforcement.**

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**(b) The Board will randomly audit licensees to ensure compliance with the continuing education requirements.** A licensee selected for audit shall provide information to document the licensee's [ **certification** ] **completion of required continuing education**. The information must include the following:

\* \* \* \* \*

**(c) A licensee who, as a result of an audit, is determined to be deficient in continuing education hours is subject to formal disciplinary action under section 11 of the act (63 P. S. § 1911) or the issuance**

of a citation under section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (63 P. S. § 2205(a)).

(d) Notwithstanding other action taken as set forth in subsection (c), a licensee who is determined to be deficient in continuing education hours is required to make up deficient hours of continuing education and submit documentation containing the information in subsection (b) to the Board within 6 months from the issuance of a warning letter, the issuance of a citation or the imposition of discipline. Hours of continuing education submitted to the Board to make up for a deficiency may not be used by the licensee to satisfy the continuing education requirement for the current biennium.

(e) Failure to make up the deficiencies in subsection (d) will subject the licensee to further disciplinary action under section 11 of the act.

**CHAPTER 49. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF PROFESSIONAL COUNSELORS  
CONTINUING EDUCATION**

§ 49.38. Reporting by licensee of hours spent in continuing education; continuing education audit and enforcement.

\* \* \* \* \*

(b) The Board will randomly audit licensees to ensure compliance with the continuing education

requirements. A licensee selected for audit shall provide information to document the licensee's [ certification ] completion of required continuing education. The information must include the following:

\* \* \* \* \*

(c) A licensee who, as a result of an audit, is determined to be deficient in continuing education hours is subject to formal disciplinary action under section 11 of the act (63 P. S. § 1911) or the issuance of a citation under section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (63 P. S. § 2205(a)).

(d) Notwithstanding other action taken as set forth in subsection (c), a licensee who is determined to be deficient in continuing education hours is required to make up deficient hours of continuing education and submit documentation containing the information in subsection (b) to the Board within 6 months from the issuance of a warning letter, the issuance of a citation or the imposition of discipline. Hours of continuing education submitted to the Board to make up for a deficiency may not be used by the licensee to satisfy the continuing education requirement for the current biennium.

(e) Failure to make up the deficiencies in subsection (d) will subject the licensee to further disciplinary action under section 11 of the act.

[Pa.B. Doc. No. 12-1734. Filed for public inspection September 7, 2012, 9:00 a.m.]

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