

<b>Regulatory Analysis Form</b>		<b>This space for use by IRRC</b> 10/30/2013 11:54
(1) Agency <b>Department of State, Bureau of Professional and Occupational Affairs, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors</b>		<b>IRRC Number: 2498</b>
(2) I.D. Number (Governor's Office Use) <b>16A-6910</b>		
(3) Short Title <b>Child Abuse Reporting Requirements</b>		
(4) PA Code Cite  <b>49 Pa. Code §§48.51-48.57, 49.51-49.57</b>	(5) Agency Contacts & Telephone Numbers  <b>Primary Contact: Beth Sender Michlovitz, Counsel State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (717)783-7200</b>  <b>Secondary Contact: Joyce McKeever, Deputy Chief Counsel, Regulatory Review (717)783-1088</b>	
(6) Type of Rulemaking (check one)  <input checked="" type="checkbox"/> <b>Proposed Rulemaking</b> <input type="checkbox"/> <b>Final Order Adopting Regulation</b> <input type="checkbox"/> <b>Final, Proposed Omitted</b>	(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <b>Yes: By the Attorney General</b> <b>Yes: By the Governor</b>	
(8) Briefly explain the regulation in clear and non-technical language. <b>The regulations are proposed in response to the statutory mandate of section 6383(b)(2) of the the Child Protective Services Law (CPSL), 23 Pa. C.S. § 6383(b)(2), , and advise licensed marriage and family therapists and licensed professional counselors of their statutory responsibility to make reports of suspected child abuse.</b> <b>The Board has fulfilled its rulemaking responsibilities pertaining to licensed social workers but with the enactment of Act 136 of 1998, which created the new licensure classifications of marriage and family therapists and professional counselors, the Board is now promulgating similar reporting provisions for these newer licensing groups.</b>		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions.  <b>Section 6(2) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (63 P.S. §1906(2)), and section 6383 of CPSL (23 Pa.C.S. § 6383).</b>		

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

**The regulations are mandated under the CPSL, 23 Pa. C.S. § 6383).**

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

**The regulations are responsive to the statutory mandate of CPSL (23 Pa. C.S. § 6383) which requires that each licensing board with jurisdiction over professional licensees identified as mandated reporters to promulgate regulations on the responsibilities of such mandated reporters. Section 6311(b) of the CPSL (23 Pa. C.S. § 63611(b) identifies licensed mental health professionals as mandated reporters.**

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

**Non-regulation would result in the Board violating the mandate set forth in the Child Protective Services Law that requires each licensing board with jurisdiction over professional licensees identified as mandated reporters to promulgate regulations on the responsibilities of such mandated reporters.**

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

**The regulations should benefit children and the public at large by encouraging more complete reporting of suspected child abuse by mandated reporters.**

### Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

**There are no perceived people or groups of people who would be adversely affected by this regulation.**

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

**All licensed Marriage and Family Therapists and Professional Counselors in the Commonwealth will be required to comply with the regulation. Pennsylvania has 296 marriage and family therapists and 2,783 professional counselors who are licensed with the Board.**

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

**The Board did not solicit input in drafting the proposed regulations because regulations are required under the CPSL.**

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

**The regulations should not impose additional costs on the regulated community.**

### Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

**There are no costs or savings to local governments resulting from the regulations.**

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

**The regulations should not impose costs and/or savings to state government.**

### Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$N/A	\$N/A	\$N/A	\$N/A	\$N/A	\$N/A
Regulated						
Local Government						
State Government						
Total Savings						
<b>COSTS:</b>						
Regulated						
Local Government						
State Government						
Total Costs						
<b>REVENUE LOSSES:</b>						
Regulated						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

See items 17, 18 and 19.

**Regulatory Analysis Form**

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
<b>State Board of Social Workers, Marriage and Family Therapists and Professional Counselors</b>	\$267,067.21	\$305,871.61	\$309,899.38	\$308,000.00

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

**There should be no adverse effects and costs associated with compliance with the regulation. See, paragraphs (11) and (13) for benefits.**

(22) Describe the non-regulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

**Non-regulatory alternatives were not considered because the CPSL requires that the Board promulgate these regulations.**

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

**See paragraph 22 above.**

## Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

N/A

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

**This regulation is consistent with other states that have mandatory child abuse reporting requirements.**

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

**This regulation will not affect existing or proposed regulations of the Board or other agencies.**

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

**The Board has scheduled no public hearings or informational meetings regarding this regulation because promulgation of such a regulation is mandated by the CPSL.**

## Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

**No.**

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

**The Board is aware of no special needs of any subset or group which should be excepted.**

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

**The regulation will be effective upon publication of final rulemaking in the Pennsylvania Bulletin. Compliance will be required as of that date.**

(31) Provide the schedule for continual review of the regulation.

**The Board continuously reviews its regulations, periodically communicates with licensees through newsletters and obtains information and feed-back from its licensees on a frequent basis.**



FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

# 2498

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

*Angela Elliott*  
BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

**State Board of Social Workers,  
Marriage and Family Therapists and  
Professional Counselors**  
\_\_\_\_\_  
(AGENCY)

Copy below is approved as to form and legality. Executive or Independent Agencies.

*Andrew C. Clark*  
BY: \_\_\_\_\_  
ANDREW C. CLARK

DOCUMENT/FISCAL NOTE NO. 16A-6910

MAY 27 2005

DATE OF APPROVAL

DATE OF ADOPTION

BY: *Ronald E. Hays*  
\_\_\_\_\_  
Ronald E. Hays

5.16.05

DATE OF APPROVAL

(Deputy General Counsel  
(Strike inapplicable title))

TITLE: Chairperson  
(EXECUTIVE OFFICER, CHAIRMAN OR CHAIRPERSON)

Check if applicable  
Copy not approved.  
Objections attached.

Check if applicable. No  
Attorney General approval or  
objection within 30 day after  
submission.

PROPOSED RULEMAKING  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF SOCIAL WORKERS, MARRIAGE  
AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS  
49 PA. CODE, CHAPTERS  
48 & 49  
CHILD ABUSE REPORTING REQUIREMENTS

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) proposes to adopt regulations regarding child abuse reporting requirements pertaining to licensed marriage and family therapists and licensed professional counselors by adding §§48.51-48.57 and 49.51-49.57, to read as set forth in Annex A.

#### Effective Date

The amendments will be effective upon publication of final-form regulations in the Pennsylvania Bulletin.

#### Statutory Authority

The Board is authorized to adopt regulations necessary for the administration of its enabling statute under section 6(2) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (63 P.S. §1906(2)) and sections 6311(b) 6383(b)(2) of the Child Protective Services Law (23 Pa.C.S. §§ 6311(b), 6383(b)(2)).

#### Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

#### Background and Purpose

These proposed regulations are responsive to the statutory mandate of Section 6383 of the Child Protective Services Law (CPSL) (23 Pa.C.S. § 6383(b)(2)), which requires that each licensing board with jurisdiction over professional licensees identified as mandated reporters of child abuse promulgate regulations on the responsibilities of mandated reporters. The mandated reporters enumerated in 23 Pa. C.S. § 6311(b) includes mental health professionals. The Board has fulfilled its rulemaking responsibilities pertaining to licensed social workers. With the enactment of Act 136 of 1998, which created the new licensure classifications of marriage and family therapists and professional counselors, the Board now intends to promulgate similar reporting provisions for licensed marriage and family therapists and professional counselors.

The child abuse reporting requirements proposed by these regulations are, with few exceptions, recaptulations of the statutory requirements imposed upon persons required to report suspected child abuse under the CPSL. Following is a description of the proposed regulations:

#### *§§ 48.51 and 49.51- Definitions relating to child abuse reporting requirements.*

Definitions are proposed to be added to §§ 48.51 and 49.51 for the following words and phrases used throughout the regulations: "child abuse," "ChildLine," "individual residing in the

same home as the child,” “perpetrator,” “person responsible for the child’s welfare,” “recent acts or omissions,” “serious mental injury,” “serious physical injury,” and “sexual abuse or exploitation.” With the exception of the definition of “ChildLine” which is tailored after the Department of Public Welfare’s definition found at 55 Pa. Code § 3490.4 (relating to definitions), the proposed definitions provided for these terms are those contained in section 6303 of the CPSL (23 Pa. C.S. § 6303).

*§§ 48.52 and 49.52 - Suspected child abuse – mandated reporting requirements.*

Proposed §§ 48.52 and 49.52 announce mandatory reporting requirements for persons required to report suspected child abuse under section 6311 of the CPSL (23 Pa. C.S. § 6311). Subsection (a) announces the general rule that licensed marriage and family therapists and licensed professional counselors who come into contact with children shall make a report of suspected child abuse. Subsection (b) announces the reporting requirements under section 6311(c) of the CPSL, for licensed marriage and family therapists and professional counselors who are staff members of a medical or other public or private institution, school, facility or agency. Subsections (c) and (d), respectively, announce the procedures for reporting child abuse as required under section 6313 of the CPSL (23 Pa. C.S. § 6313). Proposed subsection (c) instructs licensees that reports of suspected child abuse shall be made immediately by telephone to ChildLine, and in writing within 48 hours after the oral report, to the appropriate county children and youth social service agency.

*§§ 48.53 and 49.53- Photographs, medical tests and X-rays of child subject to report.*

Under section 6314 of the CPSL (23 Pa. C.S. § 6314), persons or officials who are required to report cases of suspected child abuse are permitted to take photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Proposed §§ 48.53 and 49.53 advises licensed marriage and family therapists and professional counselors of this information and of other relevant information which shall be forwarded to the appropriate county children and youth social service agency concurrently with the written report or as soon thereafter as possible.

*§§ 48.54 and 49.54 -Suspected death as a result of child abuse – mandated reporting requirement.*

Section 6317 of the CPSL (23 Pa. C.S. § 6317) provides that a person or official required to report cases of suspected child abuse who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner. Proposed §§ 48.54 and 49.54 advise licensed marriage and family therapists and professional counselors of this statutory mandate.

*§§ 48.55 and 49.55 - Immunity from liability.*

Proposed §§ 48.55 and 49.55 advise licensed marriage and family therapists and professional counselors that under section 6318 of the CPSL (23 Pa. C.S. § 6318), those who participate in good faith in the making of a report of suspected child abuse, cooperating with an investigation, testifying in a proceeding or taking photographs, shall have immunity from civil and criminal liability that

might result by reason of the licensed marriage and family therapist's or professional counselor's actions. The proposed sections also inform licensed marriage and family therapists and licensed professional counselors that under section 6318 of the CPSL, the good faith of the licensed marriage and family therapist or licensed professional counselor will be presumed for the purpose of any civil or criminal proceeding. The Board proposes as well under §§ 48.55 and 49.55 to extend the good faith presumption to disciplinary proceedings against a licensed marriage and family therapist or licensed professional counselor that results by reason of the licensed marriage and family therapist's or professional counselor's actions in participating in good faith in the making of a report of suspected child abuse.

*§§ 48.56 and 49.56 – Confidentiality – waived.*

Section 6383(b)(2) of the CPSL requires that the regulations promulgated by licensing boards having jurisdiction over professional licensees identified as mandated reporters "shall clarify that the provisions of this chapter take precedence over any professional standard that might otherwise apply in order to protect children from abuse." Sections 48.56 and 49.56 propose to address this statutory mandate by clarifying that the child abuse reporting requirements announced in these chapters take precedence over any client confidentiality, ethical principle or professional standard that might otherwise apply.

*§§ 48.57 and 49.57 – Noncompliance.*

Proposed §§ 48.57 and 49.57 advise licensed marriage and family therapists and licensed professional counselors of the consequences of noncompliance with the child abuse reporting requirements of §§ 48.52-48.54 and §§ 49.52-49.54. As proposed, licensed marriage and family therapists and licensed professional counselors are advised under subsection (a) that a willful failure to comply with the reporting requirements will result in disciplinary action under section 11 of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act) (63 P.S. § 1911). Subsection (b) advises licensed marriage and family therapists and professional counselors of the criminal penalties available under section 6319 of the CPSL (23 Pa. C.S. § 6319), for the same willful noncompliance with the reporting requirements.

Fiscal Impact and Paperwork Requirements

The proposed regulations will have no fiscal impact on the Commonwealth or its political subdivisions. As mandated reporters, licensed marriage and family therapists and professional counselors may incur additional paperwork in complying with the child abuse reporting requirements announced by these proposed regulations.

Compliance with Executive Order 1996-1

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and regulated population under the directives of Executive Order 1996-1, Regulatory

Review and Promulgation. The Board did not solicit pre-draft input regarding these proposed amendments because regulations are required under the CPSL.

#### Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

#### Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 26, 2005, 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 to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House 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 any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that 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 and objections raised.

#### Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed amendments to Sandra Matter, Administrative Assistant, 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.

Ronald E. Hays, Chairperson  
State Board of Social Workers, Marriage  
and Family Therapists and Professional Counselors

ANNEX A  
PENNSYLVANIA ADMINISTRATIVE CODE  
TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS  
PART I. DEPARTMENT OF STATE  
Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
Chapter 48. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY  
THERAPISTS AND PROFESSIONAL COUNSELORS – LICENSURE OF MARRIAGE AND  
FAMILY THERAPISTS

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CHILD ABUSE REPORTING REQUIREMENTS

**§48.51. Definitions relating to child abuse reporting requirements.**

The following words and terms, when used in this section and §§48.52-48.57(relating to child abuse reporting requirements), have the following meanings, unless the context clearly indicates otherwise:

Child abuse – A term meaning any of the following:

- (i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.
- (ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.
- (iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.
- (iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

ChildLine – An organizational unit of the Department of Public Welfare, which operates a 24-hour a day Statewide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Individual residing in the same home as the child – An individual who is 14 years of age or older and who resides in the same home as the child.

Perpetrator – A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.

Person responsible for the child's welfare – A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.

Recent acts or omissions – Acts or omissions committed within 2 years of the date of the report to the Department of Public Welfare or county agency.

Serious mental injury – A psychological condition, as diagnosed by a physician or licensed psychologist including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical injury – An injury that causes a child severe pain or significantly impairs a child’s physical functioning, either temporarily or permanently.

Sexual abuse or exploitation – The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct or a simulation of sexually explicit conduct for the purpose of producing a visual depiction, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault or other form of sexual exploitation of children.

**§48.52. Suspected child abuse – mandated reporting requirements.**

(a) General rule. Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), licensed marriage and family therapists who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse.

(b) Staff members of public or private agencies, institutions and facilities. Licensed marriage and family therapists who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity



is a victim of child abuse. Upon notification by the licensed marriage and family therapist, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).

(c) Reporting procedure. Reports of suspected child abuse shall be made by telephone and by written report.

(1) Oral reports. Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) Written reports. Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.

(d) Written reports. Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. The following information shall be included in the written reports, if available:

(1) The names and addresses of the child and the parents or other person responsible for the care of the child, if known.

(2) Where the suspected abuse occurred.

(3) The age and sex of the subjects of the report.

(4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or siblings of the child.

(5) The name and relationship of the persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by those persons.

(6) Family composition.

(7) The source of the report.

(8) The person making the report and where that person can be reached.

(9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.

(10) Other information which the Department of Public Welfare may require by regulation.

**§48.53. Photographs, medical tests and X-rays of child subject to report.**

A licensed marriage and family therapist may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

**§48.54. Suspected death as a result of child abuse – mandated reporting requirement.**

A licensed marriage and family therapist who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner of the county where the injuries were sustained.

**§48.55. Immunity from liability.**

Under 23 Pa.C.S. § 6318 (relating to immunity from liability) a licensed marriage and family therapist who participates in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs shall have immunity from civil and criminal liability that might result by reason of the licensed marriage and family therapist's actions. For the purpose of any civil or criminal proceeding, the good faith of the licensed marriage and family therapist shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a licensed marriage and family therapist's actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs.

**§48.56. Confidentiality - waived.**

To protect children from abuse, the reporting requirements of §§ 48.52 – 48.54 (relating to suspected child abuse – mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse – mandated reporting requirement) take precedence over the provisions of any client confidentiality, ethical principle or professional standard that might otherwise apply.

**§48.57. Noncompliance.**

(a) *Disciplinary action.* A licensed marriage and family therapist who willfully fails to comply with the reporting requirements in §§ 48.52 – 48.54 (relating to suspected child abuse mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse – mandated reporting requirement) will be subject to disciplinary action under section 11 of the act (63 P.S. § 1911).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), a licensed marriage and family therapist who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

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CHAPTER 49. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY  
THERAPISTS AND PROFESSIONAL COUNSELORS – LICENSURE OF PROFESSIONAL  
COUNSELORS

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CHILD ABUSE REPORTING REQUIREMENTS

**§49.51. Definitions relating to child abuse reporting requirements.**

The following words and terms, when used in this section and §§48.52-48.57(relating to child abuse reporting requirements), have the following meanings, unless the context clearly indicates otherwise:

*Child abuse* – A term meaning any of the following:

- (i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.
- (ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.
- (iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.
- (iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

ChildLine – An organizational unit of the Department of Public Welfare, which operates a 24-hour a day Statewide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Individual residing in the same home as the child – An individual who is 14 years of age or older and who resides in the same home as the child.

Perpetrator – A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.

Person responsible for the child's welfare – A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.

Recent acts or omissions – Acts or omissions committed within 2 years of the date of the report to the Department of Public Welfare or county agency.

Serious mental injury – A psychological condition, as diagnosed by a physician or licensed psychologist including the refusal of appropriate treatment, that does one or more of the following:

- (i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.
- (ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical injury – An injury that causes a child severe pain or significantly impairs a child’s physical functioning, either temporarily or permanently.

Sexual abuse or exploitation – The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct or a simulation of sexually explicit conduct for the purpose of producing a visual depiction, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault or other form of sexual exploitation of children.

**§49.52. Suspected child abuse – mandated reporting requirements.**

(a) General rule. Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), licensed professional counselors who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse.

(b) Staff members of public or private agencies, institutions and facilities. Licensed professional counselors who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim

of child abuse. Upon notification by the licensed professional counselor, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).

(c) Reporting procedure. Reports of suspected child abuse shall be made by telephone and by written report.

(1) Oral reports. Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) Written reports. Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.

(d) Written reports. Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. The following information shall be included in the written reports, if available:

(1) The names and addresses of the child and the parents or other person responsible for the care of the child, if known.

(2) Where the suspected abuse occurred.

(3) The age and sex of the subjects of the report.

(4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or siblings of the child.

(5) The name and relationship of the persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by those persons.

(6) Family composition.

(7) The source of the report.



(8) The person making the report and where that person can be reached.

(9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.

(10) Other information which the Department of Public Welfare may require by regulation.

**§49.53. Photographs, medical tests and X-rays of child subject to report.**

A licensed professional counselor may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

**§49.54. Suspected death as a result of child abuse – mandated reporting requirement.**

A licensed professional counselor who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner of the county where the injuries were sustained.

**§48.55. Immunity from liability.**

Under 23 Pa.C.S. § 6318 (relating to immunity from liability) a licensed professional counselor who participates in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs shall have immunity from civil and criminal liability that might result by reason of the licensed professional counselor's actions. For the purpose of any civil or criminal proceeding, the good faith of the licensed professional counselor shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a licensed professional counselor's actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs

**§49.56. Confidentiality - waived.**

To protect children from abuse, the reporting requirements of §§ 49.52 – 49.54 (relating to suspected child abuse – mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse – mandated reporting requirement) take precedence over the provisions of any client confidentiality, ethical principle or professional standard that might otherwise apply.

**§48.57. Noncompliance.**

(a) *Disciplinary action.* A licensed professional counselor who willfully fails to comply with the reporting requirements in §§ 49.52 – 49.54 (relating to suspected child abuse – mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse – mandated reporting requirement) will be subject to disciplinary action under section 11 of the act (63 P.S. § 1911).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), a licensed professional counselor who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

\* \* \*



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
**STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND  
FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS**

Post Office Box 2649  
Harrisburg, Pennsylvania 17105-2649  
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September 26, 2005

The Honorable John R. McGinley, Jr., Chairman  
INDEPENDENT REGULATORY REVIEW COMMISSION  
14<sup>th</sup> Floor, Harrisstown 2, 333 Market Street  
Harrisburg, Pennsylvania 17101

Re: Proposed Regulation  
State Board of Social Workers, Marriage and  
Family Therapists and Professional Counselors  
16A-6910: Child Abuse Reporting Requirements

Dear Chairman McGinley:

Enclosed is a copy of a proposed rulemaking package of the State Board of Social Workers, Marriage and Family Therapists and Professional Counselors pertaining to Child Abuse Reporting Requirements, 16A-6910.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in black ink that reads "Ronald E. Hays".

Ronald E. Hays, Chairperson  
State Board of Social Workers, Marriage and  
Family Therapists and Professional Counselors

REH/BSM:law

Enclosure

cc: Albert H. Masland, Chief Counsel  
Department of State  
Basil L. Merenda, Commissioner  
Bureau of Professional and Occupational Affairs  
Joyce McKeever, Deputy Chief Counsel  
Department of State  
Cynthia Montgomery, Regulatory Counsel  
Department of State  
Herbert Abramson, Senior Counsel in Charge  
Department of State  
Beth Sender Michlovitz, Counsel  
State Board of Social Workers, Marriage and  
Family Therapists and Professional Counselors  
State Board of Social Workers, Marriage and  
Family Therapists and Professional Counselors

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-6910

SUBJECT: State Board of Social Workers, Marriage and Family Therapists and Professional Counselors: Child Abuse Reporting Requirements

AGENCY: DEPARTMENT OF STATE # 2998

**TYPE OF REGULATION**

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

RECEIVED 05/11/05

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
9/26/05	<i>Sandra J. Hayer</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
9/26/05	<i>Mary Welner</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
9/26/05	<i>Stephen F. Hoffman</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
9/26/05	<i>Marya Casas</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)