

Regulatory Analysis Form

(Completed by Promulgating Agency)

(All Comments submitted on this regulation will appear on IRRC's website)

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(1) Agency
Department of State, Bureau of Professional and Occupational Affairs

(2) Agency Number: 16A
Identification Number: 6917

IRRC Number: 2972

(3) PA Code Cite: 49 Pa. Code § 43b.24

(4) Short Title: **Schedule of Civil Penalties – Social Workers, Marriage and Family Therapists and Professional Counselors**

(5) Agency Contacts (List Telephone Number and Email Address):
Primary Contact: **Cynthia Montgomery, Regulatory Counsel, Department of State, P.O. Box 2649, Harrisburg, PA 17105-2649; phone 717-783-7200; fax 787-0251; email: cymontgome@pa.gov.**
Secondary Contact: **Beth Michlovitz, Board Counsel, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P.O. Box 2649, Harrisburg, PA 17105-2649; phone: 717-783-7200; fax: 787-0251 email: bmichlovit@pa.gov.**

(6) Type of Rulemaking (check applicable box):
 Proposed Regulation
 FINAL REGULATION
 Final Omitted Regulation

Emergency Certification Regulation;
 Certification by the Governor
 Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)
The proposed rulemaking would add § 43b.24 (relating to schedule of civil penalties – social workers, marriage and family therapists and professional counselors) to add a schedule of civil penalties for three general categories of matters that routinely arise before the State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) – cases involving unlicensed individuals holding out as licensed; lapsed license cases; and cases involving violations of the continuing education requirements.

(8) State the statutory authority for the regulation. Include specific statutory citation.
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 (the 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 relating to the conduct or operation of a business or facility licensed by the board or commission.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The regulation is not mandated by any Federal or State law or court order or Federal regulation.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

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 an Act 48 citation retain their due process right of appeal prior to the imposition of discipline. 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. An Act 48 schedule of civil penalties is desirable because it improves the effectiveness of BPOA's enforcement efforts by streamlining procedures and reducing paperwork while preserving the due process rights of respondents. Accordingly, BPOA, the Board and the regulated community all would directly benefit from the regulation.

(11) 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 regulations.

There are no federal standards applicable to the subject matter of the regulation.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

The regulation would not put Pennsylvania at a competitive disadvantage with other states. All states are empowered to impose disciplinary sanctions, including fines or civil penalties, against those who violate licensing statutes and regulations.

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

The regulation is referenced in the Board's proposed rulemaking relating to continuing education audit and enforcement (#16A-6918). The regulation would not affect existing or proposed regulations of any other state agency.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Because Act 48 specifically requires the Commissioner to consult with BPOA licensing boards in promulgating schedules of civil penalties, the Commissioner relied on the Board to develop a workable schedule of civil penalties for violations of the Social Workers, Marriage and Family Therapists and Professional Counselors Law (act) (63 P.S. §§ 1901 – 1922) and the Board's regulations. As a consequence, the Commissioner did not solicit pre-draft input from the public or any other advisory council or group. However, the proposal was discussed at public meetings of the Board throughout 2011 and 2012, which are routinely attended by professional associations who represent the regulated community and other organizations who have an interest in the regulatory agenda of the Board. In formulating the proposal, the Commissioner and the Board considered input from the Executive Director of the National Association of Social Workers – Pennsylvania Chapter, relating to the civil penalties associated with the "title protection" provisions of the act. In addition, the Commissioner invited the major professional organizations that represent the regulated community to submit comments following publication of the notice of proposed rulemaking. The Pennsylvania Association of Marriage and Family Therapists submitted comments on the proposed rulemaking, which were considered prior to drafting the final rulemaking.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The regulation would affect licensed social workers, licensed clinical social workers, licensed marriage and family therapists, and licensed professional counselors, as well as unlicensed individuals that use restricted designations or that make unauthorized representations. At present there are approximately 7,255 licensed social workers, 4,972 licensed clinical social workers, 507 licensed marriage and family therapists, and 5,127 licensed professional counselors. The number of unlicensed individuals and entities that might be subject to the regulation cannot be estimated.

According to the Pennsylvania Department of Labor and Industry in 2008 (the most recent year for which data is available), social workers, marriage and family therapists and professional counselors provide their services for a variety of private and public sector employers. Excluding those who work for local and state governments and in elementary and secondary schools, licensees are employed in the following private sector positions (listed in alphabetical order): child day care services, colleges and universities, community care facilities for the elderly, emergency and other relief services, general medical and surgical hospitals, home health care services, individual and family services, nursing care facilities, offices of other health care practitioners, other residential care facilities, outpatient care centers, psychiatric and substance abuse hospitals, residential mental health facilities, vocational rehabilitation services, while a small minority are self-employed.

Small businesses are defined in Section 3 of the Regulatory Review Act, (71 P.S. § 745.3) which provides that a small business is defined by the SBA's Small Business Size Regulations under 13 CFR Ch. 1 Part 121. These size standards have been established for types of businesses under the North American Industry Classification System (NAICS). In applying the NAICS standards to the types of businesses where licensees may work, a small business in Subsector 624 (Social Assistance), Subsector 623 (Nursing and Residential Care Facilities) or Subsector 621 (Ambulatory Health Care Services) is one that has \$7.0 million or less in average annual receipts. (These would include those that work for child and youth services, services for the elderly and persons with disabilities, other individual and family services, emergency and other relief services and child day care services, residential mental health and substance abuse facilities, homes for the elderly and other residential care facilities, offices of mental health practitioners and offices of all other miscellaneous health care practitioners. For those licensees who are employed in outpatient mental health and substance abuse centers (# 621420), the small business threshold is \$10.0 million or less in average annual receipts. Those licensees in home health care services (# 621610) and nursing care facilities (# 623110) have a small business threshold of \$13.5 million or less in average annual receipts. Finally, licensees employed in general medical and surgical hospitals (# 622110) or in psychiatric and substance abuse hospitals (# 622210) have a small business threshold of \$34.5 million or less in average annual receipts. Based on this variety of employers, the Board believes that most social workers and marriage and family therapists in Pennsylvania are employed in small businesses. The Board does not collect information on the size of the businesses where its licensees are employed.

However, according to the Small Business Administration (SBA), there are approximately 982,692 businesses in Pennsylvania; of which 978,831 are small businesses; and 3,861 are large businesses. Of the 978,831 small businesses, 236,775 are small employers (those with fewer than 500 employees) and the remaining 772,056 are non-employers. Thus, the vast majority of businesses in Pennsylvania are considered small businesses. Therefore, for purposes of determining the economic impact on small businesses, the Board must assume that a large number of its licensees work for small businesses as that term is defined by the SBA and Pennsylvania's Regulatory Review Act.

Although many licensees probably work for "small businesses," this regulation would appear to have no adverse impact on small businesses because the only change made by the schedule of civil penalties is the ability to process violations using the more streamlined, efficient and cost-effective Act 48 citation process. The use of this process for relatively simple matters benefits all parties.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

There are approximately 7,255 licensed social workers, 4,972 licensed clinical social workers, 507 licensed marriage and family therapists, and 5,127 licensed professional counselors who would be required to comply with the regulation. Small businesses would not have any compliance requirements.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

Individual licensees may realize some savings, in the form of less time spent on paperwork and reduced legal fees, from the streamlined Act 48 procedures in the event of alleged continuing education violations. There would appear to be no financial, economic or social impact on small businesses (or businesses of any size, for that matter).

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The regulation would provide a schedule of civil penalties at no cost to the public at large and with likely savings for BPOA, the Board and the regulated community.

(19) 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. Explain how the dollar estimates were derived.

The regulation would not impose additional costs on the regulated community because civil penalties may be imposed in any disciplinary proceeding, whether initiated by an Act 48 citation or by the more formal order to show cause. The regulated community should realize some savings, in the form of less time spent on paperwork and reduced legal fees, from the streamlined Act 48 procedures. These estimated savings cannot be quantified.

The regulation would not impose new legal, accounting or consulting procedures.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation would not result in costs or savings to local government.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation would cause the Board and BPOA's Prosecution and Counsel Divisions to spend less time – and thus incur fewer costs – on enforcement actions involving those continuing education violations that can now be processed through the Act 48 citation procedures. These estimated savings cannot be quantified because it depends on variables such as how many citations are issued, how many respondents simply pay the citation without requesting a hearing, how many hearings are requested and conducted, and how many decisions are appealed to the board. When a respondent admits the violation and simply pays the citation, it costs the agency less than \$250 to process the citation from the opening of the matter to conclusion. A formal disciplinary action can cost the agency thousands of dollars.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The regulation may reduce the overall amount of paperwork associated with disciplinary proceedings relating to continuing education violations for those violations could now be handled more efficiently through the Act 48 citation process. The regulation would not alter reporting requirements nor require any accounting and consulting procedures.

(23) 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
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	See (19)	See (19)	See (19)	See (19)	See (19)	See (19)
Local Government						
State Government	See (21)	See (21)	See (21)	See (21)	See (21)	See (21)
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 2009-2010	FY -2 2010-2011	FY -1 2011-2012	Current FY 2012-2013
State Board of Social Workers, Marriage and Family Therapists and Professional Counselors	\$ 682,529.90	\$739,113.18	\$706,326.85	\$725,000.00

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

There does not appear to be an adverse impact on small businesses. Violations of the act or regulations of the Board would be prosecuted with or without this schedule of civil penalties. Any impact would appear to be positive in that the costs associated with responding to a citation are less than the costs associated with formal disciplinary proceedings. The Act 48 process is much faster than formal disciplinary proceedings, with hearings held on the second Tuesday of every month. In addition, the maximum civil penalty that may be imposed in an Act 48 civil penalty proceeding remains at \$1,000 per violation; while the Board is authorized to impose civil penalties up to \$10,000 per violation, plus other sanctions such as reprimand, suspension, etc., in formal disciplinary proceedings. The Commissioner and the Board believe that the Act 48 citation process is a less burdensome and less costly alternative to handling relatively simple (evidentiary) matters than formal disciplinary proceedings.

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

The regulation would apply uniformly to all individuals and entities that commit violations for which Act 48 civil penalties are assessed. No special provisions have been developed for any affected groups or persons.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The Commissioner and the Board considered a graduated schedule of civil penalties for violations of the "title protection" provisions of the law, similar to the proposed schedule for lapsed license violations. However, it was determined that such a schedule was not a sufficient deterrent and that each individual act of holding out as if licensed should constitute a separate offense. Therefore, the proposed civil penalty for these provisions was set at \$500 for first offenses with formal disciplinary action for subsequent offenses. Formal disciplinary action subjects the respondent to civil penalties up to \$10,000 per violation.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

- a) **The regulation contains no reporting requirements for small businesses.**
- b) **The regulation contains no schedules or deadlines for compliance. In addition, the Commissioner and the Board did not consider lower civil penalties for violations by individuals who are or who work for small businesses. To do so would be less of a deterrent and would be inconsistent with the public health, safety and welfare.**
- c) **The regulation contains no reporting requirements for small businesses.**
- d) **There are no design or operational standards in the regulation.**
- e) **It would be contrary to the public health, safety and welfare to exempt anyone from the requirements contained in the regulation. All licensees, even those that are or that work for small businesses must be subject to disciplinary action to enforce the mandatory requirements of the act.**

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

No scientific data, studies or references were used to justify the regulation.

(29) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: **October 9, 2012**
- B. The date or dates on which public meetings or hearings will be held: **All regulatory proposals are discussed at public meetings of the Board. The remaining meeting dates for 2013 are: September 3, October 15, November 5 and December 3, 2013.**
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: **Fall 2013**
- D. The expected effective date of the final-form regulation: **Upon publication**
- E. The date by which compliance with the final-form regulation will be required: **Upon publication**
- F. The date by which required permits, licenses or other approvals must be obtained: **N/A**

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Commissioner continually reviews the efficacy of the Bureau's regulations, as part of the annual review process under Executive Order 1996-1. The Board reviews its regulatory proposals at regularly scheduled public meetings, generally the second Tuesday of each month. The remaining meeting dates for 2013 are: September 3, October 15, November 5 and December 3, 2013. More information can be found on the Department's website (www.dos.state.pa.us).

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

2013 SEP 20 AM 11:10

(Pursuant to Commonwealth Documents Law)

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

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

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BY: _____
(DEPUTY ATTORNEY GENERAL)

Department of State, Bureau of Professional and Occupational Affairs
(AGENCY)

BY: SHAWNE E. SMITH

DOCUMENT/FISCAL NOTE NO. 16A-6917

SEP 05 2013
DATE OF APPROVAL

DATE OF APPROVAL

DATE OF ADOPTION:

(Deputy General Counsel
~~Chief Counsel,~~
~~Independent Agency~~
(Strike inapplicable title)

BY: Katie True
Katie True

[] Check if applicable
Copy not approved.
Objections attached.

TITLE: Commissioner
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

FINAL RULEMAKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

49 Pa. Code § 43b.24

SCHEDULE OF CIVIL PENALTIES - SOCIAL WORKERS, MARRIAGE AND FAMILY
THERAPISTS AND PROFESSIONAL COUNSELORS

The Commissioner of Professional and Occupational Affairs (Commissioner) hereby adds § 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 civil penalty schedule 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 relating to the conduct or operation of a business or facility licensed by the 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 an Act 48 citation 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, and they 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. To that end, the final-form rulemaking establishes 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.

Summary of Comments and the Commissioner's Response

The Commissioner published a notice of proposed rulemaking in the *Pennsylvania Bulletin* on September 8, 2012, for thirty days of public comment. See, 42

Pa.B. 5742. On October 8, 2012, the Commissioner received a comment from the Pennsylvania Association for Marriage and Family Therapists (PAMFT). Generally, PAMFT agrees with the new schedule of civil penalties, but asked that the Commissioner consider additional language restricting the use of the term “family therapist” to individuals with appropriate training and education, similar to the protection accorded to the term “social worker” in section 20(a.1) of the act (63 P.S. § 1920(a.1)). Unfortunately, neither the Commissioner nor the Board has the statutory authority to restrict the use of the term “family therapist” or to impose civil penalties for the use of that term. It would take an act of the General Assembly to provide title protection to the use of the term “family therapist.” For this reason, no change has been made to the final-form rulemaking based on this comment.

On October 22, 2012, the House Professional Licensure Committee (HPLC) submitted comments to the Commissioner on the proposed rulemaking. First, the HPLC suggested removing a duplicate word. The Legislative Reference Bureau removed the duplicate word when the proposed rulemaking was published, and the Commissioner has likewise removed the word from the final-form rulemaking. In addition, the HPLC suggested describing the violation under section 1920(a.1) of the act as holding oneself out as a social worker without meeting “the criteria set forth in” the definition of “social worker” in section 1903 of the act. The Commissioner has found this suggestion reasonable, and has made the amendment to the final-form rulemaking.

On November 8, 2013, the Independent Regulatory Review Commission (IRRC) sent a letter to the Commissioner indicating that IRRC had no objections, comments or recommendations to offer on the proposal.

Fiscal Impact and Paperwork Requirements

The rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions, and will 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

The Commissioner continuously monitors the effectiveness of Bureau regulations on a fiscal year and biennial basis. 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 August 28, 2012, the Commissioner submitted a copy of the notice of proposed rulemaking, published at 42 Pa.B. 5742 (September 8, 2012), to IRRC, HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

In compliance with section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Commissioner also provided IRRC, HPLC and SCP/PLC with copies of comments received as well as other documents when requested. In preparing the final-form regulation, the Commissioner has considered the comments received from IRRC, HPLC, and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), this final-form regulation was approved by the HPLC on _____, 2013 and deemed approved by the SCP/PLC on _____, 2013. Under section 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), the final regulation was approved by IRRC on _____, 2013.

Contact Person

Further information may be obtained by contacting Beth Michlovitz, Counsel, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P.O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The Commissioner finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The amendments to the final form rulemaking do not enlarge the purpose of proposed rulemaking published at 42 Pa.B. 5742.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified this Preamble.

Order

The Commissioner, acting under the authority of Act 48, orders that:

(a) The regulations of the Commissioner, 49 Pa. Code, Chapter 43b, are amended to read as set forth in Annex A.

(b) The Commissioner shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Commissioner shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

Katie True,
Commissioner of Professional and
Occupational Affairs

ANNEX A

**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**

<u>Violation under</u>	<u>Title/Description</u>	<u>Penalties</u>
<u>63 P.S.</u>		
<u>Sections 1904 and 1916</u>	<u>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</u>	<u>1st offense – \$500 2nd and subsequent offenses – formal action</u>
<u>Sections 1904 and 1916.1</u>	<u>Holding oneself out as a licensed clinical social worker, using the letters L.C.S.W. in connection with one's name or using</u>	<u>1st offense – \$500 2nd and subsequent offenses – formal action</u>

	<u>words or symbols indicating or tending to</u> <u>indicate that one is a licensed clinical</u> <u>social worker without first having obtained</u> <u>a license from the Board</u>	
<u>Sections 1904 and</u> <u>1916.2</u>	<u>Holding oneself out as a licensed marriage</u> <u>and family therapist, using the letters</u> <u>L.M.F.T. in connection with one's name</u> <u>or using words or symbols indicating or</u> <u>tending to indicate that one is a licensed</u> <u>marriage and family therapist without first</u> <u>having obtained a license from the Board</u>	<u>1st offense – \$500</u> <u>2nd and subsequent offenses –</u> <u>formal action</u>
<u>Sections 1904 and</u> <u>1916.3</u>	<u>Holding oneself out as a licensed</u> <u>professional counselor, using the letters</u> <u>L.P.C. in connection with one's name</u> <u>or using words or symbols indicating or</u> <u>tending to indicate that one is a licensed</u> <u>professional counselor without first having</u> <u>obtained a license from the Board.</u>	<u>1st offense – \$500</u> <u>2nd and subsequent offenses –</u> <u>formal action</u>
<u>Section 1920(a)</u>	<u>Holding oneself out as a licensed social</u> <u>worker, licensed clinical social worker,</u> <u>licensed marriage and family therapist or</u> <u>licensed professional counselor on a</u>	<u>1st offense – 0 – 12 months –</u> <u>\$100 per month up to \$1,000;</u> <u>over 12 months – formal</u> <u>action</u>

	<u>lapsed or expired license.</u>	<u>2nd and subsequent offenses – formal action</u>
<u>Section 1920(a.1)</u>	<u>Holding oneself out as a social worker, using the title of “social worker” or using the abbreviation of “S.W.” without meeting THE CRITERIA SET FORTH IN the definition of “social worker” in 63 P.S. § 1903</u>	<u>1st offense – \$500 2nd and subsequent offenses – formal action</u>
<u>Violation under 49 Pa. Code</u>	<u>Title/Description</u>	<u>Penalties</u>
<u>Section 47.32(a)</u>	<u>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</u>	<u>1st offense – less than 3 hours deficient – warning; 3 – 10 hours deficient – \$100 per hour; over 10 hours deficient - formal action 2nd and subsequent offenses – formal action</u>
<u>Section 47.32(b)</u>	<u>Failure of a licensed clinical social worker to complete 30 clock hours of continuing education in acceptable courses</u>	<u>1st offense – less than 3 hours deficient – warning; 3 – 10 hours deficient –</u>

	<u>and programs in social work offered by</u>	<u>\$100 per hour;</u>
	<u>approved providers during the preceding</u>	<u>over 10 hours deficient –</u>
	<u>biennium as a condition of renewal,</u>	<u>formal action</u>
	<u>including at least 3 clock hours in ethical</u>	<u>2nd and subsequent offenses –</u>
	<u>issues</u>	<u>formal action</u>
<u>Section 48.32</u>	<u>Failure of a licensed marriage and family</u>	<u>1st offense – less than 3 hours</u>
	<u>therapist to complete 30 clock hours of</u>	<u>deficient – warning;</u>
	<u>continuing education in acceptable courses</u>	<u>3 – 10 hours deficient –</u>
	<u>and programs offered by approved</u>	<u>\$100 per hour;</u>
	<u>providers during the preceding biennium</u>	<u>over 10 hours deficient –</u>
	<u>as a condition of renewal, including at</u>	<u>formal action</u>
	<u>least 3 clock hours in ethical issues</u>	<u>2nd and subsequent offenses –</u>
		<u>formal action</u>
<u>Section 49.32</u>	<u>Failure of a licensed professional counselor</u>	<u>1st offense – less than 3 hours</u>
	<u>to complete 30 clock hours of continuing</u>	<u>deficient – warning;</u>
	<u>education in acceptable courses and</u>	<u>3 – 10 hours deficient –</u>
	<u>programs offered by approved providers</u>	<u>\$100 per hour;</u>
	<u>during the preceding biennium as a</u>	<u>over 10 hours deficient –</u>
	<u>condition of renewal, including at least</u>	<u>formal action</u>
	<u>3 clock hours in ethical issues</u>	<u>2nd and subsequent offenses –</u>
		<u>formal action</u>

COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
16A-6917 – SCHEDULE OF CIVIL PENALTIES – SOCIAL WORKERS,
MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

PUBLIC COMMENTATORS LIST

Shelby Riley, LMFT, President
Rita Porreca, LMFT, Legislative Chair
PAMFT
500 Pinetown Rd., Suite 301 A
Ft. Washington, PA 19038



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-1389

September 20, 2013

The Honorable Silvan B. Lutkewitte, III, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harrisstown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
Bureau of Professional and Occupational Affairs
16A-6917: SCHEDULE OF CIVIL PENALTIES

Dear Chairman Lutkewitte:

Enclosed is a copy of a final rulemaking package of the Commissioner of Bureau of Professional and Occupational Affairs Professional and Occupational Affairs pertaining to Schedule of Civil Penalties.

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 cursive script that reads "Kathy J. Barley".

Kathy J. Barley
Acting Commissioner
Bureau of Professional and Occupational Affairs

KJB/CKM:rs

Enclosure

cc: Kathy J. Barley, Acting Commissioner
Professional and Occupational Affairs
Patricia Allen, Director of Policy, Department of State
Steven V. Turner, Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
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-6917

SUBJECT: SCHEDULE OF CIVIL PENALTIES

AGENCY: DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY
THERAPISTS AND PROFESSIONAL COUNSELORS

TYPE OF REGULATION

- Proposed Regulation
- X 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

2013 SEP 20 AM 11:10

RECEIVED
IRRC

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON PROFESSIONAL LICENSURE</i>
	<u>9/20/13 Angie Kelly</u>	MAJORITY CHAIR <u>Julie Harhart</u>
		MINORITY CHAIR _____
		<i>SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE</i>
	<u>9.20.13 Jill B. Heintzel</u>	MAJORITY CHAIR <u>Robt.M. Tomlinson</u>
		MINORITY CHAIR _____
	<u>9/20/13 K Cooper</u>	<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
		<i>ATTORNEY GENERAL (for Final Omitted only)</i>
		<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>