

<h1 style="text-align: center;">Regulatory Analysis Form</h1> <p style="text-align: center;">(Completed by Promulgating Agency)</p> <p style="text-align: center;">(All Comments submitted on this regulation will appear on IRRC's website)</p>		<b>INDEPENDENT REGULATORY REVIEW COMMISSION</b>
<p>(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></p>		<b>IRRC</b> 2013 SEP 20 AM 11:10
<p>(2) Agency Number: 16A          Identification Number: 6918</p>		IRRC Number: <b>2973</b>
<p>(3) PA Code Cite: <b>49 Pa. Code §§ 47.37, 48.38 and 49.38</b></p>		
<p>(4) Short Title: <b>Continuing Education Audit and Enforcement</b></p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: <b>Cynthia Montgomery, Regulatory Counsel, Department of State, P.O. Box 2649, Harrisburg, PA 17105-2649; phone 717-783-7200; fax 787-0251; email: <a href="mailto:cymontgome@pa.gov">cymontgome@pa.gov</a>.</b></p> <p>Secondary Contact: <b>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: <a href="mailto:bmichlovit@pa.gov">bmichlovit@pa.gov</a>.</b></p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation  <input checked="" type="checkbox"/> <b>FINAL REGULATION</b>  <input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation;  <input type="checkbox"/> Certification by the Governor  <input type="checkbox"/> Certification by the Attorney General</p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p><b>The amendments clarify that the Board will audit licensees to ensure compliance with the continuing education requirements and to require that licensees who, as a result of audit, are determined to be deficient in acceptable continuing education hours make up the deficiency notwithstanding any disciplinary action taken by the Board. The amendments will allow the Board to make effective use of the Act 48 citation process for continuing education violations.</b></p>		
<p>(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.</p> <p><b>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 relating to continuing education.</b></p>		

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(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.

**The regulation is needed to clarify the continuing education audit and enforcement procedures and to allow the Board to make efficient use of the Act 48 citation process for continuing education procedures. Historically, a continuing education violation required formal administrative proceedings, and when the Board determined that a continuing education violation had occurred, it would issue an order imposing a monetary civil penalty and ordering the deficiency to be made up within 6 months. It is necessary to codify this practice in order to make use of the more streamlined citation process and still assure that all continuing education violations are remedied in a timely manner. All licensees will benefit from the clarification to the regulations, and those licensees whose disciplinary matters may be handled through the Act 48 process will benefit by the less burdensome process. 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. It is impossible to determine how many of these may violate the continuing education regulations and be subject to discipline.**

(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, including continuing education violations. A review of the surrounding states indicates that Delaware, Maryland and Virginia enforce their continuing education requirements for social workers through random audit similar to Pennsylvania. None of the surrounding states appear to have process akin to the Act 48 citation process.**

(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 a companion to and is referenced in the Commissioner's proposed rulemaking relating to Schedule of Civil Penalties – Social Workers, Marriage and Family Therapists and Professional Counselors (#16A-6917). 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.)

**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 Board shared drafts with and considered input from the Executive Director of the National Association of Social Workers – Pennsylvania Chapter. In addition, the Board invited the major professional organizations that represent the regulated community to submit comments following publication of the notice of proposed rulemaking; however no public comments were received.**

(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?

**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 affected by the regulation. Licensees are benefited by the regulation and the notice it provides about the continuing education audit and enforcement process and by the more streamlined Act 48 citation process.**

**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 continuing education enforcement would involve individual licensees who violate the continuing education regulations. It is doubtful that any small business would pay civil penalties incurred by their employees for violations of the continuing education regulations.

(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 clarifies/modifies the continuing education audit and enforcement process 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 the regulation merely clarifies/modifies the continuing education audit and enforcement procedures. The regulated community 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. These estimated savings cannot be quantified.**

(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
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
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						
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government						
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A
<b>REVENUE LOSSES:</b>						
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. All reporting, recordkeeping and other administrative costs associated with continuing education compliance, audit and enforcement are borne by the individual licensees. The only possible impact may be lost work time for licensees who are required to appear at hearings relating to alleged continuing education violations, but that impact is entirely speculative.**

(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 licensees of the Board that are required to complete continuing education. 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.

**No alternative regulatory provisions were considered. The Board believes the revisions will permit the use of a less burdensome process under Act 48 to handle continuing education violations.**

(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. Individual licensees may be audited and are required to maintain records to document the completion of continuing education.**
- b) **All licenses renew biennially and all continuing education must be completed each biennial renewal cycle. No less stringent deadlines were devised for employees who are or who work for small businesses.**
- c) **The regulation contains no reporting requirements for small businesses, unless an individual licensee qualifies as a small business. In that case, the only reporting required is in response to an audit request. This process has not changed, but rather has been clarified, in the regulation.**
- 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 audit and 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 Board continually reviews the efficacy of its regulations, as part of its 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](http://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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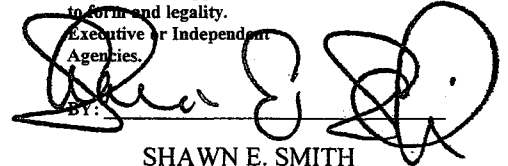
Copy below is hereby approved as to form and legality. Attorney General

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BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

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

BY:   
SHAWN E. SMITH

DOCUMENT/FISCAL NOTE NO. 16A-6918

SEP 05 2013

DATE OF APPROVAL

DATE OF ADOPTION: \_\_\_\_\_

DATE OF APPROVAL

BY:   
Laura L. Hinds, L.S.W.

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

TITLE: Chairperson  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

- Check if applicable  
Copy not approved.  
Objections attached.
- 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  
STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY  
THERAPISTS AND PROFESSIONAL COUNSELORS  
49 PA. CODE, CHAPTERS 47, 48 AND 49  
§§ 47.37, 48.38 and 49.38

CONTINUING EDUCATION AUDIT AND ENFORCEMENT

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) hereby amends §§ 47.37, 48.38 and 49.38 (relating to reporting by licensees of hours spend 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 rulemaking being promulgated 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, it 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 in order to be able to make use of the more streamlined citation process, and still assure that all continuing education deficiencies are remedied in a timely manner.

### **Summary of Comments and the Board's Response**

The Board published a notice of proposed rulemaking in the Pennsylvania Bulletin on September 8, 2012 (42 Pa.B. 5744) for thirty days of public comment. The Board received no comments from the public. On October 23, 2012, the Board received comments from the House Professional Licensure Committee (HPLC). On November 8, 2012, the Board received comments from the Independent Regulatory Review Commission (IRRC). Both the HPLC and IRRC commented on the continuing education audit process. The HPLC asked for an explanation regarding at what point in the biennial period the continuing education audits are expected to be conducted. IRRC asked the Board to provide a more detailed explanation for how the Board conducts these random audits, including an average timeframe necessary to complete an audit, and the impact an audit will have on a licensee's ability to practice.

Generally, continuing education audits are expected to commence approximately 90 days after the end of the biennial period. The licensure database contains a program

that generates a list of licensees selected randomly for audit. An audit letter is generated and is mailed via first class mail to each licensee selected for audit to the licensee's last address on file with the Board. The letter directs the licensee to provide documentation evidencing completion of the required continuing education for the prior biennial period within 30 days. If a licensee fails to respond to the first notice, a second notice is sent via certified mail, with return receipt requested, again requesting the required documentation. The documentation received is reviewed by staff of the Bureau of Professional and Occupational Affairs (Bureau) to determine if it appears to comply with the continuing education regulations. Bureau staff may correspond with a licensee to resolve any issues. This process can take another 60 to 90 days. Ultimately if a suspected deficiency is identified and remains unresolved, the audit file is referred to the Bureau's Professional Compliance Office to be reviewed for possible disciplinary action. The audit process has no impact on the licensee's ability to practice.

Possible continuing education deficiencies are then reviewed by the paralegals and attorneys in the Professional Compliance Office/Prosecution Division to determine if there has been a violation of the continuing education regulations. If a violation is identified, one of three possible actions will be taken: 1) a warning letter may be issued; 2) a citation may be issued imposing a monetary civil penalty; or 3) formal disciplinary action may be commenced by the filing of an order to show cause. IRRC also asked under what circumstances a warning letter would be sent. Pursuant to the schedule of civil penalties which is concurrently being promulgated by the Commissioner of Professional and Occupational Affairs, a warning letter may be appropriate if the deficiency amounts to 1 or 2 credit hours. This often occurs when a licensee documents 30 hours of continuing education, however a particular course may not have been given by an approved provider, or a licensee may exceed the cap on the number of hours that are permitted to be taken in home study courses. It can also occur when a licensee submits documentation of a course completed outside of the applicable biennial renewal period. The warning letter will direct the licensee to make up the deficiency within 6 months as required by § 47.37(d); § 48.38(d) or § 49.38(d), as applicable.

A citation may be issued under the civil penalty schedule for deficiencies of 3 to 10 credit hours. Under the civil penalty schedule being promulgated at § 43b.24 (relating to schedule of civil penalties – social workers, marriage and family therapists and professional counselors), a citation of \$100 per credit hour would be issued to the licensee along with a notice to make up the deficiency, as required. Upon receipt of the citation, the licensee could simply pay the civil penalty and make up the deficiency within 6 months; or dispute the violation and request a hearing. Hearings on citations are conducted on the first Tuesday of each month before a hearing examiner. If a licensee is aggrieved by a decision of the hearing examiner, the licensee may appeal it to the Board. The Board members will then review the record made before the hearing examiner and determine whether to uphold or dismiss the citation, and a final order would be issued.

Finally, if the identified deficiency is between 11 and 30 credit hours, formal disciplinary action could be initiated by the filing of an order to show cause. Under the General Rules of Administrative Practice and Procedure (GRAPP), the licensee has 30

days to file an answer to the order to show cause, and may request a hearing. The Board may hear the matter or delegate it to be heard by a hearing examiner. A formal hearing is conducted and ultimately a final adjudication and order is issued either finding a violation and imposing discipline, or dismissing the matter. If discipline is imposed, it will include an order to make up the deficient continuing education hours within 6 months. It should be noted, however, that the vast majority of formal disciplinary proceedings for continuing education violations are resolved by consent agreement and order.

The HPLC also asked whether a year or more of the licensure period passes before an audit is completed and a citation or other sanctions are imposed. It is possible that an audit and the resulting action by the legal office could take a year or more to complete. The audit is not commenced until at least 90 days after the close of the biennial renewal period. The audit itself can take up to 6 months to complete. Review and action by the legal office staff adds additional time to the overall process. Formal disciplinary action takes much longer than the citation process, which in turn, takes longer than the warning letter process.

IRRC recommended, to aid clarity, that the Board add a cross-reference to the schedule of civil penalties being promulgated by the Commissioner to subsection (c) in §§ 47.37, 48.38 and 49.38. The Board agrees that a cross-reference to § 43b.24 would aid clarity and has made that amendment to the final-form rulemaking. IRRC also recommended that subsection (c) specifically reference the subsections of section 11 of the act (63 P.S. § 1911) that apply to authorize formal disciplinary action. Section 11(a) of the act authorizes the Board to discipline a licensee for a variety of reasons including those that may be applicable to a continuing education deficiency. The discretion as to which grounds to charge in the order to show cause lies exclusively with the prosecuting attorney. The Board cannot be involved in the decision to prosecute or otherwise direct the prosecution of continuing education violations. Subsection (b) sets forth the panoply of sanctions available to the Board; and subsection (c) provides the requirement that all actions of the Board be taken subject to the right of notice, hearing, adjudication and appeal in accordance with GRAPP. Subsections (d) and (e) (relating to temporary suspension and automatic suspension) do not apply to continuing education violations. Therefore, to aid clarity, the Board has amended the final-form rulemaking to refer to subsections (a), (b) and (c) only.

Next, the HPLC asked how the 6 month deficiency correction period will be monitored. Once the warning letter, citation or final order imposing formal discipline is issued advising the licensee of the need to make up the deficiency, Board staff will receive the documentation required by subsection (d) and it will be reviewed. If a licensee fails to submit documentation within 6 months as directed, the matter will be referred again to the Professional Compliance Office for consideration as to whether additional disciplinary action should be initiated. With reference to subsection (e) which pertains to "additional disciplinary action under section 11 of the act," IRRC asked the Board to include specific cross references to the relevant provisions in the act. The Board's reference to "additional disciplinary action" was meant to refer to the possibility of a second disciplinary action being brought for violating a regulation promulgated by

the Board or for violating an order of the Board previously entered in a disciplinary proceeding. Again, the specific provisions of section 11 that would apply to such a disciplinary proceeding are in subsections (a), (b) and (c). Therefore, the Board has amended the final regulation to refer to these subsections only.

### **Description of Amendments**

Based on the comments received, §§ 47.37(c) and (e), 48.38(c) and (e), and 49.38(c) and (e) have been amended to clarify the relevant provisions of section 11 of the act that authorize disciplinary action for continuing education violations and to provide a cross-reference to the applicable civil penalty schedule for social workers, marriage and family therapists and professional counselors.

### **Fiscal impact and Paperwork Requirements**

The proposal should not result in any 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, 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 Board submitted a copy of the notice of proposed rulemaking, published at 42 Pa.B. 5744 (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 Board 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 Board has considered the comments received from IRRC and the HPLC. No comments were received from 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 Board 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. 5744.

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

### **Order**

The Board, acting under the authority of its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code §§ 47.37, 48.38 and 49.39, are amended to read as set forth in Annex A.

(b) The Board 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 Board 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*.

Laura L. Hinds, L.S.W.,  
Chairperson

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 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 (A), (B) AND (C) of the act (63 P.S. § 1911(A), (B) AND (C)), 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)) AS



PROVIDED IN § 43b.24 (RELATING TO SCHEDULE OF CIVIL PENALTIES – SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS).

(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 all 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(A), (B) AND (C) 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.**

(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(A), (B) AND (C) of the act (63 P.S. § 1911(A), (B) AND (C)) 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)) AS PROVIDED IN § 43b.24 (RELATING TO SCHEDULE OF CIVIL PENALTIES – SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS).

(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 all 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(A), (B) AND (C) 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 (A), (B) AND (C) of the act (63 P.S. § 1911(A), (B) AND (C)) 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)) AS

PROVIDED IN § 43b.24 (RELATING TO SCHEDULE OF CIVIL PENALTIES – SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS).

(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 all 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(A), (B) AND (C) of the act.

State Board of Social Workers, Marriage and Family Therapists and  
Professional Counselors

16A-6918 – Continuing Education Audit and Enforcement

List of Public Commentators

THERE WERE NO PUBLIC COMMENTS RECEIVED ON THIS 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

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  
14<sup>th</sup> Floor, Harristown 2, 333 Market Street  
Harrisburg, Pennsylvania 17101

Re: Final Regulation  
STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY  
THERAPISTS AND PROFESSIONAL COUNSELORS  
16A-6918: CONTINUING EDUCATION AUDIT AND ENFORCEMENT

Dear Chairman Lutkewitte:

Enclosed is a copy of a final rulemaking package of the State Board of Social Workers, Marriage and Family Therapists and Professional Counselors pertaining to Continuing Education Audit and Enforcement.

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 "Laura L. Hinds".

Laura L. Hinds, LSW, Chairperson  
State Board of Social Workers, Marriage and Family  
Therapists and Professional Counselors

LLH/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-6918

**SUBJECT:** CONTINUING EDUCATION AUDIT AND ENFORCEMENT

**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

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