

# Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY  
REVIEW COMMISSION

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

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IRRC

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

(2) Agency Number: 16A  
Identification Number: 16A-723

IRRC Number: 3069

(3) PA Code Cite: 49 Pa. Code §§ 43b.23 and 43b.23a

(4) Short Title:  
Schedule of civil penalties – massage therapists

(5) Agency Contacts (List Telephone Number and Email Address):  
Primary Contact: Louis Lawrence Boyle, Assistant Counsel, Department of State, P.O. Box 2649,  
Harrisburg, PA 17105-2649 (phone 717-783-7200) (fax 787-0251) [llboyle@pa.gov](mailto:llboyle@pa.gov).  
Secondary Contact: Cynthia Montgomery, Regulatory Counsel, Department of State, P.O. Box  
2649, Harrisburg, PA 17105-2649 (phone 717-783-7200) (fax 787-0251) [cymontgome@pa.gov](mailto:cymontgome@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 Commissioner of Professional and Occupational Affairs (Commissioner) proposes to amend Chapter 43b to read as set forth in Annex A. The Commissioner, in consultation with the State Board of Massage Therapy (Board), proposes to amend the schedule of civil penalties contained in § 43b.23 (relating to schedule of civil penalties – massage therapists – statement of policy) by promulgating the statement of policy as a regulation. This regulation will increase the deterrent effect of the civil penalties by increasing the amount of several of the penalties, as well as clarifying other civil penalties and adding two new civil penalties to enforce provisions of the Massage Therapy Law (act) and Chapter 20.

(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 the appropriate licensing boards in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of these boards.

(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 proposed rulemaking is not mandated by any Federal or State law or court order.**

(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 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 to a hearing prior to the imposition of judgment. 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. This regulation will increase the deterrent effect of the civil penalties by increasing the amount of several of the penalties, as well as clarifying other civil penalties and adding two new civil penalties to enforce the act.**

(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.

**The proposed rulemaking does not overlap or conflict with any Federal requirements.**

(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 differs with other states in that Pennsylvania breaks down the civil penalty per violation type as described, while most surrounding states do not contain as much detail.**

**In Delaware, the Board may impose any of the following sanctions, singly or in combination, when it finds a licensee is in violation: issue a letter of reprimand; place the licensee on probationary status, and require the licensee to report regularly to the Board, limit all practice and professional activities to those areas prescribed by the Board, and/or continue or renew the practitioner's professional education until the required degree of skill has been attained in those areas which are the basis of the probation; suspend any licensee's license or certification; revoke a licensee's license or certification; and/or impose a monetary penalty not to exceed \$500 for each violation. If a person that is not currently a licensed massage or bodywork therapist or certified as a massage technician, is engaging in the practice of massage or bodywork therapy or of practicing as a massage technician, or otherwise assuming or using any title or description conveying, or tending to convey the impression that the practitioner is qualified to practice massage or bodywork therapy, or acting as a massage technician, such offender shall be guilty of a misdemeanor. For the first offense, the licensee shall be fined not less than \$100, nor more than \$500 for each offense. For a second or subsequent conviction, the fine shall be not less than \$500, nor no more than \$1,000 for each offense. Superior Court shall have jurisdiction over all violations.**

In Maryland, the Disciplinary Guidelines are most similar to Pennsylvania's Schedule of Civil Penalties in that they go into great detail for each violation and the subsequent civil penalty that accompanies each violation. The guidelines are used by the Board as a system for sanctioning licensees in formal and informal actions and proceedings. The guidelines are broke down into the following sections: Abuse, Physical and Emotional; Criminal Convictions or Plea of *Nolo Contendere*; Disciplined by Another Licensing or Disciplinary Authority; Diversion of Controlled Substances or Prescription Drugs; Failure to Renew a License When the Licensee Has Continued to Practice; Noncompliance with Board Orders; Incompetent Practice Or Misconduct; Sexual Misconduct; Unauthorized Practice; and Unethical Conduct.

In New Jersey, the board lists many grounds that it may use to refuse to admit a person to an examination or may refuse to issue or may suspend or revoke any certificate, registration or license issued by the board upon proof that the applicant or holder of such certificate, registration or license violated one or more of those grounds. The board may suspend or revoke the registration of an employer offering massage and bodywork therapies upon proof of the evidence that the employer: has made false or misleading statements of a material nature in the application for registration; or failed to demonstrate that each employee of the employer who is engaged in the performance of massage and bodywork therapies is in possession of a license to practice massage and bodywork therapies. The Board shall either suspend or revoke the registration of an entity that has: submitted false or misleading information in its application submitted or failed to demonstrate that every employee who is engaged in providing massage and bodywork therapy services is licensed to practice by the Board.

In New York, there are general provisions that discuss unprofessional conduct of massage therapists, but there are no guidelines that list what penalties a licensee could incur if unprofessional conduct is performed by a licensee.

In Ohio, the Board shall either suspend or revoke the registration of an entity that has: submitted false or misleading information in its application submitted; or failed to demonstrate that every employee who is engaged in providing massage and bodywork therapy services is licensed to practice by the Board. If the holder of a certificate issued violates the Revised Code, the state medical board, pursuant to an adjudication and an affirmative vote of no fewer than six of its members, shall: for a first violation, impose a civil penalty of not more than \$5,000; for each subsequent violation, impose a civil penalty of not more than \$20,000. If the violator is a certificate holder, by an affirmative vote of no less than six members, to the extent permitted by law, may limit, revoke, or suspend an individual's certificate to practice, refuse to register an individual, refuse to reinstate a certificate, or reprimand or place on probation the holder of a certificate for a second or subsequent violation.

In Virginia, massage therapy is regulated by the Virginia Board of Nursing. The Board has the authority to deny, revoke or suspend a certificate issued by it or to otherwise discipline a certificate holder upon proof that the practitioner has violated any of the provisions of the Code of Virginia or has engaged in certain acts. For example, these acts include any fraud or deceit, filing false credentials, falsely representing facts on an application for initial certification or reinstatement or renewal of a certificate, or misrepresenting one's qualifications including scope of practice. Violations also include any unprofessional conduct, such as performing acts which constitute the practice of any other health care profession for which a license or a certificate is required or acts which are beyond the limits of the practice of massage therapy as defined in the Code of Virginia. Also included are assuming duties and responsibilities within the practice of

massage therapy without adequate training or when competency has not been maintained, failing to acknowledge the limitations of massage and bodywork or failing to refer patients to appropriate health care professionals when indicated. Any certificate holder who enters into a relationship with a patient or client that constitutes a professional boundary violation in which the massage therapist uses the therapist's professional position to take advantage of the vulnerability of a patient, a client or his family, which results in personal gain at the expense of the patient or client, a nontherapeutic personal involvement or sexual conduct with a patient or client, constitutes a violation. Likewise, violations include falsifying or otherwise altering patient or employer records, or violating the privacy of patients or the confidentiality of patient information unless required to do so by law. Massage therapists cannot employ or assign unqualified persons to practice under the title of "massage therapist" or "certified massage therapist," engage in any material misrepresentation in the course of one's practice as a massage therapist, or fail to practice in a manner consistent with the code of ethics.

**In West Virginia, any person, corporation or association violating the provisions of law is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$500 nor more than \$1,000, or confined in jail not more than one year, or both fined and imprisoned.**

**Based on these laws and regulations, the regulation will not place Pennsylvania at a competitive disadvantage.**

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

**The proposed regulation will have no effect on other regulations of the Board or other state agencies.**

(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 Board discussed this schedule of civil penalties at its regularly scheduled public meeting on November 12, 2013 and sent a copy of its agenda for that meeting to interested parties prior to the meeting. The agenda indicated that the Board would consider this proposal and other examples of civil penalty schedules. Representatives of the profession generally attend the public sessions of Board meetings. On November 12, 2013, representatives of the regulated community attended the public meeting at which this rulemaking was discussed, including the Debra Persinger, Executive Director of the Federation of State Massage Therapy Boards; Natalie Cook, of the Winter Group, a lobbyist representing the American Massage Therapy Association of Pennsylvania; and several massage therapy educators and continuing education providers, including two from the Baltimore School of Massage.**

(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 proposed rulemaking would apply to all licensees of the Board. There are approximately 7,589 massage therapists with current licenses in the Commonwealth.**

**According to the Pennsylvania Department of Labor and Industry (L&I) in 2010, most massage therapists (44.2%) are self-employed, 32.6% work in personal care services, 12.0% work in offices of other health practitioners, 3.3% work in other amusement and recreation industries, 0.8% work in civic and social organizations and 0.4 % work in private households. A few massage therapists work in management and technical consulting services, junior colleges, technical and trade schools and offices of physicians.**

**For the business entities listed above, small businesses are defined in Section 3 of Act 76 of 2012, which provides that a small business is defined by the U.S. Small Business Administration's (SBA) Small Business Size Regulations under 13 CFR Ch. 1 Part 121. Specifically, the SBA has established these size standards at 13 CFR § 121.201 for types of businesses under the North American Industry Classification System (NAICS). In applying the NAICS standards to the types of businesses where massage therapists work, obviously those licensees who are self-employed and those who work in private households are small businesses. Small businesses in the categories of personal care services, all other miscellaneous health practitioners, all other amusement and recreation industries, and civic and social organizations are ones with \$7.0 million or less in average annual receipts. A small business in management consulting services as well as scientific and technical consulting services and technical and trade schools are those with \$14.0 million or less in average annual receipts. For junior colleges, the annual threshold is \$19.0 million or less. The NAICS thresholds for offices of physicians (except mental health specialists) is \$10 million or less annually. In considering all of these small business thresholds set by NAICS for the businesses in which massage therapists work, it is probable that most of the licensed massage therapists work in small businesses.**

**Only those licensees and businesses that violate the statutory or regulatory provisions listed in the Annex and unlicensed individuals who practice without a license will be affected by this rulemaking. The effect of the rulemaking is only procedural – replacing formal disciplinary proceedings with the Act 48 citation process.**

**The Commissioner has not identified any group of individuals or entities that will be adversely affected by the rulemaking. Generally, Act 48 citations benefit both licensees and the Department. 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 to a hearing prior to the imposition of judgment.**

(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.

**Only those licensees and businesses that violate the statutory or regulatory provisions listed in the Annex and unlicensed individuals who practice without a license will be required to comply with the regulation. There are approximately 7,589 massage therapists with current licenses in the Commonwealth. There is no way to approximate the number of unlicensed individuals who may practice without a license.**

(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.

**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 to a hearing prior to the imposition of judgment. 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. This regulation will increase the deterrent effect of the civil penalties by increasing the amount of several of the penalties, as well as clarifying other civil penalties and adding two new civil penalties to enforce the act.**

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

**No adverse effects or increased costs have been associated with compliance with the proposed rulemaking. Therefore, the above-identified benefits would outweigh any costs.**

(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.

**Those members of the regulated community who are charged with violating either of the penalties in this schedule of civil penalties will save legal costs by accepting the Act 48 civil penalty rather than participating in the full formal disciplinary action. At the same time, licensees who receive an Act 48 citation retain their due process right to a hearing prior to the imposition of judgment.**

(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.

**There are no costs or savings to local governments associated with compliance with the proposed rulemaking.**

(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 Bureau and the Board will enjoy a savings with this rulemaking because the Act 48 citation process is much less expensive than formal disciplinary action. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements.**

(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.

**Because the proposed rulemaking would permit the use of Act 48 citations to sanction violators of the statute or regulations at the sections indicated, rather than formal disciplinary action, the Bureau, licensees and the Board will have a reduction in paperwork requirements for the disciplinary process.**

(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						
Local Government						
State Government						
<b>Total Savings</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Costs</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>REVENUE LOSSES:</b>						
Regulated Community						
Local Government						
State Government						
<b>Total Revenue Losses</b>	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	FY -2	FY -1	Current FY
State Board of Massage Therapy	\$211,749.61	\$413,876.64	\$590,433.53	\$641,000.00

(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.

**As discussed above in the answers to questions 17 – 19 and 21 – 22, this regulation will not have an adverse impact on small businesses.**

(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.

**No affected groups or persons have been identified whose particular needs would necessitate the making of special accommodations.**

(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.**

(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.



**As discussed above in the answers to questions 17 – 19 and 21 – 22, this regulation will not have an adverse impact on small businesses.**

(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.

**The proposed rulemaking is not based on any data, studies, or references.**

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

- |   |   |
|---|---|
| A. The date by which the agency must receive public comments:                               | <b>30 days after publication</b>  |
| B. The date or dates on which public meetings or hearings will be held:                     | <b>Public meetings will be held after publication of the the proposed regulation to discuss any public comments</b> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <b>Within 2 years of publication</b>  |
| D. The expected effective date of the final-form regulation:                                | <b>Final Promulgation</b>   |
| E. The date by which compliance with the final-form regulation will be required:            | <b>Effective date</b>   |
| F. The date by which required permits, licenses or other approvals must be obtained:        | <b>Effective date</b>   |

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

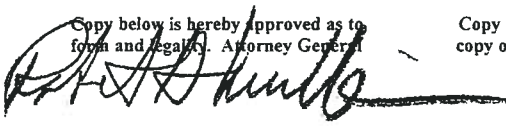
**The Commissioner and BPOA licensing boards continually review the efficacy of their regulations, as part of their annual review process pursuant to Executive Order 1996-1. More information can be found on the BPOA website ([www.dos.state.pa.us/bpoa](http://www.dos.state.pa.us/bpoa)).**

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU 2014 AUG -5 AM 10: 15

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

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



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

JUL 18 2014

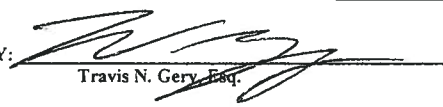
DATE OF APPROVAL

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

Bureau of Professional and Occupational Affairs  
(AGENCY)

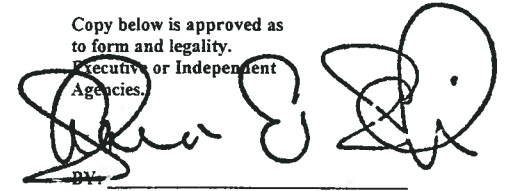
DOCUMENT/FISCAL NOTE NO. 16A-723

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

BY:   
Travis N. Gery, Esq.

TITLE: Commissioner  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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



JUN 25 2014

DATE OF APPROVAL

(Executive Deputy General Counsel  
Strike inapplicable title)

- Check if applicable  
Copy not approved.  
Objections attached.
- Check if applicable. No  
Attorney General approval or  
objection within 30 day after  
submission.

NOTICE OF PROPOSED RULEMAKING  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

49 PA. CODE §§ 43b.23 and 43b.23a

SCHEDULE OF CIVIL PENALTIES – MASSAGE THERAPISTS

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to delete § 43b.23 (relating to schedule of civil penalties—massage therapists—statement of policy) and to adopt § 43b.23a (relating to schedule of civil penalties—massage therapists) to read as set forth in Annex A.

*Effective date*

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

*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 in the Bureau of Professional and Occupational Affairs (the Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of the licensing boards.

*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 to a hearing prior to the imposition of judgment. 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. Section 5(b)(4) of Act 48 (63 P.S. § 2205(b)(4)) authorizes the Board, as a licensing board within the Bureau, to levy a civil penalty of not more than \$10,000 on any licensee or unlicensed person who violates any provision of the Act or Board regulations. However, section 5(a) of Act 48 (63 P.S. § 2205(a)) limits the civil penalty levied by citation to no more than \$1,000 per violation.

The State Board of Massage Therapy (Board) has participated in the Act 48 citation program since 2010, when it adopted the statement of policy at § 43b.23 setting forth a schedule of civil penalties for a number of offenses under the Massage Therapy Law (act) (63 P.S. §§ 627.1—627.50) and the Board's regulations in Chapter 20. The Board believes that it is necessary to implement the civil penalties contained in this proposed rulemaking in order to promulgate the schedule as a regulation and to improve the deterrent effect.

*Description of the proposed amendments*

The Commissioner, in consultation with the Board, proposes to amend the schedule of civil penalties by continuing the penalties set forth in the previous policy statement implemented in 2010, with a few exceptions noted below. First, the Commissioner would increase the amount of the penalties for the first four violations under § 20.42(a)(14) – (16) (relating to standards of professional conduct) and section 6(b)(i) of the act (63 P.S. § 627.6(b)(i)) because a civil penalty

of only \$50 has limited effect as a deterrent and is not sufficient to cover the Board’s cost in implementing the civil penalty. This is especially true if a respondent decides to request a hearing on the imposition of an Act 48 citation.

Second, for the next two civil penalties under sections 6(b)(ii) and 14 of the act (63 P.S. §§ 627.6(b)(ii) and 627.14) the Commissioner would add language for clarity. Under § 627.6(b)(ii), the Commissioner would clarify that the civil penalty of \$100 per credit hour for failure to complete 24 continuing education (CE) credits would extend to a maximum of 10 credit hours because the maximum civil penalty under Act 48 is \$1,000. It therefore follows that failure to complete more than 10 credit hours of CE would result in formal action, as would second and subsequent offenses. Under § 627.14, because a second offense for holding oneself out as a massage therapist or practicing massage therapy while unlicensed would result in formal action, any subsequent offenses would also result in formal action.

Third, the Commissioner would amend the last 2 penalties pertaining to expired licenses in violation of section 14(b) and (e) of the act (63 P.S. § 627.14(b) and (e)). The Commissioner proposes to remove the warning letter for the first offenses of 0-6 months and would make the initial fine for lapses from 0-12 months \$250.

Finally, the Commissioner would add two new civil penalties for violations of section 14(c) and (d) of the act (63 P.S. § 627.14(c) and (d)) for employing an individual in massage therapy who is not licensed and for a business utilizing the words “massage,” “massage therapist,” “massage practitioner,” “masseur,” “masseuse,” “myotherapist,” or any derivative of these terms or abbreviation, unless the services of the business are provided by licensees. For either of these violations, the civil penalty would be \$500 for the first offenses and formal action for second and subsequent offenses.

#### *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking would have no adverse fiscal impact on the Commonwealth or its political subdivisions, and would reduce the paperwork requirements of both the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements and adjudications/orders for those violations subject to the Act 48 citation process. The only fiscal impact of the proposal would be borne by those persons who violate the act or regulations of the Board and are subject to the civil penalties proposed by the new schedule.

#### *Sunset Date*

The Board, the Bureau and the Commissioner continually monitor the effectiveness of regulations affecting their operations. As a result, 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 5, 2014, the Commissioner submitted a copy of this proposed rulemaking and a copy of a

regulatory analysis form to the Independent Regulatory Review Commission (IRRC) and 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 Commissioner, the General Assembly, and the Governor of comments, recommendations or objections raised.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Louis Lawrence Boyle, Regulatory Unit Counsel, State Board of Massage Therapy, Department of State, by mail at P.O. Box 2649, Harrisburg, PA 17105-2649 or by email at [RA-STRegulatoryCounsel@pa.gov](mailto:RA-STRegulatoryCounsel@pa.gov) within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16A-723 (schedule of civil penalties –massage therapists), when submitting comments.

Travis N. Gery, Esq., Commissioner

**ANNEX A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL**

**AFFAIRS**

**SCHEDULE OF CIVIL PENALTIES**

\* \* \* \* \*

§ 43b.23. [Schedule of civil penalties – massage therapists – statement of policy] (Reserved).

**[STATE BOARD OF MASSAGE THERAPY**

<b>Violation</b>	<b>Violation</b>	<b>Title/Description</b>	<b>Civil Penalty</b>
<b>under</b>	<b>under</b>		
<b>63 P. S.</b>	<b>49 Pa. Code</b>		
	<b>Chapter 20</b>		
	§ 20.42(a)(14)	Failure to display current license or wallet card.	First offense—\$50 Second and subsequent offenses—\$250
	§ 20.42(a)(15)	Failure to include massage therapy license number in advertisements.	First offense—\$50 Second and subsequent offenses—\$250

		First offense—\$50
§ 20.42(a)(16)	Failure to display name and title.	Second and subsequent offenses—\$250
		First offense—\$50
§ 627.6(b)(i)	Failure to hold current certification to administer CPR.	Second offense—\$250 Subsequent offense—formal action
		First offense—\$100 per credit hour
§ 627.6(b)(ii)	Failure to complete 24 hours of continuing education courses approved by the Board during the 24 months preceding license renewal.	Second offense—formal action
		First offense—\$500
§ 627.14	Holding oneself out as a massage therapist or practicing massage therapy while unlicensed.	Second offense—formal action
		0—6 months—warning
		7—12 months—\$250
§ 627.14(b)	Holding oneself out as a licensed massage therapist while license is expired.	13—18 months—\$500 19—24 months—\$1,000 More than 24 months—formal action
		0—6 months—warning
§ 627.14(e)	Practicing massage therapy on an expired license.	7—12 months—\$250

13—18 months—\$500  
 19—24 months—\$1,000  
 More than 24 months—  
 formal prosecution ]

**§ 43b.23a. Schedule of civil penalties – massage therapists.**

**STATE BOARD OF MASSAGE THERAPY**

**Violation under**

**Violation under**

**49 Pa. Code**

**63 P.S.**

**Chapter 20**

**Title/Description**

**Civil Penalty**

§ 20.42(a)(14)	Failure to display current license or wallet card.	1 <sup>st</sup> offense - \$250 2 <sup>nd</sup> and subsequent offenses - \$500
§ 20.42(a)(15)	Failure to include massage therapy license number in advertisements.	1 <sup>st</sup> offense - \$250 2 <sup>nd</sup> and subsequent offenses - \$500
§ 20.42(a)(16)	Failure to display name and title.	1 <sup>st</sup> offense - \$250 2 <sup>nd</sup> and subsequent offenses - \$500
§ 627.6(b)(i)	Failure to hold current certification to administer CPR.	1 <sup>st</sup> offense - \$250 2 <sup>nd</sup> offense – \$500 Subsequent offense -



formal action

§ 627.6(b)(ii)      Failure to complete 24 hours 1<sup>st</sup> offense - \$100 per  
of continuing education      credit hour up to 10 credit  
courses approved by the      hours  
Board during the 24 months More than 10 credit  
preceding license renewal.      hours—formal action  
2<sup>nd</sup> and subsequent  
offenses – formal action

§ 627.14      Holding oneself out as a      1<sup>st</sup> offense – \$500  
massage therapist or      2<sup>nd</sup> and subsequent  
practicing massage therapy      offenses – formal action  
while unlicensed

§ 627.14(b)      Holding oneself out as a      1<sup>st</sup> offense -  
licensed massage therapist      0 – 12 months – \$250  
while license is expired.      13 – 18 months – \$500  
19 – 24 months – \$1,000  
More than 24 months –  
formal action.  
2<sup>nd</sup> offense -

0 – 12 months – \$500

13 – 18 months – \$1,000

More than 18 months –

formal action

Subsequent offenses –

formal action

§ 627.14(c)

Employing an individual  
in massage therapy who is  
not licensed.

1<sup>st</sup> offense – \$500

2<sup>nd</sup> and subsequent

offenses – formal action

§ 627.14(d)

A business utilizing the  
words massage, massage  
therapist, massage  
practitioner, masseur,  
masseuse, myotherapist or  
any derivative of these terms  
or abbreviation, unless the  
services of the business are  
provided by licensees.

1<sup>st</sup> offense – \$500

2<sup>nd</sup> and subsequent

offenses – formal action

§ 627.14(e)

Practicing massage therapy 1<sup>st</sup> offense -

on an expired license.

0 – 12 months – \$250

13 – 18 months – \$500

19 – 24 months – \$1,000

More than 24 months –

formal action.

2<sup>nd</sup> offense -

0 – 12 months – \$500

13 – 18 months – \$1,000

More than 18 months –

formal action

Subsequent offenses –

formal action

\* \* \* \* \*



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
Post Office Box 2649  
Harrisburg, Pennsylvania 17105-2649  
(717) 783-7200

August 5, 2014

The Honorable John F. Mizner, Esq., Chairman  
INDEPENDENT REGULATORY REVIEW COMMISSION  
14<sup>th</sup> Floor, Harristown 2, 333 Market Street  
Harrisburg, Pennsylvania 17101

Re: Proposed Regulation  
Bureau of Professional and Occupational Affairs  
16A-723

Dear Chairman Mizner:

Enclosed is a copy of a proposed rulemaking package of the Commissioner of Bureau of Professional and Occupational Affairs pertaining to the schedule of civil penalties for Massage Therapists.

The Commissioner 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 blue ink, appearing to read "Travis N. Gery".

Travis N. Gery, Esq.  
Commissioner of Professional and Occupational Affairs

TNG/LLB:ld  
Enclosure

cc: Patricia Allen, Director of Policy, Department of State  
Kevin P. Schmidt, Chief Counsel  
Department of State  
Cynthia Montgomery, Regulatory Counsel  
Department of State  
Louis Lawrence Boyle, Counsel  
State Board of Massage Therapy  
State Board of Massage Therapy

