

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

2016 AUG -3 AM 10:52

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

(1) Agency

Department of State, Bureau of Professional and
Occupational Affairs, State Board of Physical Therapy

(2) Agency Number: 16A

Identification Number: 6515

IRRC Number: 3084

(3) PA Code Cite:

49 Pa. Code §§ 40.67, 40.192

(4) Short Title:

Continuing education enforcement

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: **Thomas Blackburn, Regulatory Unit Counsel, Department of State;**
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(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)

This rulemaking amends the regulations of the State Board of Physical Therapy (Board) to provide that, in addition to paying a civil penalty upon citation, a licensee who did not complete the required amount of continuing education must make up the deficient credits. Failure to make up the deficiency and provide the Board with proof within 6 months of issuance of the citation would subject the licensee to formal disciplinary action.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The final rulemaking is authorized under section 3(a) of the Physical Therapy Practice Act (act) (63 P.S. § 1303(a)), which provides the Board's general authority to promulgate regulations not inconsistent with law as it may deem necessary for the performance of its duties and the proper administration of the act.

(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 rulemaking 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.

Licensees are required to complete continuing education as a condition of license renewal. However, sometimes a licensee mistakenly verifies that the licensee has completed all required continuing education. Invariably disciplinary action involves payment of a civil penalty proportionate to the amount of deficiency and making up the deficient amount of continuing education. The rulemaking permits the Board to take advantage of the streamlined procedures of the Act 48 citation system while requiring licensees to make up the deficiency in a timely manner or face possible license suspension.

(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 rulemaking is not more stringent and 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 states surrounding Pennsylvania all require licensed physical therapists to complete required continuing education as a condition of renewal. Although the surrounding states permit the imposition of a fine of varying maximum amounts on a licensee who has committed these violations, none of the surrounding states has set a specific fine for failing to complete required continuing education.

The rulemaking will not put Pennsylvania at a competitive disadvantage with other states.

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

Except as provided in rulemaking 16A-6516 (schedule of civil penalties – physical therapists and physical therapist assistants) which is being promulgated by the Commissioner of Professional and Occupational Affairs simultaneously, this rulemaking 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 did not solicit input by way of an exposure draft because the rulemaking is related only to the procedural mechanism for enforcement of the Board's continuing education requirements (Act 48 citation process versus formal disciplinary action). However, the Board discussed this proposed rulemaking in public session during three public Board meetings in 2013 at which interested parties and stakeholders were present, including the Hospital and Health System Association of Pennsylvania, and the Rehabilitation & Community Providers Association. After publication of proposed rulemaking, the Board again discussed this rulemaking in public session at its meetings in March and May 2015. All of the Board's public meetings are generally attended by representatives of associations of members of the regulated community.

(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?

Currently, there are approximately 13,702 licensed physical therapists in Pennsylvania, an additional 2,283 physical therapists who are certified for direct access, 1,612 certified physical therapist assistants and an additional 3,765 physical therapist assistants who are authorized to provide services under indirect supervision.

According to the Pennsylvania Department of Labor and Industry (L&I) in 2010, the greatest percentage of physical therapists (PTs), 37.4%, work in offices of other health practitioners as do 51.2% of physical therapy assistants (PTAs). 21.8% of PTs and 19.5% of PTAs work in general medical and surgical hospitals, 8.4% of PTAs work in other hospitals, 9.1% of PTs and 2.3% of PTAs work for home health care services, 6.2% of PTs and 9.3% of PTAs work in nursing care facilities, 5.9% of PTs and no PTAs are self-employed, 2.7% of PTs and 3.4% of PTAs work in offices of physicians, 1.6 % of PTs and no PTAs work in community care facilities for the elderly, 1.2 % of PTs and only a few PTAs work in outpatient care centers, 1.1% of PTs and no PTAs work in elementary and secondary schools, and 0.9% of PTs and no PTAs work for individual and family services, while 0.5% of PTAs work in private households. Finally, only a few PTAs work in medical and diagnostic laboratories and other ambulatory health care services.

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 physical therapists and physical therapist assistants work, a small business in the categories of offices of physical, occupational and speech therapists and audiologists and offices of all other miscellaneous health practitioners are ones with \$7.0 million or less in average annual receipts. Small businesses in general medical and surgical hospitals and specialty hospitals (except for psychiatric and substance abuse hospitals) are those with \$35.5 million or less in average annual receipts. The NAICS threshold for home health care services is \$14.0 million or less in average annual receipts. Furthermore, small businesses in skilled nursing care facilities are those with \$25.5 million or less in average annual receipts. Small businesses in outpatient care centers are those with

\$19 million or less in average annual receipts. For elementary and secondary schools as well as individual and family services and offices of physicians (except mental health specialists), the NAICS thresholds are \$10 million or less in average annual receipts. In considering all of these small business thresholds set by NAICS for the businesses in which physical therapists and physical therapists assistants work, it is probable that most of the licensed physical therapists and physical therapists assistants work in small businesses.

This rulemaking will benefit both licensees and the businesses that employ them. As noted in the answer to question 10, the summary process under Act 48 would be a much more efficient manner of handling violations than the formal disciplinary process, as long as licensees promptly make up any deficiencies in continuing education within 6 months. In addition, by reinforcing a schedule of civil penalties adopted in the companion regulation (16A-6516) rather than relying solely on formal disciplinary charges, licensees will not be taken out of their practice unless they fail to make up the continuing education in a timely manner. This will provide stability not only for the licensees, but also for those businesses that employ the licensees.

(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.

See the response to question (15). All physical therapists and physical therapist assistants will be required to comply with the rulemaking, but it would affect only those licensees or certificate holders who fail to timely complete the required amount of mandatory continuing education. The Board currently has approximately 13,702 licensed physical therapists, an additional 2,283 physical therapists who are certified for direct access, 1,612 certified physical therapist assistants and an additional 3,765 physical therapist assistants who are authorized to provide services under indirect supervision.

(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.

As noted in the last paragraph of the answer to question 15, this rulemaking will benefit both licensees and the businesses that employ them. As noted in the answer to question 10, the summary process under Act 48 would be a much more efficient manner of handling violations than the formal disciplinary process, while still ensuring licensees due process. In addition, by establishing a schedule of civil penalties rather than relying solely on formal disciplinary action, licensees who timely make up the deficiency will not be taken out of their practice, thereby providing stability not only for the licensees, but also those businesses that employ the licensees.

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

No adverse effects or costs have been associated with compliance with the rulemaking. Therefore, the above-identified benefits of the rulemaking outweigh any cost or adverse effect.

(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 few members of the regulated community who are charged with these violations would enjoy a savings as a result of compliance with this rulemaking, as a result of using the summary Act 48 citation process rather than full formal disciplinary action. There are no other costs or savings to the regulated community associated with compliance with the rulemaking.

(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 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 Board will enjoy a savings as a result of compliance with this rulemaking, as a result of using the summary Act 48 citation process rather than full formal disciplinary action. There are no other costs or saving to state government associated with implementation of the rulemaking.

(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.

This rulemaking will not require any additional recordkeeping or other paperwork for implementation. Because the rulemaking will permit the use of Act 48 citations, rather than formal disciplinary action, to sanction certain violators, the Board and its licensees 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
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
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 (13-14)	FY -2 (14-15)	FY -1 (15-16)	Current FY (16-17)
Pa. State Bd. of Physical Therapy	(actual) \$461,078	(actual) \$651,986	(budget) \$665,000	(budget) \$691,000

(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 noted in the responses to questions 10, 15 and 17, this rulemaking does not have an adverse impact on small business.

(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 Board has determined that there are no special needs of any subset of its applicants or licensees for whom special accommodations should be made.

(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 schemes 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.

Because, as noted in the responses to questions 10, 15, 17 and 24, this rulemaking does not have an adverse impact on small businesses, the Board did not conduct a regulatory flexibility analysis.

(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.

This rulemaking is not based upon any scientific 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: | <u>Dec. 15, 2014</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>Within 2 years</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon publication</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>Upon publication</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(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. The Board meets on the remaining dates in 2016: July 28, September 29, and November 18. More information can be found on the Board's website (linked from professional licensing boards and commissions from www.dos.pa.gov).

Commenter's List for Regulation 16A-6515

There are no comments pertaining to Regulation 16A-6515.

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2016 AUG -3 AM 10: 52

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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)

State Board of Physical Therapy

(AGENCY)

Marisa H. Z. Lehr

DOCUMENT/FISCAL NOTE NO. 16A-6515

JUL 18 2016

DATE OF APPROVAL

DATE OF APPROVAL

DATE OF ADOPTION:

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

BY: *Norman L. Johnson*

Norman L. Johnson, PT

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

TITLE: Chairperson
(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
STATE BOARD OF PHYSICAL THERAPY

49 Pa. Code §§ 40.67, 40.192

CONTINUING EDUCATION ENFORCEMENT

The State Board of Physical Therapy (Board) hereby amends §§ 40.67 and 40.192 (relating to continuing education for licensed physical therapist; and continuing education for certified physical therapist assistant), to read as set forth in Annex A.

Effective date

The rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

The final rulemaking is authorized under section 3(a) of the Physical Therapy Practice Act (act) (63 P.S. § 1303(a)), which provides the Board's general authority to promulgate regulations not inconsistent with law as it may deem necessary for the performance of its duties and the proper administration of the act.

Description and Need for the Rulemaking

Section 7.2 of the act (63 P.S. § 1307.2) requires each licensed physical therapist to complete at least 30 hours of continuing physical therapy education during each biennial renewal period. Section 9.1(j) of the act (63 P.S. § 1309.1(j)) requires each certified physical therapist assistant to complete at least 30 hours of continuing physical therapy education during each biennial renewal period. The Board has incorporated these requirements into its regulations at §§ 40.67(a) and 40.192(a), respectively. Under §§ 40.19(c)(5) and 40.191(c)(5) (relating to renewal of physical therapist license; and renewal of certification), to renew a license or certificate, a licensed physical therapist or certified physical therapist assistant is required to verify that the licensee or certificate holder has completed the required amount of continuing education. Moreover, the Board will not renew the license of a physical therapist or the certificate of a physical therapist assistant if the individual cannot verify that the continuing education required during the immediately preceding biennium has been completed. Although these requirements are conditions for renewal, a licensee or certificate holder may mistakenly verify satisfaction of the continuing education requirement. Upon audit, however, it is discovered that the licensee or certificate holder has not completed the requirements.

Under section 11(a)(6) of the act (63 P.S. § 1311(a)(6)), the Board may suspend or revoke a license or certificate for unprofessional conduct. Under section 12(c) of the act (63 P.S. § 1312(c)) the Board may levy a civil penalty against a licensee or certificate holder who has violated the act. Under § 40.52(11) (relating to unprofessional conduct; physical therapists), the Board has defined unprofessional conduct to include violating a provision of the act or the Board's regulations that establish a standard of conduct. Disciplinary actions for failing to complete the continuing education requirement in a timely manner invariably result in the licensee being required to pay a civil penalty proportionate to the amount of deficiency and to make up the deficiency promptly. Accordingly, the Board determined that it should utilize the more streamlined citation procedures under section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)), which provides that the Commissioner of Professional and Occupational Affairs (Commissioner), after consultation with licensing boards in the Bureau of Professional and

Occupational Affairs, may promulgate a schedule of civil penalties for violations of the acts or regulations of these licensing boards and agents of the Board may issue citations for violations covered by the schedule of civil penalties. Therefore, the Commissioner separately proposed a rulemaking using the Act 48 citation system to levy the civil penalty. However, the regulatory scheme must assure that, in addition to paying the civil penalty, the licensee has made up the deficient continuing education. This final-form rulemaking sets forth the procedures to address curing the deficiency.

The rulemaking adds § 40.67(f). A licensed physical therapist who is determined through the post-renewal continuing education audit to be deficient would be issued an Act 48 citation for failing to complete the required amount of continuing education and would be required to make up the deficiency and provide proof to the Board within 6 months of the issuance of the citation. If the licensee does not do so, the licensee would be subject to disciplinary action, including the suspension of the license under section 11(a)(6) of the act for committing unprofessional conduct. Because mandatory continuing education is generally considered to be a condition of renewal, proposed § 40.67(f) would exempt for this disciplinary proceeding a licensee who permitted the license to expire at the conclusion of a renewal period during which the licensee did not complete the required amount of continuing education and did not practice the profession until reactivating the license under § 40.20(c) (relating to inactive status of physical therapist license) upon a demonstration that the licensee subsequently completed all required deficient continuing education.

The Board is also adding § 40.192(f) to provide similar provisions for certified physical therapist assistants. A certified physical therapist assistant who does not make up the deficiency would be subject to disciplinary action under § 40.181(a)(6) (relating to refusal, suspension or revocation of certification) for committing unprofessional conduct, as authorized under section 9.1(f) of the act. A physical therapist assistant who permitted the certificate to expire and did not provide services until reactivating under § 40.191(g) (relating to renewal of certification) upon a demonstration that the certificate holder subsequently completed all required deficient continuing education would be exempted from this disciplinary process.

While the Commonwealth's prosecuting attorneys may utilize this "citation and make-up" system as one tool in addressing a licensee or certificate holder who has not completed the required continuing education, they retain the discretion to also file formal action under section 11(a)(2) of the act, which provides that the Board may suspend or revoke a license or certificate of an individual who has attempted to or obtained a license or certificate by fraud or misrepresentation, if the licensee/certificate holder, for example, knows that the required continuing education has not been completed, but verifies on the renewal application that the licensee/certificate holder has completed the required amount of continuing education.

Summary of Comments and Responses to Proposed Rulemaking

The Board published notice of proposed rulemaking at 44 Pa.B. 7178 (November 15, 2014) with a 30-day public comment period. The Board received no comments from the public. The Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) as part of their review of proposed

rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1-745.14). The Board did not receive any comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

The HPLC commented to note a typographical error in the proposed rulemaking as delivered. The Legislative Reference Bureau corrected this typo prior to publication of the proposed rulemaking in the *Pennsylvania Bulletin*.

IRRC first pointed to the requirement of section 7.2 of the act that each licensed physical therapist shall complete the required amount of continuing education and “shall provide the board with evidence of the completion of the continuing education” and the similar requirement of section 9.1(j) of the act that each certified physical therapist assistant shall complete the required amount of continuing education and “shall provide the board with evidence of the completion of the continuing education.” Because section 3(a) of the act (63 P.S. § 1303(a)) requires that the Board’s regulations be consistent with the act, IRRC asked for the Board’s specific statutory authority for allowing a licensee or certificate holder who has not met the continuing education requirement to continue to practice or provide services for 6 more months.

The Board’s use of a post-renewal audit process to identify those who have not completed the required continuing education is consistent with the act and comports with constitutional requirements of due process. Under existing §§ 40.19(c)(5) and 40.191(c)(5), an applicant for renewal is required to “verify that the [licensed physical therapist or certified physical therapist assistant, respectively,] has complied with the continuing education requirements mandated by ... the act ... during the biennial period immediately preceding the period for which renewal is sought in accordance with [§§ 40.67 and 40.192, respectively].” This verification is the evidence upon which the Board may grant renewal. The Board simply could not possibly review documentation of continuing education for every licensed physical therapist and every certified physical therapist assistant during the window for renewal. “The Board will not renew [a license or certificate] if the [licensed physical therapist or certified physical therapist assistant] has not completed the continuing education required under ... the act during the biennial period immediately preceding the period for which renewal is sought.” *Id.* After the close of the biennial renewal process, the Board conducts a random audit of licensees and certificate holders to verify compliance with the continuing education requirements. This post-renewal audit system is standard for the boards/commissions under the Bureau of Professional and Occupational Affairs. For those individuals who have provided the verification, it is not until the audit that the Board would obtain information suggesting that the licensee has not completed all required continuing education. And even then, the Board cannot remove a licensee from practice without due process of law. Because the license has been renewed and the licensee retains a property interest in the license, the Board cannot rescind renewal and provide the licensee with only the opportunity for a post-deprivation hearing without specific authorization from the General Assembly.

By this rulemaking, the Board is not granting licensees who failed to complete required continuing education an additional 6 months to practice. The Board’s renewal of the license or certificate based on the certification statement verifying completion of the continuing education authorizes the continued practice for the next biennium. Because there has been no final determination that the licensee failed to complete the required continuing education, the Board

cannot yet remove the licensee from practice at the time of audit or any other time prior to a final determination even if through formal disciplinary action rather than an Act 48 citation. Only after a licensee or certificate holder admits the violation or a final adjudication is issued finding a violation of the continuing education requirements after a hearing, can the Board take disciplinary action. The Board could have chosen to suspend the license or certificate until the deficient continuing education is remedied, rather than permitting the opportunity to remedy the deficiency. However, the Board's goal in enforcing the continuing education requirements is two-fold: deterrence and compliance. The Board believes the monetary civil penalty is adequate to deter the licensee/certificate holder from future violations, and the threat of additional discipline for failure to cure the deficiency will result in compliance within the required 6 months. It is worth noting again that an applicant for renewal who verifies completion of the required amount of continuing education without a basis to do so is separately subject to disciplinary action, including a suspension of the license.

IRRC next noted that the rulemaking would require the licensed physical therapist or certified physical therapy assistant to "make up the deficiency and provide proof of the entire required amount of continuing education in subsection (b)." Because subsection (a) sets the required amount of continuing education and subsection (b) describes the documentation that, in general, a licensee or certificate holder must have to establish completion of a CE course or program, IRRC both asked what would constitute the proof that a licensee or certificate holder would be required to submit and inquired whether the Board meant to refer to subsection (a). Because this was not clear, the Board has revised this sentence to require the licensee or certificate holder to "make up the deficiency and provide proof, in accordance with subsection (b), of completion of the entire amount of continuing education required by subsection (a)."

IRRC also pointed to the existing provisions in §§ 40.67(b)(3) and 40.192(b)(3) that note that the Board will audit licensed physical therapists and certified physical therapist assistants to verify compliance with the continuing education requirements. IRRC expressed concern that the Board will only audit those who have been cited and provided documentation of making up the deficiency rather than fully reviewing each person's proof. The post-renewal audit process was developed for the licensing board office staff to determine that all licensees generally are in compliance with the continuing education requirements. Bureau statistics from the last twenty audits conducted Bureau-wide indicate that nearly 90% of licensees who are audited are found to be in compliance. The statistics from the Board's last audit demonstrate that 98% of licensees and certificate holders that are subject to audit are found to be in compliance. Those for whom the audit does not show compliance are referred to the Professional Compliance Office for possible disciplinary action. At this point, and with possible additional investigation, the Department's prosecuting arm now addresses that subset of licensees who did not establish compliance with the continuing education requirements. Under these regulations, when disciplinary action has begun via issuance of an Act 48 citation (unless the matter is dismissed through appeal), the prosecution division will be expecting the later submission of proof of making up the deficient continuing education. The prosecution division will be expected to file formal action if the licensed physical therapist or certified physical therapist assistant has not provided adequate proof of completion of all required continuing education.

Finally, IRRC questioned how that Board determined that 6 months is a reasonable and

feasible amount of time for the regulated community to make up continuing education deficiencies. The Board acknowledges that the General Assembly, in making completion of continuing education a condition precedent for renewal has determined that continuing education is necessary to maintain competence and therefore provides public protection. The Board determined that 6 months is long enough for the licensee to have had an opportunity to challenge a citation before a hearing examiner and possibly appeal to the Board. It is also long enough that the licensee has a reasonable opportunity to find and complete relevant continuing education courses. Additionally, it is short enough to minimize any additional notable deterioration in the licensee's skills and knowledge. Finally, a term of 6 months is a reasonable period of time for the prosecution division to track and is a relatively simple and straightforward date for licensees and certificate holders to measure and follow.

As the Board was preparing the final-form rulemaking, the Legislative Reference Bureau contacted staff to inform them that the section number for the related schedule of civil penalties being promulgated by the Commissioner would need to change to § 43b.26 because the schedule of civil penalties for the State Board of Optometry would be published at § 43b.25. Therefore, the Board made appropriate revisions to this final-form rulemaking to correct the cross-references to § 43b.26 (relating to schedule of civil penalties—physical therapists and physical therapy assistants).

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions and will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 31, 2014, the Board submitted a copy of the notice of proposed rulemaking, published at 44 Pa.B. 7178, to IRRC and the chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC, the HPLC, the SCP/PLC and the public.

On August 3, 2016, the Board delivered final-form rulemaking to IRRC, the HPLC and the SCP/PLC. Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on September 14, 2016, the final-form rulemaking was deemed approved by the HPLC and by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on September 15, 2016, and approved the final-form rulemaking.

Additional Information

Further information may be obtained by contacting Michelle Roberts, Board

Administrator, State Board of Physical Therapy, P.O. Box 2649, Harrisburg, PA 17105-2649, ra-physical@pa.gov.

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) and 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 this final-form rulemaking do not enlarge the scope of proposed rulemaking published at 44 Pa.B. 7178.
- (4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the Physical Therapy Practice Act.

Order

The Board, acting under its authorizing statute, orders that:

- (a) The regulations of the Board at 49 Pa. Code, Chapter 40 are amended, by amending §§40.67 and 40.192 (relating to continuing education for licensed physical therapist; continuing education for certified physical therapist assistant), to read as set forth in Annex A.
- (b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval 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) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

Norman L. Johnson, PT, Chairperson
State Board of Physical Therapy

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 40. STATE BOARD OF PHYSICAL THERAPY

Subchapter A. PHYSICAL THERAPISTS

* * * * *

CONTINUING EDUCATION

§ 40.67. Continuing education for licensed physical therapist.

* * * * *

(f) *Disciplinary action authorized.* Unless otherwise excused by the act or this chapter, failure to complete the minimum required amount of continuing education during the applicable renewal period will subject the licensee to discipline under section 12(c) of the act (63 P. S. § 1312(c)) in accordance with the schedule of civil penalties in ~~§ 43b.25~~ § 43b.26 (relating to schedule of civil penalties—physical therapists and physical therapist assistants). Within 6 months after the issuance of a citation under ~~§ 43b.25~~ § 43b.26 for failure to complete the required amount of continuing education, the licensee shall make up the deficiency and provide proof, IN ACCORDANCE WITH SUBSECTION (B), OF COMPLETION of the entire ~~required~~ amount of continuing education ~~in~~ REQUIRED BY subsection ~~(b)~~ (A). In addition to a civil penalty assessed under this subsection, failure to complete the required amount of continuing education and to provide the Board with proof of completion of the required amount of continuing education within 6 months after the issuance of a citation under ~~§ 43b.25~~ § 43b.26 will subject the licensee to disciplinary action under section 11(a)(6) of the act (63 P. S. § 1311(a)(6)) for committing

unprofessional conduct as defined in § 40.52(11). This subsection does not apply to a licensee who permitted the licensee's license to expire at the conclusion of a biennial renewal period for which the licensee did not complete the required amount of continuing education and did not practice the profession prior to reactivating that license under § 40.20(c) upon a demonstration that the licensee subsequently completed the required deficient continuing education.

* * * * *

Subchapter C. PHYSICAL THERAPIST ASSISTANTS

* * * * *

CONTINUING EDUCATION

§ 40.192. Continuing education for certified physical therapist assistant.

* * * * *

(f) Disciplinary action authorized. Unless otherwise excused by the act or this chapter, failure to complete the minimum required amount of continuing education during the applicable renewal period will subject the certified physical therapist assistant to discipline under section 12(c) of the act (63 P. S. § 1312(c)) in accordance with the schedule of civil penalties in § 43b.25 § 43b.26 (relating to schedule of civil penalties—physical therapists and physical therapist assistants). Within 6 months after the issuance of a citation under § 43b.25 § 43b.26 for failure to complete the required amount of continuing education, the physical therapist assistant shall make up the deficiency and shall provide proof, IN ACCORDANCE WITH SUBSECTION (B), OF COMPLETION of the entire ~~required~~ amount of continuing education ~~is~~ REQUIRED BY subsection ~~(b)~~ (A). In addition to a civil penalty assessed under this subsection, failure to complete the required amount of continuing education and to provide the Board with proof of completion of the required amount of continuing education within 6 months after the issuance of a citation under

§ 43b.25 § 43b.26 will subject the certified physical therapist assistant to disciplinary action under section 9.1(f) of the act for committing unprofessional conduct as provided in § 40.181(a)(6). This subsection does not apply to a certified physical therapist assistant who permitted the physical therapist assistant's certificate to expire at the conclusion of a biennial renewal period for which the physical therapist assistant did not complete the required amount of continuing education and did not provide patient services prior to reactivating that certificate under § 40.191(g) upon a demonstration that the physical therapist assistant subsequently completed the required deficient continuing education.

* * * * *



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF PHYSICAL THERAPY

Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7134

August 3, 2016

The Honorable Julie Harhart, Chairman
Professional Licensure Committee
PENNSYLVANIA HOUSE OF REPRESENTATIVES
313 Main Capitol
Harrisburg, Pennsylvania 17120

Re: Final Regulation
State Board of Physical Therapy
16A-6515: CONTINUING EDUCATION ENFORCEMENT

Dear Representative Harhart:

Enclosed is a copy of a final rulemaking package of the State Board of Physical Therapy pertaining to Continuing Education Enforcement.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Norman L. Johnson".

Norman L. Johnson, PT, Chairperson
State Board of Physical Therapy

NLJ/TAB:js
Enclosure

cc: Ian J. Harlow, Commissioner of
Professional and Occupational Affairs
Leigh Chapman, Director of Policy, Department of State
Timothy Gates, Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Teresa Lazo, Counsel
State Board of Physical Therapy
State Board of Physical Therapy

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

I.D. NUMBER: 16A-6515
SUBJECT: Continuing Education Enforcement
AGENCY: DEPARTMENT OF STATE

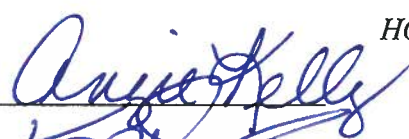
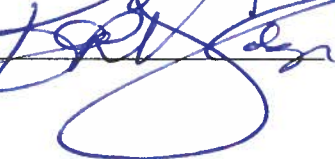

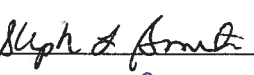

TYPE OF REGULATION

- 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 Disapproved Regulation
 - a. With Revisions
 - b. Without Revisions

2016 AUG -3 AM 10:53

RECEIVED
LRPC

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON PROFESSIONAL LICENSURE</i>
8/3/16		MAJORITY CHAIR <u>Julie Harhart</u>
8/3/16		MINORITY CHAIR <u>Harry A. Readshaw</u>
		<i>SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE</i>
8/3/16		MAJORITY CHAIR <u>Robert M. Tomlinson</u>
8/3/16		MINORITY CHAIR <u>Lisa M. Boscola</u>
8/3/16		<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
_____	_____	<i>ATTORNEY GENERAL</i> (for Final Omitted only)
_____	_____	<i>LEGISLATIVE REFERENCE BUREAU</i> (for Proposed only)