

# Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY  
REVIEW COMMISSION

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

(1) Agency

Department of State, Bureau of Professional and Occupational Affairs

(2) Agency Number: 16A

Identification Number: 6516

IRRC Number: 3085

(3) PA Code Cite:

49 Pa. Code § 43b.26

(4) Short Title:

Schedule of civil penalties – physical therapists and physical therapist assistants

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

Primary Contact: **Thomas Blackburn, Regulatory Unit Counsel, Department of State;**  
(717)783-7200; P.O. Box 69523, Harrisburg, PA 17106-9523; (717)787-0251; tblackburn@pa.gov

Secondary Contact: **Cynthia K. Montgomery, Regulatory Counsel, Department of State**  
(717)783-7200; P.O. Box 69523, Harrisburg, PA 17106-9523; (717)787-0251; 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)

**This rulemaking establishes a schedule of civil penalties for the State Board of Physical Therapy (Board) to include failure to complete the required amount of mandatory continuing education and practice on a lapsed license or certificate.**

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

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(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 rulemaking establishes a civil penalty schedule for certain violations of the Board's regulations. Consistent with the practice of other licensing boards within the Bureau, the summary process under Act 48 is a much more efficient manner of handling violations than the formal disciplinary process, while still ensuring licensees due process.**

(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 and prohibit practice on an expired license. 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 or practice on an expired license.**

**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-6515 (continuing education enforcement) which is being promulgated by the State Board of Physical Therapy simultaneously, this rulemaking will have no effect on other regulations of the Board, the Bureau 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 therapist assistants work, it is probable that most of the licensed physical therapists and physical therapist 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 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 as adopted in the companion regulation (16A-6515). 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 either fail to timely complete the required amount of mandatory continuing education or practice after failing to renew. 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 Bureau and 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
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
<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.

<b>Program</b>	<b>FY -3 (13-14)</b>	<b>FY -2 (14-15)</b>	<b>FY -1 (15-16)</b>	<b>Current FY (16-17)</b>
<b>Pa. State Bd. of Physical Therapy</b>	(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><b>Dec. 15, 2014</b></u>    |
| B. The date or dates on which public meetings or hearings will be held:                     | <u><b>N/A</b></u>              |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u><b>Within 2 years</b></u>   |
| D. The expected effective date of the final-form regulation:                                | <u><b>Upon publication</b></u> |
| E. The date by which compliance with the final-form regulation will be required:            | <u><b>Upon publication</b></u> |
| F. The date by which required permits, licenses or other approvals must be obtained:        | <u><b>N/A</b></u>              |

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

**The Board and the Bureau continually review the efficacy of their regulations, as part of the 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](http://www.dos.pa.gov)).**



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

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

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

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

*Marisa H. Z. Lehr*

DOCUMENT/FISCAL NOTE NO. 16A-6516

JUL 18 2016

DATE OF APPROVAL

DATE OF APPROVAL

DATE OF ADOPTION:

BY: *I J Harlow*  
Ian J. Harlow

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

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

TITLE: Acting Commissioner  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

FINAL RULEMAKING

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

49 Pa. Code § 43b.26

SCHEDULE OF CIVIL PENALTIES - PHYSICAL THERAPISTS  
AND PHYSICAL THERAPIST ASSISTANTS

The Commissioner of Professional and Occupational Affairs (Commissioner) hereby adopts § 43b.26 (relating to schedule of civil penalties – physical therapists and physical therapist assistants), to read as set forth in Annex A.

#### *Effective Date*

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

#### *Statutory Authority*

The final rulemaking is authorized under section 5(a) of the act of July 2, 1993 (P.L. 345, No. 48) (Act 48) (63 P.S. § 2205(a)).

#### *Background and Need for the Rulemaking*

Section 5(a) of Act 48 provides that the Commissioner, after consultation with licensing boards in the Bureau of Professional and Occupational Affairs (Bureau), may promulgate a schedule of civil penalties for violations of the acts or regulations of the licensing boards and agents of the Bureau may issue citations for violations covered by the schedule of civil penalties. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation retain their due process right of appeal prior to the imposition of discipline. The State Board of Physical Therapy (Board) has not previously had an Act 48 schedule of civil penalties.

As is being done for other licensing boards with continuing education requirements, the Commissioner proposed a civil penalty schedule for violation of the continuing education requirements for licensees of the Board, because the Commissioner and the Board believe the Act 48 citation process will be a much more efficient method of handling these violations, while still ensuring licensees due process. Payment of the civil penalty will not relieve a licensee of the obligation to complete the required amount of mandatory continuing education. Because the primary objective of the disciplinary process is compliance, under a separate rulemaking promulgated by the Board, a licensee who fails to complete the required amount of mandatory continuing education during the biennial renewal period will also be required to complete the required continuing education during the next 6 months. Failure to complete the required continuing education by that deadline will subject the licensee to formal disciplinary action. The rulemaking is intended to apply to those licensees and certificate holders who mistakenly verified that they had satisfied the continuing education requirement and timely renewed, but who later were determined not to have satisfied the requirements. In support of the additional disciplinary objective of deterrence, the Commonwealth's prosecuting attorneys have discretion to file formal action under section 11(a)(2) of the Physical Therapy Practice Act (63 P.S. § 1311(a)(2)) against those licensees and certificate holders who attempt to or obtain licensure or certification by fraud or misrepresentation. As provided in §§ 40.67(b)(3) and 40.192(b)(3) (relating to continuing education for licensed physical therapist; and continuing education for certified physical therapist assistant), the Board will audit physical therapists and physical therapist assistants to verify

compliance with the continuing education requirements, and licensees and certificate holders are required to respond to audit notices timely. The Board believes that prompt issuance of a citation and subsequent audit notices will encourage compliance with the continuing education requirements.

The Commissioner, in consultation with the Board, therefore establishes a schedule of civil penalties to be enforced by citation under Act 48. For a first offense violation of failing to complete the required amount of mandatory continuing education during the biennial renewal period under § 40.67(a) or § 40.192(a) a civil penalty of \$25 for each credit hour that the licensee or certificate holder, respectively, is deficient, up to a maximum of \$1,000. For a second offense violation with a deficiency of 20 hours or less the civil penalty is \$50 per hour of deficiency, and for a third offense violation with a deficiency of 10 hours or less the civil penalty is \$100 per hour of deficiency. Offenses beyond these amounts of deficiency and all subsequent offenses will not be subject to an Act 48 citation, but rather will proceed through the formal disciplinary process. Additionally, the Commissioner in consultation with the Board, establishes for a first offense of failing to respond timely to an audit notice under § 40.67(b)(3) or § 40.192(b)(3) by a licensee or certificate holder, respectively, a civil penalty of \$100, increasing to \$250 for a second offense and \$500 for a third offense, with any subsequent offenses resulting in formal disciplinary action. However, a citation could only be issued if the underlying audit notice notified the licensee that failure to respond would result in issuance of a citation.

Additionally, the Board's current regulation at § 40.20(b) (relating to inactive status of physical therapist license) prohibits a licensed physical therapist whose license has lapsed from practicing physical therapy in this Commonwealth, and § 40.191(j) (relating to renewal of certification) prohibits a certified physical therapist assistant whose certificate has lapsed from providing physical therapy services in this Commonwealth. As is being done for other licensing boards, the Commissioner also proposed a civil penalty schedule for practice on a lapsed or expired license or certificate, because the Commissioner and the Board believe the Act 48 citation process will be a much more efficient method of handling these violations, while still ensuring licensees due process. Because failure to renew a license might be an attempt to avoid the continuing education requirements, use of an Act 48 citation for lapsed license practice will be limited to those first-time offenders who are in compliance with the continuing education requirements. A licensee who practiced on a lapsed license without having complied with the continuing education will instead be subject to formal disciplinary action where the Board has the authority to suspend or revoke a license.

The Commissioner, in consultation with the Board, establishes for practicing on a lapsed or expired license or certificate (while in compliance with continuing education requirements) in violation of § 40.20(b) or § 40.191(j), respectively, a civil penalty of \$50 per month – up to a maximum of \$1,000 – for practicing less than one renewal cycle. Violations of practicing for more than one renewal cycle while expired will not be subject to an Act 48 citation, but rather would proceed through the formal disciplinary process.

#### *Summary of Comments and Responses to Proposed Rulemaking*

The Commissioner published notice of proposed rulemaking at 44 Pa.B. 7173 (November

15, 2014) with a 30-day public comment period. The Commissioner received no comments from the public. The Commissioner received no comments from the House Professional Licensure Committee (HPLC) or the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) as part of their review of proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1—745.14). The Independent Regulatory Review Commission (IRRC) notified the Commissioner that it had no objections, comments or recommendations and that, if the final-form rulemaking is delivered without revisions and the legislative committees do not take any action, the rulemaking will be deemed approved.

As the Board was preparing the final rulemaking, the Legislative Reference Bureau contacted staff to inform the Commissioner and the Board that the section number would need to be changed because the schedule of civil penalties for the State Board of Optometry would be published as final rulemaking at § 43b.25. Therefore, this final rulemaking was renumbered as § 43b.26, and all cross-references in the Board’s companion rulemaking relating to continuing education enforcement have been corrected. No other changes have been made to the final-form rulemaking.

#### *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. In preparing the final-form rulemaking, the Board had no comments from IRRC, the HPLC, the SCP/PLC or the public to consider.

On August 3, 2016, the Commissioner 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, because it had no comments on proposed and the Commissioner did not amend the rulemaking, IRRC was deemed to have approved the final-form rulemaking under section 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)).

#### *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](mailto:ra-physical@pa.gov).

### *Findings*

The Commissioner finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law.
- (3) This final-form rulemaking does not include any amendments that would enlarge the scope of proposed rulemaking published at 44 Pa.B. 7173.
- (4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the Physical Therapy Practice Act.

### *Order*

The Commissioner, acting under the authority provided by the act of July 2, 1993 (P.L. 345, No. 48), orders that:

- (a) The regulations of the Commissioner at 49 Pa. Code, Chapter 43b are amended, by adding § 43b.26 (relating to schedule of civil penalties – physical therapists and physical therapist assistants), to read as set forth in Annex A.
- (b) The Bureau 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 Bureau 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*.

Ian J. Harlow  
Commissioner of Professional and Occupational  
Affairs

**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, GUIDELINES FOR IMPOSITION OF CIVIL  
PENALTIES AND PROCEDURES FOR APPEAL**

\* \* \* \* \*

**§ 43b.26. Schedule of civil penalties – physical therapists and physical therapist assistants.**

**STATE BOARD OF PHYSICAL THERAPY**

**Violation under**

<b><u>49 Pa. Code</u></b>	<b><u>Title/Description</u></b>	<b><u>Penalties</u></b>
<u>Section 40.20(b)</u>	<u>Practicing physical therapy after failing to renew but before reactivation of license (in compliance with continuing education requirements)</u>	<u>One biennial renewal cycle or less - \$50 per month lapsed, not to exceed \$1,000</u> <u>More than one biennial renewal cycle – formal action</u>
<u>Section 40.67(a)</u>	<u>Failure of licensed physical therapist to complete the required amount of continuing education</u>	<u>1st offense - \$25 per hour of deficiency, not to exceed \$1,000</u> <u>2<sup>nd</sup> offense - deficient 20 hours or less - \$50 per hour of deficiency not to exceed \$1,000</u>

		<u>2<sup>nd</sup> offense - deficient more than 20</u>
		<u>hours – formal action</u>
		<u>3<sup>rd</sup> offense - deficient 10 hours or</u>
		<u>less - \$100 per hour of deficiency</u>
		<u>not to exceed \$1,000</u>
		<u>3<sup>rd</sup> offense - deficient more than 10</u>
		<u>hours – formal action</u>
		<u>Subsequent offenses – formal</u>
		<u>action</u>
<u>Section</u>	<u>Failure of licensed physical</u>	<u>1<sup>st</sup> offense - \$100</u>
<u>40.67(b)(3)</u>	<u>therapist to respond to</u>	<u>2<sup>nd</sup> offense - \$250</u>
	<u>continuing education audit</u>	<u>3<sup>rd</sup> offense - \$ 500</u>
	<u>request within 30 days, or other</u>	<u>Subsequent offenses – formal</u>
	<u>time period set forth in audit</u>	<u>action</u>
	<u>request that notifies the licensee</u>	
	<u>that failure to respond is subject</u>	
	<u>to discipline</u>	
<u>Section 40.191(j)</u>	<u>Providing services as a physical</u>	<u>One biennial renewal cycle or less -</u>
	<u>therapist assistant after failing to</u>	<u>\$50 per month lapsed, not to exceed</u>
	<u>renew but before reactivation of</u>	<u>\$1,000</u>
	<u>certification (in compliance with</u>	<u>More than one biennial renewal</u>
	<u>continuing education</u>	<u>cycle – formal action</u>
	<u>requirements)</u>	

<u>Section 40.192(a)</u>	<u>Failure of certified physical therapist assistant to complete the required amount of continuing education</u>	<u>1<sup>st</sup> offense - \$25 per hour of deficiency, not to exceed \$1,000</u> <u>2<sup>nd</sup> offense - deficient 20 hours or less - \$50 per hour of deficiency, not to exceed \$1,000</u> <u>2<sup>nd</sup> offense - deficient more than 20 hours – formal action</u> <u>3<sup>rd</sup> offense - deficient 10 hours or less - \$100 per hour of deficiency, not to exceed \$1,000</u> <u>3<sup>rd</sup> offense - deficient more than 10 hours – formal action</u> <u>Subsequent offenses – formal action</u>
<u>Section 40.192(b)(3)</u>	<u>Failure of certified physical therapist assistant to respond to continuing education audit request within 30 days, or other time period set forth in audit request that notifies the physical therapist assistant that failure to respond is subject to discipline</u>	<u>1<sup>st</sup> offense - \$100</u> <u>2<sup>nd</sup> offense - \$250</u> <u>3<sup>rd</sup> offense - \$ 500</u> <u>Subsequent offenses – formal action</u>



Commenters List for Regulation 16A-6516

There were no comments pertaining to Regulation 16A-6516.



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

August 3, 2016

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

Re: Final Regulation  
Bureau of Professional and Occupational Affairs  
16A-6516

Dear Representative Harhart:

Enclosed is a copy of a final rulemaking package of the Commissioner of Professional and Occupational Affairs pertaining to Schedule of civil penalties – physical therapists and physical therapist assistants.

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 blue ink, appearing to read 'I J Harlow', with a long horizontal stroke extending to the right.

Ian J. Harlow  
Commissioner of  
Professional and Occupational Affairs

IJH/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-6516  
**SUBJECT:** Schedule of Civil Penalties – Physical Therapists and Physical Therapist Assistants  
**AGENCY:** DEPARTMENT OF STATE






**TYPE OF REGULATION**

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Disapproved 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>
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 &amp; 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 (for Final Omitted only)</i>
		<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>