

PROPOSED RULEMAKING

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties—Physical Therapists and Physical Therapist Assistants

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to add § 43b.25 (relating to schedule of civil penalties—physical therapists and physical therapist assistants) to read as set forth in Annex A.

Effective Date

The proposed rulemaking will be effective upon final-form publication 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 (Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of these licensing boards. Section 12(c) of the Physical Therapy Practice Act (act) (63 P. S. § 1312(c)) authorizes the State Board of Physical Therapy (Board) to levy a civil penalty of up to \$1,000 on a licensee or certificate holder who violates a provision of the act, and section 5(b)(4) of Act 48 authorizes a board within the Bureau to levy a civil penalty of not more than \$10,000 per violation on a licensee or certificate holder who violates a provision of the applicable licensing act or board regulation.

Background and Need for the Proposed Rulemaking

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 licensing boards. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive an Act 48 citation retain their due process right of appeal prior to the imposition of discipline. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts, with approximately 30% of sanctions imposed by the licensing boards being accomplished through the Act 48 citation process. The 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 is proposing 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. Be-

cause the primary objective of the disciplinary process is compliance, under the separate rulemaking being proposed 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 proposed rulemaking is intended to apply to licensees and certificate holders who mistakenly verified that they 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 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 the Board's regulations 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 Board's regulation in § 40.20(f) (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 is proposing a civil penalty schedule for practice on a lapsed or expired license or certificate, because the Commissioner and 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 or, for licensed physical therapists, professional liability insurance 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 or malpractice insurance requirements will instead be subject to formal disciplinary action where the Board has the authority to suspend or revoke a license.

Description of the Proposed Rulemaking

The Commissioner, in consultation with the Board, proposes for practicing on a lapsed or expired license or certificate (while in compliance with continuing education and applicable professional liability insurance requirements) 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 would not be subject to an Act 48 citation, but rather would proceed through the formal disciplinary process.

The Commissioner, in consultation with the Board, also proposes for a first offense violation of failing to complete the required amount of mandatory continuing education during the biennial renewal period a civil penalty of \$25 for each credit hour that the licensee or certificate holder 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 would be \$50 per hour of deficiency, and for a third offense violation with a deficiency of 10 hours or less the civil penalty would be \$100 per hour of deficiency. Offenses beyond these amounts of deficiency and subsequent offenses would not be subject to an Act 48 citation, but rather would proceed through the formal disciplinary process. Additionally, the Commissioner, in consultation with the Board, proposes for a first offense of failing to respond timely to an audit notice a civil penalty of \$100, increasing to \$250 for a second offense and \$500 for a third offense, with 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.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking should not have adverse fiscal impact on the Commonwealth, its political subdivisions or the private sector. The proposed rulemaking will not impose additional paperwork requirements upon the Commonwealth, its political subdivisions or the private sector. Instead, the proposed rulemaking will reduce the paperwork requirements of the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements and adjudications/orders for those violations subject to the Act 48 citation process.

Sunset Date

The Commissioner and the Board continuously monitor the effectiveness of regulations. As a result, sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 31, 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 the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and 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 comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which 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 Regulatory Unit Counsel, Department of State, P.O. Box 2649, Harrisburg, PA 17105-2649, RA-STRegulatoryCounsel@pa.gov within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-6516 (Schedule of civil penalties—physical therapists and physical therapist assistants) when submitting comments.

TRAVIS N. GERY, Esq.,
Commissioner

(Editor's Note: See 44 Pa.B. 7178 (November 15, 2014) for a proposed rulemaking by the State Board of Physical Therapy relating to this proposed rulemaking.)

Fiscal Note: 16A-6516. No fiscal impact; (8) recommends adoption.

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.25. Schedule of civil penalties—physical therapists and physical therapist assistants.

STATE BOARD OF PHYSICAL THERAPY

Violation under 49 Pa. Code

Section 40.20(b)

Title/Description

Practicing physical therapy after failing to renew but before reactivation of license (in compliance with continuing education requirements)

Penalties

One biennial renewal cycle or less—\$50 per month lapsed, not to exceed \$1,000
More than one biennial renewal cycle—formal action

<i>Violation under 49 Pa. Code</i>	<i>Title/Description</i>	<i>Penalties</i>
Section 40.67(a)	Failure of licensed physical therapist to complete the required amount of continuing education	1st offense—\$25 per hour of deficiency, not to exceed \$1,000 2nd offense—deficient 20 hours or less—\$50 per hour of deficiency not to exceed \$1,000 2nd offense—deficient more than 20 hours—formal action 3rd offense—deficient 10 hours or less—\$100 per hour of deficiency not to exceed \$1,000 3rd offense—deficient more than 10 hours—formal action Subsequent offenses—formal action
Section 40.67(b)(3)	Failure of licensed physical therapist to respond to continuing education audit request within 30 days, or other time period in audit request that notifies the licensee that failure to respond is subject to discipline	1st offense—\$100 2nd offense—\$250 3rd offense—\$ 500 Subsequent offenses—formal action
Section 40.191(j)	Providing services as a physical therapist assistant after failing to renew but before reactivation of certification (in compliance with continuing education requirements)	One biennial renewal cycle or less—\$50 per month lapsed, not to exceed \$1,000 More than one biennial renewal cycle—formal action
Section 40.192(a)	Failure of certified physical therapist assistant to complete the required amount of continuing education	1st offense—\$25 per hour of deficiency, not to exceed \$1,000 2nd offense—deficient 20 hours or less—\$50 per hour of deficiency, not to exceed \$1,000 2nd offense—deficient more than 20 hours—formal action 3rd offense—deficient 10 hours or less—\$100 per hour of deficiency, not to exceed \$1,000 3rd offense—deficient more than 10 hours—formal action Subsequent offenses—formal action
Section 40.192(b)(3)	Failure of certified physical therapist assistant to respond to continuing education audit request within 30 days, or other time period in audit request that notifies the physical therapist assistant that failure to respond is subject to discipline	1st offense—\$100 2nd offense—\$250 3rd offense—\$ 500 Subsequent offenses—formal action

[Pa.B. Doc. No. 14-2355. Filed for public inspection November 14, 2014, 9:00 a.m.]

PHILADELPHIA PARKING AUTHORITY

[52 PA. CODE CHS. 1017 AND 1021]

Image Retention and Use

The Philadelphia Parking Authority (Authority), on August 27, 2014, adopted a proposed rulemaking order to clarify retention and use procedures related to images captured by a taxicab safety camera system.

Proposed Rulemaking Order; Philadelphia Taxicab and Limousine Regulations; Image Retention and Use; Doc. No. 126-10

Proposed Rulemaking Order

By The Authority:

The Authority is the sole regulator¹ of all taxicab and limousine service in Philadelphia.² The purpose of the proposed rulemaking is to clarify retention and use procedures related to images captured by a taxicab safety camera system. The Authority seeks comments from all interested parties on the proposed regulation, which are found at Annex A to this Order.

A. Background and discussion

All taxicabs in Philadelphia will soon be equipped with safety cameras. Those cameras will capture images of the interior of each taxicab at various intervals to deter crimes against drivers and bad behavior in general. In most cases, images recorded by these safety cameras will be stored locally and overwritten on a scheduled basis. The local images will be secure and accessible only by Authority's Taxicab and Limousine Division Enforcement Department. Images may also be transmitted to both the Authority and the taxicab's dispatcher to assist in law enforcement response times and investigations.

The proposed regulation establishes requirements related to the limited retention of safety cameras images, regardless of which entity has possession. The regulation will also prohibit the inappropriate use of these images. Finally, the regulation will prohibit the unnecessary activation of the taxicab distress button, which accelerates the rate of images captured and initiates the transmission of the images to the Authority and the dispatcher.

B. The regulation

We propose adding the below referenced sections to provide guidance and limitations upon the use and retention of images captured by safety camera systems and to prohibit the inappropriate activation of the taxicab distress button:

§ 1017.78. Use of Captured images

(a) *Purpose.* This subsection identifies the purpose of the regulation.

(b) *Prohibitions.* This subsection requires safety cameras images to be confidentiality maintained and released or copied only as permitted in the regulation.

(c) *Local storage device.* This subsection provides that only the Taxicab and Limousine Division's Enforcement Department may access images stored on the data storage devices installed in each taxicab.

¹ The act of July 16, 2004, (P.L. 758, No. 94), 53 Pa.C.S. §§ 5701 et seq., as amended, (the "act").

² The Authority may promulgate taxicab and limousine regulations. 53 Pa.C.S. §§ 5722 and 5742.

(d) *Maintenance of captured images.* This subsection requires all images in the possession of a dispatcher or the Authority to be maintained in password protected files. Additionally, images in the possession of the Authority will be securely maintained only by the Enforcement Department of the Taxicab and Limousine Division.

(e) *Deletion of captured images.* This section establishes timeframes for the deletion of images in the possession of either the dispatcher or the Authority, or both, as well as exceptions to those timeframes.

(f) *Release of captured images.* This section provides for the release of safety camera images by a dispatcher to the Authority or law enforcement or from the Authority to law enforcement.

§ 1021.12. *Additional requirements.* A safety camera system will transmit images when the taxicab meter system distress button is activated. While we believe it is axiomatic that a driver should not inappropriately activate the distress button, there is no specific prohibition from such conduct in the regulations at present. This section will address that issue.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 29, 2014, the Authority submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Urban Affairs Committee and the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the proposed rulemaking, the Commission provided IRRC and will provide the Committees with a copy of a detailed Regulatory Analysis Form. 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 must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Authority, the General Assembly and the Governor of comments, recommendations or objections raised.

Conclusion

The Authority, therefore, formally commences its rulemaking process to promulgate this regulation to become part of 52 Pa. Code Part II in a manner consistent with Annex A to this Order. The Authority seeks comments from all interested parties on this proposed body of regulations, which are found at Annex A to this Order. The Authority hereby advises that all comments submitted in response to this Order will be posted, without redaction of name, address, or other personal information or comment provided, on the website of the Independent Regulatory Review Commission, which may be reached at (717) 783-5417.

Accordingly, under sections 13 and 17 of the Act (53 Pa.C.S. §§ 5722 and 5742); section 5505(d)(17), (23) and (24) of the Parking Authorities Act (act of June 19, 2001) (P.L. 287, No. 22) (53 Pa.C.S. § 5505(d)(17), (23) and (24)); sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P.S. § 732.204(b)); section 745.5 of the Regulatory Review Act (71 P.S. § 745.5); and section 612

of The Administrative Code of 1929 (71 P. S. § 232), and the regulations promulgated at 4 Pa. Code §§ 7.231—7.234, the Authority proposes adoption of the regulations set forth in Annex A; *Therefore,*

It Is Ordered That:

1. A proposed rulemaking be opened to consider the regulation set forth in Annex A.
2. The Executive Director shall submit this proposed rulemaking Order and Annex A to the Office of Attorney General for review as to form and legality.
3. The Executive Director shall submit this proposed rulemaking Order and Annex A for review and comments to the Independent Regulatory Review Commission and the Legislative Standing Committees.
4. The Executive Director shall do all such other things necessary to advance this regulation through the appropriate promulgations process in an expeditious manner.
5. The Secretary of the Board shall certify this proposed rulemaking Order and Annex A and that the Executive Director shall deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.
6. An original and 15 copies of any written comments referencing the docket number of the proposed regulation be submitted within 30 days of publication in the *Pennsylvania Bulletin* to the Philadelphia Parking Authority, Attn: General Counsel, 701 Market Street, Suite 5400, Philadelphia, PA 19106.
7. A copy of this proposed rulemaking Order and Annex A shall be served on the City of the First Class Taxicab and Limousine Advisory Committee and a copy shall be posted on the Authority’s website at www.philapark.org/tld.
8. The contact person for this proposed rulemaking is James R. Ney, Director, Taxicab and Limousine Division, (215) 683-9417.

VINCENT J. FENERTY, Jr.,
Executive Director

Fiscal Note: 126-10. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART II. PHILADELPHIA PARKING AUTHORITY

Subpart B. TAXICABS

CHAPTER 1017. VEHICLE AND EQUIPMENT REQUIREMENTS

Subchapter G. SAFETY CAMERAS

(Editor’s Note: The following section is new and printed in regular type to enhance readability.)

§ 1017.78. Use of captured images.

- (a) *Purpose.* The purpose of a safety camera system is to discourage bad acts in taxicabs in furtherance of protecting the health and safety of taxicab drivers and the public.
- (b) *Prohibitions.* Images from a safety cameras system shall be maintained in the strictest of confidentiality and may not be duplicated, released or disclosed except as provided in subsection (f).

(c) *Local storage device.* Data storage devices secured in a taxicab as provided in § 1017.74(h) (relating to safety camera requirements) must be configured to overwrite recorded images at intervals not to exceed 60 days. Only the Enforcement Department may access images stored on the data storage devices.

(d) *Maintenance of captured images.*

(1) Each dispatcher shall identify at least one, but no more than three, key employees to be responsible for the security of images transmitted to the dispatcher as provided in § 1017.74 on Form No. DSP-4 as provided in § 1019.9 (relating to list of affiliated taxicabs). The dispatcher shall maintain safety camera system images in password protected files accessible only by the key employee or employees.

(2) Images from a safety camera system in the possession of the Authority will be maintained and secured by the Enforcement Department in password protected files.

(e) *Deletion of captured images.*

(1) A dispatcher shall delete safety camera system images on the 31st day after receipt, unless one or more of the following applies:

(i) The dispatcher is directed, in writing, by the Enforcement Department to withhold designated images from deletion.

(ii) The dispatcher is directed, in writing, by a law enforcement agency to withhold designated images from deletion.

(2) The Enforcement Department will delete safety camera system images on the 31st day after receipt, unless one or more of the following applies:

(i) The image contains evidence of criminal activity.

(ii) The image contains evidence related to a regulatory investigation or complaint.

(iii) A law enforcement agency has requested, in writing, that the image be retained.

(3) The Enforcement Department will maintain a log of the images excluded from deletion as provided in paragraph (2), including reference to matter necessitating retention and the date each image is ultimately deleted.

(f) *Release of captured images.*

(1) A dispatcher shall release safety camera system images to the Enforcement Department or a law enforcement agency upon written request.

(2) The Authority will release safety camera system images to a law enforcement agency upon written request.

CHAPTER 1021. TAXICAB DRIVERS

§ 1021.12. Additional requirements.

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(f) No requirement of this subpart, or any Authority regulation, may be interpreted to disrupt or interfere with interstate commerce exclusively regulated by or preempted by the government of the United States.

(g) A taxicab driver may not activate the distress button required under § 1017.24(d)(8) (relating to meter activation and display) except when the driver is in need of emergency assistance by law enforcement or other emergency responders.

[Pa.B. Doc. No. 14-2356. Filed for public inspection November 14, 2014, 9:00 a.m.]

STATE BOARD OF PHYSICAL THERAPY

[49 PA. CODE CH. 40]

Continuing Education Enforcement

The State Board of Physical Therapy (Board) proposes to amend §§ 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 proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

The proposed 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.

Background and Need for the Proposed 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 incorporated these requirements into §§ 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 that the licensee has satisfied 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 proposes to 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. Accordingly, the Commissioner has separately proposed using the Act 48 citation system to levy the civil penalty. To obtain greater compliance with the underlying continuing education requirements, this rulemaking proposes to amend the Board's regulations to address curing the deficiency.

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.

Description of the Proposed Rulemaking

The proposed rulemaking would add § 40.67(f). This proposed subsection would subject a licensee who failed to complete the minimum required amount of continuing education during the applicable biennial renewal period to disciplinary action in the form of a civil penalty under section 12(c) of the act in accordance with the schedule of civil penalties in proposed § 43b.25 (relating to schedule of civil penalties—physical therapists and physical therapist assistants), being promulgated concurrently by the Commissioner. It would also require the licensee to make up the deficiency and provide proof to the Board within 6 months of the issuance of the Act 48 citation. If the licensee does not do so, the licensee will 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 the required deficient continuing education.

The proposed rulemaking would also add § 40.192(f) with 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) upon a demonstration that the certificate holder subsequently completed the required deficient continuing education would be exempted from this disciplinary process.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will not impose additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, a sunset date has not been assigned.

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 this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and 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 comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, 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 Regulatory Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, RA-STRegulatoryCounsel@pa.gov within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-6515 (Continuing education enforcement) when submitting comments.

SUSAN L. WHITNEY, PhD, PT, NCS, ATC,
Chairperson

(Editor's Note: See 44 Pa.B. 7173 (November 15, 2014) for a proposed rulemaking by the Bureau of Professional and Occupational Affairs relating to this proposed rulemaking. Section 43b.25 will be adopted on or before the date of final adoption of this proposed rulemaking.)

Fiscal Note: 16A-6515. No fiscal impact; (8) recommends adoption.

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.

* * * * *

(e) *Authoring publications.* A licensed physical therapist may earn continuing education credit for authoring publications as provided in this subsection.

* * * * *

(4) Credit for authoring a publication will be awarded only for the biennial renewal period in which it was published.

(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 (relating to schedule of civil penalties—physical therapists and physical therapist assistants). Within 6 months after the issuance of a citation under § 43b.25 for failure to complete the required amount of continuing education, the licensee shall make up the deficiency and provide proof of the entire required amount of continuing education in subsection (b). 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 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

MAINTENANCE OF CERTIFICATION

§ 40.192. Continuing education for certified physical therapist assistant.

* * * * *

(e) *Authoring publications.* A certified physical therapist assistant may earn continuing education credit for authoring publications as provided in this subsection.

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(4) Credit for authoring a publication will be awarded only for the biennial renewal period in which it was published.

(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 (relating to schedule of civil penalties—physical therapists and physical therapist assistants). Within 6 months after the issuance of a citation under § 43b.25 for failure to complete the required amount of continuing education, the physical therapist assistant shall make up the deficiency and shall provide proof of the entire required amount of continuing education in subsec-

tion (b). 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 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.

[Pa.B. Doc. No. 14-2357. Filed for public inspection November 14, 2014, 9:00 a.m.]
