



PROPOSED RULEMAKING

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties—Massage Therapists

[44 Pa.B. 5487]

[Saturday, August 16, 2014]

The Commissioner of Professional and Occupational Affairs (Commissioner) proposes to delete § 43b.23 (relating to schedule of civil penalties—massage therapists—statement of policy) and to add § 43b.23a (relating to schedule of civil penalties—massage therapists) 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 acts or regulations of the licensing boards.

Background and Purpose

Act 48 authorizes agents of the Bureau to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's boards and commissions. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, a licensee who receives an Act 48 citation retains his due process right to a hearing prior to the imposition of judgment. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts. Section 5(b)(4) of Act 48 authorizes a licensing board within the Bureau to levy a civil penalty of not more than \$10,000 on a licensee or an unlicensed person who violates a provision of an act or board regulations. However, section 5(a) of Act 48 limits the civil penalty levied by citation to no more than \$1,000 per violation.

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

Description of the Proposed Rulemaking

The Commissioner, in consultation with the Board, proposes to amend the schedule of civil penalties by continuing the penalties in the statement of policy implemented in 2010, with a few exceptions noted as follows. The Commissioner would increase the amount of the penalties for the first four violations under § 20.42(a)(14)—(16) (relating to standards of professional conduct) and section 6(b)(1)(i) of the act (63 P. S. § 627.6(b)(1)(i)) because a civil penalty of only \$50 has limited effect as a deterrent and is not sufficient to cover the Board's cost in implementing the civil penalty. This is especially true if a respondent decides to request a hearing on the imposition of an Act 48 citation.

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

The Commissioner would amend the last two penalties pertaining to expired licenses in violation of section 14(b) and (e) of the act. The Commissioner proposes to remove the warning letter for the first offenses of 0—6 months and would make the initial fine for lapses from 0—12 months \$250.

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

Fiscal Impact and Paperwork Requirements

The proposed rulemaking would not have adverse fiscal impact on the Commonwealth or its political subdivisions and would reduce the paperwork requirements of both the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements and adjudications/orders for those violations subject to the Act 48 citation process. The only fiscal impact of the proposed rulemaking would be borne by those persons who violate the act or regulations of the Board and are subject to the civil penalties proposed by the new schedule.

Sunset Date

The Board, the Bureau and the Commissioner continually monitor the effectiveness of regulations affecting their operations. As a result, 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 August 5, 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 Louis Lawrence Boyle, Regulatory Unit Counsel, State Board of Massage Therapy, 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-723 (schedule of civil penalties—massage therapists) when submitting comments.

TRAVIS N. GERY, Esq.,
Commissioner

Fiscal Note: 16A-723. 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.23. [Schedule of civil penalties—massage therapists—statement of policy]
(Reserved).

[STATE BOARD OF MASSAGE THERAPY

Violation under 49 Pa. Chapter 20 P. S.	Violation Code under 63 Chapter 20 P. S.	Title/Description	Civil Penalty
	§ 20.42(a)(14)	Failure to display current license or wallet card.	First offense—\$50 Second and subsequent offenses—\$250
	§ 20.42(a)(15)	Failure to include massage therapy license number in advertisements.	First offense—\$50 Second and subsequent offenses—\$250
	§ 20.42(a)(16)	Failure to display name and title.	First offense—\$50 Second and subsequent offenses—\$250
§ 627.6(b)(i)		Failure to hold current certification to administer CPR.	First offense—\$50 Second offense—\$250 Subsequent offense—formal action
§ 627.6(b)(ii)		Failure to complete 24 hours of continuing education courses approved by the Board during the 24 months preceding license renewal.	First offense—\$100 per credit hour Second offense—formal action
§ 627.14		Holding oneself out as a massage therapist or practicing massage therapy while unlicensed.	First offense—\$500 Second offense—formal action
§ 627.14(b)		Holding oneself out as a licensed massage therapist while license is expired.	0—6 months—warning 7—12 months—\$250 13—18 months

§ 627.14(e)	Practicing massage therapy on an expired license.	—\$500 19—24 months —\$1,000 More than 24 months—formal action 0—6 months— warning 7—12 months— \$250 13—18 months —\$500 19—24 months —\$1,000 More than 24 months—formal prosecution]
----------------	---	---

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

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

STATE BOARD OF MASSAGE THERAPY

Violation under 49 Pa. Violation Code under 63 Chapter P. S. 20	Title/Description	Civil Penalty
§ 20.42(a) (14)	Failure to display current license or wallet card.	1st offense— \$250 2nd and subsequent offenses— \$500
§ 20.42(a) (15)	Failure to include massage therapy license number in advertisements.	1st offense— \$250 2nd and subsequent offenses— \$500
§ 20.42(a) (16)	Failure to display name and title.	1st offense— \$250 2nd and subsequent offenses— \$500

§ 627.6(b) (i)	Failure to hold current certification to administer CPR.	1st offense— \$250 2nd offense —\$500 Subsequent offense— formal action
§ 627.6(b) (ii)	Failure to complete 24 hours of continuing education courses approved by the Board during the 24 months preceding license renewal.	1st offense— \$100 per credit hour up to 10 credit hours More than 10 credit hours —formal action 2nd and subsequent offenses— formal action
§ 627.14	Holding oneself out as a massage therapist or practicing massage therapy while unlicensed.	1st offense— \$500 2nd and subsequent offenses— formal action
§ 627.14(b)	Holding oneself out as a licensed massage therapist while license is expired.	1st offense— 0—12 months— \$250 13—18 months— \$500 19—24 months— \$1,000 More than 24 months— formal action 2nd offense — 0—12 months— \$500 13—18 months— \$1,000 More than 18 months— formal action

		Subsequent offenses— formal action
§ 627.14(c)	Employing an individual in massage therapy who is not licensed.	1st offense— \$500 2nd and subsequent offenses— formal action
§ 627.14(d)	A business utilizing the words massage, massage therapist, massage practitioner, masseur, masseuse, myotherapist or any derivative of these terms or abbreviations, unless the services of the business are provided by licensees.	1st offense— \$500 2nd and subsequent offenses— formal action
§ 627.14(e)	Practicing massage therapy on an expired license.	1st offense— 0—12 months— \$250 13—18 months— \$500 19—24 months— \$1,000 More than 24 months— formal action 2nd offense— — 0—12 months— \$500 13—18 months— \$1,000 More than 18 months— formal action Subsequent offenses— formal action

[Pa.B. Doc. No. 14-1735. Filed for public inspection August 15, 2014, 9:00 a.m.]

No part of the information on this site may be reproduced for profit or sold for profit.

This material has been drawn directly from the official *Pennsylvania Bulletin* full text database. Due to the limitations of HTML or differences in display capabilities of different browsers, this version may differ slightly from the official printed version.



webmaster@PaBulletin.com