

105 CMR: DEPARTMENT OF PUBLIC HEALTH

105 CMR 125.000: LICENSING OF RADIOLOGIC TECHNOLOGISTS

Section

- 125.001: Scope and Purpose
- 125.002: General Provisions
- 125.003: Definitions
- 125.004: Radiologic Technologist Licensing Disciplines
- 125.005: Application for Radiologic Technologist License
- 125.006: Requirements for Licensure in an Advanced Practice Discipline
- 125.007: Licensure Fee and Term
- 125.008: Temporary Licensing of Radiologic Technologists
- 125.009: Continuing Education
- 125.010: License Renewal
- 125.011: Posting of License Document
- 125.012: Required Reporting
- 125.013: Student Clinical Education
- 125.014: Complaints
- 125.020: Grounds for Suspension of a License or Immediate Cessation of Activity
- 125.021: Grounds for Denial, Modification, Limitation, Revocation or Refusal to Renew a License
- 125.022: Enforcement Procedures
- 125.023: Severability
- 125.024: Waiver

125.001: Scope and Purpose

105 CMR 125.000 sets out the requirements to obtain and maintain a license to practice as a Radiologic Technologist in the Commonwealth of Massachusetts. The purpose of 105 CMR 125.000 is to establish minimum standards necessary for an individual to become licensed as a Radiologic Technologist and to specify enforcement procedures for violations of 105 CMR 125.000.

125.002: General Provisions

(A) In accordance with M.G.L. c. 111, § 5L, no person shall perform the duties of a Radiologic Technologist without holding a current license from the Department.

(B) No licensed Radiologic Technologist shall conduct work in an advanced practice discipline, as described in 105 CMR 125.000, unless specifically authorized by the Department to practice in that specialization.

(C) Nothing in 105 CMR 125.000 shall be construed as preventing or restricting the practice, services or activities of:

- (1) any person licensed in the Commonwealth by any other statute from engaging in the profession for which he or she is licensed; or
- (2) any person employed as a Radiologic Technologist by the U.S. government or any agency of it, if such person provides services solely under the direction or control of the organization by which he or she is employed.

125.003: Definitions

As used in 105 CMR 125.000:

ACR means the American College of Radiology.

ACRT means the Advisory Commission for Radiologic Technologists.

Advanced Practice Discipline means an area of medical imaging or radiation therapy practice in which a radiologic technologist has successfully completed a post-primary certification and registration.

AED means Automated External Defibrillator.

125.003: continued

ARRT means the American Registry of Radiologic Technologists.

BLS means Basic Life Support.

Bone Densitometry means the practice and performance of those activities, actions, duties, and responsibilities contained within, and defined by, the *Practice Standards for Medical Imaging and Radiation Therapy, Bone Densitometry Practice Standards*, as published by the American Society of Radiologic Technologists, or equivalent publication approved by the Department.

CBRPA means the Certification Board for Radiology Practitioner Assistants.

CEU means continuing education unit which equals one contact hour per credit. One contact hour equals 50 minutes of educational instructional activity.

Commissioner means the Commissioner of the Massachusetts Department of Public Health.

Computed Tomography (CT) means the practice and performance of those activities, actions, duties, and responsibilities contained within and defined by the *Practice Standards for Medical Imaging and Radiation Therapy, Computed Tomography Practice Standards*, as published by the American Society of Radiological Technologists or equivalent publication approved by the Department. For the purposes of 105 CMR 125.000, licensing in CT refers to Diagnostic CT, and excludes CT exams performed for therapeutic radiation treatment planning of delivery (CT simulators), or for calculating attenuation coefficients for Nuclear Medicine and PET studies (PET-CT and SPECT-CT), or dental cone beam CT, or Cone Beam CT utilized for external beam radiation therapy planning.

CPR means Cardiopulmonary Resuscitation.

Department means the Massachusetts Department of Public Health.

JRCERT means the Joint Review Committee on Education in Radiologic Technology.

JRCNMT means the Joint Review Committee on educational programs in Nuclear Medicine Technology.

Mammography means the practice and performance of those activities, actions, duties, and responsibilities contained within the *Practice Standards of Medical Imaging and Radiation Therapy, Mammography Practice Standards*, as published by the American Society of Radiological Technologist or equivalent publication approved by the Department.

Mammography Radiologic Technologist means the individual who holds a license to practice within the mammography radiography category.

Medical Radiography means the practice and performance of those activities, actions, duties, and responsibilities contained within and defined by the *Practice Standards of Medical Imaging and Radiation Therapy, Radiography Practice Standards*, as published by the American Society of Radiologic Technologists, or equivalent publication approved by the Department.

NMTCB means the Nuclear Medicine Technology Certification Board.

Nuclear Medicine means the practice and performance of those activities, actions, duties, and responsibilities contained within, and defined by, the *Practice Standards for Nuclear Medicine as published by the Society of Nuclear Medicine, American Society of Radiologic Technologist*, or equivalent publication approved by the Department.

Nuclear Medicine Advanced Associate (NMAA) means the advanced practice and performance of those activities, actions, duties, and responsibilities contained within, and defined, by the scope of practice of the *Nuclear Medicine Advanced Associate* as published by the Society of Nuclear Medicine and Molecular Imaging, or equivalent publication approved by the Department. Nuclear Medicine includes the performance of PET procedures.

125.003: continued

PET means Positron Emission Tomography.

Radiation Therapy means the practice and performance of those activities, actions, duties, and responsibilities contained within, and defined by, the *Practice Standards for Medical Imaging and Radiation Therapy, Radiation Therapy Practice Standards* as published by the American Society of Radiologic Technologists, or equivalent publication approved by the Department.

Radiologic Technologist means the individual who practices radiologic technology in Radiography, Nuclear Medicine, Radiation Therapy, Mammography, Computed Tomography, Positron Emission Tomography, or any combination thereof.

Radiologist Assistant means those Radiologic Technologists who have successfully completed an educational program recognized by the Department for Radiologist Assistant and who may perform non-invasive and invasive radiology procedures using image guidance as appropriate and follows the *Practice Standards for Medical Imaging and Radiation Therapy, Radiologist Assistant Practice Standards* as published by the American Society of Radiologic Technologists.

125.004: Radiologic Technologist Licensing Disciplines

(A) The Department shall issue licenses to Radiologic Technologists in one or more of the following disciplines:

- (1) Radiography;
- (2) Nuclear Medicine;
- (3) Radiation Therapy;
- (4) Mammography, which also requires a license in Radiography;
- (5) Computed Tomography, which also requires a full license in Radiography, and/or Nuclear Medicine, and/or Radiation Therapy;
- (6) Radiologist Assistant which also requires a full license in Radiography or Radiation Therapy;
- (7) Positron Emission Tomography, which also requires a full license in Nuclear Medicine, Radiography or Radiation Therapy;
- (8) Nuclear Medicine Advanced Associate, which also requires a full license in Nuclear Medicine.

(B) Standards of Ethics. Radiologic Technologists shall abide by the Standard of Ethics set forth by each corresponding certification agency and/or professional society.

125.005: Application for Radiologic Technologist License

(A) To practice Radiologic Technology in the Commonwealth of Massachusetts, an individual must:

- (1) Be currently certified or registered by a Board recognized by the Department, as specified in 105 CMR 125.005(C); and
- (2) obtain a Radiologic Technologist license from the Department.

(B) An applicant for a license shall submit to the Department by hand delivery or by mail:

- (1) A completed application on a form provided by the Department;
- (2) a copy of the current Board certification or registration; and
- (3) the appropriate fee established by the Executive Office of Administration and Finance.

(C) The following national or international certifying boards are recognized by the Department:

American Registry of Radiologic Technologists
American Society of Clinical Pathologists
Australian Institute of Radiography
British College of Radiographers
Canadian Association of Medical Radiologic Technologists
Certification Board for Radiology Practitioner Assistants
Nuclear Medicine Technologists Certification Board

or other such boards recognized by the Department.

125.006: Requirements for Licensure in an Advanced Practice Discipline

(A) To work in an advanced practice discipline, a Radiologic Technologist must obtain a license from the Department that authorizes the individual to work in the specified advanced practice discipline. To be licensed in Massachusetts in an advanced practice discipline, the applicant must:

- (1) Have a current Massachusetts Radiologic Technologist license;
- (2) Have successfully passed the ARRT, NMTCB or CBRPA exam in the advanced practice discipline; and
- (3) Submit to the Department documentation of certification or registration in the advanced practice discipline.

(B) A Radiologic Technologist may work in the following advanced practice disciplines upon completion of the corresponding training and upon receiving a license from the Department to practice in that advanced practice discipline:

- (1) A Computed Tomography Technologist (CT Technologist) shall have passed the Computed Tomography examination administered by the ARRT or the NMTCB.
- (2) A Mammography Radiologic Technologist (Mammographer) shall have passed the Mammography Technologist examination administered by the ARRT.
- (3) A Radiologist Assistant shall have passed the Radiology Assistant examination administered by the ARRT or the Radiology Practitioner Assistant examination administered by the CBRPA.
- (4) A Positron Emission Tomography (PET) Radiologic Technologist with a primary license in Radiography or Radiation Therapy shall have passed the Positron Emission Tomography examination administered by the NMTCB.
- (5) A Nuclear Medicine Advanced Associate (NMAA) shall have passed the Nuclear Medicine Advanced Associate examination administered by the NMTCB.

(C) A licensed Radiologic Technologist who is working towards an advanced discipline may perform procedures under appropriate supervision and gain the clinical experience needed to meet the eligibility requirements.

(D) A Radiologist Assistant shall work under the supervision of a radiologist and may not interpret images, make diagnoses, or prescribe medications or therapies.

125.007: Licensure Fee and Term

(A) Each applicant for a license shall submit the fee prescribed by the Executive Office for Administration and Finance, 801 CMR 4.02: *Fees for Licenses, Permits, and Services to Be Charged by State Agencies*.

(B) The term of a license shall be from the date the license is issued through the last day of the applicant's birth month in the next odd numbered year.

125.008: Temporary Licensing of Radiologic Technologists

(A) Minimum Licensure Application Requirements. An individual who does not meet the licensure requirements specified in 105 CMR 125.005, may apply for a temporary license to practice Radiologic Technology in Massachusetts for a period not to exceed one year, provided that:

- (1) the individual is 18 years of age or older; and
- (2) the individual has either:
 - (a) successfully completed all requirements of a JRCERT/JRCNMT accredited or equivalent program prior to application for examination and has provided proof of completion of said requirements to the Department; and
 - (b) has been determined to be eligible for examination by the American Registry of Radiologic Technologists, Nuclear Medicine Technology Certification Board or other certifying agency recognized by the Department, as set forth in 105 CMR 125.005(C).

125.009: Continuing Education

(A) Continuing Education Requirements.

- (1) CEUs must be obtained through a provider approved by the Department. All licensees are required to obtain a minimum of 24 CEUs during each two-year license renewal cycle. Individuals licensed as a Radiologist Assistant or a Nuclear Medicine Advanced Associate are required to obtain a minimum of 50 CEUs during each two-year license renewal cycle.
- (2) For individuals licensed in one discipline:
 - (a) ten CEUs must be in the discipline in which the individual is licensed;
 - (b) two CEUs must be in radiation safety; and
 - (c) the remaining 12 CEUs must be earned in topics directly related to health care practice, radiation safety, or their specialty.
- (3) For individuals licensed in two or more disciplines:
 - (a) four CEUs must be in each discipline in which the individual is licensed;
 - (b) two CEUs must be in radiation safety, and the remaining CEUs must be earned in topics directly related to health care practice, radiation safety, or their specialty.
- (4) For individuals licensed as Mammography Radiologic Technologists, 12 CEUs must be in Mammography, two CEUs must be in radiation safety, four CEUs in Radiography, and the remaining CEUs must be in topics directly related to health care practice, radiation safety, Radiography or Mammography.
- (5) For individuals licensed as a Radiologist Assistant, 50 CEUs must be included in the ARRT's Continuing Education Requirements, including two in radiation safety.
- (6) For individuals licensed as a Nuclear Medicine Advanced Associate, 50 CEUs must be included in the NMTCB's Continuing Education Requirements, including two in radiation safety.

(B) CEU approval agencies recognized by the Department include:

American College of Radiology (ACR)
American Association of Medical Dosimetrists (AAMD)
Association for Medical Imaging Management (AHRA)
American Institute of Ultrasound in Medicine (AIUM)
American Society of Nuclear Cardiology (ASNC)
American Society of Radiologic Technologists (ASRT)
Association of Vascular and Interventional Radiographers (AVIR)
Canadian Association of Medical Radiation Technologists (CAMRT)
Massachusetts Society of Radiologic Technologists (MSRT)
Medical Dosimetrist Certification Board (MDCB)
Radiological Society of North America (RSNA)
Section for Magnetic Resonance Technologist of the International Society for Magnetic Resonance in Medicine (SMRT)
Society of Diagnostic Medical Sonography (SDMS)
Society of Nuclear Medicine and Molecular Imaging (S.N.M.MI)
Society of Vascular Ultrasound (SVU)
Other agencies recognized by the Department.

(C) Each licensed Radiologic Technologist must maintain documentation of CEUs obtained for the current renewal cycle and previous renewal cycle at each workplace where employed as a Radiologic Technologist and shall make such records available to Department inspectors upon request. Acceptable evidence of CEUs includes certificates of attendance and/or certificates of completion of CEU activities from any approval agency recognized by the Department, as set forth in 105 CMR 125.005(C).

(D) Six CEUs will be awarded for a valid Advanced Cardiac Life Support (ACLS). Advanced level CPR certification is limited to the following: Advanced Cardiac Life Support (ACLS), Pediatric Advanced Level Support (PALS), Instructor or Instructor Trainer. Only one certification may be submitted during a licensing cycle. A copy of a valid certificate issued by the Red Cross, the American Heart Association, or the American Safety and Health Institute will be accepted. CEU credit is not available for basic CPR (BLS/BLS with AED, Healthcare Provider CPR).

125.009: continued

(E) The licensing cycle for CEUs is defined by the Radiologic Technologist's birth month. CEU requirements begin on the first day of the individual's birth month, in the year the license is renewed, through the last day of the month prior to the individual's birth month, 24 months later.

(F) Probation Status.

(1) A Radiologic Technologist who fails to meet the CEU requirements during a licensing cycle will be placed on probation. In order to be removed from probation the technologist must obtain, within three months from the expiration date of the license, the number of CEUs lacking from the CEUs needed and any penalty CEUs assessed against the licensee.

(2) The penalty CEUs will be equal to the number of CEUs that were lacking in the licensing cycle. The CEUs submitted to satisfy the probation requirements cannot be used to fulfill the current licensing cycle. In addition, the technologist shall be required to obtain the necessary 24 CEUs by the end of the licensing cycle to remain in compliance with 105 CMR 125.009(A)(1).

(3) Licensees on probation must comply with these requirements within three months of being put on probation or will be subject to enforcement action in accordance with the provisions of 105 CMR 125.000. Radiologic Technologists who are on CEU Probation will have "CEU Probation" indicated on their license. Once the CEU requirements are satisfied, "CEU Probation" will be removed from the license.

125.010: License Renewal

(A) To renew a Radiologic Technologist license, the licensee shall submit the following at least 21 calendar days before the current license's expiration date:

- (1) a renewal application; and
- (2) evidence of completion of a minimum of 24 CEUs.

(B) Unless otherwise ineligible to sit for ARRT or NMTCB testing, Radiologic Technologists shall submit a valid copy of their ARRT or NMTCB card.

(C) Failure to receive notification by the Agency prior to the expiration date will not be an excuse for failure to file a timely renewal.

(D) The Agency will not renew the license of a Radiologic Technologist who is in violation of any provision of 105 CMR 125.000 at the time of renewal.

(E) A Radiologic Technologist whose license has expired is prohibited from working as a radiologic technologist in Massachusetts.

(F) Expired Licenses. When the valid period of a Radiologic Technologist's license has expired, the number of CEUs required for renewal shall be as follows:

(1) When renewal is sought within six months following the expiration of the license, the applicant must submit evidence of having obtained 24 CEUs in accordance with 105 CMR 125.009(A)(1) during the previous renewal cycle and a valid ARRT or NMTCB card.

(2) When renewal is sought more than six months following the expiration of a license, the applicant must submit evidence of having obtained 24 CEUs in accordance with 105 CMR 125.009(A)(1) during the previous renewal cycle, as well as one additional CEU per month following the expiration of the license, and a valid AART or NMTCB card.

(G) When renewal is sought more than six months following the expiration of a license, applicants must submit an application for a license as provided in 105 CMR 125.005.

125.011: Posting of License Document

A Radiologic Technologist shall provide the original license or a copy for posting purposes at each place of employment. In lieu of posting each license or photocopy of licenses for all individuals employed within a facility, a facility may prominently display on a wall at the facility in full view of patients a listing of all individuals licensed in Radiologic Technology as long as the listing clearly identifies each licensee with:

105 CMR: DEPARTMENT OF PUBLIC HEALTH

125.011: continued

- (1) his or her respective license number;
- (2) discipline his or her license is in; and
- (3) license expiration date.

125.012: Required Reporting

A licensee shall notify the Radiation Control Program of the Department within 30 days of:

- (1) Any legal or disciplinary action or proceeding initiated against the licensee by any other licensing jurisdiction (United States or foreign), any health care institution, any professional society or association, including those listed in 105 CMR 125.005(C), any government agency, by any law enforcement agency, or any court for acts or conduct substantially the same as acts or conduct which would constitute grounds for suspension, denial, modification, limitation, revocation, or refusal to renew a license, or which would in any way relate directly or indirectly to his or her fitness to be licensed as a radiologic technologist; and
- (2) Any changes to the licensee's name or mailing address.

125.013: Student Clinical Education

(A) Any student enrolled in approved/accredited education programs in Radiography, Nuclear Medicine, Radiation Therapy, Mammography, PET, or CT is permitted to engage in those clinical activities which constitute the Clinical Education component of the program's approved curriculum, so long as such activities occur:

- (1) Under appropriate levels of supervision as stipulated by program requirements;
- (2) Only while the student is enrolled in the program; and
- (3) Only during and as an integral part of the regularly scheduled clinical education activities.

(B) If for any reason a student must repeat any radiation procedure/ exposure, a licensed Radiologic Technologist must directly supervise all activities associated with the repeat radiation procedure/exposure. For the requirements of 105 CMR 125.014, "directly supervise" means that the licensed Radiologic Technologist is present with the student, in the room, overseeing all activities associated with the repeat radiation procedure/exposure.

125.014: Complaints

The Department shall investigate every complaint received about practices or acts which may violate M.G.L. c. 111, § 5L or any provision of 105 CMR 125.000.

(A) If the Department finds that an investigation is not required because the alleged act or practice is not in violation of M.G.L. c. 111, § 5L or 105 CMR 125.000, then the Department shall notify the complainant of this finding and the reasons on which it is based.

(B) If the Department finds that an investigation is required, because the alleged act or practice may be in violation of M.G.L. c. 111, § 5L or 105 CMR 125.000, the Department shall investigate and if a finding is made that the act or practice is in violation of M.G.L. c. 111, § 5L or 105 CMR 125.000, then the Department shall initiate whatever enforcement actions it deems appropriate as provided in 105 CMR 125.000.

(C) Investigation of complaints may lead to enforcement actions pursuant to 105 CMR 125.022.

(D) All oral or written complaints about radiologic technologists shall be addressed to the Director, Radiation Control Program, Massachusetts Department of Public Health.

125.020: Grounds for Suspension of a License or Immediate Cessation of Activity

The Commissioner or his or her designee may summarily suspend a license or order immediate cessation of an activity, pending a hearing, whenever the Commissioner finds that public health, safety or the environment would be threatened by delay in issuance of an order. A radiologic technologist may not practice during the period of a suspension of his or her license or conduct a prohibited activity after notification of an order of immediate cessation of said activity.

125.020: continued

(A) Immediate Suspension of a License or Immediate Cessation of Activity.

(1) If the Department intends to order immediate suspension of a license or immediate cessation of an activity, the Department will provide written notice stating the reason(s) for an order requiring immediate suspension or immediate cessation of an activity and the provisions of law relied upon. The immediate suspension or order of immediate cessation of an activity shall take effect immediately upon issuance of the notice.

(2) The Department shall provide for a hearing pursuant to 801 CMR 1.01: *Formal Rules* promptly after the issuance of an order of immediate suspension or order of immediate cessation of an activity.

(3) In cases of suspension of a license or immediate cessation of an activity, the Hearing Officer shall determine whether the Department has proved by a preponderance of the evidence that there existed, immediately prior to or at the time of the suspension or cease and desist order, a threat to public health, safety or the environment.

(4) In the event that the Department determines that the violation of state law or of 105 CMR 125.000 which posed a threat is corrected prior to the decision of the Hearing Officer, the Department may lift the suspension by giving written notice to the licensee.

125.021: Grounds for Denial, Modification, Limitation, Revocation or Refusal to Renew a License

(A) Specific Grounds. The Department may issue an order denying, modifying, limiting, revoking, or refusing to renew a license sought or issued under 105 CMR 125.000 for any of the following reasons:

(1) The applicant or licensee failed to submit the information required for licensure under 105 CMR 125.000.

(2) The applicant failed to meet the requirements for licensure as specified in M.G.L. c. 111, § 5L and/or 105 CMR 125.000.

(3) The applicant or licensee failed to pay licensure and/or registration fees.

(4) The applicant or licensee engaged in the practice of Radiologic Technology after the expiration of his or her radiologic technology license or after such license has been suspended or revoked.

(5) The applicant or licensee obtained or attempted to obtain or maintain a license or board certification by fraud, misrepresentation or by the submission of incorrect, false or misleading information.

(6) The applicant or licensee engaged in fraudulent or deceptive practice; or practice beyond the authorized scope of the license or with gross incompetence, or with negligence on repeated occasions.

(7) The applicant or licensee failed to exercise reasonable care, judgment, knowledge, or ability in the performance of duties or failed to perform those duties within the scope of his or her training and certification or otherwise engaged in conduct which calls into question the individual's competence to practice.

(8) The applicant or licensee knowingly permitted, aided or abetted an unlicensed person to perform activities requiring a license or failed to report such activities upon becoming aware of them.

(9) The applicant or licensee engaged in or aided in the falsification of radiologic screening/or diagnostic results, including but not limited to, the reporting of such false results to any patient.

(10) The applicant or licensee engaged in conduct which endangers public health, safety or the environment.

(11) The licensee failed to comply with an order issued by the Department or failed to comply with a consent agreement entered into with the Department.

(12) The applicant or licensee failed to remedy or correct a cited violation by the date specified in a written notice from the Department or by the date specified in the plan of correction accepted or modified by the Department.

(13) The applicant or licensee violated 105 CMR 125.000 and has a history of non-compliance with the same or similar violation or has received a warning letter from the Department within the last five years for the same or similar violation.

(14) The applicant or licensee has failed to pay civil penalties or criminal fines levied in accordance with 105 CMR 125.000, or any applicable licensure late fees.

125.021: continued

(15) The applicant or licensee failed to allow duly authorized agents of the Department to conduct inspections or attempted to impede the work of duly authorized representatives of the Department or the enforcement of any provisions of M.G.L. c. 111, § 5L or 105 CMR 125.000.

(16) The applicant or licensee has been convicted of, pleaded guilty to, or has, in a judicial proceeding, admitted facts sufficient for a finding that he or she is guilty of, any criminal violation relating directly or indirectly to his or her fitness to be licensed under 105 CMR 125.000, including, but not limited to the following:

- (a) Medicare or Medicaid fraud;
- (b) a crime relating to the activities regulated under M.G.L. c. 111, § 5L and/or 105 CMR 125.000 and/or 127.000: *Licensing of Mammography Facilities*;
- (c) rape, assault or other violent crimes against persons;
- (d) a drug related crime.

(17) The applicant or licensee has been the subject of proceedings which resulted in the suspension, limitation, modification, denial or revocation of his or her license or refusal of renewal of his or her license.

(18) The applicant or licensee has been disciplined in another jurisdiction in any way by the licensing authority for acts or conduct relating directly or indirectly to his or her fitness to be licensed as a Radiologic Technologist.

(19) The applicant or licensee has failed to report to the Department, within the time period provided by law or regulation, any legal or disciplinary action initiated against the licensee by another licensing jurisdiction (United States or foreign), any health care institution, any professional society or association or credentialing organization, any government agency, any law enforcement agency, or any court for acts or conduct substantially the same as acts or conduct which would constitute grounds for suspension, denial, modification, limitation, revocation or refusal to renew a license under 105 CMR 125.021 or 125.022, or which would in any way relate directly or indirectly to his or her fitness to be licensed as a radiologic technologist under 105 CMR 125.000.

125.022: Enforcement Procedures

(A) Notice of Violation. Whenever the Department finds upon inspection, investigation of a complaint or through information in its possession that an applicant or licensee is not in compliance with provisions of M.G.L. c. 111, § 5L or 105 CMR 125.000, the Department shall notify the applicant or licensee of such violation or deficiency. The notice shall include a statement of the violations or deficiencies found, the provision of the law relied upon, and a reasonable period of time for correction. A violation or deficiency may result in denial, suspension, revocation or refusal to renew a license; a modification or limitation of a license; a cease and desist order; and/or the imposition of a civil or criminal penalties. After issuing a Notice of Violation, the Department may require a written plan of correction, as specified in 105 CMR 125.022(B), or proceed to issue a Notice of Intent To Issue an Order, as specified in 105 CMR 125.022(C).

(B) Plan of Correction.

(1) The applicant or licensee shall, within ten days of receipt of a Notice of Violation, submit to the Department a written plan of correction. The plan shall clearly identify the licensee, state the date, reference the violation or deficiency cited, state specific corrective action(s) and timetable(s) and date(s) for completion for each deficiency cited, and shall be signed by either the applicant or licensee or his or her designee.

(2) The Department will determine whether the written plan of correction sufficiently addresses violations or deficiencies. If upon review of the plan of correction, the Department finds that the applicant or licensee is in compliance with 105 CMR 125.000 and/or that the applicant or licensee has submitted an acceptable plan of correction, the Department shall notify the applicant or licensee of its findings of compliance and/or its acceptance or modification of the plan of correction.

(3) If upon review of the plan of correction, the Department finds the plan of correction is unacceptable, the Department may request that the applicant or licensee amend and resubmit the plan of correction with five days of the date of notice or such other time as the Department may specify for resubmission.

125.022: continued

(4) If upon review of the plan of correction, the Department determines that an applicant or licensee remains non-compliant with applicable laws and regulations regarding licensure or determines that further enforcement action is warranted, the Department may initiate enforcement procedures as set forth in 105 CMR 125.023.

(C) Notice of Department's Intent to Issue an Order.

(1) Prior to the Department issuing an order to modify, limit, deny, suspend, revoke or refuse to renew a license, and/or to require a person to cease and desist any activity, and/or to impose civil penalties, and/or issue a reprimand, the applicant or licensee shall be notified in writing of the grounds for the Department's action, the provision(s) of law relied upon, the amount of any civil penalty, and his/her right to request an adjudicatory proceeding and/or judicial review.

(2) If a license is to be modified, limited, denied, revoked, suspended, or refused renewal or if an activity is to be ceased or a civil penalty imposed by the Department, then the aggrieved applicant or licensee may request an adjudicatory hearing within 21 days of receipt of notification of the Department's Intent to Issue an Order. Said request shall be filed in accordance with Standard Adjudicatory Rules of Practice and Procedures, 801 CMR 1.01: *Formal Rules*.

(D) Denial, Revocation or Refusal to Renew Based on Lack of Minimum Qualifications.

(1) If the Department determines that the applicant or licensee fails to meet the age, educational, Department-approved training requirements or other requirements for licensure specified by M.G.L. c. 111, § 5L, the Department shall notify the applicant or licensee in writing that his or her license is being denied, revoked or refused renewal. Said notice shall include the factual basis for the Department's determination.

(2) The Department shall afford the applicant or licensee 21 days from receipt of the written notification to submit certified records to show that he or she meets the age, educational, Department-approved training requirements and other requirements for licensure.

(3) The Department shall deny, revoke or refuse to renew the license of that applicant or licensee without further hearing unless the applicant submits the documentation required in 105 CMR 125.022(D)(2).

(E) Denial, Modification, Limitation, Revocation, or Refusal to Renew a License Based on Failure to File Reports or Pay Fees or Maintain Insurance. No hearing shall be afforded where denial, modification, limitation, revocation, suspension or refusal to renew is based solely upon failure of the licensee to file timely reports, schedules or applications, or to pay lawfully prescribed fees, or to maintain insurance coverage as required by any law or regulation.

(F) Administrative Procedures: Denial, Modification, Limitation, Suspension, Revocation or Refusal to Renew a License; Orders to Cease an Activity; Civil Penalties.

(1) All adjudicatory proceedings shall be conducted in accordance with M.G.L. c. 30A and 801 CMR 1.01: *Formal Rules*.

(2) Except for circumstances specified in 105 CMR 125.022(D), if the Department determines that a license should be denied, modified, limited, suspended, revoked, or refused renewal, and/or that an applicant or licensee should cease an activity, and/or that a civil penalty should be imposed, and if the Department notifies the applicant or licensee of its intended action, upon receipt of a Notice of Claim for an Adjudicatory Proceeding, the Department shall initiate a hearing pursuant to 801 CMR 1.01: *Formal Rules*.

(3) The Hearing Officer shall determine whether the Department has proved by a preponderance of the evidence that the license should be denied, modified, limited, suspended, revoked or refused renewal; that an activity should cease; and/or that a civil penalty be imposed based on relevant facts as they existed at or prior to the time the Department initiated the hearing procedure.

(4) If the Hearing Officer finds any single ground for denial, modification, limitation, suspension, revocation, or refusal to renew a license; for a cessation of an activity; and/or for imposition of a civil penalty, then the Hearing Officer shall render a recommended decision.

125.022: continued

(G) Final Agency Decision and Judicial Review.

(1) The recommended decision of a Hearing Officer in any adjudicatory proceeding conducted under 105 CMR 125.000 shall be reviewed by the Commissioner. The Commissioner's decision upon this review shall constitute a final agency decision in an adjudicatory proceeding subject to judicial review pursuant to M.G.L. c. 30A, § 14.

(2) Any applicant or licensee that fails to exercise its right to an adjudicatory proceeding under 105 CMR 125.000 waives both its right to administrative review by the Commissioner and its right to judicial review pursuant to M.G.L. c. 30A, § 14.

(H) Civil Penalties.

(1) If the Department determines that an applicant or licensee has not complied with an order issued pursuant to M.G.L. c. 111, § 5L or with any provision of M.G.L. c. 111, § 5L or with any applicable rule, regulation, license or registration adopted or issued thereunder, the Department, in *lieu* of, or in addition to suspending, denying, modifying, limiting, revoking, or refusing renewal of a license, may assess civil penalties in an amount not exceeding \$100,000 per violation, subject to the right to a hearing specified in 105 CMR 125.022(C). Such civil penalty may be assessed whether or not the violation was willful.

(2) Factors In Determining Amount of Penalty. In determining the amount of the civil penalty, the Department shall consider the following:

- (a) The willfulness of violation;
- (b) The actual and potential danger to the public health or the environment;
- (c) The actual or potential cost of such danger to the public health or the environment;
- (d) The actual or potential damage or injury to the public health or environment;
- (e) The actual and potential cost of such damage or injury;
- (f) The actual or potential cost to the Commonwealth of enforcing provisions of 105 CMR 125.000;
- (g) Whether the person being assessed the civil penalty did everything reasonable to prevent failure to comply from occurring, to come into compliance promptly, and to remedy and mitigate whatever harm might have been done as a result of the failure to comply;
- (h) Whether the person being assessed the civil penalty has previously failed to comply with any order issued pursuant to M.G.L. c. 111, § 5L or any other rule or regulation adopted hereunder;
- (i) Whether imposition of a civil penalty is likely to deter future non-compliance;
- (j) The financial condition of the person being assessed the civil penalty; and
- (k) The public interest.

(3) Civil Penalty for Operation without a License. Practicing as a Radiologic Technologist without a license constitutes a violation of law punishable by a civil penalty of up to \$100,000. Each day during which a radiologic technologist operates without a license shall constitute a separate offense.

(4) Payment of the Civil Penalty. If after hearing, or waiver thereof, the Department imposes a civil penalty, then the civil penalty shall be due and payable to the Commonwealth of Massachusetts within 30 days after the date of the final agency action.

(5) Non-exclusivity of Civil Penalties. By imposing a civil penalty, the Department does not waive its right to invoke other enforcement procedures, such as modification, limitation, suspension, revocation or refusal to renew a license or registration.

(I) Criminal Enforcement. The Department may elect to enforce any section 105 CMR 125.000 or provision of M.G.L. c. 111, § 5L by seeking to have criminal sanctions imposed. Any person who violates M.G.L. c. 111, § 5L or any rule, regulation, license, registration, or order adopted or issued under M.G.L. c. 111, § 5N or 5O shall be fined not less than \$100 nor more than \$2,000, or be imprisoned for a period of not more than two years, or both. Any person who continues to violate the provisions of the aforementioned laws after due notice by the Department shall be fined not less than \$1,000 nor more than \$20,000 or be imprisoned for a period of not more than 20 years, or both. After due notice has been issued by the Department, each day of such violation shall constitute a separate offense.

105 CMR: DEPARTMENT OF PUBLIC HEALTH

125.022: continued

(J) Judicial Enforcement. The Department may apply directly to the Supreme Judicial Court or Superior Court to enforce any provision of M.G.L. c. 111, § 5L and/or any rule or regulation, license, registration, or order adopted and issued there under by the Department. When a person is engaged in or about to engage in any act or practice which constitutes or will constitute a violation of such provision, rule, regulation, license, registration, or order, the Department may seek to restrain such act or practice or the use or occupation of premises or parts thereof or such other equitable relief as public health and safety requires.

(K) Nonexclusivity of Enforcement Procedures. None of the enforcement procedures contained in 105 CMR 125.000 is mutually exclusive. Any enforcement procedures may be invoked simultaneously if the situation so requires.

125.023: Severability

The provisions of 105 CMR 125.000 are severable. If any section, subsection, paragraph or provision is declared unconstitutional or invalid by a court of competent jurisdiction, the validity of the remaining provisions shall not be so affected.

125.024: Waiver

The Department may waive the application of any provision of 105 CMR 125.000 with respect to a particular case when in its opinion the enforcement thereof would do manifest injustice, provided that:

(A) The party requesting a waiver shall submit written documentation supporting its request; and

(B) The decision of the Department to grant a waiver shall not conflict with the purpose of 105 CMR 125.000 and shall not pose a risk to public health or safety.

REGULATORY AUTHORITY

105 CMR 125.000: M.G.L. c. 111, §§ 3 and 5L.