

105 CMR: DEPARTMENT OF PUBLIC HEALTH

105 CMR 125.000: LICENSING OF RADIOLOGIC TECHNOLOGISTS
Section

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125.001: Scope and Purpose

105 CMR 125.000 set out the requirements to obtain 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. Nothing in 105 CMR 125.000 shall be construed as preventing or restricting the practice, services or activities of any person licensed in the Commonwealth by any other statute from engaging in the profession for which he or she is licensed.

125.002: Authority

M.G.L. c. 111, §§ 3 and 5L through 5Q.

125.003: Definitions

As used in 105 CMR 125.000 *et seq.*:

ACRT means the Advisory Commission for Radiologic Technologists.

ARRT means the American Registry of Radiologic Technologists.

ASRT means the American Society of Radiologic Technologists.

CAHEA means the Committee on Allied Health Education and Accreditation.

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

Chest Radiography means the practice and performance of those activities, actions, duties, and responsibilities contained within, and defined by, the scope of practice of the limited scope of practice chest radiologic technologist as published by the American Society of Radiologic Technologists, or equivalent. More specifically, chest radiography includes chest (PA/Lateral/Decubitis), ribs and clavicles.

Chest Radiologic Technologist (Limited Scope) means the individual who holds a license to practice within the limited scope chest radiography category.

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Commission means the Advisory Commission for Radiologic Technologists (ACRT).

Extremity Radiography means the practice and performance of those activities, actions, duties, and responsibilities contained within, and defined by, the scope of practice of the limited scope of practice extremity radiologic technologist as published by the American Society of Radiologic Technologists, or equivalent. More specifically, extremity radiography includes the upper extremities (arms up to and including shoulders) and lower extremities excluding hips/pelvis.

Extremity Radiologic Technologist (Limited Scope) means the individual who holds a license to practice within the limited scope extremity radiography category.

Mammography Radiography means the practice and performance of those activities, actions, duties, and responsibilities contained within, and defined by, the scope of practice Mammography Radiologic Technologist as published by the American Society of Radiologic Technologists, or equivalent.

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

Medical Radiographer means the radiologic technologist who holds a full license to practice the full scope of medical radiography.

Medical Radiography means the practice and performance of those activities, actions, duties, and responsibilities contained within, and defined by, the scope of practice of the medical radiographer as published by the American Society of Radiologic Technologists, or equivalent.

Nuclear Medicine Technology means the practice and performance of those activities, actions, duties, and responsibilities contained within, and defined by, the scope of practice of the Nuclear Medicine Technologist as published by the Society of Nuclear Medicine, or equivalent.

Nuclear Medicine Technologist means the individual who practices nuclear medicine technology.

Radiation Therapy Technology means the practice and performance of those activities, actions, duties, and responsibilities contained within, and defined by, the scope of practice of the radiation therapy technologist as published by the American Society of Radiologic Technologists, or equivalent.

Radiation Therapy Technologist means the individual who practices radiation therapy technology. This individual may also be known as a radiation therapist.

Radiologic Technologist means the individual who practices radiologic technology in Radiography, Nuclear Medicine, Radiation Therapy, Mammography, or Limited Scope Radiography categories, or any combination thereof.

Scope of Practice Categories in Radiography: means the four categories of licensed practice in Radiography: Full (general) Radiography; Limited Radiography -- chest; and, Limited Radiography -- Extremities, and Mammography.

Use of Fluoroscopy by Licensed Radiologic Technologists: means that the use of fluoroscopy by radiologic technologists licensed in the specialty of Radiography (Full/General), "shall be for the purposes of positioning only, shall be restricted to use of exposure parameters resulting in doses as low as reasonably achievable, and shall be limited to only those instances where exceptional patient conditions render ineffective use of routine radiographic positioning protocols, practices and/or procedures".

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125.004: Types of Licenses

Licenses shall be issued by the Department to radiologic technologists in the following categories:

- (A) Radiologic Technologist -- Radiography
 - (1) Full/general
 - (2) Limited -- chest
 - (3) Limited -- extremities
 - (4) Mammography -- requires full/general alsoNOTE: New limited licenses are no longer issued.
- (B) Radiologic Technologist -- Nuclear Medicine
- (C) Radiologic Technologist -- Radiation Therapy

125.005: Licensing of Certified Radiologic Technologists

(A) Individuals Certified by a Board Recognized by the Department. Individuals who are certified by a Board recognized by the Department but are not presently licensed by the Department, before practicing radiologic technology in the Commonwealth of Massachusetts, shall provide to the Department the properly completed application provided by the Department, a notarized copy of the certification, and the appropriate fee, which shall be delivered in hand, or by mail, to:

The Advisory Commission for Radiologic Technologists
c/o Radiation Control Program
Massachusetts Department of Public Health
State Laboratory Institute
305 South Street
Jamaica Plain, MA 02130

The following national, or international, certifying boards are recognized by the Commission:

American Registry of Radiologic Technologists
British College of Radiographers
Australian Institute of Radiography
Canadian Association of Medical Radiologic Technologists
Society of Radiographers of South Africa
Nuclear Medicine Technologists Certification Board
American Society of Clinical Pathologists
New Zealand Institute of Medical Radiation Technology
--or other such boards deemed equivalent by the Commission

125.006: Licensing of Non-Certified Radiologic Technologists

(A) Minimum Licensure Application Requirements. An individual who is not a certified radiologic technologist, as specified in 105 CMR 125.004, may apply to be examined as a radiologic technologist provided that:

- (1) the individual has a high school diploma, or equivalent; *and*,
- (2) the individual is at least 18 years of age; *and*,
- (3) the individual, as of April 1, 1990, has successfully completed all requirements of a C.A.H.E.A. accredited, or equivalent, program prior to the applied for examination date and has provided proof of completion of said requirements.

Individuals deemed eligible for examination by the American Registry of Radiologic Technologists shall be accepted as eligible for the Massachusetts Radiologic Technology Licensure examination. This eligibility extends to graduates of Military Radiologic Technology programs recognized/accepted as eligible for examination by the ARRT, as well as programs holding a provisional accreditation status from CAHEA.

(B) Licensure Examination:

- (1) Through contractual arrangement with the Department, the American Registry of Radiological Technologists shall, for the purposes of licensure examination, prepare, administer and provide score results for the following examinations:

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Nuclear Medicine Technology
Medical Radiography (full/general)
Radiation Therapy Technology
Other examinations, as they become available

(2) All applications for licensure examination must follow the procedure established by the Department for licensure examination. Application for Massachusetts licensure is to be considered separate and independent from the application to the ARRT for examination certification by that Agency.

(C) Application for Examination: An individual meeting the requirements of 105 CMR 125.006(A)(1), (2) and (3) shall submit an application for examination by the deadline specified on the application form provided by the Department. Application forms can be obtained from the Department at the following address:

The Advisory Commission for Radiologic Technologists
c/o Radiation Control Program
Massachusetts Department of Public Health
State Laboratory Institute
305 South Street
Jamaica Plain, MA 02130

The deadlines for application for licensure examination are as follows:

Applicants eligible for March examination:

no applications accepted after: January 9

Applicants eligible for July examination:

no applications accepted after: May 9

Applicants eligible for October examination:

no applications accepted after: August 9

The mailing deadline will be rigidly enforced. No exceptions to the deadlines will be made regardless of the circumstances. Applications received which are postmarked after the deadline will be held over for the next regularly scheduled examination.

(D) Temporary License:

(1) A temporary license to practice radiologic technology in Massachusetts, for a period not to exceed one year, may be issued by the Department to applicants who:

- (a) file a complete, appropriate application for licensure examination; and,
- (b) provide documentation satisfactory to the ACRT that they have successfully completed all graduation requirements of a CAHEA approved (or equivalent) program.

(2) Such temporary license shall not be renewable.

(3) After September 1, 1992, there will be no working student licenses issued in the Commonwealth of Massachusetts. (Student licenses were issued prior to September 1, 1992 and allowed students to work outside of the clinical practice directly associated with their educational program while under the direct supervision of a licensed radiologic technologist.)

(E) Passing Grade:

(1) After March 1991, the passing examination score shall be that established by the ARRT, as provided by the recognized testing agency;

(2) Individuals who receive less than a passing score are considered to have failed the examination.

125.007: Mammography Radiologic Technologist License

(A) As of July 1, 1993, there will be an additional category for Licensing of Radiologic Technologists. This category shall be that of Mammography Radiologic Technologist. To be licensed in Massachusetts in this category, the applicant must:

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- (1) Be licensed in Radiography for a minimum of one year; and,
- (2) Have successfully passed the ARRT exam in Mammography; or, have successfully passed an alternative examination process developed by the ACRT and the Department; and,
- (3) Have received one year of specialized training in mammography and/or supervised training since January 1, 1990.

(B) A permit to obtain specialized training and education in Mammography Radiologic Technology will, upon written request, be issued to Radiologic Technologists licensed in the Full Radiography category pursuant to the procedures described in 105 CMR 125.006(D).

(C) A licensed Mammography Radiologic Technologist must meet the following Continuing Education requirements:

- 20 CEUs must be obtained in each two year renewal cycle, as follows:
- 12 CEUs must be in Mammography;
- two CEUs must be radiation safety; and
- six CEUs must be in topics directly related to health care practice, or Radiography or Mammography.

125.008: Continuing Education

(A) Continuing Education Requirements:

(1) Continuing Education Units (CEUs) recognized by the ACRT and the Department are limited to those CEUs which have been approved by an approval agency recognized by the ACRT. Licensees are required to obtain a minimum of 20 CEUs during each license renewal cycle such that for those CEUs required for the license renewal cycle,

- 8 CEUs must be in each category in which the individual is licensed;
- 2 CEUs must be in radiation safety;
- For individuals licensed in one or two categories, the numeric difference between the number of CEUs earned in their specialty(s) and 20 CEUs must be earned in topics directly related to health care practice, or their specialty;
- For individuals licensed in all three categories of Radiography/ Mammography Nuclear Medicine and Radiation therapy only the eight CEUs per category requirement (12 for Mammography) and the two CEU requirement in radiation safety shall apply.

(2) CEU approval agencies recognized by the ACRT and the Department include:

- American College of Radiology (ACR)
- American Medical Association (AMA)
- American Nursing Association (ANA)
- American Roentgen Ray Society (ARRS)
- American Society of Radiologic Technologists (ASRT)
- Massachusetts Nursing Association (MNA)
- Massachusetts Society of Radiologic Technologists (MSRT)
- Radiological Society of North America (RSNA)
- Society of Diagnostic Medical Sonographers (SDMS)
- Society of Nuclear Medicine (S.N.M.)

Other organizations subsequently recognized by the ACRT.

(3) Each licensed Radiologic Technologist is accountable for monitoring his/her own records of C.E.U.s and for assuring that current records are given to each place of his/her radiologic technology employment.

(4) Records of continuing education activity must be kept at the individual's place of employment for a period of *two years* longer than the individual's last license renewal date.

(B) CEUs -- Dates of term defined: Coincident with the effective term of an individual's license, the time frame within which an individual may credit C.E.U. activities extends from the first day of the month following the month in which falls the individual's birthday in the year the license is renewed, through the last day of the month within which falls the individual's birthday, 24 months later.

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125.009: Licensure Fee and Term

- (A) The fee of \$25.00 per year shall be applied as required by the Secretary of Administration and Finance.
- (B) The term of licensure in Radiologic Technology shall be for a period of two years, starting from the first day of the month following the month of the birth of the licensee, through the last day of the month of the applicant's birthday, 24 months later.

125.010: Posting of License Document

The Radiologic Technologist License shall be posted, at each place of employment as a radiologic technologist. A photocopy of the license will be acceptable for posting purposes. In lieu of posting each license or photocopy of the licenses for all individuals employed within a facility, prominent display of a listing of all individuals licensed in Radiologic Technology will be acceptable so long as the listing clearly identifies each licensee with their respective license number, category of license and license expiration date. In this respect, posting means that the license shall be prominently displayed on the wall of the facility in full view of the patients.

125.011: Waiver

The Department, upon the recommendation of the Commission 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:

- the party requesting a waiver shall submit written documentation supporting its request; and,
- the decision of the Commission to grant a waiver shall not conflict with the spirit of 105 CMR 125.000.

125.012: Required Reporting

A licensee shall notify the Radiation Control Program of the department within 30 days of 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, 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, *see* 105 CMR 125.020 or 125.021, or which would in any way relate directly or indirectly to his/her fitness to be licensed as a radiologic technologist.

125.013: Student Clinical Education

Student duly enrolled in CAHEA (or equivalent) accredited programs in Radiography, Nuclear Medicine, and Radiation Therapy, will be 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:

- (A) Under appropriate levels of supervision as stipulated by the program's accreditation requirements;
- (B) Only while the student is enrolled in the program; and,
- (C) Only during and as an integral part of the regularly scheduled clinical education activities.

Furthermore, if for any reason a student must repeat any radiographic exposure, a licensed Radiologic Technologist must directly supervise all activities associated with the repeat exposure. for the requirements of 105 CMR 125.013, "directly supervise" means that the licensed Radiologic Technologist is present with the student, in the room, overseeing all activities associated with the repeat exposure will not become necessary.

125.014: Complaints

The Department shall investigate every complaint received about practices or acts which may violate M.G.L. c. 111, §§ 5N through 5P 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, §§ 5N through 5P 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, §§ 5N through 5P 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, §§ 5N through 5P or 105 CMR 125.000, then the Department shall apply whichever enforcement procedure as provided in 105 CMR 125.000 is appropriate to remedy the situation and the Department shall notify the complainant of its action in this matter.

(C) Investigation of complaints may lead to enforcement actions including an order to cease an activity; denial, revocation, suspension or refusal to renew a license registration or certificate; modification of a license by the Department; and/or imposition of civil and/or criminal penalties.

(D) All oral or written complaints about radiologic technologists shall be addressed to the Complaint Specialist, Radiation Control Program, State Laboratory, 305 South Street, Room 759, Jamaica Plain, MA 02130, Tel. 617-727-6214.

125.015: Availability of Reports; Disclosure of Information

(A) Disclosure of Information While Investigation is Pending. Upon request by any person, the Department shall provide the following information about a complaint pending investigation:

- (1) the date on which Department staff received the complaint;
- (2) the estimated date on which the Department expects to complete its investigation and the issue the final complaint investigation report; and,
- (3) information about any actions taken by the Department to protect and ensure the health and safety of patients, employees or the public.

(B) Availability of Final Complaint Investigation Report. Upon written request and approval of that request by the Commissioner of the Department or his designee, a copy of the final complaint investigation report containing the Department's findings and recommendations may be made available. However, any materials or data which would permit identification of the reporting individual, a patient or any person whose right of privacy pursuant to M.G.L. c. 66A would be abridged by the disclosure, shall be deleted from the copy of the final complaint investigation report.

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

In accordance with M.G.L. c. 111 § 5O, the Commissioner 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/her license or conduct a prohibited activity after notification of an order of immediate cessation of said activity.

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 one of the following reasons:

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- (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 the license.
- (5) The applicant or licensee obtained or attempted to obtain or maintain a license 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, judgement, knowledge, or ability in the performance of duties or failed to perform those duties within the scope of his/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.
- (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 has engaged in conduct which endangers public health, safety or the environment.
- (11) The applicant or licensee has failed to remedy or correct a cited violation by the date specified in the written notice from the Department under M.G.L. c. 111, § 5O or by the date specified in the plan of correction accepted or modified by the Department.
- (12) The applicant or licensee has failed to pay civil penalties or criminal fines levied in accordance with M.G.L. c. 111 § 5O or 5P and/or 105 CMR 125.000.
- (13)(a) The applicant or licensee has failed to allow duly authorized agents of the Department to conduct inspections.
- (b) The applicant or licensee has attempted to impede the work of duly authorized representatives of the Department or the enforcement of any provisions of M.G.L. c. 111, §§ 5N through Q or 105 CMR 125.000.
- (14) The applicant or licensee has been convicted of, pleaded guilty to, or has, in a judicial proceeding, admitted facts sufficient for a finding that s/he is guilty of, any criminal violation relating directly or indirectly to his/her fitness to be licensed under 105 CMR 125.000 including but not limited to:
 - (a) Medicare or Medicaid fraud;
 - (b) a crime relating to the activities regulated under M.G.L. c. 111, §§ 5L through Q and/or 105 CMR 125.000 and/or 105 CMR 127.000;
 - (c) rape, assault or other violent crimes against persons;
 - (d) a drug related crime.
- (15) The applicant or licensee has been the subject of proceedings which resulted in the suspension, limitation, modification, denial or revocation of his/her license or refusal of renewal of his/her license.
- (16) The applicant or licensee has been the subject of proceedings which were ultimately resolved by settlement agreement but which were initiated to suspend, limit, modify, deny or revoke or refuse renewal of the applicant or licensee's license.
- (17) (a) 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/her fitness to be licensed as a radiologic technician.
- (b) 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, 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,

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limitation, revocation or refusal to renew a license under 105 CMR 125.020 or 125.021, or which would in any way relate directly or indirectly to his/her fitness to be licensed as a radiologic technologist under 105 CMR 125.000.

(B) Other Grounds. Nothing herein shall limit the Department's adoption of policies and grounds for discipline through adjudication as well as through rule-making.

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 §§ 5N through 5Q or a regulation promulgated thereunder, 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 or certificate of inspection; a modification or limitation of a license; a cease and desist order; and/or the imposition of a civil penalty and/or criminal sanctions.

(B) Plan of Correction.

(1) The applicant or licensee shall within ten days of receipt of the notice, file with 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/her designee.

(2) The Department will determine whether the corrections have been made. 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.

(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, the Department may initiate enforcement procedures as set forth in 105 CMR 125.022.

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

(1) Prior to the Department issuing an order to modify, limit, deny, 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, 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 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 *et seq.*

(D) Administrative Hearings: Procedure.

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

(a) The Department shall give the licensee written notice stating the reason(s) for the suspension or immediate cessation of an activity and the provisions of law relied upon. The suspension or order of immediate cessation of an activity shall take effect immediately upon issuance of the notice.

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- (b) The Department shall provide for a hearing pursuant to 801 CMR 1.01 *et seq.* promptly after the issuance of an order of suspension or order of immediate cessation of an activity.
- (c) 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.
- (d) 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.
- (2) Refusal to Renew Based on Expiration of a License. If a radiologic technologist has allowed his/her license to expire and/or has failed to renew his/her license in accordance with the requirements of 105 CMR 125.000, the Department may, at its discretion:
- inform the applicant or licensee that his/her license has expired;
 - offer the applicant or licensee an opportunity to submit a complete and current application within two weeks, or within such other time period as the Department may designate; and,
 - refuse to renew the license of the applicant or licensee without a hearing unless the applicant or licensee submits a current and complete application within the time allowed.
- A radiologic technologist may not engage in the practice of radiologic technology after his/her license has expired until a new license has been issued.
- (3) Denial, Revocation or Refusal to Renew Based on Lack of Minimum Qualifications.
- 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 or 105 CMR 125.000, the Department shall notify in writing the applicant or licensee that his/her license is to be denied, revoked or refused renewal. Said notice shall include the factual basis for the Department's determination.
 - The Department shall afford the applicant or licensee 21 days from receipt of the written notification to submit certified records to show that s/he meets the age, educational, Department-approved training requirements or other requirements for licensure.
 - 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)(3)(b).
- (4) 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 review is based solely upon failure of the licensee to file timely reports, schedules or applications or to pay lawfully proscribed fees, or to maintain insurance coverage as required by any law or regulation. M.G.L. c. 30A § 13(3).
- (5) Denial, Modification, Limitation, Revocation or Refusal to Renew a License; Orders to Cease an Activity; Civil Penalties.
- All adjudicatory proceedings shall be conducted in accordance with M.G.L. c. 30A and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 *et seq.*
 - Except for circumstances specified in 105 CMR 125.022(D)(2)(3) and (4), if the Department determines that a license should be denied, modified, limited, revoked, or refused renewal, and/or that a 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 *et seq.*

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- (c) The Hearing Officer shall determine whether the Department has proved by a preponderance of the evidence that the license should be denied, modified, limited, 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.
- (d) If the Hearing Officer finds any single ground for denial, modification, limitation, revocation, suspension, 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 affirming the issuance of the Department's Order.
- (6) Final Agency Decision and Judicial Review:
- (a) 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.
- (b) 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.
- (E) Civil Penalties:
- (1) If the Department determines, after a notice has been issued and an opportunity for a hearing has been provided, that an applicant or licensee has not complied with an order issued pursuant to M.G.L. c. 111 § 5O or with any provision of M.G.L. c. 111 §§ 5N through 5Q 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. 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:
- The willfulness of violation;
 - The actual and potential danger to the public health or the environment;
 - The actual or potential cost of such danger to the public health or the environment;
 - The actual or potential damage or injury to the public health or environment;
 - The actual and potential cost of such damage or injury;
 - The actual or potential cost to the Commonwealth of enforcing provisions of 105 CMR 125.000;
 - 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;
 - Whether the person being assessed the civil penalty has previously failed to comply with any order issued pursuant to M.G.L. c. 111 §§ 5N through 5Q or any other rule or regulation adopted hereunder;
 - Whether imposition of a civil penalty is likely to deter future non-compliance;
 - The financial condition of the person being assessed the civil penalty; and,
 - 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 on the 30th day after final agency action.

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125.022: continued

(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.

(F) Criminal Enforcement. The Department may elect to enforce any section 105 CMR 125.000 or provision of M.G.L. c. 111, § 5P by seeking to have criminal sanctions imposed. Any person who violates M.G.L. c. 111 § 5N or 5O 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.

(G) 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 §§ 5N through 5Q and/or any rule or regulation, license, registration, or order adopted and issued thereunder 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.

(H) Nonexclusivity of Enforcement Procedures. None of the enforcement procedures contained in 105 CMR 125.000 are 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.

REGULATORY AUTHORITY

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