

DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
5100 Board of Cosmetology and Barbering
Statutory Authority: 24 Delaware Code, Section 5106 (24 **Del.C.** §5106)
24 **DE Admin. Code** 5100

FINAL

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 31, 2005 at a scheduled meeting of the Delaware Board of Cosmetology and Barbering to receive comments regarding proposed Regulation 18.0. The proposed regulation identifies crimes substantially related to the practice of cosmetology, barbering, electrology and nail technology as mandated by SB 229 enacted by the 142nd General Assembly. The proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 6, December 1, 2004.

Background

Under Title 24, Chapter 51, as amended by SB 229, one of the qualifications for licensure is that the applicant “shall not have a criminal conviction record, nor pending criminal charge relating to an offense the circumstances of which substantially relate to his or her licensed practice or which calls into question the ability of the applicant to carry out that applicant's own professional services with due regard for the health and safety of the recipients of those services and the public. Applicants who have criminal conviction records or pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the record or charge is substantially related to his or her licensed practice or which calls into question the ability of the applicant to carry out that applicant's own professional services with due regard for the health and safety of the recipients of those services and the public.” 24 **Del.C.** §5107(a)(7). In addition, a licensee shall be subject to disciplinary action if the licensee has “been convicted of a crime that is substantially related to the practice of cosmetology, barbering, or manicuring within the past 5 years.” 24 **Del.C.** §5113 (a)(4).¹

“‘Substantially related’ means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the cosmetology, barbering, or manicuring.” 24 **Del.C.** §5101(13).

The Board is charged by SB 229 to “promulgate regulations specifically identifying those crimes, which are substantially related to the practice of cosmetology, barbering, or manicuring.” 24 **Del.C.** § 5106(b).

Summary of the Evidence

No written comments were received.

Malik Shelton appeared to offer public comment. Mr. Shelton questioned whether the rule would allow for licensure of someone who may have been convicted 10 years ago of a crime on the list but has been rehabilitated. He also wanted to know what standard the Board used to select the crimes.

Counsel for the Board explained that Senate Bill 229 did not permit the Board to look at the circumstances of the offense or factors such as rehabilitation. In addition, Senate Bill 229 set the standard by which the Board selected the crimes and read the standard set forth in 24 **Del.C.** §5101(13).

Theresa Tucci appeared to offer public comment. Ms. Tucci was concerned with how information would be obtained on the application. Ms. Tucci’s did not have a comment about the substance of the rule.

Findings of Fact

The Board carefully reviewed and considered the crimes presented as a compilation of crimes extracted from the **Delaware Code**. Neither of the public comments offered specifically addressed or opposed the offenses selected by

1. A felony conviction remains a bar to licensure under in 24 **Del.C.** §5107(a)(6) as of the date of this Order and until removed by legislative action.

the Board as substantially related. The overarching concern of the Board was the safety of public since the licensees have direct physical contact with the individuals they treat while performing cosmetology, barbering, electrology and nail technology services. Many services are performed with scissors, razors and other sharp instruments. Many salons also include spa services where clients receive treatment in various states of undress during which they should be able to be secure in their privacy. In addition, licensees perform services on children and the elderly who may be vulnerable to undue influence or other forms of abuse.

Clients frequently share details of their personal lives including information about their homes and financial status. Licensees often have access to home and business addresses of their clients. They also have access to the billing information of their clients, including credit card and checking account information. While certain services are performed clients often leave personal property, including purses, unattended.

The "primary objective of the Board of Cosmetology and Barbering, to which all other objectives and purposes are secondary, is to protect the general public (specifically those persons who are direct recipients of services regulated by this subchapter) from unsafe practices, and from occupational practices which tend to reduce competition or artificially fix the price of services rendered. The secondary objectives of the Board are to maintain minimum standards of practitioner competency, and to maintain certain standards in the delivery of services to the public." 24 Del.C. §5100.

The Board finds that the crimes identified in the proposed rule are substantially related to fitness or ability to perform 1 or more of the duties and responsibilities necessarily related to the practice of cosmetology, barbering, electrology and nail technology in that they involve: the use of physical violence or force, or the threat thereof, toward or upon the person of another; sexual abuse or inappropriate sexual conduct; violation of privacy; dishonesty, or false or fraudulent conduct; mistreatment or abuse of children, the elderly or animals; and those felony drug offenses involving the distribution, delivery or possession of drugs in areas where children are likely to be present.

The Board finds that the proposed draft contained typographical omissions in sections 18.1.59, 18.1.74 and 18.1.83 and finds that the draft should have specified that the offenses were limited to felony level offenses only. In addition, the Board finds that the definitional provision found in 18.1.76 is not a crime and should be deleted and the remainder of the list renumbered. The Board will make these non-substantive corrections.

Decision and Effective Date

The Board hereby adopts Regulation 18.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

Text and Citation

The text of the rule remains as published in *Register of Regulations*, Vol. 8, Issue 6, December 1, 2004, with technical corrections noted above and as reflected in Exhibit A attached hereto.

SO ORDERED this ____ day of _____, 2005.

BOARD OF COSMETOLOGY AND BARBERING

Kevin J. Castaldi, President, Professional Member

Marina T. Civarelli, Vice President, Professional
Member

Veronica L. Hopkins, Secretary, Public Member

John Bonarigo, Professional Member

Madelyn M. Nellius, Public Member

Richard Shultie, Jr., Professional Member

Jerome Stanley, Professional Member

5100 Board of Cosmetology and Barbering

18.0 Crimes substantially related to the practice of cosmetology, barbering, electrology and nail technology

18.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or

conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the practice of cosmetology, barbering, electrology and nail technology in the State of Delaware without regard to the place of conviction:

- 18.1.1 Criminal solicitation in the first degree. 11 Del.C. §503.
- 18.1.2 Conspiracy in the first degree. 11 Del.C. §513.
- 18.1.3 Aggravated Menacing. 11 Del.C. §602(b).
- 18.1.4 Reckless endangering in the first degree. 11 Del.C. §604.
- 18.1.5 Abuse of a pregnant female in the second degree. 11 Del.C. §605.
- 18.1.6 Abuse of a pregnant female in the first degree. 11 Del.C. §606
- 18.1.7 Assault in the second degree. 11 Del.C. §612.
- 18.1.8 Assault in the first degree. 11 Del.C. §613.
- 18.1.9 Abuse of a sports official; felony. 11 Del.C. §614.
- 18.1.10 Assault by abuse or neglect. 11 Del.C. §615.
- 18.1.11 Terroristic threatening; felony. 11 Del.C. §621.
- 18.1.12 Unlawfully administering drugs. 11 Del.C. §625.
- 18.1.13 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626.
- 18.1.14 Murder by abuse or neglect in the second degree. 11 Del.C. §633.
- 18.1.15 Murder by abuse or neglect in the first degree. 11 Del.C. §634.
- 18.1.16 Murder in the second degree. 11 Del.C. §635.
- 18.1.17 Murder in the first degree. 11 Del.C. §636.
- 18.1.18 Abortion. 11 Del.C. §651.
- 18.1.19 Unlawful sexual contact in the second degree. 11 Del.C. §768.
- 18.1.20 Unlawful sexual contact in the first degree. 11 Del.C. §769.
- 18.1.21 Rape in the fourth degree. 11 Del.C. §770.
- 18.1.22 Rape in the third degree. 11 Del.C. §771.
- 18.1.23 Rape in the second degree. 11 Del.C. §772.
- 18.1.24 Rape in the first degree. 11 Del.C. §773.
- 18.1.25 Sexual extortion. 11 Del.C. §776.
- 18.1.26 Continuous sexual abuse of a child. 11 Del.C. §778.
- 18.1.27 Dangerous crime against a child. 11 Del.C. §779.
- 18.1.28 Female genital mutilation. 11 Del.C. §780.
- 18.1.29 Unlawful imprisonment in the first degree. 11 Del.C. §782.
- 18.1.30 Kidnapping in the second degree. 11 Del.C. §783.
- 18.1.31 Kidnapping in the first degree. 11 Del.C. §783A.
- 18.1.32 Arson in the third degree. 11 Del.C. §801
- 18.1.33 Arson in the second degree. 11 Del.C. §802.
- 18.1.34 Arson in the first degree. 11 Del.C. §803.
- 18.1.35 Burglary in the second degree. 11 Del.C. §825.
- 18.1.36 Burglary in the first degree. 11 Del.C. §826
- 18.1.37 Possession of burglar's tools or instruments facilitating theft. 11 Del.C. §828.
- 18.1.38 Robbery in the second degree. 11 Del.C. §831.
- 18.1.39 Robbery in the first degree. 11 Del.C. §832.
- 18.1.40 Carjacking in the second degree. 11 Del.C. §835.
- 18.1.41 Carjacking in the first degree. 11 Del.C. §836.
- 18.1.42 Extortion. 11 Del.C. §846.
- 18.1.43 Identity theft. 11 Del.C. §854.
- 18.1.44 Forgery. 11 Del.C. §861.
- 18.1.45 Possession of forgery devices. 11 Del.C. §862.
- 18.1.46 Tampering with public records in the first degree. 11 Del.C. §876.
- 18.1.47 Unlawful use of credit card; felony. 11 Del.C. §903.
- 18.1.48 Reencoder and scanning devices. 11 Del.C. §903A.
- 18.1.49 Criminal impersonation of a police officer. 11 Del.C. §907B.
- 18.1.50 Dealing in children. 11 Del.C. §1100
- 18.1.51 Endangering the welfare of a child. 11 Del.C. §1102.
- 18.1.52 Sexual exploitation of a child. 11 Del.C. §1108.
- 18.1.53 Unlawfully dealing in child pornography. 11 Del.C. §1109.

- 18.1.54 Possession of child pornography. 11 Del.C. §1111.
- 18.1.55 Sexual offenders; prohibitions from school zones. 11 Del.C. §1112.
- 18.1.56 Perjury in the second degree. 11 Del.C. §1222.
- 18.1.57 Perjury in the first degree. 11 Del.C. §1223.
- 18.1.58 Terroristic threatening of public officials or public servants. 11 Del.C. §1240.
- 18.1.59 Abetting the violation of driver's license restrictions; [felony]. 11 Del.C. §1249.
- 18.1.60 Escape in the second degree. 11 Del.C. §1252
- 18.1.61 Escape after conviction. 11 Del.C. §1253.
- 18.1.62 Assault in a detention facility. 11 Del.C. §1254.
- 18.1.63 Promoting prison contraband; deadly weapon. 11 Del.C. §1256.
- 18.1.64 Use of an animal to avoid capture. 11 Del.C. §1257A(b) (1) and (2).
- 18.1.65 Sexual relations in detention facility. 11 Del.C. §1259.
- 18.1.66 Misuse of prisoner mail; second conviction. 11 Del.C. §1260.
- 18.1.67 Tampering with a witness. 11 Del.C. §1263.
- 18.1.68 Interfering with child witness. 11 Del.C. §1263A.
- 18.1.69 Tampering with physical evidence. 11 Del.C. §1269.
- 18.1.70 Criminal contempt of a domestic violence protective order. 11 Del.C. §1271A.
- 18.1.71 Hate crimes. 11 Del.C. §1304.
- 18.1.72 Aggravated harassment. 11 Del.C. §1312.
- 18.1.73 Stalking. 11 Del.C. §1312A.
- 18.1.74 Cruelty to animals; [felony]. 11 Del.C. §1325.
- 18.1.75 Violation of privacy. 11 Del.C. §1335.
- ~~18.1.76 Definitions relating to riot, disorderly conduct and related offenses. 11 Del.C. §1337.~~
- ~~18.1.[77 76] Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 Del.C. §1338.~~
- ~~18.1.[78 77] Adulteration. 11 Del.C. §1339.~~
- ~~18.1.[79 78] Promoting prostitution in the third degree. 11 Del.C. §1351.~~
- ~~18.1.[80 79] Promoting prostitution in the second degree. 11 Del.C. §1352.~~
- ~~18.1.[81 80] Promoting prostitution in the first degree. 11 Del.C. §1353.~~
- ~~18.1.[82 81] Obscenity. 11 Del.C. §1361.~~
- ~~18.1.[83 82] Unlawfully dealing with a dangerous weapon; [felony]. 11 Del.C. §1445.~~
- ~~18.1.[84 83] Possession of a deadly weapon during commission of a felony. 11 Del.C. §1447.~~
- ~~18.1.[85 84] Possession of a firearm during commission of a felony. 11 Del.C. §1447A~~
- ~~18.1.[86 85] Possession and purchase of deadly weapons by persons prohibited. 11 Del.C. §1448.~~
- ~~18.1.[87 86] Giving a firearm to person prohibited. 11 Del.C. §1454.~~
- ~~18.1.[88 87] Engaging in a firearms transaction on behalf of another. 11 Del.C. §1455.~~
- ~~18.1.[89 88] Possession of a weapon in a Safe School and Recreation Zone; felony. 11 Del.C. §1457.~~
- ~~18.1.[90 89] Removing a firearm from the possession of a law enforcement officer. 11 Del.C. §1458.~~
- ~~18.1.[91 90] Organized Crime and Racketeering. 11 Del.C. §1504.~~
- ~~18.1.[92 91] Victim or Witness intimidation. 11 Del.C. §§3532 & 3533.~~
- ~~18.1.[93 92] Violations. (Abuse, neglect, mistreatment or financial exploitation of residents or patients.) 16 Del.C. §1136.~~
- 18.1.[94 93] Distribution, delivery, or possession of controlled substance within 1,000 feet of school property. 16 Del.C. §4767.
- 18.1.[95 94] Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 Del.C. §4768.
- 18.2 Crimes substantially related to the practice of cosmetology, barbering, electrology and nail technology shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Cosmetology and Barbering is available at: <http://www.professionallicensing.state.de.us/boards/cosmetology/index.shtml>**