

## DEPARTMENT OF ADMINISTRATIVE SERVICES

### DIVISION OF PROFESSIONAL REGULATION

2500 Board of Pharmacy

24 DE Admin. Code 2500

**Statutory Authority: 24 Delaware Code, Section 2509 (24 Del.C. §2509)**

### FINAL

### ORDER

After due notice in the **Register of Regulations** and two Delaware newspapers, a public hearing was held on November 10, 2004 at a scheduled meeting of the State Board of Pharmacy to receive comments regarding proposed Regulation 16.0. The proposed regulation identifies crimes substantially related to the practice of pharmacy as mandated by SB 229 enacted by the 142<sup>nd</sup> General Assembly. The proposed regulation was published in the **Register of Regulations**, Vol. 8, Issue 4, October 1, 2004.

#### Background

Under 24 **Del.C.** §2518 as amended by SB 229, the Board of Pharmacy “may refuse to issue or renew or may suspend, revoke or restrict the license of any person after due notice and hearing...” who is “(a)(4)convicted of a crime that is substantially related to the practice of pharmacy...” or fails to “(a)(8)...notify the Board that ... the registrant has been convicted of a crime that is substantially related to the practice of pharmacy.” SB 229 has defined “substantially related” as “the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the practice of pharmacy.” The “practice of pharmacy” is defined in 24 **Del. C.** §2502.

#### Summary Of The Evidence And Information Submitted

There was no verbal comment. Written comment is summarized below.

1. John A. Werner, Chairperson, Governor’s Advisory Council for Exception Citizens, submitted a letter dated October 26, 2004 with two comments. First, he notes that in 16.1 the phrase “without regard to the place of conviction” could be considered to include foreign jurisdictions that may not have the due process protection we enjoy in this country. Secondly, he questions the choice of crimes and suggests including 16 **Del.C.** §§4751 & 4752 (manufacture, deliver, or possession with intent to deliver...drugs). In his view, the inclusions selected by the Board may be too restrictive.

2. Daniese McMullin-Powell, Chairperson, State Council for Persons with Disabilities, submitted a memorandum dated November 8, 2003 with the same comments and concerns expressed by the Governor’s Council for Exceptional Citizens.

#### Findings Of Fact With Respect To The Evidence And Information Submitted

1. There is no indication that the legislature intended for criminal conduct in a foreign jurisdiction to be treated more favorably than the same conduct in this country. It is noteworthy that the prior statutory felony language was silent with respect to place of conviction. It is outside the scope of the enabling legislation for the Board to impose jurisdictional limitations that were not included by the General Assembly.

2. The Board did not include the crimes suggested by the commenter because the inclusion of the term ‘possession’ in these criminal statutes identifies conduct that is not substantially related to the practice of pharmacy. It is the trafficking in large quantities of drugs that the Board finds related since the practice of pharmacy includes safely storing, compounding, and dispensing drugs. A pharmacist has access to large quantities of drugs and the abuse of the responsibility to dispense lawfully could be harmful to the public. The conduct that could give rise to a conviction for ‘possession’ does not necessarily have a “direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the practice of pharmacy.”

The Board is charged with the responsibility to “promote, preserve and protect the public health, safety and welfare by and through the effective control and regulation of the practice of pharmacy...” 24 **Del.C.** §2501. Applicants for licensure under §2515(4) must “be of good moral character” and a person who has demonstrated

conduct detrimental to public safety can be found unqualified even though the conduct may not be substantially related to the practice of pharmacy. Similarly, the Board can discipline a licensee or refuse to issue a license when the individual is "guilty of any act involving moral turpitude or gross immorality." 24 Del.C. §2518(3). This language survived the amendment to §2518 by SB 229. These provisions provide the Board with the tools to protect the public health, welfare, and safety when criminal conduct does not necessarily have a direct bearing on fitness or ability related to the practice of pharmacy as defined under the statute.

Any Board determination under §§2515(4) and 2518(3) that could impact an applicant or licensee is made after a hearing and subject to appellate review. The Board can review the merits of each case when a crime is presented to include consideration of age of the offender, time lapse following the crime, evidence of rehabilitation and other mitigating circumstances in determining whether the conviction of a crime demonstrates moral turpitude, gross immorality, or lack of good moral character that is harmful to the public.

#### **Decision And Effective Date**

The Board hereby adopts the changes to Regulation 16.0 to be effective 10 days following publication of this order in the Register of Regulations.

#### **Text And Citation**

The text of the revised rules remains as published in the **Register of Regulations**, Vol. 8, Issue 4, October 1, 2004.

**SO ORDERED** this 10<sup>th</sup> day of November, 2004.

#### **STATE BOARD OF PHARMACY**

John E. Murphy, R.Ph., President  
Nancy Weldin  
Yvonne Brown, R.Ph., Vice President  
Carolyn Calio  
Daniel Hauser, Pharm. D.  
Karen J. Dey, R.Ph.  
Angelo Chiari, R.Ph.

#### **16.0 Crimes substantially related to the practice of pharmacy.**

**16.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal the following crimes, is deemed to be a crime substantially related to the practice of pharmacy in the State of Delaware without regard to the place of conviction:**

**16.1.1 Unlawfully administering a controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626.**

**16.1.2 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs. 16 Del.C. §4753A.**

**16.2 Crimes substantially related to the practice of pharmacy 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 PHARMACY IS AVAILABLE AT:  
<http://www.state.de.us/research/AdminCode/title24/2500%20Board%20of%20Pharmacy.shtml#TopOfPage>**