

DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
2000 Board of Occupational Therapists
Statutory Authority: 24 Delaware Code, Section 2006(b) (24 **Del.C.** §2006(b))
24 **DE Admin. Code** 2000

FINAL

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on November 17, 2004 at a scheduled meeting of the Board of Occupational Therapy Practice to receive comments regarding proposed Regulation 7.0. The proposed regulation identifies crimes substantially related to the practice of occupational therapy as mandated by SB 229 enacted by the 142nd General Assembly. The proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 4, October 1, 2004.

A revised proposal with substantive changes was again published in the *Register of Regulations*, Vol. 8, Issue 9, February 1, 2005. A second public hearing was held on March 16, 2005 to receive comments on the revised proposal.

Background

Under 24 **Del.C.** §2015(a)(2) as amended by SB 229, the Board of Occupational Therapy Practice may impose discipline on a licensee who “has been convicted of a crime that is substantially related to the practice of occupational therapy.” 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 occupational therapy.” The “practice of occupational therapy” is defined in 24 **Del.C.** §2002(7).¹

After hearing the public comment in November, the Board decided to reexamine the selected crimes at its January meeting. There were some misdemeanors that were included by mistake. The Board is guided in this process by its recognition that there is a large and diverse population served by occupational therapists. Some patients have seeing eye dogs or canine partners for life. Occupational therapists work in the homes and cars of clients. They serve vulnerable populations and the goal of the Board, consistent with its legislative mandate, is the protection of these individuals.

It is noteworthy that the National Board for Certification of Occupational Therapy, Inc. (NBCOT) reviews crimes on a case by case basis when permitting applicants to take the licensure examination that is the prerequisite for licensure in Delaware.

Summary of the Evidence and Information Submitted

For the November 17, 2004 public hearing:

1. John A. Werner, Chairperson, Governor’s Advisory Council for Exception Citizens, submitted a letter dated October 26, 2004 with two comments. First, he believes the Board did not identify crimes that are substantially related to the practice of occupational therapy, rather a hodgepodge of crimes including some misdemeanors. He selected proposed 7.1.9, 7.1.61, 7.1.62 and 7.1.71, as examples of inappropriate selections. He thought a restrained approach to defining crimes would be consistent with the intent of SB 229.

Secondly, 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. He suggested that the Board clarify whether convictions in foreign countries are disqualifying events.

1. “Practice of occupational therapy” shall mean the use of goal-directed activities with individuals who are limited by physical limitations due to injury or illness, psychiatric and emotional disorders, developmental or learning disabilities, poverty and cultural differences or the aging process, in order to maximize independence, prevent disability and maintain health.

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.

3. Julie Marshall offered verbal comment supporting the written comments read into the record. She thought the 94 crimes identified should be scaled back and stated that the occupational therapy field should not follow a conventional model that might apply to other allied medical fields.

For the March 16, 2005 public hearing:

4. Jamie Wolfe, Chairperson, Delaware Developmental Disabilities Council sent a letter dated February 24, 2005. She noted the changes made by the Board but the Council supports giving the Division of Professional Regulation the authority to identify the crimes for consistency among professions. The Council recommends clarifying that foreign crimes are not covered. In addition, the Council recommends including the rule promulgated by the Board of Dental Examiners reserving the authority to make changes in emergencies.¹ She thought that would encourage Boards to take a more restrained approach if they could subsequently add crimes that may have been overlooked.

Findings of Fact with Respect to the Evidence and Information Submitted

The Board completed its assigned task after carefully considering what occupational therapists do in all settings and the clients that they serve. It considered the written and verbal comments after two public hearings. The Board respectfully suggests that an approach of being inclusive is necessary to protect the public. The Board does have the authority to re-visit the regulation. However, reviewing the circumstances in each case would be a better mechanism to accomplish the legislative intent than making emergency revisions because a major crime was overlooked.

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.

Decision and Effective Date

The Board hereby adopts the changes to Regulation 7.0 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 *Register of Regulations*, Vol. 8, Issue 9, February 1, 2005

SO ORDERED this day of 16th day of March, 2005.

BOARD OF OCCUPATIONAL THERAPY PRACTICE

Michael von Reider, President
December Hughes, Vice President
Dana Maurer, Secretary
Mara Schmittinger

7.0 Crimes substantially related to practice of occupational therapy

1. 11.10 The Board [of Dentistry and Dental Hygiene] reserves the jurisdiction and authority to modify this regulation as and if it becomes necessary to either add or delete crimes including such additions as may be required on an emergency basis under 29 Del.C. §10119 to address imminent peril to the public health, safety or welfare.

7.1 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 the following crimes, is deemed to be a crime substantially related to the practice of occupational therapy in the State of Delaware without regard to the place of conviction:

- 7.1.1 Unlawful harm to law enforcement or seeing eye dogs. 7 Del.C. §1717
- 7.1.2 Aggravated menacing. 11 Del.C. §602(b)
- 7.1.3 Reckless endangering. 11 Del.C. §604
- 7.1.4 Abuse of a pregnant female in the second degree. 11 Del.C. §605
- 7.1.5 Abuse of a pregnant female in the first degree. 11 Del.C. §606
- 7.1.6 Assault in the second degree. 11 Del.C. §612
- 7.1.7 Assault in the first degree. 11 Del.C. §613
- 7.1.8 Felony abuse of a sports official. 11 Del.C. §614
- 7.1.9 Assault by abuse of neglect. 11 Del.C. §615
- 7.1.10 Felony Terroristic threatening. 11 Del.C. §621
- 7.1.11 Unlawful administering drugs. 11 Del.C. §625
- 7.1.12 Unlawful administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C.

§626

- 7.1.13 Vehicular assault in the first degree. 11 Del.C. §629
- 7.1.14 Criminally negligent homicide. 11 Del.C. §631
- 7.1.15 Manslaughter. 11 Del.C. §632
- 7.1.16 Murder by abuse or neglect in the second degree. 11 Del.C. §633
- 7.1.17 Murder by abuse or neglect in the first degree. 11 Del.C. §634
- 7.1.18 Murder in the second degree. 11 Del.C. §635
- 7.1.19 Murder in the first degree. 11 Del.C. §636
- 7.1.20 Sexual harassment. 11 Del.C. §763
- 7.1.21 Unlawful sexual contact in the second degree. 11 Del.C. §768
- 7.1.22 Unlawful sexual contact in the first degree. 11 Del.C. §769
- 7.1.23 Rape in the fourth degree. 11 Del.C. §770
- 7.1.24 Rape in the third degree. 11 Del.C. §771
- 7.1.25 Rape in the second degree. 11 Del.C. §772
- 7.1.26 Rape in the first degree. 11 Del.C. §773
- 7.1.27 Sexual extortion. 11 Del.C. §776
- 7.1.28 Bestiality. 11 Del.C. §777
- 7.1.29 Continuous sexual abuse of a child. 11 Del.C. §778
- 7.1.30 Dangerous crime against a child. 11 Del.C. §779
- 7.1.31 Unlawful imprisonment in the first degree. 11 Del.C. §782
- 7.1.32 Kidnapping in the second degree. 11 Del.C. §783
- 7.1.33 Kidnapping in the first degree. 11 Del.C. §783A
- 7.1.34 Acts constituting coercion. 11 Del.C. §791
- 7.1.35 Burglary in the second degree. 11 Del.C. §825
- 7.1.36 Burglary in the first degree. 11 Del.C. §826
- 7.1.37 Robbery in the second degree. 11 Del.C. §831
- 7.1.38 Robbery in the first degree. 11 Del.C. §832
- 7.1.39 Carjacking in the second degree. 11 Del.C. §835
- 7.1.40 Carjacking in the first degree. 11 Del.C. §836
- 7.1.41 Extortion. 11 Del.C. §846
- 7.1.42 Identity theft. 11 Del.C. §854
- 7.1.43 Felony forgery. 11 Del.C. §861
- 7.1.44 Falsifying business records. 11 Del.C. §871
- 7.1.45 Felony unlawful use of a credit card. 11 Del.C. §903
- 7.1.46 Insurance fraud. 11 Del.C. §913
- 7.1.47 Health care fraud. 11 Del.C. §913A
- 7.1.48 Dealing in children. 11 Del.C. §1100
- 7.1.49 Endangering the welfare of a child. 11 Del.C. §1102
- 7.1.50 Endangering the welfare of an incompetent person. 11 Del.C. §1105
- 7.1.51 Unlawfully dealing with a child. 11 Del.C. §1106
- 7.1.52 Sexual exploitation of a child. 11 Del.C. §1108
- 7.1.53 Unlawful dealing in child pornography. 11 Del.C. §1109

- 7.1.54 Possession of child pornography 11 Del.C. §1111
 - 7.1.55 Sexual offenders; prohibitions from school zones. 11 Del.C. §1112
 - 7.1.56 Sexual solicitation of a child. 11 Del.C. §1112A
 - 7.1.57 Terroristic threatening of public officials or public servants. 11 Del.C. §1240
 - 7.1.58 Felony abetting the violation of driver's license restrictions. 11 Del.C. §1249
 - 7.1.59 Felony offenses against law enforcement animals. 11 Del.C. §1250
 - 7.1.60 Felony hate crimes. 11 Del.C. §1304
 - 7.1.61 Felony stalking. 11 Del.C. §1312A
 - 7.1.62 Felony cruelty to animals. 11 Del.C. §1325
 - 7.1.63 Felony maintaining a dangerous animal. 11 Del.C. §1327(a)
 - 7.1.64 Felony violation of privacy. 11 Del.C. §1335(a)
 - 7.1.65 Adulteration. 11 Del.C. §1339
 - 7.1.66 Promoting prostitution in the second degree. 11 Del.C. §1352
 - 7.1.67 Promoting prostitution in the first degree. 11 Del.C. §1353
 - 7.1.68 Obscenity. 11 Del.C. §1361
 - 7.1.69 Carrying a concealed deadly weapon. 11 Del.C. §1442
 - 7.1.70 Felony unlawful dealing with a dangerous weapon. 11 Del.C. §1445(a)
 - 7.1.71 Felony possession of a deadly weapon during the commission of a felony. 11 Del.C. §1447
 - 7.1.72 Possession of a firearm during a commission of a felony. 11 Del.C. §1447A
 - 7.1.73 Possession and purchase of deadly weapons by persons prohibited. 11 Del.C. §1448
 - 7.1.74 Felony Possession of a weapon in a Safe School and Recreation Zone. 11 Del.C. §1457
 - 7.1.75 Duty to report child abuse or neglect. 16 Del.C. §903
 - 7.1.76 Abuse, neglect, mistreatment or financial exploitation of residents or patients in a nursing or similar facility. 16 Del.C. §1136
 - 7.1.77 Felony falsification or destruction of records related to maintenance medical treatment. 16 Del.C. §2513
 - 7.1.78 Manufacture, delivery or possession with intent to deliver schedule I or II narcotic drugs. 16 Del.C. §4751
 - 7.1.79 Manufacture, delivery or possession with intent to deliver Schedule I, II, III, IV, or V non-narcotic drugs. 16 Del.C. §4752
 - 7.1.80 Unlawful delivery or noncontrolled substances. 16 Del.C. §4752A.
 - 7.1.81 Possession, consumption, or use of controlled substances. 16 Del.C. §4753.
 - 7.1.82 Trafficking in marijuana, cocaine, illegal drugs, metamphetamines, L.S.D., or designer drugs. 16 Del.C. §4753A
 - 7.1.83 Possession, consumption, or use of non-narcotic controlled substances classified in Schedule I, II, III, IV, or V. 16 Del.C. § 4754
 - 7.1.84 Crimes related to controlled substances. 16 Del.C. §4756
 - 7.1.85 Distribution of controlled substances to persons under 21 years of age. 16 Del.C. §4761
 - 7.1.86 Distribution, delivery or possession of a controlled substance within 1,000 feet of school property. 16 Del.C. §4767
 - 7.1.87 Distribution, delivery or possession of a controlled substance within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 Del.C. §4768
 - 7.1.88 Felony obtaining benefit under false representation. 31 Del.C. §1003
 - 7.1.89 Felony falsification of reports, statements, or documents. 31 Del.C. §1004
 - 7.1.90 Kickback schemes and solicitation. 31 Del.C. §1005
 - 7.1.91 Conversion of benefit payment. 31 Del.C. §1006
 - 7.1.92 Intentional abuse, neglect, mistreatment, or exploitation of an infirm adult. 31 Del.C. §3913
- 7.2 Crimes substantially related to the practice of occupational therapy 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 Occupational Therapy is available at:**

<http://dpr.delaware.gov/boards/occupationaltherapy/index.shtml>
8 DE Reg. 1449 (4/1/05)