

DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
2600 Board of Physical Therapists and Athletic Trainers
Statutory Authority: 24 Delaware Code, Section 2604(1) (24 **Del.C.** §2604(1))
24 **DE Admin. Code** 2600

FINAL

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on March 15, 2005 at a scheduled meeting of the Delaware Examining Board of Physical Therapists and Athletic Trainers to receive comments regarding proposed Regulation 13.0. The proposed regulation identifies crimes substantially related to the practice of physical therapy and athletic training 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 26, 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 the practice of physical therapy or athletic training. 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 the practice of physical therapy or athletic training.” 24 **Del.C.** §2606(a)(6). 24 **Del.C.** §2616(a)(4), as amended by SB 229, provides that the Board, after due notice and hearing, may refuse to license or register any applicant or may refuse to renew the license or registration of any person or may suspend or revoke the license or registration of any licensed or registered person who “has been convicted of a crime that is substantially related to the practice of physical therapy or athletic training in the courts of this State or any other state, territory or country. Conviction, as used in this paragraph, shall include a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere.” 24 **Del.C.** §2616(a)(4).

“ ‘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 practice of physical therapy or athletic training.” 24 **Del.C.** §2602(9).

The Board’s authority to promulgate rules and regulations implementing or clarifying specific sections of Chapter 26 is set forth in 24 **Del.C.** §2604(a)(1). The specific mandate for this rule is set forth in 24 **Del.C.** §2604(b). The proposed regulation specifically identifies those crimes which are substantially related to the practice of physical therapy and athletic training.

Summary of the Evidence and Information Submitted

No written comments were received. No public comment was received at the March 15, 2005 hearing.

Findings of Fact with Respect to the Evidence and Information Submitted

The Board carefully reviewed and considered the crimes presented as a compilation of crimes extracted from the **Delaware Code**. The overarching concern of the Board was the safety of the public since the licensed practitioners work in close physical proximity, and have direct physical contact, with the individuals they treat while performing the services of a physical therapist or athletic trainer. Clients may include children and the elderly who are vulnerable to undue influence or other forms of abuse. Practitioners work in a variety of settings including, but not limited to, hospitals, clinics, nursing homes and private offices. In addition, many athletic trainers work directly with student athletes in schools.

Physical therapists and athletic trainers also have access to confidential health and financial information. Practitioners 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.

The “primary objective of the Examining Board of Physical Therapists and Athletic Trainers, which all other objectives and purposes are secondary, is to protect the general public (especially those persons who are direct recipients of services regulated by this chapter) from unsafe practices and from occupational practices which tend to reduce competition or to fix the price of services rendered..” 24 Del.C. § 2601.

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 or responsibilities necessarily related to the practice of physical therapy or athletic training 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 and the elderly; and offenses involving the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment and which call into question the ability of the practitioner to carry out the practitioner's professional duties with due regard for the health and safety of the individuals who are the recipients of their services.

In summary, the Board finds that adopting regulation 13.0 as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public, particularly the recipients of physical therapy and athletic training services.

Decision and Effective Date

The Board hereby adopts Regulation 13.0 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, and as attached hereto as Exhibit A.

SO ORDERED this 15th day of March, 2005.

EXAMINING BOARD OF PHYSICAL THERAPISTS AND ATHLETIC TRAINERS

Gary T. Nowell, President, Professional Member
Patrick McKenzie, Vice-Chairperson,
Professional Member
Katherine Daniello, Professional Member
Vincent De Leo, Professional Member
Sharon Harris, Public Member
Steven Kotrch, Public Member
Ruth Ann Messick, Public Member
Denise Smith, Professional Member
John R. Smith, Professional Member
Kristen Whiteman, Professional Member

13.0 Crimes substantially related to the practice of physical therapy and athletic training:

13.1 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 physical therapy and athletic training in the State of Delaware without regard to the place of conviction:

- 13.1.1 Offensive touching. 11 Del.C. 601.
- 13.1.2 Aggravated menacing. 11 Del.C. §602 (b)
- 13.1.3 Abuse of a pregnant female in the second degree. 11 Del.C. § 605.
- 13.1.4 Abuse of a pregnant female in the first degree. 11 Del.C. §606.
- 13.1.5 Assault in the second degree. 11 Del.C. §612
- 13.1.6 Assault in the first degree. 11 Del.C. §613.
- 13.1.7 Assault by abuse or neglect. 11 Del.C. §615.

- 13.1.8 Unlawfully administering drugs. 11 Del.C. §625.
- 13.1.9 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626.
- 13.1.10 Criminally negligent homicide. 11 Del.C. §631.
- 13.1.11 Manslaughter. 11 Del.C. §632.
- 13.1.12 Murder by abuse or neglect in the second degree. 11 Del.C. §633
- 13.1.13 Murder by abuse or neglect in the first degree. 11 Del.C. §634.
- 13.1.14 Murder in the second degree; class A felony. 11 Del.C. §635.
- 13.1.15 Murder in the first degree. 11 Del.C. §636.
- 13.1.16 Promoting suicide. 11 Del.C. §645.
- 13.1.17 Abortion. 11 Del.C. §651.
- 13.1.18 Issuing abortifacient articles. 11 Del.C. §653.
- 13.1.19 Incest. 11 Del.C. §766.
- 13.1.20 Unlawful sexual contact in the third degree. 11 Del.C. §767.
- 13.1.21 Unlawful sexual contact in the second degree. 11 Del.C. §768.
- 13.1.22 Unlawful sexual contact in the first degree. 11 Del.C. §769.
- 13.1.23 Rape in the fourth degree. 11 Del.C. §770.
- 13.1.24 Rape in the third degree. 11 Del.C. §771.
- 13.1.25 Rape in the second degree. 11 Del.C. §772.
- 13.1.26 Rape in the first degree. 11 Del.C. §773.
- 13.1.27 Sexual extortion. 11 Del.C. § 776.
- 13.1.28 Bestiality. 11 Del.C. § 777.
- 13.1.29 Continuous sexual abuse of a child. 11 Del.C. §778.
- 13.1.30 Dangerous crime against a child. 11 Del.C. §779.
- 13.1.31 Female genital mutilation. 11 Del.C. §780.
- 13.1.32 Unlawful imprisonment in the first degree. 11 Del.C. §782.
- 13.1.33 Kidnapping in the second degree. 11 Del.C. §783.
- 13.1.34 Kidnapping in the first degree. 11 Del.C. §783A.
- 13.1.35 Arson in the first degree. 11 Del.C. §803.
- 13.1.36 Burglary in the third degree. 11 Del.C. §824.
- 13.1.37 Burglary in the second degree. 11 Del.C. §825.
- 13.1.38 Burglary in the first degree. 11 Del.C. §826.
- 13.1.39 Robbery in the second degree. 11 Del.C. §831.
- 13.1.40 Robbery in the first degree. 11 Del.C. §832.
- 13.1.41 Carjacking in the second degree. 11 Del.C. §835.
- 13.1.42 Carjacking in the first degree. 11 Del.C. §836.
- 13.1.43 Theft; felony. 11 Del.C. §841.
- 13.1.44 Extortion. 11 Del.C. §846.
- 13.1.45 Identity theft. 11 Del.C. §854.
- 13.1.46 Forgery. 11 Del.C. § 861.
- 13.1.47 Falsifying business records. 11 Del.C. §871.
- 13.1.48 Tampering with public records in the second degree. 11 Del.C. §873.
- 13.1.49 Tampering with public records in the first degree. 11 Del.C. §876.
- 13.1.50 Offering a false instrument for filing. 11 Del.C. §877.
- 13.1.51 Issuing a false certificate. 11 Del.C. §878.
- 13.1.52 Reencoder and scanning devices. 11 Del.C. §903A.
- 13.1.53 Criminal impersonation of a police officer. 11 Del.C. §907B.
- 13.1.54 Insurance fraud. 11 Del.C. §913.
- 13.1.55 Health care fraud. 11 Del.C. §913A.
- 13.1.56 Dealing in children. 11 Del.C. §1100.
- 13.1.57 Sexual exploitation of a child. 11 Del.C. §1108.
- 13.1.58 Unlawfully dealing in child pornography. 11 Del.C. §1109.
- 13.1.59 Possession of child pornography. 11 Del.C. §1111.
- 13.1.60 Sexual solicitation of a child. 11 Del.C. §1112A.
- 13.1.61 Bribery. 11 Del.C. §1201
- 13.1.62 Receiving a bribe; felony. 11 Del.C. §1203.
- 13.1.63 Perjury in the second degree. 11 Del.C. §1222.

- 13.1.64 Perjury in the first degree. 11 **Del.C.** §1223.
- 13.1.65 Escape after conviction. 11 **Del.C.** §1253.
- 13.1.66 Assault in a detention facility. 11 **Del.C.** §1254.
- 13.1.67 Promoting prison contraband; felony. 11 **Del.C.** §1256.
- 13.1.68 Bribing a witness. 11 **Del.C.** §1261.
- 13.1.69 Bribe receiving by a witness. 11 **Del.C.** §1262.
- 13.1.70 Tampering with a witness. 11 **Del.C.** §1263.
- 13.1.71 Interfering with child witness; class F. 11 **Del.C.** §1263A.
- 13.1.72 Bribing a juror. 11 **Del.C.** §1264.
- 13.1.73 Bribe receiving by a juror. 11 **Del.C.** §1265.
- 13.1.74 Tampering with physical evidence. 11 **Del.C.** §1269.
- 13.1.75 Riot. 11 **Del.C.** §1302.
- 13.1.76 Hate crimes; felony. 11 **Del.C.** §1304.
- 13.1.77 Aggravated harassment. 11 **Del.C.** §1312.
- 13.1.78 Stalking; felony. 11 **Del.C.** §1312A.
- 13.1.79 Abusing a corpse. 11 **Del.C.** §1332.
- 13.1.80 Violation of privacy; felony. 11 **Del.C.** §1335.
- 13.1.81 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 **Del.C.** §1338.
- 13.1.82 Adulteration. 11 **Del.C.** §1339.
- 13.1.83 Promoting prostitution in the second degree. 11 **Del.C.** §1352.
- 13.1.84 Promoting prostitution in the first degree. 11 **Del.C.** § 1353.
- 13.1.85 Obscenity. 11 **Del.C.** §1361.
- 13.1.86 Carrying a concealed deadly weapon; Class E (if previous conviction within 5 years). 11 **Del.C.** §1442.
- 13.1.87 Possessing a destructive weapon. 11 **Del.C.** §1444.
- 13.1.88 Unlawfully dealing with a dangerous weapon; felony 11 **Del.C.** §1445.
- 13.1.89 Possession of a deadly weapon during commission of a felony. 11 **Del.C.** §1447.
- 13.1.90 Possession of a firearm during commission of a felony. 11 **Del.C.** §1447A.
- 13.1.91 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448.
- 13.1.92 Engaging in a firearms transaction on behalf of another. 11 **Del.C.** §1455.
- 13.1.93 Organized Crime and Racketeering. 11 **Del.C.** §1504.
- 13.1.94 Victim or Witness Intimidation. 11 **Del.C.** §§3532 & 3533.
- 13.1.95 Abuse, neglect, mistreatment or financial exploitation of residents or patients; felony or under subsection (c). 16 **Del.C.** §1136(a), (b) and (c).
- 13.1.96 Prohibited acts A under the Uniform Controlled Substances Act. 16 **Del.C.** §4751(a), (b) and (c).
- 13.1.97 Prohibited acts B under the Uniform Controlled Substances Act. 16 **Del.C.** §4752(a) and (b).
- 13.1.98 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §4753A (a)(1)-(9).
- 13.1.99 Prohibited acts E under the Uniform Controlled Substances Act. 16 **Del.C.** §4755.(a)(1) and (2)
- 13.1.100 Prohibited acts under the Uniform Controlled Substances Act. 16 **Del.C.** §4756(a)(1)-(5) and (b).
- 13.1.101 Distribution to persons under 21 years of age. 16 **Del.C.** §4761.
- 13.1.102 Purchase of drugs from minors. 16 **Del.C.** §4761A
- 13.1.103 Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs; felony. 23 **Del.C.** §2302(a) and § 2305 (3) and (4).
- 13.1.104 Failure to collect or pay over tax. 30 **Del.C.** §572.
- 13.1.105 Driving a vehicle while under the influence or with a prohibited alcohol content; felony. 21 **Del.C.** §4177 (3) and (4).
- 13.1.106 Duty of driver involved in accident resulting in injury or death to any person; felony. 21 **Del.C.** §4202.
- 13.1.107 Prohibition of Intimidation under the Fair Housing Act; felony. 6 **Del.C.** §2581.
- 13.1.108 Interception of Communications Generally; Divulging Contents of Communications; felony. 11 **Del.C.** §2402
- 13.1.109 Breaking and Entering, Etc. to Place or Remove Equipment 11 **Del.C.** §2410.

13.1.110 Aggravated Act of Intimidation. 11 Del.C. §3533

13.1.111 Attempt to Intimidate. 11 Del.C. §3534

13.1.112 Providing false information when seeking employment in a public school. 11 Del.C. §8572

13.1.113 Abuse, neglect, exploitation or mistreatment of infirm adult; felony. 31 Del.C. §3913(a), (b)

and (c).

13.2 Crimes substantially related to the practice of physical therapy and athletic training 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 Physical Therapists and Athletic Trainers is available at: <http://www.professionallicensing.state.de.us/boards/physicaltherapy/index.shtml>**

8 DE Reg. 1452 (4/1/05)