

DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
5300 Board of Massage and Bodyworks
Statutory Authority: 24 Delaware Code, Section 5306(1) (24 Del.C. §5306(1)) 24 DE Admin.
Code 5300

FINAL

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on January 20, 2005 at a scheduled meeting of the Delaware Board of Massage and Bodywork to receive comments regarding proposed Regulation 9.0. The proposed regulation identifies crimes substantially related to the practice of massage and bodywork 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 53, one of the qualifications for licensure is that the applicant shall submit evidence that the applicant “has not engaged in any of the acts or offenses that would be grounds for disciplinary action under this chapter; and, has no disciplinary proceedings or unresolved complaints pending against him or her in any jurisdiction where the applicant has previously been or is currently licensed to practice massage and/or bodywork therapy.” 24 **Del.C.** §5308(a)(4). 24 **Del.C.** §5313(a)(2), as amended by SB 229, provides that a licensee shall be subject to disciplinary action set forth in §5315 if, after a hearing the Board finds that the massage or body work therapist or massage technician “has been convicted of a crime that is substantially related to the practice of massage and bodywork. “‘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 massage and bodywork.” 24 **Del.C.** §5302(8).

The Board’s authority to promulgate rules and regulations implementing or clarifying specific sections of Chapter 53 is set forth in 24 **Del.C.** §5306(a)(1). The specific mandate for this rule is set forth in 24 **Del.C.** §5306(b). The proposed regulation specifically identifies those crimes which are substantially related to the practice of massage and bodywork.

Summary Of The Evidence And Information Submitted

No written comments were received. No public comment was received at the January 20, 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 massage and bodywork services. Massage and bodywork clients may also include children and the elderly who are vulnerable to undue influence or other forms of abuse. The massage practitioner also has access to confidential client information concerning health and financial information.

The “primary objective of the Board of Massage and Bodywork, to which all other objectives and purposes are secondary, is to protect the general public, specifically those persons who are the direct recipients of services regulated by this chapter, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered” 24 **Del.C.** §5301.

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 of a massage or body work therapist or massage technician 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 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.

In summary, the Board finds that adopting Regulation 9.0 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 massage and bodywork services.

Decision And Effective Date

The Board hereby adopts the changes to Regulation 9.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

Text And Citation

The text of the revised rule remains as published in *Register of Regulations*, Vol. 8, Issue 6, December 1, 2004.

SO ORDERED this 20th day of January, 2005.

BOARD OF MASSAGE AND BODYWORK
Vivian Cebrick, President, Public Member
Suzie Stehle, Professional Member
Barbara Uniatowski, Professional Member
Mary Jo Verdery, Public Member
Clayton Yocum, Secretary, Public Member

9.0 Crimes Substantially Related To The Practice Of Massage And Bodywork:

9.1 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 massage and bodywork in the State of Delaware without regard to the place of conviction:

- 9.1.1 Aggravated menacing. 11 Del.C. §602(b)
- 9.1.2 Reckless endangering in the first degree. 11 Del.C. §604
- 9.1.3 Abuse of a pregnant female in the first degree. 11 Del.C. §606.
- 9.1.4 Assault in the second degree. 11 Del.C. §612
- 9.1.5 Assault in the first degree. 11 Del.C. §613.
- 9.1.6 Abuse of a sports official; felony. 11 Del.C. §614.
- 9.1.7 Terroristic threatening; felony. 11 Del.C. §621.
- 9.1.8 Unlawfully administering drugs. 11 Del.C. §625.
- 9.1.9 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626.
- 9.1.10 Murder by abuse or neglect in the second degree. 11 Del.C., §633.
- 9.1.11 Murder by abuse or neglect in the first degree. 11 Del.C. §634.
- 9.1.12 Murder in the second degree. 11 Del.C. §635.
- 9.1.13 Murder in the first degree. 11 Del.C. §636.
- 9.1.14 Incest. 11 Del.C. §766.
- 9.1.15 Unlawful sexual contact in the third degree. 11 Del.C. §767.
- 9.1.16 Unlawful sexual contact in the second degree. 11 Del.C. §768.
- 9.1.17 Unlawful sexual contact in the first degree. 11 Del.C. §769.
- 9.1.18 Rape in the fourth degree. 11 Del.C. §770.
- 9.1.19 Rape in the third degree. 11 Del.C. §771.
- 9.1.20 Rape in the second degree. 11 Del.C. §772.
- 9.1.21 Rape in the first degree. 11 Del.C. § 773.
- 9.1.22 Sexual extortion. 11 Del.C. §776.
- 9.1.23 Bestiality. 11 Del.C., §777.
- 9.1.24 Continuous sexual abuse of a child. 11 Del.C. §778.
- 9.1.25 Dangerous crime against a child. 11 Del.C. §779.
- 9.1.26 Female genital mutilation. 11 Del.C. §780.

9.1.27 Kidnapping in the second degree. 11 Del.C., §783.
9.1.28 Kidnapping in the first degree. 11 Del.C., §783A.
9.1.29 Acts constituting coercion. 11 Del.C., §791.
9.1.30 Arson in the first degree. 11 Del.C., §803.
9.1.31 Burglary in the third degree. 11 Del.C., §824.
9.1.32 Burglary in the second degree. 11 Del.C., §825.
9.1.33 Burglary in the first degree. 11 Del.C., §826.
9.1.34 Robbery in the second degree. 11 Del.C., §831.
9.1.35 Robbery in the first degree. 11 Del.C., §832.
9.1.36 Carjacking in the second degree. 11 Del.C., §835.
9.1.37 Carjacking in the first degree. 11 Del.C., §836.
9.1.38 Theft; felony. 11 Del.C., §841.
9.1.39 Theft; lost or mislaid property; mistaken delivery. 11 Del.C., §842.
9.1.40 Extortion. 11 Del.C., §846.
9.1.41 Receiving stolen property. 11 Del.C., §851.
9.1.42 Identity theft. 11 Del.C., §854.
9.1.43 Criminal impersonation of a police officer. 11 Del.C., §907B.
9.1.44 Securing execution of documents by deception. 11 Del.C., §909.
9.1.45 Insurance fraud. 11 Del.C., §913.
9.1.46 Health care fraud. 11 Del.C., §913A.
9.1.47 Dealing in children. 11 Del.C., §1100.
9.1.48 Sexual exploitation of a child. 11 Del.C., §1108.
9.1.49 Unlawfully dealing in child pornography. 11 Del.C., §1109.
9.1.50 Possession of child pornography. 11 Del.C., §1111.
9.1.51 Sexual offenders; prohibitions from school zones. 11 Del.C., §1112.
9.1.52 Sexual solicitation of a child. 11 Del.C., §1112A.
9.1.53 Improper influence. 11 Del.C., §1207.
9.1.54 Terroristic threatening of public officials or public servants. 11 Del.C., §1240.
9.1.55 Assault in a detention facility. 11 Del.C., §1254.
9.1.56 Promoting prison contraband; felony. 11 Del.C., §1256.
9.1.57 Tampering with a witness. 11 Del.C., §1263.
9.1.58 Hate crimes; felony. 11 Del.C., §1304.
9.1.59 Aggravated harassment. 11 Del.C., §1312.
9.1.60 Stalking. 11 Del.C., §1312A.
9.1.61 Cruelty to animals; felony. 11 Del.C., §1325.
9.1.62 Maintaining a dangerous animal; felony. 11 Del.C., §1327.
9.1.63 Abusing a corpse. 11 Del.C., §1332.
9.1.64 Violation of privacy. 11 Del.C., §1335.
9.1.65 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 Del.C., §1338.
9.1.66 Adulteration. 11 Del.C., §1339.
9.1.67 Lewdness. 11 Del.C., §1341.
9.1.68 Prostitution. 11 Del.C., §1342.
9.1.69 Patronizing a prostitute prohibited. 11 Del.C., §1343.
9.1.70 Promoting prostitution in the third degree. 11 Del.C., §1351.
9.1.71 Promoting prostitution in the second degree. 11 Del.C., §1352.
9.1.72 Promoting prostitution in the first degree. 11 Del.C., §1353.
9.1.73 Permitting prostitution. 11 Del.C., §1355.
9.1.74 Obscenity. 11 Del.C., §1361.
9.1.75 Possessing a destructive weapon. 11 Del.C., §1444.
9.1.76 Unlawfully dealing with a dangerous weapon; felony. 11 Del.C., §1445.
9.1.77 Possession of a deadly weapon during commission of a felony. 11 Del.C., §1447.
9.1.78 Possession of a firearm during commission of a felony. 11 Del.C., §1447A.
9.1.79 Possession and purchase of deadly weapons by persons prohibited. 11 Del.C., §1448.
9.1.80 Giving a firearm to person prohibited. 11 Del.C., §1454.
9.1.81 Engaging in a firearms transaction on behalf of another. 11 Del.C., §1455.
9.1.82 Removing a firearm from the possession of a law enforcement officer. 11 Del.C., §1458.
9.1.83 Organized Crime and Racketeering. 11 Del.C., §1504.

- 9.1.84 Victim or Witness Intimidation. 11 Del.C. §§3532 & 3533.
- 9.1.85 Abuse, neglect, mistreatment or financial exploitation of residents or patients. 16 Del.C. §1136(a), (b) and (c).
- 9.1.86 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).
- 9.1.87 Prohibited acts E under the Uniform Controlled Substances Act. 16 Del.C. §4755.
- 9.1.88 Prohibited acts under the Uniform Controlled Substances Act. 16 Del.C. §4756(a)(1)-(5) and (b).
- 9.1.89 Breaking and Entering, Etc. to Place or Remove Equipment 11 Del.C. §2410
- 9.1.90 Attempt to Intimidate. 11 Del.C. §3534
- 9.1.91 Abuse, neglect, exploitation or mistreatment of infirm adult. 31 Del.C. §3913(a), (b) and (c).
- 9.2 Crimes substantially related to the practice of massage and bodywork 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 Massage and Bodywork is available at: <http://www.professionallicensing.state.de.us/boards/massagebodyworks/index.shtml>**

8 DE Reg 1107 (2/1/05)