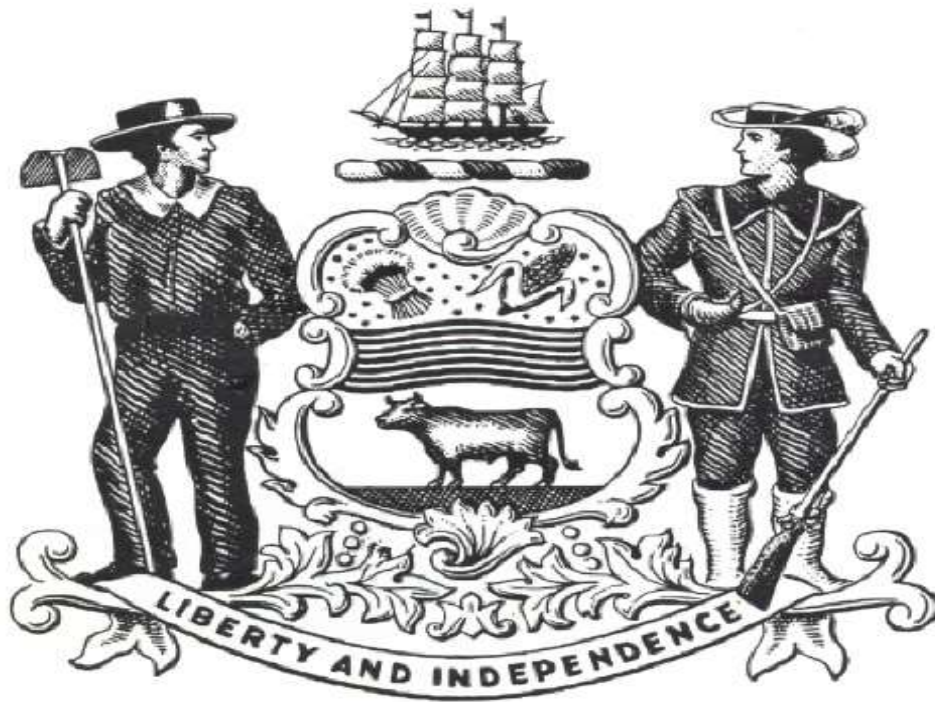

Joint Legislative Oversight and Sunset Committee



Board of Occupational Therapy

2018 Draft Report

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A NOTE ABOUT THIS DRAFT REPORT

The information provided in this report is taken from the Joint Legislative Oversight and Sunset Committee (“Committee”) Performance Review Questionnaire, as it was completed by the agency under review. When appropriate, the Analyst who prepared this report made minor changes to grammar and the organization of information provided in the questionnaire, but no changes were made to the substance of what the agency reported. Any points of consideration which arose in analyzing the questionnaire and compiling this report are addressed in the section titled Additional Comment from the Committee Analyst. It is the intent of the Analyst to make any substantive changes which may be required, as the result of findings made through the Joint Legislative Oversight and Sunset review processes, in the final version of this report.

The statutes governing and applying to the agency under review are included as Appendixes to this Draft Report. They are included only as a reference for Joint Legislative Oversight and Sunset Committee members, and may not be included in the Final Report.

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AGENCY HISTORY

The Occupational Therapy Practice Act, Chapter 20 of the Delaware Code, was passed as House Bill 164 in June 1985. In April 1986, the Governor appointed the first Board Members, and the Board held its first meeting in December 1986.

JOINT LEGISLATIVE OVERSIGHT AND SUNSET COMMITTEE REVIEW HISTORY

The Joint Sunset Committee reviewed the Board in 1988 and 1996.

In 1988, the Board had only begun to develop rules and regulations. The Committee made 3 recommendations:

Recommendation #1: The Committee recommends that Chapter 20 of Title 24 be changed to allow for the “grandfathering” of current registered Occupational Therapists and certified Occupational Therapist Assistants.

Recommendation #2: The Committee further recommends that Chapter 20 of Title 24 be amended to allow for the temporary licensure of occupational therapists while serving as visiting practitioners to the State.

Recommendation #3: The Committee recommends that Board members be reimbursed for mileage expenses incurred while traveling to meetings.

As a result of the 1988 review, HB 666 with HA 1 and 2 of the 134th General Assembly was passed. It was not until this point that the Board was able to effectively operate. The legislation included a temporary license provision and a grandfather provision which stated that: “All certified occupational therapy assistants and registered occupational therapists now practicing in this State as of the effective date of this Act will be licensed upon filing the application and paying the appropriate fees for such license.” The designations “certified” and “registered” are national association designations and were used to initially license practitioners.

In 1996, JLOSC made 18 Recommendations. Legislation enacted in June 1998 met all the Recommendations, which were as follows:

Recommendation #1: As a condition for continuation of the Board, that the entire Chapter 20, 24 Del. C., be amended to refer throughout to the feminine as well as the masculine gender.

Recommendation #2: As a condition for continuation of the Board, that § 2002, 24 Del. C., be amended to more clearly define the words “licensed occupational therapist” and “licensed occupational therapy assistant.”

Recommendation #3: As a condition for continuation of the Board, that the definition of “occupational therapy aide” contained in § 2002(5), 24 Del. C., be stricken, and all references to “aides” contained in the statute should likewise be stricken: e.g., § 2004(4), 24 Del. C.

Recommendation #4: As a continuation for continuation of the Board, that the definition in § 2002(8), 24 Del. C., of “American Occupational Therapy Association” be stricken from the statute, if needed, the definition could be replaced by reference to the American Occupational Therapy Certifying Board, or its successor, which administers the professional examination.

Recommendation #5: As a condition for continuation of the Board, that § 2006, 24 Del. C., be amended to bring Board members under the Public Integrity Act, Chapter 58, 24 Del. C.

New legislation was enacted on June 17, 1998 that amended Chapter 20, Title 24, by adding § 2003(h) "The provisions of Chapter 58, Title 29 of the Delaware Code shall apply to all members of the Board."

Recommendation #6: As a condition for continuation of the Board, that § 2007, 24 Del. C., Powers and Duties of the Board, be updated to mandate compliance with the Administrative Procedures; to reference the American Occupational Therapy Association and the Division of Professional Regulation approval of examination; to add the power to administer examination; to reference the authority of the Division of Professional Regulation regarding complaints; and to reference the Division's clerical and administrative duties.

Recommendation #7: As a condition for continuation of the Board, that § 2007, 24 Del. C., be amended to grant the Board the power to require completion of continuing education credits as a condition for renewal of licensure.

Recommendation #8: As a condition for continuation of the Board, that § 2008, 24 Del. C., be rewritten and updated to refer to an applicant's successfully passing the national examination given by the American Occupational Therapy Certifying Board or its successor.

Recommendation #9: As a condition for continuation of the Board, that § 2008, 24 Del. C., be updated to refer to the applicant's responsibility to contact the National Practitioner Data Bank to verify with the Division of Professional Regulation the applicant's licensure status regarding complaints, etc. The applicant will be further responsible for contacting each state in which he or she has been or is licensed to request verification of his or her licensure status with the Board.

In addition to the 1998 legislation, Board Rule 2.2.3 specifies the applicants' responsibility for obtaining a letter of good standing from any state in which the applicant is or has been licensed. The decision was made not to require National Board Practitioner Data Bank (NPDB) reports for applicants because it is an artificial barrier to licensure for this profession. There is a fee for the applicant to request an NPDB report. The report contains the same disciplinary action information that is already provided to the Board on each State's licensure verification. In addition, similarly situated boards such as Physical Therapy, Optometry and Social Work, do not require NPDB reports.

Recommendation #10: As a condition for continuation of the Board, that §2008, 24 Del.C., be updated by reference to the applicant's not having engaged in any acts which would be grounds for disciplinary action under this Chapter, and by adding the usual language regarding information on applications, false information given, and appeal rights of applicants.

Recommendation #11: As a condition for continuation of the Board, that § 2009, 24 Del. C., be amended to refer to the American Occupational Therapy Certifying Board, or its successor, and approval by the Division of Professional Regulation, where appropriate in the Section.

Recommendation #12: As a condition for continuation of the Board., that § 2010, 24 Del. C., be amended to refer to the applicant's responsibility to provide for the submission of all materials

necessary for licensure; this includes contacting the National Practitioner Data Bank and any states where the applicant currently is or has been licensed.

In addition to the 1998 legislation, Board Rule 2.2.3 specifies the applicants' responsibility for obtaining a letter of good standing from any state in which the applicant is or has been licensed.

Recommendation #13: As a condition for continuation of the Board, that fee language contained in § 2012 and also in § 2011 (Examination fee), 24 Del. C., be combined, and include reference to the Division of Professional Regulation's authority to set all fees.

Recommendation #14: As a condition for continuation of the Board, that the language of § 2013, 24 Del. C., regarding non-disciplinary remedial actions available to the Board, be updated to conform to the American's with Disabilities Act. Reference should also be made to the practitioner's right to a hearing in accordance with the Administrative Procedures Act.

Recommendation #15: As a condition for continuation of the Board, that § 2013, 24 Del. C. be updated to include the standard wording regarding an applicant or practitioner's use or abuse of drugs.

Recommendation #16: As a condition for continuation of the Board, that language governing professional fees for service be stricken from § 2013(a)(6), 24 Del. C.

Recommendation #17: As a condition for continuation of the Board, that the complaint language of § 2015, 24 Del. C., be updated to reference the responsibility and authority of the Division of Professional Regulation.

Recommendation #18: As a continuation of the Board, that a separate Section be added to the statute and contain updated hearing language which will reference the authority of the Division of Professional Regulation.

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MISSION AND PRIMARY OBJECTIVES

The Board's mission is to protect the public from unsafe practices and practices which tend to reduce competition or fix prices for services. The Board must also maintain standards of professional competence and service delivery.

The primary objective of the Board of Occupational Therapy Practice, 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 Chapter 20 of Title 24, from unsafe practices and from occupational practices which tend to reduce competition or 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. In meeting its objectives, the Board develops standards assuring professional competence; monitors complaints brought against practitioners regulated by the Board; adjudicates at formal hearings; promulgates rules and regulations; and imposes sanctions where necessary against practitioners.

COMPOSITION & STAFFING OF THE BOARD

Composition:

There are currently 5 members serving on the Board. The Governor appoints all Board members. The Office of Boards and Commissions administers the appointment process. The Board's governing statute provides for the makeup of the Board:¹

- 5 members, who are residents of this State.
 - o 3 professional members, 2 of whom shall be occupational therapists licensed under the governing statute, 1 may be a licensed occupational therapy assistant.
 - o 2 public members.
 - A public member shall not be, nor have ever:
 - Been occupational therapists or occupational therapy assistants.
 - Been members of the immediate family of an occupational therapist or occupational therapy assistant.
 - Been employed by an occupational therapist or occupational therapy assistant.
 - Had a material financial interest in the providing of goods and services to occupational therapists or occupational therapy assistants.
 - Been engaged in any activity directly related to occupational therapy.

Each member of the Board shall serve a term of 3 years, and may succeed himself or herself for 1 additional term; provided however, that where a member was initially appointed to fill a vacancy, such member may succeed himself or herself for only 1 additional full term. Any person appointed to fill a vacancy on the Board shall hold office for the remainder of the unexpired term of the former member. Each term of office shall expire on the date specified in the appointment; however, the Board member shall remain eligible to participate in Board proceedings unless and until replaced by the Governor.²

¹ See 24 *Del. C.* § 2003(b).

² See 24 *Del. C.* § 2003(c).

An individual may be appointed to the Board 2 consecutive times. To serve an additional term, at least one year must pass since the expiration of the member’s term.³

Board members may be suspended or removed by the Governor for misfeasance, nonfeasance, malfeasance, misconduct, incompetency, or neglect of duty. A member subject to disciplinary hearing shall be disqualified from Board business until the charge is adjudicated or the matter is otherwise concluded. A Board member may appeal any suspension or removal to the Superior Court.⁴

Neglect of duty is defined as “any member who is absent without adequate reason for 3 consecutive meetings, or fails to attend at least 1/2 of all regular business meetings during any calendar year.”⁵ No member has been removed as described above.

The Division communicates with the Governor's Office on a regular basis concerning vacancies and reappointments for the 34 boards and commissions it oversees, including this Board. In addition, members receive attendance letters from the Director of the Division of Professional Regulation when attendance is a concern.

Current Board members are:⁶

	NAME	TERM	COUNTY
1.	Mara Beth Schmittinger - Chair, Professional Member	8/2014-8/2017 (first term)	New Castle
2.	Evan Park - Vice-Chair, Public Member	2/2015-2/2018 (first term)	Kent
3.	Angelita Mosley – Secretary, Public Member	3/2015-3/2015 (first term)	Kent
4.	Kelly M. Richardson, Professional Member	2/2013-2/2019 (second term)	Sussex
5.	Karen M. Virion, Professional Member	3/2014-8/2020 (second term)	New Castle

Kevin Maloney is the Deputy Attorney General assigned to the Board. The Division’s Director, David C. Mangler, advises the Board.

Compensation:

Each member is reimbursed for all expenses involved in each meeting, including travel. In addition, members receive not more than \$50 for each meeting attended with a \$500 cap per calendar year.

A recent Constitutional amendment updated the new compensation maximum of \$1500 per year for board and commission members.

³ See 24 Del. C. § 2003(c)(d).

⁴ See 24 Del. C. § 2003(f).

⁵ See 24 Del. C. § 2003(i).

⁶ Council members’ contact information was included in the JOLSC Questionnaire and is available upon request.

Member Trainings:

The Division is statutorily mandated to provide training to members appointed to the regulatory boards and commissions at least once every fiscal year. The trainings outline the legal responsibilities of members to protect the health, safety, and welfare of the general public.⁷

In January 2013, the Division purchased an annual subscription for Online Board Member training offered by the Council on Licensure Enforcement and Regulation (“CLEAR”) and has continued to renew this subscription annually. In addition to the CLEAR online training, the Division provides newly appointed members with an orientation and resource manual.

Conflict of Interest:

The Board’s Deputy Attorney General advises members of potential conflicts. The Division provides new members with copies of Public Integrity laws during orientation.

Staffing:

The Division is organized into service teams which each provide administrative support to a specified group of professions and trades.⁸ The service team is responsible for the Board also supports eleven other professional boards and commissions that they support. Three state employees (two merit employees and one exempt employee) and two contractual employees provide credentialing, licensing, and board liaison services to all boards within the Service Team.

The Division has an investigative unit that handles complaints for all 34 professional boards and commissions. There are currently 14 investigators, three of which are contractual employees.

Currently, the Board is adequately staffed. In FY 2007, however, the Division took steps to address administrative staffing issues. The Division was authorized in FY 2007 to hire four new administrative positions in response to increased demand and reduction of the Division’s reliance on contractual employees.

Additionally, the Division expanded the use of its enterprise database application by significantly increasing services available through its website. Specifically, the public can view licensee information, related laws and rules online, and download complaint forms. Licensees can update their profiles and renew licenses using a credit card. Applicants can check the status of licensure applications online and complete fillable forms.

In November 2007, the Division implemented a new organizational structure to optimize administrative functions that support the boards and commissions, licensees and the public. The board has benefited from the new structure, which provides a service team, a team leader and three staff members assigned to credentialing, licensing, and board liaison services. The new structure has resulted in greater responsiveness to customer inquiries.

In 2011, the Division hired two new hearing officers and a paralegal to implement a hearing process to expedite the adjudication of complaints made against professionals, including those under the Board’s purview.

⁷ See 29 Del. C. § 8735.

⁸ See Appendix C for the Division’s Organization Chart.

Based on the Service Team structure, the below chart reflects the tasks for each Division staff member. Each profession within the service team is assigned an overall workload rating. The workload rating for the Board of Occupational Therapy represents 15-20% of each staff members’ time that is spent providing certain administrative activities to the Board.

<i>Credentialing Services</i> Lisa Smith, Administrative Specialist II	<i>Board Liaison Services</i> Mary Melvin, Administrative Specialist II	<i>Licensee Services</i> Mary Melvin, Administrative Specialist II
Review applications and all credentialing documentation for completeness and authenticity Complete licensing system checklist, coordinates with board liaison Respond to customer inquiries- Level 2 Website updates Maintain licensing database.	Attend/schedule/notice meetings & hearings Prepare board agenda and minutes Process commission/board member payments Monitor formal complaints (from DAG) Manage all board/commission correspondence Website updates Conduct research/ legislative initiatives. Respond to customer inquiries – Level 2 Maintain licensing database.	Issue licenses and temporary permits Complete license verifications Review continuing education. Process online renewals and release renewal holds Respond to customer inquiries – Level 2 Update web site Maintain licensing database.

DUTIES, RESPONSIBILITIES, AND AUTHORITY

The Board’s key duties and responsibilities are to implement the standards of occupational therapy through education, examination, and continuing education. In addition, the Board has a duty to enforce the law, rules, and regulations to ensure safe practice and undue harm to the public. Finally, the Board provides the public with a resource to confirm the status of any licensee and also administers consumers’ complaints.

Typically, the Board of Occupational Therapy meets at least six times per year. Meetings are open to the public and held in the Cannon building in Dover.

The Board makes information or educational resources available to the public. The Board has a web presence on the Division’s website, which provides laws, rules, and regulations; frequently asked questions; and licensure and renewal requirements.⁹ The public can search for licensees through the “Verify License Online” link to determine the licensure status and whether a licensee has any public disciplinary action.¹⁰ Board decisions are available online for the public.

The public has access to information about the complaint process and can complete and submit to the Division a complaint form online. Rule and regulation changes and public hearing notices are

⁹ See <https://dpr.delaware.gov/boards/occupationaltherapy/>
¹⁰ See <https://dpronline.delaware.gov/mylicense%20weblookup/Search.aspx>

published in two newspapers, the News Journal and the Delaware State News, and through the Register of Regulations.

The following groups are served or affected by the Board’s actions:

Interest Groups (Groups affected by Board actions or represent others served by or affected by Board actions)		
Group or Association Name/Contact Person	Address	Internet Address
Delaware Occupational Therapy Association, Inc. (DOTA)	3 Ross Court Wilmington, DE 19810	https://dotaonline.site-ym.com/

National Organizations or other Government Entities (that serve as an information clearinghouse or regularly interact with the Board)		
Group or Association Name/Contact Person	Address	Phone Number
National Board for certification in Occupational Therapy (NBCOT)	12 South Summit Avenue Suite 100 Gaithersburg, MD 20877	(301) 990-7979
The American Occupational Therapy Association, Inc. (AOTA)	4720 Montgomery Lane Suite 200 Bethesda, MD 20814-3449	1-800-SAY-AOTA (301) 652-6611

Industry or Trade Publications		
Group or Association Name/Contact Person	Address	Internet Address
American Journal of Occupational Therapy (AJOT)	4720 Montgomery Lane Suite 200 Bethesda, MD 20814-3449	subscriptions@aota.org

Licensing:

Currently licensed:

Occupational Therapists: 639 Individual

Occupational Therapist Assistant: 340 Individual

Renewals are biannual. The end of the renewal period for licenses under statute is July 31 in even numbered years. There are no reciprocity or endorsement agreements with any other state or jurisdiction.¹¹

¹¹ See 24 Del. C. § 2109.

This chart illustrates statistical data regarding licensure:

Name of License #1 issued by the Board: Occupational Therapist

	# of License Applications Received	# of License Applications Approved	# of Licenses Issued	# of Licenses Rejected	# of Licenses Revoked
Calendar Year 2015	72	69	69	0	0
Calendar Year 2016	66	54	54	0	0
Calendar Year 2017 (11/30/17)	69	55	55	0	0

Name of License #2 issued by the Board: Occupational Therapist Assistant

	# of License Applications Received	# of License Applications Approved	# of Licenses Issued	# of Licenses Rejected	# of Licenses Revoked
Calendar Year 2015	34	30	30	0	0
Calendar Year 2016	32	28	28	0	0
Calendar Year 2017 (11/30/17)	29	22	22	0	0

The examination for occupational therapists and occupational therapy assistants is a computer based exam sponsored by the National Board for Certification in Occupational Therapy (“NBCOT”). NBCOT administers the validated exam through Prometric testing centers in Delaware and throughout the United States. If a student fails an exam, they must wait 30 days to retest.

Delaware Exam Results

Name of Exam	# Tested 2014	# Passed 2014	# Tested 2015	# Passed 2015	# Tested 2016	# Passed 2016	# Tested 2017	# Passed 2017
Occupational Therapist *	50	43	32	29	29	24	55	47
Occupational Therapy Assistant	39	34	26	24	42	36	34	31

Complaint and Disciplinary Process:

Written complaints can be filed online with the Division’s Investigative Unit. The management of the complaints is defined by statute.¹² The Division investigates complaints from the public against licensed professionals and those practicing without a license. If it is determined that a complaint has merit and the facts are able to be substantiated, the investigation is forwarded to the Attorney General’s Office with a prosecution recommendation. Complaints that are unable to be substantiated or do not rise to the level of a violation of law or rule are closed at the Division level. The Division Director or the Director’s designee has the authority to subpoena investigative material and witnesses. Investigations involve evidence gathering, witness interviews, and rare undercover operations.

Currently, the Division’s investigative unit has a staff of fifteen Investigators who provide investigative support to 34 boards and commissions within the Division of Professional Regulation. The Investigative Unit has a goal of completing investigations within 120 days of receipt.

Complaints filed against the Board have been rare. One complaint was investigated in 2007. The complaint was filed as the result of a report received from another state board the practitioner received discipline in another state.

In 2008, 1 complaint was investigated. The complaint was filed by a member of the public for unprofessional conduct.

In 2013, 1 complaint was investigated. The complaint was filed by a healthcare agency for diversion of drugs.

There are currently no complaints filed or pending with the Attorney General’s Office. None of these cases resulted in disciplinary action; all were closed with no action.

Complaint Data 2015-2017

	Calendar Year 2015	Calendar Year 2016	Calendar Year 2017 (to date)
Total Number of Complaints Received by the Board	0	0	1 ¹³
Total Number of Complaints Investigated	0	0	0
Total Number of Complaints found to be Valid	0	0	0
Total Number of Complaints Forwarded to the Attorney General	0	0	0
Total Number of Complaints Resulting in Disciplinary Action	0	0	0

¹² See 29 Del C. § 8735(h).

¹³ Analyst note: The Board received a complaint alleging that a licensee “illegally rented” a property and made obscene comments. The Board does not have authority to investigate either of these matters.

Disciplinary actions may be taken after the Board hears evidence presented by the State’s prosecutor, licensee, and licensee’s attorney and deliberates in a public hearing. The Board can impose sanctions pursuant to statute.¹⁴

Any practitioner that is in disagreement with the action of the Board may appeal the Board’s decision to the Superior Court in accordance with Chapter 101 of Title 29.

ENACTED LEGISLATION IMPACTING THE BOARD

The following amendments have impacted the Board of Occupational Therapy statute since it’s 1996 review:

Re-write of Chapter 20

-HB 429 w/HA 1 passed the 139th General Assembly and was enacted on June 17, 1998. This Bill amended Title 24 of the Delaware Code by re-writing Chapter 20 in its entirety, to implement the 1996 recommendations.

Disqualifications for Licensure

-SB 229 w/ SA 1 & HA 1 passed the 142nd General Assembly and was enacted on June 22, 2004. This bill created a uniform approach throughout Title 24 regarding disqualifications for licensure. It requires that the refusal, revocation, or suspension of licenses for professions and occupations regulated under Title 24 be based upon conviction of crimes that are “substantially related” to the profession or occupation at issue, and not for crimes that are unrelated to the profession or occupation. The bill required the Board promulgate regulations that specifically identify the crimes that are "substantially related" to the profession. This authority was granted under 24 Del. C. §2008(a)(6). The Board promulgated Rule 7.0, crimes substantially related to practice of occupational therapy.

Military Protection

-SB 206 passed the 143rd General Assembly and was enacted July 21, 2005, to give protection to active duty military, activated reservists, or members of the National Guard from having their professional licenses expire during active military deployments. This authority was granted under 29 Del. C. §8735(p).

Conviction Waiver

-SB 403 passed the 143rd General Assembly and was enacted on July 20, 2006 to allow Title 24 boards and commissions to waive convictions substantially related to the professions under certain conditions. These conditions included that after a hearing, the Board, by an affirmative vote of a majority of the quorum, may waive the requirement under §2008(a)(6) of Title 24, which excludes those with a criminal record from obtaining a license, if it finds that certain specified qualifications have been met.

¹⁴ See 24 Del C. § 2015-§ 2018

Addressing Unlicensed Practice

-HB 36 passed the 144th General Assembly and was enacted on June 19, 2008, which gave all boards and commissions the authority to address unlicensed practice and impose fines for those who violated cease and desist orders subject to hearing procedures. This authority was granted under 29 Del. C. §8735(q) and §10161(c), (d), (e), and (f).

Authority to Utilize Hearing Panels

-SB 159 passed the 145th General Assembly and was enacted on July 8, 2009, which gave boards and commissions authority to use hearing panels to conduct disciplinary hearings and complaints of unlicensed practice. This authority was granted under 29 Del. C. § 10161.

Conviction Waiver Process

-SB 164 passed the 145th General Assembly and was enacted on August 18, 2009, which allowed all boards and commissions under Title 24 to waive criminal convictions substantially related to the profession either by holding a hearing (which was previously practiced) or a review of the documentation to determine whether applicants met the specified criteria for a waiver. This authority was granted under 24 Del. C. §2008(a)(6).

License Revocation

-SB 232 passed the 145th General Assembly and was enacted on July 12, 2010, which gave boards and commissions the authority to suspend or revoke a license effective immediately after a hearing with a written order to be served 30 days after the hearing date. This authority was granted under 29 Del. C. §10128(f).

Waiver Authority

-SB 59 passed the 146th General Assembly and was enacted on June 8, 2011, that modified the waiver authority for boards, commissions, and councils to license individuals with substantially related felony crimes by changing the waiting period from 5 years after the discharge of sentences to 5 years from the date of conviction provided that all other restrictions related to incarceration, probation, work release, parole and suspended sentences have been met. The boards, commissions and councils could continue to either have a hearing or review the record to decide upon granting a waiver and have the discretion to deny waivers if warranted by the facts of the case. The legislation also removed the 5-year limitation for misdemeanors entirely provided that the applicant had met all restrictions. This authority was granted under 24 Del. C. §2008(6).

Annual Compensation

-SB 18 passed the 146th General Assembly and was enacted on June 30, 2011, which amended the Constitution to increase the amount of annual compensation an officer must receive before Senate confirmation is required. The current amount of \$500 had existed since 1897. This was the second leg of a constitutional amendment after the passage of SB 267 during the 144th General Assembly.

Director Authority

-SB 122 passed the 146th General Assembly and was enacted July 5, 2011, that authorized boards and commissions to delegate to the Director of the Division, the administrative authority to issue permits and licenses to individuals and organizations in accordance with written criteria agreed upon by any and the Director. The Board of Occupational Therapy has granted authority for the

Division to issue licenses to individuals applying by exam or reciprocity. The Board still reviews all reinstatement applications.

Quorum

-SB 142 passed the 146th General Assembly and was enacted on July 13, 2011, which eliminated the need for a quorum of a board or commission to sign a decision previously approved by a quorum of its members and allow an order to be issued under the signature of the board or commission president or other officer. This authority was granted under 29 Del. C. §10128(g).

Simplification of Licensure Process

-HB 238 w/HA 1 passed the 146th General Assembly and was enacted on May 28, 2012, that simplified the licensure process to enable military spouses to obtain a professional license and expedite their ability to work in their profession. This authority was granted under 29 Del. C. §8735.

Citations and Fines

-SB 90 passed the 147th General Assembly and was enacted on August 6, 2013, giving the Division authority to issue citations and monetary fines when individuals and businesses are found engaging in unlicensed professional practices regulated by a board, commission, council, or committee. This authority was granted under 29 Del. C. §8735(a).

Chaperone Requirement

-SB 114 passed the 147th General Assembly and was enacted on August 6, 2013, adding chaperone requirements for the designated healthcare professionals of podiatry, chiropractic, dentistry and dental hygiene, nursing, occupational therapy, physical therapy/athletic training, social work, and massage and bodywork, who treat minors consistent with the provisions added to the Medical Practice Act with practice specific modifications where appropriate. This authority was granted under 24 Del. C. §2021.

Disparate Emergency Procedures

-SB 115 w/SA 1 and HA 1 passed the 147th General Assembly and was enacted on April 15, 2014, adopting the emergency suspension provision already included in the Medical Practice Act for other boards and commissions regulated under Titles 23 and 24 to enable a temporary suspension pending a hearing to be issued upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of the Board chair or the Board chair's designee, if the activity of the licensee presents a clear and immediate danger to the public's health. This legislation makes the current disparate emergency procedures more uniform across all boards. This amends 24 Del. C. §2017.

Fingerprinting Requirement

-SB 98 w/HA 1 passed the 147th General Assembly and was enacted on June 30, 2014, removing the requirement that fingerprinting be repeated every 10 years for those licensed as occupational therapists or occupational therapy assistants, among other licensed professionals. This amends 24 Del. C. §2008.

Military Education

-HB 296 passed the 147th General Assembly and was enacted on July 21, 2014, allowing the boards and commissions to recognize military education, training and experience when reviewing credentials and issuing licenses to assist service personnel and their spouses in obtaining or renewing professional licenses when transitioning from active duty. This legislation further allows boards and commissions to issue service personnel temporary licenses when the service personnel or spouse holds a valid license from another state. The previous law had allowed only for boards and commissions to do so for military spouses. This authority was granted under 29 Del. C. §8735.

Telehealth

-HB 69 w/ HA 1 passed the 148th General Assembly and was enacted on July 7, 2015, offering opportunities for improving the delivery and accessibility of health care across many professions responsible for the wellbeing of Delawareans. Geography, weather, availability of specialists, transportation, and other factors can create barriers to accessing appropriate health care and one way to provide, ensure, or enhance access to care given these barriers is through the appropriate use of technology to allow health care consumers access to qualified health care providers. This amends 24 *Del. C.* §2002. As a result of this Bill, the Board promulgated Rule 4.0 Telehealth.

Board Member Compensation

-SB 83 passed the 149th General Assembly and was enacted on July 21, 2017. This bill amends the provisions related to board member compensation under Titles 24 and 28 consistent with a recent amendment to the Delaware Constitution raising the maximum compensation per calendar year from five hundred dollars per year to \$1500 per year. The bill removes the need for further amendments to the compensation provisions by deleting the reference to the specific dollar amount of the maximum. This authority was granted under 24 Del. C. §2003(j).

Military Education

-HB 112 passed the 149th General Assembly and was enacted on September 29, 2017. This Bill allows professional licensing boards and commissions administered by the Division to recognize military education, training, and experience of all current and former military personnel when reviewing credentials and issuing licenses. This is a change from the current law, which only allows such boards and commissions to do so for active duty military, members of the National Guard, or military reserves assigned to a duty station in Delaware. This change recognizes the military education, training, and experience of individuals who are retired, a veteran, or are active duty individuals assigned to duty stations located outside this State. This authority was granted under 29 Del. C. §8735.

PENDING LEGISLATION

There is currently no legislation pending from the Board of Occupational Therapy.

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ADMINISTRATIVE PROCEDURES ACT COMPLIANCE

The Board promulgates rules and regulations in accordance with the Administrative Procedures Act.¹⁵ Below are the rules and regulations and dates of adoption.

-Effective May 1, 1999, the Board of Occupational Therapy promulgated comprehensive Rules and Regulations that described the Board's organization, operations and rules of procedure, the process and requirements for licensure and certain standards of conduct applicable to the practice of occupational therapy.

-Effective April 1, 2003, the Board of Occupational Therapy promulgated revisions to Rules 2.0 and 5.0 to instituted continuing education as a refresher for applicants who delay licensure after passing the NBCOT exam and clarify the continuing education requirements for licensees.

-Effective April 1, 2005, the Board of Occupational Therapy promulgated Rule 7.0 to identify crimes substantially related to the practice of occupational therapy, as mandated by SB 229 enacted by the 142nd General Assembly.

-Effective October 1, 2005, the Board of Occupational Therapy deleted Rules 3.0 and 4.0 to conform to SB No. 179 of the 143rd General Assembly which struck the temporary licensure provisions in 24 Del. C. § 2012. The remaining provisions were renumbered according.

-Effective May 1, 2006, the Board of Occupational Therapy promulgated revisions to Rules 2.0 and 3.0 to allow for online renewal of licenses and online attestation of completion of continuing education (CE) and provide for a post-renewal audit. The changes clarified that CEs must be completed (not submitted) before May 31 of each renewal year. This change allowed licensees to renew their licenses online any time of day. Although licensees were no longer required to submit CE documentation to the Division prior to the license renewal, licensees were required to keep the records of their CE credits. The Board conducts random audits of licensees to ensure CE compliance.

-Effective January 1, 2008, the Board of Occupational Therapy promulgated revisions to Rules 2.0 and 3.0 to change the audit process for license renewal so that continuing education attestations are audited after the license renewal period is over, rather than before the expiration date. The changes also extended the period of time during which licensees may obtain required CE credits, from May 31st to July 31st of each renewal year, to correspond with the license renewal period.

-Effective March 1, 2009, the Board of Occupational Therapy promulgated revisions to Rule 1.3, which addresses supervision of occupational therapy assistants.

-Effective February 1, 2010, the Board of Occupational Therapy promulgated Rule 4.0 which addressed licensee competence to administer various treatment modalities. At the request of the Board or a member of the public, a licensee is required to provide documentation of training or education to demonstrate competence. In addition, Rule 1.3.3 is amended to clarify the parameters of an occupational therapist's supervision of an occupational therapy assistant. A new Rule 3.1.2.4 gives the Board authority to conduct hearings and impose sanctions regarding licensees' failure to comply with CE requirements.

¹⁵ See Appendix B for the Board's Regulations.

-Effective June 1, 2015, the Board of Occupational Therapy promulgated revisions to Rule 3.0 to clarify the application of continuing education. Additionally, rules of an administrative nature were changed to reflect current practices Rules 1.0, 2.0 and 4.0.

-Effective April 1, 2016, the Board of Occupational Therapy promulgated revisions to Rule 2.0 pertaining to renewal of an expired licenses. Rule 4.0 was promulgated addressing telehealth services.

The Board’s Deputy Attorney General, Kevin Maloney, has been assisting the Board in their review of the Board’s statute, rules, and regulations. There are no Delaware Attorney General’s Opinions affecting the board. There are currently no proposed rule and regulation changes. There are no federal laws and regulations impacting the Board.

There are recent state judicial decisions that directly affect the functioning of the Board. The Delaware Supreme Court ruled in the case of *Richardson v. the Bd. of Cosmetology Barbering*¹⁶ that the Board had created an insufficient record for appellant review pursuant to 29 Del. C. § 10125 when the licensee’s attorney filed an exception to the hearing officer’s recommendation. This case demanded that the Board create a record from which a verbatim transcript can be prepared.

FREEDOM OF INFORMATION ACT (“FOIA”) COMPLIANCE

The Board has not received any FOIA complaints. FOIA requests are handled by the Deputy Director of the Division in coordination with the Division’s Deputy Attorney General and the Department of State’s FOIA Coordinator.

Meeting agendas are posted online through the State of Delaware Government Information Center and in the Division’s customer service area. Meeting agendas are posted seven days prior to the meeting date, in accordance with the Administrative Procedures Act. Agendas are available online at the Division's website.¹⁷

The Board’s meeting minutes are transcribed and maintained electronically in the Board’s office. Minutes are prepared for approval by the Board at their next regularly scheduled meeting. Final approved minutes are posted to the online meeting calendar five business days after the meeting, in accordance with the Freedom of Information Act. The public may download copies of the approved meeting minutes online or request a hard copy by contacting the Division.

In accordance with the Delaware Freedom of Information Act, minutes of executive sessions are not public information. Other than executive sessions, all meetings are open to the public. In the last three years, the Board has held no executive sessions.

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¹⁶ Richardson v. Bd. of Cosmetology & Barbering, 69 A.3d 353

¹⁷ See www.dpr.delaware.gov.

FISCAL INFORMATION

Revenue:

Fiscal Year	Source(s) of Funds	Amount \$\$
FY18 (budgeted)*	Special Funds	
		TOTAL \$ 10,700.00
FY17 (actual)	Special Funds	
		TOTAL \$126,349.00
FY16 (actual)	Special Funds	
		TOTAL \$ 20,457.00

*This amount is an estimate of applications the Division will receive in FY16. The Division is unable to determine how many licensees will request additional services from the Division.

Revenue was significantly higher in FY 2017 as a result of the biennial renewal of all licensees.

The Board does not receive federal funds.

Fines and Fees Collected by the Board:

Description of Fine or Fee	Current Fine or Fee \$\$	Number of Persons or Entities Paying Fine or Fee	Fine or Fee Revenue \$\$	Where is the Fine or Fee Revenue Deposited
Renewal Fee for Occupational Therapist	194.00	454	\$88,076.00	Special Fund
License Fee for Occupational Therapist	194.00	82	\$15,908.00	Special Fund
Renewal Fee for Occupational Therapy Assistant	68.00	253	\$17,204.00	Special Fund
License Fee for Occupational Therapy Assistant	68.00	42	\$2,856.00	Special Fund
License Fee Upgrade from Occupational Therapy Assistant to Occupational Therapist	55.00	34	\$1,870.00	Special Fund
Inactive Renewal	40.00	19	\$760.00	Special Fund
License Verification	35.00	75	\$2,625.00	Special Fund
Roster Fee	40.00	3	\$120.00	Special Fund
Duplicate License Request	25.00	9	\$225.00	Special Fund
Continuing Education Request	40.00	31	\$1,240.00	Special Fund
Fines	\$150	10	\$1500.00	General Fund

The Division conducts a fee setting analysis biennially for all professions. This analysis was completed in June 2016 for fees effective July 1, 2016 through June 30, 2018. The next analysis will be done in May or June 2018. The Division has authority to establish and change fees as approved by the Secretary of State.¹⁸

Expenditures:

Fiscal Year	Source(s)	Amount \$\$
FY18 (budgeted)*		
		TOTAL
FY17 (actual)**	Special Fund	
		TOTAL \$46,007.14
FY16 (actual)	Special Fund	
		TOTAL \$35,006.31

*The Division is unable to provide expenditure information on a per board/commission basis. The budget for the Division encompasses all boards and commissions.

**This amount is the direct expenses and overhead costs for the Board. The overhead costs are apportioned by the percentage of licensees to the total number of licensees in the Division; this is done biennially during the fee setting analysis.

The Board has never been audited by the State Auditor or another external organization.

ACCOMPLISHMENTS

-In 2005, the Board promulgated rules and regulations to identify crimes substantially related to the practice of occupational therapy.

-In 2008, the Division began offering applicants the ability to track the progress of their applications for licensure online, by notifying applicants when their applications had been received.

-The Division streamlined the renewal process by offering online renewal with the use of payment by credit card and the ability of licensees to attest to their continuing education online subject to post renewal audit.

-The Board updated the Division’s website to make it more user-friendly for the public to access licensee and disciplinary information and for applicants and licensees to access licensure requirements, laws, and rules and regulations.

-In 2011, the Division implemented the new hearing officer process as a result of legislation that implemented significant regulatory and law enforcement system reforms. This included additional investigative and legal resources dedicated to the Division to include hearing officers and a paralegal to expedite the adjudication of complaints made against professionals.

¹⁸ See 29 Del. C. § 8735(d).

-In April, 2013 the Board agreed to join several other healthcare related professional boards in amending its statute to require all current licensees and future applicants to obtain fingerprinting and criminal background checks.

-In 2014, the Division initiated SB 98 requiring a mandatory State of Delaware and Federal Bureau of Investigation criminal background checks for all practitioners under the Board of Examiners in occupational therapy.

-In 2015, the General Assembly passed that promotes the use of telehealth and telemedicine delivered services for most health care professions in the state, including occupational therapy. This will require private health insurers to reimburse for services delivered using telemedicine technologies. In April 2016, the Board promulgated Rule 4.0 addressing delivery of services using telehealth.

-In 2017, HB 112 was passed that allows professional licensing boards and commissions administered by the Division of Professional Regulation, including occupational therapy, to recognize military education, training, and experience of all current and former military personnel when reviewing credentials and issuing licenses. This change would recognize the military education, training, and experience of individuals who are retired, a veteran, or are active duty individuals assigned to duty stations located outside this State.

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CHALLENGES

1. As industry education requirements change, the Board will need to continue to ensure Delaware laws are consistent with national minimum licensure standards to foster licensure portability and reciprocity.
2. CE requirements in the Board’s Rules and Regulations are overly complex.¹⁹

OPPORTUNITIES FOR IMPROVEMENT

1. Revise the statute to make it consistent with the laws of other Title 24 Boards and delete antiquated sections of the code which are no longer applicable. In particular:
 - a. Add language pertaining to duty to report conduct that constitutes grounds for discipline or inability to practice.
 - b. Update sanctions to remove “Censure a practitioner” from the available sanctions.
 - c. Remove references to temporary licenses since the temporary license section of the statute was repealed.
 - d. Remove § 2015(c). It is covered in the Administrative Procedures Act.
 - e. Remove § 2017(c). It is covered in the Administrative Procedures Act.
 - f. Miscellaneous clean up to remove unnecessary words and fix grammar errors.
2. Revise the reciprocity language to address situations where the licensee holds a current license in a state that is not substantially similar to Delaware.

COMMENT FROM THE COMMITTEE ANALYST

In addition to the Division’s notation to revise the governing statute, the Committee may recommend that the Board update their regulations relating to “crimes substantially related to the practice of occupational therapy.” The Division has been working with boards to 1) update incorrect references to the Delaware Code; and 2) to modify the list of crimes in their regulations.

¹⁹ Analyst note: The Board is currently working to update Regulations in regard to this challenge.

APPENDIX A: GOVERNING STATUTE

TITLE 24

Professions and Occupations

CHAPTER 20. OCCUPATIONAL THERAPY

Subchapter I. Board Of Occupational Therapy Practice

§ 2001 Objectives.

The primary objective of the Board of Occupational Therapy Practice, 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.

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. In meeting its objectives, the Board shall develop standards assuring professional competence; shall monitor complaints brought against practitioners regulated by the Board; shall adjudicate at formal hearings; shall promulgate rules and regulations; and shall impose sanctions where necessary against practitioners.

Nothing in this chapter shall be deemed a direct or indirect commitment by the General Assembly to a present or future requirement that insurers or other third parties must offer or provide coverage for the services of practitioners licensed under this chapter.

[65 Del. Laws, c. 172, § 1](#); [71 Del. Laws, c. 293, § 1](#);

§ 2002 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them under this section, except where the context clearly indicates a different meaning:

- (1) "Board" shall mean the State Board of Occupational Therapy Practice established in this chapter.

- (2) "Distant site" means a site at which a health-care provider legally allowed to practice in the State is located while providing health-care services by means of telemedicine or telehealth.
- (3) "Excessive use or abuse of drugs" shall mean any use of narcotics, controlled substances or illegal drugs without a prescription from a licensed physician, or the abuse of alcoholic beverage such that it impairs a person's ability to perform the work of an occupational therapist or occupational therapy assistant.
- (4) "Occupational therapist" shall mean a person who is licensed to practice occupational therapy pursuant to this chapter and who offers such services to the public under any title incorporating the words "occupational therapy," "occupational therapist" or any similar title or description of occupational therapy services.
- (5) "Occupational therapy assistant" shall mean a person licensed to assist in the practice of occupational therapy, under the supervision of an occupational therapist.
- (6) "Occupational therapy services" shall mean, but are not limited to:
- a. The assessment, treatment and education of or consultation with the individual, family or other persons; or
 - b. Interventions directed toward developing, improving or restoring daily living skills, work readiness or work performance, play skills or leisure capacities, or enhancing educational performance skills; or
 - c. Providing for the development, improvement or restoration of sensorimotor, oralmotor, perceptual or neuromuscular functioning, or emotional, motivational, cognitive or psychosocial components of performance.

These services may require assessment of the need for use of interventions such as the design, development, adaptation, application or training in the use of assistive technology devices; the design, fabrication or application of rehabilitative technology such as selected orthotic devices; training in the use of assistive technology, orthotic or prosthetic devices; the application of thermal agent modalities, including, but not limited to, paraffin, hot and cold packs and fluido therapy, as an adjunct to, or in preparation for, purposeful activity; the use of

ergonomic principles; the adaptation of environments and processes to enhance functional performance; or the promotion of health and wellness.

Services may be provided through the use of telemedicine in a manner deemed appropriate by regulation. Services also may include participation in telehealth as further defined in regulation.

(7) "Originating site" means a site in Delaware at which a patient is located at the time health-care services are provided to him or her by means of telemedicine or telehealth, unless the term is otherwise defined with respect to the provision in which it is used; provided, however, notwithstanding any other provision of law, insurers and providers may agree to alternative siting arrangements deemed appropriate by the parties.

(8) "Person" shall mean a corporation, company, association and partnership, as well as an individual.

(9) "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.

(10) "Store and forward transfer" means the transmission of a patient's medical information either to or from an originating site or to or from the provider at the distant site, but does not require the patient being present nor must it be in real time.

(11) "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 occupational therapy.

(12) "Supervision" shall mean the interactive process between the licensed occupational therapist and the occupational therapy assistant. It shall be more than a paper review or cosignature. The supervising occupational therapist is responsible for insuring the extent, kind and quality of the services rendered by the occupational therapy assistant.

(13) "Telehealth" means the use of information and communications technologies consisting of telephones, remote patient monitoring devices or other electronic means which support

clinical health care, provider consultation, patient and professional health-related education, public health, health administration, and other services as described in regulation.

(14) "Telemedicine" means a form of telehealth which is the delivery of clinical health-care services by means of real time 2-way audio, visual, or other telecommunications or electronic communications, including the application of secure video conferencing or store and forward transfer technology to provide or support health-care delivery, which facilitate the assessment, diagnosis, consultation, treatment, education, care management and self-management of a patient's health care by a licensee practicing within his or her scope of practice as would be practiced in-person with a patient and with other restrictions as defined in regulation.

[65 Del. Laws, c. 172, § 1](#); [70 Del. Laws, c. 186, § 1](#); [71 Del. Laws, c. 293, § 1](#); [74 Del. Laws, c. 262, § 37](#); [80 Del. Laws, c. 80, § 11](#);

§ 2003 Board of Occupational Therapy Practice; appointments; qualifications; term; vacancies; suspension or removal; unexcused absences; compensation.

(a) There is created a State Board of Occupational Therapy Practice which shall administer and enforce this chapter.

(b) The Board shall consist of 5 members appointed by the Governor, who are residents of this State: Three professional members, 2 of whom shall be occupational therapists licensed under this chapter, 1 may be a licensed occupational therapy assistant, and 2 public members. The public members shall not be, nor ever have been, occupational therapists or occupational therapy assistants, nor members of the immediate family of an occupational therapist or occupational therapy assistant; shall not have been employed by an occupational therapist or occupational therapy assistant; shall not have a material interest in the providing of goods and services to occupational therapists or occupational therapy assistants; nor have been engaged in an activity directly related to occupational therapy. The public members shall be accessible to inquiries, comments and suggestions from the general public.

(c) Except as provided in subsection (d) of this section, each member shall serve a term of 3 years, and may succeed himself or herself for 1 additional term; provided however, that where a member was initially appointed to fill a vacancy, such member may succeed himself or herself for only 1 additional full term. Any person appointed to fill a vacancy on the Board shall hold office for the remainder of the unexpired term of the former member. Each term of office shall

expire on the date specified in the appointment; however, the Board member shall remain eligible to participate in Board proceedings unless and until replaced by the Governor. Persons who are members of the Board on June 17, 1998, shall complete their terms.

(d) A person who has never served on the Board may be appointed to the Board for 2 consecutive terms; but no such person shall thereafter be eligible for 2 consecutive appointments. No person, who has been twice appointed to the Board or who has served on the Board for 6 years within any 9-year period, shall again be appointed to the Board until an interim period of at least 1 year has expired since such person last served.

(e) Any act or vote by a person appointed in violation of this section shall be invalid. An amendment or revision of this chapter is not sufficient cause for any appointment or attempted appointment in violation of subsection (d) of this section, unless such an amendment or revision amends this section to permit such an appointment.

(f) A member of the Board shall be suspended or removed by the Governor for misfeasance, nonfeasance or malfeasance. A member subject to disciplinary hearing shall be disqualified from Board business until the charge is adjudicated or the matter is otherwise concluded. A Board member may appeal any suspension or removal to the Superior Court.

(g) No member of the Board, while serving on the Board, shall hold elective office in any professional association of occupational therapists or occupational therapy assistants; this includes a prohibition against serving as head of the professional association's Political Action Committee (PAC).

(h) Chapter 58 of Title 29 shall apply to all members of the Board.

(i) Any member who is absent without adequate reason for 3 consecutive meetings, or fails to attend at least 1/2 of all regular business meetings during any calendar year, shall be guilty of neglect of duty.

(j) Each member of the Board shall be reimbursed for all expenses involved in each meeting, including travel, and in addition shall receive compensation per meeting attended in an amount determined by the Division in accordance with Del. Const. art. III, § 9.

[65 Del. Laws, c. 172, § 1](#); [66 Del. Laws, c. 400, § 1](#); [67 Del. Laws, c. 368, § 11](#); [70 Del. Laws, c. 186, § 1](#); [71 Del. Laws, c. 293, § 1](#); [81 Del. Laws, c. 85, § 10](#);

§ 2004 Organization; meetings; officers; quorum.

- (a) The Board shall hold regularly scheduled business meetings at least once in each quarter of a calendar year, and at such times as the chair deems necessary; or at the request of a majority of the Board members.
- (b) The Board shall elect annually from its members a chair, vice-chair and secretary. Each officer shall serve for 1 year, and shall not succeed himself or herself for more than 2 consecutive terms. In the event of a vacancy in 1 of the offices, a replacement shall be elected at the next Board meeting.
- (c) A majority of the members shall constitute a quorum for the purpose of transacting business. No disciplinary action shall be taken without the affirmative vote of 3 members of the Board.
- (d) Minutes of all meetings shall be recorded, and copies shall be maintained by the Division of Professional Regulation. At any hearing where evidence is presented, a record from which a verbatim transcript can be prepared shall be made. The expense of preparing any transcript shall be incurred by the person requesting it.

[65 Del. Laws, c. 172, § 1](#); [66 Del. Laws, c. 400, § 2](#); [70 Del. Laws, c. 186, § 1](#); [71 Del. Laws, c. 293, § 1](#);

§ 2005 Records.

The Division of Professional Regulation shall keep a register of all approved applications for license as an occupational therapist and occupational therapy assistant, and complete records relating to meetings of the Board, examinations, rosters, changes and additions to the Board's rules and regulations, complaints, hearings and such other matters as the Board shall determine. Such records shall be prima facie evidence of the proceedings of the Board.

[71 Del. Laws, c. 293, § 1](#);

§ 2006 Powers and duties.

- (a) The Board of Occupational Therapy Practice shall have authority to:
- (1) Formulate rules and regulations, with appropriate notice to those affected; all rules and regulations shall be promulgated in accordance with the procedures specified in the

Administrative Procedures Act [Chapter 101 of Title 29] of this State. Each rule or regulation shall implement or clarify a specific section of this chapter;

(2) Designate the application form to be used by all applicants, and to process all applications;

(3) Designate the written, standardized examination as approved by the National Board for Certification in Occupational Therapy, Inc., or its successor, to be taken by all persons applying for licensure; applicants who qualify for licensure by reciprocity shall have achieved a passing score on the national examination;

(4) The Board shall adopt the administration, grading procedures and passing score of the National Board for Certification in Occupational Therapy, Inc., or a comparable alternative national or regional examination, if a national examination is not available;

(5) Establish minimum education, training and experience requirements for licensure as occupational therapists and occupational therapy assistants;

(6) Evaluate the credentials of all persons applying for a license to practice occupational therapy and to practice as occupational therapy assistants in Delaware, in order to determine whether such persons meet the qualifications for licensing set forth in this chapter.

(7) Grant licenses to, and renew licenses of, all persons who meet the qualifications for licensure and/or renewal of licenses;

(8) Establish by rule and regulation continuing education standards required for license renewal;

(9) Evaluate certified records to determine whether an applicant for licensure, who has been previously licensed, certified or registered in another jurisdiction to practice occupational therapy or to act as an occupational therapy assistant, has engaged in any act or offense that would be grounds for disciplinary action under this chapter and whether there are disciplinary proceedings or unresolved complaints pending against such applicants for such acts or offenses;

(10) Refer all complaints from licensees and the public concerning licensed occupational therapists and occupational therapy assistants, or concerning practices of the Board or of the profession, to the Division of Professional Regulation for investigation pursuant to § 8735 of

Title 29; and assign a member of the Board to assist the Division in an advisory capacity with the investigation of the technical aspects of the complaint;

(11) Conduct hearings and issue orders in accordance with procedures established pursuant to this chapter and Chapter 101 and § 8735 of Title 29. Where such provisions conflict with this chapter, this chapter shall govern. The Board shall determine whether or not an occupational therapist or occupational therapy assistant shall be subject to a disciplinary hearing, and, if so, shall conduct such hearing in accordance with this chapter and the Administrative Procedures Act [Chapter 101 of Title 29];

(12) Where it has been determined after a disciplinary hearing, that penalties or sanctions should be imposed, to designate and impose the appropriate sanction or penalty after time for appeal has lapsed.

(b) The Board of Occupational Therapy shall promulgate regulations specifically identifying those crimes which are substantially related to the practice of occupational therapy.

[65 Del. Laws, c. 172, § 1; 71 Del. Laws, c. 293, § 1; 74 Del. Laws, c. 262, § 38.;](#)

APPENDIX B: REGULATIONS

**TITLE 24 REGULATED PROFESSIONS AND OCCUPATIONS
DELAWARE ADMINISTRATIVE CODE**

1

**DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION**

2000 Board of Occupational Therapy Practice

1.0 Supervision/consultation Requirements for Occupational Therapy Assistants

1.1 "Occupational therapy assistant" shall mean a person licensed to assist in the practice of occupational therapy under the supervision of an occupational therapist. 24 Del.C. §2002(4).

"Under the supervision of an occupational therapist" means the interactive process between the licensed occupational therapist and the occupational therapy assistant. It shall be more than a paper review or co-signature. The supervising occupational therapist is responsible for insuring the extent, kind, and quality of the services rendered by the occupational therapy assistant.

The phrase, "Under the supervision of an occupational therapist," as used in the definition of occupational therapist assistant includes, but is not limited to the following requirements:

- 1.1.1 Communicating to the occupational therapy assistant the results of patient/client evaluation and discussing the goals and program plan for the patient/client;
- 1.1.2 In accordance with supervision level and applicable health care, educational, professional and institutional regulations, reevaluating the patient/client, reviewing the documentation, modifying the program plan if necessary and co-signing the plan.
- 1.1.3 Case management;
- 1.1.4 Determining program termination;
- 1.1.5 Providing information, instruction and assistance as needed;
- 1.1.6 Observing the occupational therapy assistant periodically; and
- 1.1.7 Preparing on a regular basis, but at least annually, a written appraisal of the occupational therapy assistant's performance and discussion of that appraisal with the assistant.

The supervisor may assign to a competent occupational therapy assistant the administration of standardized tests, the performance of activities of daily living evaluations and other elements of patient/client evaluation and reevaluation that do not require the professional judgment and skill of an occupational therapist.

1.2 Supervision for Occupational Therapy Assistants is defined as follows:

- 1.2.1 Direct Supervision requires the supervising occupational therapist to be on the premises and immediately available to provide aid, direction, and instruction while treatment is performed in any setting including home care. Occupational therapy assistants with experience of less than one (1) full year are required to have direct supervision.
- 1.2.2 Routine Supervision requires direct contact at least every two (2) weeks at the site of work, with interim supervision occurring by other methods, such as telephonic or written communication.
- 1.2.3 General Supervision requires at least monthly direct contact, with supervision available as needed by other methods.

1.3 Minimum supervision requirements:

- 1.3.1 Occupational therapy assistants with experience of less than one (1) full year are required to have direct supervision.
Occupational therapy assistants with experience greater than one (1) full year must be supervised under either direct, routine or general supervision based upon skill and experience in the field as determined by the supervising OT.
- 1.3.2 Supervising occupational therapists must have at least one (1) year clinical experience after they have received permanent licensure.
- 1.3.3 An occupational therapist may supervise up to three (3) occupational therapy assistants but never more than two (2) occupational therapy assistants who are under direct supervision at the same time on any given day.
- 1.3.4 Effective July 1, 2009, the supervising occupational therapist shall submit to the Board a completed Verification of Occupational Therapy Assistant Supervision form upon the commencement of supervision.

2

**TITLE 24 REGULATED PROFESSIONS AND OCCUPATIONS
DELAWARE ADMINISTRATIVE CODE**

- 1.3.5 Effective July 1, 2009, the supervising occupational therapist shall immediately advise the Board in writing when he or she is no longer supervising an occupational therapy assistant and shall provide the Board with an updated Verification of Occupational Therapy Assistant Supervision form.
- 1.3.6 Levels of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen level of supervision should be reevaluated regularly for effectiveness.
- 1.3.7 The supervising occupational therapist, in collaboration with the occupational therapy assistant, shall maintain a written supervisory plan specifying the level of supervision and shall document the supervision of each occupational therapy assistant. Levels of supervision should be determined by the occupational therapist before the individuals enter into a supervisor/supervisee relationship. The chosen level of supervision should be reevaluated regularly for effectiveness. This plan shall be reviewed at least every six months or more frequently as demands of service changes.
- 1.3.8 A supervisor who is temporarily unable to provide supervision shall arrange for substitute supervision by an occupational therapist licensed by the Board with at least one (1) year of clinical experience, as defined above, to provide supervision as specified by Section 1.0 of these rules and regulations.

- 2 DE Reg. 2040 (05/01/99)**
- 12 DE Reg. 1232 (03/01/09)**
- 13 DE Reg. 1095 (02/01/10)**
- 18 DE Reg. 995 (06/01/15)**
- 20 DE Reg. 821 (04/01/17)**

2.0 Licensure Procedures:

- 2.1 To apply for an initial license, including relicensure after expiration, an applicant shall submit to the Board:
 - 2.1.1 A completed notarized application on the form approved by the Board;
 - 2.1.2 Verification of a passing score on the NBCOT standardized exam submitted by the exam service or NBCOT;
 - 2.1.2.1 If the date of application for licensure is more than three years following the successful completion of the NBCOT exam, the applicant shall submit proof of twenty (20) hours of continuing education in the two years preceding the application in accordance with Section 5.0 of these rules and regulations.
 - 2.1.3 Official transcript and proof of successful completion of field work submitted by the school directly to the Board office;
 - 2.1.4 Fee payable to the State of Delaware.
- 2.2 To apply for a reciprocal license, in addition to the requirements listed in 24 Del.C. §2011, an applicant shall submit the following to the Board:
 - 2.2.1 A completed notarized application on the form approved by the Board;
 - 2.2.2 Verification of a passing score on the NBCOT standardized exam submitted by the exam service or NBCOT;
 - 2.2.3 Letter of good standing from any state in which the applicant is or has been licensed (applicants are responsible for forwarding blank verification form to all states where they are now or ever have been licensed);
 - 2.2.4 Fee payable to the State of Delaware.
- 2.3 Only completed application forms will be accepted. Any information submitted to the Board is subject to verification.
- 2.4 To apply for renewal, an applicant shall submit:
 - 2.4.1 A completed online renewal application;
 - 2.4.2 Renewal fee payable to the State of Delaware.
 - 2.4.3 Evidence of completion of the required continuing education.
- 2.5 To apply for inactive status:

A licensee may, upon written request to the Board and payment of the fee established by the Division of Professional Regulation, have his/her license placed on inactive status if he/she is not actively engaged in the

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practice of occupational therapy in the State. To renew an inactive license, a licensee shall submit an online renewal application and renewal fee payable to the State of Delaware.

- 2.6 To apply for reactivation of an inactive license, a licensee shall submit:
 - 2.6.1 A reactivation request form;
 - 2.6.2 Proof of continuing education attained within the past two years (20 contact hours). The twenty (20) hours must be in accordance with Section 3.0 of these rules and regulations;
 - 2.6.3 Fee payable to the State of Delaware.
- 2.7 To apply for renewal of an expired license, an applicant shall (within one year of the expiration date):
 - 2.7.1 file a renewal application online at www.dpr.delaware.gov;
 - 2.7.2 attest on the renewal application to the completion of continuing education as required in accordance with Section 3.0 of these regulations;
 - 2.7.3 pay a renewal and late fee as determined by the Division of Professional Regulation;
 - 2.7.4 all late renewals shall be audited for compliance with CE renewal requirements;
 - 2.7.5 any licensee whose license is in an expired status as of July 31, 2014 must either renew the license no later than July 31, 2016 or fulfill the requirements of subsection 2.1.

- 6 DE Reg. 1331 (04/01/03)
- 9 DE Reg. 1768 (05/01/06)
- 11 DE Reg. 926 (01/01/08)
- 13 DE Reg. 1095 (02/01/10)
- 18 DE Reg. 995 (06/01/15)
- 20 DE Reg. 821 (04/01/17)

3.0 Continuing Education

- 3.1 Continuing Education Content Hours
 - 3.1.1 Continuing education (CE) is required for license renewal and shall be completed by July 31st of each even numbered year. Occupational therapists and occupational therapy assistants are required to complete 20 hours per biennial period. Continuing education must be earned in two (2) or more of the seven (7) categories for continuing education described in subsection 3.5.
 - 3.1.1.1 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Section 3.0;
 - 3.1.1.2 Attestation shall be completed electronically;
 - 3.1.1.3 Licensees selected for random audit are required to supplement the attestation with attendance verification as provided in subsection 3.1.2.
 - 3.1.2 Random audits will be performed by the Board to ensure compliance with the CE requirement.
 - 3.1.2.1 The Board will notify licensees after July 31 of each biennial renewal period that they have been selected for audit.
 - 3.1.2.2 Licensees selected for random audit shall be required to submit verification within ten (10) business days of the date of notification of selection for audit.
 - 3.1.2.3 Verification shall include such information necessary for the Board to assess whether the course or other activity meets the CE requirements in Section 3.0, which may include, but is not limited to, the information noted for each type of CE as set forth in subsection 3.3.
 - 3.1.2.4 The Board shall review all documentation submitted by licensees pursuant to the continuing education audit. If the Board determines that the licensee has met the continuing education requirements, his or her license shall remain in effect. If the Board determines that the licensee has not met the continuing education requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. The hearing will be conducted to determine if there are any extenuating circumstances justifying noncompliance with the continuing education requirements. Unjustified noncompliance with the continuing education requirements set forth in these rules and regulations shall constitute a violation of 24 Del.C. §2015(a)(5) and the licensee may be subject to one or more of the disciplinary sanctions set forth in 24 Del.C. §2017.
 - 3.1.3 Contact hours shall be prorated for new licensees in accordance with the following schedule:
 - 3.1.3.1 *21 months up to and including 24 months remaining in the licensing cycle requires 20 hours
 - 3.1.3.2 *16 months up to an including 20 months remaining in the licensing cycle requires 15 hours

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- 3.1.3.3 *11 months up to and including 15 months remaining in the licensing cycle requires 10 hours
- 3.1.3.4 *10 months or less remaining in the licensing cycle - exempt
- 3.2 Definition of Acceptable Continuing Education Credits:
 - 3.2.1 Continuing education must be earned in two (2) or more of the seven (7) categories for continuing education described in subsection 3.5.
- 3.3 Continuing Education Content:
 - 3.3.1 Continuing education must be in a field of health and social services related to occupational therapy, must be related to a licensee's current or anticipated roles and responsibilities in occupational therapy, and must directly or indirectly serve to protect the public by enhancing the licensee's continuing competence.
 - 3.3.2 Approval will be at the discretion of the Board. A licensee or continuing education provider may request prior approval by the Board by submitting an outline of the activity before it is scheduled. The Board pre-approves continuing education sponsored or approved by AOTA or offered by AOTA-approved providers as long as the content is not within the exclusion in subsection 3.5.1.1 for courses covering documentation for reimbursement or other business matters.
 - 3.3.3 CE earned in excess of the required credits for the two (2) year period may not be carried over to the next biennial period.
- 3.4 Definition of Contact Hours:
 - 3.4.1 "Contact Hour" means a unit of measure for a continuing education activity. One contact hour equals 60 minutes in a learning activity, excluding meals and breaks."
 - 3.4.2 One (1) academic semester hour shall be equal to fifteen (15) contact hours.
 - 3.4.3 One (1) academic quarter hour shall be equal to ten (10) contact hours.
 - 3.4.4 The preparing of original lectures, seminars, or workshops in occupational therapy or health care subjects shall be granted one (1) contact hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.
- 3.5 Continuing Education Categories:
 - 3.5.1 Category 1: Courses: (Classroom or home study/correspondence/online) The maximum credit for course work shall not exceed nineteen (19) hours. Course work involving alternative therapies shall be limited to five (5) hours. Course work by home study, correspondence or online of a non-interactive nature shall be limited to ten (10) hours. Extension courses, refresher courses, workshops, seminars, lectures, conferences, and non patient-specific in-service training qualify under this provision as long as they are presented in a structured educational experience beyond entry-level academic degree level and satisfy the criteria in subsection 3.3.1.
 - 3.5.1.1 Excluded are any job related duties in the workplace such as fire safety, OSHA or CPR. Also excluded are courses covering documentation for reimbursement or other business matters.
 - 3.5.1.2 Documentation for continuing education courses shall include a certificate of completion or similar documentation including name of course, date, author/instructor, sponsoring organization, location, and number of hours attended and amount of continuing education credit earned.
 - 3.5.1.3 Documentation for academic coursework shall include an original official transcript indicating successful completion of the course, date, and a description of the course from the school catalogue or course syllabus.
 - 3.5.1.4 Documentation for other courses in this category shall include information sufficient for the Board to determine whether the course is appropriate for CE credit and the number of hours of the course. This may include, but is not limited to, the forms of documentation cited above.
 - 3.5.2 Category 2: Professional Meetings & Activities: The maximum number of credit hours shall not exceed ten (10) hours. Approved credit includes attendance at: DOTA business meetings, AOTA business meetings, AOTA Representative Assembly meetings, NBCOT meetings, OT Licensure Board meetings and AOTA National Round Table discussions. Credit will be given for participation as an elected or appointed member/officer on a board, committee or council in the field of health and social service related to occupational therapy. Seminars or other training related to management or administration are considered professional activities. Excluded are any job related meetings such as department meetings, supervision of students and business meetings within the work setting.
 - 3.5.2.1 Excluded are any job related meetings such as department meetings, supervision of students and business meetings within the work setting.

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- 3.5.2.2 Documentation includes name of committee or board, name of agency or organization, purpose of services, and description of licensee's role. Participation must be validated by an officer or representative of the organization or committee.
 - 3.5.3 Category 3: Publications: The maximum number of credit hours shall not exceed fifteen (15) hours. These include writing chapters, books, abstracts, book reviews accepted for publication and media/ video for professional development in any venue.
 - 3.5.3.1 Documentation shall include the full reference for publication including title, author, editor and date of publication; or a copy of acceptance letter if not yet published.
 - 3.5.4 Category 4: Presentations: The maximum number of credit hours shall not exceed fifteen (15) hours. This includes workshops and community service organizations presentations that the licensee presents. The preparation of original lectures, seminars, or workshops in occupational therapy or health care subjects shall be granted one (1) hour for preparation for each contact hour of presentation. Credit for preparation shall be given for the first presentation only.
 - 3.5.4.1 Credit will not be given for the presentation of information that the licensee has already been given credit for under another category.
 - 3.5.4.2 Excluded are presentations that are part of a licensee's job duties.
 - 3.5.4.3 Documentation includes a copy of the official program/schedule/syllabus including presentation title, date, hours of presentation, and type of audience or verification of such signed by sponsor.
 - 3.5.5 Category 5: Research/Grants: Credit may be awarded one time for contact hours per study/topic regardless of length of project, not to exceed ten (10) hours. Contact hours accumulated under this category may not be used under the publication category.
 - 3.5.5.1 Documentation for research includes verification from the primary investigator indicating the name of the research project, dates of participation, major hypotheses or objectives of the project, and licensee's role in the project.
 - 3.5.5.2 Documentation for grants includes the name of the grant proposal, name of the grant source, purpose and objectives of the project, and verification from the grant author regarding the licensee's role in the development of the grant if not the grant author.
 - 3.5.6 Category 6: Specialty Certification: Approval for credit hours for specialty certification, requiring successful completion of courses and exams attained during the current licensure period will be at the discretion of the Board. Examples include Certified Hand Therapist (CHT) and Occupational Therapist, Board Certified in Pediatrics (BCP).
 - 3.5.6.1 Documentation includes a certificate of completion or other documentation from the recognized certifying body that identifies satisfactory completion of the requirements for obtaining board certification of specialty certification.
 - 3.5.7 Category 7: Fieldwork Supervision: The maximum number of credit hours shall not exceed ten (10) hours. One CE hour may be awarded for each Level I OT or OTA fieldwork student. One CE hour may be awarded for each week of participation as the primary clinical fieldwork educator for Level II OT or OTA fieldwork students.
 - 3.5.7.1 Documentation shall include verification provided by the school to the fieldwork educator with the name of student, school, and dates of fieldwork or the signature page of the completed student evaluation form. Evaluation scores and comments should be deleted or blocked out.
- 3.6 The Board may waive or postpone all or part of the continuing education activity requirements of these regulations if an occupational therapist or occupational therapy assistant submits written request for a waiver and provides evidence to the satisfaction of the Board of an illness, injury, financial hardship, family hardship, or other similar extenuating circumstance which precluded the individual's completion of the requirements.
- 6 DE Reg. 1331 (04/01/03)
 9 DE Reg. 1768 (05/01/06)
 11 DE Reg. 926 (01/01/08)
 13 DE Reg. 1095 (02/01/10)
 18 DE Reg. 995 (06/01/15)
 20 DE Reg. 821 (04/01/17)

4.0 Telehealth

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- 4.1 Telehealth is the use of electronic communications to provide and deliver a host of health-related information and health-care services including occupational therapy services as defined in 24 Del.C. §2002.
- 4.2 The Occupational Therapist and Occupational Therapist Assistant (referred to as "licensee" for the purpose of this regulation) who provides treatment through telehealth shall meet the following requirements:
 - 4.2.1 Location of patient during treatment through telehealth
 - 4.2.1.1 An occupational therapy practitioner is required to be licensed in Delaware if the practitioner provides occupational therapy services to a client who is in Delaware.
 - 4.2.2 Informed consent
 - 4.2.2.1 Before services are provided through telehealth, the licensee shall obtain written, informed consent from the patient, or other appropriate person with authority to make health care treatment decisions for the patient.
 - 4.2.2.1.1 The use of electronic communications in the provision of care;
 - 4.2.2.1.2 The potential breach of confidentiality, or inadvertent access, of protected health information using electronic communication in the provision of care; and
 - 4.2.3 Confidentiality: The licensee shall ensure that the electronic communication is secure to maintain confidentiality of the patient's medical information as required by the Health Insurance Portability and Accountability Act (HIPAA) and other applicable Federal and State laws. Confidentiality shall be maintained through appropriate processes, practices and technology, including disposal of electronic equipment and data.
 - 4.2.4 Competence and scope of practice
 - 4.2.4.1 The licensee shall be responsible for determining and documenting that telehealth is an appropriate level of care for the patient.
 - 4.2.4.2 The licensee shall comply with the Board's law and rules and regulations and all current standards of care requirements applicable to onsite care.
 - 4.2.4.3 The licensee shall limit the practice of telehealth to the area of competence in which proficiency has been gained through education, training and experience.
 - 4.2.4.4 The occupational therapist who screens, evaluates, writes or implements the plan of care is responsible for determining the need for the physical presence of an occupational therapy practitioner during any interactions with clients.
 - 4.2.4.5 Subject to the supervision requirements of Board subsection 1.2, the occupational therapist will determine the amount and level of supervision needed during telehealth.
 - 4.2.4.6 The licensee shall document in the file or record which services were provided by telehealth.

20 DE Reg. 821 (04/01/17)

5.0 Competence to Administer Treatment Modalities

Upon the request of the Board, or a member of the public, the licensee shall produce documentation demonstrating his or her competence to administer a particular treatment modality. Competence may be shown by documented professional education, such as continuing education, in-service training or accredited higher education programs with documented coursework related to the modality in question. Determination of competence is at the discretion of the Board.

- 13 DE Reg. 1095 (02/01/10)
- 18 DE Reg. 995 (06/01/15)
- 20 DE Reg. 821 (04/01/17)

6.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

- 6.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.
- 6.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

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- 6.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).
- 6.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.
- 6.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection 4.8 of this section.
- 6.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
 - 6.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
 - 6.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.
 - 6.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
 - 6.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.
 - 6.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.
 - 6.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- 6.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- 6.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time

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during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

- 6.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.
- 6.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- 6.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.
- 6.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

13 DE Reg. 1095 (02/01/10)

20 DE Reg. 821 (04/01/17)

7.0 Crimes substantially related to practice of occupational therapy

- 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

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- 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

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- 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, methamphetamines, 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 regulation.
 - 2 DE Reg. 2040 (05/01/99)
 - 6 DE Reg. 1331 (04/01/03)
 - 8 DE Reg. 1449 (04/01/05)
 - 9 DE Reg. 587 (10/01/05)
 - 9 DE Reg. 1768 (05/01/06)
 - 11 DE Reg. 926 (01/01/08)
 - 12 DE Reg. 1232 (03/01/09)
 - 13 DE Reg. 1095 (02/01/10)
 - 18 DE Reg. 995 (06/01/15)
 - 20 DE Reg. 821 (04/01/17)

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APPENDIX C: ORGANIZATIONAL CHART

ORGANIZATIONAL CHART – CURRENT

09/30/2017

