

CHAPTER 424
FORMERLY
HOUSE BILL NO. 462

AN ACT TO AMEND TITLE 24 OF THE DELAWARE CODE RELATING TO THE BOARD OF OCCUPATIONAL THERAPY PRACTICE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2001, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter I. Board ~~Of~~ of Occupational Therapy Practice.

§ 2001. Objectives.

(a) 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.

(b) The secondary objectives of the Board are to maintain minimum standards of ~~practitioner~~ licensee competency and ~~to maintain~~ certain standards in the delivery of services to the public. In meeting its objectives, the Board shall do all of the following:

(1) ~~develop~~ Develop standards assuring professional ~~competence~~; competence.

(2) ~~shall monitor~~ Monitor complaints brought against ~~practitioners~~ licensees regulated by the ~~Board~~; Board.

(3) ~~shall adjudicate~~ Adjudicate at formal ~~hearings~~; hearings.

(4) ~~shall promulgate~~ Promulgate rules and ~~regulations~~; and regulations.

(5) ~~shall impose~~ Impose sanctions where necessary against ~~practitioners~~ licensees.

(c) Nothing in this chapter ~~shall be deemed is~~ 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~~ licensees.

Section 2. Amend § 2002, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 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~~ As used in this chapter:

(1) "Applicant" means an individual who applies to be licensed under this chapter.

(1) "Board" ~~shall mean~~ means 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~~ this State is located while providing health-care services by means of telemedicine or telehealth.

(3) "Division" means the Division of Professional Regulation.

(3) "Excessive use or abuse of drugs or alcohol" or "excessively uses or abuses drugs or alcohol" shall mean means any use of narcotics, controlled ~~substances~~ 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) "Licensee" means an individual licensed under this chapter to practice occupational therapy services.

(4) "Occupational therapist" ~~shall mean~~ means a person who is licensed to practice occupational therapy ~~pursuant to~~ under this chapter and ~~who~~ offers such services to the public under any title incorporating the words "occupational therapy," "occupational ~~therapist~~" therapist," or any similar title or description of occupational therapy services.

(5) "Occupational therapy assistant" ~~shall mean~~ means a person licensed to assist in the practice of occupational ~~therapy,~~ therapy under the supervision of an occupational therapist.

(6)a. "Occupational therapy services" ~~shall mean, but are not limited to~~ includes any of the following:

a. 1. The assessment, ~~treatment~~ treatment, and education of or consultation with ~~the~~ an individual, ~~family~~ family, or other ~~persons;~~ or persons.

b. 2. Interventions directed toward developing, ~~improving~~ improving, or restoring daily living skills, work readiness or work performance, play ~~skills~~ skills, or leisure ~~capacities,~~ capacities, or enhancing educational performance ~~skills;~~ or skills.

e. 3. Providing for the development, ~~improvement~~ improvement, or restoration of sensorimotor, oralmotor, perceptual or neuromuscular functioning, or emotional, motivational, ~~eognitive~~ cognitive, or psychosocial components of performance.

b. ~~These services~~ "Occupational therapy services" or "practice of occupational therapy" may require assessment of the need for use of interventions such as the design, development, adaptation, ~~application~~ application, or training in the use of assistive technology devices; the design, ~~fabrication~~ 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,~~ including paraffin, hot and cold ~~packs~~ packs, and fluído 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.

c. "Occupational therapy services" or "practice of occupational therapy" ~~Services~~ may be provided through the use of telemedicine in a manner deemed appropriate by ~~regulation.~~ regulation and 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~~ the patient 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~~ means a corporation, company, ~~association~~ association, ~~and or~~ or partnership, as well as or an individual.

(9) "Practice of occupational therapy" ~~shall mean~~ means 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~~ differences, or the aging process, in order to maximize independence, prevent ~~disability~~ 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 or that the transmission~~ be in real time.

(11) "Substantially related" means the nature of the criminal ~~conduct~~, conduct for which ~~the a~~ a person was ~~convicted~~, 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~~ means the interactive process between ~~the a~~ a licensed occupational therapist and ~~the an~~ an occupational therapy ~~assistant. It shall be~~ assistant, and requires more than a paper review or cosignature. ~~The~~ "Supervision" means that the supervising occupational therapist is responsible for insuring the extent, ~~kind~~ kind, and quality of the services ~~rendered by the occupational therapy assistant that the occupational therapy assistant renders.~~

(13) "Telehealth" means the use of information and communications technologies consisting of telephones, remote patient monitoring ~~devices~~ 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~~ management, and self-management of a patient's health care by a licensee practicing within ~~his or her~~ the licensee's scope of practice as would be practiced in-person with a patient and with other restrictions as defined in regulation.

Section 3. Amend § 2003, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

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

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

(b) The Board ~~shall consist~~ consists of 5 members ~~appointed by the Governor,~~ who are residents of this State and appointed by the Governor as follows:

~~(1) Three professional members, 2 of whom shall be occupational therapists licensed under this chapter,~~ Two occupational therapists.

~~(2) 1 may be a licensed occupational therapy assistant, and~~ One occupational therapy assistant.

~~(3) 2 public members. The public members shall~~ Two public members, who must meet all of the following qualifications:

a. ~~not~~ Not be, nor ever have been, an occupational ~~therapists~~ therapist or occupational therapy ~~assistants,~~ assistant.

b. ~~not members~~ Not be, nor ever have been, a member of the immediate family of an occupational therapist or occupational therapy ~~assistant;~~ assistant.

c. ~~shall not have been~~ Not be, nor ever have been employed by an occupational therapist or occupational therapy ~~assistant;~~ assistant.

d. ~~shall not~~ Not have a material interest in the providing of goods and services to an occupational ~~therapists~~ therapist or occupational therapy ~~assistants;~~ assistant.

e. ~~not~~ Not 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. Each member is appointed for a term of 3 years. A member may succeed the member's term for 1 additional term, and may not be appointed again until a period of 3 years has expired.~~

~~(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~~ member appointed in violation of this section ~~shall be~~ is 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~~ the amendment or revision amends this section to permit ~~such an~~ the appointment.

~~(f)(1) A member of the Board shall be suspended or removed by the Governor for misfeasance, nonfeasance or malfeasance. The Governor may remove a member for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. If a member is absent from 3 consecutive meetings or attends less than 50% of meetings in a 12 month period, the member is in neglect of duty and may be assumed to have resigned, and the Governor may accept the member's resignation.~~

~~(2) A member subject to disciplinary hearing shall be is 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 A member of the Board, while serving on the Board, shall may not hold elective office in any professional association of occupational therapists or occupational therapy assistants; this includes a prohibition against assistants, including serving as head of the professional association's Political Action Committee (PAC).~~

~~(h) The law regulating the conduct of officers and employees of the State under Chapter 58 of Title 29 shall apply applies 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 must be reimbursed for all expenses involved in each meeting, including travel, and in addition shall must receive compensation per meeting attended in an amount determined by the Division in accordance with Del. Const. art. III, § 9.~~

Section 4. Amend § 2004, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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~~ necessary and at the request of a majority of the Board members.

(b) The Board shall elect annually from its members a chair, ~~vice chair~~ vice-chair, and secretary. Each officer shall serve for 1 year, and shall may not succeed ~~himself or herself~~ the officer's term for more than 2 consecutive terms. In the event of a vacancy in 1 of the offices, the Board shall elect a replacement ~~shall be elected~~ at the next Board meeting.

(c) A majority of the members ~~shall constitute~~ constitutes a quorum for the purpose of transacting business. ~~No~~ The Board may not take disciplinary action ~~shall be taken~~ without the affirmative vote of at least 3 members ~~of the Board~~.

(d) Minutes of all meetings shall must be recorded, and ~~copies shall be maintained by the Division of Professional Regulation~~ shall maintain copies of meeting minutes. At any hearing where evidence is presented, a record must be made from which a verbatim transcript can be prepared ~~shall be made~~. The person requesting the transcript must pay for the expense of preparing ~~any~~ the transcript ~~shall be incurred by the person requesting it~~.

Section 5. Amend § 2005, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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~~ changes, and additions to the Board's rules and regulations, complaints, ~~hearings~~ hearings, and ~~such any~~ such any other matters as ~~that~~ that the Board ~~shall determine~~ determines. ~~Such~~ The records ~~shall be~~ are prima facie evidence of the Board's proceedings ~~of the Board~~.

Section 6. Amend § 2006, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline and by redesignating accordingly as follows:

§ 2006. Powers and duties.

(a) The Board of Occupational Therapy Practice ~~shall have authority to~~ may do all of the following:

(1) Formulate rules and regulations, with appropriate notice to those ~~affected~~; ~~all rules~~ affected. Rules and regulations ~~shall~~ must 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~~ must implement or clarify a specific section of this ~~chapter~~; chapter.

(2) Designate the application form to be used by all ~~applicants~~; applicants and ~~to~~ process all ~~applications~~; 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~~ that an applicant must pass to qualify for licensure. An applicant who ~~qualify~~ qualifies for licensure by reciprocity ~~shall~~ must have achieved a passing score on the national ~~examination~~; 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~~ training, and experience requirements for ~~licensure as occupational therapists and occupational therapy assistants~~; licensure.

(6) Evaluate ~~the~~ an applicant's 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 applicant meets the qualifications for licensing ~~set forth in~~ under this chapter.

(7) Grant licenses to, and renew licenses of, ~~all persons who meet~~ an applicant or licensee who meets the qualifications for licensure ~~and/or~~ or renewal of ~~licenses~~; licenses.

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

(9) Evaluate certified records to determine whether an applicant ~~for licensure~~, who has been previously licensed, ~~certified~~ certified, or registered in another jurisdiction to practice occupational therapy or to

act as an occupational therapy ~~assistant~~, assistant has engaged in any act or offense that would be grounds for disciplinary action under this ~~chapter~~ chapter, and whether ~~there are~~ any disciplinary proceedings or unresolved complaints are pending against ~~such applicants for such acts or offenses~~; the applicant for the act or offense.

(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~~, licensees, the Board's practices, or the profession to the Division of Professional Regulation for investigation pursuant to under § 8735 of Title 29; 29, and assign a ~~member of the Board~~ member to assist the Division in an advisory capacity with the investigation of the technical aspects of the ~~complaint~~; complaint. A Board member who is assigned to assist the Division under this paragraph may not participate in deliberations on the complaint.

(11) Conduct hearings and issue orders in accordance with procedures established ~~pursuant to under~~ under this ~~chapter and chapter~~, Chapter 101 of Title 29, 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~~ a licensee is subject to a disciplinary ~~hearing~~; hearing and, if so, shall conduct ~~such~~ the hearing in accordance with this chapter and the Administrative Procedures Act [Chapter 101 of Title 29; 29].

(12) ~~Where it has been determined after a disciplinary hearing,~~ If the Board determines 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.

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

Section 7. Amend § 2007, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter II. License.

§ 2007. License required.

(a) ~~No~~ A person ~~shall~~ may not engage in the practice of occupational therapy or hold ~~himself or herself~~ the person out to the public in this State as being qualified to practice as an occupational therapist or occupational therapy ~~assistant~~; assistant, or use in connection with the person's name, or otherwise assume or use, any title or description conveying or tending to convey the impression that ~~such~~ the person is qualified to practice occupational therapy, unless ~~such~~ the person has been ~~duly~~ licensed under this chapter.

(b) ~~Whenever~~ If a license to practice as an occupational therapist or occupational therapy assistant in this ~~state~~ State has expired or been suspended or revoked, it ~~shall be~~ is unlawful for the person holding the expired, suspended, or revoked license to practice occupational therapy in this State.

(c) It ~~shall be~~ is unlawful for ~~any person, or for any a person or~~ a person or business entity, ~~its~~ or a person's or business entity's employees, ~~agents~~ agents, or representatives to use in connection with ~~his, her or it's~~ the person's or business entity's name or business activity the words occupational therapist, occupational therapist registered, licensed occupational therapist, occupational therapy assistant, licensed occupational therapy ~~assistant,~~ assistant; the letters of OT, OT/L, OTR, OTR/L, OTA, COTA, ~~COTA/L~~ COTA/L; or any other words, letters, ~~abbreviations~~ abbreviations, or insignia indicating or implying directly or indirectly that occupational therapy services are ~~rendered~~ rendered, unless ~~such~~ the person or business entity is licensed under this chapter.

Section 8. Amend § 2008, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2008. Qualifications of applicant; report to Attorney General; judicial review.

(a) An applicant who is applying for licensure as an occupational therapist or occupational therapy assistant under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that ~~such person~~ the applicant meets all of the following qualifications:

(1) Has successfully completed the academic requirements of an educational program in occupational therapy ~~recognized by the Board; and that the Board recognizes. The occupational therapy education program and occupational therapist assistant educational program must be accredited by the Accreditation Council for Occupational Therapy Education.~~

~~a. The occupational therapy educational program shall be accredited by the Accreditation Council for Occupational Therapy Education (ACOTE);~~

~~b. The occupational therapy assistant educational program shall be accredited by the Accreditation Council for Occupational Therapy Education (ACOTE);~~

(2) Has successfully completed a period of supervised field work experience arranged by the recognized educational institution where the ~~person~~ applicant has met the academic requirements, or by the nationally recognized professional ~~association;~~ association.

(3) Has achieved the passing score on the written standardized examination developed by the National Board for Certification in Occupational Therapy, Inc., or its ~~successor;~~ successor.

(4)a. ~~Shall not have~~ Has not been the recipient of any administrative penalties regarding ~~that person's~~ the applicant's practice of occupational therapy, including ~~but not limited to fines, fines;~~ formal reprimands, reprimands; license suspensions or ~~revocation—(except~~ revocation, except for license revocations for nonpayment of license renewal ~~fees);~~ fees; or probationary ~~limitations and/or limitations.~~

~~b. has~~ Has not entered into any "consent agreements" which contain conditions placed by a Board on that ~~person's~~ applicant's professional conduct and practice, including any voluntary surrender of a license.

~~c.~~ The Board may determine, after a hearing, whether ~~such~~ an administrative penalty included in paragraph (4)a. and (4)b. of this section is grounds to deny ~~licensure;~~ licensure.

(5) ~~Shall not have any~~ Has no impairment related to drugs, ~~alcohol~~ alcohol, or a finding of mental incompetence by a physician that would limit the applicant's ability to undertake the practice of occupational therapy in a manner consistent with the safety of the ~~public;~~ public.

(6) ~~Shall~~ Does not have a criminal conviction ~~record, nor record or~~ pending criminal charge relating to an offense, the circumstances of which substantially relate to the practice of occupational therapy. Applicants who have criminal conviction records or pending criminal charges shall ~~require~~ request that the appropriate authorities ~~to~~ provide information about the record or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the record or charge is substantially related to the practice of occupational therapy. ~~However,~~ The Board may waive this paragraph (a)(6) of this section if, after a hearing or review of documentation demonstrating that the applicant meets the specified criteria for a waiver, the Board, by an affirmative vote of a ~~majority of the quorum,~~ majority of the quorum, ~~may waive this paragraph (a)(6), if~~ quorum, it finds all of the following:

a. For waiver of a felony conviction, more than 5 years have elapsed since the date of the conviction. At the time of the application the applicant may not be incarcerated, on work release, on probation, on ~~parole~~ parole, or serving any part of a suspended ~~sentence~~ sentence, and must be in substantial compliance with all court orders pertaining to fines, ~~restitution~~ restitution, and community service.

b. For waiver of a misdemeanor conviction or violation, at the time of the application the applicant ~~may~~ must not be incarcerated, on work release, on probation, on ~~parole~~ parole, or serving any part of a suspended ~~sentence~~ sentence, and must be in substantial compliance with all court orders pertaining to fines, ~~restitution~~ restitution, and community service.

c. The applicant is capable of practicing occupational therapy in a competent and professional manner.

d. ~~The granting of~~ Granting the waiver will not endanger the public health, ~~safety or welfare;~~ safety, or welfare.

(7) ~~Shall not have~~ Has not been convicted of a felony sexual ~~offense;~~ offense.

(8)a. Has submitted, at the applicant's expense, fingerprints and other necessary information in order to obtain all of the following:

a. 1. A report of the applicant's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Central Repository contains no ~~such information~~ criminal history record relating to that ~~person;~~ applicant.

b. 2. A report of the applicant's entire federal criminal history record ~~pursuant to~~ under the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification ~~shall be~~ is the intermediary for purposes of this section and the Board ~~of Occupational Therapy Practice shall be~~ is the screening point for the receipt of ~~said~~ the federal criminal history ~~records;~~ records.

e. ~~b.~~ An applicant may not be licensed to practice occupational therapy until the applicant's criminal history reports have been produced. ~~An~~ The Board may not license an applicant whose record shows a prior criminal conviction ~~may not be licensed by the Board~~ unless a waiver is granted ~~pursuant to~~ under paragraph (a)(6) of this section.

(b) ~~Where~~ If the Board ~~has found~~ finds to its satisfaction that an ~~application~~ applicant has been intentionally ~~fraudulent, or that false information has been intentionally supplied,~~ fraudulent or intentionally supplied false information, it shall report its findings to the Attorney General for further action.

(c) ~~Where the application of a person has been refused or rejected and such~~ If the Board refuses or rejects an application and the applicant ~~feels~~ believes that the Board has acted without ~~justification;~~ justification, ~~has~~ imposed higher or different standards for that applicant than for other applicants or ~~licensees;~~ licensees, or ~~has~~ in some other manner contributed to or caused the failure of ~~such~~ the application, the applicant may appeal to the Superior Court.

(d) ~~All individuals licensed to practice occupational therapy in this State shall be required to~~ Licensees ~~must~~ be fingerprinted by the State Bureau of Identification, at the licensee's expense, for the purposes of performing subsequent criminal background checks. ~~Licensees shall submit by January 1, 2016, at the applicant's expense, fingerprints and other necessary information in order to obtain a criminal background check.~~

Section 9. Amend § 2009, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2009. Applicability of chapter.

Nothing in this chapter ~~shall~~ may be construed as preventing or restricting the practice, ~~services~~ services, or activities of any of the following:

(1) ~~Any~~ A person registered or licensed in this State by any other law from engaging in the profession or occupation for which that person is ~~licensed;~~ licensed.

(2) ~~Any~~ A person pursuing a course of study leading to a degree or certificate in occupational therapy at an accredited or approved educational program if such activities and services constitute a part of a supervised course of study and if ~~such a~~ the person is designated by a title which clearly indicates that person's status as a student or ~~trainee;~~ trainee.

(3) ~~Any~~ A person fulfilling the supervised field work experience requirements of this chapter, if such activities and services constitute the requirements for ~~licensure;~~ or licensure.

(4) ~~Any~~ A visiting occupational therapist who teaches temporarily at an accredited or approved educational program, or who lectures or instructs participants at seminars sanctioned by the Delaware Occupational Therapy Association.

Section 10. Amend § 2010, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2010. Foreign-trained Applicants.

In addition to the ~~requirement~~ requirements of § 2008 of this title, a foreign-trained applicant ~~shall be~~ is eligible for licensure as an occupational therapist or as an occupational therapy assistant after submitting to the Board satisfactory evidence of graduation from a school offering a program in occupational therapy or occupational therapy assistant which has been approved for the educational preparation of occupational therapists or occupational therapy assistants by the appropriate accrediting agency recognized by the National Board for Certification in Occupational Therapy, Inc., or its successor.

Section 11. Amend § 2011, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2011. Reciprocity.

Upon payment of the appropriate fee and submission and acceptance of a written application on forms provided by the Board, the Board shall grant a license to each applicant who ~~shall present~~ presents proof of current licensure in good standing in another state, the District of Columbia, or territory of the United ~~States, whose standards for licensure are substantially similar to those of this State,~~ States, and who meets all of the following criteria:

(1) ~~The applicant's~~ Has a license ~~is~~ in good standing as defined in § 2008(a)(4)-(6) of this ~~title; and~~ title.

(2) Has achieved the passing score on all parts of the written, standardized examination administered by the National Board for Certification in Occupational Therapy, Inc., or its successor.

Section 12. Amend § 2012, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2012. ~~Temporary license. [Repealed.]~~ Duty to report unprofessional conduct; inability to practice.

(a) A licensee has a duty to report to the Division information that the licensee reasonably believes indicates that the licensee or another licensee has engaged in or is engaging in conduct that constitute grounds for disciplinary action under this chapter. A licensee shall report to the Board within 30 days of the occurrence of any of the following:

(1) A partial or full removal of the licensee's or another licensee's hospital privileges based on adverse events, unprofessional conduct, or competency issues.

(2) A disciplinary action taken by any regulatory agency against against the licensee or another licensee.

(3) A reasonably-substantiated incident involving violence, threat of violence, abuse, or neglect by the licensee or another licensee toward another person.

(b)(1) A licensee is subject to temporary or permanent license restriction, suspension, or revocation if the licensee is unable to practice the occupation with reasonable skill or safety to patients due to any of the following circumstances:

a. Mental illness or mental incompetence.

b. Physical illness, including deterioration due to aging or loss of motor skills.

c. Excessive use or abuse of drugs or alcohol.

(2) A license may be permanently restricted, suspended, or revoked after a hearing under § 2006(a)(11) of this title.

(3) A license may be temporarily restricted, suspended, or revoked after a hearing under § 2006(a)(11) of this title or, if circumstances present an immediate danger to the public health, safety, or welfare, without a hearing and under the process established in § 2017(c) of this title.

Section 13. Amend § 2013, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2013. Fees.

(a) The amount to be charged for each fee imposed under this chapter ~~shall~~ must approximate and reasonably reflect all costs necessary to defray the Board's expenses ~~of the Board, as well as~~ and the Division's proportional expenses ~~incurred by the Division of Professional Regulation~~ in its service on behalf of the Board.

(b) ~~There shall be a~~ A separate fee may be charged for each service or ~~activity;~~ activity, but no fee ~~shall~~ may be charged for a purpose not specified in this chapter.

(c) The application fee ~~shall~~ must not be combined with any other fee or charge.

(d) At the beginning of each licensure biennium, the ~~Division of Professional Regulation,~~ or any other state agency acting ~~in its behalf,~~ on the Division's behalf shall compute, for each separate service or activity, the appropriate Board fees for the coming licensure biennium.

Section 14. Amend § 2014, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2014. Issuance and renewal of licenses.

(a) The Board shall issue a license to each ~~applicant,~~ applicant who meets the requirements of and pays the fee under this chapter for licensure as an occupational therapist or occupational therapy assistant ~~and who pays the fee established under § 2013 of this title.~~

(b) Each license ~~shall~~ must be renewed biennially, in ~~such a manner as is~~ such a manner as is determined by the ~~Division of Professional Regulation, and~~ Division, upon payment of the appropriate fee and submission of a renewal form provided by the ~~Division of Professional Regulation,~~ Division, and proof that the licensee has met the continuing education requirements established by the Board.

(c) The Board, in its rules and regulations, shall determine the period of time within which a ~~licensed occupational therapist or occupational therapy assistant~~ licensee may still renew ~~the occupational therapist's or occupational therapy assistant's license,~~ a license ~~notwithstanding the fact that such~~ if the licensee has failed to renew on or before the renewal date.

(d) A licensee, upon written request, may ~~be placed~~ place the licensee's license on inactive status. The ~~renewal fee of the licensee shall~~ to renew an inactive license must be prorated in accordance with the amount of time the ~~licensee~~ license was inactive. The licensee may reenter practice upon written notification to the Board of the intent to do so and completion of continuing education as required ~~in~~ by the Board's rules and regulations.

Section 15. Amend § 2015, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2015. Grounds for discipline.

(a) A ~~practitioner licensed under this chapter shall be~~ licensee is subject to disciplinary actions ~~set forth in under § 2017 of this title, title~~ if, after a hearing, the Board finds that the ~~occupational therapist or occupational therapy assistant~~ licensee has done any of the following:

(1) ~~Has employed~~ Employed or knowingly cooperated in fraud or material deception in order to acquire a license as an occupational therapist or occupational therapy ~~assistant; has~~ assistant, impersonated another person holding a license or registration, ~~or~~ allowed another person to use the ~~practitioner's~~ licensee's license, or aided or abetted a person not licensed ~~as an occupational therapist or occupational therapy assistant under this chapter~~ to represent ~~himself or herself~~ the person as an occupational therapist or occupational therapy ~~assistant; assistant.~~

(2) ~~Has been~~ Been convicted of a crime that is substantially related to the practice of occupational ~~therapy; a therapy. A~~ copy of the record of conviction certified by the clerk of the court entering the conviction ~~shall be~~ is conclusive evidence ~~therefor; of the conviction.~~

(3) ~~Has excessively used or abused drugs either in the past 2 years or currently; 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 the practitioner's ability to perform the work of an occupational therapist or occupational therapy assistant; Excessively used or abused drugs or alcohol in the previous 2 years.~~

(4) ~~Has engaged~~ Engaged in an act of consumer fraud or ~~deception; deception~~, engaged in the restraint of ~~competition; competition~~, or participated in price-fixing ~~activities; activities.~~

(5) ~~Has violated~~ Violated a lawful provision of this ~~chapter, or any lawful~~ chapter or a regulation established ~~thereunder; under this chapter.~~

(6) ~~Has had that practitioner's~~ Had the licensee's license, ~~certification~~ certification, or registration as an occupational therapist or occupational therapy assistant suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another ~~jurisdiction; provided however, that~~ jurisdiction.

a. For ~~paragraph (a)(6) of this section to apply,~~ the underlying grounds for ~~such~~ the action in another jurisdiction ~~have been~~ must be presented to the Board by certified record, and the Board ~~has determined~~ must determine that the facts found ~~by the appropriate authority~~ in the other jurisdiction constitute 1 or more of the acts defined in this chapter.

b. ~~Every person licensed as an occupational therapist or occupational therapy assistant in this State shall be~~ A licensee is deemed to have ~~given consent~~ consented to the release of ~~this~~ the information ~~under paragraph (a)(6)a. of this section~~ by the Board of ~~Occupational Therapy Practice~~ or other comparable ~~agencies~~ agency in another jurisdiction and ~~to waive~~ waived all objections to the admissibility of previously adjudicated evidence ~~of such~~ the acts or offenses; on the record of the other jurisdiction.

(7) ~~Has failed~~ Failed to notify the Board that the ~~practitioner's~~ licensee's license, ~~certification~~ certification, or registration as an occupational therapist or occupational therapy assistant in another ~~state~~ jurisdiction has been subject to discipline, ~~or has been~~ surrendered, ~~suspended~~ suspended, or revoked. A certified copy of the record of disciplinary action, surrender, ~~suspension~~ suspension, or revocation ~~shall be~~ is conclusive evidence ~~thereof;~~ thereof.

(8) While acting as a supervising occupational therapist, has failed to supervise and take reasonable steps to see that ~~an~~ occupational therapy ~~assistants~~ assistant ~~and temporary licensees~~ perform performs services responsibly, ~~competently~~ competently, and ethically, in accordance with rules and regulations ~~established by~~ that the Board ~~established~~. ~~Supervising~~ A supervising occupational ~~therapists shall be~~ therapist is subject to disciplinary action for ~~any acts or offenses which are~~ an act or offense which is grounds for ~~such~~ disciplinary action when ~~such acts or offenses are~~ the act or offense is undertaken by the occupational therapy assistant ~~or~~ temporary licensee acting under the supervising occupational therapist's direction or control.

(b) ~~Where a practitioner~~ If a licensee fails to comply with the Board's request that the ~~practitioner~~ licensee attend a hearing, the Board may petition the Superior Court to order ~~such~~ the licensee's attendance, ~~and the said~~ attendance. ~~The~~ Court ~~or any judge assigned thereto shall have~~ has the jurisdiction to issue ~~such~~ an order requiring the licensee to attend the hearing.

(e) ~~Subject to this chapter and subchapter IV of Chapter 101 of Title 29, no license shall be restricted, suspended or revoked by the Board, and no practitioner's right to practice occupational therapy or to act as an occupational therapy assistant shall be limited by the Board until such practitioner has been given notice, and an opportunity to be heard, in accordance with the Administrative Procedures Act [Chapter 101 of Title 29].~~

Section 16. Amend § 2016, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2016. Complaints.

(a) ~~All complaints shall be received and investigated by the Division of Professional Regulation~~ The Division shall receive and investigate a complaint in accordance with § 8735 of Title 29, and the Division shall ~~be~~ responsible for issuing issue a final written report at the conclusion of its investigation.

(b) ~~When it is determined~~ If the Board determines that an individual is engaging in the practice of occupational therapy or ~~is~~ using the title occupational therapist or occupational therapy assistant and is not licensed under ~~the laws of this State~~ this chapter, the Board shall issue a formal warning to the individual under this chapter. If the formal warning does not resolve the matter, the Board may apply to the Office of the Attorney General to issue a cease and desist order ~~after formally warning the unlicensed practitioner in accordance with this chapter~~.

(c) ~~Any complaints~~ The Division shall investigate a complaint against a licensee involving allegations of unprofessional conduct or incompetence ~~shall be investigated by the Division of Professional Regulation~~.

Section 17. Amend § 2017, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 2017. Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that 1 or more of the conditions or violations ~~set forth in~~ under § 2015 of this title applies to a ~~practitioner regulated by this chapter~~ licensee:

(1) Issue a letter of reprimand.

~~(2) Censure a practitioner.~~

(3) Place a ~~practitioner~~ the licensee on probationary ~~status,~~ status and require the ~~practitioner~~ licensee to do any of the following:

a. Report regularly to the Board upon the matters which are the basis of the ~~probation;~~ probation.

b. Limit all practice and professional activities to those areas ~~prescribed by that~~ the Board prescribes.

(4) Suspend ~~any practitioner's~~ the licensee's license.

(5) Revoke ~~any practitioner's~~ the licensee's license.

(6) Impose a monetary penalty not to exceed \$500 for each violation.

(b) The Board may withdraw or reduce conditions of probation ~~when~~ if it finds that the deficiencies which required ~~such action have been~~ the probation are remedied.

(c) ~~In the event of~~ If a formal or informal complaint concerning the activity of a licensee ~~that~~ presents a clear and immediate danger to the public health, ~~safety~~ safety, or welfare, the Board may temporarily suspend the ~~person's~~ licensee's license, pending a hearing, 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.

(1) An order temporarily suspending a license ~~may~~ must not be issued unless the ~~person~~ licensee or the ~~person's~~ licensee's attorney ~~received~~ receives at least 24 hours' written or oral notice before the temporary ~~suspension~~ suspension, so that the ~~person~~ licensee or the ~~person's~~ licensee's attorney may file a written response to the proposed suspension.

(2) The decision as to whether to issue the temporary order of suspension ~~will~~ must be decided on the written submissions.

(3) An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the ~~order~~ order, unless the ~~temporarily suspended person~~ licensee requests a continuance of the ~~hearing date.~~ If the temporarily suspended person requests a continuance, hearing, in which case the order of temporary suspension remains in effect until the hearing is convened and the Board renders a decision is rendered by the Board.

(4) A ~~person~~ licensee whose license has been temporarily suspended ~~pursuant to~~ under this section may request an expedited hearing. Upon the licensee's timely request, the Board shall schedule the hearing on an expedited basis, provided that the Board receives the request within 5 calendar days from the date on which the person received notification of the decision to temporarily suspend the person's license. A request is timely if the licensee provides it to the Board within 5 calendar days from the date that the licensee received notice of the temporary suspension.

(d) As a condition to reinstatement of a suspended ~~license~~, license or removal from probationary status, the Board may impose ~~such~~ disciplinary or corrective measures ~~as are~~ authorized under this chapter.

(e) The Board shall permanently revoke the license ~~to practice occupational therapy~~ of a ~~person~~ licensee who is convicted of a felony sexual offense.

Section 18. Amend § 2018, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2018. Hearing procedures.

(a) If a complaint alleging violation of § 2015 of this title is filed with the Board ~~pursuant to~~ under § 8735 of Title 29, ~~alleging violation of § 2015 of this title~~, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing ~~shall~~ must be given and the hearing must be conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) All hearings ~~shall be~~ are informal without use of rules of evidence. If the Board finds, by a majority vote of all members, that the complaint has merit, the Board shall take such action permitted under this chapter as it deems necessary. The Board's decision ~~shall~~ must be in writing and ~~shall~~ include ~~it's~~ the Board's reasons for ~~such~~ the decision. The Board's decision ~~shall~~ must be mailed immediately to the ~~practitioner~~ licensee.

(c) ~~Where the practitioner~~ If the licensee is in disagreement with the Board's action ~~of the Board~~, the ~~practitioner~~ licensee may appeal the Board's decision to the Superior Court within 30 days of ~~service, or of~~ service of the Board's decision or the postmarked date of the copy of the decision mailed to the ~~practitioner~~ licensee. Upon ~~such appeal~~ an appeal, the Court shall hear the evidence on the record. ~~Stays shall be granted~~ The Court may grant a stay in accordance with § 10144 of Title 29.

Section 19. Amend § 2019, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2019. Reinstatement of a suspended license; removal from probationary status; replacement of license.

(a) As a condition to reinstatement of a suspended ~~license~~, license or removal from probationary status, the Board may reinstate ~~such~~ a license if, after a hearing, the Board is satisfied that the licensee has taken the prescribed corrective actions and otherwise satisfied all of the conditions of the suspension ~~and/or the~~ or probation.

(b) ~~Applicants~~ An applicant for reinstatement shall pay the appropriate fees and submit documentation required by the Board as evidence that all the conditions of a suspension ~~and/or~~ or probation have been met. ~~Proof~~ The Board may also require that the applicant ~~has met~~ meet the continuing education requirements of this chapter ~~may also be required, as appropriate.~~

(c) A new license to replace ~~any~~ a license lost, ~~destroyed~~ destroyed, or mutilated may be issued subject to the rules of the ~~Board. A charge shall be made for such issuance.~~ Board, and upon payment of a fee to issue a replacement license.

Section 20. Amend § 2020, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2020. ~~Penalty~~ Penalties.

~~(a) A person not currently licensed under this chapter as an occupational therapist or occupational therapy assistant when guilty of engaging in the practice of occupational therapy, or using in connection with that person's name, or otherwise assuming or using any title or description conveying, or tending to convey the impression that the person is qualified to practice occupational therapy, such offender shall be guilty of a misdemeanor. It is unlawful for a person who is not licensed under this chapter to to any of the following:~~

(1) Engage in the practice of occupational therapy.

(2) Use in connection with that person's name or otherwise assume or use any title or description that conveys or tends to convey the impression that the person is qualified to practice occupational therapy.

~~(b) Upon the first offense, that person shall be fined not less than \$500 nor more than \$1,000 for each offense. For a second or subsequent conviction, the fine shall be not less than \$1,000 nor more than \$2,000 for each offense. A person who violates subsection (a) of this section is guilty of a misdemeanor and subject to the following penalties:~~

(1) For the first offense, a fine of not less than \$500 nor more than \$1,000 for each offense.

(2) For each subsequent offense, a fine of not less than \$1,000 nor more than \$2,000 for each offense.

~~(c) Superior Court shall have~~ has jurisdiction over all violations of this chapter.

Section 21. Amend § 2021, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2021. Treatment or examination of minors.

(a) As used in this section:

(1) "Adult staff member" means an individual who is 18 years or older and is acting under the direction of the licensee, the licensee's employer, or is otherwise licensed under this chapter.

(2) "Evaluation or treatment" includes dressing, bathing, or toileting that exposes a minor patient's breast, genitalia, or rectum.

(3) "Minor" means an individual who is 15 years or younger.

(4) "Services" includes inpatient, outpatient, home, or school treatment.

~~(b) A minor patient's parent, guardian~~ guardian, or other caretaker, or an adult staff member, ~~shall~~ must be present when a ~~person licensed to practice occupational therapy under this chapter~~ licensee provides ~~services, including inpatient, outpatient, home or school treatment,~~ services to a minor patient who is disrobed or partially disrobed during evaluation or treatment ~~involving, but not limited to, dressing, bathing, or toileting, that exposes the breasts, genitalia or rectum.~~

~~(c) When using~~ If an adult staff member ~~to observe~~ observes the evaluation or treatment, the adult staff member ~~shall~~ must be of the same gender as the patient when practicable.

~~(d) The minor patient may decline the presence of a third person only with consent of a parent, guardian or other caretaker. The minor patient may request private consultation with the person licensed to practice occupational therapy without the presence of a third person~~ individual providing consent to the minor patient's treatment and only after the initial evaluation.

(b) When a minor patient's evaluation or treatment involves the female breasts, or female or male genitalia or rectum, a ~~person licensed to practice occupational therapy under this chapter~~ licensee shall provide ~~notice to the person~~ the individual providing consent to the minor patient's treatment with notice of the rights under this section. The notice ~~shall~~ must be provided in written form or ~~be~~ conspicuously posted in a manner in which a ~~minor patients~~ patient and the parent, guardian or other caretaker individual providing consent to the minor patient's treatment are made aware of the notice. In circumstances in which the posting or the provision of the written notice ~~would~~ may not convey the right to have a ~~chaperone~~ third person present, the ~~person licensed to practice occupational therapy~~ licensee shall use another means to ensure that the ~~person understands the right~~ minor patient and the individual providing consent to the minor patient's treatment understand the rights under this section.

(c) ~~For the purposes of this section, "minor" is defined as a person 15 years of age or younger, "adult staff member" is defined as a person 18 years of age or older who is acting under the direction of the licensed person or the employer of the licensed person or who is otherwise licensed under this chapter.~~

(d) ~~The person licensed under this chapter~~ A licensee that provides treatment to a minor patient ~~pursuant to~~ under this section shall, contemporaneously with ~~such~~ the treatment, note in the ~~child's~~ minor patient's record the name of each person present when ~~such~~ the treatment is ~~being~~ provided.

Approved September 4, 2018