Title 24

Professions and Occupations

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Part

Chapter 1

BOARD OF ACCOUNTANCY

§ 101 Objectives and functions.

The primary objective of the Board of Accountancy, to which all other objectives and purposes are secondary, is to protect the general public (specifically those persons who are direct recipients of services regulated by this chapter) from unsafe practices, including incompetent auditing, accounting and tax services rendered by certificate and permit holders, and from occupational practices which tend to reduce competition or fix the price of services rendered. Secondary objectives of the Board include maintaining minimum standards of competency in accounting, auditing and tax services rendered by certificate and permit holders and maintaining minimum standards in the delivery of such 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, adjudicate such complaints at formal hearings, promulgate rules and regulations, and impose sanctions where necessary against practitioners.

(71 Del. Laws, c. 139 § 1.)

§ 102 Definitions.

The following definitions shall apply, unless the definition is inappropriate for the context:

(1) "AICPA" means the American Institute of Certified Public Accountants.

(2) "Attest" means providing the following services:

a. Any audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS);

b. Any review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services (SSARS);

c. Any examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements (SSAE);

d. Any engagement to be performed in accordance with the standards of the PCAOB; and

e. Any examination, review, or agreed upon procedures engagement to be performed in accordance with the SSAE, other than an examination described in paragraph (2)c. of this section.

(3) "Board" means the Delaware State Board of Accountancy.

(4) "Certificate" means a certificate of "certified public accountant" issued by the Board pursuant to this chapter or the prior law of this State, or a corresponding certificate of certified public accountancy issued after examination under the law of any other state.

(5) "Certified public accountant" means the holder of a permit to practice certified public accountancy.

(6) "Certified public accounting" or "the practice of certified public accountancy" means the performance, or offer to perform, for a client or a potential client, by a person or firm holding itself out to the public as a CPA permit holder, of 1 or more kinds of services involving the use of accounting or auditing skills, including the issuance of reports or financial statements, or of 1 or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters.

(7) "Client" means a person or entity that agrees with a permit holder or permit holder's employer to receive any professional service.

(8) "Compilation" means providing a service to be performed in accordance with, and as defined by, Statements on Standards for Accounting and Review Services (SSARS).

(9) "Division" means the State of Delaware Division of Professional Regulation.

(10) "Firm" means a sole proprietorship, partnership, corporation or any other entity authorized under Delaware law or a similar statute of another state.

(11) "Licensee" means an individual or firm licensed under this title or under corresponding law in another jurisdiction.

(12) "NASBA" means the National Association of State Boards of Accountancy.

(13) "Nonpublic entity" means an entity other than one whose securities trade in a public market either on a stock exchange (domestic or foreign) or in the over-the-counter market, including securities quoted only locally or regionally, or an entity that makes a filing with a regulatory agency in preparation for the sale of any of its securities in a public market.

(14) "PCAOB" means the Public Company Accounting Oversight Board.

(15) "Peer review" means a board-approved study, appraisal, or review of 1 or more aspects of the attest and compilation services rendered by an individual or firm permit holder performed by a person or persons who hold Delaware permits or are duly licensed in another jurisdiction and who are not affiliated with the individual or firm permit holder being reviewed.

(16) "Permit" or "permit to practice" means a permit issued by the Board to practice either public accountancy or certified public accountancy.

(17) "Principal place of business" means the office location designated by the licensee.

(18) "Public accountant" means the holder of a permit to practice public accountancy.

(19) "Public accounting" or "practice of public accountancy" means the performance, or offer to perform, for a client or a potential client, by a person or firm holding itself out to the public as a permit holder, of 1 or more kinds of services involving the use of accounting or auditing skills, including the issuance of reports or financial statements, or of 1 or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters.

(20) "Regulation" means any rule or regulation duly adopted by the Board.

(21) "Report" when used with reference to any attest or compilation service, means an opinion, report, or other form of language that states or implies assurance as to the reliability of the attested information or compiled financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is an accountant or auditor, or from the language of the report itself. The term "report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the attested information or compiled financial statements referred to and/or special competence on the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence.

(22) "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Guam; except that "this State" means the State of Delaware.

(23) "Substantial equivalency" is a determination by the Board of Accountancy or its designee that the education, examination and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to, or exceed the education, examination and experience requirements contained in the Uniform Accountancy Act or that an individual CPA's education, examination and experience qualifications are comparable to or exceed the education, examination and experience requirements contained in the Uniform Accountancy Act. In ascertaining substantial equivalency as used in this act the Board shall take into account the qualifications without regard to the sequence in which experience, education or examination requirements were attained.

(24) "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 accountancy.

(60 Del. Laws, c. 198 § 1; 65 Del. Laws, c. 167 § 1; 71 Del. Laws, c. 139 § 1; 74 Del. Laws, c. 262 § 1; 75 Del. Laws, c. 128 § 1; 76 Del. Laws, c. 418 § 1; 80 Del. Laws, c. 247 § 1.)

§ 103 Board of Accountancy; appointments; qualifications; term; vacancies.

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

(b) The Board shall consist of 9 members who are residents of this State and are appointed by the Governor, as follows:

(1) Five certified public accountants, all of whom must hold active permits to practice certified public accountancy;

(2) One public accountant who holds a valid permit to practice public accountancy;

(3) Two members from the public at large; and

(4) One public member who is employed full time in the field of post-secondary accounting education.

(c) To serve on the Board, the public members referred to in paragraph (b)(3) of this section, shall not be nor ever have been a certified public accountant or public accountant, nor a member of the immediate family of a certified public accountant or public accountant; shall not be nor ever have been employed by a person or firm which provides certified public accounting or public accounting services; shall not have a material financial interest in the providing of goods and services to any person or firm which provides accounting services; nor have been engaged in an activity directly related to accounting services. The public members shall be accessible to inquiries, comments and suggestions from the general public.

(d) Except as provided in subsection (e) of this section, each member shall serve for a term of 3 years and may succeed himself or herself for 1 additional term. 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.

(e) 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 3 years has expired since such person last served.

(f) 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 (e) of this section, unless such amendment or revision amends this section to permit such an appointment.

(g) No member of the Board of Accountancy, while serving on the Board, shall be an officer (president, chairperson, president-elect, vice president, secretary or treasurer) of a professional accounting organization, including the American Institute of Certified Public Accountants (AICPA), the Delaware Society of Certified Public Accountants (DSCPA), the National Society of Public Accountants (NSPA), the Delaware Association of Public Accountants (DAPA) or any other professional accounting association.

(h) The provisions set forth for "employees" in Chapter 58 of Title 29 shall apply to members of the Board and to all agents appointed or otherwise employed by the Board.

(i) Any member who is absent without adequate reason for 3 consecutive meetings or fails to attend at least half of all regular business

meetings during any calendar year shall be guilty of neglect of duty.

(j) Each member of the Board shall be compensated at an appropriate and reasonable level as determined by the Division and may be reimbursed for meeting-related travel expenses at the State's approved rate.

(27 Del. Laws, c. 98 § 2; Code 1915 § 980; 32 Del. Laws, c. 48 § 2; Code 1935 § 1091; 46 Del. Laws, c. 110 § 1; 24 Del. C. 1953 § 101; 50 Del. Laws, c. 167 § 1; 55 Del. Laws, c. 193; 60 Del. Laws, c. 198 § 1; 65 Del. Laws, c. 167 § 1; 67 Del. Laws, c. 368 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 139 § 1; 76 Del. Laws, c. 418 § 2; 80 Del. Laws, c. 247 § 1.)

§ 104 Officers; meetings; conduct of business; quorum; absences.

(a) The Board shall hold a regularly scheduled business meeting at least once in each quarter of a calendar year and at such other times as the president may deem necessary, or at the request of a majority of Board members.

(b) The Board shall elect annually from its members a president and a secretary. Each officer shall serve for 1 year and shall not succeed himself or herself for more than 2 consecutive years.

(c) A majority of members of the Board shall constitute a quorum for the transaction of all business and no disciplinary action shall be taken without the affirmative vote of at least 5 members.

(d) Minutes of all meetings shall be recorded and copies shall be maintained by the Division. At any hearing in which 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.

(27 Del. Laws, c. 98 § 2; Code 1915 § 980; 32 Del. Laws, c. 48 § 2; Code 1935 § 1091; 46 Del. Laws, c. 110 § 1; 24 Del. C. 1953 § 101; 50 Del. Laws, c. 167 § 1; 55 Del. Laws, c. 193; 60 Del. Laws, c. 198 § 1; 65 Del. Laws, c. 167 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 139 § 1.)

§ 105 Powers and duties.

(a) The Board of Accountancy shall have the authority to:

(1) Formulate rules and regulations, with appropriate notice to those affected. Each rule or regulation shall implement or clarify a specific section of this chapter. All rules and regulations shall be promulgated in accordance with the procedures specified in the Administrative Procedures Act, Chapter 101 of Title 29;

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

(3) Designate an examination to be taken by persons applying for a permit, as follows:

a. The Board shall adopt the Uniform Certified Public Accountant Examination as the national examination to be taken by all applicants for licensure as certified public accountants and use the advisory grading service of the American Institute of Certified Public Accountants (AICPA), or its successor organization.

b. The Board shall adopt the examination recognized by the National Society of Public Accountants (NSPA) as the national examination to be taken by applicants for permits as public accountants and use the advisory grading service of the NSPA.

c. The Division shall have the power to review, approve and execute all contracts for examination services;

(4) Provide notice and information to applicants regarding their applications;

(5) Designate the requirements for the issuance of permits to practice consistent with the provisions of this chapter;

(6) [Repealed].

(7) Issue permits to practice to individuals and firms who meet the qualifications of this chapter;

(8) Require the completion of continuing education requirements for all licensees;

(9) Evaluate certified records to determine whether an applicant for a permit to practice, who has been previously licensed or certified, or who has held a certificate and/or permit in another jurisdiction, 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 accountants and the practice of public accounting or certified public accounting, or concerning practices of the Board or of the profession, or concerning the unlicensed practice of public accountancy or certified public accountancy, to the Division 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. Such member shall recuse himself or herself from the deliberations on the complaint;

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

(13) Bring proceedings in the courts for the enforcement of this chapter;

(14) To become a member of the National Association of State Boards of Accountancy or its successor organization and to pay such dues which that association shall establish; to send delegates to its meetings; and to assist members attending that association's meetings;

and

(15) To require all applicants for permits to practice to obtain a passing grade on the Code of Ethics examination administered and graded by the American Institute of Certified Public Accountants (AICPA).

(b) The Board of Accountancy shall promulgate regulations specifically identifying those crimes which are substantially related to the practice of accountancy.

(27 Del. Laws, c. 98 § 3; Code 1915 § 982; 32 Del. Laws, c. 48 §§ 2, 3; Code 1935 § 1093; 24 Del. C. 1953 § 106; 50 Del. Laws, c. 167 § 3; 55 Del. Laws, c. 193; 60 Del. Laws, c. 198 § 1; 65 Del. Laws, c. 167 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 139 § 1; 74 Del. Laws, c. 262 § 2; 76 Del. Laws, c. 418 § 3; 80 Del. Laws, c. 247 § 1.)

§ 106 Certificate or permit required.

(a) The use of the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that a person is a certified public accountant shall be limited to a person who holds an active permit to practice issued by the Board pursuant to this chapter or issued under the laws of another jurisdiction. Holders of certificates only, who have never held a Delaware permit to practice, may not use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that a person is a certified public accountant. Up to and including June 30, 2017, holders of certificates only who have held a Delaware permit to practice which has since lapsed may use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that a person is a certified public accountant; provided that it is clearly indicated that such person is not holding himself or herself out as a practicing certified public accountant. Upon proper notification to the Board, holders of CPA permits to practice who no longer provide any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills and who no longer meet the continuing education requirement under § 108 of this title must place the word "inactive" adjacent to their CPA title.

(b) The use of the title or designation "public accountant" or the abbreviation "PA" or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that such person is a public accountant shall be limited to a person who holds a valid permit to practice public accountancy.

(27 Del. Laws, c. 98 § 1; Code 1915 § 981; Code 1935 § 1092; 24 Del. C. 1953 § 103; 55 Del. Laws, c. 193; 60 Del. Laws, c. 198 § 1; 65 Del. Laws, c. 167 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 139 § 1; 75 Del. Laws, c. 128 § 2; 80 Del. Laws, c. 247 § 1.)

§ 107 Requirements and qualifications for a permit to practice as a certified public accountant.

(a) Each person who is engaged in the practice of certified public accountancy and whose principal place of business is in this State, whether as a principal or employee of a firm, shall be required to obtain and maintain a valid permit to practice certified public accountancy. The permit to practice as a certified public accountant shall be granted to persons who meet the education, experience, lack of disqualifying conviction and examination requirements of the following subsections of this section and rules adopted thereunder and who make application therefore pursuant to § 108 of this title.

(b) The applicant has not been convicted of a crime that is substantially related to the practice of accountancy; however, 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, may waive this subsection, if it finds all of the following:

(1) 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

(3) The applicant is capable of practicing accountancy in a competent and professional manner.

(4) The granting of the waiver will not endanger the public health, safety or welfare;

(c) The applicant has completed at least 150 semester hours of college education including a baccalaureate or higher degree conferred by an accredited college or university acceptable to the Board, the total educational program to include an accounting concentration or equivalent as determined by Board rule to be appropriate;

(d) The applicant has successfully passed the Uniform Certified Public Accountant Examination and/or such successor examinations as may be required to qualify for a permit to practice, provided that the applicant may not sit for said exams until that applicant has successfully completed at least 120 semester hours of college education including a baccalaureate or higher degree conferred by an accredited college or university acceptable to the Board, the total educational program to include an accounting concentration or equivalent as determined by Board rule to be appropriate;

(e) The applicant has successfully passed the AICPA self-study course and examination in professional ethics; and

(f) The applicant has had 1 year of experience. This experience shall include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills all of which was supervised by a United States certified public accountant, meeting requirements prescribed by the Board by rule. This experience would be acceptable if it was gained through employment in government, industry, academia or public practice.

(27 Del. Laws, c. 98 § 3; Code 1915 § 982; 32 Del. Laws, c. 48 §§ 2, 3; Code 1935 § 1093; 45 Del. Laws, c. 82 § 1; 24 Del. C. 1953 § 104; 50 Del. Laws, c. 167 § 2; 55 Del. Laws, c. 193; 58 Del. Laws, c. 511 § 49; 60 Del. Laws, c. 198 § 1; 65 Del. Laws, c. 167 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 139 § 1; 72 Del. Laws, c. 468 § 1; 74 Del. Laws, c. 262 § 3; 75 Del. Laws, c. 128 § 3; 75 Del. Laws, c. 436 § 1; 76 Del. Laws, c. 418 §§ 4-12; 77 Del. Laws, c. 199 § 1; 78 Del. Laws, c. 44 §§ 1, 2; 80 Del. Laws, c. 247 § 1.)

§ 108 Issuance and renewal of CPA permits to practice and maintenance of competency; reciprocity.

(a) The Board shall grant or renew permits to practice to persons who make application and demonstrate that:

(1) Their qualifications, including where applicable the qualifications prescribed by § 107 of this title, are in accordance with the following subsections of this section, or

(2) They are eligible under the substantial equivalency standard set out in § 109(a)(2) of this title.

(b) Permits to practice shall be initially issued, and renewed, for periods of not more than 2 years but in any event shall expire on June 30 of the odd-numbered year following issuance or renewal. Applications for such permits to practice shall be made in such form, and in the case of applications for renewal, between such dates, as the Board shall by rule specify, and the Board shall grant or deny any such application no later than 120 days after the application is filed in proper form.

(c) Reciprocal permits to practice shall be issued to applicants who have passed the Uniform CPA Examination and hold a valid CPA certificate, license or permit to practice in a substantially equivalent state or who individually are determined to be substantially equivalent.

(2) With regard to applicants that do not qualify for reciprocity under the substantial equivalency standard set out in § 109 of this title, the Board shall issue a permit to practice to a holder of a certificate, license or permit issued by another state upon a showing that:

a. The applicant passed the Uniform CPA Examination;

b. The applicant had 4 years of experience of the type described in § 107(f) of this title or meets comparable requirements prescribed by the Board by rule, after passing the examination upon which the applicant's certificate was based and within the 10 years immediately preceding the application; and

c. If the applicant's certificate, license or permit was issued more than 4 years prior to the application for issuance of an initial certificate under this section, that the applicant has fulfilled the requirements of continuing professional education that would have been applicable under subsection (d) of this section.

(d) Permits to practice shall be renewed biennially. An applicant for renewal of a permit under this section shall show that the applicant has completed no less than 80 hours of continuing professional education as determined by Board rule during the 2-year renewal period that has elapsed since the last biennial renewal date. If an applicant's initial permit to practice was issued less than 2 years prior to the renewal date, the applicant must fulfill the following continuing professional educational requirements:

(1) No continuing education requirement if initial permit was issued less than 1 year prior to the renewal date; or

(2) A prorated continuing professional education requirement as determined by Board rule if initial permit was issued 1 year or more, but less than 2 years, prior to the renewal date.

(e) For renewal of a permit to practice under this section, each licensee shall participate in a program of learning designed to maintain professional competency. Such program of learning must comply with rules adopted by the Board. The Board may by rule create an exception to this requirement for permit holders who do not perform or offer to perform 1 or more kinds of services involving the use of accounting or auditing skills, including issuance of reports on financial statements or of 1 or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters, and who make application for inactive status to the Board. Licensees granted such an exception by the Board must place the word "inactive" adjacent to their CPA title on any business card, letterhead or other document or device with the exception of their CPA permit to practice, on which their CPA title appears. Holders of an inactive permit to practice certified public accountancy may apply to have their permit to practice reinstated pursuant to Board rule.

(f) Applicants for initial issuance or renewal of permits to practice under this section shall in their applications list all states in which they have applied for or hold certificates, licenses or permits and list any past denial, revocation or suspension of a certificate, license or permit, and each holder of or applicant for a permit to practice under this section shall notify the Board in writing, within 30 days after its occurrence, of any issuance, denial, revocation or suspension of a certificate, license or permit by another state.

(g) Holders of expired permits to practice as of July 1, 2016, may apply to have their permit to practice reinstated upon a showing that the applicant has completed no less than 80 hours of continuing professional education as determined by Board rule during the 2-year renewal period ending June 30, 2017. Any holder of an expired permit to practice who fails to reinstate his or her permit by June 30, 2017, shall be required to meet all of the requirements for the initial issuance of a permit to practice pursuant to this section.

(80 Del. Laws, c. 247 § 1.)

§ 109 Substantial equivalency.

(a)(1) An individual whose principal place of business is not in this State and who holds a valid license as a certified public accountant from any state which the NASBA National Qualification Appraisal Service has verified to be in substantial equivalence with the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act shall be presumed to have qualifications substantially equivalent to this State's requirements and shall have all the privileges of permit holders of this State without the need to obtain a permit under § 108 of this title. Notwithstanding any other provision of law, an individual who offers or renders professional services, whether in person, by mail, telephone or electronic means, under this section shall be granted practice privileges in this State and no notice or other submission

shall be provided by any such individual. Such an individual shall be subject to the requirements in paragraph (a)(3) of this section.

(2) An individual whose principal place of business is not in this State and who holds a valid license as a certified public accountant from any state which the NASBA National Qualification Appraisal Service has not verified to be in substantial equivalence with the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act shall be presumed to have qualifications substantially equivalent to this State's requirements and shall have all the privileges of permit holders of this State without the need to obtain a permit under § 108 of this title if such individual obtains from the NASBA National Qualification Appraisal Service verification that such individual's CPA qualifications are substantially equivalent to the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act. Any individual who passed the Uniform CPA Examination and holds a valid license issued by any other state prior to January 1, 2012, may be exempt from the education requirement in § 107(c) of this title for purposes of this paragraph (a)(2). Notwithstanding any other provision of law, an individual who offers or renders professional services, whether in person, by mail, telephone or electronic means, under this section shall be granted practice privileges in this State and no notice or other submission shall be provided by any such individual. Such an individual shall be subject to the requirements in paragraph (a)(3) of this section.

(3) An individual licensee of another state exercising the privilege afforded under this section and the firm which employs that licensee hereby simultaneously consent, as a condition of the grant of this privilege:

a. To the personal and subject matter jurisdiction and disciplinary authority of the Board;

b. To comply with this chapter and the Board's rules;

c. That in the event the license from the state of the individual's principal place of business is no longer valid, the individual will cease offering or rendering professional services in this State individually and on behalf of a firm; and

d. To the appointment of the State Board which issued their license as their agent upon whom process may be served in any action or proceeding by this Board against the licensee.

(b) A permit holder of this State offering or rendering services or using that permit holder's CPA title in another state shall be subject to disciplinary action in this State for an act committed in another state for which the permit holder would be subject to discipline for an act committed in the other state. The Board shall be required to investigate any complaint made by the board of accountancy of another state.

(c) Practice within this State by individuals who qualify for the practice privilege under this section shall not obligate a firm that does not maintain an office in this State to obtain a firm permit under § 111 of this title.

(76 Del. Laws, c. 418 § 13; 80 Del. Laws, c. 247 § 1.)

§ 110 Requirements for permits to practice public accountancy.

(a) Each person who intends to be or is engaged in the practice of public accountancy in this State, whether as a principal of a firm or an employee of a firm, shall be required to obtain and maintain a valid permit to practice public accountancy. The Board shall grant and/or renew permits to persons who make application and demonstrate their qualifications in accordance with this section.

(b) Permits shall be issued and renewed for periods of 2 years.

(c) An applicant for initial issuance of a permit under this section shall show that the applicant:

(1) Has not been convicted of a crime that is substantially related to the practice of accountancy; however, 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, may waive this paragraph (c)(1) of this section, if it finds all of the following:

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

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

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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

(2) Holds, at a minimum, an associate degree, conferred by an accredited college or university, or a degree from an accredited 2-year college with a concentration in accounting, or what the Board determines to be substantially the equivalent of such concentration;

(3) Has passed either all parts of the examination recognized by the National Society of Public Accountants or both the Financial Accounting and Reporting (FAR) and Auditing and Attestation (AUD) portions of the Uniform Certified Public Accountant Examination;

(4) Has successfully passed the AICPA self-study course and examination in professional ethics; and

(5) Has not engaged in any acts or offenses that would be grounds for disciplinary action under this chapter and has no disciplinary proceedings or unresolved complaints pending against the applicant in any jurisdiction where the individual has been or currently holds a permit to practice. Each holder of or applicant for a permit under this section shall notify the Board in writing, within 30 days after its occurrence, of any issuance, denial, revocation or suspension of a permit by another state.

(d) An applicant for renewal of a permit under this section shall show that the applicant has completed no less than 80 hours of continuing professional education as determined by Board rule during the 2-year renewal period that has elapsed since the last biennial renewal date. If an applicant's initial permit to practice was issued less than 2 years prior to the renewal date, the applicant must fulfill the

following continuing professional education requirements:

(1) No continuing education requirement if initial permit was issued less than 1 year prior to the renewal date; or

(2) A prorated continuing professional education requirement as determined by Board rule if initial permit was issued 1 year or more, but less than 2 years, prior to the renewal date.

(e) No new permits to practice public accountancy shall be issued after December 31, 2016. Applications for reciprocal public accountant permits to practice will be accepted from public accountants who hold an active public accountant permit in good standing in another jurisdiction and who relocate to Delaware and identify Delaware as their primary residence. The Board may, by rule, require continuing education as a condition to issuance of the reciprocal permit.

(65 Del. Laws, c. 167 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 139 § 1; 76 Del. Laws, c. 418 § 15; 80 Del. Laws, c. 247 § 1.)

§ 111 Requirements for permits to practice by firms.

(a) Each firm with an office in this State and which intends to be or is engaged in the practice of certified public accountancy or the practice of public accountancy in this State shall be required to obtain and maintain a valid permit to practice. The Board shall grant or renew permits to firms that make application and demonstrate their qualifications in accordance with this section.

(b) A firm that does not have an office in this State may engage in the practice of certified public accountancy in this State through an individual practicing pursuant to the practice privilege afforded by § 109 of this title without obtaining a permit under this section or otherwise notifying the Board.

(c) Permits shall be renewed biennially.

(d) An applicant for initial issuance or renewal of a CPA firm permit to practice under this section shall be required to show that:

(1) Notwithstanding any other provision of law, a simple majority of the ownership of the firm, in terms of financial interests and voting rights, of all partners, officers, shareholders, members or managers, belongs to holders of a CPA certificate, CPA permit, or CPA license who are licensed in some state. All partners, officers, shareholders, members or managers, whose principal place of business is in this State, and who perform certified public accounting services in this State hold a valid permit to practice under § 108 of this title, or the corresponding provision of prior law. Although firms may include nonlicensee owners, the firm and its ownership must comply with applicable rules promulgated by the Board.

(2) Any certified public accounting firm as defined in this title may include nonlicensee owners provided that:

a. The firm designated a permit holder of this State who is responsible for the proper registration of the firm and identifies that individual to the Board.

b. All nonlicensee owners are active individual participants in the certified public accounting firm or affiliated entities.

c. The firm complies with such other requirements as the Board may impose by rule.

(e) An applicant for initial issuance or renewal of a PA firm permit to practice under this section shall be required to show that:

(1) Notwithstanding any other provision of law, a simple majority of the ownership of the firm, in terms of financial interests and voting rights, of all partners, officers, shareholders, members or managers, belongs to holders of permits to practice under § 110 of this title. All partners, officers, shareholders, members or managers, whose principal place of business is in this State, and who perform public accounting services in this state hold a valid permit to practice under § 110 of this title. Although firms may include nonlicensee owners, the firm and its ownership must comply with applicable rules promulgated by the Board.

(2) Any public accounting firm as defined in this title may include nonlicensee owners provided that:

a. The firm designated a permit holder of this State who is responsible for the proper registration of the firm and identifies that individual to the Board.

b. All nonlicensee owners are active individual participants in the public accounting firm or affiliated entities.

c. The firm complies with such other requirements as the Board may impose by rule.

(f) For purposes of this section, the employees of a public accounting firm with its principal office or offices outside of this State must obtain a permit for those employees who work in excess of 80 hours in this State or who work for a client or clients located in this State. However, any firm which is engaged to practice public accountancy in this State, for even 1 hour, is required to obtain a permit. Every principal of a public accounting firm who is responsible for the accounting work in this State shall obtain an individual permit to practice under § 110 of this title.

(g), (h) [Repealed.]

(i) An applicant for initial issuance or renewal of a permit to practice under this section shall be required to register each office of the firm within this State with the Board and to affirm that all attest and compilation services rendered in this State are under the charge of a person holding an active permit to practice issued under this chapter or qualifies for the practice privilege under § 109 of this title.

(j) An applicant for initial issuance or renewal of permits under this section shall in his or her application list all states in which they have applied for or hold permits as CPA firms and list any past denial, revocation or suspension of a permit by any other state, and each holder of or applicant for a permit under this section shall notify the Board in writing, within 30 days after its occurrence, of any change in the identities of partners, officers, shareholders, members or managers whose principal place of business is in this State, any change in the number or location of offices within this State, any change in the identity of the persons in charge of such offices, and any issuance, denial, revocation or suspension of a permit by any other state.

(k) An applicant for initial issuance or renewal of permits under this section shall in his or her application list all states in which they

have applied for or hold permits as PA firms and list any past denial, revocation or suspension of a permit by any other state, and each holder of or applicant for a permit under this section shall notify the Board in writing, within 30 days after its occurrence, of any change in the identities of partners, officers, shareholders, members or managers whose principal place of business is in this State, any change in the number or location of offices within this State, any change in the identity of the persons in charge of such offices, and any issuance, denial, revocation or suspension of a permit by any other state.

(l) Firms which fall out of compliance with the provisions of this section due to changes in ownership or personnel, after receiving or renewing a permit, shall take corrective action to bring the firm back into compliance within 60 days. Failure to bring the firm back into compliance within 60 days will result in the suspension or revocation of the firm permit.

(m) Effective July 1, 2017, the Board shall by rule require as a condition to renewal of permits under this section, that firms that provide attest and/or compilation services be enrolled in a board-approved peer review program and comply with the applicable standards and guidance of that program, provided that any such rule:

(1) Shall be promulgated reasonably in advance of the time when it first becomes effective;

(2) Shall include reasonable provision for compliance by a firm showing that it has, within the preceding 3 years, undergone a peer review. Such compliance requirement shall first be effective for the renewal period ending June 30, 2019; and

(3) Shall require, with respect to any organization administering peer review programs, that it be subject to evaluations by the Board or its designee, to periodically assess the effectiveness of the peer review program under its charge.

(65 Del. Laws, c. 167 § 1; 71 Del. Laws, c. 139 § 1; 75 Del. Laws, c. 128 § 5; 76 Del. Laws, c. 418 § 16; 80 Del. Laws, c. 247 § 1.)

§ 112 Professional responsibilities.

While § 111(a) of this title requires firms to obtain permits to practice, and § 102(10) of this title defines "firm" to include valid partnerships and corporations, this chapter shall not be interpreted to alter professional responsibility standards. All firms and accountants practicing in firms shall continue to be bound by professional responsibility standards no less stringent than those stated in § 608 of Title 8.

(71 Del. Laws, c. 139 § 1; 80 Del. Laws, c. 247 § 1.)

§ 113 Examinations.

The Board may, by regulation, prescribe the terms and conditions for granting credit to a candidate for a permit to practice certified public accountancy or an applicant for a permit to practice public accountancy based on the candidate's or applicant's satisfactory completion of an examination in any 1 or more of the subjects of the Uniform Certified Public Accountant Examination, the examination recognized by the National Society of Public Accountants and any written examination in any other subject or subjects given by the Board or by the licensing authority in any other jurisdiction.

(27 Del. Laws, c. 98 § 3; Code 1915 § 982; 32 Del. Laws, c. 48 §§ 2, 3; Code 1935 § 1093; 24 Del. C. 1953 § 105; 55 Del. Laws, c. 193; 60 Del. Laws, c. 198 § 1; 65 Del. Laws, c. 167 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 139 § 1; 80 Del. Laws, c. 247 § 1.)

§ 114 [Reserved.]

(27 Del. Laws, c. 98 § 4; Code 1915 § 983; Code 1935 § 1094; 45 Del. Laws, c. 82 § 2; 24 Del. C. 1953 § 107; 55 Del. Laws, c. 193; 60 Del. Laws, c. 198 § 1; 65 Del. Laws, c. 167 § 1; 71 Del. Laws, c. 139 § 1; 75 Del. Laws, c. 128 § 6; Del. Laws, c. 247 § 1, eff May 25, 2016.)

§ 115 Prohibited acts; limitation of services.

(a) No person or firm shall perform compilation, review or audit services, as defined by the American Institute of Certified Public Accountants (AICPA), except holders of a valid permit to practice.

(b) Audit services provided by holders of permits to practice public accountancy shall be limited to services for nonpublic entities.

(65 Del. Laws, c. 167 § 1; 71 Del. Laws, c. 139 § 1.)

§ 116 Complaints.

(a) The Board or any aggrieved person may file a complaint against any individual or firm holding a permit to practice or any certificate holder. All complaints shall be received and investigated by the Division in accordance with § 8735 of Title 29, and the Division shall be responsible for issuing a final written report at the conclusion of its investigation. The Division may refer a complaint against an individual practicing under § 109 of this title to the state of licensure for handling.

(b) When it is determined that an individual or firm is engaged in the practice of certified public accountancy or public accountancy without having first obtained the appropriate permit, the Board shall apply to the Division of Professional Regulation to issue a cease and desist order.

(c) Any complaints involving allegations of unprofessional conduct or incompetence shall be investigated by the Division of Professional Regulation.

(71 Del. Laws, c. 139 § 1; 76 Del. Laws, c. 418 § 17; 80 Del. Laws, c. 247 § 1.)

§ 117 Unprofessional conduct.

An individual holding a certificate and any individual or firm holding a permit to practice shall be subject to those disciplinary actions set forth in § 118 of this title if, after a hearing, the Board finds that the individual or firm:

(1) Has employed or knowingly cooperated in fraud or material deception in order to acquire or renew a certificate or permit to practice or be otherwise authorized to practice accountancy; or impersonated another person holding a certificate or permit to practice; or allowed another person to use the individual's certificate or permit to practice; or aided or abetted a person not holding a certificate or permit to practice to represent himself or herself as holding a certificate or permit to practice;

(2) Has engaged in an act of fraud or gross negligence in the practice of accounting or engaged in dishonorable, unethical or unprofessional conduct intended to or likely to deceive, defraud or harm the public;

(3) Has been found guilty of or has entered a plea of guilty or nolo contendere to a crime that is substantially related to the practice of accountancy;

(4) Has been subject to disciplinary sanction or censured or has had the individual's certificate or permit to practice revoked or suspended in any other state for any cause other than failure to pay an annual registration fee;

(5) Has been subject to disciplinary sanction or censured or has had the individual's right to practice revoked before any state or federal agency; or

(6) Has violated a lawful provision of this chapter or any lawful regulation or rule of professional conduct established thereunder.

(27 Del. Laws, c. 98 § 5; Code 1915 § 984; Code 1935 § 1095; 24 Del. C. 1953 § 108; 55 Del. Laws, c. 193; 60 Del. Laws, c. 198 § 1; 65 Del. Laws, c. 167 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 139 § 1; 74 Del. Laws, c. 262 § 4; 76 Del. Laws, c. 418 § 18; 80 Del. Laws, c. 247 § 1.)

§ 118 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions or take any of the following actions, singly or in combination, when it finds that 1 or more of the conditions or violations set forth in § 117 of this title applies to a certificate or permit holder or to an individual or firm with practice privileges under § 109 of this title:

(1) Issue a letter of reprimand;

(2) Censure the certificate or permit holder or individual or firm with practice privileges under § 109 of this title;

(3) Suspend the certificate or permit to practice or the practice privilege of the individual or firm;

(4) Place the certificate or permit holder or the practice privilege holder on probationary status and require him or her to:

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

b. Limit all practice and professional activities to those areas prescribed by the Board; and/or

c. Continue or renew his or her professional education until the required degree of skill has been attained in the areas which are the basis of the probation;

(5) Revoke the certificate or permit to practice or practice privilege of an individual or firm;

(6) Impose a fine of up to $10,000 for each offense, at the discretion of the Board; and/or

(7) Require the certificate or permit holder or practice privilege holder or firm to reimburse the Division for the cost of the investigation, including but not limited to, legal assistance, public hearings, materials, human resources, contractual assistance and appropriate salary and overtime pay for all state employees involved notwithstanding merit system laws or regulations to the contrary.

(b) The Board may refuse or reject an applicant for a permit to practice if, after a hearing, the Board finds that an applicant has misstated or misrepresented a material fact in connection with the applicant's application; has violated any section of the AICPA Code of Professional Conduct; or practiced public accountancy or certified public accountancy without being registered in accordance with this chapter.

(c) The Board may withdraw or reduce conditions of probation when it finds that the deficiencies which required such actions have been remedied.

(d) Upon an application (or petition), in writing, and after notice and a hearing, the Board may issue a new permit to practice or a practice privilege to a person or firm whose certificate or permit or practice privilege has been revoked or suspended or modify the terms of any suspension.

(e) In the event of a formal or informal complaint concerning the activity of a certificate or permit holder that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person's certificate or permit, 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. An order temporarily suspending a certificate or permit may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose certificate or permit has been temporarily suspended pursuant to this section may request an expedited hearing. 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 certificate or permit.

(60 Del. Laws, c. 198 § 1; 65 Del. Laws, c. 167 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 139 § 1; 76 Del. Laws, c. 418 §§ 19, 20; 79 Del. Laws, c. 213 § 2; 80 Del. Laws, c. 247 § 1.)

§ 119 Board hearings; procedures.

(a) If a complaint is filed with the Board pursuant to § 8735 of Title 29, alleging violation of § 117 of this title, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing conducted in accordance with this chapter, § 8735 of Title 29 and the Administrative Procedures Act, Chapter 101 of Title 29.

(b) Upon reaching its conclusion of law and determining an appropriate sanction, if any, the Board shall issue a written decision and order in accordance with § 10128 of Title 29. The order must restate the factual findings, but need not summarize the evidence presented. The decision and order may be issued over the signature of only the President or other officer of the Board. The decision and order must be sent by certified mail, return receipt requested, to the subject of the complaint.

(c) [Repealed.]

(60 Del. Laws, c. 198 § 1; 65 Del. Laws, c. 167 § 1; 71 Del. Laws, c. 139 § 1; 80 Del. Laws, c. 247 § 1.)

§ 120 Ownership of working papers.

(a) All statements, records, schedules, working papers and memoranda made by a permit holder or a partner, shareholder, officer, director or employee of a permit holder, incident to or in the course of rendering services to a client, except the reports submitted by the permit holder to the client, and except for records that are part of the client's records, shall be and remain the property of the permit holder in the absence of an express agreement between the permit holder and the client to the contrary. No such statement, record, schedule, working paper or memorandum shall be sold, transferred or bequeathed without the consent of the client or the client's personal representative or assignee, to anyone other than 1 or more surviving partners or stockholders or new partners or stockholders of the permit holder or any combined or merged firm or successor in interest to the permit holder. Nothing in this section should be construed as prohibiting any temporary transfer of working papers or other material necessary in the course of carrying out quality reviews.

(b) A permit holder shall furnish to permit holder's client or former client, upon request and reasonable notice:

(1) A copy of the permit holder's working papers, to the extent that such working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client; or

(2) Any accounting or other records belonging to or obtained from or on behalf of the client that the permit holder removed from the client's premises or received for the client's account; the permit holder may make and retain copies of such documents of the client when they form the basis for work done by the permit holder.

(c) Nothing herein shall require a permit holder to keep any working paper beyond the period prescribed in any other applicable statute.

(24 Del. C. 1953 § 110; 55 Del. Laws, c. 193; 60 Del. Laws, c. 198 § 1; 65 Del. Laws, c. 167 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 139 § 1.)

§ 121 Violations; penalties.

(a) Where the Board has determined, upon notice and hearing pursuant to Chapter 101 of Title 29, that a person is engaged in the practice of certified public accountancy or public accountancy, or is representing himself or herself to the public as the recipient of a certificate or permit, or is holding himself or herself out as being authorized to practice certified public accountancy or public accountancy, without having lawfully obtained a certificate or permit, or without having a practice privilege under § 109 of this title, or otherwise wrongfully uses such title or any similar title to practice certified public accountancy or public accountancy, or continues to practice certified public accountancy or public accountancy after the revocation or suspension of a practice privilege in this State or after the revocation, suspension or expiration of a certificate or permit from this State or another state, the Board may apply to the Division of Professional Regulation to issue a cease and desist order.

(b) Where the Board has determined, upon notice and hearing pursuant to Chapter 101 of Title 29, that a firm is improperly holding itself out as being authorized to practice certified public accountancy or public accountancy, the Board may apply to the Division of Professional Regulation to issue a cease and desist order.

(c) [Repealed.]

(d) Any person or entity who violates any provisions of this chapter or any rules or regulations promulgated hereunder, shall be liable for a civil penalty as set forth in § 118(a)(6) of this title. Where a partnership or corporation engages in the practice of certified public accountancy or public accountancy in violation of this chapter, or any rules or regulations promulgated hereunder, every partner of such partnership and every officer, director, shareholder or principal of such corporation, shall be deemed to have committed the violation in question. Nothing in this section shall be construed to prevent prosecution under, or be inconsistent with, Chapter 5 of Title 11.

(27 Del. Laws, c. 98 § 7; Code 1915 § 986; Code 1935 § 1097; 24 Del. C. 1953 § 114; 55 Del. Laws, c. 193; 60 Del. Laws, c. 198 § 1; 65 Del. Laws, c. 167 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 139 § 1; 76 Del. Laws, c. 418 § 21; 80 Del. Laws, c. 247 § 1.)

§ 122 Status of existing certificates preserved.

(a) Any person legally authorized to practice as a certified public accountant in this State as of July 1, 1985, shall thereafter possess the same rights and privileges as persons to whom permits to practice certified public accountancy shall be issued pursuant to this chapter, subject, however, to the power of the Board, as provided in this chapter, to suspend or revoke the certificate and/or permit to practice of such person or censure or reprimand such person for any of the causes set forth in this chapter.

(b) Any person who holds a valid certificate issued under this chapter and regulations of the Board in effect on or before June 30, 1985, shall be deemed to have sufficient education and experience to satisfy the experience requirement of § 107(c) of this title.

(c) Any firm holding a valid permit to practice as of December 31, 2015, that would otherwise not quality for renewal solely based on §

111(d) of this title shall nevertheless be eligible for renewal.

(d) [Repealed.]

(60 Del. Laws, c. 198 § 1; 65 Del. Laws, c. 167 § 1; 71 Del. Laws, c. 139 § 1; 75 Del. Laws, c. 128 §§ 7, 10; 80 Del. Laws, c. 247 § 1.)

§ 123 Status of existing public accountants preserved.

Any person legally authorized to practice as a public accountant in this State as of June 30, 1985, or who had a permit to practice public accountancy on that date shall thereafter possess the same rights and privileges as persons to whom permits to practice public accountancy shall be issued pursuant to § 110 of this title, subject, however, to the power of the Board, as provided in this chapter, to suspend or revoke the permit of such person or censure or reprimand such person for any of the causes set forth in this chapter.

(65 Del. Laws, c. 167 § 1; 66 Del. Laws, c. 132; 71 Del. Laws, c. 139 § 1.)

§ 124 Renewals.

In the event that a permit holder fails to timely renew a permit, such permit can be reinstated within a period of 1 year from the lapse of the permit to practice, at the discretion of the Board, upon payment of the regular renewal fee plus an additional late renewal processing fee established by the Division of Professional Regulation, and upon the permit holder furnishing proof of compliance with all other permit requirements established by the Board, including proof that the permit holder has met the continuing education requirements established by the Board.

§§ 125 , 126. [Reserved.]

§ 127 Permitted titles and safe harbor language.

(a) Notwithstanding any provision to the contrary contained herein, an individual who is not a licensee of the Board shall not be prohibited the use of the following titles: the unadorned word "Accountant"; "Enrolled Agent" or initials "E.A."; "Accredited business Advisor" or the initials "A.B.A."; "Accredited Tax Preparer" or the initials "A.T.P."; "Accredited Tax Advisor" or the initials "A.T.A."

(b) Notwithstanding any provision to the contrary contained herein, an individual who is not a licensee of the Board shall not be prohibited the use of the following language in connection with financial statements:

"I (we) have prepared the accompanying (financial statements) of (name of entity) as of (time period) for the (period) then ended. This presentation is limited to preparing in the form of financial statements information that is the representation of management (owners).

"I (we) have not audited or reviewed the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them."

(76 Del. Laws, c. 418 § 23.)

Part

Chapter 2
LANDSCAPE ARCHITECTS

§ 200 Objectives of board.

The primary objective of the Board of Landscape Architecture, to which all other objectives and purposes are secondary, is to protect the general public (specifically those persons who are direct recipients of services regulated by this chapter) from unsafe practices, and from occupational practices which tend to reduce competition or 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 complaints hearings, shall promulgate rules and regulations, and shall impose sanctions where necessary against practitioners.

(63 Del. Laws, c. 461 § 1; 67 Del. Laws, c. 385 § 1.)

§ 201 Definitions.

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

(1) "Board" shall mean the Delaware State Board of Landscape Architecture.

(2) "Landscape architect" shall mean a person who, on the basis of demonstrated knowledge acquired by professional education or practical experience, or both, has been granted and holds a current certificate entitling the person to use the designation "landscape architect" and practices landscape architecture in this State under the authority of this chapter.

(3)a. "Landscape architecture" shall mean any service or creative work the adequate performance of which requires landscape architectural education, training and experience. It shall mean the performance of professional services such as consultation, investigation, research, planning, design, preparation of drawings, specifications and contract documents, and responsible supervision or construction management in connection with the development of land areas where, and to the extent that the dominant purpose of such services is: The preservation, enhancement or determination of proper land uses, natural land features, wetlands and environmentally sensitive plant and animal communities, naturalistic and aesthetic values; the determination of settings, circulation systems, and hard scaping structures, grounds and approaches for buildings and structures or other improvements; the determination of environmental problems of land relating to erosion, flooding, blight and other hazards; the shaping and contouring of land and water forms; the setting of grades, determination of drainage and providing for storm drainage systems where such systems do not require structural design of system components and determination of landscape irrigation.

b. "Landscape architecture" shall include the design of such tangible objects and features as are necessary to the purpose outlined herein but shall not include the design of buildings, structures and utilities with separate and self-contained purposes such as are ordinarily included in the practice of architecture or engineering.

(4) "Substantially related" means the nature of 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 landscape architecture.

(60 Del. Laws, c. 190 § 1; 67 Del. Laws, c. 385 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 § 5; 74 Del. Laws, c. 336 § 1.)

§ 202 License required.

No person shall hold oneself out to the public as being a licensed landscape architect, or use in connection with one's name or otherwise assume, use or advertise any title or description intending to convey the impression that one is a licensed landscape architect, unless such person has been licensed under this chapter.

(60 Del. Laws, c. 190 § 1; 63 Del. Laws, c. 461 § 2; 67 Del. Laws, c. 385 § 1; 70 Del. Laws, c. 186 § 1.)

§ 203 Board of Landscape Architecture — Appointment; composition; qualifications; term of office; suspension or removal; compensation.

(a) The Board of Landscape Architecture shall consist of 5 members appointed by the Governor: 3 professional members who shall be licensed landscape architects; and 2 public members. To serve on the Board, a public member shall not be nor ever have been a landscape architect, nor a member of the immediate family of a landscape architect; shall not have been employed by a landscape architect; shall not have had a material financial interest in the providing of goods and services to landscape architect; and shall not have been engaged in an activity directly related to landscape architecture. Such public member shall be accessible to inquiries, comments and suggestions from the general public.

(b) Each member shall serve for a term of 3 years, and may successively serve 1 additional term; provided however, that where a member was initially appointed to fill a vacancy, such member may successively serve 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.

(c) A person who has never served on the Board may be appointed to the Board 2 consecutive times, 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 term has expired since such person last served.

(d) Any act or vote by a person appointed in violation of subsection (c) 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 (c) of this section, unless such amendment or revision amends this section to permit such an appointment.

(e) A member of the Board shall be suspended or removed by the Governor for misfeasance, nonfeasance or malfeasance. A member subject to disciplinary proceedings 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.

(f) No member of the Board of Landscape Architecture, while serving on the Board, shall be a president, chairperson or other official of a professional association of landscape architects.

(g) The provisions set forth for "employees" in Chapter 58 of Title 29 shall apply to all members of the Board, and to all agents appointed by or otherwise employed by the Board.

(h) Each Board member shall be reimbursed for all expenses involved in each meeting, including travel; and in addition shall receive not more than $50 for each meeting attended, but not more than $500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(60 Del. Laws, c. 190 § 1; 63 Del. Laws, c. 461 § 3; 67 Del. Laws, c. 368 § 2; 67 Del. Laws, c. 385 § 1; 68 Del. Laws, c. 91 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 309 § 1.)

§ 204 Board of Landscape Architecture — Officers; meetings; quorum.

(a) In January of each year the members shall elect, from among their Board, a President, a Secretary and a Treasurer. Each officer shall serve for 1 year, and shall not successively serve for more than 2 consecutive terms.

(b) The Board shall hold regularly scheduled business meetings at least once in each quarter of a calendar year, and at such other times as the President deems necessary; or at the request of a majority of Board members. Special or emergency meetings may be held without notice provided a quorum is present.

(c) A majority of members shall constitute a quorum, and no action shall be taken without the affirmative vote of at least 3 members. Any member who fails to attend 3 consecutive meetings, or who fails to attend at least 1/2 of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed.

(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, such hearing shall be recorded and transcribed by the Division.

(60 Del. Laws, c. 190 § 1; 63 Del. Laws, c. 461 § 4; 64 Del. Laws, c. 117 § 1; 65 Del. Laws, c. 355 § 1; 67 Del. Laws, c. 385 § 1; 68 Del. Laws, c. 91 § 2; 70 Del. Laws, c. 186 § 1.)

§ 205 Powers and duties.

(a) The Board shall have authority to:

(1) Formulate rules and regulations relating to official seals and other matters, with appropriate notice to those affected, where such notice can reasonably be given. 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 for licensure, subject to the approval of the Director of the Division of Professional Regulation, and to process all applications;

(3) Designate a written national examination, prepared by either the national professional association or by a recognized legitimate national testing service. The examination shall be prepared for testing on a national basis, and not specifically prepared at the request of the Board for its individual use. The national examination shall be taken by persons applying for licensure, except applicants who qualify for licensure by reciprocity;

(4) Provide for the administration of all examinations, including notice and information to applicants;

(5) Under such conditions as are permitted by the national testing service, administer the uniform national examination, or another nationally-administered examination for those applicants who have been unable to take it at the school or college of landscape architecture, or elsewhere;

(6) Grant licenses to all persons who meet the qualifications for licensure;

(7) Refer complaints received from practitioners and from the public, concerning practitioners or practices of the profession, to the Division of Professional Regulation for investigation pursuant to § 8735 of Title 29;

(8) If an investigation under § 8735 of Title 29 indicates that a disciplinary hearing is appropriate, to conduct such hearing in accordance with this chapter; with the provisions of § 8735(h) of Title 29; and with the applicable provisions of the Administrative Procedures Act [Chapter of 101 of Title 29];

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

(10) Bring proceedings in the courts for the enforcement of this chapter;

(11) Maintain complete records relating to meetings, applications, examinations, rosters, changes in the Board's rules and regulations, complaints, hearings and other matters within the Board's jurisdiction, except for those matters or subjects where the records are maintained by the Division of Professional Regulation;

(12) Formulate rules and regulations relating to continuing education requirements for practitioners; and

(13) Require, by subpoena, the attendance and testimony of witnesses and the production of papers, records and other documentary evidence.

(b) The authority, powers and duties of the Board set forth in this section shall not be construed to include the computation or collection of fees and charges; formulation or administration of examinations; reimbursement of expenses; rules and regulations concerning public meetings; investigation of complaints; or any other powers or duties reserved to the Division of Professional Regulation in accordance with § 8735 of Title 29.

(c) The Board of Landscape Architecture shall promulgate regulations specifically identifying those crimes which are substantially related to the practice of landscape architecture.

(60 Del. Laws, c. 190 § 1; 63 Del. Laws, c. 461 § 5; 67 Del. Laws, c. 385 § 1; 68 Del. Laws, c. 91 § 3; 70 Del. Laws, c. 309 § 2; 74 Del. Laws, c. 262 § 6.)

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

(a) An applicant who is applying for licensure under this chapter shall have 1 of the following qualifications:

(1) Graduated from a school or college of landscape architecture approved or accredited by the National Council of Landscape Architectural Registration Boards, the American Society of Landscape Architects Landscape Architectural Accreditation Board, or other legitimate national association of landscape architects and acquired at least 2 years of professional experience in the practice of landscape architecture acceptable to the Board under the direct supervision of a licensed landscape architect.

(2) Completed 2 years of courses in landscape architecture acceptable to the Board taken from a school or college of landscape architecture approved or accredited by the National Council of Landscape Architectural Registration Boards, the American Society of Landscape Architects Landscape Architectural Accreditation Board, or other legitimate national association of landscape architects and acquired 4 years of professional experience in the practice of landscape architecture acceptable to the Board under the direct supervision of a licensed landscape architect.

(d) Each applicant shall provide such information as may be required on an application form designed and furnished by the Board. No application form shall require a picture of the applicant; require information relating to citizenship, place of birth, length of state residency; nor require personal references.

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

(b) An applicant shall be required to pass the uniform national examination, prepared and graded by the National Council of Landscape Architectural Registration Boards.

(c) An applicant shall not have been convicted of a crime that is substantially related to the practice of landscape architecture; however, 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, may waive this subsection, if it finds all of the following:

(1) 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, or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

(3) The applicant is capable of practicing landscape architecture in a competent and professional manner.

(4) The granting of the waiver will not endanger the public health, safety, or welfare.

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

(60 Del. Laws, c. 190 § 1; 63 Del. Laws, c. 461 § 6; 67 Del. Laws, c. 385 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 § 7; 74 Del. Laws, c. 336 §§ 2-4; 75 Del. Laws, c. 436 § 2; 77 Del. Laws, c. 199 § 2; 78 Del. Laws, c. 44 §§ 3, 4; 80 Del. Laws, c. 205 § 1.)

§ 207 Examination.

(a) The Board shall, in the same month of each year, or at such times as are determined by the testing service, administer the uniform national examination, prepared and graded by the National Council of Landscape Architectural Registration Boards or such portions of the uniform national examination as it deems necessary. Such written examination shall be obtained from, and corrected by, the National Council of Landscape Architectural Registration Boards, or similar national testing service. Where an applicant has failed to pass the examination, but has successfully completed or passed certain portions or sections which the applicant previously failed, the applicant shall be permitted to retake only those certain portions or sections of the examination the applicant has failed, if the testing service permits such partial examination. In the event the applicant fails the second time to successfully complete or pass the examination, the Board may

require that such applicant again take the complete examination.

(b) In the event an applicant has already taken and passed the uniform national examination, the certificate from the National Council of Landscape Architectural Registration Boards acknowledging same shall be accepted, and no further state examination shall be necessary.

(60 Del. Laws, c. 190 § 1; 63 Del. Laws, c. 461 § 7; 67 Del. Laws, c. 385 § 1; 70 Del. Laws, c. 186 § 1.)

§ 208 Reciprocity.

Where the applicant is already licensed in another state, the Board shall accept a certificate or other evidence of the examination score issued by the National Council of Landscape Architectural Registration Boards that the applicant has successfully completed or passed the uniform national examination, or the certificate or other evidence of successful completion of a similar national testing service for its national examination for landscape architects, in lieu of all other requirements for licensure provided for in this chapter. Upon receipt of an application for reciprocity, the Board shall contact each board which has previously licensed the applicant, to determine whether or not there are disciplinary proceedings or unresolved complaints pending against the applicant. In the event there is a disciplinary proceeding or unresolved complaint pending, the applicant shall not be licensed until the proceeding or complaint has been resolved. An application for licensure by reciprocity shall be accompanied by full payment of the reciprocity fee.

(60 Del. Laws, c. 190 § 1; 63 Del. Laws, c. 461 § 8; 67 Del. Laws, c. 385 § 1; 70 Del. Laws, c. 186 § 1.)

§ 209 [Repealed.]

§ 210 Renewal; inactive status; reinstatement.

(a) [Repealed.]

(b) Each license shall be renewed biennially, in such manner as is determined by the Division of Professional Regulation. The Board shall in its rules and regulations, determine the period of time within which a practitioner may still renew a license, notwithstanding the fact that such practitioner has failed to renew on or before the renewal date; provided, however, that such period shall not exceed l year. The Board shall charge for each month or quarter during such "late renewal period" a late fee which, at the end of such "late period" will be twice the sum of the unpaid renewal fee. At the expiration of the period designated by the Board, the license shall be deemed to be lapsed and not renewable unless the former licensee reapplies under the same conditions which govern reciprocity; provided, however, that the former licensee shall also pay a reinstatement fee in an amount which is 3 times the amount of the reciprocity fee.

(c) Any licensee may, upon a written request, be placed in an inactive status. The renewal fee of such person shall be prorated in accordance with the amount of time such person was inactive. Such person may reenter practice upon notification to the Board of the intent to do so.

(d) A former licensee who has been penalized for the violation of a provision of this chapter, or whose license has been suspended or revoked, and who subsequently is permitted to apply for reinstatement shall apply for a new license, successfully complete the uniform national examination and shall pay all appropriate fees therefor.

(60 Del. Laws, c. 190 § 1; 63 Del. Laws, c. 461 § 10; 65 Del. Laws, c. 355 § 1; 67 Del. Laws, c. 385 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 336 § 5; 80 Del. Laws, c. 205 § 2.)

§ 211 Complaints.

All filings and investigations of complaints by practitioners or members of the public which concern any aspect of the practice of landscape architecture shall be presented and processed pursuant to § 8735(h) of Title 29.

(60 Del. Laws, c. 190 § 1; 63 Del. Laws, c. 461 § 11; 65 Del. Laws, c. 355 § 1; 67 Del. Laws, c. 385 § 1.)

§ 212 Practice by corporations and partnerships.

(a) The privilege of engaging in the practice of landscape architecture is personal, based upon the qualifications of the individual evidenced by registration and is not transferable. All final drawings, specifications, plans, reports or other papers or documents involving the practice of landscape architecture, as defined within this chapter, when issued or filed for public record, shall be dated and bear the signature and seal of the landscape architect or landscape architects who prepared or approved same.

(b) Nothing in subsection (a) of this section shall be construed as preventing the formation of business entities, provided that such entities are authorized under Delaware law or the laws of another state, as a vehicle for the practice of or offer to practice landscape architecture for others by individual landscape architects licensed under this chapter through a business entity, or the offering or rendering of landscape architectural services by a business entity through landscape architects licensed under this chapter, provided that:

(1) One or more of the officers, partners, members, managers, or principals is designated as being responsible for any services in the practice of landscape architecture on behalf of their business entity and is a licensed landscape architect under this chapter;

(2) All personnel of said business entity, who act in its behalf as landscape architects in this State or for clients located in this State are licensed under this chapter; and

(3) Said business entity has been issued a certificate of authorization by the Board as herein provided.

(c) A business entity desiring a certificate of authorization shall file with the Board an application, on forms provided by the Board, listing relevant information, including the names and addresses of officers, partners, members, managers or principals of the business entity and also of the individual or individuals duly licensed to practice landscape architecture in this State who shall be in responsible charge of

the practice of landscape architecture in compliance with paragraph (b)(1) of this section and any other information required by the Board, accompanied by the appropriate fee. A certificate of authorization shall be renewed biennially in such manner as is determined by the Division, and upon payment of the appropriate fee and submission of a renewal form provided by the Division. In the event there should be a change in the information provided on the application for a certificate of authorization, notification of such change shall be provided to the Board in writing within 30 days of the effective date of such change.

(d) No such business entity shall be relieved of responsibility for the conduct or acts of its agents, employees, officers, partners, members or principals by reason of its compliance with this section, nor shall any individual be relieved of responsibility for landscape architectural services performed by reason of employment or relationship with such business entity. All business entities and landscape architects practicing through such entities shall be bound by professional standards no less stringent than those stated in § 608 of Title 8.

(e) The Board may revoke, suspend or cancel a certificate of authorization, if after a hearing, the Board determines that any officer, partner, member, manager, principal, or employee has violated any lawful provision of this chapter, or any lawful regulation established thereunder.

(60 Del. Laws, c. 190 § 1; 63 Del. Laws, c. 461 § 12; 67 Del. Laws, c. 385 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 336 §§ 6-8.)

§ 213 Grounds for discipline; procedure.

(a) Practitioners regulated under this chapter shall be subject to those disciplinary actions set forth in § 214 of this title if, after a hearing, the Board finds:

(1) That the practitioner has employed or knowingly cooperated in fraud or material deception in order to be licensed, or be otherwise authorized to practice landscape architecture;

(2) Illegal, incompetent or negligent conduct in the practice of landscape architecture;

(3) Excessive use or abuse of drugs (including alcohol, narcotics or chemicals);

(4) That the practitioner has been convicted of a crime that is substantially related to the practice of landscape architecture;

(5) That the practitioner, as a landscape architect or otherwise in the practice of the profession, knowingly engaged in an act of consumer fraud or deception, engaged in the restraint of competition or participated in price-fixing activities;

(6) That the practitioner has violated a lawful provision of this chapter, or any lawful regulation established thereunder.

(b) A practitioner shall be subject to nondisciplinary remedial action if, after a hearing, the Board finds that there is a danger to the health, safety and welfare of the public due to:

(1) Physical illness or loss of motor skill, including but not limited to deterioration through the aging process;

(2) Temporary emotional disorder or mental illness; or

(3) Permanent emotional disorder or mental illness.

(c) If a practitioner's physical or mental capacity to practice safely is at issue in a nondisciplinary remedial proceeding, the Board may order the practitioner to submit to a reasonable physical or mental examination. Failure to comply with a lawful order to submit to a physical or mental examination shall render a practitioner liable to temporary suspension or revocation of license in accordance with § 214 of this title.

(d) Where a practitioner fails to comply with the Board's request that the practitioner submit to an examination or attending a hearing, the Board may petition the Superior Court to order such examination or attendance, and the said Court or any judge assigned thereto shall have jurisdiction to issue such order.

(e) Subject to 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 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 [29 Del. C. § 10101 et seq.].

(60 Del. Laws, c. 190 § 1; 63 Del. Laws, c. 461 § 13; 67 Del. Laws, c. 385 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 § 8.)

§ 214 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that one of the conditions or violations set forth in § 213 of this title applies to a practitioner regulated by this chapter:

(1) Issue a letter of reprimand;

(2) Censure a practitioner;

(3) Place a practitioner on probationary status, and require the practitioner to:

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

b. Limit all practice and professional activities to those areas prescribed by the Board; and/or

c. Continue or renew the practitioner's professional education until the required degree of skill has been attained in those areas which are the basis of the probation;

(4) Suspend any practitioner's license;

(5) Revoke any practitioner's license.

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

(c) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the

public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(d) Where a license has been suspended due to a disability of the licensee, the Board may reinstate such license if, after a hearing, the Board is satisfied that the licensee is able to practice with reasonable skill and safety.

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

(60 Del. Laws, c. 190 § 1; 63 Del. Laws, c. 461 § 14; 67 Del. Laws, c. 385 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 336 § 9; 79 Del. Laws, c. 213 § 2.)

§ 215 Hearing procedures.

(a) Upon the receipt of a complaint, the Board shall determine what action, if any, it shall take. If the Board decides not to take any further action, and the complainant is known to the Board, the Board shall forward by letter to the complainant its reasons for not taking further action. Where the Board has determined to take further action, the matter shall be heard by the Board within 3 months from the date on which the complaint was received. The Board shall fix the time and place for a full hearing of the matter, and shall cause a copy of the complaint, together with a notice of the time and place fixed for the hearing, to be personally delivered or served upon the practitioner at least 30 days before the date fixed for the hearing. In cases where the practitioner cannot be located or where personal service cannot be effected, substitute service shall be effected in the same manner as with civil litigation.

(b) All hearings shall be informal without use of the 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 be in writing and shall include its reasons for such decision. A copy of the decision shall be mailed immediately to the practitioner. The Board's decision shall become effective on the thirtieth day after the date it is mailed or served on the practitioner, unless there is an appeal by the practitioner to the Superior Court within that time.

(60 Del. Laws, c. 190 § 1; 63 Del. Laws, c. 461 § 15; 67 Del. Laws, c. 385 § 1.)

§ 216 Practicing without a license; penalties.

(a) Where the Board has determined that a person is practicing landscape architecture within the State without having lawfully obtained a license therefor, or that a person previously licensed is unlawfully practicing although the person's license has been suspended or revoked, the Board shall formally warn such person. If the offense continues, the Board shall make a formal complaint to the Attorney General. The complaint shall include all evidence known to, or in the possession of, the Board.

(b) Where the Board has placed a practitioner on probationary status under certain restrictions or conditions, and the Board has determined that such restrictions or conditions are being or have been violated by the practitioner, it may, after a hearing on the matter, suspend or revoke the practitioner's license.

(c) Where a person not currently licensed as a landscape architect is convicted of unlawfully practicing landscape architecture in violation of this chapter such offender shall, upon the first offense, be fined $50, and shall pay all costs; provided, however, that where it is alleged that such violation has resulted in injury to any person, the offender shall be charged and tried under the applicable provisions of Title 11.

(d) Where a person previously convicted of unlawfully practicing landscape architecture is convicted a second or subsequent time of such offense, the fine assessed against such person shall be increased by $250 for each subsequent offense thereafter.

(60 Del. Laws, c. 190 § 1; 63 Del. Laws, c. 461 § 16; 67 Del. Laws, c. 385 § 1; 70 Del. Laws, c. 186 § 1.)

§§ 217 -219. [Repealed.]

Part
Chapter 3
ARCHITECTURE

§ 301 Objectives and functions.

The primary objective of the Board of Architects, to which all other objectives and purposes are secondary, is to protect the general public (including those persons who are direct recipients of services regulated by this chapter) from unsafe practices, and from occupational practices which tend to reduce competition or fix the price of services rendered. The secondary objectives of the Board are to maintain minimum standards of architect 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 architects regulated by the Board; shall adjudicate at formal hearings; shall promulgate rules and regulations; and shall impose sanctions where necessary against architects.

(64 Del. Laws, c. 1 § 1; 68 Del. Laws, c. 144 § 1.)

§ 302 Definitions.

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

(1) "Architect" shall mean any person who engages in the practice of architecture as hereinafter defined.

(2) The "Board" shall mean the Board of Architects established by § 8735(a)(3) of Title 29 and this chapter.

(3) "Certificate of registration" shall mean any document which indicates that a person is currently registered with the Board of Architects.

(4) "Direct supervision" shall mean that degree of supervision by a person overseeing the work of another whereby the supervisor has both control over and detailed professional knowledge of the work prepared under the person's supervision.

(5) "Practice of architecture" shall mean the rendering or offering to render those services, hereinafter described, in connection with the design and construction, enlargement or alteration of a structure or group of structures which have as their principal purpose human habitation or use, and the utilization of space within and surrounding such structures; the services referred to include planning, preparing studies, designs, drawings, specifications and other technical submissions and furnishing administration of construction contracts.

(6) "Registered architect" shall mean an architect holding a current certificate of registration.

(7) "Substantially related" means the nature of 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 architecture.

(8) "Technical submissions" shall mean designs, drawings, specifications, studies and other technical reports prepared in the course of practicing architecture.

(62 Del. Laws, c. 344 § 1; 64 Del. Laws, c. 1 § 1; 65 Del. Laws, c. 355 § 1; 68 Del. Laws, c. 144 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 § 9.)

§ 303 Registration to practice; construction of chapter.

(a) The right to engage in the practice of architecture shall be deemed a personal right, based upon the qualifications of the individual as evidenced by a certificate of registration, which shall not be transferable. No person shall engage in the practice of architecture in this State or otherwise hold oneself out to the public as being an architect, or use in connection with the person's name, or otherwise assume, use or advertise any title or description intending to convey the impression that the person is an architect, unless such person has a certificate of registration.

(b) The provisions of this chapter shall not be construed to prevent, nor to affect:

(1) The preparation of technical submissions or the administration of construction contracts by an employee or subordinate of a person or organization lawfully engaged in the practice of architecture, providing such work is done under the direct responsibility and supervision of such person or organization;

(2) The practice of architecture by a person licensed in this State as a professional engineer, when such practice is incidental to what may be properly considered an engineering project;

(3) The practice of landscape architecture by a landscape architect, regardless of whether the practice of landscape architecture shall continue to be licensed under the Delaware Code;

(4) A nonresident, who holds a certificate to practice architecture in the state in which the person resides, and/or in addition holds the certification issued by the National Council of Architectural Registration Boards, from agreeing to perform or holding the person's self out as able to perform any of the professional services involved in the practice of architecture; provided that the person shall not perform any of the professional services involved in the practice of architecture until registered as provided in subsection (a) of this section; and further provided that the person notifies the Board in writing if the person, prior to registration, engages in any of the activities permitted by this paragraph;

(5) Any of the activities that, apart from this exemption, would constitute the practice of architecture, if performed in connection with

any of the following:

a. Single and 2-family dwellings, and any sheds, storage buildings and garages incidental to such dwellings;

b. Farm buildings, including barns, silos, sheds or housing for farm equipment and livestock, provided such structures are designed to be occupied by no more than 10 persons; or

c. Any alteration, renovation or remodeling of a structure when such alteration, renovation or remodeling does not affect structural or other safety features of the structure and when the work contemplated by the design does not require the issuance of a permit under applicable building codes;

(6) The preparation of submissions to architects by the manufacturer, supplier, installer, or others of any materials, components, or equipment incidental to the architect's design of the entire project that describe or illustrate the use of such items;

(7) The preparation of any details or shop drawings required of the contractor by the terms of the construction documents;

(8) The management of construction contracts by persons engaged in contracting work;

(9) The preparation of technical submissions or the administration of construction contracts by persons acting under the responsible control of a registered architect;

(10) Officers and employees of the United States of America from engaging in the practice of architecture as employees of said United States of America;

(11) A person who holds the certification issued by the National Council of Architectural Registration Boards (NCARB) but who is not currently registered in the jurisdiction, from offering to provide the professional services involved in the practice of architecture, provided that the person shall not perform any of the professional services involved in the practice of architecture until registered as hereinbefore provided, and further provided that he or she notifies the Board in writing that:

a. The person holds a NCARB certificate and is not currently registered in the jurisdiction, but will be present in Delaware for the purpose of offering to provide architectural services;

b. The person will deliver a copy of the notice referred to in paragraph (b)(11)a. of this section to every potential client to whom the person offers to render architectural services; and

c. The person will provide the Board with a statement of intent that the person will apply immediately to the Board for registration, if selected as the architect for a project in Delaware;

(12) A person who holds the certification issued by the National Council of Architectural Registration Boards but who is not currently registered in the jurisdiction from seeking an architectural commission by participating in an architectural design competition for a project in Delaware, provided that the person notifies the Board in writing that:

a. The person holds an NCARB certificate and is not currently registered in the jurisdiction, but will present in Delaware for the purpose of participating in an architectural design competition;

b. The person will deliver a copy of the notice referred to in paragraph (b)(11)a. of this section to every person conducting an architectural design competition in which the person participates; and

c. The person will provide the Board with a statement of intent that the person will apply immediately to the Board for registration, if selected as the architect for the project;

(13) A person who is not currently registered in Delaware, but who is currently registered in another United States or Canadian jurisdiction, from providing uncompensated (other than reimbursement of expenses) professional services at the scene of an emergency at the request of a public officer, public safety officer, or municipal or county building inspector acting in an official capacity. "Emergency" shall mean earthquake, eruption, flood, storm, hurricane, or other catastrophe that has been designated as a major disaster or emergency by the President of the United States or the Governor or other duly authorized office of the State of Delaware;

(14) An individual registered and practicing in a nation other than the United States or Canada (a "foreign architect") from practicing in this jurisdiction, so long as such practice is in strict accordance with the provisions of this subsection:

a. The foreign architect must show that such foreign architect holds a current registration in good standing which allows such foreign architect to use the title "architect" and to engage in the "unlimited practice of architecture" (defined as the ability to provide services on any type building in any state, province, territory, or other political subdivision of the foreign architect's national jurisdiction).

b. The foreign architect must show that a bilateral agreement exists between the NCARB and the national registration authority of the foreign architect's national jurisdiction.

c. An architect registered in this jurisdiction shall take responsible control over all aspects of the architectural services for said project.

d. The foreign architect may not seek, solicit, or offer to render architectural services in this jurisdiction, except with the material participation of the architect referred to in paragraph (b)(14)c. of this section above.

e. Promptly after the foreign architect has been selected to provide architectural services for a project within this jurisdiction, the architect referred to in paragraph (b)(14)c. of this section above must file a statement with the Board:

1. Identifying the foreign architect;
2. Describing the project; and
3. Describing the foreign architect's role.

f. In all aspects of offering or providing architectural services within this jurisdiction, the foreign architect must use the title "[x], a foreign architect in consultation with [y], an architect registered in Delaware";

(15) A person currently employed under the responsible control of an architect, and who maintains in good standing a National Council of Architectural Registration Boards record, from using the title "intern architect" or "architectural intern" in conjunctions with the person's current employment. Such person may not engage in the practice of architecture except to the extent permitted by other provisions of this chapter.

(c) The owner of any real property who allows a project to be constructed on such real property shall be engaged in the practice of architecture unless the owner shall have employed or shall have caused others to have employed a registered architect and/or a registered engineer to furnish construction contract administration services with respect to such project.

(1) For purposes of this section, the following terms shall have the following meanings:

a. "Building official" shall mean the person appointed by the municipality or State subdivision having jurisdiction over the project to have principal responsibility for the safety of the project as finally built.

b. "Construction contract administration services" shall comprise at least the following services:

1. Visiting the construction site on a regular basis as is necessary to determine that the work is proceeding generally in accordance with the technical submissions submitted to the building official at the time the building permit was issued;

2. Processing shop drawings, samples, and other submittals required of the contractor by the terms of construction contract documents; and

3. Notifying an owner and the building official of any code violations, changes which affect code compliance, the use of any materials, assemblies, components or equipment prohibited by a code, major or substantial changes between such technical submissions and the work in progress, or any deviation from the technical submissions which he or she identifies as constituting a hazard to the public, which he or she observes in the course of performing his or her duties.

c. "Owner" shall mean with respect to any real property any of the following persons:

1. The holder of a mortgage secured by such property;

2. The holder, directly or indirectly, of an equity interest in such real property exceeding 10 percent of the aggregate equity interest in such real property;

3. The record owner of such real property; or

4. The lessee of all or any portion of such real property when the lease covers all of that portion of such real property upon which the project is being constructed, the lessee has significant approval rights with respect to the project, and the lease, at the time the construction of the project begins, has a remaining term of not less than 10 years.

d. "Project" shall mean the construction, enlargement, or alteration of a building, other than a building exempted by the provisions of paragraph (b)(5) of this section.

(2) If the registered architect who sealed the technical submissions which were submitted to the building official at the time the building permit was issued has not been employed to furnish construction contract administration services at the time such registered architect issues such technical submissions, the registered architect shall note on such technical submissions that the registered architect has not been so employed. If the registered architect is not employed to furnish construction contract administration services when construction of the project begins, the registered architect shall file, not later than 30 days after such construction begins, with the Board and with the building official, on a form prescribed by the Board, a notice setting forth the names of the owner or owners known to the registered architect, the address of the project, and the name, if known to the registered architect, of the registered architect employed to perform construction contract administration services. If the registered architect believes that no registered architect has been so employed, the registered architect shall so state on the form. Any registered architect who fails to place the note on that registered architect's technical submissions or to file such notice, as required by this paragraph, shall have violated the provisions of this chapter and shall be subject to disciplines as set forth herein.

(3) If the Board determines, with respect to a particular project or class of projects, that the public is adequately protected without the necessity of a registered architect performing construction contract administration services, the Board may waive the requirements of this subsection with respect to such project or class of projects.

(64 Del. Laws, c. 1 § 1; 68 Del. Laws, c. 144 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 261 §§ 1, 2.)

§ 304 Board of Architects.

(a) The Board of Architects shall consist of 9 members appointed by the Governor: 5 professional members who shall be registered architects; and 4 public members. To serve on the Board, a public member shall not be, nor ever have been, employed by a person or firm which provides construction services, nor a member of the immediate family of an architect or engineer; shall not have been employed by a person or firm which provides construction services (which shall include architects and architectural businesses, engineers and engineering businesses, and any other occupation involved in the design of structures); shall not have had a material financial interest in the providing of goods and services to any person or firm which provides construction services; nor have been engaged in an activity directly related to the design of buildings. No person shall be a public member if a member of such person's immediate family is an architect, or is an employee of an architect; or if a member of such person's immediate family has a material or financial interest in the providing of goods or services to architects. Each public member shall be accessible to inquiries, comments and suggestions from the general public.

(b) Each member shall serve for a term of 3 years, and may successively serve 1 additional term; provided, however, that where a member was initially appointed to fill a vacancy, such member may successively serve 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, and the member shall no longer be eligible to participate in Board proceedings unless lawfully appointed. Current Board members, who will have served as members for 10 years or more at the end of their current terms, will not be eligible for reappointment to the Board.

(c) A member of the Board shall be suspended or removed by the Governor for misfeasance, nonfeasance or malfeasance. A member subject to disciplinary proceedings 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.

(d) No member of the Board of Architects, while serving on the Board, shall be a president, chairperson or other official of a professional architect association.

(e) The provisions set forth for "employees" in § 5805 of Title 29 shall apply to all members of the Board, and to all agents appointed, or otherwise employed, by the Board.

(f) Each member of the Board shall receive not more than $500 in any calendar year for services as a member of the Board, including not more than $40 for each meeting which such member attends during that year.

(38 Del. Laws, c. 60 §§ 1-3, 11; Code 1935 §§ 891-893, 901; 24 Del. C. 1953 §§ 301, 309; 62 Del. Laws, c. 344 § 1; 64 Del. Laws, c. 1 § 1; 67 Del. Laws, c. 368 § 3; 68 Del. Laws, c. 144 § 1; 70 Del. Laws, c. 186 § 1.)

§ 305 Officers; conduct of business.

(a) In the same month of each year, the members shall elect, from among their number, a president and a secretary. A member may serve as an officer of the Board for not more than 2 consecutive years.

(b) The Board shall hold a regularly scheduled business meeting at least once in each quarter of a calendar year and at such other times as the president may deem necessary, or at the request of a majority of Board members. A majority of members shall constitute a quorum; and no action shall be taken without the affirmative vote of at least 5 members. Any member who fails to attend 3 consecutive meetings, or who fails to attend at least 1/2 of all regular business meetings during any calendar year, shall automatically, upon such occurrence, be deemed to have resigned from office and a replacement shall be appointed.

(c) Minutes of all meetings shall be recorded, and copies of the minutes shall be maintained by the Division of Professional Regulation. At any hearing in which 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.

(d) The Division of Professional Regulation shall annually compute the average expenses incurred in duplicating the following materials: The meeting schedule for the Board, notice of next business meeting and the minutes of Board meetings. Upon initial registration and each registration renewal, each registered architect shall receive a list of materials available from the Division, and the price charged to receive each for 1 year. Each item shall be offered to the registered architect and to members of the public at a cost set by the Division of Professional Regulation.

(38 Del. Laws, c. 60 §§ 1, 5-7; Code 1935 §§ 891, 895-897; 24 Del. C. 1953 §§ 303-305; 56 Del. Laws, c. 399 § 1; 62 Del. Laws, c. 344 § 1; 64 Del. Laws, c. 1 § 1; 65 Del. Laws, c. 355 § 1; 68 Del. Laws, c. 144 § 1; 70 Del. Laws, c. 186 § 1.)

§ 306 Powers and duties.

(a) The Board of Architects shall have the authority to:

(1) Promulgate rules of conduct governing the practice of architects, including rules and regulations concerning continuing education, and/or misrepresentations, conflicts of interest, disability, violations of law or other unprofessional conduct. 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 for certificates of registration, and to process all applications;

(3) Designate a written examination to be taken by persons applying for a certificate of registration. The Board shall adopt the examinations of the National Council of Architectural Registration Boards, or a comparable alternative national or regional examination, if a national examination is not available;

(4) Provide for the administration of all examinations, including notice and information to applicants. The Board shall adopt the administration and grading procedures of the National Council of Architectural Registration Boards, or of a comparable alternative national or regional examination if a national examination is not available;

(5) Designate the requirements for the issuance of a certificate of registration consistent with the other provisions of this chapter;

(6) Grant certificates of registration to all persons who meet the qualifications for registration and who otherwise satisfy the requirements set forth in this chapter;

(7) Refer all complaints from registered architects and from the public concerning architects, or concerning practices of the Board or of the profession, to the Division of Professional Regulation for investigation pursuant to § 8735 of Title 29;

(8) Hold hearings and take such actions as are permitted under the provisions of the Administrative Procedures Act, Chapter 101 of Title 29. Where such provisions conflict with the provisions of this chapter, this chapter shall govern. The Board shall determine whether or not an architect shall be subject to a disciplinary hearing, and if so, shall conduct such hearing in accordance with this chapter and the Administrative Procedures Act;

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

(10) Bring proceedings in the courts for the enforcement of this chapter;

(11) In cooperation with Division of Professional Regulation, to maintain complete records relating to meeting minutes, applications, examinations, rosters, changes and additions to the rules and regulations, complaints, hearings and such other matters as the Board shall determine. The Division of Professional Regulation shall have the power to review, approve and execute all contracts for examination services;

(12) The Board may require by subpoena the attendance and testimony of witnesses and the production of papers, records or other documentary evidence.

(b) The Board of Architects shall promulgate regulations specifically identifying those crimes which are substantially related to the practice of architecture.

(64 Del. Laws, c. 1 § 1; 68 Del. Laws, c. 144 § 1; 74 Del. Laws, c. 262 § 10.)

§ 307 Application procedures.

(a) An applicant who is applying for initial registration under this chapter shall have the following qualifications:

(1) The applicant shall hold a National Architectural Accrediting Board (NAAB) accredited professional degree in architecture or shall have completed such other education as the Board deems equivalent. The Board shall adopt accreditation decisions of the NAAB and shall adopt regulations governing education or continuing education published from time to time by the National Council of Architectural Registration Boards;

(2) The applicant shall have completed practical training in architectural work acceptable to the Board.

(b) Each applicant shall provide such information as may be required on an application form designed and furnished by the Board.

(c) The Board may refuse or reject an applicant if, after a hearing, the Board finds that the applicant has:

(1) Been convicted of committing a crime that is substantially related to the practice of architecture; however, 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, may waive this paragraph (c)(1), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

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

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

(2) Misstated or misrepresented a fact in connection with an application;

(3) Been found guilty of a violation of any of the Requirements for Business and Professional Conduct required of architects and as set forth in statutes or regulations;

(4) Practiced architecture without being registered in violation of the registration laws of Delaware. Notwithstanding such a finding, the Board may allow registration of such applicant if the applicant presents to the Board suitable evidence of reform.

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

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

(f) [Repealed.]

(38 Del. Laws, c. 60 §§ 13, 15; Code 1935 §§ 903, 905; 24 Del. C. 1953 §§ 311, 313; 56 Del. Laws, c. 399 § 2; 62 Del. Laws, c. 344 § 1; 64 Del. Laws, c. 1 § 1; 68 Del. Laws, c. 144 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 § 11; 75 Del. Laws, c. 261 § 3; 75 Del. Laws, c. 436 § 3; 77 Del. Laws, c. 199 § 3; 78 Del. Laws, c. 44 §§ 5, 6; 80 Del. Laws, c. 206 § 1.)

§ 308 Examination of applicants.

(a) An applicant for initial registration under this chapter shall be required to pass an examination adopted by the Board and graded by a national testing administrator. The Board, or its agent, shall, at least once per year, provide for the administration and grading of such examination. Where an applicant has failed to pass the examination, but has successfully completed and passed certain portions or sections of the examination, the applicant shall in the next subsequent examination be tested only for those portions or section which the applicant has previously failed.

(b) The Board may exempt from the written examination requirement an applicant who holds a certification issued by the National Council of Architectural Registration Boards.

(64 Del. Laws, c. 1 § 1; 68 Del. Laws, c. 144 § 1; 70 Del. Laws, c. 186 § 1; 80 Del. Laws, c. 206 § 2.)

§ 309 Reciprocity.

(a) Upon payment of the application 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:

(1) Holds a National Council of Architectural Boards (NCARB) certificate; or

(2) Presents proof of current registration in good standing in another jurisdiction whose standards for licensure are substantially similar to those of this State; or

(3) Is licensed in a jurisdiction whose standards for licensure are not substantially similar to those of this State but who has held an active license in good standing in that jurisdiction for a minimum of 5 years and holds a National Architectural Accrediting Board (NAAB) accredited professional degree in architecture or such other education as the Board deems equivalent; or

(4) Is licensed in a jurisdiction whose standards for licensure are not substantially similar to those of this State but who has held an active license in good standing in that jurisdiction for a minimum of 13 years.

(b) An applicant who is applying for licensure by reciprocity must also meet the requirements of § 307(c) of this title.

(64 Del. Laws, c. 1 § 1; 68 Del. Laws, c. 144 § 1; 70 Del. Laws, c. 186 § 1; 80 Del. Laws, c. 206 § 3.)

§ 310 Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each calendar year the Division of Professional Regulation, or any state agency acting in its behalf, shall compute for each separate service or activity the appropriate Board fees for the coming year.

(38 Del. Laws, c. 60 § 16; Code 1935 § 906; 24 Del. C. 1953 § 314; 53 Del. Laws, c. 108 § 3; 57 Del. Laws, c. 474; 62 Del. Laws, c. 344 § 1; 64 Del. Laws, c. 1 § 1; 65 Del. Laws, c. 355 § 1; 68 Del. Laws, c. 144 § 1.)

§ 311 Issuance and renewal of certificate of registration.

(a) Each applicant who meets the requirements of §§ 307 and 308 of this title, or the requirements of § 309 of this title, and who pays the fee established under § 310 of this title, shall be issued a certificate of registration.

(b) Each certificate of registration shall be renewed biennially, in such manner as is determined by the Division of Professional Regulation. The Board shall, in its rules and regulations, determine the period of time within which a registered architect may still renew a license, notwithstanding the fact that such registered architect has failed to renew on or before the renewal date; provided, however, that such period shall not exceed 1 year. The Board shall charge, for each month or quarter during such "late renewal period," a late fee which at the end of such "late period" shall be twice the sum of the unpaid renewal fee. At the expiration of the period designated by the Board, the certification of registration of the registered architect shall be deemed to be lapsed and not renewable, unless the former Delaware registered architect, without further examination, files an application under the same conditions which govern the application for reciprocity pursuant to § 309 of this title, provided, however, that the former registered Delaware architect shall also pay a reinstatement fee in the amount which is 3 times the amount of the annualized reciprocity fee, as determined by the Division.

(38 Del. Laws, c. 60 § 18; Code 1935 § 908; 24 Del. C. 1953 § 316; 62 Del. Laws, c. 344 § 1; 64 Del. Laws, c. 1 § 1; 65 Del. Laws, c. 355 § 1; 68 Del. Laws, c. 144 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 261 § 4.)

§ 312 Certificate of registration.

Every registered architect having a place of business or employment within the State shall display their certificate of registration in a conspicuous place in such place of business or employment. A new certificate of registration, to replace a lost, destroyed or mutilated certificate, shall be issued by the Board upon payment of a fee established in accordance with § 310 of this title. Each such duplicate certificate shall be stamped or marked "duplicate."

(68 Del. Laws, c. 144 § 1; 70 Del. Laws, c. 186 § 1.)

§ 312A Certificate of authorization.

(a) The privilege of engaging in the practice of architecture is personal, based upon the qualifications of the individual evidenced by registration and is not transferable. All final drawings, specifications, plans, reports, or other papers or documents involving the practice of architecture, as defined within this chapter, shall be dated and bear the signature and seal of the architect or architects who prepared or directly supervised the same.

(b) Nothing in subsection (a) of this section shall be construed as preventing the formation of business entities, provided that such entities are authorized under Delaware law or the laws of another state, as a vehicle for the practice of or offer to practice architecture for others by individual architects registered under this chapter through a business entity, or the offering or rendering of architectural services by a business entity through architects registered under this chapter, provided that:

(1) One or more of the officers (if a corporation), partners (if a partnership), members or managers (if a limited liability company or publicly owned corporation), is designated as being responsible for any services in the practice of architecture on behalf of their respective business entity and is a registered architect under this chapter;

(2) All personnel of said business entity, who act in its behalf as architects in this State or for clients located in this State are registered under this chapter; and

(3) Said business entity has been issued a certificate of authorization by the Board as herein provided.

(c) A business entity desiring a certificate of authorization shall file with the Board an application, on forms provided by the Board, listing relevant information, including the names, addresses, and license or registration numbers of directors, officers, partners, members or managers of the business entity and also of the individual or individuals duly registered to practice architecture in this State who shall be in responsible charge of the practice of architecture through the business entity in compliance with paragraph (b)(3) of this section above, and any other information required by the Board, accompanied by the appropriate fee as determined by the Division of Professional Regulation. A certificate of authorization may be renewed biennially by submission of the required information and fee. In the event that there should be a change in the information provided on the application for a certificate of authorization, notification of such change shall be provided to the Board in writing within 30 days of the effective date of such change. If all the requirements of this section are met, the Board shall issue a certification of authorization to such business entity, and that business entity shall be authorized to contract for and to collect fees for architectural services.

(d) An applicant for initial issuance or renewal of a certificate of authorization shall be required to register each office of the business entity within this State with the Board and show that each office is under the charge and supervision of an individual holding a valid certificate of registration under this chapter.

(e) No such business entity shall be relieved of responsibility for the conduct or acts of its agents, employees, officers, partners, members or principals by reason of its compliance with this section, nor shall any individual be relieved of responsibility for architectural services performed by reason of employment or relationship with such business entity. All business entities and architects practicing through such entities shall be bound by professional responsibility standards no less stringent than those stated in § 608 of Title 8.

(f) The Board may revoke, suspend or cancel a certification of authorization, if after a hearing, the Board determines that any officer, partner, member, manager, principal or employee has violated any lawful provision of this chapter, or any lawful regulation established thereunder.

(77 Del. Laws, c. 225 § 1.)

§ 313 Seal.

Every registered architect shall have a seal of a design authorized by the Board by regulation. All technical submissions prepared by such architect, or under the architect's direct supervision, shall be stamped with the impression of the architect's seal. No registered architect shall impress the seal on any technical submissions unless they were prepared under the architect's direct supervision.

(68 Del. Laws, c. 144 § 1; 70 Del. Laws, c. 186 § 1.)

§ 314 Violations; grounds for professional discipline.

(a) An architect or holder of a certificate of authorization shall be subject to those disciplinary actions set forth in § 315 of this title, if, after a hearing, the Board finds that the architect or holder of a certificate of authorization has:

(1) Employed or knowingly cooperated in fraud or material deception in order to acquire a certificate of registration, or be otherwise authorized to practice architecture;

(2) Engaged in illegal, incompetent or negligent conduct in the practice of architecture;

(3) As an architect or otherwise in the practice of the profession, knowingly engaged in an act of consumer fraud or deception, engaged in the restraint of competition or participated in price-fixing activities; or

(4) Violated a lawful provision of this chapter, or any lawful regulation established thereunder.

(b) An architect shall be subject to nondisciplinary remedial action if, after a hearing, the Board finds that there is a danger to the health, safety and welfare of the public due to:

(1) Physical illness or loss of motor skill, including but not limited to deterioration through the aging process;

(2) Temporary emotional disorder or mental illness; or

(3) Permanent emotional disorder or mental illness.

(c) If an architect's physical or mental capacity to practice safely is at issue in a non-disciplinary remedial proceeding, the Board may order the architect to submit to a reasonable physical or mental examination. Failure to comply with such an order shall render a registered architect liable to temporary suspension or revocation of the architect's certificate of registration in accordance with § 315 of this title, notwithstanding the Board's power to compel such attendance under subsection (d) of this section.

(d) Where an architect fails to comply with the Board's request that the architect submit to an examination or attend a hearing, the Board may petition the Superior Court to order such examination or attendance, and the said court or any judge assigned thereto shall have jurisdiction to issue such order.

(e) No certificate of registration or certificate of authorization shall be restricted, suspended or revoked by the Board, and no registered architect's right to practice shall be limited by the Board, until such registered architect or holder of a certificate of authorization has been given notice and an opportunity to be heard in accordance with § 316 of this title.

(38 Del. Laws, c. 60 § 19; Code 1935 § 909; 24 Del. C. 1953 § 317; 62 Del. Laws, c. 344 § 1; 64 Del. Laws, c. 1 § 1; 68 Del. Laws, c. 144 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 225 §§ 2-5.)

§ 315 Remedial actions and disciplinary sanctions.

(a) The Board may impose any of the following sanctions or take any of the following actions, singly or in combination, when it finds that 1 of the conditions or violations set forth in § 314 of this title applies to an architect or holder of a certificate of authorization:

(1) Issue a letter of reprimand;

(2) Censure the architect or holder of a certificate of authorization;

(3) Place the architect or holder of a certificate of authorization on probationary status, and require the architect or holder of a certificate of authorization to:

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

b. Limit all practice and professional activities to those areas prescribed by the Board; and/or

c. Continue or renew the architect's professional education until the required degree of skill has been attained in those areas which are the basis of the probation;

(4) Suspend a registered architect's certificate of registration or suspend a certificate of authorization;

(5) Revoke a registered architect's certificate of registration or revoke a certificate of authorization;

(6) Issue cease and desist orders;

(7) Seek injunctions; and/or

(8) Seek judicial enforcement of civil fines imposed by the Board.

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

(c) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(d) Where a certificate of registration has been suspended due to a disability of the registered architect, the Board may reinstate such certification of registration if, after a hearing, the Board is satisfied that the registered architect is able to practice with reasonable skill and safety.

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

(38 Del. Laws, c. 60 § 20; Code 1935 § 910; 24 Del. C. 1953 § 318; 62 Del. Laws, c. 344 § 1; 64 Del. Laws, c. 1 § 1; 68 Del. Laws, c. 144 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 225 §§ 6-11; 79 Del. Laws, c. 213 § 2.)

§ 316 Board hearings; procedure.

(a) Upon the receipt of a formal complaint from the Attorney General's office, the Board shall fix the time and place of a full hearing of the matter, and it shall be scheduled to be heard as soon as practicable. The Board shall cause a copy of the complaint, together with a notice of the time and place fixed for the hearing, to be personally delivered or served upon the architect at least 20 days before the date fixed for the hearing. In cases where the architect cannot be located or where personal services cannot be effected, substitute service shall be effected in the same manner as with civil litigation.

(b) All hearings shall be informal without use of the 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 be in writing and shall include its reason for such decision. A copy of the decision shall be mailed by registered mail immediately to the complainant, and to the architect. The Board's decision shall become effective on the thirtieth day after the day it is received by the architect, unless there is an appeal to the Superior Court within that time.

(c) Where either the complainant or the architect is in disagreement with the action of the Board, either person may appeal the Board's decision to the Superior Court within 30 days of the receipt of the Board's decision. Upon such appeal, the Court shall hear the evidence "de novo." The filing of an appeal shall act as a stay of the Board's decision, pending final determination of the appeal.

(64 Del. Laws, c. 1 § 1; 68 Del. Laws, c. 144 § 1.)

§ 317 Penalties.

(a) Where the Board has determined, upon notice and hearing pursuant to Chapter 101 of Title 29 that a person is engaged in the practice of architecture regulated by this chapter without having lawfully obtained a license or that a person previously licensed under this chapter is

engaged in a practice regulated by this chapter notwithstanding that the person's license has been suspended or revoked, the Board may issue a cease and desist order. In addition to the power to issue a cease and desist order, the Board may seek an injunctive order prohibiting such unlawful practice and/or seek the imposition of other civil penalties defined by this chapter.

(b) Upon notice and hearing pursuant to Chapter 101 of Title 29, the Board may fine any person who violates such cease and desist order not less than $100 or more than $1000. Each day a violation continues may be deemed a separate offense in the Board's discretion.

(c) Where the Board has placed a registered architect on probationary status under certain restrictions or conditions, and the Board has determined that such restrictions or conditions are being or have been violated by the registered architect, the Board may, after a hearing on the matter, suspend or revoke the registered architect's certificate of registration.

(d) Any person who violates any provisions of this chapter or any rules or regulations promulgated hereunder shall be liable for a civil penalty of not more than $5,000 for the first offense; and not more than $10,000 for the second and each subsequent offense, which penalty may be sued for, and recovered by, the Board. Nothing in this section shall be construed to prevent prosecution under, or be inconsistent with, Chapter 5 of Title 11.

(38 Del. Laws, c. 60 § 14; Code 1935 § 904; 24 Del. C. 1953 § 312; 62 Del. Laws, c. 344 § 1; 64 Del. Laws, c. 1 § 1; 68 Del. Laws, c. 144 § 1; 75 Del. Laws, c. 261 §§ 5, 6; 77 Del. Laws, c. 225 §§ 12, 13.)

Part

Chapter 4

BARBERS

Subchapter I

General Provisions

§§ 401 -416. Definitions; State Board of Examiners of Barbers; appointment; qualifications; terms of office; vacancies; oaths; organization; meetings; quorum; annual report; receipts; disbursements; rules and regulations; posting; revocation of license; hearing; examination of shops; failure to keep shops sanitary; examination of applicants; notice; registration in lieu of examination; certificates; renewals; fees; examination fee; qualification; certificate; renewal fee; apprentices; limitation on number; qualifications; card; register; open to public; following occupation of barber without certificate unlawful; saving clause; establishing new barbershop; fee; Sunday closing; penalty; penalties; jurisdiction.

(Repealed by 69 Del. Laws, c. 178 § 1, effective Feb 4, 1994.)

Subchapter II

Barber Schools

§§ 421 -432. Qualifications for registration; equipment requirements for barber schools; personal qualifications; student information; student barber sign; general regulations pertaining to schools; rules and regulations governing the operation and conduct of barber schools; examination by Board; licensing of students; curriculum requirements; fees; definitions; barber instruction in public schools.

(Repealed by 69 Del. Laws, c. 178 § 1, effective Feb 4, 1994.)

Part

Chapter 5

PODIATRY

Subchapter I

Board of Podiatry

§ 501 Objectives.

The primary objective of the Board of Podiatry, 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 that 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 licensed practitioners.

(64 Del. Laws, c. 39 § 1; 72 Del. Laws, c. 213 § 1.)

§ 502 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 Podiatry established in this chapter.

(2) "Diagnosis" shall mean the ascertainment of a disease or ailment by its general symptoms.

(3) "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.

(4) "Division" shall mean the State Division of Professional Regulation.

(5) "Electrical treatment" shall mean the administration of electricity to the foot and ankle by means of electrodes, machinery, rays and the like.

(6) "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 beverages such that it impairs a person's ability to perform the work of a podiatrist.

(7) "Manipulative treatment" shall mean the use of the hand or machinery in the operation of or working upon the foot and its articulations.

(8) "Mechanical treatment" shall mean the application of any mechanical appliance made of steel, leather, felt or any material to the foot or the shoe for the purpose of treating any disease, deformity or ailment.

(9) "Medical treatment" shall mean the application to or prescription for the foot and ankle of medicine, pads, adhesives, felt, plasters or any medicinal agency.

(10) "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.

(11) "Podiatrist" shall mean a person who is qualified to practice podiatry and is licensed under this chapter.

(12) "Practice of podiatry" shall mean the diagnosis and the medical, surgical, mechanical, manipulative and electrical treatment of all ailments of the foot and ankle. As appropriate in regulation, these services may be performed with the use of telemedicine. Podiatry may also include participation in telehealth, as further defined in regulation. Amputation of the foot shall be restricted to state-licensed podiatrists who have completed an American Podiatric Medical Association accredited surgical residency program acceptable to the Board and have current amputation privileges, or have fulfilled the credentialing criteria of the surgical committee of the Joint Committee on Accreditation of Hospitals accredited hospital where the amputation is to be performed.

(13) "State" shall mean the State of Delaware.

(14) "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.

(15) "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 podiatry.

(16) "Surgical treatment" shall mean the use of any cutting instrument to treat a disease, ailment or condition.

(17) "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.

(18) "Telemedicine" means 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.

(33 Del. Laws, c. 66 § 2; 40 Del. Laws, c. 108 § 2; Code 1935 § 5385; 24 Del. C. 1953 § 501; 53 Del. Laws, c. 315 § 1; 61 Del. Laws, c. 356 § 1; 64 Del. Laws, c. 39 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 213 § 1; 74 Del. Laws, c. 262 § 12; 80 Del. Laws, c. 80 § 7.)

§ 503 Board of Podiatry; appointments; composition; qualifications; term; vacancies; suspension or removal; unexcused absences; compensation.

(a) There is created a State Board of Podiatry that shall administer and enforce this chapter.

(b) The Board shall consist of 5 members, appointed by the Governor, who are residents of this State: 3 shall be podiatrists licensed under this chapter and 2 shall be public members. The public members shall not be, nor ever have been, podiatrists, nor members of the immediate family of a podiatrist; shall not have been employed by a podiatrist or a company engaged in the practice of podiatry; shall not have a material interest in the providing of goods and services to podiatrists; nor have been engaged in an activity directly related to podiatry. 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 or until replaced by the Governor. Persons who are members of the Board on July 20, 1999, 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 term 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, 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.

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

(h) The provisions set forth in 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, according to Division of Professional Regulation policy, and, in addition, shall receive not more than $50 for each meeting attended, but not more than $500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(33 Del. Laws, c. 66 §§ 3, 14; 40 Del. Laws, c. 108 §§ 3, 17; Code 1935 §§ 5386, 5398; 42 Del. Laws, c. 159 § 1; 24 Del. C. 1953 §§ 502, 503; 53 Del. Laws, c. 315 § 1; 61 Del. Laws, c. 356 § 1; 64 Del. Laws, c. 39 § 1; 67 Del. Laws, c. 368 § 4; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 213 § 1.)

§ 504 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 President deems necessary, or at the request of a majority of the Board members.

(b) The Board annually shall elect a president and secretary. Each officer shall serve for 1 year, and shall not succeed himself or herself for more than 2 consecutive terms.

(c) A majority of the members shall constitute a quorum for the purpose of transacting business, and no disciplinary action shall be taken without the affirmative vote of at least 3 members.

(d) Minutes of all meetings shall be recorded, and the Division of Professional Regulation shall maintain copies. 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.

(33 Del. Laws, c. 66 § 3; 40 Del. Laws, c. 108 § 3; Code 1935 § 5386; 42 Del. Laws, c. 159 § 1; 24 Del. C. 1953 § 502; 53 Del. Laws, c. 315 § 1; 61 Del. Laws, c. 356 § 1; 64 Del. Laws, c. 39 § 1; 65 Del. Laws, c. 355 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 213 § 1.)

§ 505 Records.

The Division of Professional Regulation shall keep a register of all approved applications for license as a podiatrist 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.

(72 Del. Laws, c. 213 § 1.)

§ 506 Powers and duties; immunity.

(a) The Board of Podiatry 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 on podiatry administered by the National Board of Podiatric Medical Examiners (NBPME) and the Podiatric Medical Licensing Examination for States (PMLEXIS), to be taken by all persons applying for licensure.

(4) Evaluate the credentials of all persons applying for a license to practice podiatry in this State, in order to determine whether such persons meet the qualifications for licensing set forth in this chapter.

(5) Grant licenses to and renew licenses of all persons who meet the qualifications for licensure, including those persons who apply for temporary licensure.

(6) Establish by rule and regulation continuing education standards required for license renewal.

(7) Evaluate certified records to determine whether an applicant for licensure who previously has been licensed, certified or registered in another jurisdiction 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 applicant for such acts or offenses.

(8) Refer all complaints from licensees and the public concerning licensed podiatrists or concerning practices of the Board or of the profession to the Division 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.

(9) Conduct hearings and issue orders in accordance with procedures established pursuant to Chapter 101 of Title 29.

(10) Where it has been determined after a 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 members of the Board shall not be subject to and shall be immune from claims, suit, liability, damages or any other recourse, civil or criminal, arising from any act, proceeding, decision or determination undertaken or performed, or recommendation made, so long as such member of the Board acted in good faith and without malice in carrying out the responsibilities, authority, duties, powers and privileges of the offices conferred by law upon them under this chapter, or any other provisions of the Delaware or federal law or rules or regulations or duly adopted rule or regulation of the Board. Good faith is presumed unless otherwise proven, and malice is required to be proven by the complainant.

(c) No member of the Board shall in any manner whatsoever discriminate against any applicant or person holding or applying for a certificate to practice podiatric medicine by reason of sex, race, color, creed or national origin.

(d) No member shall participate in any action of the Board involving directly or indirectly any person related in any way by blood or marriage to said member.

(e) The Board of Podiatry shall promulgate regulations specifically identifying those crimes which are substantially related to the practice of podiatry.

(61 Del. Laws, c. 356 § 1; 64 Del. Laws, c. 39 § 1; 67 Del. Laws, c. 212 §§ 1, 2; 72 Del. Laws, c. 213 § 1; 74 Del. Laws, c. 262 § 13.)

Subchapter II

License

§ 507 License required.

(a) No person shall engage in the practice of podiatry or hold himself or herself out to the public in this State as being qualified to practice podiatry; or use in connection with that person's name, or otherwise assume or use, any title or description conveying or tending to convey the impression that the person is qualified to practice podiatry, unless such person has been duly licensed under this chapter.

(b) Whenever a license to practice as a podiatrist in this State has expired or been suspended or revoked, it shall be unlawful for the person to practice podiatry in this State.

(64 Del. Laws, c. 39 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 213 § 1.)

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

(a) An applicant who is applying for licensure as a podiatrist under this chapter shall submit evidence, verified by oath and satisfactory to

the Board, that such person:

(1) Has received a degree of "Doctor of Podiatric Medicine" or its equivalent from a college or school approved by the Council on Podiatric Education of the American Podiatric Medical Association, or the successor of such Council.

(2) Has satisfactorily completed a hospital residency program approved by the Council on Podiatric Medical Education.

(3) Has satisfactorily completed the Podiatric Medical Licensing Examination for States (PMLEXIS); the minimum passing score shall be that score recommended by the testing service providing the examination.

(4) Shall not have been the recipient of any administrative penalties regarding the applicant's practice of podiatry, including but not limited to fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations, and/or has not entered into any "consent agreements" which contain conditions placed by a Board on the applicant's professional conduct and practice, including any voluntary surrender of a license. The Board may determine, after a hearing, whether such administrative penalty is grounds to deny licensure.

(5) Shall not have any impairment related to drugs, alcohol or a finding of mental incompetence by a physician that would limit the applicant's ability to undertake the practice of podiatry in a manner consistent with the safety of the public.

(6) Shall not have a criminal conviction record, nor pending criminal charge relating to an offense, the circumstances of which substantially relate to the practice of podiatry. Applicants who have criminal conviction records or pending criminal charges shall request 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 podiatry. 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, may waive this paragraph (a)(6), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

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

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

(7) Has not engaged in any of the acts or offenses that would be grounds for disciplinary action under this chapter, and has no disciplinary proceedings or unresolved complaints pending against the applicant in any jurisdiction where the applicant has previously been or currently is licensed.

(8) Has not been convicted of a felony sexual offense.

(9) Has submitted, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

a. 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 relating to that person.

b. A report of the applicant's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Board of Podiatry shall be the screening point for the receipt of said federal criminal history records.

c. An applicant may not be licensed to practice podiatric medicine until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be licensed by the Board unless a waiver is granted pursuant to paragraph (a)(6) of this section.

(10) Has submitted to the Board a sworn or affirmed statement that the applicant is, at the time of application, physically and mentally capable of engaging in the practice of podiatric medicine according to generally accepted standards, and submit to such examination as the Board may deem necessary to determine the applicant's capability.

(b) Where the Board has found to its satisfaction that an applicant has been intentionally fraudulent, or that the applicant has supplied false information, the Board 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 applicant feels that the Board has acted without justification; has imposed higher or different standards for the applicant than for other applicants or licensees; or has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

(d) All individuals licensed to practice podiatric medicine in this State shall be required to 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.

(33 Del. Laws, c. 66 § 9; 40 Del. Laws, c. 108 § 4; Code 1935 § 5387; 42 Del. Laws, c. 160 § 1; 24 Del. C. 1953 § 504; 53 Del. Laws, c. 108 § 4; 53 Del. Laws, c. 315 § 1; 58 Del. Laws, c. 511 § 51; 61 Del. Laws, c. 356 § 1; 64 Del. Laws, c. 39 § 1; 67 Del. Laws, c. 212 § 3; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 213 § 1; 74 Del. Laws, c. 262 § 14; 75 Del. Laws, c. 436 § 4; 77 Del. Laws, c. 199 § 4; 78 Del. Laws, c. 44 §§ 7, 8; 79 Del. Laws, c. 277 § 1; 80 Del. Laws, c. 50 § 1.)

§ 509 Examination.

In the event an applicant for licensure has not successfully completed the PMLEXIS examination, or its successor, required by this chapter, the Board shall administer or authorize the administration of such examination provided the applicant has received a degree of "Doctor of Podiatric Medicine" as described in § 508(a)(1) of this title. All examinations shall be graded by the testing service providing the examinations. The passing score shall be established by the testing agency.

(33 Del. Laws, c. 66 §§ 4, 6; 40 Del. Laws, c. 108 §§ 5, 6; Code 1935 § 5388; 24 Del. C. 1953 § 505; 53 Del. Laws, c. 108 § 5; 53 Del. Laws, c. 315 § 1; 61 Del. Laws, c. 356 § 1; 64 Del. Laws, c. 39 § 1; 67 Del. Laws, c. 212 § 6; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 213 § 1.)

§ 510 Reciprocity.

(a) 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 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. A license in "good standing" is defined in § 508(a)(4)-(7) of this title.

(b) An applicant, who is licensed or registered in a state whose standards are not substantially similar to those of this State, shall have practiced for a minimum of 5 years after licensure, provided however that the applicant meets all other qualifications for reciprocity in this section.

(c) An applicant, who has received a degree of "Doctor of Podiatric Medicine" or its equivalent from a foreign school, college or university, shall submit a certified copy of the applicant's school, college or university record for evaluation by the Board.

(d) In the event that a disciplinary proceeding or unresolved complaint is pending, the applicant shall not be licensed in this State until the proceeding or complaint has been resolved. Applicants for licensure in this State shall be deemed to have given consent to the release of such information and to waive all objections to the admissibility of such information as evidence at any hearing or other proceeding to which the applicant may be subject.

(e) Each application for licensure shall be accompanied by payment of the application fee.

(64 Del. Laws, c. 39 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 213 § 1.)

§ 511 Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division in its service on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each licensure biennium, the Division, or any other State agency acting in its behalf, shall compute, for each separate service or activity, the appropriate Board fees for the licensure biennium.

(64 Del. Laws, c. 39 § 1; 65 Del. Laws, c. 355 § 1; 72 Del. Laws, c. 213 § 1.)

§ 512 Issuance and renewal of licenses.

(a) The Board shall issue a license to each applicant, who meets the requirements of this chapter for licensure as a podiatrist and who pays the fee established under § 511 of this title.

(b) Each license shall be renewed biennially, in such manner as is determined by the Division, and upon payment of the appropriate fee and submission of a renewal form provided by the 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 podiatrist may still renew the licensed podiatrist's license, notwithstanding the fact that such licensee has failed to renew on or before the renewal date, provided however that such period shall not exceed 1 year.

(d) A licensee, upon written request, may be placed in an inactive status for no more than 5 years. Such person who desires to reactivate the licensee's license shall complete a Board-approved application form, submit a renewal fee set by the Division, and submit proof of fulfillment of continuing education requirements in accordance with the Board's rules and regulations.

(Code 1935 § 5398A; 43 Del. Laws, c. 240 § 1; 24 Del. C. 1953 § 509; 53 Del. Laws, c. 108 § 6; 53 Del. Laws, c. 315 § 1; 61 Del. Laws, c. 356 § 1; 64 Del. Laws, c. 39 § 1; 65 Del. Laws, c. 355 § 1; 67 Del. Laws, c. 212 § 4; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 213 § 1.)

§ 513 Temporary license.

(a) The Board, at its discretion, may issue a temporary license to practice podiatry in this State to a podiatrist, who is licensed or otherwise legally qualified to practice podiatry in any state of the United States or other jurisdiction, and who meets the following conditions:

(1) The applicant is entering this State for the purpose of taking charge of the practice of a person licensed to practice podiatry in this State during such licensee's temporary illness or absence from this State; and

(2) The applicant shall complete an application, pay the appropriate fee established by the Division, and shall present proof of current licensure in "good standing" in the state or states where the applicant currently is and/or has been licensed. A license in "good standing" is defined in § 508(a)(4)-(7) of this title, and such applicant shall comply with the provisions of § 510(d) of this title.

(b) The person licensed to practice medicine in this State shall make the licensee's request to the Board in writing and shall submit a

certified statement that the purpose of the temporary license is to take charge of the licensee's practice of podiatry in this State during a temporary illness or absence from this State.

(c) Such temporary license shall be effective for not less than 2 weeks nor for more than 3 months from date of issuance.

(d) The Board may also issue a temporary license to practice as a podiatric physician to an applicant who is participating in a residency program in this State and who is an otherwise qualified applicant for licensure in this State. The temporary license for such residency program participant will be valid for the period of residency and will expire immediately upon completion of or withdrawal from the residency or 24 months from issuance whichever is earlier. Such temporary license may be renewed once only for an additional 24 months and any such renewed license shall also expire immediately upon completion of or withdrawal from the residency program.

(67 Del. Laws, c. 212 § 5; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 213 § 1; 75 Del. Laws, c. 231 §§ 1, 2.)

§ 514 Complaints.

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

(b) When it is determined that an individual is engaging, or has engaged, in the practice of podiatry, or is using the title "podiatrist" and is not licensed under the laws of this State, the Board shall apply to the Office of the Attorney General to issue a cease and desist order.

(c) The Division shall have the authority to conduct inspections upon receipt of any complaint in connection with § 515(a)(8) of this title or upon the occurrence of an adverse event as defined in § 122(3)y.3.A. of Title 16 and, as applicable, to refer such information to the Department of Health and Social Services pursuant to § 122(3)y. of Title 16. In connection herewith, the Division may share information with the Department of Health and Social Services in accordance with applicable law.

(64 Del. Laws, c. 39 § 1; 65 Del. Laws, c. 355 § 1; 72 Del. Laws, c. 213 § 1; 78 Del. Laws, c. 15 § 8.)

§ 515 Grounds for discipline.

(a) A practitioner licensed under this chapter shall be subject to disciplinary actions set forth in § 516 of this title, if, after a hearing, the Board finds that the podiatrist:

(1) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license as a podiatrist; has impersonated another person holding a license, or allowed another person to use the podiatrist's license, or aided or abetted a person not licensed as a podiatrist to represent himself or herself as a podiatrist.

(2) Has illegally, incompetently or negligently practiced podiatry.

(3) Has been convicted of any offense, the circumstances of which substantially relate to the practice of podiatry. A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence therefor.

(4) Has excessively used or abused drugs either in the past 3 years or currently.

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

(6) Has violated a lawful provision of this chapter, or any lawful regulation established thereunder.

(7) Has had his or her license as a podiatrist suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record; and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every person licensed as a podiatrist in this State shall be deemed to have given consent to the release of this information by the Board of Podiatry, or other comparable agencies in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses.

(8) Has maintained a facility in an unsanitary or unsafe condition. For purposes of this section, "facility" shall have the same meaning as defined in § 122(3)y.3.C. of Title 16.

(9) Has failed to notify the Board that the podiatrist's license as a podiatrist in another state has been subject to discipline, or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof; or,

(10) Has a physical condition such that the performance of podiatry is or may be injurious or prejudicial to the public.

(b) Subject to the provisions of 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 podiatry 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].

(c) The Division shall have the authority to conduct inspections upon receipt of any complaint in connection with paragraph (a)(8) of this section or upon the occurrence of an adverse event as defined in § 122(3)y.3.A. of Title 16 and, as applicable, refer such information to the Department of Health and Social Services pursuant to 122(3)y. of Title 16. In connection herewith, the Division may share information with the Department of Health and Social Services in accordance with applicable law.

(64 Del. Laws, c. 39 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 213 § 1; 74 Del. Laws, c. 262 § 15; 78 Del. Laws, c. 15 §§ 9, 10.)

§ 516 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that 1 of the conditions or violations set forth in § 515 of this title applies to a practitioner regulated by this chapter:

(1) Issue a letter of reprimand.
(2) Censure a practitioner.
(3) Place a practitioner on probationary status, and require the practitioner to:
a. Report regularly to the Board upon the matters, which are the basis of the probation.
b. Limit all practice and professional activities to those areas prescribed by the Board.
(4) Suspend any practitioner's license.
(5) Revoke any practitioner's license.
(6) Impose a monetary penalty not to exceed $500 for each violation.
(7) The Board shall permanently revoke the certificate to practice podiatric medicine of a person who is convicted of a felony sexual offense.

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

(c) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(33 Del. Laws, c. 66 §§ 12, 13; 40 Del. Laws, c. 108 §§ 11-13; Code 1935 §§ 5393, 5394; 24 Del. C. 1953 §§ 510, 511; 53 Del. Laws, c. 315 § 1; 61 Del. Laws, c. 356 § 1; 64 Del. Laws, c. 39 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 213 § 1; 79 Del. Laws, c. 213 § 2; 79 Del. Laws, c. 277 § 1.)

§ 517 Hearing procedures.

(a) If a complaint is filed with the Board pursuant to § 8735 of Title 29, alleging violation of § 515 of this title, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) All hearings shall be 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 be in writing and shall include its reasons for such decision. The Board's decision shall be mailed immediately to the practitioner.

(c) Where the practitioner is in disagreement with the action of the Board, the practitioner may appeal the Board's decision to the Superior Court within 30 days of service, or of the postmarked date of the copy of the decision mailed to the practitioner. Upon such appeal the Court shall hear the evidence on the record. Stays shall be granted in accordance with Chapter 101 of Title 29.

(64 Del. Laws, c. 39 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 213 § 1.)

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

(a) As a condition to reinstatement of a suspended license, or removal from probationary status, the Board may reinstate such 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 probation.

(b) Where a license or registration has been suspended due to the licensee's inability to practice pursuant to this chapter, the Board may reinstate such license, if, after a hearing, the Board is satisfied that the licensee is again able to perform the essential functions of a podiatrist, with or without reasonable accommodations; and/or, there is no longer a significant risk of substantial harm to the health and safety of the individual or others.

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

(d) A new license to replace any license lost, destroyed or mutilated may be issued subject to the rules of the Board. A charge set by the Division shall be made for such issuance.

(72 Del. Laws, c. 213 § 1.)

§ 518A Prescription requirements.

No written prescription shall be prescribed if it does not contain the following information clearly written, clearly hand printed, electronically printed, or typed:

(1) The name, address and phone number of the prescriber;
(2) The name and strength of the drug prescribed;
(3) The quantity of the drug prescribed;
(4) The directions for use of the drug;
(5) Date of issue.
(75 Del. Laws, c. 161 § 1.)

Subchapter III

Other Provisions

§ 519 Exemptions.

(a) Nothing in this chapter shall be construed to prevent:

(1) Persons who are licensed to practice podiatry in any other state, district or foreign country from entering this State, as practicing podiatrists, to consult with a podiatrist of this State. Such consultation shall be limited to examination, recommendation and testimony in litigation.

(2) Any student of an accredited school or college of podiatry from receiving practical training under the personal supervision of a licensed podiatrist in this State.

(3) Any person from completing a Council on Podiatric Medical Education-approved hospital residency program in this State.

(4) Any podiatrist or surgeon, commissioned by any of the armed forces of the United States or by the United States Public Health Service, from practicing podiatry on the podiatrist's or surgeon's designated facility in this State.

(5) Any physician licensed in this State from practicing podiatry in this State.

(b) This chapter shall not prohibit the fitting, recommending or sale of corrective shoes, arch supports or similar mechanical appliances by retail dealers or manufacturers. However, no representative of a dealer or manufacturer shall be permitted to medically diagnose, treat or prescribe for any foot or ankle ailment, disease or deformity, unless such person is licensed to practice podiatry in this State.

(72 Del. Laws, c. 213 § 1; 70 Del. Laws, c. 186 § 1; 80 Del. Laws, c. 50 § 1.)

§ 520 Penalty.

A person not currently licensed as a podiatrist under this chapter, when engaging in the practice of podiatry, 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 podiatry, shall be guilty of a misdemeanor. Upon the first offense, the person shall be fined not less than $500 dollars nor more than $1,000 dollars 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. Justice of the Peace Court shall have jurisdiction over all violations of this chapter.

(64 Del. Laws, c. 39 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 213 § 1.)

§ 521 Accreditation of facilities where invasive procedures are performed.

No person licensed under this chapter shall perform any invasive procedure, as defined in § 122(3)y. of Title 16, in a facility unless it is accredited or licensed in accordance with § 122(3)z. of Title 16. For purposes of this section, the terms "facility" and "invasive medical procedure" shall have the meanings set forth in § 122(3)y. of Title 16.

(78 Del. Laws, c. 80 § 5.)

§ 522 Treatment or examination of minors.

(a) A parent, guardian or other caretaker, or an adult staff member, shall be present when a person licensed under this chapter provides outpatient treatment to a minor patient who is disrobed or partially disrobed or during an outpatient physical examination regardless of sex of the licensed person and patient, except when rendering care during an emergency. When using an adult staff member to observe the treatment or examination, the adult staff member shall be of the same gender as the patient when practicable. 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 licensee without the presence of a third person after the physical examination.

(b) When a minor patient is to be disrobed, or partially disrobed during a physical examination, a person licensed under this chapter shall provide notice to the person providing consent to treatment of the rights under this section. The notice shall be provided in written form or be conspicuously posted in a manner in which minor patients and their parent, guardian or other caretaker are made aware of the notice. In circumstances in which the posting or the provision of the written notice would not convey the right to have a chaperone present, the person licensed shall use another means to ensure that the person understands the right under this section.

(c) For the purposes of this section, "minor" is defined as a person 15 years of age or younger, and "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 that provides outpatient treatment to a minor pursuant to this section shall, contemporaneously

with such treatment, note in the child's medical record the name of each person present when such treatment is being provided.

(79 Del. Laws, c. 169 § 1.)

Part

Chapter 6

COSMETOLOGISTS

§§ 601 -626. Definitions; State Board of Cosmetology; appointment; qualifications; term of office; vacancies; powers; meetings; organization; oath; quorum; records of Board; qualifications for admission to examination, licensing and registration; registration of salons and schools; requirements of a school; application for examination; admission to examination; examinations; certificates or licenses; fees; persons called to aid of Board; curriculum committee; reciprocity; exemption of present practitioners from examination; powers and duties of the Board; hearings; hearing may be held by majority of the Board; sanitary rules; temporary licenses; services and activities exempted from chapter; display of certificates or licenses; renewal of certificates or licenses; duration and renewal of certificates; penalty; appeals; cosmetology instruction in public schools.

(Repealed by 69 Del. Laws, c. 178 § 1, effective Feb 4, 1994.)

Part

Chapter 7

BOARD OF CHIROPRACTIC

§ 700 Purpose of chapter; objectives of board.

The primary objective of the Board of Chiropractic, 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 licensees or former licensees.

Throughout the history of chiropractic, there have been distinct philosophical approaches to chiropractic. No action, rule, standard or requirement shall be imposed or interpreted which would restrict a practitioner from licensure as long as the practitioner complies with this chapter.

(64 Del. Laws, c. 413 § 2; 70 Del. Laws, c. 514 § 1.)

§ 701 Chiropractic defined; limitation of chiropractic license.

(a)(1) "Chiropractic" means a drugless system of health care based on the principle that interference with the transmission of nerve impulses may cause disease.

(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) "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.

(4) "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.

(5) "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.

(6) "Telemedicine" means a form of telehealth which 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.

(b) The practice of chiropractic includes, but is not limited to, the diagnosing and locating of misaligned or displaced vertebrae (subluxation complex), using x-rays and other diagnostic test procedures. The practice includes the use of telemedicine and may also include the practice of and participation in telehealth, as further defined in regulation. Practice of chiropractic includes the treatment through manipulation/adjustment of the spine and other skeletal structures and the use of adjunctive procedures not otherwise prohibited by this chapter.

(c) Except as otherwise provided in this chapter, the practice of chiropractic does not include the use of drugs, surgery or obstetrical or gynecological examinations or treatment.

(d) All examinations performed by chiropractors shall be in accordance with the protocol and procedures as taught in the majority of accredited chiropractic colleges.

(41 Del. Laws, c. 261 § 8; 24 Del. C. 1953 § 701; 70 Del. Laws, c. 514 § 2; 80 Del. Laws, c. 80 § 8.)

§ 702 Composition; terms; suspension or removal; qualifications; vacancies; compensation.

(a) There is created a State Board of Chiropractic, which shall administer and enforce this chapter, and which shall consist of 7 members appointed by the Governor, who are residents of this State; 4 of whom shall be licensed to practice chiropractic in this State; and 3 public members. A public member shall not be nor ever have been a chiropractor, nor a member of the immediate family of a chiropractor; shall not have been employed by a chiropractor; shall not have had a material financial interest in the providing of goods and services to chiropractors; nor have been engaged in an activity directly related to chiropractic. Such public member shall be accessible to inquiries, comments and suggestions from the general public.

(b) Except as provided in subsection (c) of this section, each member shall serve for 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. Persons who are members of the Board on July 17, 1996, shall complete their terms of office.

(c) A person who has never served on the Board may be appointed to the Board 2 consecutive times, 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 term has expired since such person last served.

(d) Any act or vote by a person appointed in violation of subsection (c) 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 (c) of this section, unless such amendment or revision amends this section to permit such an appointment.

(e) A member of the Board shall be suspended or removed by the Governor for misfeasance, nonfeasance or malfeasance. A member subject to disciplinary proceedings 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.

(f) No member of the Board of Chiropractic, while serving on the Board, shall be an officer of a local or state professional chiropractic association or have a financial interest in any chiropractic college or school.

(g) Vacancies occurring on the Board by reason of the death of any member or the member's incapacity, neglect or refusal to act or by removal or in any other way, including those specified in this chapter shall be filled by the Governor.

(h) Each Board member shall receive not more than $50 for each meeting attended, and not more than $500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(i) The provisions set forth for "employees" in Chapter 58 of Title 29 shall apply to all members of the Board and to all agents appointed or otherwise employed by the Board.

(41 Del. Laws, c. 261 §§ 1, 2; 24 Del. C. 1953 §§ 702, 703; 64 Del. Laws, c. 413 § 3; 67 Del. Laws, c. 368 § 5; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 514 §§ 3-6.)

§ 703 Officers; meetings; quorum.

(a) The Board annually shall elect a president and secretary. Each officer shall serve for 1 year and shall not succeed himself or herself in the same office.

(b) The Board shall hold a regularly scheduled business meeting at least once in each quarter of a calendar year and at such other times as the President deems necessary, or at the request of a majority of Board members.

(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 4 members of the Board. Any member who fails to attend 3 consecutive meetings, or who fails to attend at least 1/2 of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed.

(d) Minutes of all meetings shall be recorded, and copies of the minutes shall be maintained by the Division of Professional Regulation. At any hearing where evidence is presented, the hearing shall be recorded. Transcripts shall be made at the request and expense of any party.

(41 Del. Laws, c. 261 § 3; 24 Del. C. 1953 § 704; 50 Del. Laws, c. 325 § 1; 64 Del. Laws, c. 413 § 3; 65 Del. Laws, c. 331 §§ 1, 2; 65 Del. Laws, c. 355 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 514 §§ 7, 41.)

§ 704 Complaints.

All complaints shall be received and investigated by the Division of Professional Regulation in accordance with § 8735 of Title 29. The Division shall be responsible for issuing a final written report at the conclusion of its investigation. The Board president shall assign a member of the Board to assist the Division of Professional Regulation with the investigation of the technical aspects of the complaint and shall not discuss any matter of fact or law regarding such investigation with any Board member prior to the final decision of the Board. Such member shall recuse himself or herself from the deliberations on the complaint at any hearing regarding the complaint. If it is determined that a practitioner should be subject to a disciplinary hearing, the Board shall conduct such hearing in accordance with this chapter and the Administrative Procedures Act [Chapter 101 of Title 29].

When it is determined that an individual is engaging in the practice of chiropractic or is using the title "chiropractor" and is not licensed under the laws of this State, the Board shall notify the office of the Attorney General for appropriate action.

(64 Del. Laws, c. 413 § 3; 65 Del. Laws, c. 331 § 3; 65 Del. Laws, c. 355 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 514 § 8.)

§ 705 Hearing; procedures.

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

(b) All hearings shall be informal without use of the 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 be in writing and shall include its reasons for such decision. A copy of the decision shall be mailed immediately to the complainant, and to the

practitioner. The Board's decision shall become effective on the thirtieth day after the date it is mailed or served on the practitioner.

(c) Where either the complainant or the practitioner is in disagreement with the action of the Board, either person may appeal the Board's decision to the Superior Court within 30 days of service, or of the postmarked date of the copy of the Board's decision. Upon such appeal, the Court shall hear the evidence on the record, and any stay of the Board's decision shall be granted according to the Administrative Procedures Act [Chapter 101 of Title 29].

(64 Del. Laws, c. 413 § 3; 65 Del. Laws, c. 331 §§ 4-6; 70 Del. Laws, c. 135 §§ 1, 2; 70 Del. Laws, c. 514 § 9.)

§ 706 Powers and duties; immunity.

(a) The Board shall have the authority and the duty to:

(1) Formulate rules and regulations with appropriate notice to those affected where such notice can reasonably be given;

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

(3) Grant licenses to, and renew licenses of, all persons who meet the qualifications for licensure;

(4) Designate the national written examination to be taken by all persons applying for licensure, except those applicants who qualify for licensure by reciprocity;

(5) Grant licenses to all persons who meet the qualifications for licensure;

(6) Refer all complaints from practitioners and the public 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;

(7) Investigate complaints of unauthorized practice of chiropractic;

(8) Determine whether or not a practitioner shall be the subject of a disciplinary hearing, and if so, to conduct such hearing in accordance with this chapter and the Administrative Procedures Act [Chapter 101 of Title 29];

(9) 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;

(10) Provide for the rules for continuing chiropractic education; and

(11) Bring proceedings in the courts for the enforcement of this chapter.

(b) The Board may require by subpoena the attendance and testimony of witnesses and production of paper, records or other such evidence.

(c) The members of the Board shall not be subject to, and shall be immune from, claims, suits, liability, damages or any other recourse, civil or criminal, arising from any act or proceeding, decision or determination undertaken or performed, or recommendation made, so long as such member of the Board acted in good faith and without malice in carrying out the responsibilities, authority, duties, powers and privileges of the offices conferred by law upon them under this chapter or any other provisions of the Delaware or federal law or rules or regulations or duly adopted rule or regulation of the Board. Good faith is presumed unless otherwise proven and malice is required to be proven by the complainant.

(d) No member of the Board shall in any manner whatsoever discriminate against any applicant or person holding or applying for a license to practice chiropractic by reason of sex, race, color, creed or national origin.

(e) No member shall participate in any action of the Board involving directly or indirectly any person related in any way by blood or marriage to said member.

(f) The Board of Chiropractic shall promulgate regulations specifically identifying those crimes, which are substantially related to the practice of chiropractic.

(41 Del. Laws, c. 261 § 7; 24 Del. C. 1953 § 706; 64 Del. Laws, c. 413 § 3; 70 Del. Laws, c. 514 §§ 10-14; 72 Del. Laws, c. 125 §§ 1, 2; 74 Del. Laws, c. 262 § 16.)

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

(a) An applicant who is applying for licensure as a doctor of chiropractic under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person:

(1) Has received a degree of "Doctor of Chiropractic" from a school or college fully accredited by an accrediting agency recognized by the U.S. Department of Education;

(2) Shall provide proof satisfactory to the Board that the applicant has successfully passed Parts I, II, III, IV and the physiotherapy section of the National Board of Chiropractic Examiners' examination;

(3) Shall not have been the recipient of any administrative penalties regarding the applicant's practice of chiropractic, including but not limited to fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations and/or has not entered into any "consent agreements" which contain conditions placed by a Board on the applicant's professional conduct and practice, including any voluntary surrender of a license. The Board may determine, after a hearing, whether such administrative penalty is grounds to deny licensure;

(4) Shall not have any impairment related to drugs, alcohol or a finding of mental incompetence by a physician that would limit the applicant's ability to undertake the practice of chiropractic in a manner consistent with the safety of the public;

(5) Shall not have a criminal conviction record, nor pending criminal charge relating to an offense, the circumstances of which

substantially related to the practice of chiropractic. Applicants who have criminal conviction records or pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the record or charge is substantially related to the practice of chiropractic. "Substantially related" means the nature of 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 chiropractic. 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, may waive this paragraph (a)(5), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

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

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

(6) Has not been convicted of a felony sexual offense;

(7) Has submitted, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

a. 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 relating to that person;

b. A report of the applicant's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Board of Chiropractic shall be the screening point for the receipt of said federal criminal history records;

c. An applicant may not be licensed to practice chiropractic until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be licensed by the Board unless a waiver is granted pursuant to paragraph (a)(5) of this section.

(b) An applicant, who has received a degree of "Doctor of Chiropractic" or its equivalent from a foreign school, college or university, shall submit a certified copy of the applicant's school, college or university record for evaluation by the Board.

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

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

(e) All individuals licensed to practice chiropractic in this State shall be required to 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.

(41 Del. Laws, c. 261 § 3; 24 Del. C. 1953 § 707; 50 Del. Laws, c. 325 § 2; 53 Del. Laws, c. 147 § 1; 64 Del. Laws, c. 413 § 3; 65 Del. Laws, c. 331 § 7; 69 Del. Laws, c. 398 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 514 §§ 15-17; 72 Del. Laws, c. 125 § 3; 74 Del. Laws, c. 262 §§ 17, 18; 75 Del. Laws, c. 436 §§ 5, 6; 77 Del. Laws, c. 199 §§ 5, 6; 78 Del. Laws, c. 44 §§ 9, 10; 79 Del. Laws, c. 277 § 2.)

§ 708 Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for an activity not specified in this chapter. The application fee shall not be combined with any other fee or charge, except as specifically set forth herein. At the beginning of each calendar year the Division of Professional Regulation, or any other state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate fee for the coming year.

(41 Del. Laws, c. 261 § 4; 24 Del. C. 1953 § 709; 53 Del. Laws, c. 108 § 7; 64 Del. Laws, c. 413 § 3; 65 Del. Laws, c. 331 § 10; 65 Del. Laws, c. 355 § 1; 70 Del. Laws, c. 514 § 21; 72 Del. Laws, c. 125 § 6.)

§ 709 Issuance of license; renewal; inactive status; reinstatement.

(a) Each person, who has been admitted to practice in this State by reciprocity, or who has otherwise qualified for a license shall, prior to practicing in this State, file for and obtain an occupational license from the Division of Revenue in accordance with Chapter 23 of Title 30. The Board shall forthwith issue a license to each person who has qualified for same under this chapter and who has complied with all rules and regulations of the Board.

(b) Upon payment of the renewal fee and upon submission of proof of satisfactory completion of continuing education requirements, each license shall be renewed biennially in such manner as is determined by the Division of Professional Regulation. The Board shall, in its rules and regulations, determine the period of time within which a practitioner may still renew the license; provided, however, that such

period shall not exceed 1 year. At the expiration of the period designated by the Board, the license shall be deemed to be lapsed and not renewable, unless the former licensee reapplies under the same conditions which govern reciprocity; provided, however, that the former licensee shall also pay a reinstatement fee in an amount which is determined by the Division of Professional Regulation.

(c) Any licensee may, upon the licensee's written request, be placed in an inactive status not to exceed 5 years. The renewal fee of such person shall be prorated in accordance with the amount of time such person was inactive. Such person may reenter practice upon notification to the Board of that person's intent to do so, provided said person has satisfied all continuing education requirements prescribed by the Board.

(d) A former licensee who has been penalized for the violation of a provision of this chapter, or whose license has been suspended or revoked, and who subsequently is permitted to apply for reinstatement shall apply for a new license, successfully complete the examination required by the Board, and shall pay all appropriate fees before the former licensee may be relicensed.

(41 Del. Laws, c. 261 § 4; 24 Del. C. 1953 § 710; 53 Del. Laws, c. 108 § 8; 64 Del. Laws, c. 413 § 3; 65 Del. Laws, c. 331 §§ 11, 12; 65 Del. Laws, c. 355 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 514 §§ 22-25; 72 Del. Laws, c. 125 §§ 4, 6.)

§ 710 Reciprocity.

(a) 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 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.

(b) An applicant, who is currently licensed in another state, the District of Columbia or territory of the United States, whose standards for licensure are not substantially similar to those of this State, shall present proof of current licensure in good standing in another state, the District of Columbia or territory of the United States, and in addition the applicant shall meet 1 of the following criteria:

(1) Shall have graduated from an accredited or Board-approved school of chiropractic after July 1, 1997, and shall provide documentation of successful completion of Parts I, II, II, IV and the physiotherapy section of the National Board of Chiropractic Examiners' examination;

(2) Shall have graduated from an accredited or Board-approved school of chiropractic, prior to July 1, 1997, but after January 31, 1991, and shall provide documentation of successful completion of Parts I, II, III of the National Board of Chiropractic Examiners' examination; or

(3) Shall have graduated from an accredited or Board-approved school of chiropractic, prior to January 31, 1991, and shall provide documentation of successful completion of Parts, I, II, III of the National Board of Chiropractic Examiners' examination; or Parts I and II of the National Board of Chiropractic Examiners' examination and the Special Purpose Examination for Chiropractic (SPEC) approved by the National Board of Chiropractic Examiners.

(c) Notwithstanding the provisions of paragraph (b)(1), (2), or (3) of this section, if the applicant has successfully passed those examinations that were available at the time of the applicant's graduation from a board-approved school of chiropractic and application for original licensure, the Board shall accept proof of successful completion of those examinations in lieu of the provisions of paragraph (b)(1), (2), or (3) of this section. If no examinations were available at the time of the applicant's graduation from a board-approved school of chiropractic, the Board shall accept proof of active practice in another jurisdiction for the past 5 years in lieu of the provisions of paragraph (b)(1), (2), or (3) of this section.

(d) For all applicants licensure in good standing is defined in § 707(a)(3), (4), and (5) of this title. The applicant is responsible for providing proof of licensure in good standing in all states in which that applicant is or has been licensed.

(41 Del. Laws, c. 261 § 5; 24 Del. C. 1953 § 711; 53 Del. Laws, c. 108 § 9; 64 Del. Laws, c. 413 § 3; 65 Del. Laws, c. 331 § 13; 67 Del. Laws, c. 24 § 8; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 514 § 26; 72 Del. Laws, c. 125 §§ 5, 6; 75 Del. Laws, c. 436 § 7; 79 Del. Laws, c. 169 § 3.)

§ 711 Grounds for discipline; procedure; sanctions.

(a) Practitioners regulated under this chapter shall be subject to those disciplinary actions set forth in this section if, after a hearing, the Board finds the practitioner guilty of unprofessional conduct as defined in subsection (b) of this section.

(b) Unprofessional conduct is hereby defined as any of the following acts:

(1) Use of any false, fraudulent or forged statement or document or use of any fraudulent, deceitful, dishonest or unethical practice in connection with any licensing requirements of this chapter;

(2) Conviction of a crime that is substantially related to the practice of chiropractic. "Substantially related" means the nature of 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 chiropractic;

(3) Any dishonorable or unethical conduct likely to deceive, defraud or harm the public;

(4) The wilful violation of the confidential relations and communications of a patient;

(5) The practitioner has employed or knowingly cooperated in fraud or materiel deception in order to be licensed, or be otherwise authorized to practice chiropractic;

(6) Has excessively used or abused drugs (including alcohol, narcotics or chemicals);

(7) Practice of chiropractic under a false or assumed name;

(8) Use, distribution or prescription for use of dangerous or narcotic drugs;

(9) Solicitation or acceptance of a fee from a patient or other person by fraudulent representation that a manifestly incurable condition can be permanently cured;

(10) Knowing or intentional performance of any act which, unless authorized by the Board of Chiropractic, assists an unlicensed and unauthorized person to practice chiropractic;

(11) The failure to provide adequate supervision to a person working under the practitioner's direction;

(12) Misconduct, incompetence or gross negligence in the practice of chiropractic;

(13) Wilful failure to divulge to the Board or any committee or representative thereof, upon its request, information relevant to authorization or competence to practice chiropractic;

(14) The violation of this chapter or the violation of an order or regulation of the Board;

(15) Charging a grossly exorbitant fee for professional services rendered;

(16) Suspension, revocation or refusal to grant a license to practice chiropractic or other disciplinary action taken by the appropriate licensing authority in another state or territory; provided, however, that the underlying grounds for such action in another state or territory have been presented to the Board by either certified record or live testimony and the Board has determined that the facts found by the appropriate authority in the other state constitute unprofessional conduct as that term is defined in paragraphs (b)(1) through (15) of this section;

(17) Engaging directly or indirectly in the division, transferring, signing, rebating or refunding of fees received for professional services or profiting by means of a credit or other valuable consideration such as wages, an unearned commission, discount or gratuity with any person who referred a patient, or with any relative or business associate of the referring person. Nothing in this paragraph shall be construed as prohibiting the members of any regularly or properly organized entity recognized under Delaware law and comprised solely of chiropractors from making any division of their total fees among themselves as they determine by contract necessary to defray their joint operating costs. This paragraph shall not apply to chiropractic positions held by chiropractors employed by or contracted with a Delaware licensed medical doctor or doctor of osteopathy that works in the State a minimum of 10 hours per week. It will also not apply to any Delaware-licensed hospitals. The estate of a licensed chiropractor shall have 1 year to divest of the chiropractic business.

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

(d) Subject to 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 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].

(e) The Board may impose any of the following sanctions, partially, singly or in combination, when it finds that 1 of the conditions or violations set forth in subsection (b) of this section applies to a practitioner regulated under this chapter:

(1) Restrict the license of a practitioner;

(2) Publicly censure a practitioner;

(3) Issue a public letter of reprimand;

(4) Place a practitioner on probationary status, and require the practitioner to:

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

b. Limit all practice and professional activities to those areas prescribed by the Board; and/or

c. Continue or renew the practitioner's professional education until the required degree of skill has been attained in those areas which are the basis of the probation;

(5) Suspend any practitioner's license;

(6) Revoke a practitioner's license; or

(7) The Board shall permanently revoke the license to practice chiropractic of a person who is convicted of a felony sexual offense.

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

(g) Where the Board has placed a practitioner on probationary status under certain restrictions or conditions, and the Board has determined that such restrictions or conditions are being or have been violated by the practitioner it may, after a hearing on the matter, suspend or revoke the practitioner's license.

(h) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

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

(41 Del. Laws, c. 261 § 7A; 42 Del. Laws, c. 199 § 2; 24 Del. C. 1953 § 712; 50 Del. Laws, c. 325 § 3; 64 Del. Laws, c. 413 § 3; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 514 §§ 27-34; 72 Del. Laws, c. 125 § 6; 74 Del. Laws, c. 262 § 19; 79 Del. Laws, c. 98 § 1; 79 Del. Laws, c. 213 § 2; 79 Del. Laws, c. 277 § 2.)

§ 712 License to practice.

No person may practice chiropractic in this State who has not been licensed in accordance with this chapter. Under such rules and regulations as the Board may adopt, this chapter shall not be construed to prohibit the practice of chiropractic by persons who are licensed to practice in any other state, district or foreign country who, as practicing chiropractors, enter this State to consult with a chiropractor of this State. Such consultation shall be limited to examination, recommendation or testimony in litigation.

(41 Del. Laws, c. 261 § 6; 42 Del. Laws, c. 199 § 1; 24 Del. C. 1953 § 713; 64 Del. Laws, c. 413 § 3; 70 Del. Laws, c. 514 §§ 35, 36; 72 Del. Laws, c. 125 § 6.)

§ 713 Practicing without license; penalties.

(a) No person shall represent himself or herself to the public as a doctor of chiropractic, or display any sign or advertise in any manner as being a doctor of chiropractic or chiropractic physician without first obtaining from the Board the license or licenses required under this chapter.

(b) Where the Board has determined that person is practicing chiropractic within this State without having lawfully obtained a license therefor, or that a person previously licensed is unlawful practicing although the person's license has been suspended or revoked, the Board shall formally warn such person in writing. If the offense continues, the Board shall make a formal complaint to the Attorney General. The complaint shall include all evidence known to, or in the possession of, the Board.

(c) Where a person not currently licensed as a chiropractic is tried and convicted of unlawfully practicing chiropractic in violation of this chapter such offender shall, upon the first offense, be fined $500 or imprisoned not less than 1 month nor more than 1 year, or both, and upon a second or any subsequent offense, shall be fined not less than $1,000 and imprisoned not less than 6 months nor more than 1 year, or both, and shall pay all cost; provided, however, that where it is alleged that such violation has resulted in injury to any person, the offender shall be charged and tried under the applicable provisions of Title 11.

(d) The Superior Court shall have jurisdiction of violations of this chapter.

(41 Del. Laws, c. 261 § 9A; 42 Del. Laws, c. 199 § 3; 24 Del. C. 1953 § 714; 64 Del. Laws, c. 413 § 3; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 514 §§ 37, 38; 72 Del. Laws, c. 125 § 6.)

§ 714 Chiropractic practitioners subject to regulation.

Chiropractic practitioners shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases and any and all matters pertaining to public health, reporting to the proper health officer the same as other practitioners.

(41 Del. Laws, c. 261 § 9; 24 Del. C. 1953 § 715; 72 Del. Laws, c. 125 § 6.)

§ 715 Filing false documents; penalty.

Whoever files or attempts to file as that person's own the diploma, certificate or license of another or a forged, false affidavit of identification or qualification is guilty of a felony and shall be fined not less than $500 nor more than $2,000 and imprisoned not more than 5 years.

(41 Del. Laws, c. 261 § 7A; 42 Del. Laws, c. 199 § 2; 24 Del. C. 1953 § 712; 50 Del. Laws, c. 325 § 3; 64 Del. Laws, c. 413 § 3; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 514 § 39; 72 Del. Laws, c. 125 § 6.)

§ 716 Chiropractic practitioners eligible for compensation from insurance.

(a) For purposes of disability insurance, standard health and accident, sickness, and all other such insurance plans, whether or not they be considered insurance policies, and contracts issued by health service corporations and health maintenance organizations, if the chiropractor is authorized by law to perform a particular service, the chiropractor shall be entitled to compensation for that chiropractor's services under such plans and contracts.

(b) Nothing in this section shall prevent the operation of reasonable and nondiscriminatory cost containment or managed care provisions, including but not limited to, deductibles, coinsurance, allowable charge limitations, coordination of benefits and utilization review. Any copayment or coinsurance amount shall be equal to or less than 25% of the fee due or to be paid to the doctor of chiropractic under the policy, contract, or certificate for the treatment, therapy, or service provided.

(c) The Insurance Commissioner shall issue and administer regulations to aid the administration, effectuation, investigation and enforcement of this section.

(24 Del. C. 1953 § 717; 54 Del. Laws, c. 147 § 2; 69 Del. Laws, c. 168 § 1; 69 Del. Laws, c. 393 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 514 § 40; 72 Del. Laws, c. 125 § 6; 77 Del. Laws, c. 462 § 3; 78 Del. Laws, c. 165 § 1.)

§ 717 Opinions and testimony.

(a) Any chiropractor who is duly licensed as a chiropractic practitioner under this chapter shall be deemed competent to offer opinions in the courts, administrative agencies and other tribunals of this State as to matters of causation, within the scope of chiropractic practice, provided the testimony is offered to a reasonable degree of chiropractic certainty and there is otherwise an adequate foundation for the admission of this testimony.

(b) Any chiropractor duly licensed under this chapter shall also be deemed competent to offer opinions in the courts, administrative agencies and other tribunals of this State as to matters of permanent impairment or disability, provided the testimony is within the scope of chiropractic practice, is offered to a reasonable degree of chiropractic certainty and there is otherwise an adequate foundation of the admission of this testimony.

(c) No Doctor of Chiropractic shall be permitted to offer chiropractic opinions for the purpose of determining eligibility for health insurance policy benefits relating to chiropractic care in the State unless the Doctor of Chiropractic is duly licensed and actively practicing in the State. For purposes of this subsection, a Doctor of Chiropractic shall be considered "actively practicing" if that Doctor of Chiropractic maintains an office in the State for treatment of patients and is engaged in the practice of chiropractic in the State more than an average of 10 hours per week. For purposes of this section "insurance policy" shall include without limitation all health plans and policies for the payment for, provision of or reimbursement for chiropractic or medical services, supplies or both issued by health insurers, health service corporations or managed care organizations.

(74 Del. Laws, c. 5 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 380 § 1.)

§ 718 Severability.

Should any section or provision of this chapter be decided by the court to be unconstitutional or invalid, such decision shall not affect the validity of this chapter as a whole or any other part thereof.

(75 Del. Laws, c. 380 § 2.)

§ 719 Treatment or examination of minors.

(a) A parent, guardian or other caretaker, or an adult staff member, shall be present when a person licensed under this chapter provides outpatient treatment to a minor patient who is disrobed or partially disrobed or during an outpatient physical examination involving the breasts, genitalia or rectum, regardless of sex of the licensed person and patient, except when rendering care during an emergency. When using an adult staff member to observe the treatment or examination, the adult staff member shall be of the same gender as the patient when practicable. 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 licensee without the presence of a third person after the physical examination.

(b) When a minor patient is to be disrobed, partially disrobed or will undergo a physical examination involving the breasts, genitalia or rectum, a person licensed under this chapter shall provide notice to the person providing consent to treatment of the rights under this section. The notice shall be provided in written form or be conspicuously posted in a manner in which minor patients and their parent, guardian or other caretaker are made aware of the notice. In circumstances in which the posting or the provision of the written notice would not convey the right to have a chaperone present, the person licensed shall use another means to ensure that the person understands the right under this section.

(c) For the purposes of this section, "minor" is defined as a person 15 years of age or younger, and "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 that provides outpatient treatment to a minor pursuant to this section shall, contemporaneously with such treatment, note in the child's medical record the name of each person present when such treatment is being provided.

(79 Del. Laws, c. 169 § 2.)

Part

Chapter 9

DEADLY WEAPONS DEALERS

§ 901 License requirement.

No person shall engage in the business of selling any pistol or revolver, or stiletto, steel or brass knuckles, or other deadly weapon made especially for the defense of one's person without first having obtained a license therefor, which license shall be known as "special license to sell deadly weapons." No person licensed or unlicensed shall possess, sell or offer for sale any switchblade knife.

This section shall not apply to toy pistols, pocket knives or knives used for sporting purposes and in the domestic household, or surgical instruments or tools of any kind.

(26 Del. Laws, c. 15 § 1; Code 1915 § 257; Code 1935 § 231; 24 Del. C. 1953 § 901; 49 Del. Laws, c. 77; 66 Del. Laws, c. 184 § 1.)

§ 902 Application and fee for license; duration; renewal.

Whoever desires to engage in the business of selling any of the articles referred to in the first paragraph of § 901 of this title shall apply to the Department of State to obtain a license to conduct such business and shall pay an application fee of $50 to the Department. The license shall entitle the holder thereof to conduct such business until June 1 next succeeding its date. An application for renewal of such license shall be accompanied by a payment of $50 to the Department.

(26 Del. Laws, c. 15 § 2; 27 Del. Laws, c. 30; Code 1915 § 258; Code 1935 § 232; 42 Del. Laws, c. 71 § 1; 24 Del. C. 1953 § 902; 49 Del. Laws, c. 346 § 3; 61 Del. Laws, c. 406 § 1; 65 Del. Laws, c. 379; 66 Del. Laws, c. 249 § 1; 75 Del. Laws, c. 88 § 17(2).)

§ 903 Sale to persons under 21 or intoxicated persons.

No person shall sell to a person under the age of 21 or any intoxicated person any of the articles referred to in the first paragraph of § 901 of this title.

(26 Del. Laws, c. 15 § 3; Code 1915 § 259; 30 Del. Laws, c. 28 § 1; Code 1935 § 233; 42 Del. Laws, c. 71 § 2; 24 Del. C. 1953 § 903; 66 Del. Laws, c. 184 § 2.)

§ 904 Records.

(a) Any person desiring to engage in the business described in this chapter shall keep and maintain in the place of business at all times a record in accordance with this section and all applicable federal laws and regulations (including, without limitation, 18 U.S.C. § 921 et seq. and 27 C.F.R. 478.121 et seq.). In such record the businessperson shall enter the date of the sale, the name and address of the person purchasing any deadly weapon, the number and kind of deadly weapon so purchased, the age of the purchaser, the mode of identification bearing a picture (except as provided in § 1448B(f) of Title 11) which shall include but it is not limited to a driver's license, and any other information as shall be required by federal law and regulation. The record shall at all times be open for inspection by any judge, justice of the peace, police officer, constable or other peace officer of this State.

(b) Any person engaging in the business described in this chapter shall keep and maintain a list of current employees including their names, former names used, dates of birth, physical descriptions and social security numbers. The required employee list and all attachments thereto shall be considered confidential but shall, nevertheless, be open for inspection by any police officer of this State or of any political subdivision of this State, within their respective jurisdiction, at any time, at the licensee's primary place of business and during the licensee's regular business hours. No person licensed under this chapter shall knowingly allow any employee who is a person prohibited from possessing a deadly weapon pursuant to § 1448 of Title 11 to facilitate a sale of a deadly weapon. All employers licensed to do business pursuant to this chapter shall, prior to employment and at least once during each calendar year thereafter, perform a telephonic criminal history record check of each employee utilizing the procedures set forth in § 1448A of Title 11 and shall make and maintain a record thereof using the State Bureau of Identification Criminal History Record Information and Mental Health Information Consent Form (Form 544). A copy of each such form shall be attached to the above required employee list for inspection upon the valid request of a police officer of this State or of any political subdivision of this State, within their respective jurisdiction.

(c) Notwithstanding any provision to the contrary, any inspection by a judge, justice of the peace, police officer, constable, or other peace officer of this State shall be reasonable under the circumstances existing at the time and shall only be made pursuant to and in furtherance of an open criminal investigation or during the course of a criminal prosecution.

(26 Del. Laws, c. 15 § 4; Code 1915 § 259; 30 Del. Laws, c. 28 § 1; Code 1935 § 233; 42 Del. Laws, c. 71 § 2; 24 Del. C. 1953 § 904; 61 Del. Laws, c. 406 §§ 2-4; 63 Del. Laws, c. 55 § 1; 66 Del. Laws, c. 184 § 3; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 149 § 1; 79 Del. Laws, c. 20 §§ 8, 8A.)

§ 904A Criminal history checks for sales between unlicensed persons.

(a) For purposes of this section, "licensed firearm dealer" means any person licensed as a deadly weapons dealer pursuant to Chapter 9 of Title 24 and 18 U.S.C. § 921 et seq.

(b) As a condition of its license, any dealer holding a license pursuant to this chapter shall facilitate the transfer of a firearm, as that term is defined in § 222 of Title 11, from any unlicensed person as that term is defined in § 1448B of Title 11, upon the request of said

unlicensed person, pursuant to the following procedure:

(1) The prospective buyer and seller shall jointly appear at the place of business of the dealer, during said dealer's regular hours of business, and shall inform the dealer of their desire to avail themselves of the advantages of the procedure set forth herein.

(2) The dealer shall then subject the prospective buyer to a criminal history background check pursuant to the terms of § 1448A of Title 11.

(3) In the event that said record check reveals that the prospective buyer is prohibited from possessing, purchasing or owning a firearm pursuant to § 1448 of Title 11, the dealer shall so inform both parties of that fact and the transfer shall not take place.

(4) The dealer shall maintain a record of all criminal history background checks under this section in accordance with § 904 of this title.

(5) Any dealer who is asked to facilitate the transfer of a firearm pursuant to the terms of this section, may charge a reasonable fee for said service, said fee not to exceed $30 per criminal history check performed pursuant to this procedure. Notwithstanding the foregoing, no fee may be charged for the return of a firearm to its owner in the event that the proposed transaction may not be immediately and legally completed as the result, or lack thereof, of a criminal history background check hereunder.

(6) Failure or refusal on the part of the dealer to facilitate the transfer of a firearm pursuant to the procedures set forth herein shall be adequate cause to suspend the license of said dealer for a period not to exceed 30 days per occurrence.

(7) Subject to subchapter IV of Chapter 101 of Title 29, no license shall be restricted, suspended or revoked until a license holder has been given notice, and an opportunity to be heard in accordance with the Administrative Procedures Act (Chapter 101 of Title 29).

(c) Nothing in this section, or any other section of the Code, shall authorize or permit the State or any agency, department or instrumentality thereof to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited from receiving a firearm as set forth in Chapter 5 of Title 11. Any such system of registration is expressly prohibited.

(69 Del. Laws, c. 324 § 1; 79 Del. Laws, c. 20 § 9.)

§ 905 Penalties.

Whoever violates this chapter shall be fined not more than $250 or imprisoned not more than 6 months, or both.

(26 Del. Laws, c. 15 § 5; Code 1915 § 260; Code 1935 § 234; 24 Del. C. 1953 § 905; 66 Del. Laws, c. 184 § 4.)

Part

Chapter 11

DENTISTRY AND DENTAL HYGIENE

Subchapter I

State Board of Dentistry and Dental Hygiene

§ 1100 Objectives.

The primary objective of the State Board of Dentistry and Dental Hygiene, 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 and unprofessional practices.

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 licensees or former licensees.

(71 Del. Laws, c. 31 § 1; 77 Del. Laws, c. 463 § 3.)

§ 1101 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) Academic license. — Full-time director, chairperson or attending faculty member of a hospital based dental, oral and maxillofacial surgery or other specialty dental residency program for the purposes of teaching.

(2) "Board" shall mean the State Board of Dentistry and Dental Hygiene established in this chapter.

(3) "Dental assistant" shall mean any person not licensed to practice dentistry and/or dental hygiene in this State, who aids a dentist in the performance of generalized tasks, including chair-side aid, clerical work, reception, radiography, dental laboratory work, and any other such tasks delegated by the dentist.

(4) "Dental auxiliary personnel" shall mean any person not licensed to practice dentistry in this State, who works in a dental office as either a dental assistant, dental hygienist, dental technician, or otherwise.

(5) "Dental hygienist" shall mean a person who is qualified to practice dental hygiene as prescribed in this chapter.

(6) "Dental technician" shall mean any person not licensed to practice dentistry in this State, engaged in the business of constructing, altering, repairing or duplicating full dentures ("plates"), partial dentures, splints, orthodontic appliances, fixed bridges or any other prosthetic appliances.

(7) "Dentist" shall mean a person who is qualified to practice dentistry as prescribed in the chapter.

(8) "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.

(9) "Division" shall mean the State Division of Professional Regulation.

(10) "Excessive use or abuse of drugs" shall mean any use of narcotics, controlled substances or illegal drugs without a prescription from a licensed individual with valid prescriptive authority or the abuse of alcoholic beverage or prescription or nonprescription drugs, such that it impairs a person's ability to perform the work of a dentist or dental hygienist.

(11) "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.

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

(13) "Practice of dental hygiene" shall mean the removal of calculus deposits, plaque and stains from all surfaces of the teeth, and making instrumental examinations of the oral cavity, and assembling all necessary information for use by the dentist in diagnosis and treatment planning, and the performance of such prophylactic or preventive measures in the case of teeth, including the application of chemicals to the teeth and periodontal tissues, designed and approved for the prevention of dental caries and/or periodontal disease, as the Board may authorize; but the "practice of dental hygiene" shall not include any other operation on the teeth or tissues of the mouth.

(14) "Practice of dentistry" is defined as the evaluation, diagnosis, prevention and/or treatment (nonsurgical, surgical or related procedures) of diseases, disorders and/or conditions of the oral cavity, maxillofacial area and/or the adjacent and associated structures and their impact on the human body provided by a dentist within the scope of the dentist's education, training and experience, in accordance with the ethics of the profession and applicable law. The practice includes the use of telemedicine and may also include participation in telehealth as further defined in regulation. A person shall be construed to practice dentistry who by verbal claim, sign,

advertisement, opening of an office, or in any other way, including use of the words "dentist," "dental surgeon," the letters "D.D.S.," "D.M.D.," or other letters or titles, represents the person to be a dentist or who holds himself or herself out as able to perform, or who does perform, dental services or work. A person shall be regarded as practicing dentistry who is a manager, proprietor, operator or conductor of a place for performing dental operations or who for a fee, salary or other reward paid, or to be paid either to himself or herself or to another person, performs or advertises to perform dental operations of any kind.

(15) "State" shall mean the State of Delaware.

(16) "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.

(17) "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 dentistry or dental hygiene.

(18) "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.

(19) "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.

(73 Del. Laws, c. 332 § 3; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 § 20; 75 Del. Laws, c. 436 § 8; 77 Del. Laws, c. 463 §§ 1, 2, 3; 79 Del. Laws, c. 261 § 1; 80 Del. Laws, c. 80 § 9.)

§ 1102 State Board of Dentistry and Dental Hygiene; appointments; qualifications; term; vacancies; suspension or removal; unexcused absences; compensation.

(a) There is created a State Board of Dentistry and Dental Hygiene which shall administer and enforce this chapter.

(b) The Board shall consist of 9 members, appointed by the Governor, who are residents of this State, 5 of whom shall be dentists licensed under this chapter and who have been actively practicing dentistry in this State for a period of 5 years immediately preceding appointment to the Board; 1 member shall be a dental hygienist who has been actively practicing dental hygiene in this State for a period of 5 years immediately preceding appointment to the Board; and 3 public members who shall have been residents of this State for a period of 5 years immediately preceding appointment to the Board. The public members shall not be, nor ever have been, dentists or dental hygienists, nor members of the immediate family of a dentist or dental hygienist; shall not have been employed by a dentist; and shall not have a material interest in the providing of goods and services to dentists or dental hygienists, nor have been engaged in an activity directly related to dentistry or dental hygiene. The public members shall be accessible to inquiries, comments and suggestions from the general public. No public member shall have been licensed in any health related field or be licensed to practice law. No person shall be eligible for appointment to the Board who is in any manner connected with or interested in any dental college or the dental department of any college or university or the dental supply business.

(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.

(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, 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 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 dentists or dental hygienists, including the Delaware State Dental Society and the Delaware Dental Hygienists' Association.

(h) The provisions set forth for "employees" in 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, in accordance with the policy of the Division of Professional Regulation, for all expenses involved in each meeting, including travel; and, in addition, shall receive not more than $50 for each meeting attended but not

more than $500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(k) A dentist and a dental hygienist from the same practice, or 2 dentists from the same practice, or 2 dental hygienists from the same practice, may not serve on the Board or the Dental Hygiene Advisory Committee at the same time.

(11 Del. C. 1953 §§ 1101-1103, 1005; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 547 § 7; 60 Del. Laws, c. 449 § 2; 61 Del. Laws, c. 179 §§ 1, 2; 61 Del. Laws, c. 334 §§ 4, 6; 63 Del. Laws, c. 290 § 8; 65 Del. Laws, c. 494 § 2; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 266 §§ 3, 4; 70 Del. Laws, c. 451 §§ 1, 2; 71 Del. Laws, c. 31 § 1; 73 Del. Laws, c. 332 § 3; 77 Del. Laws, c. 463 §§ 3, 4.)

§ 1103 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 President deems necessary, or at the request of a majority of the Board members.

(b) The Board annually shall elect a President and Secretary. Each officer shall serve for 1 year and shall not succeed himself or herself for more than 2 consecutive terms.

(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 5 members of the Board.

(d) When members of the Dental Hygiene Advisory Committee participate in voting on matters listed in § 1105(c)(1)-(5) of this title, the Board composition shall be 12 voting members, so that 7 members shall constitute a quorum.

(e) 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.

(17 Del. Laws, c. 496 § 3; 21 Del. Laws, c. 242 § 2; 26 Del. Laws, c. 133 § 1; Code 1915 § 888; 38 Del. Laws, c. 48 § 2; Code 1935 § 969; 42 Del. Laws, c. 93 § 1; 24 Del. C. 1953 § 1104; 65 Del. Laws, c. 210 §§ 3, 4, 12; 67 Del. Laws, c. 366 § 2; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 31 § 1; 73 Del. Laws, c. 332 § 3; 77 Del. Laws, c. 463 § 5.)

§ 1104 Records.

The Division of Professional Regulation shall keep a register of all approved applications for license as a dentist or a dental hygienist 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.

(Code 1915 § 890; 38 Del. Laws, c. 48 § 2; Code 1935 § 971; 24 Del. C. 1953 § 1106; 65 Del. Laws, c. 210 § 12; 71 Del. Laws, c. 31 § 1; 73 Del. Laws, c. 332 § 3.)

§ 1105 Dental Hygiene Advisory Committee.

(a) There is created a State Dental Hygiene Advisory Committee which shall serve the Board on matters pertaining to the policy and practice of dental hygiene.

(b) The Committee shall consist of 3 licensed dental hygienists, appointed by the Governor, who are residents of this State and who have been actively practicing dental hygiene in this State for 2 years immediately preceding appointment to the Committee.

(1) No person shall be eligible for appointment to the Committee who is in any manner connected with or who has an interest in any dental hygiene college or the dental hygiene department of any college or university or any commercial dental enterprise.

(2) Each member shall serve a term of 3 years and remain eligible to participate in proceedings unless and until replaced by the Governor.

(3) All terms shall be staggered so that 1 new member is added and 1 member is retired each year.

(4) A member of the Committee shall be suspended or removed by the Governor for misfeasance, nonfeasance, malfeasance, misconduct, incompetency or neglect of duty.

(5) No member of the Committee shall hold elective office in any professional association of dental hygienists.

(6) Each member of the Committee shall be reimbursed, according to the policy of the Division of Professional Regulation, for all expenses involved in each meeting, including travel; and in addition, shall receive $50 for each meeting attended but not more than $500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(7) No 2 dental hygienists from the same practice may serve on the Advisory Committee at the same time.

(c) The Committee shall participate with members of the Board in:

(1) Voting on the qualifications of candidates who apply for licensure to practice dental hygiene;

(2) Voting on the composition of the state dental hygiene clinical/practical examination;

(3) Voting on the requirements for renewal of dental hygiene licenses;

(4) Voting on disciplinary actions involving hygienists; and

(5) Voting on other matters involving the policy and practice of dental hygiene as defined in § 1101(13) of this title and further defined in the Board's rules and regulations. The Committee shall not vote on matters involving changing the scope of practice as defined in § 1101(13) of this title.

(65 Del. Laws, c. 210 § 16; 71 Del. Laws, c. 31 § 1; 73 Del. Laws, c. 332 § 3; 77 Del. Laws, c. 463 §§ 6-8; 79 Del. Laws, c. 261 § 1; 80 Del. Laws, c. 80 § 9.)

§ 1106 Powers and duties of the Board.

(a) The State Board of Dentistry and Dental Hygiene 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) Examine candidates for licensure subject to § 8735(d)(5) of Title 29;

a. Designate the written, standardized examination administered by the National Board of Dental Examiners to be taken by all persons applying for licensure;

b. Prepare and administer a practical examination in dentistry and dental hygiene;

c. Designate a written jurisprudence examination on the Delaware laws pertaining to dentistry to be taken by all persons applying for licensure;

(4) Provide for the administration of all applicable examinations, including notice and information to applicants;

(5) Evaluate the credentials of all persons applying for a license to practice dentistry and dental hygiene in order to determine whether such persons meet the qualifications for licensing set forth in this chapter;

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

(7) Establish by rule and regulation continuing education standards required for license renewal for dentists and dental hygienists;

(8) Evaluate certified records to determine whether an applicant for licensure who has been previously licensed, certified or registered in another jurisdiction to practice dentistry or dental hygiene 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;

(9) Refer all complaints from licensees and the public concerning licensed dentists and dental hygienists 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;

(10) Conduct hearings and issue orders in accordance with procedures established pursuant to this chapter, Chapter 101 of Title 29 and § 8735 of Title 29. Where such provisions conflict with the provisions of this chapter, this chapter shall govern. The Board shall determine whether or not a dentist or dental hygienist 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];

(11) 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;

(12) Working in conjunction with the Board of Directors of the Delaware Institute of Dental Education and Research, develop programs to encourage and allow dentists to practice in under-served areas of the State, as designated by the Delaware Health Care Commission, in lieu of hospital-based residency training as a condition of licensure;

(13) Issue a volunteer license to an individual who is duly licensed as a dentist or dental hygienist in this State or to any individual who has ever been so licensed provided proof of continued competence is provided to the satisfaction of the Board. Such individuals shall certify on the license application that the individual will perform no dental or dental hygiene services for any direct compensation and that the individual volunteers his or her time exclusively in a nonprofit dental clinic or nonprofit dental service designated by the Delaware Health Care Commission and approved by the Delaware State Board of Dentistry and Dental Hygiene. A volunteer license shall be issued at no charge to a qualified individual approved by the Board. All other costs associated with meeting the requirements for such license will remain the responsibility of the applicant. The applicant for a volunteer license shall be responsible for completing the continuing education required for an active Delaware licensee by the Board and shall adhere to all standards of practice and supervision required of a Delaware licensed dentist or dental hygienist. Any dentist or dental hygienist having a volunteer license shall not practice dentistry or dental hygiene in this State in any setting other than in an approved nonprofit dental clinic or nonprofit dental service.

(14) Define 3 levels of supervision by rule and regulation.

(15) Establish by rule and regulation the requirement to and standards for permits that authorize dentist to administer anesthetic agents.

(16) Issue subpoenas requiring the production of and receive information regarding changes in hospital privileges as a result of disciplinary or other adverse action taken by a hospital, or regarding disciplinary or other adverse action taken by a dental society against any person certified under this chapter to practice dentistry or dental hygiene.

(b) The State Board of Dentistry and Dental Hygiene shall promulgate regulations specifically identifying those crimes which are substantially related to the practice of dentistry and dental hygiene.

(Code 1915 § 891; 38 Del. Laws, c. 48 § 2; Code 1935 § 972; 24 Del. C. 1953 § 1107; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 31 § 1; 72 Del. Laws, c. 481 § 1; 73 Del. Laws, c. 332 § 3; 74 Del. Laws, c. 262 § 21; 75 Del. Laws, c. 104 § 1; 77 Del. Laws, c. 463 §§ 3, 9-13.)

§§ 1107 -1110. [Reserved.]

Subchapter II

Dentistry and Dental Hygiene

§ 1121 License required.

(a) No person shall practice dentistry or dental hygiene or hold himself or herself out to the public in this State as being qualified to practice dentistry or dental hygiene 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 the person is qualified to practice dentistry or dental hygiene unless such person has been duly licensed under this chapter.

(b) A dental hygienist licensed under this chapter shall practice dental hygiene only under the general supervision of a licensed dentist, in the office of the licensed dentist or in any public school or other public institution of this State.

(c) A licensed dental hygienist may practice under the general supervision of the State Dental Director, or the State Dental Director's designee, who shall be a licensed Delaware dentist, in schools and state institutions. A licensed dental hygienist may also practice under the general supervision of the State Dental Director, or the State Dental Director's designee, who shall be a Delaware licensed dentist, in federally qualified health centers, nonprofit organizations and other locations as designated by the Delaware Health Care Commission in consultation with DIDER. The protocols under which hygienists practice in these settings will be established by the State Dental Director and shall be subject to the approval of the Delaware State Board of Dentistry and Dental Hygiene.

(d) The State Dental Director shall be a Delaware licensed dentist. In the event that the State Dental Director does not have a Delaware dental license when hired, the State Dental Director must obtain a Delaware license within 2 years of assuming the position. The Board may grant a temporary license for a period no longer than 2 years to the State Dental Director, provided the State Dental Director has met all licensure requirements except successful completion of the practical exam. The authority to practice dentistry under such a temporary license will be limited to the performance of the duties as the State Dental Director.

(e) Whenever a license to practice as a dentist or dental hygienist in this State has expired or has been suspended or revoked, it shall be unlawful for the person to practice dentistry or dental hygiene in this State.

(73 Del. Laws, c. 332 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 463 § 3.)

§ 1122 Qualifications of applicant; report to Attorney General; judicial review.

(a) An applicant who is applying for licensure as a dentist under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person:

(1) Has received a degree in dentistry from an accredited dental college or university accredited by the Commission on Dental Accreditation of the American Dental Association.

(2) Before matriculating in a dental college or university, has completed at least 2 years of undergraduate study in an accredited college or university.

(3) Has acquired 1 year's experience as a dental intern within a general practice residency accredited by the Commission on Dental Accreditation of the American Dental Association (CODA) or has completed a CODA approved specialty residency with those specific rotations identified in the Board's rules and regulations, or if applying by reciprocity has had 3 years of active dental practice in another state or territory of the United States.

(4) Has achieved the passing score on all examinations prescribed by the Board.

(b) An applicant who is applying for licensure as a dental hygienist under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person has:

(1) Graduated from high school or has received a general equivalency diploma (G.E.D.).

(2) Graduated from a dental hygiene college or university program accredited by the Commission on Dental Accreditation of the American Dental Association of at least 2 academic years' duration; or

(3) Graduated, prior to 1953, from a dental hygiene program of at least 1 year's duration, which program had been approved by the Board at the time of the person's graduation; and

(4) Achieved the passing score on all examinations prescribed by the Board.

(c) All applicants shall have complied with the following conditions:

(1) Shall submit proof of current certification in cardiopulmonary resuscitation (CPR) technique in accordance with regulations adopted by the Board.

(2) Shall not have been the recipient of any administrative penalties regarding the applicant's practice of dentistry or dental hygiene, including but not limited to fines, formal reprimands, license suspension or revocation (except for license revocations for nonpayment of license renewal fees), or probationary limitations, or have entered into any "consent agreements" which contain conditions placed by a Board on the applicant's professional conduct and practice, including any voluntary surrender of a license while under investigation the Board may determine, after a hearing or based on the documentation submitted, whether such administrative penalty is grounds to deny licensure.

(3) Shall not have any impairment related to drugs or alcohol that would limit the applicant's ability to undertake the practice of dentistry or dental hygiene in a manner consistent with the safety of the public.

(4) Shall not have a criminal conviction for a crime substantially related to the practice of dentistry or dental hygiene. 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, may waive this paragraph (c)(4), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of practicing dentistry or dental hygiene in a competent and professional manner.

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

e. The applicant has not been convicted of a felony sexual offense.

(5) Shall not have engaged in any of the acts or offenses that would be grounds for disciplinary action under this chapter, and shall not have been the recipient of any administrative penalties regarding that applicant's practice as a dentist or dental hygienist, including but not limited to fines, formal reprimands, license suspensions or revocation, (except for license revocations for nonpayment of license renewal fees), probationary limitations, nor entered into any consent agreements which contain conditions placed by a Board on that applicant's professional conduct and practice, including any voluntary surrender of a license. The Board may determine after a hearing or review of documentation whether such administrative penalty is grounds to deny licensure.

(6) Submit, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

a. 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 relating to that person.

b. A report of the applicant's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Board of Dentistry and Dental Hygiene shall be the screening point for the receipt of said federal criminal history records.

An applicant may not be certified to practice dentistry or dental hygiene until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be certified by the Board unless a waiver is granted pursuant to paragraphs (c)(4)a., b. and c. of this section;

(7) Shall submit to the Board a sworn or affirmed statement that the applicant is, at the time of application, physically and mentally capable of engaging in the practice of medicine according to generally accepted standards, and submit to such examination as the Board may deem necessary to determine the applicant's capability.

(d) Where the Board has found to its satisfaction that an applicant has been intentionally fraudulent, or that false information has been intentionally supplied, the Board shall deny the application and report its findings to the Attorney General for further action.

(e) All individuals licensed to practice dentistry and dental hygiene in this State shall be required to 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.

(73 Del. Laws, c. 332 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 § 22; 75 Del. Laws, c. 436 § 9; 77 Del. Laws, c. 199 § 7; 77 Del. Laws, c. 463 §§ 14-17; 78 Del. Laws, c. 44 §§ 11-13; 78 Del. Laws, c. 147 § 1; 79 Del. Laws, c. 277 § 3; 80 Del. Laws, c. 314 § 1.)

§ 1123 Examinations.

(a) An applicant applying to take the Delaware practical (clinical) examination shall submit evidence, verified by oath satisfactory to the Board, that such person:

(1) When applying as a dentist, has received a degree in dentistry from a dental college or university accredited by the Commission on Dental Accreditation of the American Dental Association;

(2) When applying as a dental hygienist, has fulfilled the requirements set forth within § 1122 (b)(1)-(3) of this title.

(b) An applicant applying for licensure shall:

(1) Successfully pass, with a score established by the Board, a validated practical examination prepared and administered by the Board. A practical test in dentistry or dental hygiene prepared by the Board and its method of administration shall be validated as to content and scoring by a member of the faculty of an accredited school of dentistry. Such faculty member shall not be licensed to practice dentistry in Delaware and shall be agreed upon by the Division and the Board. An applicant who has failed the practical examination 3 times may not take the examination again unless the applicant can provide evidence of mitigating circumstances to the satisfaction of the Board.

(2) For licensure as a dentist, submit proof satisfactory to the Board that the applicant has successfully completed the National Board of Dental Examiners' examination in dentistry with a passing score established by the Board; for licensure as a dental hygienist, submit proof satisfactory to the Board that the applicant has successfully passed the National Board of Dental Examiners' examination in dental hygiene.

(3) For licensure as a dentist, successfully pass a written jurisprudence examination on Delaware laws pertaining to dentistry; for licensure as a dental hygienist, successfully pass a written jurisprudence examination on Delaware laws pertaining to dental hygiene. All examinations shall be approved by the Division and the Board.

(73 Del. Laws, c. 332 § 1; 74 Del. Laws, c. 61 § 1; 77 Del. Laws, c. 463 § 18.)

§ 1124 Dentists and dental hygienists licensed in other jurisdictions.

(a) 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 practice dentistry or dental hygiene to each applicant, who shall present proof of current licensure in "good standing" in another state, the District of Columbia, or territory of the United States, who meets the following criteria:

(1) Has maintained the applicant's license in "good standing" and has satisfied all requirements of § 1122(c)(2)-(7) of this title.

(2) Shall, subject to subsection (b) of this section, have passed the examinations required in § 1123(b)(1), (2) and (3) of this title.

(3) For licensure as a dentist, has received a degree in dentistry from an accredited dental college or university accredited by the Commission on Dental Accreditation of the American Dental Association.

(4) For licensure as a dentist, shall submit proof that the applicant has had 3 years of active dental practice in another state, the District of Columbia or a territory of the United States.

(5) Shall submit proof of current certification in cardiopulmonary resuscitation (CPR) technique in accordance with regulations adopted by the Board.

(b) An applicant for licensure as a dental hygienist, who shall have practiced for a minimum of 3 of the last 5 years in the state in which the applicant currently is or has been licensed, may be licensed provided that the applicant meets the qualifications of paragraphs (a)(1), (2), and (5) of this section, except for the completion of the practical examination.

(c) All applicants for licensure under this section shall have remained academically current through continuing education or otherwise, as determined by the Board.

(73 Del. Laws, c. 332 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 436 § 10; 77 Del. Laws, c. 463 §§ 19-21.)

§ 1125 Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division in its service on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each licensure biennium, the Division, or any other state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate Board fees for the licensure biennium.

(73 Del. Laws, c. 332 § 1.)

§ 1126 Issuance and renewal of licenses; replacement of licenses.

(a) The Board shall issue a license to each applicant who meets the requirements of this chapter for licensure as a dentist or dental hygienist and who pays the fee established in § 1125 of this title.

(b) Each license shall be renewed biennially, in such manner as is determined by the Division, upon payment of the appropriate fee and submission of a renewal form provided by the Division, and proof that the licensee has met the continuing education requirements established by the Board and proof that the licensee has not been convicted of a crime substantially related to the practice of dentistry or dental hygiene unless a waiver is granted pursuant to § 1122(c)(4) of this title.

(c) The Board, in its rules and regulations, shall determine the period of time within which a licensed dentist or dental hygienist may still renew his or her license, notwithstanding the fact that such licensee has failed to renew on or before the renewal date, provided however that such period shall not exceed 1 year. Any licensee who fails to renew on or before the renewal date, and any allowable extensions, not to exceed 1 year, will be considered a new applicant.

(d) Any person whose license or certificate has expired for failure to make biennial registration over a period of more than 5 years and who has not been in the active full-time practice or dentistry or dental hygiene in another state or territory of the United States during the previous 5 years is required, in addition to applying as a new applicant, to submit to reexamination or other formal assessment of competency as approved by the Board.

(e) All individuals licensed under this chapter, upon written request, may be placed in an inactive status in accordance with the Board's rules and regulations. Such individual may reenter practice upon written notification to the Board of the intent to do so and completion of continuing education as required in the Board's rules and regulations. The Board may establish by regulation provisions for resuming active status.

(f) All licenses issued under this chapter shall be displayed in view of the public in the place of business of the licensee.

(g) A new license to replace any license lost, destroyed or mutilated may be issued by the Division of Professional Regulations. A charge shall be made for such issuance.

(73 Del. Laws, c. 332 § 1; 77 Del. Laws, c. 199 § 8; 77 Del. Laws, c. 463 §§ 22-26; 80 Del. Laws, c. 314 § 2.)

§ 1127 Complaints.

(a) All complaints shall be received and investigated by the Division of Professional Regulation in accordance with § 8735 of Title 29,

and the Division shall be responsible for issuing a final written report at the conclusion of its investigation.

(b) When it is determined that an individual is engaging or has engaged in the practice of dentistry or dental hygiene or is using the title "dentist" or "dental hygienist," and is not licensed under the laws of this State, the Board shall report to the office of the Attorney General for appropriate action.

(c) The Division shall have the authority to conduct inspections upon receipt of any complaint in connection with § 1128(12) of this title or upon the occurrence of an adverse event as defined in § 122(3)y.3.A. of Title 16 and, as applicable, refer such information to the Department of Health and Social Services pursuant to § 122(3)y. of Title 16. In connection herewith, the Division may share information with the Department of Health and Social Services in accordance with applicable law.

(73 Del. Laws, c. 332 § 1; 78 Del. Laws, c. 15 § 6.)

§ 1128 Grounds for discipline.

A practitioner licensed under this chapter shall be subject to disciplinary actions set forth in § 1129 of this title, if, after a hearing, the Board finds that the dentist or dental hygienist:

(1) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license as a dentist or dental hygienist, has impersonated another person holding a license or has allowed another person to use the practitioner's license, or has aided or abetted a person not licensed as a dentist or dental hygienist to represent himself or herself as a dentist or dental hygienist;

(2) Has practiced dentistry or dental hygiene in an incompetent or grossly negligent manner or has otherwise been guilty of misconduct or unprofessional conduct. In addition to such acts or omissions as the Board may define as unprofessional conduct by rules and regulations, unprofessional conduct shall include, but shall not be limited to, practicing in a corporation or other business entity which actually limits or restricts the exercise and application of professional judgment by the dentist or dental hygienist to the detriment of the dentist's or dental hygienist's patients;

(3) [Repealed.]

(4) Has been convicted of any offense the circumstances of which substantially relate to the practice of dentistry or dental hygiene. A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence thereof;

(5) Has engaged in an act of consumer fraud or deception, engaged in the illegal restraint of competition, or participated in illegal price-fixing activities;

(6) Has violated a provision of this chapter or any regulation established thereunder;

(7) Has had the practitioner's license as a dentist or dental hygienist suspended or revoked, or has had other disciplinary action taken against the dentist or dental hygienist by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record, and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts prohibited by this chapter. Every person licensed as a dentist or dental hygienist in this State shall be deemed to have given consent to the release of this information by the Board or other comparable agency in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses;

(8) Has failed to notify the Board that the practitioner's license as a dentist or dental hygienist in another state has been subject to discipline or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof;

(9) Has a physical condition such that the performance of dentistry or dental hygiene is or may be injurious or prejudicial to the public;

(10) Has had the practitioner's United States Drug Enforcement Administration (DEA) privileges restricted or revoked;

(11) Has engaged in the excessive use or abuse of drugs;

(12) Has maintained a facility in an unsanitary or unsafe condition. For purposes of this section, "facility" shall have the same meaning as defined in § 122(3)y.3.C. of Title 16;

(13) Has been convicted of a felony sexual offense;

(14) Has failed to report child abuse or neglect as required by § 903 of Title 16, or any successor thereto; or

(15) Has failed to report to the Division of Professional Regulation as required by § 1131A of this title.

(73 Del. Laws, c. 332 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 § 23; 78 Del. Laws, c. 15 § 7; 78 Del. Laws, c. 147 § 2.)

§ 1129 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that 1 of the conditions or violations set forth in § 1128 of this title applies to a practitioner regulated by this chapter:

(1) Issue a letter of reprimand;

(2) Censure a practitioner;

(3) Place a practitioner on probationary status and require the practitioner to:

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

b. Limit all practice and professional activities to those areas prescribed by the Board;

(4) Suspend any practitioner's license;

(5) Revoke any practitioner's license;

(6) Impose a monetary penalty not to exceed $1,000 for each violation;

(7) Take such other disciplinary action as the Board may deem necessary and appropriate;

(8) The Board shall permanently revoke the certificate to practice dentistry or dental hygiene of a person who is convicted of a felony sexual offense.

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

(c) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

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

(e) As a condition to reinstatement of a suspended license or removal from probationary status, the Board may reinstate such 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 probation and can practice dentistry or dental hygiene with reasonable skill and safety to the public.

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

(73 Del. Laws, c. 332 § 1; 77 Del. Laws, c. 463 §§ 27-29; 78 Del. Laws, c. 147 § 3; 79 Del. Laws, c. 213 § 2.)

§ 1130 Hearing procedures.

(a) If a complaint is filed with the Board by the office of the Attorney General pursuant to § 8735 of Title 29 alleging violation of § 1128 of this title, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) The technical rules of evidence shall not apply to hearings before the Board. If the Board finds, by a majority vote of all members hearing the case, that the complaint has been established by a preponderance of evidence, the Board shall take such action permitted under this chapter as it deems necessary. The Board's decision shall be in writing and shall include its reasons for such decision. The Board's decision shall be mailed immediately to the practitioner.

(c) Where the practitioner is in disagreement with the action of the Board, the practitioner may appeal the Board's decision to the Superior Court.

(73 Del. Laws, c. 332 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1131 Duty to self-report.

(a) A licensee shall self-report to the Board:

(1) Any arrest or the bringing of an indictment or information charging the licensee with a crime substantially related to the practice of dentistry and dental hygiene as defined in the Board's rules and regulations.

(2) The conviction of the licensee, including any verdict of guilty or plea of guilty or no contest, of any crime substantially related to the practice of dentistry and dental hygiene as defined by the Board in its rules and regulations.

(b) The report required by this section shall be made in writing within 30 days of the date of the arrest, bringing of the indictment or information or of the conviction.

(c) Failure to make a report required by this section constitutes grounds for discipline under § 1128 of this title.

(77 Del. Laws, c. 463 § 31.)

§ 1131A Duty to report conduct that constitutes grounds for discipline or inability to practice.

(a) Every person to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or any other healthcare provider has engaged in or is engaging in conduct that would constitute grounds for disciplinary action under this chapter or the other healthcare provider's licensing statute.

(b) Every person to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or

any other healthcare provider may be unable to practice with reasonable skill and safety to the public by reason of mental illness or mental incompetence; physical illness; including deterioration through the aging process or loss of motor skill; or excessive abuse of drugs, including alcohol.

(c) Every person to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation any information that the reporting person reasonably believes indicates that a person certified and registered to practice medicine in this State is or may be guilty of unprofessional conduct or may be unable to practice medicine with reasonable skill or safety to patients by reason of mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive use or abuse of drugs, including alcohol.

(d) All reports required under subsections (a), (b) and (c) of this section must be filed within 30 days of becoming aware of such information. A person reporting or testifying in any proceeding as a result of making a report pursuant to this section is immune from claim, suit, liability, damages, or any other recourse, civil or criminal, so long as the person acted in good faith and without gross or wanton negligence; good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant.

(78 Del. Laws, c. 147 § 4.)

§ 1131B Treatment or examination of minors.

(a) A parent, legal guardian or other caretaker, or adult staff member, shall be present when a person licensed or certified to practice dentistry or dental hygiene under this chapter provides services to a minor, regardless of the sex of the licensed or certified person and minor, whenever a door to the treatment room is required to be closed or any time the minor is sedated.

(b) When a minor is to receive services, the person licensed or certified to practice dentistry or dental hygiene under this chapter shall provide notice to the parent, legal guardian or other caretaker of the rights under subsection (a) of this section. The notice shall be provided in written form and shall be posted conspicuously in the location where services will be provided.

(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 that provides treatment to a minor pursuant to this section shall, contemporaneously with such treatment, note in the patient's record the name of each person present when such treatment is being provided.

(79 Del. Laws, c. 169 § 4.)

§ 1132 Limited license — Fee.

(a) Upon completion of an application approved by the Board and payment of a fee established by the Division, the Board may issue a limited license to an applicant for licensure as a dentist who has fulfilled the requirements of § 1122(a)(1) and (2) of this title, and who furnishes proof satisfactory to the Board that the applicant has been appointed a dental intern in a hospital or other institution maintained by this State, by a county or municipality thereof, or in a hospital or dental infirmary incorporated under the laws of this State.

(b) The limited license shall entitle the applicant to practice dentistry only in the hospital or other institution designated on the license and only on bona fide patients of the hospital or institution and under the direction of a licensed dentist employed therein or on the staff thereof.

(c) The applicant for limited license shall comply with the provisions of § 1122(c)(1)-(7) of this title.

(d) The holder of a limited license shall be bound by all other applicable provision of this chapter.

(e) The limited license shall be renewed annually.

(73 Del. Laws, c. 332 § 1; 77 Del. Laws, c. 463 § 32.)

§ 1132A Academic license — Director or chairperson of a hospital dental or hospital oral and maxillofacial surgery residency program.

(a) Upon completion of an application approved by the Board and payment of a fee established by the Division, in accordance with § 1125 of this title, the Board may issue an academic license to an applicant for licensure as a dentist who has fulfilled the following requirements:

(1) Meets the requirements of § 1122(a)(1), (2), and (3) of this title.

(2) Presents proof of current licensure in "good standing" in another state, the District of Columbia, or territory of the United States.

(3) The applicant furnishes proof satisfactory to the Board that the applicant is "Board Certified" or is "Board Eligible" in general dentistry or in a specialty of dentistry.

(4) The applicant furnishes proof satisfactory to the Board that the applicant has been appointed a full-time director, chairperson or an attending faculty member of a hospital based dental, oral and maxillofacial surgery or other dental specialty residency program of a hospital system that is based in Delaware and that is accredited, is establishing or has received Initial Accreditation by the Commission on Dental Accreditation of the American Dental Association (CODA) for the purposes of teaching.

(b) The academic license shall entitle the applicant to practice dentistry or oral and maxillofacial surgery only in the institution designated on the license and on bona fide patients in an academic setting for teaching purposes.

(c) The applicant for this academic license shall comply with the provisions of § 1122(a)(1)-(3), (c)(1)-(7) and (d) of this title.

(d) The holder of an academic license shall be bound by all other applicable provisions of this chapter.

(e) The academic license shall be renewed biennially.

(f) If the applicant was in the process of acquiring a "Board Certification" or "Board Eligible" when the academic license was granted, the applicant must obtain full "Board Certification" in general dentistry or in a specialty of dentistry within 5 years. If this "Board Certification" is not obtained then the Board shall not approve renewal of this academic license.

(g) If the applicant is an appointee to a hospital-based dental or specialty residency program undergoing initial CODA accreditation, the program must complete full accreditation within 2 years. If the program does not have CODA accreditation after 2 years, the Board may approve an extension of the academic license after review of program status.

(h) Any individual who received an academic license under this section prior to these changes may retain an academic license as long as the license remains in good standing and is renewed consecutively.

(i) This academic license will become a full license immediately once the dentist fulfills the requirements of § 1122(a)(4) of this title.

(j) The Board shall promulgate rules regarding issuance of these academic licenses to ensure adequate numbers of educational faculty for resident training and to maintain CODA accreditation as interpreted by the Board.

(77 Del. Laws, c. 205 § 1; 77 Del. Laws, c. 463 § 33; 79 Del. Laws, c. 261 § 1.)

§ 1132B Provisional license — Dentists practicing in federally qualified health centers.

(a) Upon completion of an application approved by the Board and payment of a fee established by the Division, the Board shall issue a provisional license to an applicant for licensure as a dentist who has fulfilled the requirements of § 1122(a)(1), (2), and (3) of this title, has completed a general practice residency, or holds both a license in another jurisdiction and 3 years of practice experience, and who furnishes proof satisfactory to the Board that the applicant has contracted to be an employee with a federally qualified health center (FQHC). General supervision by a Delaware-licensed dentist must be provided by the FQHC for eligible applicants. Eligible organizations must include the provision of care for medically indigent patient populations in their mission.

(b) The provisional license shall entitle the applicant to practice dentistry only in the FQHC designated on the license and only on bona fide patients of the FQHC under the direction of a licensed dentist employed therein or on the staff thereof. If the supervising dentist becomes unable or unavailable to provide direction, the FQHC will then contract with a Delaware-licensed dentist to provide direction for the provisional license holder.

(c) The provisional license shall entitle the applicant to practice dentistry for a 2-year period from the date of issuance and shall not be renewed. The applicant must fulfill the requirements of § 1123(b)(1) of this title within the 2-year period, and must take the Delaware practical examination at least once within the first year of the provisional license unless the Board grants an extension to the applicant for good cause. The provisional license shall convert to a full license once the holder passes the practical examination and fulfills the requirements of § 1123(b)(1) of this title. The requirements of §§ 1122(a)(4) and 1123(b)(2) and (3) of this title must be met by the end of the 2-year period. If these requirements are not fulfilled, the Board may deny full licensure.

(d) The applicant for provisional license shall comply with the provisions of § 1122(c)(1)-(7) of this title.

(e) The holder of a provisional license shall be bound by all other applicable provisions of this chapter.

(f) The provisional license shall expire after the second year has been completed in the FQHC. The Board may grant an extension of the provisional license for up to 6 months for good cause demonstrated by the provisional license holder.

(79 Del. Laws, c. 160 § 1.)

Subchapter III

Other Provisions

§ 1133 Exemptions.

Nothing in this chapter shall be construed to prevent:

(1) A licensed dentist or dental hygienist serving in any branch of the United States Armed Services, Veterans' Administration or Public Health Service from discharging the dentist's or dental hygienist's official duties;

(2) A licensed physician or surgeon from extracting teeth or treating pathological conditions of the mouth, teeth or oral tissues, or from radiographing such tissues, unless such person practices dentistry as a specialty;

(3) A lawful practitioner of dentistry in another state, the District of Columbia or a territory of the United States from making a clinical demonstration for educational purposes before a dental society, convention, association of dentists or dental college or performing duties in connection with a specific case on which the practitioner may have been called to this State by a legally qualified practitioner of dentistry of this State.

(4) A practitioner of dentistry who maintains a lawful dental license to practice in another state, the District of Columbia or a territory of the United States from making a clinical demonstration in connection with the lawful research and development of dental product or dental products manufactured by a dental manufacturer complying with guidelines set forth by the United States Food and Drug Administration.

(5) A person not currently licensed as a dentist under this chapter from owning or operating a nonprofit, tax-exempt organization as described in §§ 501(c)(3), 509(a)(1) and 170(b)(1)(A)(iii) of the Internal Revenue Code (26 U.S.C. §§ 501(c)(3), 509(a)(1), and 170(b)(1)(A)(iii)) so long as such person is not otherwise practicing dentistry.

(73 Del. Laws, c. 332 § 2; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 463 § 34; 80 Del. Laws, c. 259 § 1.)

§ 1134 Penalty.

A person not currently licensed as a dentist or dental hygienist under this chapter who engages in the practice of dentistry or dental hygiene or uses in connection with that person's name, or otherwise assumes or uses, any title or description conveying, or tending to convey, the impression that the person is qualified to practice dentistry or dental hygiene shall be guilty of a misdemeanor. Upon the first offense, the 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. Justice of the Peace Courts shall have jurisdiction over all violations of this section.

(73 Del. Laws, c. 332 § 2; 70 Del. Laws, c. 186 § 1.)

§ 1135 Certain unlawful acts; supervision by dentists.

(a) No person shall repair, construct, adjust or alter any appliance, denture or dental restoration except under the authorization and responsibility of a licensed practitioner of dentistry as defined by this chapter.

(b) Dentists may have direct supervision of dental assistants.

(73 Del. Laws, c. 332 § 2; 77 Del. Laws, c. 463 § 35.)

§ 1136 Prescriptions for dentists.

Pharmacists licensed by this State may fill prescriptions of dentists licensed by this State for any drug necessary in the practice of dentistry, dental surgery or oral surgery.

(73 Del. Laws, c. 332 § 2.)

§ 1137 Prescription requirements.

No written prescription shall be prescribed if it does not contain the following information clearly written, clearly hand printed, electronically printed, or typed:

(1) The name, address and phone number of the prescriber;

(2) The name and strength of the drug prescribed;

(3) The quantity of the drug prescribed;

(4) The directions for use of the drug;

(5) Date of issue.

(75 Del. Laws, c. 161 § 2.)

§ 1138 Accreditation of facilities where invasive procedures are performed.

No person licensed under this chapter shall perform any invasive procedure, as defined in § 122(3)y. of Title 16, in a facility unless such facility is accredited or licensed in accordance with § 122(3)z. of Title 16. For purposes of this section, the terms "facility" and "invasive medical procedure" shall have the meanings set forth in § 122(3)y. of Title 16.

(78 Del. Laws, c. 80 § 4.)

§§ 1151 -1159. [Reserved.]

Subchapter IV

Violations and Penalties; Enforcement

§ 1171 Name used in practice of dentistry.

(a) Any dentist who practices or offers to practice dentistry or dental surgery may use a trade name that is not false, misleading or deceptive provided that the proper name of 1 of the owners, all of whom must be dentists, is used in conjunction with the trade name.

(b) Advertisements in any medium shall include the name, as it appears on the current biennial renewal certificate, and the degree — D.D.S. or D.M.D. — of at least 1 licensed dentist who is an owner of the dental facility.

(c) A directory listing all of the names of the dentists practicing at that location shall be prominently displayed in the entrance or reception area of the dental facility.

(d) The names of dentists who have practiced under the trade name shall be maintained in the records of the dental facility for at least 5 years following their departure from the practice.

(e) The use of the name of a dentist no longer actively associated with the practice may not be continued for longer than 1 year.

(f) A trade name may not include the word "clinic" unless the name designates a public or nonprofit facility.

(g) A trade name may not include the word "institute" unless the name designates an educational or research facility.

(h) A trade name may not, by the use of plurals or otherwise, misrepresent the number of dentists practicing at a facility.

(Code 1915 § 892T; 38 Del. Laws, c. 48 § 2; Code 1935 § 993; 24 Del. C. 1953 § 1171; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 463 § 36.)

§ 1172 Unlawful acts; penalty.

Whoever employs a person who is not a licensed dentist to perform dental operations as defined in this chapter or permits such persons to practice dentistry in the employer's office; or whoever practices dentistry under a false name or assumes a title or appends or prefixes to that person's name letters which falsely represent the person as having a degree from a chartered dental college, or makes use of the words "dental college" or "dental school" or equivalent words when not lawfully authorized so to do, or impersonates another at an examination held by the Board, or knowingly makes a false application or a false representation in connection with such examination; shall be fined not less than $100 nor more than $200.

(Code 1915 § 892Y; 38 Del. Laws, c. 48 § 2; Code 1935 § 998; 24 Del. C. 1953 § 1172; 70 Del. Laws, c. 186 § 1.)

§ 1173 Failure to display dentistry license; penalty.

Whoever engages in the practice of dentistry and fails to keep displayed in the place where the person practices, and in such manner as to be easily seen and read, the license granted pursuant to the laws of this State shall be fined not less than $10 nor more than $50.

(Code 1915 § 892W; 38 Del. Laws, c. 48 § 2; Code 1935 § 996; 24 Del. C. 1953 § 1173; 70 Del. Laws, c. 186 § 1.)

§ 1174 Practice of dentistry after cancellation of registration.

Any person whose registration as a practitioner of dentistry has been cancelled under this chapter shall be deemed an unregistered person and subject as such to the penalties prescribed for the practice of dentistry by persons who are not duly registered.

(Code 1915 § 892S; 38 Del. Laws, c. 48 § 2; Code 1935 § 992; 24 Del. C. 1953 § 1174.)

§ 1175 Filing of false documents or forged affidavits; penalty.

Whoever files or attempts to file as that person's own the diploma, certificate or license of another or a forged, false affidavit of identification or qualification is guilty of a felony and shall be fined not less than $1,000 nor more than $5,000 and imprisoned not more than 5 years.

(Code 1915 § 892L; 38 Del. Laws, c. 48 § 2; Code 1935 § 985; 24 Del. C. 1953 § 1175; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 463 § 37.)

§ 1176 Certain specific offenses; penalty.

(Repealed by 77 Del. Laws, c. 463 § 46, effective July 30, 2010.)

§ 1177 Sale or offer to sell, procurement, alteration or use of diploma, license or certificate; penalty.

Whoever sells or offers to sell a diploma conferring a dental degree or a license or a certificate granted pursuant to this chapter or procures such diploma or license or certificate with intent to use the same as evidence of the right to practice dentistry as defined by law, by a person other than the 1 to whom such diploma was issued or to whom such license was granted or any person who, with fraudulent intent, alters such diploma or license or certificate or attempts to use the same shall be fined not less than $1,000 nor more than $5,000.

(Code 1915 § 892X; 38 Del. Laws, c. 48 § 2; Code 1935 § 997; 24 Del. C. 1953 § 1177; 77 Del. Laws, c. 463 § 38.)

§ 1178 Practice without registration or certificate; separate offenses; penalty.

Whoever practices or attempts to practice dentistry or dental hygiene within this State without having been licensed to practice dentistry or dental hygiene or during the period of suspension or revocation of such license previously granted shall be fined not less than $500 nor more than $1,000, or imprisoned not less than 1 month nor more than 1 year, or both, and, upon a second or any subsequent offense, shall be fined not less than $1,000 nor more than $5,000 and imprisoned not less than 6 months nor more than 1 year.

Each act of practice or attempt to practice dentistry or dental hygiene in violation of this section shall be a separate offense.

(Code 1915 § 892P; 38 Del. Laws, c. 48 § 2; Code 1935 § 989; 24 Del. C. 1953 § 1178; 49 Del. Laws, c. 287; 65 Del. Laws, c. 210 § 12; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 463 §§ 39-41.)

§ 1179 Penalty in absence of specific designation.

Whoever violates any provision or law relating to the practice of dentistry or dental hygiene or the application for examination and licensing of dentists and registration of dental hygienists, for which no specific penalty has been prescribed, shall be fined not less than $500 nor more than $1,000.

(Code 1915 § 892Z; 38 Del. Laws, c. 48 § 2; Code 1935 § 999; 24 Del. C. 1953 § 1179; 65 Del. Laws, c. 210 § 12; 77 Del. Laws, c. 463 § 42.)

§ 1180 Second or subsequent offenses.

Whoever is convicted of a second or subsequent offense under § 1172, § 1173, § 1177 or § 1179 of this title shall be punished by the maximum fine prescribed in such section or by imprisonment for not less than 10 nor more than 60 days or by both such fine and

imprisonment.

(Code 1915 § 892AA; 38 Del. Laws, c. 48 § 2; Code 1935 § 1000; 24 Del. C. 1953 § 1180.)

§ 1181 Enforcement of chapter; prosecution for violations.

(a) [Repealed.]

(b) All violations of the laws relating to the practice of dentistry and dental hygiene shall be prosecuted in courts of this State by the Attorney General or one of the Attorney General's deputies.

(17 Del. Laws, c. 496 § 7; 21 Del. Laws, c. 242 § 4; Code 1915 § 892; 38 Del. Laws, c. 48 § 2; Code 1935 § 973; 24 Del. C. 1953 § 1181; 65 Del. Laws, c. 210 § 12; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 463 §§ 43, 44.)

Subchapter V

General Provisions

§ 1191 Immunity of officials reviewing dental records and dentists' work; confidentiality of investigative records; liability of informants.

(a) The members of the State Board of Dentistry and Dental Hygiene of Delaware, dental ethics committee and dentists who are members of hospital and Delaware State Dental Society committees whose function is the review of dental records and of dentists' work with a view to quality of care and utilization of hospital facilities, home visits and office visits shall severally not be subject to, and shall be immune from, claim, suit, liability, damages or any other recourse, civil or criminal, arising from any act or proceeding, decision or determination undertaken, performed or reached in good faith and without malice by any such member or members acting individually or jointly in carrying out the responsibilities, authority, duties, powers and privileges of the offices conferred by law upon them under this chapter, or any other state law, or duly adopted rules and regulations of the aforementioned committees and hospitals, good faith being presumed until proven otherwise, with malice required to be shown by a complainant.

(b) The records and proceedings of any such committees or organizations as described in subsection (a) of this section shall be confidential records which shall not constitute public records or be available for general inspection by the public. All hearings on complaints shall be opened to the public only at the request of the respondent.

(c) No person who provides information to any such committees or organizations as described in subsection (a) of this section, or who testifies as a witness, shall be held liable in any cause of action arising out of the providing of such information or the giving of such testimony, provided that such person does so in good faith and without malice.

(59 Del. Laws, c. 368 § 1; 64 Del. Laws, c. 236 § 1; 77 Del. Laws, c. 463 § 3.)

§ 1192 Reports of dental malpractice actions.

The Prothonotary in each county of the State shall report to the Board the adjudication of any dental malpractice claim against a dentist which was filed in the Prothonotary's office or the settlement of any dental malpractice claim which was filed in the Prothonotary's office.

(65 Del. Laws, c. 210 § 13; 70 Del. Laws, c. 186 § 1.)

§ 1193 Limitation of action for dental malpractice.

No action for recovery of damages against a dentist, dental hygienist or dental assistant for personal injury, including death, allegedly suffered in the course of dental treatment, shall be brought after the expiration of 2 years from the date upon which such injury occurred; provided, however, that:

(1) Solely in the event of a personal injury the occurrence of which during such period of 2 years was unknown to and could not in the exercise of reasonable diligence have been discovered by the injured person, such action may be brought prior to the expiration of 3 years from the date upon which such injury occurred, and not thereafter; and

(2) A minor under the age of 6 years shall have until the latter time for bringing such an action as provided for in paragraph (1) of this section or until the minor's sixth birthday to bring an action.

(65 Del. Laws, c. 210 § 14.)

§ 1194 Appeal panel.

(a) Prior to the administration of the first practical examination each year by the Board, the Director of the Division of Professional Regulation shall appoint an appeal panel to hear appeals as a result of denial of licensure by the Board for failure of a practical examination. For appeals arising from the failure of the dental practical examination, the appeal panel shall consist of 2 dentists licensed to practice in this State and 1 public member. For appeals arising from the failure of the dental hygiene practical examination, the appeal panel shall consist of 1 dentist licensed to practice in this State, 1 dental hygienist and 1 public member.

(b) The licensed professional members of the respective panels shall have at least 3 years of experience practicing in their respective professions. A professional member shall not have served on the State Board of Dentistry and Dental Hygiene nor on the Dental Hygiene Advisory Committee for at least 5 years preceding the professional member's appointment to the panel; nor shall such professional member be an officer or other elected official in a professional association of dentists or dental hygienists. The public member shall not have been a

dentist nor dental hygienist, nor a member of the immediate family of a dentist or dental hygienist, nor have been employed by a dentist, nor have a material interest in the providing of goods and services to dentists, nor have been engaged in an activity directly related to dentistry or dental hygiene.

(c) Each member of the appeal panel shall serve for a term of 1 year and shall be eligible for 1 additional reappointment to the appeal panel.

(d) In the event an applicant for licensure has failed a practical examination administered by the State Board of Dentistry and Dental Hygiene, the applicant has the right to appeal the decision by the Board. Such appeal shall be filed in writing with the Director of the Division of Professional Regulation within 20 days of the date of notification by the Board. Upon receipt of the applicant's written appeal of the Board's decision, the Director shall convene the appeal panel within 30 days. The Director shall notify the appellant by certified mail of the date set for the hearing.

(e) The conduct of all hearings and the issuance of orders shall be in accordance with procedures established pursuant to this section, Chapter 101 of Title 29 and § 8735 of Title 29. Where such provisions conflict with the provisions of this section, this section shall govern.

(f) The applicant may appeal any denial of licensure by the panel to the Superior Court within 30 days' notice of denial. Such appeal shall be on the record.

(g) In the event that an appeal is remanded from Superior Court, such appeal will be heard by the original appeal panel.

(70 Del. Laws, c. 406 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 463 § 3.)

§ 1195 Dentist discontinuing practice or leaving state; death of a dentist; change of dentist and transfer of patient records; notification of patients.

(a) Every dentist licensed to practice under this chapter who is discontinuing a practice in this State or is leaving this State and who is not transferring patient records to another dentist shall notify that dentist's own patients of record by publishing a notice to that effect in a newspaper of daily circulation in the area where the dentist practices. The notice must be published at least 3 times over a 3-month period in advance of discontinuing the practice or leaving the State and must explain how a patient can procure that dentist's own patient records. All patients of record who have not requested their records 30 days before the closing of the practice shall be notified by first class mail by the dentist to permit the patients to procure their records. Any patient records that have not been procured within 7 years after the dentist discontinues practice or leaves the State may be permanently disposed of in a manner that ensures the confidentiality of the records.

(b) When a dentist licensed to practice under this chapter dies and has not transferred patient records to another dentist and has not made provisions for a transfer of patient records to occur upon the dentist's death, a personal representative of the dentist's estate shall notify the dentist's patients of record by publishing a notice to that effect in a newspaper of daily circulation in the area where the dentist practiced. The notice must be published at least 3 times over a 3-month period after the dentist's death and must explain how a patient can procure patient records. All patients of record who have not requested their records 30 days after publication shall be notified by first class mail by the personal representative of the estate to permit patients to procure their records. Any patient records that have not been procured within 7 years after the death of the dentist may be permanently disposed of in a manner that ensures confidentiality of the records.

(c) Whenever a patient changes from the care of 1 dentist to another dentist, the prior dentist shall transfer the records of the patient to the new dentist upon the written request of either the new dentist or the patient. If a patient changes care from 1 dentist to another dentist and fails to notify the prior dentist, or leaves the care of the prior dentist for a period of 7 years from the last entry date on the patient's record and fails to notify the prior dentist, or fails to request the transfer of records to the new dentist, then the prior dentist shall maintain said records for a period of 7 years from the last entry date in the patient's dental record after which time the records may be permanently disposed of in a manner that ensures confidentiality of the records.

(d) This section shall not apply to a dentist who has seen or treated a patient on referral from another dentist and who has provided a record of the diagnosis or treatment to another dentist, hospital or agency which has provided treatment for the patient.

(e) A dentist or the personal representative of the estate of a dentist who disposes of patient records in accordance with the provisions of this section is not liable for any direct or indirect loss suffered as a result of the disposal of a patient's records.

(75 Del. Laws, c. 72 § 1; 70 Del. Laws, c. 186 § 1.)

Subchapter VI

Volunteer License Provisions [Expired July 3, 2010, subject to the provisions of 76 Del. Laws, c. 309, § 2]

§ 1196 Volunteer license, application procedures [Expired July 3, 2010, subject to the provisions of 76 Del. Laws, c. 309, § 2]

In order to apply for a volunteer license, an applicant must:

(1) Submit proof of current license or proof of licensure within the past 2 years (from another U.S. state and/or Canadian province);

(2) Submit record of continuing education (CE) credit that meets the State of Delaware's requirement for the preceding 2 years as determined in the Board's rules and regulations;

(3) Submit to background check, both professional and criminal;
(4) Pass the Jurisprudence test for the State of Delaware;
(5) Show proof of 25 years of continuous licensure in another U.S. state or states and/or Canadian province or provinces; and
(6) Have no verifiable complaints on the National Practitioner Data Bank.
(76 Del. Laws, c. 309 § 1.)

§ 1197 Restrictions under the volunteer license for practicing dentistry [Expired July 3, 2010, subject to the provisions of 76 Del. Laws, c. 309, § 2]

(a) Cannot practice dentistry for payment/profit;
(b) License is site-specific to charitable clinics as approved by the Delaware State Board of Dental Examiners;
(c) Must work under the supervision of the dentist in charge of the approved, site-specific clinic; and
(d) Must renew license annually. A 2-year license will not be issued.
(76 Del. Laws, c. 309 § 1.)

§ 1198 Volunteer license; maintenance requirements [Expired July 3, 2010, subject to the provisions of 76 Del. Laws, c. 309, § 2]

In order to maintain a license under this section, an applicant:
(1) Must complete a minimum of 125 hours of volunteer dentistry per year; and
(2) Must follow any other requirements that any licensed dentist in this State must follow (e.g., CPR, CE requirements, etc.).
(76 Del. Laws, c. 309 § 1.)

§ 1199 Evaluation of volunteer license [Expired July 3, 2010, subject to the provisions of 76 Del. Laws, c. 309, § 2]

(a) Every volunteer dentist and hygienist will be evaluated using an evaluation/review form by the supervising dentist. This form will be developed by the Delaware State Board of Dental Examiners and will be submitted bimonthly for the first 6 months and once every 6 months after the initial 6-month period.

(b) If the supervising dentist finds that the volunteer dentist is incompetent and/or is a danger to the public, the supervising dentist shall immediately notify the Delaware State Board of Dental Examiners. The Board may suspend the license until a hearing is held based on the notification. The complaint and hearing process in §§ 1127 through 1130 of this title is incorporated herein.
(76 Del. Laws, c. 309 § 1.)

§ 1199A Penalties, civil violation [Expired July 3, 2010, subject to the provisions of 76 Del. Laws, c. 309, § 2]

Penalties for violating the requirement of not practicing dentistry for profit will result in a $2500 fine for each offense.
(76 Del. Laws, c. 309 § 1.)

Part

Chapter 12

SECURITY SYSTEMS AND PROTECTIVE SERVICES

Subchapter I

Licensure

§ 1201 Definitions.

(a) "Officers or employees of the security business" shall include all persons associated with a security business except stockholders of a corporation whose stock is publicly traded.

(b) "Security business" means a person or entity in the business of selling, providing, installing, maintaining, servicing, repairing, altering, replacing or providing monitoring services at a security system site. Every security business shall have a registered agent pursuant to § 132 of Title 8.

(c) "Security system" shall mean a device or series of devices, including, but not limited to, hardwired systems and systems interconnected with a radio frequency method such as cellular or private radio signals, which emit or transmit a remote or local audible, visual or electronic signal indicating an alarm condition and intended to summon law enforcement authority response, including local alarm systems. "Security system" does not include an alarm installed in a vehicle or in someone's person unless the vehicle or the personal alarm is permanently located at a site.

(64 Del. Laws, c. 281 § 1; 64 Del. Laws, c. 377 § 1; 76 Del. Laws, c. 179 §§ 1-3.)

§ 1202 License requirement; operation without license.

(a) No persons shall operate a security business without having obtained a license, as provided herein, to conduct such business. The Division of Revenue shall not issue a license to a security business under the authority of Chapter 23 of Title 30 without the approval of the Superintendent of the Delaware State Police.

(b) Operating a security business without a license shall be punishable pursuant to § 1214 of this title. Each day a person operates a security business without a license may be counted as a separate violation.

(64 Del. Laws, c. 281 § 1.)

§ 1203 Qualifications of applicants.

(a) In addition to the requirements of the Division of Revenue, an applicant for a license to operate as a security business in this State shall furnish the following information to the Superintendent of the State Police:

(1) The name and address of the security business and the location or locations where it intends to operate within the State;

(2) If the applicant is a corporation, the application shall state the date and place of incorporation, the name and address of its resident agent if incorporated in Delaware with a principal place of business outside the State, the location of the applicant's principal place of business and a list of the principal corporate officers with their business and home addresses;

(3) If the applicant intends to operate as a partnership, the application shall list each of the partners with their business and home addresses;

(4) A statement as to the length of time the applicant has been engaged in the security business and where engaged, and the date when the security business commenced operation in this State or when the security business intends to commence such operation;

(5) The specific nature of the security business;

(6) Each applicant's full name, business address and telephone number, home address and telephone number and date and place of birth;

(7) The name and address of the applicant's present place or places of employment for the past 3 years and the length of time so employed, stating the principal source of income for any individual not regularly employed in 1 business;

(8) A list of all felony and misdemeanor convictions in any jurisdiction of all individuals listed in the application;

(9) One set of classifiable fingerprints recorded in the manner required by the Superintendent of State Police;

(10) A statement as to whether the individual has ever been denied a license or permit in any jurisdiction to engage in the security business or has had such license or permit revoked or suspended;

(11) If neither the applicant nor any other person named above will operate the business on a daily basis, the name and home address of the person who will be responsible for the operation of the business with information on training or experience in the field of security systems or protective services; and

(12) The Superintendent may require that the application include any other information which the Superintendent may reasonably deem necessary to determine whether the applicant or individual signing the application meets the requirements of this statute or to establish the truth of the facts set forth in the application.

(b) If the applicant is an individual and does not reside or operate any business or is not employed within the State, or in the event the

applicant is a form of partnership and no owner or general partner resides, operates a business or is employed within the State, then the application must also be subscribed and sworn to by the individual having the authority and responsibility for the management and operations of the security business with this State.

(c) If the applicant is a corporation, the application shall be subscribed and sworn to by at least 1 principal corporate officer, either the president, vice-president, treasurer, secretary or comptroller. If the applicant is a corporation and none of its principal corporate officers are responsible for the management and operation of the security business within the State, the application shall also be subscribed and sworn to by the individual having the authority and responsibility for the management and operations of the security business within the State.

(d) An application for a license to operate a security business shall be signed by at least 1 person 18 years of age or older.

(e) The Division may conduct a criminal history background check pursuant to the procedures set forth in Chapter 85 of Title 11 for the purposes of licensing any individual pursuant to this chapter.

(64 Del. Laws, c. 281 § 1; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 252 § 11.)

§ 1204 Review of applicants.

The Superintendent shall review each application for a license to operate a security business. The Superintendent shall investigate the character of each applicant and each officer of the corporation or partner named in the application to the extent the Superintendent deems necessary. If the Superintendent finds that all parties whose names have been submitted are of good character and that the business is organized for a legitimate purpose, the Superintendent may approve the issuance of a business license by the Division of Revenue to the applicant.

(1) Evidence of a lack of good character shall include:

a. A record of arrests and/or convictions for crimes involving offenses against the person, dishonesty or fraud; and

b. A record of complaints filed with the Division of Consumer Protection or Better Business Bureau regarding the applicant, officers or partners in the business or the proposed manager of the business.

(2) Evidence of a lack of a legitimate purpose shall include:

a. A total lack of training or experience in the installation of burglar alarms or alarm systems by any person named in the application; and

b. Failure to obtain a bond as required by § 1212 of this title.

(3) The Superintendent may conduct a criminal history background check pursuant to the procedures set forth in Chapter 85 of Title 11 for the purposes of licensure review pursuant to this chapter.

(64 Del. Laws, c. 281 § 1; 69 Del. Laws, c. 291 § 98(c); 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 252 § 12.)

§ 1205 Renewal and transferability of license.

Each license shall expire 2 years after the date of issuance. No license issued pursuant to this chapter shall be assigned or transferred, either by operation of law or otherwise.

(64 Del. Laws, c. 281 § 1.)

§ 1206 Change in ownership or site of business; revocation of license.

(a) In the event of any change in the membership of the firm or in the officers or directors of any association or corporation or any change in the address of any office or location of such business, the Superintendent shall be notified in writing of such change within 5 days thereafter. Failure to give such notification shall be sufficient cause for revocation of the license.

(b) Each new member of the firm or of the officers or directors of any association or corporation shall provide the information required by § 1203 of this title. The Superintendent shall then review each application as provided in § 1204 of this title. If the Superintendent finds that the applicant is not of good character, the Superintendent shall revoke the license. In the event that a license is revoked pursuant to this subsection, the license holder shall be afforded a hearing before the Superintendent and shall have the right to appeal to the Secretary of the Department of Safety and Homeland Security in conformity with the state Administrative Procedures Act [Chapter 101 of Title 29].

(64 Del. Laws, c. 281 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 110 § 138.)

§ 1207 Posting of license.

(a) Before any applicant shall exercise any rights under the license issued to the applicant, such license, or a certified copy thereof, shall be posted and at all times thereafter, while the same is in force, be displayed in a conspicuous place in the principal office and in each bureau, agency, subagency, office or branch office for which it is issued.

(b) No person holding any license approved by the Superintendent under this chapter shall:

(1) Post or permit such license to be posted upon premises other than those described therein or to which it may be transferred pursuant to this chapter;

(2) Fail to maintain such license in a conspicuous place in such offices or places of business; or

(3) Knowingly alter, deface or destroy any such license or permit the alteration, defacement or destruction thereof.

(64 Del. Laws, c. 281 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1208 Employee identification cards.

(a) Any person operating a security business shall provide the Superintendent with a list of the names, addresses, Social Security numbers and 1 set of classifiable fingerprints recorded in the manner required by the superintendent of employees as hired, except persons subject to the exceptions of subsection (j) of this section.

(b) No individual shall function as a security agent or perform the duties described in subsection (c) of this section without first obtaining the identification card required by this section.

(c) Owners, principal corporate officers, partners, employees and managers of all security businesses shall be required to obtain identification cards if they are directly engaged in selling, installing, altering, servicing, moving, maintaining, repairing, replacing, monitoring, responding to or causing others to respond to security systems within the State.

(d) Security agents who are employed by persons who were engaged in the security business on June 25, 1984, shall have 60 days to file an application for an identification card under this section and may continue to function as a security agent pending a final determination of such application.

(e) A temporary identification card may be issued by a security business licensed under this statute to any of its security agents or any individual required to obtain an identification card prior to the issuance of a permanent identification card for any such individual by the business. The form, requirements and conditions for issuance and use of temporary identification cards shall be prescribed by the Superintendent.

(f) The temporary or permanent identification card shall be carried by any individual required to obtain an identification card under this statute whenever such individual is engaged in the security business and shall be exhibited upon request.

(g) The Superintendent may refuse to approve an identification card if the identification card applicant has been convicted of a felony or a misdemeanor in any jurisdiction and the Superintendent finds that such conviction reflects unfavorably on the fitness of such applicant to engage in the security business or to be employed by the security business.

(h) The permanent and temporary identification card issued by the business shall include the name and description identifying the cardholder, the name of the security agent's employer and the number of any other information which is required or which the business may wish to include.

(i) No permanent identification card or temporary identification card issued pursuant to this chapter shall be transferable. Temporary identification cards issued by a security business must be surrendered to the business by the cardholder upon termination of employment.

(j) Persons, individuals, owners, principal corporate officers, partners, employees, and managers who do not perform functions at an end-user's premises are not subject to the requirements of subsections (a) through (i) of this section if their duties are limited to selling electronic security equipment or services at a retail store location, online, or by telephone.

(64 Del. Laws, c. 281 § 1; 79 Del. Laws, c. 62 § 1.)

§ 1209 Employee identification cards — Renewal; notice of changes.

(a) Identification cards approved by the Superintendent shall expire and be renewable on the fifth anniversary date of the birth of the applicant next following the date of its issuance, unless the birth date is February 29, in which event the license shall expire and be renewable on February 28 every fifth year.

(b) The Superintendent may refuse to renew an identification card for any grounds set forth in § 1204 or § 1208 of this title.

(c) A security business shall notify the Superintendent within 10 days after the termination of employment of, or association of, any cardholder of such security business.

(64 Del. Laws, c. 281 § 1; 73 Del. Laws, c. 370 § 1.)

§ 1210 Request for hearing upon receipt of notice of denial of an identification card or license.

After receipt of written notice from the Superintendent of denial or approval for a license or an identification card, the applicant shall be afforded a hearing before the Superintendent and shall have the right to appeal to the Secretary of the Department of Safety and Homeland Security in conformity with the state Administrative Procedures Act [Chapter 101 of Title 29].

(64 Del. Laws, c. 281 § 1; 74 Del. Laws, c. 110 § 138.)

§ 1211 Suspension or revocation of identification cards; notices.

(a) Identification cards may be suspended or revoked by the Superintendent on the grounds that the holder is not considered of good character.

(b) In the event that the Superintendent suspends or revokes an identification card, the cardholder, upon receipt of the notice of suspension or revocation, shall cease to perform any services related to the security business.

(c) Both the identification cardholder and the security business which employs the cardholder or with which the cardholder is associated shall be notified by the Superintendent of the suspension or revocation of an identification card.

(64 Del. Laws, c. 281 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1212 Issuance of license; copies; fee; bond.

If the application for a license is approved by the Superintendent, the Division of Revenue shall issue and deliver to the applicant, a license to conduct business and to maintain 1 or more bureaus, agencies or offices for the conduct of such business at the locations stated in the application. As many copies of the license as there are to be offices, bureaus, agencies or branch offices shall be supplied upon:

(1) Payment by the applicant to the Division of Revenue of a license fee of $150; and

(2) Execution by the applicant and delivery to the Department of Safety and Homeland Security of a bond with a surety company authorized to be surety in this State and approved as to form, manner of execution and sufficiency by the Superintendent, payable to the State, and which shall be for the benefit of any persons injured by the wilful, malicious or wrongful act of the applicant, in the amount of $10,000. The bond shall be conditioned for the faithful and honest conduct of such business by the applicant.

(64 Del. Laws, c. 281 § 1; 74 Del. Laws, c. 110 § 138.)

§ 1213 Delay of suspension or revocation of license or identification card during public emergency.

(a) Under circumstances in which the Superintendent determines that a public emergency exists or that the public health, welfare or safety may be jeopardized, the Superintendent may, upon application by the licensee or any third party affected by such termination, revocation or suspension, extend the time for the termination, revocation or suspension.

(b) After the Superintendent has issued a notice of intent to revoke or suspend a security business license or to revoke or suspend a security agent identification card, the licensee or identification cardholder may request that the license or identification card remain in effect subject to the terms of a written order of consent to be issued by the Superintendent. Denial of a request for consent order negotiations shall not be subject to judicial review.

(64 Del. Laws, c. 281 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1214 Prohibited acts; penalties.

(a) It shall be unlawful for a person to:

(1) Conduct a security business without a license;

(2) Fail to obtain an identification card as required by § 1208 of this title;

(3) Wilfully and knowingly fail to notify subscribers of a security business of the suspension of a security business or the suspension or revocation of its license;

(4) Wilfully and knowingly fail to file the surety bond required by § 1212 of this title;

(5) Wilfully and knowingly fail to surrender a revoked license certificate or to surrender an identification card;

(6) Wilfully and knowingly submit false information of a material nature in any application or renewal application for a security business license or for an identification card.

(b) Any person found guilty of violating this section shall be subject to a fine not to exceed $500 or imprisonment for a period not to exceed 90 days or both.

(64 Del. Laws, c. 281 § 1.)

Subchapter II

False Alarms

§ 1221 Purpose.

(a) The purpose of this subchapter is to encourage security system users and security businesses to properly use and maintain the operational effectiveness of security systems in order to improve the reliability of security systems and reduce or eliminate false alarms.

(b) This subchapter governs security systems intended to summon law enforcement response, requires registration by security system users, establishes a system of administration, and provides for the enforcement of penalties for violations of this section.

(76 Del. Laws, c. 179 § 4.)

§ 1222 Definitions.

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

(1) "Alarm" means a security system signal that is created by the activation of a security system.

(2) "Arming station" means a device that allows control of a security system.

(3) "Automatic voice dialer" means any electrical, electronic, mechanical, or other device capable of being programmed to send a prerecorded voice message, when activated, over a telephone line, radio or other communication system, to a law-enforcement authority, public safety or emergency services agency requesting dispatch.

(4) "Cancellation" means the process where response to a security system dispatch request is terminated when a security business for the security system site notifies the responding law-enforcement agency, prior to arrival at the security system site, that there is not an existing situation at the security system site requiring law-enforcement authority response.

(5) "Conversion" means the transaction or process by which a security business begins the servicing and/or monitoring of a previously unmonitored security system or a security system previously serviced and/or monitored by another security business.

(6) "Duress alarm" means a silent security system signal generated by the entry of a designated code into an arming station in order to signal that the security system user is being forced to turn off the system and requires law-enforcement response.

(7) "False alarm" means a security system dispatch request to a law-enforcement authority, when no emergency of actual or threatened criminal activity requiring immediate response exists. This definition includes signals activated by negligence, accident, mechanical failure, and electrical failure; signals activated intentionally in nonemergency situations; and signals for which the actual cause is unknown. There is a rebuttable presumption that an alarm is false if personnel responding from a law-enforcement authority do not discover any evidence of unauthorized entry, criminal activity, or other emergency after following normal police procedures in investigating the incident. An alarm is not false if the security system user proves that:

a. An individual activated the alarm based on a reasonable belief that an emergency or actual or threatened criminal activity requiring immediate response existed;

b. The security system was activated by a violent condition of nature, including but not limited to tornadoes, floods, earthquakes and lightning, or by an electrical surge that caused physical damage to the system, as evidenced by testimony of a licensed security system contractor who has conducted an on-site inspection and personally observed the damage to the system;

c. If the security system user experienced a power outage, causing the alarm to activate upon restoration of power, as evidenced by written documentation provided by Delmarva Power or other applicable provider; or,

d. Where there has been a cancellation as defined in paragraph (4) of this section.

(8) "Holdup alarm" means a silent alarm signal generated by the manual activation of a device intended to signal a robbery in progress.

(9) "Law-enforcement authority" means any authorized representative of a law-enforcement agency.

(10) "Local security system" means any security system, which is not monitored, that annunciates an alarm only at the security system site.

(11) "Monitoring" means the process by which a security business receives signals from a security system and relays a security system dispatch request for the purpose of summoning law enforcement to the security system site.

(12) "Monitoring station" means an office or entity whereby a security business conducts monitoring of security systems for purposes of dispatch and notification. A monitoring station shall provide a toll-free, 24-hour telephone number for use by a responding law-enforcement agency.

(13) "Panic alarm" means an audible security system signal generated by the manual activation of a device intended to signal a life threatening or emergency situation requiring law-enforcement response.

(14) "Person" means an individual, corporation, partnership, association, organization, or similar entity.

(15) "Responder" means an individual capable of reaching the security system site within 30 minutes and having access to the security system site, the code to the security system, and the authority to approve repairs to the security system.

(16) "Security business" is as defined in § 1201 of this title.

(17) "Security system" is as defined in § 1201 of this title.

(18) "Security system administrator" means a person or persons designated by the state with authority to administer, control and review false alarm reduction efforts and administer the provisions of this section.

(19) "Security system dispatch request" means a notification to a law-enforcement authority that a security system, either manual or automatic, has been activated at a particular security system site.

(20) "Security system registration" means authorization granted by the security system administrator to a security system user to operate a security system.

(21) "Security system site" means a single fixed premises or location served by a security system or systems. Each unit, if served by a separate security system in a multi-unit building or complex, shall be considered a separate security system site.

(22) "Security system user" means any person or entity, which has contracted for monitoring, repair, installation or maintenance services from a security business for a security system, or which owns or operates a security system which is not monitored, maintained or repaired under contract.

(23) "Takeover" means the transaction or process by which a security system user takes over control of an existing security system, which was previously controlled by another security system user.

(24) "Verify" means at least two attempts by a security business, or its representative, to contact the security system site and/or security system user by telephone and/or other electronic means, whether or not actual contact with a person is made, to determine whether a security system signal is valid before requesting law-enforcement dispatch, in an attempt to avoid an unnecessary security system dispatch request.

(25) "Zones" means division of devices into which a security system is divided to indicate the general location from which a security system signal is transmitted.

(76 Del. Laws, c. 179 § 4.)

§ 1223 Registration.

(a) A security system user shall not operate, or cause to be operated, a security system at its security system site without obtaining a valid security system registration. A separate security system registration is required for each security system site.

(b) The security system registration application form must be submitted to the security system administrator within 30 days after the security system at a particular site has been activated or within 30 days after a security system takeover. Failure to submit a timely application will result in a nonregistered security system. Use of a nonregistered security system shall be a violation of this chapter.

(c) Each security system application must include the following information:

(1) The name, complete address (including apartment/suite number) and telephone numbers of the person who will be the registration holder and be responsible for the proper maintenance and operation of the security system;

(2) The name and complete address of the security system site, the classification of the security system site as either residential (includes apartment, condominium, mobile home, etc.) or commercial, and the name, address and telephone number of the person responsible for that security system site;

(3) For each security system located at the security system site, the classification of the security system (i.e. burglary, holdup, duress, panic alarms, etc.) and for each classification whether such alarm is audible or silent;

(4) The mailing address, if different from the address of the security system site;

(5) Any dangerous or special conditions present at the security system site;

(6) The names and addresses of at least 2 individuals who are able to, and have agreed to:

a. Receive notification of a security system activation at any time and who can respond to the security system site and, upon request, gain access to the security system site and deactivate the security system if necessary; or,

b. Receive notification of a security system activation at any time and who has access to the security system user for purposes of deactivating the security system, if necessary.

(7) Type of business conducted at a commercial security system site;

(8) Signed certification from the security system user stating the following:

a. The date of installation, conversion or takeover of the security system, whichever is applicable;

b. The name, address and telephone number of the security system inspection company or companies performing the security system installation; conversion or takeover and of the security system installation company responsible for providing repair service to the security system;

c. The name, address and telephone number of the monitoring company if different from the security system installation company;

d. That a set of written operating instructions for the security system, including written guidelines on how to avoid false alarms, has been left with the applicant by the security system installation company; and,

e. That the alarm installation company has trained the applicant in proper use of the security system, including instructions on how to avoid false alarms.

(9) Acknowledgment that any delay in law-enforcement authority response time may be influenced by factors including, but not limited to priority of calls, weather conditions, traffic conditions, emergency conditions, staffing levels, etc.

(d) Any false statement of material fact made by an applicant for the purpose of obtaining a security system registration shall be sufficient cause for refusal to issue a registration.

(e) A security system registration shall not be transferable to another person or security system site. A security system user shall inform the security system administrator of any change that alters any of the information listed on the security system registration application within 5 days of such change.

(76 Del. Laws, c. 179 § 4.)

§ 1224 Duties of the security system user.

(a) A security system user shall maintain the security system site and the security system in a manner that will minimize or eliminate false alarms.

(b) A security system user shall maintain at each security system site a set of written operating instructions for each security system.

(c) A security system user that is using a security business for monitoring shall provide that security business at least 2 different telephone numbers to verify an alarm.

(d) A security system user shall adjust the mechanism or cause the mechanism to be adjusted so that an alarm signal audible on the exterior of a security system site will sound for no longer than 10 minutes after being activated.

(e) A security system user shall not use an automatic voice dialer.

(f) Violations of subsections (a), (b), (c) and (d) of this section shall result in an assessment of a civil penalty against the security system user in the amount of $50. A violation of subsection (e) of this section shall result in the assessment of a civil penalty against the security system user in the amount of $100.

(76 Del. Laws, c. 179 § 4.)

§ 1225 Duties of security businesses.

(a) A security business shall provide written and oral instructions to each of its security system users for every security system site on the proper use and operation of its security systems. Such instructions shall specifically include all instructions necessary to turn the security system on and off and instructions on the avoidance of false alarms.

(b) A security business shall be responsible for the prevention of false alarms during installations, servicing, repairs and maintenance of security systems.

(c) A security business shall ensure that battery backup power is installed during new installations of security systems.

(d) A security business shall not use an automatic voice dialer.

(e) A security business providing monitoring services shall attempt to verify an activated alarm signal by contacting at least 2 different telephone numbers provided by a security system user who has authority to cancel the dispatch before a security system dispatch request is made, unless the security system administrator has waived the 2-call dispatch requirement. This subsection shall not apply to duress and holdup alarms.

(f) A security business that issues security system dispatch requests must maintain for a period of at 1 year from the date of a security system dispatch request, records relating to security system dispatch requests. Records must include name, address and telephone number of the security system user, the security system zone or zones activated, the time of a security system dispatch request and evidence of its efforts to verify. These records shall immediately be made available to the security system administrator or any police officer at any time during normal business hours.

(g) A security business providing monitoring services shall provide the relevant police department or departments with a toll-free telephone number for contacting monitoring station dispatchers and for obtaining information as provided in subsection (f) of this section.

(h) A security business shall not make a security system dispatch request if monitoring equipment indicates a security system malfunction.

(i) All security businesses shall have an office located in the State of Delaware with an operational telephone that shall be answered during regular business hours.

(j) After completion of the installation of a security system, an employee of the security business responsible for installing the security system shall review with the security system user a false alarm prevention checklist approved by the security system administrator.

(k) A security business responsible for monitoring a security system at a registered security system site shall not make a security system dispatch request to a law-enforcement authority in response to a burglar alarm signal, excluding panic, duress and holdup signals, during the first 7 days following a security system installation. The security system administrator may grant a security system user's request for an exemption from this waiting period based upon a determination that special circumstances substantiate the need for the exemption.

(l) A security business responsible for monitoring a security system at a registered security system site shall:

(1) Report alarm signals by using telephone numbers designated by the security system administrator;

(2) Communicate security system dispatch requests to law-enforcement;

(3) Communicate cancellations to the law-enforcement authority;

(4) Ensure that all security system users of security systems equipped with a duress, holdup or panic alarm are given adequate training as to the proper use of the duress, holdup or panic alarm;

(5) Communicate any available information (north, south, front, back, floor, etc.) about the location on all alarm signals related to the security system dispatch request;

(6) Communicate the type of alarm activation (silent or audible, interior or perimeter);

(7) Provide a security system user registration number when requesting law-enforcement dispatch;

(8) After a security system dispatch request, promptly advise the law-enforcement authority if the monitoring company knows that the security system user or the responder is on the way to the security system site;

(9) Attempt to contact the security system user within 24 hours via mail, fax, telephone, or other electronic means when an security system dispatch is made; and,

(10) Upon the effective date of this section, monitoring companies must maintain for a period of at least 1 year from the date of the security system dispatch request, records relating to security system dispatch requests. Records must include the name, address and telephone number of the security system user, the security system zones or zones activated, the time of security system dispatch request and evidence of an attempt to verify. The security system administrator may request copies of such records for individually named security system users. If the request is made within 60 days of an security system dispatch request, the monitoring company shall furnish requested records within 3 business days of receiving the request. If the records are requested between 60 days to 1 year after security system dispatch request, the monitoring company shall furnish the requested records within 30 days of receiving the request.

(11) A security system installation company and/or monitoring company that purchases security system accounts from another person shall notify the security system administrator of such purchase and provide details as may be reasonably requested by the security system administrator.

(76 Del. Laws, c. 179 § 4.)

§ 1226 Duties and authority of the security system administrator.

(a) All security system administrators shall have an office located in the State of Delaware with an operational telephone that shall be answered during regular business hours.

(b) The Department of Safety and Homeland Security, or its designee, shall:

(1) Designate a manner, form and telephone number for the communication of security system dispatch requests; and

(2) Establish a procedure to accept cancellation of security dispatch requests, which shall be used by the security system administrator to enforce the provisions of this section.

(c) The security system administrator shall establish a procedure to record such information on security system dispatch requests necessary to permit the security system administrator to maintain records, including, but not limited to, the information listed below:

(1) Identification of the registration number for the security system site;
(2) Identification of the security system site;
(3) Date and time security system dispatch request was received, including the name of the monitoring company and the monitoring operator name or number;
(4) Date and time of law-enforcement authority arrival at the security system site;
(5) Zone and zone description, if available;
(6) Weather conditions;
(7) Name of security system user's representative at the security system site, if any;
(8) Identification of the responsible security system installation company or monitoring company;
(9) If the law-enforcement authority was unable to locate the address of the security system site; and,
(10) Cause of the alarm signal, if known.

(d) The security system administrator shall establish a procedure for the notification of a false alarm to the security system user. The notice shall include the following information:
(1) The date and time of law-enforcement authority response to the false alarm;
(2) A statement urging the security system user to ensure that the security system is properly operated, inspected and serviced in order to avoid false alarms and resulting fines.

(e) The security system administrator may require a conference with a security system user and the security system installation company and/or monitoring company responsible for the repair or monitoring of the security system to review the circumstances of each false alarm.

(f) The security system administrator may require a security system user to remove a holdup alarm that is a single action, nonrecessed button, if a false holdup alarm has occurred.

(76 Del. Laws, c. 179 § 4.)

§ 1227 False alarms.

No security system user shall cause, allow or permit the security system to give 3 false alarms at a security system site within a calendar year.

(76 Del. Laws, c. 179 § 4.)

§ 1228 Penalties.

A security system user in violation of § 1227 of this title shall be subject to a civil penalty as follows:
(1) Fourth false alarm: $50 civil penalty;
(2) Fifth false alarm: $75 civil penalty;
(3) Sixth false alarm: $100 civil penalty;
(4) Seventh and any false alarm thereafter within a calendar year: $250 civil penalty for each offense.

(76 Del. Laws, c. 179 § 4.)

§ 1229 Civil Penalties and appeals.

(a) Summons and notice of violation. — A summons for payment of a violation of this subchapter may be executed by mailing such summons to the security system user at the address where the security system is located.

(b) Payment. — Persons electing to pay a civil penalty shall make payments to the entity designated on the summons for payment. Procedure for payment under this section shall be by regulation of the Department of Safety and Homeland Security, or by regulation, code or ordinance of the applicable municipality or county.

(c) Procedure to contest a violation. — A security system user receiving a summons pursuant to this subchapter may request a hearing to contest the violation by notifying, in writing, the entity designated on the summons within 30 days of the date of the mailing of the summons. Upon receipt of a timely request for a hearing, an administrative hearing shall be scheduled pursuant to regulations set forth by the Department of Safety and Homeland Security and the security system user shall be notified of the hearing date by first class mail. The hearing may be informal and shall be held in accordance with the regulations of the Department of Safety and Homeland Security. Costs for such hearing shall not be assessed against the prevailing party.

(d) Appeal of administrative hearing. — Either party may elect to appeal an administrative decision to the Justice of the Peace Court, which shall have exclusive jurisdiction to hear the appeal. An appeal to the Justice of the Peace Court shall be the final right of appeal.

(e) Failure to pay and successfully contest the violation. — If the security system user fails to pay the civil penalty, to respond to the summons within the time specified on the summons, and/or to successfully contest the civil penalty, the Department of Safety and Homeland Security, or its designee, may establish procedures for the collection of these civil penalties, and may enforce the civil penalty by civil action in the Justice of the Peace Court, including seeking judgment and execution on a judgment against the security system user.

(76 Del. Laws, c. 179 § 4.)

§ 1230 Confidentiality.

In the interest of public safety, all information contained in and gathered through the security system registration applications shall be confidential information.

(76 Del. Laws, c. 179 § 4.)

Part

Chapter 13

PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES

§ 1301 Short title.

This chapter may be cited as the "Private Investigators and Private Security Agencies Act."

(69 Del. Laws, c. 285 § 1.)

§ 1302 Definitions.

As used in this chapter, unless the context requires a different definition:

(1) "Armored car company" or "agency" means any person that provides secured transportation and protection from 1 place or point to another place or point of money, currency, coins, bullion, securities, bonds, jewelry or other valuables.

(2) "Board" means the Delaware Board of Examiners of Private Investigators and Private Security Agencies.

(3) "Branch office license" means a permit granted by the Board entitling a person to operate as a security services contractor or investigations company at a location other than the principal place of business as shown in the Board records.

(4) "Commissioned security officer" means any security officer to whom a security officer commission has been issued by the Board.

(5) "Computer forensic specialist", means persons who interpret, evaluate, test, or analyze pre-existing data from computers, computer systems, networks, or other electronic media, provided to them by another person where that person owns, controls, or possesses said computer, computer systems, networks, or electronic media.

(6) "Deadly weapon" has the meaning given in the definition of "deadly weapon" in § 222 of Title 11.

(7) "Director" means the officer in charge of the Professional Licensing Section of the Division of the Delaware State Police.

(8) "Event security staff" means any individual employed by a security-services contractor to primarily perform crowd management, patron screening and event security at sports or entertainment venues with a minimum spectator capacity of 5,000 people.

(9) "Firearm" has the meaning given in § 222 of Title 11.

(10) "Guard company" or "agency" means any person engaging in the business of or undertaking to provide a private watchperson, guard or street patrol service on a contractual basis for another person and performing any one or more of the following or similar functions:

a. Prevention of intrusion, entry, larceny, vandalism, abuse, fire, or trespass on private property;

b. Prevention, observation or detection of any unauthorized activity on private property;

c. Control, regulation or direction of the flow or movements of the public, whether by vehicle or otherwise, only to extent and for the time directly and specifically required to assure the protection of property; or

d. Protection of individual from bodily harm.

"Guard company" or "agency" shall also include any person that employs and supervises event security staff.

(11) "Investigator" or "agency" means any person who engages in the business or accepts employment to obtain or furnish information with reference to:

a. Crime or wrongs done or threatened against the United States of America or any state or territory of the United States of America;

b. The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation or character of any person;

c. The location, disposition or recovery of lost or stolen property;

d. The cause or responsibility for fires, libels, losses, accidents, damages or injuries to persons or to property;

e. The securing of evidence to be used before any court, board, officer, or investigating committee; or

f. "Investigator" or "agency" shall not include any person employed as a computer forensic specialist.

(12) "License" means a permit granted by the Board entitling a person to operate as a security services contractor or investigations company.

(13) "Licensee" means any person to whom a license is granted under this chapter.

(14) "Manager" means in the case of a corporation, an officer or supervisor, or in the case of a partnership, a general or unlimited partner meeting the experience qualifications set forth in this chapter for managing a security services contractor or an investigations company.

(15) "Person" includes individual, firm, association, company, partnership, corporation, nonprofit organization, institution, or similar entity.

(16) "Private investigator" means any person who performs 1 or more services as described under the definition of investigator.

(17) "Registration" means a permit granted by the Board to an individual to perform the duties as described in this chapter.

(18) "Security department of a private business" means the security department of any person, if the security department has as its general purpose the protection and security of its own property and grounds, and if it does not offer or provide security services to any

other person.

(19) "Security officer" means any individual employed by a security services contractor or the security department of a private business to perform the duties of a security guard, security watchperson, security patrol, armored car guard or courier guard.

(20) "Security officer commission" means an authorization granted by the Board to an individual employed as a security officer to carry a firearm.

(21) "Security services contractor" means any guard company, armored car company or courier company as defined herein.

(69 Del. Laws, c. 285 § 2; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 423 §§ 1-4; 77 Del. Laws, c. 457 § 1; 80 Del. Laws, c. 176 § 1.)

§ 1303 Engaging in business as private detective without license; penalty.

(a) Any individual or business who fails to obtain the license required by § 1329 of this title shall be subject to the penalties set forth in subsection (b) of this section below.

(b) Whoever violates this section shall be fined not more than $500 or imprisoned not more than 1 year or both.

(24 Del. C. 1953 § 1302; 50 Del. Laws, c. 301 § 1; 69 Del. Laws, c. 285 § 2; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 372 § 1.)

§ 1304 Board of examiners of private investigators and private security agencies.

(a) Creation of Board. — The Delaware Board of Examiners of Private Investigators and Private Security Agencies is created for the protection of the general public and to carry out the functions and duties conferred on it by this chapter.

The Director of the Delaware Board of Examiners of Private Investigators and Security Agencies shall serve as Chief Administrator of the Board. The Director shall be a uniformed member of the Division of State Police designated by the Secretary of Public Safety.

All legal process and all documents required by law to be served or filed with the Board shall be served or filed with the Director at the designated office herein also referred to as the Professional Licensing Section, Division of State Police. All official records of the Board or affidavits by the Director as to the content of such records shall be prima facie evidence of all matters required to be kept by the Board.

The Delaware Board of Examiners of Private Investigators and Security Agencies will adhere to the Administrative Procedures Act [Chapter 101 of Title 29].

All fines collected under this chapter shall be deposited to the credit of the General Fund.

(b) Rules of Procedure. — The Board shall have the following powers and duties:

(1) To determine the qualifications of security guards, private investigators, armored car employees and businesses licensed under this chapter;

(2) To investigate alleged violations of the provision of this chapter and of any rules and regulations adopted by the Board;

(3) To promulgate all rules and regulations necessary in carrying out the provisions of this chapter; and

(4) To establish and enforce standards governing the safety and conduct of persons licensed and registered under this chapter.

(69 Del. Laws, c. 285 § 3; 77 Del. Laws, c. 457 § 2.)

§ 1305 Board membership; eligibility.

(a) The Board is composed of the following members:

(1) The Superintendent of the Division of State Police or a designated representative;

(2) The Attorney General or a designated representative;

(3) Three public members shall be appointed by the Governor, who are residents of the State of Delaware;

(4) Two members shall be appointed by the Governor, who are licensed under this chapter, who have been engaged for a period of 5 consecutive years as a private investigator and who are not employed by the same person as any other member of the Board;

(5) Two members shall be appointed by the Governor, who are licensed under this chapter, who have been engaged for a period of 5 consecutive years as a security services contractor, and who are not employed by the same person as any other member of the Board, who:

a. Is licensed under this chapter as an owner or operator of a guard company;

b. Has operated for at least 5 consecutive years as a guard company; and

c. Is not employed by a person who employs any other member of the Board.

(b) A person is not eligible for appointment as a public member if the person or the person's spouse:

(1) Is licensed by an occupational regulatory agency in the field of private security;

(2) Is employed by or participates in the management of a business entity or other organization related to the field of private security; or

(3) Has, other than as a consumer, a financial interest in a business entity or other organization related to the field of private security.

(c) A member of the Board may not be an officer, employee or paid consultant of a trade association in the private security industry.

For the purpose of this section, "trade association" means a nonprofit, cooperative, voluntarily joined association of business or professional competitors that is designed to assist its members and its industry or profession in dealing with mutual or professional problems and in promoting their common interests.

(d) It is grounds for removal from the Board if a member:

(1) Does not have, at the time of appointment, the qualifications required by paragraph (a)(5)a. or b., of this section for appointment to the Board;

(2) Does not maintain, during the service on the Board, the qualifications required by paragraph (a)(5)a. or b., of this section, for appointment to the Board;

(3) Violates a prohibition established in subsection (b) of this section;

(4) Does not attend at least 1/2 of the regularly scheduled meetings, held by the Board, in a calendar year, excluding meetings held when the person was not a member of the Board; or

(5) Is unable to discharge the members' duties for a substantial part of the term of which the member was appointed because of illness or disability.

The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.

If the Director has knowledge that a potential ground for removal exists, the Director shall notify the Chairperson of the Board of the ground. The Chairperson of the Board shall then notify the Governor that a potential grounds for removal exists.

(e) Notwithstanding the provisions of this section, all Board members serving as of June 27, 1994, shall continue to serve the balance of their term.

(69 Del. Laws, c. 285 § 3; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 347 § 1.)

§ 1306 Terms of office.

Members appointed to the Board serve 3-year terms, however, no member can serve more than 2 consecutive terms. If a member has served 2 consecutive terms, the member may be reappointed providing that the member has not served for 3 years prior to the member's last appointment.

(69 Del. Laws, c. 285 § 3; 70 Del. Laws, c. 186 § 1.)

§ 1307 Compensation of Board members.

Each member of the Board, who is not serving on the Board in their capacity as a state employee, shall be reimbursed $50 for each meeting attended; provided however, that no Board member shall receive more than $500 in any given calendar year.

(69 Del. Laws, c. 285 § 3.)

§ 1308 Subpoenas and injunctions.

(a) In the conduct of any investigation conducted under the provisions of this chapter, the Board may issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records and documents. The officer conducting the hearing may administer oaths and may require testimony and evidence to be given under oath.

(b) No witness is privileged to refuse to testify to any fact or produce any paper respecting which the witness is properly examined by the officer conducting the hearing.

If a witness refuses to obey a subpoena or give any evidence relevant to proper inquiry by the Board, then the Board may petition Superior Court to compel the witness to obey the subpoena or give the evidence. The Court shall immediately issue process to the witness and shall hold a hearing on the petition as soon as possible. If the witness refuses, without reasonable cause or legal grounds, to be examined or to give evidence relevant to proper inquiry by the Board, the Court shall punish the witness for contempt.

(c) The Director and/or the Director's designee shall have the authority to investigate any violations of this chapter and/or rules and regulations adopted by the Board and are authorized to take statements under oath in any investigation of a matter covered by this chapter. In the conduct of any investigation conducted under this chapter, the Board may issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents.

(d) The Board may institute an action in its name against a person to enjoin a violation of this act or a rule or regulation of the Board. For the Board to sustain the action, the Board does not have to allege or prove that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation. The Board may not be required to give an appeal bond in any cause arising under this chapter.

(e) Whenever it appears that any person has violated any of the provisions of this chapter for which a penalty is imposed, the Board may cause a civil suit to be instituted in a Court of Chancery for injunctive relief to restrain such person from continuing the violation and for assessment and recovery of the civil penalty.

(69 Del. Laws, c. 285 § 3; 70 Del. Laws, c. 186 § 1.)

§ 1309 Revocation, suspension, etc.

The Board shall have the power to suspend, revoke or place on probation any person or business required to be licensed under this chapter that violates any provisions of this chapter and/or who violates any rules and/or regulations promulgated by the Board.

(69 Del. Laws, c. 285 § 3.)

§ 1310 Emergency suspension.

(a) The Director shall be granted the power to impose an emergency suspension or cease and desist order on any person or business licensed under this chapter or should be licensed under this chapter if, in the opinion of the Director, that failure to take such action could jeopardize the public's safety and welfare.

(b) Any person or business whose license is suspended by the Director, under subsection (a) of this section shall be granted a full hearing, by the Board, within 10 days from the date that the request for a hearing is received by the Director, provided that the violating party request such a hearing, in writing, to the Director within 5 days of the suspension. With the consent of the person or business requesting a hearing, the hearing may be scheduled at the next quarterly meeting of the Board.

(69 Del. Laws, c. 285 § 3; 76 Del. Laws, c. 245 §§ 4, 5; 76 Del. Laws, c. 246 §§ 1, 2.)

§ 1311 Board powers.

(a) The Board may suspend, revoke, place on probation, fine any applicant, registrant or licensee who has committed any act which could result in a felony conviction, or has committed any act that could result in a misdemeanor conviction which involves moral turpitude or a drug offense; or has practiced fraud, deceit or misrepresentation; or has consumed or has been impaired by alcohol or any controlled substance while on duty working in a capacity regulated by this chapter; or has made a material misstatement in any application or renewal for a license.

(b) Anyone whose license has been suspended, revoked or denied under this act is entitled to a hearing before the Board.

(c) Any person whose license has been refused, suspended, revoked, or has been imposed a civil penalty is entitled to a hearing before the Board.

(d) The Board shall have the power to impose a civil penalty upon any person or business required to be licensed under this chapter up to $200, per day, for each violation.

(e) The Board may conduct a criminal history background check pursuant to the procedures set forth in Chapter 85 of Title 11 for the purposes of licensing any individual pursuant to this chapter.

(69 Del. Laws, c. 285 § 3; 73 Del. Laws, c. 252 § 13; 75 Del. Laws, c. 372 § 2.)

§ 1312 Organization and meetings of the Board.

The Board shall meet quarterly or at such times to be decided by the majority of the Board.

A majority of the Board constitutes a quorum to transact business.

(69 Del. Laws, c. 285 § 3.)

§ 1313 Consumer information.

The Board shall prepare information of interest to consumers or recipients of services regulated, under this chapter, describing the Board's procedures by which complaints are filed with and resolved by the Board. The Board shall make the information available to the general public and appropriate state agencies.

The Board, by rule, shall establish methods by which consumers or service recipients are notified the name, mailing address, and telephone number, of the Board, for the purpose of directing complaints to the Board. The Board may provide for the notification through inclusion of the information, on each registration form, application, or written contract for services of a person regulated under this chapter.

(69 Del. Laws, c. 285 § 3.)

§ 1314 Security guard license requirements.

Anyone who wishes to be licensed, under this chapter, as a noncommissioned security guard, must meet and maintain the following requirements:

(1) Must be at least 18 years of age;

(2) Must not have been convicted of any felony;

(3) Must not have been convicted of any misdemeanor involving moral turpitude;

(4) Must not have been convicted of any felony or misdemeanor involving the act of theft;

(5) Must not have been convicted of any felony or misdemeanor involving drug offenses;

(6) If served in the armed forces, must not have been discharged other than honorable conditions;

(7) Must not be a member or employee of any law-enforcement organization, as defined by the Council of Police Training;

(8) Must meet and maintain the qualifications set and approved by the Board of Examiners.

(69 Del. Laws, c. 285 § 3; 71 Del. Laws, c. 186 § 1.)

§ 1315 Commissioned security guard license requirements.

Anyone who wishes to be licensed as an armed security guard, under this chapter, must meet the same qualifications as a security guard with the following exceptions:

(1) Must be at least 21 years of age;

(2) Must meet and maintain the qualifications set and approved by the Board of Examiners.

(69 Del. Laws, c. 285 § 3.)

§ 1316 Private investigator license requirements.

Anyone who wishes to be licensed as a private investigator, under this chapter, must meet and maintain the following requirements:

(1) Be at least 21 years of age;

(2) Not have been convicted of any felony;

(3) Not have been convicted of any misdemeanor involving moral turpitude or theft or any misdemeanor that, in the discretion of the Board, bears such a relationship to the performance of security services as to constitute a disqualification for a private security guard and/or private investigator to be issued a license;

(4) Not have been convicted of any drug offense;

(5) Meet and maintain the qualifications set and approved by the Board of Examiners.

(69 Del. Laws, c. 285 § 3.)

§ 1317 Armored car guard license requirements.

Must meet same qualifications as a commissioned security guard.

(69 Del. Laws, c. 285 § 3.)

§ 1318 Security guard business licensee license requirements.

An applicant applying for a license, to own and operate a security guard business, shall have the following qualifications:

(1) Be at least 25 years of age;

(2) Have at least 4 years of experience as a manager in a bona fide licensed security agency or must have at least 5 years investigative experience or must have been a police officer for any local, state or federal agency or the equivalent thereof who has graduated from a certified law enforcement academy;

(3) Not have been convicted of any felony;

(4) Not have been convicted of any misdemeanor involving moral turpitude or theft or any misdemeanor that, in the discretion of the Board, bears such a relationship to the performance of security services, as to constitute a disqualification for a private security guard, and/or licensee to be issued a license;

(5) Not have been convicted of any drug offense;

(6) Meet and maintain the qualifications set and approved by the Board of Examiners.

(69 Del. Laws, c. 285 § 3; 70 Del. Laws, c. 591 § 1.)

§ 1319 Private investigator business licensee license requirements.

An applicant applying for a license to own and operate a private investigative business, shall have the following qualifications:

(1) Be at least 25 years of age;

(2) Have at least 5 years investigative experience or must have been a police officer for any local, state or federal agency or the equivalent thereof who has graduated from a certified law-enforcement academy;

(3) Not have been convicted of any felony;

(4) Not have been convicted of any misdemeanor involving moral turpitude or theft or any misdemeanor that, in the discretion of the Board, bears such a relationship to the performance of the private investigative industry, to constitute a disqualification for a private investigator to be issued a license;

(5) Not have been convicted of any drug offense;

(6) Meet and maintain the qualifications set and approved by the Board of Examiners.

(69 Del. Laws, c. 285 § 3; 70 Del. Laws, c. 591 § 1.)

§ 1320 Armored car guard business licensee license requirements.

An applicant applying for a license, to own and operate an armored car guard business, shall have the following qualifications:

(1) Be at least 25 years of age;

(2) Have at least 4 years of experience as a manager in a bona fide armored car agency;

(3) Not have been convicted of any felony;

(4) Not have been convicted of any misdemeanor involving moral turpitude or theft or any misdemeanor that, in the discretion of the Board, bears such a relationship to the performance of armored car services, as to constitute a disqualification for an armored car guard, and/or licensee to be issued a license;

(5) Not have been convicted of any drug offense;

(6) Meet and maintain the qualifications set and approved by the Board of Examiners;

(7) Have been issued a license by the Banking Commissioner pursuant to § 3203 of Title 5.

(69 Del. Laws, c. 285 § 3.)

§ 1321 Firearms.

(a) It shall be unlawful for anyone licensed, under this chapter, to carry a concealed deadly weapon as defined in § 1442 of Title 11, unless they have been issued a concealed deadly weapons permit.

(b) It shall be unlawful for anyone licensed, under this chapter, to carry any type of weapon unless the Board has approved the use of such weapon and, if approved, the person has been trained in the use of such weapon, by a board-approved instructor.

(c) It shall be unlawful for an individual, employed as a security guard, to carry a firearm during the course of performing their duties as a security guard, if they have not been issued a commissioned security guard license.

(d) It shall be unlawful for any person to hire or employ an individual or for any individual to accept employment, in the capacity of a security guard, to carry a firearm in the course and scope of employment duties unless the security guard has been issued a commissioned security guard license.

(e) It shall be unlawful for a commissioned security guard to carry a firearm unless:

(1) The security guard is engaged in the performance of duties as a security officer or is engaged in traveling directly to or from a place of assignment;

(2) The security guard is wearing a distinctive uniform indicating that the person is a security guard;

(3) Such uniform has a distinctive patch that indicates the company by whom the person is employed;

(4) The firearm is in plain view; and

(5) The firearm is the type of weapon that the commissioned security guard qualified with pursuant to this chapter.

(69 Del. Laws, c. 285 § 3; 70 Del. Laws, c. 186 § 1.)

§ 1322 Change of address.

Notification shall be made to the Board of Examiners within 14 days after the change of address of any individual licensed under this chapter.

(69 Del. Laws, c. 285 § 3.)

§ 1323 Change in membership or address or location of business; authorization of new location.

(a) In the event of any change in the membership of the firm or in the officers or directors of any association or corporation or any change in the address of any office or location of such business, the Superintendent shall be notified in writing of such change within 5 days thereafter. Failure to give such notification shall be sufficient cause for revocation of the license.

(b) Upon written application to the Superintendent setting forth a proposed change in the location of any office or place of business of the licensee as set forth in the license, the Superintendent may authorize a new location for any such office or place of business. In such case, the licensee shall produce to the Superintendent the license and all copies thereof to the end that the Superintendent may either endorse thereon such change of location or issue a new license as of the same date as the original license in lieu of the license so surrendered.

(24 Del. C. 1953 § 1306; 50 Del. Laws, c. 301 § 1; 69 Del. Laws, c. 285 § 4; 70 Del. Laws, c. 186 § 1.)

§ 1324 Identification card.

Anyone required to be licensed under this chapter shall be issued, by the Board of Examiners, an identification card which shall expire and be renewable on the fifth anniversary date of the birth of the applicant next following the date of its issuance, unless the birth date is February 29, in which event the license shall expire and be renewable on February 28 every fifth year.

(69 Del. Laws, c. 285 § 4; 73 Del. Laws, c. 369 § 1.)

§ 1325 Possession of identification card.

Any person who has been issued an identification card by the Board of Examiners shall be required to have such card in their possession while in the performance of the person's duties.

(69 Del. Laws, c. 285 § 4; 70 Del. Laws, c. 186 § 1.)

§ 1326 Notification of arrest.

Anyone licensed under this chapter shall, excluding weekends and state holidays, notify the Board of Examiners within 24 hours of any arrest which could result in a misdemeanor or felony conviction. Failure to do so may result in the suspension or revocation of a license.

(69 Del. Laws, c. 285 § 4.)

§ 1327 Insurance.

Any person who applies for a license to own or operate a private investigations company, private security agency or armored car agency shall file, with the Board, a surety bond and certificate of insurance in the amount set forth by the Board of Examiners.

(69 Del. Laws, c. 285 § 4.)

§ 1328 License fee.

Any individual, firm, association, corporation or company may be charged an application fee as set forth by the Board of Examiners which shall not exceed $600 per year.

(69 Del. Laws, c. 285 § 4; 70 Del. Laws, c. 591 § 1.)

§ 1329 License requirements and submission of fingerprints.

(a) No person shall engage in the business of a private investigator, investigations company, security service contractor, security guard, guard company, armored car company, courier company or armored car guard without first obtaining a license from the Professional Licensing Section, Division of State Police.

(b) No person will be issued a license unless that person submits, to the State Bureau of Identification, their name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, address of legal residence and the provision of such other

information as may be necessary to obtain a report of the person's entire criminal history record from the State Bureau of Identification and a report of the person's entire federal criminal history pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544.

(c) Event security staff working fewer than 28 days each calendar year shall not require a license.

(69 Del. Laws, c. 285 § 4; 77 Del. Laws, c. 457 § 3; 80 Del. Laws, c. 176 § 2.)

§ 1330 Posting of license; offenses; penalty.

(a) Before any applicant shall exercise any rights under the license issued to the applicant, such license, or a certified copy thereof, shall be posted and at all times thereafter while the same is in force be displayed in a conspicuous place in the principal office and in each bureau, agency, subagency, office or branch office for which it is issued.

(b) No person holding any license issued by the Superintendent under this chapter shall:

(1) Post or permit such license to be posted upon premises other than those described therein or to which it may be transferred pursuant to this chapter;

(2) Fail to maintain such license in a conspicuous place in such offices or places of business; or

(3) Knowingly alter, deface or destroy any such license or permit the alteration, defacement or destruction thereof.

(24 Del. C. 1953 § 1309; 50 Del. Laws, c. 301 § 1; 69 Del. Laws, c. 285 § 5; 70 Del. Laws, c. 186 § 1.)

§ 1331 Surrender of expired, revoked or suspended licenses; penalty.

Any person to whom a license may be issued in accordance with this chapter shall surrender such license and all duplicate copies thereof which have expired or have been revoked, suspended or surrendered.

(24 Del. C. 1953 § 1310; 50 Del. Laws, c. 301 § 1; 69 Del. Laws, c. 285 § 5.)

§ 1332 Loss or destruction of license.

If any license or certified copy thereof issued by the Superintendent is lost or destroyed, notice of such loss or destruction shall be given to the Superintendent forthwith, and the Superintendent may, at the Superintendent's discretion, issue a duplicate or certified copy thereof.

(24 Del. C. 1953 § 1311; 50 Del. Laws, c. 301 § 1; 69 Del. Laws, c. 285 § 5; 70 Del. Laws, c. 186 § 1.)

§ 1333 Identification card; wearing of badges or shields; offenses; surrender of card; penalty.

(a) For the purpose of identification of persons engaged in the conduct of a private detective business as private detective or private investigator, each such person shall carry and show when requested an identification card, which shall be issued by the Superintendent at the time of initial issuance of license. For the purpose of identification of employees of a private detective business, upon examination of employee's statement and fingerprint cards, the Superintendent shall furnish an employee's identification card.

(b) No person licensed under this chapter or the officers, directors, employees, operators or agents thereof shall wear, carry or accept any badge or shield purporting to indicate that such person is a private detective or investigator or connected with a private detective business, but any such person, officer, director, employee, operator or agent who is acting as a guard or performs any such service may, while in uniform and while on the premises of the employer of the licensee where the guard is so acting, wear a badge or shield inscribed with the license holder's name and the word "guard" or "special guard."

(c) No person licensed under this chapter shall issue identification cards to any person other than a bona fide employee or shall sell, issue, rent, loan or distribute badges or membership cards indicating that the holder thereof is a private detective or investigator or is engaged in the private detective business to any person or persons other than those lawfully entitled to such identification cards.

(d) Any person to whom an identification card has been issued in accordance with this chapter, shall surrender the identification card to the Board:

(1) Upon termination of employment; or

(2) Upon suspension or revocation by the Board.

(e) Whoever violates this section shall be fined not more than $50.

(24 Del. C. 1953 § 1314; 50 Del. Laws, c. 301 § 1; 63 Del. Laws, c. 47 §§ 10, 11; 65 Del. Laws, c. 376 § 4; 69 Del. Laws, c. 285 § 6; 70 Del. Laws, c. 186 § 1.)

§ 1334 Disclosure of information by employees prohibited; false report or statement to employer; penalty.

(a) Any person who may be or has been employed by the holder of a license under this chapter shall not divulge to anyone other than the employer, or in such manner and to such person as the employer directs, any information acquired by the employee during such employment in respect to any work to which the employee shall have been assigned by such employer, except as such disclosure may be required by this chapter or in connection with any investigation of a licensee by the Superintendent or as may be required by constituted authority or under process of law.

(b) No person shall violate this section, and no person, being an employee of a licensed private detective business, shall wilfully make a false report or statement to the employer in respect to any matter or thing connected with the employment.

(24 Del. C. 1953 § 1315; 50 Del. Laws, c. 301 § 1; 69 Del. Laws, c. 285 § 6; 70 Del. Laws, c. 186 § 1.)

§ 1335 Regulation of advertising.

(a) The Superintendent shall promulgate such rules and regulations, upon notice to the public in general, as the Superintendent deems necessary to avoid advertising techniques, cards or other forms of publication which will mislead the public as to any matter that relates to a private detective business. The Superintendent shall further have the authority to order any private detective business to comply with these rules and regulations.

(b) Failure to comply with any order of the Superintendent pursuant to subsection (a) of this section shall be cause for revocation of the license of the licensee.

(24 Del. C. 1953 § 1316; 50 Del. Laws, c. 301 § 1; 63 Del. Laws, c. 47 § 12; 69 Del. Laws, c. 285 § 6; 70 Del. Laws, c. 186 § 1.)

§ 1336 Reciprocity; licenses under prior laws.

(a) Any person, firm, association or corporation incorporated or licensed under the laws of any other state of the United States and intending to conduct a private detective business or act as a private detective or investigator within this State shall file in the office of the Superintendent a written application duly signed and verified and obtain from the Superintendent a license as provided in this chapter and shall be subject to all the provisions of this chapter.

(b) Licenses issued under any other law of this State prior to June 20, 1955, authorizing the conduct of a private detective business or the business of a private detective or investigator, shall continue in force until the expiration thereof, but such licensees in all other respects shall be subject to this chapter.

(24 Del. C. 1953 § 1317; 50 Del. Laws, c. 301 § 1; 69 Del. Laws, c. 285 § 6.)

§ 1337 Carrying of concealed weapons by licensees.

No person licensed as a private detective or in the employ of any detective or agency shall carry a concealed deadly weapon unless the person is so licensed in accordance with the laws of this State.

(24 Del. C. 1953 § 1318; 50 Del. Laws, c. 301 § 1; 69 Del. Laws, c. 285 § 7; 70 Del. Laws, c. 186 § 1.)

§ 1338 Enforcement of chapter; jurisdiction.

All police agencies and law-enforcement officers of this State may carry out this chapter and enforce compliance therewith. Justices of the Peace Courts shall have jurisdiction over violations under this chapter.

(24 Del. C. 1953 § 1319; 50 Del. Laws, c. 301 § 1; 63 Del. Laws, c. 47 § 14; 69 Del. Laws, c. 285 § 7.)

§ 1339 Violation of chapter as ground for revocation of license.

A violation of this chapter shall be cause for revocation of any license issued thereunder, notwithstanding that the same violation may constitute a misdemeanor or felony.

(24 Del. C. 1953 § 1320; 50 Del. Laws, c. 301 § 1; 69 Del. Laws, c. 285 § 7.)

§ 1340 Reports of convictions for violations of this chapter.

Anyone licensed pursuant to § 1318, § 1319 or § 1320 of this title shall file a report with the Board of Examiners within 10 days of any conviction for a violation of any provision of this chapter of any employee licensed pursuant to this chapter.

(24 Del. C. 1953 § 1321; 50 Del. Laws, c. 301 § 1; 69 Del. Laws, c. 285 § 8.)

§ 1341 Maintenance of office in state; manager; telephone listing.

Any licensee pursuant to § 1318, § 1319 or § 1320 of this title shall maintain an office within the State, which office shall be supervised by a manager licensed pursuant to this chapter. The office shall maintain a Delaware area code telephone listing through which an officer or employee of the licensee may be reached at any period in which the license is in effect.

(63 Del. Laws, c. 47 § 13; 69 Del. Laws, c. 285 § 9; 72 Del. Laws, c. 427 § 1.)

Part

Chapter 14

BOARD OF ELECTRICAL EXAMINERS

Subchapter I

Board of Electrical Examiners

§ 1401 Objectives.

The primary objective of the Board of Electrical Examiners, 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 licensed practitioners.

(64 Del. Laws, c. 476 § 1; 72 Del. Laws, c. 210 § 1.)

§ 1402 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) "Apprentice electrician" shall mean a person who is licensed by the Board and whose principal occupation is the learning and assisting in the performance of electrical services.

(2) "Board" shall mean the State Board of Electrical Examiners established in this chapter.

(3) "Cut-in-card" shall mean the approval certificate sent to the power company by the inspection agency after an inspection has been completed, which authorizes the power company to turn on the electricity at the property.

(4) "Division" shall mean the State Division of Professional Regulation.

(5) "Dwelling" shall mean, for purposes of this chapter, any enclosure that affords habitable living space for a human being or human beings.

(6) "Electrical inspection agency" shall mean the agency responsible for the oversight and the issuing of certificates of inspection for all electrical work performed in this State.

(7) "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 that person's ability to perform the work of an electrician.

(8) "Full-time employee" shall mean an individual, who is added to the company payroll and who has on file with the employer a W-4 form authorizing the employer to withhold taxes and who receives a wage or salary and who is under the supervision of a licensed electrician.

(9) "Homeowner" shall mean, for purposes of this chapter, an individual who both owns and lives in that person's home or dwelling.

(10) "Journeyperson electrician" shall mean a person who is qualified and skilled to perform electrical work and who has met the requirements of § 1408 of this title to be licensed as a journeyperson electrician.

(11) "License" shall mean the certificate issued by the Board that is evidence that the holder has met the requirements of this chapter.

(12) "Limited electrician" shall mean a person licensed by the Board to plan, estimate, layout, perform or supervise the installation, erection or repair of any electrical conductor, molding, duct, raceway, conduit, machinery, apparatus, device or fixture, for the purpose of lighting, heating or power, in any structure which contains 4 or fewer dwelling units, as determined by the applicable building code.

(13) "Limited electrician special" shall mean a person licensed by the Board to plan, estimate, layout, perform or supervise the installation, erection or repair of any electrical conductor, molding, duct, raceway, conduit, machinery, apparatus, device or fixture, for any of the following purposes: elevators, swimming pools, air conditioning, heating and oil burners, in any structure which contains 4 or fewer dwelling units, as determined by the applicable building code.

(14) "Master electrician" shall mean a person, licensed by the Board, to plan, estimate, layout, perform or supervise the installation, erection or repair of any electrical conductor, molding, duct, raceway, conduit, machinery, apparatus, device or fixture for the purpose of lighting, heating or power in any structure.

(15) "Master electrician special" shall mean a person, licensed by the Board, to plan, estimate, layout, perform or supervise the installation, erection or repair of any electrical conductor, molding, duct, raceway, conduit, machinery, apparatus, device or fixture for any 1 of the following purposes: elevators, swimming pools, electric signs, air conditioning, heating, refrigeration and oil burners, and overhead and underground primary distribution systems.

(16) "Person" shall mean an individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company and any other legal entity and includes a legal successor of those entities.

(17) "Service" shall mean, for purposes of this chapter, to repair or replace in kind.

(18) "State" shall mean the State of Delaware.

(19) "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 work of an electrician.

(20) "Supervision" shall mean that a licensed electrician shall be fully responsible for all electrical work performed under that licensed electrician's license.

(21) "Unlicensed practitioner" shall mean any person, who engages in the occupational practices as defined in paragraph (12), (13), (14) or (15) of this section, and who has not been granted a license or a homeowner's permit by the Board.

(24 Del. C. 1953 § 1401; 55 Del. Laws, c. 423 § 1; 59 Del. Laws, c. 202 § 2; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 210 § 1; 74 Del. Laws, c. 262 § 24; 78 Del. Laws, c. 191 §§ 1, 2.)

§ 1403 Board of Electrical Examiners; appointments; composition; qualifications; term; vacancies; suspension or removal; unexcused absences; compensation.

(a) There is created a State Board of Electrical Examiners, which shall administer and enforce this chapter.

(b) The Board shall consist of 9 members, appointed by the Governor, who are residents of this state: Five shall be electricians licensed under this chapter, 1 of whom may be a registered professional engineer with at least 6 years' experience in electrical planning and design, and 4 public members. The public members shall not be, nor ever have been, licensed electricians, nor members of the immediate family of a licensed electrician; shall not have been employed by an electrician or electrical contractor; shall not have a material interest in the providing of goods and services to electricians; nor have been engaged in an activity directly related to the electrical business. 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.

(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 term 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, 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.

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

(h) The provisions set forth in 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 who 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, according to Division policy, and, in addition, shall receive not more than $50 for each meeting attended but not more than $500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(24 Del. C. 1953 §§ 1402, 1403, 1404; 55 Del. Laws, c. 423 § 1; 59 Del. Laws, c. 202 §§ 3, 4; 65 Del. Laws, c. 231 § 1; 67 Del. Laws, c. 366 § 3; 69 Del. Laws, c. 376 § 1; 70 Del Laws c. 186 § 1; 72 Del. Laws, c. 210 § 1.)

§ 1404 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 president deems necessary, or, at the request of a majority of Board members.

(b) The Board annually shall elect a president, vice-president, secretary, a complaint officer and an education officer. Each officer shall serve for 1 year and shall not succeed himself or herself for more than 2 consecutive terms.

(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 at least 5 members of the Board.

(d) Minutes of all meetings shall be recorded and the Division shall maintain copies of the minutes. At any hearing where evidence is presented, a record from which a verbatim transcript can be prepared shall be made. The person requesting the transcript shall incur the cost of preparing any transcript.

(24 Del. C. 1953 § 1405; 55 Del. Laws, c. 423 § 1; 59 Del. Laws, c. 202 § 5; 65 Del. Laws, c. 231 § 2; 67 Del. Laws, c. 366 § 4; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 210 § 1.)

§ 1405 Records.

The Division shall keep a register of all approved applications for license as a limited electrician, limited electrician special, master electrician and master electrician special, 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.

(24 Del. C. 1953 § 1408; 55 Del. Laws, c. 423 § 1; 59 Del. Laws, c. 202 § 6; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 210 § 1.)

§ 1406 Powers and duties.

(a) The Board of Electrical Examiners 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 process all applications;

(3) Designate the written, standardized examination, approved by the Division, and administered and graded by the testing service, to be taken by all persons applying for licensure; except applicants who qualify for licensure by reciprocity;

(4) Evaluate the credentials of all persons applying for a license as limited electrician, limited electrician special, master electrician, master electrician special, journeyperson electrician and apprentice electrician, in this State, in order to determine whether such persons meet the qualifications for licensing set forth in this chapter.

(5) Grant licenses to and renew licenses of all persons who meet the qualifications for licensure;

(6) Delegate authority to the Division to grant homeowners' permits to persons who qualify for such permits;

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

(8) Evaluate certified records to determine whether an applicant for licensure, who previously has been licensed, certified or registered in another jurisdiction as an electrician, 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 applicant for such acts or offenses;

(9) Refer all complaints from licensees and the public concerning licensed electricians, or concerning practices of the Board, or of the profession, to the Division 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;

(10) Conduct hearings and issue orders in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(11) Grant a license to, and renew the license of, a nonpracticing licensee, as defined in the Board's rules and regulations, provided the individual does not use the license to perform electrical installations or file inspections, and who in addition, submits proof of completion of biennial continuing education requirements.

(12) Require, if necessary, that a licensed electrician take over the work done by an unlicensed practitioner, or if the work is completed, that the work be inspected by a Board-licensed inspection agency; such work shall be inspected by the inspection agency within 5 working days after receipt of the Board's request.

(13) Designate and impose the appropriate sanction or penalty, after time for appeal has lapsed, when the Board determined after a hearing, that penalties or sanctions should be imposed.

(b) The Board shall require that all persons receiving a master electrician, master electrician special, limited electrician or limited electrician special license, display on the vehicles used in the performance of their work, the words "Licensed Electrician," and the number assigned to them, in not less than 3-inch letters and numbers.

(c) The Board of Electrical Examiners shall promulgate regulations specifically identifying those crimes which are substantially related to the work of an electrician.

(24 Del. C. 1953 § 1406; 55 Del. Laws, c. 423 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 210 § 1; 74 Del. Laws, c. 257 § 1; 74 Del. Laws, c. 262 § 25; 78 Del. Laws, c. 191 §§ 3, 4.)

Subchapter II

License

§ 1407 License required.

(a) No person shall engage in the practice of providing electrical services or hold himself or herself out to the public in this State as being qualified to act as a licensed electrician; or use in connection with that person's name, or otherwise assume or use, any title or description conveying or tending to convey the impression that the person is qualified to act as a licensed electrician, unless such person has been duly licensed under this chapter.

(b) Whenever a license to practice as an electrician in this State has expired or been suspended or revoked, it shall be unlawful for the person to act as an electrician in this State.

(24 Del. C. 1953 § 1421; 55 Del. Laws, c. 423 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 210 § 1.)

§ 1408 Qualifications of applicant.

(a) An applicant, who is applying for licensure as an electrician under this chapter, shall submit evidence, verified by oath and satisfactory to the Board, that such person:

(1) For licensure as a master electrician shall have knowledge of electricity in the residential, commercial and industrial areas, and in addition shall have:

a. Six years' full-time experience under the supervision of a licensed master electrician; or

b. Eight thousand hours of full-time experience under the supervision of a licensed master electrician, plus 576 hours of related instruction, or other approved training verified by a certificate of completion of apprenticeship from any bona fide, registered apprenticeship program of any state; or

c. Four years' full-time experience under the supervision of a licensed master electrician and 2 years' of technical training.

(2) For licensure as limited electrician shall have knowledge of electricity in the residential area, and in addition shall have:

a. Three years' full-time experience under the supervision of a licensed electrician, master or limited; or

b. Four thousand hours of full-time experience under the supervision of a licensed electrician, master or limited, plus 288 hours of related instruction, or other approved training verified by a certificate of completion of apprenticeship from any bona fide, registered apprenticeship program of any state.

(3) For licensure as master electrician special shall have knowledge of electricity as it relates to the particular type or types of specialty, and in addition shall have:

a. Six years' full-time experience under the supervision of a licensed master electrician, or master electrician special in the applicable specialty; or

b. Eight thousand hours of full-time experience under the supervision of a licensed master electrician or master electrician special, plus 576 hours of related instruction, or other approved training in the applicable specialty, verified by a certificate of completion of apprenticeship from any bonafide, registered apprenticeship program of any state.

(4) For licensure as limited electrician special shall have knowledge of electricity as it relates to the particular type or types of specialty, and in addition shall have:

a. Three years' full-time experience under the supervision of a licensed master electrician, master electrician special or limited electrician special in the applicable specialty; or

b. Four thousand hours of full-time experience under the supervision of a licensed master electrician, master electrician special or limited electrician special, in the applicable specialty, plus successful completion of 288 hours of related instruction, or other approved training in a specialty verified by a certificate of completion of apprenticeship from any bonafide, registered apprenticeship program of any state.

(5) For licensure as a journeyperson electrician shall:

a. Be at least 20 years of age.

b. Shall either:

1. Successfully complete an apprenticeship program approved by the Board that includes passing a final exam for successful completion of such program; or

2. Have over 8,000 hours of full-time experience performing electrical work under the supervision of a licensed master electrician, master electrician special, limited electrician or limited electrician special.

c. The exam required for a journeyperson license in paragraph (a)(7) of this section shall not be required for any person that has successfully met the requirement of paragraph (a)(5)b.1. of this section.

(6) For licensure as an apprentice electrician shall:

a. Be at least 18 years of age unless enrolled in a Board approved vocational program at a vocational school.

b. Be enrolled in or have successfully completed an apprentice program approved by the Board.

(7) After fulfilling the applicable experience and/or training requirements of this section, a person applying for licensure as a master electrician, master electrician special, journeyperson electrician, limited electrician, and limited electrician special shall have achieved the passing score on the written, standardized examination for licensure, with a passing score as determined by the Board in rules and regulations, and which is approved by the Division.

(8) Shall not have been the recipient of any administrative penalties regarding that person's practice as an electrician, including, but not limited, to fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations, and/or has not entered into any "consent agreements" which contain conditions placed by a Board on that person's professional conduct and practice, including any voluntary surrender of a license. The Board may determine after a hearing whether such administrative penalty is grounds to deny licensure.

(9) Shall not have any impairment related to drugs or alcohol that would limit the applicant's ability to act as an electrician in a manner consistent with the safety of the public.

(10) Shall not have a criminal conviction record, nor pending criminal charge relating to an offense, the circumstances of which substantially relate to providing electrical services. Applicants who have criminal conviction records or pending criminal charges shall request 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 providing electrical services. 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, may waive this paragraph (a)(10), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of practicing electrical services in a competent and professional manner.

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

(11) Shall have no disciplinary proceedings or unresolved complaints pending against the person in any jurisdiction where the applicant has previously been or currently is licensed or registered.

(b) All evidence of experience shall be submitted on written affidavit forms provided by the Board.

(c) All evidence of education shall be submitted by written certification from the educational institution attended.

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

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

(f) An applicant may elect to postpone submitting the applicant's licensure fee and proof of general liability insurance after successfully completing the examination for licensure; but such postponement shall not exceed 12 months. If the applicant fails to activate that applicant's license within 12 months of passing the examination, the Board shall require that the applicant retake the examination.

(24 Del. C. 1953 § 1422; 55 Del. Laws, c. 423 § 1; 59 Del. Laws, c. 48 § 5; 59 Del. Laws, c. 202 § 7; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 210 § 1; 73 Del. Laws, c. 128 §§ 1-6; 74 Del. Laws, c. 262 § 26; 75 Del. Laws, c. 436 § 11; 77 Del. Laws, c. 199 § 9; 78 Del. Laws, c. 44 §§ 14, 15; 78 Del. Laws, c. 191 §§ 5, 6; 79 Del. Laws, c. 86 §§ 1, 2.)

§ 1409 Reciprocity.

(a) 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 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. A license in "good standing" is defined in § 1408(a)(8)-(11) of this title.

(b) An applicant, who is licensed in a state whose standards are not substantially similar to those of this State, shall have practiced for a minimum of 5 years after licensure; provided however, that the applicant meets all other qualifications for reciprocity in this section.

(24 Del. C. 1953 § 1426; 55 Del. Laws, c. 423 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 210 § 1; 78 Del. Laws, c. 191 § 5.)

§ 1410 Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division in its service on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each licensure biennium, the Division, or any other state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate Board fees for the licensure or biennium.

(24 Del. C. 1953 § 1424; 55 Del. Laws, c. 423 § 1; 57 Del. Laws, c. 607; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 210 § 1.)

§ 1411 Issuance and renewal of licenses.

(a) The Board shall issue a license to each applicant, who meets all of the requirements of this chapter for licensure as an electrician, in the category applied for, and who pays the fee established under § 1410 of this title, and submits proof of general liability insurance as required by the Board.

(b) Each license shall be renewed biennially, in such manner as is determined by the Division, and upon payment of the appropriate fee and submission of a renewal form provided by the Division, proof of general liability insurance as required by the Board, 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 electrician may still renew that licensed electrician's license, notwithstanding the fact that such licensee has failed to renew on or before the renewal date.

(d) A licensee, upon written request, may be placed in an inactive status in accordance with the Board's rules and regulations. The renewal fee of such person shall be prorated according to the amount of time such person was inactive. Such person may reenter practice

upon written request to the Board of the intent to do so, and completion of continuing education, as required in the Board's rules and regulations.

(24 Del. C. 1953 §§ 1425, 1427; 55 Del. Laws, c. 423 § 1; 59 Del. Laws, c. 202 §§ 8, 10; 64 Del. Laws, c. 476 § 7; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 210 § 1.)

§ 1412 Grounds for discipline.

(a) A practitioner licensed under this chapter shall be subject to disciplinary actions set forth in § 1414 of this title, if, after a hearing, the Board finds that the practitioner has:

(1) Employed, or knowingly cooperated in, fraud or material deception in order to acquire a license as an electrician; has impersonated another person holding a license, or allowed another person to use the practitioner's license, or aided or abetted a person not licensed as an electrician to represent himself or herself as a licensed electrician;

(2) Illegally, incompetently or negligently provided electrical services;

(3) Performed electrical work in a category for which the practitioner is not licensed;

(4) Been convicted of any offense, the circumstances of which substantially relate to the performance of electrical work. A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence therefor;

(5) Excessively used or abused drugs;

(6) Engaged in an act of consumer fraud or deception of the public;

(7) Violated a lawful provision of this chapter, or any lawful rule or regulation established thereunder;

(8) Had the practitioner's license as an electrician suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record; and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every person licensed as an electrician in this State shall be deemed to have given consent to the release of this information by the Board, or other comparable agencies in another jurisdiction, and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses;

(9) Failed to notify the Board that the practitioner's license as an electrician in another state has been subject to discipline, or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof; or

(b) Subject to the provisions of 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 as an electrician 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].

(72 Del. Laws, c. 210 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 436 § 12.)

§ 1413 Complaints.

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

(b) When it is determined that an individual, not currently licensed by the Board, is engaging, or has engaged, in providing electrical services to the public, or is using the title "master electrician", "master electrician special", "limited electrician", "limited electrician special", or other title implying that the individual is competent to provide electrical services, the Board shall apply to the Office of the Attorney General to issue a cease and desist order.

(64 Del. Laws, c. 476 § 6; 65 Del. Laws, c. 355 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 210 § 1.)

§ 1414 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that 1 of the conditions or violations set forth in § 1412 of this title applies to a practitioner or licensee regulated by this chapter:

(1) Issue a letter of reprimand;

(2) Censure a practitioner;

(3) Place a practitioner on probationary status, and require the practitioner to:

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

b. Limit all practice and professional activities to those areas prescribed by the Board;

(4) Suspend any practitioner's license;

(5) Revoke any practitioner'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 it finds that the deficiencies, which required such action have been remedied.

(c) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the

temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(24 Del. C. 1953 § 1428; 55 Del. Laws, c. 423 § 1; 59 Del. Laws, c. 202 § 11; 64 Del. Laws, c. 476 §§ 2, 3; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 210 § 1; 79 Del. Laws, c. 213 § 2.)

§ 1415 Hearing procedures.

(a) If a complaint is filed with the Board pursuant to § 8735 of Title 29, alleging violation of § 1412 of this title, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) All hearings shall be 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 be in writing and shall include its reasons for such decision. The Board's decision shall be mailed immediately to the practitioner.

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

(24 Del. C. 1953 § 1431; 55 Del. Laws, c. 423 § 1; 64 Del. Laws, c. 476 § 8; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 210 § 1.)

§ 1416 Reinstatement of a suspended license; removal from probationary status; replacement of license.

(a) As a condition to reinstatement of a suspended license, or removal from probationary status, the Board may reinstate such 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 probation.

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

(c) A new license to replace any license lost, destroyed or mutilated may be issued subject to the rules of the Board. A charge shall be made for such issuance.

(24 Del. C. 1953 § 1429; 55 Del. Laws, c. 423 § 1; 59 Del. Laws, c. 202 §§ 12, 13; 64 Del. Laws, c. 476 § 4; 65 Del. Laws, c. 462 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 210 § 1.)

Subchapter III

Other Provisions

§ 1417 Homeowner's Permits.

(a) Any person, who plans to install that person's own internal wiring, electrical work or equipment, including the main breaker or fuse, in or about that person's own home, that is not for sale nor any part for rent, excluding swimming pools and hot tubs, shall obtain a homeowner's permit. Permits shall be valid for 1 year. Failure of the homeowner to obtain a final inspection of the homeowner's work shall be cause for the Board to cancel the homeowner's permit.

(b) Persons applying for a homeowner's permit shall submit a photo identification, copy of the deed to the home and title or contract of sale for the mobile home (if applicable).

(c) Application for a homeowner's permit shall be available at the Board office in Dover, or by mail. The Division shall issue the permit only to those persons who fulfill the requirements of this section.

(72 Del. Laws, c. 210 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1418 Partnership, firm or corporation; loss of license holder.

(a) If a partnership, firm or corporation suffers a loss of a license holder, the partnership, firm or corporation shall notify the Board in writing with supporting documentation within 7 days of the loss of a license holder.

(b) The Board shall schedule an emergency meeting within 10 days during which time the partnership, firm or corporation may continue to operate without a license holder provided the partnership, firm or corporation continues to employ the same personnel with the exception of the license holder.

(c) A person associated with the partnership, firm or corporation shall submit an application for a license to the Board, before the

emergency meeting, for consideration by the Board at such meeting. At the emergency meeting the Board may issue a temporary license valid for 100 days dated from the date of notification by the partnership, firm or corporation.

(d) If approved at the emergency meeting, the applicant shall be scheduled for the next available examination.

(e) Regardless of the provisions of subsection (c) of this section, a temporary license shall expire when the Board receives notification of the results of the examination.

(f) If the partnership, firm or corporation allows the 100-day temporary license to expire without having a person obtain a license or having in their employ a person with a license, then said partnership, firm or corporation shall cease and desist immediately from all electrical work for which a license is required under this chapter.

(72 Del. Laws, c. 210 § 1.)

§ 1419 Exceptions.

(a) Nothing in this title shall be construed to prevent the performing of electrical work by:

(1) Any of the following individuals working in a manufacturing or industrial facility:

a. An electrical engineer who is recognized by their company as the person responsible for facility repairs, maintenance, or electrical additions, and who is registered with the Board, or a professional electrical engineer who is registered with the Board and who is licensed and listed on the Delaware Association of Professional Engineers;

b. An electrical engineer or electrical engineering technician, recognized by the manufacturing or industrial company as qualified, working in a laboratory environment conducting basic research and development;

c. An "in-house" electrical engineer, electrical engineering technician, or other person conducting research and development building and testing a custom panel designed by the company and not commercially available, provided that such exception shall not extend to the permanent installation of the equipment;

(2) The Department of Transportation, its agencies, offices and divisions, for all work performed by the Department, or under its supervision, and which is approved by the Department, for the installation, erection, construction, reconstruction and/or maintenance of drawbridges and traffic-control devices, including traffic signals, traffic signs and highway lighting;

(3) Persons working beyond the main breaker or fuse of 200 amps or less on structures used exclusively for agricultural purposes, except that the provisions of § 1420 of this title regarding certificates of inspection shall apply where new installations are involved;

(4) Any electric light or power company, electric railway company, steam railway company, diesel railway company, telegraph or telephone company, water or wastewater utility whose rates and services are regulated by the Delaware Public Service Commission, or any person performing the electrical work of such company or utility, when such work is a part of the plant or services used by the company in rendering its authorized service to the public, as further defined in rules and regulations of the Board;

(5) Any homeowner or homeowners who comply with the mandates of § 1417 of this title.

(b) Nothing in this chapter shall restrict any person from servicing equipment in the fields of heating, air conditioning, refrigeration or appliances.

(24 Del. C. 1953 § 1432; 55 Del. Laws, c. 423 § 1; 59 Del. Laws, c. 202 § 16; 62 Del. Laws, c. 342 § 1; 64 Del Laws c. 476 § 5; 65 Del. Laws, c. 355 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 210 § 1; 78 Del. Laws, c. 191 § 7; 79 Del. Laws, c. 86 § 3; 79 Del. Laws, c. 407 § 1.)

§ 1420 Certificate of Inspection required; "cut-in-card"

(a) All electrical work performed in this State, unless specifically exempt, shall receive a certificate of inspection issued by a Board-licensed inspection agency.

(b) All applications for inspections shall be filed with the inspection agency within 5 working days of the commencement of electrical work.

(c) Inspection agencies shall make all inspections within 5 working days of receipt of the application for inspection.

(d) No power company shall connect any current, light or power to any property without first obtaining from an inspection agency a permanent or temporary "cut-in-card," except in case of emergency when service may be restored by a licensed electrician prior to obtaining a "cut-in-card." The inspection agency shall issue a "cut-in-card" only for electrical work performed by a licensed electrician, except for work being done or which has been done by persons who are not required to obtain licenses under this chapter.

(24 Del. C. 1953 § 1433; 55 Del. Laws, c. 423 § 1; 59 Del. Laws, c. 202 § 17; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 210 § 1.)

§ 1421 Electrical Inspection Agencies.

(a) All agencies, who intend to conduct electrical inspections in this State, shall apply for a license as an approved electrical inspection agency, complete a Board-approved application and submit to the Board proof of the following:

(1) Name or names, address or addresses, and telephone number or numbers for all office facilities located in this State, at least 1 office of which shall service all 3 counties;

(2) For all electrical inspectors employed by the inspection agency, proof of at least 7 years of experience in residential, commercial or industrial wiring;

(3) The passing grade obtained by each inspector on the following examinations, administered by a nationally recognized testing agency and approved by the Division: Electrical 1- and 2-family dwelling; electrical general, administered within 18 months of

employment as an inspector; and electrical plan review, administered within 24 months of such employment.

(b) The Board may grant conditional approval of the inspection agency, not to exceed 6 months, after reviewing the credentials of the agency, evidence of general liability insurance and errors and omission insurance, as required by the Board's rules and regulations, and payment of the fee established by the Division. No electrical inspection agency shall conduct any electrical inspection in this State until it has at least 1 full-time, nationally-certified inspector on its payroll, who will conduct electrical inspections in this State.

(c) The Board may deny an application for licensure as an inspection agency; such denial shall be in writing and state the reason or reasons for such denial; and shall be provided by the Board to the inspection agency within 10 days of the decision. The inspection agency may appeal all denials of licensure to the Superior Court.

(d) After the Board has granted a conditional approval for the inspection agency and such approval has been in effect for at least 3 months, the Board may grant a license to the inspection agency, upon submission of certified proof of the following:

(1) All employees, officers or stockholders of the inspection agency shall not have any proprietary or pecuniary interest in any electrical contracting business located in this State;

(2) All employees, officers or stockholders of the inspection agency shall not have any proprietary or pecuniary interest in any manufacturer or seller of electrical appliances, machinery, wiring, electrical hardware or other electrical apparatus.

(3) All employees, officers or stockholders of the inspection agency shall not have any proprietary or pecuniary interest in any electric utility or company, municipal electrical department or other utility or company, which supplies electrical energy for industrial, residential or commercial use.

(e) All licensed electrical inspection agencies in this State shall file, and keep up to date, with the Board and keep open to public inspection at all times during normal business hours, and in each office, the addresses and telephone numbers of all offices, time of regular business hours for all offices, and a schedule with all rates and charges for services rendered by the agency.

(f) All licensed electrical inspection agencies in this State shall make inspections within 5 days of receipt of an application for inspection and shall issue a certificate of approval within 15 days after final inspection. All applications for inspection must be filed by a state-licensed electrician or by a person or persons specifically excepted by this chapter.

(g) All violations noted during an inspection shall be corrected within 15 days and reinspected by the same inspection agency. If not corrected, the inspection agency shall notify the utility concerned and the Board of such violations. The utility shall not provide service to the premises until the violation is corrected.

(h) All records of the licensed electrical inspection agencies shall be available for examination by the Division's investigators; the agency shall inform the Division of the location of all records.

(i) All licensed electrical inspection agencies in this State shall carry general liability insurance and errors and omission insurance of at least $1,000,000 each for claims of property damage or personal injury arising from faulty electrical work approved by the agency, or any of its employees, or other acts or omissions performed by the agency or any of its employees.

(j) All employees of all licensed electrical inspection agencies in this State shall be remunerated on a salary basis only and shall not be given commissions or other bonus incentives for volume of work performed.

(k) Each license shall be renewed annually upon payment of the appropriate fee, in such a manner as is determined by the Division.

(l) The Board may impose any of the sanctions available under § 1414 of this title on an electrical inspection agency if the agency is determined to be guilty of:

(1) Fraud or deceit in obtaining a license;

(2) An act of consumer fraud or deception of the public;

(3) Negligence, incompetency or misconduct in providing electrical inspection services; or

(4) Violation of any lawful provision of this chapter or any lawful rule or regulation established thereunder.

(24 Del. C. 1953 § 1434; 59 Del. Laws, c. 202 § 18; 59 Del. Laws, c. 396 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 210 § 1; 73 Del. Laws, c. 128 §§ 7, 8.)

§ 1422 Apprentice electricians.

(a) An apprentice electrician must work under the direct onsite supervision of a licensed master electrician, master electrician special, limited electrician, limited electrician special or journeyperson electrician.

(b) A licensed electrician supervising an apprentice electrician pursuant to subsection (a) of this section shall be responsible for the activities of the apprentice electrician performing work in the State.

(78 Del. Laws, c. 191 § 8.)

§ 1423 Duty to report.

(a) An owner, operator, manager, or supervisor of a business performing electrical services shall have a duty to report to the Board, if such owner, operator, manager, or supervisor has knowledge that a person working for or under his or her supervision is:

(1) Performing electrical work; and

(2) Does not have the proper license under subchapter II of this chapter.

(b) The report required pursuant to this section must be made in writing to the Board within 10 days of such owner, operator, manager, or supervisor having the required knowledge and shall contain the name of the person performing the electrical work without a license.

(c) An owner, operator, manager, or supervisor of a business performing electrical services must check to see if an employee or independent contractor has the proper license under subchapter II of this chapter before allowing such employee or independent contractor to perform electrical work for such owner, operator, manager or supervisor.

(79 Del. Laws, c. 86 § 4; 70 Del. Laws, c. 186 § 1.)

§ 1424 Penalty.

A person, not currently licensed as an electrician or exempt from licensure under this chapter, when guilty of performing electrical work, 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 perform electrical work, such offender shall be guilty of a misdemeanor. Upon the first offense, the 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. Justice of the Peace Courts shall have jurisdiction over all violations of this chapter.

(24 Del. C. 1953 § 1440; 55 Del. Laws, c. 423 § 1; 59 Del. Laws, c. 202 § 19; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 210 § 1; 78 Del. Laws, c. 191 § 8; 79 Del. Laws, c. 86 § 4.)

§ 1425 Inspections.

An agent of the Division may inspect during business hours, without prior notice any person providing electrical services at any business or location to determine if such person has a proper license as required by this chapter.

(80 Del. Laws, c. 318 § 1.)

Part

Chapter 15

HOTELS, RESTAURANTS AND PLACES OF ENTERTAINMENT

§ 1501 Exclusion of customers.

No keeper of an inn, tavern, hotel or restaurant or other place of public entertainment or refreshment of travelers, guests or customers shall be obliged, by law, to furnish entertainment or refreshment to persons whose reception or entertainment by the proprietor would be offensive to the major part of the proprietor's customers and would injure business.

As used in this section, "customers" includes all who have occasion for entertainment or refreshment.

(15 Del. Laws, c. 194 § 1; Code 1915 § 3575; Code 1935 § 4066; 24 Del. C. 1953 § 1501; 70 Del. Laws, c. 186 § 1.)

§ 1502 Safekeeping of valuables.

Whenever the proprietor of any hotel, inn or boardinghouse provides a good, sufficient and secure safe or vault in the office or other convenient place in such hotel, inn or boardinghouse for the safe keeping of any money, goods, jewelry and valuables belonging to the guests and boarders of such hotel, inn or boardinghouse, and notifies the guests and boarders thereof, by placing in every lodging room and other conspicuous places printed cards or notices stating the fact that such safe or vault is provided in which such goods, jewelry and valuables may be deposited and that the proprietor or proprietors thereof will not be responsible for such money, goods, jewelry and valuables unless deposited in such safe or vault, and if such guest or boarder neglects to deposit such money, goods, jewelry or valuables in such safe or vault, the proprietor shall not be liable for any loss of such money, goods, jewelry or valuables sustained by such guest, by theft or otherwise.

(Code 1915 § 3575a; 32 Del. Laws, c. 192; Code 1935 § 4067; 24 Del. C. 1953 § 1502.)

§ 1503 Inspection of food preparation areas.

The food preparation area of any hotel, restaurant, place of business, institution or business which prepares or serves food for human consumption shall be subject to a state health inspection, without advance notice. For purposes of this section, a "food preparation area" shall include any kitchen, food storage area, locker or other area where food is prepared or kept prior to being served. For purposes of this section, the term "advance notice" shall mean any form of communication of a plan or schedule for inspection by any representative of the Department of Health and Social Services, prior to the inspection.

(62 Del. Laws, c. 149 § 1; 70 Del. Laws, c. 149 § 209.)

Part

Chapter 16

ADULT ENTERTAINMENT ESTABLISHMENTS

Subchapter I

Adult Book Stores and Other Adult Entertainment Establishments

§ 1601 Purpose.

(a) It is the finding of the General Assembly that the health, safety and welfare of the people of the State are imperiled by the increasing incidence of the crimes of obscenity, prostitution and of offenses related thereto. The General Assembly finds that the foregoing crimes are principally facilitated by the widespread abuse of legitimate occupations and establishments, to wit, adult entertainment establishments. It is the further finding of the General Assembly that existing criminal penalties for the foregoing offenses have been rendered ineffective by the active concealment of the identities of the individuals who create, control and promote such businesses; by the failure of these individuals and businesses to exercise adequate control and supervision over the activities of their employees; and by the active promotion of prostitution and obscenity by these individuals and businesses for their own financial gain. It is the additional finding of the General Assembly that the health, safety and welfare of the people of the State are imperiled by the widespread operation of adult-oriented retail businesses without reasonable time, place and manner limitations on such businesses.

(b) To the end of furthering the substantial and compelling interest of the people of this State in being free of the crimes of obscenity, prostitution and its companion offenses, and in order to promote the health, safety and welfare, the General Assembly does hereby act.

(61 Del. Laws, c. 122 § 1; 62 Del. Laws, c. 413 § 2; 77 Del. Laws, c. 168 § 1.)

§ 1602 Definitions.

As used in this chapter:

(1) "Adult" shall mean a person who has attained the age of 18.

(2) "Adult entertainment establishment" shall mean any commercial establishment, business or service, or portion thereof, which offers sexually-oriented material, devices, paraphernalia or specific sexual activities, services, performances or any combination thereof, or in any other form, whether printed, filmed, recorded or live. The term "adult entertainment establishment" shall include but not be limited to such activities as:

a. "Adult book stores" which shall mean any corporation, partnership or business of any kind which has as part of its stock books, magazines or other periodicals and which offers, sells, provides or rents for a fee:

1. Any sexually-oriented material, and which business restricts or purports to restrict admission to adults, within the meaning of this chapter, or to any class of adults;

2. Any sexually-oriented material which is available for viewing by patrons on the premises by means of the operation of movie machines or slide projectors; or

3. Any sexually-oriented material which has a substantial portion of its contents devoted to the pictorial depiction of sadism, masochism or bestiality.

4. [Repealed.]

b. "Adult motion picture theatres" which shall mean an enclosed building used for presenting film presentations which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specific sexual activities for observation by patrons therein;

c. "Adult shows" or "adult peep shows" which shall include all adult shows, exhibitions, performances or presentations which contain acts or depictions of specific sexual activities;

d. "Conversation parlors," "relaxation studios," "health salons" or "call services" which shall mean any commercial business, enterprise or service which offers or which holds itself out as offering conversations or relaxation or any other services whereby any employee, attendant or patron is involved in specific sexual activities or representations thereof.

e. [Repealed.]

(3) "Adult-oriented retail establishment" shall mean any commercial establishment, business or service, or portion thereof, which offers as a substantial portion of their business sexually-oriented material, devices, or paraphernalia, but does not allow on-site displays of sexually-oriented materials or sexual activities.

(4) "Applicant" shall mean the person in whose name or on whose behalf a license under this chapter is requested.

(5) "Beastiality" shall mean sexual activity, actual or simulated, between a human being and an animal.

(6) "Commission" shall mean the Commission on Adult Entertainment Establishments.

(7) "Conviction" means a verdict of guilty by the trier of fact, whether judge or jury, or a plea of guilty or a plea of nolo contendere accepted by the court.

(8) "Licensee" shall mean the person to whom and in whose name a license is issued under this chapter.

(9) "Masochism" shall mean sexual gratification achieved by a person through, or the association of sexual activity with, submission or subjection to physical pain, suffering, humiliation, torture or death.

(10), (11) [Repealed.]

(12) "Partner" shall include both a general and a limited partner.

(13) "Partnership" shall include both a general and a limited partnership.

(14) "Peace officer" shall include police officers, the Attorney General and the Attorney General's deputies and assistants.

(15) "Person" means a human being who has been born and is alive, and, where appropriate, a public or private corporation, an unincorporated association, a government or a governmental instrumentality.

(16) "Principal stockholder" shall mean a person who owns equity securities of the licensee, whether voting or nonvoting, preferred or common, in any amount equal to or greater than 10 percent of the total amount of equity securities of the licensee issued and outstanding.

(17) "Sadism" shall mean sexual gratification achieved through, or the association of sexual activity with, the infliction of physical pain, suffering, humiliation, torture or death upon another person or animal.

(18) "Sexually-oriented material" shall mean any book, article, magazine, publication or written matter of any kind, drawing, etching, painting, photograph, motion picture film or sound recording, which depicts sexual activity, actual or simulated, involving human beings or human beings and animals, or which exhibits uncovered human genitals or pubic region in a lewd or lascivious manner or which exhibits human male genitals in a discernibly turgid state, even if completely covered.

(19) "Specific sexual activities" shall be defined as including the following sexual activities and/or the exhibition of the following anatomical areas:

a. Human genitals in the state of sexual stimulation or arousal; or

b. Acts of human masturbation, sexual intercourse, sodomy, cunnilingus, fellatio or any excretory function, or representation thereof;

c. The fondling or erotic touching of human genitals, pubic region, buttocks or the female breasts; or

d. Less than completely opaquely covered:

1. Human genitals, pubic region;

2. Buttocks;

3. Female breasts below the top of the areola; or

4. Human male genitals in a discernable turgid state, even if completely and opaquely covered.

(20) [Repealed.]

(61 Del. Laws, c. 122 § 1; 62 Del. Laws, c. 413 §§ 3, 4; 63 Del. Laws, c. 13 § 1; 68 Del. Laws, c. 236 § 3; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 168 § 2.)

§ 1603 Commission on Adult Entertainment Establishments.

(a) The Commission on Adult Entertainment Establishments is hereby established. The Commission shall consist of 5 members who shall be appointed by the Governor and who shall be residents of this State. No person shall be a member if a member of such person's immediate family is licensed by the Commission, or is an employee of a licensee of the Commission; or if a member of such person's immediate family has a material or financial interest in the providing of goods or services to a licensee of the Commission.

(b) Members shall serve for terms of 3 years. The Chairperson shall be elected annually by vote of the members. In the event that a member of the Commission for any reason cannot complete a term of office, the Governor shall appoint another person to serve for the remainder of the term.

(c) A person who has never served on the Board may be appointed to the Board 2 consecutive times, 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 term has expired since such person last served.

(d) Any act or vote by a person appointed in violation of subsection (c) 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 (c) of this section, unless such amendment or revision amends this section to permit such an appointment.

(e) Each member of the Commission shall receive as compensation the sum of $50 per diem for each day or part thereof actually engaged in the discharge of the member's duties under this chapter, and shall be reimbursed by the State Treasurer for reasonable expenses and costs incurred in traveling to and from meetings of the Commission.

(f) Three members of the Commission shall constitute a quorum to conduct business. In the absence of the Chairperson, an acting Chairperson shall be designated by the quorum of Commissioners present.

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

(61 Del. Laws, c. 122 § 1; 62 Del. Laws, c. 413 § 5; 67 Del. Laws, c. 368 § 8; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 320 § 1; 77 Del. Laws, c. 168 § 3.)

§ 1604 Duties and powers of Commission.

(a) The Commission shall issue, revoke and suspend licenses for operation of adult entertainment establishments, and for the operation of adult-oriented retail businesses in accordance with this chapter.

(b) The Commission shall meet regularly as determined by the Commission or within 30 days, whichever comes sooner, after receipt of a completed application for a license, and shall conduct such special meetings and hearings as shall be necessary to implement this chapter.

(c) Each member of the Commission shall have the power to administer oaths, and to compel the attendance of witnesses and the production of documents and other tangible objects material to its proceedings by the issuance of subpoenas to carry out the purposes of this chapter.

(d) No findings of fact shall be made by the Commission except upon a hearing before at least 3 members, 3 of which shall concur in said finding. All findings of fact shall be written or recorded.

(e) The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Commission as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Commission. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each calendar year the Division of Professional Regulation, or any state agency acting in its behalf, shall compute for each separate service or activity the appropriate Commission fees for the coming year.

(f) All documents filed with the Commission and all records maintained shall become public, official and business records of the State and shall be admissible in evidence in any judicial proceeding in this State in accordance with the laws of Delaware applicable to the admissibility of such records.

(g) The Commission shall have the power to make such rules and regulations not inconsistent with the law as are necessary for their performance of its duties.

(61 Del. Laws, c. 122 § 1; 62 Del. Laws, c. 413 § 6; 77 Del. Laws, c. 168 § 4.)

§ 1605 Records.

(a) The Commission shall maintain separate indexes relating to the licensing of adult entertainment establishments and adult-oriented retail businesses.

(b) The Commission shall maintain an alphabetized or a computerized index containing the full name or names, including nicknames or aliases, residential address or addresses, business address or addresses, social security number, driver's license number, a picture and the identity of any banks within or without the State wherein accounts are maintained, of every applicant and licensee under this chapter. The same information shall be provided for any other person whose signature appears upon any document comprising an application for license submitted under this chapter. Said index shall be kept current and shall indicate the eligibility of such persons as licensees under this chapter, and whether the signatures of such persons on an application for license preclude the issuance of a license based thereon.

(c) In carrying out its responsibilities, the Commission may submit names of applicants and those appearing in applications to the Department of Justice, State Police or Department of Homeland Security for the purpose of a record check.

(61 Del. Laws, c. 122 § 1; 62 Del. Laws, c. 413 § 7; 77 Del. Laws, c. 168 § 5.)

§ 1606 Adult entertainment license requirement.

(a) No person shall engage in, carry on or participate in the operation of an adult entertainment establishment or adult-oriented retail business without first having been issued a license therefor by the Commission. Any adult entertainment establishment being operated without a license therefore is hereby declared to be a nuisance for purposes of Chapter 71 of Title 10.

(b) Whoever engages in the operation of an adult-oriented retail business in violation of this section shall be fined not more than $500 or imprisoned not more than 6 months, or both.

(c) Any person, and in the case of corporation this shall include its principal stockholders, board of directors, officers and persons engaged in the management of such establishment, who shall engage in, carry on or participate in the operation of an adult entertainment establishment in violation of this section shall be fined not more than $10,000 and imprisoned not more than 6 months, or both.

(d) A certificate, certified by a member of the Commission, that a diligent search of the Commission's records, those pertaining to licenses kept in conformity with this chapter, has failed to disclose the existence of a valid license for an adult entertainment establishment or adult-oriented retail establishment in question shall be prima facie evidence of a violation of this section.

(61 Del. Laws, c. 122 § 1; 62 Del. Laws, c. 413 §§ 8-10; 77 Del. Laws, c. 168 § 6.)

§ 1607 License fee; term.

(a) No license for the operation of an adult-oriented retail business under this chapter, or renewal thereof, shall be issued unless the applicant shall have paid the nonrefundable application fee as provided in § 1613 of this title.

(b) No license for the operation of any adult entertainment establishment under this chapter, nor renewal thereof, shall be issued unless the applicant shall have paid the nonrefundable application fee as provided in § 1613 of this title.

(c) Nothing in this chapter, however, shall be construed to affect or impair in any manner the requirements of Title 30.

(d) Each license granted pursuant to this chapter shall be for a period of 1 year and may only be renewed by making a new application in the manner provided in this chapter.

(61 Del. Laws, c. 122 § 1; 62 Del. Laws, c. 413 § 11; 63 Del. Laws, c. 284 § 1; 77 Del. Laws, c. 168 § 7.)

§ 1608 Transferability of license.

(a) Each license issued under this chapter shall be for the sole use and benefit of the licensee to whom it is issued and shall not be transferable.

(b) Whoever intentionally uses or permits the use, or attempts to use or permit the use of a license issued under this chapter by or on behalf of a person other than the licensee to whom said license shall be issued shall be fined not more than $500, or imprisoned for not more than 6 months, or both.

(61 Del. Laws, c. 122 § 1.)

§ 1609 Form and content of license.

(a) Every license issued under this chapter shall be signed by the signature or by the facsimile signature of the Chairperson of the Commission, shall bear in bold letters the date of issuance and termination and shall state the name and address of the licensee.

(b) Every license for the operation of an adult entertainment establishment shall describe the nature of the business or enterprise as appropriate within the meaning of § 1602(2) of this title, and the location of the premises at which such business is authorized. Where the licensee is a corporation, the license shall state the name and address of said corporation's registered agent in this State, and the name of its registered agent at such address.

(c) Every license for the operation of an adult-oriented retail establishment shall describe the location of the premises at which such business is authorized. Where the licensee is a corporation, the license shall state the name and address of said corporation's registered agent in this State, and the name of its registered agent at such address.

(61 Del. Laws, c. 122 § 1; 62 Del. Laws, c. 413 § 12; 77 Del. Laws, c. 168 § 8.)

§ 1610 License tied to physical location; prohibited activities.

(a) No license issued under this chapter shall authorize the licensee to engage in or carry on the business of operating an adult entertainment establishment or adult-oriented retail establishment in any place other than the premises set forth in said license. In addition, each applicant or licensee seeking a license or renewal must affirmatively establish within their application that the location or proposed location of the place of business is in compliance with all applicable laws and ordinances. If a licensee changes the location of the licensee's place of business during the period for which the license was issued, the license shall be amended by making application in accordance with this chapter in making a new application, to authorize business at the new location, provided that said business is otherwise permitted at the new location by applicable law and ordinance.

(b) Any person, and in the case of a corporation this shall include its principal stockholders, board of directors, officers and persons engaged in the management of such establishment, who is the holder of a license issued under this chapter and who engages in, carries on or participates in the operation of the business of operating an adult entertainment establishment or adult-oriented retail establishment at a place other than that authorized by said license shall be fined not more than $500, or imprisoned for not more than 6 months, or both.

(c) No new adult entertainment establishment as defined in § 1602 of this title shall operate in the same building or in separate buildings less than 1,500 feet from each other, within 500 feet of any residence regardless of how such property is zoned, or within 2,800 feet from a church or school. Violations of this subsection shall be punishable by a fine in the amount of $5,000. Distances shall be measured from property line to property line.

(d) No new adult-oriented retail establishment shall operate in the same building or in separate buildings less than 500 feet from each other, within 200 feet of any school bus stop or any residence regardless of how such property is zoned, or within 500 feet from a church or school. Distances shall be measured from property line to property line. No adult-oriented retail establishment shall operate in a manner that allows sexually-oriented material, devices, or paraphernalia to be visible from outside of the establishment at any time, including during times any door to the business is open. Violations of this subsection shall be punishable by a fine in an amount not to exceed $5,000.

(e) Notwithstanding any provision of law to the contrary, no municipal corporation or county may adopt any ordinance or charter amendment with distance restrictions less than those provided in this section.

(61 Del. Laws, c. 122 § 1; 62 Del. Laws, c. 413 § 13; 63 Del. Laws, c. 284 §§ 2, 3; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 452 § 1; 77 Del. Laws, c. 168 § 9.)

§ 1611 Display of license.

(a) Every person licensed to operate an adult entertainment establishment or adult-oriented retail establishment under this chapter shall display each license in a conspicuous manner on the premises for which the license shall have been issued.

(b) Violation of this section shall be punished by a fine of not more than $1,000.

(61 Del. Laws, c. 122 § 1; 62 Del. Laws, c. 413 § 14; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 168 § 10.)

§ 1612 Massagist license application.

(Repealed by 77 Del. Laws, c. 168 § 11, effective July 16, 2009.)

§ 1613 Adult entertainment establishment or adult-oriented retail establishment license application.

(a) No license for the operation of an adult entertainment establishment or adult-oriented retail establishment shall be issued under this

chapter unless the applicant has executed and filed with the Commission an application for license under oath on a form prepared by the Commission which is in compliance with this chapter.

(b) Every application for license for the operation of an adult entertainment establishment or adult-oriented retail establishment shall state the full name(s) of the applicant appearing pursuant to § 1615 of this title, including nickname(s) or alias(es), residential address(es), place(s) of employment, including address(es) and phone number(s), social security number, date of birth, driver's license number, a photograph of the applicant taken within 30 days of the application, federal employer's identification number and an address of the premises for which the application for license is made. Each application shall further provide the full name(s), including nickname(s) and alias(es), residential address(es), place of employment(s) including address(es) and phone number(s), date of birth, social security number and a recent photograph taken within 30 days of providing this information to the Commission of those persons employed by the adult entertainment establishment or adult-oriented retail establishment, and to specifically identify who is to be responsible for the day-to-day management of the adult entertainment establishment or adult-oriented retail establishment.

(c) Where the applicant is a corporation, no license shall be issued unless there first be filed with the Commission, as part of the application of license:

(1) A copy of the certificate of incorporation certified by the Secretary of State of the state of incorporation;

(2) Where the applicant is a foreign corporation within the meaning of § 371 of Title 8, a copy of the certificate of the Secretary of State prescribed by subsection (c) of that section;

(3) A certificate which shall bear the full name(s), including nicknames or aliases, place(s) of employment, including address(es) and phone number(s), social security number, date of birth, driver's license number and a photograph taken within 30 days of application of every director, officer and principal stockholder of the applicant, and each such signature shall be separately witnessed and acknowledged by a notary public of the district of execution; and

(4) The names and addresses of all holders of stock of the applicant as of a date 30 days or less prior to the date of application, which shall be certified as true and correct by an authorized director or officer of said corporation.

(d) Where the applicant is a partnership or other unincorporated association, no license shall be issued unless there is first filed with the Commission, as part of the application for license, a certificate which shall bear the full name(s), including nicknames or aliases, signature(s), place(s) of employment, including address(es) and phone number(s), social security number, date of birth, driver's license number and a photograph taken within 30 days of application of every partner or member, and each such signature shall be separately witnessed and acknowledged by a notary public of the district of execution.

(e) An application for license for the operation of an adult entertainment establishment shall include a certificate stating the full name(s), including nicknames or aliases, signature(s), residential address(es), place(s) of employment, including address(es) and phone number(s), date of birth, social security number, driver's license number and a photograph taken within 30 days of application of the person or persons who shall be responsible for the selection or procurement of all sexually-oriented material for each such establishment and each such signature shall be separately witnessed and acknowledged by a notary public of the district of execution. This subsection shall not be construed to preclude the responsibility of any other person or persons for the procurement of sexually-oriented materials.

(f) Every application for a license for the operation of an adult entertainment establishment or adult-oriented retail establishment, or for renewal thereof, shall be accompanied by a nonrefundable fee in the amount as determined by the Division of Professional Regulation.

(g) No application for a license to operate an adult entertainment establishment or adult-oriented retail establishment shall be received by the Commission within 6 months following the date upon which an application to operate an adult entertainment establishment or adult-oriented retail establishment at the same location has been denied.

(61 Del. Laws, c. 122 § 1; 62 Del. Laws, c. 413 §§ 15-17; 63 Del. Laws, c. 284 § 5; 71 Del. Laws, c. 469 § 1; 77 Del. Laws, c. 168 § 12.)

§ 1614 Form of signature.

No signature of an applicant or licensee, or of any director, officer, principal stockholder or employee of an applicant or licensee, or of any partner associated with an applicant or licensee, which is required to be affixed to any document filed under this chapter, shall be a facsimile signature.

(61 Del. Laws, c. 122 § 1.)

§ 1615 Personal appearance required.

(a) No license shall be issued under this chapter except upon personal appearance of the applicant before a member of the Commission. The applicant shall affix the applicant's signature and Social Security number to the application for license in said member's presence and shall acknowledge under oath that said application for license is the applicant's act and deed and that the facts stated therein are true.

(b) Where the applicant is a corporation, subsection (a) of this section shall be satisfied by the appearance, signature and Social Security number of a director on behalf of the corporation in the same manner. Where the applicant is a partnership or other unincorporated association, subsection (a) of this section shall be satisfied by the appearance, signature and Social Security number of a general partner or member on behalf of the applicant.

(61 Del. Laws, c. 122 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1616 Grounds for denial of license.

The Commission after a hearing shall issue a license for the operation of an adult entertainment establishment or adult-oriented retail

establishment for every applicant who shall have satisfactorily completed and filed an application for license as required by this chapter and shall have paid the required fee, provided that the Commission may refuse to license an applicant if the Commission has substantial evidence that would reasonably support a belief that a substantial objection to the granting of the license has been presented by the community within which the license is to operate, or that the granting of such license is otherwise not in the public interest. For the purposes of this subsection, the term "substantial objection" shall include:

(1) Any objection, or group of objections, presented to the Commission either individually or as a group, by persons who reside within the election district where the license is to operate and all contiguous election districts, sufficient to give the Commission reason to believe that a majority of the residents of the community within which the license is to operate oppose the issuance of the license; or

(2) Any objection, or group of objections, presented to the Commission either individually or as a group, the content of which gives the Commission reason to believe the quality of life of the community within which the license is to operate will be adversely affected by the granting of the license.

(61 Del. Laws, c. 122 § 1; 62 Del. Laws, c. 413 § 18; 77 Del. Laws, c. 168 § 13.)

§ 1617 Grounds for refusal to issue a license; suspension; revocation.

(a) The Commission shall refuse to issue a license to any applicant, and shall revoke any license for the operation of an adult entertainment establishment or adult-oriented retail establishment, for any of the following reasons:

(1) An intentional misrepresentation or omission of any material fact required to be filed pursuant to this chapter;

(2) A transfer of a license in violation of § 1608(a) or § 1610(a) of this title; or the failure to comply with § 1622 or § 1623 of this title;

(3) A conviction of the licensee for any of the following offenses, including conspiracy to commit any of the following offenses: Lewdness, tax evasion, obscenity, prostitution, promoting prostitution, sexual assault, sexual misconduct, indecent exposure, incest, rape or sodomy, in this State or any other state or jurisdiction;

(4) A conviction of any director, officer, principal stockholder, manager, procurer, employee or independent contractor of the licensee or of a partner associated with the licensee for any of the following offenses, including conspiracy to commit any of the following offenses: Lewdness, tax evasion, obscenity, prostitution, promoting prostitution, sexual assault, sexual misconduct, indecent exposure, incest, rape or sodomy, in this State or any other state or jurisdiction, occurring on the licensed premises; or

(5) A conviction of any director, officer, principal stockholder, manager, procurer, employee or independent contractor of the licensee, or of a partner associated with the licensee, for any of the following offenses, including conspiracy to commit any of the following offenses: Lewdness, tax evasion, obscenity, prostitution, promoting prostitution, sexual assault, sexual misconduct, indecent exposure, incest, rape or sodomy, in this State or any other jurisdiction, not occurring on licensed premises, where said director, officer, principal stockholder, manager, procurer, employee or independent contractor, at the time of the conduct constituting the offense, was off the premises at the request or direction or pursuant to the authority of the licensee for the purpose of furthering the business of the licensee.

(b) The person or persons responsible for any intentional misrepresentation or omission of any material fact required to be filed pursuant to this chapter shall be fined $1,000, imprisoned for 30 days, or both. For the purpose of this subsection, a fact is deemed "material" when it could have affected the decision as to whether to grant or deny an application for license.

(c) The license for the operation of an adult entertainment establishment or adult-oriented retail establishment may be suspended by the Commission, for a period not to exceed 6 months, for any violation of this chapter not otherwise punishable by subsection (a) of this section, or § 1616 of this title.

(61 Del. Laws, c. 122 § 1; 62 Del. Laws, c. 413 § 19; 63 Del. Laws, c. 285 §§ 1, 2; 68 Del. Laws, c. 133 §§ 3, 4; 68 Del. Laws, c. 158 §§ 1, 2; 72 Del. Laws, c. 452 § 2; 77 Del. Laws, c. 168 § 14.)

§ 1618 Suspension of license to operate massage establishment or act as massagist; regulations imposing sanctions.

(Repealed by 77 Del. Laws, c. 168 § 15, effective July 16, 2009.)

§ 1619 Hearings.

(a) The Commission shall not suspend or revoke any license under this chapter except after a hearing where the licensee has been given at least 20 days' notice in writing, specifying the reason or reasons for such suspension or revocation and a date of the hearing.

(b) Any hearing pursuant to this section shall be at such time and place as the Commission shall prescribe, but no later than 20 days after the Commission is in receipt of a completed application or 20 days after a licensee has received notice of a proposed suspension or revocation action. Failure of the person or persons to appear after receiving notice shall constitute a waiver of the right to appear in such hearing.

(c) Hearings shall be before a panel of no less than 3 Commissioners and the applicant or licensee shall be permitted the assistance of counsel at the applicant's or licensee's own expense, to present witnesses in the applicant's or licensee's own behalf and to cross-examine witnesses against the applicant or licensee. The proceedings shall be recorded either electronically or stenographically. The Commission shall make specific findings of fact based upon a preponderance of the evidence upon the concurring vote of no fewer than 3 Commissioners. The Commission shall give written notice, accompanied by its findings of fact and conclusions of law, of its action within 10 days of said hearing.

(d) The applicant or licensee shall have the right of appeal to the Superior Court upon filing notice of appeal within 20 days of the

decision of the Commission. Such review shall be on the record and shall not be de novo, and the cost of transportation shall be borne by the appellant.

(61 Del. Laws, c. 122 § 1; 62 Del. Laws, c. 413 § 20; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 168 § 16.)

§ 1620 Criminal background checks of applicants and employees.

An applicant for licensure as an adult entertainment establishment or adult-oriented retail establishment and all persons employed by the adult entertainment establishment or adult-oriented retail establishment shall submit, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

(1) A report of the individual'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 relating to that person.

(2) A report of the individual's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Commission on Adult Entertainment Establishments shall be the screening point for the receipt of said federal criminal history records.

(78 Del. Laws, c. 44 § 80.)

§ 1621 Records; inspection of records.

(a) Every adult entertainment establishment which is licensed under this chapter shall maintain on the premises a record which shall state the name and address of every person, distributor, wholesaler or publisher from whom said establishment has received any sexually-oriented material, and the date such material was received, for purposes of sale, exhibition or dissemination on the premises after the effective date of this chapter.

(b) All records which are required to be maintained pursuant to this section shall be subject to inspection on demand by any peace officer or by the Commission or any member thereof.

(c) Violation of this section shall be punished by a fine of not more than $200 or by imprisonment for not more than 6 months, or both.

(61 Del. Laws, c. 122 § 1; 62 Del. Laws, c. 413 § 21; 77 Del. Laws, c. 168 § 18.)

§ 1622 Change of management of adult entertainment establishment or adult-oriented retail establishment.

(a) An adult entertainment establishment or adult-oriented retail establishment shall notify the Commission in writing within 10 days of any change, containing the full name(s), including nicknames or aliases, residential address(es), place(s) of employment, including address(es) and phone number(s), Social Security number, date of birth, driver's license number and a photograph taken within 30 days of notification, of any change in the identity of the persons identified pursuant to § 1613(b) and (e) of this title.

(b) A violation of this section shall be punishable by a fine in the amount of $1,000.

(61 Del. Laws, c. 122 § 1; 62 Del. Laws, c. 413 § 22; 77 Del. Laws, c. 168 § 19.)

§ 1623 Applicability of chapter.

This chapter shall apply with equal force and effect to businesses and enterprises in existence prior to the effective date of this chapter and to those undertaken thereafter. The information required of all applicants hereunder shall be supplied to the Commission by any business subject to this chapter previously licensed pursuant to § 2905 of Title 30 within 20 days after the effective date of this chapter if such business has more than 90 days remaining on its then existing license.

(61 Del. Laws, c. 122 § 1; 77 Del. Laws, c. 168 § 20.)

§ 1624 Inspections of massage establishments.

(Repealed by 77 Del. Laws, c. 168 § 21, effective July 16, 2009.)

§ 1625 Rules and prohibitions relating to adult entertainment establishments.

(a) No adult entertainment establishment shall be established in a shopping area containing 1 or more parcels of land owned by a common owner or owners and having in such area 4 or more retail stores.

(b) No adult entertainment establishment shall open to do business before 10:00 a.m., Monday through Saturday; and no adult entertainment establishment shall remain open after 10:00 p.m., Monday through Saturday. No adult entertainment establishment shall be open for business on any Sunday or a legal holiday as designated in § 501 of Title 1. This subsection shall not apply to any business which, on or before January 1, 1997, was regulated under both this chapter and Title 4, and which is not an adult book store, conversation parlor or adult motion picture theater as the same are defined in this chapter.

(62 Del. Laws, c. 270 § 2; 63 Del. Laws, c. 69 § 1; 68 Del. Laws, c. 133 §§ 1, 2; 69 Del. Laws, c. 19 § 1; 71 Del. Laws, c. 160 § 1.)

§ 1626 Offenses.

Unless otherwise provided, all violations of this chapter are misdemeanors.

(61 Del. Laws, c. 122 § 1; 62 Del. Laws, c. 270 § 1.)

§ 1627 Jurisdiction.

Exclusive jurisdiction for all criminal violations of this chapter shall be in the Superior Court.
(61 Del. Laws, c. 122 § 1; 62 Del. Laws, c. 270 § 1.)

§ 1628 Words of gender or number.

Unless the context otherwise requires, words denoting the singular number may, and where necessary, shall be construed as denoting the plural number, and words denoting the plural number may, and where necessary, shall be construed as denoting the singular number, and words denoting the masculine gender may, and where necessary, shall be construed as denoting the feminine gender or the neuter gender.
(61 Del. Laws, c. 122 § 1; 62 Del. Laws, c. 270 § 1.)

§ 1629 Presence of minors prohibited; penalties.

(a) It shall be unlawful for an owner, manager, operator, procurer, employee or independent contractor of an adult entertainment establishment to knowingly admit or allow to remain on the premises of such establishment an individual under the age of 18 years.
(b) Any person who violates this section shall be fined in the amount of $1,000 for the first conviction, and in the amount of $5,000 for each subsequent conviction.
(c) It shall be an affirmative defense to a prosecution under this section that the minor presented to the accused identification, with a photograph of such minor affixed thereon, which identification sets forth information which would lead a reasonable person to believe such individual was 18 years of age or older.
(63 Del. Laws, c. 284 § 6; 77 Del. Laws, c. 168 § 22.)

Subchapter II

Adult Entertainment Establishments; Public Nuisances

§ 1631 Statement of purpose; findings.

(a) It is hereby found that there are certain commercial premises, buildings, structures or parts thereof which, by reason of the design and use of such premises, buildings or structures are conducive to the spread of communicable disease to persons frequenting such premises, buildings and structures; and also to the public health, safety and welfare. The General Assembly declares that the health, safety and welfare of all persons in this State should be protected through the application and enforcement of standards regulating such premises, buildings and structures, in order to eliminate the possibility of the spread of, or infection by, communicable diseases.
(b) The sexually transmittable disease of Acquired Immune Deficiency Syndrome, currently found to be irreversible and uniformly fatal, is found to be of particular danger to persons who frequent adult entertainment establishments or other premises, when they are in violation of state law. A high incidence of this and other communicable diseases is found to occur in discernable population groups. The risk factors for obtaining or spreading A.I.D.S. are associated with high-risk sexual conduct. The commercial premises, buildings and structures where persons might place themselves at risk of infection from this disease, or from any other communicable disease facilitated by high-risk sexual conduct, should as public policy be regulated and standards for the prevention of the spread of these communicable diseases should be established for the protection of the public health, safety and welfare.
(68 Del. Laws, c. 134 § 1.)

§ 1632 Definitions.

The following words, terms and phrases, when used in this subchapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
(1) "Booths, stalls or partitioned portions of a room or individual rooms" shall mean:
a. Enclosures specifically offered to persons for a fee, or as an incident to performing high-risk sexual conduct; or
b. Enclosures which are part of a business operated on the premises, which offers movies or other entertainment to be viewed within such enclosure, including enclosures wherein movies or other entertainment is dispensed for a fee.
The words "booths, stalls or partitioned portions of a room or individual rooms" shall not mean enclosures which are private offices used by an owner, manager or other person employed on the premises for attending to the tasks of such person's employment, and which office or enclosure is not held out for use or hire to the public for the purpose of viewing movies or other entertainment for a fee, and which are not open to any persons other than employees.
(2) "Doors, curtains or portal partitions" shall mean full, complete, nontransparent closure devices constructed so that one outside cannot see or view activity taking place within the enclosure.
(3) "Hazardous site" shall mean any commercial premises, building, structure or any part thereof, which is a site of high-risk sexual conduct.
(4) "High-risk sexual conduct" shall mean:
a. Fellatio;
b. Anal intercourse; and/or
c. Vaginal intercourse with persons who engage in sexual acts for exchange of money.

(5) "Open to an adjacent public room so that the area inside is visible to persons in such adjacent room" shall mean either:

a. The absence of any door, curtain or portal partition; or

b. A door or other device which is made of clear, transparent material such as glass, plexiglass or other similar material meeting building code and safety standards, which permits the activity inside the enclosure to be viewed or seen by persons outside the enclosure.

(6) "Secretary" shall mean the Secretary of the Department of Health and Social Services.

(68 Del. Laws, c. 134 § 1.)

§ 1633 Building standards.

(a) No commercial building, structure, premises, part thereof or facilities therein, shall be so constructed, used, designed or operated for the purpose of engaging in, or permitting persons to engage in, sexual activities which include high-risk sexual conduct.

(b) No person shall own, operate, manage, rent, lease or exercise control over any commercial building, structure, premises or portion or part thereof, which contains:

(1) Partitions between subdivisions of a room, portion or part of a building, structure or premises having an aperture which is designed or constructed to facilitate sexual activity between persons on either side of the partition; or

(2) Booths, stalls, or partitioned portions of a room or individual rooms, used for the viewing of motion pictures or other forms of entertainment, having doors, curtains or portal partitions, unless such booths, stalls, partitioned portions of a room or individual rooms so used shall have at least one side open to an adjacent public room so that the area inside is visible to persons in adjacent public rooms. Such areas shall be lighted in a manner that the persons in the areas used for viewing motion pictures or other forms of entertainment are visible from the adjacent public rooms, but such lighting shall not be of such intensity as to prevent the viewing of the motion pictures or other offered entertainment.

(c) The standards set forth in this section shall not apply to buildings, structures and premises which are lawfully operating as hotels, motels, apartment complexes, condominiums or rooming houses.

(68 Del. Laws, c. 134 § 1.)

§ 1634 Department of Health and Social Services.

(a) The Department of Health and Social Services shall administer this subchapter and may adopt rules and regulations to facilitate its administration of this subchapter. In exercising the powers conferred by this or any other section of the Delaware Code or of this chapter relating to sexually related communicable diseases, the Department shall be guided by the most recent instructions, opinions and guidelines of the Center for Disease Control of the United States Department of Health and Human Services as the same relate to the spread of infectious diseases. Any rules or regulations which are adopted by the Department which relate to controlling the spread of sexually related communicable diseases shall also apply in the exercising of its powers authorized under this subchapter.

(b) In order to ascertain the source of certain infections, and reduce the spread of infection, the Secretary and all persons so authorized by the Secretary shall have full power and authority to inspect or cause to be inspected, and to issue orders regarding any commercial building, structure, premises or any part thereof, which may be a site of high-risk sexual conduct. If the Secretary determines that a hazardous site exists, the Secretary may:

(1) Notify the management, owner or tenant of the premises that the Secretary has reasonable belief that such premises, building or structure is a hazardous site; and

(2) Issue warnings to the management, owner or tenant of the premises to remedy those items cited or listed by the Secretary's notice; and

(3) Once such notice and warnings have been issued, the Secretary, or any person designated by the Secretary, shall have the right to proceed in accordance with § 1635 of this title.

(68 Del. Laws, c. 134 § 1.)

§ 1635 Closure of certain public nuisances.

(a) After the Secretary has issued the notice and warning described in § 1634 of this title, the management, owner or tenant shall have 10 days to request a hearing before the Secretary or a hearing officer appointed by the Secretary, for a final determination as to whether or not the site is a hazardous site. If the management, owner or tenant of the premises does not, within 10 days of the notice, request a hearing, the Secretary shall then cause the premises to be posted with a warning advising the public that the premises have been declared a hazardous site. The Secretary shall then issue an order to the management, owner or tenant of such premises to take measures to bring the premises into compliance with § 1633 of this title.

(b) If the management, owner or tenant of the premises requests a hearing, the hearing shall be held before the Secretary or a hearing officer approved by the Secretary at a date not more than 30 days after such request for a hearing. After considering all evidence, the Secretary or the hearing officer, as the case may be, shall make a determination as to whether or not the premises constitute a hazardous site. If the Secretary or hearing officer makes a determination that the premises constitute a hazardous site, the Secretary shall then issue an order and cause the premises, building or structure to be posted with a warning advising the public that the premises have been declared a hazardous site.

(c) If, after 30 days from issuance of the Secretary's order to the management, owner or tenant of the hazardous site, the Secretary

determines that the measures to bring the premises into compliance, and to prevent high-risk sexual conduct have not been undertaken, the Secretary may declare the site to be a public nuisance, and:

(1) Order the abatement of the hazardous site as a public nuisance, which order shall be enforced by mandatory or prohibitory injunction in a court of competent jurisdiction; and/or

(2) May secure a court order for the closure of the premises constituting a hazardous site until the premises, building or structure is in compliance with the standards set forth in § 1633 of this title; or

(3) May, in compliance, with § 310 of Title 16, take such steps as are set forth therein for the abatement of a nuisance.

(d) The management, owner or tenant may, within 30 days of the Secretary's order, apply to the Superior Court for a civil trial de novo of any finding or findings made by the Secretary or hearing officer, and of any charges brought against said management, owner or tenant.

(68 Del. Laws, c. 134 § 1.)

Part

Chapter 17

MEDICAL PRACTICE ACT

Subchapter I

General Provisions

§ 1701 Statement of purpose.

Recognizing that the practice of medicine and the practices of certain other healthcare professions are privileges and not natural rights, it is hereby considered a matter of policy in the interests of public health, safety, and welfare to provide laws covering the granting of those privileges and their subsequent use and control, and to provide regulations to the end that the public health, safety, and welfare are promoted and that the public is properly protected from the unprofessional, improper, unauthorized, or unqualified practice of medicine and practice of certain other healthcare professions and from unprofessional conduct by persons authorized to practice medicine or to practice certain other healthcare professions.

(60 Del. Laws, c. 462 § 1; 75 Del. Laws, c. 141 § 1.)

§ 1702 Definitions.

The following definitions apply to this chapter unless otherwise expressly stated or implied by the context.

(1) "Board" means the Board of Medical Licensure and Discipline.

(2) "Certificate to practice medicine" means the authorization awarded by the Board to a person who has been qualified to practice medicine in this State by meeting the requirements of this chapter.

(3) "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.

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

(5) "Executive Director" means the Executive Director of the Board of Medical Licensure and Discipline.

(6) "Healthcare institution" means a facility or agency licensed, certified, or otherwise authorized by law to provide, in the ordinary course of business, treatments, services, or procedures to maintain, diagnose, or otherwise affect a person's physical or mental condition.

(7) "Medical group" means 1 or more physicians or other health-care practitioners who work together under the name of a professional corporation, a limited liability partnership, or other legal entity.

(8) "Medicine" means the science of restoring or preserving health and includes allopathic medicine and surgery, osteopathic medicine and surgery, and all the respective branches of the foregoing.

(9) "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, 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.

(10) "Physician" means an allopathic doctor of medicine and surgery or a doctor of osteopathic medicine and surgery who is registered and certified to practice medicine pursuant to this chapter.

(11) "Practice of medicine" or "practice medicine" includes:

a. Advertising, holding out to the public, or representing in any manner that one is authorized to practice medicine in this State;

b. Offering or undertaking to prescribe, order, give, or administer any drug or medicine for the use of another person;

c. Offering or undertaking to prevent or to diagnose, correct, and/or treat in any manner or by any means, methods, or devices a disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of another person, including the management of pregnancy and parturition;

d. Offering or undertaking to perform a surgical operation upon another person;

e. Rendering a written or otherwise documented medical opinion concerning the diagnosis or treatment of a person or the actual rendering of treatment to a person within the State by a physician located outside the State as a result of transmission of the person's medical data by electronic or other means from within the State to the physician or to the physician's agent;

f. Rendering a determination of medical necessity or a decision affecting or modifying the diagnosis and/or treatment of a person;

g. Using the designation Doctor, Doctor of Medicine, Doctor of Osteopathy, physician, surgeon, physician and surgeon, Dr., M.D., or D.O., or a similar designation, or any combination thereof, in the conduct of an occupation or profession pertaining to the prevention, diagnosis, or treatment of human disease or condition, unless the designation additionally contains the description of another branch of the healing arts for which one holds a valid license in the State.

For the purposes of this chapter, in order that the full resources of the State are available for the protection of persons using the services of physicians, the act of the practice of medicine occurs where a person is located at the time a physician practices medicine

upon the person.

(12) "Registration" means the entry of a certificate to practice medicine into the records of the Board of Medical Licensure and Discipline pursuant to the regulations of the Board.

(13) "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.

(14) "Substantially related" means the nature of criminal conduct for which a person was convicted has a direct bearing on the person's fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of medicine, the work of a physician assistant, of the practice of respiratory care.

(15) "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.

(16) "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 health-care provider practicing within his or her scope of practice as would be practiced in-person with a patient, legally allowed to practice in the State, while such patient is at an originating site and the health-care provider is at a distant site.

(17) "Unauthorized practice of medicine" means the practice of medicine as defined in paragraph (11) of this section by a person not authorized under this chapter to perform an act set forth in that subsection, unless excepted by § 1703 of this title.

(60 Del. Laws, c. 462 § 1; 61 Del. Laws, c. 68 §§ 2, 3; 62 Del. Laws, c. 90 § 1; 62 Del. Laws, c. 112 § 1; 63 Del. Laws, c. 62 § 1; 65 Del. Laws, c. 490 § 1; 67 Del. Laws, c. 5 § 1; 67 Del. Laws, c. 434 § 1; 68 Del. Laws, c. 147 § 1; 68 Del. Laws, c. 152 § 1; 69 Del. Laws, c. 355 §§ 1, 2, 6; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 283 § 1; 74 Del. Laws, c. 262 § 27; 75 Del. Laws, c. 141 § 1; 77 Del. Laws, c. 319 § 1; 80 Del. Laws, c. 80 § 2.)

§ 1703 Nonapplicability of certain provisions.

Provisions of this chapter pertaining to the practice of medicine do not apply to:

(1) A person providing service in an emergency, where no fee or other consideration is contemplated, charged, or received;

(2) Physicians of any civilian or military branch of the United States government in the discharge of their official duties;

(3) Advanced practice nurses, chiropodists, chiropractors, dental hygienists, dentists, emergency medical technicians, optometrists, pharmacists, physical therapists, physician assistants, podiatrists, practical nurses, professional nurses, psychologists, respiratory care practitioners, veterinarians, or persons engaged in other professions or occupations who are certified, licensed, or registered according to law and are acting within the scope of the activity for which they are certified, licensed, or registered;

(4) A person administering a lawful domestic or family remedy to a member of that person's family;

(5) A person fully certified, licensed, or otherwise authorized to practice medicine in another state of the United States who briefly renders emergency medical treatment or briefly provides critical medical service at the specific lawful direction of a medical institution or federal agency that assumes full responsibility for the treatment or service;

(6) A person who has earned a doctorate degree from a recognized college or university and who uses the designation of "Dr." in connection with that person's name or calls himself or herself "Doctor", except in matters related to medicine or health, in which case the type of doctorate held must be specified;

(7) The mechanical application of glasses;

(8) The practice of massage;

(9) The business of barbering, cosmetology, and manicuring;

(10) The practice of ritual circumcision performed pursuant to the requirements or tenets of a religion; provided, however, that a person certified and registered to practice medicine in this State certifies in writing to the Board that, in the person's opinion, the circumcision practitioner has sufficient knowledge and competence to perform a ritual circumcision according to accepted medical standards;

(11) The practice of healing by spiritual means in accordance with the tenets and practice of a religion by an accredited practitioner of the religion. In the practice of healing by spiritual means, an accredited practitioner may not use medical titles or other designations which imply or designate that the practitioner is certified to practice medicine in this State. A person engaged in the practice of healing by spiritual means may not perform surgical operations or prescribe medications, nor may a pharmacist or pharmacy honor a prescription drawn by the person. A person engaged in the practice of healing by spiritual means must observe all state and federal public health laws;

(12) A physician from another state or jurisdiction who is in this State to testify in a judicial or quasi judicial proceeding;

(13) The performing of delegated medical acts pursuant to subchapter VI of this chapter by a person who is licensed by the Board as a physician assistant;

(14) A person rendering medical, surgical, or other health services who is functioning as a member of an organized emergency program which has been approved by the Board of Medical Licensure and Discipline; who has successfully completed an emergency medical course; and who is acting under the supervision and control of a person certified and registered to practice medicine in this State

or in a state contiguous to this State;

(15) A licensed registered nurse making a pronouncement of death and signing all forms or certificates registering the death as permitted or required by the State, but only if the nurse is an attending nurse caring for a terminally ill patient:

a. In the patient's home or place of residence as part of a hospice program or a certified home healthcare agency program;

b. In a skilled nursing facility;

c. In a residential community associated with a skilled nursing facility;

d. In an extended care facility; or

e. In a hospice;

and only if the attending physician of record has agreed in writing to permit the attending licensed registered nurse to make a pronouncement of death in that case;

(16) The provisions of subchapter II, Chapter 27 of Title 16, the Uniform Anatomical Gift Act;

(17) A medical student who is engaged in training;

(18) A person performing health care acts pursuant to Chapter 94 of Title 16 and § 1921(a) of this title;

(19) Notwithstanding the provisions of § 1702(11)e. of this title, a physician licensed in another state or the District of Columbia may render a written or otherwise documented medical opinion to a person covered by the State Group Health Insurance Program pursuant to any second opinion or diagnosis evaluation program offered by the State Group Health Insurance Program without obtaining a certificate to practice medicine in this State.

(75 Del. Laws, c. 141 § 1; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 378 § 1; 77 Del. Laws, c. 319 § 1; 80 Del. Laws, c. 80 § 2.)

§ 1704 State requirement for services of a physician or surgeon.

If a law, rule, or regulation of this State requires the services or qualifications of a physician or surgeon, the requirement may be met only by a person registered and certified to practice medicine under this chapter.

(60 Del. Laws, c. 462 § 1; 62 Del. Laws, c. 417 § 1; 75 Del. Laws, c. 141 § 2.)

§ 1705 Accreditation of facilities where invasive procedures are performed.

No person licensed under this chapter shall perform any invasive medical procedure, as defined in § 122(3)y. of Title 16, in a facility unless such facility is accredited or licensed in accordance with § 122(3)z. of Title 16. For purposes of this section, the terms "facility" and "invasive medical procedure" shall have the meanings set forth in § 122(3)y. of Title 16.

(78 Del. Laws, c. 80 § 3.)

Subchapter II

The Board of Medical Licensure and Discipline

§ 1710 Composition.

(a) The Board of Medical Licensure and Discipline has the sole authority in this State to issue certificates to practice medicine and is the State's supervisory, regulatory, and disciplinary body for the practice of medicine. The Board also has the sole authority in this State to issue authorizing documents to practice other specified professions or occupations regulated by this chapter, and to supervise, regulate, and discipline members of those professions and occupations.

(b) The Board consists of 16 voting members appointed by the Governor, 8 of whom are persons certified and registered to practice medicine in this State and of whom at least 1 is an osteopathic physician; 4 of whom are persons certified and registered to practice medicine in this State and have their primary place of practicing medicine in New Castle County; 2 of whom are persons certified and registered to practice medicine in this State and have their primary place of practicing medicine in Kent County; 2 of whom are persons certified and registered to practice medicine in this State and have their primary place of practicing medicine in Sussex County; and 7 of whom are public members. The Director of the Division of Public Health shall serve as a voting member of the Board. A public member may not be nor may ever have been certified, licensed, or registered pursuant to this chapter; may not be the spouse of someone certified, licensed, or registered pursuant to this chapter; at the time of appointment may not be a member of the immediate family of someone certified, licensed, or registered pursuant to this chapter.

(c) The Medical Society of Delaware and the Delaware State Osteopathic Medical Society may submit lists of their resident members and any recommendations to the Governor by January 1 of each year under the seal of and signed by the Secretary of the Society to aid the Governor in the appointment of new members to the Board.

(d) An appointment to the Board to succeed a member whose term has expired shall be for a 3-year term. Vacancies occurring for any cause other than expiration of term shall be filled by the Governor for the unexpired term as provided in this subsection.

(e) A physician-appointee to the Board must be a certified and registered physician in good standing, and must have practiced medicine under the laws of this State for a period of not less than 5 years prior to the physician-appointee's appointment to the Board.

(f) The Governor shall fill vacancies on the Board and, after a hearing, may remove a member of the Board for cause due to the member's neglect of the duties required by this chapter, or on the recommendation of the Board, after a hearing, due to the member's unprofessional

or dishonorable conduct.

(g) A member of the Board may not serve more than 3 full, consecutive 3-year terms, which is not diminished by serving an unexpired term. Upon serving 3 full, consecutive 3-year terms, a former member is eligible for reappointment to the Board no earlier than 1 year after the expiration of the last term served on the Board by the former member.

(h)(1) While serving on the Board, a member may not be an officer of any state or local allopathic or osteopathic medical society.

(2) While serving on the Board, a member of the Board may not be a member of the board of directors of a professional review organization.

(j) A member of the Board is eligible to be reimbursed for travel to and from each meeting. However, a member may receive not more than $50 for each meeting attended, and not more than a total of $500 for meetings attended in any calendar year.

(60 Del. Laws, c. 462 § 1; 63 Del. Laws, c. 270 § 1; 64 Del. Laws, c. 327 § 5; 64 Del. Laws, c. 477 § 1; 67 Del. Laws, c. 226 §§ 1-4; 67 Del. Laws, c. 368 § 9; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 102 § 1; 71 Del. Laws, c. 105 § 1; 75 Del. Laws, c. 141 § 1; 75 Del. Laws, c. 358 § 1; 77 Del. Laws, c. 319 §§ 1-4, 12, 13.)

§ 1711 Organization.

(a) The Board annually shall elect from among its members a president, a vice-president, and a secretary, and such other officers as it considers necessary, 2 of whom may be the same person.

(b) The Board may, with the concurrence of the Director of the Division, set job duties for the Board's Executive Director and other necessary staff. The Executive Director may not be a Board member. The Executive Director and other necessary staff are employees of the Division.

(c) The Board, with the approval of the Division, shall establish and maintain an office within this State.

(d) The Board shall meet at least 8 times a year at a public place and at a time as the Board determines, subject to guidelines established or approved by the Division of Professional Regulation.

(e) Unless otherwise provided in this chapter, meetings of the Board are open to the public and may be closed to the public only in accordance with the provisions contained in § 10004 of Title 29.

(60 Del. Laws, c. 462 § 1; 60 Del. Laws, c. 686 § 1; 67 Del. Laws, c. 226 § 5; 75 Del. Laws, c. 141 § 1.)

§ 1712 Quorum.

(a) A quorum for the transaction of business consists of 9 members of the Board entitled to vote. An affirmative vote of at least 5 members of the quorum is required to take any action that the Board has the power to take, unless otherwise expressly provided in this chapter, including the express provisions in subsection (b) of this section.

(b) An affirmative vote of at least 7 members of the Board present and voting at a meeting is required to adopt a regulation which can deprive a physician of the physician's certificate to practice medicine or subject a physician to disciplinary action.

(60 Del. Laws, c. 462 § 1; 61 Del. Laws, c. 68 § 1; 67 Del. Laws, c. 226 § 6; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 141 § 1.)

§ 1713 Powers and duties of the Board.

(a) The Board has the following powers and duties, in addition to other powers and duties set forth elsewhere in this chapter:

(1) To investigate, through the Executive Director, the character of each applicant for a certificate to practice medicine, or for a certificate, license, or other authorizing document to practice any other profession or occupation regulated by this chapter, to determine if the applicant has previously engaged in unprofessional conduct pursuant to § 1731(b) of this title, and to investigate the physical and mental capability of physicians to engage in the practice of medicine, or of members of other professions or occupations regulated by this chapter to engage in the practice of their professions or occupations, with reasonable skill and safety to patients pursuant to § 1731(c) of this title;

(2) To conduct or approve of professional or occupational examinations as it deems necessary and proper to determine the professional or occupational qualifications of each person who applies for a certificate to practice medicine in this State, or who applies for a certificate, license, or other authorizing document to practice any other profession or occupation regulated under this chapter;

(3) To investigate, through the Executive Director, complaints or charges of unprofessional conduct against the holder of a certificate to practice medicine, or such complaints or charges against the holder of any certificate, license, or other authorizing document issued under this chapter;

(4) To investigate, through the Executive Director, complaints and charges of the inability of a person to practice medicine, or to practice any other profession or occupation regulated under this chapter, with reasonable skill or safety to patients due to the person's physical, mental, or emotional illness or incompetence, including but not limited to deterioration through the aging process, or loss of motor skill, or excessive use or abuse of drugs, including alcohol;

(5) To investigate, through the Executive Director, complaints of the unauthorized practice of medicine or the unauthorized practice of any other profession or occupation regulated under this chapter;

(6) To levy fines not to exceed $50,000, and to grant, deny, restrict, revoke, suspend, reinstate, or reissue a certificate to practice medicine or a certificate, license, or other authorizing document to practice any profession or occupation regulated under this chapter;

(7) To issue subpoenas, compel the attendance of witnesses, and administer oaths;

(8) To require the production of and receive information regarding changes in hospital privileges as a result of disciplinary or other

adverse action taken by a hospital, or regarding disciplinary or other adverse action taken by a medical society against any person certified under this chapter to practice medicine;

(9) To reprimand, censure, take other appropriate disciplinary action, or restrict professional or occupational activities with respect to any person certified to practice medicine in this State or any other person certified, licensed, or otherwise authorized to practice a profession or occupation regulated under this chapter;

(10) To take depositions or cause depositions to be taken, as needed in any investigation, hearing, or proceeding;

(11) To hold hearings;

(12) To promulgate rules and regulations not inconsistent with or beyond the scope of this chapter or other laws of this State for carrying out the powers and duties required by this chapter;

(13) By resolution passed by a majority of the members of the Board, to designate 1 or more committees, with each committee to include 1 or more of the members of the Board and such other person or persons as may be appropriate; provided, however, that a committee may not levy a fine, or grant or refuse to grant, restrict, revoke, suspend, reinstate, or reissue a certificate to practice medicine or a certificate, license, or other authorizing document to practice another profession or occupation issued under this chapter;

(14) To designate records of the Board confidential and exempt from public disclosure, in accordance with § 10002 of Title 29;

(15) To designate 3 members of the Board, through the Executive Director, to act as a hearing panel for the purpose of hearing charges of unprofessional conduct as set forth in § 1731(b) of this title or charges of the inability to practice medicine as set forth in § 1731(c) of this title, or for the purpose of making determinations of fact in connection with the temporary suspension of a certificate to practice medicine pursuant to § 1738 of this title, or for necessary purposes relating to disciplinary or other action against the holder of a certificate, license, or other authorizing document issued under this chapter;

(16) To designate, through the Executive Director, any person qualified by relevant experience as an examiner for the purpose of hearing any alleged charges of the inability to practice medicine as set forth in § 1731(c) of this title, or for the purpose of making determinations of fact in connection with the temporary suspension of a certificate to practice medicine pursuant to § 1738 of this title, or for necessary purposes relating to disciplinary or other action against the holder of a certificate, license, or other authorizing document issued under this chapter;

(17) To perform duties regarding emergency medical services systems and paramedic services set forth in Chapters 97 and 98 of Title 16.

(b) A member of the Board or a member of any committee designated by the Board pursuant to paragraph (a)(13) of this section is immune from claim, suit, liability, damages, or any other recourse, civil or criminal, arising from any act or omission under the authority of this chapter so long as the member acted in good faith and without gross or wanton negligence, with good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant.

(c) A member of the Board may not discriminate, by reason of gender, race, color, creed, religion, age, disability, or national origin, against a person holding or applying for a certificate to practice medicine, or for an authorizing document to practice another occupation or profession pursuant to this chapter.

(d) The Board shall provide by rule or regulation for continuing education for persons certified to practice medicine or other professions or occupations pursuant to this chapter.

(e) The Board shall promulgate regulations specifically identifying those crimes which are substantially related to the practice of medicine, the work of a physician assistant, or the practice of respiratory care.

(f) The Board shall promulgate rules and regulations establishing guidelines for the imposition of disciplinary sanctions against persons certified or licensed to practice medicine or other professions or occupations regulated by this chapter.

(75 Del. Laws, c. 141 § 1; 77 Del. Laws, c. 321 § 1; 77 Del. Laws, c. 325 § 14; 77 Del. Laws, c. 370 § 1.)

§ 1714 Fees.

The amount of a fee imposed under this chapter by the Division of Professional Regulation must approximate and reasonably reflect the reasonable projected costs of services or activities provided by the Board, as well as the proportional expenses incurred by the Division for services or activities provided on behalf of the Board. A separate fee may be charged for each service or activity, but a fee may not be charged for a purpose not specified in this chapter. The application fee for a certificate to practice medicine, or for a certificate, license, or other authorizing document to practice any other profession or occupation regulated by this chapter, may not be combined with any other fee or charge. At the beginning of each licensure biennium, the Division, or another State agency acting in its behalf, shall compute and set the fee for each separate service or activity that the Board or the Division expects to provide during that licensure biennium.

(60 Del. Laws, c. 462 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 102 § 2; 75 Del. Laws, c. 141 § 1.)

§ 1715 Records.

The Division of Professional Regulation shall keep a register of all approved applications for certificates to practice medicine, approved applications for authorization to practice any profession or occupation regulated under this chapter, for registrations and renewal of registrations of certificates to practice medicine, for licenses and renewals of licenses to practice as physician assistants, for licenses and renewals of licenses to practice respiratory therapy, and for all other certificates, licenses, registrations, or other authorizing documents to practice any profession or occupation regulated under this chapter and their renewals, granted by the Board. In addition, the Director shall

maintain 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 documents as the Board determines. Records of Board proceedings kept by the Division are prima facie evidence of the proceedings of the Board. An applicant, certificate holder, registrant, or licensee must notify the Division of Professional Regulation of a change in his or her address or in any other information on his or her application, registration, or renewal form within 15 days of the change.

(71 Del. Laws, c. 102 § 3; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 141 § 2.)

Subchapter III

Certificate to Practice Medicine; Registration of Certificate; Renewal of Registration

§ 1720 Certification requirements to practice medicine.

(a) A person may not practice medicine in this State unless the person:

(1) Has a certificate to practice medicine issued by the Board of Medical Licensure and Discipline;

(2) Registers the certificate to practice medicine and renews it biennially; and

(3) If required, has an occupational license pursuant to Part III of Title 30.

(b) To receive a certificate to practice medicine in this State, an applicant for a certificate must:

(1) Have a working ability to read, write, speak, understand, and be understood in the English language;

(2) Possess the following educational credentials:

a. A degree of Doctor of Medicine or Doctor of Osteopathy, or an equivalent degree, from a legally incorporated medical college or school located in the United States or Canada, which medical college or school has been approved by the appropriate accrediting body of the American Medical Association or the American Osteopathic Association; or

b. A degree of Doctor of Medicine or Doctor of Osteopathy, or an equivalent degree, from a legally incorporated medical college or school located in a country other than the United States or Canada, medical college or school which is listed in the International Medical Education Directory (IMED), along with documentary proof that the applicant successfully passed the examination administered by the Educational Commission for Foreign Medical Graduates and the Federation of State Medical Boards; or

c. A degree of Doctor of Medicine or Doctor of Osteopathy, or an equivalent degree, from a legally incorporated medical college or school located in a country other than the United States or Canada, which medical college or school is not listed in the International Medical Education Directory (IMED), but the applicant has completed 3 years of postgraduate training in a residency program which has been approved by the Accreditation Council for Graduate Medical Education and has successfully passed the examination administered by the Educational Commission for Foreign Medical Graduates and the Federation of State Medical Boards;

d. Documentary proof that all clinical rotations served by the applicant in the United States or Canada as part of training received in a medical college or school were conducted in institutions that are formal parts, such as a primary hospital, of a medical college or school or that have formal affiliation with a medical college or school approved by the appropriate accrediting body of the American Medical Association or the American Osteopathic Association, or that the clinical rotations were served in hospitals which had, at the time the rotations were served, a residency training program approved by the Accreditation Council for Graduate Medical Education in the subject matter of the clinical rotation;

(3) Have satisfactorily completed an internship or equivalent training in an institution, which internship or equivalent training and institution are approved by the Board;

(4) Submit to the Board a sworn or affirmed statement that the applicant:

a. Has not been convicted of or has not admitted under oath to having committed a crime substantially related to the practice of medicine;

b. Has not been professionally penalized for or convicted of drug addiction;

c. Has not had the applicant's license or certificate or other authorizing document to practice allopathic medicine or osteopathic medicine in any other state, territory, or foreign nation revoked, suspended, restricted, limited, or subjected to disciplinary or other action by the certifying or licensing authority thereof, or an application to practice denied;

d. Has not been removed, suspended, expelled, or disciplined by any professional medical association or society when the removal, suspension, expulsion, or discipline was based upon what the association or society found to be unprofessional conduct, professional incompetence, or professional malpractice;

e. Has not been disciplined by a licensed hospital or by the medical staff of the hospital, including the removal, suspension, or limitation of hospital privileges, the nonrenewal of privileges for cause, the resignation of privileges under pressure of investigation or other disciplinary action, if the discipline was based upon what the hospital or medical staff found to be unprofessional conduct, professional incompetence, or professional malpractice;

f. Has not engaged in the practice of medicine without a certificate or license or other authorization to practice medicine;

g. Has not unlawfully prescribed narcotic drugs;

h. Has not wilfully violated the confidence of a patient, except under legal requirement;

i. Has not been professionally penalized or convicted of fraud;

j. Has reviewed and acknowledges the applicant's own duties to report unprofessional conduct under the Medical Practice Act and to report child abuse or neglect under § 903 of Title 16, or any successors thereto.

(5) Submit to the Board a sworn or affirmed statement that the applicant is, at the time of application, physically and mentally capable of engaging in the practice of medicine according to generally accepted standards, and submit to such examination as the Board may deem necessary to determine the applicant's capability;

(6) Submit, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

a. 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 relating to that person.

b. A report of the applicant's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Board of Medical Licensure and Discipline shall be the screening point for the receipt of said federal criminal history records.

An applicant may not be certified to practice medicine until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be certified by the Board unless a waiver is granted pursuant to subsection (e) of this section. The State Bureau of Identification may release any subsequent criminal history to the Board.

(7) Pass the professional examination pursuant to § 1721 of this title, unless excepted under § 1722 of this title or waived as provided in subsection (e) of this section.

(8) [Repealed.]

(c) An applicant for a certificate to practice medicine in this State must submit to the Board an application in writing in such form as the Board requires.

(d) An applicant for a certificate to practice medicine in this State must fulfill the requirements of subsection (b) of this section in accord with the form and manner required by the Board in its rules and regulations. The applicant must also pay the application fee set by the Division, and, unless an exception in § 1722 of this title applies, the applicant must pass a professional examination pursuant to § 1721 of this title.

(e) The Board, by the affirmative vote of 9 of its members, may waive any of the requirements of this section if it finds all of the following by clear and convincing evidence:

(1) The applicant's education, training, qualifications, and conduct have been sufficient to overcome the deficiency or deficiencies in meeting the requirements of this section;

(2) The applicant is capable of practicing medicine in a competent and professional manner;

(3) The granting of the waiver will not endanger the public health, safety, or welfare;

(4) For waiver of a felony conviction other than a conviction of a felony sexual offense, 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service, although waiver shall not be granted to any person who is convicted of a felony sexual offense; and

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

(f) In determining if an applicant qualifies for certification to practice medicine, the Board may rely upon relevant decisions made by the appropriate authority in other states and may not permit a collateral attack upon those decisions.

(g) Notwithstanding any language to the contrary, the Board shall not issue a license to an applicant until first verifying that an applicant is not listed on either the Adult Abuse Registry or the Child Protection Registry as being substantiated for abuse or neglect.

(h) An applicant for initial or renewal certification to practice medicine in this State must disclose whether the applicant has ever been the subject of an investigation by any licensing authority, medical association, hospital or other healthcare institution. The Board may require an applicant to provide sufficient documentation to enable the Board to determine whether investigation or a diagnostic mental or physical examination is necessary to determine the applicant's qualifications for certification to practice medicine in this State. Any such investigation or diagnostic mental or physical examination shall be conducted pursuant to § 1732 of this title.

(i) All individuals licensed to practice under this chapter shall be required to be fingerprinted by the State Bureau of Identification, at the licensee's expense, for the purposes of performing subsequent criminal background checks. Licensees who received their initial license to practice on or before July 1, 2007, shall submit by January 1, 2012, at the applicant's expense, fingerprints and other necessary information in order to obtain a criminal background check.

(20 Del. Laws, c. 40 § 13; 24 Del. Laws, c. 139 § 1; Code 1915 § 846; 33 Del. Laws, c. 58 § 1; Code 1935 § 925; 41 Del. Laws, c. 86 § 1; 24 Del. C. 1953 §§ 1732, 1733; 50 Del. Laws, c. 369 § 1; 52 Del. Laws, c. 323 §§ 1, 2; 58 Del. Laws, c. 511 § 53; 59 Del. Laws, c. 55 §§ 1-3; 60 Del. Laws, c. 462 § 1; 64 Del. Laws, c. 477 § 3; 67 Del. Laws, c. 226 § 7; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 102 § 4; 74 Del. Laws, c. 262 § 28; 75 Del. Laws, c. 141 § 1; 75 Del. Laws, c. 399 § 1; 75 Del. Laws, c. 436 § 13; 77 Del. Laws, c. 319 § 1; 77 Del. Laws, c. 323 § 1; 77 Del. Laws, c. 324 §§ 1, 2; 77 Del. Laws, c. 460 § 4; 78 Del. Laws, c. 44 §§ 16, 17; 79 Del. Laws, c. 194 § 1; 79 Del. Laws, c. 277 § 4; 80 Del. Laws, c. 86 § 1.)

§ 1721 Professional examination.

(a) The Board shall require written and/or clinical professional examination of each applicant for a certificate to practice medicine in accordance with the Board's rules and regulations.

(b) A professional examination issued pursuant to this section must be in the English language, must be comprehensive in character, and must be designed to determine an applicant's fitness to practice medicine. It must cover those general subjects and topics, a knowledge of which is commonly and generally required of candidates for the degree of Doctor of Medicine or Doctor of Osteopathy conferred by approved medical colleges or schools in the United States.

(c) The Board shall include in its rules and regulations the number of times and the conditions under which an applicant who has failed 1 or more professional examinations conducted pursuant to this section may again apply for a certificate to practice medicine under this chapter.

(20 Del. Laws, c. 40 § 11; Code 1915 § 844; Code 1935 § 923; 24 Del. C. 1953 § 1735; 50 Del. Laws, c. 369 § 1; 60 Del. Laws, c. 462 § 1; 75 Del. Laws, c. 141 § 1.)

§ 1722 Waiver of professional examination for temporary certification, for hospital or institution staff, for physicians licensed in another jurisdiction, and for physicians passing an alternative exam.

(a) The Board may adopt rules and regulations that waive the professional examination required pursuant to § 1721 of this title for the issuance of a certificate to practice medicine in the following cases:

(1) The applicant for whom the examination is to be waived is licensed, certified, registered, or otherwise legally qualified to practice medicine in another state of the United States or in another jurisdiction, and seeks a temporary certificate to practice medicine for not less than 2 weeks nor more than 3 months for the purpose of taking charge of the practice of a person certified and registered to practice medicine in this State during the person's temporary illness or absence from this State. The Board may, in its discretion, extend a temporary certificate to practice medicine pursuant to this paragraph for an additional 3 months, but not longer. A temporary certificate may be issued pursuant to this paragraph to an applicant by the Board upon the written request of a person certified and registered to practice medicine in this State and upon the payment of a fee established for such purpose by the Division of Professional Regulation. The written request must contain an affirmation that the purpose of the temporary certificate is to allow the applicant to take charge of the practice of a person certified and registered to practice medicine in this State during the person's temporary illness or absence from the State;

(2) The applicant for whom the examination is to be waived:

a. Is employed in this State as an intern, resident, house physician, or fellow in a hospital accredited by the Joint Commission on the Accreditation of Hospitals or by the American Osteopathic Hospital Association; or

b. Is a staff physician employed in a governmental institution in this State and is applying for a certificate to practice medicine for a period of time not to exceed the length of time of employment in the hospital or governmental institution.

A certificate issued pursuant to this paragraph is subject to yearly renewal and restricts the applicant to practice only in the hospital or institution where the applicant is employed;

(3) The applicant for whom the examination is to be waived is licensed, certified, registered, or otherwise legally authorized to practice medicine by competent authority in any other of the United States or in any other jurisdiction approved by the Board.

(b) When a certificate to practice medicine is issued to an applicant pursuant to this section and the applicant registers with the Board and obtains an occupational license pursuant to Chapter 23 of Title 30, the applicant may practice medicine in this State, but only for the time and only under the conditions, if any, specified in the certificate.

(60 Del. Laws, c. 462 § 1; 71 Del. Laws, c. 102 § 6; 75 Del. Laws, c. 141 § 1.)

§ 1723 Issuance of certificate to practice; registration and registration renewal; reactivating inactive status.

(a) The Board shall issue a certificate to practice medicine in this State and register the certificate for an applicant who meets the requirements of this chapter.

(b) The Division shall keep a current register of all persons certified to practice medicine in this State. Each such person shall inform the Division of any change of current address and telephone number within 15 days of the change.

(c) The registration of a certificate to practice medicine must be renewed biennially, through a procedure determined by the Division. The procedure must include payment of an appropriate registration renewal fee; submission of a renewal form provided by the Division; submission of the materials required by § 1720(b)(4), (b)(5), and (g), of this title unless waived pursuant to § 1720(e) of this title; proof that the certified person has met the continuing medical education requirements established by the Board; and the period of time within which a person certified to practice medicine in this State may renew the certified person's registration without penalty, notwithstanding the fact that the person failed to renew the person's registration on or before the renewal date; and the penalty for failure to renew registration in a timely manner. The procedure must also include evidence of completion of training on the recognition of child sexual and physical abuse, exploitation and domestic violence, and the reporting obligations under the Medical Practice Act and § 903 of Title 16, and any successors thereto, and any other mandatory reporting obligations required by the Board. Such trainings shall be coordinated under §§ 911 and 931(b)(4) of Title 16 to ensure consistent trainings across disciplines.

(d) The Board may establish, by class and not by individual, requirements for continuing education or reexamination, or both, for a person issued a certificate to practice medicine, or issued any authorized document to practice another profession or occupation regulated under this chapter, who is on inactive status and wishes to reactivate that person's status.

(e) The Division shall review the criminal history of all individuals licensed to practice medicine on a periodic basis, at a minimum, once every 6 months.

(20 Del. Laws, c. 40 § 12; Code 1915 § 845; 33 Del. Laws, c. 58 § 1; Code 1935 § 924; 41 Del. Laws, c. 86 § 1; 42 Del. Laws, c. 89 § 2; 45 Del. Laws, c. 89 § 1; 24 Del. C. 1953 § 1737; 53 Del. Laws, c. 108 § 17; 60 Del. Laws, c. 462 § 1; 62 Del. Laws, c. 417 § 2; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 102 § 5; 74 Del. Laws, c. 349 § 1; 75 Del. Laws, c. 141 § 1; 77 Del. Laws, c. 323 § 2; 77 Del. Laws, c. 324 §§ 3, 4; 80 Del. Laws, c. 187 § 8.)

§ 1724 Temporary emergency certificate during a public emergency.

The Board may issue a temporary emergency certificate to practice medicine for a period of time not to exceed 12 months, but renewable at the discretion of the Board, to a person whom it finds qualified to practice medicine in this State. A temporary emergency certificate may be issued only during a public emergency declared by the President of the United States or the Governor of the State. When an occupational license is issued by the Director of Revenue pursuant to Chapter 23 of Title 30, if such license is required, and the temporary emergency certificate is registered by the Board, the holder of the temporary emergency certificate may, during the term specified on the certificate unless sooner revoked, practice medicine in this State, subject to all the laws of this State and to the regulations and restrictions which the Board may adopt, including, but not limited to, location limitations and limitations on the nature of the practice of medicine within the State.

(24 Del. C. 1953 § 1744; 49 Del. Laws, c. 158 § 1; 50 Del. Laws, c. 369 § 1; 52 Del. Laws, c. 323 § 9; 60 Del. Laws, c. 462 § 1; 61 Del. Laws, c. 68 §§ 4, 5; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 102 § 7; 75 Del. Laws, c. 141 § 1.)

§ 1725 Temporary certificate pending certification.

The Executive Director of the Board, with the approval of a physician member of the Board, may issue a temporary certificate pending certification to practice medicine for a period of time not to exceed 3 months to a person otherwise qualified to practice medicine who has applied for certification to practice medicine. When an occupational license is issued by the Director of Revenue pursuant to Chapter 23 of Title 30, if such license is required, and the temporary certificate pending certification is registered by the Board, the holder of the temporary certificate pending certification may, during the time specified on the certificate unless sooner revoked, practice medicine in this State, subject to all the laws of this State and to the regulations and restrictions which the Board may adopt, including, but not limited to, location limitations and limitations on the nature of the practice of medicine within the State.

(24 Del. C. 1953 § 1744; 49 Del. Laws, c. 158 § 1; 50 Del. Laws, c. 369 § 1; 52 Del. Laws, c. 323 § 9; 60 Del. Laws, c. 462 § 1; 61 Del. Laws, c. 68 §§ 4, 5; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 102 § 7; 75 Del. Laws, c. 141 § 1.)

§ 1726 Notice of certification required.

The Executive Director of the Board shall, immediately upon issuing a certificate to practice medicine pursuant to § 1722, § 1723, or § 1724 of this title, make available to the director of the Division of Public Health of the Department of Health and Social Services the full name and address of the person to whom the certificate was issued and the date thereof, and, in the case of the issuance of a certificate pursuant to § 1722 or § 1724 of this title, the length of time for which the certificate authorizes the practice of medicine and the limitation on the authorization, if any.

(30 Del. Laws, c. 58; Code 1915 § 847A; Code 1935 § 927; 24 Del. C. 1953 § 1738; 50 Del. Laws, c. 369 § 1; 52 Del. Laws, c. 323 § 3; 60 Del. Laws, c. 462 § 1; 75 Del. Laws, c. 141 § 1.)

§ 1727 Consulting physicians from other states.

This chapter does not prevent a person who is certified, licensed, or otherwise authorized to practice medicine in another state or in a foreign country from engaging in a consultation with a person certified and registered to practice medicine in this State.

(20 Del. Laws, c. 40 § 16; Code 1915 § 851; Code 1935 § 932; 24 Del. C. 1953 § 1743; 50 Del. Laws, c. 369 § 1; 60 Del. Laws, c. 462 § 1; 63 Del. Laws, c. 9 § 1; 75 Del. Laws, c. 141 § 1.)

§ 1728 Medical personnel for visiting sports teams.

(a) Notwithstanding any other provision of this chapter or other law, a physician who is certified, licensed, or otherwise authorized to practice medicine in another state or country shall be exempt from the certification and registration requirements of this chapter while practicing medicine in this State if all of the following conditions are met:

(1) The physician has a written or oral agreement with a sports team to provide general or emergency care to the team members, coaching staff, and families traveling with the team for a specific sporting event to take place in this State; and

(2) The physician may not practice medicine with respect to any person residing or present in this State other that a person described in paragraph (a)(1) of this section, unless providing medical care pursuant to § 6801 of Title 16;

(b) The exemption shall remain in force while the physician is traveling with the team, but shall be no longer than 10 days per individual sporting event. The Executive Director of the Board may grant a physician additional time for exemption, up to 20 additional days per sporting event, upon prior request by the physician. The total number of days a physician may be exempt, including additional time granted upon request, may not exceed 30 days per sporting event.

(c) A physician exempt from the certification and licensure requirements under this section is not authorized to practice medicine at any health care facility, as defined in Chapter 93 of Title 16, in the State.

(79 Del. Laws, c. 137 § 1.)

§ 1729 Home health-care orders from out-of-state physicians.

(a) Notwithstanding any other provision of this chapter or other law, a physician who is certified, licensed, or otherwise authorized to practice medicine in another state shall be exempt from the certification and registration requirements of this chapter in order to prescribe home health-care services provided by a home health-care agency licensed pursuant to Title 16 to a patient who resides in this State.

(b) The prescription of home health-care services under this section must first be made pursuant to an in-person physical examination of the patient performed within the jurisdictional boundaries of the state in which the prescribing physician is certified, licensed or otherwise authorized to practice medicine.

(79 Del. Laws, c. 338 § 1.)

Subchapter IV

Disciplinary Regulation; Proceedings of the Board

§ 1730 Duty to report unprofessional conduct and inability to practice medicine.

(a) Every person to whom a certificate to practice medicine is issued has a duty to report to the Board if that person is treating professionally another person who possesses a certificate to practice medicine for a condition defined in § 1731(c) of this title, if, in the reporting person's opinion, the person being treated may be unable to practice medicine with reasonable skill or safety. The reporting person shall provide the Board with a written report which includes the name and address of the person being treated, the exact condition being treated, and the reporting person's opinion of whether or not action should be taken under § 1731 of this title. A person reporting to the Board or testifying in any proceeding as a result of making a report pursuant to this section is immune from claim, suit, liability, damages, or any other recourse, civil or criminal, so long as the person acted in good faith and without gross or wanton negligence; good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant.

(b)(1) Every person to whom a certificate to practice medicine is issued and health care facility as defined in § 1740 of this title has a duty to report to the Board within 30 days:

a. Any partial or full removal of hospital privileges based on adverse events, unprofessional conduct or competency issues; and

b. Any disciplinary action taken by a medical society against that person; and

c. Any reasonably substantiated incidents involving violence, threat of violence, abuse, or neglect by a person toward any other person.

(2) Every person certified to practice medicine in this State shall report to the Board within 30 days any civil or criminal investigation in any jurisdiction which concerns that person's certification or license or other authorization to practice medicine. The Board may require an applicant to provide sufficient documentation to enable the Board to determine whether to investigate, pursuant to § 1732 of this title, or whether there are grounds for discipline under § 1731(b) of this title.

(c) Every person to whom a certificate to practice medicine is issued has a duty to report to the Board, within 60 days, all information concerning medical malpractice claims settled or adjudicated to final judgment, as provided in Chapter 68 of Title 18, and, within 30 days, all information required to be reported under § 1731A(f) of this title.

(d) Every person to whom a certificate to practice medicine is issued has a duty to report, within 30 days of the day each such person becomes aware, of the existence of a report to the Department of Services for Children, Youth and Their Families under Chapter 9 of Title 16 against that person concerning child abuse or neglect or a report to the Division of Long-Term Care Residents Protection under Chapter 85 of Title 11 against that person concerning adult abuse, neglect, mistreatment, or financial exploitation.

(60 Del. Laws, c. 462 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 102 §§ 8, 9; 75 Del. Laws, c. 141 § 1; 77 Del. Laws, c. 320 § 9; 77 Del. Laws, c. 325 § 1; 77 Del. Laws, c. 460 § 2; 78 Del. Laws, c. 101 § 1.)

§ 1731 Unprofessional conduct and inability to practice medicine.

(a) A person to whom a certificate to practice medicine in this State has been issued may be disciplined by the Board for unprofessional conduct, as defined in subsection (b) of this section, by means of levying a fine, or by the restriction, suspension, or revocation, either permanent or temporary, of that person's certificate to practice medicine, or by other appropriate action, which may include a requirement that a person who is disciplined must complete specified continuing education courses. The Board shall permanently revoke the certificate to practice medicine in this State of a person who is convicted of a felony sexual offense.

(b) "Unprofessional conduct" includes but is not limited to any of the following acts or omissions:

(1) The use of any false, fraudulent, or forged statement or document or the use of any fraudulent, deceitful, dishonest, or unethical practice in connection with a certification, registration, or licensing requirement of this chapter, or in connection with the practice of medicine or other profession or occupation regulated under this chapter;

(2) Conduct that would constitute a crime substantially related to the practice of medicine;

(3) Any dishonorable, unethical, or other conduct likely to deceive, defraud, or harm the public;

(4) The practice of medicine or other profession or occupation regulated under this chapter under a false or assumed name;

(5) The practice of medicine or other profession or occupation regulated under this chapter without a certificate or other authorizing document or renewal of such document, unless otherwise authorized by this chapter;

(6) The use, distribution, or issuance of a prescription for a dangerous or narcotic drug, other than for therapeutic or diagnostic purposes;

(7) Advertising of the practice of medicine or other profession or occupation regulated under this chapter in an unethical or unprofessional manner;

(8) Solicitation or acceptance of a fee from a patient or other person by fraudulent representation that a manifestly incurable condition, as determined with reasonable medical certainty, can be permanently cured;

(9) Knowing or intentional performance of an act which, unless authorized by this chapter, assists an unauthorized person to practice medicine or other profession or occupation regulated under this chapter;

(10) The failure to provide adequate supervision to an individual working under the supervision of a person who is certified and registered to practice medicine;

(11) Misconduct, including but not limited to sexual misconduct, incompetence, or gross negligence or pattern of negligence in the practice of medicine or other profession or occupation regulated under this chapter;

(12) Wilful violation of the confidential relationship with or confidential communications of a patient;

(13) Wilful failure to report to the Board as required by § 1730(a) of this title;

(14) Wilful failure to report to the Board as required by § 1730(b) of this title;

(15) Wilful failure to report to the Board as required by § 1730(c) of this title;

(16) Unjustified failure upon request to divulge information relevant to the authorization or competence of a person to practice medicine or other profession or occupation regulated under this chapter to the Board, to any committee thereof, to the Executive Director, or to anyone designated by the Executive Director to request such information;

(17) The violation of a provision of this chapter or the violation of an order or regulation of the Board related to medical procedures or to the procedures of other professions or occupations regulated under this chapter, the violation of which more probably than not will harm or injure the public or an individual;

(18) Charging a grossly exorbitant fee for professional or occupational services rendered;

(19) Suspension or revocation of a certificate to practice medicine or of the authorizing document to practice another profession or occupation regulated under this chapter, or other disciplinary action taken by the regulatory authority in another state or territory. In making its determination, the Board may rely upon decisions made by the appropriate authorities in other states and may not permit a collateral attack on those decisions;

(20) Signing the death certificate of a person prior to the actual time of death of the person;

(21) A violation of § 1764A of this title;

(22) Wilful failure to report to the Board when required by § 1731A of this title; and

(23) Wilful failure to comply with § 1769B of this title.

(c) A certificate to practice medicine or an authorizing document to practice another profession or occupation regulated under this chapter is subject to restriction, suspension, or revocation, either temporarily or permanently, in case of the inability of the holder to practice medicine or other profession or occupation with reasonable skill or safety to patients by reason of 1 or more of the following:

(1) Mental illness or mental incompetence;

(2) Physical illness, including, but not limited to, deterioration through the aging process or loss of motor skill;

(3) Excessive use or abuse of drugs, including alcohol.

(d) The Board may establish, by class and not by individual, requirements for continuing education and/or reexamination as a condition for renewal of registration and for recertification to practice medicine or other profession or occupation regulated under this chapter, or as a condition to continue to practice medicine or other profession or occupation regulated under this chapter after disciplinary sanctions are imposed or after inability to practice with reasonable skill or safety to patients has been determined.

(e) A person who files a complaint with the Board or any of its members, the Executive Director, or the Division, or who provides information to the Board or any of its members, the Executive Director, or the Division regarding a complaint, or who testifies as a witness at a hearing before the Board or any of its hearing panels or committees concerning unprofessional conduct by a person certified to practice medicine or other profession or occupation regulated under this chapter in this State or concerning the inability of a person certified to practice medicine or other profession or occupation regulated under this chapter for the reasons set forth in subsection (c) of this section, may not be held liable in any cause of action arising out of the filing of the complaint, the providing of information, or the giving of testimony, provided that the person does so in good faith and without gross or wanton negligence.

(f) The provisions of this section apply to any person to whom a certificate, license, or other authorizing document to practice a profession or occupation has been issued pursuant to this chapter.

(60 Del. Laws, c. 462 § 1; 62 Del. Laws, c. 90 § 3; 63 Del. Laws, c. 252 § 1; 64 Del. Laws, c. 477 § 4; 67 Del. Laws, c. 226 §§ 10, 11; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 102 §§ 12-14; 74 Del. Laws, c. 213 § 1; 74 Del. Laws, c. 262 § 30; 75 Del. Laws, c. 141 § 1; 75 Del. Laws, c. 161 § 3; 77 Del. Laws, c. 322 § 1; 77 Del. Laws, c. 325 §§ 3-6.)

§ 1731A Duty to report.

(a) Any person may report to the Board information that the reporting person reasonably believes indicates that a person certified and registered to practice medicine in this State is or may be guilty of unprofessional conduct or may be unable to practice medicine with reasonable skill or safety to patients by reason of mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive use or abuse of drugs, including alcohol. The following have an affirmative duty to report, and must report, such information to the Board in writing within 30 days of becoming aware of the information:

(1) All persons certified to practice medicine under this chapter;

(2) All certified, registered, or licensed healthcare providers;

(3) The Medical Society of Delaware;

(4) All healthcare institutions in the State;

(5) All state agencies other than law-enforcement agencies;

(6) All law-enforcement agencies in the State, except that such agencies are required to report only new or pending investigations of alleged criminal conduct specified in § 1731(b)(2) of this title, and are further required to report within 30 days of the close of a criminal investigation or the arrest of a person licensed under this chapter.

(b) If a person certified to practice medicine in this State voluntarily resigns from the staff of a healthcare institution, or voluntarily limits that person's own staff privileges at a healthcare institution, or fails to reapply for hospital or staff privileges at a healthcare institution, the healthcare institution and the person shall promptly report in writing such conduct to the Board if the conduct occurs while the person is under formal or informal investigation by the institution or a committee thereof for any reason related to possible unprofessional conduct or possible inability to practice medicine with reasonable skill or safety to patients by reason of mental illness or mental incompetence; physical illness; or excessive use or abuse of drugs, pursuant to § 1731 of this title.

(c) Upon receiving a report pursuant to subsection (a) or (b) of this section, or on its own motion, the Board shall investigate any evidence which appears to show that the person reported is or may be guilty of unprofessional conduct or may be unable to practice medicine with reasonable skill or safety to patients by reason of mental illness or mental incompetence; physical illness; or excessive use or abuse of drugs, pursuant to § 1731 of this title.

(d) When an investigation is necessary pursuant to subsection (c) of this section, the Executive Director, with the approval of the assisting Board members who must be or must include a physician and a public member when the investigation relates to the quality of medical care provided by a physician or to the competency of a physician to engage safely in the practice of medicine, has the authority to inquire from any organization which undertakes physician peer review or physician quality assurance evaluations whether or not there has been any peer review, quality assurance, or similar process instituted involving the physician under investigation. The Executive Director may, by subpoena, compel the production of a list of the medical records reviewed during the peer review process, a list of the quality assurance indicators, and/or a list of other issues which were the basis for the peer review, quality assurance, or similar process. The lists produced must identify each item with a unique medical identifier to replace the patient's name and specific identifying information. If necessary, after receiving the lists the Executive Director may, by subpoena, compel the production of the relevant medical records. However, the individual, hospital, organization, or institution shall remove the patient's name and specific identifying information from the records prior to complying with the subpoena. If, after having reviewed the records produced, an assisting physician Board member and an assisting public Board member consider it necessary, the Executive Director may, by subpoena, compel the production of the patient's name. The Board shall take reasonable steps to protect the identity of the patient in so far as such protection does not, in the opinion of the Board, adversely affect the Board's ability to protect the public interest. An individual, hospital, organization, or institution that furnishes information to the Board pursuant to a subpoena issued pursuant to this subchapter with respect to any patient is not solely by reason of furnishing the information liable in damages to any person or subject to any other recourse, civil or criminal.

(e) The Board shall promptly acknowledge all reports received under this section. Individuals or entities reporting under this section must be promptly informed of the Board's final disposition of the reported matters.

(f) Malpractice insurance carriers and insured persons certified to practice medicine in this State shall file with the Board a report of each final judgment, settlement, or award against the insured persons. A person not covered by a malpractice insurance carrier shall also file a report with the Board. A report required to be filed under this subsection must be made to the Board within 30 days of a final judgment, settlement, or award.

(g) An individual, institution, agency, or organization required to report under this section who does so in good faith is not subject to civil damages or criminal prosecution for reporting.

(h) The Executive Director shall initially review every report made to the Board under this subchapter. The Executive Director may defer the investigation of a report pending a reported licensee's evaluation and treatment for substance abuse or for physical or mental illness, provided sufficient safeguards exist to protect the licensee's patients and the public. Safeguards may include a verifiable, voluntary cessation of the practice of medicine or a limited or monitored practice. Upon completion of the reported licensee's evaluation and treatment, the Executive Director may resume investigation of the report pursuant to the requirements of this chapter. If the Executive Director determines that a deferral is warranted, the case shall be summarized and placed before the Board for its information.

(i) Pursuant to the authority conferred herein and by § 1713 of this title, the Board shall have the authority to impose a fine, not to exceed

$10,000 for the first violation, and not to exceed $50,000 for any subsequent violation, on any person, any healthcare provider, any healthcare institution, and the Medical Society of Delaware for violation of any duty imposed by this chapter, and said fine shall be imposed pursuant to the procedures of this chapter.

(j) Upon receiving a complaint involving potential criminal conduct, the Board shall promptly report the complaint to appropriate law-enforcement agencies, including the Delaware Department of Justice.

(67 Del. Laws, c. 159 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 102 § 15; 75 Del. Laws, c. 141 § 1; 75 Del. Laws, c. 358 § 2; 77 Del. Laws, c. 319 §§ 7, 8; 77 Del. Laws, c. 321 § 2; 77 Del. Laws, c. 325 §§ 7-9.)

§ 1731B Counseling; letter of concern.

(a) If the Executive Director and the President of the Board, or a member of the Board designated by the President to assist in an investigation concerning a person certified to practice medicine, determine after the investigation that a violation of this chapter or of regulations enacted pursuant to this chapter which warrants formal disciplinary action has not occurred, but that an act or omission of the person is a matter of concern and that the person's practice may be improved if the person is made aware of the concern, the Executive Director, with the concurrence of the President or the assisting Board member, may issue a nondisciplinary, confidential letter of concern regarding the person's act or omission.

(b) If a person certified to practice medicine receives a total of 3 letters of concern and/or letters of counseling pursuant to this section, the Executive Director may reasonably require a formal assessment of professional competency pursuant to § 1732(d) of this title to assess the person's continued ability to protect the health and safety of the person's present or prospective patients.

(70 Del. Laws, c. 144 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 141 § 1; 75 Del. Laws, c. 358 § 3; 77 Del. Laws, c. 325 § 11.)

§ 1732 Investigations of complaints; Executive Director authority.

(a) All complaints of unprofessional conduct, unauthorized practice of medicine, or medical malpractice shall be referred to the Division of Professional Regulation to be investigated. Complaints alleging potential sexual misconduct by a licensee should be afforded priority by the Division. The Division of Professional Regulation shall formulate charges, if circumstances warrant, by bringing a formal complaint against a person to whom a certificate to practice medicine or otherwise licensed or registered in this State has been issued.

(b) The Executive Director shall initiate investigations concerning inability to practice medicine with reasonable skill or safety to patients. The Executive Director with the Board president or the president's designee, shall, after reviewing the results of the investigation, determine whether the person to whom a certificate to practice medicine has been issued is able to practice medicine with reasonable skill and safety to patients, either on a restricted or unrestricted basis. If the Executive Director reasonably believes that a diagnostic mental or physical examination of the person under investigation is necessary, the Executive Director shall order the person to submit to an examination at the person's expense to be conducted by a physician or agency designated by the Executive Director. Every person to whom a certificate to practice medicine has been issued is deemed to have given that person's own consent to submit to a diagnostic mental or physical examination when so directed by the Executive Director, and to have waived all objections to the admissibility of the examination report to the Board. A person who submits to a diagnostic mental or physical examination as ordered by the Executive Director has the right to designate another physician to be present at the examination and to submit an independent report on the examination to the Board.

(c) To assist in an investigation of alleged unprofessional conduct, or medical malpractice, or of inability to practice medicine with reasonable skill or safety to patients, the Executive Director, on behalf of the Board, may, by subpoena, compel the production of necessary patient medical records of and patient medical records reviewed by all hospitals, organizations, and healthcare institutions located in the State and by all quality assurance, peer review, and other similar committees, including the records of the Medical Society of Delaware and its committees. A subpoena issued under this subsection is subject to the subpoena restrictions in § 1731A(d) of this title. The Board shall take reasonable steps to protect the identity of the patient in so far as such protection does not, in the opinion of the Board, adversely affect the Board's ability to protect the public interest.

(d) In addition to or in lieu of a diagnostic evaluation, the Executive Director may require an applicant for or the holder of a certificate to practice medicine, at the applicant or certificate holder's expense, to complete a formal assessment of professional competency if the Executive Director, after consultation with the President of the Board and at least 1 other physician member of the Board, determines that a formal assessment is warranted to protect the health and safety of present or prospective patients. A formal assessment must be performed by the assessment center established by the Federation of State Medical Boards and the National Board of Medical Examiners, or by another assessment center as the Executive Director directs. A formal assessment may not be required of an applicant or certificate holder by the Executive Director without the written concurrence of the President of the Board and at least 1 other physician member of the Board that the assessment is warranted pursuant to this subsection.

(e) When a complaint is made by a law-enforcement agency or employee thereof and involves allegations of criminal activity, the Division of Professional Regulation and the Executive Director shall suspend any new or pending investigation upon a written request to do so by the Delaware Department of Justice or a federal law-enforcement authority. Such written request shall suspend the duty to investigate pursuant to this section, duty to regularly advise the complainant pursuant to § 1733(a)(2) of this title and any other duties that would interfere with the ability of law enforcement to investigate the allegations successfully. The suspension shall remain in effect until the Delaware Department of Justice or federal law enforcement informs the Executive Director in writing that action by the Division of Professional Regulation will not interfere with a pending law-enforcement investigation.

(60 Del. Laws, c. 462 § 1; 64 Del. Laws, c. 327 § 2; 67 Del. Laws, c. 226 § 12; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 102 §§ 16-19; 75 Del. Laws, c. 141 § 1; 77 Del. Laws, c. 325 §§ 10, 11.)

§ 1733 Complaints; notice of hearing.

(a)(1) Any member of the public or of the Board, or the Executive Director may file with the Board a complaint concerning any aspect of the practice of medicine against a person to whom a certificate to practice medicine in this State has been issued or any other person with a duty imposed by this chapter.

(2) The Executive Director shall advise the complainant of the progress of the case at least every 90 days until the case is resolved.

(3) The Executive Director shall communicate with the Delaware Department of Justice, at least monthly, regarding the status of complaints filed by law enforcement, and shall report the case status to the Board only if the case is no longer subject to suspension pursuant to § 1732(e) of this title.

(b) The Executive Director shall investigate in accord with the procedures set forth in § 1732 of this title each complaint which appears to be valid and well-founded.

(c) The Executive Director may maintain the confidentiality of the complaining party or the respondent from the Board. In the absence of an Executive Director or acting Executive Director, the Secretary of State may exercise that discretion.

(d) After investigation, if the Executive Director elects to file a formal written complaint against a respondent, the person must be served personally or by certified mail, return receipt requested, with a copy of the complaint not less than 20 days nor more than 60 days prior to a hearing on the complaint. A formal written complaint under this subsection must describe in detail the allegations upon which the complaint is based.

(e) A notice of hearing must inform the person of the date, time, and place of the hearing; state the statute or regulation allegedly violated and the statutory or regulatory authority which gives the Board authority to act; state that the person has a right to be represented by counsel at the hearing and to present evidence on the person's own behalf; and inform the person that the Board must base its decision solely upon evidence received at the hearing. The person is entitled to file with the Board a written response to the complaint within 20 days of service or of receipt by certified mail of the complaint.

(f) A complaint of the unauthorized practice of medicine must be reported immediately to the Attorney General. A person who files a complaint with or provides information to the Board concerning a violation of this chapter is not liable in any cause of action arising out of the filing of the complaint or the providing of information, provided that the person does so in good faith and without gross or wanton negligence.

(g) The Office of the Attorney General shall provide legal services to the Board, its committees, and the Executive Director.

(60 Del. Laws, c. 462 § 1; 64 Del. Laws, c. 327 § 3; 67 Del. Laws, c. 226 § 13; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 102 § 20; 75 Del. Laws, c. 88 § 17(2); 75 Del. Laws, c. 141 § 1; 77 Del. Laws, c. 319 § 10; 77 Del. Laws, c. 321 §§ 3-5; 77 Del. Laws, c. 325 §§ 12, 13.)

§ 1734 Hearings.

(a) Procedure. —

(1) Upon the mailing of a formal complaint by the Executive Director pursuant to this chapter, the Executive Director shall appoint an examiner pursuant to § 1713 of this title or a hearing panel composed of 3 unbiased members of the Board, the 3 members being 2 physician members and 1 public member if practical, who shall hear the evidence concerning the alleged charges. The hearing panel shall convene to hear the evidence no more than 90 days after the Board accepts a formal complaint unless the hearing panel, in its discretion, grants a continuance of the hearing date. All evidence at the hearing must be taken under oath or affirmation, but technical rules of evidence do not apply. After the evidence has been heard by the hearing panel, the panel may convene in executive session for consideration of the evidence presented at the hearing and for purposes permitted by § 10004 of Title 29, and shall make written findings of fact, conclusions of law, and a recommendation for a proper disciplinary action, if 1 is warranted. Only evidence presented at the hearing may be considered by the hearing panel in reaching its findings of fact and conclusions of law. The findings of fact made by the hearing panel are binding on the parties appearing before it and on the Board. If the hearing panel finds that the allegations made in the complaint are not supported by the evidence, it shall so indicate to the Board, together with its recommendation that no further action be taken and that the person complained about be exonerated of all charges. If a majority of the members of the Board who consider the matter, excluding members who participated in the investigation of the complaint and members on the hearing panel and members who are otherwise biased, vote to accept the hearing panel's conclusions of law and recommendation, no further proceedings may be held before the Board. However, if a majority of the members of the Board who consider the matter, excluding any members who participated in the investigation of the complaint and members on the hearing panel and members who are otherwise biased, vote to reject the hearing panel's conclusions of law and recommendation, a formal hearing must be held before the Board to enable the Board to make its own conclusions of law and determine what discipline, if any, should be imposed. In such a case, the hearing panel's findings of fact are binding upon the Board.

(2) If the hearing panel finds that any of the factual allegations made in the complaint are supported by the evidence it has considered, the Board, excluding members who participated in the investigation of the complaint and members on the hearing panel and members who are otherwise biased, will consider the findings of fact and conclusions of law made by the hearing panel at a formal hearing.

(3) A formal hearing must be held within 90 days after the issuance of the written findings of facts and conclusions of law of the

hearing panel pursuant to this subsection; provided, however, that if the hearing panel finds that the person complained about presents a clear and imminent danger to the public health by that person's continued practice of medicine, then the full Board may meet for the formal hearing as soon as possible, but only upon 3 days' written notice of the formal hearing being provided to the person or to that person's attorney. No less than 7 affirmative votes are necessary in order for disciplinary action to be taken by the Board. Upon reaching its conclusions of law and determining the appropriate disciplinary action, if any, the Board shall issue a written decision and order in accordance with § 10128 of Title 29. The decision and order must be signed by the Board's President, or, if the President is not available, by another officer of the Board.

(b) Open hearings. — A hearing on a complaint conducted by a hearing panel or examiner is open to the public, except the Board may conduct executive session for deliberations and purposes permitted by § 10004 of Title 29. A formal hearing on a complaint before the Board is open to the public in accordance with the provisions of § 10004 of Title 29.

(c) Transcript of proceedings. — A stenographic transcript must be made of the formal hearings of the Board and of the hearings of the Board's hearing panels or examiner. The person complained about is entitled, upon that person's own request, to obtain a copy of the transcript at the person's own expense.

(d) Rights of respondent. — The person complained about is entitled to be represented by counsel before a hearing panel or examiner and before the Board. The person complained about also has the right to cross-examine witnesses against the person, the right to present that person's own witnesses, and the right to introduce evidence at the hearing. In addition, the person complained about has the right to compel the issuance of a subpoena for the attendance of witnesses to appear and testify or for the production of books, records, or other documents at the hearing.

(e) Conduct of hearing before the hearing panel. — An attorney from the Office of the Attorney General shall present evidence in support of the allegations contained in the formal complaint. The attorney may call witnesses and cross-examine any witnesses called on behalf of the person complained about. A member of the Board who participated in the investigation of the complaint under consideration or a member who is biased may not sit on the hearing panel or take part in the deliberations or decisions of the hearing panel. To find that a fact or allegation is supported by evidence, the panel members must unanimously agree. The hearing panel shall make its findings of fact and conclusions of law based solely upon the evidence presented to it at the hearing.

(f) Conduct of hearing before the examiner. — An attorney from the Office of the Attorney General shall present evidence in support of the allegations contained in the formal complaint. The attorney may call witnesses and cross-examine any witnesses called on behalf of the person complained about. The examiner may administer oaths, examine witnesses and receive evidence in any locality. The testimony or evidence so taken or received shall have the same force and effect as if taken or received by the Board, or by a hearing panel pursuant to §§ 1713(a)(15) and 1734 of this title. Upon completion of such hearing or the taking of such testimony and evidence, the examiner shall submit to the Board the examiner's findings and recommendations thereon, which findings and recommendations shall be considered by the Board and such action taken with respect thereto by the Board as it decides to be proper.

(g) Conduct of formal hearing before the Board. — The findings of fact made by a hearing panel on a complaint are binding upon the Board at a formal hearing on the same complaint. At a formal hearing, the Board may not consider additional evidence. The Board shall deliberate and reach its own conclusions of law based upon the findings of fact made by the hearing panel. The Board shall consider the hearing panel's conclusions of law, but is not bound by them. To adopt conclusions of law, 7 Board members must vote in favor of them. After adopting its conclusions of law, the Board shall determine what disciplinary action, if any, against the person complained about is appropriate, based solely upon the record before it. To impose disciplinary action, affirmative votes by the majority of the Board members who considered the matter, but in every case no less than 7 affirmative votes are necessary. The Executive Director, Board members who participated in the investigation of the complaint under consideration, the members of the hearing panel, and any Board members who are otherwise biased may not participate in the deliberations of the Board concerning a complaint investigated by the Executive Director.

(h) Written decision and order. — Upon reaching its conclusion of law and determining the appropriate disciplinary action, if any, the Board shall issue a written decision and order in accordance with § 10128 of Title 29. The order must restate the factual findings of the hearing panel, but need not summarize the evidence presented. However, notwithstanding the provisions of § 10128(c) of Title 29, the decision and order may be issued over the signature of only the President or other officer of the Board. The decision and order must be sent by certified mail, return receipt requested, to the person complained about, with a copy to the Executive Director.

(i) Upon receiving a decision and order pursuant to subsection (h) of this section, the Executive Director shall file the required disciplinary action reports to data banks.

(60 Del. Laws, c. 462 § 1; 61 Del. Laws, c. 68 § 7; 64 Del. Laws, c. 327 § 4; 64 Del. Laws, c. 477 § 6; 65 Del. Laws, c. 66 § 1; 67 Del. Laws, c. 226 § 14; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 102 § 21; 75 Del. Laws, c. 141 § 1; 77 Del. Laws, c. 321 § 6; 77 Del. Laws, c. 325 §§ 15-19.)

§ 1735 Revocation or suspension of certificate.

(a) If the Board determines pursuant to this subchapter that a fine and/or the restriction, suspension, or revocation of a certificate to practice medicine and/or any other disciplinary action or other action is warranted, an order describing the Board's action must be served personally or sent by certified mail, return receipt requested, to the certificate holder. In addition, copies of the order must be filed in the office of the Board, in the Division of Professional Regulation, in the Division of Public Health of the Department of Health and Social Services, and with the Director of Revenue. Upon receipt of an order of the Board revoking or suspending a certificate to practice medicine,

the Director of Revenue shall forthwith revoke or suspend the occupational license to practice medicine issued by the Director and comply with any terms of the order applicable to the Division of Revenue.

(b) The Director of Revenue may not issue an occupational license or a license renewal to any person whose certificate to practice medicine has been revoked or suspended by the Board, unless issuance is in conformity with the terms and conditions of the order of revocation or suspension, or in conformity with any order of reinstatement issued by the Board, or in accordance with a final judgment in any proceeding for review instituted under this chapter.

(60 Del. Laws, c. 462 § 1; 61 Del. Laws, c. 68 § 6; 67 Del. Laws, c. 226 § 15; 71 Del. Laws, c. 102 §§ 22, 23; 75 Del. Laws, c. 141 § 1.)

§ 1736 Appeal procedures.

(a) A person against whom a decision of the Board has been rendered may appeal the decision to the Superior Court in the county in which the offense occurred.

(b) An appeal pursuant to this section must be filed within 30 days after the day the written decision and order of the Board is issued.

(c) An appeal pursuant to this section is on the record of the Board hearing, without a trial de novo.

(d) A Board action revoking, suspending, or otherwise restricting a person's certificate to practice medicine is not stayed upon appeal unless so ordered by the Superior Court.

(e) A person whose certificate to practice medicine has been suspended or otherwise restricted may, after the expiration of 90 days from the decision of the Superior Court, or of the Supreme Court if the decision of the Superior Court is appealed, or after 90 days from the decision and order of the Board if no appeal is taken, apply to the Board to have the certificate reinstated or reissued for good cause shown.

(60 Del. Laws, c. 462 § 1; 67 Del. Laws, c. 226 § 16; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 141 § 1.)

§ 1737 Confidentiality of records.

Release of records of the Board is governed by the provisions of the Freedom of Information Act, Chapter 100 of Title 29.

(60 Del. Laws, c. 462 § 1; 67 Del. Laws, c. 226 § 17; 75 Del. Laws, c. 141 § 1.)

§ 1738 Temporary suspension pending hearing.

(a) In the event of a formal or informal complaint concerning the activity of a person certified to practice medicine that presents a clear and immediate danger to the public health, the Board may temporarily suspend the person's certificate to practice medicine, pending a hearing, upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of the Board President or the Board President's designee. An order temporarily suspending a certificate to practice medicine may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney can file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing panel convenes and a decision is rendered.

(b) A person whose certificate to practice medicine has been temporarily suspended pursuant to this section must be notified of the temporary suspension immediately and in writing. Notification consists of a copy of the complaint and the order of temporary suspension pending a hearing personally served upon the person or sent by certified mail, return receipt requested, to the person's last known address.

(c) A person whose certificate to practice medicine has been temporarily suspended pursuant to this section may request an expedited hearing. 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 certificate to practice medicine.

(d) As soon as possible after the issuance of an order temporarily suspending a person's certificate to practice medicine pending a hearing, the Board shall appoint a 3-member hearing panel consisting of 2 physician members and 1 public member of the Board if practicable. After notice to the person pursuant to subsection (b) of this section, the hearing panel shall convene within 60 days of the date of the issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If the person requests in a timely manner an expedited hearing, the hearing panel shall convene within 15 days of the receipt of the request by the Board. The 3-member panel shall proceed to a hearing in accordance with the procedures set forth in § 1734 of this title and shall render a decision within 30 days of the hearing.

(e) In addition to making findings of fact, the hearing panel shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect until the Board, pursuant to § 1734(g) of this title, deliberates and reaches conclusions of law based upon the findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended person requests an extension of the order pending a final decision of the Board. Upon the final decision of the Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Board.

(66 Del. Laws, c. 2 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 102 § 24; 75 Del. Laws, c. 141 § 1; 77 Del. Laws, c. 319 §§ 5, 6; 77 Del. Laws, c. 325 § 19.)

§ 1739 Protection from liability.

Pursuant to the State Early Opt-in provision of 42 U.S.C. § 11111(c)(2), the protection from liability set forth in 42 U.S.C. § 11111(a) applies to professional review actions, as defined in 42 U.S.C. § 11151, commenced on or after Sept. 10, 1988.

(66 Del. Laws, c. 357 § 1; 75 Del. Laws, c. 141 § 1.)

§ 1740 Health care facilities reporting requirements.

(a) Definitions. —

(1) "Direct access" means the opportunity to have personal contact with persons receiving care during the course of one's assigned or professional duties.

(2) "Health care facility" means any custodial or residential facility or other facility where health, nutritional or personal care is provided for persons including nursing homes, assisted living facilities, long-term care facilities, hospitals, health care agencies, birth centers, emergency centers, surgical centers, and adult and child day care facilities. This term also includes any business, professional association, or other business entity where 2 or more physicians practice together.

(3) "Person seeking certification" means any person seeking an initial certificate to practice medicine from the Board of Medical Licensure and Discipline.

(b) Service letter. —

(1) The Board of Medical Licensure and Discipline shall not issue a certificate to practice medicine without first obtaining 1 or more service letters regarding the applicant, provided that person has previously practiced medicine. The service letter obtained must include a service letter from all health care facilities where that person currently has direct access to patients, and where that person has admitting or staff privileges. In addition, if a person seeking certification had direct access to patients or staff or admitting privileges at a health care facility within the past 3 years, the Board of Medical Licensure and Discipline shall also obtain a service letter from each such facility. If a person seeking certification has not previously had direct access to patients or was self-employed or 1 or more of the health-care facilities where that person had direct access to patients no longer exists, then the Board must require the person to provide letters of reference from 2 physicians who are familiar with the person, but who are not relatives of the person.

(2) For purposes of this subsection, the required service letter shall be in a form provided by the Board of Medical Licensure and Discipline. Notwithstanding any law or provision to the contrary, the form shall be signed by a responsible physician at the current or previous health care facility and shall contain information about the scope of that persons practice and relationship to the facility, the duration of that relationship, and any reasonably substantiated incidents involving violence, threat of violence, abuse, or neglect by the person seeking certification toward any other person, including any disciplinary action taken as a result of such conduct.

(3) Any health care facility that is required to provide a service letter for the purpose stated above shall obtain a statement signed by the person seeking certification wherein the person authorizes a full release permitting the Board of Medical Licensure and Discipline to obtain any and all information pertaining to the facts of the person's current or previous relationship with the facility.

(4) In addition to the requirements of § 1720 of this title, the Board shall obtain a statement signed by the person seeking certification wherein the person attests that the information provided regarding current and past relationships to health care facilities represent a full and complete disclosure of the person's current and previous contacts with health care facilities. Any person seeking certification who fails to make a full and complete disclosure of such information shall be subject to a civil penalty of $5,000. Any person who wilfully fails to make a full and complete disclosure shall not be issued a certificate to practice medicine.

(5) Any health care facility receiving the Board's written request for a service letter shall provide the service letter within 10 business days from the day the request is received. Any health care facility that fails to make a full and complete disclosure of information, pursuant to this section and § 1730(b)(1)c. of this title, as required, shall be subject to a civil penalty of $10,000 for each such violation.

(6) Any health care facility providing information about a person seeking licensure as required by this section shall be immune from claims, suits, liability, damages, or any other recourse, civil or criminal, so long as the person acted in good faith and without gross or wanton negligence; good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant.

(7) The requirements of this section shall be in addition to any requirements of § 708 of Title 19.

(8) The Division of Professional Regulation shall investigate and seek civil penalties against persons seeking certification and health care facilities that violate the provision of this section.

(9) Notwithstanding the foregoing, the Board may issue a certificate to practice medicine to an applicant who was employed out of State or country within the past 5 years, where completed service letters have not been received from all health care facilities, provided all other requirements of this chapter are met and provided requests were made to such facilities and the Board determines that all possible efforts were made to obtain the required service letter. Applicants to which this paragraph applies shall obtain letters of reference from 2 qualified physicians who are familiar with the person, who are not relatives of the person.

(77 Del. Laws, c. 460 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 194 § 2.)

§ 1741 Complaints of unsanitary or unsafe conditions.

(a) A person certified or licensed under this chapter may be disciplined by the Board for maintaining a facility in an unsanitary or unsafe condition, by means of levying a fine, or by the restriction, suspension, or revocation, either permanent or temporary, of that person's

certificate or license, or by other appropriate action, which may include a requirement that a person who is disciplined must complete specified continuing education courses. For purposes of this section, "facility" shall have the same meaning as defined in § 122(3)y.3.C. of Title 16.

(b) The Division shall have the authority to conduct inspections upon receipt of any complaint in connection with subsection (a) of this section or upon the occurrence of an adverse event as defined in § 122(3)y.3.A. of Title 16 and, as applicable, to refer such information to the Department of Health and Social Services pursuant to § 122(3)y. of Title 16. In connection herewith, the Division may share information with the Department of Health and Social Services in accordance with applicable law.

(78 Del. Laws, c. 15 § 2.)

Subchapter V

Miscellaneous Provisions

§ 1760 Determination of death.

(a) An individual who has sustained either:

(1) Irreversible cessation of circulatory and respiratory functions or

(2) Irreversible cessation of all functions of the entire brain, including the brain stem,

is dead. A determination of death pursuant to this section must be made in accordance with accepted medical standards.

(b) A determination of death pursuant to this section may be made by a person certified to practice medicine under this chapter by either:

(1) Personal examination of the individual believed to be dead, or

(2) The use of information provided by an EMT-P (paramedic) using telemetric or transtelephonic means in accordance with protocols approved by the Board of Medical Licensure and Discipline, following recommendations of the Board's Advanced Life Support Committee.

(c) This section must be applied and construed to effectuate its general purpose to make uniform the law with respect to the determination of death among states enacting it.

(d) This section may be cited as the "Uniform Determination of Death Act".

(65 Del. Laws, c. 237 § 1; 67 Del. Laws, c. 156 § 1; 75 Del. Laws, c. 141 § 1; 77 Del. Laws, c. 319 § 1.)

§ 1761 Physician discontinuing business or leaving the State; death of a physician; change of physician and transfer of patient records; patient access to records.

(a) A person certified to practice medicine under this chapter who is discontinuing a medical-practice business in this State or who is leaving this State and who is not transferring patient records to another person certified to practice medicine shall notify that person's patients of record by publishing a notice to that effect in a newspaper of daily circulation in the area where the person practices. The notice must be published at least 1 time per month over a 3-month period in advance of discontinuing the business or leaving the State and must explain how a patient can procure that patient's patient records. All patients of record who have not requested their records 30 days before the person discontinues the medical-practice business or leaves the State must be notified by first class mail by the person to permit that person's patients to procure their records. Any patient records that have not been procured within 7 years after the person discontinues business or leaves the State may be permanently disposed of in a manner that ensures confidentiality of the records.

(b) If a person certified to practice medicine under this chapter dies and has not transferred patient records to another person certified to practice medicine and has not made provisions for a transfer of patient records to occur upon the person's death, a personal representative of the person's estate shall notify the person's patients of record by publishing a notice to that effect in a newspaper of daily circulation in the area where the person practiced. The notice must be published at least 1 time per month over a 3-month period after the person's death and must explain how a former patient can procure the patient's patient records. All former patients who have not requested their records 30 days after such publication must be notified by first class mail by the personal representative of the estate to permit the patients to procure their records. Any patient records that have not been procured within 7 years after the death of the person may be permanently disposed of in a manner that ensures confidentiality of the records.

(c) If a patient changes from the care of 1 person certified to practice medicine to another person certified to practice medicine, the former person shall transfer a copy of the records of the patient to the current person upon the request of either the current person or the patient. The former person may charge for the reasonable expenses of copying the patient's records, according to a payment schedule established by the Board of Medical Licensure and Discipline. The actual cost of postage or shipping may also be charged if the records are mailed. Alternatively, if the patient and current person agree, the former person may forward to the current person a summary of the patient's record, in lieu of transferring the entire record, at no charge to the patient. If a patient changes care from 1 person certified to practice medicine to another and fails to notify the former person, or leaves the care of the former person for a period of 7 years from the last entry date on the patient's record and fails to notify the former person, or fails to request the transfer of records to the current person, then the former person shall maintain the patient's records for a period of 7 years from the last entry date in the patient's medical record, after which time the records may be permanently disposed of in a manner that insures confidentiality of the records.

(d) Patients, on their own behalf, shall have the right to obtain a copy of their medical records from any person certified to practice medicine according to a payment schedule established by the Board of Medical Licensure and Discipline. The actual cost of postage or shipping may also be charged if the records are mailed.

(e) This section does not apply to a person certified to practice medicine who has seen or treated a patient on referral from another person certified to practice medicine and who has provided a copy of the record of the diagnosis and/or treatment to the other person, or to a hospital or an agency which has provided treatment for the patient.

(f) A person certified to practice medicine or the personal representative of the estate of such person who disposes of patient records in accordance with the provisions of this section is not liable for any direct or indirect loss suffered as a result of the disposal of a patient's records.

(g) Any person certified to practice medicine in this State who violates this section may be found by the Board to have committed unprofessional conduct, and any aggrieved patient or the patient's personal representative may bring a civil action for damages or injunctive relief, or both, against the violator.

(h) Charges for copies of such records not susceptible to photostatic reproduction, such as radiology films, models, photographs or fetal monitoring strips shall be the full cost of such reproduction.

(i) Payment of all costs may be required by the provider or its third-party release-of-information service prior to the copies of the records being furnished. This subsection shall not apply to copies of the records requested in order to make or complete an application for a disability benefits program.

(j) The Board of Medical Licensure and Discipline shall review fees yearly.

(k) The actual cost of shipping may also be charged if the copies of the records are mailed or shipped to the requester.

(l) A person certified to practice medicine shall have 45 days from the closure of the record or the assembly of a complete record to fulfill a request for medical records unless a faster response is medically necessary.

(64 Del. Laws, c. 372 § 1; 68 Del. Laws, c. 197 §§ 1, 2; 68 Del. Laws, c. 392 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 308 §§ 1, 2, 3; 73 Del. Laws, c. 59 §§ 1, 2; 75 Del. Laws, c. 141 § 1; 76 Del. Laws, c. 353 § 1; 77 Del. Laws, c. 319 § 1.)

§ 1761A Appointment of a custodian of patient records.

(a) If the Board receives a formal or informal complaint concerning access to patient records as a result of a physician's physical or mental incapacity, or abandonment or involuntary discontinuation of a medical-practice business in this State, the Board may temporarily or permanently appoint a person or entity as custodian of the physician's patient records, in accordance with the procedures set forth in §§ 1732-1734 of this title.

(b) The custodian of patient records appointed under this section shall notify the physician's patients of record to that effect by publishing notice in a newspaper of daily circulation in the area where the physician practiced. The notice must be published at least 1 time per month over a 3-month period after the appointment of the custodian and must explain how a patient can procure that patient's records. All patients who have not requested their records 30 days after such publication must be notified by first-class mail by the custodian to permit the patients to procure their records. Any patient records that have not been procured within 7 years after the appointment of the custodian may be permanently disposed of in a manner that ensures confidentiality of the records.

(c) A custodian of patient records appointed under this section who disposes of patient records in accordance with the provisions of this section is not liable for any direct or indirect loss suffered as a result of the disposal of a patient's records.

(d) The Board shall establish a registry of physicians and healthcare entities who are willing to serve as records custodians.

(77 Del. Laws, c. 325 § 22.)

§ 1762 Reports of treatment of certain wounds, injuries, poisonings, or other conditions; failure to report; penalty.

(a) Every person certified to practice medicine who attends to or treats a stab wound; poisoning by other than accidental means; or a bullet wound, gunshot wound, powder burn, or other injury or condition arising from or caused by the discharge of a gun, pistol, or other firearm, or when such injury or condition is treated in a hospital, sanitarium, or other institution, the person, manager, superintendent, or other individual in charge shall report the injury or condition as soon as possible to the appropriate police authority where the attending or treating person was located at the time of treatment or where the hospital, sanitarium, or institution is located. This section does not apply to wounds, burns, poisonings, or injuries or conditions received by a member of the armed forces of the United States or the State while engaged in the actual performance of duty. A person who fails to make a report required by this section shall be fined not less than $100 nor more than $2,500.

(b) A person certified to practice medicine or other individual who makes a report pursuant to this section is immune from liability for the report, provided that the person or other individual acted in good faith and without gross or wanton negligence.

(24 Del. C. 1953 § 1762; 50 Del. Laws, c. 369 § 1; 65 Del. Laws, c. 123 § 1; 75 Del. Laws, c. 141 § 1.)

§ 1763 Reports of persons who are subject to losses of consciousness; limitation on use; failure; penalty.

Every physician attending or treating persons who are subject to losses of consciousness due to disease of the central nervous system shall report within 1 week to the Division of Motor Vehicles the names, ages and addresses of all such persons unless such person's infirmity is under sufficient control to permit the person to operate a motor vehicle with safety to person and property.

The reports shall be for the information of the Division of Motor Vehicles in enforcing the Motor Vehicle Law. Said reports shall be kept confidential and used solely for the purpose of determining the eligibility of any person to operate a motor vehicle on the highways of this State.

A physician failing to make such a report shall be fined not less than $5.00 nor more than $50 and costs for each such report the physician fails to make.

(24 Del. C. 1953 § 1763; 50 Del. Laws, c. 369 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 451 §§ 1, 2; 75 Del. Laws, c. 141 § 1.)

§ 1764 State revenue.

The provisions of this chapter may not be construed to interfere with the operation of the provisions of Title 29 relating to state licenses and taxes.

(20 Del. Laws, c. 40 § 19; Code 1915 § 853; Code 1935 § 934; 24 Del. C. 1953 § 1765; 49 Del. Laws, c. 235; 50 Del. Laws, c. 369 § 1; 75 Del. Laws, c. 141 § 1.)

§ 1764A Prescription requirements.

No written prescription shall be prescribed if it does not contain the following information clearly written, clearly hand printed, electronically printed, or typed:

(1) The name, address and phone number of the prescriber;

(2) The name and strength of the drug prescribed;

(3) The quantity of the drug prescribed;

(4) The directions for use of the drug;

(5) Date of issue.

(75 Del. Laws, c. 161 § 4.)

§ 1765 Construction of chapter relating to the ADA.

This chapter may not be construed to conflict with, replace, restrict, or supersede applicable provisions of the Americans with Disabilities Act (ADA) [42 U.S.C. § 12101 et seq...If a provision of this chapter is in conflict with an applicable provision of the ADA, the applicable provision of the ADA controls the interpretation of the chapter.

(75 Del. Laws, c. 141 § 1.)

§ 1766 Penalties [See conflicting amendment, unable to be implemented, in 75 Del. Laws, c. 161, § 5.]

(a) A person who practices or attempts to practice medicine contrary to the provisions of this chapter is guilty of a class F felony and shall be fined not less than $1000 nor more than $5000 or imprisoned not more than 3 years, or both.

(b) A person who terminates or attempts to terminate or assists in the termination of a human pregnancy otherwise than by birth, except in accordance with subchapter IX of this chapter, is guilty of a class C felony and shall be fined not more than $5,000 and imprisoned not less than 2 nor more than 10 years.

(c) A person who violates a provision of this chapter for which a penalty is not specified is guilty of a class B misdemeanor.

(d) The Attorney General of this State or a deputy attorney general shall enforce the provisions of this chapter.

(e) The Superior Court has exclusive original jurisdiction over violations of the criminal provisions of this chapter.

(20 Del. Laws, c. 40 § 17; Code 1915 § 854; Code 1935 § 935; 24 Del. C. 1953 § 1766; 49 Del. Laws, c. 234; 50 Del. Laws, c. 369 § 1; 57 Del. Laws, c. 145 § 3; 57 Del. Laws, c. 344; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 141 § 1; 75 Del. Laws, c. 161 § 5.)

§ 1767 Emergency care at the scene of an emergency.

A person certified to practice medicine under this chapter who, in good faith and without gross or wanton negligence, renders emergency care at the scene of an emergency is not liable for civil damages as a result of any acts or omissions in rendering the emergency care.

(24 Del. C. 1953 § 1767; 54 Del. Laws, c. 225; 75 Del. Laws, c. 141 § 1.)

§ 1768 Immunity of boards of review; confidentiality of review board record.

(a) The Board of Medical Licensure and Discipline and the Medical Society of Delaware, their members, and the members of any committees appointed by the Board or Society; the members of any committee appointed by a certified health maintenance organization; members of hospital and osteopathic medical society committees; members of a professional standards review organization established under federal law; and members of other peer review committees or organizations whose function is the review of medical records, medical care, and physicians' work, with a view to the quality of care and utilization of hospital or nursing home facilities, home visits, and office visits, are immune from claim, suit, liability, damages, or any other recourse, civil or criminal, arising from any act, omission, proceeding, decision, or determination undertaken or performed, or from any recommendation made, so long as the person acted in good faith and without gross or wanton negligence in carrying out the responsibilities, authority, duties, powers, and privileges of the offices conferred by law upon them, with good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant.

(b) Unless otherwise provided by this chapter, the records and proceedings of committees and organizations described in subsection (a) of this section are confidential and may be used by those committees or organizations and the members thereof only in the exercise of the

proper functions of the committee or organization. The records and proceedings are not public records and are not available for court subpoena, nor are they subject to discovery. A person in attendance at a meeting of any such committee or organization is not required to testify as to what transpired at the meeting. A person certified to practice medicine, or a hospital, organization, or institution furnishing, in good faith and without gross or wanton negligence, information, data, reports, or records to such a committee or organization or a member thereof with respect to any patient examined or treated by a person certified to practice medicine or examined, treated, or confined in the hospital or institution is not, by reason of furnishing such information, data, reports, or records, liable in damages to any person or subject to any other recourse, civil or criminal. Nothing in this subsection prevents the Board from providing information, data, reports, or records in its possession to a medical, osteopathic, or other licensing board of any other state or territory of the United States regarding a person who is certified to practice medicine under this chapter, or otherwise regulated by this chapter, or who has been certified under this chapter or who has attempted to be certified under this chapter. The Board shall take reasonable steps to protect the identity of the patient in so far as such protection does not, in the opinion of the Board, adversely affect the Board's ability to protect the public interest. The Board and its members and employees are not liable in any cause of action arising out of the providing of information, data, reports, or records provided that the person has acted in good faith and without gross or wanton negligence. This section may not be construed to create a privilege or right to refuse to honor a subpoena issued by or on behalf of the Board of Medical Licensure and Discipline pursuant to § 1731A(d) of this title, or issued by the Attorney General pursuant to § 2504(4) of Title 29, nor may it be construed to limit access to records by rights-protection agencies whose access is authorized by federal law. Notwithstanding the foregoing, in cases in which any disciplinary action by the Board was issued, the formal complaints prepared by the Delaware Department of Justice and the results of the hearings are not confidential and are public records except insofar as they contain confidential patient information or are otherwise subject to an exception under Chapter 100 of Title 29.

(24 Del. C. 1953 § 1768; 57 Del. Laws, c. 492; 58 Del. Laws, c. 50; 58 Del. Laws, c. 226; 60 Del. Laws, c. 462 § 3; 62 Del. Laws, c. 90 § 2; 66 Del. Laws, c. 358 § 1; 67 Del. Laws, c. 226 § 18; 69 Del. Laws, c. 129 § 1; 71 Del. Laws, c. 102 § 25; 75 Del. Laws, c. 141 § 1; 77 Del. Laws, c. 319 § 1; 77 Del. Laws, c. 325 §§ 20, 21.)

§ 1769 Disclosure of laboratory costs.

A person certified to practice medicine who bills patients or third-party payors for individual tests or test series administered by any private or hospital clinical laboratory shall disclose on the bill the name of the laboratory, the amount or amounts charged by the laboratory for individual tests or test series and the amount of any procurement or processing charge made by the person certified to practice medicine for each test or test series. A test or test series performed at a state laboratory or at another laboratory at which no charge is made must be noted on the bill.

(59 Del. Laws, c. 326 § 1; 75 Del. Laws, c. 141 § 1.)

§ 1769A Required warning to pregnant women of possible effects of using alcohol, cocaine, or other narcotics.

(a) A person certified to practice medicine who treats, advises, or counsels pregnant women for matters relating to the pregnancy shall post warnings and give written and verbal warnings to all pregnant women regarding possible problems, complications, and injuries to themselves and/or to the fetus from the consumption or use of alcohol or cocaine, marijuana, heroin, and other narcotics during pregnancy.

(b) A person who treats, advises, or counsels pregnant women pursuant to subsection (a) of this section and who is certified to practice medicine may designate a licensed nurse to give the warnings required by this section.

(c) The Director of the Division of Public Health shall prescribe the form and content of the warnings required pursuant to this section.

(68 Del. Laws, c. 78 § 2; 70 Del. Laws, c. 147 § 28; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 141 § 1.)

§ 1769B Treatment or examination of minors.

(a) A parent, guardian or other caretaker, or an adult staff member, shall be present when a person licensed to practice medicine under this chapter provides outpatient treatment to a minor patient who is disrobed or partially disrobed or during an outpatient physical examination involving the breasts, genitalia or rectum, regardless of sex of the licensed person and patient, except when rendering care during an emergency. When using an adult staff member to observe the treatment or examination, the adult staff member shall be of the same gender as the patient when practicable. 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 medicine without the presence of a third person after the physical examination. Every hospital and nursing facility and similar facility that provides treatment to minors shall develop and implement policies regarding the treatment of minor patients that are consistent with the purposes of this section and will submit those policies for approval by the Department of Health and Social Services. Violations of approved policies will be treated as a violation of this section.

(b) When a minor patient is to be disrobed, partially disrobed or will undergo a physical examination involving the breasts, genitalia or rectum, a person licensed to practice medicine under this chapter shall provide notice to the person providing consent to treatment of the rights under this section. The notice shall be provided in written form or be conspicuously posted in a manner in which minor patients and their parent, guardian or other caretaker are made aware of the notice. In circumstances in which the posting or the provision to the patient of the written notice would not convey the right to have a chaperone present, the person licensed to practice medicine shall use another means to ensure that the patient or person understands the right 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 acting under the direction of the licensed person or the employer of the licensed person or who is otherwise licensed under this chapter, "hospital" has the meaning prescribed by Chapter 10 of Title 16, and "nursing facility and similar facility" has the meaning prescribed by Chapter 11 of Title 16.

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

(77 Del. Laws, c. 322 § 2.)

§ 1769C Physician practices with multiple offices.

If a physician practice has multiple offices, a physician member of that practice shall visit each office periodically, as frequently as needed but at least once per month, for purposes of ensuring that the office is managed properly and patient care is appropriate.

(78 Del. Laws, c. 387 § 1.)

§ 1769D Telemedicine and telehealth.

(a) Physicians may practice telemedicine and telehealth. Provided that telemedicine shall not be utilized by a physician with respect to any patient in the absence of a physician-patient relationship, except for the instances in subsection (i) of this section.

(b) Physicians who utilize telemedicine shall, if such action would otherwise be required in the provision of the same service not delivered via telemedicine, ensure that a proper physician-patient relationship is established either in-person or through telehealth which includes but is not limited to:

(1) Fully verifying and authenticating the location and, to the extent possible, identifying the requesting patient;

(2) Disclosing and validating the provider's identity and applicable credential or credentials;

(3) Obtaining appropriate consents from requesting patients after disclosures regarding the delivery models and treatment methods or limitations, including informed consents regarding the use of telemedicine technologies as indicated in paragraph (b)(5) of this section;

(4) Establishing a diagnosis through the use of acceptable medical practices, such as patient history, mental status examination, physical examination (unless not warranted by the patient's mental condition), and appropriate diagnostic and laboratory testing to establish diagnoses, as well as identify underlying conditions or contra-indications, or both, to treatment recommended or provided;

(5) Discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options;

(6) Ensuring the availability of the distant site provider or coverage of the patient for appropriate follow-up care; and

(7) Providing a written visit summary to the patient.

(c) Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional (encounter in person) settings.

(d) The physician treating a patient through telemedicine must maintain a complete record of the patient's care which must follow all applicable state and federal statutes and regulations for recordkeeping, confidentiality, and disclosure to the patient.

(e) Telemedicine shall include, at such time as feasible and when appropriate, utilizing the Delaware Health Information Network (DHIN) in connection with the practice.

(f) Without a prior and proper patient-provider relationship, as provided in subsection (b) of this section, providers are prohibited from issuing prescriptions solely in response to an Internet questionnaire, an Internet consult, or a telephone consult.

(g) Prescriptions made through telemedicine and under a physician-patient relationship may include controlled substances, subject to limitations as set by the Board.

(h) Physicians using telemedicine technologies to provide medical care to patients located in Delaware must, prior to a diagnosis and treatment, either provide:

(1) An appropriate examination in-person;

(2) Have another Delaware-licensed practitioner at the originating site with the patient at the time of the diagnosis;

(3) The diagnosis must be based using both audio and visual communication; or

(4) The service meets standards of establishing a patient-physician relationship included as part of evidenced-based clinical practice guidelines in telemedicine developed by major medical specialty societies, such as those of radiology or pathology.

(i) Telemedicine may be practiced without a physician-patient relationship during:

(1) Informal consultation performed by a physician outside the context of a contractual relationship and on an irregular or infrequent basis without the expectation or exchange of direct or indirect compensation;

(2) Furnishing of medical assistance by a physician in case of an emergency or disaster if no charge is made for the medical assistance; or

(3) Episodic consultation by a medical specialist located in another jurisdiction who provides such consultation services on request to a licensed health-care professional.

(80 Del. Laws, c. 80 § 3.)

Subchapter VI

Physician Assistants

§ 1770 The Regulatory Council for Physician Assistants.

(a) The Regulatory Council for Physician Assistants (Council) shall consist of 7 voting members, 1 of whom is a physician member appointed by the Board, 1 of whom is a physician who regularly supervises physician assistants appointed by the Board, and 1 of whom is a pharmacist appointed by the Board of Pharmacy. The remaining 4 members, appointed by the Board, must be practicing physician assistants, subject to the same causes for removal as a physician member of the Board except that the requirement for certification and registration to practice medicine is replaced by licensure as a physician assistant. The Council may elect officers as necessary.

(b) Each Council member shall be appointed for a term of 3 years and may succeed himself or herself for 1 additional 3-year term; provided, however, that if a member is initially appointed to fill a vacancy, that member may succeed himself or herself for only 1 additional 3-year term. A person appointed to fill a vacancy on the Council is entitled to hold office for the remainder of the unexpired term of the former member. Each term of office expires on the date specified in the appointment; however, a member whose term of office has expired remains eligible to serve until replaced by the Board. A person who has never served on the Council may be appointed for 2 consecutive terms, but that person is thereafter ineligible for appointment to the Council except as hereinafter provided. A person who has twice been appointed to the Council or who has served on the Council for 6 years within any 9-year period may not again be appointed until an interim period of at least 1 year has expired since the person last served. The members of the Council are to be compensated at an appropriate and reasonable level as determined by the Division of Professional Regulation and may be reimbursed for meeting-related travel expenses at the State's approved rate. A member serving on the Council may not be an elected officer or a member of the board of directors of any professional association of physician assistants.

(c) The Council, in accordance with the Administrative Procedures Act [Chapter 101 of Title 29], shall promulgate rules and regulations governing the practice of physician assistants, subject to approval of the Board. The Board must approve or disapprove any proposed rule or regulation within 60 days of submission by the Council. If the Board fails to approve or disapprove the proposed rules or regulations within 60 days, the proposed rule or regulation is deemed approved by the Board.

(d) The Council shall meet at least on a quarterly basis and at other such times as license applications are pending. The Council shall evaluate the credentials of all applications for licensure as a physician assistant in this State, in order to determine whether the applicant meets the qualifications for licensure set forth in this chapter. The Council shall present to the Board the names of individuals qualified for licensing, shall review and consider disciplinary complaints and recommend disciplinary action against licensees as necessary, and shall suggest changes in operations or regulations.

(75 Del. Laws, c. 141 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 319 § 1; 78 Del. Laws, c. 387 § 2.)

§ 1770A Physician assistants; definitions.

As used in this subchapter:

(1) "Delegated medical acts" means healthcare activities and duties delegated to a physician assistant by a supervising physician.

(2) "Physician assistant" or "PA" means an individual who:

a. Has graduated from a physician assistant or surgeon assistant program which is accredited by the Accreditation Review Commission on Education for the Physician Assistant (ARC-PA) or, prior to 2001, by the Committee on Allied Health Education and Accreditation (CAHEA) of the American Medical Association (AMA), or a successor agency acceptable to and approved by the Board, or has passed the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants prior to 1986;

b. Has a baccalaureate degree or the equivalent education to a baccalaureate degree, as determined by the Council and the Board;

c. Has passed a national certifying examination acceptable to the Regulatory Council for Physician Assistants and approved by the Board;

d. Is licensed under this chapter to practice as a physician assistant; and

e. Has completed any continuing education credits required by rules and regulations developed under this chapter.

(3) "Supervision of physician assistants" means the ability of the supervising physician to provide or exercise control and direction over the services, activities, and duties of a physician assistant and to be available for consultation with the physician assistant during the time of the patient encounter with the physician assistant, if necessary to provide advice on the ongoing care of the patient. The constant physical presence of the supervising physician is not required in the supervision of a physician assistant, provided that the supervising physician is readily accessible by some form of electronic communication.

(68 Del. Laws, c. 147 § 2; 68 Del. Laws, c. 345 § 1; 69 Del. Laws, c. 355 §§ 3-5; 71 Del. Laws, c. 102 § 26; 74 Del. Laws, c. 262 § 30A; 75 Del. Laws, c. 141 § 1; 78 Del. Laws, c. 387 § 2.)

§ 1771 Physician's duties in supervision of a physician assistant.

(a) A physician who delegates medical acts to a physician assistant is responsible for the physician assistant's medical acts and must provide adequate supervision. Adequate supervision will depend on the nature of the practice setting and the experience of the physician assistant. It is the obligation of each team of physician(s) and physician assistant(s) to ensure that the physician assistant's scope of practice is identified, that delegation of medical tasks is appropriate to the physician assistant's level of competence, that the relationship of, and access to, the supervising physician is defined, and that a process for evaluation of the physician assistant's performance is established.

(b) Each physician-physician assistant team, hospital, clinic, medical group, or other healthcare facility shall be responsible for creating a written agreement, which shall be kept on file at the primary location where the physician assistant provides care, describing the information required by subsection (a) of this section. The written agreement shall be made available to the Board or the Council upon request.

(c) A supervising physician may not delegate a medical act to a physician assistant who, by statute or professional regulation, is prohibited from performing the act.

(d) A supervising physician may not be involved in patient care in name only.

(e) A supervising physician may not delegate medical acts to a physician assistant that exceed the physician's scope of practice.

(f) A supervising physician may not at any given time supervise more than 4 physician assistants, unless a regulation of the Board increases or decreases the number.

(g) A physician who supervises a physician assistant in violation of the provisions of this subchapter or of regulations adopted pursuant to this subchapter is subject to disciplinary action by the Board of Medical Licensure and Discipline for permitting the unauthorized practice of medicine.

(h) Hospitals, clinics, medical groups and other healthcare facilities may employ physician assistants; however, no more than 4 physician assistants may at any given time be employed and supervised for each physician practicing in the same facility unless a regulation of the Board increases or decreases the number.

(i) If the supervising physician delegates the authority to a physician assistant to treat patients in a setting where the supervising physician is not routinely present the physician must assure that the means and methods of supervision are adequate to assure appropriate patient care. This may include telecommunication, chart review, or other methods of communication and oversight that are appropriate to the care setting and the education and experience of the physician assistant. The supervision plan must be detailed in the practice agreement and made available to the Board or Council upon request. Failure to have a supervision plan or failure to provide quality patient care due to lack of adequate supervision constitutes grounds for discipline.

(75 Del. Laws, c. 141 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 319 § 1; 78 Del. Laws, c. 387 § 2.)

§ 1772 Prohibited acts by a physician assistant.

(a) A physician assistant may not maintain or manage an office separate and apart from the office of the physician assistant's supervising physician.

(b) A physician assistant may not engage in diagnosis, prescribe or dispense legend drugs or therapeutics, or practice medicine or surgery or perform refractions in any setting independent of the supervision of a physician who is certified to practice medicine.

(c) A physician assistant may not assign a delegated medical act to another individual without the supervising physician's authorization.

(d) A physician assistant may not independently bill a patient for services rendered at the request of the supervising physician.

(e) Nothing in this chapter may be construed to authorize a physician assistant to practice independent of a supervising physician.

(f) Except as otherwise provided in this chapter or in a medical emergency, a physician assistant may not perform any medical act which has not been delegated by a supervising physician.

(g) A physician assistant may not practice as a member of any other health profession regulated under this code unless the physician assistant is certified, licensed, registered, or otherwise authorized to practice the other profession.

(75 Del. Laws, c. 141 § 1; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 387 § 2.)

§ 1773 Regulation of physician assistants.

(a) The Council shall adopt rules and regulations which address the following:

(1) The licensing of physician assistants to allow:

a. The performance of delegated medical acts within the education, training, and experience of physician assistants; and

b. The performance of services customary to the practice of the supervising physician;

(2) Delegated medical acts provided by physician assistants to include, but not be limited to:

a. The performance of complete patient histories and physical examinations;

b. The recording of patient progress notes in an outpatient setting;

c. The relaying, transcribing, or executing of specific diagnostic or therapeutic orders;

d. Medical acts of diagnosis and prescription of therapeutic drugs and treatments which have been delegated by the supervising physician;

e. Prescriptive authority for therapeutic drugs and treatments within the scope of physician assistant practice, as delegated by the supervising physician. The physician assistant's prescriptive authority and authority to practice as a physician assistant are subject to biennial renewal upon application to the Physician Assistant Regulatory Council; and

f. The use of telemedicine as defined in this chapter and, as further described in regulation, the use of and participation in telehealth.

(b)(1) The Board, in conjunction with the Regulatory Council for Physician Assistants, shall suspend, revoke, or restrict the license of a physician assistant or take disciplinary action or other action against a physician assistant for engaging in unprofessional conduct as defined in § 1731(b) of this title; or for the inability to render delegated medical acts with reasonable skill or safety to patients because of the

physician assistant's physical, mental, or emotional illness or incompetence, including but not limited to: deterioration through the aging process, or loss of motor skills, or excessive use of drugs, including alcohol; or for representing himself or herself as a physician, or for knowingly allowing himself or herself to be represented as a physician; for failing to report in writing to the Board within 30 days of becoming aware of any physician, physician assistant, or healthcare provider who the licensee reasonably believes has engaged in unprofessional conduct as defined in § 1731(b) of this title or is unable to act with reasonable skill or safety to patients because of the physician's, physician assistant's, or other healthcare provider's physical, mental, or emotional illness or incompetence, including but not limited to deterioration through the aging process, or loss of motor skills, or excessive use of drugs, including alcohol for failing to report child abuse and neglect as required by § 903 of Title 16. The license of any physician assistant who is convicted of a felony sexual offense shall be revoked. Disciplinary action or other action undertaken against a physician assistant must be in accordance with the procedures, including appeal procedures, applicable to disciplinary actions against physicians pursuant to subchapter IV of this chapter, except that a hearing panel for a complaint against a physician assistant consists of 3 unbiased members of the Regulatory Council, the 3 members being 2 physician assistant members and 1 physician or pharmacist member if practicable.

A person reporting or testifying in any proceeding as a result of making a report pursuant to this section is immune from claim, suit, liability, damages, or any other recourse, civil or criminal, so long as the person acted in good faith and without gross or wanton negligence; good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant.

(2)a. If the Board or the Regulatory Council for Physician Assistants receives a formal or informal complaint concerning the activity of a physician assistant and the Regulatory Council members reasonably believe that the activity presents a clear and immediate danger to the public health, the Regulatory Council, with the approval of the Board, may issue an order temporarily suspending the physician assistant's license to practice pending a hearing. An order temporarily suspending a license to practice may not be issued by the Council, with the approval of the Board, unless the physician assistant or the physician assistant's attorney received at least 24 hours' written or oral notice prior to the temporary suspension so that the physician assistant or the physician assistant's attorney can be heard in opposition to the proposed suspension, and unless at least 4 members of the Council and 7 members of the Board vote in favor of the temporary suspension. 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 unless the temporarily suspended physician assistant requests a continuance of the hearing date. If the physician assistant requests a continuance, the order of temporary suspension remains in effect until the hearing panel convenes and a decision is rendered.

b. A physician assistant whose license to practice has been temporarily suspended pursuant to this section must be notified of the temporary suspension immediately and in writing. Notification consists of a copy of the complaint and the order of temporary suspension pending a hearing personally served upon the physician assistant or sent by certified mail, return receipt requested, to the physician assistant's last known address.

c. A physician assistant whose license to practice has been temporarily suspended pursuant to this section may request an expedited hearing. The Council shall schedule the hearing on an expedited basis, provided that the Council receives the request within 5 calendar days from the date on which the physician assistant received notification of the decision of the Council, with the approval of the Board, to temporarily suspend the physician assistant's license to practice.

d. As soon as possible after the issuance of an order temporarily suspending a physician assistant's license to practice pending a hearing, the Executive Director shall appoint a 3-member hearing panel. After notice to the physician assistant pursuant to subsection (b) of this section, the hearing panel shall convene within 60 days of the date of the issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If the physician assistant requests in a timely manner an expedited hearing, the hearing panel shall convene within 15 days of the receipt of the request by the Council. The 3-member panel shall proceed to a hearing in accordance with the procedures set forth in § 1734 of this title and shall render a decision within 30 days of the hearing.

e. In addition to making findings of fact, the hearing panel shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect until the Board, pursuant to § 1734(g) of this title, deliberates and reaches conclusions of law based upon the findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended physician assistant requests an extension of the order pending a final decision of the Board. Upon the final decision of the Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Board.

(75 Del. Laws, c. 141 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 319 § 1; 77 Del. Laws, c. 325 § 19; 78 Del. Laws, c. 149; 78 Del. Laws, c. 387 § 2; 80 Del. Laws, c. 80 § 4.)

§ 1773A Participation in disaster or emergency care.

(a) A physician assistant licensed in this State or licensed or authorized to practice in any other U.S. jurisdiction or credentialed as a physician assistant by a federal employer who is responding to a need for medical care created by an emergency or a state or local disaster (excluding an emergency which occurs in that person's place of employment or practice) may render such care that he or she is able to provide without supervision pursuant to § 1770A of this title or with such supervision as is available.

(b) Any physician who supervises a physician assistant providing medical care in response to such an emergency or state or local disaster

shall not be required to meet the requirements set forth in this subchapter for a supervising physician.

(c) A person licensed as a physician assistant under this chapter who, in good faith and without gross or wanton negligence, renders emergency care at the scene of an emergency, excluding an emergency which occurs in that person's place of employment or practice, shall not be liable for civil damages as a result of any acts or omissions in rendering the emergency care.

(78 Del. Laws, c. 387 § 2; 70 Del. Laws, c. 186 § 1.)

§ 1774 Temporary licensing of physician assistants.

(a) Notwithstanding any provision of this subchapter to the contrary, the Executive Director, with the approval of a physician member of the Board, may grant a temporary license to an individual who has graduated from a physician or surgeon assistant program which has been accredited by the Accreditation Review Commission on Education for the Physician Assistant (ARC-PA) or, prior to 2001, by the Committee on Allied Health Education and Accreditation (CAHEA) of the American Medical Association (AMA) or a successor agency and who otherwise meets the qualifications for licensure but who has not yet taken a national certifying examination, provided that the individual is registered to take and takes the next scheduled national certifying examination. A temporary license granted pursuant to this subsection is valid until the results of the examination are available from the certifying agency. If the individual fails to pass the national certifying examination, the temporary license granted pursuant to this subsection must be immediately rescinded until the individual successfully qualifies for licensure pursuant to this subchapter.

(b) An individual who is temporarily licensed pursuant to this section may not have a prescriptive practice and may not perform delegated medical acts except in the physical presence of the individual's supervising physician.

(75 Del. Laws, c. 141 § 1; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 387 § 2.)

§ 1774A Fees set by Board.

The Division of Professional Regulation shall establish fees for licensing physician assistants, for renewing licenses on a biennial basis, and for other regulatory purposes. The fees must approximate the costs reasonably necessary to defray the actual expenses of the Board and the regulatory council, as well as the proportional expenses incurred by the Division in administering the issuance and renewal of licenses, and other regulation of physician assistants.

(75 Del. Laws, c. 141 § 1; 78 Del. Laws, c. 387 § 2.)

§ 1774B Prohibited acts; penalties; enforcement.

(a) A person may not practice as a physician assistant in this State or represent that the person is a physician assistant or knowingly allow himself or herself to be represented as a physician assistant unless the person is licensed under this subchapter, except as otherwise provided in this chapter.

(b) A person who, contrary to the provisions of this subchapter, practices or attempts to practice as a physician assistant within the State or represents that the person is a physician assistant or knowingly allows himself or herself to be represented as a physician assistant shall be fined not less than $500 nor more than $2,000 or imprisoned not more than 1 year, or both.

(c) The Attorney General of this State or a deputy attorney general shall enforce the provisions of this subchapter.

(75 Del. Laws, c. 141 § 1; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 387 § 2.)

§ 1774C Procedure or action not prescribed.

This subchapter governs the practice of physician assistants. If a procedure or action is not specifically prescribed in this subchapter, but is prescribed in the subchapters relating to the practice of medicine, and the procedure or action would be useful or necessary for the regulation of physician assistants, the Board or Council may, in its discretion, proceed in a manner prescribed for physicians in the practice of medicine.

(75 Del. Laws, c. 141 § 1; 78 Del. Laws, c. 387 § 2.)

§ 1774D Inactive license; return to clinical practice.

(a) Any physician assistant who notifies the Board in writing on forms prescribed by the Board may elect to place his or her license on inactive status. A physician assistant whose license is inactive shall be excused from payment of renewal fees and shall not practice as a physician assistant. Any licensee who engages in practice while his or her license is inactive shall be considered to be practicing without a license, which shall be grounds for discipline under § 1774B of this title. A physician assistant whose license has been inactive for 3 years or less may reactivate the license by paying the renewal fee pursuant to § 1774A of this title and meeting the requirements for ordinary license renewal as determined by the Board.

(b) If a physician assistant whose license has been on inactive status for in excess of 3 years and who has not practiced as a physician assistant in any jurisdiction of the United States for over 3 years requests to reactivate his or her license, the Board may grant a re-entry license and may, after consultation with the Council, impose additional practice and supervision requirements for the re-entry license. A re-entry license granted under this subsection shall be valid for no longer than 6 months and may be renewed only once at the Board's discretion.

In the month immediately preceding the month during which the re-entry license will expire, a physician assistant may apply to the Board for a full license as a physician assistant. The Board shall grant a full license to a physician assistant who meets all qualifications for

licensure and whom the Board determines is qualified to practice. If the Board determines that a physician assistant is still not qualified to receive a full license at the conclusion of the re-entry license period, the Board may only once renew the re-entry license. If the Board elects to renew a re-entry license instead of issuing a full license, the Board shall provide to the physician assistant a written explanation for that decision when issuing the renewed re-entry license.

Additional practice requirements that the Board may choose to impose as a condition of a re-entry license may include:

(1) Requiring the supervising physician to be physically on-site while the physician assistant is practicing;

(2) Requiring the supervising physician to review and countersign a portion of patient charts for patients seen by the physician assistant;

(3) Requiring the physician assistant to possess current certification from the NCCPA;

(4) Requiring the physician assistant to take a review course or to complete a specified amount of Category 1 CME, as determined by the Council and agreed upon by the Board as appropriate; and

(5) Requiring documentation of a specific minimum number of clinical practice hours performed under the re-entry license.

(c) The above subsection (b) of this section shall also apply to a physician assistant who has not placed his or her license on inactive status in this State but who has previously practiced as a physician assistant in another jurisdiction of the United States and has not actively engaged in clinical practice for a period in excess of 3 years immediately prior to applying for a license under this subchapter.

(78 Del. Laws, c. 387 § 2; 70 Del. Laws, c. 186 § 1.)

Subchapter VII

Respiratory Care Practitioners

§ 1775 Respiratory Care Advisory Council.

(a) The Respiratory Care Advisory Council (Council) consists of 7 members, 1 of whom is a physician member of the Board of Medical Licensure and Discipline. The remaining 6 council members are individuals trained in respiratory care who have been licensed and primarily employed in the practice of respiratory care in this State for at least 2 of the 3 years immediately prior to appointment. The Council may elect officers as necessary.

(b) Each Council member is appointed by the Board for a term of 3 years, and may succeed himself or herself for 1 additional 3-year term; provided, however, that if a member is initially appointed to fill a vacancy, the member may succeed himself or herself for only 1 additional 3-year term. A person appointed to fill a vacancy on the Council is entitled to hold office for the remainder of the unexpired term of the former member. Each term of office expires on the date specified in the appointment; however, a Council member whose term of office has expired remains eligible to participate in Council proceedings until replaced by the Board. A person who has never served on the Council may be appointed to the Council for 2 consecutive terms, but the person is thereafter ineligible for appointment to the Council except as hereinafter provided. A person who has been twice appointed to the Council or who has served on the Board for 6 years within any 9-year period may not again be appointed to the Council until an interim period of at least 1 year has expired since the person last served. A member serving on the Council may not be an elected officer or a member of the board of directors of any professional association of respiratory care practitioners.

(c) The Council shall promulgate rules and regulations governing the practice of respiratory care, after public hearing and subject to the approval of the Board of Medical Licensure and Discipline. The Board must approve or reject within 60 days proposed rules or regulations submitted to it by the Council. If the Board fails to approve or reject the proposed rules or regulations within 60 days, the proposed rules or regulations are deemed to be approved by the Board.

(d) The Council shall meet quarterly, and at such other times as license applications are pending. The Council shall, from time to time, present to the Board the names of individuals qualified to be licensed or qualified to receive temporary licenses, and shall recommend disciplinary action against licensees as necessary, and shall suggest changes in operations or regulations.

(75 Del. Laws, c. 141 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 319 § 1.)

§ 1776 Respiratory care practitioners.

(a) As used in this subchapter:

(1) "Respiratory care" means the allied health profession, under the direction of a person certified to practice medicine, which is responsible for direct and indirect services in the treatment, management, diagnostic testing, control, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system. Respiratory care includes inhalation therapy and respiratory therapy.

(2) "Respiratory care practitioner" or "RCP" means an individual who practices respiratory care in accord with the requirements of this subchapter;

(b) A respiratory care practitioner works under the general supervision of a person certified to practice medicine, whether by direct observation and monitoring, by protocols approved by a person certified to practice medicine, or by orders written or verbally given by a person certified to practice medicine. A respiratory care practitioner may evaluate patients and make decisions within parameters defined by

a person certified to practice medicine and by the Board of Medical Licensure and Discipline. The work performed by a respiratory care practitioner includes, but is not limited to:

(1) Collecting samples of blood, secretions, gases, and body fluids for respiratory evaluations;

(2) Measuring cardiorespiratory volumes, flows, and pressures;

(3) Administering pharmacological agents, aerosols, and medical gases via the respiratory route;

(4) Inserting and maintaining airways, natural or artificial, for the flow of respiratory gases;

(5) Controlling the environment and ventilatory support systems such as hyperbaric chambers and ventilators;

(6) Resuscitating individuals with cardiorespiratory failure;

(7) Maintaining bronchopulmonary hygiene;

(8) Researching and developing protocols in respiratory disorders;

(9) Performing pulmonary function studies; and

(10) The use of telemedicine as defined in this chapter and, as further described in regulation, the use of and participation in telehealth.

(c) Nothing in this subchapter is intended to limit, preclude, or otherwise interfere with the professional activities of other individuals and healthcare providers formally trained and licensed by the State.

(d) An individual who is licensed pursuant to this subchapter, who is not being investigated or sanctioned in relation to unprofessional conduct or physical, mental, emotional, or other impairment, and who has passed an examination that includes the subject matter of 1 or more of the professional activities included in subsection (b) of this section may not be prohibited from performing those professional activities passed in the examination, provided that the testing body that administered the examination is approved by the Board.

(70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 203 § 1; 72 Del. Laws, c. 171 § 1; 74 Del. Laws, c. 262 § 30B; 75 Del. Laws, c. 141 § 1; 77 Del. Laws, c. 319 § 1; 80 Del. Laws, c. 80 § 5.)

§ 1777 Licensure.

(a) The requirements for licensure by the Board as a respiratory care practitioner are:

(1) The applicant must successfully complete a national qualifying examination with a passing grade that leads to a credential conferred by the National Board for Respiratory Care, Inc. (NBRC), or its successor organization, as a certified respiratory therapist (CRT) and/or as a registered respiratory therapist (RRT); or

(2) The applicant must possess a current license in a state which has licensing requirements equal to or exceeding the requirements of this subchapter, and there may not be any outstanding or unresolved complaints pending against the applicant;

(3) The applicant:

a. May not have been assessed any administrative penalties regarding the applicant's practice of respiratory care, including but not limited to fines, formal reprimands, license suspension or revocation (except for license suspension or revocation for nonpayment of license renewal fees), and probationary limitations; and

b. May not have entered into a consent agreement which contains conditions placed by a Board or other authority on the applicant's professional conduct or practice, including the voluntary surrender of the applicant's license while under investigation for misconduct.

However, the Board may, after a hearing, waive the requirement of paragraph (a)(3)a. of this section if the administrative penalty prevents the issuance of a license;

(4) The applicant may not have an impairment related to the current use of drugs or alcohol which substantially impairs the practice of respiratory care with reasonable skill and safety;

(5) The applicant may not have been convicted of or may not have admitted under oath to having committed a crime substantially related to the practice of respiratory care. "Substantially related" means that the nature of the criminal conduct for which the person was convicted or to which the person admitted under oath has a direct bearing on the person's fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of respiratory care. The Board shall promulgate regulations specifically identifying the crimes which are substantially related to the practice of respiratory care;

(6) The applicant may not have a criminal conviction record or a pending criminal charge relating to an offense, the circumstances of which substantially relate to or affect the practice of respiratory care. An applicant who has a criminal conviction record or a pending criminal charge must arrange for information about the record or charge to be provided directly to the Board by the appropriate authorities in sufficient specificity to enable the Board to make a determination of whether the record or charge is substantially related to or affects the practice of respiratory care.

(b) Waiver of requirements. — The Respiratory Care Advisory Council, by the affirmative vote of 5 of its members and with the approval of the Board within 30 days of the vote, may waive any of the requirements of subsection (a) of this section if its finds all of the following by clear and convincing evidence:

(1) The applicant's education, training, qualifications, and conduct have been sufficient to overcome the deficiency or deficiencies in meeting the requirements of this section;

(2) The applicant is capable of practicing respiratory care in a competent and professional manner;

(3) The granting of the waiver will not endanger the public health, safety, or welfare;

(4) 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service; and

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

(c) License denial. — If it appears to the Board that an applicant has been intentionally fraudulent or that an applicant has intentionally submitted, or intentionally caused to be submitted, false information as part of the application process, the Board may not issue a license to the applicant and must report the incident of fraud or submitting false information to the Office of the Attorney General for further action.

(d) Temporary license. — The Executive Director of the Board, with the approval of a physician member of the Board, may issue a temporary permit to an applicant for licensure who has presented a completed application to the Board. A temporary permit issued under this paragraph is valid for a period of not more than 90 days and may not be renewed. Only 1 temporary permit may be issued under this paragraph.

(e) License suspension, revocation, or nonrenewal. —

(1) The Council, after appropriate notice and hearing, may recommend to the Board of Medical Licensure and Discipline that the Board revoke, suspend, or refuse to issue a license, or place the licensee on probation, or otherwise discipline a licensee found guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, fraud, deceit, incompetence, gross negligence, dishonesty, or other behavior in the licensee's professional activity which is likely to endanger the public health, safety, or welfare. The Council and Board may take necessary action against a respiratory care practitioner who is unable to render respiratory care services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness, or the excessive use of drugs, including alcohol. Disciplinary action or other action taken against a respiratory care practitioner must be in accordance with the procedures for disciplinary and other actions against physicians, including appeals as set forth in subchapter IV of this chapter, except that a hearing panel for a complaint against a respiratory care practitioner consists of 3 unbiased members of the Regulatory Council, the 3 members being the chair of Council and 2 other members, if practicable.

(2)a. If the Board or the Respiratory Care Advisory Council receives a formal or informal complaint concerning the activity of a respiratory care practitioner and the Council members reasonably believe that the activity presents a clear and immediate danger to the public health, the Council may issue an order temporarily suspending the respiratory care practitioner's license to practice pending a hearing. An order temporarily suspending a license to practice may not be issued by the Council, with the approval of the Board, unless the respiratory care practitioner or the respiratory care practitioner's attorney received at least 24 hours' written or oral notice prior to the temporary suspension so that the respiratory care practitioner or the respiratory care practitioner's attorney can be heard in opposition to the proposed suspension, and unless at least 4 members of the Council and 7 members of the Board vote in favor of the temporary suspension. 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 unless the temporarily suspended respiratory care practitioner requests a continuance of the hearing date. If the respiratory care practitioner requests a continuance, the order of temporary suspension remains in effect until the hearing panel convenes and a decision is rendered.

b. A respiratory care practitioner whose license to practice has been temporarily suspended pursuant to this section must be notified of the temporary suspension immediately and in writing. Notification consists of a copy of the complaint and the order of temporary suspension pending a hearing personally served upon the respiratory care practitioner or sent by certified mail, return receipt requested, to the respiratory care practitioner's last known address.

c. A respiratory care practitioner whose license to practice has been temporarily suspended pursuant to this section may request an expedited hearing. The Council shall schedule the hearing on an expedited basis, provided that the Council receives the request within 5 calendar days from the date on which the respiratory care practitioner received notification of the decision of the Council, with the approval of the Board, to temporarily suspend the respiratory care practitioner's license to practice.

d. As soon as possible after the issuance of an order temporarily suspending a respiratory care practitioner's license to practice pending a hearing, the Council President shall appoint a 3-member hearing panel. After notice to the respiratory care practitioner pursuant to paragraph (e)(2)b. of this section, the hearing panel shall convene within 60 days of the date of the issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If the respiratory care practitioner requests in a timely manner an expedited hearing, the hearing panel shall convene within 15 days of the receipt of the request by the Council. The 3-member panel shall proceed to a hearing in accordance with the procedures set forth in § 1734 of this title and shall render a decision within 30 days of the hearing.

e. In addition to making findings of fact, the hearing panel shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect until the Board, pursuant to § 1734(g) of this title, deliberates and reaches conclusions of law based upon the findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended respiratory care practitioner requests an extension of the order pending a final decision of the Board. Upon the final decision of the Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by

the Board.

(75 Del. Laws, c. 141 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 436 § 14; 77 Del. Laws, c. 319 § 1; 77 Del. Laws, c. 325 § 19; 78 Del. Laws, c. 44 §§ 18, 19.)

§ 1777A Procedure or action not prescribed.

This subchapter governs the practice of respiratory care practitioners. If a procedure or action is not specifically prescribed in this subchapter, but is prescribed in the subchapters relating to the practice of medicine, and the procedure or action would be useful or necessary for the regulation of respiratory care practitioners, the Board may, in its discretion, proceed in a manner prescribed for physicians in the practice of medicine.

(75 Del. Laws, c. 141 § 1.)

§ 1778 Fees; license renewal.

The Division of Professional Regulation shall establish reasonable fees for licensing respiratory care practitioners and for biennial license renewal. A licensee, when renewing a license, shall provide documentation of continuing education related to respiratory care pursuant to the continuing education requirements for respiratory care practitioners established by the Advisory Council.

(75 Del. Laws, c. 141 § 1.)

§ 1779 Prohibited acts; penalties; enforcement.

(a) A person may not practice respiratory care in this State or represent that the person is a respiratory care practitioner or knowingly allow himself or herself to be represented as a respiratory care practitioner unless the person is licensed under this subchapter, except as otherwise provided in this chapter.

(b) A person who, contrary to the provisions of this subchapter, practices or attempts to practice respiratory care within the State or represents that the person is a respiratory care practitioner or knowingly allows himself or herself to be represented as a respiratory care practitioner shall be fined not less than $500 nor more than $2,000 or imprisoned not more than 1 year, or both.

(c) The Office of the Attorney General is charged with the enforcement of this subchapter.

(d) Notwithstanding the provisions of subsection (a) of this section, a respiratory therapist having a current license issued in another state or the District of Columbia may provide respiratory care within their scope of practice in connection with the interstate transport of a patient without obtaining a license to practice respiratory care in this State. This exemption is limited to the immediate transport need.

(75 Del. Laws, c. 141 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 130 § 1.)

Subchapter VIII

Parental Notice of Abortion Act

§ 1780 Short title.

This subchapter shall be known and may be cited as the "Parental Notice of Abortion Act."

(70 Del. Laws, c. 238 § 1.)

§ 1781 Legislative purpose and findings.

(a) The General Assembly of the State finds as fact that:

(1) Immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences;

(2) The physical, emotional, and psychological consequences of teen pregnancy are serious and can be lasting, particularly when the patient is immature;

(3) The capacity to become pregnant and the capacity for mature judgment concerning how to choose among the alternatives for managing that pregnancy are not necessarily related;

(4) Parents ordinarily possess information essential to enable a physician to exercise the physician's best medical judgment concerning the child;

(5) Parents who are aware that their minor daughter has had an abortion can ensure that she receives adequate medical attention after the abortion;

(6) Parental consultation is usually desirable and in the best interest of their minor children and parents ordinarily act in the best interest of their minor children; and

(7) Parental involvement legislation enacted in other states has been shown to have significant impact in reducing abortion, birth and pregnancy rates among minors.

(b) It is the intent of the General Assembly of the State in enacting this parental notice provision to further the important and compelling State interests of:

(1) Protecting minors against their own immaturity;

(2) Fostering the family structure and preserving it as a viable social unit;

(3) Protecting the rights of parents to rear children who are members of their household; and

(4) Protecting the health and safety of minor children.

(70 Del. Laws, c. 238 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1782 Definitions.

For purposes of this subchapter, the following definitions will apply.

(1) "Abortion" means the use of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant, with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to remove a dead fetus.

(2) "Coercion" means restraining or dominating the choice of a minor female by force, threat of force, or deprivation of food and shelter.

(3) "Emancipated minor" means any minor female who is or has been married or has, by court order or otherwise, been freed from the care, custody and control of her parents or any other legal guardian.

(4) "Licensed mental health professional" means a person licensed under the Division of Professional Regulation of the State as a:

(a) Psychiatrist;

(b) Psychologist; or

(c) Licensed professional counselor of mental health.

(5) "Medical emergency" means that condition which, on the basis of the physician or other medically authorized person's good faith clinical judgment, so complicates the medical condition of the pregnant minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which delay will create serious risk of substantial and irreversible impairment of a major bodily function.

(6) "Minor" means a female person under the age of 16.

(70 Del. Laws, c. 238 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1783 Notice required.

No physician or other medically authorized person shall perform an abortion upon an unemancipated minor until complying with the following notification provisions:

(1) No physician or other medically authorized person shall perform an abortion upon an unemancipated minor unless the physician, medically authorized person, or an agent of the physician or of the medically authorized person has given at least 24 hours actual notice to one or both parents (either custodial or noncustodial), a grandparent, a licensed mental health professional (who shall not be an employee or under contract to an abortion provider except employees or contractors of an acute care hospital) or to the legal guardian of the pregnant minor of the intention to perform the abortion, or unless the physician, medically authorized person, or an agent of the physician or of the medically authorized person has received a written statement or oral communication from another physician or medically authorized person, hereinafter called the "referring physician or medically authorized person," certifying that the referring physician or medically authorized person has given such notice. If the person contacted pursuant to this subsection is not the parent or guardian, the person so contacted must explain to the minor the options available to her include adoption, abortion and full-term pregnancy, and must agree that it is in the best interest of the minor that a waiver of the parental notice requirement be granted. Any licensed mental health professional so contacted shall certify that the professional has performed an assessment of the specific factors and circumstances of the minor subject to the evaluation including but not limited to the age and family circumstances of the minor and the long-term and short-term consequences to the minor of termination or continuation of the pregnancy.

a. No physician or other abortion provider shall charge a referral fee to a person authorized under this section to receive notice; nor shall a person authorized under this section to receive notice charge a referral fee to a physician or other abortion provider.

b. Nothing in this section shall affect the obligations of a person pursuant to other provisions of this Code to report instances of child abuse to the appropriate government agencies.

(2) A minor may petition the Family Court ("Court") of any county of this State for a waiver of the notice requirement of this section pursuant to the procedures of § 1784 of this title. A physician who has received a copy of a court order granting a waiver application under § 1784 of this title shall not, at any time, give notice of the minor's abortion to any person without the minor's written permission.

(70 Del. Laws, c. 238 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1784 Application for waiver of parental notice requirement; grounds; timeliness of decision; notice of decision; appeals; costs.

(a) The Court shall consider waiving the notice requirement of § 1783 of this title upon the proper application of a minor. The application shall be in writing, signed by the minor, and verified by her oath or affirmation before a person authorized to perform notarial acts. It shall designate:

(1) The minor's name and residence address;

(2) A mailing address where the Court's order may be sent and a telephone number where messages for the minor may be left;

(3) That the minor is pregnant;

(4) That the minor desires to obtain an abortion;

(5) Each person for whom the notice requirement is sought to be waived; and

(6) The particular facts and circumstances which indicate that the minor is mature and well-informed enough to make the abortion decision on her own and/or that it is in the best interest of the minor that notification pursuant to § 1783 of this title be waived.

(b) The Court, by a judge, shall grant the written application for a waiver if the facts recited in the application establish that the minor is mature and well-informed enough to make the abortion decision on her own or that it is in the best interest of the minor that notification pursuant to § 1783 of this title be waived. The Court shall presume that married parents not separated and grandparents are complete confidants, such that, on application to waive the notice requirement as to either, grounds to waive the notice requirement as to one parent or grandparent shall constitute grounds to waive the notice requirement as to the spouse thereof.

(c) If the Court fails to rule within 5 calendar days of the time of the filing of the written application, the application shall be deemed granted; in which case, on the sixth day, the Court shall issue an order stating that the application is deemed granted.

(d) The Court shall mail 3 copies of any order to the mailing address identified in the application on the day the order issues, shall attempt to notify the minor by telephone on the day the order issues, and if so requested, shall make copies of the order available at Court chambers for the minor.

(e) An expedited appeal to the Supreme Court shall be available to any minor whose petition is denied by a judge of the Family Court. Notice of intent to appeal shall be given within 2 days of the receipt of actual notice of the denial of the petition. The Supreme Court shall advise the minor that she has a right to court-appointed counsel and shall provide her with such counsel upon request, at no cost to the minor. The Supreme Court shall expedite proceedings to the extent necessary and appropriate under the circumstances. The Supreme Court shall notify the minor of its decision consistent with subsection (d) of this section.

(f) No court shall assess any fee or cost upon a minor for any proceeding under this section.

(g) Each Court shall provide by rule for the confidentiality of proceedings under this subchapter, but shall continue to initiate investigations into any allegations of past abuse where otherwise appropriate, without disclosing that an application under this subchapter was the source of the information prompting the investigation.

(70 Del. Laws, c. 238 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1785 Short form of affidavit and application for waiver of parental notice requirement.

The following shall be sufficient form of affidavit and application for waiver of parental notice requirement under this subchapter:

IN THE FAMILY COURT OF THE STATE OF DELAWARE
IN AND FOR (NAME OF COUNTY) COUNTY

IN THE MATTER OF:	)	AFFIDAVIT AND
	)	APPLICATION FOR
(NAME OF MINOR APPLICANT),	)	WAIVER OF NOTICE
	)	OF
	)	ABORTION
STATE OF DELAWARE	)	
	)	:u2500
_____ COUNTY, SS:	)	

BE IT REMEMBERED that on this _____ day of _____ , A.D. _____ before me, (name of person authorized to perform notarial acts), personally appeared (name of minor applicant/affiant) who, being by me duly sworn or affirmed, depose and say:

(1) That the minor applicant resides at (minor's address);

(2) That the Court may send its order to (mailing address designated by applicant minor) and leave telephone messages for the applicant minor at (phone number designated by applicant minor);

(3) That the minor applicant is pregnant;

(4) That the minor applicant desires to obtain an abortion;

(5) That the minor applicant desires that the Court waive the notice requirement of § 1783 of Title 24;

(6) That the minor applicant believes that she is mature and well-informed enough to make the abortion decision on her own and/or it would be in her best interest that a waiver of notice be granted because (state reasons why mature and well-informed enough and/or waiver of notice is in best interest based upon the applicant's age and family circumstances and the long-term and short-term consequences to the applicant of termination or continuation of the pregnancy).

WHEREFORE, this minor applicant intends to submit this affidavit and application for waiver of notice of abortion to the Family Court, and pray that an order be issued waiving the notification requirement of § 1783 of Title 24 as to the following persons: (identify each such person).

Minor applicant/affiant

SWORN TO or affirmed and subscribed before me by the minor applicant/affiant this _____ day of _____ , A.D. _____ .

(Notary)

(70 Del. Laws, c. 238 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1786 Coercion prohibited.

No parent, guardian, or other person shall coerce a minor to undergo an abortion or to continue a pregnancy. Any minor who is threatened with such coercion may apply to a court of competent jurisdiction for relief. The court shall provide the minor with counsel, give the matter expedited consideration, and grant such relief as may be necessary to prevent such coercion. Should a minor be denied the financial support of her parents or legal guardian by reason of her refusal to undergo abortion or to continue a pregnancy, she shall be considered emancipated for purposes of eligibility for assistance benefits.

(70 Del. Laws, c. 238 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1787 Medical emergency exception.

The requirements of § 1783, § 1784 and § 1786 of this title shall not apply when, in the best medical judgment of the physician or other medically authorized person, based on the facts of the case, a medical emergency exists that so complicates the pregnancy as to require an immediate abortion.

(70 Del. Laws, c. 238 § 1.)

§ 1788 Counseling to affected persons.

The Division of Prevention and Behavioral Health Services, Department of Services for Children, Youth and Their Families, shall offer counseling and support to any minor who is pregnant and is considering filing or has filed an application under this subchapter, if the minor requests such services. Notwithstanding any contrary statute, no notification of the request for or provision of such services to the minor shall be provided to any person, nor shall the consent of any person thereto be required.

(70 Del. Laws, c. 238 § 1; 77 Del. Laws, c. 327 § 210(a).)

§ 1789 Penalty and criminal jurisdiction.

(a) Any person who intentionally performs an abortion with knowledge that, or with reckless disregard as to whether, the person upon whom the abortion has been performed is an unemancipated minor, and who intentionally or knowingly fails to conform to any requirement of this subchapter, shall be guilty of a class A misdemeanor.

(b) The Superior Court shall have exclusive jurisdiction of violations of this section.

(70 Del. Laws, c. 238 § 1.)

§ 1789A Notice and avoidance of liability.

In any prosecution pursuant to § 1789 of this title, the State shall prove beyond a reasonable doubt that the physician (or other medically authorized person) who performed the abortion did not have a good faith belief on that physician's part that actual notice was given by such physician (or other medically authorized person), that physician's agent, or the referring physician or another medically authorized person to a person listed in § 1783(1) of this title as qualified to receive notice. In any civil case, the plaintiff must prove the absence of such a good faith belief by clear and convincing evidence.

(70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 238 § 1.)

§ 1789B Civil damages available.

Failure to give notice pursuant to the requirements of this subchapter is prima facie evidence of interference with family relations in appropriate civil actions. The law of this State shall not be construed to preclude the award of punitive damages in any civil action relevant to violations of this subchapter. Nothing in this subchapter shall be construed to limit the common law rights of parents.

(70 Del. Laws, c. 238 § 1.)

Subchapter IX

Termination of Human Pregnancy

§ 1790 Limitation on termination of human pregnancy; annual report.

(a) No person shall terminate or attempt to terminate or assist in the termination or attempt at termination of a human pregnancy otherwise than by birth, except that a physician licensed by this State may terminate a human pregnancy or aid or assist or attempt a termination of a human pregnancy if such procedure takes place in a hospital accredited by a nationally recognized medical or hospital accreditation authority, upon authorization by a hospital abortion review authority appointed by the hospital if 1 or more of the following conditions exist:

(1) Continuation of the pregnancy is likely to result in the death of the mother;

(2) There is substantial risk of the birth of the child with grave and permanent physical deformity or mental retardation;

(3) The pregnancy resulted from:

a. Incest, or

b. A rape or unlawful sexual intercourse in the first or second degree committed as a result of force or bodily harm or threat of

force or bodily harm, and the Attorney General of this State has certified to the hospital abortion review authority in writing over the Attorney General's signature that there is probable cause to believe that the alleged rape or unlawful sexual intercourse in the first or second degree did occur, except that during the first 48 hours after the alleged rape or unlawful sexual intercourse in the first or second degree no certification by the Attorney General shall be required;

(4) Continuation of the pregnancy would involve substantial risk of permanent injury to the physical or mental health of the mother.

(b) In no event shall any physician terminate or attempt to terminate or assist in the termination or attempt at termination of a human pregnancy otherwise than by birth unless:

(1) Not more than 20 weeks of gestation have passed (except in the case of a termination pursuant to paragraph (a)(1) of this section or where the fetus is dead); and

(2) Two physicians licensed by this State, 1 of whom may be the physician proposed to perform the abortion, certify to the abortion review authority of the hospital where the procedure is to be performed that they are of the opinion, formed in good faith, that 1 of the circumstances set forth in subsection (a) of this section exists (except that no such certification is necessary for the circumstances set forth in paragraph (a)(3)b. of this section); where the personal physician of an expectant mother claims that she has a mental or emotional condition, a psychiatrist licensed by this State shall, in addition to the personal physician, certify to the abortion review authority of the hospital where such procedure is to be performed that the physician is of the opinion, formed in good faith, that 1 of the circumstances set forth in subsection (a) of this section exists (except that no such certification is necessary for the circumstances set forth in paragraph (a)(3)b. of this section); and

(3) In the case of an unmarried female under the age of 18 or mentally ill or incompetent, there is filed with the hospital abortion review authority the written consent of the parents or guardians as are then residing in the same household with the consenting female, or, if such consenting female does not reside in the same household with either of her parents or guardians, then with the written consent of 1 of her parents or guardians.

(c) The hospital abortion review authority of each hospital in which a procedure or procedures are performed pursuant to this section shall, on or before March 1 in each year, file with the Department of Health and Social Services a written report of each such procedure performed pursuant to the authorization of such authority during the preceding calendar year setting forth grounds for each such authorization but not including the names of patients aborted.

(24 Del. C. 1953 § 1790; 57 Del. Laws, c. 145 § 2; 57 Del. Laws, c. 235 §§ 1, 2; 58 Del. Laws, c. 511 § 55; 66 Del. Laws, c. 269 § 16; 70 Del. Laws, c. 149 § 211; 70 Del. Laws, c. 186 § 1.)

§ 1791 Refusal to perform or submit to medical procedures.

(a) No person shall be required to perform or participate in medical procedures which result in the termination of pregnancy; and the refusal of any person to perform or participate in these medical procedures shall not be a basis for civil liability to any person, nor a basis for any disciplinary or other recriminatory action against the person.

(b) No hospital, hospital director or governing board shall be required to permit the termination of human pregnancies within its institution, and the refusal to permit such procedures shall not be grounds for civil liability to any person, nor a basis for any disciplinary or other recriminatory action against it by the State or any person.

(c) The refusal of any person to submit to an abortion or to give consent shall not be grounds for loss of any privileges or immunities to which such person would otherwise be entitled, nor shall submission to an abortion or the granting of consent be a condition precedent to the receipt of any public benefits.

(24 Del. C. 1953 § 1791; 57 Del. Laws, c. 145 § 2; 70 Del. Laws, c. 186 § 1.)

§ 1792 Assistance or participation in an unlawful termination of human pregnancy.

No person shall, unless the termination of a human pregnancy has been authorized pursuant to § 1790 of this title:

(1) Sell or give, or cause to be sold or given, any drug, medicine, preparation, instrument or device for the purpose of causing, inducing or obtaining a termination of such pregnancy; or

(2) Give advice, counsel or information for the purpose of causing, inducing or obtaining a termination of such pregnancy; or

(3) Knowingly assist or cause by any means whatsoever the obtaining or performing of a termination of such pregnancy.

(24 Del. C. 1953 § 1792; 57 Del. Laws, c. 145 § 2.)

§ 1793 Residency requirements; exceptions.

(a) No person shall be authorized to perform a termination of a human pregnancy within the State upon a female who has not been a resident of this State for a period of at least 120 days next before the performance of an operative procedure for the termination of a human pregnancy.

(b) This section shall not apply to such female who is gainfully employed in this State at the time of conception, or whose spouse is gainfully employed in this State at the time of conception or to such female who has been a patient, prior to conception, of a physician licensed by this State, or to such female who is attempting to secure the termination of her pregnancy for the condition specified in § 1790(a)(1) of this title.

(24 Del. C. 1953 § 1793; 57 Del. Laws, c. 145 § 3(A); 70 Del. Laws, c. 186 § 1.)

§ 1794 Consent prior to termination of human pregnancy.

(a) No abortion may be performed unless the woman submitting to the abortion first gives her written consent to the abortion stating that she freely and voluntarily consents to the abortion and that she has received a full explanation of the abortion procedure and effects, including, but not limited to, the following:

(1) The abortion procedure to be utilized.

(2) The probable effects of the abortion procedure on the woman, including the effects on her child-bearing ability and effects on possible future pregnancies.

(3) The facts of fetal development as of the time the proposed abortion is to be performed.

(4) The risks attendant to the procedure.

(5) An explanation of the reasonable alternatives to abortion and of the reasonable alternative procedures or methods of abortion.

(b) No abortion may be performed on a woman within 24 hours after giving written consent pursuant to subsection (a) of this section unless, in the opinion of her treating physician, an emergency situation presenting substantial danger to the life of the woman exists.

In the event a woman's treating physician determines an abortion is necessary because an emergency situation presenting substantial danger to the life of the woman existed and such woman is unable to give her consent to an abortion, an abortion may be performed on such woman.

(62 Del. Laws, c. 171 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1795 Live birth following abortion.

(a) In the event an abortion or an attempted abortion results in the live birth of a child, the person performing or inducing such abortion or attempted abortion and all persons rendering medical care to the child after its birth must exercise that degree of medical skill, care and diligence which would be rendered to a child who is born alive as the result of a natural birth.

(b) Nothing found in this section shall be deemed to preclude prosecution under any other applicable section of the Delaware Code for knowing or reckless conduct which is detrimental to the life or health of an infant born as a result of a procedure designed to terminate pregnancy. Anyone who knowingly violates this section shall be guilty of a class A misdemeanor.

(63 Del. Laws, c. 353 § 1.)

Subchapter X

Acupuncture Practitioners [Effective until Oct. 17, 2016]

§ 1796 Acupuncture Advisory Council [Effective until Oct. 17, 2016]

(a) The Acupuncture Advisory Council (Council) consists of 5 voting members, and 1 ex officio member. The 5 voting members shall consist of 1 physician member of the Board of Medical Licensure and Discipline and 4 Council members licensed and trained in acupuncture who have been primarily employed in the practice of acupuncture in this State for at least 3 years immediately prior to appointment. The ex officio member shall be a Delaware physician who has expertise in acupuncture. The Council may elect officers as necessary.

(b) Each Council member is appointed by the Board of Medical Licensure and Discipline for a term of 3 years, and may succeed himself or herself for 1 additional 3-year term; provided, however, that if a member is initially appointed to fill a vacancy, the member may succeed himself or herself for only 1 additional 3-year term. A person appointed to fill a vacancy on the Council is entitled to hold office for the remainder of the unexpired term of the former member. Each term of office expires on the date specified in the appointment; however, a Council member whose term of office has expired remains eligible to participate in Council proceedings until replaced by the Board. A person who has never served on the Council may be appointed to the Council for 2 consecutive terms, but the person is thereafter ineligible for appointment to the Council except as hereinafter provided. A person who has been twice appointed to the Council or who has served on the Council for 6 years within any 9-year period may not again be appointed to the Council until an interim period of at least 1 year has expired since the person last served. A member, other than the ex officio member, serving on the Council may not be an elected officer or a member of the board of directors of any professional association of acupuncture practitioners. The members of the Council are compensated at an appropriate and reasonable level as determined by the Division and may be reimbursed for meeting-related travel expenses at the State's current approved rate.

(c) The Council shall promulgate rules and regulations governing the practice of acupuncture, after public hearing and subject to the approval of the Board of Medical Licensure and Discipline. The Board must approve or reject within a reasonable amount of time proposed rules or regulations submitted to it by the Council.

(d) The Council shall meet quarterly, and at such other times as license applications are pending. The Council shall present to the Board the names of individuals qualified to be licensed and shall recommend disciplinary action against licensees as necessary, and shall suggest changes in operations or regulations. The Board shall approve or reject these recommendations within a reasonable time period.

(76 Del. Laws, c. 261 § 1; 77 Del. Laws, c. 101 § 1; 77 Del. Laws, c. 319 § 1; 78 Del. Laws, c. 139 § 1.)

§ 1796 Acupuncture Advisory Council [Effective Oct. 17, 2016]

(a) The Acupuncture Advisory Council (Council) consists of 5 voting members, and 1 ex officio member. The 5 voting members shall consist of 1 physician member of the Board of Medical Licensure and Discipline who possesses knowledge of acupuncture and 4 Council members licensed and trained in acupuncture or acupuncture and eastern medicine who have been primarily employed in the practice of acupuncture or acupuncture and eastern medicine in this State for at least 3 years immediately prior to appointment. The ex officio member shall be a Delaware physician who has expertise in acupuncture or acupuncture and eastern medicine. The Council may elect officers as necessary.

(b) Each Council member is appointed by the Board of Medical Licensure and Discipline for a term of 3 years, and may succeed himself or herself for 1 additional 3-year term; provided, however, that if a member is initially appointed to fill a vacancy, the member may succeed himself or herself for only 1 additional 3-year term. A person appointed to fill a vacancy on the Council is entitled to hold office for the remainder of the unexpired term of the former member. Each term of office expires on the date specified in the appointment; however, a Council member whose term of office has expired remains eligible to participate in Council proceedings until replaced by the Board. A person who has never served on the Council may be appointed to the Council for 2 consecutive terms, but the person is thereafter ineligible for appointment to the Council except as hereinafter provided. A person who has been twice appointed to the Council or who has served on the Council for 6 years within any 9-year period may not again be appointed to the Council until an interim period of at least 1 year has expired since the person last served. A member, other than the ex officio member, serving on the Council may not be an elected officer or a member of the board of directors of any professional association of acupuncture practitioners. The members of the Council are compensated at an appropriate and reasonable level as determined by the Division and may be reimbursed for meeting-related travel expenses at the State's current approved rate.

(c) The Council shall promulgate rules and regulations governing the practice of acupuncture and eastern medicine, after public hearing and subject to the approval of the Board of Medical Licensure and Discipline. The Board must approve or reject within a reasonable amount of time proposed rules or regulations submitted to it by the Council.

(d) The Council shall meet quarterly, and at such other times as license applications are pending. The Council shall present to the Board the names of individuals qualified to be licensed and shall recommend disciplinary action against licensees as necessary, and shall suggest changes in operations or regulations. The Board shall approve or reject these recommendations within a reasonable time period.

(76 Del. Laws, c. 261 § 1; 77 Del. Laws, c. 101 § 1; 77 Del. Laws, c. 319 § 1; 78 Del. Laws, c. 139 § 1; 80 Del. Laws, c. 316 § 2.)

§ 1797 Acupuncture practitioners [Effective until Oct. 17, 2016]

(a) As used in this subchapter:

(1) "Acupuncture" is the stimulation of points on the body by the insertion and manipulation of acupuncture needles using both traditional and modern scientific methods of evaluation and point selection. It also refers to a form of health care, based on a theory of energetic physiology that describes and explains the interrelationship of the body organs or functions with an associated acupuncture point or combination of points located on "channels" or "meridians". Acupuncture points shall include the classical points defined in authoritative acupuncture texts and special groupings of acupuncture points elicited using generally accepted diagnostic techniques of oriental medicine and selected for stimulation in accord with its principles and practices. Acupuncture points are stimulated in order to restore the normal function of the aforementioned organs or sets of functions. Acupuncture shall also include the ancillary techniques of oriental medicine including moxibustion, acupressure or other forms of manual meridian therapy and recommendations that include oriental dietary therapy, supplements and lifestyle modifications according to the principles of oriental medicine. Oriental dietary therapy shall be defined as recommending, advising or furnishing nonfraudulent information about herbs, vitamins, minerals, amino acids, carbohydrates, sugars, enzymes, food concentrates, foods, other food supplements, or dietary supplements. For purposes of this paragraph, "fraud" shall be defined as an intentional misrepresentation for financial gain. Legitimate disagreement about the role of the above-listed nutrients and foods as they apply to human nutrition shall not, in and of itself, constitute fraud. These supplemental techniques may be used within the public domain or by another licensed or registered healthcare or bodywork professional, according to state law or regulation.

(2) "Board" means the Board of Medical Licensure and Discipline.

(3) "Council" means the Acupuncture Advisory Council.

(4) "License" means, unless the context requires otherwise, a license issued by the Board to practice acupuncture.

(5)a. "Practice of acupuncture" means the use of needles or of oriental medical therapies for the purpose of normalizing energetic physiological functions including pain control, and for the promotion, maintenance, and restoration of health.

b. Needles used in the practice of acupuncture shall only be pre-packaged, single use, sterile acupuncture needles. These needles shall only be used on an individual patient in a single treatment session and disposed of according to federal standards for biohazard waste.

(b) Nothing in this subchapter shall limit, preclude, or otherwise interfere with the professional activities of other individuals and healthcare providers who are allowed to perform acupuncture. This includes chiropractic, medical and osteopathic physicians.

(c) An individual who is licensed pursuant to this subchapter, who is not being investigated or sanctioned in relation to unprofessional conduct or physical, mental, emotional, or other impairment, may not be prohibited from performing those professional activities included in this section.

(76 Del. Laws, c. 261 § 1; 77 Del. Laws, c. 101 § 1; 77 Del. Laws, c. 319 § 1; 77 Del. Laws, c. 449 §§ 1, 2.)

§ 1797 Acupuncture practitioners [Effective Oct. 17, 2016]

(a) As used in this subchapter:

(1) "Acupuncture" is the stimulation of points on the body by the insertion and manipulation of acupuncture needles using both traditional and modern scientific methods of evaluation and point selection. It also refers to a form of health care, based on a theory of energetic physiology that describes and explains the interrelationship of the body organs or functions with an associated acupuncture point or combination of points located on "channels" or "meridians". Acupuncture points shall include the classical points defined in authoritative acupuncture texts and special groupings of acupuncture points elicited using generally accepted diagnostic techniques of eastern medicine and selected for stimulation in accord with its principles and practices. Acupuncture points are stimulated in order to restore the normal function of the aforementioned organs or sets of functions. Acupuncture shall also include the ancillary techniques of eastern medicine including moxibustion, acupressure or other forms of manual meridian therapy and recommendations that include eastern dietary therapy, supplements and lifestyle modifications.

(2) "Board" means the Board of Medical Licensure and Discipline.

(3) "Council" means the Acupuncture Advisory Council.

(4) "Eastern medicine" means the practice of acupuncture, Chinese herbology and Asian bodywork therapy as part of a comprehensive healthcare system encompassing a variety of traditional healthcare therapies that have been used for more than 3,000 years to diagnose and treat illness, prevent disease and improve well-being.

(5) "License" means, unless the context requires otherwise, a license issued by the Board to practice acupuncture.

(6)a. "Practice of acupuncture" means the use of needles with or without electrical stimulation for the purpose of normalizing energetic physiological functions including pain control, and for the promotion, maintenance, and restoration of health.

b. Nothing in this subchapter shall limit, preclude, or otherwise interfere with the professional activities of other individuals and healthcare providers who are allowed to perform acupuncture. This includes chiropractic, medical and osteopathic physicians.

(7) "Practice of eastern medicine" includes the practice of acupuncture and further means making recommendations or prescriptions based in eastern dietary therapy, supplements and lifestyle modifications according to the principles of eastern medicine. Eastern dietary therapy shall be defined as recommending, advising or furnishing nonfraudulent information about herbs, vitamins, minerals, amino acids, carbohydrates, sugars, enzymes, food concentrates, foods, other food supplements, or dietary supplements. For purposes of this paragraph, "fraud" shall be defined as an intentional misrepresentation for financial gain. Legitimate disagreement about the role of the above-listed nutrients and foods as they apply to human nutrition shall not, in and of itself, constitute fraud. These supplemental techniques may be used within the public domain or by another licensed or registered healthcare or bodywork professional, according to state law or regulation.

(b) Nothing in this subchapter shall limit, preclude, or otherwise interfere with the professional activities of other individuals and healthcare providers who are allowed to perform acupuncture. This includes chiropractic, medical and osteopathic physicians.

(c) An individual who is licensed pursuant to this subchapter, who is not being investigated or sanctioned in relation to unprofessional conduct or physical, mental, emotional, or other impairment, may not be prohibited from performing those professional activities included in this section.

(76 Del. Laws, c. 261 § 1; 77 Del. Laws, c. 101 § 1; 77 Del. Laws, c. 319 § 1; 77 Del. Laws, c. 449 §§ 1, 2; 80 Del. Laws, c. 316 § 3.)

§ 1798 Licensure [Effective until Oct. 17, 2016]

(a) All applicants must meet the following requirements for licensure by the Board as an acupuncture practitioner:

(1) Achievement of a Diplomate in Oriental Medicine from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) or its equivalent as recognized by the Council and approved by the Board, or an organization that is recognized as equivalent to the NCCAOM by the Council and approved by the Board; and

(2) Completion of a course or evidence of passing an examination in clean needle technique;

(3) An applicant for whom English is a second language shall demonstrate the ability to communicate in the English language as determined by regulations as recommended by the Council and approved by the Board;

(4) The applicant:

a. May not have been assessed any administrative penalties regarding the applicant's practice of acupuncture, including but not limited to fines, formal reprimands, license suspension or revocation (except for license suspension or revocation for nonpayment of license renewal fees) and probationary limitations; and

b. May not have entered into a consent agreement which contains conditions placed by a board or other authority on the applicant's professional conduct or practice, including the voluntary surrender of the applicant's license while under investigation for misconduct.

However, the Board may, after a hearing, waive the requirement of paragraph (a)(4)a. of this section if the administrative penalty prevents the issuance of a license;

(5) The applicant may not have an impairment related to the current use of drugs or alcohol which substantially impairs the practice of acupuncture with reasonable skill and safety;

(6) The applicant may not have been convicted of or may not have admitted under oath to having committed a crime substantially

related to the practice of acupuncture. "Substantially related" means that the nature of the criminal conduct for which the person was convicted or to which the person admitted under oath has a direct bearing on the person's fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of acupuncture. The Board shall promulgate regulations specifically identifying the crimes which are substantially related to the practice of acupuncture;

(7) Meet any other qualifications that the Board establishes in regulations.

(b) Waiver of requirements. — The Acupuncture Advisory Council, by the affirmative vote of 3 of its members and with the approval of the Board within a reasonable period of time from the vote, may waive any of the requirements of subsection (a) of this section if it finds all of the following by clear and convincing evidence:

(1) The applicant's education, training, qualifications and conduct have been sufficient to overcome the deficiency or deficiencies in meeting the requirements of this section;

(2) The applicant is capable of practicing acupuncture in a competent and professional manner;

(3) The granting of the waiver will not endanger the public health, safety, or welfare;

(4) 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service; and

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

(c) License denial. — If it appears to the Board that an applicant has been intentionally fraudulent or that an applicant has intentionally submitted, or intentionally caused to be submitted, false information as part of the application process, the Board may not issue a license to the applicant and must report the incident of fraud or submitting false information to the Office of the Attorney General for further action.

(d) Temporary license. — The Executive Director of the Board, with the approval of a physician member of the Board, may issue a temporary permit to an applicant for licensure who has presented a completed application to the Board. A temporary permit issued under this subsection is valid for a period of not more than 90 days and may not be renewed. Only 1 temporary permit may be issued under this subsection.

(e) License suspension, revocation, or nonrenewal. —

(1) The Council, after appropriate notice and hearing, may recommend to the Board of Medical Licensure and Discipline that the Board revoke, suspend, or refuse to issue a license, or place the licensee on probation, or otherwise discipline a licensee found guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, fraud, deceit, incompetence, gross negligence, dishonesty, or other behavior in the licensee's professional activity which is likely to endanger the public health, safety, or welfare. The Council may recommend and Board may take necessary action against an acupuncture practitioner who is unable to render acupuncture services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness, or the excessive use of drugs including alcohol. Disciplinary action or other action taken against an acupuncture practitioner must be in accordance with the procedures for disciplinary and other actions against physicians, including appeals as set forth in subchapter IV of this chapter except that a hearing panel for a complaint against an acupuncture practitioner consists of 3 members; 1 of the 3 shall be a physician member of the Board; 2 of the 3 shall be unbiased members of the Acupuncture Advisory Council; and if no conflict exists, 1 of the 2 Acupuncture Advisory Council members shall be the Chair of the Acupuncture Advisory Council. The Chair of the hearing panel shall be 1 of the Council panel members.

(2)a. If the Board or the Acupuncture Advisory Council receives a formal or informal complaint concerning the activity of an acupuncture practitioner and the Board or Council members reasonably believe that the activity presents a clear and immediate danger to the public health, the Council may recommend that the Board issue an order temporarily suspending the acupuncture practitioner's license to practice pending a hearing. An order temporarily suspending a license to practice may not be issued by the Board, unless the acupuncture practitioner or the acupuncture practitioner's attorney received at least 24 hours' written or oral notice prior to the temporary suspension so that the acupuncture practitioner or the acupuncture practitioner's attorney can be heard in opposition to the proposed suspension, and unless at least 3 members of the Council and 7 members of the Board vote in favor of the temporary suspension. 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 unless the temporarily suspended acupuncture practitioner requests a continuance of the hearing date. If the acupuncture practitioner requests a continuance, the order of temporary suspension remains in effect until the hearing panel convenes and a decision is rendered.

b. An acupuncture practitioner whose license to practice has been temporarily suspended pursuant to this section must be notified of the temporary suspension immediately and in writing. Notification consists of a copy of the complaint and the order of temporary suspension pending a hearing personally served upon the acupuncture practitioner or sent by certified mail, return receipt requested, to the acupuncture practitioner's last known address.

c. An acupuncture practitioner whose license to practice has been temporarily suspended pursuant to this section may request an expedited hearing. The Council shall schedule the hearing on an expedited basis, provided that the Council receives the request within 5 calendar days from the date on which the acupuncture practitioner received notification of the decision of the Board, to

temporarily suspend the acupuncture practitioner's license to practice.

d. As soon as possible after the issuance of an order temporarily suspending an acupuncture practitioner's license to practice pending a hearing, the Council Chair shall appoint a 3-member hearing panel consisting of 3 members; 1 of the 3 shall be a physician member of the Board; 2 of the 3 shall be unbiased members of the Acupuncture Advisory Council; and if no conflict exists, 1 of the 2 Acupuncture Advisory Council members shall be the Chair of the Acupuncture Advisory Council. The Chair of the hearing panel shall be 1 of the Council panel members. After notice to the acupuncture practitioner pursuant to paragraph (e)(2)b. of this section, the hearing panel shall convene within 60 days of the date of the issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If an acupuncture practitioner requests in a timely manner an expedited hearing, the hearing panel shall convene within 15 days of the receipt of the request by the Council. The 3-member panel shall proceed to a hearing in accordance with the procedures set forth in § 1734 of this title and shall render a decision within 30 days of the hearing.

e. In addition to making findings of fact, the hearing panel shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect until the Board, pursuant to § 1734(g) of this title, deliberates and reaches conclusions of law based upon the findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended acupuncture practitioner requests an extension of the order pending a final decision of the Board. Upon the final decision of the Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Board.

(76 Del. Laws, c. 261 § 1; 77 Del. Laws, c. 101 § 1; 77 Del. Laws, c. 319 § 1; 77 Del. Laws, c. 325 § 19; 78 Del. Laws, c. 44 §§ 20, 21.)

§ 1798 Licensure [Effective Oct. 17, 2016]

(a) All applicants must meet the following requirements for licensure by the Board as an acupuncture and eastern medicine practitioner:

(1) Achievement of a Diplomate in Oriental Medicine from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) or its equivalent as recognized by the Council and approved by the Board, or an organization that is recognized as equivalent to the NCCAOM by the Council and approved by the Board; and

(2) Completion of a course or evidence of passing an examination in clean needle technique;

(3) An applicant for whom English is a second language shall demonstrate the ability to communicate in the English language as determined by regulations as recommended by the Council and approved by the Board;

(4) The applicant:

a. May not have been assessed any administrative penalties regarding the applicant's practice of acupuncture, including but not limited to fines, formal reprimands, license suspension or revocation (except for license suspension or revocation for nonpayment of license renewal fees) and probationary limitations; and

b. May not have entered into a consent agreement which contains conditions placed by a board or other authority on the applicant's professional conduct or practice, including the voluntary surrender of the applicant's license while under investigation for misconduct.

However, the Board may, after a hearing, waive the requirement of paragraph (a)(4)a. of this section if the administrative penalty prevents the issuance of a license;

(5) The applicant may not have an impairment related to the current use of drugs or alcohol which substantially impairs the practice of acupuncture with reasonable skill and safety;

(6) The applicant may not have been convicted of or may not have admitted under oath to having committed a crime substantially related to the practice of acupuncture. "Substantially related" means that the nature of the criminal conduct for which the person was convicted or to which the person admitted under oath has a direct bearing on the person's fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of acupuncture. The Board shall promulgate regulations specifically identifying the crimes which are substantially related to the practice of acupuncture;

(7) Meet any other qualifications that the Board establishes in regulations.

(b) All applicants must meet the following requirements for licensure by the Board as an acupuncture practitioner:

(1) Achievement of a Diplomate in Acupuncture from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) or its equivalent as recognized by the Council and approved by the Board, or an organization that is recognized as equivalent to the NCCAOM by the Council and approved by the Board; and

(2) Completion of a course or evidence of passing an examination in clean needle technique;

(3) An applicant for whom English is a second language shall demonstrate the ability to communicate in the English language as determined by regulations as recommended by the Council and approved by the Board;

(4) The applicant:

a. May not have been assessed any administrative penalties regarding the applicant's practice of acupuncture, including but not limited to fines, formal reprimands, license suspension or revocation (except for license suspension or revocation for nonpayment of license renewal fees) and probationary limitations; and

b. May not have entered into a consent agreement which contains conditions placed by a board or other authority on the applicant's professional conduct or practice, including the voluntary surrender of the applicant's license while under investigation for misconduct.

However, the Board may, after a hearing, waive the requirement of paragraph (a)(4)a. of this section if the administrative penalty prevents the issuance of a license;

(5) The applicant may not have an impairment related to the current use of drugs or alcohol which substantially impairs the practice of acupuncture with reasonable skill and safety;

(6) The applicant may not have been convicted of or may not have admitted under oath to having committed a crime substantially related to the practice of acupuncture. "Substantially related" means that the nature of the criminal conduct for which the person was convicted or to which the person admitted under oath has a direct bearing on the person's fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of acupuncture. The Board shall promulgate regulations specifically identifying the crimes which are substantially related to the practice of acupuncture;

(7) Meet any other qualifications that the Board establishes in regulations.

(8) An acupuncturist who obtains licensure pursuant to this section may go on to become a licensed acupuncture and eastern medicine practitioner by achieving a Diplomate in Oriental Medicine from the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) or its equivalent as recognized by the Council and approved by the Board, or an organization that is recognized as equivalent to the NCCAOM by the Council and approved by the Board.

(c) Waiver of requirements. — The Acupuncture Advisory Council, by the affirmative vote of 3 of its members and with the approval of the Board within a reasonable period of time from the vote, may waive any of the requirements of subsection (a) of this section if it finds all of the following by clear and convincing evidence:

(1) The applicant's education, training, qualifications and conduct have been sufficient to overcome the deficiency or deficiencies in meeting the requirements of this section;

(2) The applicant is capable of practicing acupuncture in a competent and professional manner;

(3) The granting of the waiver will not endanger the public health, safety, or welfare;

(4) 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service; and

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

(d) License denial. — If it appears to the Board that an applicant has been intentionally fraudulent or that an applicant has intentionally submitted, or intentionally caused to be submitted, false information as part of the application process, the Board may not issue a license to the applicant and must report the incident of fraud or submitting false information to the Office of the Attorney General for further action.

(e) Temporary license. — The Executive Director of the Board, with the approval of a physician member of the Board, may issue a temporary permit to an applicant for licensure who has presented a completed application to the Board. A temporary permit issued under this subsection is valid for a period of not more than 90 days and may not be renewed. Only 1 temporary permit may be issued under this subsection.

(f) License suspension, revocation, or nonrenewal. —

(1) The Council, after appropriate notice and hearing, may recommend to the Board of Medical Licensure and Discipline that the Board revoke, suspend, or refuse to issue a license, or place the licensee on probation, or otherwise discipline a licensee found guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, fraud, deceit, incompetence, gross negligence, dishonesty, or other behavior in the licensee's professional activity which is likely to endanger the public health, safety, or welfare. The Council may recommend and Board may take necessary action against a licensee who is unable to render acupuncture or eastern medicine services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness, or the excessive use of drugs including alcohol. Disciplinary action or other action taken against a licensee must be in accordance with the procedures for disciplinary and other actions against physicians, including appeals as set forth in subchapter IV of this chapter except that a hearing panel for a complaint against a licensee consists of 3 members; 1 of the 3 shall be a physician member of the Board; 2 of the 3 shall be unbiased members of the Acupuncture Advisory Council; and if no conflict exists, 1 of the 2 Acupuncture Advisory Council members shall be the Chair of the Acupuncture Advisory Council. The Chair of the hearing panel shall be 1 of the Council panel members.

(2)a. If the Board or the Acupuncture Advisory Council receives a formal or informal complaint concerning the activity of a licensee and the Board or Council members reasonably believe that the activity presents a clear and immediate danger to the public health, the Council may recommend that the Board issue an order temporarily suspending the licensee's license to practice pending a hearing. An order temporarily suspending a license to practice may not be issued by the Board, unless the licensee or the licensee's attorney received at least 24 hours' written or oral notice prior to the temporary suspension so that the licensee or the licensee's attorney can be heard in opposition to the proposed suspension, and unless at least 3 members of the Council and 7 members of the Board vote in favor of the temporary suspension. 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 unless the temporarily suspended licensee requests a continuance of the hearing date. If the licensee requests a continuance, the order of temporary suspension remains in effect until the hearing panel convenes and a decision is rendered.

b. A licensee whose license to practice has been temporarily suspended pursuant to this section must be notified of the temporary suspension immediately and in writing. Notification consists of a copy of the complaint and the order of temporary suspension pending a hearing personally served upon the licensee or sent by certified mail, return receipt requested, to the licensee's last known address.

c. A licensee whose license to practice has been temporarily suspended pursuant to this section may request an expedited hearing. The Council shall schedule the hearing on an expedited basis, provided that the Council receives the request within 5 calendar days from the date on which the licensee received notification of the decision of the Board, to temporarily suspend the licensee's license to practice.

d. As soon as possible after the issuance of an order temporarily suspending a licensee's license to practice pending a hearing, the Council Chair shall appoint a 3-member hearing panel consisting of 3 members; 1 of the 3 shall be a physician member of the Board; 2 of the 3 shall be unbiased members of the Acupuncture Advisory Council; and if no conflict exists, 1 of the 2 Acupuncture Advisory Council members shall be the Chair of the Acupuncture Advisory Council. The Chair of the hearing panel shall be 1 of the Council panel members. After notice to the licensee pursuant to paragraph (f)(2)b. of this section, the hearing panel shall convene within 60 days of the date of the issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If an acupuncture practitioner requests in a timely manner an expedited hearing, the hearing panel shall convene within 15 days of the receipt of the request by the Council. The 3-member panel shall proceed to a hearing in accordance with the procedures set forth in § 1734 of this title and shall render a decision within 30 days of the hearing.

e. In addition to making findings of fact, the hearing panel shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect until the Board, pursuant to § 1734(g) of this title, deliberates and reaches conclusions of law based upon the findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended licensee requests an extension of the order pending a final decision of the Board. Upon the final decision of the Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Board.

(76 Del. Laws, c. 261 § 1; 77 Del. Laws, c. 101 § 1; 77 Del. Laws, c. 319 § 1; 77 Del. Laws, c. 325 § 19; 78 Del. Laws, c. 44 §§ 20, 21; 80 Del. Laws, c. 316 §§ 4-6.)

§ 1798A Procedure or action not described [Effective until Oct. 17, 2016]

This subchapter governs the practice of acupuncture practitioners. If a procedure or action is not specifically prescribed in this subchapter, but is prescribed in the subchapters relating to the practice of medicine, and the procedure or action would be useful or necessary for the regulation of acupuncture practitioners, the Board may, in its discretion, proceed in a manner prescribed for physicians in the practice of medicine.

(76 Del. Laws, c. 261 § 1; 77 Del. Laws, c. 101 § 1.)

§ 1798A Procedure or action not described [Effective Oct. 17, 2016]

This subchapter governs the practice of acupuncture and eastern medicine practitioners. If a procedure or action is not specifically prescribed in this subchapter, but is prescribed in the subchapters relating to the practice of medicine, and the procedure or action would be useful or necessary for the regulation of acupuncture and eastern medicine practitioners, the Board may, in its discretion, proceed in a manner prescribed for physicians in the practice of medicine.

(76 Del. Laws, c. 261 § 1; 77 Del. Laws, c. 101 § 1; 80 Del. Laws, c. 316 § 7.)

§ 1799 Fees; license renewal [Effective until Oct. 17, 2016]

The Division of Professional Regulation shall establish reasonable fees for licensing acupuncture practitioners and for biennial license renewal. A licensee, when renewing a license, shall provide documentation of continuing education related to acupuncture pursuant to the continuing education requirements for acupuncture practitioners established by the Acupuncture Advisory Council.

(76 Del. Laws, c. 261 § 1; 77 Del. Laws, c. 101 § 1.)

§ 1799 Fees; license renewal [Effective Oct. 17, 2016]

The Division of Professional Regulation shall establish reasonable fees for licensing and for biennial license renewal. A licensee, when renewing a license, shall provide documentation of continuing education related to acupuncture pursuant to the continuing education requirements for acupuncture practitioners established by the Acupuncture Advisory Council.

(76 Del. Laws, c. 261 § 1; 77 Del. Laws, c. 101 § 1; 80 Del. Laws, c. 316 § 8.)

§ 1799A Current practitioners [Effective until Oct. 17, 2016]

(a) Any acupuncture practitioner who is practicing in this State as of June 27, 2008, and has been doing so within the 12 months prior to June 27, 2008, shall be granted a license, provided they document the following:

(1) Completion of a course or evidence of passing an examination in clean needle technique; and

(2) The applicant demonstrates competence in performing acupuncture by meeting 1 of the following standards for education or training:

a. Graduation from a course of training of at least 1,800 hours in acupuncture, including 300 clinical hours, that is accredited by the ACAOM or found by the Council to be equivalent to a course approved by the ACAOM; or

b. Achievement of a diplomate in acupuncture from the NCCAOM or its equivalent organization, or achieve a passing score on an examination that is determined by the Board to be equivalent to the examination that is given by NCCAOM.

(b) Any acupuncture apprentice who was engaged in a study and training program that leads to certification as an acupuncturist by the NCCAOM, which was conducted in Delaware and was commenced a minimum of 6 months prior to June 27, 2008, and which was conducted by an acupuncturist residing and practicing in Delaware who is eligible for licensing under this subchapter, upon presenting their NCCAOM certification in acupuncture, shall be granted a license.

(76 Del. Laws, c. 261 § 1; 77 Del. Laws, c. 101 § 1.)

§ 1799A Current practitioners [Effective Oct. 17, 2016]

(76 Del. Laws, c. 261 § 1; 77 Del. Laws, c. 101 § 1; Del. Laws, c. 316 § 9, eff Oct 17, 2016.)

§ 1799B Exemptions [Effective until Oct. 17, 2016]

(a) Acupuncture or supplemental techniques may be performed by a student, trainee or visiting teacher who is designated as a student, trainee or visiting teacher while participating in a course of study or training under supervision of a licensed acupuncturist in a program that the Council has recommended to the Board for approval. This includes continuing education programs and any acupuncture programs that are a recognized route to certification as an acupuncturist by the NCCAOM or any Board-approved agency.

(b) Any herbalist, retailer or other person who does not hold himself or herself out to be a licensed acupuncturist shall not be limited by this subchapter.

(76 Del. Laws, c. 261 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 101 § 1.)

§ 1799B Exemptions [Effective Oct. 17, 2016]

(a) Acupuncture or supplemental or eastern medicine techniques may be performed by a student, trainee or visiting teacher who is designated as a student, trainee or visiting teacher while participating in a course of study or training under supervision of a licensed acupuncturist or acupuncture and eastern medicine practitioner in a program that the Council has recommended to the Board for approval. This includes continuing education programs and any acupuncture or eastern medicine programs that are a recognized route to certification as an acupuncturist by the NCCAOM or any Board-approved agency.

(b) Any herbalist, retailer or other person who does not hold himself or herself out to be a licensed acupuncturist shall not be limited by this subchapter.

(76 Del. Laws, c. 261 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 101 § 1; 80 Del. Laws, c. 316 § 10.)

§ 1799C Renewal [Effective until Oct. 17, 2016]

Licenses must be renewed biennially and every licensee for renewal shall be required to complete continuing education credits as determined by regulation. The Board shall determine acceptable sources of continuing education credits as recommended by the Council.

(76 Del. Laws, c. 261 § 1; 77 Del. Laws, c. 101 § 1.)

§ 1799C Renewal [Effective Oct. 17, 2016]

Licenses must be renewed biennially and every licensee for renewal shall be required to complete continuing education credits as determined by regulation. The Board shall determine acceptable sources of continuing education credits as recommended by the Council.

(76 Del. Laws, c. 261 § 1; 77 Del. Laws, c. 101 § 1.)

§ 1799D Reciprocal licensing [Effective until Oct. 17, 2016]

All applicants for reciprocal licensing must possess a current license in another state which has licensing requirements equal to or exceeding the requirements of this subchapter, and there may not be any outstanding or unresolved complaints against the applicant.

(76 Del. Laws, c. 261 § 1; 77 Del. Laws, c. 101 § 1.)

§ 1799D Reciprocal licensing [Effective Oct. 17, 2016]

All applicants for reciprocal licensing must possess a current license in another state which has licensing requirements equal to or exceeding the requirements of this subchapter, and there may not be any outstanding or unresolved complaints against the applicant.

(76 Del. Laws, c. 261 § 1; 77 Del. Laws, c. 101 § 1.)

§ 1799E Prohibited acts; penalties; enforcement [Effective until Oct. 17, 2016]

(a) No person in this State shall use the title "licensed acupuncturist" or "L. Ac.", or use in connection with that person's name any letters, words or symbols indicating or implying that the person is a licensed acupuncturist, or advertise services under the description of "licensed acupuncturist", unless that person holds a license as an acupuncturist issued pursuant to this subchapter. Nothing in this subsection shall be

construed to prevent a person from providing care or performing or advertising services within the scope of that person's license.

(b) A person who, contrary to the provisions of this subchapter, practices or attempts to practice acupuncture within the State or represents that the person is an acupuncture practitioner or knowingly allows himself or herself to be represented as an acupuncture practitioner shall be fined not less than $500 nor more than $2,000 or imprisoned not more than 1 year, or both.

(c) The Office of the Attorney General is charged with the enforcement of this subchapter.

(76 Del. Laws, c. 261 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 101 § 1.)

§ 1799E Prohibited acts; penalties; enforcement [Effective Oct. 17, 2016]

(a) No person in this State shall use the title "licensed acupuncturist" or "L. Ac.", or use in connection with that person's name any letters, words or symbols indicating or implying that the person is a licensed acupuncturist, or advertise services under the description of "licensed acupuncturist", unless that person holds a license as an acupuncturist issued pursuant to this subchapter. Nothing in this subsection shall be construed to prevent a person from providing care or performing or advertising services within the scope of that person's license.

(b) No person in this State shall use the title "eastern medicine practitioner" or use in connection with that person's name any letters, words, or symbols indicating or implying that the person is a licensed eastern medicine practitioner, or advertise services under the description of "licensed eastern medicine practitioner", unless that person holds a license issued pursuant to this subchapter. Nothing in this subsection shall be construed to prevent a person from providing care or performing or advertising services within the scope of that person's license.

(c) A person who, contrary to the provisions of this subchapter, practices or attempts to practice acupuncture within the State or represents that the person is an acupuncture practitioner or knowingly allows himself or herself to be represented as an acupuncture practitioner shall be fined not less than $500 nor more than $2,000 or imprisoned not more than 1 year, or both.

(d) The Office of the Attorney General is charged with the enforcement of this subchapter.

(76 Del. Laws, c. 261 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 101 § 1; 80 Del. Laws, c. 316 § 11.)

§ 1799F Acupuncture detoxification specialist (ADS); license required [Effective until Oct. 17, 2016]

(a) An individual who is not licensed as an acupuncturist under this subchapter shall not practice as an acupuncture detoxification specialist using the National Acupuncture Detoxification Association (NADA) or equivalent organization's auricular point protocol for the purpose of treating alcoholism, nicotine dependency, substance abuse, or chemical dependency in the State without first obtaining a license issued by the Board upon the recommendation of the Council. Applications for licensure shall be upon written forms provided by the Council and Board and upon payment of a fee established by the Division of Professional Regulation. An applicant for a license to practice as an acupuncture detoxification specialist pursuant to the NADA or equivalent organization auricular point protocol in Delaware must meet the following criteria:

(1) Has successfully completed the NADA auricular point protocol training program or an equivalent training program satisfactory to the Council and Board for the treatment of alcoholism, nicotine dependency, substance abuse, or chemical dependency that meets or exceeds the standards of training set by the NADA including instruction in clean needle technique;

(2) Maintains current certification from the NADA or an equivalent organization satisfactory to the Board that meets or exceeds the standards of training set by NADA;

(3) Must provide evidence of a current license or certificate in good standing in a healthcare related profession as approved by the Council and the Board. However, individuals providing evidence of NADA certification obtained prior to the date of the enactment of this legislation shall not be required to provide evidence of licensure or certification in a healthcare profession;

(4) Performs the auricular point protocol within a state, federal, or board approved alcohol, substance abuse, or chemical dependency program or other Council and Board approved healthcare setting; and

(5) Is in good standing as defined in § 1798(a)(4)-(7) of this title.

(b) Waiver of requirements. — The Acupuncture Advisory Council, by the affirmative vote of 3 of its members and with the approval of the Board, may waive any of the requirements of subsection (a) of this section if it finds all of the following by clear and convincing evidence:

(1) The applicant's education, training, qualifications and conduct have been sufficient to overcome the deficiency or deficiencies in meeting the requirements of this section;

(2) The applicant is capable of practicing as an acupuncture detoxification specialist in a competent and professional manner;

(3) The granting of the waiver will not endanger the public health, safety, or welfare; and

(4) For waiver of a crime substantially related to the practice of acupuncture, more than 5 years have elapsed since the applicant has fully discharged all imposed sentences. As used herein, the term "sentence" includes, but is not limited to, all periods of modification of a sentence, probation, parole or suspension. However, "sentence" does not include fines, restitution or community service, as long as the applicant is in substantial compliance with such fines, restitution and community service.

(c) ADS are prohibited from needling any body acupuncture points and may not advertise themselves as acupuncturists.

(d) ADS shall be subject to the disciplinary provisions of § 1798(e) of this title.

(e) Each license shall be renewed biennially, in such manner as is determined by the Division, and upon payment of the appropriate fee and submission of a renewal form provided by the Division and proof of current NADA or equivalent approved organization certification.

(77 Del. Laws, c. 449 § 3.)

§ 1799F Acupuncture detoxification specialist (ADS); license required [Effective Oct. 17, 2016]

(a) An individual who is not licensed as an acupuncturist under this subchapter shall not practice as an acupuncture detoxification specialist using the National Acupuncture Detoxification Association (NADA) or equivalent organization's auricular point protocol for the purpose of preventing and treating alcoholism, nicotine dependency, substance abuse, or chemical dependency in the State without first obtaining a license issued by the Board upon the recommendation of the Council. Applications for licensure shall be upon written forms provided by the Council and Board and upon payment of a fee established by the Division of Professional Regulation. An applicant for a license to practice as an acupuncture detoxification specialist pursuant to the NADA or equivalent organization auricular point protocol in Delaware must meet the following criteria:

(1) Has successfully completed the NADA auricular point protocol training program or an equivalent training program satisfactory to the Council and Board for the treatment of alcoholism, nicotine dependency, substance abuse, or chemical dependency that meets or exceeds the standards of training set by the NADA including instruction in clean needle technique;

(2) Must provide evidence of a current license or certificate in good standing in a health-care related profession as approved by the Council and the Board; and

(3) Is in good standing as defined in § 1798(a)(4)-(7) of this title.

(b) Waiver of requirements. — The Acupuncture Advisory Council, by the affirmative vote of 3 of its members and with the approval of the Board, may waive the requirements of paragraph (a)(4) of this section if it finds all of the following by clear and convincing evidence:

(1) The applicant's education, training, qualifications and conduct have been sufficient to overcome the deficiency or deficiencies in meeting the requirements of this section;

(2) The applicant is capable of practicing as an acupuncture detoxification specialist in a competent and professional manner;

(3) The granting of the waiver will not endanger the public health, safety, or welfare; and

(4) For waiver of a crime substantially related to the practice of acupuncture, more than 5 years have elapsed since the applicant has fully discharged all imposed sentences. As used herein, the term "sentence " includes, but is not limited to, all periods of modification of a sentence, probation, parole or suspension. However, "sentence " does not include fines, restitution or community service, as long as the applicant is in substantial compliance with such fines, restitution and community service.

(c) ADS are prohibited from needling any body acupuncture points and may not advertise themselves as acupuncturists.

(d) ADS shall be subject to the disciplinary provisions of § 1798(f) of this title.

(e) Each license shall be renewed biennially, in such manner as is determined by the Division, and upon payment of the appropriate fee and submission of a renewal form provided by the Division and proof of continued competency as established in the Board's regulations .

(77 Del. Laws, c. 449 § 3; 80 Del. Laws, c. 316 § 12.)

Subchapter XI

Genetic Counselors

§ 1799G Statement of purpose.

The intent of the General Assembly in enacting this subchapter is to establish minimum standards of education, experience and examination for professional genetic counselors so that the public can readily identify those who meet these minimum standards. In enacting this subchapter the General Assembly intends to provide a licensure process for professional genetic counselors, a scope of practice for genetic counselor services, and to establish "licensed genetic counselor" as the state-recognized legal title for professional genetic counselors. It is also the intent of the General Assembly in enacting this subchapter to assure consumers the right to choose from whom they receive information and advice. Recognition of these goals will protect the health of the public by broadening access to appropriate genetic counseling.

(77 Del. Laws, c. 317 § 1.)

§ 1799H Definitions.

As used in this subchapter:

(1) "ABGC" shall mean the American Board of Genetic Counseling or an organization that is recognized as equivalent.

(2) "ABMG" shall mean the American Board of Medical Genetics or an organization that is recognized as equivalent.

(3) "Active candidate status" or "ACS" shall be conveyed by the ABGC.

(4) "Board" shall mean the Board of Medical Licensure and Discipline.

(5) "Genetic counselor" means an individual who engages in the competent practice of genetic counseling.

(6) "L.G.C." shall be the abbreviation for the title "licensed genetic counselor".

(7) "License" shall mean any document which indicates that a person is currently licensed by the Board of Medical Licensure and Discipline to practice genetic counseling.

(8) "NSGC" means the National Society of Genetic Counselors or an organization that is recognized as equivalent

(9) The "practice of genetic counseling" shall include any or all of the following activities:

a. Obtaining and interpreting individual, family and medical development histories;

b. Determining the mode of inheritance and risk of transmission of genetic conditions;

c. Discussing the inheritance, features, natural history, means of diagnosis;

d. Identifying, coordinating and explaining genetic laboratory tests and other diagnostic studies; provided however, that if in the course of providing a genetic counseling service to any client, a genetic counselor finds any indication of disease or condition that requires medical assessment, the genetic counselor shall refer a client to a physician licensed to practice medicine;

e. Assessing psychosocial factors, recognizing social, educational, and cultural issues;

f. Evaluating the client's or family's responses to the condition or risk of recurrence and provide client-centered counseling and anticipatory guidance;

g. Communicating genetic information to clients in an understandable manner;

h. Facilitating informed decision making about testing and management alternatives;

i. Identifying and effectively utilizing community resources that provide medical, educational, financial, and psychosocial support and advocacy;

j. Providing accurate written documentation of medical, genetic, and counseling information for families and health care professionals; and

k. The use of telemedicine as defined in this chapter and, as further described in regulation, the use of and participation in telehealth.

(77 Del. Laws, c. 317 § 1; 77 Del. Laws, c. 319 § 1; 80 Del. Laws, c. 80 § 6.)

§ 1799I Genetic Counselor Advisory Council.

(a) The Genetic Counselor Advisory Council (Council) consists of 5 voting members, and 1 ex officio member. The 5 voting members shall consist of 1 physician member of the Board of Medical Licensure and Discipline and 4 Council members licensed and trained as genetic counselors who have been primarily employed in the practice of genetic counseling in this State for at least 3 years immediately prior to appointment. The ex officio member shall be a Delaware physician who has expertise in genetic counseling. The Council may elect officers as necessary.

(b) Each Council member is appointed by the Board of Medical Licensure and Discipline for a term of 3 years, and may succeed himself or herself for 1 additional 3-year term; provided, however, that if a member is initially appointed to fill a vacancy, the member may succeed himself or herself for only 1 additional 3-year term. A person appointed to fill a vacancy on the Council is entitled to hold office for the remainder of the unexpired term of the former member. Each term of office expires on the date specified in the appointment; however, a Council member whose term of office has expired remains eligible to participate in Council proceedings until replaced by the Board. A person who has never served on the Council may be appointed to the Council for 2 consecutive terms, but the person is thereafter ineligible for appointment to the Council except as hereinafter provided. A person who has been twice appointed to the Council or who has served on the Council for 6 years within any 9-year period may not again be appointed to the Council until an interim period of at least 1 year has expired since the person last served. The members of the Council are to be compensated at an appropriate and reasonable level as determined by the Division of Professional Regulation and may be reimbursed for meeting-related travel expenses at the State's current approved rate. A member serving on the Council may not be an elected officer or a member of the board of directors of any professional association of genetic counselors.

(c) The Council shall promulgate rules and regulations governing the practice of genetic counseling, after public hearing and subject to the approval of the Board of Medical Licensure and Discipline. The Board must approve or reject proposed rules or regulations submitted to it by the Council within 60 days. If the Board fails to approve or reject the proposed rules or regulations within 60 days, the proposed rules or regulations are deemed to be approved by the Board.

(d) The Council shall meet quarterly, and at such other times as license applications are pending and evaluate the credentials of all persons applying for a license as a licensed genetic counselor in this State, in order to determine whether such persons meet the qualifications for licensing set forth in this chapter. The Council shall present to the Board the names of individuals qualified to be licensed and shall recommend disciplinary action against licensees as necessary, and shall suggest changes in operations or regulations. The Board shall approve or reject these recommendations within a reasonable time period.

(e) License suspension, revocation, or nonrenewal. —

(1) The Council, after appropriate notice and hearing, may recommend to the Board of Medical Licensure and Discipline that the Board revoke, suspend, or refuse to issue a license, or place the licensee on probation, or otherwise discipline a licensee found guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, fraud, deceit, incompetence, negligence, dishonesty, or other behavior in the licensee's professional activity which is likely to endanger the public health, safety, or welfare. The Council may recommend and Board may take necessary action against a genetic counselor who is unable to render services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness, or the excessive use of drugs including alcohol. Disciplinary action or other action taken against a genetic counselor must be accordance with the procedures for disciplinary and other actions against physicians, including appeals as set forth in subchapter IV of this chapter except that a hearing panel for a complaint against a genetic counselor consists of 3 members; 1 of the 3 shall be a physician member of the Board; 2 of the 3 shall be unbiased

members of the Council; and if no conflict exists, 1 of the 2 Council members shall be the Chair of the Council. The Chair of the hearing panel shall be 1 of the Council panel members.

(2)a. If the Board or the Council receives a formal or informal complaint concerning the activity of a genetic counselor and the Board or Council members reasonably believe that the activity presents a clear and immediate danger to the public health, the Council may recommend that the Board issue an order temporarily suspending the genetic counselor's license to practice, pending a hearing. An order temporarily suspending a license to practice may not be issued by the Board, unless the genetic counselor or the genetic counselor's attorney received at least 24 hours' written or oral notice prior to the temporary suspension so that the genetic counselor or the genetic counselor's attorney can be heard in opposition to the proposed suspension, and unless at least 3 members of the Council and 7 members of the Board vote in favor of the temporary suspension. 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 unless the temporarily suspended genetic counselor requests a continuance of the hearing date. If the genetic counselor requests a continuance, the order of temporary suspension remains in effect until the hearing panel convenes and a decision is rendered.

b. A genetic counselor whose license to practice has been temporarily suspended pursuant to this section must be notified of the temporary suspension immediately and in writing. Notification consists of a copy of the complaint and the order of temporary suspension pending a hearing personally served upon the genetic counselor or sent by certified mail, return receipt requested, to the genetic counselor's last known address.

c. A genetic counselor whose license to practice has been temporarily suspended pursuant to this section may request an expedited hearing. The Council shall schedule the hearing on an expedited basis, provided that the Council receives the request within 5 calendar days from the date on which the genetic counselor received notification of the decision of the Board, to temporarily suspend the genetic counselor's license to practice.

d. As soon as possible after the issuance of an order temporarily suspending a genetic counselor's license to practice pending a hearing, the Council Chair shall appoint a 3-member hearing panel consisting of 3 members; 1 of the 3 shall be a physician member of the Board; 2 of the 3 shall be unbiased members of the Council; and if no conflict exists, 1 of the 2 Council members shall be the Chair of the Council. The Chair of the hearing panel shall be 1 of the Council panel members. After notice to the genetic counselor pursuant to paragraph (e)(2)b. of this section, the hearing panel shall convene within 60 days of the date of issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If a genetic counselor requests in a timely manner an expedited hearing, the hearing panel shall convene within 15 days of the receipt of the request by the Council. The 3-member panel shall proceed to a hearing in accordance with the procedures set forth in § 1734 of this title and shall render a decision within 30 days of the hearing.

e. In addition to making findings of fact, the hearing panel shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect until the Board, pursuant to § 1734(g) of this title, deliberates and reaches conclusions of law based upon the findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended genetic counselor requests an extension of the order pending a final decision of the Board. Upon the final decision of the Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Board.

(f) The Council shall refer all complaints from practitioners and from the public to the Board.

(77 Del. Laws, c. 317 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 319 § 1; 77 Del. Laws, c. 325 § 19; 78 Del. Laws, c. 139 § 2.)

§ 1799J Licensure.

(a) An applicant who is applying for licensure under this subchapter shall:

(1) Provide satisfactory evidence of having certification as a:

a. Genetic counselor by the ABGC or ABMG; or

b. Medical geneticist by the ABMG

(2) Submit an application prescribed by the Council.

(3) Submit a certified criminal background check pursuant to § 1720(b)(6) of this title.

(4) The applicant may not have an impairment related to the current use of drugs or alcohol which substantially impairs the practice of genetic counseling with reasonable skill and safety.

(b) The Board may refuse or reject an applicant, if after hearing, the Board finds that:

(1) The applicant has engaged in activities that are grounds for discipline under § 1799P of this title.

(2) The applicant has been convicted of a crime substantially related to the practice of genetic counseling as determined by the Board of Medical Licensure and Discipline in its rules and regulations.

(3) The applicant has been the recipient of any administrative penalties from any other jurisdiction or jurisdictions regarding the applicant's practice of genetic counseling, including but not limited to fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations, and/or has entered into any "consent agreements" which contain conditions placed by a Board on the applicant's professional conduct and practice, including any voluntary surrender of a license in lieu of discipline.

(c) Waiver of requirements. — The Council, by the affirmative vote of 3 of its members and with the approval of the Board within a reasonable period of time from the vote, may waive any of the requirements of subsection (b) of this section if it finds all of the following by clear and convincing evidence:

(1) The applicant's education, training, qualifications and conduct have been sufficient to overcome the deficiency or deficiencies in meeting the requirements of this section;

(2) The applicant is capable of practicing as a genetic counselor in a competent and professional manner;

(3) The granting of the waiver will not endanger the public health, safety, or welfare;

(4) 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service; and

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

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

(77 Del. Laws, c. 317 § 1; 77 Del. Laws, c. 319 § 1; 78 Del. Laws, c. 44 §§ 22, 23.)

§ 1799K Provisional license.

(a) The Board may issue a provisional license to practice genetic counseling to a candidate for licensure who has been granted active candidate status by the ABGC, provided the candidate meets the other qualifications for licensure listed in § 1799J of this title.

(b) The provisional license shall be valid for up to 1 year from the date it was issued, and may be renewed for 1 additional year if the applicant fails the certification examination. The provisional license automatically expires:

(1) When the applicant is issued a license; or

(2) On the expiration date printed on the provisional license; or

(3) Upon notice of the second failure of the certification examination.

(c) An application for extension of a provisional license must be signed by the applicant's supervisor. A genetic counselor working under a provisional license must be under the general supervision of a licensed genetic counselor or a licensed physician. If a candidate fails to pass the exam 2 times within this provision, they may reapply for provisional licensure after regaining active candidate status by the ABGC or another organization acceptable to the Board. The Board may establish in its rules additional requirements relating to provisional licensure.

(77 Del. Laws, c. 317 § 1.)

§ 1799L Reciprocity.

An applicant for licensure by reciprocity must possess a current license in a state which has licensing requirements equal to or exceeding the requirements of this subchapter, and there may not be any outstanding or unresolved complaints against the applicant.

(77 Del. Laws, c. 317 § 1.)

§ 1799M Continuing education.

The Council, with the approval of the Board, is authorized to adopt regulations specifying continuing education requirements which must be met by a licensee before a licensee will be eligible for renewal of their license.

(77 Del. Laws, c. 317 § 1.)

§ 1799N Issuance and renewal of licenses; fees.

(a) The Division of Professional Regulation shall establish reasonable fees for licensing genetic counselors and for biennial license renewal.

(b) The Board shall issue a license to each applicant who meets the requirements of this chapter for licensure as a genetic counselor and who pays the established fees.

(c) Each license shall be renewed biennially, in such manner as is determined by the Division and upon payment of the appropriate fee and submission of a renewal form provided by the Division, and proof that the licensee has met the continuing education requirements established by § 1799M of this title.

(d) The Council, in its rules and regulation, shall determine the period of time within which a licensee may still renew the licensee's license and determine late fees associated with the license renewal, notwithstanding the fact that such licensee has failed to renew on or before the renewal date, provided, however that such period shall not exceed 1 year.

(e) A licensee, upon written request, may be placed in an inactive status for no more than 5 years. Such person, who desires to reactivate that person's license, shall complete a Board-approved application form, obtain an updated certified criminal background check, submit a renewal fee, and proof of fulfillment of continuing education requirements in accordance with the rules and regulation of the Council.

(77 Del. Laws, c. 317 § 1.)

§ 1799O Licensure required.

(a) No person shall represent oneself or engage in the practice of genetic counseling as a licensed genetic counselor in this State or use the title "genetic counselor", "licensed genetic counselor", "L.G.C.", "gene counselor", "genetic consultant", "genetic associate" or any combination of above terms and/or abbreviations unless such a person is licensed under this subchapter.

(b) This subchapter does not prohibit or restrict:

(1) Any person licensed in this State under any chapter of this title who are physicians or other healthcare professionals from engaging in the practice for which that person is licensed.

(2) The practice of genetic counseling by a person who is employed by the United States or state government or any of its bureaus, divisions, or agencies while in the discharge of the employee's official duties.

(3) The supervised practice of genetic counseling of a person pursuing a course of study leading to a degree in genetic counseling or an equivalent major, as authorized by the Board, from a ABGC accredited school or program, if the activities and services constitute a part of a supervised course of study and if the person is designated by a title that clearly indicates the person's status as a student. This period is not to exceed 2 years unless written approval is provided by the Board. The individual will be supervised by an individual licensed under this subchapter or a physician.

(77 Del. Laws, c. 317 § 1.)

§ 1799P Grounds for discipline, sanctions, or penalties.

(a) The following conditions and actions of an L.G.C. may result in disciplinary action as set forth in subsection (b) of this section if, after a hearing, the Board finds that an applicant or L.G.C:

(1) Has employed or knowingly cooperated in fraud or material deception in order to be licensed: or

(2) Has engaged in illegal, incompetent or negligent conduct in the provision of genetic counseling; or

(3) Has, in the practice of the profession, knowingly engaged in an act of consumer fraud or deception; or

(4) Has violated the code of ethics as established by the NSGC; or

(5) Has violated a lawful provision of this subchapter or any lawful rule or regulation established hereunder; or

(6) Has been convicted of a crime substantially related to the practice of genetic counseling as determined by the Board of Medical Licensure and Discipline in its rules and regulations.

(b) Persons licensed under this subchapter who have been determined to be in violation of this subchapter shall be subject to the following disciplinary actions:

(1) Issuance of a letter of reprimand.

(2) Censure.

(3) Placement on probationary status.

(4) Denial of license.

(5) Suspension of license.

(6) Revocation of license.

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

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

(77 Del. Laws, c. 317 § 1; 77 Del. Laws, c. 319 § 1.)

§ 1799Q Unauthorized practice of genetic counseling.

Whoever engages in the practice of genetic counseling or attempts to engage in the practice of genetic counseling contrary to the provisions of this subchapter shall be guilty of a Class G felony and shall be fined not less than $500 and not more than $1,500, or imprisoned not more than 2 years, or both.

(77 Del. Laws, c. 317 § 1.)

§ 1799R Administrative procedures.

All procedures under this chapter shall be governed by the Delaware Administrative Procedures Act, Chapter 101 of Title 29.

(77 Del. Laws, c. 317 § 1.)

§ 1799S Procedure or action not described.

This subchapter governs the practice of genetic counseling practitioners. If a procedure or action is not specifically prescribed in the subchapter, but is prescribed in the subchapters relating to the practice of medicine, and the procedure or action would be useful or necessary for the regulation of genetics counseling practitioners, the Board may, in its discretion, proceed in a manner prescribed for physicians in the practice of medicine.

(77 Del. Laws, c. 317 § 1.)

Subchapter XII

Professional Polysomnographers

§ 1799AA Issuance and renewal of licenses; fees.

(a) The Division of Professional Regulation shall establish reasonable fees for licensing polysomnographers and for biennial license renewal.

(b) The Board shall issue a license to each applicant who meets the requirements of this subchapter for licensure as a polysomnographer and who pays the established fees.

(c) Each license shall be renewed biennially, in such manner as is determined by the Division and upon payment of the appropriate fee and submission of a renewal form provided by the Division, and proof that the licensee has met the continuing education requirements established by § 1799Z of this title.

(d) The Council, in its rules and regulation, shall determine the period of time within which a licensee may still renew the licensee's license and determine late fees associated with the license renewal, notwithstanding the fact that such licensee has failed to renew on or before the renewal date, provided, however that such period shall not exceed 1 year.

(e) A licensee, upon written request, may be placed in an inactive status for no more than 5 years. Such person, who desires to reactivate that person's license, shall complete a board-approved application form, obtain an updated certified criminal background check, submit a renewal fee, and proof of fulfillment of continuing education requirements in accordance with the rules and regulation of the Council.

(78 Del. Laws, c. 407 § 1.)

§ 1799BB Grounds for discipline, sanctions, or penalties.

(a) The following conditions and actions of a polysomnographer may result in disciplinary action as set forth in subsection (b) of this section if, after a hearing, the Board finds that an applicant or polysomnographer:

(1) Has employed or knowingly cooperated in fraud or material deception in order to be licensed: or

(2) Has engaged in illegal, incompetent or negligent conduct in the provision of polysomnography; or

(3) Has, in the practice of the profession, knowingly engaged in an act of consumer fraud or deception; or

(4) Has violated the code of ethics as established by the AASM, BRPT or and other organization approved by the Council; or

(5) Has violated a lawful provision of this subchapter or any lawful rule or regulation established hereunder; or

(6) Has been convicted of a crime substantially related to the practice of polysomnography as determined by the Board in its rules and regulations; or

(7) Has been convicted of a sexual felony offense.

(b) Persons licensed under this subchapter who have been determined to be in violation of this subchapter shall be subject to the following disciplinary actions:

(1) Issuance of a letter of reprimand.

(2) Censure.

(3) Placement on probationary status.

(4) Denial of license.

(5) Suspension of license.

(6) Revocation of license.

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

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

(78 Del. Laws, c. 407 § 1.)

§ 1799CC Unauthorized practice of polysomnography.

Whoever engages in the practice of polysomnography or attempts to engage in the practice of polysomnography contrary to the provisions of this subchapter shall be guilty of a class G felony and shall be fined not less than $500 and not more than $1,500, or imprisoned not more than 2 years, or both.

(78 Del. Laws, c. 407 § 1.)

§ 1799DD Procedure or action not described.

This subchapter governs the practice of polysomnography. If a procedure or action is not specifically prescribed in the subchapter, but is prescribed in the subchapters relating to the practice of medicine, and the procedure or action would be useful or necessary for the regulation of polysomnographic practitioners, the Board may, in its discretion, proceed in a manner prescribed for physicians in the practice of medicine.

(78 Del. Laws, c. 407 § 1.)

§ 1799EE Duty to report conduct that constitutes grounds for discipline or inability to practice.

(a) Every person to whom a license to practice has been issued under this subchapter has a duty to report to the Division of Professional

Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or any other healthcare provider has engaged in or is engaging in conduct that would constitute grounds for disciplinary action under this chapter or the other healthcare provider's licensing statute.

(b) Every person to whom a license to practice has been issued under this subchapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or any other healthcare provider may be unable to practice with reasonable skill and safety to the public by reason of mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive abuse of drugs, including alcohol.

(c) Every person to whom a license to practice has been issued under this subchapter has a duty to report to the Division of Professional Regulation any information that the reporting person reasonably believes indicates that a person certified and registered to practice medicine in this State is or may be guilty of unprofessional conduct or may be unable to practice medicine with reasonable skill or safety to patients by reason of mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive use or abuse of drugs, including alcohol.

(d) All reports required under subsections (a), (b) and (c) of this section must be filed within 30 days of becoming aware of such information. A person reporting or testifying in any proceeding as a result of making a report pursuant to this section is immune from claim, suit, liability, damages, or any other recourse, civil or criminal, so long as the person acted in good faith and without gross or wanton negligence; good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant.

(78 Del. Laws, c. 407 § 1.)

§ 1799T Statement of purpose.

The intent of the General Assembly in enacting this subchapter is to establish minimum standards of education, experience and examination for professional polysomnographers so that the public can readily identify those who meet these minimum standards. In enacting this subchapter the General Assembly intends to provide a licensure process for professional polysomnographers, a scope of practice for polysomnographer services, and to establish "licensed polysomnographer" as the state-recognized legal title for professional polysomnographers. It is also the intent of the General Assembly in enacting this subchapter to assure consumers the right to choose from whom they receive information and advice. Recognition of these goals will protect the health of the public by broadening access to appropriate polysomnography services.

(78 Del. Laws, c. 407 § 1.)

§ 1799U Definitions.

As used in this subchapter:

(1) "AASM" shall mean the American Academy of Sleep Medicine or an organization that is recognized as equivalent.

(2) "Board" shall mean the Board of Medical Licensure and Discipline.

(3) "BRPT" shall mean the Board of Registered Polysomnographic Technologists or its successor organization.

(4) "Council" means the Polysomnography Advisory Council.

(5) "Direct supervision" means that the licensed polysomnographer providing supervision must be present in the area where the polysomnographic procedure is being performed and immediately available to furnish assistance and direction throughout the performance of the procedure.

(6) "General supervision" means that the licensed polysomnographer works under the supervision of a person licensed to practice medicine, whether by direct observation and monitoring, by protocols approved by a person licensed to practice medicine, or by orders written or verbally given by a person licensed to practice medicine. A licensed polysomnographer may evaluate patients and make decisions within parameters defined by a person certified to practice medicine and by the Board. The licensed polysomnographer works under a physician's overall direction and control, but the physician's presence is not required during the performance of the procedure.

(7) "License" shall mean any document which indicates that a person is currently licensed by the Board to practice polysomnography.

(8) "LPSGT" shall be the abbreviation for the title "licensed polysomnographer".

(9) "NBRC SDS exam" means the National Board for Respiratory Care Sleep Disorders and Therapeutic Intervention Respiratory Care Specialist exam.

(10) "Polysomnographer" means an allied health professional, practicing polysomnography under the direction of a person licensed to practice medicine, who is responsible for direct and indirect services in the treatment, management, diagnostic testing, control, and care of patients with deficiencies and abnormalities associated with the human sleep wake cycle.

(11) "Polysomnographic student" means a person who is enrolled in an accredited educational program described in § 1799V of this title and who may provide sleep-related services under the direct supervision of a licensed polysomnographer as a part of the person's educational program and is therefore, exempt from the licensure requirement.

(12) "Polysomnographic trainee" means a person who has completed an accredited educational program described in § 1799V of this title and who may provide sleep-related services under the direct supervision of a licensed polysomnographer as part of the person's clinical program and is therefore exempt from the licensure requirement.

(13) "Practice of polysomnography" means the performance of any of the following tasks as directly related to the diagnosis and

treatment of sleep-related disorders, under the general supervision of a licensed physician:

a. Monitoring and recording physiologic data during the evaluation of sleep-related disorders, including sleep-related respiratory disturbances, by applying the following techniques, equipment, and procedures:

1. Titration using approved airway pressure devices and/or other technologies on spontaneously breathing patients using a mask or oral appliance, provided the mask or oral appliance does not extend into the trachea or attach to an artificial airway;

2. Supplemental low flow oxygen therapy (less than or equal to 6 liters per minute) during a polysomnogram utilizing a nasal cannula or approved airway pressure devices and technologies on spontaneously breathing patients, provided the devices or technologies do not extend into the trachea or attach to an artificial airway;

3. Capnography during a polysomnogram;

4. Cardiopulmonary resuscitation;

5. Pulse oximetry;

6. Gastroesophageal pH monitoring;

7. Esophageal pressure monitoring;

8. Sleep staging (including surface electroencephalography, surface electrooculography, and surface submental electromyography);

9. Surface electromyography;

10. Electrocardiography;

11. Respiratory effort monitoring, including thoracic and abdominal movement;

12. Plethysmography blood flow monitoring;

13. Snore monitoring;

14. Audio and video monitoring;

15. Body movement and body position monitoring;

16. Nocturnal penile tumescence monitoring;

17. Nasal and oral airflow monitoring;

18. Body temperature monitoring;

19. Monitoring the effects that a mask or oral appliance used to treat sleep disorders has on sleep patterns; provided, however, the mask or oral appliance shall not extend into the trachea or attach to an artificial airway;

20. Actigraphy;

b. Observing and monitoring physical signs and symptoms, general behavior, and general physical response to polysomnographic evaluation and recommending whether initiation, modification, or discontinuation of a treatment regimen is warranted;

c. Analyzing and scoring data collected during the monitoring described in paragraphs (13)a.1. and 2. of this section for the purpose of assisting a licensed physician in the diagnosis and treatment of sleep and wake disorders;

d. Implementation of a written or verbal order from a licensed physician which requires the practice of polysomnography;

e. Education of a patient regarding sleep disorders and the treatment regimen which assists that patient in improving the patient's sleep.

(78 Del. Laws, c. 407 § 1.)

§ 1799V Education.

The following qualify as approved educational programs:

(1) A polysomnographic educational program that is accredited by the Commission on Accreditation of Allied Health Education Programs;

(2) A respiratory care educational program that is accredited by the Commission on Accreditation for Respiratory Care and completion of the curriculum for a polysomnography certificate established and accredited by the Commission on Accreditation for Respiratory Care;

(3) An electroneurodiagnostic technologist educational program with a polysomnographic technology track that is accredited by the Commission on Accreditation of Allied Health Education Programs;

(4) An Accredited Sleep Technologist Educational Program (A-STEP) that is accredited by the American Academy of Sleep Medicine; or

(5) Any other educational program incorporating both formal instruction and supervised clinical practice as recommended by the Council and approved by the Board.

(78 Del. Laws, c. 407 § 1.)

§ 1799W Polysomnography Advisory Council.

(a) The Council consists of 5 voting members. The 5 voting members shall consist of 1 physician member certified in the field of sleep medicine and 4 council members who are credentialed registered polysomnographic technologists and have been primarily employed in the practice of polysomnography in this State for at least 3 years immediately prior to appointment. The 4 polysomnography practicing members shall be licensed pursuant to this subchapter no later than July 1, 2014, and all polysomnography practicing members thereafter

shall be licensed pursuant to this subchapter. The Council may elect officers as necessary.

(b) Each council member is appointed by the Board for a term of 3 years, and may succeed himself or herself for 1 additional 3-year term; provided, however, that if a member is initially appointed to fill a vacancy, the member may succeed himself or herself for only 1 additional 3-year term. A person appointed to fill a vacancy on the Council is entitled to hold office for the remainder of the unexpired term of the former member. Each term of office expires on the date specified in the appointment; however, a council member whose term of office has expired remains eligible to participate in council proceedings until replaced by the Board. A person who has never served on the Council may be appointed to the Council for 2 consecutive terms, but the person is thereafter ineligible for appointment to the Council except as hereinafter provided. A person who has been twice appointed to the Council or who has served on the Council for 6 years within any 9-year period may not again be appointed to the Council until an interim period of at least 1 year has expired since the person last served. The members of the Council are to be compensated at an appropriate and reasonable level as determined by the Division of Professional Regulation and may be reimbursed for meeting-related travel expenses at the State's current approved rate. A member serving on the Council may not be an elected officer or a member of the board of directors of any professional association of polysomnographers.

(c) The Council shall promulgate rules and regulations governing the practice of polysomnography, after public hearing and subject to the approval of the Board. The Board must approve or reject proposed rules or regulations submitted to it by the Council within 60 days. If the Board fails to approve or reject the proposed rules or regulations within 60 days, the proposed rules or regulations are deemed to be approved by the Board.

(d) The Council shall meet quarterly, and at such other times as license applications are pending and evaluate the credentials of all persons applying for a license as a licensed polysomnographer in this State, in order to determine whether such persons meet the qualifications for licensing set forth in this chapter. The Council shall present to the Board the names of individuals qualified to be licensed and shall recommend disciplinary action against licensees as necessary, and shall suggest changes in operations or regulations. The Board shall approve or reject these recommendations within a reasonable time period.

(e) License suspension, revocation, or nonrenewal. —

(1) The Council, after appropriate notice and hearing, may recommend to the Board that the Board revoke, suspend, or refuse to issue a license, or place the licensee on probation, or otherwise discipline a licensee found guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, fraud, deceit, incompetence, negligence, dishonesty, or other behavior in the licensee's professional activity which is likely to endanger the public health, safety, or welfare. The Council may recommend and the Board may take necessary action against a licensed polysomnographer, who is unable to render services with reasonable skill or safety to patients because of mental illness or mental incompetence, physical illness, or the excessive use of drugs including alcohol. Disciplinary action or other action taken against a licensed polysomnographer must be accordance with the procedures for disciplinary and other actions against physicians, including appeals as set forth in subchapter IV of this chapter except that a hearing panel for a complaint against a licensed polysomnographer consists of 3 members; 1 of the 3 shall be a physician member of the Board; 2 of the 3 shall be unbiased members of the Council; and if no conflict exists, 1 of the 2 council members shall be the Chair of the Council. The Chair of the hearing panel shall be 1 of the council panel members.

(2)a. In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporary suspended person requests a continuance of the hearing date. If the temporary suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

b. As soon as possible after the issuance of an order temporarily suspending a polysomnographer's license to practice pending a hearing, the Council Chair shall appoint a 3-member hearing panel consisting of 3 members; 1 of the 3 shall be a physician member of the Board; 2 of the 3 shall be unbiased members of the Council; and if no conflict exists, 1 of the 2 Council members shall be the Chair of the Council. The Chair of the hearing panel shall be 1 of the Council panel members; or the complaint may be scheduled before a hearing officer pursuant to § 8735(v)(1)d. of Title 29. The hearing shall be convened within 60 days of the date of issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If a polysomnographer requests in a timely manner an expedited hearing, the hearing panel shall convene within 15 days of the receipt of the request by the Council. A decision shall be rendered within 30 days of the hearing.

c. In addition to making findings of fact, the hearing panel or hearing officer shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel or hearing officer determines that the facts found constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect until the Board

deliberates and reaches conclusions of law based upon the findings of fact. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered unless the suspended polysomnographer requests an extension of the order pending a final decision of the Board. Upon the final decision of the Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Board.

(78 Del. Laws, c. 407 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 223 § 1.)

§ 1799X Licensure.

(a) On and after July 1, 2014, any person who is engaged in the practice of polysomnography must be licensed as provided in this chapter. It shall be unlawful for any person to engage in the practice of polysomnography on or after July 1, 2014, unless such person is practicing polysomnography under the provisions of this chapter.

(b) Polysomnographic license. —

(1) A licensed polysomnographer may provide sleep-related services under the general supervision of a licensed physician;

(2) A person seeking licensure as a licensed polysomnographer must present proof that the person meets the following requirements:

a. Must be at least 18 years of age, and must pay the fees established by the Division of Professional Regulation;

b. The licensed polysomnographer applicant must have successfully completed 1 of the educational requirements in § 1799V of this title and passed an exam which is accredited by an independent outside agency and recommended by the Council and approved by the Board unless otherwise exempt pursuant to paragraph (b)(3) of this section;

c. The licensed polysomnographer applicant must meet any additional educational or clinical requirements established by the Board.

(3) Any individual who is engaged in the practice of polysomnography as of July 1, 2011, shall be eligible for licensure under this chapter without meeting the educational requirement in § 1799V of this title, if the individual has:

a. Passed the national certifying examination given by the BRPT;

b. Been credentialed by the BRPT; and

c. Met any additional educational or clinical requirements established by the Council and approved by the Board.

(4) Before practicing polysomnography, an individual must obtain a polysomnographic license from the Board.

(5) To be eligible for renewal of a license to engage in the practice of polysomnography, a licensed polysomnographer must continue to be credentialed by BRPT, or other organization approved by the Council.

(6) Licensure. —

a. No person shall represent oneself or engage in the practice of polysomnography as a licensed polysomnographer in this State or use the title "polysomnographer," "licensed polysomnographer," "LPSGT," or any combination of above terms and/or abbreviations unless such a person is licensed under this subchapter.

b. This subchapter does not prohibit or restrict:

1. Any person licensed in this State under any chapter of this title who are physicians or other healthcare professionals from engaging in the practice for which that person is licensed;

2. The practice of polysomnography by a person who is employed by the United States or state government or any of its bureaus, divisions, or agencies while in the discharge of the employee's official duties;

3. The supervised practice of polysomnography of a person pursuing a course of study leading to a certificate or degree in polysomnography or an equivalent major, as authorized by the Board, from an accredited school or program approved by the Council, if the activities and services constitute a part of a supervised course of study and if the person is designated by a title that clearly indicates the person's status as a student. This period is not to exceed 2 years unless written approval is provided by the Board. The individual will be supervised by an individual licensed under this subchapter or a physician; or

4. The provision of diagnostic electroencephalograms conducted in accordance with the guidelines of the American Clinical Neurophysiology Society.

c. The provisions of this subchapter shall not apply to licensed respiratory care practitioners.

(c) Waiver of requirements. — The Polysomnography Advisory Council, by the affirmative vote of 5 of its members and with the approval of the Board within 30 days of the vote, may waive the quarterly meeting requirements of § 1799W(d) of this title.

(d) License denial. — If it appears to the Board that an applicant has been intentionally fraudulent or that an applicant has intentionally submitted, or intentionally caused to be submitted, false information as part of the application process, the Board may not issue a license to the applicant and must report the incident of fraud or submitting false information to the Office of the Attorney General for further action.

(e) An applicant who is applying for licensure under this subchapter shall:

(1) Submit an application prescribed by the Council.

(2) Submit a certified criminal background check pursuant to § 1720(b)(6) of this title.

(3) The applicant may not have an impairment related to the current use of drugs or alcohol which substantially impairs the practice of polysomnography with reasonable skill and safety.

(f) The Board may refuse or reject an applicant, if after hearing, the Board finds that:

(1) The applicant has engaged in activities that are grounds for discipline under § 1799BB of this title.

(2) The applicant has been convicted of a crime substantially related to the practice of polysomnography as determined by the Board in

its rules and regulations.

(3) The applicant has been the recipient of any administrative penalties from any other jurisdiction or jurisdictions regarding the applicant's practice of polysomnography, including but not limited to fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations, and/or has entered into any "consent agreements" which contain conditions placed by a Board on the applicant's professional conduct and practice, including any voluntary surrender of a license in lieu of discipline.

(g) Waiver of requirements. — The Council, by the affirmative vote of 3 of its members and with the approval of the Board within a reasonable period of time from the vote, may waive the requirements of paragraph (f)(2) of this section if it finds all of the following by clear and convincing evidence:

(1) The applicant's education, training, qualifications and conduct have been sufficient to overcome the deficiency or deficiencies in meeting the requirements of this section;

(2) The applicant is capable of practicing as a polysomnographer in a competent and professional manner;

(3) The granting of the waiver will not endanger the public health, safety, or welfare; and

(4) 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service;

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

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

(78 Del. Laws, c. 407 § 1.)

§ 1799Y Endorsement.

An applicant for licensure by endorsement must possess a current license in a state which has licensing requirements substantially similar to or exceeding the requirements of this subchapter, and there may not be any outstanding or unresolved complaints against the applicant.

(78 Del. Laws, c. 407 § 1.)

§ 1799Z Continuing education.

The Council, with the approval of the Board, is authorized to adopt regulations specifying continuing education requirements which must be met by a licensee before a licensee will be eligible for renewal of his or her license.

(78 Del. Laws, c. 407 § 1; 70 Del. Laws, c. 186 § 1.)

Subchapter XIII

Midwifery Practitioners

§ 1799FF Definitions.

As used in this subchapter:

(1) "Board" means the Board of Medical Licensure and Discipline.

(2) "Certified midwife" or "CM" means a practitioner who has received certification by the American Midwifery Certification Board or its equivalent or successor.

(3) "Certified professional midwife" or "CPM" means a practitioner who has received certification by the North American Registry of Midwives (NARM) or its equivalent or successor.

(4) "Client" means a woman under the care of a midwife and, when applicable in the context of care, the newborn.

(5) "Council" means the Midwifery Advisory Council.

(6) "Home birth" means a birth outside of a hospital or an otherwise accredited or licensed hospital or medical facility.

(7) "License" means, unless the context requires otherwise, a license issued by the Board to practice midwifery.

(8) "Midwife" means a person who practices midwifery.

(9) "Midwifery" means the practice of providing supervision, care, and advice to a client during prepartum, pregnancy, labor, and the postpartum periods, and conducting deliveries on the midwife's own responsibility or in collaboration with a licensed physician, or licensed Delaware health-care delivery system. The licensed practice of midwifery includes taking certain safety measures and identifying the physical, social and emotional needs of the client. The practice of midwifery requires that level of education, experience, knowledge, and skill ordinarily expected of an individual who meets the requirements for licensure pursuant to this chapter. In order to practice midwifery in the State, a midwife must be licensed pursuant to this chapter. For the purposes of this chapter, "midwifery" does not include the practice of certified nurse midwives, as defined in Chapter 19 of this title, nor does it include the practice of a person

licensed to practice medicine pursuant to this chapter.

(10) "Midwifery student" means a person who is enrolled in an accredited educational program and who may provide midwifery services as a part of that person's educational program.

(11) "Practice of a certified midwife" means the management of women's health care, pregnancy, childbirth, postpartum care for newborns, family planning, and gynecological services consistent with the Standards of Practice of the American College of Nurse-Midwives and the education, training, and experience of the certified midwife.

(12) "Practice of a certified professional midwife" means the provision of continuous care for women throughout the childbearing cycle which CPMs are qualified to provide. The CPM credential requires knowledge about and experience in out-of-hospital settings. The scope of practice of the licensed CPM is further derived from the North American Registry of Midwives Job Analysis, state laws and regulations, and individual practice guidelines developed according to acquired professional skills and knowledge.

(80 Del. Laws, c. 33 § 1; 80 Del. Laws, c. 258 § 1.)

§ 1799GG Subchapter exemptions and limitations.

(a) Nothing in this subchapter shall limit, preclude, or otherwise interfere with the professional activities of other individuals and health-care providers who are allowed to practice obstetrics and gynecology, nor shall this subchapter apply to certified nurse midwives as defined by Chapter 19 of this title.

(b) Nothing in this subchapter shall prohibit or restrict the directly supervised practice of midwifery by a midwifery student pursuing a course of study leading to a credential in midwifery or an equivalent major, as recommended by the Council and approved by the Board, from an accredited school or program recommended by the Council and approved by the Board, if the activities and services constitute a part of a supervised course of study and if the midwifery student is under the direct supervision of a midwife licensed under this subchapter and is designated by a title that clearly indicates the person's status as a student, provided this course of study shall not exceed 5 years unless the Council recommends and the Board provides written approval for an extension.

(80 Del. Laws, c. 33 § 1; 80 Del. Laws, c. 258 § 2.)

§ 1799HH Midwifery Advisory Council.

(a) The Board of Medical Licensure and Discipline shall form the Midwifery Advisory Council (Council) which consists of 7 voting members. The members shall consist of: 4 midwives, 2 CMs and 2 CPMs, whenever possible; 1 certified nurse midwife (CNM) as described in Chapter 19 of this title; 1 practicing obstetrician with hospital admitting privileges who is a member of the American Congress of Obstetricians and Gynecologists and certified by the American Board of Obstetrics and Gynecology; and 1 practicing pediatrician with hospital admitting privileges and certification from the American Board of Pediatrics. The inaugural midwife members shall be licensed pursuant to this subchapter no later than October 1, 2016, and all midwife members thereafter shall be licensed pursuant to this subchapter. The Council may elect officers as necessary. The Chair of the Council shall be a midwife in good standing. The members of the Council shall be compensated at an appropriate and reasonable level as determined by the Division of Professional Regulation and may be reimbursed for meeting-related travel expenses at the State's current approved rate.

(b) Members shall be appointed so that the terms of 4 members, including no more than 2 midwives, shall expire 2 years after the initial appointment and that the terms of the remaining 3 members shall expire 3 years after the initial appointment. Thereafter, members are each appointed by the Board of Medical Licensure and Discipline for a term of 3 years, subject to removal by the Governor for neglect of duty, malfeasance, or misfeasance in office, and may succeed himself or herself for 1 additional 3-year term; provided, however, that if a member is initially appointed to fill a vacancy, the member may succeed himself or herself for only 1 additional 3-year term. A person appointed to fill a vacancy on the Council is entitled to hold office for the remainder of the unexpired term of the former member. Each term of office expires on the date specified in the appointment; however, a council member whose term of office has expired remains eligible to participate in council proceedings until replaced by the Board. A person who has been twice appointed to the Council or who has served on the Council for 6 years within any 9-year period may not again serve until an interim period of at least 1 year has expired since the person last served.

(c) The Council shall promulgate rules and regulations governing the practice of midwifery, the scope of practice of CMs and the scope of practice of CPMs, after public hearing and subject to the approval of the Board of Medical Licensure and Discipline. The Board must approve or reject proposed rules or regulations submitted to it by the Council within 60 days. If the Board fails to approve or reject the proposed rules or regulations within 60 days, the proposed rules or regulations are deemed to be approved by the Board. Such rules and regulations shall include, but not be limited to:

(1) Procedures for the examination of applicants and issuance of licenses to those applicants it finds qualified;

(2) Licensing and licensing renewal requirements;

(3) Standards for education, and training programs and the procedures for denial, revocation, or suspension of such program for failure to meet or maintain the standards;

(4) Continuing education requirements for licensed midwives;

(5) Description of the responsibilities of the midwife toward the client and her newborn in the antepartum, intrapartum, and the postpartum periods, including newborn assessment and screening consistent with existing statute.

(6) Practice standards for licensed midwives that shall include, but shall not be limited to:

a. Adoption of ethical standards for licensed midwives;
b. Maintenance of records of care, including client charts and birth statistics;
c. Participation in peer review and continuing education with midwives, physicians and nurses;
d. Requirement to have a second attendant certified in neonatal resuscitation at birth;
e. Description of the tools and equipment a midwife may and may not use during delivery; and
f. Medications and tests the midwife is authorized to obtain and administer in various settings as delineated in regulation.

(d) License suspension, revocation, and nonrenewal. —

(1) The Council, after appropriate notice and hearing, may recommend to the Board of Medical Licensure and Discipline that the Board revoke, suspend, or refuse to issue a license, or place a licensee on probation, or otherwise discipline a licensee found guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, fraud, deceit, incompetence, gross negligence, dishonesty, failure to adhere to the procedures of § 1799JJ of this title below, or other behavior in the licensee's professional activity which is likely to endanger the public health, safety, or welfare. The Council shall recommend that the Board permanently revoke the license of a person who is convicted of a felony sexual offense. The Council may recommend and Board may take necessary action against a midwife who is unable to practice midwifery with reasonable skill or safety to clients because of physical or mental illness, impairment or incompetence; including illness, impairment, or incompetence caused by or related to substance abuse. Disciplinary action or other action taken against a midwife must be in accordance with the procedures for disciplinary and other actions against licensed health professionals, including appeals as set forth in subchapter IV of this chapter except that a hearing panel for a complaint against a midwife shall be convened as described below.

(2) In the event of a formal or informal complaint concerning the activity of a licensee that the Board determines, exercising its reasonable discretion, presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person's license, pending a hearing, upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of the Council Chair or the Council Chair's designee.

a. An order temporarily suspending a license to practice may not be issued by the Board, unless the midwife or the midwife's attorney received at least 24 hours' written or oral notice prior to the temporary suspension and unless the Secretary of State or the Secretary's designee, and the Council Chair or the Council Chair's designee concur. At a minimum, the initial oral or written notice will inform the midwife or the midwife's attorney of:

1. The essential terms of the suspension;
2. The reason for the suspension;
3. The midwife's right to a hearing; and
4. The midwife's right to an expedited hearing.

b. Within 48 hours of receiving the initial oral or written notice, a midwife whose license has been temporarily suspended pursuant to this section must be formally notified of the temporary suspension in writing. Formal notification consists of, at minimum:

1. A copy of the complaint;
2. The order of temporary suspension pending a hearing; and
3. A description of the hearing including the midwife's right to request an expedited hearing,

personally served upon the midwife or sent by certified mail, return receipt requested, to the midwife's last known address.

c. A midwife whose license to practice has been temporarily suspended pursuant to this section may request, and has a right to, an expedited hearing. 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 formal notification of the decision to temporarily suspend the person's license.

d. As soon as possible after the issuance of an order temporarily suspending a midwife's license to practice pending a hearing, the Council Chair shall appoint a 3-member hearing panel consisting of 3 members; 1 of the 3 shall be an unbiased physician member of the Council or Board; 2 of the 3 shall be unbiased midwife members of the Council; and if possible and no conflict exists, at least 1 of the 2 Council midwife members shall be of the same licensure type as the midwife under complaint. The Chair of the hearing panel shall be 1 of the Council midwife members. After notice to the midwife pursuant this section, the hearing panel shall convene within 60 calendar days of the date of the issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If a midwife requests an expedited hearing, the hearing panel shall convene within 15 calendar days of the receipt by the Council of the request. The 3-member panel shall conduct a hearing in accordance with the procedures set forth in § 1734 of this title and shall render a decision within 15 calendar days of the hearing. 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 unless the temporarily suspended midwife requests a continuance of the hearing date. If the midwife requests a continuance, the order of temporary suspension will remain in effect until the hearing panel convenes and a decision is rendered by the Board.

e. In addition to making findings of fact, the hearing panel shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect until the Board, pursuant to § 1734(g) of this title, deliberates

and reaches conclusions of law based upon the findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended midwife requests an extension of the order pending a final decision of the Board. Upon the final decision of the Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Board.

(e) The Council shall meet at least quarterly and at such other times as license applications are pending. The Council shall present to the Board the names of individuals qualified to be licensed, shall recommend disciplinary action against licensees as necessary, and shall suggest changes in operations or regulations pursuant to this section. The Council shall keep minutes of its meetings which shall be available to the public upon FOIA request, except that information discussed by the Council concerning a mother or child which is private in nature or which would tend to reveal the identity of a client of a midwife shall be discussed in executive session pursuant to Chapter 100 of Title 29.

(f) The Board shall grant limited prescriptive authority upon the issuance of a certified professional midwife license or certified midwife license. The Council shall recommend and the Board shall approve the parameters of the limited prescriptive authority in its regulations.

(80 Del. Laws, c. 33 § 1; 80 Del. Laws, c. 258 §§ 3, 4.)

§ 1799II Licensure.

(a) To be eligible for licensure by the Board as a certified professional midwife, an applicant shall:

(1) Possess a valid CPM credential or another valid credential from an accrediting organization as recommended by the Council and approved by the Board; however; applicants who obtain the CPM credential after December 31, 2019, are required to also have obtained an education accredited by the Midwifery Education and Accreditation Council (MEAC), or another midwifery education accreditation organization as recommended by the Council and approved by the Board, and training and education which meet the International Confederation of Midwives (ICM) standards and guidelines as applicable to the scope of midwives licensed under this subchapter;

(2) Be at least 21 years of age;

(3) Shall not have been assessed any administrative penalties regarding the applicant's practice of midwifery, including but not limited to fines, formal reprimands, license suspension or revocation — except for license suspension or revocation for nonpayment of license renewal fee or unlicensed practice penalties assessed prior to the establishment of the Council — and/or probationary limitations;

(4) Shall not have been convicted of or may not have admitted under oath to having committed a crime substantially related to the practice of midwifery or any felony or violent misdemeanor or crime involving dishonesty;

(5) Be a graduate of a high school or its equivalent;

(6) Meet minimum educational requirements as required for attainment of the CPM credential, including prepartum, prenatal, intrapartum, and postpartum care of the mother and baby, and risk assessment for the mother and baby during this period;

(7) Shall not have been convicted of a felony sexual offense; and

(8) Shall have completed a course in pharmacology and intravenous therapy recommended by the Council and approved by the Board.

(b) To be eligible for licensure by the Board as a certified midwife, an applicant shall:

(1) Possess a valid CM credential, or another valid credential from an accrediting organization as recommended by the Council and approved by the Board;

(2) Be at least 21 years of age;

(3) Shall not have been assessed any administrative penalties regarding the applicant's practice of midwifery, including but not limited to fines, formal reprimands, license suspension or revocation — except for license suspension or revocation for nonpayment of license renewal fee or unlicensed practice penalties assessed prior to the establishment of the Council — and probationary limitations;

(4) Shall not have been convicted of or shall not have admitted under oath to having committed a crime substantially related to the practice of midwifery or any felony or violent misdemeanor or crime involving dishonesty;

(5) Be a graduate of a high school or its equivalent;

(6) Meet the minimum educational requirements as required for attainment of the CM credential including successful completion of a midwifery education program accredited by the Accreditation Commission for Midwifery Education (ACME) or meet the education standards approved by the International Confederation of Midwives (ICM);

(7) Shall not have been convicted of a felony sexual offense; and

(8) Shall have completed a course in pharmacology and intravenous therapy recommended by the Council and approved by the Board.

(c) The Council may waive the requirements of paragraphs (a)(3), (a)(4), (b)(3), and (b)(4) of this section if its finds all of the following by clear and convincing evidence:

(1) The applicant's education, training, qualifications, and conduct have been sufficient to overcome the deficiency or deficiencies in meeting the requirements of this section;

(2) The applicant is capable of practicing midwifery in a competent and professional manner;

(3) The granting of the waiver will not endanger the public health, safety, or welfare;

(4) For waiver of a misdemeanor conviction or violation, and for waiver of a felony for the practice of unlicensed midwifery after June 30, 2016, at the time of the application the applicant may not be incarcerated, on work release, on probation, on parole or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

(5) For waiver of any other 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service; and

(d) Any termination, revocation, or suspension of a certification from NARM, AMCB, or other midwifery certifying organization, or discipline from the same must be promptly reported to the Council.

(e) Licensure must be renewed every 2 years.

(f) An applicant for licensure to practice midwifery shall submit a certified criminal background check pursuant to § 1720(b)(6) of this title. An applicant may not be certified until the applicant's criminal history reports have been produced. An applicant whose record shows a disqualifying prior criminal conviction pursuant to paragraphs (a)(4) or (7) of this section or paragraphs (b)(4) or (7) of this section may not be certified by the Board unless a waiver is granted pursuant to subsection (c) of this section. The State Bureau of Identification may release any subsequent criminal history to the Board and Council.

(g) Except for unlicensed practice of midwifery established prior to June 30, 2016, the information obtained thereby may be used by the Board and Council to determine the applicant's eligibility for licensing under this chapter.

(h) It shall be unlawful for any person to engage in the practice of midwifery after June 30, 2016, unless such person is licensed under the provisions of this chapter.

(80 Del. Laws, c. 33 § 1; 80 Del. Laws, c. 258 §§ 5, 6.)

§ 1799JJ Client screening for homebirth delivery services.

The provisions of this section shall apply only to a midwife while providing home birth delivery services. For the purposes of obtaining informed consent as governed by this section, the mother that is part of the client shall give informed consent on behalf of herself and the newborn.

(1) When accepting a client for care, a midwife shall obtain the client's informed consent, which shall be evidenced by a written statement signed by both the midwife and the client which shall contain the following elements, in a form drafted by the Council and adopted by the Board, if the midwife offers home birth services:

a. An acknowledgement that home birth can include increased risk of death and disability for mother and child;

b. A clear statement that the risks have been explained and understood by the client;

c. A clear statement that the client is aware that the midwife is not a licensed physician or nurse, nor are they seeking the services of one for their home birth;

d. A newborn checklist describing the services and care of the newborn; and

e. Information regarding procedures in the event a transfer becomes necessary and that a transfer may be required to protect the safety of the client if signs or symptoms are observed by the midwife that necessitate such transfer that includes:

1. Estimated distance between the planned birth site and the receiving facility; and

2. Information regarding concurrent care policies at the receiving facility. The statement on concurrent care will be repeated orally to the client or, if the client is incapacitated, the client's designated agent, in the event of a transfer.

(2) When accepting a client for care, a midwife shall obtain in addition to the client's informed consent, a written statement in a form proposed by the Council and adopted by the Board, and signed by both the midwife and the client. The form shall certify that full disclosure has been made and acknowledged by the client as to each of the following items, with the client's acknowledgement evidenced by a separate signature adjacent to each item in addition to the client's signature and the date at the end of the form:

a. The name, address, telephone number, and license number of the licensed midwife;

b. A description of the midwife's education, training, and experience in midwifery in relation to both the mother and the newborn;

c. The nature and scope of the care to be given, including a description of the ante partum, intrapartum, and postpartum conditions requiring consultation, transfer of care, or transport to a hospital;

d. A copy of the written plan described in paragraph (3) of this section below which is particular to each client;

e. An explanation that in the event of an emergency or voluntary transfer that no liability from the actions of the midwife are assignable to the receiving facility or medical professional;

f. An explanation of the right of the client to file a complaint with the Council and instructions on how to file a complaint with the Council;

g. A statement indicating that the client's records and any transaction with the midwife are confidential pursuant to the federal Health Insurance Portability and Accountability Act [P.L. 104-191];

h. A disclosure of whether the midwife carries malpractice or liability insurance; and

i. Any further information as required by the Council.

(3) A midwife shall prepare, in a form proposed by the Council and adopted by the Board, a written plan for the appropriate delivery of emergency care and provide the client with a copy of the plan as provided in paragraph (2) of this section. The plan shall address the following:

a. Consultation with other health-care providers;

b. Emergency transfer;

c. Access to neonatal intensive care units and obstetrical units or other patient care areas;

(4) A midwife shall provide an initial screening to ensure that each client receives safe and appropriate care and to determine whether any contraindications are present. A midwife will also perform ongoing screening and maintain, beginning at the time of the initial screening, a detailed health history in a form prescribed by the Council and adopted by the Board.

(5) Upon transfer of a client, emergency or otherwise, a midwife shall provide all records described in this section to the receiving care provider or facility and remain available to speak with the receiving health-care provider at the point of transfer about the course of care provided to the client.

(6) A midwife offering home birth services shall only accept and provide care to those women who are classified as eligible for a home birth or midwife-assisted birth in accordance with evidence based standards proposed by the Council and adopted by the Board as being low risk pregnancy, labor, and delivery, which includes but is not limited to:

a. There is no preexisting maternal disease or condition likely to affect the pregnancy, such as uterine surgeries including Caesarean procedures and others, as recommended by the Council and approved by the Board;

b. There is no significant disease arising from the pregnancy;

c. There is a singleton fetus;

d. There appears to be a cephalic presentation prior to delivery;

e. The onset of labor occurs when the fetus has a gestational age greater than 37 weeks and less than 42 weeks, which period can be expanded or contracted if the Council and Board determine that it would be in the best interests of clients to do so; and

f. Labor is most likely to be spontaneous.

(7) The midwife must be able at all times to recognize the warning signs of conditions that render the woman ineligible for a midwife-assisted home birth. If a midwife determines at any time during the course of the pregnancy that a woman's condition may preclude attendance by the midwife, the client shall be informed that she should transfer to an appropriate, licensed, health-care provider. A midwife may and shall, at any time, terminate a relationship with a client if that midwife deems the woman is or has become ineligible for a midwife-assisted birth or home birth. The cause for termination must be documented and included in the health history described in paragraph (4) of this section. Such midwife shall inform the client of such termination in writing and recommend transfer to an appropriate licensed health-care provider.

(8) If a midwife identifies that the client demonstrates a high risk condition as defined by the Council and approved by the Board, the midwife shall refer the client to a physician with obstetrical hospital privileges for client assessment and/or screening, at the time the condition is noted by the midwife. In the event of an emergency, if the midwife determines that immediate termination of the relationship pursuant to paragraph (7) of this section would increase or create risk of death or injury to the mother or her infant, the midwife will immediately engage emergency medical services, and may continue to assist in the emergency.

(80 Del. Laws, c. 33 § 1.)

§ 1799KK Physician-midwife relationship.

(a) No health-care provider or facility shall be vicariously liable for an injury resulting from an act or omission by a midwife unless an employment and/or agency relationship has been established between the midwife and the health-care provider or facility.

(b) Upon the successful transfer of care of a client from a midwife to a licensed physician in accordance with § 1799JJ(1) of this title, if authorized by the client, physician, and facility the licensed midwife may provide concurrent care with a physician and surgeon and, be present during the labor and childbirth, and resume postpartum care, if appropriate.

(80 Del. Laws, c. 33 § 1.)

§ 1799LL Treatment or examination of minors.

(a) A parent, guardian or other caregiver, or an adult staff member, shall be present when a person licensed to practice midwifery under this chapter provides outpatient treatment to a minor client who is disrobed or partially disrobed or during an outpatient physical examination involving the breasts, genitalia or rectum, regardless of sex of the licensed person and client, except when rendering care during an emergency. When using an adult staff member to observe the treatment or examination, the adult staff member shall be of the same gender as the client when practicable. The minor client may decline the presence of a third person only with consent of a parent, guardian or other caregiver. The minor client may request private consultation with the person licensed to practice midwifery without the presence of a third person after the physical examination. Every hospital and nursing facility and similar facility that provides treatment to minors shall develop and implement policies regarding the treatment of minor clients that are consistent with the purposes of this section and will submit those policies for approval by the Department of Health and Social Services. Violations of approved policies will be treated as a violation of this section.

(b) When a minor client is to be disrobed, partially disrobed or will undergo a physical examination involving the breasts, genitalia or rectum, a person licensed to practice midwifery under this chapter shall provide notice to the person providing consent to treatment of the rights under this section. The notice shall be provided in written form or be conspicuously posted in a manner in which a minor client and the minor client's parent, guardian or other caregiver are made aware of the notice. In circumstances in which the posting or the provision to the client of the written notice would not convey the right to have a chaperone present, the person licensed to practice midwifery shall use another means to ensure that the client or person understands the right 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 acting under the direction of the licensed person or the employer of the licensed person or who is otherwise licensed under this chapter, "hospital" has the meaning prescribed by Chapter 10 of Title 16, and "nursing facility and similar facility" has the meaning prescribed by Chapter 11 of Title 16.

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

(80 Del. Laws, c. 33 § 1.)

§ 1799MM Recordkeeping.

(a) A person licensed under this chapter who is discontinuing practice in this State or who is leaving this State and who is not transferring client records to another person licensed to practice midwifery or medicine shall notify that person's clients of record by publishing a notice to that effect in a newspaper of daily circulation in the area where the person practices. The notice must be published at least 1 time per month over a 3-month period in advance of discontinuing the business or leaving the State and must explain how a client can procure that client's records. All clients of record who have not requested their records 30 days before the person discontinues the practice or leaves the State must be notified by first-class mail by the person to permit that person's clients to procure their records. Any client records that have not been procured within 7 years after the person discontinues practice or leaves the State may be permanently disposed of in a manner that ensures confidentiality of the records.

(b) If a person licensed under this chapter dies and has not transferred client records to another person licensed to practice midwifery or medicine and has not made provisions for a transfer of client records to occur upon the person's death, a personal representative of the person's estate shall notify the person's clients of record by publishing a notice to that effect in a newspaper of daily circulation in the area where the person practiced. The notice must be published at least 1 time per month over a 3-month period after the person's death and must explain how a former client can procure the client's records. All former clients who have not requested their records 30 days after such publication must be notified by first class mail by the personal representative of the estate to permit the clients to procure their records. Any client records that have not been procured within 7 years after the death of the person may be permanently disposed of in a manner that ensures confidentiality of the records.

(c) If a client changes from the care of 1 person licensed to practice midwifery or medicine to another person certified to practice midwifery or medicine, the former person shall transfer a copy of the records of the client to the current person upon the request of either the current person or the client. The former person may charge for the reasonable expenses of copying the client's records, according to a payment schedule established by the Board of Medical Licensure and Discipline. The actual cost of postage or shipping may also be charged if the records are mailed. Alternatively, if the client and current person agree, the former person may forward to the current person a summary of the client's record, in lieu of transferring the entire record, at no charge to the client. If a client changes care from 1 person certified to practice midwifery or medicine to another and fails to notify the former person, or leaves the care of the former person for a period of 7 years from the last entry date on the client's record and fails to notify the former person, or fails to request the transfer of records to the current person, then the former person shall maintain the client's records for a period of 7 years from the last entry date in the client's medical record, after which time the records may be permanently disposed of in a manner that insures confidentiality of the records.

(d) Clients, on their own behalf, shall have the right to obtain a copy of their records from any person certified to practice midwifery or medicine according to a payment schedule established by the Board of Medical Licensure and Discipline. The actual cost of postage or shipping may also be charged if the records are mailed.

(80 Del. Laws, c. 33 § 1.)

§ 1799NN Duty to report conduct that constitutes grounds for discipline or inability to practice.

(a) Every person to whom a license to practice has been issued under this subchapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or any other health-care provider has engaged in or is engaging in conduct that would constitute grounds for disciplinary action under this chapter or the other health-care provider's licensing statute.

(b) Every person to whom a license to practice has been issued under this subchapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or any other health-care provider may be unable to practice with reasonable skill and safety to the public by reason of: mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive abuse of drugs, including alcohol.

(c) Every person to whom a license to practice has been issued under this subchapter has a duty to report to the Division of Professional Regulation any information that the reporting person reasonably believes indicates that a person certified and registered to practice medicine in this State is or may be guilty of unprofessional conduct or may be unable to practice medicine with reasonable skill or safety to clients by reason of: mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive use or abuse of drugs, including alcohol.

(d) All reports required under subsections (a), (b) and (c) of this section must be filed within 30 days of becoming aware of such information. A person reporting or testifying in any proceeding as a result of making a report pursuant to this section is immune from claim, suit, liability, damages, or any other recourse, civil or criminal, so long as the person acted in good faith and without gross or wanton

negligence; good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant. (80 Del. Laws, c. 33 § 1.)

Part

Chapter 18

BOARD OF PLUMBING, HEATING, VENTILATION, AIR CONDITIONING, AND REFRIGERATION EXAMINERS

Subchapter I

Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners

§ 1801 Objectives.

The primary objective of the Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners, to which all other objectives are secondary, is to protect the general public, specifically those persons who are direct recipients of services regulated by this chapter, from unsafe practices and from occupational practices which tend to reduce competition or 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 complaint hearings; shall promulgate rules and regulations; and shall impose sanctions, where necessary, against licensees.

(71 Del. Laws, c. 185 § 1; 75 Del. Laws, c. 296 § 1.)

§ 1802 Definitions.

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

(1) "Board" means the State Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners.

(2) "Commercial hood system" means a system or ventilation for an exhaust in commercial establishments.

(3) "Cooling system" means a system in which heat is removed from air, surrounding surfaces, or both. A cooling system includes an air conditioning system.

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

(5) "Gas piping" means any arrangement of piping used to convey fuel gas, supplied by 1 meter, and each arrangement of gas piping serving a building, structure, or premises, whether individually metered or not. "Gas piping" does not include the installation of gas appliances where existing service connections are already installed, nor does the term include the installations, alterations, or maintenance of gas utilities owned by a public utility.

(6) "HVACR" means heating, ventilation, air conditioning, and refrigeration.

(7) "HVACR restricted services" means HVACR services that are limited to 1 of the following specialties:

a. Heating — forced air systems; ventilation; and gas piping; or

b. Heating — hydronic systems and gas piping; or

c. Commercial hood systems; or

d. Refrigeration; or

e. Air-conditioning; or

f. Gas piping.

(8) "HVACR services" means the design, installation, construction, maintenance, service, repair, alteration, or modification of a product or of equipment including gas piping in heating and air conditioning, refrigeration, ventilation, or process cooling or heating systems.

(9) "Hydronic system" means a heating and cooling system using liquids or steam to transmit or remove heat.

(10) "License" means a document issued by the Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners certifying that the holder has met the requirements of this chapter and is a master plumber, master HVACR licensee, or master HVACR restricted licensee.

(11) "Master HVACR licensee" means an individual holding a current license pursuant to this chapter to provide heating, ventilation, air conditioning, commercial hood systems, hydronic systems, refrigeration, and gas piping services pursuant to this chapter.

(12) "Master HVACR licensee restricted" means an individual holding a current license pursuant to this chapter to provide services pursuant to this chapter in 1 of the following areas:

a. Heating — forced air systems; ventilation; and gas piping; or

b. Heating — hydronic systems and gas piping; or

c. Commercial hood systems; or

d. Refrigeration; or

e. Air-conditioning; or

f. Gas piping.

(13) "Master plumber", "licensed plumber", or "licensed master plumber" means an individual holding a current license to provide plumbing services issued pursuant to this chapter.

(14) "Plumber" is an individual who provides plumbing services.

(15) "Plumbing services" means the design, installation, construction, replacement, service, repair, alteration, or modification of the pipes, fixtures, and other apparatus used for bringing the water supply into a building and removing liquid and water-carried wastes from a building. Plumbing services also includes the installation and connection of gas piping.

(16) "Refrigeration system" means a system used to cool a surface or area below 55 degrees Fahrenheit or 12.9 degrees Celsius.

(17) "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 work of a master plumber, master HVACR licensee, or master HVACR licensee restricted.

(18) "Supervision" means control and oversight by a master licensee who is an owner or full-time employee of the entity providing services. A supervising master licensee is responsible and accountable for the work performed under the supervising master licensee's license.

(19) "Ventilation system" means the natural or mechanical process of supplying air to, or removing air from, any space, whether the air is conditioned or not conditioned and at a rate of airflow of more than 250 cubic feet per minute.

(71 Del. Laws, c. 185 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 § 31; 75 Del. Laws, c. 296 § 1; 76 Del. Laws, c. 192 §§ 1-6.)

§ 1803 Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners; appointment; composition; qualification; term; vacancies; suspension or removal; unexcused absences; compensation.

(a) The State Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners shall administer and enforce this chapter.

(b) The Board shall consist of 9 members who are appointed by the Governor and who are residents of this State. Three members, 1 from each county, are master plumbers who have been engaged in the plumbing services for at least 5 years. Three members, 1 from each county, are master HVACR licensees or master HVACR restricted licensees who have been engaged in HVACR or HVACR restricted services for at least 5 years. Three members, 1 from each county, are public members. A public member may not be nor ever have been a master plumber, master HVACR licensee, or master HVACR restricted licensee; may not be a member of the immediate family of a master plumber, master HVACR licensee, or master HVACR restricted licensee; may not be nor ever have been employed by a master plumber, master HVACR licensee, master HVACR restricted licensee, plumbing contractor, HVACR contractor, or HVACR restricted contractor; may not have a material interest in the providing of goods or services to master plumbers, master HVACR licensees, master HVACR restricted licensees, plumbing contractors, HVACR contractors, or HVACR restricted contractors; and may not be nor ever have been engaged in an activity directly related to providing plumbing, HVACR, or HVACR services. A public member must be accessible to inquiries, comments, and suggestions from the general public.

(c) Except as provided in subsection (d) of this section, each Board member serves a term of 3 years and may succeed himself or herself for 2 additional terms; provided, however, that if a member is initially appointed to fill a vacancy, the member may succeed himself or herself for only 2 additional full terms. A person appointed to fill a vacancy on the Board holds office for the remainder of the unexpired term of the vacating member. A term of office expires on the date specified in the appointment; however, a Board member whose appointment has expired remains eligible to participate in Board proceedings until replaced by the Governor. A person who is a member of the Board on June 27, 2006, may complete that member's term.

(d) A person who has never served on the Board may be appointed to the Board for 3 consecutive terms; but the person is thereafter ineligible to serve for 3 consecutive terms. A person who has been appointed 3 times to the Board or who has served on the Board for 9 years within any 12-year period may not again be appointed to the Board until an interim period of at least 1 term has expired since the person last served.

(e) An act or vote on Board business by a person appointed to the Board in violation of this section is invalid.

(f) The Governor shall suspend or remove a member of the Board for the member's misfeasance, nonfeasance, malfeasance, misconduct, incompetence, neglect of duty, or for other good cause. "Neglect of duty" means the failure to attend, without adequate reason, 3 consecutive regular business meetings, or at least half of all regular business meetings during any calendar year. A member subject to a disciplinary hearing may not participate in Board meetings until the charge is adjudicated or the matter is otherwise concluded. A Board member may appeal to the Superior Court a suspension or removal initiated pursuant to this subsection.

(g) A member of the Board, while serving on the Board, may not hold elective office in any occupational association of master plumbers, master HVACR licensees, or master HVACR restricted licensees or serve as an officer of an occupational association's political action committee (PAC).

(h) The provisions of the State Employees', Officers' and Officials' Code of Conduct set forth in Chapter 58 of Title 29 apply to the members of the Board.

(i) The Division shall reimburse Board members for expenses involved in each meeting, including travel, according to Division policy. A member may not receive more than $50 for each meeting attended, and not more than $500 in any calendar year.

(71 Del. Laws, c. 185 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 296 § 1.)

§ 1804 Organization; meetings; officers; quorum.

(a) The Board shall hold regularly scheduled business meetings at least once in each quarter of a calendar year, at other times as the president of the Board considers necessary, and at the request of a majority of the Board members.

(b) The Board shall elect annually a president, vice president, and secretary. Each term of office is for 1 year. An officer may not serve for more than 3 consecutive years in the same office.

(c) A majority of the members of the Board constitutes a quorum for the purpose of transacting business. However, at least 5 Board members must vote affirmatively to find that grounds for discipline exist and to impose a sanction for a disciplinary violation.

(d) Minutes of all meetings of the Board must be recorded. The Division shall maintain copies of the recorded minutes. At any hearing where evidence is presented, a record from which a verbatim transcript can be prepared shall be made. A person requesting a transcript incurs the expense of preparing the transcript.

(71 Del. Laws, c. 185 § 1; 75 Del. Laws, c. 296 § 1.)

§ 1805 Records.

The Division shall keep a register of all approved applications for licensure as a master plumber, master HVACR licensee, and master HVACR licensee restricted, and shall keep complete records relating to meetings of the Board, examinations, rosters of licensees, changes to the Board's rules and regulations, complaints, hearings, and other matters as the Board determines. Records kept in accord with this section are prima facie evidence of the proceedings of the Board.

(71 Del. Laws, c. 185 § 1; 74 Del. Laws, c. 262 § 32; 75 Del. Laws, c. 296 § 1.)

§ 1806 Authority of the Board.

(a) The Board of Plumbing, Heating, Ventilation, and Air Conditioning Examiners shall have the authority to:

(1) Administer and enforce the provisions of this chapter and of rules and regulations promulgated under this chapter;

(2) Promulgate rules and regulations necessary or desirable to carry out the objectives of this chapter, including rules and regulations to carry out the objectives governing licensure and the requirements for continuing education;

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

(4) Designate the written, standardized examination, approved by the Division and administered and graded by a testing service, to be taken by applicants except those who qualify for licensure by reciprocity;

(5) Evaluate certified records to determine whether an applicant for licensure, who is or has been licensed, registered, or otherwise authorized to provide services in another jurisdiction, 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 the applicant for such act or offense;

(6) Grant licenses to and renew licenses of, all applicants who meet the qualifications set forth in this chapter;

(7) Refer all complaints concerning master plumbers, master HVACR licensees, or master HVACR restricted licensees, or concerning the practices of the Board, or of the profession to the Division of Professional Regulation for investigation pursuant to § 8735(h) of Title 29. The Division of Public Health shall, upon request, assist the Division of Professional Regulation in the investigation of complaints requiring field inspections;

(8) Hold hearings and take such actions as are permitted under the Administrative Procedures Act, Chapter 101 of Title 29;

(9) Designate and impose appropriate sanction or penalty after time for appeal has lapsed, if the Board determines after a disciplinary hearing that the sanction or penalty should be imposed;

(10) Adopt, and revise as necessary, a detailed statewide HVACR and fuel gas code;

(11) Coordinate an effort with each county and municipality in the State, which effort will result in consistency in local plumbing, HVACR, and fuel gas codes and the statewide plumbing, HVRAC, and fuel gas code;

(12) The Board shall require that all persons licensed in plumbing and HVACR services display the words "Licensed Plumber" and/or "Licensed HVACR" and the license number assigned to them in not less than 3-inch letters and numbers on the vehicles used in the performance of their work.

(b) The Board of Plumbing, Heating, Ventilation, Air Conditioning and Refrigeration Examiners shall promulgate regulations specifically identifying those crimes which are substantially related to the work of a master plumber, master HVACR licensee, or master HVACR licensee restricted.

(c) Heating, Ventilation, Air Conditioning and Refrigeration Code; International Fuel Gas Code adoption and enforcement. — The State Board of Plumbing, Heating, Air Conditioning, Ventilation and Refrigeration Examiners shall adopt the most recent version of the International Mechanical Code (IMC) and the International Fuel Gas Code (IFC) within 1 calendar year of their issuance with whatever modifications the Board deems appropriate. The State Board of Plumbing, Heating, Air Conditioning, Ventilation and Refrigeration Examiners may adopt and enforce additional heating, ventilation, air conditioning, and refrigeration, and fuel gas regulations which shall not be in conflict with the IMC or the IFC.

(d) Local regulations. — Every political subdivision within the State of Delaware, including county, city and municipal governments, shall enforce the International Mechanical Code (IMC) and the International Fuel Gas Code (IFC), as adopted or modified by the State

Board of Plumbing, Heating, Air Conditioning, Ventilation and Refrigeration Examiners. Every political subdivision retains the right to propose additional or modified heating, ventilation, air conditioning, and refrigeration (HVACR), and fuel gas regulations, which must be submitted in writing to the State Board Plumbing, Heating, Air Conditioning, Ventilation and Refrigeration Examiners for review and approval, and which may not be in conflict with the IMC or the IFC. The State Board of Plumbing, Heating, Air Conditioning, Ventilation and Refrigeration Examiners within 60 days of receiving such proposed changes or additions may thereafter adopt, modify or reject the proposed changes or additions. Upon issuance of the statewide HVACR and/or fuel gas regulations every political subdivision shall have the option of adopting and enforcing said regulations, or adopting and enforcing the minimum standards set forth in the most recently adopted version of the IMC and the IFC.

(71 Del. Laws, c. 185 § 1; 74 Del. Laws, c. 262 § 32; 75 Del. Laws, c. 296 § 1; 77 Del. Laws, c. 398 § 1; 79 Del. Laws, c. 115 § 1.)

Subchapter II

License — Plumbing

§ 1807 License required; exemptions.

(a) A person shall not provide plumbing services in this State nor hold himself or herself out to the public as being a licensed master plumber, nor use "licensed plumber", "master plumber", or "licensed master plumber" in connection with that person's name, nor otherwise assume or use any title or description conveying or tending to convey the impression that the person is qualified to provide plumbing services, unless the person has been licensed as a master plumber under this chapter, or exempted from the provisions of this chapter pursuant to subsection (c) of this section.

(b) If the license of a master plumber has expired or been suspended or revoked, it is unlawful for the holder of the expired, suspended, or revoked license to perform plumbing services in this State.

(c) An individual may provide plumbing services without being licensed under this chapter if:

(1) The individual is an apprentice, journeyman, mechanic, or other person providing such services under the supervision of a master plumber who is the individual's employer or who is employed full time by the same business entity as the individual;

(2) The individual is a homeowner who is performing plumbing services other than gas piping in or about that individual's own home that is not for sale or any part for rent or lease, provided that the individual has filed an application for a permit with the authorized inspection authority;

(3) The individual is providing such services on property used exclusively for agricultural purposes and the individual has filed an application for a permit with the authorized inspection authority; or

(4) The individual is providing such services pursuant to the provisions in § 1832 of this title.

(5) The individual is providing services authorized under subchapter III of this chapter.

(d) The penalty for a violation of this section is, for a first offense, a fine of not less than $500 nor more than $1000, and, for a second or subsequent offense, a fine of not less than $1000 nor more than $2000. Justice of the Peace Courts shall have jurisdiction over violations of this section.

(71 Del. Laws, c. 185 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 296 § 1.)

§ 1808 Qualifications of applicant.

(a) An applicant for licensure as a master plumber shall submit evidence, satisfactory to the Board, and verified by oath or affirmation, that the applicant:

(1) Has received a journeyman's certificate issued in any state following completion of a plumbing apprenticeship program that meets or exceeds the Federal Bureau of Apprenticeship and Training Standards and, thereafter, performed plumbing services for 2 years under the supervision of a master plumber or an individual holding a similar level of licensure in another state; or has performed plumbing services for 7 years under the supervision of a master plumber or a plumber holding a similar level of licensure in another state and, thereafter, successfully completed the apprenticeship equivalency test approved by the Board and administered by a Delaware vocational-technical school;

(2) Has achieved the passing score on a written, standardized examination, designated by the Board and approved by the Division, for licensure as a Delaware master plumber after fulfilling the experience and/or training requirements of this section;

(3) Has not received any administrative penalties regarding the applicant's practice, including, but not limited to, fines, formal reprimands, license suspension or revocation (except for license revocation for nonpayment of license renewal fees), probationary limitations, and consent agreements which contain conditions placed by a Board on the applicant's occupational conduct or practice, including the voluntary surrender of a license, certificate, registration, or other authorization to provide plumbing services. The Board may determine after a hearing whether the imposition of a particular administrative penalty is grounds to deny licensure.

(4) Does not have an impairment related to drug or alcohol use that would limit the applicant's ability to provide plumbing services in a manner that is not detrimental to the health, safety, or welfare of the public;

(5) Does not have any disciplinary proceedings or unresolved complaints pending against the applicant in any jurisdiction where the

applicant has previously been or is currently authorized to provide plumbing services; or have a criminal conviction record or any pending criminal charges relating to an incident, the circumstances of which substantially relate to providing plumbing services. An applicant who has such a criminal conviction record or any such pending criminal charges must request appropriate authorities to provide information about the record or charges directly to the Board in sufficient specificity to enable the Board to make a determination of whether the record or charge is substantially related to providing plumbing services. However, after a hearing or review of documentation that the applicant meets the specified criteria for a waiver, the Board, by an affirmative vote of a majority of the quorum, may waive this paragraph (a)(5) herein if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of practicing plumbing services in a competent and professional manner.

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

(b) The Board may waive the requirements of paragraph (a)(3) or (5) of this section for good cause.

(c) Each applicant shall provide the information requested on the application form approved by the Board. All evidence of experience must be submitted by affidavit on forms approved by the Board. An application form may not require an applicant to submit a photograph of himself or herself, or information related to citizenship, place of birth, length of state residency, or personal references.

(d) If the Board finds that false information has been intentionally provided to the Board, it shall report its finding to the Attorney General's Office for further action.

(e) If the Board refuses to accept, or rejects, an application and the applicant believes that the Board acted without justification, or imposed a higher or different standard to the applicant than to other applicants, or in some other unlawful manner contributed to or caused the refusal or rejection of the application, the applicant may appeal to the Superior Court.

(71 Del. Laws, c. 185 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 296 § 1; 75 Del. Laws, c. 436 § 15; 77 Del. Laws, c. 199 §§ 10-12; 78 Del. Laws, c. 44 §§ 24, 25.)

§ 1809 Examination.

(a) The written, standardized examination required in § 1808(a)(2) of this title must be offered at least quarterly. The Board will determine the passing score in its rules and regulations.

(b) An applicant who fails to receive a passing score on an examination administered pursuant to this chapter may apply to retake the examination on the next available date. If an applicant fails to pass the examination after 3 attempts, the Board, in its rules and regulations, may specify the conditions under which an applicant may retake the examination.

(71 Del. Laws, c. 185 § 1; 74 Del. Laws, c. 262 § 32; 75 Del. Laws, c. 296 § 1.)

§ 1810 Reciprocity.

(a) Upon submission and acceptance of a written application on forms provided by the Board, along with payment of the required fee, the Board shall grant a license to each applicant who presents proof of current licensure in good standing in another state, the District of Columbia, or a territory of the United States whose standards for licensure are substantially similar to those of this State and who submits the verified evidence described in § 1808(a)(3) through (5) of this title.

(b) An applicant who is licensed by another state, the District of Columbia, or a territory of the United States whose standards for licensure are not substantially similar to those of this State must have practiced for a minimum of 7 years after licensure, in addition to meeting the other qualifications for reciprocity in this section.

(71 Del. Laws, c. 185 § 1; 75 Del. Laws, c. 296 § 1.)

§ 1811 Fees.

The amount set by the Division for each fee imposed under this chapter shall approximate and reasonably reflect the costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division in its services on behalf of the Board. A separate fee may be charged for each service or activity, but a fee shall not be charged unless the service or activity is specified in this chapter. The application fee may not be combined with any other fee. At the beginning of each licensure biennium, the Division, or another state agency acting in its behalf, shall compute the fees for each separate service or activity for the licensure biennium.

(71 Del. Laws, c. 185 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 296 § 1.)

§ 1812 Issuance and renewal of licenses.

(a) The Board shall issue a license to each applicant who meets the requirements of this chapter for licensure as a master plumber and who pays the appropriate fees established under § 1811 of this title.

(b) A license is renewable biennially in a manner determined by the Division, upon payment of the appropriate fee, submission of a renewal form provided by the Division, and proof that the licensee has met any continuing education requirements established by the

Board.

(c) The Board, in its rules and regulations, shall determine the period of time within which a licensee may renew that licensee's license, notwithstanding the fact that the licensee failed to renew that licensee's license on or before the designated renewal date; provided, however, that the period of time may not exceed 1 year beyond the designated renewal date.

(d) A licensee, upon the licensee's written request, may be placed on inactive status for no more than 5 years. A licensee on inactive status who desires to reactivate that licensee's license must complete and submit an application form approved by the Board, submit the reactivation fee set by the Division, and submit proof of fulfillment of any continuing education requirements established by the Board.

(71 Del. Laws, c. 185 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 296 § 1.)

§ 1813 Complaints.

(a) All complaints received by the Division shall be investigated in accordance with § 8735 of Title 29. The Division shall issue a final written report at the conclusion of its investigation.

(b) If the Board determines that a person has provided or is providing plumbing services or has used or is using the title "master plumber", "licensed plumber," or a similar designation contrary to the requirements of this chapter, the Board shall request that the Office of the Attorney General issue a cease and desist order and/or prosecute the person.

(71 Del. Laws, c. 185 § 1; 74 Del. Laws, c. 262 § 32; 75 Del. Laws, c. 296 § 1.)

§ 1814 Grounds for discipline or other remediation.

(a) An individual licensed under this chapter is subject to disciplinary sanctions set forth in § 1815 of this title or other appropriate remediation, if, after a hearing, the Board finds that the licensee has:

(1) Engaged or knowingly cooperated in fraud or material deception in order to acquire a license, has allowed another person to use that individual's license, or has aided or abetted an unlicensed to represent himself or herself as an individual licensed pursuant to this chapter;

(2) Illegally, incompetently, or negligently provided plumbing services;

(3) Been convicted of an offense, the circumstances of which substantially relate to providing plumbing services. A copy of the record of conviction certified by the clerk of the court entering the conviction is conclusive evidence of conviction;

(4) In the last 2 years used illegal drugs; used prescription drugs without a prescription; excessively used legally prescribed drugs; or abused alcoholic beverages or drugs to the extent that it impaired that individual's ability to provide services authorized under this chapter with reasonable skill, competence, and safety to the public;

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

(6) Violated a provision of this chapter or any lawful regulation established hereunder;

(7) Had that individual's license as a master plumber restricted, suspended or revoked, or been subjected to other adverse action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for the suspension, revocation, or other adverse action in another jurisdiction have been presented to the Board by certified record and the Board has determined that the facts found by the appropriate licensing authority in the other jurisdiction constitute 1 or more of the acts listed in this section. A person licensed in this State is deemed to have given consent to the release of information regarding license suspension or revocation or other adverse action taken by the Board or by comparable agencies in other jurisdictions and to have waived all objections to the admissibility of previously adjudicated evidence of the acts or offenses which underlie license suspension or revocation or other adverse action;

(8) Failed to notify the Board that the individual's license to provide services authorized under this chapter in another jurisdiction has been subject to discipline, or has been surrendered, suspended, or revoked. A certified copy of the record of disciplinary action, or of the surrender, suspension, or revocation of the license shall be conclusive evidence thereof;

(9) A physical or mental impairment that prevents that individual from providing services authorized under this chapter with reasonable skill, competence, and safety to the public.

(b) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(71 Del. Laws, c. 185 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 § 33; 75 Del. Laws, c. 296 § 1; 79 Del. Laws, c. 213 § 2.)

§ 1815 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it determines that a licensee has violated a ground for discipline set forth in § 1814 of this title:

(1) Issue a letter of reprimand to the licensee;

(2) Censure the licensee;

(3) Place the licensee on probationary status and require that licensee to:

a. Report regularly to the Board upon the matters that are the basis of the probation; and/or

b. Limit all practice and professional activities to those areas prescribed by the Board;

(4) Suspend the license of the licensee;

(5) Revoke the license of the licensee;

(6) Prescribe an administrative penalty, not to exceed $500 for each violation.

(b) The Board may withdraw or reduce conditions of probation imposed pursuant to paragraph (a)(3) of this section, if it finds that the deficiencies that required the conditions of probation to be imposed have been remedied.

(c) If the Board suspends a licensee due to an impairment pursuant to § 1814(a)(9) of this title, the Board may reinstate the license if, after a hearing, the Board is satisfied that the licensee is able to provide professional services with reasonable skill, competence, and safety to the public.

(71 Del. Laws, c. 185 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 296 § 1; 79 Del. Laws, c. 213 § 2.)

§ 1816 Hearing procedures.

(a) If a complaint alleging that a licensee has violated § 1814 of this title is filed with the Division pursuant to § 8735(h) of this title, the Board shall set a time and place to conduct a hearing on the complaint. The Division shall give notice of the hearing and the Board shall conduct the hearing in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) A hearing conducted pursuant to this section is informal, without the use of the Delaware Rules of Evidence. If the Board decides by the affirmative votes of 5 or more members that a licensee has violated § 1814 of this title, the Board may take any action permitted under this chapter that the Board considers reasonable. The Board's decision must be in writing and must include the reasons for the decision. The Board shall immediately mail its decision to the licensee or personally serve the licensee with the decision.

(c) If a licensee disagrees with the decision of the Board, the licensee may appeal the Board's decision to the Superior Court within 30 days of the postmarked date of the copy of the decision mailed to that licensee, or within 30 days of personal service. Upon appeal, the Court shall review the evidence on the record. A stay pending review may be granted by the Court in accordance with § 10144 of Title 29.

(71 Del. Laws, c. 185 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 296 § 1.)

§ 1817 Reinstatement of a suspended license; removal from probationary status; replacement of license.

(a) The Board may reinstate a suspended license if, after a hearing, the Board is satisfied that the licensee has taken the required corrective actions and has otherwise satisfied all of the conditions imposed pursuant to the license suspension and/or probation period.

(b) An individual seeking license reinstatement and/or removal from probationary status must pay the appropriate fees and submit the documentation required by the Board to show that all the conditions imposed pursuant to the license suspension and/or the probation period have been met. Proof that the individual has met the continuing education requirements of this chapter may also be required.

(c) If a license is lost, destroyed, or mutilated, a replacement license may be issued subject to the rules of the Board. A charge must be assessed for the issuance of a replacement license.

(71 Del. Laws, c. 185 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 296 § 1.)

§§ 1818 , 1819. [Reserved.]

Subchapter III

License — Heating, Ventilation, Air Conditioning, and Refrigeration

§ 1820 License required; exemptions.

(a) A person shall not provide HVACR or HVACR restricted services in this State nor hold himself or herself out to the public as being a master HVACR licensee or master HVACR restricted licensee, nor use "master HVACR licensee", "master HVACR restricted licensee" in connection with that person's name nor otherwise assume or use any title or description conveying or tending to convey the impression that that person is qualified to provide HVACR or HVACR restricted services, unless that person has been licensed as a master HVACR licensee or a master HVACR restricted licensee under this chapter or exempted from the provisions of this chapter pursuant to subsection (c) of this section.

(b) If the license of a master HVACR licensee or master HVACR restricted licensee has expired or been suspended or revoked, it is unlawful for the holder of the expired, suspended, or revoked license to act as a master HVACR licensee, or master HVACR restricted licensee in this State.

(c) An individual may provide HVACR or HVACR restricted services without being licensed under this chapter if:

(1) The individual is an apprentice, journeyman, mechanic or other person providing such services under the supervision of a master HVACR licensee or master HVACR restricted licensee, who is the individual's employer or who is employed full time by the same business entity as the individual;

(2) The individual is a homeowner who is performing HVACR services other than gas piping in or about that individual's own home that is not for sale or any part for rent or lease;

(3) The individual is providing such services on property used exclusively for agricultural purposes and the individual has filed an application for a permit with the authorized inspection authority;

(4) The individual is providing such services pursuant to the provisions in § 1831 of this title.

(d) The penalty for a violation of this section is, for a first offense, a fine of not less than $500 nor more than $1000, and, for a second or subsequent offense, a fine of not less than $1000 nor more than $2000. Justice of the Peace Courts have jurisdiction over violations of this section.

(75 Del. Laws, c. 296 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1821 Qualifications of applicant — Heating, ventilation, air conditioning, and refrigeration.

(a) An applicant for licensure as a master HVACR licensee, or master HVACR restricted licensee, must submit evidence, satisfactory to the Board and verified by oath or affirmation, that the applicant:

(1) Has received a journeyman's certificate issued in any state following completion of an HVACR, or HVACR restricted apprenticeship program that meets or exceeds the Federal Bureau of Apprenticeship and Training Standards and, thereafter, performed HVACR, or HVACR restricted services for 2 years under the supervision of a master HVACR licensee, or master HVACR restricted licensee, or an individual holding a similar level of licensure in another state; or has performed HVACR or HVACR restricted services for 7 years under the supervision of a master HVACR licensee or master HVACR restricted licensee or an individual holding a similar level of licensure in another state and, thereafter, successfully completed the apprenticeship equivalency test approved by the Board and administered by a Delaware vocational-technical school;

(2) Has achieved the passing score on a written, standardized examination, designated by the Board and approved by the Division, for licensure as a Delaware master HVACR licensee or master HVACR restricted licensee after fulfilling the experience and/or training requirements of this section;

(3) Has been certified at the appropriate level for handling chlorofluorocarbons (CFC's) by a testing organization approved by the Environmental Protection Agency;

(4) Has not received any administrative penalties regarding that applicant's practice, including, but not limited to, fines, formal reprimands, license suspension or revocation (except for license revocation for nonpayment of license renewal fees), probationary limitations, and consent agreements which contain conditions placed by a Board on the applicant's occupational conduct or practice, including the voluntary surrender of a license, certificate, registration, or other authorization to provide HVACR services. The Board may determine after a hearing whether the imposition of a particular administrative penalty is grounds to deny licensure;

(5) Does not have an impairment related to drug or alcohol use that would limit that applicant's ability to provide HVACR or HVACR restricted services in a manner that is not detrimental to the health, safety, or welfare of the public;

(6) Does not have any disciplinary proceedings or unresolved complaints pending against that applicant in any jurisdiction where that applicant has previously been or is currently authorized to provide HVACR or HVACR restricted services; and

(7) Does not have a criminal conviction record or any pending criminal charges relating to an incident, the circumstances of which substantially relate to providing HVACR or HVACR restricted services. An applicant who has such a criminal conviction record or any such pending criminal charges must request appropriate authorities to provide information about the record or charges directly to the Board in sufficient specificity to enable the Board to make a determination of whether the record or charge is substantially related to providing HVACR or HVACR services. However, after a hearing or review of documentation that the applicant meets the specified criteria for a waiver, the Board, by an affirmative vote of a majority of the quorum, may waive this paragraph (a)(7) herein if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of practicing plumbing services in a competent and professional manner.

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

(b) The Board may waive the requirements of paragraph (a)(4) or (7) of this section for good cause.

(c) Each applicant shall provide the information requested on the application form approved by the Board. All evidence of experience must be submitted by affidavit on forms approved by the Board. An application form may not require an applicant to submit a photograph of himself or herself, or information related to citizenship, place of birth, length of state residency, or personal references.

(d) If the Board finds that false information has been intentionally provided to the Board, it shall report its finding to the Attorney General's Office for further action.

(e) If the Board refuses to accept, or rejects, an application and the applicant believes that the Board acted without justification, or imposed a higher or different standard to the applicant than to other applicants, or in some other unlawful manner contributed to or caused the refusal or rejection of the application, the applicant may appeal to the Superior Court.

(f) [Repealed.]

(75 Del. Laws, c. 296 § 1; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 192 §§ 8-10; 77 Del. Laws, c. 199 § 13; 78 Del. Laws, c. 44 §§ 26, 27.)

§ 1822 Examination.

(a) The written, standardized examination required in § 1821(a)(2) of this title must be offered at least quarterly. The Board will determine the passing score in its rules and regulations.

(b) An applicant who fails to receive a passing score on an examination administered pursuant to this chapter may apply to retake the examination on the next available date. If an applicant fails to pass the examination after 3 attempts, the Board, in its rules and regulations, may specify the conditions under which an applicant may retake the examination.

(75 Del. Laws, c. 296 § 1.)

§ 1823 Reciprocity.

(a) Upon submission and acceptance of a written application on forms provided by the Board, along with payment of the required fee, the Board shall grant a license to each applicant who presents proof of current licensure in good standing in another state, the District of Columbia, or a territory of the United States whose standards for licensure are substantially similar to those of this State and who submits the verified evidence described in § 1821(a)(3) through (7) of this of this title.

(b) An applicant who is licensed by another state, the District of Columbia, or a territory of the United States whose standards for licensure are not substantially similar to those of this State must have practiced for a minimum of 7 years after licensure, in addition to meeting the other qualifications for reciprocity in this section.

(75 Del. Laws, c. 296 § 1.)

§ 1824 Fees.

The amount set by the Division for each fee imposed under this chapter must approximate and reasonably reflect the costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division in its services on behalf of the Board. A separate fee may be charged for each service or activity, but a fee may not be charged unless the service or activity is specified in this chapter. The application fee may not be combined with any other fee. At the beginning of each licensure biennium, the Division, or another State agency acting in its behalf, shall compute the fees for each separate service or activity for the licensure biennium.

(75 Del. Laws, c. 296 § 1.)

§ 1825 Issuance and renewal of licenses.

(a) The Board shall issue a license to each applicant who meets the requirements of this chapter for licensure as a master HVACR licensee or master HVACR restricted licensee and who pays the appropriate fees established under § 1824 of this title.

(b) A license is renewable biennially in a manner determined by the Division, upon payment of the appropriate fee, submission of a renewal form provided by the Division, and proof that the licensee has met any continuing education requirements established by the Board.

(c) The Board, in its rules and regulations, shall determine the period of time within which a licensee may renew that licensee's license, notwithstanding the fact that the licensee failed to renew that licensee's license on or before the designated renewal date; provided, however, that the period of time may not exceed 1 year beyond the designated renewal date.

(d) A licensee, upon the licensee's written request, may be placed on inactive status for no more than 5 years. A licensee on inactive status who desires to reactivate that licensee's license must complete and submit an application form approved by the Board, submit the reactivation fee set by the Division, and submit proof of fulfillment of any continuing education requirements established by the Board.

(75 Del. Laws, c. 296 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1826 Complaints.

(a) All complaints received by the Division must be investigated in accordance with § 8735 of Title 29. The Division must issue a final written report at the conclusion of its investigation.

(b) If the Board determines that a person has provided or is providing HVACR or HVACR restricted services or has used or is using the title "master HVACR licensee", "master HVACR restricted licensee", or a similar designation contrary to the requirements of this chapter, the Board shall request that the Office of the Attorney General issue a cease and desist order and/or prosecute the person.

(75 Del. Laws, c. 296 § 1.)

§ 1827 Grounds for discipline or other remediation.

(a) An individual licensed under this chapter is subject to disciplinary sanctions set forth in § 1828 of this title or other appropriate

remediation, if, after a hearing, the Board finds that the licensee has:

(1) Employed or knowingly cooperated in fraud or material deception in order to acquire a license, has allowed another person to use that licensee's license, or has aided or abetted an unlicensed to represent himself or herself as an individual licensed pursuant to this chapter;

(2) Illegally, incompetently, or negligently provided HVACR or HVACR restricted services;

(3) Been convicted of an offense, the circumstances of which substantially relate to providing HVACR or HVACR restricted services. A copy of the record of conviction certified by the clerk of the court entering the conviction is conclusive evidence of conviction;

(4) In the last 2 years used illegal drugs; used prescription drugs without a prescription; excessively used legally prescribed drugs; or abused alcoholic beverages or drugs to the extent that it impaired that licensee's ability to provide services authorized under this chapter with reasonable skill, competence, and safety to the public;

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

(6) Violated a provision of this chapter or any lawful regulation established hereunder;

(7) Had that licensee's license as a master HVACR licensee or master HVACR restricted licensee suspended or revoked, or been subjected to other adverse action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for the suspension, revocation, or other adverse action in another jurisdiction have been presented to the Board by certified record and the Board has determined that the facts found by the appropriate licensing authority in the other jurisdiction constitute 1 or more of the acts listed in this section. A person licensed in this State is deemed to have given consent to the release of information regarding license suspension or revocation or other adverse action taken by the Board or by comparable agencies in other jurisdictions and to have waived all objections to the admissibility of previously adjudicated evidence of the acts or offenses which underlie license suspension or revocation or other adverse action;

(8) Failed to notify the Board that the licensee's license to provide services authorized under this chapter in another jurisdiction has been subject to discipline, or has been surrendered, suspended, or revoked. A certified copy of the record of disciplinary action, or of the surrender, suspension, or revocation of the license shall be conclusive evidence thereof; and

(9) A physical or mental impairment that prevents that licensee from providing services authorized under this chapter with reasonable skill, competence, and safety to the public.

(b) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(75 Del. Laws, c. 296 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 213 § 2.)

§ 1828 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it determines that a licensee has violated a ground for discipline set forth in § 1827 of this title:

(1) Issue a letter of reprimand to the licensee;

(2) Censure the licensee;

(3) Place the licensee on probationary status and require that licensee to:

a. Report regularly to the Board upon the matters that are the basis of the probation; and/or

b. Limit all practice and professional activities to those areas prescribed by the Board;

(4) Suspend the license of the licensee;

(5) Revoke the license of the licensee;

(6) Prescribe an administrative penalty, not to exceed $500 for each violation.

(b) The Board may withdraw or reduce conditions of probation imposed pursuant to paragraph (a)(3) of this section, if it finds that the deficiencies that required the conditions of probation to be imposed have been remedied.

(c) If the Board suspends a licensee due to an impairment pursuant to § 1827(9) of this title, the Board may reinstate the license if, after a hearing, the Board is satisfied that the licensee is able to provide professional services with reasonable skill, competence, and safety to the public.

(75 Del. Laws, c. 296 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1829 Hearing procedures.

(a) If a complaint alleging that a licensee has violated § 1827 of this title is filed with the Division pursuant to § 8735(h) of Title 29, the Board shall set a time and place to conduct a hearing on the complaint. The Division shall give notice of the hearing and the Board shall conduct the hearing in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) A hearing conducted pursuant to this section is informal, without the use of the Delaware Rules of Evidence. If the Board decides by the affirmative votes of 5 or more members that a licensee has violated § 1827 of this title, the Board may take any action permitted under this chapter that the Board considers reasonable. The Board's decision must be in writing and must include the reasons for the decision. The Board shall immediately mail its decision to the licensee or personally serve the licensee with the decision.

(c) If a licensee disagrees with the decision of the Board, the licensee may appeal the Board's decision to the Superior Court within 30 days of the postmarked date of the copy of the decision mailed to that licensee, or within 30 days of personal service. Upon appeal, the Court shall review the evidence on the record. A stay pending review may be granted by the Court in accordance with § 10144 of Title 29.

(75 Del. Laws, c. 296 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1830 Reinstatement of a suspended license; removal from probationary status; replacement of license.

(a) The Board may reinstate a suspended license if, after a hearing, the Board is satisfied that the licensee has taken the required corrective actions and has otherwise satisfied all of the conditions imposed pursuant to the license suspension and/or probation period.

(b) An individual seeking license reinstatement and/or removal from probationary status must pay the appropriate fees and submit the documentation required by the Board to show that all the conditions imposed pursuant to the license suspension and/or the probation period have been met. Proof that the individual has met the continuing education requirements of this chapter may also be required.

(c) If a license is lost, destroyed, or mutilated, a replacement license may be issued subject to the rules of the Board. A charge must be assessed for the issuance of a replacement license.

(75 Del. Laws, c. 296 § 1.)

Subchapter IV

Miscellaneous Provisions

§ 1831 Artificial entity's loss of license holder.

(a) If a partnership, firm, corporation, or other artificial entity that provides services regulated under this chapter suffers the loss of its sole license holder, the entity shall notify the Board in writing with supporting documentation within 7 days of the loss of its license holder.

(b) The Board shall schedule an emergency meeting within 10 days of notification pursuant to subsection (a) of this section. From the date of loss of the sole license holder through the date of the emergency meeting, the entity may continue to operate without a license holder, provided that the entity continues to employ the same personnel with the exception of the license holder.

(c) An owner or employee of an entity that desires to continue providing services despite the loss of the sole license holder must submit an application for licensure to the Board before the emergency meeting scheduled pursuant to subsection (b) of this section, for consideration by the Board at the meeting. At the meeting the Board may issue a temporary license to the applicant, valid for 100 days, dated from the date of notification to the Board by the entity, pursuant to subsection (a) of this section.

(d) If the Board issues a temporary license to the applicant at the emergency meeting pursuant to subsection (c) of this section, the applicant must take the next available examination.

(e) Notwithstanding the provisions of subsections (c) and (f) of this section, a temporary license expires immediately upon an applicant's failure to take the next available examination; or, if the applicant takes the examination, upon the Board's receipt of notification that the applicant failed the examination taken pursuant to subsection (d) of this section.

(f) If a 100-day temporary license issued pursuant to this section expires and the entity has no license holder in its employ, the entity must cease and desist immediately from providing plumbing services for which a license is required under this chapter.

(75 Del. Laws, c. 296 § 1.)

§ 1832 Local regulation.

Nothing in this chapter shall be construed to limit the ability of any county, municipality, or other governmental entity to adopt and enforce plumbing, HVACR, or fuel gas codes and regulations that are not in conflict with this chapter.

(75 Del. Laws, c. 296 § 1.)

Part
Chapter 19
NURSING

§ 1901 Declaration of legislative intent.

The General Assembly hereby declares the practice of nursing by competent persons is necessary for the protection of the public health, safety and welfare and further finds that the levels of practice within the profession of nursing should be regulated and controlled in the public interest. In order to safeguard life and health, the general administration and supervision of the education, examination, licensing and regulation of professional and practical nursing is declared essential, and such general administration and supervision is vested in the Board of Nursing.

(24 Del. C. 1953 § 1901; 54 Del. Laws, c. 153 § 1; 64 Del. Laws, c. 26 § 1; 69 Del. Laws, c. 319 § 2.)

§ 1902 Definitions.

(a) "Administration of medications" means a process whereby a single dose of a prescribed drug or biological is given to a patient by an authorized licensed person by 1 of several routes, oral, inhalation, topical, or parenteral. The person verifies the properly prescribed drug order, removes the individual dose from a previously dispensed, properly labeled container (including a unit dose container), assesses the patient's status to assure that the drug is given as prescribed to the patient for whom it is prescribed and that there are no known contraindications to the use of the drug or the dosage that has been prescribed, gives the individual dose to the proper patient, records the time and dose given and assesses the patient following the administration of medication for possible untoward side effects.

(b) "Advanced practice nurse" means an individual whose education and certification meet criteria established by the Board of Nursing who is currently licensed as a registered nurse and has a master's degree or a postbasic program certificate in a clinical nursing specialty with national certification. When no national certification at the advanced level exists, a master's degree in a clinical nursing specialty will qualify an individual for advanced practice nurse licensure. "Advanced practice nurse" shall include nurse practitioners, certified registered nurse anesthetists, certified nurse midwives or clinical nurse specialists. Advanced practice nursing means "the practice of professional nursing", as defined in this section.

(c)(1) "Advanced practice registered nurse" ("APRN")means an individual with knowledge and skills acquired in basic nursing education; licensure as an RN; and graduation from or completion of a graduate level APRN program accredited by a national accrediting body and current certification by a national certifying body in the appropriate APRN role and at least 1 population focus. "Advanced practice registered nurse" shall include certified nurse practitioners, certified registered nurse anesthetists, certified nurse midwives or clinical nurse specialists. Advanced practice nursing means an expanded scope of nursing in a role and population focus approved by the Board of Nursing, with or without compensation or personal profit, and includes the RN scope of practice. The scope of an APRN includes, but is not limited to, performing acts of advanced assessment, diagnosing, prescribing and ordering. Advanced practice nursing is the application of nursing principles, including those described in subsection (x) of this section, at an advanced level and includes:

a. For those advanced practice nurses who do not perform independent acts of diagnosis or prescription, the authority as granted within the scope of practice rules and regulations promulgated by the Board of Nursing; and

b. For those advanced practice nurses performing independent acts of diagnosis and/or prescription with the collaboration of a licensed physician, dentist, podiatrist or licensed Delaware health-care delivery system without written guidelines or protocols and within the scope of practice as defined in the rules and regulations promulgated by the Joint Practice Committee and approved by the Board of Medical Licensure and Discipline.

Nothing in this act is to be construed to limit the practice of nursing by advanced practice nurses as is currently being done or allowed including nursing diagnosis as pursuant to paragraph (u)(2) of this section.

Advanced practice nurses shall operate in collaboration with a licensed physician, dentist, podiatrist, or licensed Delaware health-care delivery system to cooperate, coordinate, and consult with each other as appropriate pursuant to a collaborative agreement defined in the rules and regulations promulgated by the Board of Nursing, in the provision of health care to their patients. Advanced practice nurses desiring to practice independently or to prescribe independently must do so pursuant to § 1906(a)(20) of Title 24.

(2) Those individuals who wish to engage in independent practice without written guidelines or protocols and/or wish to have independent prescriptive authority shall apply for such privilege or privileges to the Joint Practice Committee and do so only in collaboration with a licensed physician, dentist, podiatrist or licensed Delaware health-care delivery system. This does not include those individuals who have protocols and/or waivers approved by the Board of Medical Licensure and Discipline.

(d) "Collaborative agreement" means a written document expressing an arrangement between a licensed physician, podiatrist, or licensed Delaware health-care delivery system and an advanced practice registered nurse.

(e) The "Compact Administrator" shall be the Executive Director of the Delaware Board of Nursing who shall be designated as the Compact Administrator by the President of the Board.

(f) "Consultation" means the communication and decision-making process among health-care professionals related to the treatment and care of a patient, including the exchange of clinical observations and assessments; accessing and assessment of appropriate additional

resources or expertise; arrangement of appropriate referrals, testing, or studies; and development of an appropriate plan of care that includes decisions regarding the health care provided.

(g) "Dispensing" means providing medication according to an order of a practitioner duly licensed to prescribe medication. The term shall include both the repackaging and labeling of medications from bulk to individual dosages.

(h) "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.

(i) "Full-practice authority," as granted to an advanced practice registered nurse, means all of the following:

(1) Practicing within standards established or recognized by the Board of Nursing.

(2) Being accountable to patients, the nursing profession, and the Board of Nursing for complying with the requirements of this chapter and the quality of advanced nursing care rendered.

(3) Recognizing limits of knowledge and experience.

(4) Planning for the management of situations beyond the APRN's expertise.

(5) Consultation with or referring patients to other health-care providers as appropriate.

(j) "Head of the Nursing Licensing Board" means the President of the Delaware Board of Nursing.

(k) "Independent practice" means practice and prescribing by an advanced practice registered nurse who is not subject to a collaborative agreement and works outside the employment of an established health-care organization, health-care delivery system, physician, podiatrist, or practice group owned by a physician or podiatrist. Independent practice shall be in an area substantially related to the population and focus of the APRN's education, and certification.

(l) "Licensure" means the authorization to practice nursing within this State granted by the Delaware Board of Nursing and includes the authorization to practice in Delaware under the Interstate Nurse Licensure Compact [Chapter 19A of this title].

(m) "Limited lay administration of medications (LLAM)" means a process by which LLAM trained unlicensed assistive personnel, functioning in a setting authorized by § 1932 of this title, gives a prescribed medication to clients/patients/residents/students as ordered by a licensed practitioner authorized to prescribe medications or gives a nonprescription medication pursuant to the Delacare regulations.

(n) "LLAM trained unlicensed assistive personnel (UAP)" means an individual who has successfully completed the Board of Nursing approved LLAM course, including the core course and any program specific specialized training modules required.

(o) "Nurse educator" is a registered nurse who is a faculty member or director of a Delaware board-approved nursing education program preparing individuals at the registered nurse entry level.

(p) "Nursing diagnosis" means the description of the individual's actual or potential health needs which are identified through a nursing assessment and are amenable to nursing intervention. The focus of the nursing diagnosis is on the individual's response to illness or other factors that may adversely affect the attainment/or maintenance of wellness. These diagnostic acts are distinct from medical, osteopathic and dental diagnosis.

(q) "Nursing education program" means a course of instruction offered and conducted to prepare persons for licensure as a registered or licensed practical nurse, and/or a course of instruction offered and conducted to increase the knowledge and skills of the nurse and leads to an academic degree in nursing, and/or refresher courses in nursing.

(r) "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.

(s) "Standards of nursing practice" means those standards of practice adopted by the Board that interpret the legal definitions of nursing, as well as provide criteria against which violations of the law can be determined. Such standards of nursing practice shall not be used to directly or indirectly affect the employment practices and deployment of personnel by duly licensed or accredited hospitals and other duly licensed or accredited health-care facilities and organizations. In addition, such standards shall not be assumed the only evidence in civil malpractice litigation, nor shall they be given a different weight than any other evidence.

(t) "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.

(u) "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 nursing.

(v) "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.

(w) "Telemedicine" means 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.

(x) "The practice of practical nursing" as a licensed practical nurse means the performance for compensation of nursing services by a

person who holds a valid license pursuant to the terms of this chapter and who bears accountability for nursing practices which require basic knowledge of physical, social and nursing sciences. These services, at the direction of a registered nurse or a person licensed to practice medicine, surgery or dentistry, include:

(1) Observation;

(2) Assessment;

(3) Planning and giving of nursing care to the ill, injured and infirm;

(4) The maintenance of health and well being;

(5) The administration of medications and treatments prescribed by a licensed physician, dentist, podiatrist or advanced practice nurse; and

(6) Additional nursing services and supervision commensurate with the licensed practical nurse's continuing education and demonstrated competencies;

(7) Dispensing activities only as permitted in the Board's Rules and Regulations. Nothing contained in this chapter shall be deemed to permit acts of surgery or medical diagnosis; nor shall it be deemed to permit dispensing of drugs, medications or therapeutics independent of the supervision of a physician who is licensed to practice medicine and surgery, or those licensed to practice dentistry or podiatry; and

(8) The use of telemedicine, as defined in this chapter, and practice of and participation in telehealth as further defined in regulation.

(y) "The practice of professional nursing" as a registered nurse means the performance of professional nursing services by a person who holds a valid license pursuant to the terms of this chapter, and who bears primary responsibility and accountability for nursing practices based on specialized knowledge, judgment and skill derived from the principles of biological, physical and behavioral sciences. The registered nurse practices in the profession of nursing by the performance of activities, among which are:

(1) Assessing human responses to actual or potential health conditions;

(2) Identifying the needs of the individual and/or family by developing a nursing diagnosis;

(3) Implementing nursing interventions based on the nursing diagnosis;

(4) Teaching health-care practices. Nothing contained herein shall limit other qualified persons or agencies from teaching health-care practices without being licensed under this chapter;

(5) Advocating the provision of health care-services through collaboration with other health service personnel;

(6) Executing regimens, as prescribed by a licensed physician, dentist, podiatrist or advanced practice nurse, including the dispensing and/or administration of medications and treatments;

(7) Administering, supervising, delegating and evaluating nursing activities;

(8) The use of telemedicine, as defined in this chapter, and participation in telehealth, as further defined in regulation.

(9) Nothing contained in this chapter shall be deemed to permit acts of surgery or medical diagnosis; nor shall it be deemed to permit dispensing of drugs, medications or therapeutics independent of the supervision of a physician who is licensed to practice medicine and surgery, or those licensed to practice dentistry or podiatry.

A registered nurse shall have the authority, as part of the practice of professional nursing, to make a pronouncement of death; provided, however, that this provision shall only apply to attending nurses caring for terminally ill patients or patients who have "do not resuscitate" orders in the home or place of residence of the deceased as a part of a hospice program or a certified home health-care agency program; in a skilled nursing facility; in a residential community associated with a skilled nursing facility; any licensed assisted living community; in an extended care facility; or in a hospice; and provided that the attending physician of record has agreed in writing to permit the attending registered nurse to make a pronouncement of death in that case.

(z) "The profession of nursing" is an art and process based on a scientific body of knowledge. The practitioner of nursing assists patients in the maintenance of health, the management of illness, injury or infirmity or in the achieving of a dignified death.

(24 Del. C. 1953 § 1902; 54 Del. Laws, c. 153; 64 Del. Laws, c. 26 § 1; 67 Del. Laws, c. 5 § 2; 67 Del. Laws, c. 434 § 2; 68 Del. Laws, c. 152 § 2; 68 Del. Laws, c. 161 § 2; 69 Del. Laws, c. 319 §§ 3-7, 13; 71 Del. Laws, c. 283 § 2; 71 Del. Laws, c. 478 § 1; 72 Del. Laws, c. 334 § 2; 73 Del. Laws, c. 285 §§ 1, 2; 73 Del. Laws, c. 316 §§ 1, 2; 74 Del. Laws, c. 262 § 34; 77 Del. Laws, c. 319 § 1; 77 Del. Laws, c. 420 § 2; 80 Del. Laws, c. 80 § 10; 80 Del. Laws, c. 171; 80 Del. Laws, c. 172 § 1.)

§ 1903 Delaware Board of Nursing — Appointments; qualifications; terms of office; vacancies; suspension or removal.

(a) The Delaware Board of Nursing (hereafter referred to as the Board) shall consist of 15 members. The term of office of every member appointed to the Board, except those appointed to fill vacancies occurring during any term of office, is 3 years. The Board shall be composed of 5 registered nurses, 1 licensed practical nurse, 1 nurse at-large which shall be either a registered nurse or licensed practical nurse, 2 advanced practice nurses representing different practice roles, 1 registered nurse educator, and 5 public members.

Registered nurse appointees shall have a diploma or an earned degree in nursing, nursing education or education, and at least 3 years active practice as a registered nurse in nursing service, administration or teaching.

Each practical nurse appointee shall be a licensed practical nurse, who is a graduate of an approved school of practical nursing, with at least 3 years active practice as a practical nurse.

The public members shall be residents of Delaware for a minimum of 3 years, shall be knowledgeable about the health needs of

Delaware, but shall not be licensees of any health occupation board, employees of a health-care occupational board, employees of a health-care facility or agency, or engaged in governance or administration of a health-care facility or agency.

(b) The nursing experience referred to in this section shall have been within the last 5 years preceding appointment and said appointee must be currently licensed in Delaware.

(c) The Governor shall appoint all members to the Board of Nursing.

(d) Sixty days prior to the expiration of the term of any member of the Board, a successor shall be appointed by the Governor. A list of at least 3 nominees for each registered nurse vacancy may be furnished to the Governor by the Delaware Nurses' Association and other professional organizations in order to aid the Governor in the appointment of new members of the Board. A list of at least 3 nominees for each licensed practical nurse vacancy may be furnished to the Governor by the Delaware Licensed Practical Nurses' Association and others in the practical nursing community in order to aid the Governor in the appointment of new members of the Board. The Governor shall not be limited to the recommendations of the professional organizations in making appointments of registered or practical nurses to the Board. The Governor shall seek nominees from the consumer population for the public members appointees. Vacancies occurring for any cause other than expiration of term shall be filled by the Governor for the unexpired term as provided in this subsection.

(e) At least 1 of the professional nurse members of the Board shall be a resident of New Castle County, 1 a resident of Kent County and 1 a resident of Sussex County. Licensed practical nurse members shall be representatives of at least 2 counties simultaneously. If there is no qualified person available in the geographical subdivision, then appointments shall be made from qualified persons available in any of the other geographical subdivisions.

(f) Each member shall serve for a term of 3 years, and may successively serve for 1 additional term; provided, however, that where a member was initially appointed to fill a vacancy, such member may successively serve 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.

(g) A person who has never served on the Board may be appointed to the Board 2 consecutive times, 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 term has expired since such person last served.

(h) Any act or vote by a person appointed in violation of subsection (g) 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 (g) of this section, unless such amendment or revision amends this section to permit such an appointment.

(i) A member of the Board shall be suspended or removed by the Governor for misfeasance, nonfeasance or malfeasance. A member subject to disciplinary proceedings 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.

(j) No member of the Board shall hold any elective office in, nor be a representative of, any local, state, regional or national nursing association.

(k) The provisions set forth for "employees" in Chapter 58 of Title 29 shall apply to all members of the Board, and to all agents appointed or otherwise employed by the Board.

(24 Del. C. 1953 § 1903; 54 Del. Laws, c. 153; 57 Del. Laws, c. 668 §§ 1, 12, 13; 64 Del. Laws, c. 26 § 1; 67 Del. Laws, c. 366 § 5; 67 Del. Laws, c. 368 § 10; 68 Del. Laws, c. 162 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 482 §§ 1, 2; 72 Del. Laws, c. 121 § 1; 77 Del. Laws, c. 420 § 1; 79 Del. Laws, c. 368 § 1.)

§ 1904 Delaware Board of Nursing — Election of officers; quorum; rules and regulations; special meetings; compensation; seal.

(a) The Board shall elect, annually, from its members a President and Vice-President. In the event of a vacancy in 1 of the offices, a replacement shall be elected at the next Board meeting or at a meeting called for that purpose.

(b) Eight members of the Board, including 1 officer, shall constitute a quorum.

(c) The Board may adopt and promulgate such rules and regulations as may be necessary to govern its proceedings, to define the duties of its officers and to effectuate the intent and purpose of this chapter.

(d) The members of the Board shall receive compensation for each day, or part thereof, actually engaged in service and shall be reimbursed for all proper and necessary expenses.

(e) The Board shall adopt a seal and may use that seal on official documents.

(24 Del. C. 1953 § 1904; 54 Del. Laws, c. 153; 57 Del. Laws, c. 668 § 2; 64 Del. Laws, c. 26 § 1; 67 Del. Laws, c. 366 § 6; 70 Del. Laws, c. 482 §§ 3, 25.)

§ 1905 Delaware Board of Nursing — Executive Director.

The Executive Director shall be a registered nurse with at least 5 years' experience in an administrative or teaching position, have earned a master's degree in nursing, nursing education, education or a related health field.

(24 Del. C. 1953 § 1905; 54 Del. Laws, c. 153; 64 Del. Laws, c. 26 § 1; 67 Del. Laws, c. 144 § 2.)

§ 1906 Delaware Board of Nursing — Powers and duties.

(a) The Board shall:

(1) Adopt and, from time to time, revise such rules and regulations and standards not inconsistent with the law as may be necessary to enable it to carry into effect this chapter;

(2) Approve curricula and develop criteria and standards for evaluating educational programs preparing persons for license under this chapter;

(3) Provide for surveys of such programs at such times as it may deem necessary;

(4) Approve such programs as meet the requirements of this chapter and of the Board;

(5) Deny or withdraw approval from educational programs for failure to meet approved curricula or other criteria;

(6) Examine, license and renew licenses of duly qualified applicants, including applicants for conducting nursing educational programs and shall also prescribe the procedures for subsequent examinations of applicants who fail an examination;

(7) Establish categories of advanced practice registered nurses in the roles of certified nurse practitioner (CNP), certified registered nurse anesthetist (CRNA), certified nurse midwife (CNM), and clinical nurse specialist (CNS) and in the population foci of family/individual across the lifespan, adult-gerontology, neonatal, pediatrics, women's health/gender-related or psychiatric/mental health. Each APRN shall use the designation "APRN" plus role title as a minimum for purposes of identification and documentation. When providing nursing care, the APRN shall provide clear identification that indicates his or her APRN designation;

(8) Issue a temporary permit to practice nursing to applicants who apply for licensure by endorsement and to new graduates awaiting results of the first licensing examination;

(9) Conduct hearings upon charges calling for discipline of a licensee or revocation of a license;

(10) Have the power to issue subpoenas and compel the attendance of witnesses, and administer oaths to persons giving testimony at hearings;

(11) Cause the prosecution of all persons violating this chapter and have the power to incur such necessary expenses therefor;

(12) Keep a record of all its proceedings;

(13) Make an annual report to the Governor;

(14) Have all of the duties, powers and authority necessary to the enforcement of this chapter, as well as such other duties, powers and authority as it may be granted from time to time by appropriate statute;

(15) Appoint advisory committees as the Board deems desirable;

(16) Maintain a system of statistics related to nursing education programs and registered nurse and licensed practical nurse licensure in the State;

(17) Participate in and pay fees to the national organization of state boards of nursing, the National Council of State Boards of Nursing, Inc.;

(18) By regulation, establish requirements for mandatory continuing education;

(19) Administer the Advanced Practice Registered Nurse Committee;

(20) Have the authority to grant, restrict, suspend or revoke practice or prescriptive authority and be responsible for promulgating rules and regulations to implement the provisions of this chapter regarding advanced practice registered nurses who have been granted authority for independent practice or prescriptive authority;

(21) Have the authority to limit the ability of APRNs to prescribe and order nonpharmacological interventions.

(b) The Board of Nursing shall promulgate regulations specifically identifying those crimes which are substantially related to the practice of nursing.

(24 Del. C. 1953 § 1906; 54 Del. Laws, c. 153; 64 Del. Laws, c. 26 § 1; 65 Del. Laws, c. 380 § 2; 67 Del. Laws, c. 10 § 1; 67 Del. Laws, c. 144 § 3; 69 Del. Laws, c. 319 §§ 8, 9; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 482 §§ 4, 26; 74 Del. Laws, c. 262 § 35; 77 Del. Laws, c. 319 § 1; 80 Del. Laws, c. 171; 80 Del. Laws, c. 172 § 2.)

§ 1907 Delaware Board of Nursing — Revenue and expenses.

(a) All fees and other money received by the Board shall be paid over to the State Treasurer, in accordance with Chapter 61 of Title 29.

(b) Expenses of the Board, within the limits of appropriations made to it, shall be paid by the State Treasurer upon warrants signed by the proper officers of the Board.

(24 Del. C. 1953 § 1907; 54 Del. Laws, c. 153; 64 Del. Laws, c. 26 § 1.)

§ 1908 Delaware Board of Nursing — Meetings; examinations for licensing; nursing education programs; fees.

(a) The Board shall meet as often as necessary to carry out its responsibilities as defined in this chapter.

(b) Special meetings of the Board may be called by the Executive Director upon the request of the President or any 2 members.

(c) The Board shall consider and act upon applications to conduct a nursing education program.

(d) The amount charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board and the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each calendar year, the Division of Professional Regulation, or any other state agency acting on its behalf, shall compute for each separate service or activity the appropriate Board fees for the coming year.

(24 Del. C. 1953 § 1908; 54 Del. Laws, c. 153; 57 Del. Laws, c. 668 § 3; 63 Del. Laws, c. 84 § 1; 64 Del. Laws, c. 26 § 1; 70 Del. Laws, c. 482 §§ 5, 6.)

§ 1909 License requirement.

No unlicensed person, except those persons issued a temporary permit by the Board, shall practice advanced practice, professional or practical nursing. Upon request, any person engaged in the practice of advanced practice, professional or practical nursing shall exhibit a license authorizing such practice.

(24 Del. C. 1953 § 1909; 54 Del. Laws, c. 153; 64 Del. Laws, c. 26 § 1; 69 Del. Laws, c. 319 § 10.)

§ 1910 Qualifications for registered nurse.

An applicant for a license to practice as a registered nurse shall submit to the Board written evidence, verified by oath, that the applicant:

(1) Is a graduate of and holds a certificate from a State Board of Nursing approved nursing education program that is authorized to prepare persons for licensure as a registered nurse;

(2) Demonstrates competence in English related to nursing;

(3) Must show evidence of an earned high school diploma or its equivalent;

(4) Is of such satisfactory physical and mental health as is consistent with the Americans with Disabilities Act [42 U.S.C. § 12101 et. seq.];

(5) Has committed no acts which are grounds for disciplinary action as set forth in § 1922(a) of this title; however, 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 may waive § 1922(a)(2) of this title, herein, if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

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

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

e. The applicant has not been convicted of a felony sexual offense; and

(6) If seeking licensure by endorsement, demonstrates active employment in professional nursing in the past 5 years, or satisfactory completion of a professional nursing refresher program with an approved agency within 2 years prior to filing an application. In the event no refresher course is available the Board may consider alternate methods of evaluating current knowledge in professional nursing.

(24 Del. C. 1953 § 1910; 54 Del. Laws, c. 153; 57 Del. Laws, c. 668 §§ 4, 5; 64 Del. Laws, c. 26 § 1; 70 Del. Laws, c. 482 §§ 7-9; 75 Del. Laws, c. 436 § 16; 77 Del. Laws, c. 199 § 14; 78 Del. Laws, c. 35 §§ 1, 2; 78 Del. Laws, c. 44 §§ 28, 29.)

§ 1910A Criminal background checks of registered nurses [See § 1928 of this title]

§ 1911 Licensure by examination for registered nurse.

The applicant shall be required to pass the standard national examination for professional nursing. The passing score shall be as recommended by the National Council of State Boards of Nursing. Every applicant who shall pass the prescribed examination shall receive a license to practice nursing as a registered nurse.

(24 Del. C. 1953 § 1911; 54 Del. Laws, c. 153; 64 Del. Laws, c. 26 § 1; 70 Del. Laws, c. 482 § 10.)

§ 1912 Reciprocity for registered nurse.

(a) The Board may, by endorsement, without written examination, license as a registered nurse an applicant who, on or after July 1, 1983, is duly licensed as a registered nurse or is entitled to perform similar services under a different title under the laws of another state, territory or foreign country if, in the opinion of the Board, the applicant meets the qualifications specified by this chapter for registered nurses in this State.

(b) In the event the applicant has not been actively employed in professional nursing in the past 5 years, the applicant will be required to give evidence of satisfactory completion of a professional nursing refresher program with an approved agency within 2 years prior to endorsement before licensure by endorsement will be granted. In the event no refresher course is available the Board may consider alternate methods of evaluating current knowledge in professional nursing.

(c) Verification of current Delaware license is provided upon request to other state boards of nursing.

(24 Del. C. 1953 § 1912; 54 Del. Laws, c. 153; 64 Del. Laws, c. 26 § 1; 70 Del. Laws, c. 482 § 11.)

§ 1913 Registered nurses licensed under previous law.

(a) Any person holding a license to practice nursing as a registered nurse that is valid on July 1, 1983, shall be deemed to be licensed as a registered nurse under this chapter and shall be eligible for renewal of such license under the conditions and standards prescribed by § 1918 of this title.

(b) Any person eligible for reactivation or reinstatement of a license to practice nursing as a registered nurse in this state on or after July 1, 1983, shall be deemed to be eligible to be licensed as a registered nurse under this chapter and shall be eligible for renewal of such license under the conditions and standards prescribed by § 1918 of this title.

(c) Any person whose license to practice nursing as a registered nurse has lapsed in this State on or after July 1, 1983, because of failure to renew may become licensed as a registered nurse under this chapter by applying for reinstatement according to the rules and regulations established by the Board of Nursing.

(d) Any person who was licensed to practice nursing as a registered nurse and who had requested to be placed on inactive status in this State on or after July 1, 1983, may become licensed as a registered nurse under this chapter by applying for reactivation according to the rules and regulations established by the Board of Nursing.

(24 Del. C. 1953 § 1916; 54 Del. Laws, c. 153; 64 Del. Laws, c. 26 § 1.)

§ 1914 Qualifications for licensed practical nurse.

An applicant for a license to practice as a licensed practical nurse shall submit to the Board written evidence, verified by oath, that such applicant:

(1) Is a graduate of and holds a certificate from a State Board of Nursing approved practical nursing education program. The Board may, by an affirmative vote of a majority of a quorum of the Board, waive this requirement for application for licensure by endorsement if it finds clear and convincing evidence that the applicant's education, training, experience and conduct have been sufficient to overcome the deficiency in meeting this requirement;

(2) Demonstrates competence in English related to nursing;

(3) Must show evidence of an earned high school diploma or its equivalent;

(4) Is of such satisfactory physical and mental health as is consistent with the Americans with Disabilities Act [42 U.S.C. § 12101 et. seq.];

(5) Has committed no acts which are grounds for disciplinary action as set forth in § 1922(a) of this title; however, 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 may waive § 1922(a)(2) of this title, herein, if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

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

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

e. The applicant has not been convicted of a felony sexual offense; and

(6) If seeking licensure by endorsement, demonstrates active employment in practical nursing in the past 5 years, or satisfactory completion of a practical nursing refresher program with an approved agency within 2 years prior to filing an application. In the event no refresher course is available the Board may consider alternate methods of evaluating current knowledge in practical nursing.

(24 Del. C. 1953 § 1913; 54 Del. Laws, c. 153; 57 Del. Laws, c. 668 §§ 6, 7; 64 Del. Laws, c. 26 § 1; 70 Del. Laws, c. 482 §§ 12-14; 75 Del. Laws, c. 436 § 17; 77 Del. Laws, c. 199 § 15; 77 Del. Laws, c. 420 § 4; 78 Del. Laws, c. 35 §§ 3, 4; 78 Del. Laws, c. 44 §§ 30, 31.)

§ 1914A Criminal background checks of licensed practical nurses [Redesignated as § 1929 of this title]

§ 1915 Licensure by examination for licensed practical nurse.

The applicant shall be required to pass the standard national examination for practical nursing. The passing score shall be as recommended by the National Council of State Boards of Nursing. Every applicant who shall pass the prescribed examination shall receive a license to practice as a licensed practical nurse.

(24 Del. C. 1953 § 1914; 54 Del. Laws, c. 153; 64 Del. Laws, c. 26 § 1; 70 Del. Laws, c. 482 § 15.)

§ 1916 Reciprocity for licensed practical nurse.

(a) The Board may, by endorsement, without written examination, license as a practical nurse an applicant who, as of July 1, 1983, is duly licensed as a practical nurse or is entitled to perform similar services under a different title under the laws of another state, territory or foreign country, if in the opinion of the Board, the applicant meets the qualifications specified by this chapter for licensed practical nurses in this State.

(b) In the event the applicant has not been actively employed in practical nursing in the past 5 years, the applicant will be required to give evidence of satisfactory completion of a practical nursing refresher program within an approved agency within 2 years prior to endorsement before licensure by endorsement will be granted. In the event no refresher course is available the Board may consider alternate methods of evaluating current knowledge in practical nursing.

(c) Verification of current Delaware license is provided upon request to other state boards of nursing.

(24 Del. C. 1953 § 1915; 54 Del. Laws, c. 153; 64 Del. Laws, c. 26 § 1; 70 Del. Laws, c. 482 § 16.)

§ 1917 Licensed practical nurses licensed under previous law.

(a) Any person holding a license to practice nursing as a licensed practical nurse that is valid on July 1, 1983, shall be deemed to be licensed as a licensed practical nurse under this chapter and shall be eligible for renewal of such license under the conditions and standards prescribed by § 1918 of this title.

(b) Any person eligible for reactivation or reinstatement of a license to practice nursing as a licensed practical nurse in this State on or after July 1, 1983, shall be deemed to be eligible to be licensed as a licensed practical nurse under this chapter and shall be eligible for renewal of such license under the conditions and standards prescribed by § 1918 of this title.

(c) Any person whose license to practice nursing as a licensed practical nurse has lapsed in this State on or after July 1, 1983, because of failure to renew may become licensed as a licensed practical nurse under this chapter by applying for reinstatement according to the rules and regulations established by the Board of Nursing.

(d) Any person who was licensed to practice nursing as a licensed practical nurse and who had requested to be placed on inactive status in this State on July 1, 1983, may become licensed as a licensed practical nurse under this chapter by applying for reactivation according to the rules and regulations established by the Board of Nursing.

(24 Del. C. 1953 § 1916; 54 Del. Laws, c. 153; 64 Del. Laws, c. 26 § 1.)

§ 1918 Renewal of license; lapse of license; late renewal; penalties; retirement from practice; temporary permit to practice.

(a) Every advanced practice registered nurse, registered or licensed practical nurse licensed under this chapter shall reregister biennially by filing an application; provided however, that the license of any licensee who is on active military duty with the armed forces of the United States and serving in a theater of hostilities on the date such application or reregistration is due shall be deemed to be current and in full compliance with this chapter until the expiration of 60 days after such licensee is no longer on active military duty in a theater of hostilities. The advanced practice registered nurses' licensure and/or prescriptive authority shall be subject to biennial renewal coinciding with RN license renewal. In the event the applicant has not been actively employed in professional, practical, or advanced practice registered nursing in the past 5 years, the applicant will be required to give evidence of satisfactory completion of an appropriate board-approved nursing refresher program within 1 year prior to licensure by reinstatement.

APRNs not in clinical practice for more than the past 2 years must provide evidence of satisfactory completion of 24 contact hours of CE, 12 in pharmacotherapeutics and 12 in the clinical management of patients within 1 year prior to applying for renewal. APRNs not in clinical practice for more than the past 5 years must complete 45 hours of pharmacotherapeutics CE within 1 year prior to application in addition to the advanced practice nursing refresher program. In the event no advanced practice refresher program is available, the applicant must complete 600 hours of supervised clinical experience in the appropriate advanced practice role and population focus, with a qualified preceptor within 1 year prior to licensure by reinstatement. A qualified APRN preceptor holds an active unencumbered license or privilege to practice as an APRN or is a physician who has an active unencumbered license and practices in a comparable practice focus in the clinical setting.

(b) Upon receipt of the application and fee, the Board shall verify the accuracy of the information set forth in the application and issue to the applicant a certificate of renewal of license for 2 years, provided that the applicant has successfully completed continuing education requirements as may be established by the Board. Such certificate shall entitle the holder to engage in the practice of professional, practical, or advanced practice registered nursing for the period stated therein. Any licensee whose license lapses for failure to renew the license may be reinstated by the Board upon satisfactory evidence of active employment in professional, practical, or advanced practice registered nursing within the past 5 years or satisfactory completion of a refresher program within an approved agency within a 1-year period prior to renewal and upon satisfactory explanation for the failure to renew the license and payment of a penalty fee to be determined.

(c) A license may be renewed up to 60 days past the license's expiration date, by submitting to the Division of Professional Regulation payment of the penalty fee referred to in subsection (b) of this section and proof of completion of continuing education requirements. The license of a nurse who fails to renew on time is considered lapsed and the nurse is not permitted to work until the license is renewed. Licensees who fail to renew during the renewal period or during the 60-day late renewal period must apply for reinstatement.

(d) After a license has lapsed or been inactive for 5 or more years and the applicant has not been in active practice in professional or practical nursing in the past 5 years, the applicant will be required to give evidence of satisfactory completion of a professional or practical nursing refresher program within an approved agency within 1 year prior to reinstatement before licensure by reinstatement will be granted. In the event no refresher course is available the Board may consider alternate methods of evaluating current knowledge in professional or practical nursing.

(e) Any person practicing nursing during the time that person's license has lapsed shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of this chapter.

(f) Any person licensed under this chapter who desires to retire from practice in this State shall so notify the Board. Upon receipt of such notice, the Board shall place the name of such person on a nonpracticing list. While on this list, such person shall not be required to pay any license fee, and shall not practice nursing in this State. When such person desires to resume practice, application for renewal shall be made under subsection (a) of this section and the license shall be reactivated if the requirements of the Board are met.

(g) Temporary permits to practice nursing may be issued by the Board to persons who have requested reinstatement of their license, if they have practiced nursing within the past 5 years.

(h) Every registered or licensed practical nurse licensed under this chapter primarily engaged in the practice of electrolysis shall be exempt from the requirement in subsection (a) of this section that states in the event the applicant has not been actively employed in professional practical nursing in the past 5 years, the applicant will be required to give evidence of satisfactory completion of a professional or practical nursing refresher program within 2 years prior to renewal before licensure by renewal will be granted.

(24 Del. C. 1953 § 1917; 54 Del. Laws, c. 153; 57 Del. Laws, c. 668 § 8; 64 Del. Laws, c. 26 § 1; 65 Del. Laws, c. 221 § 2; 65 Del. Laws, c. 466 § 2; 69 Del. Laws, c. 319 § 11; 69 Del. Laws, c. 372 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 482 §§ 17-20, 27, 28; 78 Del. Laws, c. 122 §§ 1, 2; 80 Del. Laws, c. 171.)

§ 1919 Nursing educational programs.

(a) An institution desiring to conduct a nursing education program shall apply to the Board and submit satisfactory evidence that it is ready and qualified to instruct students in the prescribed basic curriculum for educating nurses and that it is prepared to meet other standards which may be established by the Board. The Board may authorize the temporary operation of a nursing education program pending evaluation for approval. The Board shall grant approval in writing. The Board may visit and survey any nursing education program at any reasonable time.

(b) If the Board determines that any approved nursing education program is not maintaining the standards required by this chapter and by the Board, written notice thereof, specifying the deficiency and the time within which the same shall be corrected, shall immediately be given to the program. The Board shall withdraw such program's approval if it fails to correct the specified deficiency, and such nursing education program shall discontinue its operation; provided, however, that the Board shall grant a hearing to such program upon written application and extend the period for correcting specified deficiency upon good cause being shown.

(c) An approved nursing education program which plans substantive changes, as defined in the Board's rules and regulations, shall obtain the written approval of the Board prior to the date of the change.

(d) Any nursing education program in the State that is recognized as an approved program by the Board of Nursing on or after July 1, 1983, shall be deemed to be an approved education program for the purpose of this chapter.

(24 Del. C. 1953 § 1918; 54 Del. Laws, c. 153; 64 Del. Laws, c. 26 § 1.)

§ 1920 License requirements; use of abbreviations.

(a) No person shall engage in the practice of professional nursing in Delaware without being licensed by the Board, except those persons issued a temporary permit by the Board.

(b) No person shall engage in practice as an advanced practice registered nurse without a board-issued license as an advanced practice registered nurse. Notwithstanding any provision to the contrary, the use of title and abbreviation for advanced practice registered nurses is authorized in accordance with the following:

(1) Only certified registered nurse anesthetists may use that title, the abbreviation "CRNA" or any other words, letters, signs or figures indicating that the person using the same is a certified registered nurse anesthetist.

(2) Only certified nurse practitioners may use that title, the abbreviation "CNP" or any other words, letters, signs or figures indicating that the person using the same is a certified nurse practitioner.

(3) Only certified nurse midwives may use that title, the abbreviation "CNM" or any other words, letters, signs or figures indicating that the person using the same is a certified nurse midwife.

(4) Only clinical nurse specialists may use that title, the abbreviation "CNS" or any other words, letters, signs or figures indicating that the person using the same is a clinical nurse specialist.

(5) The abbreviation for the "APRN" designation for a certified nurse practitioner, a certified registered nurse anesthetist, a certified nurse midwife, and for a clinical nurse specialist will be "APRN," plus the role title, i.e., "CNP," "CRNA," "CNM," or "CNS." It shall be unlawful for any person to use the title "APRN" or "APRN" plus their respective role titles, authorized abbreviations or any other title that would lead a person to believe the individual is an APRN, unless permitted by this chapter.

(c) No person shall knowingly employ a graduate of a professional nursing program or a registered nurse to engage in the practice of professional nursing without a temporary permit or license from the Board.

(d) Only registered nurses shall use that title, the title "nurse", the abbreviation of "R.N." or any other words, letters, signs or figures indicating that the person using the same is a registered nurse.

(e) No person shall practice practical nursing in Delaware without being licensed by the Board, except those persons issued a temporary permit by the Board.

(f) No person shall knowingly employ a graduate of a practical nursing program or a licensed practical nurse to engage in the practice of practical nursing without a temporary permit or license from the Board.

(g) Only licensed practical nurses shall use that title, the title "nurse", the abbreviation "L.P.N." or any other words, letters, signs or figures indicating that the person using the same is a licensed practical nurse.

(24 Del. C. 1953 § 1919; 54 Del. Laws, c. 153; 64 Del. Laws, c. 26 § 1; 69 Del. Laws, c. 319 § 12; 77 Del. Laws, c. 234 §§ 1, 2; 80 Del. Laws, c. 171.)

§ 1921 Applicability of chapter.

(a) This chapter shall not apply to the following situations:

(1) Nursing services rendered during an epidemic or a state or national disaster;

(2) The rendering of assistance by anyone in the case of an emergency;

(3) Emergency services rendered by ambulance personnel trained in advanced life support under a licensed physician's supervision as defined in Chapter 97 of Title 16. "Advanced life support" is defined in Chapter 97 of Title 16;

(4) The incidental care of the sick in private homes by members of the family, friends, domestic servants or persons primarily employed as housekeepers;

(5) Nursing services rendered by a student enrolled in a State Board of Nursing approved school of professional or practical nursing when these services are incidental to the course of study; or those nursing services rendered by a professional nurse or practical nurse enrolled in a State Board of Nursing approved refresher course pending reinstatement, reactivation or endorsement of licensure;

(6) The practice of nursing in this State by a nurse licensed in another state whose employment requires such nurse to accompany and care for a patient temporarily in this State, provided the nursing services are not rendered for more than 3 months within 1 year and such nurse does not claim to be licensed in this State;

(7) The practice of nursing by a nurse licensed in another state employed by the United States government or any bureau, division or agency thereof;

(8) The practice of nonmedical nursing in connection with healing by prayer or spiritual means in accordance with the tenets and practice of a well-recognized church or religious denomination, provided that persons practicing such nonmedical nursing do not claim to be licensed under this chapter;

(9) Auxiliary care services performed by nurse's aides, attendants, orderlies and other auxiliary workers in medical care facilities, or elsewhere by persons under the direction and supervision of a person licensed to practice nursing, medicine, dentistry or podiatry, and performing those services which are routine, repetitive and limited in scope, and that do not require the professional judgment of a registered nurse or a licensed practical nurse; provided, however, that nothing contained herein shall limit the right of any person to act pursuant to [former] § 1703(e)(7) of this title [repealed], or persons employed in similar positions in the offices of podiatrists or dentists without being licensed under this chapter;

(10) Administration of prescription or nonprescription medications, other than by injection, by child care providers who have successfully completed a state-approved medication training program, to children in child day care homes or child day care centers regulated by the State under §§ 341-344 of Title 31; provided the medication and written permission for the administration of the particular medication has been obtained from the child's parent or legal guardian and further provided the medication is in its original container, properly labeled. Properly labeled medication shall include instructions for administration of the medication;

(11) Nursing services rendered by a graduate of a State Board of Nursing approved school of professional or practical nursing working under supervision, pending results of the first licensing examination. The Board shall establish the procedure and extent to which subsequent examinations may be taken and the length of time and the character of nursing service which may be rendered pending subsequent examinations;

(12) The practice of any currently licensed registered nurse or licensed practical nurse of another state who provides or attends educational programs or provides consultative services within this State not to exceed 14 days in any calendar year. Neither the education nor consultation may include the provision of patient care, the direction of patient care or the affecting of patient care policies.

(13) Educators, coaches, or persons hired or contracted by schools serving students in kindergarten through grade 12 who assist students with medications that are self-administered during school field trips and approved school activities outside the traditional school day or off-campus that have completed a Board of Nursing approved training course developed by the Delaware Department of Education;

(14) Attendants providing basic and ancillary services defined and regulated by the Department of Health and Social Services in conformity with the Community-Based Attendant Services Act, Chapter 94 of Title 16;

(15) A competent individual who does not reside in a medical facility or a facility regulated pursuant to Chapter 11 of Title 16, may delegate to unlicensed persons performance of health-care acts, unless of a nature excluded by the Board through regulations, provided:

a. The acts are those individuals could normally perform themselves but for functional limitations; and

b. The delegation decision is entirely voluntary.

c. Nothing contained herein shall diminish any legal or contractual entitlement to receive health-care services from licensed or certified personnel;

(16) The limited lay administration of medications pursuant to § 1932 of this title.

(b) Persons involved in the rendering of electrolysis treatments shall be eligible for licensing under this chapter regardless of whether the applicant is in compliance with § 1910(6) of this title, or § 1914(6) of this title, so long as such applicants are in compliance with either § 1910(1)-(5) or § 1914(1)-(5) of this title.

(24 Del. C. 1953 § 1920; 54 Del. Laws, c. 153; 57 Del. Laws, c. 634; 57 Del. Laws, c. 668 §§ 9, 10; 64 Del. Laws, c. 26 § 1; 65 Del. Laws, c. 466 § 1; 66 Del. Laws, c. 21 §§ 1, 2; 68 Del. Laws, c. 93 §§ 1-3; 68 Del. Laws, c. 162 § 2; 71 Del. Laws, c. 478 § 2; 73 Del. Laws, c. 32 § 1; 73 Del. Laws, c. 41 § 1; 73 Del. Laws, c. 193 § 3; 74 Del. Laws, c. 260 § 1; 77 Del. Laws, c. 220 § 1; 78 Del. Laws, c. 340 § 1; 80 Del. Laws, c. 83 § 2.)

§ 1922 Disciplinary proceedings; appeal.

(a) Grounds. — The Board may impose any of the following sanctions (subsection (b) of this section) singly or in combination when it finds a licensee or former licensee is guilty of any offense described herein, except that the license of any licensee who is convicted of a felony sexual offense shall be permanently revoked:

(1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing; or

(2) Is convicted of a crime that is substantially related to the practice of nursing; or

(3) Is unfit or incompetent by reason of negligence, habits or other causes; or

(4) Is habitually intemperate or is addicted to the use of habit-forming drugs; or

(5) Is mentally incompetent; or

(6) Whose physical condition is such that the performance of nursing service is or may be injurious or prejudicial to patients or to the public; or

(7) Has had a license to practice as a registered nurse or licensed practical nurse suspended or revoked in any jurisdiction; or

(8) Is guilty of unprofessional conduct as shall be determined by the Board, or the wilful neglect of a patient; or

(9) Has wilfully or negligently violated this chapter; or

(10) Has failed to report child abuse or neglect as required by § 903 of Title 16, or any successor thereto; or

(11) Has failed to report to the Division of Professional Regulation as required by § 1930 of this title.

(b) Disciplinary sanctions. —

(1) Permanently revoke a license to practice.

(2) Suspend a license.

(3) Censure a licensee.

(4) Issue a letter of reprimand.

(5) Place a licensee on probationary status and require the licensee to:

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

b. Limit practice to those areas prescribed by the Board.

c. Continue or renew professional education until satisfactory degree of skill has been attained in those areas which are the basis of the probation.

(6) Refuse a license.

(7) Refuse to renew a license.

(8) Or otherwise discipline.

(c) Procedure. —

(1) When a complaint is filed pursuant to § 8735 of Title 29, alleging a violation of this chapter, the complaint shall be received and investigated by the Division of Professional Regulation and the Division shall be responsible for issuing a final written report at the conclusion of its investigation.

(2) The Board shall cause a copy of the complaint, together with a notice of the time and place fixed for the hearing, to be served upon the practitioner at least 30 days before the date fixed for the hearing. In cases where the practitioner cannot be located or where personal service cannot be effected, substitute service shall be effected in the same manner as with civil litigation.

(3) In all proceedings herein:

a. The accused may be represented by counsel who shall have the right of examination and cross-examination.

b. The accused and the Board may subpoena witnesses. Subpoenas shall be issued by the President or the Vice-President of the Board upon written request and shall be served as provided by the rules of the Superior Court and shall have like effect as a subpoena issued by said Court.

c. Testimony before the Board shall be under oath. Any member of the Board shall have power to administer oaths for this purpose.

d. A stenographic record of the hearing shall be made by a qualified court reporter. At the request and expense of any party such record shall be transcribed with a copy to the other party.

e. The decision of the Board shall be based upon sufficient legal evidence. If the charges are supported by such evidence, the Board may refuse to issue, or revoke or suspend a license, or otherwise discipline a licensee. A suspended license may be reissued upon a further hearing initiated at the request of the suspended licensee by written application in accordance with the rules of the Board.

f. All decisions of the Board shall be final and conclusive. Where the practitioner is in disagreement with the action of the Board, the practitioner may appeal the Board's decision to the Superior Court within 30 days of service or of the postmarked date of the copy of the decision mailed to the practitioner. The appeal shall be on the record to the Superior Court and shall be as provided in §§ 10142-10145 of Title 29.

g. Upon reaching its conclusion of law and determining an appropriate disciplinary action, if any, the Board shall issue a written decision and order in accordance with § 10128 of Title 29. The order must restate the factual findings, but need not summarize the evidence presented. However, notwithstanding the provisions of § 10128(c) of Title 29, the decision and order, including an order

issued pursuant to § 1923 of this title, may be issued over the signature of only the President or other officer of the Board. The decision and order must be sent by certified mail, return receipt requested, to the person complained about, with a copy to the Executive Director.

(24 Del. C. 1953 § 1921; 54 Del. Laws, c. 153; 64 Del. Laws, c. 26 § 1; 65 Del. Laws, c. 221 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 482 §§ 21, 22, 29; 74 Del. Laws, c. 262 § 36; 77 Del. Laws, c. 420 § 3; 78 Del. Laws, c. 35 §§ 5, 6.)

§ 1923 Temporary suspension; pending hearing.

In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(68 Del. Laws, c. 153 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 482 § 24; 79 Del. Laws, c. 213 § 2.)

§ 1924 Unlawful practices.

(a) No person shall practice or offer to practice professional or practical nursing or shall represent himself or herself as a registered nurse or licensed practical nurse in this State, or shall use any title, abbreviation, sign, card or device to indicate that such person is a registered nurse or licensed practical nurse, unless such person is licensed under this chapter.

(b) No person, hospital or institution shall conduct or shall offer to conduct a professional or practical nursing education program unless such person, hospital or institution is approved under this chapter.

(24 Del. C. 1953 § 1923; 54 Del. Laws, c. 153; 64 Del. Laws, c. 26 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1925 Penalties.

Whoever shall:

(1) Sell or fraudulently obtain or furnish any nursing diploma, license or renewal, or record of the same, or aid or abet therein; or

(2) Practice professional or practical nursing and/or hold or represent himself or herself as a registered or licensed practical nurse under cover of any diploma, license or record illegally or fraudulently obtained, signed or issued; or

(3) Practice professional or practical nursing unless licensed under this chapter; or

(4) Use, in connection with that person's name any designation tending to imply that the person is a registered or practical nurse, unless licensed under this chapter; or

(5) Practice professional or practical nursing when that person's license is suspended or revoked; or

(6) Conduct a professional or practical nursing education program which has not been approved by the Board; or

(7) Knowingly employ a graduate of a professional or practical nursing program or a registered nurse or a practical nurse to engage in the practice of nursing without a valid temporary permit or license from the Board; or

(8) Violate standards of nursing practice as adopted by the Board;

shall be fined not more than $1,000, or be imprisoned not more than 1 year, or both.

(24 Del. C. 1953 § 1924; 54 Del. Laws, c. 153; 64 Del. Laws, c. 26 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 104 § 1.)

§ 1926 Status of present Board members.

Each member of the Board of Nursing on July 1, 1983, becomes a member of the Board created by this chapter until the expiration of the term which that member was serving on that date. Any vacancy occurring in the membership of the former Board shall be filled in the manner provided in this chapter.

(24 Del. C. 1953 § 1925; 54 Del. Laws, c. 153; 64 Del. Laws, c. 26 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1927 Prescription requirements.

An APRN licensed by the Board may prescribe, order, procure, administer, store, dispense and furnish over the counter, legend and controlled substances pursuant to applicable state and federal laws and within the APRN's role and population focus.

(1) Written, verbal or electronic prescriptions and orders shall comply with all applicable state and federal laws.

(2) All prescriptions shall be clearly written, clearly hand-printed, electronically printed, or typed and shall include, but not be limited to, the following information:

a. The name, title, address, phone number, and registration number of the prescriber;

b. Name of patient;
c. Date of prescription;
d. Full name of the drug, dosage, route, amount to be dispensed and directions for its use;
e. Number of refills;
f. Signature of prescriber on written prescription;
g. DEA number of the prescriber on all scheduled drugs.

(3) APRNs may receive, sign for, record and distribute samples to patients. Distribution of drug samples shall be in accordance with state law and federal Drug Enforcement Administration laws, regulations and guidelines.

(75 Del. Laws, c. 161 § 6; 80 Del. Laws, c. 171.)

§ 1928 Criminal background checks of registered nurses.

An applicant for licensure to practice as a registered nurse shall submit, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

(1) A report of the individual'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 relating to that person.

(2) A report of the individual's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Board of Nursing shall be the screening point for the receipt of said federal criminal history records.

(75 Del. Laws, c. 325 § 1.)

§ 1929 Criminal background checks of licensed practical nurses.

An applicant for licensure to practice as a licensed practical nurse shall submit, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

(1) A report of the individual'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 relating to that person.

(2) A report of the individual's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Board of Nursing shall be the screening point for the receipt of said federal criminal history records.

(75 Del. Laws, c. 325 § 2.)

§ 1930 Duty to report conduct that constitutes grounds for discipline or inability to practice.

(a) Every person to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or any other healthcare provider has engaged in or is engaging in conduct that would constitute grounds for disciplinary action under this chapter or the other healthcare provider's licensing statute.

(b) Every person to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or any other healthcare provider may be unable to practice with reasonable skill and safety to the public by reason of: mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive abuse of drugs, including alcohol.

(c) Every person to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation any information that the reporting person reasonably believes indicates that a person certified and registered to practice medicine in this State is or may be guilty of unprofessional conduct or may be unable to practice medicine with reasonable skill or safety to patients by reason of: mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive use or abuse of drugs, including alcohol.

(d) All reports required under subsections (a), (b) and (c) of this section must be filed within 30 days of becoming aware of such information. A person reporting or testifying in any proceeding as a result of making a report pursuant to this section is immune from claim, suit, liability, damages, or any other recourse, civil or criminal, so long as the person acted in good faith and without gross or wanton negligence; good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant.

(78 Del. Laws, c. 35 § 7.)

§ 1931 Treatment or examination of minors.

(a) A parent, guardian or other caretaker, or an adult staff member, shall be present when a person licensed under this chapter provides outpatient treatment to a minor patient who is disrobed or partially disrobed or during an outpatient physical examination involving the breasts, genitalia or rectum, regardless of sex of the licensed person and patient, except when rendering care during an emergency. When using an adult staff member to observe the treatment or examination, the adult staff member shall be of the same gender as the patient when practicable. 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 licensee without the presence of a third person after the physical examination.

(b) When a minor patient is to be disrobed, partially disrobed or will undergo a physical examination involving the breasts, genitalia or rectum, a person licensed under this chapter shall provide notice to the person providing consent to treatment of the rights under this section. The notice shall be provided in written form or be conspicuously posted in a manner in which minor patients and their parent, guardian or other caretaker are made aware of the notice. In circumstances in which the posting or the provision of the written notice would not convey the right to have a chaperone present, the person licensed shall use another means to ensure that the person understands the right under this section.

(c) For the purposes of this section, "minor" is defined as a person 15 years of age or younger, and "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 that provides outpatient treatment to a minor pursuant to this section shall, contemporaneously with such treatment, note in the child's medical record the name of each person present when such treatment is being provided.

(79 Del. Laws, c. 169 § 5.)

§ 1932 Limited lay administration of medications.

(a) Individuals who have successfully completed a board-approved limited lay administration of medications training program may administer prescription or nonprescription medications to patients/residents/clients in the following settings:

(1) Residential child care facilities and day treatment programs regulated by the State under Title 31.

(2) All residential or day services for persons with intellectual disabilities regulated by the State under Chapter 79 of Title 29 and Chapter 11 of Title 16.

(3) Group homes for persons with psychiatric disabilities regulated by the State under Chapter 11 of Title 16 and other community support programs certified by the Division of Substance Abuse and Mental Health.

(4) Assisted living facilities regulated by the State under Chapter 11 of Title 16.

(5) Group homes established for persons with AIDS regulated by the State under Chapter 11 of Title 16.

(b) Medications must be in the original container and properly labeled.

(c) An annual report to the Board of Nursing, on a form developed by the Board of Nursing, must be submitted no later than August 1 of each year indicating compliance with the guidelines as set forth in the approved LLAM training program.

(80 Del. Laws, c. 83 § 3.)

§ 1933 Telemedicine.

(a) Telemedicine shall not be utilized by an advanced practice registered nurse (APRN) with respect to any patient in the absence of an APRN-patient relationship.

(b) APRNs who utilize telemedicine shall, if such action would otherwise be required in the provision of the same service not delivered via telemedicine, ensure that a proper APRN-patient relationship is established which includes but is not limited to:

(1) Fully verifying and authenticating the location and, to the extent possible, identifying the requesting patient;

(2) Disclosing and validating the provider's identity and applicable credential or credentials;

(3) Obtaining appropriate consents from requesting patients after disclosures regarding the delivery models and treatment methods or limitations, including informed consents regarding the use of telemedicine technologies as indicated in paragraph (b)(5) of this section;

(4) Establishing a diagnosis through the use of acceptable medical practices, as patient history, mental status examination, physical examination (unless not warranted by the patient's mental condition), and appropriate diagnostic and laboratory testing to establish diagnoses, as well as identify underlying conditions or contra-indications, or both, to treatment recommended or provided;

(5) Discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options;

(6) Ensuring the availability of the distant site provider or coverage of the patient for appropriate follow-up care; and

(7) Providing a written visit summary to the patient.

(c) Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional (encounter in person) settings.

(d) The APRN treating a patient through telemedicine must maintain a complete record of the patient's care which must follow all applicable state and federal statutes and regulations for recordkeeping, confidentiality, and disclosure to the patient.

(e) Telemedicine shall include, at such time as feasible and when appropriate, utilizing the Delaware Health Information Network (DHIN) in connection with the practice.

(f) Without a prior and proper patient-provider relationship, as provided in paragraph (b)(5) of this section, providers are prohibited from issuing prescriptions solely in response to an Internet questionnaire, an Internet consult, or a telephone consult.

(g) Prescriptions made through telemedicine and under an APRN-patient relationship may include controlled substances, subject to limitations as set by the Board.

(h) This section does not apply to any of the following:

(1) Informal consultation performed by a APRN outside the context of a contractual relationship and on an irregular or infrequent basis without the expectation or exchange of direct or indirect compensation;

(2) Furnishing of medical assistance by a APRN in case of an emergency or disaster if no charge is made for the medical assistance;

(3) Episodic consultation by a medical specialist located in another jurisdiction who provides such consultation services on request to a person licensed in this State.

(80 Del. Laws, c. 80 § 22.)

§ 1934 Advanced Practice Registered Nurse Committee.

(a) The purpose of the Advanced Practice Registered Nurse Committee shall be to:

(1) Advise the Board of Nursing by recommending rules and regulations regarding the practice of advance practice registered nurses; and

(2) Review collaborative agreements upon submission to the Board; and

(3) Draft regulations to be reviewed by the Board of Nursing; and

(4) Review collaborative agreements of advanced practice registered nurses (APRNs) who seek independent practice.

(b) The Committee shall have 9 members and consist of the following:

(1) Four advanced practice registered nurses representing each category of APRN role with a variety of population foci, appointed by the Board of Nursing. Each APRN member of the Committee shall have at least the equivalent of 3 years of full-time experience in their APRN role.

(2) One pharmacist, appointed by the Board of Pharmacy.

(3) Four physicians who work with APRNs, appointed by the Board of Medical Licensure and Discipline.

(4) The first Committee Chair shall be 1 of the 2 APRNs who are members of the Board of Nursing and shall serve for 1 year, not to succeed himself or herself for more than 2 consecutive terms. The position of committee chair shall then rotate among Committee members.

(c) Appointments shall be for 3-year terms, provided that the terms of newly-appointed members will be staggered so that no more than 5 appointments shall expire annually. Members may be appointed for less than 3 years to ensure that members' terms expire on a staggered basis.

(d) A majority of members appointed to the Committee shall constitute a quorum to conduct official business.

(e) A Committee member may be removed at any time for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office. A member who is absent from 3 consecutive committee meetings without good cause or who attends less than 50% of committee meetings in a calendar year shall be deemed in neglect of duty.

(f) The Committee shall:

(1) Draft rules and regulations regarding competencies, benchmarks, and metrics within each of the 4 roles and 6 population foci that must be accomplished during the collaborative agreement period for review by the Board.

(2) Review emerging practices and advise the Board of Nursing on APRN licensure and practice standards, including prescribing trends and provide recommendations to the Board of Nursing regarding APRN practice.

(3)a. Make recommendations to the Board of Nursing whether to grant or deny requests for independent practice. The Committee may also recommend that individual collaborative agreement periods be extended for additional time.

b. The Committee shall make its recommendation after evaluating evidence that a graduate advanced practice registered nurse or APRN has:

1. Practiced under a collaborative agreement within a hospital or integrated clinical setting for at least 2 years and a minimum of 4,000 full-time hours. The physician, podiatrist, or health-care delivery system party to the collaborative agreement must practice in an area substantially related to the population and focus of the APRN's education, certification, and planned independent practice. The 2-year collaboration will not commence until the collaborative agreement is submitted to the Committee and Board of Nursing.

2. Submitted written evidence that the collaborators have satisfactorily completed 2 years and a minimum of 4,000 full-time hours of collaboration in compliance with the Board of Nursing's rules and regulations regarding competencies, benchmarks, and metrics within the APRN's role and population focus. Such written evidence shall be submitted after the completion of the practice hours required in this chapter and prior to the granting of independent practice.

(4)a. The Board of Nursing shall provide to the Board of Medical Licensure and Discipline a monthly list of APRNs who were granted prescriptive authority.

b. When an APRN who has been granted independent practice comes before the Board of Nursing for discipline related to a deviation from the standard of care, the Board of Nursing's decision must be approved by the Board of Medical Licensure and Discipline.

(80 Del. Laws, c. 172 § 3; 70 Del. Laws, c. 186 § 1.)

§ 1935 Advanced Practice Registered Nurse (APRN) — Authority and duties.

(a) The Board of Nursing grants full-practice and prescriptive authority upon the issuance of an APRN license. The granting of full-practice authority does not equate to the granting of independent practice.

(b) An APRN licensed by the Board of Nursing with full-practice authority is authorized within the APRN's role and population foci to:

(1) Prescribe, procure, administer, store, dispense, and furnish over the counter, legend and controlled substances pursuant to

applicable state and federal laws and within the APRN's role and population foci.

(2) Plan and initiate a therapeutic regimen within the APRN's role and population foci that includes ordering and prescribing nonpharmacological interventions, including:

a. Medical devices and durable medical equipment, nutrition, blood, and blood products.

b. Diagnostic and supportive services including home health care, hospice, and physical and occupational therapy.

(3) Diagnose, prescribe and institute therapy or referrals of patients within the APRN's role and population foci to health-care agencies, health-care providers and community resources.

(4) Sign death certificates in all circumstances, subject to the restrictions set forth in the definition of the term "practice of professional nursing" as provided in this chapter.

(c) APRNs with full-practice authority shall seek consultation regarding treatment and care of patients as appropriate to patient needs and the APRN's level of expertise and scope of practice.

(d) An APRN may be designated as the primary care provider by an insurer or health-care services corporation.

(e) An APRN granted independent practice shall not be held to any lesser standard of care than that of a physician providing care to a specific patient condition or population.

(f) Any APRN rendering services in person or by electronic means in Delaware must hold an active Delaware RN and APRN license.

(g) APRNs shall obtain approval from the APRN Committee and Board of Nursing pursuant to this chapter in order to practice independently.

(80 Del. Laws, c. 172 § 3.)

§ 1936 Collaborative agreements.

(a) A collaborative agreement must outline how the parties to the agreement will cooperate, coordinate, and consult pursuant to the Board of Nursing's rules and regulations.

(b) All new APRN graduates and those nurses seeking to obtain independent practice must practice under a collaborative agreement for 2 years and a minimum of 4,000 full-time hours.

(c) An APRN already practicing pursuant to a collaborative agreement as of July 1, 2015, shall be required to resubmit the collaborative agreement to the Committee, granted credit for any hours accumulated, and required to otherwise comply with the relevant provisions of this chapter in order to obtain independent practice.

(80 Del. Laws, c. 172 § 3.)

Part

Chapter 19A

INTERSTATE NURSE LICENSURE COMPACT

§ 1901A The Interstate Nurse Licensure Compact.

The State hereby enters into the Interstate Nurse Licensure Compact as set forth in this chapter. The text of the Compact is as follows:

INTERSTATE NURSE LICENSURE COMPACT

ARTICLE I.

Findings and Declaration of Purpose

(a) The party states find that:

(1) The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

(2) Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

(3) The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's healthcare delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

(4) New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex; and

(5) The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

(b) The general purposes of this Compact are to:

(1) Facilitate the states' responsibility to protect the public's health and safety;

(2) Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

(3) Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions;

(4) Promote compliance with the laws governing the practice of nursing in each jurisdiction; and

(5) Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

ARTICLE II.

Definitions

As used in this Compact:

(a) "Adverse action" means a home or remote state action.

(b) "Alternative program" means a voluntary, nondisciplinary monitoring program approved by a nurse licensing board.

(c) "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.

(d) "Current significant investigative information" means:

(1) Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

(2) Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

(e) "Home state" means the party state which is the nurse's primary state of residence.

(f) "Home state action" means any administrative, civil, equitable or criminal action permitted by the home state's laws which are imposed on a nurse by the home state's licensing board or other authority including actions against an individual's license such as: revocation, suspension, probation or any other action which affects the nurse's authorization to practice.

(g) "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

(h) "Multistate licensure privilege" means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical/vocational nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege such as: revocation, suspension, probation or any other action which affects a nurse's authorization to practice.

(i) "Nurse" means a registered nurse or licensed practical/vocational nurse, as those terms are defined by each party's state practice laws.

(j) "Party state" means any state that has adopted this Compact.

(k) "Remote state" means a party state, other than the home state,

(1) Where the patient is located at the time nursing care is provided, or,

(2) In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is

located.

(l) "Remote state action" means

(1) Any administrative, civil, equitable or criminal action permitted by a remote state's laws which are imposed on a nurse by the remote state's licensing board or other authority including actions against an individual's multistate licensure privilege to practice in the remote state, and

(2) Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards thereof.

(m) "State" means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

(n) "State practice laws" means those individual party state's laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" does not include the initial qualifications for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE III.

General Provisions and Jurisdiction

(a) A license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state. A license to practice licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical/vocational nurse in such party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

(b) Party states may, in accordance with state due process laws, limit or revoke the multistate licensure privilege of any nurse to practice in their state and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(c) Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

(d) This Compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

(e) Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

ARTICLE IV.

Applications for Licensure in a Party State

(a) Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

(b) A nurse in a party state shall hold licensure in only 1 party state at a time issued by the home state.

(c) A nurse who intends to change primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses will not be issued by a party state until after a nurse provides evidence of change in primary state of residence satisfactory to the new home state's licensing board.

(d) When a nurse changes primary state of residence by:

(1) Moving between 2 party states, and obtains a license from the new home state, the license from the former home state is no longer valid;

(2) Moving from a nonparty state to a party state, and obtains a license from the new home state, the individual state license issued by the nonparty state is not affected and will remain in full force if so provided by the laws of the nonparty state;

(3) Moving from a party state to a nonparty state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

ARTICLE V.

Adverse Actions

In addition to the General Provisions described in Article III of this Compact, the following provisions apply:

(a) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

(b) The licensing board of a party state shall have the authority to complete any pending investigations for a nurse who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate action or actions, and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

(c) A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the license issued by the home state.

(d) For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

(e) The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

(f) Nothing in this Compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain nonpublic if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

ARTICLE VI.

Additional Authorities Invested in Party State Nurse Licensing Boards

Notwithstanding any other powers, party state nurse licensing boards shall have the authority to:

(a) If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse;

(b) Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witnesses and/or evidence are located.

(c) Issue cease and desist orders to limit or revoke a nurse's authority to practice in their state;

(d) Promulgate uniform rules and regulations as provided for in Article VIII(c) of this Compact.

ARTICLE VII.

Coordinated Licensure Information System

(a) All party states shall participate in a cooperative effort to create a coordinated data base of all licensed registered nurses and licensed practical/vocational nurses. This system shall include information on the licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(b) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials, to the coordinated licensure information system.

(c) Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(d) Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

(e) Any personally identifiable information obtained by a party states' licensing board from the coordinated licensure information system may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(f) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information, shall also be expunged from the coordinated licensure information system.

(g) The Compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection and exchange of information under this Compact.

ARTICLE VIII.

Compact Administration and Interchange of Information

(a) The head of the nurse licensing board, or his or her designee, of each party state shall be the administrator of this Compact for his or her state.

(b) The Compact administrator of each party state shall furnish to the Compact administrator of each other party state any information and documents including, but not limited to, a uniform data set of investigations, identifying information, licensure data and disclosable alternative program participation information to facilitate the administration of this Compact.

(c) Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this Compact. These uniform rules shall be adopted by party states, under the authority invested under Article VI(d) of this Compact.

ARTICLE IX.

Immunity

No party state or the officers or employees or agents of a party state's nurse licensing board who acts in accordance with the provisions of this Compact shall be liable on account of any act or omission in good faith while engaged in the performance of their duties under this Compact. Good faith in this article shall not include willful misconduct, gross negligence or recklessness.

ARTICLE X.

Entry into Force, Withdrawal, and Amendment

(a) This Compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

(b) No withdrawal shall affect the validity or applicability by the licensing boards of states remaining party to the Compact of any report of adverse action occurring prior to the withdrawal.

(c) Nothing contained in this Compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this Compact.

(d) This Compact may be amended by the party states. No amendment to this Compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

ARTICLE XI.

Construction and Severability

(a) This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state party thereto, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

(b) In the event party states find a need for settling disputes arising under this Compact:

(1) The party states may submit the issues in dispute to an arbitration panel which will be comprised of an individual appointed by the Compact administrator in the home state; an individual appointed by the Compact administrator in the remote state or states involved; and an individual mutually agreed upon by the Compact administrators of all the party states involved in the dispute.

(2) The decision of a majority of the arbitrators shall be final and binding.

(72 Del. Laws, c. 334 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1902A Disciplinary action in Delaware.

(a) All nurses holding a Delaware nursing license which is either under suspension or under probation by the Delaware Board of Nursing or who are participating in an established treatment program which is an alternative to disciplinary action, shall not practice in any other party state during the term of such suspension, probation or participation without prior authorization from such other party state. The Delaware nursing licensure of any nurse under such suspension, probation or participation who practices nursing in another party state without prior authorization from that state may be revoked by the Delaware Board of Nursing.

(b) The multi-state licensure privilege granted by this State is subject to revocation or other disciplinary action as the result of any disciplinary action imposed by a nurse's home state.

(72 Del. Laws, c. 334 § 1.)

§ 1903A Effect of other obligations.

This Compact is intended to facilitate the regulation of the practice of nursing and does not relieve employers from complying with contractual and statutorily imposed obligations.

(72 Del. Laws, c. 334 § 1.)

§ 1904A Compact as controlling law.

If there is an irreconcilable conflict between the Interstate Nurse Licensure Compact and Chapter 19 of Title 24, the Compact shall control.

(72 Del. Laws, c. 334 § 1.)

§ 1905A Continuation of Compact.

This Compact and this State's participation therein shall remain in full force and effect beyond June 30, 2005, and shall not terminate without further action of the General Assembly.

(75 Del. Laws, c. 63 § 2.)

§ 1910A Criminal background checks of registered nurses [See § 1928 of this title]

§ 1914A Criminal background checks of licensed practical nurses [See § 1929 of this title]

Part

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, according to Division policy; and in addition shall receive not more than $50 for each meeting attended but not more than $500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(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.)

§ 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.)

Subchapter II

License

§ 2007 License required.

(a) No person shall engage in the practice of occupational therapy or hold himself or herself out to the public in this State as being qualified to practice as an occupational therapist or occupational therapy 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 person is qualified to practice occupational therapy, unless such person has been duly licensed under this chapter.

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

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

(65 Del. Laws, c. 172 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 293 § 1.)

§ 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:

(1) Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the Board; and

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 has met the academic requirements, or by the nationally recognized professional 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;

(4) Shall not have been the recipient of any administrative penalties regarding that person's practice of occupational therapy, including but not limited to fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations and/or has not entered into any "consent agreements" which contain conditions placed by a Board on that person's professional conduct and practice, including any voluntary surrender of a license. The Board may determine, after a hearing, whether such administrative penalty is grounds to deny licensure;

(5) Shall not have any impairment related to drugs, 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;

(6) Shall not have a criminal conviction record, nor pending criminal charge relating to an offense, the circumstances of which substantially relate to the practice of occupational therapy. Applicants who have criminal conviction records or pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the record or charge is substantially related to the practice of occupational therapy. However, 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, may waive this paragraph (a)(6), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

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

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

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

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

a. 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 relating to that person;

b. A report of the applicant's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Board of Occupational Therapy Practice shall be the screening point for the receipt of said federal criminal history records;

c. An applicant may not be licensed to practice occupational therapy until the applicant's criminal history reports have been

produced. An applicant whose record shows a prior criminal conviction may not be licensed by the Board unless a waiver is granted pursuant to paragraph (a)(6) of this section.

(b) Where the Board has found to its satisfaction that an application has been intentionally fraudulent, or that false information has been intentionally supplied, 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 applicant feels that the Board has acted without justification; has imposed higher or different standards for that applicant than for other applicants or licensees; or has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

(d) All individuals licensed to practice occupational therapy in this State shall be required to 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.

(65 Del. Laws, c. 172 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 293 § 1; 74 Del. Laws, c. 262 § 39; 75 Del. Laws, c. 210 § 1; 75 Del. Laws, c. 436 § 18; 77 Del. Laws, c. 199 § 16; 78 Del. Laws, c. 44 §§ 32, 33; 79 Del. Laws, c. 277 § 5.)

§ 2009 Applicability of chapter.

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

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

(2) Any 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 person is designated by a title which clearly indicates that person's status as a student or trainee;

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

(4) Any 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.

(65 Del. Laws, c. 172 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 293 § 1.)

§ 2010 Foreign-trained Applicants.

In addition to the requirement of § 2008 of this title, a foreign-trained applicant shall be 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.

(71 Del. Laws, c. 293 § 1.)

§ 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 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, and who meets the following criteria:

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

(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.

(65 Del. Laws, c. 172 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 293 § 1; 75 Del. Laws, c. 436 § 19.)

§ 2012 Temporary license.

(Repealed by 75 Del. Laws, c. 210 § 2, effective July 21, 2005.)

§ 2013 Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its service on behalf of the Board. There shall be a separate fee charged for each service or activity; but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each licensure biennium, the Division of Professional Regulation, or any other state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate Board fees for the coming licensure biennium.

(65 Del. Laws, c. 172 § 1; 65 Del. Laws, c. 355 § 1; 71 Del. Laws, c. 293 § 1.)

§ 2014 Issuance and renewal of licenses.

(a) The Board shall issue a license to each applicant, who meets the requirements of 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 be renewed biennially, in such manner as is determined by the Division of Professional Regulation, and upon payment of the appropriate fee and submission of a renewal form provided by the Division of Professional Regulation, 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 may still renew the occupational therapist's or occupational therapy assistant's license, notwithstanding the fact that such licensee has failed to renew on or before the renewal date.

(d) A licensee, upon written request, may be placed on inactive status. The renewal fee of the licensee shall be prorated in accordance with the amount of time the licensee 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 the Board's rules and regulations.

(65 Del. Laws, c. 172 § 1; 66 Del. Laws, c. 400 § 3; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 293 § 1; 75 Del. Laws, c. 210 § 3.)

§ 2015 Grounds for discipline.

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

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

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

(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;

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

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

(6) Has had that practitioner's license, 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 the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record, and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every person licensed as an occupational therapist or occupational therapy assistant in this State shall be deemed to have given consent to the release of this information by the Board of Occupational Therapy Practice or other comparable agencies in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses;

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

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

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

(c) 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].

(65 Del. Laws, c. 172 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 293 § 1; 74 Del. Laws, c. 262 § 40.)

§ 2016 Complaints.

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

When it is determined 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, the Board shall 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.

Any complaints involving allegations of unprofessional conduct or incompetence shall be investigated by the Division of Professional Regulation.

(65 Del. Laws, c. 172 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 293 § 1.)

§ 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 § 2015 of this title applies to a practitioner regulated by this chapter:

(1) Issue a letter of reprimand.

(2) Censure a practitioner.

(3) Place a practitioner on probationary status, and require the practitioner to:

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

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

(4) Suspend any practitioner's license.

(5) Revoke any practitioner'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 it finds that the deficiencies which required such action have been remedied.

(c) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(d) As a condition to reinstatement of a suspended 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 who is convicted of a felony sexual offense.

(65 Del. Laws, c. 172 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 293 § 1; 79 Del. Laws, c. 213 § 2; 79 Del. Laws, c. 277 § 6.)

§ 2018 Hearing procedures.

(a) If a complaint is filed with the Board pursuant to § 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 be given and the hearing conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) All hearings shall be 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 be in writing and shall include its reasons for such decision. The Board's decision shall be mailed immediately to the practitioner.

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

(65 Del. Laws, c. 172 § 1; 65 Del. Laws, c. 355 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 293 § 1.)

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

(a) As a condition to reinstatement of a suspended license, or removal from probationary status, the Board may reinstate such 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 probation.

(b) Applicants 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 probation have been met. Proof that the applicant has met the continuing education requirements of this chapter may also be required, as appropriate.

(c) A new license to replace any license lost, destroyed or mutilated may be issued subject to the rules of the Board. A charge shall be made for such issuance.

(71 Del. Laws, c. 293 § 1.)

§ 2020 Penalty.

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. 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. Superior Court shall have jurisdiction over all violations of this chapter.

(71 Del. Laws, c. 293 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2021 Treatment or examination of minors.

(a) A parent, guardian or other caretaker, or an adult staff member, shall be present when a person licensed to practice occupational therapy under this chapter provides services, including inpatient, outpatient, home or school treatment, 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. When using an adult staff member to observe the evaluation or treatment, the adult staff member shall be of the same gender as the patient when practicable. 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 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 shall provide notice to the person providing consent to treatment of the rights under this section. The notice shall be provided in written form or be conspicuously posted in a manner in which minor patients and their parent, guardian or other caretaker are made aware of the notice. In circumstances in which the posting or the provision of the written notice would not convey the right to have a chaperone present, the person licensed to practice occupational therapy shall use another means to ensure that the person understands the right 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 that provides treatment to a minor pursuant to this section shall, contemporaneously with such treatment, note in the child's record the name of each person present when such treatment is being provided.

(79 Del. Laws, c. 169 § 6; 70 Del. Laws, c. 186 § 1.)

Part

Chapter 21
OPTOMETRY

§ 2100 Objectives.

The primary objective of the Board of Examiners in Optometry, 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.

(70 Del. Laws, c. 546 § 1.)

§ 2101 Definition of practice of optometry.

(a) "Practice of optometry" means the examination or measurement by any subjective or objective means including automated or testing devices for the diagnosis, treatment, and prevention of conditions of the human eye, lid, adnexa, and visual system as outlined below.

(1) "Practice of optometry" includes all of the following:

a. Use, adapting, and fitting of all types of lenses or devices except as provided in paragraph (a)(2) of this section.

b. Dispensing of any type of contact lenses that must be dispensed in accordance with a written, current contact lens prescription from a licensed physician or optometrist, including information that the Board may specify by rule or regulation.

c. Determination of refractive error or visual, muscular, or anatomical anomalies of the eye.

d. Provision or prescription of vision therapy, low-vision rehabilitation, or developmental or perceptual therapy.

(2) A license to practice optometry includes the utilization of any method or means which the optometrist is educationally qualified to provide, as established by the Delaware State Board of Examiners in Optometry and:

a. Includes performance of minor procedures on the surface of the skin of the ocular adnexa, of the cornea and conjunctiva of the globe and lid that can be performed safely with topical anesthesia and that would not require the use of injections or penetration of the globe, and the cutting or closure of human tissue by suture or staple, glue, adhesive, soldering, or cauterization. Also excludes anterior corneal stromal puncture, collagen cross-linking, postsurgical pterygium or conjuctival graft gluing of amniotic membranes, mechanical polishing of the corneal basement membrane, or any procedure that requires full- or partial-thickness incision of the sclera or cornea. Such minor procedures include: removal of superficial foreign body of the external eye conjunctiva; removal of conjunctival nonperforating foreign bodies; removal of a foreign body with or without slit lamp; superficial corneal scraping for diagnostic purposes; epilation of trichiasis by forceps; expression of conjunctival follicles; closure of lacrimal punctum by plug; intense pulsed light therapy; thermal treatment of eyelid margin for dry eye and blepharitis such as Lipiflow; and dilation of lacrimal punctum, with or without irrigation except on infant and toddler patients.

b. Prohibits surgery.

c. Prohibits the use of ophthalmic lasers or other modalities in which tissue is burned, vaporized, cut, or otherwise irreversibly altered by thermal, light-based, electromagnetic, radiation, chemical, ultrasound, infusion, cryotherapy, or similar means, excluding the use of pharmaceutical agents described in paragraph (a)(3) of this section.

d. Procedures must meet the standard of care as if performed by a physician.

(3) "Practice of optometry", as it relates to pharmaceutical agents, means as follows:

a. Includes the use of pharmaceutical agents for the diagnosis and treatment of diseases, disorders, and conditions of the eye and adnexa based on the licensing requirement that satisfies the requirement for graduate level coursework that includes general and ocular pharmacology as follows:

1. Prescription for controlled substances.

A. Schedule II controlled substances containing Hydrocodone, with a limitation on maximum 72-hour supply.

B. Schedules III, IV, and V controlled substances, with a limitation on maximum 72-hour supply.

2. Prescription for the use of an oral steroid with a limitation not to exceed a single 6-day methylprednisolone dose pack.

b. Includes the use of an epinephrine auto-injector to counteract anaphylaxis.

c. Excludes prescription for oral immuno-suppressives except for the use of oral steroids reference 7(b).

d. Excludes the prescription of oral antifungals.

e. Excludes the prescription of oral antimetabolites.

f. Excludes the prescription of any substance delivered intravenously or by injection.

g. Excludes any medication used solely for the treatment of systemic conditions outside the scope of an optometrist.

(b) For purposes of this chapter, the term "diagnostically certified optometrists" applies only to those currently licensed in the category

and if that license lapses, the licensee could only relicense by meeting current licensing requirements in § 2107 of this title. The duties of a nondiagnostically certified optometrist are limited to those that do not utilize therapeutic pharmaceutical agents or perform procedures that require subsequent treatment with therapeutic pharmaceutical agents.

(c) In administering this chapter, the State Board shall, by rule or regulation, specify those acts, services, procedures and practices which constitute the "practice of optometry" within the definitions of this section and consistent with having submitted proof of graduate level coursework that includes general and ocular pharmacology.

(d) For purposes of disability insurance, workers' compensation, standard health and accident, sickness and other insurance policies, programs and plans, if the optometrist is authorized by law to perform the particular services, the optometrist shall be entitled to compensation for services under the said programs. Individuals entitled to such services shall have freedom to choose between any optometrist and any physician skilled in diseases of the eye.

(e) The practice of optometry also includes services provided by telemedicine and participation in telehealth. For the purposes of this section, "telehealth" is defined as 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. "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. "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. "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. "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.

(25 Del. Laws, c. 113 § 1; Code 1915 § 894; 37 Del. Laws, c. 69 § 1; 38 Del. Laws, c. 49 § 1; Code 1935 § 1003; 47 Del. Laws, c. 106 § 1; 24 Del. C. 1953 § 2101; 54 Del. Laws, c. 30; 59 Del. Laws, c. 250 §§ 1, 2, 13; 66 Del. Laws, c. 1 § 1; 69 Del. Laws, c. 288 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 172 §§ 1-3; 80 Del. Laws, c. 80 § 12; 80 Del. Laws, c. 356 § 1.)

§ 2102 Board of Examiners in Optometry; appointment; qualifications; terms of office; vacancies; suspension or removal; unexcused absences; compensation.

(a) The Delaware State Board of Examiners in Optometry, heretofore established and hereafter in this chapter referred to as the "Board," shall carry out and enforce this chapter.

(b) The Board shall consist of 5 members appointed by the Governor, who are residents of this State: 3 duly-licensed optometrists engaged in the actual practice of optometry and 2 public members. Said public members: Shall not be or ever have been licensed as an optometrist, ophthalmologist or optician; shall not be a member of the immediate family of an optometrist, ophthalmologist or optician; shall not have been employed by an optometrist, ophthalmologist or optician; shall not have had a material financial interest in the providing of goods and services to those licensed in this chapter; shall not have been engaged in any activity directly related to optometry; and shall not have been licensed in any health-related field or be licensed to practice law.

(c) Said public members shall be accessible to inquiries, comments and suggestions from the general public and shall be entitled to full voting privileges on all aspects of all issues which come before the Board, including the licensing process.

(d) A person who has never served on the Board may be appointed to the Board 2 consecutive times, 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 term has expired since such person last served.

(e) Any act or vote by a person appointed in violation of subsection (d) 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 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, 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.

(g) No member of the Board, while serving on the Board, shall hold elective office in any professional association of optometrists.

(h) The provisions set forth for "employees" in Chapter 58 of Title 29 shall apply to all members of the Board and to all agents appointed or otherwise employed by 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 not more than $50 for each meeting attended, but not more than $500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(25 Del. Laws, c. 113 § 3; Code 1915 § 893; Code 1935 § 1002; 24 Del. C. 1953 § 2102; 50 Del. Laws, c. 482 § 1; 55 Del. Laws, c. 224 §§ 1, 2; 59 Del. Laws, c. 250 § 3; 66 Del. Laws, c. 1 § 1; 67 Del. Laws, c. 368 § 12; 69 Del. Laws, c. 288 § 2; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 546 §§ 2-10; 80 Del. Laws, c. 356 § 1.)

§ 2103 Organization; meetings; officers; quorum.

(a) The Board shall hold a regularly scheduled business meeting at least once in each year and at such times as the President deems necessary or at the request of a majority of the Board members.

(b) The Board shall elect annually a President and Secretary. Each officer shall serve for 1 year, and shall not succeed himself or herself for more than 2 consecutive terms.

(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.

(25 Del. Laws, c. 113 § 4; Code 1915 § 895; Code 1935 § 1004; 24 Del. C. 1953 § 2103; 59 Del. Laws, c. 250 § 11; 66 Del. Laws, c. 1 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 546 § 11.)

§ 2104 Powers and duties.

(a) The Board of Examiners in Optometry 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, national examination, approved by the Division of Professional Regulation, to be taken by all persons applying for licensure; applicants who qualify for licensure by reciprocity shall have achieved a passing score on the designated national examination.

(4) The Board shall adopt the administration, grading procedures and passing score set by the national board or of 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 optometrists.

(6) Evaluate the credentials of all persons applying for a licensure to practice optometry 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 optometry 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 optometrists 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, 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 optometrist 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 Optometry shall promulgate regulations specifically identifying those crimes which are substantially related to the practice of optometry.

(37 Del. Laws, c. 69 § 2; Code 1915 § 895A; Code 1935 § 1005; 24 Del. C. 1953 § 2104; 66 Del. Laws, c. 1 § 1; 70 Del. Laws, c. 546 § 12; 75 Del. Laws, c. 436 § 20.)

§ 2105 Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its service on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each calendar year, the Division of

Professional Regulation, or any other state agency acting in its behalf, shall compute for each separate service or activity, the appropriate Boards fees for the coming year.

(25 Del. Laws, c. 113 § 11; Code 1915 § 902; 37 Del. Laws, c. 44 § 1; Code 1935 § 1012; 42 Del. Laws, c. 94 § 2; 24 Del. C. 1953 § 2105; 55 Del. Laws, c. 224 § 3; 60 Del. Laws, c. 460 § 1; 66 Del. Laws, c. 1 § 1; 70 Del. Laws, c. 546 § 13.)

§ 2106 License required.

(a) No person shall engage in the practice of optometry or hold himself or herself out to the public in this State as being qualified to practice optometry or use in connection with that person's name, or otherwise assume or use, any title or description conveying or tending to convey the impression that the person is qualified to practice optometry, unless such person has been duly licensed under this chapter.

(b) Whenever a license to practice as an optometrist in this State has expired or been suspended or revoked, it shall be unlawful for the person to practice optometry in this State.

(25 Del. Laws, c. 113 § 2; Code 1915 § 899; 40 Del. Laws, c. 30; Code 1935 § 1009; 24 Del. C. 1953 § 2106; 66 Del. Laws, c. 1 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 546 § 14.)

§ 2107 Qualifications of applicant; report to Attorney General; judicial review.

(a) An applicant who is applying for licensure as an optometrist under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person:

(1) Has received a degree of "doctor of optometry" from a legally incorporated and accredited optometric college or school which has been approved by the appropriate accrediting body of the American Optometric Association.

(2) Has achieved the passing score on a nationally recognized, written, standardized examination in optometry that includes diagnosis, treatment, and management of ocular disease, approved by the Division of Professional Regulation. The examination in this section must be administered at least once each year.

(3) Has completed a 6-month internship in optometry, which shall be approved by the Board; the Board shall waive the internship when the applicant meets the requirements of § 2109 of this title.

(4) Has not engaged in any of the acts or offenses that would be grounds for disciplinary action under this chapter and has no disciplinary proceedings or unresolved complaints pending against the applicant in any jurisdiction where the applicant has previously been or currently is licensed as an optometrist.

(5) Possesses current cardio-pulmonary resuscitation (CPR) certification for adults and children.

(6) Has not been convicted of a felony sexual offense.

(7) Has submitted, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

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

b. A report of the applicant's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Board of Optometry shall be the screening point for the receipt of said federal criminal history records.

c. An applicant may not be licensed as an optometrist until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be licensed by the Board unless a waiver is granted pursuant to § 2113(a)(8) of this title.

(b) Where the Board has found to its satisfaction that an applicant has been intentionally fraudulent or that false information has been intentionally supplied, 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 applicant feels that the Board has acted without justification, has imposed higher or different standards for that applicant than for other applicants or licensees or has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

(d) All individuals licensed to practice optometry in this State shall be required to be fingerprinted by the State Bureau of Investigation, 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.

(25 Del. Laws, c. 113 § 5; Code 1915 § 896; 35 Del. Laws, c. 58 § 1; Code 1935 § 1006; 42 Del. Laws, c. 94 § 1; 47 Del. Laws, c. 106 § 2; 24 Del. C. 1953 § 2107; 53 Del. Laws, c. 108 § 22; 58 Del. Laws, c. 511 § 56; 59 Del. Laws, c. 250 § 4; 60 Del. Laws, c. 460 § 2; 66 Del. Laws, c. 1 § 1; 69 Del. Laws, c. 288 § 3; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 546 § 15; 79 Del. Laws, c. 277 § 7; 80 Del. Laws, c. 356 § 1.)

§ 2108 Examinations.

(25 Del. Laws, c. 113 § 5; Code 1915 § 896; 35 Del. Laws, c. 58 § 1; Code 1935 § 1006; 42 Del. Laws, c. 94 § 1; 47 Del. Laws, c. 106 § 2; 24 Del. C. 1953 § 2108; 66 Del. Laws, c. 1 § 1; 69 Del. Laws, c. 288 § 4; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 546 §§ 33-35; Del. Laws, c. 356 § 1, eff Aug 3, 2016.)

§ 2109 Reciprocity.

The Board shall waive the internship requirement for an applicant holding a valid license to practice optometry issued by another jurisdiction and who has practiced for a minimum of 5 years in such other jurisdiction with standards of licensure which are equal to or

greater than those of this chapter and grant a license by reciprocity to such applicant. The applicant shall contact the National Practitioner Data Bank, requesting that verification be sent to the Board regarding that applicant's licensure status. In addition, the applicant shall contact each jurisdiction where that applicant currently is licensed or has been previously licensed or otherwise authorized to practice optometry and request that a certified statement be provided to the Board stating whether or not there are disciplinary proceedings or unresolved complaints pending against the applicant. In the event there is a disciplinary proceeding or unresolved complaint pending, the applicant shall not be licensed until the proceeding or complaint has been resolved.

(25 Del. Laws, c. 113 § 5; Code 1915 § 896; 35 Del. Laws, c. 58 § 1; Code 1935 § 1006; 42 Del. Laws, c. 94 § 1; 47 Del. Laws, c. 106 § 2; 24 Del. C. 1953 § 2109; 53 Del. Laws, c. 108 § 23; 60 Del. Laws, c. 460 § 3; 66 Del. Laws, c. 1 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 546 § 16; 80 Del. Laws, c. 356 § 1.)

§ 2110 Internship requirements; temporary licenses.

Every applicant, except those applicants who qualify for licensure by reciprocity, shall be required to complete a Board-approved 6-month internship in optometry. The internship shall be completed after the applicant has passed all parts of the national, written, standardized examination in optometry, which is approved by the Division, including the examination on the treatment and management of ocular disease (TMOD), approved by the Division.

The Board may grant temporary licenses to any candidate successfully passing the written examinations. The temporary license shall be issued only for the duration of the internship.

(Code 1935 c. 31; 47 Del. Laws, c. 106 § 5; 24 Del. C. 1953 § 2110; 50 Del. Laws, c. 482 § 2; 66 Del. Laws, c. 1 § 1; 67 Del. Laws, c. 200 § 2; 69 Del. Laws, c. 288 § 5; 70 Del. Laws, c. 546 §§ 17-19, 36; 80 Del. Laws, c. 356 § 1.)

§ 2111 Certification and registration for successful applicants.

All persons successfully passing the examinations for licensure as required by the chapter shall be registered in the Board Register, which shall be kept by the Division of Professional Regulation, as licensed to practice optometry and shall also receive an endorsement of such registration.

(25 Del. Laws, c. 113 § 5; Code 1915 § 896; 35 Del. Laws, c. 58 § 1; Code 1935 § 1006; 42 Del. Laws, c. 94 § 1; 47 Del. Laws, c. 106 § 2; 24 Del. C. 1953 § 2111; 53 Del. Laws, c. 108 § 24; 66 Del. Laws, c. 1 § 1; 69 Del. Laws, c. 288 § 6; 70 Del. Laws, c. 546 § 37; 80 Del. Laws, c. 356 § 1.)

§ 2112 Issuance and renewal of licenses.

The Board shall issue a license to each applicant who meets the requirements of this chapter for licensure as an optometrist and who pays the fee established under § 2105 of this title.

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

The Board, in its rules and regulations, shall determine the period of time within which a licensed optometrist may still renew that licensed optometrist's license, notwithstanding the fact that such licensee has failed to renew on or before the renewal date.

An optometrist currently holding an active diagnostic license may not utilize therapeutic pharmaceutical agents or perform procedures that require subsequent treatment with therapeutic pharmaceutical agents. An optometrist holding an active diagnostic license may renew such license under the terms determined by the Board in the rules and regulations.

The 6-month internship for Delaware optometric licensure may not be completed under the supervision of a diagnostic optometrist.

A diagnostically-licensed optometrist may convert to an unrestricted license by completing the requirements set forth in the rules and regulations.

A lapsed diagnostic license may not be reactivated.

(25 Del. Laws, c. 113 § 12; Code 1915 § 903; Code 1935 § 1013; 42 Del. Laws, c. 94 § 3; 24 Del. C. 1953 § 2112; 53 Del. Laws, c. 108 § 25; 59 Del. Laws, c. 250 § 12; 60 Del. Laws, c. 460 § 4; 66 Del. Laws, c. 1 § 1; 69 Del. Laws, c. 288 § 7; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 546 § 20; 80 Del. Laws, c. 356 § 1.)

§ 2113 Grounds for refusal, revocation or suspension of licenses.

(a) A practitioner licensed under this chapter shall be subject to disciplinary actions set forth in § 2115 of this title if, after a hearing, the Board finds that the optometrist has:

(1) Practiced in a merchandising store;

(2) Practiced in an office not exclusively devoted to the practice of optometry or other health care profession, where material or merchandise is displayed pertaining to a business or commercial undertaking not bearing any relation to the practice of optometry or other health care profession or practicing in a store or office which does not conform to that used by the majority of professional optometrists in the area;

(3) Continued in the employ of, or acted as an assistant to, any person, firm or corporation, either directly or indirectly, after the optometrist has knowledge that such person, firm or corporation is violating the laws of Delaware concerning the practice of optometry;

(4) Solicited in person or through an agent or agents for the purpose of selling ophthalmic materials or optometric services which involves any form of kickback arrangement or where financial remuneration or payment in kind is made to a nonpractitioner to induce

referral business from that nonpractitioner;

(5) Caused or permitted the use of that optometrist's name, profession or professional title by or in conjunction with any association, company, corporation or unlicensed person in any advertising of any manner, unless in conjunction with a vision service plan approved by the Board;

(6) Practiced for or in conjunction with, either directly or indirectly, a corporation or company, except that allowed under Chapter 6 of Title 8; provided, that the foregoing shall not prevent a person licensed pursuant to this chapter from rendering optometric services at a nonprofit clinic which is operated by a corporation or company that is affiliated with a hospital licensed by the Department of Health and Social Services and accredited by the Joint Commission on Accreditation of Health Organizations (JCAH) or the American Osteopathic Association;

(7) Employed or knowingly cooperated in fraud or material deception in order to acquire a license as an optometrist; has impersonated another person holding a license or allowed another person to use that optometrist's license; or aided or abetted a person not licensed as an optometrist to represent himself or herself as an optometrist;

(8) Been convicted of a crime that is substantially related to the practice of optometry. "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 optometry. A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence therefor; however, 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, may waive this paragraph (a)(8), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

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

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

(9) Excessively used or abused drugs (including alcohol, narcotics or chemicals);

(10) Engaged in an act of consumer fraud or deception; engaged in the restraint of competition; or participated in price-fixing activities;

(11) Had that optometrist's license, certification or registration as an optometrist suspended or revoked or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record, and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every person licensed as an optometrist in this State shall be deemed to have given consent to the release of this information by the Board of Examiners in Optometry, or other comparable agencies in another jurisdiction, and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses;

(12) Failed to notify the Board that the optometrist's license, certification or registration as an optometrist in another state has been subject to discipline or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof;

(13) Engaged in illegal, negligent or unethical conduct in the practice of optometry; or

(14) Violated any provision of this chapter or any rule or regulation of the Board.

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

(c) Subject to this chapter and Chapter 101 of Title 29, no license shall be restricted, suspended or revoked by the Board and no practitioner's right to practice optometry 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].

(25 Del. Laws, c. 113 § 13; Code 1915 § 904; 37 Del. Laws, c. 69 § 3; Code 1935 § 1014; 47 Del. Laws, c. 106 § 3; 24 Del. C. 1953 § 2113; 59 Del. Laws, c. 250 §§ 5-9; 63 Del. Laws, c. 115 § 2; 66 Del. Laws, c. 1 § 1; 70 Del. Laws, c. 149 § 212; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 546 § 21; 72 Del. Laws, c. 172 § 4; 74 Del. Laws, c. 262 § 41; 75 Del. Laws, c. 436 § 21; 77 Del. Laws, c. 199 § 17; 78 Del. Laws, c. 44 §§ 34, 35.)

§ 2114 Complaints.

All complaints shall be received and investigated by the Division of Professional Regulation in accordance with § 8735 of Title 29 and the Division shall be responsible for issuing a final written report at the conclusion of its investigation.

When it is determined that an individual is engaging in the practice of optometry or is using the title "optometrist" and is not licensed under the laws of this State, the Board shall apply to the office of the Attorney General to issue a cease and desist order after formally warning the unlicensed practitioner in accordance with the provisions of this chapter.

Any complaints involving allegations of unprofessional conduct or incompetence shall be investigated by the Division of Professional Regulation.

(70 Del. Laws, c. 546 § 22.)

§ 2115 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that 1 of the conditions or violations set forth in § 2113 of this title applies to a practitioner regulated by this chapter:

(1) Issue a letter of reprimand;

(2) Publicly censure a practitioner;

(3) Place a practitioner on probationary status and require the practitioner to:

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

b. Limit all practice and professional activities to those areas prescribed by the Board;

(4) Suspend any practitioner's license;

(5) Revoke any practitioner's license;

(6) Impose a monetary penalty not to exceed $500 for each violation in addition to suspension or revocation of a license; and/or

(7) The Board shall permanently revoke the license to practice optometry of a person who is convicted of a felony sexual offense.

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

(c) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(d) Where a license has been suspended due to a disability of the licensee, the Board may reinstate such license if, after a hearing, the Board is satisfied that the licensee is able to practice with reasonable skill and safety.

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

(70 Del. Laws, c. 546 § 23; 79 Del. Laws, c. 213 § 2; 79 Del. Laws, c. 277 § 8.)

§ 2116 Hearing procedures.

(a) If a complaint is filed with the Board pursuant to § 8735 of Title 29, alleging violation of § 2115 of this chapter, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) All hearings shall be 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 be in writing and shall include its reasons for such decision. The Board's decision shall be mailed immediately to the practitioner.

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

(70 Del. Laws, c. 546 § 30; 70 Del. Laws, c. 186 § 1.)

§ 2117 Reinstatement of a suspended license; removal from probationary status: replacement of license.

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

(b) Where a license has been suspended due to the licensee's inability to practice pursuant to this chapter, the Board may reinstate such license if, after a hearing, the Board is satisfied that the licensee is again able to perform the essential functions of an optometrist, with or without reasonable accommodations and/or there is no longer a significant risk of substantial harm to the health and safety of the individual or others.

(c) Applicants for reinstatement must pay the appropriate fees and submit documentation required by the Board as evidence that all the conditions of a suspension and/or probation have been met. Proof that the applicant has met the continuing education requirements of this

chapter may also be required, as appropriate.

(d) A new license to replace any license lost, destroyed or mutilated may be issued subject to the rules of the Board. A charge shall be made for such issuance.

(70 Del. Laws, c. 546 § 30.)

§ 2118 Exemptions.

(a) Nothing in this chapter shall be construed to prevent the sale and/or application of spectacles in the ordinary course of trade, provided no part of this chapter is violated by this exemption.

(b) Those persons having the degree of Doctor of Medicine or Doctor of Osteopathy and licensed to practice medicine and surgery in this State under Chapter 17 of this title shall be exempt from this chapter, and nothing in this chapter shall apply to or restrict a nationally registered contact lens technician, acting under a valid written spectacle prescription not more than 2 years old and under the supervision of a licensed ophthalmologist or optometrist, as defined in subsection (c) of this section, whose office is on the same premises as the contact lens technician. The contact lens technician shall keep the Board informed of the identity and office location of the contact lens technician's licensed supervising ophthalmologist or optometrist.

(c) For purposes of subsection (b) of this section, the following definitions apply:

(1) "On the same premises" means being within the same building as the designated licensed supervising ophthalmologist or optometrist. The building occupied by the designated licensed supervising ophthalmologist or optometrist must not include space with a building or structure owned, leased or occupied by the designated licensed supervising practitioner in which the designated licensed supervising practitioner does not engage in the regular and consistent practice of ophthalmology or optometry.

(2) "Supervision" means the regular and consistent physical presence and availability of a designated licensed supervising ophthalmologist or optometrist within the same building as the contact lens technician.

(25 Del. Laws, c. 113 § 17; Code 1915 § 907; 37 Del. Laws, c. 69 § 6; Code 1935 § 1017; 24 Del. C. 1953 § 2117; 59 Del. Laws, c. 250 § 14; 61 Del. Laws, c. 346 § 1; 66 Del. Laws, c. 1 § 1; 69 Del. Laws, c. 288 § 8; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 546 §§ 24, 25, 29; 72 Del. Laws, c. 424 § 1.)

§ 2119 Discrimination by state boards between optometrists and ophthalmologists forbidden.

No state board or commission, created or existing by law, including public schools and other state agencies, in the performance of their duties, shall in any way show any discrimination between optometrists and ophthalmologists.

All boards or commissions shall honor ocular reports or other professional services by legally qualified and licensed optometrists in this State.

(Code 1915 § 905A; 40 Del. Laws, c. 101 § 1; Code 1935 § 1005; 24 Del. C. 1953 § 2118; 66 Del. Laws, c. 1 § 1; 69 Del. Laws, c. 288 § 8; 70 Del. Laws, c. 546 §§ 26, 29.)

§ 2120 Penalty.

A person not currently licensed as an optometrist under this chapter, when guilty of engaging in the practice of optometry 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 optometry, shall be guilty of a misdemeanor. Upon the first offense, that person shall be fined not less than $100 nor more than $500 for each offense; and, in addition, may be imprisoned for not more than 1 year. For a second or subsequent conviction, the fine shall be not less than $500 nor more than $1,000 for each offense. Superior Court shall have jurisdiction over all violations of this chapter.

(25 Del. Laws, c. 113 §§ 15, 16; Code 1915 § 906; 37 Del. Laws, c. 69 § 5; 38 Del. Laws, c. 49 § 2; Code 1935 § 1016; 24 Del. C. 1953 § 2119; 54 Del. Laws, c. 332; 66 Del. Laws, c. 1 § 1; 69 Del. Laws, c. 288 § 8; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 546 §§ 27, 29.)

§ 2121 Continuing education requirements.

(a), (b) [Repealed.]

(c) The Board shall publish in its rules and regulations the guidelines governing acceptable continuing education requirements.

(d) In the event that any optometrist licensed in this State fails to meet continuing education requirements, that optometrist's license shall lapse, and not be eligible for renewal, at the end of the licensing period in which the requirements were not met. The Board may provide for hardship exceptions to the continuing education requirements in its rules and regulations. Subject to the time period for renewal established pursuant to § 2112 of this title, the Board shall renew such license upon presentation of satisfactory evidence of successful completion of continuing education requirements and upon payment of all fees due.

(70 Del. Laws, c. 546 §§ 28, 29; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 172 § 5; 80 Del. Laws, c. 356 § 1.)

§ 2122 Prescription requirements.

(a) No written prescription shall be prescribed if it does not contain the following information clearly written, clearly hand printed, electronically printed, or typed:

(1) The name, address and phone number of the prescriber;

(2) The name and strength of the drug prescribed;

(3) The quantity of the drug prescribed;
(4) The directions for use of the drug;
(5) Date of issue.

(b) Optometrists who apply for a provider identifier number for controlled substances shall do so as outlined by the Division of Professional Regulation.

(c) A completed application must provide proof of graduate level coursework that includes general and ocular pharmacology.

(d) Controlled substances registration must include both of the following:

(1) Optometrists must register with the Drug Enforcement Agency [DEA] and use such DEA number for controlled substance prescriptions.

(2) Optometrists must register biennially with the Office of Controlled Substances in accordance with § 4732 of Title 16.

(75 Del. Laws, c. 161 § 7; 80 Del. Laws, c. 356 § 1.)

§ 2123 Duty to report conduct that constitutes grounds for discipline or inability to practice.

(a) Every optometrist to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation, in writing, information that the licensee reasonably believes indicates that any other optometrist licensed under this chapter or any other healthcare provider has engaged in or is engaging in conduct that would constitute grounds for disciplinary action under this chapter or the other healthcare provider's licensing statute.

(b) Every individual to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation, in writing, information that the licensee reasonably believes indicates that any other optometrist licensed under this chapter or any other healthcare provider may be unable to practice with reasonable skill and safety to the public by reason of: mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive use or abuse of drugs, including alcohol.

(c) Every individual to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation any information that the reporting individual reasonably believes indicates that an individual certified and registered to practice optometry in this State is or may be guilty of unprofessional conduct or may be unable to practice medicine with reasonable skill or safety to patients by reason of: mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive use or abuse of drugs, including alcohol.

(d) All reports required under this section must be filed within 30 days of becoming aware of such information. An individual reporting or testifying in any proceeding as a result of making a report pursuant to this section is immune from claim, suit, liability, damages, or any other recourse, civil or criminal, if the individual acted in good faith and without gross or wanton negligence; good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant.

(80 Del. Laws, c. 356 § 1.)

Part

Chapter 23

PAWNBROKERS, SECONDHAND DEALERS AND SCRAP METAL PROCESSORS

Subchapter I

General Provisions

§ 2301 Definitions.

As used in this chapter:

(1) "Antique dealer" means a person, company, corporation, or member or members of a partnership or firm who sells exclusively goods that are at least 50 years old.

(2) "Automated kiosk" means an interactive device that is permanently installed within a secure retail space and that has the following technological functions:

a. Monitored remotely by a live representative during all business hours of operation;

b. Verification of a seller's identity via a government-issued identification card;

c. Secure storage of goods accepted by the kiosk;

d. Capture and storage of images during the transaction; and

e. Electronically report all transactions to law enforcement.

(3) "Consumer" means any person or buyer who purchases a retail product, as defined in paragraph (6) of this section, other than for further purposes of resale or processing.

(4) "Exempted Internet acquisitions" means any property acquired by a business licensed under this chapter from an exclusive Internet sale.

(5) "Pawnbroker" means any person, company, corporation, or member or members of a partnership or firm who:

a. Engages in the business of lending money on the deposit or pledge of personal property or other valuable things, other than causes in action, securities, or written evidences of indebtedness; or

b. Purchases personal property with an expressed or implied agreement or understanding to sell it back at a subsequent time at a stipulated price; or

c. Lends money upon goods, wares or merchandise pledged, stored or deposited as collateral security.

(6) "Retail" means the sale or purchase for final consumption in contrast to a sale for further sale or processing, or a sale to the final consumer, rather than a sale to a retailer or one who intends to resell.

(7) "Scrap metal processor" means any person, company, corporation, or member or members of a partnership or firm engaged in the business of selling or receiving any worn out or discarded metal, old iron, used plumbing fixtures, other metals, automobiles, automobile parts, chain, copper, lead, brass, or other parts of machinery.

(8) "Secondhand dealer" means any person, company, corporation, or member or members of a partnership or firm whose storefront business includes any volume of selling or receiving previously owned, used, rented or leased tangible personal property excluding motor vehicles. The term "secondhand dealer" includes any individual engaged in the business of receiving tangible personal property by means of an automated kiosk. The term "secondhand dealer" shall not include auction houses, flea markets, antique dealers or motor vehicle dealers. This chapter, as it relates to secondhand dealers, does not apply to:

a. The sale of secondhand goods at events commonly known as "garage sales," "yard sales," or "estate sales";

b. The sale or receipt of secondhand books, magazines, post cards, postage stamps;

c. The sale or receipt of used merchandise donated to recognized nonprofit, religious, or charitable organizations or any school-sponsored association for which no compensation is paid;

d. The sale or receipt of secondhand furniture;

e. The sale or receipt of secondhand clothing and shoes;

f. The sale of goods exclusively via the Internet that meet the definition of "exempted Internet acquisition" set forth in this section ;

g. Federal firearms licensed dealers;

h. The retail sale or purchase of goods, notwithstanding any and all articles under § 2302(b) of this title, and/or produce or other food products to a consumer, by a person, company, corporation, member or members of a partnership or firm from a location that the person, company, corporation, member or members or a partnership or firm, owns or leases; or

i. The taking in trade by a business of an item of a like kind to items which such business sells as new goods as the principal or substantial part of its business.

(24 Del. Laws, c. 162 § 1; Code 1915 § 1196; Code 1935 § 1382; 46 Del. Laws, c. 136 § 1; 24 Del. C. 1953 § 2301; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 284 § 1; 77 Del. Laws, c. 185 § 2; 78 Del. Laws, c. 184 §§ 1- 6; 79 Del. Laws, c. 299 § 1; 80 Del. Laws, c. 395 § 1.)

§ 2302 Reporting requirements.

(a) Every pawnbroker and secondhand dealer shall create a record and provide information regarding merchandise acquired via an electronic format to be determined by the Secretary of Safety and Homeland Security.

(1) Such record shall include, at a minimum, the following information:

a. The date and time of purchase;

b. The make, model, identifying markings, color, size, any listed serial number, International Mobile Station Equipment Identity (IMEI), the Mobile Equipment Identifier (MEID), any unique identifying number assigned by the manufacturer, or any other identifiable characteristics of the purchased item or items;

c. If payment is based on weight for precious metal, the weight of the type of the metal shall be listed as well as any precious stone(s) which is a part of the item;

d. The amount or other consideration paid for the merchandise;

e. The name and address of the individual from whom the merchandise is acquired;

f. The signature of the individual from whom the merchandise is acquired;

g. For each individual from whom the pawn broker or secondhand dealer acquires scrap metal:

1. The date of birth and driver's license; or,

2. Identification information about the individual from a valid state-issued photo identification card that provides a physical description of the individual, including the sex, race, distinguishing features, and approximate age, height and weight of the individual.

(2) Pawnbrokers and secondhand dealers shall collect a photograph of the seller and all information pertaining to the seller, required on the electronic form, for every transaction regardless of value.

(3) Automated kiosks shall collect a right thumbprint image of the seller and all information pertaining to the seller including photograph and valid government issued identification, required on the electronic form, for every transaction regardless of value.

(b)(1) Every scrap metal processor shall create a record and provide information regarding scrap metal acquired via an electronic format to be determined by the Secretary of Safety and Homeland Security with respect to the following articles purchased or otherwise acquired:

a. Copper;

b. Silver;

c. Gold;

d. Brass;

e. Platinum;

f. Bronze;

g. Automobiles or automobile parts displaying a vehicle identification number (VIN); or

h. Lead-acid batteries.

(2) Such record shall include, at a minimum, the following information:

a. The date and time of purchase;

b. The type and grade of scrap metal;

c. If payment is based on weight, the weight of each type and grade of scrap metal;

d. The amount or other consideration for the scrap metal;

e. The registration plate number, make and model of the vehicle used in the delivery of scrap metal;

f. The name and address of the individual from whom the scrap metal is acquired;

g. The signature of:

1. The individual from whom the scrap metal is acquired; and,

2. The scrap metal processor; and

h. For each individual from whom the scrap metal processor acquires scrap metal:

1. The date of birth and driver's license; or,

2. Identification information about the individual from a valid state-issued photo identification card that provides a physical description of the individual, including the sex, race, distinguishing features, and approximate age, height and weight of the individual.

(3) Scrap metal processors will collect a photograph of the seller and all information pertaining to the seller, required on the electronic form, for every transaction regardless of value.

(c) The forms required by subsections (a) and (b) of this section shall be completed immediately after any articles or goods have been purchased or acquired and shall be submitted electronically by the close of business the next business day, in a format to be determined by the Secretary of the Department of Safety and Homeland Security, to the law-enforcement agency having primary jurisdiction over the area in which the business is located. If the article or good's serial number, IMEI, MEID, or other unique identifying number is not available at the time of purchase or receipt from an automated kiosk, the report filed pursuant to this section must be updated with the serial number, IMEI, MEID, or other unique identifying number as soon as possible. The holding requirements in § 2304(a)(1) of this title do not begin until all required reports are complete and submitted to the appropriate law-enforcement agency. Forms submitted under this section shall

be kept confidential and are not public records.

(d) Pawnbrokers, secondhand dealers and scrap metal processors shall record the name of the person making the record entry and shall make that information available to police.

(e) The information provided on the forms under this section shall be stored and maintained by the pawnbroker, secondhand dealer or scrap metal processor for a period of 1 year and shall be provided to police immediately upon request.

(f) The Secretary of the Department of Safety and Homeland Security may promulgate rules and regulations that allow for the completion and filing of electronic forms and information.

(g)(1) Articles purchased or otherwise acquired by a scrap metal processor shall be recorded via an electronic image, in either still or video format, and a copy of said image(s) is to be supplied at the specific request of a law-enforcement agency, within 24 hours of said request.

(2) The images referenced in paragraph (g)(1) of this section above will be kept on file by the scrap metal processor for a minimum of 30 days after the image was recorded.

(24 Del. Laws, c. 162 § 5; Code 1915 § 1200; 28 Del. Laws, c. 81 § 1; Code 1935 § 1386; 47 Del. Laws, c. 263 § 1; 24 Del. C. 1953 § 2313; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 284 § 1; 76 Del. Laws, c. 349 §§ 1, 2; 77 Del. Laws, c. 185 § 3; 77 Del. Laws, c. 338 § 1; 78 Del. Laws, c. 173 § 1; 78 Del. Laws, c. 184 § 7; 79 Del. Laws, c. 156 §§ 1, 2; 79 Del. Laws, c. 299 § 1; 80 Del. Laws, c. 395 § 1.)

§ 2303 Pawn ticket and memorandum.

(a) Any pawnbroker shall furnish to each applicant or customer a ticket on which is printed a number corresponding with the number used to identify the article placed in pawn, and also the amount given in cash, together with all charges and the total amount to be paid when the article is to be redeemed.

(b) Any pawnbroker shall, at the time the loan is made on goods or articles, deliver to the person pawning or pledging such goods or articles, a memorandum or note, signed by such person and containing an account and description of the goods or articles pawned or pledged. No charge shall be made or received by any pawnbroker for any such ticket entry, memorandum or note.

(24 Del. Laws, c. 162 §§ 5, 6; Code 1915 §§ 1200, 1201; 28 Del. Laws, c. 81 § 1; Code 1935 §§ 1386, 1387; 47 Del. Laws, c. 263 § 1; 24 Del. C. 1953 § 2307; 75 Del. Laws, c. 284 § 1.)

§ 2304 Holding period.

(a)(1) A secondhand dealer operating an automated kiosk may ship all goods, wares and merchandise to a secure off-site location upon approval from the Superintendent of the State Police or the Superintendent's designee. Goods shipped under this section must be held for 30 days including weekends and holidays, subject to return and inspection by any police officer of Delaware. The off-site location may be out of the State.

(2) Every pawnbroker and secondhand dealer subject to this chapter must keep for a period of 18 days, including weekends and holidays, subject to inspection by any police officer of Delaware, all goods, wares and merchandise purchased or received from any person before selling, shipping or otherwise disposing of the same. This does not prohibit any person from securing valuable goods, wares and merchandise in a vault, safe or safety deposit box or other similarly secured storage area on the normal business premises so long as such secured items are readily available for inspection by a police officer. Scrap metal processors must hold platinum, gold and silver articles for 18 days.

(b) Every scrap metal processor subject to this chapter must keep for a period of 72 hours from the date and time the item was electronically reported, not including holidays or weekends, all copper or brass articles purchased or received from any person before selling, shipping or otherwise disposing of same, except that there shall be no holding period for articles meeting all of the following criteria:

(1) That are purchased or received from a commercially licensed entity;

(2) That are of the type commonly purchased or received from commercial entities; and

(3) For which payment is made directly to the commercial entity and not to the individual delivering the articles.

(c) Every scrap metal processor which takes in a scrapped or dismantled vehicle without a title must have the vehicle cleared by a Delaware State Police auto theft technician before the vehicle is scrapped, dismantled, or altered in any way.

(d) Such holding periods are not applicable when the person from whom the goods were acquired or pledged desires to redeem, repurchase, or recover the goods, provided the dealer or pawnbroker can produce the record of the original transaction with verification that the customer is the person from whom the goods were originally acquired.

(e) A pawnbroker, secondhand dealer, or scrap metal processor shall not destroy, disfigure or obliterate identification marks or cause the identity of an article to otherwise be destroyed so long as the article continues to be in that person's possession.

(f) Law-enforcement officers may require that an item be held for an additional 30 days beyond the requirements of subsection (a) of this section if they know or have reason to believe that the property is missing or stolen.

(24 Del. Laws, c. 162 § 11; Code 1915 § 1206; Code 1935 § 1392; 47 Del. Laws, c. 264 § 1; 24 Del. C. 1953 § 2311; 75 Del. Laws, c. 284 § 1; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 209 § 1; 76 Del. Laws, c. 349 §§ 3, 4; 78 Del. Laws, c. 184 §§ 8, 9; 79 Del. Laws, c. 156 § 3; 80 Del. Laws, c. 395 § 1.)

§ 2305 Inspection of premises and records.

(a) Every pawnbroker, secondhand dealer and scrap metal processor subject to this chapter shall maintain at a place of business

designated on the license records of all information required by this chapter, together with a photocopy of government-issued photo identification, for a period of at least 1 year from the date the transaction was recorded.

(b) The records required to be maintained in subsection (a) of this section shall, during regular business hours, be subject to inspection by a law-enforcement officer of Delaware, or by the Attorney General or any Deputy Attorney General.

(c) Such inspection shall consist of an examination on the premises of the inventory and required records to determine whether the records and inventory are being maintained on the premises as required by this chapter.

(24 Del. Laws, c. 162 § 7; Code 1915 § 1202; Code 1935 § 1388; 24 Del. C. 1953 § 2314; 71 Del Laws c. 176 § 31; 75 Del. Laws, c. 284 § 1.)

§ 2306 Stolen goods: notice to police.

Any pawnbroker, secondhand dealer or scrap metal processor may seize any goods offered to such person for sale or as a pledge or pawn, which such person has reason to believe have been stolen. Such person shall immediately notify the law enforcement agency with jurisdiction over the premises where the sale or offer or pledge took place or where the goods are currently located. Any person acting in compliance with this section shall be immune from civil or criminal penalties if that person acts in good faith.

(24 Del. Laws, c. 162 § 14; Code 1915 § 1209; Code 1935 § 1395; 24 Del. C. 1953 § 2316; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 284 § 1.)

§ 2307 Prohibited transactions.

(a) No pawnbroker, secondhand dealer or scrap metal processor subject to this chapter shall knowingly purchase or acquire any article, ware or merchandise:

(1) From any person or persons under the age of 18 unless that person or person is:

a. Recycling aluminum cans; or

b. Accompanied by a parent, grandparent or guardian;

(2) From any person under the influence of any intoxicating liquor or drug when such condition is visible or apparent; or

(3) Which has an altered, obliterated or otherwise tampered with serial number or identifying marking.

(b) No pawnbroker subject to this chapter shall take or receive as a pledge or pawn any artificial limb or wheelchair.

(c) A scrap metal processor may not purchase a catalytic converter from an individual unless the individual, at the time of purchase, provides identification as:

(1) A licensed automotive dismantler and recycler or scrap metal processor; or

(2) An agent or employee of a licensed commercial enterprise.

(d) A scrap metal processor may not purchase the following items from an individual unless the individual, at the time of purchase, provides appropriate authorization from a relevant business or unit of federal, state, or local government specifically authorizing the individual to conduct the transaction.

(1) Metal bleachers;

(2) Hard-drawn copper;

(3) Metal beer kegs;

(4) Cemetery urns;

(5) Grave markers;

(6) Materials related to railroad infrastructure; and

(7) Any other used articles owned by a public utility including:

a. Guardrails;

b. Manhole covers;

c. Metal light poles;

d. Tree grates;

e. Water meters; and

f. Street signs.

(24 Del. Laws, c. 162 §§ 9, 10; 24 Del. Laws, c. 163 § 1; Code 1915 §§ 1204, 1205; Code 1935 §§ 1390, 1391; 47 Del. Laws, c. 169 § 1; 24 Del. C. 1953 §§ 2309, 2310, 2312; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 284 § 1; 79 Del. Laws, c. 156 § 4.)

§ 2308 Penalties.

Whoever violates this chapter, except where another penalty is provided, shall be guilty of a misdemeanor and, if convicted, may be fined not more than $10,000.

(24 Del. Laws, c. 162 § 16; Code 1915 § 1211; Code 1935 § 1397; 46 Del. Laws, c. 135 § 1; 24 Del. C. 1953 § 2318; 75 Del. Laws, c. 284 § 1; 76 Del. Laws, c. 209 § 2; 77 Del. Laws, c. 185 § 4.)

§ 2309 Local regulations.

Nothing in this chapter shall preclude political subdivisions of the State and municipalities from enacting laws more restrictive than the provisions of this chapter, but such laws shall be in addition to, not in lieu of, the regulations set forth in this chapter.

(75 Del. Laws, c. 284 § 1.)

Subchapter II

Licensing

§ 2310 License required.

No person shall carry on the business of a pawnbroker, secondhand dealer or scrap metal processor without first having taken out a license and duly qualified as provided in this chapter.

(24 Del. Laws, c. 162 § 13; Code 1915 § 1208; Code 1935 § 1394; 24 Del. C. 1953 § 2302; 75 Del. Laws, c. 284 § 1.)

§ 2311 Licenses; qualifications; issuance by State Police.

The State Police shall annually on or before March 15 grant licenses to such persons, citizens of this State and companies existing under the laws of this State to engage in and carry on the business of pawnbroker, secondhand dealer or scrap metal processor.

The licenses shall designate the building in which the person or company shall carry on the business. No person or company shall engage in or carry on the business of pawnbroker, secondhand dealer or scrap metal processor in any other building than the 1 designated in the license. This prohibition does not apply to the acquisition of goods by a pawnbroker, secondhand dealer or scrap metal processor.

The State Police may suspend or revoke a license for a violation of this chapter or regulations promulgated thereunder by the Secretary of the Department of Safety and Homeland Security.

(24 Del. Laws, c. 162 § 1; Code 1915 § 1196; Code 1935 § 1382; 46 Del. Laws, c. 136 § 1; 24 Del. C. 1953 § 2303; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 284 § 1; 77 Del. Laws, c. 185 § 5.)

§ 2312 License fees.

(a) Every person receiving a license for conducting the business of pawnbroker shall pay the State Police $50 to go to the State's General Fund.

(b) Every person receiving a license for conducting the business of secondhand dealer shall pay the State Police $50 to go to the State's General Fund.

(c) Every person receiving a license for conducting the business of scrap metal processor shall pay the State Police $50 to go to the State's General Fund.

(d) Every person receiving a license for conducting the business of pawnbroker, secondhand dealer or scrap metal processor, shall annually pay a reasonable subscription fee, not to exceed $300, to the electronic reporting system designated by the Secretary of the Department of Safety and Homeland Security.

(24 Del. Laws, c. 162 § 2; Code 1915 § 1197; Code 1935 § 1383; 46 Del. Laws, c. 137 § 1; 24 Del. C. 1953 § 2304; 75 Del. Laws, c. 284 § 1; 78 Del. Laws, c. 173 § 2.)

§ 2313 Pawnbroker's insurance.

Every person applying for a license to conduct the business of a pawnbroker shall first effect an insurance policy against fire for $50,000 for the protection of goods, pawned or pledged.

(24 Del. Laws, c. 162 § 4; Code 1915 § 1199; Code 1935 § 1385; 24 Del. C. 1953 § 2306; 75 Del. Laws, c. 284 § 1.)

§ 2314 Annual state report.

The State Police shall maintain an annual report setting forth the list of licensed pawnbrokers, secondhand dealers and scrap metal processors in this State and their respective addresses and contact information.

(24 Del. Laws, c. 162 § 5; Code 1915 § 1200; 28 Del. Laws, c. 81 § 1; Code 1935 § 1386; 47 Del. Laws, c. 263 § 1; 24 Del. C. 1953 § 2313; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 284 § 1.)

§ 2315 Rate of interest.

No person conducting the business of a pawnbroker shall ask, demand or receive a greater rate of interest than 30 percent per month on any loans secured by pledge of personal property.

(24 Del. Laws, c. 162 § 8; Code 1915 § 1203; 30 Del. Laws, c. 83 § 1; Code 1935 § 1389; 24 Del. C. 1953 § 2308; 75 Del. Laws, c. 284 § 1; 77 Del. Laws, c. 185 § 6.)

§ 2316 Unlicensed pawnbrokers, secondhand dealers or scrap metal processors.

(a) Any pawnbroker, second hand dealer, or scrap metal processor operating without the required license may be issued a cease and desist order by the Delaware State Police and will not be permitted to operate without first obtaining such license.

(b) Any property acquired by a pawnbroker, secondhand dealer, or scrap metal processor during the time they were unlicensed is subject to forfeiture.

(79 Del. Laws, c. 299 § 1.)

Part

Chapter 25

PHARMACY

Subchapter I

Objectives; Definitions; Board of Pharmacy

§ 2501 Objectives.

The primary objective of the Board of Pharmacy is to promote, preserve, and protect the public health, safety, and welfare. In meeting this objective, the Board shall develop and maintain a registry of drug outlets engaged in the manufacture, production, sale, and distribution of drugs, medications, and such other materials as may be used in the diagnosis and prevention of illness and disease and in the treatment of injury, and shall monitor the outlets to insure safe practices. The secondary objective of the Board is to maintain minimum standards of professional competency in the practice of pharmacy.

In meeting its objectives, the Board shall develop standards assuring professional competence; shall monitor complaints brought against pharmacists regulated by the Board; shall adjudicate at formal complaint hearings; shall promulgate rules and regulations; and shall impose sanctions, where necessary, against pharmacists. This chapter must be liberally construed to carry out these objectives.

(68 Del. Laws, c. 206 § 1; 76 Del. Laws, c. 167 § 1.)

§ 2502 Definitions.

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

(1) "Biological product" means a biological product as defined in § 351 of the Public Health Service Act (42 U.S.C. § 262).

(2) "Board," "Board of Pharmacy," or "State Board of Pharmacy" means the Delaware State Board of Pharmacy.

(3) "Certified pharmacy technician" means a person who is certified by the Pharmacy Technician Certification Board (PTCB) or other entity approved by the Board of Pharmacy.

(4) "Direct supervision" means oversight and control by a licensed pharmacist who remains on the premises and is responsible for the work performed by a subordinate.

(5) "Dispense" means to furnish or deliver a drug to an ultimate user by or pursuant to the lawful prescription of a practitioner. Dispense includes the preparation, packaging, labeling, or compounding necessary to prepare a drug for furnishing or delivery.

(6) "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.

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

(8) "Drug" means:

a. A substance recognized as a drug in the Official United States Pharmacopoeia/National Formulary;

b. A substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of any illness, condition, or disease in humans or animals;

c. A substance, other than food, intended to affect the structure or any function of the body of a human or an animal; or

d. A substance intended for use as a component of any substance specified in paragraph (8)a., b. or c. of this section.

"Drug" does not include devices or their components, parts, or accessories.

(9) "Drug outlet" means a pharmacy, an in-state or out-of-state drug wholesaler, a drug manufacturer, a drug distributor, or a nonpharmacy veterinary drug seller.

(10) "Executive Secretary" means the executive secretary of the Delaware State Board of Pharmacy who shall be a pharmacist.

(11) "Federal Food and Drug Administration (FDA) Approved Drug Products with Therapeutic Equivalence Evaluations" means the publication with that title containing a list of prescription drugs by generic name.

(12) "Interchangeable" means a biological product licensed by the Federal Food and Drug Administration pursuant to 42 U.S.C. § 262(k)(4).

(13) "Intern" means a person who is registered by the Board of Pharmacy and supervised by an approved preceptor and who is completing the practical experience requirement of the Board prior to that person's licensure as a pharmacist.

(14) "Internship" or "externship" means a period of practical experience established by Board of Pharmacy regulation that must be completed by an applicant for a license to practice pharmacy in this State.

(15) "Manufacturer" means a person who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a drug, but does not include a person who is engaged in the preparation and dispensing of a drug pursuant to a prescription.

(16) "Monitoring drug therapy" means interpreting and analyzing information needed to evaluate the safety and efficacy of drug

therapy.

(17) "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.

(18) "Over-the-counter product" or "OTC" means a substance which may be sold without a prescription and which is packaged for use by the consumer and labeled in accordance with the requirements of state and federal statutes and regulations.

(19) "Person" means a natural person or an entity.

(20) "Pharmacist" or "licensee" means an individual licensed by the State pursuant to this chapter to engage in the practice of pharmacy.

(21) "Pharmacy" means a place where drugs are compounded or dispensed.

(22) "Pharmacy technician" means an individual who is not registered as an intern with the Board of Pharmacy or a certified pharmacy technician.

(23) "Practice of pharmacy" means the interpreting, evaluating, and dispensing of a practitioner's or prescriber's order. The practice of pharmacy includes, but is not limited to, the proper compounding, labeling, packaging, and dispensing of a drug to a patient or the patient's agent, and administering a drug to a patient. The practice of pharmacy includes the application of the pharmacist's knowledge of pharmaceutics, pharmacology, pharmacokinetics, drug and food interactions, drug product selection, and patient counseling. It also includes:

a. Participation in drug utilization and/or drug regimen reviews;

b. Participation in therapeutic drug selection, substitution of therapeutically equivalent drug products;

c. Advising practitioners and other health-care professionals, as well as patients, regarding the total scope of drug therapy, so as to deliver the best care possible;

d. Monitoring drug therapy;

e. Performing and interpreting capillary blood tests to screen and monitor disease risk factors or facilitate patient education, the results of which must be reported to the patient's health-care practitioner; screening results to be reported only if outside normal limits;

f. Conducting or managing a pharmacy or other business establishment where drugs are compounded or dispensed;

g. The use of telemedicine and participation in telehealth in a manner deemed appropriate by regulation; and

h. Administration of injectable medications, biologicals and adult immunizations pursuant to a valid prescription or physician-approved protocol approved by a physician duly licensed in the State under subchapter III of Chapter 17 of this title. Pharmacists shall request which physician or physicians and notify the physician or physicians as designated by the patient of such administration within 24 hours. The notice shall include the patient's name, the name of the immunizations, inoculations or vaccinations administered, and the date of administration and may be submitted by phone, fax, post or electronically. Upon request a copy of the protocol will be made available to the designated physician or physicians without costs.

(24) "Practitioner" or "prescriber" means an individual who is authorized by law to prescribe drugs in the course of professional practice or research in any state.

(25) "Preceptor" means a licensed pharmacist who is approved by the Board to supervise an intern.

(26) "Prescription drug" or "legend drug" means a drug required by federal or state law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients, subject to § 503(b) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 353(b)).

(27) "Prescription drug order" or "prescription" means the lawful written or verbal order of a practitioner for a drug.

(28) "Reference product" means a product as defined by the Federal Food and Drug Administration pursuant to 42 U.S.C. § 262.

(29) "State" means the State of Delaware.

(30) "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.

(31) "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 pharmacy.

(32) "Substitution" or "substitute" means pharmacist's selection of prescriber authorized generic or therapeutically equivalent prescription medications or, in the case of biologicals, pharmacist selection of an interchangeable biological product in place of the prescribed product. Generic substitution means a drug that is the same active ingredient, equivalent in strength to the strength written on the prescription and which is classified as being therapeutically equivalent to another drug in the latest edition or supplement of the Federal Food and Drug Administration (FDA) Approved Drug Products with Therapeutic Equivalence Evaluations, sometimes referred to as the "Orange Book."

(33) "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.

(34) "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.

(35) "Therapeutically equivalent drug" means a drug which contains the same active ingredient or ingredients and is identical in strength or concentration, dosage form, and route of administration and which is classified as being therapeutically equivalent to another drug in the latest edition or supplement of the Federal Food and Drug Administration (FDA) Approved Drug Products with Therapeutic Equivalence Evaluations, Evaluations, sometimes referred to as the Orange Book.

(36) "Use or abuse of drugs" means:

a. The use of illegal drugs;

b. The use of prescription drugs without a prescription; or

c. The excessive use or abuse of alcoholic beverage or drugs to the extent that it impairs a pharmacist's ability to perform the work of a pharmacist.

(37) "Wholesale distribution" means the distribution of drugs to a person other than a consumer or patient. Wholesale distribution does not include:

a. The distribution of drugs within a healthcare group-purchasing organization;

b. The transfer of prescription drugs by a pharmacy to another pharmacy to alleviate a temporary shortage;

c. The dispensing of a drug pursuant to a prescription; or

d. The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug:

1. By a charitable organization described in § 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)(3)) to a nonprofit affiliate of the charitable organization to the extent permitted by law;

2. Among hospitals or other health care entities which are under common control;

3. For emergency medical reasons.

(38) "Wholesale distributor" means a person engaged in the wholesale distribution of drugs, including, but not limited to, a manufacturer's or distributor's warehouse, a chain drug warehouse or wholesale drug warehouse, an independent wholesale drug trader, and a pharmacy that engages in the wholesale distribution of drugs.

(68 Del. Laws, c. 206 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 412 § 1; 74 Del. Laws, c. 262 § 42; 76 Del. Laws, c. 167 § 1; 79 Del. Laws, c. 238 § 1; 80 Del. Laws, c. 80 § 13.)

§ 2503 Board of Pharmacy; appointments; composition; qualifications; terms; vacancies; suspension or removal; unexcused absences; compensation.

(a) The Delaware State Board of Pharmacy shall administer and enforce this chapter.

(b) The Board consists of 9 members who are appointed by the Governor and who are residents of the State. Six members are pharmacists who have been engaged in the practice of pharmacy in Delaware for at least 5 years and who are representative of the various practice settings in the field of pharmacy. Three members are public members, 1 from each county. A public member may not be, nor ever have been, a pharmacist or a member of the immediate family of a pharmacist; may not be, nor ever have been, employed by a pharmacy; may not have a material interest in the providing of goods or services to a pharmacy; and may not be, nor ever have been, engaged in an activity directly related to the practice of pharmacy. A public member must be accessible to inquiries, comments, and suggestions from the general public.

(c) Except as provided in subsection (d) of this section, each Board member serves 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, the member may succeed himself or herself for only 1 additional full term. A person appointed to fill a vacancy on the Board holds office for the remainder of the unexpired term of the vacating member. Each term of office expires on the date specified in the appointment; however, a Board member whose appointment has expired remains eligible to participate in Board proceedings unless or until replaced by the Governor. Members must be appointed so that the terms of no more than 3 members expire in any 1 year. A person who is a member of the Board on July 24, 2007, may complete that person's own term.

(d) A person who has never served on the Board may be appointed to the Board for 2 consecutive terms; but that person is thereafter ineligible to serve for 2 consecutive appointments. A person who has been twice appointed to the Board or who has served on the Board for 6 years within any 9-year period may not again be appointed to the Board until an interim period of at least 1 term has expired since the person last served.

(e) An act or vote on Board business by a person appointed to the Board in violation of this section is invalid.

(f) The Governor shall suspend or remove a member of the Board for the member's misfeasance, nonfeasance, malfeasance, misconduct, incompetency, or neglect of duty. A member subject to a disciplinary hearing must be disqualified from Board business until the charge is adjudicated or the matter is otherwise concluded. A Board member may appeal to the Superior Court a suspension or removal initiated pursuant to this subsection.

(g) A member of the Board, while serving on the Board, may not hold elective office in any professional association of pharmacists or

serve as an officer of a professional association's political action committee (PAC).

(h) The provisions of the State Employees', Officers' and Officials' Code of Conduct set forth in Chapter 58 of Title 29 apply to the members of the Board.

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

(j) The Division shall reimburse Board members for expenses involved in each meeting, including travel, according to Division policy. A member may not receive more than $50 for each meeting attended, and not more than $500 in any calendar year. After attending 10 meetings, a member may not be compensated for any subsequent meetings attended in that year.

(k) The Pharmacy Regulatory Council shall fall under the authority of the Board of Medical Licensure and Discipline and shall consist of 4 pharmacists and 1 member of the public appointed by the Board of Pharmacy, and 2 physicians appointed by the Board of Medical Licensure and Discipline. One of the physicians shall serve as chairperson of the Council. Regulations applicable to activities described in § 2502(23)h. of this title must be approved by the Council.

(24 Del. Laws, c. 140 §§ 7, 10; Code 1915 §§ 856, 859; 36 Del. Laws, c. 103 § 1; Code 1935 § 936; 45 Del. Laws, c. 90 § 2; 24 Del. C. 1953 §§ 2501, 2505; 53 Del. Laws, c. 90 §§ 1, 3; 59 Del. Laws, c. 318 § 1; 60 Del. Laws, c. 586 §§ 1, 2; 62 Del. Laws, c. 251 §§ 2, 3; 65 Del. Laws, c. 378 § 1; 67 Del. Laws, c. 366 § 7; 67 Del. Laws, c. 368 § 13; 68 Del. Laws, c. 206 § 1; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 167 § 1; 77 Del. Laws, c. 319 § 1; 79 Del. Laws, c. 238 § 1; 80 Del. Laws, c. 80 § 13.)

§ 2504 Organization; meetings; officers; quorum; Executive Secretary.

(a) The Board shall hold regularly scheduled business meetings at least 6 times in a calendar year, and at other times as the President of the Board considers necessary, and at the request of a majority of the Board members.

(b) The Board shall elect annually a president and other officers as it considers appropriate and necessary to conduct business. Each term of office is for 1 year. An officer may not serve for more than 3 consecutive terms in the same office.

(c) The Executive Secretary, who is an ex officio member of the Board without a vote, is responsible for the performance of the regular administrative functions of the Board and other duties as the Board may direct.

(d) A majority of the members of the Board constitutes a quorum for the purpose of transacting business; however, no disciplinary action may be taken without the affirmative vote of at least 5 members.

(e) Minutes of all meetings must be recorded. The Executive Secretary shall maintain copies of the recorded minutes. At any hearing where evidence is presented, a record from which a verbatim transcript can be prepared must be made. The person requesting a transcript incurs the expense of preparing the transcript.

(24 Del. Laws, c. 140 § 8; Code 1915 § 857; Code 1935 § 937; 45 Del. Laws, c. 90 § 1; 24 Del. C. 1953 § 2502; 59 Del. Laws, c. 318 § 2; 68 Del. Laws, c. 206 § 1; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 167 § 1.)

§ 2505 Records.

The Executive Secretary shall keep complete records relating to meetings of the Board, examinations, rosters of licensees and permit holders, changes and additions to the Board's rules and regulations, complaints, hearings, and other matters as the Board determines. Records kept in accord with this section are prima facie evidence of the proceedings of the Board.

(76 Del. Laws, c. 167 § 1.)

§ 2506 Authority of the Board.

(a) The Board of Pharmacy has the authority to:

(1) Promulgate rules and regulations in accordance with the procedures specified in the Administrative Procedures Act [Chapter 101 of Title 29];

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

(3) Designate the national standardized examinations in pharmacy and jurisprudence as approved by the National Association of Boards of Pharmacy, or its successor, to be taken by a person applying for a license to practice pharmacy;

(4) Evaluate the credentials of each person applying for a license to practice pharmacy in order to determine whether the person meets the qualifications set forth in this chapter;

(5) Grant a license to and renew the license of each person who qualifies for a license to practice pharmacy; and grant or renew a license with restrictions, if appropriate, as a reasonable accommodation to an applicant with a disability;

(6) Establish by regulation continuing education standards required for license renewal;

(7) Evaluate certified records, including criminal history records, to determine whether an applicant for licensure who previously has been licensed, certified, or registered in another jurisdiction to practice pharmacy 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 the applicant for such acts or offenses;

(8) Maintain a registry of interns;

(9) Refer all complaints from licensees and the public concerning persons licensed under this chapter, or concerning the practices of the Board or the profession, to the Division 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 for the technical aspects of the complaint;

(10) Issue subpoenas to require the attendance of persons and the production of books and papers for the purpose of conducting investigations preliminary to hearings and for the purpose of eliciting testimony at hearings. A person who is subpoenaed may be required to testify in any and all matters within the jurisdiction of the Board. Subpoenas may be issued by the Director of the Division of Professional Regulation or the Executive Secretary of the Board and are enforceable by the Superior Court;

(11) Conduct hearings and issue orders in accordance with the procedures established in the Administrative Procedures Act in Chapter 101 of Title 29;

(12) Designate and impose an appropriate sanction or penalty, if it has been determined after a hearing that a sanction or penalty should be imposed;

(13) Evaluate applications and issue permits to pharmacies or other establishments, as provided under this chapter;

(14) Join professional organizations and associations organized exclusively to promote the improvement of the standards of the practice of pharmacy for the protection of the health, safety, and welfare of the public and whose activities assist and facilitate the work of the Board, and pay annual dues to the organizations and associations joined;

(15) Regulate the sale and dispensing of drugs and other materials, including the right to seize any drugs and other materials found by the Board to be detrimental to the public health, safety, or welfare, in accordance with Chapter 33 of Title 16;

(16) Regulate the purity and quality of drugs and other materials within the practice of pharmacy;

(17) Promulgate rules and regulations to implement the law relating to pure drugs, pursuant to § 3315 of Title 16;

(18) Appoint public members and pharmacists to the Pharmacy Regulatory Council of the Board of Medical Licensure and Discipline.

(b) The Board of Pharmacy shall promulgate regulations specifically identifying those crimes, which are substantially related to the practice of pharmacy.

(c) The Board shall submit a written report to the Governor within 3 months after the conclusion of each fiscal year and shall make the report available to anyone requesting a copy.

(24 Del. Laws, c. 140 §§ 9, 12; 24 Del. Laws, c. 141 §§ 1, 2; Code 1915 §§ 858, 861, 868, 875; 28 Del. Laws, c. 62; 29 Del. Laws, c. 55; 36 Del. Laws, c. 103 § 1; Code 1935 §§ 938, 941, 948, 956; 43 Del. Laws, c. 95 § 1; 45 Del. Laws, c. 90 § 3; 46 Del. Laws, c. 95 § 3; 24 Del. C. 1953 §§ 2503, 2506, 2507, 2509; 53 Del. Laws, c. 90 §§ 4, 272; 53 Del. Laws, c. 108 § 27; 55 Del. Laws, c. 316 § 3; 62 Del. Laws, c. 251 §§ 1, 4, 5; 64 Del. Laws, c. 452 § 2; 65 Del. Laws, c. 378 § 2; 68 Del. Laws, c. 206 § 1; 72 Del. Laws, c. 159 § 1; 74 Del. Laws, c. 262 § 43; 76 Del. Laws, c. 167 § 1; 77 Del. Laws, c. 319 § 1.)

Subchapter II

Licensure

§ 2507 License required.

(a) A person may not, in this State, engage in the practice of pharmacy or hold himself or herself out to the public as being qualified to practice pharmacy, or use in connection with that person's own name, or otherwise assume or use, a title or description conveying or tending to convey the impression that the person is qualified to practice pharmacy, except as provided in this chapter.

(b) No person who has not been issued a certificate as a pharmacist or who is not a pharmacy intern, or a pharmacy student participating in an approved College of Pharmacy coordinated practical experience program under the direct supervision of a licensed pharmacist, within the meaning of this chapter, shall certify a prescription, perform drug utilization reviews, provide drug information requiring clinical or technical knowledge, counsel patients, receive new verbal prescription orders without recorded backup, or contact a prescriber concerning prescription drug order interpretation or therapy modification. Other responsibilities may be delegated to a certified pharmacy technician or pharmacy technicians who are under the direct supervision of a pharmacist.

(c) It is unlawful for a person to practice pharmacy in this State if the person's license to practice pharmacy expires, is placed on inactive status, or is suspended or revoked.

(d) The penalty for a violation of this section is, for a first conviction, a fine of not less than $500 nor more than $1000, and for a second or subsequent conviction, a fine of not less than $1000 nor more than $2000.

(24 Del. Laws, c. 140 § 1; Code 1915 § 862; Code 1935 § 942; 24 Del. C. 1953 § 2521; 64 Del. Laws, c. 452 § 1; 68 Del. Laws, c. 206 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 161 § 9; 75 Del. Laws, c. 260 §§ 1, 2; 76 Del. Laws, c. 167 § 1.)

§ 2508 Qualifications of applicant; judicial review; report to Attorney General.

(a) An applicant for a license to practice pharmacy must submit evidence, verified by oath or affirmation and satisfactory to the Board, that the applicant has completed the requirements for graduation from a school or college of pharmacy accredited by the American Council on Pharmaceutical Education; or, if the applicant is a graduate of a foreign school or college of pharmacy, that the applicant graduated and received a pharmacy degree from a pharmacy degree program which has been approved by the Board.

(b) An applicant for a license to practice pharmacy must obtain practical experience in the practice of pharmacy during and/or after attendance at a school or college of pharmacy, under such terms and conditions as the Board determines. The Board shall also determine the necessary qualifications for preceptors used in internships or other programs.

(c) The Board shall determine whether an applicant whose conduct or status is described in 1 or more of the following paragraphs of this

subsection is qualified to engage in the practice of pharmacy. In making this determination, the Board shall consider whether the applicant's conduct is or is not related to the practice of pharmacy and whether licensure of the applicant will or will not present a risk to public health, safety, or welfare.

(1) The applicant received an administrative penalty regarding the practice of pharmacy, including but not limited to fines, formal reprimands, license suspension or revocation (except for license revocation for nonpayment of license renewal fees), probationary limitations, or entry into a consent agreement which contains conditions placed by a Board on the applicant's professional conduct and practice, including the voluntary surrender of the applicant's license to practice pharmacy.

(2) The applicant has an impairment related to drugs, alcohol, or mental competence.

(3) The applicant has a criminal conviction record or a pending criminal charge related to an incident, the circumstances of which substantially relate to the practice of pharmacy. However, 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, may waive this paragraph (c)(3) of this section, if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

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

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

(d) An applicant shall submit fingerprints and other necessary information in order to obtain a report of the individual's entire criminal history record from the State Bureau of Identification and from the Federal Bureau of Investigation pursuant to Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C § 534). If the applicant does not have a criminal history record, the applicant shall cause to be submitted a statement from each agency that the agency has no record of criminal history information relating to the applicant. The State Bureau of Identification shall be the intermediary for the purpose of this subsection and the Board, or its designee, shall be the screening point for the receipt of the federal criminal history record. The applicant is responsible for the required fee, if any, for obtaining the records.

(e) If the Board finds that false information has been intentionally provided to the Board, it shall report its finding to the Attorney General's Office for further action.

(f) If the Board refuses to accept, or rejects, an application and the applicant believes that the Board acted without justification, or imposed higher or different standards for the applicant than for other applicants, or in some other unlawful manner contributed to or caused the refusal or rejection of the application, the applicant may appeal to the Superior Court.

(24 Del. Laws, c. 140 §§ 2,3; Code 1915 §§ 863, 864; 35 Del. Laws, c. 56 § 1; Code 1935 §§ 943, 944; 41 Del. Laws, c. 87 § 1; 42 Del. Laws, c. 91 § 1; 46 Del. Laws, c. 95 §§ 1, 2; 24 Del. C. 1953 §§ 2522, 2523; 53 Del. Laws, c. 90 §§ 6,7; 58 Del. Laws, c. 511 § 57; 59 Del. Laws, c. 318 § 3; 62 Del. Laws, c. 251 § 6; 64 Del. Laws, c. 167 § 1; 65 Del. Laws, c. 378 § 3; 68 Del. Laws, c. 206 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 436 § 22; 76 Del. Laws, c. 167 § 1; 77 Del. Laws, c. 199 § 18; 78 Del. Laws, c. 44 §§ 36, 37.)

§ 2509 Examination.

(a) The Board shall adopt the administration, grading procedures, and passing score of the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination (MPJE) or of comparable alternative national examinations.

(b) The Board shall determine in its rules and regulations the frequency and conditions under which a candidate may retest after a failure.

(24 Del. Laws, c. 140 § 3; Code 1915 § 864; 35 Del. Laws, c. 56 § 1; Code 1935 § 944; 41 Del. Laws, c. 87 § 1; 42 Del. Laws, c. 91 § 1; 46 Del. Laws, c. 95 § 2; 24 Del. C. 1953 § 2523; 53 Del. Laws, c. 90 § 7; 58 Del. Laws, c. 511 § 57; 59 Del. Laws, c. 318 § 3; 64 Del. Laws, c. 167 § 1; 68 Del. Laws, c. 206 § 1; 75 Del. Laws, c. 436 § 22; 76 Del. Laws, c. 167 § 1.)

§ 2510 Reciprocity.

(a) The Board shall grant a license to practice pharmacy to a reciprocal applicant who pays the appropriate fee, submits a completed application on forms provided by the Board and which completed application is accepted by the Board, and who otherwise qualifies pursuant to subsection (b) of this section and sends proof to the Board that:

(1) The reciprocal applicant's current licensure is in good standing in another state, the District of Columbia, or a territory of the United States;

(2) The reciprocal applicant passed the NAPLEX and MPJE or a comparable alternative national examination adopted by the Board for this State; and

(3) The reciprocal applicant passed the examination of the Foreign Pharmacy Graduate Examination Committee (FPGEC) of the National Association of Boards of Pharmacy Foundation (NABP), if the applicant is a graduate of a foreign school of pharmacy.

(b) The provisions of § 2508(c), (d), (e), and (f) of this title apply to reciprocal applicants. If a disciplinary proceeding or unresolved complaint is pending against a reciprocal applicant, the reciprocal applicant may not be licensed in this State until the proceeding or

complaint has been resolved to the satisfaction of the Board. A reciprocal applicant for licensure in this State is deemed to have given consent to the release of information regarding disciplinary proceedings and unresolved complaints and to have waived all objections to the admissibility of the information as evidence at any hearing or other proceeding to which the reciprocal applicant may be subjected.

(c) A reciprocal applicant is not required to obtain practical experience pursuant to § 2508(b) of this title.

(24 Del. Laws, c. 140 § 3; Code 1915 § 864; 35 Del. Laws, c. 56 § 1; Code 1935 § 944; 41 Del. Laws, c. 87 § 1; 42 Del. Laws, c. 91 § 1; 46 Del. Laws, c. 95 § 2; 24 Del. C. 1953 § 2523; 53 Del. Laws, c. 90 § 7; 58 Del. Laws, c. 511 § 57; 59 Del. Laws, c. 318 § 3; 64 Del. Laws, c. 167 § 1; 68 Del. Laws, c. 206 § 1; 75 Del. Laws, c. 436 § 23; 76 Del. Laws, c. 167 § 1.)

§ 2511 Fees.

The amount charged by the Division for each fee imposed under this chapter must approximate and reasonably reflect the cost necessary to defray the expenses of the Board as well as the proportional expenses incurred by the Division in its services or activities on behalf of the Board. A separate fee may be charged for each service or activity. At the beginning of each licensure biennium, the Division, or a state agency acting on its behalf, shall compute and set the fee for the licensure biennium.

(24 Del. Laws, c. 140 §§ 9, 12; 24 Del. Laws, c. 141 §§ 1, 2; Code 1915 §§ 858, 861, 868; 28 Del. Laws, c. 62; 29 Del. Laws, c. 55; 36 Del. Laws, c. 103 § 1; Code 1935 §§ 938, 941, 948; 43 Del. Laws, c. 95 § 1; 45 Del. Laws, c. 90 § 3; 46 Del. Laws, c. 95 § 3; 24 Del. C. 1953 §§ 2503, 2506, 2507; 53 Del. Laws, c. 90 §§ 4, 272; 53 Del. Laws, c. 108 § 27; 55 Del. Laws, c. 316 § 3; 62 Del. Laws, c. 251 §§ 1, 4, 5; 64 Del. Laws, c. 452 § 2; 65 Del. Laws, c. 378 § 2; 68 Del. Laws, c. 206 § 1; 74 Del. Laws, c. 262 § 43; 76 Del. Laws, c. 167 § 1.)

§ 2512 Issuance and renewal of license.

(a) The Board shall issue a license to each applicant who meets the requirements of this chapter for licensure to practice pharmacy and who pays the fee established under § 2511 of this title.

(b) A license to practice pharmacy must be renewed biennially, in a manner determined by the Division. License renewal must include the completion and submission of a renewal form provided by the Division, payment of the appropriate fee, and proof that the licensee has met the continuing education requirements established by the Board.

(c) The Board shall not renew any license to any applicant unless and until the applicant has offered proof that the applicant has completed continuing professional education relating to:

(1) The distribution, dispensing or delivery of controlled substances, as defined in this chapter; or

(2) The detection and recognition of symptoms, patterns of behavior, or other characteristic of impairment and dependency resulting from the abusive or illegal use of controlled substances; and

(3) Other topics as the Board deems appropriate.

(d) The Board, in its rules and regulations, shall determine the period of time within which a licensee may renew that licensee's own license, notwithstanding the fact that the licensee failed to renew that licensee's own license on or before the designated renewal date; provided, however, that the period of time may not exceed 1 year beyond the designated renewal date.

(e) A licensee, upon the licensee's written request, may be placed on inactive status for no more than 4 years. A licensee on inactive status who desires to reactivate that licensee's own license shall complete and submit an application form approved by the Board, submit the renewal fee set by the Division, and submit proof of fulfillment of the continuing education requirements established by the Board.

(f) If a licensee is on inactive status for more than 4 years, that licensee may be relicensed, but only by following the reentry process established by the Board in its rules and regulations.

(24 Del. Laws, c. 140 §§ 4, 6; Code 1915 §§ 865, 867; 32 Del. Laws, c. 45 § 1; Code 1935 §§ 945, 947; 24 Del. C. 1953 §§ 2524, 2525; 49 Del. Laws, c. 263; 53 Del. Laws, c. 90 § 8; 62 Del. Laws, c. 251 §§ 7-9; 64 Del. Laws, c. 247 § 1; 68 Del. Laws, c. 206 § 1; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 167 § 1; 79 Del. Laws, c. 193 § 5.)

§ 2513 Temporary license.

The Executive Secretary may issue a temporary, 90-day license to practice pharmacy to a person who has made application for a permanent license and whose application is pending. In issuing a temporary, 90-day license, the Board may impose conditions as it considers appropriate, including, but not limited to, restrictions on the practice of pharmacy. The Board may grant 1 90-day extension of a temporary license.

(76 Del. Laws, c. 167 § 1.)

§ 2514 Complaints.

(a) All complaints received by the Division must be investigated in accordance with § 8735 of Title 29.

(b) If the Board determines that a person is engaging in or has engaged in the practice of pharmacy or is using the title "pharmacist" and is not licensed to practice pharmacy pursuant to § 2507 of this title, the Board shall request that the Office of the Attorney General issue a cease and desist order.

(24 Del. Laws, c. 140 § 16; Code 1915 § 872; 32 Del. Laws, c. 45 § 2; Code 1935 § 952; 24 Del. C. 1953 § 2529; 68 Del. Laws, c. 206 § 1; 76 Del. Laws, c. 167 § 1.)

§ 2515 Grounds for discipline.

(a) A pharmacist licensed under this chapter is subject to disciplinary sanctions set forth in § 2516 of this title if, after a hearing, the

Board finds that the pharmacist:

(1) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license to practice pharmacy, has impersonated another person holding a license, has allowed another person to use the pharmacist's license, or has aided or abetted a person not licensed to practice pharmacy to represent himself or herself as a pharmacist;

(2) Has illegally, incompetently, or negligently practiced pharmacy;

(3) Has been convicted of a crime that is substantially related to the practice of pharmacy; a copy of the record of conviction certified by the clerk of the court entering the conviction is conclusive evidence of conviction;

(4) Has used or abused drugs, as defined in § 2502(36) of this title, in the past 2 years;

(5) Has engaged in an act of consumer fraud or deception, engaged in the restrain of competition, or participated in price-fixing activities;

(6) Has violated a lawful provision of this chapter or any lawful regulation established hereunder;

(7) Has had that pharmacist's own license to practice pharmacy suspended or revoked or has been subjected to other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for the suspension, revocation, or other action in another jurisdiction have been presented to the Board by certified record and the Board has determined that the facts found by the appropriate licensing authority in the other jurisdiction constitute 1 or more of the acts listed in this subsection. Every person licensed to practice pharmacy in this State is deemed to have given consent to the release of information regarding license suspension or revocation or other disciplinary action by the Board of Pharmacy or by other comparable agencies in other jurisdictions and to have waived all objections to the admissibility of previously adjudicated evidence of the acts or offenses which underlie license suspension or revocation or other disciplinary action;

(8) Has failed to notify the Board that the pharmacist's license to practice pharmacy in another jurisdiction has been subject to discipline, or has been surrendered, suspended, or revoked; or that the licensee has been convicted of a crime that is substantially related to the practice of pharmacy. A certified copy of the record of disciplinary action, or of the surrender, suspension, or revocation of the license is conclusive evidence thereof. A copy of the record of conviction certified by the clerk of the court entering the conviction is conclusive evidence of conviction; or

(9) Has a physical or mental impairment that prevents the pharmacist from engaging in the practice of pharmacy with reasonable skill, competence, and safety to the public.

(b) Subject to the provisions of this chapter and subchapter IV of Chapter 101 of Title 29, the Board shall not restrict, suspend, or revoke a license to practice pharmacy or limit a licensee's right to engage in the practice of pharmacy until the Board gives to the licensee proper notice and opportunity to be heard.

(24 Del. Laws, c. 140 § 4; Code 1915 § 865; 32 Del. Laws, c. 45 § 1; Code 1935 § 945; 24 Del. C. 1953 § 2527; 53 Del. Laws, c. 90 § 10; 53 Del. Laws, c. 267; 54 Del. Laws, c. 253; 55 Del. Laws, c. 316 § 2; 59 Del. Laws, c. 318 § 4; 62 Del. Laws, c. 251 § 11; 65 Del. Laws, c. 355 § 1; 65 Del. Laws, c. 378 § 4; 68 Del. Laws, c. 206 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 §§ 44, 45; 75 Del. Laws, c. 436 §§ 24-26; 76 Del. Laws, c. 167 § 1; 79 Del. Laws, c. 238 § 1; 80 Del. Laws, c. 80 § 13.)

§ 2516 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it determines that a person licensed to practice pharmacy has violated a ground for discipline set forth in § 2515 of this title:

(1) Issue a letter of reprimand to the licensee;

(2) Censure the licensee;

(3) Place the licensee on probationary status and require the licensee to:

a. Report regularly to the Board upon the matters that are the basis of the probation; and/or

b. Limit all practice and professional activities to those areas prescribed by the Board;

(4) Suspend the license of the licensee;

(5) Revoke the license of the licensee;

(6) Impose an administrative penalty, not to exceed $500 for each violation.

(b) The Board may withdraw or reduce conditions of probation imposed pursuant to paragraph (a)(3) of this section, if it finds that the deficiencies that required the conditions of probation to be imposed have been remedied.

(c) If the Board suspends a license to practice pharmacy due to an impairment of the licensee, the Board may reinstate the license if, after a hearing, the Board is satisfied that the licensee is able to practice pharmacy with reasonable skill, competence, and safety to the public.

(24 Del. C. 1953 § 2531; 53 Del. Laws, c. 90 §§ 12-16; 62 Del. Laws, c. 251 § 12; 63 Del. Laws, c. 234 § 1; 68 Del. Laws, c. 206 § 1; 76 Del. Laws, c. 167 § 1.)

§ 2517 Hearing procedures.

(a) If a complaint alleging a violation of § 2515 of this title is filed with the Board pursuant to § 8735(h) of Title 29, the Board shall set a time and place to conduct a hearing on the complaint. The Board shall give notice of the hearing and shall conduct the hearing in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) A hearing pursuant to this section is informal, without the use of the Rules of Evidence. If the Board decides by a majority vote of all members that the complaint has merit, the Board may take any action permitted under this chapter that the Board considers necessary. The

Board's decision must be in writing and must include the reasons for the decision. The Board shall immediately mail its decision to the licensee or personally serve the licensee with the decision.

(c) If a licensee is in disagreement with the decision of the Board, the licensee may appeal the Board's decision to the Superior Court within 30 days of the postmarked date of the copy of the decision mailed to that licensee, or within 30 days of service. Upon appeal, the Court shall hear the evidence on the record. A stay pending review may be granted by the Court in accordance with § 10144 of Title 29.

(24 Del. Laws, c. 140 § 4; 32 Del. Laws, c. 45 § 1; 34 Del. Laws, c. 71; Code 1915 § 874A; Code 1935 §§ 945, 955, 956E; 41 Del. Laws, c. 87 § 6; 46 Del. Laws, c. 143 § 1; 24 Del. C. 1953 §§ 2527, 2586; 49 Del. Laws, c. 220 § 27; 53 Del. Laws, c. 267; 54 Del. Laws, c. 253; 55 Del. Laws, c. 316 § 2; 59 Del. Laws, c. 318 §§ 4, 9; 62 Del. Laws, c. 251 § 11; 65 Del. Laws, c. 355 § 1; 65 Del. Laws, c. 378 § 4; 68 Del. Laws, c. 206 § 1; 69 Del. Laws, c. 423 § 23; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 §§ 44, 45; 75 Del. Laws, c. 436 §§ 24-26; 76 Del. Laws, c. 167 § 1.)

§ 2518 Reinstatement of a suspended license; removal from probationary status.

(a) As a condition of reinstatement of a suspended license or the issuance of another license after revocation, the Board may impose any condition or conditions that are authorized under this chapter. Before reinstating a suspended license or removing a licensee from probationary status, the Board shall, without a hearing, make a determination as to whether the licensee has taken the required corrective actions and has satisfied all of the conditions imposed pursuant to the license suspension and/or the probation period. A licensee who disagrees with a determination made by the Board under this subsection may request a hearing before the Board.

(b) A licensee seeking reinstatement or removal from probationary status must pay the appropriate fees and submit the evidence required by the Board to show that all the conditions imposed pursuant to the license suspension and/or the probation period have been met. Proof that the licensee has met that licensee's continuing education requirements may also be required.

(76 Del. Laws, c. 167 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2519 Temporary suspension pending hearing.

In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(68 Del. Laws, c. 206 § 1; 76 Del. Laws, c. 167 § 1; 79 Del. Laws, c. 213 § 2.)

§ 2520 Counseling of pharmacists.

(a) If the Executive Secretary and the President of the Board jointly find after an investigation that a pharmacist has violated a provision of this chapter or a regulation enacted pursuant to this chapter, but that the violation can be reasonably resolved without a formal disciplinary sanction under § 2516 of this title, the Executive Secretary and the president, or his or her designee, may counsel the pharmacist regarding the violation. The Executive Secretary shall notify the pharmacist in writing of the finding and of the decision not to proceed with formal disciplinary sanctioning. The notification must explain the finding and request the presence of the pharmacist at a counseling session. During the counseling session, the Executive Secretary and the president, or his or her designee, shall discuss with the pharmacist the violation, and establish a plan of correction, if necessary.

(b) Counseling pursuant to subsection (a) of this section is voluntary. However, if the pharmacist fails to attend the counseling session or fails to comply with the necessary plan of correction specified by the Executive Secretary and the president, or his or her designee, the violation must be handled in the same manner as a violation of § 2515 of this title is handled.

(c) The counseling of a pharmacist under this section is not considered disciplinary action if the pharmacist attends the counseling session and complies with any necessary plan of correction required by the Executive Secretary and the president, or his or her designee. Counseling pursuant to this section may not be used in considering disciplinary sanctions in a future hearing unrelated to the incident for which the pharmacist was counseled unless the future incident involves the same or similar allegations as those for which the pharmacist was counseled.

(71 Del. Laws, c. 101 § 1; 70 Del. Law c. 186 § 1; 76 Del. Laws, c. 167 § 1.)

§ 2521 Impaired pharmacist.

(a) An "impaired pharmacist" is a pharmacist whose use or abuse of drugs or alcohol affects that pharmacist's ability to practice pharmacy. An impaired pharmacist may be eligible to enter an approved treatment program pursuant to an agreement with the Executive Secretary and the Board president.

(b) Disciplinary action will not be taken against a pharmacist who enters into and successfully completes an approved treatment program pursuant to subsection (a) of this section as long as a complaint has not been filed against the pharmacist and as long as the pharmacist has not been convicted of, or has not pleaded guilty or nolo contendere to a felony or a drug offense. Records related to a treatment program under this section are not public records, and may be used in a subsequent related disciplinary matter before the Board only if the pharmacist was, or could have been, disciplined.

(c) A pharmacist who does not qualify under subsection (b) of this section may, nevertheless, enter into an agreement with the Executive Secretary and the Board President to participate in an approved treatment program. Action on a disciplinary complaint may be deferred and ultimately dismissed if the pharmacist successfully completes the treatment program.

(d) An agreement pursuant to this section that permits an impaired pharmacist to enter into an approved treatment program must contain at least the following provisions:

(1) The pharmacist must agree not to engage in the practice of pharmacy for the duration of the treatment program.

(2) The pharmacist must sign a release so that records of treatment and progress are released to the Executive Secretary and the Board president.

(3) If the pharmacist does not make satisfactory progress in the program, the agreement is void and an investigation and disciplinary proceedings may be pursued.

(4) The pharmacist must agree to submit to random drug and alcohol screening at a specified laboratory or health care facility.

(5) The pharmacist must agree to be personally responsible for all cost related to the program.

(e) A pharmacist who successfully completes an approved treatment program may return to the practice of pharmacy if the Executive Secretary and the Board President determine that the pharmacist's return to practice will not endanger the public health, safety, or welfare. The Executive Secretary and the President may require the pharmacist to agree to specific conditions of practice to protect the public.

(68 Del. Laws, c. 206 § 1; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 167 § 1.)

Subchapter III

Miscellaneous provisions

§ 2522 Prescription labeling.

(a) A practitioner prescribing a drug to be prepared and dispensed by a pharmacist in this State for the use of a patient or any third person must, as part of the prescription, include directions describing the exact method by which the drug must be taken or administered. A prescription without specific directions, or a prescription bearing the notation "as directed" without specific directions, may not be prepared or dispensed.

(b) A pharmacist shall affix to every container in which a drug is dispensed a label containing the following information:

(1) Prescription number;

(2) The date the prescription is dispensed;

(3) Patient's full name;

(4) Brand or established name and strength of the drug to the extent that it can be measured;

(5) Practitioner's directions as found on the prescription;

(6) Practitioner's name;

(7) Name and address of the dispensing pharmacy or practitioner.

(c) Practitioners who, for good reason, do not wish to reveal the name or strength of the drug prescribed to the patient shall so inform the pharmacist by a notation on the face of the prescription. However, practitioners who sell drugs directly to patients shall label all such drugs in accordance with this section with the exception of a prescription number. Practitioners who dispense drugs directly to patients shall label all drugs or provide a document including the following information:

(1) The patient's full name;

(2) The date the drugs were dispensed to the patient;

(3) The practitioner's name;

(4) The practitioner's directions.

(d) No pharmacist shall fail to dispense a prescription because it is not clearly written and/or lacks information required by this title without first making a reasonable effort to contact the practitioner who issued the prescription to gather the clear and complete information.

(24 Del. C. 1953 § 2563; 58 Del. Laws, c. 244 § 2; 68 Del. Laws, c. 206 § 1; 75 Del. Laws, c. 101 § 1; 75 Del. Laws, c. 415 §§ 1, 2; 76 Del. Laws, c. 167 § 1.)

§ 2523 Exemptions.

Nothing in this chapter may be construed to prevent:

(1) A student or graduate of an accredited school of pharmacy from receiving practical training pursuant to an internship or other approved program under the supervision of a pharmacist in this State;

(2) A pharmacy technician or certified pharmacy technician from performing under the direct supervision of a pharmacist the

delegated functions permitted under the rules and regulations of the Board and not inconsistent with this chapter;

(3) A practitioner licensed under the laws of this State to practice within the scope of that practitioner's license;

(4) The selling at retail of over-the-counter products;

(5) A business not licensed as a pharmacy to sell gases that are used for medicinal purposes and which require a prescription, provided that:

a. The business is registered with the Board;

b. The sale is authorized by a written order or by a verbal order reduced to writing from a practitioner;

c. The record of the written order or of the verbal order reduced to writing is maintained on the premises of the business for at least 2 years; and

d. The gas product is stored and dispensed according to requirements established by the Board.

(6) The sale of noncontrolled prescription drugs designated for veterinary use by a business not licensed as a pharmacy, provided that the business is registered with the Board and the sale is authorized by a written order or by a verbal order reduced to writing from a licensed veterinarian.

(7) A pharmacist in this State from dispensing a valid noncontrolled prescription drug pursuant to a prescription received via electronic transmission from a practitioner's office to the prescription department of the dispensing pharmacy.

(8) Pharmacist selection of appropriate dosage forms, concentrations, equivalent strengths or routes of administration of medications.

(24 Del. Laws, c. 140 § 1; Code 1915 § 862; Code 1935 § 942; 24 Del. C. 1953 § 2521; 64 Del. Laws, c. 452 § 1; 68 Del. Laws, c. 206 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 161 § 9; 75 Del. Laws, c. 260 §§ 1, 2; 76 Del. Laws, c. 167 § 1.)

§ 2524 Miscellaneous fees.

The Division shall set fees to defray registration costs, costs for maintaining registries required under this chapter, and the costs of replacing lost or destroyed licenses and permits.

(24 Del. Laws, c. 140 §§ 9, 12; 24 Del. Laws, c. 141 §§ 1, 2; Code 1915 §§ 858, 861, 868; 28 Del. Laws, c. 62; 29 Del. Laws, c. 55; 36 Del. Laws, c. 103 § 1; Code 1935 §§ 938, 941, 948; 43 Del. Laws, c. 95 § 1; 45 Del. Laws, c. 90 § 3; 46 Del. Laws, c. 95 § 3; 24 Del. C. 1953 §§ 2503, 2506, 2507; 53 Del. Laws, c. 90 §§ 4, 272; 53 Del. Laws, c. 108 § 27; 55 Del. Laws, c. 316 § 3; 62 Del. Laws, c. 251 §§ 1, 4, 5; 64 Del. Laws, c. 452 § 2; 65 Del. Laws, c. 378 § 2; 68 Del. Laws, c. 206 § 1; 74 Del. Laws, c. 262 § 43; 76 Del. Laws, c. 167 § 1.)

Subchapter IV

Pharmacies

§ 2526 Permit required for each pharmacy.

(a) A person may not operate a pharmacy within the State without first having obtained a permit to operate a pharmacy from the Board. A person who desires to operate more than 1 pharmacy must make a separate permit application for each pharmacy. However, separate permits are not required for sites designated as pharmacies within the same institution at 1 general location, provided that each site is approved by the Board.

(b) The Board shall issue a separate permit for each qualifying pharmacy. A permit to operate a pharmacy granted by the Board may not be assigned or otherwise transferred to another person except upon such conditions as the Board specifically designates, and then only pursuant to the written consent of the Board or its designee. A permit must be available on site for inspection by authorized persons.

(Code 1935 § 956A; 41 Del. Laws, c. 87 § 2; 24 Del. C. 1953 § 2551; 62 Del. Laws, c. 251 § 13; 68 Del. Laws, c. 206 § 1; 76 Del. Laws, c. 167 § 1.)

§ 2527 Application fees for permits.

The application for a permit to operate a pharmacy must be made on a form furnished by the Board and must be accompanied by the application fee and/or permit fee established pursuant to § 2511 of this title.

(Code 1935 § 956A; 41 Del. Laws, c. 87 § 2; 24 Del. C. 1953 § 2552; 53 Del. Laws, c. 90 § 18; 62 Del. Laws, c. 251 § 14; 68 Del. Laws, c. 206 § 1; 76 Del. Laws, c. 167 § 1.)

§ 2528 Requirements for and issuance of permit.

(a) In determining if a permit to operate a pharmacy should be issued, the Board shall consider, but is not limited to considering, the probability that:

(1) The pharmacy will be operated in full compliance with the law and with the rules and regulations of the Board;

(2) The pharmacy will be managed by a pharmacist-in-charge who is licensed to practice pharmacy in the State and who will serve as a pharmacist-in-charge in only that pharmacy;

(3) The location and appointments of the pharmacy are such that it can be operated without endangering public health, safety, or welfare. In determining a danger to public health, safety, or welfare, the Board shall consider, but is not limited to considering, the following factors:

a. Whether an applicant, permit holder, principal, or a person having ownership interest in the pharmacy has a conviction for deceptive business practices or for a violation of drug laws under federal law or any state's law;

b. Whether an applicant, permit holder, principal, or a person having controlling ownership interest in the pharmacy has been or is the subject of an action by a regulatory agency for a violation of the agency's statutes or regulations;

(4) The pharmacist-in-charge, whose name is on the application, will comply with pharmacy, controlled substance, and other applicable statutes and regulations;

(5) The pharmacy will provide conspicuous notice to consumers that the Board of Pharmacy is the contact agency for reporting unresolved medication errors.

(b) A permit to operate a pharmacy may not be issued or renewed unless the pharmacy is equipped with proper reference materials and professional and technical equipment as provided in the Board's rules and regulations.

(c) The Executive Secretary may issue a temporary, 60-day permit to operate a pharmacy to an otherwise qualified pharmacy while the application for a permanent permit is pending. The Board may grant 1 60-day extension of a temporary permit.

(Code 1935 § 956A; 41 Del. Laws, c. 87 § 2; 24 Del. C. 1953 § 2553; 68 Del. Laws, c. 206 § 1; 76 Del. Laws, c. 167 § 1.)

§ 2529 Renewal of permit.

(a) A permit to operate a pharmacy must be renewed biennially in a manner determined by the Division, including the payment of the renewal fee established pursuant to § 2511 of this title.

(b) The Board, in its rules and regulations, shall determine the period within which a permit holder may renew the permit to operate a pharmacy, notwithstanding the fact that the permit holder failed to renew on or before the designated renewal date; provided, however, that the period of time may not exceed 1 year beyond the designated renewal date.

(c) A permit to operate a pharmacy terminates automatically upon a transfer of the controlling interest in the pharmacy, upon the termination of the legal existence of the pharmacy, or upon the discontinuance of business or professional practice.

(d) The closing of a pharmacy must be in compliance with the rules and regulations of the Board. If the closing is to be permanent, the Board must be notified 14 days prior to the closing. If the closing is to be for more than 7 consecutive business days, the Board must be notified 5 days prior to the temporary closing.

(Code 1935 § 956A; 41 Del. Laws, c. 87 § 2; 24 Del. C. 1953 § 2555; 53 Del. Laws, c. 90 §§ 19, 20; 62 Del. Laws, c. 251 § 15; 68 Del. Laws, c. 206 § 1; 76 Del. Laws, c. 167 § 1.)

§ 2530 Revocation or suspension of permit.

(a) The Board may suspend or revoke a permit to operate a pharmacy when examination or inspection of the pharmacy discloses that the pharmacy is not being operated according to law or is being operated in a manner which endangers public health, safety, or welfare.

(b) The Board may suspend or revoke a permit to operate a pharmacy if the pharmacy's prescription department is closed for more than 14 consecutive days, unless the closing of the prescription department was due to a cause which the Board finds reasonable.

(c) In determining if a pharmacy is being operated in a manner which endangers the public health, safety, or welfare pursuant to subsection (a) of this section, the Board shall consider, but is not limited to considering, the following factors:

(1) Compliance by the permit holder with the law and with the rules and regulations of the Board;

(2) A conviction of the permit holder, a principal, or a person having controlling ownership interest in the pharmacy for a violation of federal law or of any state's law other than a violation of a minor traffic offense;

(3) An action by a regulatory agency against the permit holder for a violation of the agency's statutes or regulations.

(Code 1935 §§ 942, 956A; 41 Del. Laws, c. 87 § 2; 46 Del. Laws, c. 142 § 1; 24 Del. C. 1953 § 2556; 68 Del. Laws, c. 206 § 1; 76 Del. Laws, c. 167 § 1.)

§ 2531 Hearings on actions involving permits.

(a) If the Board intends not to issue a permit or intends to suspend or revoke a permit, the Board shall give written notice to the applicant or permit holder of the intended action and the reasons therefor. The applicant or permit holder has at least 10 days from the date of notice to request a hearing. Notice of the hearing must be given and the hearing must be conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) A hearing pursuant to subsection (a) of this section is informal, without the use of the Rules of Evidence. The Board's decision must be in writing and must include the reasons for the decision. The Board's decision must be mailed immediately to or personally served upon the applicant or permit holder.

(c) If an applicant or permit holder is in disagreement with the decision of the Board, the applicant or permit holder may appeal the Board's decision to the Superior Court within 30 days of the postmarked date of the copy of a mailed decision or within 30 days of the date of service of the decision. Upon appeal, the Court shall hear the evidence on the record. A stay pending review may be granted by the Court in accordance with § 10144 of Title 29.

(Code 1935 §§ 942, 956A; 41 Del. Laws, c. 87 § 2; 46 Del. Laws, c. 142 § 1; 24 Del. C. 1953 § 2556; 68 Del. Laws, c. 206 § 1; 76 Del. Laws, c. 167 § 1.)

§ 2532 Pharmacy records.

(a) A suitable book or file in which the original of every prescription compounded or dispensed at the pharmacy must be preserved for a period of not less than 3 years. The book or file of original prescriptions must at all times be open to inspection by authorized agents of the Board.

(b) Upon request by a person for such person's pharmacy records, a pharmacy shall provide such records, in hard copy paper form (unless such person agrees to another form), as soon as is reasonably possible, but by no later than 15 business days after such person has made the request to the pharmacy, unless an emergency or a medical condition dictates that such records should be produced immediately. Nothing herein shall be construed as limiting or lessening the pharmacy's obligations to maintain confidentiality of such records and the pharmacy shall follow such pharmacy's standard procedures to ensure maintenance of confidentiality of such records.

(24 Del. Laws, c. 140 § 14; 26 Del. Laws, c. 147; Code 1915 § 870; Code 1935 § 950; 24 Del. C. 1953 § 2560; 68 Del. Laws, c. 206 § 1; 70 Del. Laws, c. 149 § 213; 76 Del. Laws, c. 167 § 1; 77 Del. Laws, c. 228 § 1.)

§ 2533 Prescription department.

(a) A pharmacy must contain a secure room or area with a door that can be locked when the pharmacy is without the attendance and supervision of a pharmacist. The secure room or area, known as the prescription department, must contain the entire stock of prescription drugs, chemicals, and preparations used in compounding and preparing prescriptions.

(b) Only a pharmacist is authorized to unlock and lock the prescription department of a pharmacy.

(c) A sign giving the name of the pharmacist-on-duty must at all times be posted in the vicinity of the prescription department of a pharmacy.

(d) During the absence of a pharmacist, the prescription department of a pharmacy must be locked until the pharmacist returns to duty. However, the merchandising section of the pharmacy may remain open.

(e) A prescription department must have at least 250 square feet of floor space. The counter inside the prescription department must be at least 18 inches wide and must have 4 linear feet for each pharmacist working concurrently on dispensing and compounding prescriptions. The counter must be kept clear and free of all merchandise and other materials not currently in use in dispensing and compounding prescriptions. The aisle behind the counter must be at least 30 inches wide and must be kept free of obstruction at all times. A prescription department which existed on February 11, 1992, is exempt from the requirements of this subsection unless the department is remodeled or relocated.

(Code 1935 § 942; 46 Del. Laws, c. 142 § 1; 24 Del. C. 1953 § 2561; 53 Del. Laws, c. 90 §§ 23-25; 59 Del. Laws, c. 318 § 5; 68 Del. Laws, c. 206 § 1; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 167 § 1.)

§ 2534 Inspections.

(a) An agent of the Board may enter and inspect during business hours any pharmacy or other place in this State where drugs are manufactured, packed, packaged, stocked, distributed, dispensed, or offered for sale.

(b) An agent of the Board acting pursuant to subsection (a) of this section: may inspect and copy records required by this chapter to be kept; may inspect within reasonable limits and in a reasonable manner the premises and all pertinent equipment, finished and unfinished materials, containers, and labeling found therein; may inspect other things therein, including records, files, papers, processes, controls, and facilities relating to a violation of this chapter; and may make an inventory of the stock of drugs therein and obtain samples of drugs and other substances.

(c) All information gathered under this section is to be kept confidential in accordance with all federal and state laws governing privacy.

(Code 1935 § 956D; 41 Del. Laws, c. 87 § 5; 24 Del. C. 1953 § 2562; 68 Del. Laws, c. 206 § 1; 70 Del. Laws, c. 149 § 214; 76 Del. Laws, c. 167 § 1.)

§ 2535 Nonresident pharmacies.

(a) A pharmacy located outside the State which delivers in any manner a prescription drug to a patient in the State is a nonresident pharmacy and must obtain a permit to conduct business in this State. A nonresident pharmacy may not deliver in any manner a prescription drug to a patient in this State unless it has a permit to do so issued by the Board.

(b) If a nonresident pharmacy which has a permit issued pursuant to this section delivers in any manner a prescription drug and the prescription drug is not personally hand delivered to the patient, a written notice must be placed in the shipping container to alert the patient that:

(1) Under certain circumstances a prescription drug's effectiveness may be affected by exposure to extremes of heat, cold, or humidity; and

(2) A local or a toll-free telephone service is available, staffed by a registered pharmacist, to answer questions about the prescription drug.

(68 Del. Laws, c. 206 § 1; 71 Del. Laws, c. 474 §§ 1, 2; 76 Del. Laws, c. 167 § 1.)

§ 2536 Nonresident pharmacies: service of process; registered agent.

A nonresident pharmacy must designate a registered agent in Delaware for service of process. A nonresident pharmacy that does not designate a registered agent is deemed to have appointed the Secretary of State to be its agent upon whom may be served all legal process in any action or proceeding against the nonresident pharmacy relating to the delivery in any manner of prescription drugs into this State. In

any action or proceeding against a nonresident pharmacy, a copy of service of process must be mailed to the nonresident pharmacy by the complaining party by certified mail, return receipt requested, at the address of the nonresident pharmacy, as designated on the nonresident pharmacy's permit application to conduct business in this State. A nonresident pharmacy which does not obtain a permit in this State pursuant to this chapter is deemed to have consented to service of process on the Secretary of State as sufficient service.

(68 Del. Laws, c. 206 § 1; 76 Del. Laws, c. 167 § 1.)

§ 2537 Conditions of nonresident pharmacy's permit to conduct business in this State.

(a) A nonresident pharmacy shall:

(1) Provide the location, names, and titles of all principal corporate officers and of all pharmacists who dispense prescription drugs in this State. This information must be provided to the Board upon application for a nonresident pharmacy's permit to conduct business in this State and within 30 days after a change of office location or after the addition or removal of a principal corporate officer or a pharmacist;

(2) Certify that it complies with all lawful directions and requests for information from regulatory or licensing agencies of the state in which it is licensed and that it will comply with all such requests made by the Board pursuant to this chapter. The nonresident pharmacy shall maintain at all times a valid license, permit, or registration to operate the pharmacy, which complies with the laws of the state in which it is physically located. The nonresident pharmacy shall maintain patient profiles in compliance with Board regulations, shall comply with the provisions of § 2549 of this title, and shall provide pertinent patient information. Prior to being issued a permit, the nonresident pharmacy must provide the Board with a copy of its most recent inspection report and, thereafter, must provide the Board with inspection reports within 60 days after receipt from the regulatory licensing agency of the state in which the nonresident pharmacy is physically located;

(3) Certify that it maintains its records of prescription drugs dispensed to Delaware patients in a way that the records are readily retrievable from the records of drugs dispensed to other patients;

(4) Provide a local or a toll-free telephone service, staffed by a registered pharmacist, during its regular hours of operation, but not less than 6 days per week for a minimum of 40 hours per week, to facilitate communication between patients in this State and pharmacists at the nonresident pharmacy who have access to patient records. The toll-free telephone number must appear on the label affixed to each container of prescription drugs dispensed to patients in this State;

(5) Pay the permit application or renewal fee for a nonresident pharmacy as set by the Board pursuant to § 2511 of this title.

(b) The Board shall report any disciplinary action it takes against a nonresident pharmacy to the Board in the state where the pharmacy is physically located.

(68 Del. Laws, c. 206 § 1; 76 Del. Laws, c. 167 § 1.)

§ 2538 Nonresident pharmacies: violations; penalties.

(a) The Board may suspend or revoke the permit to conduct business in this State of a nonresident pharmacy permit holder who violates federal law or any state's law, any of the conditions of the permit, or any of the rules or regulations adopted by the Board. The Board may impose an administrative penalty of not more than $50 for each day a violation occurs and/or continues.

(b) A person who operates a pharmacy located outside the State and delivers in any manner a prescription drug into the State without having obtained a permit to conduct business in this State pursuant to this chapter commits the offense of operating a nonresident pharmacy without a permit and may be fined not more than $50 for each day that the offense occurs and/or continues.

(24 Del. C. 1953 § 2564; 53 Del. Laws, c. 90 § 26; 58 Del. Laws, c. 244 § 1; 68 Del. Laws, c. 206 § 1; 76 Del. Laws, c. 167 § 1.)

Subchapter V

Pharmaceutical Establishments Other Than Pharmacies

§ 2540 Requirements for pharmaceutical activities not carried on in a pharmacy.

(a) Drugs, toilet preparations, dentifrices, and cosmetics may not be manufactured, packed, packaged, or distributed within this State unless done so under the personal and immediate supervision of a person approved by the Board after investigation and determination by the Board that the person is qualified by scientific or technical training, education, or experience to perform the duties of supervision that are necessary to protect public health, safety, and welfare.

(b) A person may not operate a pharmaceutical establishment to manufacture, pack, package, or distribute on a wholesale basis to persons other than the ultimate consumer any drugs, toilet preparations, dentifrices, or cosmetics without first obtaining from the Board a permit to operate a pharmaceutical establishment. This subchapter also applies to the activities of a reverse distributor who acts as an agent for a person permitted to operate a pharmaceutical establishment by receiving, inventorying, and managing the disposition of outdated or otherwise nonsalable drugs. A permit issued pursuant to this subchapter must be available for inspection by authorized persons.

(c) A person who has a permit to operate a pharmaceutical establishment is subject to Board rules and regulations with respect to the storage and handling of drugs and to the establishment and maintenance of drug distribution records, and must comply with federal, state, and local law.

(d) A permit to operate a pharmaceutical establishment issued pursuant to this subchapter terminates automatically upon a transfer of the controlling interest in the pharmaceutical establishment, upon the termination of the pharmaceutical establishment's legal existence, or upon the discontinuance of business or professional practice.

(e) Nothing in this subchapter may be construed to apply to pharmacies.

(Code 1935 § 956B; 41 Del. Laws, c. 87 § 3; 24 Del. C. 1953 § 2571; 53 Del. Laws, c. 90 § 28; 59 Del. Laws, c. 318 § 6; 68 Del. Laws, c. 206 § 1; 76 Del. Laws, c. 167 § 1.)

§ 2541 Application and fee for a permit to operate a pharmaceutical establishment.

(a) The application for a permit to operate a pharmaceutical establishment must be made on a form furnished by the Board and must be accompanied by an application fee and/or permit fee established pursuant to § 2511 of this title. A separate permit is required for each location. The permit must be available for inspection by authorized persons. The Executive Secretary, jointly with the Board president, may issue a temporary, 60-day permit to operate an otherwise qualified pharmaceutical establishment while the application for a permanent permit is pending. The Board may grant 1 60-day extension of a temporary permit.

(b) An applicant may not be licensed until its key personnel submit fingerprints and other necessary information in order to obtain a report of the individuals' entire criminal history record from the State Bureau of Identification and from the Federal Bureau of Investigation pursuant to Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C § 534). If the applicant's key personnel do not have a criminal history record, the applicant shall cause to be submitted a statement from each agency that the agency has no record of criminal history information relating to the individual. The State Bureau of Identification shall be the intermediary for the purpose of this subsection and the Board of Pharmacy, or its designee, shall be the screening point for the receipt of the federal criminal history record. The applicant is responsible for the required fee, if any, for obtaining the records.

(Code 1935 § 956B; 41 Del. Laws, c. 87 § 3; 24 Del. C. 1953 § 2572; 53 Del. Laws, c. 90 § 29; 53 Del. Laws, c. 108 § 28; 59 Del. Laws, c. 318 §§ 7, 8; 62 Del. Laws, c. 251 § 18; 68 Del. Laws, c. 206 § 1; 76 Del. Laws, c. 167 § 1; 79 Del. Laws, c. 277 § 14.)

§ 2542 Renewal of permit.

A permit to operate a pharmaceutical establishment must be renewed biennially in a manner determined by the Division, including the payment of the renewal fee established pursuant to § 2511 of this title.

(Code 1935 § 956B; 41 Del. Laws, c. 87 § 3; 24 Del. C. 1953 § 2573; 53 Del. Laws, c. 90 § 30; 62 Del. Laws, c. 251 §§ 19, 20; 68 Del. Laws, c. 206 § 1; 76 Del. Laws, c. 167 § 1.)

§ 2543 Hearings and appeals to Superior Court.

A person aggrieved by a Board decision made pursuant to this subchapter has the substantive and procedural rights to notice, hearing, and appeal described in § 2531 of this title.

(Code 1935 § 956B; 41 Del. Laws, c. 87 § 3; 24 Del. C. 1953 §§ 2575, 2576; 68 Del. Laws, c. 206 § 1; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 167 § 1.)

§ 2544 Inspections.

Inspections of pharmaceutical establishments are conducted in the same manner as inspections of pharmacies pursuant to § 2534 of this title and, in addition, include the inspection of and activities related to toilet preparations, dentifrices, and cosmetics.

(Code 1935 § 956D; 41 Del. Laws, c. 87 § 5; 24 Del. C. 1953 § 2574; 68 Del. Laws, c. 206 § 1; 70 Del. Laws, c. 149 § 215; 76 Del. Laws, c. 167 § 1.)

§ 2545 Penalties.

(a) The Board may suspend or revoke a permit to operate a pharmaceutical establishment if the permit holder violates federal law or any state's law, any of the conditions of the permit, or any of the rules or regulations adopted by the Board relating to the operation of a pharmaceutical establishment. The Board may impose an administrative penalty of not more than $50 for each day a violation occurs and/or continues to occur.

(b) A person who commits the offense of operating a pharmaceutical establishment without a permit may be fined not more than $50 for each day that the offense occurs and/or continues to occur.

(Code 1935 § 956B; 41 Del. Laws, c. 87 § 3; 24 Del. C. 1953 § 2577; 68 Del. Laws, c. 206 § 1; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 167 § 1.)

Subchapter VI

Prohibited Acts; Penalties Generally; Enforcement

§ 2546 Use of certain descriptive titles.

Nothing in this chapter may be construed to prohibit the use of the phrase "proprietary medicine store," "patent medicine store," or "health and beauty aids."

(Code 1915 § 872; 32 Del. Laws, c. 45 § 2; Code 1935 § 952; 24 Del. C. 1953 § 2581; 68 Del. Laws, c. 206 § 1; 76 Del. Laws, c. 167 § 1.)

§ 2547 Entry and inspection; penalty.

A person who commits the offense of hindering in any manner an entry or inspection under § 2534 or § 2544 of this title may be fined not more than $500 for each incident.

(Code 1935 § 956D; 41 Del. Laws, c. 87 § 5; 24 Del. C. 1953 § 2585; 68 Del. Laws, c. 206 § 1; 76 Del. Laws, c. 167 § 1.)

§ 2548 Jurisdiction.

Justices of the peace have jurisdiction over violations of this chapter.

(34 Del. Laws, c. 71; Code 1915 § 874A; Code 1935 §§ 955, 956E; 41 Del. Laws, c. 87 § 6; 46 Del. Laws, c. 143 § 1; 24 Del. C. 1953 § 2586; 49 Del. Laws, c. 220 § 27; 68 Del. Laws, c. 206 § 1; 69 Del. Laws, c. 423 § 23; 76 Del. Laws, c. 167 § 1.)

§ 2549 Substitution of drugs.

(a) When a pharmacist receives a prescription drug order from a practitioner for a brand or trade name drug, the pharmacist may dispense a therapeutically equivalent drug if the following conditions are met:

(1) The practitioner, in the case of a written prescription, places that practitioner's own signature on the signature line along side or above the words "substitution permitted" pursuant to subsection (c) of this section; or, in the case of a verbal prescription or a verbal prescription reduced to writing, the practitioner states that the substitution may be made; or, in the case of an order written in an institution licensed by the Department of Health and Social Services pursuant to Chapter 10 or Chapter 11 of Title 16, the practitioner has given written authorization to fill all prescription drug orders with therapeutically equivalent drugs unless otherwise indicated;

(2) The pharmacist informs the patient or the patient's adult representative that a therapeutically equivalent drug has been dispensed;

(3) The pharmacist indicates on the prescription and on the prescription label the name of the manufacturer or distributor of the therapeutically equivalent drug substituted unless the practitioner indicates otherwise.

(b) Unauthorized dispensing of a therapeutically equivalent drug in violation of this section is punishable by a fine of not less than $500 nor more than $1,000 or by a term of imprisonment of not less than 30 days nor more than 1 year, or both a fine and a term of imprisonment.

(c) Every prescription written in this State by a practitioner must be on a prescription form containing a line for the practitioner's signature. Alongside or beneath the signature line the words "Substitution Permitted" must be clearly printed. Beneath the signature line the following statement must be clearly printed:

"In order for a brand name product to be dispensed, the prescriber must handwrite "Brand Necessary' or "Brand Medically Necessary' in the space below."

A second line to accommodate the above-mentioned wording must be provided beneath the statement. Prescription forms containing the appropriate signature line and statement must be used by every practitioner in this State who prescribes drugs.

(24 Del. C. 1953 § 2589; 53 Del. Laws, c. 90 § 33; 60 Del. Laws, c. 330 §§ 1-3; 62 Del. Laws, c. 161 § 1; 63 Del. Laws, c. 48 §§ 1, 2; 65 Del. Laws, c. 378 § 5; 68 Del. Laws, c. 206 § 1; 70 Del. Laws, c. 149 § 216; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 311 § 1; 76 Del. Laws, c. 167 § 1.)

§ 2549A Dispensing and substitution of biological products.

(a) A pharmacist may substitute for a prescribed biological product only if:

(1) The practitioner has not expressly prohibited substitution in a manner specified in § 2549 of this title;

(2) The product to be substituted has been designated by the Federal Food and Drug Administration as interchangeable with or therapeutically equivalent to the prescribed product;

(3) The pharmacist informs the patient or the patient's adult representative that an interchangeable biological product has been dispensed; and

(4) The pharmacist indicates on the prescription and on the prescription label the name of the manufacturer of the interchangeable biological product substituted unless the practitioner indicates otherwise.

(b) If a biological product is dispensed, the pharmacist or the pharmacist's designee shall, within a reasonable time but not to exceed 10 days following dispensing, communicate to the practitioner the name and manufacturer of the biological product dispensed, by:

(1) Recording such information in an interoperable electronic health records system shared with the prescribing practitioner, to the extent such a system is in place between a pharmacist and practitioner; or

(2) In the case where electronic health records are not in place between a pharmacist and a practitioner, communicating such information to the practitioner using any prevailing means available. No communication is required under this subsection where there is no interchangeable or therapeutically equivalent biological product for the prescribed biological product, or where a refill prescription is not changed from the biological product originally dispensed.

(c) The pharmacy shall maintain a record of the biological product dispensed as required in § 2532 of this title.

(d) The Board of Pharmacy shall maintain a link on its web site to the current list of all biological products determined by the Federal Food and Drug Administration to be interchangeable with a specific biological product.

(e) Hospital pharmacies shall be exempt from the requirements of subsection (b) of this section.

(79 Del. Laws, c. 238 § 1.)

§ 2550 Emergency refills of noncontrolled drugs.

(a) A pharmacist may dispense an emergency supply of a noncontrolled drug to a patient whose refill authorization has expired if:

(1) The supply dispensed is the minimum needed for the emergency period;

(2) The pharmacist has attempted to reach the prescribing practitioner and has determined that the prescribing practitioner is not available;

(3) The medication is, in the pharmacist's professional judgment, essential for the continuation of therapy for a chronic condition; and

(4) The prescription was originally dispensed at the pharmacy.

(b) If a pharmacist dispenses an emergency supply of a noncontrolled drug pursuant to subsection (a) of this section:

(1) The refill date, quantity dispensed, and pharmacist's initials must appear on the patient profile; and

(2) The prescribing practitioner must be notified either in writing or verbally about the pharmacist's action, and the date of the notification must be documented on the patient profile.

(c) A prescription may be refilled with an emergency supply pursuant to this section only 1 time.

(68 Del. Laws, c. 206 § 1; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 167 § 1.)

Subchapter VII

Pharmacy Peer Review

§ 2551 Immunity of officials reviewing prescription records and pharmacists' work.

The members of the Board and pharmacists who are members of pharmacy peer review committees whose functions are to review prescription records and pharmacists' work with the view to the validity, quality, and appropriateness of service are jointly and severally immune from liability for any claim or cause of action, civil and criminal, arising from an act or omission if the act or omission complained of was done in good faith and without gross or wanton negligence by any member or members acting individually or jointly in carrying out the responsibilities, authority, duties, powers, and privileges of the offices conferred by law upon them under this chapter or under any other provision of law or under rules and regulations of the Board or committees, with good faith being presumed until proven otherwise and with gross or wanton negligence required to be shown by the complainant.

(24 Del. C. 1953 § 2591; 59 Del. Laws, c. 108 § 1; 68 Del. Laws, c. 206 § 1; 76 Del. Laws, c. 167 § 1.)

Part

Chapter 26

PHYSICAL THERAPY AND ATHLETIC TRAINING

§ 2601 Objectives of Board.

The primary objective of the Examining Board of Physical Therapists and Athletic Trainers, to which all other objectives and purposes are secondary, is to protect the general public (especially those persons who are direct recipients of services regulated by this chapter) from unsafe practices and from occupational practices which tend to reduce competition or to fix the price of services rendered. 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 regulated practitioners of occupational groups under the jurisdiction of the Board; shall adjudicate at formal complaint hearings; shall develop rules and regulations; and shall impose sanctions where necessary against persons in the occupational groups regulated by the Board.

(64 Del. Laws, c. 192 § 1; 74 Del. Laws, c. 381 § 7.)

§ 2602 Definitions.

As used in this chapter, unless the content requires otherwise, the following words shall have the following meanings:

(1) "Athletic injury" is a musculoskeletal or other acute, nonmusculoskeletal sports-related injury resulting from or limiting participation in or training for scholastic, recreational, professional or sanctioned amateur athletic activities.

(2) "Athletic trainer" means a person who is licensed by the State Examining Board of Physical Therapists and Athletic Trainers, to practice "athletic training," after meeting the requirements of this chapter and rules and regulations promulgated pursuant thereto.

(3) "Athletic training" means the prevention, evaluation, and treatment of athletic injuries by the utilization of therapeutic exercises and modalities such as heat, cold, light, air, water, sound, electricity, massage, and nonthrust mobilizations.

(4) "Board" means the State Examining Board of Physical Therapists and Athletic Trainers which shall administer and enforce this chapter.

(5) "Division" means the Delaware Division of Professional Regulation.

(6) "Dry needling" means an intervention that uses a thin filiform needle to penetrate the skin and stimulate underlying muscular tissue, connective tissues and myofascial trigger points for the management of neuromusculoskeletal pain and movement impairments; is based upon Western medical concepts; and requires a physical therapy examination and diagnosis.

(7) "First aid" is emergency care and treatment of an injured person before definitive medical and surgical management can be secured. Such care may include the emergency administration of medications including asthma medications, anaphylaxis medications, and glucagon. Such administration may require advanced training as determined by the Board's rules and regulations, to assure the licensee meets accepted standards of care.

(8) "Physical therapist" means a person who is licensed to practice physical therapy. "Physical therapist" and such words as "physiotherapist" are equivalent terms, and reference to any 1 of them in this chapter or otherwise shall include the others.

(9) "Physical therapist assistant" means a person who assists licensed physical therapists subject to this chapter and rules and regulations adopted pursuant thereto.

(10)a. "Practice of physical therapy" means:

1. Examining, evaluating, and testing patients/clients who have impairments of body structure or function, activity limitations or participation restrictions in physical movement and mobility, or other health and movement related conditions in order to determine a physical therapy diagnosis, prognosis, and plan of treatment intervention, and to assess the ongoing effects of intervention; and

2. Alleviating impairments of body structure or function, activity limitations or participation restrictions in physical movement and mobility by designing, implementing, and modifying treatment interventions that may include: therapeutic exercise, functional training related to physical movement and mobility in self-care and in home, community, or work integration or reintegration; gait and balance training; neurological re-education; vestibular training; manual, mechanical, and manipulative therapy, including soft tissue, musculoskeletal manipulation, and joint mobilization/manipulation; dry needling; therapeutic massage; the prescription, application, and, as appropriate, fabrication of assistive, adaptive, orthotic, prosthetic protective and supportive devices and equipment; airway clearance techniques; integumentary protection and repair techniques; nonsurgical debridement and wound care; evaluative and therapeutic physical agents or modalities; mechanical and electrotherapeutic modalities; and patient related instruction; and

3. Reducing the risk of impairments of body structure or function, activity limitations or participation restrictions in physical movement and mobility, including the promotion and maintenance of fitness, health, and wellness in populations of all ages; and

4. Engaging in administration, consultation, education, telehealth, and research.

b. Nothing in this chapter shall be construed to limit the practice of physical therapy by physical therapists as is currently being practiced or determined by the Board so long as such practice does not include surgery and the medical diagnosis of disease. Advanced services may require advanced training, as determined by the Board's rules and regulations, to assure the licensee meets the accepted standard of care.

(11) "State" means the State of Delaware.

(12) "Substantially related" means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of physical therapy or athletic training.

(13) "Telehealth," as set forth in the Board's rules and regulations, means the use of electronic communications to provide and deliver a host of health-related information and health-care services, including physical therapy and athletic training-related information and services, over large and small distances. Telehealth encompasses a variety of health care and health promotion activities, including education, advice, reminders, interventions, and monitoring of intervention.

(14) "Trigger points" are defined as hyperirritable spots in skeletal muscle that are associated with palpable nodules in taut bands of muscle fibers. They can give rise to local or referred pain, autonomic phenomenon, and can cause limitations in range of motion and muscle activation.

(15) "Visiting physical therapist or athletic trainer" means a physical therapist or athletic trainer who is licensed in another jurisdiction of the United States or credentialed to practice physical therapy or athletic training in another country and that person is teaching, demonstrating, or providing physical therapy or athletic training services in connection with teaching or participating in an educational seminar of no more than 60 days in a calendar year and abides by Delaware laws, rules, and regulations relating to physical therapy and athletic training.

(24 Del. C. 1953 § 2601; 50 Del. Laws, c. 367 § 1; 58 Del. Laws, c. 330 § 1; 64 Del. Laws, c. 192 § 1; 67 Del. Laws, c. 97 §§ 1, 2; 74 Del. Laws, c. 262 § 46; 74 Del. Laws, c. 381 §§ 1-3, 7; 79 Del. Laws, c. 406 § 1.)

§ 2603 Examining Board of Physical Therapists and Athletic Trainers — Appointment; vacancies; suspension or removal; unexcused absences; qualifications; term of office; compensation of officers.

(a) There is hereby created the State Examining Board of Physical Therapists and Athletic Trainers. The Board shall consist of 10 members, all of whom shall be residents of Delaware. Four members shall be physical therapists licensed to practice in Delaware, provided they have worked at least 3 years in Delaware as physical therapists immediately preceding their appointment. One member shall be a physical therapist assistant, licensed to practice in Delaware, provided he or she has worked at least 3 years in Delaware as a physical therapist assistant immediately preceding his or her appointment. Two members shall be athletic trainers licensed to practice in Delaware, provided they have worked at least 3 years in Delaware as athletic trainers immediately preceding their appointment. Three members shall be from the public who are not physical therapists, physical therapy assistants, or athletic trainers and who shall not be related to any person actively engaged in said professions in the State, nor shall said members have any interest in a business or institution engaged in physical therapy or athletic training.

(b) The Governor shall appoint the members to serve on the Board. In appointing persons to fill vacancies in the 10 Board positions designated to be held by persons licensed under this chapter, the Governor may select members who reside in different regions in the State in an effort to provide statewide representation of physical therapists, physical therapist assistants and athletic trainers.

(c) Appointments shall be made for terms of 3 years. A member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the remainder of the unexpired term, except that each member shall serve until a successor is duly appointed and qualified.

(d) A person who has never served on the Board may be appointed to the Board 2 consecutive times, 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 term has expired since such person last served.

(e) Any act or vote by a person appointed in violation of subsection (d) 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 amendment or revision amends this section to permit such an appointment.

(f) A member of the Board shall be eligible for reappointment. A member shall not be appointed to serve more than 2 consecutive terms. A member shall receive reimbursement for reasonable expenses incurred while engaged in the discharge of official duties. A member of the Board shall receive $50 for every meeting of the Board attended by that member. However, in no event shall a member receive more than $500 annually as compensation for attending said meetings.

(g) No member of the Board, while serving on the Board, shall hold elected office in any professional association of physical therapists, physical therapist assistants, or athletic trainers.

(h) A member of the Board shall be suspended or removed by the Governor for misfeasance, nonfeasance, malfeasance, misconduct, incompetence, or neglect of duty. A member subject to a 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.

(i) A member who is absent without adequate reason for 3 consecutive meetings or fails to attend at least half of all regular business

meetings during any calendar year shall be guilty of neglect of duty.

(24 Del. C. 1953 §§ 2602, 2604; 50 Del. Laws, c. 367 § 1; 64 Del. Laws, c. 192 § 1; 67 Del. Laws, c. 97 §§ 3-5; 67 Del. Laws, c. 366 § 8; 67 Del. Laws, c. 368 § 14; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 381 §§ 4, 5, 7; 79 Del. Laws, c. 406 § 2.)

§ 2603A Organization; meetings; officers; quorum.

(a) The Board shall elect annually from its membership a Chairperson, a Vice-Chairperson, and a Secretary. Each officer shall serve for 1 year and shall not succeed himself or herself for more than 2 consecutive terms.

(b) The Board shall hold regularly scheduled business meetings at least once in each quarter of a calendar year, and at such times as the Chairperson deems necessary, or at the request of a majority of the members of the Board.

(c) A majority of the members of the Board shall constitute a quorum for the purpose of transacting business and no action shall be taken without the affirmative vote of a majority of the quorum. No disciplinary action shall be taken without the affirmative vote of a majority of the members of the Board.

(d) Minutes of all meetings shall be recorded and the Division shall maintain copies. 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.

(79 Del. Laws, c. 406 § 3; 70 Del. Laws, c. 186 § 1.)

§ 2603B Records.

The Division shall keep a register of all approved applications for licenses under this chapter and complete records relating to meetings of the Board, rosters, changes, and additions to the Board's rules and regulations, complaints, hearings, and such other matters as the Board shall determine. Such records are prima facie evidence of the proceedings of the Board.

(79 Del. Laws, c. 406 § 3.)

§ 2604 Powers and duties of Board.

(a) The Examining Board of Physical Therapists and Athletic Trainers shall have authority to:

(1) Adopt rules and regulations, which shall be promulgated in accordance with the requirements of the Administrative Procedures Act, Chapter 101 of Title 29;

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

(3) Designate an examination to be taken by persons applying for licensure, except applicants who qualify for licensure by reciprocity;

(4) Evaluate the credentials of all applicants in order to determine whether the applicants meeting qualifications for licensing set forth in this chapter;

(5) Grant licenses to and renew licenses of all persons who meet the qualifications for licensure;

(6) Establish by rule and regulation continuing education standards required for license renewal. Such continuing education standards shall include competencies and proficiencies as determined by the Board;

(7) Establish by rule and regulation advanced training requirements to assure the licensee meets accepted standards of care for different modalities;

(8) Perform random audits of continuing education credits submitted by licensees for license renewal;

(9) Evaluate certified records to determine whether an applicant for licensure who previously has been licensed in another jurisdiction 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 the applicant for such acts or offenses;

(10) Refer all complaints from licensees and the public concerning persons licensed under this chapter, or concerning practices of the Board or of a profession regulated by the Board, to the Division 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 the Administrative Procedures Act, Chapter 101 of Title 29;

(12) Designate and impose the appropriate sanction or penalty where it has been determined, after a hearing, that penalties or sanctions should be imposed;

(13) Issue cease and desist orders and impose fines for unlicensed practice after a hearing conducted in accordance with this chapter and the Administrative Procedures Act, Chapter 101 of Title 29;

(14) Issue advisory opinions regarding this chapter upon written request by a person licensed under this chapter; and

(15) Report final disciplinary action taken against a licensee to a national disciplinary database recognized by the Board or as required by law.

(b) The Board of Physical Therapy and Athletic Training shall promulgate regulations specifically identifying those crimes which are substantially related to the practice of physical therapy or athletic training.

(24 Del. C. 1953 §§ 2603, 2605; 50 Del. Laws, c. 367 § 1; 64 Del. Laws, c. 192 § 1; 68 Del. Laws, c. 71 § 1; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 125 §§ 1, 2; 74 Del. Laws, c. 262 § 47; 74 Del. Laws, c. 381 § 7; 79 Del. Laws, c. 406 § 4.)

§ 2605 License required; exceptions.

(a) No person shall practice nor hold oneself out as being able to practice physical therapy or athletic training in this State or act as a physical therapist, physical therapist assistant or athletic trainer in any manner whatsoever whether or not compensation is received or expected unless the person is licensed in accordance with this chapter and such license is in good standing or has not been suspended or revoked.

(b) This chapter shall not prohibit any person licensed to practice in this State under any other law from engaging in that practice for which such person is licensed.

(c) This chapter shall not prohibit students, whether or not licensed in Delaware, who are enrolled in either schools or post-graduate courses of physical therapy or athletic training recognized by the Board from performing such work or acts of physical therapy or athletic training as is incidental to their respective course of study while under the direct supervision of a licensed physical therapist or licensed athletic trainer in their respective training mode.

(d) Nothing in this chapter shall apply to any person employed by an agency, bureau or division of the federal government while in the discharge of official duties; however, if such person engages in the practice of physical therapy or athletic training in this State outside the scope of such official duty, the person must be licensed as herein provided.

(e) This chapter shall not prohibit a physical therapist or athletic trainer who resides and works outside the State of Delaware and is licensed in a jurisdiction of the United States or credentialed in another country or, in the case of an athletic trainer, is certified by the National Athletic Trainers Association, from rendering care, if that person by contract or employment is providing non-clinical physical therapy or athletic training to patients/clients affiliated with or employed by established athletic teams, athletic organizations, or performing arts companies temporarily practicing, competing, or performing in the jurisdiction for no more than 60 days in a calendar year. All visiting physical therapists or athletic trainers must abide by Delaware laws, rules, and regulations relating to physical therapy and athletic training.

(f) This chapter shall not limit or restrict those who are engaged in certain occupations or jobs which may or may not require a license such as, but not limited to, physical education teachers, coaches, health, or recreation directors and instructors at health clubs or spas, water safety instructors, and massage therapists. The duties which may be properly undertaken in such occupation or job include the nontherapeutic administration of baths, massage, normal conditioning and the like to normal subjects, that is, those persons who have no specific pathology. First aid subjects are excluded.

(g) This chapter shall not prohibit a physical therapist or athletic trainer who is licensed in another jurisdiction of the United States or credentialed to practice physical therapy or athletic training in another country from teaching, demonstrating, or providing physical therapy or athletic training services in connection with teaching or participating in an educational seminar for no more than 60 days in a calendar year, so long as such person abides by Delaware laws, rules, and regulations relating to physical therapy and athletic training.

(h) This chapter shall not prohibit a physical therapist or athletic trainer who is licensed in a jurisdiction of the United States from providing physical therapy or athletic training services in this State during a declared local, jurisdictional, or national disaster or emergency. This exemption applies for no more than 60 days following the declaration of the emergency, so long as such person abides by Delaware laws, rules, and regulations relating to physical therapy and athletic training. In order to be eligible for this exemption, the physical therapist or athletic trainer shall notify the Board of his or her intent to practice in this State pursuant to this subsection.

(i) This chapter shall not prohibit a physical therapist or athletic trainer licensed in a jurisdiction of the United States who is forced to leave his or her residence or place of employment due to a declared local, jurisdictional, or national disaster or emergency from practicing physical therapy or athletic training in this State. This exemption applies for no more than 60 days following the declaration of the emergency, so long as such person abides by Delaware laws, rules, and regulations relating to physical therapy and athletic training. In order to be eligible for this exemption, the physical therapist or athletic trainer shall notify the Board of his or her intent to practice in this State pursuant to this subsection.

(24 Del. C. 1953 § 2606; 50 Del. Laws, c. 367 § 1; 58 Del. Laws, c. 330 § 2; 64 Del. Laws, c. 192 § 1; 67 Del. Laws, c. 97 §§ 6-10; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 406 § 5.)

§ 2606 Qualifications of applicant; foreign-trained applicants; report to Attorney General; judicial review.

(a) An applicant who is applying for licensure under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person:

(1) Has graduated from a school offering a program in physical therapy, physical therapy assistant or athletic training, which program as offered by such school has been approved for the educational preparation of physical therapists, physical therapist assistants or athletic trainers by the appropriate accrediting agency recognized by the Council on Post Secondary Accreditation or the United States Commission of Education, or any successor, at the time of graduation; provided however, that those applicants for licensure as athletic trainers who apply or who have applied for and been granted a license prior to July 1, 2004, may be licensed if they have been granted a degree from a college or university, successfully completed the internship process through the National Athletic Trainers Association Board of Certification (NATA BOC) and have been approved by NATA BOC to take the national examination; and

(2) Has passed, to the satisfaction of the Board, a national examination designated by the Board, to determine the applicant's fitness to practice physical therapy, to act as a physical therapist assistant or to act as an athletic trainer as herein provided; and

(3) Meets additional educational requirements set forth in the Board's rules and regulations; and

(4) Shall not have been the recipient of any administrative penalties from any other jurisdiction or jurisdictions regarding the applicant's practice of physical therapy or athletic training, including but not limited to fines, formal reprimands, license suspensions or

revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations, and/or has not entered into any "consent agreements" which contain conditions placed by a board on the applicant's professional conduct and practice, including any voluntary surrender of a license in lieu of discipline. The Board may determine, after a hearing, whether such administrative penalty is grounds to deny licensure; and

(5) Shall not have any impairment related to drugs, alcohol or a finding of mental incompetence by a physician that would limit the applicant's ability to undertake the practice of physical therapy or athletic training in a manner consistent with the safety of a patient or the public; and

(6) Shall not have a criminal conviction record, nor pending criminal charge relating to an offense, the circumstances of which substantially relate to the practice of physical therapy or athletic training. Applicants who have criminal conviction records or pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the record or charge is substantially related to the practice of physical therapy or athletic training. However, 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, may waive this paragraph (a)(6), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of practicing physical therapy and athletic training in a competent and professional manner.

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

(7) Shall not have been convicted of a felony sexual offense; and

(8) Submit, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

a. 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 relating to that person.

b. A report of the applicant's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Board of Physical Therapists and Athletic Trainers shall be the screening point for the receipt of said federal criminal history records.

c. An applicant may not be certified to physical therapy or athletic training until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be certified by the Board unless a waiver is granted pursuant to paragraph (a)(6) of this section;

(9) Shall have no disciplinary proceedings or unresolved complaints pending against that person in any jurisdiction where the applicant previously has been or currently is licensed to practice physical therapy or athletic training; and

(10) Has not been convicted of a felony sexual offense; and

(11) Has submitted, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

a. 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 relating to the person.

b. A report of the applicant's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Board shall be the screening point for the receipt of said federal criminal history records.

(b) A physical therapist applicant whose application is based on a diploma issued by a foreign physical therapy school shall furnish evidence satisfactory to the Board of the completion of a physical therapy school or schools" resident course of professional instruction equivalent to that required in subsection (a) of this section, in addition to meeting all other requirements of this section and § 2608 of this title.

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

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

(e) All individuals licensed to practice physical therapy or athletic training in this State shall be required to 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.

(f) An applicant may not be licensed until the applicant's criminal history reports have been produced. An applicant whose record shows

a prior criminal conviction may not be licensed by the Board unless a waiver is granted pursuant to paragraph (a)(6) of this section.

(24 Del. C. 1953 § 2607; 50 Del. Laws, c. 367 § 1; 58 Del. Laws, c. 330 § 3; 58 Del. Laws, c. 511 § 58; 60 Del. Laws, c. 679 §§ 1, 2; 62 Del. Laws, c. 372 § 1; 64 Del. Laws, c. 192 § 1; 67 Del. Laws, c. 97 § 11; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 291 § 1; 73 Del. Laws, c. 125 § 3; 74 Del. Laws, c. 262 § 48; 75 Del. Laws, c. 436 § 27; 77 Del. Laws, c. 199 § 19; 78 Del. Laws, c. 44 §§ 38, 39; 79 Del. Laws, c. 277 § 9; 79 Del. Laws, c. 406 § 6.)

§ 2607 Issuance and renewal of licenses; inactive status; misrepresentation.

(a) The Board shall issue a license to each physical therapist applicant, physical therapist assistant applicant, or athletic trainer applicant who satisfies the requirements for licensure set forth in this chapter and rules and regulations promulgated hereunder.

(b) Each application for license under this chapter shall be accompanied by a fee set forth in the Board's rules and regulations. Licenses shall expire biennially on January 1 and may be renewed online upon payment of a renewal fee along with evidence of continuing education courses as may be required by the rules and regulations set forth by the Board. If the renewal fee is not paid by the expiration date, a license shall automatically expire. A license which has thus expired may, within 5 years of its expiration date, be renewed upon the payment to the Board of the sum set forth in rules and regulations of the Board for each year or part thereof during which the license was expired. Reactivation of an expired license more than 5 years after its expiration date may be renewed only by complying with the provisions herein relating to the issuance of an original license.

(c) The Board shall also keep an inactive register. Any person who has been registered in this State who is not actively engaged in the practice of physical therapy or athletic training in this State may, upon request, be placed on the inactive register. Provisions for inactive status shall be set by the Board.

(d) Any applicant who knowingly or wilfully makes a false statement of fact in making an application under this chapter shall be subject to prosecution for perjury.

(24 Del. C. 1953 §§ 2612, 2614; 50 Del. Laws, c. 367 § 1; 53 Del. Laws, c. 108 § 29; 58 Del. Laws, c. 330 § 3; 60 Del. Laws, c. 679 § 5; 62 Del. Laws, c. 372 § 3; 64 Del. Laws, c. 192 § 1; 67 Del. Laws, c. 97 § 12; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 125 § 4; 79 Del. Laws, c. 406 § 8.)

§ 2608 Examination.

The Board, in its rules and regulations, shall designate the national examinations for licensure as a physical therapist, physical therapist assistant, or athletic trainer.

(24 Del. C. 1953 § 2608; 50 Del. Laws, c. 367 § 1; 64 Del. Laws, c. 192 § 1; 67 Del. Laws, c. 97 § 13; 73 Del. Laws, c. 125 §§ 5, 6; 79 Del. Laws, c. 406 § 9.)

§ 2609 Fees.

The amount charged for fees imposed under this chapter shall approximate and reasonably reflect costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division in its service on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each biennium year, the Division, or another state agency acting on its behalf, shall compute the appropriate fee for each separate service or activity.

(79 Del. Laws, c. 406 § 7.)

§ 2610 Reciprocity.

(a) 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 proof of current licensure, in good standing, in another state, the District of Columbia or territory of the United States, and who, in addition:

(1) Meets the criteria for current licensure in good standing as defined in § 2606(a)(4)-(6), (9) and (10) of this title; and

(2) Has received the passing score on the national examination designated by the Board, for practice as a physical therapist, physical therapy assistant or athletic trainer; and

(3) Has submitted, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

a. 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 relating to that person.

b. A report of the applicant's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Board shall be the screening point for the receipt of said federal criminal history records.

(b) In addition to meeting the requirements of § 2606(a)(4)-(6), (9) and (10), foreign-trained applicants must also meet the requirements of 2606(b) of this title.

(c) In the event a physical therapist, physical therapy assistant or athletic trainer, who previously was licensed in Delaware and who has let his or her license lapse, is applying for licensure under this subsection, the Board shall grant a license to such applicant, subject to subsection (a) of this section and completion of continuing education requirements, upon payment of the appropriate fee, and on submission of a written application on forms provided by the Board.

(d) An applicant may not be licensed until the applicant's criminal history reports have been produced. An applicant whose record shows

a prior criminal conviction may not be licensed by the Board unless a waiver is granted pursuant to § 2606(a)(6) of this title.

(24 Del. C. 1953 § 2610; 50 Del. Laws, c. 367 § 1; 58 Del. Laws, c. 330 § 5; 60 Del. Laws, c. 679 § 3; 62 Del. Laws, c. 372 § 2; 64 Del. Laws, c. 192 § 1; 67 Del. Laws, c. 97 § 15; 70 Del. Law c. 186 § 1; 71 Del. Laws, c. 291 § 2; 75 Del. Laws, c. 436 § 28; 79 Del. Laws, c. 406 § 11.)

§ 2611 Temporary license.

(a) Upon submission of a written application on forms provided by the Board, the Board may issue a temporary license to a person who has applied for licensure under this chapter and who, in the judgment of the Board, is eligible to take the examination provided for in § 2608 of this title. In the case of physical therapists, physical therapist assistants, or athletic trainers, such temporary licensure may be available to an applicant only with respect to the applicant's first application for licensure. In the case of physical therapists and physical therapist assistants, the applicant may use the temporary licensure only while under the direct supervision of a licensed physical therapist. In a clinical setting, the athletic trainer applicant may use the temporary licensure only while under the direct supervision of a licensed physical therapist. In a nonclinical setting, the athletic trainer applicant may use the temporary licensure only while under the direct supervision of a licensed athletic trainer. Such temporary license shall expire automatically upon the failure of a licensure examination, and upon such expiration, the temporary license shall be surrendered to the Board and may not be renewed. In all other cases, a temporary license may be renewed only once.

(b) Upon payment to the Board of a fee and the submission of a written application on forms provided by it the Board, at its discretion, may issue a temporary license to practice physical therapy in this State, without examination, to a person requesting endorsement or who provides evidence to the Board that such person is in this State on a temporary basis to exist in a medical emergency or to engage in a special project or teaching assignment relating to physical therapy practice. Such temporary license shall expire at a time determined by the Board; however, such temporary license shall not be issued for a period of more than 1 year.

(24 Del. C. 1953 § 2611; 50 Del. Laws, c. 367 § 1; 60 Del. Laws, c. 679 § 4; 64 Del. Laws, c. 192 § 1; 67 Del. Laws, c. 97 § 16; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 125 §§ 7, 8; 79 Del. Laws, c. 406 § 12.)

§ 2612 Practice, referral, and consultation.

(a) A licensed physical therapist may enter a case for the purpose of consultation, evaluation or treatment of an individual as it relates to the individual's need for physical therapy services, with or without a referral by a licensed medical or osteopathic physician; provided, however, that a physical therapist shall refer the individual to another health practitioner if symptoms are present for which treatment is outside the scope of the physical therapist's knowledge. A physical therapist may treat an individual without a referral up to 30 days after which time a physician must be consulted. Physical therapy treatment of any individual shall be administered only by a licensed physical therapist. This chapter shall not prohibit physicians licensed to practice medicine and surgery, chiropractic physicians, podiatrists, dentists and nurses licensed under this title from performing any physical or therapeutic modalities within the scope of their respective practices. Treatment by a physical therapist may also occur based on a referral from, or in consultation with, any licensed health practitioner, who has been granted prescriptive authority for a condition within the scope of their respective practices.

(b) Any person licensed under this chapter as an athletic trainer shall not treat any person by athletic training or otherwise, except after a physician's referral or an evaluation by the supervising physical therapist, first aid excluded. Any person licensed under this chapter as an athletic trainer will require a physician's referral for treatment and/or rehabilitation of injuries, other than treatment of minor sprains, strains, and contusions, first aid excluded. Treatment by an athletic trainer may occur based on a referral from, or in consultation with, any licensed health practitioner who has been granted prescriptive authority for a condition within the scope of their respective practices. An athletic trainer shall refer an individual to another licensed health practitioner if symptoms are present for which athletic training is contra-indicated or which are indicative of conditions for which treatment is outside the scope of the athletic trainer's knowledge.

(1) All treatment of athletic injuries requires a physician's referral, except for minor sprains, strains, and contusions, first aid excluded.

(2) Treatment of nonmusculoskeletal athletic injuries is limited to on-site sanctioned scholastic, collegiate, professional, recreational, or amateur sports settings. An athletic trainer may not treat nonathletic, nonmusculoskeletal injury, unless otherwise set forth in this chapter.

(3) Treatment of musculoskeletal injuries that are not defined as an athletic injury will require direction from a physical therapist as set forth in this chapter and the Board's rules and regulations. An athletic trainer may not independently initiate, modify, or discontinue a physical therapy plan of care. Nothing in this chapter is to be construed to limit the practice of athletic training by athletic trainers as is currently being practiced or determined by the Board, so long as such practice does not include surgery and the medical diagnosis of disease. Advanced services may require advanced training, as determined by the Board's rules and regulations, to assure the licensee meets the accepted standard of care.

(c) Notwithstanding any other provision in this section, a physician referral specific for dry needling is required. If the initial referral is received orally, it must be followed up with a written referral.

(d) No physical therapist, physical therapist assistant, or athletic trainer shall advertise or in any other way hold himself or herself out as an acupuncturist, unless that physical therapist, physical therapist assistant, or athletic trainer is a licensed acupuncturist.

(64 Del. Laws, c. 192 § 1; 67 Del. Laws, c. 97 § 17; 69 Del. Laws, c. 164 § 1; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 125 §§ 9, 10; 74 Del. Laws, c. 381 § 6; 79 Del. Laws, c. 406 § 13.)

§ 2613 False representation of professional title.

(a) It shall be unlawful for any person, or for any business entity, its employees, agents or representatives to use in connection with its name or business activity the words "physical therapy," "physical therapist," "physiotherapy," "physiotherapist," "aquatic therapist," "hydrotherapist," "registered physical therapist," "licensed physical therapist," "physical therapist assistant," "athletic training," "athletic trainer," "trainer," "certified athletic trainer," "licensed athletic trainer," the letters "PT," "LPT," "DPT," "RPT," "PTA," "AT," "LAT," or any words, letters, abbreviations or insignia indicating or implying directly or indirectly physical therapy services or athletic training services or to bill for physical therapy or athletic training unless such services are provided by a physical therapist or athletic trainer licensed and practicing in accordance with this chapter.

(b) While rendering patient care as an employee of a hospital, clinic, group practice or multi-professional facility, or at a commercial establishment offering health services to the public, a person holding a license pursuant to this chapter shall wear an identification badge, lab coat, or other means of identification stating that person's professional title.

(64 Del. Laws, c. 192 § 1; 67 Del. Laws, c. 97 § 18; 75 Del. Laws, c. 398 §§ 1, 2; 79 Del. Laws, c. 406 § 14.)

§ 2614 Use of professional title.

(a) Any person who holds a license pursuant to this chapter as a physical therapist may use the word "physical therapist" or the letters "PT" in connection with the person's name or place of business to denote licensure hereunder. Any person who holds a license pursuant to this chapter as a physical therapist assistant may use the words "physical therapist assistant" and may use the letters "PTA" in connection with the person's name to denote licensure hereunder.

(b) Any person who holds a license pursuant to this chapter as an athletic trainer may use the words "licensed athletic trainer" and may use the letters "LAT" in connection with the person's name to denote licensure hereunder.

(64 Del. Laws, c. 192 § 1; 67 Del. Laws, c. 97 § 19; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 398 § 3; 79 Del. Laws, c. 406 § 15.)

§ 2615 Rules and regulations; authorized services and acts.

(64 Del. Laws, c. 192 § 1; 67 Del. Laws, c. 97 § 20; 70 Del. Laws, c. 186 § 1; Del. Laws, c. 406 § 16, eff Aug 12, 2014.)

§ 2616 Grounds for discipline.

(a) A person licensed under this chapter performing physical therapy or athletic training services is subject to the disciplinary sanctions set forth in § 2620 of this title if, after a hearing, the Board finds that the licensee has:

(1) Practiced physical therapy or acted as a physical therapist assistant or athletic trainer in violation of this chapter and rules and regulations promulgated thereunder;

(2) Obtained or attempted to obtain licensure by fraud or misrepresentation;

(3) Illegally, incompetently, or negligently practiced physical therapy or athletic training;

(4) Been convicted of a crime that is substantially related to the practice of physical therapy or athletic training in the courts of this State or any other state, territory or country. "Conviction," as used in this paragraph, shall include a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere;

(5) Habitually indulged in the use of narcotics or other habit forming drugs, or excessively indulged in the use of alcohol;

(6) Had a license to practice physical therapy or license to act as a physical therapist, physical therapist assistant, or athletic trainer revoked or suspended, has had other disciplinary action taken or an application for licensure has been refused, revoked, or suspended by the proper authorities of another state, territory or country;

(7) Been guilty of unprofessional conduct as adopted in the Board's rules and regulations. Unprofessional conduct shall include departure from or the failure to conform to the minimal standards of acceptable and prevailing physical therapy practice or athletic training practice, in which preceding actual injury to a patient need not be established;

(8) Engaged directly or indirectly in the division, transferring, assigning, rebating or refunding of fees received for professional services or who profits by means of a credit or other valuable consideration such as wages, an unearned commission, discount or gratuity with any person who referred a patient, or with any relative or business associate of the referring person. Nothing in this paragraph shall be construed as prohibiting the members of any regularly and properly organized business entity recognized by Delaware law and comprised of physical therapists or athletic trainers from making any division of their total fees among themselves as they determine by contract necessary to defray their joint operating costs;

(9) The Board shall permanently revoke the certificate to practice physical therapy or athletic training of a person who is convicted of a felony sexual offense.

(10) Violated a provision of this chapter or a rule or regulation promulgated by the Board under this chapter;

(11) Failed to notify the Board that the licensee's license in another jurisdiction has been subject to discipline, or has been surrendered, suspended, or revoked. A certified copy of the record of disciplinary action, surrender, suspension, or revocation of a license shall be conclusive evidence thereof; or

(12) Been convicted of a felony sexual offense.

(b) Where the practitioner is in disagreement with the action of the Board, the practitioner may appeal the Board's decision to the Superior Court in accordance with Chapter 101 of Title 29. Upon such appeal, the Court shall hear the evidence on the record. Stays shall be granted in accordance with § 10144 of Title 29.

(c) [Repealed.]

(d) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(24 Del. C. 1953 §§ 2613, 2615; 50 Del. Laws, c. 367 § 1; 64 Del. Laws, c. 192 § 1; 67 Del. Laws, c. 97 §§ 21-25; 68 Del. Laws, c. 71 § 2; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 125 § 11; 74 Del. Laws, c. 262 § 49; 79 Del. Laws, c. 213 § 2; 79 Del. Laws, c. 277 § 9; 79 Del. Laws, c. 406 § 17.)

§ 2617 Fees and revenues.

(24 Del. C. 1953 § 2616; 53 Del. Laws, c. 108 § 30; 64 Del. Laws, c. 192 § 1; 65 Del. Laws, c. 380 § 3; 73 Del. Laws, c. 125 § 12; Del. Laws, c. 406 § 18, eff Aug 12, 2014.)

§ 2618 Penalties and jurisdiction.

(a) Where the Board has determined that a person is engaged in a practice regulated by this chapter without having lawfully obtained a license, or that a person previously licensed under this chapter is engaged in a practice regulated by this chapter notwithstanding that the person's license has been suspended or revoked, the Board shall make complaint to the Attorney General and may issue a cease and desist order. The complaint and/or order shall include all evidence known to, or in the possession of the Board.

(b) Whoever violates this chapter or a cease and desist order issued by the Board shall be fined not less than $100 nor more than $1,000. Each day a violation continues shall constitute a separate offense.

(c)(1) Justices of the peace in the county in which the offense is alleged to have occurred shall have jurisdiction over any violation of this chapter.

(2) Any person convicted of any such offense before a Justice of the Peace may appeal to the Court of Common Pleas in the county in which the conviction was had upon giving bond in the sum of $200 to the State with surety satisfactory to such Justice, provided the appeal is taken and bond given within 7 days from the time of the conviction.

(d) A violation of this chapter shall be cause for revocation of any license issued thereunder, notwithstanding that the same violation may constitute a misdemeanor or felony.

(68 Del. Laws, c. 71 § 3; 69 Del. Laws, c. 423 § 24; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 406 § 20.)

§ 2619 Treatment or examination of minors.

(a) A parent, guardian or other caretaker, or an adult staff member, shall be present when a person licensed to practice physical therapy or athletic training under this chapter provides treatment to a minor patient involving the inspection, palpation, or treatment of the female breasts, or female or male genitalia or rectum, regardless of sex of the licensed person and patient, except when rendering care during an emergency. When using an adult staff member to observe the treatment or examination, the adult staff member shall be of the same gender as the patient when practicable. 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 physical therapy or athletic training without the presence of a third person after the physical examination.

(b) When a minor patient's evaluation or treatment requires inspection or palpation involving the female breasts, or female or male genitalia or rectum, a person licensed to practice physical therapy or athletic training under this chapter shall provide notice to the person providing consent to treatment of the rights under this section. The notice shall be provided in written form or be conspicuously posted in a manner in which minor patients and their parent, guardian or other caretaker are made aware of the notice. In circumstances in which the posting or the provision of the written notice would not convey the right to have a chaperone present, the person licensed to practice physical therapy or athletic training shall use and document another means to ensure that the person understands the right 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 that provides treatment to a minor pursuant to this section shall, contemporaneously with such treatment, note in the child's medical record the name of each person present when such treatment is being provided.

(79 Del. Laws, c. 169 § 7; 70 Del. Laws, c. 186 § 1.)

§ 2620 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that a condition or violation for discipline of a licensee regulated by this chapter has been established under § 2616 of this title:

(1) Issue a letter of reprimand.

(2) Place a licensee on probationary status and require the licensee to:

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

b. Limit all professional activities to those areas prescribed by the Board.

(3) Suspend a licensee's license.

(4) Revoke or permanently revoke a licensee's license.

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

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

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

(d) The Board shall permanently revoke the license of any person who the Board determines has violated § 2616(a)(12) of this title.

(79 Del. Laws, c. 406 § 19.)

Part

Chapter 27

PROFESSIONAL LAND SURVEYORS

Subchapter I

Board Of Professional Land Surveyors

§ 2701 Objectives.

The primary objective of the Board of Professional Land Surveyors, 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.

(72 Del. Laws, c. 265 § 1.)

§ 2702 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 Professional Land Surveyors established in this chapter.

(2) "Division" shall mean the State Division of Professional Regulation.

(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 a professional land surveyor.

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

(5) "Practice of land surveying" shall mean professional services or work involving special knowledge and application of the principles of mathematics and related sciences and the relevant requirement of law in connection with the use and development of land, as described herein:

a. The act of measuring, locating, establishing or reestablishing corners, lines, boundaries, angles, elevations, contours and natural and manmade features in the air, on the surface or subsurface of the earth, within underground workings and on the beds or surface of bodies of water for the purpose of determining or establishing facts of size, area, shape, topography, tidal datum planes, legal or geodetic location or relocation and orientation of improved or unimproved real property and appurtenances thereto;

b. The horizontal and vertical control for aerial surveys and photogrammetric compilation; Global Positioning System Surveying (GPS), as related to boundary surveying and as defined as determining the horizontal and vertical location of an object on the earth's surface with respect to the center of the earth by observing satellites with equipment capable of acquiring, analyzing and managing the data collected; polaris and solar observations for the determination of the true azimuth; the monumentation and remonumentation of boundaries of land, divisions of land, tracts, parcels and lots; the measurement and preparation of plans showing existing improvements after construction; the layout of proposed improvements and the preparation of descriptions and plans for use in legal instruments of conveyance of real property and property rights; and

c. The design, preparation and furnishing of subdivision plans, land development plans, sedimentation and erosion control plans, grading plans, condominium plans, record plats and horizontal alignments, and profiles and typical sections for roads, streets, utilities, sanitary sewers and storm drainage systems. This shall not be construed so as to permit the professional land surveyor to include the design of sewage disposal stations, lift stations, commercial and industrial buildings, pumping stations and bridges, or to prepare plans for the construction of engineering and architectural projects.

(6) "Professional land surveyor" shall mean an individual who holds a valid license to practice land surveying under this chapter, and in addition:

a. Is a professional specialist in the technique of measuring land;

b. Is educated in the principles of mathematics and related sciences;

c. Is experienced in the application of the principles of mathematics and the related sciences;

d. Understands the relevant requirements of law for the presentation of adequate evidence relating to property descriptions and the surveying of real property.

(7) "Responsible charge" shall mean the direct control and personal direction of the investigation, operation and execution of land surveying work requiring initiative, and professional skill and independent judgment as a party chief or survey manager.

(8) "State" shall mean the State of Delaware.

(9) "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 land surveying.

(10) "Surveyor intern" shall mean an individual who has qualified for, taken, and has passed the written standardized national examination developed by the national professional association in the fundamentals of surveying.

(43 Del. Laws, c. 286 § 2; 24 Del. C. 1953 § 2701; 56 Del. Laws, c. 368; 58 Del. Laws, c. 501 § 2; 60 Del. Laws, c. 275 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 265 § 1; 74 Del. Laws, c. 262 § 50; 76 Del. Laws, c. 170 § 1.)

§ 2703 Board of Professional Land Surveyors; appointments; qualifications; term; vacancies; suspension or removal; unexcused absences; compensation.

(a) There is created a State Board of Professional Land Surveyors that shall administer and enforce this chapter.

(b) The Board shall consist of 7 members appointed by the Governor, who are residents of this state: Four shall be land surveyors licensed under this chapter, at least 1 of whom, but not more than 2, shall be appointed from each county of this State; and 3 public members. The public members shall not be, nor ever have been, land surveyors, nor members of the immediate family of a land surveyor; shall not have been employed by a land surveyor; shall not have a material interest in the providing of goods and services to land surveyors; nor have been engaged in an activity directly related to land surveying. 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 February 4, 2000, 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 land surveyors; this includes a prohibition against serving as head of the professional association's Political Action Committee (PAC).

(h) The provisions of Chapter 58, Title 29 of the Delaware Code 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 half of all regular business meetings during any calendar year shall be deemed to have resigned that member's appointment. The Director of the Division shall have the responsibility to enforce this provision. Upon the determination by the Director that a vacancy exists due to this provision, the Governor may appoint a new member as provided in subsection (c) of this section.

(j) Each member of the Board shall be reimbursed for all expenses involved in each meeting, including travel, according to Division policy, and in addition shall receive not more than $50 for each meeting attended but not more than $500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(43 Del. Laws, c. 286 §§ 3, 4, 6; 24 Del. C. 1953 § 2702; 58 Del. Laws, c. 501 § 2; 61 Del. Laws, c. 434 § 1; 63 Del. Laws, c. 101 §§ 1, 2; 67 Del. Laws, c. 366 § 9; 67 Del. Laws, c. 368 § 15; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 265 § 1; 78 Del. Laws, c. 140 § 1.)

§ 2704 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 4 members of the Board.

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

(43 Del. Laws, c. 286 § 7; 24 Del. C. 1953 § 2705; 58 Del. Laws, c. 501 § 2; 61 Del. Laws, c. 434 § 1; 67 Del. Laws, c. 366 § 10; 70

Del. Laws, c. 186 § 1; 72 Del. Laws, c. 265 § 1.)

§ 2705 Records.

The Division of Professional Regulation shall keep a register of all approved applications for license as a land surveyor 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.

(43 Del. Laws, c. 286 § 10; 24 Del. C. 1953 § 2708; 58 Del. Laws, c. 501 § 2; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 265 § 1.)

§ 2706 Powers and duties.

(a) The Board of Professional Land Surveyors 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 of this State [Chapter 101 of Title 29]. 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 process all applications;

(3) Designate a written, standardized, national examination prepared by either the national professional association or by a recognized national testing service and approved by the Division, to be taken by all persons applying for licensure; the national examination shall be taken by all persons applying for licensure, except applicants who qualify for licensure by reciprocity;

(4) Designate a written, 2-hour examination on drainage and the Delaware law, prepared by an independent testing agency and approved by the Director of the Division. All persons applying for licensure, including those applicants for licensure by reciprocity, shall take the examination on drainage and Delaware law;

(5) Adopt the administration, grading procedures and passing score set by the national professional association or testing service;

(6) Evaluate the credentials of all persons applying for a license to practice land surveying 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 land surveying 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 professional land surveyors 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 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 shall adopt and have an official seal, which shall be affixed to each certificate issued.

(c) The Board may establish minimum technical or general standards to regulate the practice of land surveying within the State and may establish minimum requirements for the continuing education of registrants.

(d) Any member of the Board may administer oaths or affirmations to witnesses appearing before the Board.

(e) In carrying into effect this chapter, the Board, under the hand of its Chairperson and the seal of the Board, may subpoena witnesses and compel their attendance and also may require the submission of books, papers, documents or other pertinent data in any disciplinary matter or in any case wherever a violation of this chapter is alleged. Upon failure or refusal to comply with any such order of the Board or upon failure to honor its subpoena as herein provided, the Board may present its petition to the Superior Court setting forth the facts. Thereupon the Court shall, in a proper case, issue its subpoena to such person, requiring attendance and testimony before such Court and the submission of such books, papers, documents or other pertinent data as may be deemed necessary and pertinent by the Board. Any person failing or refusing to obey the subpoena or order of the Court may be proceeded against in the same manner as for refusal to obey any other subpoena or order of the Superior Court.

(f) The amount to be charged for each fee imposed under this chapter shall approximately and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board. There shall be a separate fee charged for each service or activity; but no fee shall be charged for an activity not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each licensure biennium, the Division, or any other state agency acting on its behalf, shall compute, for each separate service or activity, the appropriate Board fees for the licensure biennium.

(g) The Board of Professional Land Surveyors shall promulgate regulations identifying those crimes which are substantially related to the practice of land surveying.

(43 Del. Laws, c. 286 § 8; 24 Del. C. 1953 § 2706; 58 Del. Laws, c. 501 § 2; 61 Del. Laws, c. 434 § 1; 63 Del. Laws, c. 101 § 3; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 265 § 1; 74 Del. Laws, c. 262 § 51; 75 Del. Laws, c. 327 § 1; 75 Del. Laws, c. 373 § 1.)

Subchapter II

License

§ 2707 License required.

(a) No person shall engage in the practice of land surveying or hold himself or herself out to the public in this State as being qualified to practice land surveying or use in connection with that person's name or otherwise assume or use any title or description conveying or tending to convey the impression that the person is qualified to practice land surveying, unless such person has been duly licensed under this chapter.

(b) Whenever a license to practice as a land surveyor in this State has expired or been suspended or revoked, it shall be unlawful for the person to practice land surveying in this State.

(43 Del. Laws, c. 286 § 1; 24 Del. C. 1953 § 2721; 58 Del. Laws, c. 501 § 2; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 265 § 1.)

§ 2708 Qualifications of applicant; report to Attorney General; judicial review.

(a) An applicant who is applying for licensure under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person:

(1)a. Applying for licensure as a surveyor intern has satisfied 1 of the following requirements:

1. Is a college senior or a graduate of a surveying program of 4 years or more; or

2. Is a graduate of a 4-year or more program as acceptable to the Board and has had at least 2 years of combined office and field experience in responsible charge of land surveying projects performed under the direct supervision of a professional land surveyor in the active practice of land surveying. The required experience shall not be achieved concurrently with the education requirement; or

3. Is a graduate of a surveying program of 2 years or more and has had at least 2 years of combined office and field experience in responsible charge of land surveying projects performed under the direct supervision of a professional land surveyor in the active practice of land surveying. The required experience shall not be achieved concurrently with the education requirement; or

4. Has 5.5 years of experience under the direct supervision of a professional land surveyor in the active practice of land surveying and has obtained Level IV Survey Technician Certification established by the National Society of Professional Surveyors — American Congress on Surveying and Mapping or similar certification acceptable to the Board.

b. Applying for licensure as a professional land surveyor has served as a surveyor intern with a specific record of 4 years, as said intern, of combined office and field experience in responsible charge of land surveying projects performed under the direct supervision of a professional land surveyor in the active practice of land surveying.

c. When calculating the years of experience for licensure under this chapter, the work performed under the direct supervision of a property line surveyor licensed under the Maryland Code, or by a surveyor licensed under equivalent provisions of other states, shall be considered as equivalent to work performed under the direct supervision of a professional land surveyor in Delaware.

(2) Professional land surveyors shall have achieved the passing score on the written standardized national examination developed by the national professional association in the principles of surveying and the written 2 hour examination on drainage and Delaware law. Surveyor interns shall have achieved a passing score on the written standardized national examination developed by the national professional association in the fundamentals of surveying; a college senior must show proof of graduation prior to issuance of a license as a surveyor intern.

(3) Shall have paid the appropriate fee or fees as established by the Division of Professional Regulation.

(4) Shall not have been the recipient of any administrative penalties regarding that person's practice of land surveying, including, but not limited to, fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), or probationary limitations, and/or has not entered into any "consent agreements" that contain conditions placed by a Board on that person's professional conduct and practice, including any voluntary surrender of a license. The Board may determine, after a hearing, whether such administrative penalty is grounds to deny licensure.

(5) Shall not have any impairment related to drugs and/or alcohol that would limit the applicant's ability to undertake the practice of land surveying in a manner consistent with the safety of the public.

(6) Shall not have a criminal conviction record, nor pending criminal charge relating to an offense the circumstances of which substantially relate to the practice of land surveying. Applicants who have criminal conviction records or pending criminal charges shall request 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 land surveying. However, 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, may waive this paragraph (a)(6) of this section, if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of practicing professional land surveying in a competent and professional manner.

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

(7) Shall not have engaged in any of the acts or offenses that would be grounds for disciplinary action under this chapter and has no disciplinary proceedings or unresolved complaints pending against that person in any jurisdiction where the applicant has previously been or currently is licensed or registered as a land surveyor.

(b) Where the Board has found to its satisfaction that an application has been intentionally fraudulent or that false information has been intentionally supplied, 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 applicant feels that the Board has acted without justification, has imposed higher or different standards for that person than for other applicants or licensees, or has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court. The appeal shall be treated as an appeal of an administrative agency decision pursuant to the Administrative Procedures Act, Chapter 101, Title 29.

(43 Del. Laws, c. 286 § 12; 24 Del. C. 1953 § 2722; 57 Del. Laws, c. 423; 58 Del. Laws, c. 501 § 2; 61 Del. Laws, c. 434 § 2; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 265 § 1; 74 Del. Laws, c. 262 § 52; 75 Del. Laws, c. 327 §§ 2-4; 75 Del. Laws, c. 436 § 29; 76 Del. Laws, c. 170 §§ 2-5; 77 Del. Laws, c. 199 § 20; 78 Del. Laws, c. 44 §§ 40, 41.)

§ 2709 Reciprocity.

(a) 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 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 and who meets the following criteria:

(1) That applicant's license is in good standing as defined in §2708(a)(3), (4), (5) and (6) of this title; and

(2) Has achieved the passing score on the 2-hour written examination on drainage and the Delaware law.

(b) An applicant who is licensed or registered in a state whose standards are not substantially similar to those of this State shall have practiced for a minimum of 5 years after licensure; provided, however, that the applicant meets all other qualifications for reciprocity in this section.

(43 Del. Laws, c. 286 § 13; 24 Del. C. 1953 § 2724; 53 Del. Laws, c. 108 § 31; 58 Del. Laws, c. 501 § 2; 61 Del. Laws, c. 434 § 2; 65 Del. Laws, c. 222 § 2; 70 Del. Law c. 186 § 1; 72 Del. Laws, c. 265 § 1; 75 Del. Laws, c. 436 § 30.)

§ 2710 Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division in its service on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each licensure biennium, the Division, or any other state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate Board fees for the coming licensure biennium.

(72 Del. Laws, c. 265 § 1.)

§ 2711 Issuance and renewal of licenses.

The Board shall issue a license to each applicant who meets the requirements of this chapter for licensure as a land surveyor and who pays the fee established under § 2710 of this title.

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

The Division or its designee shall notify every licensee of the date of expiration of license and the amount of the fee that shall be required for renewal at least 1 month prior to the expiration thereof. Failure to give or receive such notice shall not prevent the license from becoming invalid after its expiration date.

The Board, in its rules and regulations, shall determine the period of time within which a professional land surveyor may still renew license, notwithstanding the fact that such licensee has failed to renew on or before the renewal date. The Board shall charge a late fee equivalent to twice the sum of the unpaid renewal fee.

(43 Del. Laws, c. 286 § 16; 24 Del. C. 1953 § 2729; 53 Del. Laws, c. 108 § 33; 57 Del. Laws, c. 609 § 3; 58 Del. Laws, c. 501 § 2; 61 Del. Laws, c. 434 § 2; 63 Del. Laws, c. 217 § 1; 65 Del. Laws, c. 222 § 3; 68 Del. Laws, c. 232 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 265 § 1; 75 Del. Laws, c. 327 § 5; 76 Del. Laws, c. 170 § 7.)

§ 2712 Grounds for discipline.

(a) A practitioner licensed under this chapter shall be subject to disciplinary actions set forth in § 2714 of this title after a hearing, the

Board finds that the land surveyor:

(1) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license as a land surveyor; has impersonated another person holding a license or registration or allowed another person to use that land surveyor's license, or aided or abetted a person not licensed as a land surveyor to represent himself or herself as a land surveyor;

(2) Has been convicted of a crime that is substantially related to the practice of land surveying; a copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence therefor;

(3) Has excessively used or abused drugs;

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

(5) Has engaged in illegal, incompetent or grossly negligent conduct in the practice of land surveying;

(6) Has violated a lawful provision of this chapter or any lawful regulation established thereunder;

(7) Has had that land surveyor's license, certification or registration as a land surveyor suspended or revoked or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every person licensed as a land surveyor in this State shall be deemed to have given consent to the release of this information by the Board or other comparable agencies in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses;

(8) Has failed to notify the Board that the land surveyor's license or registration as a land surveyor in another state has been subject to discipline or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof; or

(9) While acting as a supervising land surveyor, has failed to supervise and take reasonable steps to see that unlicensed persons acting under the supervising land surveyor's direction or control perform services responsibly, competently and ethically, in accordance with rules and regulations established by the Board. Supervising land surveyors shall be subject to disciplinary action for any acts or offenses which are grounds for such action when such acts or offenses are undertaken by unlicensed persons acting under the supervising land surveyor's direction or control; or

(10) Has practiced or offered to practice as a land surveyor when the practitioner's license has expired or lapsed.

(b) Subject to the provisions of 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 land surveying 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.

(43 Del. Laws, c. 286 § 20; 24 Del. C. 1953 § 2730; 58 Del. Laws, c. 501 § 2; 61 Del. Laws, c. 434 § 5; 63 Del. Laws, c. 101 §§ 6-8; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 265 § 1; 74 Del. Laws, c. 262 § 53; 75 Del. Laws, c. 327 § 6; 76 Del. Laws, c. 170 § 6.)

§ 2713 Complaints.

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

(b) When it is determined that an individual is engaging in the practice of land surveying or is using the title land surveyor and is not licensed under the laws of this State, the Board shall apply to the Office of the Attorney General to issue a cease and desist order.

(43 Del. Laws, c. 286 § 19; 24 Del. C. 1953 § 2728; 53 Del. Laws, c. 108 § 32; 58 Del. Laws, c. 501 § 2; 61 Del. Laws, c. 434 § 2; 63 Del. Laws, c. 101 § 5; 72 Del. Laws, c. 265 § 1.)

§ 2714 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 § 2712 of this chapter applies to a practitioner regulated by this chapter:

(1) Issue a letter of reprimand.

(2) Censure a practitioner.

(3) Place a practitioner on probationary status, and require the practitioner to:

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

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

(4) Suspend any practitioner's license.

(5) Revoke any practitioner's license.

(6) Impose a monetary penalty not to exceed $5,000 for each violation.

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

(c) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to

whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

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

(43 Del. Laws, c. 286 § 20; 24 Del. C. 1953 § 2730; 58 Del. Laws, c. 501 § 2; 61 Del. Laws, c. 434 § 5; 63 Del. Laws, c. 101 §§ 6-8; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 265 § 1; 77 Del. Laws, c. 111 § 2; 79 Del. Laws, c. 213 § 2.)

§ 2715 Hearing procedures.

(a) If a complaint is filed with the Board pursuant to § 8735 of Title 29 alleging violation of § 2714 of this title, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) All hearings shall be 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 be in writing and shall include its reasons for such decision. The Board's decision shall be mailed immediately to the practitioner.

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

(43 Del. Laws, c. 286 § 20; 24 Del. C. 1953 § 2730; 58 Del. Laws, c. 501 § 2; 61 Del. Laws, c. 434 § 5; 63 Del. Laws, c. 101 §§ 6-8; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 265 § 1.)

§ 2716 Reinstatement of a suspended license; removal from probationary status; replacement of license.

(a) As a condition to reinstatement of a suspended license or removal from probationary status, the Board may reinstate such 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 probation.

(b) Applicants 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 probation have been met. Proof that the applicant has met the continuing education requirements of this chapter may also be required, as appropriate.

(c) A new license to replace any license lost, destroyed or mutilated may be issued subject to the rules of the Board. A charge shall be made for such issuance.

(43 Del. Laws, c. 286 § 20; 24 Del. C. 1953 § 2731; 58 Del. Laws, c. 501 § 2; 61 Del. Laws, c. 434 § 2; 72 Del. Laws, c. 265 § 1.)

§ 2717 Penalty.

A person not currently licensed under this chapter as a land surveyor, when guilty of engaging in the practice of land surveying, 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 land surveying, such offender shall be guilty of a misdemeanor. Upon the first offense, the person shall be fined not less than $500 or more than $1000 for each offense. For a second or subsequent conviction, the fine shall be not less than $1000 or more than $2000 for each offense. Justice of the Peace Court shall have jurisdiction over all violations of this chapter.

(43 Del. Laws, c. 286 § 21; 24 Del. C. 1953 § 2735; 58 Del. Laws, c. 501 § 2; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 265 § 1; 75 Del. Laws, c. 373 § 2.)

Subchapter III

Other Provisions

§ 2718 Applicability of chapter.

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

(1) Any person or persons licensed to practice engineering or architecture in Delaware;

(2) Any person or persons engaged solely in the teaching of land surveying or courses related to land surveying;

(3) Any employee of the United States government while engaged in the practice of land surveying for said government within this State;

(4) Any person or persons engaged in the practice of land surveying under the direct supervision of a professional land surveyor who is licensed in this State and who assumes responsibility for the activities of the unlicensed person or persons.

(43 Del. Laws, c. 286 § 22; 24 Del. C. 1953 § 2733; 58 Del. Laws, c. 501 § 2; 61 Del. Laws, c. 434 § 2; 63 Del. Laws, c. 101 § 10; 72 Del. Laws, c. 265 § 1.)

§ 2719 Seal.

Every land surveyor licensed in this State shall have a seal of a design authorized by the Board by regulation and which bears the professional land surveyor's name. All technical submissions prepared by such land surveyor, or under that land surveyor's direct supervision, shall be stamped with the impression of the professional land surveyor's seal. No professional land surveyor shall impress that land surveyor's seal on any technical submission unless it has been prepared under that land surveyor's direct supervision.

(43 Del. Laws, c. 286 § 15; 24 Del. C. 1953 § 2726; 58 Del. Laws, c. 501 § 2; 61 Del. Laws, c. 434 § 4; 63 Del. Laws, c. 101 § 4; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 265 § 1; 75 Del. Laws, c. 327 § 7.)

§ 2720 Public works.

Neither this State, nor any of its political subdivisions, such as counties, incorporated cities and towns, or other political entities or legally constituted boards, commissions, or authorities, or officials, or employees thereof, shall permit the commencement or continuance of any public work involving land surveying unless the field surveying shall be directly supervised by, and all drawings and documents as a result thereof, shall be prepared or certified by, a professional land surveyor licensed under this chapter, or a person authorized under Chapter 28 of this title to practice professional engineering in this State.

(43 Del. Laws, c. 286 § 18; 24 Del. C. 1953 § 2734; 58 Del. Laws, c. 501 § 2; 61 Del. Laws, c. 434 § 6; 72 Del. Laws, c. 265 § 1.)

§ 2721 Counseling; letter of concern.

(a) The Board may determine after an investigation that a violation of this chapter or of the rules and regulations enacted pursuant to this chapter which warrants formal disciplinary action has not occurred, but that an act or omission of the licensee is a matter of concern and that the licensee's practice may be improved if made aware of the concern. The Board Chair, with the concurrence of the Board, may issue a nondisciplinary, confidential letter of concern regarding the licensee's act or omission.

(b) If a person licensed to practice land surveying receives a total of 3 letters of concern and/or letters of counseling pursuant to this section, the Board may reasonably require a formal assessment of professional competency to assess the licensee's ability in order to protect the health and safety of the public.

(76 Del. Laws, c. 170 § 8; 70 Del. Laws, c. 186 § 1.)

§ 2722 Certificate of authorization.

(a) A professional land surveying corporation or partnership must have a certificate of authorization in order to practice, or offer to practice, land surveying as defined in this chapter.

(b) The practice of or offer to practice land surveying for the public by a professional land surveying corporation or partnership which has been issued a certificate of authorization is permitted, provided that 1 of the officers or 1 of the employees of the said land surveying corporation or partnership:

(1) Is designated as being in responsible charge of the land surveying activities and surveying decisions of the said corporation or partnership; and

(2) Is a licensee.

(c) All personnel of any such land surveying corporation or partnership who practice land surveying on its behalf shall be licensees. The requirements of this chapter shall not prevent a land surveying partnership or corporation and its employees from performing surveying services for the said land surveying partnership or corporation or its subsidiaries or for affiliated corporations.

(d) A land surveying corporation or partnership desiring a certificate of authorization shall file with the Board and the Division an application listing the names and addresses of all officers, board members and principals of the land surveying corporation or partnership and also of any licensee who shall be in responsible charge of the practice of land surveying through the said corporation or partnership, together with any other information required by the Division. The same information must accompany the biennial renewal fee. In the event there shall be a change in any of these persons during that biennial period, such change shall be filed with the Division within 30 days after the effective date of such change. If all the requirements of this section are met, the Board shall issue a certificate of authorization to such land surveying corporation or partnership, and such land surveying corporation or partnership shall be authorized to contract for and to collect fees for furnishing surveying services.

(e) The Board may refuse or reject an applicant if, after a hearing, the Board finds that the applicant has practiced surveying without being authorized under this section. Notwithstanding such a finding, the Board may allow licensure of such applicant if the applicant presents to the Board suitable evidence of reform.

(f) No such land surveying corporation or partnership shall be relieved of responsibility for the conduct or acts of its agents, employees or officers by reason of compliance with the provisions of this section, nor shall any individual practicing land surveying be relieved of responsibility for surveying services performed by reason of employment or relationship with such corporation or partnership.

(g) Applicants for a certificate of authorization must comply with the applicable state tax laws of Chapter 23 of Title 30. Proof of such compliance is required by the Division prior to the issuance of a certificate of authorization.

(h) A licensee who practices, or offers to practice, surveying under a name other than that person's licensed name is required to obtain a certificate of authorization, or to practice under a certificate of authorization.

(77 Del. Laws, c. 111 § 1.)

Part

Chapter 28
PROFESSIONAL ENGINEERS

§ 2801 Short title.

This chapter shall be known and may be cited as the "Delaware Professional Engineers Act."

(24 Del. C. 1953 § 2802; 58 Del. Laws, c. 501 § 1; 74 Del. Laws, c. 267 § 1.)

§ 2802 Declaration of purpose; unlawful practice.

In order to safeguard life, health, and property and to promote the public welfare, the practice of engineering in this State is hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice or to offer to practice engineering in this State; to use in connection with such person's name, by verbal claim, sign, advertisement, letterhead, card or to in any other way, represent himself or herself to be an engineer, a professional engineer or through the use of some other title imply that such person is a professional engineer licensed under this chapter; or to advertise any title or description tending to convey the impression that such person is a professional engineer unless such person has been duly licensed, authorized or exempted under this chapter. The right to engage in the practice of engineering shall be deemed a personal right based on the qualifications of the individual as evidenced by such person's certificate of licensure, which shall not be transferable.

(24 Del. C. 1953 § 2801; 58 Del. Laws, c. 501 § 1; 61 Del. Laws, c. 124 § 2; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 267 § 1.)

§ 2802A Exemption for expert testimony.

Nothing in § 2802 of this title shall be construed as prohibiting an otherwise qualified engineer, duly licensed under the laws of a state other than Delaware, from offering expert testimony in any action or proceeding in the courts of this State, consistent with the requirements of Delaware Uniform Rule of Evidence 702.

(76 Del. Laws, c. 155 § 1.)

§ 2803 Definitions.

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

(1) "Active roster" shall mean the record of members, associate members, permittees and holders of a certificate of authorization.

(2) "Adjunct member" shall mean an adjunct member of the Association, as defined in § 2806(d) of this title.

(3) "Administrative order" means an order issued by an investigating committee, with the prior approval of the Council pursuant to § 2824(b)(1)g.1. of this title, which attempts to resolve a complaint of a violation under § 2823 of this title. Administrative orders become final 14 days from the day the order is received by the accused but only if there is positive proof of service, such as a signed return receipt or an affidavit of personal service.

(4) "Affiliate member" shall mean an affiliate member of the Association, as defined in § 2806(c) of this title.

(5) "Applicant" shall mean a person who applies to become licensed as a professional engineer, applies to become certified as engineer intern, applies to become an adjunct member of the association, or applies for a certificate of authorization or permit.

(6) "Associate member" shall mean an associate member of the Association, as defined in § 2806(b) of this title.

(7) "Association" shall mean the Delaware Association of Professional Engineers.

(8) "Bylaw" shall mean a bylaw of the Association.

(9) "Certificate of authorization" shall mean an authorization issued by the Council to engage in the practice of engineering.

(10) "Committee" shall mean a committee appointed by the Council.

(11) "Consent order" means a voluntary agreement between parties attempting resolution of a complaint of a violation under § 2823 of this title or a complaint of unlicensed practice under § 2825 of this title. To become a final order, a consent order must be approved by Council pursuant to § 2824(b)(1)g.2. of this title.

(12) "Continuing professional competency" shall mean and refer to compliance with or satisfaction of a published set of guidelines and requirements for the maintenance of professional competency in the practice of engineering.

(13) "Council" shall mean the Council of the Association.

(14) "Engineer" shall mean a person who, by reason of special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by an engineering education, through graduation with a baccalaureate degree from a Council-approved 4-year educational program in engineering, in engineering technology or in science related to engineering, is qualified to begin the path to licensure.

(15) "Engineering corporations or partnerships" are corporations or partnerships who practice engineering to provide engineering services to the public.

(16) "Engineer intern" shall mean a person certified as an engineer intern by the Council.

(17) "Examination" shall mean any qualifying examination or examinations required by this chapter.

(18) "Hearing committee" means a committee of Council members to which the Council has delegated authority to adjudicate a complaint of a violation under § 2823 of this title or allegations of unlicensed practice under § 2825 of this title.

(19) "Investigating committee" means a committee of the Council to which the Council has delegated authority to investigate a complaint of a violation under § 2823 of this title or allegations of unlicensed practice under § 2825 of this title.

(20) "Licensed" means licensure as a professional engineer under this chapter.

(21) "Licensee" shall mean a person licensed as a professional engineer under this chapter.

(22) "Member" shall mean a member of the Association, as defined in § 2806(a) of this title.

(23) "Permit" shall mean a temporary privilege to practice engineering in the State granted to a qualified individual, corporation, or partnership by the Council.

(24) "Permittee" shall mean an individual, corporation or partnership holding a valid permit from the Association.

(25) "Practice of engineering" or "to practice engineering" includes any professional service performed for the general public such as consultation, investigation, evaluation, planning, design, or responsible supervision of construction or operation in connection with any public or private buildings, structures, utilities, machines, equipment, processes, works, or projects wherein the public welfare or the safeguarding of life, health or property is concerned or involved when such professional service requires the application of engineering principles and data, but it does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, neither does it include engineering services performed by an employee of a firm or corporation that does not offer professional engineering services to the general public.

(26) "Professional engineer" shall mean a person who has been duly licensed as a professional engineer by the Council.

(27) "Responsible charge" means a professional engineer's supervision of, control over, and possession of detailed professional knowledge of an engineering work. A professional engineer is only considered to be in responsible charge of an engineering work if the professional engineer makes independent professional decisions regarding the engineering work without requiring instruction or approval from another authority and maintains control over those decisions by the professional engineer's physical presence at the location where the engineering work is performed or by electronic communication with the individual executing the engineering work.

(28) "Retired member" shall mean a person who has elected to claim retired status as defined in § 2806(g) of this title.

(29) "Substantially related" shall mean 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 engineering.

(24 Del. C. 1953 § 2803; 58 Del. Laws, c. 501 § 1; 61 Del. Laws, c. 124 § 1; 65 Del. Laws, c. 336 § 1; 69 Del. Laws, c. 43 § 1; 69 Del. Laws, c. 412 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 51 § 4; 74 Del. Laws, c. 267 § 1; 76 Del. Laws, c. 291 §§ 1-6; 79 Del. Laws, c. 112 § 1.)

§ 2804 Delaware Association of Professional Engineers; objectives.

There is hereby established the Delaware Association of Professional Engineers, an instrumentality of the State. The objectives of the Association and of this chapter are to regulate the practice of engineering, to provide for the registration of qualified persons as professional engineers and the certification of engineer interns, to define the terms "engineer," "professional engineer," "engineer intern" and "the practice of engineering," to create an organization to regulate the practice of engineering to provide and administer qualifying examinations and grant registration to qualified persons as professional engineers, to provide for the appointment and election of members to the governing body of this Association, to define the powers and duties of the Council, to set forth the minimum qualifications and other requirements for registration as a professional engineer, for certification as an engineer intern, the granting of a permit to practice engineering, and the granting of a certificate of authorization, to set rules for the establishment of fees, expiration requirements and renewal requirements, to establish continuing professional competency guidelines and requirements, and to provide for the enforcement of this chapter together with penalties for violations of the provisions of this chapter.

(24 Del. C. 1953 § 2804; 58 Del. Laws, c. 501 § 1; 69 Del. Laws, c. 43 § 2; 74 Del. Laws, c. 267 § 1; 79 Del. Laws, c. 112 § 1.)

§ 2805 Ownership and use of property.

The Association may purchase, acquire, or receive by gift or bequest for the purposes of the Association and furtherance of its objectives, but for no other purposes or objectives, any real or personal property, and may sell, mortgage, lease, or otherwise dispose of any said property.

(24 Del. C. 1953 § 2805; 58 Del. Laws, c. 501 § 1; 74 Del. Laws, c. 267 § 1.)

§ 2806 Membership.

(a) All persons licensed as professional engineers on July 7, 1972, or hereafter licensed as professional engineers and who are residents of or are employed in or have a place of business within the State, and who subscribe to the code of ethics in accordance with § 2816 of this title, are members of the Association. Members shall be entitled to vote as provided by this chapter.

(b) All other persons licensed as professional engineers, and who subscribe to the code of ethics in accordance with § 2816 of this title, are associate members of the Association and shall not be entitled to vote.

(c) All persons certified as engineer interns within the State on July 7, 1972, or who are hereafter certified as engineer interns, and who subscribe to the code of ethics in accordance with § 2816 of this title, are affiliate members of the Association and shall not be entitled to vote. Affiliate members may use the title "Engineer", "Engineer intern" or "E.I."

(d) All persons meeting the definition of engineer, as set forth in § 2803(14) of this title, and who subscribe to the code of ethics in accordance with § 2816 of this title, who are residents or employed in or have a place of business in the State, are adjunct members of the Association and shall not be entitled to vote. Adjunct members may use the title "Engineer."

(e) Fees. —

(1) All fees for licensure, membership and renewals shall be in accordance with the bylaws, as approved by the members in accordance with this chapter.

(2) All fees required under the provisions of this section shall be nonreturnable and nontransferable.

(3) Reinstatement fees for professional engineers and holders of certificates of authorization shall be required for return from the inactive roster to the active roster. Reinstatement fees shall be established by bylaw and shall include any unpaid supplemental levies assessed prior to removal from the active roster.

(4) The Council may, whenever the Association has incurred an operating deficit, make a supplemental levy in order to eliminate such deficit. Each member, associate member and each holder of a certificate of authorization shall be assessed in direct proportion to their rate of annual renewal and the total amount assessed shall be the amount of the deficit. Fractional assessments shall be raised to the next highest even dollar amount. The amount assessed against any person pursuant to this paragraph shall not exceed the annual renewal fee paid by such person under this chapter. Such supplemental levy shall be a debt against those assessed and shall be billed only at the time when the annual renewal fees are billed and must be paid within 3 months. Those failing to pay within 3 months shall be declared ineligible to practice engineering in the State and shall be removed from the active roster. Reinstatement will not be allowed until the reinstatement fee has been paid in full.

(f) Expiration and renewals. —

(1) Members, associate members, adjunct members, and holders of certificates of authorization shall be billed for renewal fees 60 days before expiration of the period for which fees have been paid. If fees are not paid by the expiration date, the member, associate member or holder of a certificate of authorization shall be declared ineligible to practice engineering in the State and shall be removed from the active roster.

(2) Any applicant, associate member, adjunct member, engineering corporation or partnership whose application is approved shall be billed for fees for the quarter-year in which approved and for any remaining full quarters in the Association's licensure period.

(3) Any member, associate member, or holder of certificate of authorization on the active roster who intends to withdraw from the practice of engineering in the State shall notify the Secretary of the Council in writing. That name will then be removed from the active roster and be placed in an inactive status file. That name may be reinstated to active status by a request for reinstatement, in writing, within 10 years of that removal from the active roster, to the Secretary of the Council, by payment of a reinstatement fee and by compliance with and satisfaction of the current continuing professional competency guidelines and requirements. After the expiration of the 10-year period, reinstatement may be obtained only by reapplying for licensure pursuant to § 2817 of this title or for a certificate of authorization pursuant to § 2821 of this title. Any member, associate member or holder of a certificate of authorization in inactive status shall be ineligible to practice engineering in the State.

(4) Any member, associate member, or holder of a certificate of authorization who has not given notice of withdrawal and whose name has been removed from the active roster because of a delinquency in payment of fees, may be reinstated upon petition to the Council within 2 years of the removal from the active roster and by payment of the reinstatement fees plus any delinquency fees. After the expiration of the 2-year period, reinstatement may be obtained only by reapplying for licensure pursuant to § 2817 of this title or for a certificate of authorization pursuant to § 2821 of this title.

(g) Any member, associate member or adjunct member in good standing on the active roster who intends to retire from the practice of engineering in the State shall notify the Secretary of the Council in writing on a form provided to such member by Council at such member's request. Following the filing of this form with the Secretary of Council, the member's name will be removed from the active roster and placed in a retired status file. Retired members shall not be required to pay their biennial membership fee and shall be exempted from any continuing professional competency requirements. Any member, associate member or adjunct member in retired status shall be ineligible to practice engineering in the State, however, a retired member shall be entitled to utilize the term "P.E. (ret.)" in any signature and shall be entitled to vote provided they are residents of the State and subscribe to the code of ethics in accordance with § 2816 of this title. After being placed on the retired status file, the retired member may not apply for reinstatement.

(24 Del. C. 1953 § 2806; 58 Del. Laws, c. 501 § 1; 61 Del. Laws, c. 467 § 1; 69 Del. Laws, c. 43 §§ 3-8; 74 Del. Laws, c. 267 § 1; 76 Del. Laws, c. 291 §§ 7-9; 78 Del. Laws, c. 162 § 1; 79 Del. Laws, c. 112 § 1; 80 Del. Laws, c. 178 § 1.)

§ 2807 Council of the Delaware Association of Professional Engineers.

(a) There shall be a Council which will be the governing board of the Association. The Council shall consist of 15 voting members, 12 of whom shall be elected, and 3 of whom shall be appointed by the Governor. The immediate past president, if not an elected member of Council, shall be a nonvoting member of Council. A quorum of the Council shall be a majority of the seated members of the Council.

(b) The 12 elected members shall be elected and hold office on the basis of the following constituencies:

(1) One shall be from each of the following 5 engineering disciplines: civil, chemical, electrical, mechanical and any other;

(2) One shall be from each of the following fields of employment: government, industry, private consulting practice and education; an d

(3) One shall be from each of the 3 counties: New Castle, Kent and Sussex.

(c) Of the 3 appointed members, 1 shall be from each of the 3 counties. New Castle, Kent and Sussex.

(d)(1) A person elected as a Council member shall, at the time of election, and during the term of office, be a citizen of the United States of America, a resident of the State, a member of the Association and be qualified to represent the constituency from which the person was elected.

(2) A person appointed as a Council member shall, at the time of appointment, and during the term of office, be a citizen of the United States of America and a resident of the State and of the county for which the appointment is designated.

(e) The term of office for members of Council shall, unless otherwise specified, be 4 years. A member of Council, whether appointed or elected, may not serve more than 2 consecutive terms on the Council.

(f) Three members of Council shall be elected each year for a 4-year term to fill vacancies in the field of discipline, field of employment and county of residence. Each Council vacancy will be designated by discipline, field of employment or county of residence in accordance with the constituency designation specified in subsection (b) of this section and each designated vacancy will be voted upon separately by members of the Association. A candidate for Council must announce at the time of nomination or petition the vacancy for which that candidate is seeking election and the candidate must be qualified by discipline, field of employment or residence to fill the vacancy for which that candidate is seeking election. For purposes of election, the candidate discipline shall be that shown on the roster, the field of employment shall be that held by the candidate and the county of residence shall be that of the candidate at the time of nomination or petition as well as at the time of election. The terms of office for Council members shall commence on September 1 of the year elected or appointed and shall expire on August 31, of the year ending the term.

(24 Del. C. 1953 § 2807; 58 Del. Laws, c. 501 § 1; 61 Del. Laws, c. 467 § 2; 67 Del. Laws, c. 368 § 16; 68 Del. Laws, c. 24 § 1; 74 Del. Laws, c. 267 § 1.)

§ 2808 Council election and appointment procedure.

(a) The schedule for the election of the 12 elected members shall be as follows:

(1) Three members representing the constituencies of: Civil engineering, industry and New Castle County shall be elected in 1978 and every 4 years thereafter.

(2) Three members representing the constituencies of: electrical engineering, private consulting practice and Kent County shall be elected in 1979 and every 4 years thereafter.

(3) Three members representing the constituencies of: mechanical engineering, education and Sussex County shall be elected in 1980 and every 4 years thereafter.

(4) Three members representing the constituencies of: chemical engineering, government and any other engineering discipline not previously designated shall be elected in 1981 and every 4 years thereafter.

(b) The schedule for the appointment of the 3 appointed members shall be as follows:

(1) One member from New Castle County shall be appointed in 1994 and every 4 years thereafter.

(2) One member from Kent County shall be appointed in 1993 and every 4 years thereafter.

(3) One member from Sussex County shall be appointed in 1991 and every 4 years thereafter.

(c) All appointments to the Council shall be made by the Governor in accordance with the above schedule and with the requirements of § 2807 of this title. Each term of office of the appointed Council members shall expire on the date specified in the appointment, however, the Council member shall remain eligible to participate in Council proceedings unless and until replaced by the Governor.

(d) The 12 Council members shall be elected by members of the Association through the procedure determined by Council, including, without limitation, electronic voting. The members in contest for each elected Council position receiving a plurality of votes from those voting within the prescribed time for that Council position shall be declared elected to that Council position.

(24 Del. C. 1953 § 2808; 58 Del. Laws, c. 501 § 1; 61 Del. Laws, c. 467 § 3; 66 Del. Laws, c. 56 § 12; 67 Del. Laws, c. 368 § 17; 68 Del. Laws, c. 24 § 2; 69 Del. Laws, c. 412 § 10; 74 Del. Laws, c. 267 § 1; 79 Del. Laws, c. 112 § 1.)

§ 2809 Annual election of officers.

The President, Vice-President, Secretary and Treasurer of the Council shall be elected annually from among the Council members by vote of the Council. No Council President or Vice-President may serve more than 2 consecutive 1-year terms in office.

(24 Del. C. 1953 § 2809; 58 Del. Laws, c. 501 § 1; 74 Del. Laws, c. 267 § 1.)

§ 2810 Powers of the Council.

(a) The Council, under the head of the Council President or the President's designee and seal of the Council, may issue subpoenas for named respondents, witnesses, documents, physical evidence or any other source of evidence needed during the investigation of the complaint and/or for a public hearing on the complaint and/or in a matter involving an application for licensure, the revocation of licensure, or practicing or offering to practice without licensure, or any other matter pursuant to the provisions of this chapter. If the party or person subpoenaed fails to comply, the Council may compel compliance with said subpoena by filing a motion to compel in the Superior Court which shall have jurisdiction. The Superior Court may order costs, attorney's fees and/or a civil fine not to exceed $5,000 if the motion to compel is granted.

(b) Any member of the Council may administer oaths or affirmations to witnesses appearing before the Council.

(c) The records of the Council shall be prima facie evidence of the proceedings of the Council set forth therein. A transcript thereof, duly certified by the Secretary of the Council under seal, shall be admissible in evidence with the same force and effect as if the original were produced.

(d) Except as provided for in § 2804 of this title the Council may not create or promulgate rules or regulations to extend, modify, or in any way supplement the provisions of this chapter governing the regulation or the practice of engineering or the qualification, certification, or licensure of engineers, professional engineers, or engineer interns.

(e) The Council may, in its sole discretion, delegate its authority to investigate allegations of licensee or applicant violations under § 2823 of this title or allegations of unlicensed practice under § 2825 of this title to an investigating committee.

(f) The Council may, in its sole discretion, delegate its authority to adjudicate allegations of licensee or applicant violations under § 2823 of this title or allegations of unlicensed practice under § 2825 of this title to a hearing committee in accordance with § 2824(b)(2) of this title.

(24 Del. C. 1953 § 2810; 58 Del. Laws, c. 501 § 1; 69 Del. Laws, c. 412 § 2; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 267 § 1; 75 Del. Laws, c. 93 § 1; 76 Del. Laws, c. 291 § 10.)

§ 2811 Council vacancies.

(a) Where any member of Council is absent from 3 consecutive meetings of the Council without suitable or acceptable reason or becomes incapacitated, the office may be declared vacant by the Council.

(b) When any member of Council resigns, dies, moves that member's residence from the State or otherwise ceases to be a member, or in the case of an elected member who changes that member's engineering discipline in the roster if elected to fill a discipline position on the Council, or in the case of an elected member who changes that member's field of engineering employment if elected to fill a field of engineering employment position on the Council, or in the case of an elected or an appointed member who changes that member's county of residence if elected to fill a county residency position, the office shall be declared vacant.

(c) A declared vacancy of an appointed Council position shall be filled for the unexpired term by appointment by the Governor of the State of a person meeting the qualifications required to hold that appointed Council seat. A declared vacancy of an appointed Council position may, upon a majority vote of Council, be temporarily filled by the former Council member until a new person meeting the qualifications required to hold that appointed Council seat is appointed by the Governor.

(d) A declared vacancy of an elected Council seat shall be temporarily filled either by the former Council member or by a member meeting the qualifications required to hold that Council seat by virtue of a discipline or employment or county of residence, upon the vote of a majority of the Council, until the next annual election when a member shall be elected to fill any remainder of the unexpired term.

(24 Del. C. 1953 § 2811; 58 Del. Laws, c. 501 § 1; 61 Del. Laws, c. 467 § 4; 68 Del. Laws, c. 24 § 3; 69 Del. Laws, c. 412 §§ 11, 12; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 267 § 1.)

§ 2812 Administration.

The Council may appoint or employ such administrative officials as it deems fit.

(24 Del. C. 1953 § 2812; 58 Del. Laws, c. 501 § 1; 74 Del. Laws, c. 267 § 1.)

§ 2813 Immunity of Council and committees.

(a) The Council and the members of any committees appointed by the Council are immune from any claim, suit, liability, damages, or any other recourse, civil or criminal, arising from any act, omission, proceeding, decision, or determination undertaken or performed, or from any recommendation made, so long as the Council or committee member acted in good faith and without gross negligence in carrying out the responsibilities, authority, duties, powers, and privileges conferred by law upon them, with good faith being presumed.

(b) The Attorney General's office shall represent the Council, Council members, council officials, any committee created by Council or committee member, and at the express request of the Council, any person appointed or employed by the Council, in a civil action for damages arising from duties and services performed, or powers to be exercised, for the State. If the Attorney General's office determines it would be improper or unlawful to undertake such representation, then representation of such parties should proceed in accordance with § 3925 of Title 10.

(24 Del. C. 1953 § 2813; 58 Del. Laws, c. 501 § 1; 65 Del. Laws, c. 261 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 267 § 1; 78 Del. Laws, c. 162 § 2.)

§ 2814 Bylaws of the Association.

The Council shall prepare for approval by the membership the following bylaws related to the administrative and domestic duties of the Association:

(1) Prescribing procedures for the nomination of members of Council by a nominating committee and by the nomination by members;

(2) Prescribing procedures for the election of members of the Council;

(3) Prescribing procedures for the nomination and election of Council President, Vice-President, Secretary and Treasurer by the Council;

(4) Prescribing the duties of members of the Council and rules governing their conduct;

(5) Respecting the remuneration and reimbursement of members of the Council;

(6) Respecting the calling, holding and conducting of meetings of the Council and of the Association;

(7) Respecting the management of the property of the Association;

(8) Providing for the borrowing of money on the credit of the Association and the charging, mortgaging or pledging of the real or personal property of the Association to secure any money borrowed or other debt or other obligation or other liability of the Association;

(9) Respecting the receipt and disbursement of the funds of the Association and the investment of funds in a savings account which must be in a bank located within the State for the purpose of earning interest on the investment;

(10) Respecting the establishment of a reserve fund within a year of the initial election of Council for emergency or unforeseen expenses;

(11) Providing for an annual independent audit of the accounts of the Association;

(12) Providing for the appointment of committees of the Council and defining their composition, functions, remuneration and reimbursement;

(13) Providing for the closing of the roster and the registration of recorded changes of addresses or disciplines of the registrants for a period of 20 calendar days immediately preceding any meeting of the Association or any mailing of ballots for vote or election by the membership;

(14) For maintaining a system for the recording of registrants, their disciplines, their residence and business addresses and the counties in which they are resident, recording of the names and addresses of official representatives of engineering corporations and partnerships, and other pertinent data. The official roster of the Association shall be printed at least biannually and be available to the membership;

(15) Fixing and providing for the levying and collection or remitting of annual or other fees approved by the members in accordance with this chapter;

(16) Prescribing applications, certificates, permits and seals and providing for their issuance and use;

(17) Concerning bonding of officers of the Council and employees of the Association;

(18) Respecting all other things that are deemed necessary or convenient for the attainment of the objectives of the Association and the efficient conduct of its business.

(24 Del. C. 1953 § 2814; 58 Del. Laws, c. 501 § 1; 74 Del. Laws, c. 267 § 1.)

§ 2815 Bylaw approval by members.

A bylaw is effective when approved by the members. Proposed bylaws or changes shall be submitted to the members for approval by means of a letter ballot returned by not less than 20 percent of the members within 30 days after the mailing thereof. Affirmative votes by the majority of members voting within the prescribed time shall constitute approval by the members.

(24 Del. C. 1953 § 2815; 58 Del. Laws, c. 501 § 1; 74 Del. Laws, c. 267 § 1.)

§ 2816 Code of ethics.

(a) The Council shall prepare and publish a code of ethics designed for the protection of the public.

(b) All applicants, members, associate members, affiliate members, adjunct members, holders of certificate of authorization and permittees must subscribe to and follow this code of ethics in the practice of professional engineering, or in seeking to register as a professional engineer or seeking certification as an engineer intern.

(c) Copies of the code of ethics shall be provided to each member, associate member, affiliate member, adjunct member and permittee and shall be available free of charge to the public. Copies of the code of ethics shall also be sent to prospective applicants as a part of their application materials.

(24 Del. C. 1953 § 2816; 58 Del. Laws, c. 501 § 1; 69 Del. Laws, c. 412 §§ 3, 16; 74 Del. Laws, c. 267 § 1.)

§ 2817 Requirements for licensure.

The following requirements shall be considered as the minimum satisfactory evidence that an applicant is qualified for licensure as a professional engineer:

(1) Graduates from an engineering educational program approved by the Engineering Accreditation Commission (EAC) of ABET, Inc. (formerly the Accreditation Board for Engineering and Technology) or from an ABET recognized foreign accreditation agency approved educational program.

a. Graduation with a baccalaureate degree from an engineering educational program accredited by the EAC of ABET, Inc. or by a foreign educational program accreditation agency adjudged by ABET to use substantially equivalent accreditation procedures; and

b. Professional experience in engineering work of a character satisfactory to the Council in the amount of 4 years or more, such experience indicating that the applicant is competent to practice as a professional engineer; and

c. Successful passing of an examination approved by the Council; and

d. Meeting the additional requirements of paragraph (7) of this section.

(2) Graduates from non-EAC of ABET accredited engineering programs, from engineering technology programs or from science programs related to engineering.

a. Graduation with a baccalaureate degree from a Council approved 4-year educational program in engineering that is not EAC of ABET accredited, in engineering technology or in science related to engineering; and

b. Professional experience in engineering work of a character satisfactory to the Council in the amount of 8 years or more, such

experience indicating that the applicant is competent to practice as a professional engineer; and

c. Successful passing of an examination approved by the Council; and

d. Meeting the additional requirements of paragraph (7) of this section.

(3) Graduates from non-EAC of ABET accredited engineering programs, from engineering technology programs or from science programs related to engineering who hold master's degrees in engineering from institutions that offer EAC of ABET-accredited engineering programs, or the equivalent:

a. Graduation with a baccalaureate degree from a Council approved 4-year educational program in engineering that is not EAC of ABET accredited, in engineering technology or in science related to engineering; and

b. Professional experience in engineering work of a character satisfactory to the Council in the amount of 5 years or more, such experience indicating that the applicant is competent to practice as a professional engineer; and

c. Successful passing of an examination approved by the Council; and

d. Meeting the additional requirements of paragraph (7) of this section.

(4) Graduates from non-EAC of ABET accredited engineering programs, from engineering technology programs or from science programs related to engineering who hold doctoral degrees in engineering from institutions that offer EAC of ABET-accredited engineering programs, or the equivalent:

a. Graduation with a baccalaureate degree from a Council approved 4-year educational program in engineering that is not EAC of ABET accredited, in engineering technology or in science related to engineering; and

b. Professional experience in engineering work of a character satisfactory to the Council in the amount of 4 years or more, such experience indicating that the applicant is competent to practice as a professional engineer; and

c. Successful passing of an examination approved by the Council; and

d. Meeting the additional requirements of paragraph (7) of this section.

(5) Engineering experience and examination. —

a. Professional experience in engineering work of a character satisfactory to the Council, consisting of 15 years or more of lawful practice and indicating that the applicant is competent to practice as a professional engineer; and

b. Successful passing of an examination approved by the Council; and

c. Meeting the additional requirements of paragraph (7) of this section.

(6) Comity. —

a. The Council may, upon application and payment of the required fee and without further examination, issue a license as a professional engineer to any person holding a valid certificate of registration or a license as a professional engineer issued to that person by a proper authority of a state, territory or possession of the United States, the District of Columbia, or a province of territory of Canada, provided the applicant's qualifications meet at least 1 of the following:

1. The professional engineering qualifications of the applicant on the effective date of such certificate of registration or a license would have satisfied the requirements for licensure in this State on that date.

2. The professional engineering qualifications of the applicant at any time subsequent to the effective date of such certificate of registration or a license would have satisfied the requirements for licensure in this State in effect at that time. A personal interview may be required by Council to ascertain the facts in the case.

3. The professional engineering qualifications of the applicant include successful passing of an examination approved by the Council, meeting the additional requirements of paragraph (7) of this section, and having a minimum of 10 years of professional experience in engineering work of a character satisfactory to the Council, such experience indicating that the applicant is competent to practice as an engineer. Such experience shall have been obtained in states, territories or possessions of the United States, the District of Columbia, or provinces or territories of Canada, and at least 8 years of it shall have been obtained after the applicant has received the said valid certificate of registration or a license.

4. The professional engineering qualifications of the applicant include a minimum of 10 years of continuous and verifiable experience as a professional engineer. Such experience shall have been obtained in a state, territory, or possession of the United States, the District of Columbia, or a province or territory of Canada. The applicant must meet the additional requirements of paragraphs (7)a. and (9) of this section and must not have been subject to disciplinary action in the current or previous licensing jurisdictions.

b. A person holding a valid NCEES Council Record issued by the National Council of Examiners for Engineering and Surveying, whose qualifications meet the requirements of this chapter, may be registered by Council as a professional engineer upon receipt from the National Council of Examiners for Engineering and Surveying of a certified copy of such registration Record together with the usual application form and fee from the applicant.

c. If the person who has been licensed in Delaware pursuant to paragraph (6)a. or b. of this section has that person's license to practice revoked in the state in which the person was registered or licensed at the time licensure in Delaware through comity was sought, then the authorization issued in Delaware shall be automatically revoked followed 30 days' written notice from the Council unless the person makes application to the Council for consideration for retaining the Delaware authorization and the Council acts favorably on such application.

(7) Additional requirements. —

a. Every applicant shall give not less than 5 references, people who state that in their opinion and by their personal knowledge the applicant is qualified to practice as a professional engineer. At least 3 such references shall be registered or licensed professional engineers in this or any other state or territory or possession of the United States, the District of Columbia, or the province or territory of Canada.

b. An applicant, otherwise qualified, shall not be required to be actively practicing the applicant's profession at the time of the applicant's application.

c. Every applicant must demonstrate knowledge of the Delaware Professional Engineers Act and the code of ethics to the satisfaction of the Council.

d. The required examination shall consist of a Fundamentals of Engineering examination and a Principles and Practice of Engineering examination furnished by, and scored by, the National Council of Examiners for Engineering and Surveying, or other nationally normed examinations which are approved by the Council.

e. The examination in the Fundamentals of Engineering shall be taken after graduation, except it may be taken by a college or university senior in good academic standing in an educational program leading to a baccalaureate degree in engineering, related science or engineering technology. The Council may permit other students in such programs to take the Fundamentals of Engineering examination prior to graduation.

f. The examination in Principles and Practice of Engineering shall not be taken until after the completion of the professional experience requirement. The Council may waive this requirement in the case of an applicant who has previously passed the examination in any other state, territory, or possession of the United States, the District of Columbia, or province or territory of Canada.

g. Applicants with 4 failures of the Principles and Practice of Engineering examination may only apply to retake the examination after completing the following:

1. Present 3 new references to the Council, at least 2 of whom must be registered or licensed professional engineers in this or any other state or territory or possession of the United States, the District of Columbia, or any province or territory of Canada, pursuant to paragraph (7)a. of this section; and

2.A. Successful completion of 6 college-level semester credit hours that are preapproved by Council to assure that the courses adequately address the subject matter weaknesses outlined in the diagnostic report resulting from the preceding failure of the Principles and Practice of Engineering Examination. Applicants must provide official transcripts of the courses that were taken demonstrating that a grade of "C minus" or higher was achieved; or

B. Submit such documentation to Council that demonstrates, to Council's satisfaction, that the applicant has acquired at least 2 years of additional engineering experience, including a brief summary explaining how that experience has better prepared the applicant to pass the examination; or

C. submit such documentation to Council that demonstrates, to Council's satisfaction, that the applicant has acquired sufficient educational and engineering experience, including a brief summary explaining how that educational and engineering experience has better prepared the applicant to pass the examination.

3. On the fifth and all subsequent attempts, applicants must reapply and meet the requirement stipulated in paragraphs (7)g.1. and 2. of this section above.

(8) Applicants for licensure as a professional engineer shall be exempt from the requirement to pass the Fundamentals of Engineering Examination, if they are qualified as follows:

a. An individual holding an earned doctoral degree in engineering from a university, which has an ABET accredited undergraduate program in that discipline at the time that individual earned the doctoral degree, providing that doctoral degree required the passing of a Ph.D. qualifying examination from that university; or,

b. An individual holding a baccalaureate degree from a Council-approved 4-year engineering educational program, who has at least 15 years of professional experience in the lawful practice of engineering of a character satisfactory to the Council, and which indicates that the applicant is competent to practice as a professional engineer.

(9) The Council may refuse an applicant for licensure if the Council finds that the applicant has:

a. Been convicted of a crime that is substantially related to the practice of engineering; or .

b. Misstated or misrepresented a fact in connection with the applicant's application; or

c. Been found guilty of a violation of this chapter or of the Delaware Association of Professional Engineers' Code of Ethics; or

d. Engaged in the practice of engineering in this State without being licensed as a professional engineer. Notwithstanding such a finding, the Council may allow licensure of such applicant if the applicant presents to the Council suitable evidence of reform; or

e. Used improper means to gain information usable by the applicant on or in connection with an examination taken by the applicant to obtain licensure as a professional engineer or certification as an engineer intern.

(10) Where an application of a person has been refused or rejected, and such applicant feels that the Council has acted without justification, has imposed higher or different standards for that person than for other applicants, or has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

(24 Del. C. 1953 § 2817; 58 Del. Laws, c. 501 § 1; 61 Del. Laws, c. 467 §§ 5, 6; 66 Del. Laws, c. 56 §§ 1-8; 67 Del. Laws, c. 6 §§ 1-4; 68 Del. Laws, c. 24 § 4; 68 Del. Laws, c. 321 §§ 1-4; 69 Del. Laws, c. 43 §§ 9-11; 69 Del. Laws, c. 412 §§ 4, 13-15; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 259 §§ 1-3; 74 Del. Laws, c. 267 § 1; 75 Del. Laws, c. 304 §§ 1, 2; 76 Del. Laws, c. 291 § 11; 77 Del. Laws, c. 50 §§ 1, 2; 78 Del. Laws, c. 162 § 3; 79 Del. Laws, c. 112 § 1.)

§ 2818 Experience and educational equivalence.

(a) For applicants holding a baccalaureate degree in engineering as described in § 2817(1)a. of this title, the experience of a full-time faculty member teaching advanced engineering subjects in an ABET-accredited, or CEAB-accredited engineering curriculum may be accepted as part of the professional experience specified in § 2817(1) or (2) of this title.

(b) For applicants holding a baccalaureate degree in engineering as described in § 2817(1)a. of this title, the award of a master's degree in engineering involving 1 year or more of post graduate study in an engineering educational program approved by the Council may be accepted as 1 year of professional experience required in § 2817 of this title; or

(c) For applicants holding a baccalaureate degree in engineering as described in § 2817(1)a. of this title, the award of a doctorate, with or without a master's degree, involving full-time post-graduate study in an engineering educational program approved by the Council may be accepted as 2 years of professional experience required in § 2817 of this title.

(24 Del. C. 1953 § 2818; 58 Del. Laws, c. 501 § 1; 61 Del. Laws, c. 467 § 7; 66 Del. Laws, c. 56 § 9; 67 Del. Laws, c. 6 § 5; 74 Del. Laws, c. 267 § 1; 75 Del. Laws, c. 304 § 3; 79 Del. Laws, c. 112 § 1; 79 Del. Laws, c. 380 § 1.)

§ 2819 Requirements for certification as an engineer intern.

The following shall be considered as minimum satisfactory evidence that the applicant is qualified for certification as an engineer intern:

(1) Graduation with a baccalaureate degree from an engineering educational program accredited by the Accreditation Board of Engineering and Technology (ABET), or by a foreign educational program accreditation agency adjudged by ABET to use substantially equivalent accreditation procedures, or from a Council-approved educational program in engineering not accredited by ABET or an ABET-approved foreign educational program accreditation agency, engineering technology or science related to engineering; and

(2)a. Council-approved professional experience of 15 years or more; or

b. Successful passing of a Fundamentals of Engineering examination.

(24 Del. C. 1953 § 2819; 58 Del. Laws, c. 501 § 1; 61 Del. Laws, c. 467 § 8; 66 Del. Laws, c. 56 § 10; 67 Del. Laws, c. 6 § 6; 69 Del. Laws, c. 43 § 12; 74 Del. Laws, c. 267 § 1; 79 Del. Laws, c. 112 § 1.)

§ 2820 Qualifications for a permit.

(a) Individuals not residing in this State, not having full-time employment in this State, and not having established a place of business for the practice of professional engineering within this State, who are legally qualified by licensure to practice engineering as defined within the chapter in the state, territory or possession of the United States, the District of Columbia, or province or territory of Canada where they reside or are in business, may make application to the Council in writing for a permit to practice professional engineering in this State.

(b) After payment of the fee established in the bylaws, the applicant may be issued a permit to practice engineering for a specific project. Such permit shall be limited to a specified time period, not to exceed 1 year, and shall be issued in writing upon authorization of the Council. The issuance of 1 such permit shall not mean that the Council will approve other permits nor shall such issuance result in any accrual of the right to practice engineering with respect to any other works not specified in the permit. Applicants for the permit must comply with all applicable state tax laws of Chapter 23 of Title 30 to the same extent as required by Delaware residents. Proof of compliance with all applicable state laws is required by the Council prior to actual issuance of permit.

(c) An engineering corporation or partnership may be issued a permit subject to the above limitations, provided that 1 of its officers or partners or 1 of its employees is designated as being in responsible charge of the engineering activities and decisions and holds a valid permit or is licensed under this chapter.

(24 Del. C. 1953 § 2820; 58 Del. Laws, c. 501 § 1; 61 Del. Laws, c. 124 § 3; 61 Del. Laws, c. 467 §§ 9, 10; 67 Del. Laws, c. 6 § 7; 74 Del. Laws, c. 267 § 1.)

§ 2821 Certificate of authorization.

(a) An engineering corporation or partnership must have a certificate of authorization in order to practice, or offer to practice, engineering as defined in this chapter.

(b) The practice of or offer to practice engineering for the public by an engineering corporation or partnership which has been issued a certificate of authorization is permitted, provided that 1 of the officers or 1 of the employees of the said engineering corporation or partnership:

(1) Is designated as being in responsible charge of the engineering activities and engineering decisions of the said corporation or partnership; and

(2) Is a licensee.

(c) All personnel of any such engineering corporation or partnership who practice engineering on its behalf shall be licensees. The requirements of this chapter shall not prevent an engineering partnership or corporation and its employees from performing engineering services for the said engineering partnership or corporation or its subsidiaries or for affiliated corporations.

(d) An engineering corporation or partnership desiring a certificate of authorization shall file with the Council an application listing the

names and addresses of all officers, board members and principals of the engineering corporation or partnership and also of any licensee who shall be in responsible charge of the practice of engineering through the said engineering corporation or partnership, together with any other information required by the Council. The same information must accompany the annual renewal fee. In the event there shall be a change in any of these persons during the year, such change shall be filed with the Council within 30 days after the effective date of such change. If all the requirements of this section are met, the Council shall issue a certificate of authorization to such engineering corporation or partnership, and such engineering corporation or partnership shall be authorized to contract for and to collect fees for furnishing engineering services.

(e) The Council may refuse or reject an applicant if, the Council finds that the applicant has practiced engineering without being authorized under this section. Notwithstanding such a finding, the Council may allow licensure of such applicant if the applicant presents to the Council suitable evidence of reform.

(f) No such engineering corporation or partnership shall be relieved of responsibility for the conduct or acts of its agents, employees or officers by reason of this compliance with the provisions of this section, nor shall any individual practicing engineering be relieved of responsibility for engineering services performed by reason of this employment or relationship with such corporation or partnership.

(g) Applicants for a certificate of authorization must comply with the applicable state tax laws of Chapter 23 of Title 30. Proof of such compliance is required by the Council prior to the issuance of a certificate of authorization.

(h) A licensee who practices, or offers to practice, engineering under a name other than that person's licensed name is required to obtain a certificate of authorization, or to practice under a certificate of authorization.

(24 Del. C. 1953 § 2821; 58 Del. Laws, c. 501 § 1; 61 Del. Laws, c. 467 § 11; 62 Del. Laws, c. 376 § 1; 66 Del. Laws, c. 56 § 11; 68 Del. Laws, c. 24 § 5; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 51 § 5; 74 Del. Laws, c. 267 § 1; 75 Del. Laws, c. 304 § 4.)

§ 2822 Public works.

(a) The State, its political subdivisions, agencies, commissions and authorities shall not solicit or receive proposals for, or engage in, the construction of public works involving the practice of engineering as defined in this chapter, unless:

(1) The engineer, partnership or corporation which will perform and/or take responsibility for all engineering work, as identified in the proposal, is authorized to practice engineering under this chapter at the time of submission of the proposal; and

(2) The engineering study, drawings, specifications and estimates are prepared by, and the construction is executed under the responsible charge or direct supervision of a licensee or permittee.

(b) Any contract executed in violation of this section shall be null and void.

(24 Del. C. 1953 § 2822; 58 Del. Laws, c. 501 § 1; 61 Del. Laws, c. 467 § 12; 68 Del. Laws, c. 24 § 6; 74 Del. Laws, c. 267 § 1.)

§ 2823 Grounds for discipline; appeals.

(a) Applicants, adjunct and affiliate members, and any person licensed under this chapter shall be subject to disciplinary penalties set forth in § 2824(c) of this title, if, after a hearing, the person is found to violate any of the following:

(1) The practice of any fraud or deceit in the attempt to obtain any authorization to practice engineering in this State;

(2) Any gross negligence, incompetence, or misconduct in the practice of engineering;

(3) Violation of the code of ethics promulgated by the Council;

(4) A crime that is substantially related to the practice of engineering;

(5) An activity resulting in discipline by another jurisdiction, territory, foreign country, the District of Columbia, the United States government, or any other governmental agency, if at least 1 of the grounds for discipline is the same or substantially equivalent to those contained in this section;

(6) The failure to report instances of out-of-state discipline, as set forth in the immediately preceding paragraph, to the Executive Director of the Delaware Association of Professional Engineers within 60 days of the final order imposing discipline;

(7) Aiding or abetting another person in violating any provision of this chapter;

(8) Signing, affixing the licensee's seal, or permitting the licensee's seal or signature to be affixed to any specification, report, drawing, plan, plat, design information, construction document, or calculation, or revision thereof, that has not been prepared by the licensee or those under the licensee's responsible charge; or

(9) Failure to comply with and satisfy the continuing professional competency guidelines and requirements.

(b) The Council shall have the power to review the actions of any applicants sitting for any examination that is conducted by, or on behalf of, the Association to determine the applicant's qualification for licensure as a professional engineer or certification as an engineer intern.

(1) The following actions by an examinee shall be considered violations of this chapter:

a. Any attempt to remove, or removal of, examination materials or content from the room in which the examination is administered;

b. Any attempt to reproduce, transcribe or transmit the content of examination materials that would permit the removal of such content from the room in which the examination is administered;

c. Any use or possession of unlawfully obtained information that reveals, or is procured by the examinee with the anticipation that it could reveal, any portion of the content of the current examination;

d. Any communication, whether verbal, written, electronic, or by action, made in an effort to seek assistance from another party, that would aid in obtaining a higher grade for the examination during an examination administration, or to provide such assistance to another examinee.

e. Any impersonation, or solicitation of impersonation, that allows another individual to sit for the examination in place of the designated applicant; or

f. Any violation of the terms of any examination security agreement entered into freely by the examinee with the Association outlining the examinee's responsibilities in taking the examination.

(2) The chief proctor for the examination, acting on behalf of the Council, may at the chief proctor's sole discretion, when presented with evidence of any violation under paragraph (b)(1) of this section above at any time during the examination administration period:

a. Collect any examination materials provided to the examinee;

b. Collect any personal property belonging to the examinee, which the proctor reasonably believes may contain content from the examination materials;

c. Dismiss the examinee from the examination site; and

d. Seek any law-enforcement assistance that the chief proctor feels is necessary to affect paragraphs a. through c. above of this paragraph (b)(2) of this section.

(3) Following its review of the facts associated with any alleged examination impropriety, Council shall have the power to impose any or all of the following penalties on any individual found guilty after a hearing, unless such hearing is waived by the examinee, of an examination impropriety:

a. Void the results of the subject examination;

b. Refuse permission for the examinee to take the examination for a period of 2 years, or such time determined by Council to be required to ensure that a subsequent examination is unlikely to repeat questions contained in the subject examination;

c. Require successful completion by the examinee of an ethics course before a future examination opportunity;

d. Revoke any license as a professional engineer or certification as an engineer intern granted as a consequence of the examinee receiving a passing score on the subject examination; and

e. Report any disciplinary action taken to other jurisdictions to help ensure the integrity of their examination process.

(c) The Council, after receipt of a complaint in accordance with § 2824(c) of this title associated with the practice of engineering in Delaware, shall have the power to review the actions and representations of individuals, corporations or partnerships not authorized by this chapter to engage in the practice of engineering in Delaware. Upon notice, hearing and review afforded by subchapters III and V of the Administrative Procedures Act, Chapter 101 of Title 29, the Council may issue a cease and desist order to an individual, corporation or partnership found to be engaged in the unauthorized practice of engineering, notwithstanding that the individual's, corporation's or partnership's license has lapsed, expired or has been suspended or revoked.

(d) Subject to notice, hearing and review afforded by subchapters III and V of the Administrative Procedures Act, Chapter 101 of Title 29, the Council may fine any person who violates a cease and desist order not less than $100 or more than $1000. Each day a violation continues may be deemed a separate offense in the Council's discretion.

(e) When disciplinary action requires the successful completion of additional training or education courses, Council shall determine the conditions of the additional training or education courses on a case-by-case basis, including, but not limited to, the type and number of hours of training or education. All training or education courses shall be related to the engineering profession and must be approved by Council.

(f) Any individual, corporation or partnership aggrieved by any disciplinary decision by Council may appeal such decision to the Superior Court. The appeal shall be filed within 30 days of the day the notice of the decision was mailed. The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the Council for further proceedings on the record. The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the Council and of the purposes of the Delaware Professional Engineers' Act under which Council has acted. The Court's review, in the absence of actual fraud, shall be limited to determination of whether the Council's decision was supported by substantial evidence on the record before it.

(g) When an action is brought in the Court for review of a Council decision, enforcement of such decision may be stayed by the Court only if it finds, upon a preliminary hearing, that the issues and facts presented for review are substantial and the stay is required to prevent irreparable harm.

(h) No appeal for relief of the Court shall be considered as having been taken or made until it has been filed with the Prothonotary and served upon the Council in accordance with the rules of the Court.

(24 Del. C. 1953 § 2823; 58 Del. Laws, c. 501 § 1; 61 Del. Laws, c. 467 § 13; 69 Del. Laws, c. 412 § 5; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 51 §§ 1, 2; 74 Del. Laws, c. 267 § 1; 75 Del. Laws, c. 93 § 2; 75 Del. Laws, c. 304 §§ 5, 6; 76 Del. Laws, c. 245 § 3; 76 Del. Laws, c. 291 §§ 12, 13; 78 Del. Laws, c. 162 § 4; 79 Del. Laws, c. 112 § 1.)

§ 2824 Disciplinary action; procedure.

(a) Whether prompted by receipt of an accusation of wrongdoing by a third party or upon its own initiative, the Council may review the actions and representations of applicants, adjunct and affiliate members, and any person licensed as a professional engineer under this

chapter for alleged violations of § 2823 of this title or for unlicensed practice pursuant to § 2825 of this title.

(b) Complaint investigation and prosecution. —

(1) Upon receipt of a written accusation alleging a violation of § 2823 of this title or alleging the unlicensed practice of professional engineering in violation of § 2825 of this title, the Council may assign the matter to its investigating committee for possible prosecution. The investigating committee may also initiate the prosecution process based upon firsthand knowledge acquired by a member or upon a member's information and belief whether the accusation of wrongdoing is written or oral. Members of the investigating committee shall maintain strict confidentiality of the facts of its investigations and shall not discuss any issues of fact or law relating to an investigation with anyone except other investigating committee members, potential witnesses, the target of the investigation, or the target's legal representative.

a. If any allegations are not supported by the facts stated in the complaint, the investigating committee shall submit a written recommendation to the Council for dismissal of the unsupported allegations. The recommendation must recite verbatim all complaint allegations that are recommended for dismissal, indicating the investigating committee's reasoning for recommending dismissal of each allegation. By majority vote of the members present at a properly convened Council meeting, the Council shall approve or reject the investigating committee's written recommendation based only on the information contained in and included with the written recommendation. The Council shall reject the investigating committee's recommendation only if it decides that the investigating committee's recommendation is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If Council does not approve the investigating committee's recommendation, the matter must be remanded to the investigating committee with the Council's written reasons for withholding its approval. If all allegations in a complaint are dismissed by the Council, the complaint is dismissed.

b. If the investigating committee believes a complaint does state sufficient facts to support 1 or more allegations, the investigating committee shall investigate the allegations and send a copy of the complaint by certified mail with return receipt requested to the last address of record of the accused.

c. The accused is entitled to submit a written answer to the complaint to the investigating committee within 20 calendar days after receiving the complaint.

d. If, at any time before commencement of a hearing 1 or more allegations are found to be unsupported, the investigating committee shall submit a written recommendation to the Council for dismissal of the unsupported allegations. The recommendation must recite verbatim all complaint allegations that are recommended for dismissal, indicating the investigating committee's reasoning for recommending dismissal of each allegation. By majority vote of the members present at a properly convened Council meeting, the Council shall approve or reject the investigating committee's written recommendation based only on the information contained in and included with the written recommendation. The Council shall reject the investigating committee's recommendation only if it decides that the investigating committee's recommendation is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If Council does not approve the investigating committee's recommendation, the matter must be remanded to the investigating committee with the Council's written reasons for withholding its approval. If all allegations in a complaint are dismissed by the Council, the complaint is dismissed.

e. If, during the course of an investigation, the investigating committee finds evidence that there may have been violations in addition to those contained in the complaint or those which formed the basis for an internally-initiated investigation, the investigating committee may add additional allegations as appropriate.

f. The investigating committee shall issue a final written report at the conclusion of its investigation. The report must list the evidence reviewed and the witnesses interviewed, cite the law alleged to have been violated, and list all facts supporting 1 or more allegations.

g. The investigating committee shall resolve supported allegations in 1 of the following ways:

1. The investigating committee may submit a written recommendation to the Council that an administrative order be issued. The written recommendation must include a copy of the proposed order. The proposed order must recite all complaint allegations the investigating committee believes are supported by its findings, a brief recitation of those findings, and the proposed penalty or penalties. By majority vote of the members present at a properly convened Council meeting, the Council shall approve or reject the investigating committee's written recommendation based only on the information contained in and included with the written recommendation. The Council shall reject the investigating committee's recommendation only if it decides that the investigating committee's recommendation is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If Council does not approve the investigating committee's recommendation, the matter must be remanded to the investigating committee with the Council's written reasons for withholding its approval. If the Council approves the recommendation, the order shall be served on the accused by certified mail with return receipt requested to the last address of record of the accused or by personal service. The order must indicate that it will become final unless the accused, within 14 days after receipt of the order, objects to the proposed order and requests a hearing. Administrative orders become final 14 days from the day the order is received by the accused but only if there is positive proof of service, such as a signed return receipt or an affidavit of personal service. Administrative orders are limited to imposing the following penalties, individually or in combination: warning, public reprimand, censure, or requiring completion

of training or education courses. If the accused gives notice to the investigating committee that the allegations are contested, the investigating committee shall proceed in accordance with paragraph (b)(1)g.3. of this section.

2. The investigating committee is entitled to negotiate a consent order with the accused. Consent orders must be approved by Council before becoming final. By majority vote of the members present at a properly convened Council meeting, the Council shall approve or reject consent orders, after considering the investigating committee's written recommendation regarding an order, based only on the information contained in and included with the consent order and written recommendation. The Council shall reject consent orders only if it decides that a consent order is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If the Council approves a consent order, the consent order must be served on the accused by certified mail with return receipt requested to the last address of record of the accused or by personal service. If the Council does not approve the consent order, the matter must be remanded to the investigating committee with the Council's written reasons for withholding its approval.

3. The investigating committee, with the concurrence of the Department of Justice, is entitled to forward the complaint, along with its final investigative report, to the Council with a written recommendation to prosecute the complaint before a hearing committee. By majority vote of the members present at a properly convened Council meeting, the Council shall approve or reject the Investigating Committee's written recommendation based only on the information contained in and included with the written recommendation. The Council shall reject the investigating committee's recommendation only if it decides that the investigating committee's recommendation is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If Council does not approve the investigating committee's recommendation, the matter must be remanded to the investigating committee with the Council's written reasons for withholding its approval. If the Council approves the recommendation, the Council shall convene a hearing committee if it has not already done so, and assign the matter to the hearing committee for further proceedings. The time and place for the hearing must be fixed by the hearing committee within 90 days of receipt of the formal complaint.

(2) At a properly convened Council meeting, the Council President shall nominate at least 3 Council members to serve on a hearing committee. Nominees must be approved by a majority vote of Council members present at a properly convened Council meeting. The Council President shall designate 1 member of a hearing committee to serve as the hearing committee chair. Hearing committees shall consist of Council members only. Members of the investigating committee may not be members of the hearing committee, but investigating committee members are entitled to assist in the prosecution of the complaint before a hearing committee.

(3) The hearing committee shall properly notice and conduct the hearing. The Delaware Rules of Evidence do not apply to the presentation or admissibility of evidence in hearings. A record must be kept of all public hearings, a transcript of which must be provided at cost upon a party's request. Decisions of the hearing committee must be made by majority vote of the hearing committee's members. Decisions must be based on the evidence presented at the hearing and must be supported by substantial evidence in the record. Decisions must not be based exclusively on hearsay.

a. If the hearing committee determines that no violation under § 2823 of this title or that no unlicensed practice under § 2825 of this title has occurred, it shall issue an order dismissing the complaint.

b. If the hearing committee determines that a violation under § 2823 of this title or that an unlicensed practice under § 2825 of this title has occurred, it shall issue an order stating its findings of fact, conclusions of law, and penalties.

c. If the accused fails or refuses to appear, the hearing committee may proceed to hear the charges and render a decision by default.

d. Orders issued by the hearing committee are not final until approved by Council. After a quorum has been established at a properly convened Council meeting, by majority vote of the members present who are not recused from the matter, the Council shall approve or reject the hearing committee's written order based only on the information contained in that order. The Council shall overturn the decision of a hearing committee only if it decides that a hearing committee decision is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If Council does not approve the hearing committee's order, the matter must be remanded to the hearing committee for further proceedings in accordance with the Council's written reasons for withholding its approval. Final orders are appealable to Superior Court within 30 days of the date of mailing. Copies of orders must be served personally or by registered or certified mail to each party.

(c) Disciplinary penalties and guidelines. —

(1) Disciplinary violations under § 2823(a) of this title are punishable by the following penalties, or any combination thereof: levy fines up to $5,000; require the successful completion of additional training or education courses; issue warnings, public reprimands, and censure; refuse or revoke licensure; impose probation with appropriate terms and conditions; impose suspension of license not to exceed 2 years; and refuse to renew any authorization issued to use the term "engineer" or practice engineering in Delaware. All fines must be paid to Council within 90 days of the date of mailing of an order. All fines collected by the Council must be deposited in the General Fund of the State through the Division of Revenue, provided that the Council may first deduct from the fines an amount equal to the administrative and other direct expenses incurred by the Council, its hearing committee, and its investigating committee, in the prosecution of the complaint.

(2) The Council shall prepare and publish a chart of Disciplinary Penalty Guidelines ("Guidelines") indicating the minimum and

maximum penalties available for each basis for discipline in § 2823 of this title. Penalties must be imposed according to the Guidelines after taking into consideration any aggravating or mitigating circumstances in each case. The Guidelines shall be provided to each Association member, associate member, affiliate member, adjunct member, and permittee and shall be available free of charge to the public. Copies of the Guidelines must also be made available to prospective applicants as a part of their application materials.

(d) Any person who files a complaint, provides information, or testifies as a witness in a matter alleging a violation under § 2823 of this title or a violation under § 2825 of this title must be afforded the protections of the Delaware Whistleblowers' Protection Act as codified in Chapter 17 of Title 19.

(e) The Council may, upon petition of an adjunct member, affiliate member, individual licensee, permittee, engineering corporation or partnership holding a certificate of authorization, reissue authorization to use the term "engineer," a license, permit or certificate of authorization; provided, however, that a majority of the seated members of the Council vote in favor of such issuance.

(24 Del. C. 1953 § 2824; 58 Del. Laws, c. 501 § 1; 64 Del. Laws, c. 483 § 1; 69 Del. Laws, c. 412 §§ 6-8; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 51 § 3; 74 Del. Laws, c. 267 § 1; 75 Del. Laws, c. 304 § 7—10; 76 Del. Laws, c. 291 §§ 14, 15; 77 Del. Laws, c. 331 § 1; 78 Del. Laws, c. 162 §§ 5, 6.)

§ 2825 Unlicensed practice.

(a) Persons or engineering corporations or partnerships not licensed, not authorized by Council, or not holding a permit or certificate of authorization may not:

(1) Practice engineering as defined in this chapter.

(2) Use any name, title, description of designation, either orally or in writing, that will lead to the belief that such person is entitled to practice engineering as defined in this chapter, including without limitation the words "engineer" or "engineering" or any modification or derivative of those words.

(3) Advertise or hold oneself or conduct oneself in any way or in any such manner as to lead to the belief that such person is entitled to practice engineering.

(b) [Transferred to subsection (i) of this section.]

(c) Whoever practices or offers to practice engineering in this State without being licensed in accordance with the provisions of this chapter shall be in violation thereof.

(d) Whoever presents or attempts to use as that person's own license, certificate of authorization, permit or the seal of a professional engineer not that person's own shall be in violation of the provisions of this chapter.

(e) Whoever gives any false or forged evidence of any kind to the Council or to any member thereof in obtaining authorization to use the term "engineer," a license, a certificate of authorization, or a permit shall be in violation of the provisions of this chapter.

(f) Whoever falsely impersonates any other adjunct member, affiliate member, licensee, holder of a certificate of authorization, or permittee with a similar or different name shall be in violation of the provisions of this chapter.

(g) Whoever attempts to use an expired or revoked authorization to use the term "engineer," a license, certificate of authorization or permit shall be in violation of the provisions of this chapter.

(h) Any applicant who misstates or misrepresents any fact in connection with the application or any such applicant who uses improper means to gain information usable by such applicant on or in connection with an examination taken by the applicant to obtain licensure as a professional engineer or certification as an engineer intern shall be in violation of the provisions of this chapter.

(i) Each partner of a partnership and each officer or director of a corporation which practices engineering in violation of this chapter shall also be liable jointly and severally with and to the same extent as such partnership or corporation unless such partner, officer or director who is so liable sustains the burden of proof that the partner, officer or director did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the violation is alleged to exist.

(j) This chapter shall not be construed to prevent or to affect:

(1) The work of an employee or a subordinate of a licensee or permittee, provided such work is done under the direct responsibility, checking and supervision of a licensee or permittee, or

(2) The practice of professional engineering by an architect legally licensed in this State when such practice is incidental to what may be properly considered an architectural project.

(k) Whether prompted by receipt of a complaint or upon its own initiative, the Council or its investigating committee may review allegations of unlicensed practice of engineering.

(l) Complaints of unlicensed practice must be investigated and prosecuted in accordance with the administrative hearing procedures in § 2824(b) of this title, except that administrative orders are not available for cases of unlicensed practice.

(m) Unlicensed practice is punishable by a fine up to $5,000 and a cease and desist order that shall include a reasonable date certain for compliance.

(n) Cease and desist orders. —

(1) The investigating committee may submit a written recommendation to the Council that a cease and desist order be issued. The written recommendation must include a copy of the proposed order. The proposed order must recite verbatim all complaint allegations the investigating committee believes are supported by its findings, brief recitation of those findings, and include a reasonable date certain deadline for the accused to comply with the order. The order must also indicate that the accused may request a hearing in writing any

time before passage of the compliance deadline, and that the order will become final and enforceable after passage of the compliance deadline.

(2) By majority vote of the members present at a properly convened Council meeting, the Council shall approve or reject the investigating committee's written recommendation based only on the information contained in and included with the written recommendation. The Council shall reject the investigating committee's recommendation only if it decides that the investigating committee's recommendation is contrary to a specific state or federal law or regulation, is not supported by substantial evidence, or is arbitrary or capricious. If Council does not approve the investigating committee's recommendation, the matter must be remanded to the investigating committee with the Council's written reasons for withholding its approval. If the Council approves the recommendation, the order must be served on the accused by certified mail with return receipt requested to the last address of record of the accused or by personal service.

(3) Cease and desist orders become final after passage of the compliance deadline only with positive proof of service, such as a signed return receipt or an affidavit of personal service. If the accused requests a hearing in writing to the investigating committee, the investigating committee shall proceed in accordance with § 2824(b)(1)g.3. of this title.

(o) Violations of a cease and desist orders must be investigated and prosecuted in accordance with the procedures in § 2824(b) of this title, except that administrative orders are not available. Violation of a cease and desist order is punishable by a fine up to $5,000 for each day a violation occurs.

(24 Del. C. 1953 § 2825; 58 Del. Laws, c. 501 § 1; 61 Del. Laws, c. 467 § 14; 68 Del. Laws, c. 24 § 7; 69 Del. Laws, c. 412 § 9; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 267 § 1; 76 Del. Laws, c. 291 §§ 16-19; 79 Del. Laws, c. 112 § 1.)

§ 2826 Injunctive relief.

Whenever it appears to the Council that any person has engaged or is about to engage in any act or practice constituting a violation of any provisions of this chapter, it may in its discretion bring an action in the Court of Chancery to temporarily restrain or to enjoin the acts or practices and to enforce compliance with this chapter. Any permanent injunction granted by the Court of Chancery pursuant to this section shall include an award for the costs of the action and reasonable attorneys' fees to be paid by the defendant, with multiple defendants being jointly and severally liable for such costs and fees. The Court shall not require Council to post a bond.

(61 Del. Laws, c. 467 § 15; 72 Del. Laws, c. 298 § 1; 74 Del. Laws, c. 267 § 1.)

§ 2827 Annual reports.

The Association shall submit annually to the Governor and the State Auditor an annual report, certified by a certified public accountant, detailing its income, expenses, assets and liabilities, as well as pertinent statistical and narrative information summarizing its regulatory activities, changes in modus operandi and progress made within its area of responsibility. The Association shall send notice to the General Assembly that such report was submitted to the Governor and the State Auditor.

(24 Del. C. 1953 § 2826; 58 Del. Laws, c. 501 § 1; 61 Del. Laws, c. 467 § 15; 65 Del. Laws, c. 429 § 1; 74 Del. Laws, c. 267 § 1.)

§ 2828 Applicability of Freedom of Information Act.

(a) The Association, the Council, and its committees shall each be deemed a "public body" as that term is used in the Freedom of Information Act, Chapter 100 of Title 29, and for purposes of this section only, all references to "the Council" shall be understood as referring to the Association and committees as well.

(b) In addition to the records which are not deemed public by reason of § 10002 of Title 29, the following records shall not be deemed to be public records:

(1) The application of any person to practice engineering in the State together with all records relating thereto;

(2) Records, reports, correspondence and other documents received by the Council relating to charges against any person that could lead to disciplinary action by the Council; and

(3) All examination materials and related documents.

(c) In addition to the purpose for which a public body may go into executive session pursuant to the Freedom of Information Act, the Council may conduct an executive session for the following purposes:

(1) Consideration of the application of any person for authorization to practice engineering in the State which consideration involves matters of qualification, recommendations, education, experience or testing of the applicant.

(2) Consideration of any charges which could result in disciplinary action by the Council.

(d) For purposes of this section, the term "application" shall mean any application or filing with the Council for the purpose of obtaining authorization to use the term "engineer," licensure, a certification of authorization, a temporary permit or certification as an engineer intern.

(62 Del. Laws, c. 167 § 1; 74 Del. Laws, c. 267 § 1; 78 Del. Laws, c. 162 §§ 7, 8; 78 Del. Laws, c. 382 § 1.)

§ 2829 Use of seals and stamps.

(a) Each licensee shall obtain an embossing seal of the design authorized by the Council, bearing the licensee's name, license number and the legend "professional engineer." Failure of the licensee to substantiate to the Council, within 6 months of the licensee's application approval date, that such a seal has been procured will result in the licensee being placed by the Council in "delinquent status."

(b) In addition to the embossing seal required by the foregoing provisions of this section:

(1) Licensees may procure and use a stamp containing the same data as the embossing seal, or

(2) Licensees may use a seal that can be created or transmitted electronically.

(68 Del. Laws, c. 24 § 8; 74 Del. Laws, c. 267 § 1.)

§ 2830 Dating, signing and sealing.

(a) All final drawings, specifications and documents involving the practice of engineering as defined in this chapter when issued or filed for public record shall be dated and bear the signature and seal of the licensee or licensees who prepared or approved them.

(b) If original tracings are sealed or stamped, the date of sealing or stamping must appear under the signature.

(c) The holder of a temporary permit, using the seal of the State designated by the Council on the permit, shall seal all final drawings, specifications, and documents in accordance with this section. The permittee shall, in addition, write the permittee's permit number and the permittee's signature immediately adjacent to the imprint of the seal.

(68 Del. Laws, c. 24 § 9; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 267 § 1.)

§ 2831 Continuing professional competency.

The Council shall prepare and publish guidelines and requirements for the maintenance of professional competency to further Council's charge to safeguard life, health and property, and to promote the public welfare. All active members shall be required to comply with and satisfy all continuing professional competency guidelines and requirements approved by Council.

(79 Del. Laws, c. 112 § 1.)

Part

Chapter 29

REAL ESTATE SERVICES, BROKERS, ASSOCIATE BROKERS AND SALESPERSONS

Subchapter I

General Provisions

§ 2900 Objectives.

(a) The primary objective of the Delaware Real Estate Commission, 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 Commission are to maintain minimum standards of licensee competency and to maintain certain standards in the delivery of services to the public.

(c) In meeting its objectives, the Commission shall develop standards assuring professional competence; shall monitor complaints brought against licensees regulated by the Commission; shall adjudicate at formal hearings; shall promulgate rules and regulations; and shall impose sanctions where necessary against licensees and nonlicensees engaged in the practice of providing real estate services.

(63 Del. Laws, c. 463 § 5; 71 Del. Laws, c. 103 § 4; 78 Del. Laws, c. 166 § 1.)

§ 2901 License requirements; exemptions.

(a) No person shall engage in the practice of providing real estate services or hold himself or herself out to the public in this State as being qualified to practice the same; or use in connection with that person's name, or otherwise assume or use, any title or description conveying or tending to convey the impression that the person is qualified to practice real estate services, unless such person has been duly licensed under this chapter.

(b) Any person engaging in the practice of providing real estate services in this State without the proper licensure shall be in violation of this chapter and shall be subject to the provisions of § 10161 of Title 29.

(c) No brokerage organization, corporation, partnership or other business entity shall be licensed under this chapter. Nothing in this chapter, however, shall prevent such brokerage organization from providing real estate services provided the individual or business entity has a broker who is responsible for providing real estate services and who may have affiliated associate brokers or salespersons, properly licensed in this State, who provide such services under the supervision of the broker.

(d) No person shall directly or indirectly provide real estate services through a licensee of the State without having a license in this State.

(e) This chapter shall not apply to:

(1) Any person or a subsidiary or division thereof with common ownership or control who, as owner or lessor or buyer or lessee, performs any of the acts enumerated in this section with reference to property owned, purchased or leased by such person or a subsidiary or division thereof with common ownership or control or to the regular employee of such person, with respect to the property so owned, purchased or leased, where such acts are performed in the regular course of or as an incident to the management of such property and the investment therein; or

(2) Persons acting as attorney in fact under a duly executed power of attorney from a person engaged in a real estate transaction authorizing the final consummation by performance of any agreement of sale, leasing or exchange of real estate.

(3) This chapter shall not be construed to include in any way the services rendered by an attorney-at-law, nor shall it be held to include, while acting as such, the receiver, trustee in bankruptcy, administrator or executor, or any person selling real estate under order of any court, or a trustee acting under a trust agreement, deed of trust or will, or the regular salaried employee thereof.

(4) An "auctioneer" as defined in § 2301(a)(3) of Title 30.

(5) A provider of property management services as defined in § 2902 of this title excepting that a provider of property management services shall not directly or indirectly sell or offer to sell, buy or offer to buy, negotiate the purchase, sale, or exchange of real estate, lease or rent or offer for lease or rent any real estate, or negotiate leases or rental agreements thereof or of the improvements thereon for others.

(35 Del. Laws, c. 63 § 3; Code 1935 §§ 5475, 5480; 24 Del. C. 1953 §§ 2906, 2910; 60 Del. Laws, c. 714 § 3; 67 Del. Laws, c. 121 §§ 6, 23; 67 Del. Laws, c. 381 § 5; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 166 § 1.)

§ 2902 Definitions.

(a) As used in this chapter:

(1) "Associate broker" means any individual who holds an associate broker license from the Commission and who is licensed under a broker to sell or offer to sell, or to buy or to offer to buy, or to negotiate the purchase, sale, or exchange of real estate, or to lease or rent or offer for rent any real estate, or to negotiate leases or rental agreements thereof or of the improvements thereon for others.

(2) "Broker" means any individual who holds a broker license from the Commission and who for a compensation or valuable

consideration, is self-employed or is employed directly or indirectly by a brokerage organization to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase, sale, or exchange of real estate, or to lease or rent or offer for rent any real estate, or to negotiate leases or rental agreements thereof or of the improvements thereon for others. The broker is responsible for providing real estate services and is primarily responsible for the day to day management and supervision of a brokerage organization as it relates to this chapter.

(3) "Brokerage organization" means that individual or business entity which is not licensed but is acting as a broker under § 2901(c) of this title and is the trade name under which the broker operates. The individual or business entity shall have a broker licensed under this chapter.

(4) "Client" means a member of the public who is the principal in the statutory or common law agency relationship.

(5) "Commission" means the Delaware Real Estate Commission.

(6) "Competitive market analysis" or "CMA" means a service provided by a licensee for the purpose of providing either a potential listing price or use or a potential offering price or use in a real estate services transaction. In this method, licensees compare properties whose characteristics are similar in location, style, size and amenities to provide an estimated market price or a potential use for a target property or area. The CMA usually consists of an evaluation of similar properties that have recently sold, are currently under agreement to sell and are currently listed or offered for sale. A CMA may also be referred to as a comparative market analysis, a comparable market analysis, a broker price opinion or broker's market analysis. A CMA is not an appraisal.

(7) "Consumer information statement" or "CIS" means the disclosure form required by § 2938 of this title.

(8) "Conviction" means a verdict of guilty by the trier of fact, whether judge or jury, or a plea of guilty or a plea of nolo contendere accepted by the court.

(9) "Customer" means a member of the general public working with a licensee as a potential buyer, seller, exchangor, exchangee, tenant, or landlord of real property or is consulting with a licensee in 1 of these capacities for the purpose of entering into a brokerage agreement or transaction, but who has not yet entered into a statutory or common law agency relationship with a licensee. A customer is sometimes referred to as a prospect.

(10) "Designated agent" means a licensee appointed by the broker working with a customer or client as a statutory agent.

(11) "Designated on-site supervisor" means a licensee who has at least 5 years of continuous real estate services experience and who has been appointed as the full-time supervisor of a branch office by the broker.

(12) "Division" means the Delaware Division of Professional Regulation.

(13) "Dual agent" means a salesperson, associate broker, broker and/or brokerage organization which represents both buyer and seller or tenant and landlord as clients in a real estate services transaction.

(14) "Escrow account"' means a separate account established by the brokerage organization used solely for moneys in which a broker's customers or clients have an interest in accordance with the terms of a real estate services transaction.

(15) "Licensee" means an individual licensed under this chapter as a broker, associate broker or salesperson without implying what legal relationship they have with a customer or client.

(16) "Ministerial task" means a task that does not involve discretion or the exercise of the licensee's own judgment, for example:

a. Performing tasks for a client or customer according to the brokerage agreement or other form of consent before or after the signing of an agreement of sale or lease such as arranging an inspection; or

b. Assisting other persons to perform their part of the transaction such as providing information to the mortgage lender.

(17) "Person" means an individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company and any other legal entity and includes a legal successor of those entities.

(18) "Property management services" means those actions taken for others, pursuant to an agreement, in exchange for a fee, commission, compensation or other valuable consideration which include the supervision and the administration of the physical maintenance and/or the financial matters of real property. These supervision services may include assisting the owner in decisions in the selection of tenants, budgeting for the operation of property or properties, collecting of rent or rents, or maintaining security deposits.

(19) "Psychologically impacted" and "psychological impacts" mean that the property was, or was at any time suspected to have been the site of a homicide, suicide or other felony except arson or that an occupant of real property is or was at any time suspected to be infected or has been infected with human immunodeficiency virus (HIV) or diagnosed with acquired immune deficiency syndrome (AIDS), or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place.

(20) "Real estate service provider" means a licensee who is providing real estate services.

(21) "Real estate services" means those activities performed by a licensee as defined in this chapter. As promulgated under the rules and regulations, real estate services shall also include the marketing and advertising of properties for sale or lease.

(22) "Rules and regulations" mean those rules and regulations as promulgated by the Commission.

(23) "Salesperson" means any individual who holds a salesperson license from the Commission and who is licensed under a broker to sell or offer to sell, or to buy or to offer to buy, or to negotiate the purchase, sale, auction or exchange of real estate, or to lease or rent or offer for rent any real estate, or to negotiate leases or rental agreements thereof or of the improvements thereon for others.

(24) "State" means the State of Delaware.

(25) "Statutory agent" or "agent" means a licensee functioning as a party in an agency relationship created according to subchapter II

of this chapter as an independent contractor and not as a fiduciary. The agent offers real estate services to the public to make a market in real estate by bringing buyer and seller, or landlord and tenant together for the transaction and assisting the parties with advice and negotiations, and performing ministerial tasks to complete the transaction. Every licensee shall be presumed to be a statutory agent and may refer to themselves as agent or statutory agent unless specifically identified as a common aw agent in their brokerage agreement.

(26) "Substantially related" means the nature of the criminal conduct, for which the individual 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 providing real estate services.

(b) In applying this chapter to leasing transactions, the word "landlord" may be substituted for "seller", the word "tenant" may be substituted for "buyer", and the word "lease" may be substituted for "agreement of sale" where applicable. The terms "rental agreement" and "lease" may be used interchangeably.

(35 Del. Laws, c. 63 § 4; Code 1935 § 5476; 24 Del. C. 1953 § 2901; 57 Del. Laws, c. 151; 59 Del. Laws, c. 468 § 2; 67 Del. Laws, c. 121 §§ 1, 2, 23; 67 Del. Laws, c. 381 §§ 2, 9; 67 Del. Laws, c. 438 §§ 1, 2; 74 Del. Laws, c. 262 § 54; 75 Del. Laws, c. 277 §§ 3-5; 76 Del. Laws, c. 258 §§ 1, 2; 78 Del. Laws, c. 166 § 1.)

§ 2903 Real Estate Commission; appointments; qualifications; terms of office; vacancies; suspension or removal; unexcused absences; compensation.

(a) There is created the Delaware Real Estate Commission, which shall administer and enforce this chapter.

(b) The Commission shall consist of 9 members appointed by the Governor: 5 professional members, 3 of whom shall be licensed brokers, 1 associate broker, and 1 salesperson; and 4 public members. All members shall have been residents of the State for at least 5 years immediately prior to such appointment.

(1) Three of the professional members shall be brokers: 1 shall be a resident of New Castle County; 1 shall be a resident of Kent County; and 1 shall be a resident of Sussex County. Broker members of the Commission shall have been active licensees for at least 5 years immediately prior to their appointment.

(2) One of the professional members shall be an associate broker. The associate broker member shall have been an active licensee for at least 5 years immediately prior to that associate broker's appointment.

(3) One of the professional members shall be a salesperson. The salesperson member shall have been an active licensee for at least 4 years immediately prior to that salesperson's appointment.

(4) Of the 4 public members, 1 public member shall be from each county and 1 public member shall be from the City of Wilmington. To serve on the Commission, a public member shall not be, nor have been within the last 8 years prior to the effective date of appointment, a licensee, nor a member of the immediate family of a licensee; shall not be, nor have been with the last 8 years prior to the effective date of appointment, employed by a broker or brokerage organization; shall not have had a financial interest in the providing of goods and services to a licensee; and shall not be, nor have been within the last 8 years prior to the effective date of appointment, engaged in an activity directly related to providing real estate services.

(c) Each member shall serve for a term of 3 years, unless otherwise specified in this chapter; 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 Commission shall hold office for the remainder of the unexpired term of the former member.

(d) No member, while serving on the Commission, shall be a president, president-elect, vice-president, secretary, treasurer, director or other elected official of a professional association for real estate service providers.

(e) Any act or vote by a member appointed in violation of subsection (b) 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 (b) of this section, unless such amendment or revision amends this section to permit such an appointment.

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

(g) 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.

(h) The provisions set forth for "employees" in Chapter 58 of Title 29 shall apply to all members of the Commission and to all agents appointed, or otherwise employed by the Commission.

(i) The members of the Commission shall each receive compensation at the rate of $50 per meeting attended; provided, however, no member shall receive compensation for the year in excess of $500 and the Commission shall not be paid for more than 10 meetings during a calendar year.

(35 Del. Laws, c. 63 § 1; Code 1935 § 5473; 24 Del. C. 1953 § 2902; 57 Del. Laws, c. 151; 60 Del. Laws, c. 714 § 1; 63 Del. Laws, c. 463 §§ 1-4; 67 Del. Laws, c. 366 § 11; 67 Del. Laws, c. 368 § 18; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 603 §§ 1-6; 78 Del. Laws, c. 166 § 1.)

§ 2904 Organization; meetings; officers; quorum.

(a) In the same month of each year, the members shall elect from among their number a Chairperson, Vice-Chairperson and Secretary. Each officer shall serve for 1 year, and shall not succeed himself or herself in the same office.

(b) The Commission shall hold regularly scheduled business meetings at least once in each quarter of a calendar year and at such other times as the Chairperson deems necessary, or at the request of a majority of Commission members. Special or emergency meetings may be held, provided a quorum is present.

(c) A majority of members shall constitute a quorum, and no licensee shall be disciplined without the affirmative vote of at least 5 members.

(d) Minutes of all meetings shall be recorded and copies shall be maintained by the Division. At any hearing where evidence is presented, a record from which a verbatim transcript can be prepared shall be made. The person requesting it shall incur the expense of preparing any transcript.

(35 Del. Laws, c. 63 § 2; Code 1935 § 5474; 41 Del. Laws, c. 218 § 1; 24 Del. C. 1953 § 2903; 57 Del. Laws, c. 151; 63 Del. Laws, c. 463 §§ 6, 7; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 603 § 7; 71 Del. Laws, c. 103 § 1; 78 Del. Laws, c. 166 § 1.)

§ 2905 Records.

The Division shall keep a register of all approved applications for licensure and complete records relating to meetings of the Commission, examinations, rosters, changes and additions to the Commission's rules and regulations, complaints, hearings and such other matters as the Commission shall determine. Such records shall be prima facie evidence of the proceedings of the Commission.

(35 Del. Laws, c. 63 §§ 2, 13; 37 Del. Laws, c. 44 § 1; Code 1935 § 5485; 24 Del. C. 1953 § 2905; 57 Del. Laws, c. 151; 57 Del. Laws, c. 741 § 28A; 67 Del. Laws, c. 121 §§ 4, 5; 67 Del. Laws, c. 144 § 5; 67 Del. Laws, c. 381 §§ 3, 4; 74 Del. Laws, c. 262 § 55; 78 Del. Laws, c. 166 § 1.)

§ 2906 Powers and duties.

(a) The Commission shall have the 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. Each rule or regulation shall implement or clarify a specific section of this chapter.

(2) Approve the forms to be used under this chapter or as directed by other statutory provisions.

(3) Establish the qualifications for licensure and evaluate the credentials of all applicants for a license to practice real estate services, in order to determine whether such applicants meet the qualifications set forth in this chapter.

(4) Grant licenses to, and renew licenses of, all individuals who meet the qualifications for licensure and renewal.

(5) Establish and administer the criteria and standards by rule and regulation for instructors, schools of real estate and course providers .

(6) Establish by rule and regulation prelicensing and continuing education standards required for licensure and license renewal.

(7) Perform random audits of continuing education credits submitted by licensees for license renewal.

(8) Evaluate certified records to determine whether an applicant for licensure who previously has been licensed, certified or registered in another jurisdiction to practice real estate services 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 applicant for such acts or offenses.

(9) Refer all complaints from licensees and the general public concerning individuals licensed in this chapter or concerning practices of the Commission or of the profession, to the Division for investigation pursuant to § 8735 of Title 29 and assign a member of the Commission to assist the Division in an advisory capacity with the investigation of the technical aspects of the complaint.

(10) Conduct hearings and issue orders in accordance with procedures established pursuant to Chapter 101 of Title 29.

(11) Designate and impose the appropriate sanction or penalty where it has been determined after a hearing that penalties or sanctions should be imposed.

(12) Order compensation from the Real Estate Guaranty Fund, when, after a hearing, the Commission finds in favor of an aggrieved party, pursuant to § 2922 of this title.

(13) Issue cease and desist orders and impose fines for unlicensed practice, as specified in the rules and regulations and in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) The Division shall contract with a nationally recognized testing service for the preparation and grading of a written examination for the licensing of real estate service providers. The Commission may appoint a committee to review the written examination to establish its relevancy and accuracy for licensure in this State.

(c) The Commission shall promulgate regulations specifically identifying those crimes which are substantially related to the practice of providing real estate services.

(35 Del. Laws, c. 63 §§ 2, 13; 37 Del. Laws, c. 44 § 1; Code 1935 § 5485; 24 Del. C. 1953 § 2905; 57 Del. Laws, c. 151; 57 Del. Laws, c. 741 § 28A; 67 Del. Laws, c. 121 §§ 4, 5; 67 Del. Laws, c. 144 § 5; 67 Del. Laws, c. 381 §§ 3, 4; 74 Del. Laws, c. 262 § 55; 78 Del. Laws, c. 166 § 1.)

§ 2907 Qualifications of applicant; application; examination; report to Attorney General; judicial review.

(a) All applicants shall meet the following conditions:

(1) Shall be competent to transact real estate services by meeting the requirements of this section and the rules and regulations;

(2) Shall not have been the recipient of any administrative penalties regarding real estate services, in this or any other jurisdiction, including but not limited to fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations, and/or has not entered into any "consent agreements" which contain conditions placed by a licensing commission or board on that applicant's professional conduct and practice, including any voluntary surrender of a license. Notwithstanding the foregoing, the Commission, after a hearing, may determine whether such administrative penalty is grounds to deny licensure.

(3) Shall not have any impairment related to drugs, alcohol or a finding of mental incompetence by a physician that would limit the applicant's ability to undertake that applicant's practice in a manner consistent with the safety of the public.

(4) Shall not have a criminal conviction record, nor pending criminal charge relating to an offense the circumstances of which are substantially related to the practice of providing real estate services. In addition, shall not have been convicted of fraud. Applicants who have criminal conviction records or pending criminal charges shall request appropriate authorities to provide information about the conviction or charge directly to the Commission in sufficient specificity to enable the Commission to make a determination whether the conviction or charge is substantially related to the applicant's area of practice. However, after a hearing or review of documentation demonstrating that the applicant meets the specified criteria for a waiver, the Commission, by an affirmative vote of a majority of the quorum, may waive this paragraph (a)(4), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of providing real estate services in a competent and professional manner.

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

(b) Salesperson. — An applicant who is applying for licensure as a salesperson under this chapter shall submit evidence, verified by oath and satisfactory to the Commission, that such applicant:

(1) Meets the requirements of subsection (a) of this section.

(2) Is at least 18 years of age.

(3) Has successfully completed a prescribed prelicensing course of instruction including real estate principles and practices and Delaware real estate law.

(4) Has passed a uniform national and state examination for salespersons, as is contractually arranged for, with a nationally recognized independent testing service, by the Division; and

(5) Has provided such information as may be required on an application form designed and furnished by the Commission with the approval of the Division. No application form shall require information relating to citizenship, place of birth or length of state residency; nor require personal references.

(c) Associate broker. — An applicant who is applying for licensure as an associate broker under this chapter shall submit evidence, verified by oath and satisfactory to the Commission, that such applicant:

(1) Meets the requirements of subsection (a) of this section.

(2) Is at least 23 years of age.

(3) Has the experience requirements as specified under the rules and regulations.

(4) Has the financial prerequisites set forth in the rules and regulations.

(5) Has successfully completed a prescribed prelicensing course of instruction for brokers including real estate principles and practices and Delaware real estate law.

(6) Has passed a uniform national and state examination for brokers, as is contractually arranged for, with a nationally recognized independent testing service, by the Division; and

(7) Has provided such information as may be required on an application form designed and furnished by the Commission with the approval of the Division. No application form shall require a picture of the applicant; require information relating to citizenship, place of birth or length of State residency; nor require personal references.

(d) Broker. — In addition to the requirements of subsection (c) of this section, an applicant who is applying for licensure as a broker under this chapter shall submit verification of the applicant's responsibility for the day to day management and supervision of a brokerage organization and meet the experience and education requirements as defined in the rules and regulations.

(e) Where the Commission has found to its satisfaction that an applicant has been intentionally fraudulent or that false information has been intentionally supplied, it shall report its findings to the Attorney General for further action.

(f) Where the applicant has been refused or rejected and such applicant feels that the Commission has acted without justification; has imposed higher or different standards than for other applicants or licensees; or has in some other manner contributed to or caused the failure

of such application, the applicant may appeal to the Superior Court.

(g) Every application for a license under this chapter shall be accompanied by the fee prescribed by § 2908 of this title and payment of a Guaranty Fund fee.

(35 Del. Laws, c. 63 §§ 5, 6; Code 1935 §§ 5477, 5478; 24 Del. C. 1953 § 2907; 63 Del. Laws, c. 463 § 8; 67 Del. Laws, c. 121 §§ 7, 23; 67 Del. Laws, c. 381 § 6; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 603 § 8; 74 Del. Laws, c. 262 § 56; 75 Del. Laws, c. 436 § 31; 77 Del. Laws, c. 199 §§ 21, 22; 78 Del. Laws, c. 44 §§ 42, 43; 78 Del. Laws, c. 166 § 1.)

§ 2908 Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Commission, as well as the proportional expenses incurred by the Division in its services on behalf of the Commission. There shall be a separate fee charged for each service or activity, but no fee shall be charged for an activity not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each biennium year the Division, or any other state agency acting in its behalf, shall compute for each separate service or activity, the appropriate fee for the coming year.

(35 Del. Laws, c. 63 §§ 6, 13; Code 1935 §§ 5478, 5485; 48 Del. Laws, c. 161 § 1; 24 Del. C. 1953 § 2908; 57 Del. Laws, c. 151; 57 Del. Laws, c. 741 § 28B; 63 Del. Laws, c. 463 § 10; 65 Del. Laws, c. 380 § 4; 67 Del. Laws, c. 121 § 8; 78 Del. Laws, c. 166 § 1.)

§ 2909 Reciprocal licensure.

(a) Upon payment of the appropriate fee and submission and acceptance of a written application on forms provided by the Commission, and subject to the further requirements set forth in this section, the Commission shall grant a license to an applicant who shall present proof of current licensure in "good standing" in another state, the District of Columbia, or territory of the United States and the license shall be in "good standing" as defined in § 2907(a)(2), (3) and (4) of this title.

(b) A salesperson applicant shall also meet one of the following criteria:

(1) Presents proof of at least 3 years of continuous licensure, preceding the date of application, in another state, District of Columbia or territory of the United States and completion of real estate services transactions during those 3 years as specified in the rules and regulations; and has passed the state portion of the Delaware licensing examination; or

(2) Has successfully completed the Delaware law portion of the prelicensing course and passed the state portion of the Delaware licensing examination; or

(3) Has successfully completed the equivalent of the prescribed prelicensing education for the State in the other state, the District of Columbia, or territory of the United States and has passed the state portion of the Delaware licensing examination.

(c) An associate broker applicant shall, in addition to the requirements set forth in subsection (a) of this section, meet the following requirements:

(1) Shall be at least 23 years of age.

(2) Has the experience requirements as specified under the rules and regulations; and

(3) Has the financial prerequisites set forth in the rules and regulations; and

(4) Has passed the state portion of the examination for brokers.

(d) An applicant for a broker's license shall meet the requirements set forth in subsection (c) of this section, shall submit verification of his or her responsibility for the day to day management and supervision of a brokerage organization, and shall meet the experience and education requirements as defined in the rules and regulations.

(e) In the event there is a disciplinary proceeding or unresolved complaint pending, the applicant shall not be licensed until the proceeding or complaint has been resolved. Applicants for licensure in this State shall be deemed to have given consent to the release of information pertaining to the disciplinary proceeding or unresolved complaint and to waive all objections to the admissibility of such information as evidence at any hearing or other proceeding to which the applicant may be subject.

(f) Every applicant who is applying for licensure in an office located outside of this State, prior to being licensed, shall give irrevocable consent that legal action may be commenced against the applicant in the proper court of any county of this State in which a cause of action may arise or in which the plaintiff may reside, by service of any process or pleading authorized by the laws of this State upon any member of the Commission. In case any processes or pleadings are served upon any member of the Commission, a copy thereof shall be immediately forwarded by certified or registered mail to the main office of the licensee against which process or pleadings are directed.

(35 Del. Laws, c. 63 § 11; Code 1935 § 5483; 24 Del. C. 1953 § 2909; 60 Del. Laws, c. 714 § 2; 67 Del. Laws, c. 121 §§ 9, 23; 67 Del. Laws, c. 171 § 1; 67 Del. Laws, c. 381 §§ 11, 12; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 166 § 1.)

§ 2910 Issuance and renewal of licenses; additional licenses; reinstatement.

(a) The Commission shall issue a license to each applicant who meets the requirements of this chapter for licensure as a real estate service provider and who pays the fees prescribed by the Division.

(b) A licensee may obtain an additional license and become affiliated with an additional broker if the licensee:

(1) Obtains, from an additional broker, a written commitment providing that the licensee shall become affiliated with the broker on the granting of an additional license to the licensee;

(2) Gives each broker with whom the licensee is currently affiliated written notice that the licensee intends to affiliate with an additional broker;

(3) Obtains from the broker with whom the licensee is currently affiliated, and from the additional broker, written approval of the licensee's intent to affiliate with an additional broker; and

(4) Complies with the application procedures applicable to additional licenses set forth in the rules and regulations.

(c) On or before the biennial date established by the Division, each licensee shall make application to the Commission for a renewal of license and make payment of the fees prescribed by the Division. The renewal application shall be made online, pursuant to the Commission's rules and regulations.

(d) In addition to the other provisions of this section, each licensee applying for renewal shall be required to successfully complete in the 2-year period prior to the established renewal date continuing education hours in an amount and subject matter as prescribed by the rules and regulations of the Commission. Each licensee at the time of license renewal shall be required to certify to the Commission that he or she has completed the required number of hours in approved courses, seminars and lectures. The Commission shall publish guidelines as to acceptable courses of instruction, seminars and lectures, and shall keep the guidelines current.

(e) At the time of renewal, each licensee shall disclose whether he or she has had any criminal convictions since the last license renewal.

(f) The Commission shall, in its rules and regulations, determine the period of time a licensee may still renew a license if the licensee has failed to renew on or before the established renewal date.

(g) An individual whose license has lapsed may apply to the Commission for reinstatement pursuant to the rules and regulations.

(35 Del. Laws, c. 63 § 12; Code 1935 § 5484; 24 Del. C. 1953 § 2911; 63 Del. Laws, c. 463 § 9; 64 Del. Laws, c. 208 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 603 § 9; 78 Del. Laws, c. 166 § 1.)

§ 2911 Complaints.

All complaints shall be received and investigated by the Division in accordance with § 8735 of Title 29, and the Division shall be responsible for issuing a final written report at the conclusion of its investigation.

(35 Del. Laws, c. 63 § 9; Code 1935 § 5481; 41 Del. Laws, c. 218 § 2; 24 Del. C. 1953 § 2912; 60 Del. Laws, c. 714 §§ 4, 5; 67 Del. Laws, c. 121 §§ 10-12, 23; 67 Del. Laws, c. 171 § 2; 67 Del. Laws, c. 256 § 1; 67 Del. Laws, c. 381 § 13; 68 Del. Laws, c. 166 § 2; 69 Del. Laws, c. 86 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 103 § 2; 75 Del. Laws, c. 88 § 17(2); 78 Del. Laws, c. 166 § 1.)

§ 2912 Grounds for discipline.

(a) A licensee shall be subject to disciplinary sanctions set forth in § 2914 of this title if after a hearing, the Commission finds that the licensee:

(1) Has made any substantial misrepresentation; or

(2) Has made any false promise of a character likely to influence, persuade or induce; or

(3) Has pursued a continued and flagrant course of misrepresentation or the making of false promises through licensees or advertising or otherwise; or

(4) Has failed, within a reasonable time, to account for or to remit any money coming into the licensee's possession which belongs to others; or

(5) Has illegally practiced real estate services; or

(6) Has incompetently or negligently practiced real estate services in such manner as to not safeguard the interest of the public; or

(7) Has paid a commission or valuable consideration to any person for acts or services performed in violation of this chapter; or

(8) Has assisted a person in providing real estate services who does not hold a license to provide real estate services in this State.

(9) Has violated a provision of this chapter, any of the rules and regulations established thereunder, or any order of the Commission; or

(10) Has received or made an arrangement or agreement to receive, directly or indirectly, any form of valuable consideration for products or services relating to a real estate services transaction without prior written disclosure by the licensee to the customer or client of the licensee and the payor for the product or service; or

(11) Has misrepresented the availability of or the content of any statutorily required form such as the seller's disclosure of real property condition report form and/or the radon disclosure as provided in Chapter 25 of Title 6; or

(12) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license or renew a license as a real estate service provider; has impersonated another individual holding a license, or has allowed another individual to use that licensee's license, or has aided or abetted an individual not licensed as a real estate service provider to represent himself or herself as a real estate service provider; or

(13) Has been convicted of a crime that is substantially related to the practice of real estate services. A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence therefore; or

(14) Has had a license as a real estate service provider suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Commission by certified record and the Commission has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every individual licensed as a real estate service provider in this State shall be deemed to have given consent to the release of this information by the Commission or other comparable agencies in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses; or

(15) Has failed to notify the Commission that the licensee's license as a real estate service provider in another jurisdiction has been

subject to discipline, or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof.

(b) Any unlawful act or violation of this chapter by any real estate service provider, employee, partner, or associate of a licensed broker shall not be cause for the revocation of a license of any broker, unless it appears to the satisfaction of the Commission that such broker had knowledge thereof.

(c) The Commission may suspend or revoke any license issued under this chapter at any time where the licensee has been convicted in a court of competent jurisdiction of the crime of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud or any similar offense or has had entered a plea of guilty or nolo contendere to any similar offense.

(d) Subject to the provisions of this chapter and subchapter IV of Chapter 101 of Title 29, no license shall be restricted, suspended or revoked by the Commission, and no licensee's right to practice real estate services shall be limited by the Commission until such licensee has been given notice, and an opportunity to be heard, in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(e) A licensee acting or providing service under an exemption as defined in § 2901 of this title and through the course of delivery of the exempted service is, after a hearing, found to be guilty of paragraphs (a)(1) through (11) of this section shall be subject to discipline pursuant to § 2914 of this title.

(35 Del. Laws, c. 63 § 9; Code 1935 § 5481; 41 Del. Laws, c. 218 § 2; 24 Del. C. 1953 § 2912; 60 Del. Laws, c. 714 §§ 4, 5; 67 Del. Laws, c. 121 §§ 10-12, 23; 67 Del. Laws, c. 171 § 2; 67 Del. Laws, c. 256 § 1; 67 Del. Laws, c. 381 § 13; 68 Del. Laws, c. 166 § 2; 69 Del. Laws, c. 86 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 103 § 2; 75 Del. Laws, c. 88 § 17(2); 78 Del. Laws, c. 166 § 1.)

§ 2913 Hearing procedures.

(a) If a complaint is filed with the Commission pursuant to § 8735 of Title 29 alleging violation of § 2912 of this title, the Commission shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) Where the licensee is in disagreement with the action of the Commission, the licensee may appeal the Commission's decision to the Superior Court within 30 days of the day that notice of the decision is mailed. Upon such appeal the Court shall hear the evidence on the record. Stays shall be granted in accordance with § 10144 of Title 29.

(35 Del. Laws, c. 63 § 10; Code 1935 § 5482; 24 Del. C. 1953 § 2913 2914; 67 Del. Laws, c. 121 § 23; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 103 §§ 3, 4; 78 Del. Laws, c. 166 § 1.)

§ 2914 Disciplinary sanctions.

(a) The Commission 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 § 2912 of this title applies to a licensee:

(1) Issue a letter of reprimand;

(2) Place the licensee on probationary status and require the licensee to:

a. Report regularly to the Commission upon the matters which are the basis for the probation; and/or

b. Limit real estate services activities to those areas prescribed by the Commission.

(3) Impose a monetary penalty not to exceed $5,000 for each violation;

(4) Suspend any licensee's license.

(5) Revoke or permanently revoke any licensee's license.

(b) In addition to sanctions imposed under paragraphs (a)(1)-(4) of this section, the Commission may require a licensee to complete continuing education courses in subjects specified by the Commission in addition to those required for licensure renewal.

(c) The Commission may withdraw or reduce conditions of probation when it finds that deficiencies requiring such action have been remedied.

(d) Where the Commission has placed a licensee on probationary status under certain restrictions or conditions and the Commission has determined that such restrictions or conditions are being or have been violated by the licensee, it may, after a hearing on the matter, suspend or revoke the licensee's license.

(35 Del. Laws, c. 63 § 9; Code 1935 § 5481; 41 Del. Laws, c. 218 § 2; 24 Del. C. 1953 § 2912; 60 Del. Laws, c. 714 §§ 4, 5; 67 Del. Laws, c. 121 §§ 10-12, 23; 67 Del. Laws, c. 171 § 2; 67 Del. Laws, c. 256 § 1; 67 Del. Laws, c. 381 § 13; 68 Del. Laws, c. 166 § 2; 69 Del. Laws, c. 86 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 103 § 2; 75 Del. Laws, c. 88 § 17(2); 78 Del. Laws, c. 166 § 1.)

§ 2915 Temporary suspension pending hearing.

(a) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, welfare or safety, the Commission may temporarily suspend the 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 Commission Chairperson or the Commission Chairperson's designee. An order temporarily suspending a license may not be issued unless the licensee or the licensee's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the licensee or the licensee's attorney can file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended licensee requests a continuance of the hearing date. If the temporarily suspended licensee requests a continuance, the order of temporary suspension remains in effect until the Commission convenes and a decision is rendered.

(b) A licensee whose license has been temporarily suspended pursuant to this section must be notified of the temporary suspension immediately and in writing. Notification consists of a copy of the complaint and the order of temporary suspension pending a hearing personally served upon the licensee or sent by certified mail, return receipt requested, to the licensee's last known address.

(c) A licensee whose license has been temporarily suspended pursuant to this section may request an expedited hearing. The Commission shall schedule the hearing on an expedited basis, provided that the Commission receives the request within 5 calendar days from the date on which the licensee received notification of the decision to temporarily suspend the license.

(d) The case may be heard by the Commission, a hearing officer or a hearing panel, nominated pursuant to the Administrative Procedure Act, § 10161(d)-(f) of Title 29.

(e) After notice to the licensee pursuant to subsection (b) of this section, the Commission, or the hearing officer or the hearing panel, shall convene within 60 days of the date of the issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If the licensee requests in a timely manner an expedited hearing, the Commission, or the hearing officer or hearing panel, shall convene within 15 days of the receipt of the request by the Commission. The Commission, or hearing officer or hearing panel, shall proceed to a hearing in accordance with the Administrative Procedure Act, Chapter 101 of Title 29, and shall render a decision within 30 days of the hearing.

(f) An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the Commission unless the suspended licensee requests an extension of the order pending a final decision of the Commission. Upon the final decision of the Commission, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Commission.

(71 Del. Laws, c. 103 § 5; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 166 § 1; 79 Del. Laws, c. 168 § 2.)

§ 2916 Reinstatement of a suspended license or issuance of a new license after revocation; removal from probationary status; replacement of license.

(a) Where a license has been suspended due to the disability of the licensee, the Commission may reinstate such license if, after a hearing, the Commission is satisfied that the licensee is able to practice real estate services with reasonable skill and safety.

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

(c) Individuals seeking reinstatement must pay the appropriate fees and submit documentation required by the Commission as evidence that all the conditions of a suspension and/or probation have been met. Proof that the licensee has met the continuing education requirements of this chapter may also be required, as appropriate.

(d) A new license to replace any license lost, destroyed or mutilated will be issued subject to the rules and regulations of the Commission. A charge set by the Division shall be made for such issuance.

(e) An individual whose license has been revoked must apply as a new applicant pursuant to the rules and regulations.

(71 Del. Laws, c. 103 § 5; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 166 § 1.)

§ 2917 Effect of revocation of broker's license.

The revocation of a broker's license shall automatically suspend every real estate service provider's license granted to any individual by virtue of employment either directly or indirectly by the broker whose license has been revoked, pending a change of employing broker or brokerage organization and the issuance of a new license. Such new license shall be issued without charge, if granted during the same licensure period in which the licensee's original license was granted.

(35 Del. Laws, c. 63 § 8; Code 1935 § 5480; 24 Del. C. 1953 § 2915; 67 Del. Laws, c. 121 § 23; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 103 § 4; 78 Del. Laws, c. 166 § 1.)

§ 2918 Form and display of license.

(a) All licenses shall be issued by the Commission in such form and size as shall be prescribed by the Division.

(b) The licenses shall show the name of the licensee, the brokerage organization and the address for the approved office of the licensee.

(c) The broker shall have all licenses readily available for review upon request by the general public or the Division within the approved place of business.

(35 Del. Laws, c. 63 § 7; Code 1935 § 5479; 24 Del. C. 1953 § 2917; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 103 § 4; 78 Del. Laws, c. 166 § 1.)

§ 2919 Maintenance of place of business; office permits.

(a) The broker shall maintain an office approved by the Commission or by the state of licensure. Each office shall be under the direction and supervision of the broker. A broker applying for an office in the State of Delaware shall submit an application to the Commission for an office permit with the application fee established by the Division. A permit shall be issued only upon approval by the Commission.

(b) On or before the biennial date established by the Division, the broker shall submit an application to the Division for renewal of the office permit with the renewal fee established by the Division.

(c) The broker's license shall include the address of the approved office.

(d) If the broker maintains more than one office, the broker shall apply for and obtain an additional broker's license and office permit in the broker's name for each branch office. A branch office permit shall be subject to the requirements set forth in subsections (a) and (b) of this section. The application for a branch office shall state the address of the branch office and the designated on-site supervisor. The designated on-site supervisor shall be a licensee with a minimum of 5 years of continuous real estate services experience, which shall be documented on the branch office application. The branch office, any licensees associated with the office and the designated on-site supervisor shall be under the direction and supervision of the broker.

(e) All brokers' offices shall display a conspicuous sign on the outside of the office building as set forth in the Commission's rules and regulations.

(f) Additional requirements for issuance of office permits may be set forth in the Commission's rules and regulations.

(35 Del. Laws, c. 63 § 8; Code 1935 § 5480; 24 Del. C. 1953 § 2918; 60 Del. Laws, c. 714 § 6; 67 Del. Laws, c. 121 § 23; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 103 § 4; 78 Del. Laws, c. 166 § 1.)

§ 2920 Notice of change in location of business; new license.

Notice in writing shall be given to the Commission by the broker and include the names of each licensee included in any change of approved office location, whereupon the Commission shall issue a new license to each licensee for the unexpired period upon payment of the fee established by the Division.

(35 Del. Laws, c. 63 § 8; Code 1935 § 5480; 24 Del. C. 1953 § 2919; 71 Del. Laws, c. 103 § 4; 78 Del. Laws, c. 166 § 1.)

§ 2921 Notice and procedure on termination of licensee's employment; new license as prerequisite to resumption; inactive status.

(a) When any licensee is terminated by the broker or broker organization or voluntarily terminates, the broker shall immediately notify the Commission of such termination.

(1) Upon the broker terminating the licensee, the broker, at the time of the notification to the Commission, shall address a communication to the last known address of such licensee. The communication shall advise the licensee of the termination. A copy of the communication to the licensee shall accompany the notification to the Commission.

(2) No terminated licensee shall perform any real estate services or engage directly or indirectly in providing real estate services until the Commission, in its discretion, shall issue a new license showing a new broker and a new approved business location.

(b) Upon completion of a form as provided in the rules and regulations and payment of the prescribed fee, the Commission shall place any active licensee on an inactive status for an unlimited amount of time. A licensee may reactivate an inactive status license, subject to payment of the biennial registration fees, for such time as the license has been inactive, and upon submission of proof of fulfillment of continuing education requirements for each renewal period.

(c) A licensee may transfer his or her license from 1 broker to another upon completion of a form as provided in the rules and regulations and upon payment of the prescribed fee. The releasing broker must file a completed form with the Commission within 5 business days of obtaining a sponsoring broker and the transferring licensee's signatures on the form.

(35 Del. Laws, c. 63 § 8; Code 1935 § 5480; 24 Del. C. 1953 § 2920; 52 Del. Laws, c. 109; 57 Del. Laws, c. 403 §§ 1-3; 63 Del. Laws, c. 154 § 1; 67 Del. Laws, c. 121 § 23; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 603 § 10; 71 Del. Laws, c. 103 § 4; 78 Del. Laws, c. 166 § 1.)

§ 2922 Real Estate Guaranty Fund.

(a) The Commission shall establish and maintain a Real Estate Guaranty Fund (hereinafter referred to as the "Fund") from which, subject to this section, any person who obtains a final judgment against a licensee for loss or damage sustained by reason of theft or forgery (as defined in Title 11) or by reason of any fraud, misrepresentation or deceit by or on the part of any such licensee or any employee thereof who does not hold a license, may recover, after a hearing and on order of the Commission, compensation in an amount not exceeding in the aggregate the sum of $25,000 in connection with any 1 transaction or claim, regardless of the number of persons aggrieved or parcels of real estate involved in such transaction or claim.

(b) If the aggrieved person obtains a final judgment against a licensee for loss or damage sustained by reason of theft or forgery (as defined in Title 11) or by reason of fraud, misrepresentation or deceit by or on the part of such licensee or employee thereof who does not hold a license, such aggrieved person may file a verified claim with the Commission seeking an order directing payment from the Fund of any amount unpaid upon the judgment, subject to the limitations stated in subsection (a) of this section and this subsection. The verified claim shall be filed within 60 days after the final judgment has been obtained. The verified claim shall include a copy of the complaint, counterclaim or cross-claim, if any, a certified copy of the judgment and copies of any documentation relating to steps taken to collect on the judgment. The Commission shall proceed upon such claim in a summary manner and, upon the hearing thereof, the aggrieved person shall be required to show:

(1) That the aggrieved person is not a spouse of the judgment debtor or the personal representative of said spouse;

(2) That the aggrieved person has complied with all the requirements of this section;

(3) That the aggrieved person has obtained a final judgment as set out in this subsection, stating the amount thereof and the amount owing thereon at the date of the filing of the aggrieved person's verified claim; and

(4) That the aggrieved person has fully pursued and exhausted all available remedies and taken all reasonable steps to collect the

amount of the judgment, stating the total amount collected.

(c) If the Commission is satisfied that the aggrieved person has satisfied all the requirements of this section and is entitled to recover compensation from the Fund, it shall enter an order requiring payment from the Fund of whatever sum it shall find to be payable upon the claim, subject to the limitations of subsection (a) of this section. The Commission, in its discretion, may authorize payment of an amount from the Fund less than the claim made pursuant to this subsection.

(d) If the Commission pays from the Fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensee, the license of such licensee may be suspended or revoked by the Commission and, in the discretion of the Commission, such licensee shall be ineligible to receive a new license until the licensee has repaid in full, plus interest at the legal rate, the amount paid from the Fund on the licensee's account. A discharge in bankruptcy shall not relieve a licensee from the penalties and disabilities provided in this subsection.

(e) If at any time the money on deposit in the Fund is insufficient to satisfy any duly authorized claim or portion thereof, the Commission shall, when sufficient money has been deposited in the Fund, satisfy such unpaid claims or portions thereof in the order that such claims or portions thereof were originally filed pursuant to subsection (b) of this section, plus accumulated interest at the legal rate.

(f) Any person filing with the Commission any notice, statement or other document required under subsection (b) of this section which is false or untrue or contains any material misstatement of fact shall be fined not less than $500 nor more than $5,000.

(g) When, upon the order of the Commission or pursuant to a compromise, the Commission has caused to be paid from the Fund any sum to a judgment creditor, the Commission shall be subrogated to all of the rights of the judgment creditor up to the amount paid and the judgment creditor shall assign all of that judgment creditor's right, title and interest in the judgment up to such amount paid by the Commission, and any sums recovered by the Commission on the judgment shall be deposited to the Fund.

(h) Each licensee shall pay a fee of $25 which shall be credited to the Fund; provided, that in no case shall any licensee be required to pay said fee of $25 more than once, unless assessed as provided in subsection (i) of this section.

(i) The Commission shall, at all times, maintain the Fund at a level in excess of $250,000, and to this intent all moneys received pursuant to subsection (g) of this section shall be credited to said Fund and held in a special account other than the General Fund prescribed by § 6102(a) of Title 29. Said account shall be an interest-bearing account and the interest accruing from the funds on deposit in the account shall be credited to the Commission to defray the costs of administering the Fund; for seminars within the State and for continuing education for licensees within the State; and to reimburse Commissioners, their administrative staff and legal counsel for expenses paid to attend meetings of the Association of Real Estate License Law Officials.

(j) If the balance of the Fund should fall below the $250,000 level, the Commission shall, at the next license renewal date, assess each licensee a pro rata fee in such amount that the Fund will be returned to the $250,000 level.

(k) Any person aggrieved by any action, decision, order or regulation of the Commission may appeal to the Superior Court.

(60 Del. Laws, c. 259 § 1; 63 Del. Laws, c. 82 § 1; 65 Del. Laws, c. 274 § 1; 67 Del. Laws, c. 121 §§ 14-20, 23; 67 Del. Laws, c. 381 § 15; 68 Del. Laws, c. 139 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 603 §§ 11-13; 71 Del. Laws, c. 103 §§ 4, 6; 78 Del. Laws, c. 166 § 1.)

§ 2923 Deposits and escrow accounts; accounting; records inspection and audit.

(a) Every broker shall establish and maintain an escrow account or accounts in a federally insured banking institution which has offices within the State.

(1) Accounts shall be opened in the name of the brokerage organization and designated as an escrow account.

(2) The broker shall be a signatory on each such account.

(3) Except for the minimum balance required by the bank and money to cover bank fees, each account shall be used only for escrow deposits, earnest money deposits, rental money or other moneys in which broker's customers or clients have an interest where such money is to be held by broker in accordance with the terms of a real estate services transaction.

(b) All escrow deposits, earnest money deposits, rental money or other moneys accepted by a licensee in accordance with the terms of a real estate services transaction shall be accounted for in full upon the signing of a written agreement by all parties and maintained through the consummation or termination of the real estate services transaction. All moneys held by broker shall be disbursed in accordance with the terms of the transaction unless otherwise agreed upon in writing by the parties to the transaction or ordered by a court.

(c) All escrow deposits accepted by a licensee in accordance with the terms of a real estate services transaction shall be accepted in the name of the brokerage organization unless the parties have agreed to a different third-party escrow agent.

(d) Every licensee, upon the signing of a written agreement by all parties to a real estate services transaction, shall promptly pay over the escrow deposit, earnest money deposit, rental money or other moneys as specified in the transaction. The broker shall deposit the moneys into the broker's escrow account within 72 hours of the signing of the written agreement by all parties, or by the dates defined therein, excluding weekends and federal holidays.

(e) The broker shall have accessible at the broker's approved place of business, all books, records, written agreements and other necessary documents to determine the adequacy of the escrow account or accounts. These accounts and records shall be opened to inspection or audit by the Commission and its duly authorized agents at the broker's approved place of business during regular business hours.

(24 Del. C. 1953 § 2920B; 57 Del. Laws, c. 151; 67 Del. Laws, c. 121 § 23; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 103 § 4; 78 Del. Laws, c. 166 § 1.)

§ 2924 Penalties.

A person not currently licensed under this chapter when guilty of engaging in the practice of providing real estate services, 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 provide real estate services, such offender shall be guilty of a misdemeanor. Upon the first offense, that person shall be fined not less than $500 nor more than $5,000 for each offense. For a second or subsequent conviction, the fine shall be not less than $1,000 nor more than $10,000 for each offense. The Justices of the Peace shall have jurisdiction over all violations of this section.

(35 Del. Laws, c. 63 § 15; Code 1935 § 5487; 24 Del. C. 1953 § 2923; 57 Del. Laws, c. 151; 71 Del. Laws, c. 103 § 4; 78 Del. Laws, c. 166 § 1.)

§ 2925 Enforcement.

The Commission may report an individual for violation of this chapter before any court of competent jurisdiction and it may take the necessary legal steps for the proper legal officers of this State to enforce this chapter and collect the penalties provided in this chapter.

(35 Del. Laws, c. 63 § 16; Code 1935 § 5488; 24 Del. C. 1953 § 2924; 57 Del. Laws, c. 151; 71 Del. Laws, c. 103 § 4; 78 Del. Laws, c. 166 § 1.)

Subchapter II

Business Relationships

§ 2926 Applicability.

This subchapter applies to licensees in their business relationships with customers and clients for all types of real estate services whether they are sales, leases, exchanges, management of real estate for others, or real estate counseling conducted by licensees.

(75 Del. Laws, c. 277 § 6; 78 Del. Laws, c. 166 § 1.)

§ 2927 Certain psychological impacts not material facts.

(a) The fact or suspicion that a property might be or is psychologically impacted is not a material fact that must be disclosed in a real property transaction.

(b) No cause of action shall arise against an owner or landlord of real property or a licensee for failure to inquire about, make a disclosure about or release information about the fact or suspicion that such property is psychologically impacted.

(c) Except as stated in subsection (d) of this section if a customer or client makes a specific written request to the owner, landlord or licensee about the psychological impacts regarding a specific property, the owner, landlord or licensee shall answer the questions truthfully, to the best of such owner's, landlord's or licensee's knowledge. The licensee shall have no duty to inquire about the psychological impacts regarding a specific property unless a customer or client, in writing, specifically requests the licensee to ask the owner or landlord for such information.

(d) The owner, landlord or licensee shall not make any disclosure concerning those psychological impacts of HIV, AIDS, or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place even if a customer or client specifically asks about such psychological impacts.

(68 Del. Laws, c. 154 § 1; 71 Del. Laws, c. 103 § 4; 78 Del. Laws, c. 166 § 1.)

§ 2928 Internet and World Wide Web.

Entering a name and email address on an Internet or World Wide Web site is sufficient to establish a broker-consumer relationship for the use of that system, but does not in of itself create a broker-customer or client relationship for any other purpose. The broker may deliver the CIS by the Internet or World Wide Web and the customer may acknowledge receipt of it electronically. However, an exclusive business relationship or obligation for the customer or client to pay any compensation may only be created by a written brokerage agreement signed by the customer or client as a separate document. If the brokerage agreement is signed electronically it may not be part of a general consent to the terms of use of an Internet or World Wide Web site or other electronic device, but must be a conspicuous separate document.

(75 Del. Laws, c. 277 § 6; 78 Del. Laws, c. 166 § 1.)

§ 2929 Financial information.

Licensees do not have a duty to conduct an independent investigation of the customer's or client's financial condition and do not have a duty to independently verify the accuracy or completeness of financial statements made by the customer or client or any independent inspector, auditor, or lender, but if the licensee has actual knowledge of false financial information, the licensee shall advise the party to correct it and shall not pass on the information known to be false.

(75 Del. Laws, c. 277 § 6; 78 Del. Laws, c. 166 § 1.)

§ 2930 Compensation.

(a) Written brokerage agreements. — Nothing in this chapter obligates a buyer, tenant, seller or landlord to pay compensation to a broker or brokerage organization unless that party has entered into a written brokerage agreement with the broker or brokerage organization

specifying the compensation terms. The compensation agreement may specify that the licensee may cooperate with other licensees. Brokers or brokerage organizations may compensate other brokers or brokerage organizations participating in the transaction without further permission of the party. The source of compensation does not by itself determine brokerage relationships. If a brokerage agreement contemplated one type of transaction such as a sale, but then through the course of continuous negotiations the initial transaction changes to another type of transaction such as a lease, the broker is still entitled to compensation; however, if the initial transaction was a lease which later became a sale, the broker is not entitled to compensation unless the listing agreement, other compensation agreement, or lease provided for compensation for a later sale.

(b) Additional terms. — Nothing in this chapter shall prohibit consumers from entering into written brokerage agreements with a broker or brokerage organization which contain duties, obligations, or responsibilities which are in addition to those specified in this chapter.

(c) Different relationships permitted for different transactions or jurisdictions. — A licensee or brokerage organization may work with a single party in separate transactions pursuant to different brokerage relationships including but not limited to selling 1 property as a seller's agent and working with that seller in buying another property as buyer's agent, or seller's sub-agent where permitted; provided, however, that the licensee or brokerage organization complies with this chapter in establishing the relationships for each transaction. A licensee who is licensed in another jurisdiction may function as a licensee for properties in that jurisdiction even if the brokerage relationship is different in that jurisdiction such as a "transaction broker", without being considered that status in Delaware.

(d) Compensation to licensee or entity of licensee. — All compensation relating to a real estate services transaction to be paid to a licensee shall be paid through the broker or brokerage organization. The broker or brokerage organization may pay the licensee's individual compensation to an entity created by the licensee to receive compensation providing the entity is either already approved by the Commission as a brokerage organization or the entity does not need to be approved because it does not engage in the brokerage business but is only established for business purposes to receive the licensee's compensation. The licensee paid by the broker or brokerage organization may employ licensed or unlicensed staff or team members who shall be paid an hourly wage, salary, or commission according to their agreement with the employing licensee. Nothing in this chapter shall authorize unlicensed personal assistants, independent contractors, or employees to engage in real estate services activities which by statute or regulation of the Commission must be performed by a licensee.

(75 Del. Laws, c. 277 § 6; 78 Del. Laws, c. 166 § 1.)

§ 2931 Competitive market analysis ("CMA")

A competitive market analysis is not an appraisal. A licensee may perform a competitive market analysis as part of providing real estate services. However, a licensee shall not perform a competitive market analysis for the mortgagee on a property that is the subject of a signed agreement of sale. A competitive market analysis as permitted under this chapter shall meet the following criteria:

(1) A competitive market analysis shall only be prepared for the following purposes:

a. An existing or potential seller or owner for the purpose of listing a property for sale or lease; or

b. An existing or potential buyer or tenant for the purpose of purchasing or leasing a property for sale or lease;

(2) The following disclosure shall appear in at least a 12-point bold face type font and located immediately following the estimated market price:

"Notwithstanding any language to the contrary contained herein, this Competitive Market Analysis is NOT an appraisal of the market value for property and is not intended to be used for any legal purpose including approval of a mortgage loan, modification of a mortgage loan, divorce/property separation, estate settlement, bankruptcy proceedings or any other purpose where real estate value is needed. If an appraisal is desired, the services of a licensed or certified appraiser must be obtained."

(3) The competitive market analysis shall comply with the content requirements as provided in the rules and regulations.

(78 Del. Laws, c. 166 § 1.)

§ 2932 Common law of agency.

(a) For transactions where the consumer hires a broker as a common law agent, and the broker agrees to become the consumer's common law agent, the common law of agency applies to the extent it is not inconsistent with applicable provisions of this chapter.

(b) The duties of a licensee as a common law agent and corresponding liabilities of the client begin and terminate based upon the common law of agency.

(c) Common law agency disclosure. —

(1) All licensees in a common law agency relationship must disclose, in writing, whom they represent. This disclosure shall be made to all parties to a transaction who the licensee does not represent but with whom the licensee has substantive contact, such as prospective sellers, lessors, buyers and lessees.

(2) This disclosure referenced in subsection (a) of this section shall be made at the first substantive contact between the licensee and the person the licensee does not represent. A listing broker who is not also the selling Broker and who has no substantive contact with the prospective buyer or lessee, need not make any agency disclosure to the prospective buyer or lessee.

(3) The Commission may adopt rules and regulations to prescribe the form of disclosure to be used by licensees or minimum criteria for the form of disclosure.

(4) Licensees shall not function in the capacity of a common law agent for transactions concerning a 1-to-4 family residential property

unless they have established that relationship in writing and the policy of the broker is to represent only the seller or buyer as a single agent for each transaction and never as a dual agent.

(68 Del. Laws, c. 166 § 1; 71 Del. Laws, c. 103 § 4; 75 Del. Laws, c. 277 §§ 1, 2, 6; 78 Del. Laws, c. 166 § 1.)

§ 2933 Statutory agency.

(a) The common law of agency relative to brokerage relationships in real estate services transactions established pursuant to this chapter is expressly abrogated for any licensee functioning as a broker, associate broker, or salesperson, licensee owner, or brokerage organization as defined in this chapter as a statutory agent. The remainder of this subchapter is intended to occupy completely the field of law relative to brokerage relationships for those real estate services transactions with the licensee or licensee's functioning as statutory agents. For those areas where the public, licensees, regulators, or courts need further guidance as to the conduct of statutory agents, customers and clients, the law governing independent contractor relationships shall apply to the extent it is not inconsistent with the provisions of this chapter.

(b) Statutory interpretation. — Performing the functions of a statutory agent as described in this chapter and the rules and regulations of the Commission shall not be construed to automatically or by implication create a common law agency relationship. This section through § 2938 of this title shall be construed as rules of conduct describing how a licensee works for clients, works with customers, or interacts with the general public as a statutory agent in the capacity of an independent contractor and not as a common law agent.

(c) Presumed statutory agency. —

(1) For properties marketed for sale of 1-to-4 family residences or single lot sales of land intended for a 1-to-4 family residence:

a. The licensee working for the buyer is presumed to be a statutory agent representing the buyer;

b. A licensee working for the seller is presumed to be a statutory agent representing the seller; and

c. A licensee working for both buyer and seller is presumed to be a statutory agent representing both parties as a dual agent.

(2) For new construction onsite sales offices for 1-to-4 family residences or single lot sales of land intended for a 1-to-4 family residence, the onsite licensee shall be presumed to be a statutory agent representing the builder or seller.

(3) The presumption of agency may be rebutted by the consumer signing a consumer information statement establishing a different agency relationship.

(78 Del. Laws, c. 166 § 1.)

§ 2934 Commencement and termination of duties.

(a) Commencement of duties for a statutory agent. — The duties of confidentiality as required by § 2936(c) of this title begin upon first contact between a licensee and the customer. The other statutory duties between a licensee and client as required by this subchapter begin upon the earlier of:

(1) The first scheduled appointment;

(2) The first showing of a property;

(3) Making an offering; or

(4) Otherwise working for the client;

unless a CIS is signed indicating there is no agency relationship. For transactions exempt from providing the CIS, the duties of the agent commence when the parties form an agency relationship.

(b) Duties of a statutory agent after termination. — A licensee and brokerage organization owe no further duty or obligation to the customer or client after termination, expiration, completion or performance of the transaction or other termination of the brokerage relationship, except the duties of:

(1) Accounting in a timely manner for all money and property related to, and received during the relationship; and

(2) Treating as confidential the information provided by the customer or client during the course of the relationship that may reasonably be expected to have a negative impact on the customer or client's real estate activity unless:

a. The customer or client to whom the information pertains grants written consent;

b. Disclosure of the information, such as defects actually known by the licensee or previously disclosed by the seller on the seller's disclosure of real property condition report or radon disclosure or any other statutorily required form, is required by law;

c. The information is made public or becomes public by the words or conduct of the customer or client to whom the information pertains or from a source other than the licensee or brokerage organization; or

d. Disclosure is necessary to defend the licensee or brokerage organization against an action of wrongful conduct in an administrative or judicial proceeding or before a committee of a professional association.

(75 Del. Laws, c. 277 § 6; 76 Del. Laws, c. 258 § 3; 78 Del. Laws, c. 166 § 1.)

§ 2935 Duty to cooperate.

(a) Licensees shall cooperate with all other licensees involved in a transaction except when cooperation is not in the customer's or client's best interest. The obligation to cooperate does not include any obligation to share commissions or to otherwise compensate another licensee.

(b) In order to cooperate, licensees shall be reasonably available when requested by their customer or client to:

(1) Accept delivery of and present to the customer or client offers and counteroffers to buy, sell, or lease the customer's or client's property, or the property the customer or client seeks to purchase or lease;

(2) Assist the customer or client in developing, communicating, negotiating, and presenting offers, counteroffers, and notices that relate to offers and counteroffers until the agreement of sale or lease is signed and all contingencies are satisfied or waived; and

(3) Answer the customer's or client's questions relating to the offers, counteroffers, notices, negotiations, and contingencies; and

(4) Hold the escrow deposit.

(c) In order to cooperate, licensees shall be reasonably available when requested by a cooperating licensee to undertake the activities described in subsection (b) of this section, but only after disclosing the request to their customer or client and receiving written authorization to undertake the requested activity. If the customer or client fails to authorize the licensee to undertake the requested activity, the licensee shall not undertake such activity. If the broker's or brokerage organization's business model includes offering all of the services explained in the CIS, rather than having separate charges for distinct real estate services, the CIS is sufficient disclosure or written authorization to undertake the activities described in subsection (b) of this section.

(75 Del. Laws, c. 277 § 6; 76 Del. Laws, c. 258 § 9; 78 Del. Laws, c. 166 § 1.)

§ 2936 Broker, associate broker and salesperson as a statutory agent.

(a) Unless specifically hired as a common law agent by a written brokerage agreement, a licensee is a statutory agent and not a common law agent for any party. The broker may from time to time designate 1 or more associate brokers or salespersons licensed under that broker to be the designated associate broker or associate brokers or salesperson or salespersons of a client or clients to the exclusion of all others in the brokerage organization.

(b) Obligations and responsibilities. — A licensee shall to the extent applicable to their functions have the following obligations and responsibilities:

(1) Performing the duties required by this chapter;

(2) Performing the terms of the written brokerage agreement, if any;

(3) Exercising reasonable skill and care as a licensee;

(4) Advising the parties to obtain expert advice on material matters about which the licensee knows but the specifics of which are beyond the expertise of such licensee;

(5) Accounting in a timely manner for all money and property received;

(6) Helping to keep the parties informed regarding the progress of the transaction;

(7) Performing ministerial tasks to assist the parties in complying with the terms and conditions of any contract;

(8) Disclosing to all prospective buyers or tenants any adverse material facts actually known by the licensee;

(9) Informing the parties that they shall not be vicariously liable for acts of other licensees;

(10) Informing the parties that notice given to the designated licensee is considered notice to their client;

(11) Informing the parties that oral or written statements made by a licensee without the consent of the party do not bind the party and may not be relied upon by anyone as binding a party. As such, all statements and negotiations shall need to be authorized by or signed by the parties themselves to be binding on the parties unless otherwise stated in the brokerage agreement, agreement of sale, lease, or power of attorney;

(12) Complying with all requirements of this chapter and any rules and regulations promulgated pursuant to this chapter;

(13) Complying with any applicable federal, state, or local laws, rules, regulations, or ordinances; and

(14) Following fair housing and civil rights laws and regulations.

(c) Confidentiality. — The following information shall not be disclosed by a licensee without the informed consent of the affected party:

(1) That a buyer or tenant is willing to pay more than the purchase price or lease rate offered for the property;

(2) That a seller or landlord is willing to accept less than the asking price or lease rate for the property;

(3) What the personal motivating factors are for any party to a transaction;

(4) That a seller, buyer, landlord, or tenant will agree to terms other than those offered;

(5) Any material confidential information about the parties or property unless disclosure is required by statute or regulation or failure to disclose such information would constitute fraud or intentional misrepresentation;

(6) Any facts or suspicions regarding circumstances which may psychologically impact or stigmatize any real property pursuant to § 2927 of this title unless required to be disclosed by § 2927 of this title; or

(7) Any facts or suspicions that any party or someone in the community is a registered sex offender under subchapter III of Chapter 41 of Title 11 as amended from time to time, but if asked shall refer the person to the Delaware State Police to seek this information.

(d) Confidentiality exception. — For transactions of properties other than those marketed as:

(1) One-to-4 family residences; or

(2) Single family lots of land intended for 1-to-4 family residence;

designated agents who are not dual agents are exempt from subsection (c) of this section; instead, a duty of confidentiality by the agent to the client shall apply after a client relationship is formed.

(e) Actions permitted by agents. — An agent may do the following without breaching any obligation, duty, or responsibility to a customer or client:

(1) List and advertise competing properties for sale or lease;

(2) Show customers or clients alternative properties not owned by their broker's other clients;

(3) Show properties in which 1 customer or client is interested to their other customers or clients;

(4) Present offers on the same property for more than 1 customer or client:

(5) Disseminate information that is generally available to licensees. For example, providing information on comparable sales and the licensee's interpretation, advice, and opinion about this information with the customer or client retaining the authority to decide what to do with this information;

(6) Assist buyers and sellers in preparing offers and counteroffers, providing that the forms used advise the parties that they may seek legal advice prior to signing. Presenting all offers and counteroffers in a timely manner regardless of whether the property is subject to a contract for sale, lease or letter of intent unless instructed otherwise by the customer or client;

(7) Develop negotiating strategies or options for how to proceed with a transaction;

(8) Perform ministerial tasks;

(9) Serve as a single agent, sub-agent, or dual agent for the same parties in different transactions or different parties concerning the same property. For example, the licensee could be a statutory agent for the sellers in 1 transaction and a common law agent for the same people as buyers in another transaction;

(10) Cooperate with other licensees; however, for 1-to-4 family residences or single family lots of land intended for 1-to-4 family residences they shall not engage any common law subagents from other brokers or brokerage organizations;

(11) Disclose information concerning a transaction among the broker, designated associate broker(s) or designated salesperson(s), and office staff working for the brokerage organization on that transaction;

(12) Provide customers with factual information they request. Provide clients with relevant factual information. Tell clients about their choices of how to proceed and provide them with relevant information. Provide clients with information and advice when presented with questions from the client or a request for advice.

(f) No imputed knowledge. — There is no imputation of knowledge or information by operation of law among or between the customer, client, broker, associate broker, salesperson, brokerage organization and other licensees or persons within a brokerage organization.

(g) Notice. — Notice as defined by law or in the agreement of sale or lease given to a party shall be considered effective notice. Unless specified otherwise in the agreement of sale or lease, notice only given to a designated associate broker(s) or salesperson(s) shall also be considered effective notice to the client of that associate broker or salesperson. Notice to the broker is not considered notice to the designated associate broker(s), designated salesperson(s), or client. Notice only to the designated associate broker or salesperson is not considered notice to the broker, or the rest of the brokerage organization.

(75 Del. Laws, c. 277 § 6; 76 Del. Laws, c. 258 §§ 5-7; 78 Del. Laws, c. 166 § 1.)

§ 2937 Vicarious liability; protections when working with a statutory agent.

(a) A customer or client shall not be liable for a wrongful act, error, omission, or misrepresentation of the licensee except to the extent the customer or client had actual knowledge of the wrongful act, error, omission, or misrepresentation.

(b) A licensee shall not be liable for a wrongful act, error, omission, or misrepresentation of the customer or client except to the extent the licensee had actual knowledge of the wrongful act, error, omission, or misrepresentation.

(c) Nothing in this section shall be construed to diminish or limit any of the other duties or responsibilities of the licensee under this chapter, or the rules promulgated hereunder.

(d) This chapter does not otherwise limit the liability of a broker, for an act, error, or omission of a licensee in the brokerage organization. Notwithstanding any other provision of this chapter, the employer of the licensee is vicariously liable as the employer would be under the doctrine of respondeat superior whether the licensee is employed by the broker or brokerage organization as an employee or as an independent contractor.

(e) This section does not apply if the licensee or brokerage organization is hired as a common law agent.

(75 Del. Laws, c. 277 § 6; 76 Del. Laws, c. 258 § 8; 78 Del. Laws, c. 166 § 1.)

§ 2938 Consumer information statement; confidentiality.

(a) The Commission shall establish by rule and regulation a consumer information statement ("CIS"). The Commission may provide alternative consumer information statements for residential properties, properties that do not contain any residential units, commercial transactions, property management, or other brokerage situations as the Commission deems appropriate. At a minimum, the form shall provide a summary of what a licensee is permitted or prohibited from doing as provided by §§ 2935 and 2936 of this title. The CIS shall explain the circumstances when the consumer may hire the licensee as a common law agent, but that this would require other detailed disclosures of conflicts of interests and could involve significant potential legal liability and financial risk for the consumer.

(b) The consumer information statement required by this chapter shall be delivered to the consumer no later than the earlier of:

(1) The first scheduled appointment;

(2) The first showing of a property; or

(3) Making an offer;

unless the consumer has already been given the CIS by another licensee. A listing licensee who knows that the buyer is working with another licensee is not required to give that buyer a CIS. A licensee working with a buyer who knows that the seller is working with another licensee is not required to give a CIS to that seller. The CIS must be signed by the customer or client prior to signing an agreement of sale,

listing agreement or any other brokerage agreement, unless otherwise exempt from providing a CIS.

(c) The CIS shall be available to the consumer at open houses, but does not need to be personally presented by the licensee unless the consumer asks for more than factual information about the property or expresses interest in making an offer on the property during the open house.

(d) The duties of confidentiality as required by § 2936(c) of this title begin upon the first contact between a licensee and the customer. The other statutory duties between a licensee and client as required by this subchapter begin upon the earlier of:

(1) The first scheduled appointment;

(2) The first showing of a property;

(3) Making an offer; or

(4) Otherwise working for the client;

unless a CIS is signed indicating there is no agency relationship. For transactions exempt from providing the CIS, the duties of the agent commence when the parties form an agency relationship.

(e) Nonrenewable leases of 120 days or less are exempt from the requirement to provide the CIS to the potential tenant; provided, however, that the duties of confidentiality required by § 2936(c) of this title and the rest of this chapter still apply to those leases. The broker may still choose to provide the CIS as a matter of brokerage organization policy.

(f) Transactions of properties other than those marketed as:

(1) One-to-4 family residential properties; or

(2) Single lot sales of land intended for a 1-to-4 family residence;

are exempt from the requirement to provide the CIS to the potential parties; however the balance of this chapter shall still apply unless specifically exempted. In lieu of providing a CIS, the agreement of sale or lease shall include the following language after the confirmation of the agency relationships:

"The parties acknowledge that they have certain rights and responsibilities under Delaware agency law (Title 24 of the Delaware Code, Chapter 29) and may consult with their legal counsel."

(g) For rental of residential property not otherwise exempt from the requirement to provide the CIS, the CIS shall be given to the potential tenant no later than the earlier of:

(1) The first scheduled appointment;

(2) The first showing of a property; or

(3) Making an offer,

but does not need to be signed until the potential tenant decides to complete a rental application or the signing of a lease.

(75 Del. Laws, c. 277 § 6; 76 Del. Laws, c. 258 §§ 3, 4, 10; 78 Del. Laws, c. 166 § 1.)

Part

Chapter 30

MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS

Subchapter I

Board of Mental Health and Chemical Dependency Professionals

§ 3001 Objectives.

(a) The primary objective of the Board of Mental Health and Chemical Dependency Professionals, 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 licensee competency and to maintain certain standards in the delivery of services to the public. In meeting these objectives, the Board shall develop standards assuring professional competence; monitor complaints brought against licensees regulated by the Board; adjudicate at formal hearings; promulgate rules and regulations; and impose sanctions where necessary.

(66 Del. Laws, c. 128 § 1; 68 Del. Laws, c. 52 § 1; 72 Del. Laws, c. 267 § 1; 74 Del. Laws, c. 355 § 2; 75 Del. Laws, c. 83 § 1.)

§ 3002 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" means the Board of Mental Health and Chemical Dependency Professionals.

(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) "Division" means the Division of Professional Regulation of the State of Delaware.

(4) "Excessive use or abuse of drugs" means 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 licensee's ability to perform the work of a licensed mental health or chemical dependency professional.

(5) "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.

(6) "Person" means a corporation, company, association and partnership, as well as an individual.

(7) "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.

(8) "Substantially related" means the nature of the criminal conduct, for which a person was convicted, has a direct bearing on the fitness or ability of the person to perform 1 or more of the duties or responsibilities of a licensed mental health or chemical dependency professional.

(9) "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.

(10) "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.

(66 Del. Laws, c. 128 § 1; 68 Del. Laws, c. 52 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 267 § 1; 74 Del. Laws, c. 262 § 59; 74 Del. Laws, c. 355 §§ 3, 4; 75 Del. Laws, c. 83 § 1; 80 Del. Laws, c. 80 § 14.)

§ 3003 Board of Mental Health and Chemical Dependency Professionals; appointments; composition; qualifications; terms; vacancies; suspension or removal; unexcused absences; compensation [For application of this section, see 80 Del. Laws, c. 261, § 2]

(a) There is created a Board of Mental Health and Chemical Dependency Professionals, which shall administer and enforce this chapter.

(b) The Board shall consist of 9 members, appointed by the Governor, who are residents of this State. The Board shall be comprised of 6 professional members and 3 public members. The professional members shall consist of at least 2 professional counselors of mental health, at least 2 licensed chemical dependency professionals and when possible at least 1 licensed marriage and family therapist. The public

members shall not be, nor ever have been, mental health or chemical dependency professionals, employed by a mental health or chemical dependency professional, nor have been engaged in an activity directly related to the practice of a mental health or chemical dependency professional. The public members shall be accessible to inquiries, comments and suggestions from the 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. A term of office expires 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.

(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 term 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, malfeasance, misconduct, incompetence 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.

(g) No member of the Board, while serving on the Board, shall hold elective office in any association of mental health or chemical dependency professionals, nor serve as head of a professional association's political action committee.

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

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

(j) Each member of the Board shall be compensated at an appropriate and reasonable level as determined by the Division of Professional Regulation and may be reimbursed for all expenses involved in each meeting, including travel, according to Division policy.

(66 Del. Laws, c. 128 § 1; 67 Del. Laws, c. 366 § 12; 67 Del. Laws, c. 368 § 19; 68 Del. Laws, c. 52 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 267 § 1; 74 Del. Laws, c. 355 §§ 5-7; 75 Del. Laws, c. 83 § 1; 80 Del. Laws, c. 261 § 1.)

§ 3004 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 President deems necessary, or at the request of a majority of the Board members.

(b) The Board annually shall elect a president, vice-president and secretary. Each officer shall serve for 1 year and shall not succeed himself or herself for more than 2 consecutive terms. The office of president must rotate among the professions regulated and the public members.

(c) A majority of the members shall constitute a quorum for the purpose of transacting business and no action shall be taken without the affirmative vote of a majority of the quorum. No disciplinary action shall be taken without the affirmative vote of a majority of the members of the Board, at least 1 of whom must be of the same profession as the individual being disciplined.

(d) Minutes of all meetings shall be recorded and the Division shall maintain copies. 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.

(66 Del. Laws, c. 128 § 1; 67 Del. Laws, c. 366 § 13; 68 Del. Laws, c. 52 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 267 § 1; 74 Del. Laws, c. 355 § 8; 75 Del. Laws, c. 83 § 1.)

§ 3005 Records.

The Division shall keep a register of all approved applications for licenses under this chapter and complete records relating to meetings of the Board, rosters, changes, and additions to the Board's rules and regulations, complaints, hearings and such other matters as the Board shall determine. Such records are prima facie evidence of the proceedings of the Board.

(72 Del. Laws, c. 267 § 1; 75 Del. Laws, c. 83 § 1.)

§ 3006 Powers and duties.

(a) The Board shall have the power to:

(1) Adopt rules and regulations, which shall be promulgated in accordance with the requirements of the Administrative Procedures Act, Chapter 101 of Title 29.

(2) Designate an application form to be used by all applicants and process all applications.

(3) Evaluate the credentials of all applicants in order to determine whether the applicants meet the qualifications for licensing set forth in this chapter.

(4) Grant licenses to and renew licenses of applicants who meet the qualifications for licensure.

(5) Establish by rule and regulation continuing education standards required for license renewal.

(6) Evaluate certified records to determine whether an applicant for license who previously has been licensed, certified or registered in another jurisdiction 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 the applicant for such acts or offenses.

(7) Refer all complaints from licensees and the public concerning persons licensed under this chapter, or concerning practices of the Board or of a profession regulated by the Board, to the Division 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.

(8) Conduct hearings and issue orders in accordance with procedures established pursuant to Chapter 101 of Title 29.

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

(10) Adopt a code of ethics for each profession licensed by the Board, which code may be a code of ethics adopted by a national organization which certifies members of the profession.

(b) The Board shall, by regulation, identify crimes which are substantially related to the practice of a mental health or chemical dependency professional.

(66 Del. Laws, c. 128 § 1; 68 Del. Laws, c. 52 § 1; 72 Del. Laws, c. 267 § 1; 74 Del. Laws, c. 262 § 60; 74 Del. Laws, c. 355 §§ 9-11; 75 Del. Laws, c. 83 § 1.)

§ 3007 Fees.

The amount charged for fees imposed under this chapter shall approximate and reasonably reflect costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division in its service on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each licensure period, the Division, or another state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate fee for the period.

(66 Del. Laws, c. 128 § 1; 68 Del. Laws, c. 52 § 1; 72 Del. Laws, c. 267 § 1; 75 Del. Laws, c. 83 § 1.)

§ 3008 Issuance and renewal of licenses.

(a) The Board shall issue a license to an applicant who meets the requirements of this chapter for licensure and who pays the fee established by the Board.

(b) A license must be renewed biennially, in such manner as is determined by the Division and upon payment of a renewal fee, submission of a renewal form provided by the Division, and proof that the licensee has met the continuing education requirements established by the Board. In addition each licensee shall submit proof of membership in good standing as of the date of licensure in a national certifying organization acceptable to the Board.

(c) A licensee who fails to renew a license on or before the renewal date shall be granted 1 year to renew the license. The Division shall set a fee for late renewal. An individual who fails to renew a license before the expiration of the 1-year period must reapply as a new applicant, pay a fee set by the Division, and submit proof of fulfillment of continuing education requirements and proof of membership in a national certifying organization acceptable to the Board.

(d) A person licensed pursuant to this chapter, upon written request, may be placed on an inactive register. Provisions for resuming active status shall be established by the Board.

(e) It is the responsibility of a licensee to keep the Division informed of a change of address. Renewal applications will be sent to the last address on file with the Division.

(66 Del. Laws, c. 128 § 1; 68 Del. Laws, c. 52 § 1; 72 Del. Laws, c. 267 § 1; 75 Del. Laws, c. 83 § 1.)

§ 3009 Grounds for discipline.

(a) A person licensed under this chapter is subject to the disciplinary sanctions set forth in § 3011 of this title if, after a hearing, the Board finds that the licensee has:

(1) Employed or knowingly cooperated in a fraud or material deception in order to acquire a license under this chapter; has impersonated another person holding a license or allowed another person to use the licensee's license; or has aided or abetted a person not licensed to represent himself or herself as a person licensed under this chapter.

(2) Been convicted of a crime that is substantially related to the practice of a mental health or chemical dependency professional. A certified copy of the record of conviction shall be conclusive evidence of a conviction.

(3) Excessively used or abused drugs in the past 3 years or currently.

(4) Engaged in an act which involved consumer fraud or deception, restraint of competition, or price fixing.

(5) Violated a provision of this chapter or a regulation promulgated by the Board under this chapter.

(6) Had the licensee's professional license under this chapter suspended or revoked, or has been the subject of disciplinary action taken by the appropriate licensing authority of another jurisdiction; provided, that the grounds for the disciplinary action of the other jurisdiction have been presented to the Board by a certified record and the Board has determined that the facts found by the other jurisdiction constitute an act specified in this section. A person licensed in this State pursuant to this chapter is deemed to have given consent to the release of information by the Board or by a comparable agency in another jurisdiction and to waive all objections to the admissibility of evidence of a previously adjudicated act or offense.

(7) Failed to notify the Board that the licensee's license in another jurisdiction has been subject to discipline, or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation of a license shall be

conclusive evidence thereof.

(8) Been convicted of a felony sexual offense.

(9) Failed to report child abuse or neglect as required by § 903 of Title 16, or any successor thereto.

(10) Failed to report to the Division of Professional Regulation as required by § 3018 of this title.

(b) Subject to the provisions of subchapter IV of Chapter 101 of Title 29, no license shall be restricted, suspended or revoked by the Board and no licensee's right to hold himself or herself out as an individual licensed under this chapter shall be limited by the Board until such licensee has been given notice and an opportunity to be heard in accordance with the Administrative Procedures Act [Chapter 101 of Title 29].

(c) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(66 Del. Laws, c. 128 § 1; 68 Del. Laws, c. 52 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 267 § 1; 74 Del. Laws, c. 262 §§ 62, 63; 75 Del. Laws, c. 83 § 1; 78 Del. Laws, c. 31 § 1; 79 Del. Laws, c. 213 § 2.)

§ 3010 Complaints and investigations.

(a) All complaints shall be received and investigated by the Division in accordance with § 8735 of Title 29 and the Division shall be responsible for issuing a final written report at the conclusion of the investigation.

(b) When it is determined that an individual who is not licensed under this chapter is representing himself or herself as being so licensed, or is holding himself or herself out to the public as being licensed under this chapter, the Board shall apply to the Office of the Attorney General to issue a cease and desist order.

(66 Del. Laws, c. 128 § 1; 68 Del. Laws, c. 52 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 267 § 1; 75 Del. Laws, c. 83 § 1.)

§ 3011 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that a condition or violation for discipline of a licensee regulated by this chapter has been established under § 3009 of this title:

(1) Issue a letter of reprimand.

(2) Censure a licensee.

(3) Place a licensee on probationary status and require the licensee to:

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

b. Limit all professional activities to those areas prescribed by the Board.

(4) Suspend a licensee's license.

(5) Revoke a 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 it finds that the deficiencies which required such action have been remedied.

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

(d) The Board shall permanently revoke the license of any person who the Board determines has violated § 3009(a)(8) of this title.

(66 Del. Laws, c. 128 § 1; 68 Del. Laws, c. 52 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 267 § 1; 75 Del. Laws, c. 83 § 1; 78 Del. Laws, c. 31 § 2.)

§ 3012 Hearing procedures.

(a) If a complaint is filed with the Board pursuant to § 8735 of Title 29 alleging a violation of § 3009 of this title, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) All hearings shall be informal, without use of rules of evidence. If the Board finds, by a majority vote of all Board 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 be in writing and shall include its reasons for the decision. The decision shall be mailed immediately to the licensee.

(c) A licensee may appeal the Board's decision to the Superior Court within 30 days of the postmarked date of the copy of the decision

mailed to the licensee. The appeal shall be in accordance with the provisions of the Administrative Procedures Act, Chapter 101 of Title 29. A stay may be granted in accordance with that act.

(d) All decisions of the Board regarding suspension or revocation of a license shall be made public by the Division in a news release to major media outlets in this State. The release may include any information deemed public under the Delaware Freedom of Information Act, Chapter 100 of Title 29, and shall include a telephone contact number for the Division for further information.

(66 Del. Laws, c. 128 § 1; 68 Del. Laws, c. 52 § 1; 72 Del. Laws, c. 267 § 1; 75 Del. Laws, c. 83 § 1.)

§ 3013 Reinstatement of a suspended license; removal from probationary status.

(a) As a condition to reinstatement of a suspended license or removal from probationary status, the Board may reinstate such 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 probation.

(b) Applicants for reinstatement must pay the fees established by the Board and must submit evidence as required by the Board that all conditions of a suspension and/or probation have been met. Proof that the applicant has met any continuing education requirements of this chapter is also required.

(72 Del. Laws, c. 267 § 1; 75 Del. Laws, c. 83 § 1.)

§ 3014 Issuance of replacement license.

A new license to replace a lost, destroyed, or mutilated license may be issued, subject to the rules of the Board. The Division shall establish a charge for the issuance of a replacement license.

(72 Del. Laws, c. 267 § 1; 75 Del. Laws, c. 83 § 1.)

§ 3015 License required.

No person shall hold himself or herself out to the public as a licensed mental health or chemical dependency professional unless the person is licensed in accordance with this chapter. It shall be unlawful for a person who is not licensed under this chapter, or the person's employer, employees, agents or representatives, to use, in connection with the person's name or business, any words, letters, abbreviations or insignia indicating or implying directly or indirectly that the person is licensed under this chapter.

(66 Del. Laws, c. 128 § 1; 68 Del. Laws, c. 52 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 267 § 1; 75 Del. Laws, c. 83 § 1.)

§ 3016 Penalty.

(a) A person not currently licensed under this chapter who uses, in connection with that person's name or business, or otherwise assumes or uses any title or description conveying or tending to convey the impression that the person is licensed under this chapter, is guilty of a misdemeanor.

(b) For the first offense, the court may impose a fine of not less than $500 nor more than $1,000. For a second or subsequent conviction, the fine shall be not less than $1,000 nor more than $2,000 for each offense.

(c) Justice of the Peace Courts shall have jurisdiction over violations of this chapter.

(66 Del. Laws, c. 128 § 1; 68 Del. Laws, c. 52 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 267 § 1; 75 Del. Laws, c. 83 § 1.)

§ 3017 Privileged communications.

Communications between a mental health or chemical dependency professional licensed under this chapter and a client of the professional shall be considered confidential to the same extent as provided by Rule 503 of the Delaware Rules of Evidence.

(66 Del. Laws, c. 128 § 1; 68 Del. Laws, c. 52 § 1; 72 Del. Laws, c. 267 § 1; 75 Del. Laws, c. 83 § 1.)

§ 3018 Duty to report conduct that constitutes grounds for discipline or inability to practice.

(a) Every person to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or any other healthcare provider has engaged in or is engaging in conduct that would constitute grounds for disciplinary action under this chapter or the other healthcare provider's licensing statute.

(b) Every person to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or any other healthcare provider may be unable to practice with reasonable skill and safety to the public by reason of: mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive abuse of drugs, including alcohol.

(c) Every person to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation any information that the reporting person reasonably believes indicates that a person certified and registered to practice medicine in this State is or may be guilty of unprofessional conduct or may be unable to practice medicine with reasonable skill or safety to patients by reason of: mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive use or abuse of drugs, including alcohol.

(d) All reports required under subsections (a), (b) and (c) of this section must be filed within 30 days of becoming aware of such information. A person reporting or testifying in any proceeding as a result of making a report pursuant to this section is immune from claim,

suit, liability, damages, or any other recourse, civil or criminal, so long as the person acted in good faith and without gross or wanton negligence; good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant.

(78 Del. Laws, c. 31 § 12.)

§§ 3019 -3029. [Reserved.]

Subchapter II

Mental Health Professional Counselors and Associate Counselors

§ 3030 License required.

No person shall hold himself or herself out to the public as a licensed professional counselor of mental health or licensed associate counselor of mental health unless the person is licensed in accordance with this chapter. It shall be unlawful for a person who is not licensed under this chapter, or the person's employees, agents or representatives, to use in connection with the person's name or business the words "licensed professional counselor of mental health," "licensed associate counselor of mental health," or any other words, letters, abbreviations or insignia indicating or implying directly or indirectly that the person is licensed under this chapter.

(74 Del. Laws, c. 355 § 12; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 83 § 1.)

§ 3031 Definitions.

As used in this subchapter:

(1) "Direct supervision" is face to face consultation, on a regularly scheduled basis, between a licensed associate counselor of mental health (LACMH) and a licensed professional counselor of mental health (LPCMH) as required by the nature of the work of the LACMH. The supervising LPCMH is responsible for insuring that the extent, kind and quality of the services rendered by the LACMH are consistent with the person's education, training and experience.

(2) "Licensed associate counselor of mental health" (LACMH) is an individual licensed as an associate counselor of mental health under this chapter who is obtaining experience under the professional direct supervision of a LPCHM or other health professional approved by the Board for the purpose of becoming licensed as a professional counselor of mental health.

(3) "Licensed professional counselor of mental health" (LPCMH) is an individual licensed as a professional counselor of mental health under this chapter who publicly offers to render to individuals, groups, organizations or the general public a service involving the application of clinical counseling principles, methods or procedures and the diagnosis and treatment of mental and emotional disorders to assist individuals in achieving more effective personal and social adjustment. Such 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.

(4) "Professional direct supervision" is supervision by a licensed professional counselor of mental health.

(75 Del. Laws, c. 83 § 1; 80 Del. Laws, c. 80 § 15.)

§ 3032 Qualifications of applicant.

(a) An applicant who is applying for licensure under this subchapter shall complete a Board approved application, submit the application fee, and supply evidence verified by oath and satisfactory to the Board that the applicant:

(1) Is certified by the National Board for Certified Counselors, Inc. (NBCC), or the Academy of Clinical Mental Health Counselors (ACMHC), or other national mental health specialty certifying organization acceptable to the Board.

(2) Has completed a master's degree and subsequent to completing the degree has acquired the equivalent of 2 years of experience in professional counseling acceptable to the Board. The professional counseling experience must consist of not less than 3,200 hours obtained over a period of not more than 4 years, at least 1,600 hours of which shall have been under professional direct supervision acceptable to the Board. When such professional direct supervision is not available, a licensed clinical social worker, a licensed psychologist, a licensed marriage and family therapist or a licensed physician specializing in psychiatry may supervise the applicant. An applicant may substitute 30 graduate semester hours, or more, attained beyond the master's degree, for up to 1,600 hours of the required experience, provided that such hours are clearly related to the field of counseling and are acceptable to the Board. In no case shall the applicant have less than 1,600 hours of required post master's degree professional direct supervision.

(3) Has not received any administrative penalties regarding the applicant's actions as a licensed, registered or certified mental health provider, including but not limited to fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations, and/or has not entered into any "consent agreement" which contains conditions placed by a Board on the applicant's professional conduct, including any voluntary surrender of a license. The Board, after a hearing, may determine whether such administrative penalty is grounds to deny licensure.

(4) Does not have any impairment related to drugs or alcohol or a finding of mental incompetence by a physician that would limit the applicant's ability to act as a professional counselor of mental health or associate counselor of mental health in a manner consistent with the safety of the public.

(5) Shall not have a criminal conviction nor pending criminal charge relating to an offense, the circumstances of which substantially relate to actions as a licensed professional counselor of mental health or associate counselor of mental health. Applicants who have a criminal conviction or pending criminal charge shall request appropriate authorities to provide information about the conviction or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the conviction or charge is substantially related to actions as a licensed professional counselor of mental health or associate counselor of mental health. However, 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, may waive this paragraph (a)(5), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of practicing licensed professional counselor of mental health or associate counselor of mental health in a competent and professional manner.

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

e. The applicant has not been convicted of a felony sexual offense.

(6) Has not been penalized for any willful violation of the code of ethics adopted by the Board or the code of ethics of the National Board of Certified Counselors (NBCC) or its successor or other similar professional mental health counseling standard.

(7) Has not been convicted of a felony sexual offense.

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

a. 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 relating to that person.

b. A report of the applicant's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Board of Mental Health and Chemical Dependency Professionals shall be the screening point for the receipt of said federal criminal history records.

An applicant may not be licensed as a licensed professional counselor of mental health until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be certified by the Board unless a waiver is granted pursuant to paragraph (a)(5) of this section. The State Bureau of Identification may release any subsequent criminal history to the Board.

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

(c) Where an application is refused or rejected and the applicant feels the Board has acted without justification, has imposed higher or different standards for the applicant than for other applicants or licensees or has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

(d) All individuals licensed as a licensed professional counselor of mental health in this State shall be required to 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, 2013, at the applicant's expense, fingerprints and other necessary information in order to obtain a criminal background check.

(66 Del. Laws, c. 128 § 1; 67 Del. Laws, c. 200 § 3; 68 Del. Laws, c. 52 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 535 § 1; 72 Del. Laws, c. 267 § 1; 74 Del. Laws, c. 262 § 61; 75 Del. Laws, c. 83 § 1; 75 Del. Laws, c. 436 § 32; 77 Del. Laws, c. 199 § 23; 78 Del. Laws, c. 31 §§ 3-5; 78 Del. Laws, c. 44 §§ 44, 45; 79 Del. Laws, c. 277 § 10.)

§ 3033 Qualifications of applicant for licensed associate counselor of mental health.

(a) An applicant who is applying for licensure as an associate counselor of mental health under this chapter shall complete an application form, submit the required fee, and furnish evidence, verified by oath and satisfactory to the Board, that such person has met all the requirements established in this subchapter for licensed professional counselors of mental health, except the requirements dealing with required experience.

(b) A plan for professional direct supervision of the associate counselor of mental health shall be submitted to and approved by the Board prior to the applicant's acquiring the professional counseling experience necessary for license as a professional counselor of mental health.

(c) The associate counselor of mental health license shall be effective for a period of 2 years. The license may be renewed once.

(d) A LACMH may submit an application for LPCMH upon fulfillment of the experience requirements of this subchapter.

(66 Del. Laws, c. 128 § 1; 68 Del. Laws, c. 52 § 1; 72 Del. Laws, c. 267 § 1; 75 Del. Laws, c. 83 § 1.)

§ 3034 Reciprocity.

(a) Upon payment of the application 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 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. A "license in good standing" is defined in § 3032(a)(3)-(6) of this title.

(b) An applicant who is licensed in a jurisdiction whose standards are not substantially similar to those of this State but who has held a license in good standing for a minimum of 5 years in the jurisdiction from which the applicant is applying for reciprocal licensure and who is certified by the National Board for Certified Counselors or the Academy of Clinical Mental Health Counselors, or other national mental health specialty certifying organization acceptable to the Board may be licensed by the Board, provided the applicant meets all other qualifications for reciprocity.

(c) An applicant who is licensed in a jurisdiction whose standards are not substantially similar to those of this State and who lacks the minimum years of licensure as defined in subsection (b) of this section above may apply for licensure as an associate counselor of mental health, in order to obtain the experience necessary to fulfill the requirements of this subchapter.

(d) In lieu of the documentation required by subsection (a) of this section, an applicant may submit a certificate of professional qualification as a licensed professional counselor of mental health from a credential bank approved by the Board. The Board shall identify acceptable credentialing organizations in its rules and regulations. In addition, the Board may require the applicant to submit such supplemental information as it deems necessary to assure that the applicant meets the qualifications for licensure.

(66 Del. Laws, c. 128 § 1; 68 Del. Laws, c. 52 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 267 § 1; 73 Del. Laws, c. 293 § 1; 75 Del. Laws, c. 83 § 1; 75 Del. Laws, c. 393 § 2.)

§ 3035 [Reserved.]

Subchapter III

Chemical Dependency Professionals

§ 3040 License required.

No person shall hold himself or herself out to the public as a licensed chemical dependency professional unless the person is licensed in accordance with this chapter. It shall be unlawful for a person who is not licensed under this chapter, or the person's employees, agents or representatives, to use in connection with the person's name or business, the words "licensed chemical dependency professional" or any other words, letters, abbreviations or insignia indicating or implying directly or indirectly that the person is licensed under this chapter.

(74 Del. Laws, c. 355 § 12; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 83 § 1.)

§ 3041 Definitions.

As used in this subchapter:

(1) "Chemical dependency professional" is a person who uses addiction counseling methods to assist an individual or group to develop an understanding of alcohol and drug dependency problems, define goals, and plan action reflecting the individual's or group's interest, abilities and needs as affected by addiction problems. Such 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.

(1) "Chemical dependency professional" is a person who uses addiction counseling methods to assist an individual or group to develop an understanding of alcohol and drug dependency problems, define goals, and plan action reflecting the individual's or group's interest, abilities and needs as affected by addiction problems.

(2) "Counseling experience" is a formal, systematic process that focuses on skill development and integration of knowledge related to addiction counseling and reflects the accumulation of hours spent providing substance abuse counseling services while under the supervision of an approved clinical supervisor.

(3) "Licensed chemical dependency professional" is a person who holds a current, valid license issued pursuant to this chapter.

(4) "Professional counseling experience" is the accumulation of hours spent providing chemical dependency counseling services in a substance abuse counseling setting, including face to face interaction with clients and other services directly related to the treatment of clients.

(5) "Supervised counseling experience" is the overseeing of a supervisee's application of chemical dependency counseling principles, methods or procedures to assist clients in achieving more effective personal and social adjustment.

(6) "Uncompensated addictions services" are services offered to chemical dependent individuals free of charge.

(74 Del. Laws, c. 355 § 12; 75 Del. Laws, c. 83 § 1; 80 Del. Laws, c. 80 § 16.)

§ 3042 License requirements; professional designation.

(a) No person shall hold himself or herself out to the public as a licensed chemical dependency professional or present, call or represent himself or herself as a licensed chemical dependency professional unless licensed under this chapter.

(b) No person shall assume, represent that person's own self as or use the title of "licensed chemical dependency professional," or any of the abbreviations of the above title unless licensed under this chapter and unless the title of designation corresponds to the license held by the person pursuant to this chapter.

(c) A licensed chemical dependency professional pursuant to the provisions of this chapter, or the licensed chemical dependency professional's employee, shall not disclose any confidential information that the counselor or the counselor's employee may have required while performing alcohol and drug counseling services for a patient unless in accordance with the federal regulation regarding the Confidentiality of Alcohol and Drug Abuse Patient Records pursuant to 42 C.F.R. 2.1 et seq.

(74 Del. Laws, c. 355 § 12; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 83 § 1.)

§ 3043 Applicability of subchapter.

(a) Nothing in this subchapter shall be construed to prevent a person from engaging in or offering any addiction services such as self-help, sponsorship through Alcoholics Anonymous, Narcotics Anonymous or other uncompensated addictions services.

(b) Nothing in this subchapter shall be construed to apply to a designated employee or other agent of a private employer who has been designated to provide chemical dependency counseling under the jurisdiction of the company, or an employee or other agent of a recognized academic institution, a federal, state, county or local government institution, agency or facility, or school district, if the individual is performing solely with the company or the agency, as the case may be, or under the jurisdiction of that company or agency, and if a license granted under this chapter is not a requirement for employment.

(c) Nothing in this subchapter shall be construed to apply to a rabbi, priest, minister, or clergy of any religious denomination or sect, when performing within the scope of the person's regular or specialized ministerial duties and for which no separate charge is made, for or under the auspices or sponsorship, individually or in conjunction with others, of an established and legal cognizable church, denomination, or sect, and when the person rendering services remains accountable to the established authority thereof.

(d) Nothing in this subchapter shall be construed to apply to a student, intern or trainee in chemical dependency counseling pursuing a course of study in counseling in a regionally accredited institution, if performed under supervision and constituting a part of the supervised course of study.

(e) Nothing in this subchapter shall be construed to apply to a person licensed in the State to practice medicine and surgery, psychology, social work, clinical social work, licensed professional counselor of mental health or any other person's profession or occupation and doing work of a nature consistent with a person's training, if the person does not hold himself or herself self out to the public as possessing a license issued pursuant to this chapter.

(f) Nothing in this subchapter shall prevent the practice of healing by spiritual means in accordance with the tenets and practice of any church or religious denomination by a duly accredited practitioner thereof. In the practice of healing by spiritual means, no individual shall hold himself or herself out to the public as possessing a license issued pursuant to this subchapter.

(74 Del. Laws, c. 355 § 12; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 83 § 1.)

§ 3044 Qualifications of applicant.

(a) Applicants for chemical dependency professional license by certification under this chapter shall complete an application form, pay the required fee and provide evidence, verified by oath and satisfactory to the Board, that the applicant meets the following requirements:

(1) Received a master's degree from a regionally accredited institution of higher education with a minimum of 30 graduate semester hours in counseling or subjects closely related to counseling.

(2) Subsequent to receiving the master's degree has acquired 3,200 hours of counseling experience, 1,600 hours of which must be under the supervision of a licensed chemical dependency professional. Where supervision by a licensed chemical dependency professional is not available, a licensed clinical social worker, licensed psychologist, licensed professional counselor of mental health or a licensed physician specializing in chemical dependency may supervise the applicant. Of the 1,600 hours of supervised counseling experience, at least 100 hours must be face-to-face consultation between the supervisor and supervisee, which may take place in individual and/or in group settings, as follows:

a. Individual supervision, which consists of 1-to-1, face-to-face meetings between supervisor and supervisee, provided, the entire 100 hour requirement may be fulfilled by individual supervision.

b. Group supervision, which consists of face-to-face meetings between supervisor and no more than 6 supervisees; provided, no more than 40 hours of group supervision shall be acceptable toward the 100 hour requirement.

(3) Is certified by the National Association for Addictions Professionals, (NAADAC) as a national certified addictions counselor (NCAC or MAC), by the Delaware Certification Board (DCB Inc.) as a certified alcohol and drug counselor, or by a certifying organization acceptable to the Board.

(4) Has not received any administrative penalties regarding the applicant's actions as a Licensed Chemical Dependency Professional, including but not limited to fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations, and and/or has not entered into any "consent agreement" which contains conditions placed by a Board on the applicant's professional conduct, including any voluntary surrender of a license. The Board, after a hearing, may determine whether such administrative penalty is grounds to deny licensure.

(5) Does not have any impairment related to drugs or alcohol or a finding of mental incompetence by a physician that would limit the applicant's ability to act as a chemical dependency professional in a manner consistent with the safety of the public.

(6) Does not have a criminal conviction nor pending criminal charge relating to an offense, the circumstances of which substantially relate to actions as a licensed chemical dependency professional. Applicants who have a criminal conviction or pending criminal charge

shall request appropriate authorities to provide information about the conviction or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the conviction or charge is substantially related to actions as a licensed chemical dependency professional. However, 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, may waive this paragraph (a)(6), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of practicing licensed chemical dependency services in a competent and professional manner.

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

e. The applicant has not been convicted of a felony sexual offense.

(7) Has not been penalized for any wilful violation of the code of ethics adopted by the Board or the code of ethics of a professional organization of chemical dependency professionals.

(8) Has not been convicted of a felony sexual offense.

(9) Has submitted, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

a. 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 relating to that person.

b. A report of the applicant's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Board of Mental Health and Chemical Dependency Professionals shall be the screening point for the receipt of said federal criminal history records.

An applicant may not be licensed as a chemical dependency professional until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be certified by the Board unless a waiver is granted pursuant to paragraph (a)(6) of this section. The State Bureau of Identification may release any subsequent criminal history to the Board.

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

(c) Where an application is refused or rejected and the applicant feels the Board has acted without justification, has imposed higher or different standards for the applicant than for other applicants or licensees or has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

(d) All individuals licensed as chemical dependency professionals in this State shall be required to 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, 2013, at the applicant's expense, fingerprints and other necessary information in order to obtain a criminal background check.

(74 Del. Laws, c. 355 § 12; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 83 § 1; 75 Del. Laws, c. 436 § 33; 77 Del. Laws, c. 199 § 24; 78 Del. Laws, c. 31 §§ 6-8; 78 Del. Laws, c. 44 §§ 46, 47; 79 Del. Laws, c. 277 § 10.)

§ 3045 Reciprocity.

(a) 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 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. Such applicant shall present proof that the applicant's license is in good standing. A license in good standing is defined in § 3044(a)(4)-(7) of this title.

(b) An applicant who is licensed in a jurisdiction whose standards are not substantially similar to those of this State may be licensed by the Board if:

(1) The applicant had a license in good standing for a minimum of 5 years after licensure in the jurisdiction from which that applicant is applying for reciprocal licensure; and

(2) Is certified by the National Association for Addictions Professionals (NAADAC), or the Delaware Certification Board (DCB), or other national certifying organization acceptable to the Board;

provided, however, that the applicant meets all other qualifications for reciprocity in this section.

(c) In lieu of the documentation required by subsection (a) of this section, an applicant may submit a certificate of professional qualification as a licensed chemical dependency professional from a credential bank approved by the Board. The Board shall identify acceptable credentialing organizations in its rules and regulations. In addition, the Board may require the applicant to submit such supplemental information as it deems necessary to assure that the applicant meets the qualifications for licensure.

(75 Del. Laws, c. 393 § 1; 70 Del. Laws, c. 186 § 1.)

Subchapter IV

Marriage and Family Therapists

§ 3050 License required.

No person shall hold himself or herself out to the public as a licensed marriage and family therapist or a licensed associate marriage and family therapist unless the person is licensed in accordance with this chapter. It shall be unlawful for any person who is not licensed under this chapter, or the person's employees, agents, or representatives to use in connection with the person's name or business the words "licensed marriage and family therapist," "licensed associate marriage and family therapist," or any other words, letters, abbreviations or insignia indicating or implying directly or indirectly that such person is licensed.

(75 Del. Laws, c. 83 § 1; 70 Del. Laws, c. 186 § 1.)

§ 3051 Definitions.

(a) "Direct supervision" is face to face consultation, on a regularly scheduled basis, between a licensed associate marriage and family therapist (LAMFT) and a licensed marriage and family therapist (LMFT) as required by the nature of the work of the LAMFT. The supervising LMFT is responsible for insuring that the extent, kind and quality of the services rendered by the LAMFT are consistent with the person's education, training and experience.

(b) "Licensed associate marriage and family therapist" (LAMFT) is an individual licensed as an associate marriage and family therapist under this chapter who is obtaining experience under direct professional supervision for the purpose of becoming licensed as a marriage and family therapist (LMFT).

(c) "Licensed marriage and family therapist" (LMFT) is an individual licensed as a marriage and family therapist under this chapter who offers to individuals, couples, families or groups professional marriage and family services either directly to the general public or through public or private organizations.

(d) "Marriage and family therapy services" includes the diagnosis and treatment of mental and emotional disorders, whether cognitive, affective, or behavioral, within the context of interpersonal relationships, including marriage and family systems, and involves the professional application of psychotherapy, assessment instruments, counseling, consultation, treatment planning, and supervision in the delivery of services to individuals, couples and families. Such 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.

(e) "Professional direct supervision" is supervision by a licensed marriage and family therapist, or an individual holding the "approved supervisor" designation from the American Association for Marriage and Family Therapy (AAMFT) or a candidate for the "approved supervisor" designation who is acceptable to the Board.

(75 Del. Laws, c. 83 § 1; 80 Del. Laws, c. 80 § 17.)

§ 3052 Qualifications of applicant.

(a) An applicant who is applying for licensure under this subchapter shall complete a board-approved application, submit the application fee, and supply evidence verified by oath and satisfactory to the Board that the applicant:

(1) Has completed a master's or doctoral degree in marriage and family therapy from a recognized educational institution, or a graduate degree in an allied field from a recognized educational institution and graduate level work which is the equivalent to a master's degree in marriage and family therapy, as determined by the Board.

(2) Following completion of the master's degree has successfully completed 2 calendar years of work experience in Marriage and Family Therapy under professional direct supervision. The experience must consist of not less than 3,200 hours obtained over a period of not more than 4 consecutive years, at least 1,600 of which shall have been under direct professional supervision acceptable to the Board. When professional direct supervision is not available, a licensed clinical social worker, licensed psychologist, licensed professional counselor of mental health, or licensed physician specializing in psychiatry may supervise the applicant upon approval by the Board.

(3) Has passed the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) standardized examination or other examination acceptable to the Board.

(4) Has not been the recipient of any administrative penalties regarding the applicant's actions as a marriage and family therapist, including, but not limited to, fines, formal reprimands, license suspensions or revocations (except for license revocations for nonpayment of license renewal fees), probationary limitations, and/or has not entered into any "consent agreements" which contain conditions placed by a Board on the applicant's professional conduct, including any voluntary surrender of a license. The Board, after a hearing, may determine whether such administrative penalty is grounds to deny a license.

(5) Does not have any impairment related to drugs, alcohol or a finding of mental incompetence by a physician that would limit the applicant's ability to act as a licensed marriage and family therapist in a manner consistent with the safety of the public.

(6) Does not have a criminal conviction record, or pending criminal charge, relating to an offense the circumstances of which are substantially related to actions as a licensed marriage and family therapist. Applicants who have criminal conviction records or pending criminal charges shall request appropriate authorities to provide information about the conviction or charge directly to the Board in sufficient specificity to enable the Board to make a determination on whether the conviction or charge is substantially related to actions as a licensed marriage and family therapist. However, 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, may waive this paragraph (a)(6), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of practicing licensed marriage and family therapy services in a competent and professional manner.

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

e. The applicant has not been convicted of a felony sexual offense.

(7) Has not been penalized for any wilful violation of the code of ethics adopted by the Board or a code of ethics of a recognized professional marriage and family therapy organization.

(8) Meets all other additional requirements as may be required by the Board in its rules and regulations.

(9) Has not been convicted of a felony sexual offense.

(10) Has submitted, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

a. 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 relating to that person.

b. A report of the applicant's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Board of Mental Health and Chemical Dependency Professionals shall be the screening point for the receipt of said federal criminal history records.

An applicant may not be licensed as a marriage and family therapist until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be certified by the Board unless a waiver is granted pursuant to paragraph (a)(6) of this section. The State Bureau of Identification may release any subsequent criminal history to the Board.

(b) If the Board finds that an applicant has been intentionally fraudulent or has intentionally supplied false information, the Board shall report its finding to the Attorney General for further action.

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

(d) All individuals licensed as marriage and family therapists in this State shall be required to 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, 2013, at the applicant's expense, fingerprints and other necessary information in order to obtain a criminal background check pursuant to paragraph (a)(10) of this section.

(75 Del. Laws, c. 83 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 436 § 34; 77 Del. Laws, c. 199 § 25; 78 Del. Laws, c. 31 §§ 9-11; 78 Del. Laws, c. 44 §§ 48, 49; 79 Del. Laws, c. 277 § 10.)

§ 3053 Qualifications of applicant for licensed associate marriage and family therapist.

(a) An applicant who is applying for licensure as an associate marriage and family therapist under this chapter shall submit a completed application form, pay the required fee, and furnish evidence, verified by oath and satisfactory to the Board that such person has met all the requirements established in this subchapter for licensed marriage and family therapists, except the requirements dealing with required experience.

(b) A plan for professional direct supervision of the associate marriage and family therapist shall be submitted to and approved by the Board prior to the applicant's acquiring the marriage and family therapy experience necessary for license as a marriage and family therapist.

(c) The associate marriage and family therapist license shall be effective for a period of 2 years. The license may be renewed once.

(d) A LAMFT may submit an application for LMFT upon fulfillment of the experience requirements of this subchapter.

(75 Del. Laws, c. 83 § 1.)

§ 3054 Reciprocity.

(a) Upon payment of the application 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 proof of current licensure in good standing in another state, the District of Columbia or territory of the United States, whose standards for license are substantially similar to those of this State. A license in good standing is defined in § 3052(a)(4)-(8) of this title.

(b) An applicant who is licensed in a jurisdiction whose standards are not substantially similar to those of this State but who has held a license in good standing for a minimum of 5 years in the jurisdiction from which the applicant is applying for reciprocal license, and who is certified by the AAMFT or other national marriage and family therapist certifying organization acceptable to the Board may be licensed, provided the applicant meets all other qualifications for reciprocity.

(75 Del. Laws, c. 83 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 393 § 3.)

Part

Chapter 31
FUNERAL SERVICES

Subchapter I

Board of Funeral Services

§ 3100 Objectives.

(a) The primary objective of the Board of Funeral Services, 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 competency, and to maintain certain standards in the delivery of services to the public. In meeting its objectives, the Board shall:

(1) Develop standards assuring professional competence.

(2) Monitor complaints brought against practitioners regulated by the Board.

(3) Adjudicate at formal hearings regarding complaints brought against practitioners regulated by the Board.

(4) Promulgate rules and regulations.

(5) Impose sanctions where necessary against practitioners, both licensed and formerly licensed.

(66 Del. Laws, c. 225 § 1; 71 Del. Laws, c. 460 § 1; 72 Del. Laws, c. 209 §§ 1, 2; 80 Del. Laws, c. 194 § 1.)

§ 3101 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 Funeral Services established in this chapter.

(2) "Burial" shall mean the interment of human remains.

(3) "Cremation" shall mean the process of burning human remains to ashes.

(4) "Division" shall mean the State Division of Professional Regulation.

(5) "Embalming" shall mean the disinfecting or preservation of a dead human body, entirely or in part, by the use of chemical substances, fluids, or gases in the body, or by the introduction of the same into the body by vascular or hypodermic injection, or by the direct application of the same into the organs or cavities.

(6) "Embalming room assistant" shall mean a person who has met all of the requirements, including all necessary training in blood borne pathogens standards, and who has received all necessary vaccinations related to the industry, to be able to perform their duties in the embalming or dressing room areas for the preparation of a deceased human remains. Such individual shall not possess the ability to embalm a decedent.

(7) "Funeral director" shall mean a person engaged in the care of human remains or in the disinfecting and preparing by embalming of human remains for the funeral service, transportation, burial, entombment or cremation, and who shall file all death certificates or permits as required by Chapter 31 of Title 16.

(8) "Funeral establishment" shall mean any place used in the care and preparation of human remains for funeral service, burial, entombment or cremation; said place shall also include areas for embalming, the convenience of the bereaved for viewing and other services associated with human remains. A funeral establishment shall also include a place or office in which the business matters associated with funeral services are conducted. Satellite funeral establishments existing as of May 12, 1988, shall not be required to include an area for embalming.

(9) "Funeral services" shall mean those services rendered for the disinfecting, embalming, burial, entombment or cremation of human remains, including the sale of those goods and services usual to arranging and directing funeral services.

(10) "Intern" shall mean a person, duly registered with the Board, engaged in training to become a licensed funeral director in this State under the direction and personal supervision of a state-licensed funeral director.

(11) "Nonresident funeral director" shall mean a funeral director licensed in another state, district, territory or foreign country.

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

(13) "Practitioner" shall mean a funeral director.

(14) "Student of mortuary science" shall mean a person registered in an official accredited Institution of Mortuary Science program.

(15) "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 provision of funeral services.

(66 Del. Laws, c. 225 § 1; 69 Del. Laws, c. 147 § 1; 71 Del. Laws, c. 460 § 1; 74 Del. Laws, c. 262 § 64; 80 Del. Laws, c. 194 § 1.)

§ 3102 Board of Funeral Services.

(a) There is created a State Board of Funeral Services which shall administer and enforce this chapter.

(b) The Board shall consist of 7 members appointed by the Governor who are residents of this State: Four of whom shall be funeral directors licensed under this chapter and 3 public members. The public members shall not be, nor ever have been, funeral directors, nor members of the immediate family of a funeral director, shall not have been employed by a funeral director, shall not have a material interest in the providing of goods and services to funeral directors; nor have been engaged in an activity directly related to funeral services. 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 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.

(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, 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.

(g) A member shall be deemed in neglect of duty if he or she is absent from 3 consecutive meetings without good cause or if he or she attends less than 50% of regular business meetings in a calendar year.

(h) Each member of the Board shall be reimbursed for all expenses involved in each meeting, including travel, according to Division policy, and in addition shall receive not more than $50 for each meeting attended but not more than $500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(i) No member of the Board, while serving on the Board, shall:

(1) Hold elective office in any local, state, or national professional funeral services association.

(2) Serve as the head of a professional funeral services association's political action committee.

(3) Have any financial interest in any funeral services college, school, or cemetery.

(k) No member of the Board shall in any manner whatsoever discriminate against any applicant or person holding or applying for a license to practice funeral services by reason of sex, race, color, age, creed, or national origin.

(l) No member of the Board shall participate in any action of the Board involving, directly or indirectly, any person related in any way by blood or marriage to said member.

(m) No member of the Board shall be subject to, and all members of the Board shall be immune from, claims, suits, liability, damages, or any other recourse, civil or criminal, arising from any act or proceeding, decision or determination undertaken or performed, or recommendation made, so long as such member of the Board acted in good faith and without malice in carrying out the responsibilities, authority, duties, powers, and privileges of the office conferred by law upon the member under this chapter, or any other provisions of Delaware or federal law or rules or regulations, or duly adopted rule or regulation of the Board. Good faith is presumed unless otherwise proven and malice is required to be proven by the complainant.

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

(66 Del. Laws, c. 225 § 1; 67 Del. Laws, c. 368 § 20; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 460 § 1; 72 Del. Laws, c. 209 §§ 3, 4; 80 Del. Laws, c. 194 § 1.)

§ 3103 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 President deems necessary, or at the request of a majority of the board members.

(b) The Board shall elect annually a President and Secretary. Each officer shall serve for 1 year, and shall not succeed himself or herself for more than 2 consecutive terms.

(c) A majority of members shall constitute a quorum for the purpose of transacting business; and no disciplinary action shall be taken without the affirmative vote of at least 4 members of the Board.

(d) Minutes of all meetings shall be recorded, and copies shall be maintained by the Division. 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.

(66 Del. Laws, c. 225 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 460 § 1; 80 Del. Laws, c. 194 § 1.)

§ 3104 Records.

The Division shall keep a register of all approved applications for license as a funeral director, registration as an intern, and registration of establishment permits. The Division shall also 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 register and records shall be prima facie evidence of the proceedings of the Board.

(71 Del. Laws, c. 460 § 1; 72 Del. Laws, c. 209 § 5; 80 Del. Laws, c. 194 § 1.)

§ 3105 Powers and duties.

(a) The Board of Funeral Services shall have the authority to do all of the following:

(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 of this State (Chapter 101 of Title 29). 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 process all applications.

(3) Designate the written, standardized examination on funeral services, prepared by an independent testing service, recognized by the Conference of Funeral Service Examining Boards, or its successor, and approved by the Division. The examination shall be taken by all persons applying for licensure, except those applicants who qualify for licensure by reciprocity.

(4) Designate a written, validated examination, prepared by an independent testing service and approved by the Division, based solely on the laws of Delaware governing the professional of funeral services. The Division shall administer the state examination.

(5) Provide for the administration of examinations, including notice and information to applicants.

(6) Establish minimum education, training and experience requirements for licensure as funeral directors.

(7) Establish minimum requirements, and issue permits for funeral establishments that meet the requirements of § 3117 of this title.

(8) Evaluate the credentials of all persons or establishments applying for a license to practice funeral services in Delaware, in order to determine whether such persons or establishments meet the qualifications for licensing set forth in this chapter.

(9) Grant licenses to, and renew licenses of, all persons who meet the qualifications for licensure, and register persons who are fulfilling the licensure experience requirement under the personal supervision of a state-licensed funeral director.

(10) Establish by rule and regulation continuing education standards required for license renewal for those practitioners under 65 years of age, provided that, in establishing rules for continuing funeral services education, the Board shall consider potential economic hardship on single practitioners and other licensees, and shall not impose rules that are likely to place undue economic hardship on licensees. License renewal shall not consist of, nor be dependent upon, retesting for those practitioners under 65 years of age, provided that, in establishing rules for continuing funeral services education, the Board shall consider potential economic hardship on single practitioners and other licensees, and shall not impose rules that are likely to place undue economic hardship on licensees.

(11) Evaluate certified records to determine whether an applicant for licensure, who previously has been licensed, certified or registered in another jurisdiction to practice funeral services, 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 applicant for such acts or offenses.

(12) Refer all complaints from licensees and the public concerning practitioners, or concerning practices of the Board or of the profession, to the Division 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.

(13) Conduct hearings and issue orders in accordance with procedures established pursuant to this 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 a practitioner shall be subject to a disciplinary hearing and, if so, shall conduct such hearing in accordance with this chapter and the Administrative Procedures Act.

(14) 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.

(15) Adopt and implement an inspection program for funeral establishments and crematoriums. Through the inspection program, the Board shall have the authority to:

a. Review all licenses for accuracy and refer any inaccuracies to the appropriate agencies for investigation and resolution.

b. Send written notification to any individual or entity who is in violation of any of the licensing regulations of the State, as an initial warning. If the violation is not corrected, it may be forwarded to the appropriate agencies for investigation and resolution.

(16) Regulate cremation and crematoriums.

(b) The Board of Funeral Services shall promulgate regulations specifically identifying those crimes which are substantially related to the provision of funeral services.

(66 Del. Laws, c. 225 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 460 § 1; 72 Del. Laws, c. 209 §§ 6-10; 74 Del. Laws, c. 262 § 65; 80 Del. Laws, c. 194 § 1.)

Subchapter II

License and Registration; Limited License; Establishment Permit

§ 3106 License; registration required; responsibility.

(a) No person shall, without a license, engage in the practice of funeral services; hold himself or herself out to the public in this State as being qualified to practice funeral services; use or display in connection with that person's name any sign or advertise in any manner as being a funeral director or provider of funeral services; or otherwise assume or use any title or description conveying or tending to convey the impression that the person is qualified to practice funeral services.

(b) Practitioners regulated under this chapter shall observe and be subject to all federal, state, and municipal regulations relating to the control of contagious and infectious diseases, and any and all matters pertaining to public health, including reporting to the proper health office the same as other practitioners.

(c) Whenever a license to practice as a funeral director in this State has expired or been suspended or revoked, it shall be unlawful for the person to practice funeral services in this State and, if the individual is a sole proprietor, the establishment permit shall also be revoked.

(d) No person shall act as an intern or hold himself or herself out as a funeral services intern unless such person has been duly registered by the Board under this chapter.

(e) [Repealed.]

(f) No person or entity outside of this State shall broker funeral services within this State without being a duly-licensed Delaware funeral director operating from a duly licensed Delaware funeral establishment.

(66 Del. Laws, c. 225 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 460 § 1; 80 Del. Laws, c. 194 § 2; 80 Del. Laws, c. 231 § 1.)

§ 3107 Qualifications of applicants for licensure; judicial review; report to Attorney General.

(a) An applicant who is applying for licensure as a funeral director under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person:

(1) Has graduated from an accredited high school, or its equivalent, and has received an Associate Degree or its equivalent in mortuary science, consisting of 60 credit hours, from a school fully accredited by the American Board of Funeral Services Education, or its successor.

(2) Has achieved the passing score, as established by an independent testing service, on the written, standardized examination on funeral services recognized by the Conference of Funeral Service Examining Boards, or its successor.

(3) Has achieved the passing score, as established by an independent testing service, on a written, validated examination based solely on the laws of Delaware governing the profession of funeral services. In conjunction with the independent testing service, said examination shall be administered by the Division, which shall have sole authority to contract for the validated examination.

(4) Has satisfactorily completed an internship in this state of 1 year's duration, under the auspices of a licensed Delaware funeral director. An applicant is responsible for arranging the internship. If, after contacting 20 firms, the applicant is unable to obtain an internship within 6 months, the applicant shall so stipulate in an affidavit presented to the Board. The Board shall determine whether the applicant has pursued a position as intern to the applicant's fullest capability. The Board shall have 6 months from the date it receives the affidavit to place the applicant in an internship. If no position has been made available, the applicant shall be issued a license upon satisfaction of all other requirements for licensure.

(5) Shall not have been the recipient of any administrative penalties regarding the applicant's practice of funeral services, including fines, formal reprimands, license suspensions or revocation other than for nonpayment of license renewal fees, and probationary limitations; and shall not have entered into any "consent agreements" which contain conditions placed by a board on the applicant's professional conduct and practice, including any voluntary surrender of a license. The Board may determine, after a hearing, whether such administrative penalty is grounds to deny licensure.

(6) Shall not have any impairment related to drugs or alcohol or a finding of mental incompetence by a physician that would limit the applicant's ability to undertake the practice of funeral services in a manner consistent with the safety of the public.

(7) Shall not have a criminal conviction record, nor pending criminal charge relating to an offense, the circumstances of which substantially relate to the practice of funeral services. Applicants who have criminal conviction records or pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the record or charge is substantially related to the practice of funeral services. After a hearing at which is it determined, or a 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, may waive this paragraph (a)(7), if 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, or serving any part of a suspended sentence, and must be in substantial compliance with all court orders pertaining to fines, restitution, and community service.

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

c. The applicant is capable of practicing funeral services in a competent and professional manner.

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

(8) Has provided such information as may be required on an application form designed and furnished by the Board and approved by

the Division. No application form shall require a picture of the applicant, except where required for verification of identity for testing purposes; information relating to citizenship, place of birth, or length of state residence; or personal references. The applicant shall not be required to submit a police report as a condition of application for licensure or internship.

(b) Where the Board has found to its satisfaction that an application has been intentionally fraudulent, or that false information has been intentionally supplied, 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 applicant feels that the Board has acted without justification, imposed higher or different standards for that person than for other applicants or licensees, or, in some other manner, contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

(d) The Board shall not violate an applicant's rights during the application and internship process for licensure as a funeral director in this State.

(66 Del. Laws, c. 225 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 460 § 1; 72 Del. Laws, c. 209 §§ 11-14; 74 Del. Laws, c. 262 § 66; 75 Del. Laws, c. 436 § 35; 77 Del. Laws, c. 199 § 26; 78 Del. Laws, c. 44 §§ 50, 51; 80 Del. Laws, c. 194 § 2.)

§ 3108 Limited license.

Upon payment to the Board of a fee, established by the Division, and completion of an application on forms provided by the Board, the Board shall issue a limited license to a person who is validly licensed as a funeral director by another state of the United States, its possessions, territory, or the District of Columbia, provided that a similar privilege is granted by that jurisdiction to Delaware licensed funeral directors. A limited license will allow the licensee to make a removal of a dead human body in this State, return the body to another state or country, return dead bodies from another state or country to this State for final disposition, complete the family history portion of the death certificate, sign the death certificate in the licensee's capacity as a licensed funeral director, and execute any other procedures necessary to arrange for the final disposition of a dead human body.

(71 Del. Laws, c. 460 § 1; 80 Del. Laws, c. 194 § 2.)

§ 3109 Reciprocity.

(a) 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 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, as determined by the Board, and who meets all of the following criteria:

(1) The applicant's license is in "good standing" as defined in § 3107(a)(5) through (7) of this title.

(2) The applicant has achieved a passing score on the exam required by § 3107(a)(3) of this title.

(b) An applicant who is licensed in a state whose standards are not substantially similar to those of this State shall have practiced for at least 3 of the past 5 years in another jurisdiction, provided that the applicant meets all other qualifications for reciprocity in this section.

(c) An applicant from a state that separately licenses funeral directors and embalmers must have both licenses to qualify for licensure under subsection (b) of this section.

(d) It shall be the responsibility of the applicant to provide verification of all information required by § 3107 of this title.

(66 Del. Laws, c. 225 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 460 § 1; 72 Del. Laws, c. 209 § 15; 75 Del. Laws, c. 294 § 1; 75 Del. Laws, c. 436 § 36; 80 Del. Laws, c. 194 § 2.)

§ 3110 Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division in its service on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each licensure biennium, the Division of Professional Regulation, or any other state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate Board fees for the licensure biennium.

(66 Del. Laws, c. 225 § 1; 71 Del. Laws, c. 460 § 1; 80 Del. Laws, c. 194 § 2.)

§ 3111 Licensure; renewal of license; lapsed license; inactive status; special exception.

(a) The Board shall issue a license to each applicant who meets the requirements of this title for licensure as a funeral director and who pays the fees established under § 3110 of this title. Prior to practicing in this State, each applicant shall file for and obtain an occupational license from the Division of Revenue in accordance with Chapter 23 of Title 30.

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

(c) Any licensee whose license lapses as a result of a failure to renew may regain the license within 12 months of such lapse upon payment to the Board of a fee established by the Division, and evidence of successful completion of continuing education courses required by the Board.

(d) Any licensee, upon written request to the Board, may be placed on inactive status not to exceed 5 years. Such licensee may reenter

practice upon notification to the Board of an intention to do so, provided the licensee has satisfied all continuing education requirements prescribed by the Board. The fee to reenter practice shall be in accordance with § 3110 of this title.

(e) Notwithstanding subsection (b) of this section, in the event a funeral director who was previously licensed in Delaware and allowed his or her license to lapse for a period in excess of 12 months is applying for licensure under this section, the Board shall grant a license to such applicant, subject to the applicant complying with all of the following:

(1) Completion of the continuing education requirements set forth in subsection (b) of this section.

(2) Formal submission of a completed, written application on forms provided by the Board.

(3) Successful completion of the state law examination required by § 3105 of this title.

(4) Payment of a reinstatement fee established by the Division.

(66 Del. Laws, c. 225 § 1; 67 Del. Laws, c. 397 § 1; 68 Del. Laws, c. 36 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 460 § 1; 72 Del. Laws, c. 209 § 16; 80 Del. Laws, c. 194 § 2.)

§ 3112 Grounds for discipline.

(a) A practitioner licensed under this chapter shall be subject to disciplinary actions set forth in § 3114 of this title, if, after a hearing, the Board finds 1 or more of the following:

(1) The funeral director has employed or knowingly cooperated in fraud or material deception in order to acquire a license as a funeral director, impersonated another person holding a license or allowed another person to use that practitioner's license, or aided or abetted a person not licensed as a funeral director to represent himself or herself as a funeral director.

(2) The funeral director has illegally, incompetently, or negligently practiced funeral services.

(3) The funeral director has been convicted of a crime that is substantially related to the provision of funeral services or any offense which would limit the ability of the practitioner to carry out the practitioner's professional duties with due regard for the health and safety of the public. A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence of the conviction.

(4) The funeral director has used or abused drugs either in the past or currently. For the purposes of this subsection, "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 a funeral director.

(5) The funeral director has engaged in an act of consumer fraud or deception; engaged in the restraint of competition; or participated in price-fixing activities.

(6) The funeral director has violated a lawful provision of this chapter, or any lawful regulation established under this chapter.

(7) The practitioner's license as a funeral director was suspended or revoked, or other disciplinary action was taken by the appropriate licensing authority in another jurisdiction, provided that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every person licensed as a funeral director in this State shall be deemed to have given consent to the release of this information by the Board or other comparable agencies in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses.

(8) Failed to notify the Board that the practitioner, in his or her capacity as a funeral director in another state, has been subjected to discipline, or the practitioner's license as a funeral director in another state has been surrendered, suspended, or revoked. A certified copy of the record of disciplinary action, surrender, suspension, or revocation shall be conclusive evidence thereof.

(9) A physical condition such that the performance of funeral services is or may be injurious or prejudicial to the public.

(10) Has solicited a customer or potential customer to grant a power of attorney to the funeral director or a business associate, employee, or family member of the funeral director, or to make any of the foregoing an heir of the customer or potential customer.

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

(c) 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 funeral services 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.

(66 Del. Laws, c. 225 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 460 § 1; 72 Del. Laws, c. 209 §§ 17, 18; 74 Del. Laws, c. 262 § 67; 75 Del. Laws, c. 238 § 1; 80 Del. Laws, c. 194 § 2.)

§ 3113 Complaints.

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

(b) When it is determined that an individual is engaging or has engaged in the practice of funeral services, or is using the title "funeral director" and is not licensed under the laws of this State, the Board shall apply to the Attorney General to issue a cease and desist order, after formally warning the unlicensed practitioner in accordance with this chapter.

(c) Any complaints involving allegations of unprofessional conduct or incompetence shall be investigated by the Division.

(66 Del. Laws, c. 225 § 1; 71 Del. Laws, c. 460 § 1; 80 Del. Laws, c. 194 § 2.)

§ 3114 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 § 3112 of this title applies to a practitioner regulated by this chapter:

(1) Issue a letter of reprimand.

(2) Censure a practitioner.

(3) Place a practitioner on probationary status, and require the practitioner to:

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

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

(4) Suspend any practitioner's license.

(5) Revoke any practitioner's license.

(6) Impose a monetary penalty not to exceed $1,000 for each violation.

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

(c) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety, or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension, so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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, unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(d) Where a license has been suspended due to a disability of the licensee, the Board may reinstate such license if, after a hearing, the Board is satisfied that the licensee is able to practice with reasonable skill and safety.

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

(66 Del. Laws, c. 225 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 460 § 1; 72 Del. Laws, c. 209 § 19; 79 Del. Laws, c. 213 § 2; 80 Del. Laws, c. 194 § 2.)

§ 3115 Hearing procedures.

(a) If a complaint which alleges a violation of § 3112 of this title is filed with the Board pursuant to § 8735 of Title 29, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) All hearings shall be informal and 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 be in writing and shall include its reasons for such decision. The Board's decision shall be mailed immediately to the practitioner.

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

(66 Del. Laws, c. 225 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 460 § 1; 80 Del. Laws, c. 194 § 2.)

§ 3116 Reinstatement of a suspended license; removal from probationary status; replacement of license.

(a) As a condition to reinstatement of a suspended license, or removal from probationary status, the Board may reinstate such 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 or probation.

(b) Where a license or registration has been suspended due to the licensee's inability to practice pursuant to this chapter, the Board may reinstate such license, if, after a hearing, the Board is satisfied that the licensee is again able to perform the essential functions of a funeral director, with or without reasonable accommodations, and there is no longer a significant risk of substantial harm to the health and safety of the individual or others.

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

(d) A new license to replace any license lost, destroyed, or mutilated may be issued subject to the rules of the Board. A charge shall be made for such issuance.

(71 Del. Laws, c. 460 § 1; 80 Del. Laws, c. 194 § 2.)

Subchapter III

Other Provisions

§ 3117 Funeral establishment permit; circumstances for termination and continuation.

(a) Upon completion of an application provided by the Board, payment of the appropriate fee, and fulfillment of all standards set by the Board by regulation, the Board shall issue a funeral establishment permit when the applicant provides evidence, verified by oath, that the establishment meets all of the following requirements:

(1) Funeral services shall be conducted from a building that meets the requirements of a funeral establishment as defined in § 3101 of this title.

(2) The funeral establishment shall have in charge full time therein a person licensed in accordance with this chapter; provided, however, that this paragraph shall not apply to funeral establishments maintained, operated, or conducted prior to September 6, 1972.

(3) The property on which the funeral establishment is located shall be properly zoned by the local zoning authority.

(4) The funeral establishment has acquired all appropriate business licenses issued by the State Division of Revenue.

(b) No person shall conduct, maintain, manage, or operate a funeral establishment unless a permit for each such establishment has been issued by the Board. Violation of this subsection shall constitute grounds for discipline. A funeral establishment permit shall be conspicuously displayed in said funeral establishment. When funeral services are held in any private residence, church, or lodge hall, no permit shall be required, provided that the funeral director of record at said funeral services is operating from a firm with an already-existing funeral establishment permit.

(c) All funeral establishment permits shall be renewed biennially in a manner determined by the Division, and shall be accompanied by a fee determined by the Division pursuant to § 3110 of this title. All permits shall list the name of the licensed full-time funeral director in charge of the establishment.

(d) The applicant to whom the establishment permit has been issued shall not permit the unauthorized practice of funeral services, personally or by agents, on or off the premises of said funeral establishment.

(e) In the event of the death, disability, or circumstance that prevents the direct supervision and management by the funeral director of the funeral establishment, said permit is void, except under the occurrence of at least 1 of the following conditions:

(1) Where a funeral establishment has been operated by a funeral director under the director's license, the director's estate may continue the funeral establishment under the supervision and management of a licensed funeral director of this State until such time as the estate may be settled, but for no more than 2 years after the date of the decedent's death.

(2) Where a funeral establishment has been operated by a corporation, said corporation may continue operating and assume all responsibilities of the funeral establishment, provided that an officer of the corporation is a licensed funeral director of this State. Any change in officers of the corporation shall be reported to the Board.

(f) The Board is authorized to suspend or revoke a permit, after notice and hearing, for failure to comply with this statute or any lawful regulation applicable to funeral establishments.

(g) A funeral establishment with multiple branch locations in Delaware operated under the same trade name or owned by the same owner or owners is required to maintain an embalming area in at least 1 of its Delaware locations, and the embalming area shall be disclosed on the appropriate establishment licenses. Nothing in this chapter shall grant permission for the transfer, on a regular basis, of decedents back and forth across state boundaries for the purposes of centralized embalming.

(66 Del. Laws, c. 225 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 209 § 20; 73 Del. Laws, c. 203 §§ 1, 2; 80 Del. Laws, c. 194 § 3.)

§ 3118 Exemptions.

(a) Nothing in this chapter shall be construed to prevent persons licensed to practice in any other state, district, territory, or foreign country who, as practicing funeral directors, enter this State to transport or bury human remains, or to consult with a funeral director of this State. Such consultation shall be limited to examination, recommendation, or testimony in litigation.

(b) Nothing in this chapter shall be construed to prevent the practice of funeral services by any student of an accredited school or college of funeral services, or any intern duly registered with the Board, from receiving practical training under the personal supervision of a licensed funeral director in this State.

(c) Nothing in this chapter shall be construed to prevent the practice of funeral services by any funeral director commissioned by any of the armed forces of the United States, or by the Public Health Service, provided that practice as a funeral director is limited to the confines of a military reservation or Public Health Service facility.

(d) Nothing in this chapter shall be construed to prevent the practice of funeral services by individuals performing the administrative and management aspects of funeral services under the direct supervision of a license funeral director, provided that any sales of goods and services must be reviewed and authorized by, and under the signature of, the licensed funeral director in this State.

(66 Del. Laws, c. 225 § 1; 71 Del. Laws, c. 460 § 1; 80 Del. Laws, c. 194 § 3.)

§ 3119 Interference with free choice of funeral establishment; operating mortuary in cemetery; accepting fees from cemeteries.

No person licensed for the practice of funeral services, nor any person acting on behalf of the licensee shall do any of the following:

(1) Take part in any transaction or business which in any way interferes with the freedom of choice of the general public to choose a funeral establishment, except where the body or a part thereof is given for anatomical purposes.

(2) Operate a mortuary or funeral establishment located within the confines of, or connected with, any cemetery.

(3) Receive or accept any commission, fee, remuneration or benefit of any kind from any cemetery, mausoleum or crematory, or from any proprietor or agent thereof, in connection with the sale or transfer of any cemetery lot, entombment vault, burial privilege or cremation, nor act, directly or indirectly, as a broker or jobber of any cemetery property or interest therein.

(24 Del. C. 1953 § 3111; 58 Del. Laws, c. 415 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 460 § 1; 80 Del. Laws, c. 194 § 3.)

§ 3120 Interstate transportation of human remains.

(66 Del. Laws, c. 225 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 460 § 1; 72 Del. Laws, c. 209 §§ 21-23; Del. Laws, c. 194 § 3, eff Nov 10, 2015.)

§ 3121 Cremation.

(a) Where not previously identified, human remains may not be cremated until they have been identified by either the next-of-kin, the person authorized to make funeral arrangements, or the medical examiner. This subsection shall not apply to disposition of human remains by any school of anatomy, medicine, or dentistry.

(b) Human remains shall be transported to a crematory using a rigid, leak-resistant container which meets all of the following criteria:

(1) Is made of readily combustible material.

(2) Is of sufficient strength and rigidity for ease of handling.

(3) Complies with all local, state, and federal governmental emissions regulations.

(4) Is not composed of metal or polyethylene.

(5) Maintains a secure closure for the respectful conveyance of the decedent.

(c) A person who knowingly engages a Delaware-licensed funeral establishment to arrange for the cremation of the deceased human remains shall also be responsible, following cremation, for the identification and arrangement of the final disposition of said human remains. Failure to do so within 60 days of the date of death shall be grounds for the funeral establishment of record to submit notification to the Attorney General that the cremated remains have been abandoned.

(d) Cremated remains which have been unclaimed or abandoned for a period of more than 12 months from the date of death may be disposed of in a cemetery of the funeral establishment's choice, in a manner so as to permit the return of said cremated remains to the appropriate authorized individual at a future date. All expenses surrounding the disposition and subsequent retrieval of the cremated remains shall be at the sole expense of the authorizing party. A record of the disposition of said cremated remains must be maintained by the funeral establishment of record.

(66 Del. Laws, c. 225 § 1; 71 Del. Laws, c. 460 § 1; 80 Del. Laws, c. 194 § 3.)

§ 3122 Processing human remains where investigation of death is required.

No person licensed under this chapter shall remove or embalm human remains when the person has information indicating that an investigation of death is required pursuant to § 4706 of Title 29.

(66 Del. Laws, c. 225 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 460 § 1.)

§ 3123 Penalties.

(a) A person is guilty of a misdemeanor when:

(1) The person is not licensed as a funeral director under this chapter and, while not licensed, that person does at least 1 of the following:

a. Engages in the practice of funeral services.

b. Uses that person's name or otherwise assumes or uses any title or description conveying or tending to convey the impression that the person is qualified to practice funeral services.

(2) The person is not registered as an intern under this chapter and, while not registered, that person does at least 1 of the following:

a. Acts as an intern registered under this title.

b. Uses that person's name or otherwise assumes or uses any title or description conveying or tending to convey the impression that the person is qualified to act as an intern registered under this title.

(b) Upon the first conviction of an offense under this section, the person shall be fined not less than $500 nor more than $1,000 for each offense and shall pay all costs.

(c) Upon the second or subsequent conviction for an offense under this section, the person shall be fined not less than $1,000 nor more than $2,000 for each offense and shall pay all costs.

(d) Superior Court shall have jurisdiction over all violations of this chapter.

(e) Where it is alleged that such violation of this section has resulted in injury to any person, the offender shall be charged and tried under

the applicable provisions of Title 11.

(66 Del. Laws, c. 225 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 460 § 1; 80 Del. Laws, c. 194 § 3.)

§ 3124 Criminal background checks of licensed funeral directors.

An applicant for licensure to practice as a licensed funeral director shall submit, at the applicant's expense, fingerprints and other necessary information in order to obtain all of the following:

(1) A report of the individual'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 relating to that person.

(2) A report of the individual's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Board shall be the screening point for the receipt of the individual's federal criminal history records.

(80 Del. Laws, c. 194 § 3.)

Part

Chapter 33
VETERINARIANS

Subchapter I

General Terms

§ 3300 Short title.

This chapter shall be known as the "Delaware Veterinary Practice Act."

(24 Del. C. 1953 § 3301; 57 Del. Laws, c. 178; 75 Del. Laws, c. 295 § 1.)

§ 3301 Objectives of Board.

The primary objective of the Board of Veterinary Medicine, to which all other objectives and purposes are secondary, is to protect the general public (specifically those persons who are direct recipients of services regulated by this chapter) from unsafe practices, and from occupational practices which tend to reduce competition or 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 complaints hearings; shall promulgate rules and regulations; and shall impose sanctions where necessary against practitioners, both licensed and formerly licensed.

(63 Del. Laws, c. 460 § 1; 72 Del. Laws, c. 207 § 1; 75 Del. Laws, c. 295 § 1.)

§ 3302 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) "Accredited veterinary medicine school" shall mean any veterinary college or division of a university or college that offers the degree of Doctor of Veterinary Medicine or its equivalent and that conforms to the standards required for accreditation by the American Veterinary Medical Association (AVMA).

(2) "Animal" shall mean any animal other than man or woman, and includes fowl, birds, fish and reptiles, wild or domestic, living or dead.

(3) "Board" shall mean the State Board of Veterinary Medicine established in this chapter.

(4) "Division" shall mean the state Division of Professional Regulation.

(5) "Practice of veterinary medicine" shall mean:

a. To diagnose, prognose, treat, correct, change, relieve or prevent animal disease, deformity, defect, injury or other physical or mental conditions, including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic or other therapeutic or diagnostic substance or technique, for testing for pregnancy or for correcting sterility or infertility, or to render advice or recommendation with regard to any of the above;

b. To represent directly or indirectly, publicly or privately, an ability and willingness to do any act described in paragraph (5)a. of this section;

c. To use any title, words, abbreviation or letters in a manner or under circumstances, which induce the belief that the person using them is qualified to do any act, described in paragraph (5)a. of this section, except where such person is a veterinarian.

(6) "State" shall mean the State of Delaware.

(7) "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 veterinary medicine.

(8) "Veterinarian" shall mean a person who has received a degree in veterinary medicine from a school of veterinary medicine.

(9) "Veterinary medicine" shall include veterinary surgery, obstetrics, dentistry and all other branches or specialties of veterinary medicine.

(10) "Veterinary technician" shall mean a person who has received a degree from a veterinary technician program or its equivalent.

(4 Del. C. 1953 § 3302; 57 Del. Laws, c. 178; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 207 § 2; 74 Del. Laws, c. 262 § 68; 75 Del. Laws, c. 295 §§ 2-6.)

§ 3303 License requirement and exceptions.

No person may practice veterinary medicine in the State who is not a Delaware-licensed veterinarian or the holder of a valid temporary permit issued by the Board. This chapter shall not be construed to prohibit:

(1) An employee of the federal, state or local government performing official duties;

(2) A person who is a regular student in a veterinary school or veterinary technician program performing duties or actions assigned by

instructors, or working under the direct supervision of a licensed veterinarian during the school vacation period;

(3) A person advising with respect to or performing acts which the Board rule has or has not prescribed as accepted livestock management practices;

(4) A veterinarian regularly licensed in another state consulting with a licensed veterinarian in this State;

(5) Any merchant or manufacturer selling at the merchant's or manufacturer's regular place of business medicines, feed, appliances or other products used in the prevention or treatment of animal diseases;

(6) The owner of an animal and the owner's employee caring for and treating the animal belonging to such owner, except where the ownership of the animal was transferred for purposes of circumventing this chapter;

(7) A member of the faculty of a veterinary school performing regular functions, or a person lecturing or giving instructions or demonstrations at a veterinary school or in connection with a continuing education course or seminar;

(8) Any person selling or applying any pesticide, insecticide or herbicide;

(9) Any person engaging in bona fide scientific research which reasonably requires experimentation involving animals;

(10) Any person from performing support activities under the supervision, as determined by regulations adopted by the Board, of a Delaware-licensed veterinarian. The support activities shall not include diagnosing, prognosing, prescribing, inducing anesthesia, performing surgery or other support activities as defined in regulations adopted by the Board.

(11) A licensed veterinary technician from performing support activities under the supervision, as determined by regulations adopted by the Board, of a Delaware-licensed veterinarian. The support activities shall not include diagnosing, prognosing, prescribing, performing surgery or other support activities as defined in regulations adopted by the Board.

(24 Del. C. 1953 § 3303; 57 Del. Laws, c. 178; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 207 §§ 3, 4; 75 Del. Laws, c. 295 § 7; 75 Del. Laws, c. 295 §§ 7-11.)

§ 3304 Board of Veterinary Medicine — Appointment; composition; qualifications; term of office; suspension or removal; compensation.

(a) There is created a State Board of Veterinary Medicine which shall administer and enforce this chapter.

(b) The Board of Veterinary Medicine shall consist of 7 members appointed by the Governor: 3 professional members who shall be licensed veterinarians; 2 professional members who shall be licensed veterinary technicians appointed so that the terms of the 2 newly appointed veterinary technicians do not expire in the same year; and 2 public members. To serve on the Board, a public member shall not be nor ever have been a veterinarian or veterinary technician, nor a member of the immediate family of a veterinarian or veterinary technician; shall not have been employed by a veterinarian or veterinary technician; shall not have had a material financial interest in the providing of goods and services to veterinarian or veterinary technicians nor have been engaged in an activity directly related to veterinary medicine or veterinary technicians. Such public member shall be accessible to inquiries, comments and suggestions from the general public.

(c) Each member shall serve for a term of 3 years and may successively serve for 1 additional term; provided, however, that where a member was initially appointed to fill a vacancy, such member may successively serve 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.

(d) A person who has never served on the Board may be appointed to the Board 2 consecutive times, 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 term has expired since such person last served.

(e) Any act or vote by a person appointed in violation of subsection (c) 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 (c) of this section, unless such 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 proceedings 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 state or national professional association of veterinarians or veterinary technicians. Board members are prohibited from serving as an officer of their professional association's Political Action Committee (PAC).

(h) The provisions set forth in Chapter 58 of Title 29 shall apply to all members of the Board.

(i) Each Board member shall be reimbursed for all expenses involved in each meeting, including travel according to Division of Professional Regulation policy; and in addition shall receive not more than $50 for each meeting attended, but not more than $500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(22 Del. Laws, c. 364 § 3; Code 1915 § 730; Code 1935 § 738; 24 Del. C. 1953 § 3304; 57 Del. Laws, c. 178; 63 Del. Laws, c. 460 § 2; 64 Del. Laws, c. 448 §§ 1, 10; 67 Del. Laws, c. 368 § 21; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 207 §§ 5-10; 75 Del. Laws, c. 295 §§ 12, 13.)

§ 3305 Board of Veterinary Medicine — Officers; meetings; quorum.

(a) In the same month of each year, the members shall elect, from among their number, a President and a Vice President. Each officer shall serve for 1 year and may successively serve in the same office for 1 additional year.

(b) The Board shall hold regularly scheduled business meetings at least once in each quarter of a calendar year, and at such other times as the President deems necessary; or at the request of a majority of Board members. Special or emergency meetings may be held without notice provided a quorum is present.

(c) A majority of members shall constitute a quorum; and no action shall be taken without the affirmative vote of at least 4 members. Any member who fails to attend 3 consecutive meetings, or who fails to attend at least 1/2 of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed.

(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.

(24 Del. C. 1953 § 3304A; 57 Del. Laws, c. 178; 63 Del. Laws, c. 460 § 3; 64 Del. Laws, c. 117 § 2; 65 Del. Laws, c. 355 § 1; 68 Del. Laws, c. 244 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 207 § 11; 75 Del. Laws, c. 295 § 14.)

§ 3306 Board of Veterinary Medicine — Powers and duties.

(a) The Board of Veterinary Medicine shall have authority to:

(1) Formulate rules and regulations, with appropriate notice to those affected, where such notice can reasonably be given; 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 process all applications; however, no application form shall require a picture of the applicant, nor require information relating to citizenship, place or date of birth, length of state residency, marital status, professional association memberships, moral character or require personal or professional references;

(3) Designate the written national examinations for veterinarians and veterinary technicians, prepared by either the applicable national professional association or by a recognized legitimate national testing service, and determine whether applicants are qualified to take such examinations. The examinations shall be prepared for testing on a national basis, and not specifically prepared at the request of the Board for its individual use. Veterinarians and veterinary technicians applying for licensure shall take the applicable national examination; and both applicants who qualify for original licensure and licensure by reciprocity shall have achieved the passing score on the national examination;

(4) Evaluate the credentials of all persons applying for a license to practice veterinary medicine or as a veterinary technician in Delaware in order to determine whether such persons meet the qualifications for licensing set forth in this chapter;

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

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

(7) Evaluate certified records to determine whether an applicant for licensure, who has been previously licensed, certified, or registered in another jurisdiction to practice veterinary medicine or as a veterinary technician, 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;

(8) Refer all complaints from licensees and the public concerning licensed veterinarians or veterinary technicians, or concerning practices of the Board or of the professions, to the Division 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;

(9) Conduct hearings and issue orders in accordance with procedures established pursuant to Chapter 101 of Title 29;

(10) 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 may require by subpoena the attendance and testimony of witnesses and production of papers, records or other documentary evidence.

(c) The Board of Veterinary Medicine shall promulgate regulations specifically identifying those crimes which are substantially related to the practice of veterinary medicine.

(24 Del. C. 1953 § 3304B; 57 Del. Laws, c. 178; 63 Del. Laws, c. 460 § 4; 68 Del. Laws, c. 244 § 2; 72 Del. Laws, c. 207 §§ 12-16; 74 Del. Laws, c. 262 § 69; 75 Del. Laws, c. 295 §§ 15-19.)

§ 3307 Records.

The Division of Professional Regulation shall keep a register of all approved applications for license as a veterinarian or veterinary technician, 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.

(72 Del. Laws, c. 207 § 18; 75 Del. Laws, c. 295 § 21.)

§ 3308 Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for an activity not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each licensure biennium the Division of Professional Regulation, or any other state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate fee for the licensure biennium.

(24 Del. C. 1953 § 3308; 57 Del. Laws, c. 178; 63 Del. Laws, c. 460 § 8; 65 Del. Laws, c. 355 § 1; 72 Del. Laws, c. 207 §§ 20-23; 75 Del. Laws, c. 295 § 23.)

§ 3309 Issuance of license; renewal; inactive status; reinstatement.

(a) The Board shall issue a license to each applicant, who meets the requirements of this chapter for licensure as a veterinarian or as a veterinary technician, and who pays the fee established under § 3308 of this title.

(b) Each license shall be renewed biennially upon submission of a renewal application provided by the Board along with the evidence of continuing education courses, unless waived by the board, as may be required by the rules and regulations set forth by the Board and payment of the renewal fee as determined by the Division of Professional Regulation. The Board shall, in its rules and regulations, determine the period of time within which a practitioner may still renew the license, notwithstanding the fact that such practitioner has failed to renew on or before the renewal date; provided, however, that such period shall not exceed 1 year. At the expiration of the period designated by the Board, the license shall be deemed to be lapsed and not renewable, unless the former licensee reapplies under the same conditions which govern reciprocity.

(c) A licensee, upon written request, may be placed in an inactive status. The renewal fee of such person shall be prorated in accordance with the amount of time such person was inactive. Such person may reenter practice upon written notification to the Board of the intent to do so and completion of continuing education as required in the Board's rules and regulations.

(24 Del. C. 1953 § 3309; 57 Del. Laws, c. 178; 63 Del. Laws, c. 460 § 9; 64 Del. Laws, c. 163 § 1; 64 Del. Laws, c. 448 §§ 4-9; 65 Del. Laws, c. 355 § 1; 67 Del. Laws, c. 145 §§ 2-4; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 207 §§ 24-29; 75 Del. Laws, c. 295 § 24.)

§ 3310 Complaints.

Anyone desiring to file a complaint against any person practicing veterinary medicine shall file a written complaint with the Division of Professional Regulation. All complaints shall be received and investigated by the Division of Professional Regulation in accordance with § 8735 of Title 29 of the Delaware Code, and the Division shall be responsible for issuing a final written report at the conclusion of its investigation.

(24 Del. C. 1953 § 3310; 57 Del. Laws, c. 178; 63 Del. Laws, c. 460 § 10; 65 Del. Laws, c. 355 § 1; 72 Del. Laws, c. 207 § 30; 75 Del. Laws, c. 295 § 25.)

§ 3311 Hearing procedures.

(a) If a complaint is filed with the Board pursuant to § 8735 of Title 29, alleging violation of § 3316 or § 3321 of this title, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) All hearings shall be 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 be in writing and shall include its reasons for such decision. The Board's decision shall be mailed immediately to the licensee.

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

(24 Del. C. 1953 § 3313; 57 Del. Laws, c. 178; 63 Del. Laws, c. 460 § 13; 65 Del. Laws, c. 323 § 1; 72 Del. Laws, c. 207 § 32; 75 Del. Laws, c. 295 § 28.)

§ 3312 Reinstatement of a suspended license; removal from probationary status; replacement of license.

(a) As a condition to reinstatement of a suspended license, or removal from probationary status, the Board may reinstate such 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 probation.

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

(c) A new license to replace any license lost, destroyed or mutilated may be issued subject to the rules of the Board. A charge set by the Division shall be made for such issuance.

(24 Del. C. 1953 § 3315; 57 Del. Laws, c. 178; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 207 § 34; 75 Del. Laws, c. 295 § 30.)

Subchapter II

Veterinarians

§ 3313 Qualifications of applicant; report to Attorney General; judicial review.

(a) An applicant who is applying for licensure as a veterinarian under this subchapter shall submit evidence, verified by oath and satisfactory to the Board, that such person:

(1) Has received a degree of Doctor of Veterinary Medicine or its equivalent from a school or college accredited by the American Veterinary Medical Association, or if the applicant's degree is not from an AVMA-accredited school or college, possess a certificate issued by a certifying Commission approved by the Delaware Board;

(2) Has achieved the passing score on the written standardized examination for veterinarians designated by the Board pursuant to § 3306 of this title.

(3) Has not had that applicant's United States Drug Enforcement Administration (DEA) privileges restricted or revoked; or

(4) Shall not have any impairment related to drugs or alcohol that would limit the applicant's ability to undertake the practice of veterinary medicine in a manner consistent with the safety of a patient or the public;

(5) Shall not have a criminal conviction record, or pending criminal charge relating to an offense, the circumstances of which substantially relate to the practice of veterinary medicine. Applicants who have criminal conviction records or pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the record or charge is substantially related to the practice of veterinary medicine; however, 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, may waive this paragraph (a)(5), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of practicing veterinary medicine in a competent and professional manner.

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

(6) Shall not have engaged in any of the acts or offenses that would be grounds for disciplinary action under this subchapter and has no disciplinary proceedings or unresolved complaints pending against the applicant in any jurisdiction where the applicant has previously been or currently is licensed as a veterinarian.

(b) In the event the applicant shall have been the recipient of any administrative penalties regarding that applicant's practice of veterinary medicine, including but not limited to fines, formal reprimands, license suspension or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations, and/or has entered into any "consent agreements" which contain conditions placed by a Board on that applicant's professional conduct and practice, including any voluntary surrender of a license, the applicant shall furnish all information regarding such penalties and/r agreements to the Board. The Board may, after a hearing, determine that such administrative penalty is grounds to deny licensure.

(c) In the event the applicant has not taken the national examination designated by the Board pursuant to § 3306 of this title, the applicant shall sit for the latest examination at such times as determined by the testing service.

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

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

(24 Del. C. 1953 § 3305; 57 Del. Laws, c. 178; 63 Del. Laws, c. 460 § 5; 64 Del. Laws, c. 448 § 2; 68 Del. Laws, c. 332 § 1; 69 Del. Laws, c. 255 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 207 § 17; 74 Del. Laws, c. 262 § 70; 75 Del. Laws, c. 295 §§ 20, 31-35; 75 Del. Laws, c. 436 § 37; 77 Del. Laws, c. 199 § 27; 78 Del. Laws, c. 44 §§ 52, 53.)

§ 3314 Reciprocity.

(a) 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 proof of current licensure in "good standing " in another state, the District of Columbia, or territory of the United States. A license in "good standing" is defined in § 3313(a)(3)-(6) of this title; and

(b) The applicant has passed the national examination designated by the Board pursuant to § 3306 of this title excluding the Clinical Competency Test prior to 1996, unless at the time the applicant became licensed in the State, District of Columbia, or territory of the United States, from which that applicant is applying, the national examination designated by the Board was/were not required by this State (in which case, the applicant need only present evidence of passing whatever national licensing examinations were required of entry level licensees in this State at that time).

(c) Applicants who are not graduates of schools of veterinary medicine accredited by the American Veterinary Medical Association must

possess a certificate issued by a certifying commission approved by the Board.

(d) The Board shall grant a license to an applicant, who was previously licensed as a veterinarian in this State, and who has let that applicant's license lapse, subject to the applicant's meeting the requirements of subsection (a) of this section, and continuing education requirements as provided for in the Board's rules and regulations.

(e) In the event that a disciplinary proceeding or unresolved complaint is pending, the applicant shall not be licensed in this State until the proceeding or complaint has been resolved. Applicants for licensure as veterinarians in this State shall be deemed to have given consent to the release of such information and to waive all objections to the admissibility of such information as evidence at any hearing or other proceeding to which the applicant may be subject. Each application for licensure shall be accompanied by payment of the application fee.

(24 Del. C. 1953 § 3307; 57 Del. Laws, c. 178; 63 Del. Laws, c. 460 § 7; 67 Del. Laws, c. 145 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 207 § 19; 75 Del. Laws, c. 295 § 22; 75 Del. Laws, c. 436 § 38.)

§ 3315 Temporary license and permit.

(a) Upon payment of the appropriate fee and on submission of a written application on forms provided by the Board, the Board shall issue a temporary license to a person who has applied for licensure as a veterinarian under this subsection and who either is being considered for licensure under the reciprocity provision of this subchapter, or, is eligible to take the examination provided for in this subchapter. Such temporary license will be available to an applicant only with respect to the first application for licensure, and the applicant shall use the temporary license only while under the supervision of a licensed veterinarian. In all cases, such temporary license shall expire automatically if the applicant fails the examination or fails to sit for the same at the earliest opportunity. In all cases where a temporary license is issued to an applicant for licensure by reciprocity, such temporary license shall expire automatically upon written notice to the applicant by the Board that it proposes to deny such application. Upon expiration, the temporary license shall be surrendered to the Board.

(b) The Board may issue, without examination, a temporary permit to practice veterinary medicine in this State, to any nonresident veterinarian validly licensed in another state, territory, district of the United States or foreign country if such veterinarian pays a fee equivalent to 1/2 of the biennial fee for license renewal paid by licensed Delaware veterinarians; provided, however, that such temporary permit shall be issued for a period of not more than 1 year; provided also, that applicants meet the provisions of § 3314 of this title for reciprocity applicants.

(24 Del. C. 1953 § 3309; 57 Del. Laws, c. 178; 63 Del. Laws, c. 460 § 9; 64 Del. Laws, c. 163 § 1; 64 Del. Laws, c. 448 §§ 4-9; 65 Del. Laws, c. 355 § 1; 67 Del. Laws, c. 145 §§ 2-4; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 207 §§ 24-29; 75 Del. Laws, c. 295 § 36.)

§ 3316 Grounds for discipline; procedure.

(a) A veterinarian licensed under this subchapter shall be subject to disciplinary sanctions set forth in § 3317 of this title, if, after a hearing, the Board finds that the veterinarian has:

(1) Been found guilty of unprofessional conduct as defined in the Board's rules and regulations;

(2) Employed or knowingly cooperated in fraud or material deception in order to acquire a license as a veterinarian; has impersonated another person holding a license, or allowed another person to use that practitioner's license, or aided or abetted a person not licensed as a veterinarian to represent himself or herself as a veterinarian;

(3) Illegally, incompetently or negligently practiced veterinary medicine;

(4) Been convicted of any crime that is substantially related to the practice veterinary medicine or any offense that would limit the ability of the licensee to carry out the licensee's professional duties with due regard for the health and safety of animals. A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence therefor;

(5) Excessively used or abused drugs; 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 licensee's ability to perform the work of a veterinarian;

(6) Engaged in an act of consumer fraud or deception; engaged in the restraint of competition; or participated in price-fixing activities;

(7) Wilfully violated any privileged communication;

(8) Been fraudulent or dishonest in the application or reporting of any test for disease in animals;

(9) Failed to keep that applicant's veterinary premises and equipment in clean and sanitary condition;

(10) Failed to report, as required by law, or has made a false report of any contagious or infectious disease;

(11) Been dishonest or negligent in the inspection of foodstuffs, or in the issuance of health or inspection certificates;

(12) Been cruel to animals;

(13) Violated a lawful provision of this chapter, or any lawful regulation established thereunder;

(14) Had that applicant's license as a veterinarian suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record; and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every person licensed as a veterinarian in this State shall be deemed to have given consent to the release of this information by the Board of Veterinarians or other comparable agencies in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses;

(15) Failed to notify the Board that the applicant's license as a veterinarian in another State has been subject to discipline, or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be

conclusive evidence thereof.

(b) Subject to the provisions of this chapter and subchapter IV, Chapter 101 of Title 29, no license shall be restricted, suspended or revoked by the Board, and no licensee's right to practice veterinary medicine shall be limited by the Board until such licensee has been given notice, and an opportunity to be heard, in accordance with the Administrative Procedures Act [Chapter 101 of Title 29].

(24 Del. C. 1953 § 3311; 57 Del. Laws, c. 178; 63 Del. Laws, c. 460 § 11; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 207 § 31; 74 Del. Laws, c. 262 § 71; 75 Del. Laws, c. 295 § 26.)

§ 3317 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that 1 of the conditions or violations set forth in § 3316 of this title applies to a licensee regulated by this chapter:

(1) Issue a letter of reprimand;

(2) Censure a licensee;

(3) Place a licensee on probationary status, and require the licensee to:

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

b. Limit all practice and professional activities to those areas prescribed by the Board; and/or

c. Continue or renew professional education until the required degree of skill has been attained in those areas which are the basis of the probation;

(4) Suspend any licensee's license; or

(5) Revoke a licensee's license.

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

(c) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(d) Where a license has been suspended due to a disability of the licensee, the Board may reinstate such license if, after a hearing, the Board is satisfied that the licensee is able to practice with reasonable skill and safety.

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

(f) Where the Board has placed a licensee on probationary status under certain restrictions or conditions, and the Board has determined that such restrictions or conditions are being or have been violated by the licensee, the Board, after a hearing on the matter, may suspend or revoke the licensee's license.

(24 Del. C. 1953 § 3312; 57 Del. Laws, c. 178; 63 Del. Laws, c. 460 § 12; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 295 § 27; 79 Del. Laws, c. 213 § 2.)

§ 3318 Practicing without a license; penalties.

(a) Where the Board has reason to believe that a person is practicing veterinary medicine within this State without having lawfully obtained a license, or that a person previously licensed under this chapter is engaged in a practice regulated by this chapter, notwithstanding that the person's license has been suspended or revoked, or that a person not licensed under this chapter is using any name, title, description or designation, either orally or in writing, that will lead to the belief that such person is licensed to practice veterinary medicine as defined in this chapter, the Board shall submit a written complaint to the Division of Professional Regulation for investigation. If the investigation confirms such unlawful practice, the Board shall make a formal complaint to the Attorney General who may issue a cease and desist order. The complaint and/or order shall include all evidence known to, or in the possession of, the Board.

(b) A person not currently licensed as a veterinarian under this chapter, when guilty of engaging in the practice of veterinary medicine, or using in connection with the licensee's own name, or otherwise assuming or using any title or description conveying, or tending to convey the impression that the licensee is qualified to practice veterinary medicine, such offender upon the first offense, shall be fined not less than $500 nor more than $1,000 for each offense, and the offender shall pay all costs. Each day a violation continues shall constitute a separate offense. The Court shall order all fees received for unlawful service to be refunded. Justice of the Peace Court shall have jurisdiction over any violation of this chapter.

(24 Del. C. 1953 § 3314; 57 Del. Laws, c. 178; 63 Del. Laws, c. 460 § 14; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 207 § 33; 75 Del.

Laws, c. 295 § 37.)

Subchapter III

Veterinary Technicians

§ 3319 Qualifications of applicant; report to Attorney General; judicial review.

(a) An applicant who is applying for licensure as a veterinary technician under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person:

(1) Has received a degree from a veterinary technician program accredited by the American Veterinary Medical Association ("AVMA") or from a foreign veterinary program approved by the AVMA or, for a period not to exceed 7 years provided that the Board may by regulation, for reasons stated, shorten the time, has submitted evidence to the Board of one of the following:

a. A degree from a nonaccredited veterinary technician program or other program as defined by the Board's rules and regulations, combined with practical experience under the supervision of a licensed veterinarian for the period of time specified in the Board's rules and regulations, or

b. Practical experience under the supervision of a licensed veterinarian for a period of time specified in the Board's rules and regulations;

(2) Has achieved the passing score on the written standardized national examination designated by the Board pursuant to § 3306 of this title;

(3) Shall not have any impairment related to drugs or alcohol that would limit the applicant's ability to practice as a veterinary technician in a manner consistent with the safety of a patient or the public;

(4) Shall not have a criminal conviction record, or pending criminal charge relating to an offense, the circumstances of which substantially relate to practice as a veterinary technician. Applicants who have criminal conviction records or pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the record or charge is substantially related to practice as a veterinary technician; however, 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 may waive this paragraph (a)(4) herein, if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of practicing as a veterinary technician in a competent and professional manner.

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

(5) Shall not have engaged in any of the acts or offenses that would be grounds for disciplinary action under this chapter and has no disciplinary proceedings or unresolved complaints pending against that applicant in any jurisdiction where the applicant has previously been or currently is licensed as a veterinary technician.

(b) In the event the applicant shall have been the recipient of any administrative penalties regarding that applicant's practice as a veterinary technician, including but not limited to fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations, and/or has entered into any "consent agreements" which contain conditions placed by a Board on that applicant's professional conduct and practice, including any voluntary surrender of a license, the applicant shall furnish all information regarding such penalties and/or agreements to the Board. The Board may, after a hearing, determine that such administrative penalty is grounds to deny licensure.

(c) In the event the applicant has not taken the national examination designated by the Board pursuant to § 3306 of this title, the applicant shall sit for the latest examination at such times as are determined by the testing service.

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

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

(75 Del. Laws, c. 295 § 39; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 199 § 28; 78 Del. Laws, c. 44 §§ 54, 55.)

§ 3320 Reciprocity, lapsed license, reinstatement and temporary licensure.

(a) 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 proof of current licensure in "good standing" in another state, the District of

Columbia, or territory of the United States. A license in "good standing" is defined in § 3319 of this title; and

(b) Has received a degree from a veterinary technician program accredited by the American Veterinary Medical Association ("AVMA") or from a foreign veterinary program approved by the AVMA or, for a period not to exceed 7 years provided that the Board may by regulation, for reasons stated, shorten the time, has submitted evidence to the Board of one of the following:

A degree from a nonaccredited veterinary technician program or other program as defined by the Board's rules and regulations, combined with practical experience under the supervision of a licensed veterinarian for the period of time specified in the Board's rules and regulations, or practical experience under the supervision of a licensed veterinarian for a period of time specified in the Board's rules and regulations; and

(c) Has achieved the passing score on the written standardized national examination designated by the Board pursuant to § 3306 of this title, provided that this requirement does not apply to any applicant under this section who has continuously maintained a license in another state and graduated from an AVMA accredited school prior to 1990.

(d) The Board shall grant a license to an applicant, who was previously licensed as a veterinary technician in this State, and who has let that applicant's license lapse, subject to the applicant's meeting the requirements of subsection (a) of this section, and continuing education requirements as provided for in the Board's rules and regulations.

(e) Upon payment of the appropriate fee and on submission of a written application on forms provided by the Board, the Board may issue a temporary license to a person who has applied for original or reciprocity licensure as a veterinary technician under this subchapter. Such temporary license will be available to an applicant only with respect to the first application for licensure, and the applicant shall use the temporary license only while under the supervision of a licensed veterinarian. In all cases such temporary license shall expire automatically if application for permanent licensure is denied. Upon expiration, the temporary license shall be surrendered to the Board.

(f) In the event that a disciplinary proceeding or unresolved complaint is pending, the applicant shall not be licensed in this State until the proceeding or complaint has been resolved. Applicants for licensure as veterinary technicians in this State shall be deemed to have given consent to the release of such information and to waive all objections to the admissibility of such information as evidence at any hearing or other proceeding to which the applicant may be subject. Each application for licensure shall be accompanied by payment of the application fee.

(75 Del. Laws, c. 295 § 39; 70 Del. Laws, c. 186 § 1.)

§ 3321 Grounds for discipline; procedure.

(a) A veterinary technician licensed under this subchapter shall be subject to disciplinary actions set forth in § 3322 of this title, if, after a hearing, the Board finds that the veterinary technician:

(1) Has been found guilty of unprofessional conduct as defined in the Board's rules and regulations;

(2) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license as a veterinary technician; has impersonated another person holding a license, or allowed another person to use that veterinary technician's license, or aided or abetted a person not licensed as a veterinary technician to represent himself or herself as a veterinary technician;

(3) Has illegally, incompetently or negligently practiced as a veterinary technician;

(4) Has been convicted of any crime that is substantially related to the practice of veterinary medicine as determined by the Board or any offense that would limit the ability of the licensee to carry out the licensee's professional duties with due regard for the health and safety of animals. A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence therefore;

(5) Has expressively used or abused drugs; 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 licensee's ability to perform the work of a veterinary technician;

(6) Has engaged in an act of consumer fraud or deception; engaged in the restraint of competition; or participated in price-fixing activities;

(7) Has wilfully violated any privileged communication;

(8) Has been cruel to animals;

(9) Has violated a lawful provision of this chapter, or any lawful regulation established thereunder;

(10) Has had that veterinary technician's license as a veterinary technician suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record; and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every person licensed as a veterinary technician in this State shall be deemed to have given consent to the release of this information by the Board of Veterinary Technicians or other comparable agencies in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses;

(11) Has failed to notify the Board that the veterinary technician's license as a veterinary technician in another State has been subject to discipline, or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof.

(b) Subject to the provisions of this chapter and subchapter IV, Chapter 101 of Title 29, no license shall be restricted, suspended or

revoked by the Board, and no licensee's right to practice as a veterinary technician shall be limited by the Board until such licensee has been given notice, and an opportunity to be heard, in accordance with the Administrative Procedures Act [Chapter 101 of Title 29].

(75 Del. Laws, c. 295 § 39; 70 Del. Laws, c. 186 § 1.)

§ 3322 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that 1 of the conditions or violations set forth in § 3321 of this title applies to a licensee regulated by this subchapter:

(1) Issue a letter of reprimand;

(2) Censure of a licensee;

(3) Place a licensee on probationary status, and require the licensee to:

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

b. Limit all practice and professional activities to those areas prescribed by the Board; and/or

c. Continue or renew professional education until the required degree of skill has been attained in those areas which are the basis of the probation;

(4) Suspend a veterinary technician's license; or

(5) Revoke a veterinary technician's license.

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

(c) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(d) Where a license has been suspended due to a disability of the licensee, the Board may reinstate such license if, after a hearing, the Board is satisfied that the licensee is able to practice with reasonable skill and safety.

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

(f) Where the Board has placed a licensee on probationary status under certain restrictions or conditions, and the Board has determined that such restrictions are being or have been violated by the licensee, the Board, after a hearing on the matter, may suspend or revoke the licensee's license.

(75 Del. Laws, c. 295 § 39; 79 Del. Laws, c. 213 § 2.)

§ 3323 Practicing without a license; penalties.

(a) Where the Board has reason to believe that a person is practicing as a veterinary technician within this State without having lawfully obtained a license, or that a person previously licensed under this chapter is engaged in a practice regulated by this chapter, notwithstanding that the person's license has been suspended or revoked, or that a person not licensed under this chapter is using any name, title, description or designation, either orally or in writing, that will lead to the belief that such person is licensed to practice as a veterinary technician as defined in this chapter the Board shall submit a written complaint to the Division of Professional Regulation for investigation. If the investigation confirms such unlawful practice, the Board shall make a formal complaint to the Attorney General who may issue a cease and desist order. The complaint and/or order shall include all evidence known to, or in the possession of, the Board.

(b) A person not currently licensed as a veterinary technician under this chapter, when guilty of practicing as a veterinary technician, or using in connection with the licensee's own name, or otherwise assuming or using any title or description conveying, or tending to convey the impression that the licensee is qualified to practice as a veterinary technician, such offender upon the first offense, shall be fined not less than $200 nor more than $400 for each offense, and the offender shall pay all costs. Each day a violation continues shall constitute a separate offense. The Court shall order all fees received for unlawful service to be refunded. Justice of the Peace Court shall have jurisdiction over any violation of this subchapter.

(75 Del. Laws, c. 295 § 39.)

Part

Chapter 35
PSYCHOLOGY

Subchapter I

Board of Examiners of Psychologists

§ 3501 Objectives.

The primary objective of the Board of Examiners of Psychologists, 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, both licensed and unlicensed.

(70 Del. Laws, c. 57 § 1.)

§ 3502 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 Examiners of Psychologists 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 the person's ability to perform the work of a psychologist.

(4) "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.

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

(6) "Practice of psychology" shall mean the observation, description, evaluation, interpretation and/or modification of human behavior by the application of psychological principles, methods, and/or procedures, for the purpose of preventing or eliminating symptomatic, maladaptive or undesired behavior, and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health and mental health.

The practice of psychology includes, but is not limited to, psychological testing and the evaluation or assessment of personal characteristics, such as intelligence, personality, abilities, interests, aptitudes and neuropsychological function; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy; diagnosis and treatment of mental and emotional disorder or disability, alcoholism and substance abuse, disorders of habit or conduct, as well as the psychological aspects of physical illness, accident, injury or disability; and psychoeducational evaluation, therapy, remediation, and consultation. Psychological services may be rendered to individuals, families, groups, organizations, institutions and the public. The practice of psychology shall be construed within the meaning of this definition without regard to whether or not payment is received for services rendered.

The practice of psychology 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.

a. "Psychological testing" shall mean, but not be limited to: Administration and interpretation of standardized intelligence and neuropsychological tests which yield an intelligence quotient and/or are the basis for a diagnosis of organic brain syndromes for the purposes of classification and/or disability determination; and

b. The administration and interpretation of psychological tests which are the basis of a diagnosis of mental or emotional disorder.

(7) "Psychological assistant" shall mean a person who is registered with the Board to perform certain functions within the practice of psychology, only under the direct supervision of a supervising psychologist, and who is authorized by the Board to use the title "psychological assistant." The Board in its rules and regulations will specify the arrangements for supervision by the licensed psychologist.

(8) "Psychologist" shall mean a person who makes representations to the public by any title or description of services incorporating the words "psychology," "psychological," "psychologist," or who engages in the practice of psychology.

(9) "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.

(10) "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 psychology.

(11) "Supervising psychologist" shall mean a psychologist licensed in this State who has practiced as a licensed psychologist for 2 years in this or any other jurisdiction and who applies to the Board for the registration of a psychological assistant.

(12) "Supervision" shall mean the face-to-face consultation between the registered psychological assistant and the supervising psychologist as required by the nature of the work of the psychological assistant. The supervising psychologist is responsible for insuring that the extent, kind and quality of the services rendered by the psychological assistant are consistent with the person's education, training and experience.

(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.

(24 Del. C. 1953 § 3501; 58 Del. Laws, c. 380; 62 Del. Laws, c. 314 § 1; 70 Del. Laws, c. 57 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 § 72; 80 Del. Laws, c. 80 § 18.)

§ 3503 Board of Examiners of Psychologists; appointments; qualifications; term; vacancies; suspension or removal; unexcused absences; compensation.

(a) There is created a State Board of Examiners of Psychologists which shall administer and enforce this chapter.

(b) The Board shall consist of 9 members appointed by the Governor, who are residents of this state: 5 of whom shall be psychologists licensed under this chapter and 4 public members. At least 3 members of the Board shall be engaged full time in the practice of psychology. The public members shall not be, nor ever have been, psychologists or psychological assistants, nor members of the immediate family of a psychologist or psychological assistant; shall not have been employed by a psychologist or psychological assistant; shall not have a material interest in the providing of goods and services to psychologists or psychological assistants; nor have been engaged in an activity directly related to psychology. 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 serve 1 additional term in succession; provided, however, that where a member was initially appointed to fill a vacancy, such member may serve only 1 additional full term in succession. 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 12, 1995, 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, 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.

(g) No member of the Board, while serving on the Board, shall hold elective office in any professional association of psychologists.

(h) The provisions set forth for "employees" in Chapter 58 of Title 29 shall apply to all members of the Board, and to all agents appointed, or otherwise employed, by the Board.

(i) Any member who is absent without adequate reason for 3 consecutive meetings, or fails to attend at least half 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 not more than $50 for each meeting attended but not more than $500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(24 Del. C. 1953 § 3502; 58 Del. Laws, c. 380; 62 Del. Laws, c. 314 §§ 2, 3; 65 Del. Laws, c. 223 § 1; 67 Del. Laws, c. 366 § 14; 67 Del. Laws, c. 368 § 22; 70 Del. Laws, c. 57 § 1; 70 Del. Laws, c. 186 § 1.)

§ 3504 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 President deems necessary; or, at the request of a majority of the Board members.

(b) The Board shall elect annually a President, Vice-President and Secretary. Each officer shall serve for 1 year, and shall not succeed himself or herself for more than 2 consecutive terms.

(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 5 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.

(24 Del. C. 1953 § 3504; 58 Del. Laws, c. 380; 62 Del. Laws, c. 314 §§ 5, 6; 67 Del. Laws, c. 366 § 16; 70 Del. Laws, c. 57 § 1; 70 Del. Laws, c. 186 § 1.)

§ 3505 Records.

The Division of Professional Regulation shall keep a register of all applications for license as a psychologist or for registration of psychological assistants, 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.

(24 Del. C. 1953 § 3505; 58 Del. Laws, c. 380; 62 Del. Laws, c. 314 § 7; 70 Del. Laws, c. 57 § 1.)

§ 3506 Powers and duties.

(a) The Board of Examiners of Psychologists 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 for Professional Practice in Psychology (EPPP) to be taken by all persons applying for licensure; applicants who qualify for licensure by reciprocity shall have achieved a passing score on the EPPP;

(4) Provide for the administration of all examinations, including notice and information to applicants. The Board shall adopt the administration, grading procedures and passing score of the Association of State and Provincial Psychology Boards (ASPPB), or of 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 psychologists and for registration as psychological assistants;

(6) Evaluate the credentials of all persons applying for a license to practice psychology in Delaware and persons for whom registration as a psychological assistant is requested, in order to determine whether such persons meet the qualifications for licensing or registration set forth in this chapter;

(7) Grant licenses to, and renew licenses and registrations of, all persons who meet the qualifications for licensure and/or renewal of licenses; and register persons who meet the qualifications to act as psychological assistants under the direct supervision of a licensed psychologist;

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

(9) Evaluate certified records to determine whether an applicant for licensure or registration, who has been previously licensed, certified or registered in another jurisdiction to practice psychology, 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 psychologists and registered psychological assistants, or concerning practices of the Board or of the profession, to the Division of Professional Regulation for investigation pursuant to § 8735(h) 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, Chapter 101 of Title 29, and § 8735(h) of Title 29. Where such provisions conflict with the provisions of this chapter, this chapter shall govern. The Board shall determine whether or not a psychologist 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;

(13) Suspend or revoke a supervising psychologist's authorization to supervise a psychological assistant; and to otherwise discipline a supervising psychologist whenever a psychological assistant is in violation of this chapter or guilty of any of the acts or offenses that are grounds for disciplinary action under this chapter;

(14) Determine the number of psychological assistants that a supervising psychologist may supervise, and the requirements of their

supervision.

(b) The Board of Examiners of Psychologists shall promulgate regulations specifically identifying those crimes which are substantially related to the practice of psychology.

(70 Del. Laws, c. 57 § 1; 74 Del. Laws, c. 262 § 73.)

Subchapter II

License and Registration

§ 3507 License; registration required.

(a) No person shall engage in the practice of psychology or hold himself or herself out to the public in this State as being qualified to practice psychology; or use in connection with that person's name, or otherwise assume or use, any title or description conveying or tending to convey the impression that that person is qualified to practice psychology, unless such person has been duly licensed under this chapter.

(b) Whenever a license to practice as a psychologist in this State has expired or been suspended or revoked, it shall be unlawful for the person to practice psychology in this State.

(c) No person shall act as a psychological assistant or hold out that that person is a psychological assistant, unless such person has been duly registered by the Board under this chapter.

(24 Del. C. 1953 § 3506; 58 Del. Laws, c. 380; 62 Del. Laws, c. 314 § 8; 70 Del. Laws, c. 57 § 1; 70 Del. Laws, c. 186 § 1.)

§ 3508 Qualifications of applicant; report to Attorney General; judicial review.

(a) An applicant who is applying for licensure as a psychologist under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person has:

(1) Received a doctoral degree based on a program of studies which is psychological in content and specifically designed to train and prepare psychologists. The doctoral degree must be from an accredited college or university having a graduate program which states its purpose to be the training and preparation of psychologists. The college or university must be accredited by the United States Department of Education or by an accrediting agency which is recognized by the Council on Postsecondary Accreditation, or its successor. The doctoral degree must be based on a program of studies accredited as a professional psychology program by the American Psychological Association (APA), the Psychological Clinical Science Accreditation System (PCSAS), or an equivalent program approved by the Board. Persons holding degrees from programs outside the United States or its territories must provide evidence of training and degree equivalent to accredited programs. These applicants are responsible for providing the Board with an educational credential evaluation from an agency or institution recognized by the Board for this purpose; and

(2) Successfully completed a predoctoral internship which complies with the Board's rules and regulations; and

(3) Had, after receiving the doctoral degree, at least 1 year of supervised professional experience in psychological work of a type satisfactory to the Board; and

(4) Achieved the passing score on the written standardized Examination for Professional Practice in Psychology (EPPP) developed by the Association of State and Provincial Psychology Boards (ASPPB), or its successor; and

(5) Not engaged in any of the acts or offenses that would be grounds for disciplinary action under this chapter; and has no disciplinary proceedings or unresolved complaints pending against the applicant in any jurisdiction where the applicant has previously been or currently is licensed or certified as a psychologist.

(b) Where the Board has found to its satisfaction that an application has been intentionally fraudulent, or that false information has been intentionally supplied, 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 applicant feels that the Board has acted without justification; has imposed higher or different standards for the applicant than for other applicants or licensees; or has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

(24 Del. C. 1953 § 3507; 58 Del. Laws, c. 380; 59 Del. Laws, c. 265 § 1; 62 Del. Laws, c. 314 § 9; 65 Del. Laws, c. 223 § 2; 67 Del. Laws, c. 200 § 4; 70 Del. Laws, c. 57 § 1; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 280 § 1; 79 Del. Laws, c. 364 § 1.)

§ 3509 Qualifications of applicants for registration as a psychological assistant; number of psychological assistants; requirements of supervision.

(a) Any psychologist licensed in this State, who has practiced as a licensed psychologist for 2 years in this State or in any other jurisdiction, and who applies to the Board for the registration of a psychological assistant shall:

(1) Provide the Board with a statement which clearly shall delineate the specific functions which the psychological assistant will perform under the supervisor's direct supervision and control; and

(2) Submit evidence, verified by oath and satisfactory to the Board, that such person:

a. Has completed all requirements for a doctoral degree in psychology from an American Psychological Association (APA) accredited program, or a Psychological Clinical Science Accreditation System (PCSAS) accredited program, or an equivalent program approved by the Board. Psychological assistants registered before July 17, 2010, and who maintain their registration are

exempt from this requirement. Persons holding degrees from programs outside the United States or its territories must provide evidence of training and degree equivalent to accredited programs; and these applicants are responsible for providing the Board with an educational credential evaluation from an agency or institution recognized by the Board for this purpose; and

b. Has successfully completed a predoctoral internship which complies with the Board's rules and regulations; and

c. Will perform the specific functions, which are delineated by the supervising psychologist in the statement of intended area or areas of practice, from the office of the supervising psychologist; and

d. Will receive proper training and fulfill continuing education requirements and be supervised, directed and evaluated in accordance with a specific supervisory plan that shall include face-to-face consultation as required by the nature of the work of the psychological assistant; and

e. Has not engaged in any acts or offenses that would be grounds for disciplinary action under this chapter; and, has no disciplinary proceedings or unresolved complaints pending against the applicant in any jurisdiction where the individual has been or currently is licensed, registered or certified to practice psychology.

(b) Persons, who are presented to the Board by a supervising psychologist for registration as psychological assistants, shall provide statements under oath to the Board that they:

(1) Perform only those specific functions which have been delineated in the supervising psychologist's statement; and

(2) Not practice independently, but only under the supervision of a licensed psychologist; and

(3) Not represent themselves as licensed psychologists.

(c) The Board in its regulations shall determine the number of psychological assistants that a supervising psychologist may supervise; and the requirements of their supervision.

(70 Del. Laws, c. 57 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 414 § 1; 79 Del. Laws, c. 364 § 1; 80 Del. Laws, c. 286 § 1.)

§ 3510 Licensing or registration under special conditions; interstate practice of psychology.

(a) Persons who are currently licensed as psychologists or registered as psychological assistants in this State prior to June 12, 1995, shall be considered to have been licensed or registered under this chapter and fully qualified to act as licensed psychologists or registered psychological assistants.

(b) The Board will qualify for licensing without examination any person who applies for licensure and who is a diplomate of the American Board of Professional Psychology, subject to the provisions of this chapter.

(c) Nothing in this chapter shall be construed to prohibit the practice of psychology in this State by a person holding an earned doctoral degree in psychology from an institution of higher education, who is licensed or certified as a psychologist under the laws of another jurisdiction; provided, that the aggregate of 6 days of professional services as a psychologist, per calendar year, under the provision of this subsection is not exceeded.

(24 Del. C. 1953 § 3508; 58 Del. Laws, c. 380; 62 Del. Laws, c. 314 § 10; 70 Del. Laws, c. 57 § 1.)

§ 3511 Reciprocity.

(a) Where an applicant is already licensed or certified as a doctoral-level psychologist in another jurisdiction and has practiced continually for 2 years in that jurisdiction, the Board shall require:

(1) A certificate or other evidence that the applicant is currently licensed or certified.

(2) Evidence that the psychologist has practiced continually for 2 years.

(3) Evidence that the psychologist has achieved the passing score set by the Board on the written standardized Examination for Professional Practice of Psychology (EPPP) developed by the Association of State and Provincial Psychology Boards (ASPPB) or its successor as approved by the Board.

(4) Evidence that the candidate has received a doctoral degree from an American Psychological Association (APA) accredited program, or a Psychological Clinical Science Accreditation System (PCSAS) accredited program, or a doctoral degree based on a program of studies which is psychological in content and specifically designed to train and prepare psychologists and which complies with the Board's rules and regulations. Graduates of foreign programs will be required to have their credentials evaluated by a credential evaluation service approved by the National Association of Credential Evaluation Services to determine equivalency to the accreditation requirements of § 3508 of this title.

(b) Upon receipt of an application from an applicant who has been or who currently is licensed, certified or registered as a psychologist, or is registered as a psychological assistant, in another jurisdiction, the Board shall contact the licensing authority, or comparable agency, in such other jurisdiction or jurisdictions and request a certified statement to determine whether or not there are disciplinary proceedings or unresolved complaints pending against the applicant or whether the applicant has engaged in any of the acts or offenses that would be grounds for disciplinary action under this chapter. In the event that a disciplinary proceeding or unresolved complaint is pending, the applicant shall not be licensed until the proceeding or complaint has been resolved. Applicants for licensure under this section shall be deemed to have given consent to the release of such information and to waive all objections to the admissibility of such evidence.

(c) In lieu of the documentation required by subsections (a) and (b) of this section above, the applicant may submit a certificate of professional qualification in psychology from a credential bank approved by the Board. The Board shall identify acceptable credentialing organizations in its rules and regulations. In addition, the Board may require the applicant to submit such supplemental information as it

deems necessary to assure that the applicant meets the qualifications for licensure.

(70 Del. Laws, c. 57 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 337 § 1; 79 Del. Laws, c. 364 § 1.)

§ 3512 Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its service on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each calendar year, the Division of Professional Regulation, or any other state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate Board fees for the coming year.

(24 Del. C. 1953 § 3510; 58 Del. Laws, c. 380; 62 Del. Laws, c. 314 § 11; 65 Del. Laws, c. 380 § 5; 70 Del. Laws, c. 57 § 1; 70 Del. Laws, c. 186 § 1.)

§ 3513 Issuance and renewal of licenses; registration.

(a) The Board shall issue a license or register each applicant who meets the requirements of this chapter for licensure as a psychologist or registration as a psychological assistant and who pays the fee established under § 3512 of this title.

(b) Each license or registration shall be renewed biennially, in such manner as is determined by the Division of Professional Regulation, and upon payment of the appropriate fee and submission of a renewal form provided by the Division of Professional Regulation, and proof that the licensee or registrant 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 psychologist or registered psychological assistant may still renew such licensee's or registrant's license, notwithstanding the fact that such licensee or registrant has failed to renew on or before the renewal date.

(d) All individuals licensed under this chapter shall be required to 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, 2013, at the applicant's expense, fingerprints and other necessary information in order to obtain a criminal background check.

(e) All individuals licensed under this chapter, upon written request, may be placed in an inactive status in accordance with the Board's rules and regulations. Such person may reenter practice upon written notification to the Board of the intent to do so and completion of continuing education as required in the Board's rules and regulations. The Board may establish by regulation provisions for resuming active status.

(24 Del. C. 1953 § 3511; 58 Del. Laws, c. 380; 70 Del. Laws, c. 57 § 1; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 148 § 2; 79 Del. Laws, c. 129 § 1; 79 Del. Laws, c. 277 § 11.)

§ 3514 Grounds for refusal, revocation or suspension of licenses and registrations.

(a) A practitioner licensed or registered under this chapter shall be subject to disciplinary actions set forth in § 3516 of this title, if, after a hearing, the Board finds that the psychologist or psychological assistant:

(1) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license as a psychologist or registration as a psychological assistant; has impersonated another person holding a license or registration, or allowed another person to use the psychologist or psychological assistant license or registration, or aided or abetted a person not licensed as a psychologist or registered as a psychological assistant to represent that person as a psychologist or psychological assistant;

(2) Has been convicted of a crime that is substantially related to the practice of psychology or a crime involving the violation of a patient's trust; a copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence therefor; however, 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, may waive this paragraph (a)(2), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

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

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

e. The applicant has not been convicted of a felony sexual offense.

f. The applicant has submitted, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

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 relating to that person.

2. A report of the applicant's entire federal criminal history record pursuant to 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 the intermediary

for purposes of this section and the Board shall be the screening point for the receipt of said federal criminal history records.

An applicant may not be licensed until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be licensed by the Board unless a waiver is granted pursuant to this chapter. The State Bureau of Identification may release any subsequent criminal history to the Board.

(3) Has excessively used or abused drugs (including alcohol, narcotics or chemicals);

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

(5) Has not conducted the practitioner's professional activities in conformity with the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association (APA) (hereinafter referred to as the "Ethics Code"); and in conformity with the rules and regulations adopted by the Board to implement the Ethics Code;

(6) Has violated a lawful provision of this chapter, or any lawful regulation established thereunder;

(7) Has had a license, certification or registration as a psychologist suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record; and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every person licensed as a psychologist or person registered as a psychological assistant in this State shall be deemed to have given consent to the release of this information by the Board of Examiners of Psychologists or other comparable agencies in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses;

(8) Has failed to notify the Board that the practitioner's license, certification or registration as a psychologist or a psychological assistant in another state has been subject to discipline, or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof;

(9) While acting as a supervising psychologist, has failed to supervise and take reasonable steps to see that psychological assistants perform services responsibly, competently and ethically, in accordance with rules and regulations established by the Board. Supervising psychologists shall be subject to disciplinary action for any acts or offenses which are grounds for such action when such acts or offenses are undertaken by the psychological assistant acting under the supervising psychologist's direction or control;

(10) Has been convicted of a felony sexual offense;

(11) Failed to report child abuse or neglect as required by § 903 of Title 16, or any successor thereto; or

(12) Failed to report to the Division of Professional Regulation as required by § 3518A of this title.

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

(c) Subject to the provisions of this chapter and subchapter IV of Chapter 101 of Title 29, no license or registration shall be restricted, suspended or revoked by the Board, and no practitioner's right to practice psychology or to act as a psychological 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.

(24 Del. C. 1953 § 3513; 58 Del. Laws, c. 380; 62 Del. Laws, c. 314 § 13; 70 Del. Laws, c. 57 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 § 74; 75 Del. Laws, c. 436 § 39; 77 Del. Laws, c. 199 § 29; 78 Del. Laws, c. 44 §§ 56, 57; 78 Del. Laws, c. 148 §§ 1, 3; 79 Del. Laws, c. 364 § 1; 80 Del. Laws, c. 286 § 2.)

§ 3515 Complaints.

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

(b) When it is determined that an individual is engaging in the practice of psychology or is using the title "psychologist" and is not licensed under the laws of this State, the Board shall apply to the Office of the Attorney General to issue a cease and desist order after formally warning the unlicensed practitioner in accordance with the provisions of this chapter.

(c) Any complaints involving allegations of unprofessional conduct or incompetence shall be investigated by the Division of Professional Regulation.

(70 Del. Laws, c. 57 § 1.)

§ 3516 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that one of the conditions or violations set forth in § 3514 of this title applies to a practitioner regulated by this chapter:

(1) Issue a letter of reprimand.

(2) Censure a practitioner.

(3) Place a practitioner on probationary status, and require the practitioner to:

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

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

(4) Suspend any practitioner's license.

(5) Revoke any practitioner's license.

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

(7) The Board shall permanently revoke the license of any person who the Board determines has been convicted of a felony sexual offense.

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

(c) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(d) Where a license has been suspended due to a disability of the licensee, the Board may reinstate such license if, after a hearing, the Board is satisfied that the licensee is able to practice with reasonable skill and safety.

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

(70 Del. Laws, c. 57 § 1; 78 Del. Laws, c. 148 § 4; 79 Del. Laws, c. 213 § 2; 80 Del. Laws, c. 286 § 3.)

§ 3517 Hearing procedures.

(a) If a complaint is filed with the Board pursuant to § 8735(h) of Title 29, alleging violation of § 3514 of this title, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) All hearings shall be 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 be in writing and shall include its reasons for such decision. The Board's decision shall be mailed immediately to the practitioner.

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

(70 Del. Laws, c. 57 § 1; 70 Del. Laws, c. 186 § 1.)

§ 3518 Reinstatement of a suspended license; removal from probationary status; replacement of license and registration.

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

(b) Where a license or registration has been suspended due to the licensee's or registrant's inability to practice pursuant to this chapter, the Board may reinstate such license or registration, if, after a hearing, the Board is satisfied that the licensee or registrant is again able to perform the essential functions of a psychologist or psychological assistant, with or without reasonable accommodations; and/or there is no longer a significant risk of substantial harm to the health and safety of the individual or others.

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

(d) A new license or registration to replace any license or registration lost, destroyed or mutilated may be issued subject to the rules of the Board. A charge shall be made for such issuance.

(24 Del. C. 1953 § 3514; 58 Del. Laws, c. 380; 67 Del. Laws, c. 200 § 8; 70 Del. Laws, c. 57 § 1.)

§ 3518A Duty to report conduct that constitutes grounds for discipline or inability to practice.

(a) Every person to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or any other healthcare provider has engaged in or is engaging in conduct that would constitute grounds for disciplinary action under this chapter or the other healthcare provider's licensing statute.

(b) Every person to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or

any other healthcare provider may be unable to practice with reasonable skill and safety to the public by reason of mental illness or mental incompetence; physical illness; including deterioration through the aging process or loss of motor skill; or excessive abuse of drugs, including alcohol.

(c) Every person to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation any information that the reporting person reasonably believes indicates that a person certified and registered to practice medicine in this State is or may be guilty of unprofessional conduct or may be unable to practice medicine with reasonable skill or safety to patients by reason of mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive use or abuse of drugs, including alcohol.

(d) All reports required under subsections (a), (b) and (c) of this section must be filed within 30 days of becoming aware of such information. A person reporting or testifying in any proceeding as a result of making a report pursuant to this section is immune from claim, suit, liability, damages, or any other recourse, civil or criminal, so long as the person acted in good faith and without gross or wanton negligence; good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant.

(78 Del. Laws, c. 148 § 5.)

Subchapter III

Other Provisions

§ 3519 Exemptions.

(a) Nothing in this chapter shall be construed to prevent the teaching of psychology, the conduct of psychological research, or the provision of services or consultation to organizations or institutions; provided, that such teaching, research or service does not involve the direct practice of psychology with individuals or groups of individuals who are themselves, rather than a third party, the intended beneficiaries of such services. Persons holding an earned doctoral degree in psychology from an institution of higher education may use the title "psychologist" in conjunction with the activities permitted by this subsection.

(b) Nothing in this chapter shall be construed to prevent qualified members of other recognized professions from rendering services consistent with their professional training, the code of ethics of their respective professions and the laws of this State; provided, that they do not hold themselves out to the public by any title or description stating or implying that they are psychologists or psychological assistants or are licensed to practice psychology or registered to act as psychological assistants.

(c) Nothing in this chapter shall be construed to restrict the activities of rabbis, priests, ministers or the clergy of any synagogue, religious denomination or sect, when such activities are within the scope of the performance of their regular or specialized ministerial duties, and no separate charge is made, or when such activities are performed, whether with or without charge, for, or under auspices or sponsorship, individually, or in conjunction with others, of an established and legally recognizable church, synagogue, denomination or sect; and the person rendering service remains accountable to its established authority; provided, that they do not represent themselves to be psychologists or psychological assistants.

(d) Individuals who have been certified as school psychologists by the Department of Education shall be permitted to use the term "school psychologist" and/or "certified school psychologist." Such persons shall be restricted in their practice to employment within those settings under the purview of the Department of Education and the State Board of Education.

(e) [Repealed].

(70 Del. Laws, c. 57 § 1; 73 Del. Laws, c. 65 § 29; 77 Del. Laws, c. 414 § 2.)

§ 3520 Penalty.

A person not currently licensed as a psychologist, or registered as a psychological assistant, under this chapter, when guilty of engaging in the practice of psychology, or of acting as a psychological assistant or using in connection with the practitioner's own name, or otherwise assuming or using any title or description conveying, or tending to convey the impression that the practitioner is qualified to practice psychology, or to act as a psychological assistant, such offender shall be guilty of a misdemeanor. Upon the first offense, the practitioner shall be fined not less than $500 nor more than $1000 for each offense; and, in addition, may be imprisoned for not more than 1 year. For a second or subsequent conviction, the fine shall be not less than $1000 nor no more than $2000 for each offense. Superior Court shall have jurisdiction over all violations of this chapter.

(24 Del. C. 1953 § 3519; 58 Del. Laws, c. 380; 70 Del. Laws, c. 57 § 1; 70 Del. Laws, c. 186 § 1.)

Part

Chapter 36

GEOLOGY

Subchapter I

Board of Geologists

§ 3601 Objectives.

The primary objective of the Board of Geologists, 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 licensed practitioners.

(71 Del. Laws, c. 298 § 1.)

§ 3602 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 Geologists established in this chapter.

(2) "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 a geologist.

(3) "Geologist" shall mean a person who is qualified to practice professional geology including specialists in its various subdisciplines.

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

(5) "Practice of geology" shall mean any service or creative work, the adequate performance of which requires geologic education, training and experience in the application of the principles, theories, laws and body of knowledge encompassed in the science of geology. This may take the form of, but is not limited to, consultation, research, investigation, evaluations, mapping, sampling, planning of geologic projects and embracing such geological services or work in connection with any public or private utilities, structures, roads, building, processes, works or projects. A person shall be construed to practice geology, who by verbal claim, sign, advertisement or in any other way represents himself or herself to be a geologist, or who holds himself or herself out as able to perform or who does perform geologic services or work.

(6) "Responsible charge" shall mean the individual control and direction, by the use of initiative, skill and individual judgment, of the practice of geology.

(7) "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 geology.

Nothing contained herein shall be construed to apply to persons engaged solely in the practice of well-drilling or persons engaged in the practice of engineering as registered professional engineers.

(24 Del. C. 1953 § 3601; 58 Del. Laws, c. 477; 61 Del. Laws, c. 477 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 298 § 1; 74 Del. Laws, c. 262 § 75.)

§ 3603 Board of Geologists; appointments; composition; qualifications; term; vacancies; suspension or removal; unexcused absences; compensation.

(a) There is created a State Board of Geologists, which shall administer and enforce this chapter.

(b) The Board shall consist of 7 members, appointed by the Governor, who are residents of this State: Four shall be geologists licensed under this chapter, 1 of whom shall be a member of the Delaware Geological Survey, either the State Geologist, or the State Geologist's designee if the State Geologist declines the appointment, and 3 public members. The public members shall not be, nor ever have been, geologists, nor members of the immediate family of a geologist; shall not have been employed by a geologist or a company engaged in the practice of geology; shall not have a material interest in the providing of goods and services to geologists; nor have been engaged in an activity directly related to geology. 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.

(d) A person who has never served on the Board may be appointed for 2 consecutive terms. No person who has been twice appointed to the Board or has served on the Board for 6 years shall again be appointed until an interim period of at least 1 year has expired since the person last served. This section shall not apply to the State Geologist or the State Geologist's designee who shall be appointed by the Governor to serve at the pleasure of the Governor with no term limits.

(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, 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.

(g) No member of the Board, while serving on the Board, shall hold elective office in any professional association of geologists; 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 according to Division of Professional Regulation policy; and in addition shall receive not more than $50 for each meeting attended but not more than $500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(24 Del. C. 1953 § 3603; 58 Del. Laws, c. 477; 61 Del. Laws, c. 477 § 1; 66 Del. Laws, c. 105 § 2; 67 Del. Laws, c. 368 § 23; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 298 § 1; 77 Del. Laws, c. 404 §§ 1, 2.)

§ 3604 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 President deems necessary, or at the request of a majority of the Board members.

(b) The Board annually shall elect a President, Vice-President and Secretary. Each officer shall serve for 1 year, and shall not succeed himself or herself for more than 2 consecutive terms.

(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 at least 4 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.

(24 Del. C. 1953 § 3604; 58 Del. Laws, c. 477; 61 Del. Laws, c. 477 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 298 § 1.)

§ 3605 Records.

The Division of Professional Regulation shall keep a register of all approved applications for license as a geologist, 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.

(24 Del. C. 1953 § 3605; 58 Del. Laws, c. 477; 61 Del. Laws, c. 477 § 1; 66 Del. Laws, c. 105 § 3; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 298 § 1.)

§ 3606 Powers and duties.

(a) The Board of Geologists 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 administered by the National Association of State Boards of Geology (ASBOG) to be taken by all persons applying for licensure; applicants who qualify for licensure by reciprocity shall have achieved a passing score on all parts of the ASBOG examination or a comparable, alternative national or regional examination, if a national examination is not available;

(4) Establish minimum education, training and experience requirements for licensure as geologists;

(5) Evaluate the credentials of all persons applying for a license to practice geology in Delaware, in order to determine whether such persons meet the qualifications for licensing set forth in this chapter;

(6) Grant licenses to, and renew licenses of, all persons who meet the qualifications for licensure;

(7) Require all technical submissions to be stamped with the impression of the state-licensed geologist's seal;

(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 previously has been licensed, certified or registered

in another jurisdiction to practice geology, 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 applicant for such acts or offenses;

(10) Refer all complaints from licensees and the public concerning licensed geologists, 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 of Title 29. Where such provisions conflict with this chapter, this chapter shall govern. The Board shall determine whether or not a geologist 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 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 Geologists shall promulgate regulations specifically identifying those crimes which are substantially related to the practice of geology.

(24 Del. C. 1953 § 3606; 58 Del. Laws, c. 477; 61 Del. Laws, c. 477 § 1; 66 Del. Laws, c. 105 § 4; 71 Del. Laws, c. 298 § 1; 74 Del. Laws, c. 262 § 76.)

Subchapter II

License

§ 3607 License required.

(a) No person shall engage in the practice of geology or hold himself or herself out to the public in this State as being qualified to practice geology; or use in connection with that person's name, or otherwise assume or use, any title or description conveying or tending to convey the impression that the person is qualified to practice geology, unless such person has been duly licensed under this chapter.

(b) Whenever a license to practice as a geologist in this State has expired or been suspended or revoked, it shall be unlawful for the person to practice geology in this State.

(61 Del. Laws, c. 477 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 298 § 1.)

§ 3608 Qualifications of applicant; report to Attorney General; judicial review.

(a) An applicant who is applying for licensure as a geologist under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person:

(1) Has received a degree from an accredited college or university with a major in geology; or has completed 30 credit hours of geology or its subdisciplines, of which 24 credits are third or fourth year courses or graduate courses;

(2) Has acquired 5 years of experience in geologic work satisfactory to the Board and as defined in its rules and regulations;

(3) Has achieved the passing score on all parts of the written, standardized examination administered by the National Association of State Boards of Geology (ASBOG), or its successor;

(4) Shall not have been the recipient of any administrative penalties regarding that applicant's practice of geology, including but not limited to fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations and/or has not entered into any "consent agreements" which contain conditions placed by a Board on that applicant's professional conduct and practice, including any voluntary surrender of a license; the Board may determine, after a hearing, whether such administrative penalty is grounds to deny licensure;

(5) Shall not have any impairment related to drugs, alcohol or a finding of mental incompetence by a physician that would limit the applicant's ability to undertake the practice of geology in a manner consistent with the safety of the public;

(6) Shall not have a criminal conviction record, nor pending criminal charge relating to an offense, the circumstances of which substantially relate to the practice of geology. Applicants who have criminal conviction records or pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the record or charge is substantially related to the practice of geology. However, 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, may waive this paragraph (a)(6), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

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

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

(b) Where the Board has found to its satisfaction that an applicant has been intentionally fraudulent, or that false information has been intentionally supplied, 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 applicant feels that the Board has acted without justification; has imposed higher or different standards for that person than for other applicants or licensees; or has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

(61 Del. Laws, c. 477 § 1; 66 Del. Laws, c. 105 § 5; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 298 § 1; 74 Del. Laws, c. 262 § 77; 75 Del. Laws, c. 374 § 1; 75 Del. Laws, c. 436 § 40; 77 Del. Laws, c. 199 § 30; 78 Del. Laws, c. 44 §§ 58, 59.)

§ 3609 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 proof of current licensure in good standing in another State, the District of Columbia, or territory of the United States; and who meets the following criteria:

(1) Has received a degree from an accredited college or university with a major in geology; or has completed 30 credit hours of geology or its subdisciplines, of which 24 credits are third or fourth year courses or graduate courses;

(2) The applicant's license is in good standing as defined in § 3608(a)(4)-(6), of this title;

(3) Has achieved the passing score on all parts of the written, standardized examination administered by the National Association of State Boards of Geology (ASBOG), or its successor; unless at the time the applicant became licensed in the State, District of Columbia, or territory of the United States, from which the applicant is applying, the examination prepared under the authority of ASBOG, or subsequent examination or examinations prepared under the authority of ASBOG was/were not required by the State of Delaware; and

(4) Shall have practiced for a minimum of 2 years after licensure in the jurisdiction from which that applicant is applying for licensure and acquired 5 years experience, or its equivalent, in geologic work satisfactory to the Board as defined in its rules and regulations; provided however, that the applicant meets all other qualifications for reciprocity in this section.

(24 Del. C. 1953 § 3607; 58 Del. Laws, c. 477; 61 Del. Laws, c. 477 § 1; 66 Del. Laws, c. 105 § 6; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 298 § 1; 75 Del. Laws, c. 374 § 2; 75 Del. Laws, c. 436 § 41.)

§ 3610 Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its service on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each licensure biennium, the Division of Professional Regulation, or any other state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate Board fees for the licensure biennium.

(66 Del. Laws, c. 105 § 8; 71 Del. Laws, c. 298 § 1.)

§ 3611 Issuance and renewal of licenses.

(a) The Board shall issue a license to each applicant who meets the requirements of this chapter for licensure as a geologist and who pays the fee established under § 3610 of this title.

(b) Each license shall be renewed biennially, in such manner as is determined by the Division of Professional Regulation, and upon payment of the appropriate fee and submission of a renewal form provided by the Division of Professional Regulation, 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 geologist may still renew that licensed geologist's license, notwithstanding the fact that such licensee has failed to renew on or before the renewal date.

(d) A person licensed pursuant to this chapter, upon written request, may be placed in an inactive status. Such person may reenter practice upon written notification to the Board of the intent to do so and completion of continuing education as required in the Board's rules and regulations. The Board may establish by regulation provisions for resuming active status.

(24 Del. C. 1953 § 3609; 58 Del. Laws, c. 477; 61 Del. Laws, c. 477 § 1; 66 Del. Laws, c. 105 § 7; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 298 § 1; 79 Del. Laws, c. 129 § 2.)

§ 3612 Grounds for discipline.

(a) A practitioner licensed under this chapter shall be subject to disciplinary actions set forth in § 3614 of this title, if, after a hearing, the Board finds that the geologist:

(1) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license as a geologist; has impersonated another person holding a license, or allowed another person to use that practitioner's license, or aided or abetted a person not licensed as a geologist to represent himself or herself as a geologist;

(2) Has illegally, incompetently or negligently practiced geology;

(3) Has been convicted of a crime that is substantially related to the practice of geology;

(4) A copy of the record of conviction certified by the Clerk of the Court entering the conviction shall be conclusive evidence therefor;

(5) 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 a geologist;

(6) Has engaged in an act of consumer fraud or deception; engaged in the restraint of competition; or participated in price-fixing activities;

(7) Has violated a lawful provision of this chapter, or any lawful regulation established thereunder;

(8) Has had that practitioner's license as a geologist suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record; and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute one or more of the acts defined in this chapter. Every person licensed as a geologist in this State shall be deemed to have given consent to the release of this information by the Board of Geologists or other comparable agencies in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses;

(9) Has failed to notify the Board that the practitioner's license as a geologist in another state has been subject to discipline, or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof; or

(10) Has a physical condition such that the performance of geology is or may be injurious or prejudicial to the public.

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

(c) 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 geology 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].

(24 Del. C. 1953 § 3610; 58 Del. Laws, c. 477; 61 Del. Laws, c. 477 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 298 § 1; 74 Del. Laws, c. 262 § 79.)

§ 3613 Complaints.

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

(b) When it is determined that an individual is engaging, or has engaged, in the practice of geology, or is using the title "geologist" and is not licensed under the laws of this State, the Board shall 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.

(71 Del. Laws, c. 298 § 1.)

§ 3614 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that one of the conditions or violations set forth in § 3612 of this title applies to a practitioner regulated by this chapter:

(1) Issue a letter of reprimand;

(2) Censure a practitioner;

(3) Place a practitioner on probationary status, and require the practitioner to:

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

b. Limit all practice and professional activities to those areas prescribed by the Board;

(4) Suspend any practitioner's license;

(5) Revoke any practitioner'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 it finds that the deficiencies which required such action have been remedied.

(c) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(d) Where a license has been suspended due to a disability of the licensee, the Board may reinstate such license if, after a hearing, the

Board is satisfied that the licensee is able to practice with reasonable skill and safety.

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

(24 Del. C. 1953 § 3611; 58 Del. Laws, c. 477; 61 Del. Laws, c. 477 § 1; 66 Del. Laws, c. 105 § 8; 71 Del. Laws, c. 298 § 1; 79 Del. Laws, c. 213 § 2.)

§ 3615 Hearing procedures.

(a) If a complaint is filed with the Board pursuant to § 8735 of Title 29, alleging violation of § 3612 of this title, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) All hearings shall be 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 be in writing and shall include its reasons for such decision. The Board's decision shall be mailed immediately to the practitioner.

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

(71 Del. Laws, c. 298 § 1; 70 Del. Laws, c. 186 § 1.)

§ 3616 Reinstatement of a suspended license; removal from probationary status; replacement of license.

(a) As a condition to reinstatement of a suspended license, or removal from probationary status, the Board may reinstate such 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 probation.

(b) Where a license or registration has been suspended due to the licensee's inability to practice pursuant to this chapter, the Board may reinstate such license, if, after a hearing, the Board is satisfied that the licensee is again able to perform the essential functions of a geologist, with or without reasonable accommodations; and/or there is no longer a significant risk of substantial harm to the health and safety of the individual or others.

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

(d) A new license to replace any license lost, destroyed or mutilated may be issued subject to the rules of the Board. A charge shall be made for such issuance.

(71 Del. Laws, c. 298 § 1.)

Subchapter III

Other Provisions

§ 3617 Exemptions.

(a) Nothing in this chapter shall be construed to prevent persons engaged solely in teaching the science of geology from continuing to engage in the act of teaching the science of geology;

(b) Nothing in this chapter shall be construed to prevent the practice of geology by persons working under the direct supervision of a Delaware licensed geologist; such licensed geologist shall be responsible for the activities of unlicensed persons practicing geology in this State. The supervising licensed geologist shall inform the Board of the unlicensed practice of geology.

(71 Del. Laws, c. 298 § 1.)

§ 3618 Penalty.

A person not currently licensed as a geologist under this chapter, when guilty of engaging in the practice of geology, 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 geology, such offender shall be guilty of a misdemeanor. Upon the first offense, the 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 $1,00 0 nor more than $2,000 for each offense. Justice of the Peace Court shall have jurisdiction over all violations of this chapter.

(71 Del. Laws, c. 298 § 1; 70 Del. Laws, c. 186 § 1.)

§ 3619 Seal.

Every geologist licensed in this State shall have a seal of a design authorized by the Board by regulation. All technical submissions prepared by such geologist, or under that geologist's direct supervision, shall be stamped with the impression of that geologist's seal. No licensed geologist shall impress that geologist's seal on any technical submission unless it has been prepared under that geologist's direct supervision.

(71 Del. Laws, c. 298 § 1; 70 Del. Laws, c. 186 § 1.)

Part

Chapter 37

SPEECH/LANGUAGE PATHOLOGISTS, AUDIOLOGISTS, AND HEARING AID DISPENSERS

Subchapter I

Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers

§ 3701 Objectives.

The primary objective of the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers, 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 licensed practitioners.

(24 Del. C. 1953 § 3601; 59 Del. Laws, c. 206 § 1; 63 Del. Laws, c. 151 § 2; 65 Del. Laws, c. 224 § 1; 72 Del. Laws, c. 266 § 1.)

§ 3702 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) "Audiologist" shall mean a person who is licensed to practice audiology pursuant to this act and who offers such services to the public under any title or description of services incorporating the words "audiologist," "hearing clinician," "hearing therapist," "aural rehabilitator" or any other similar title or description of service.

(2) "Audiology aide" shall mean a person who is certified by the Council of Accreditation of Occupational Hearing Conservationists, or its equivalent, and whose supervising licensed audiologist annually shall register such person with the Board. The audiology aide shall perform services only under the direct supervision of an audiologist licensed in this State.

(3) "Board" shall mean the State Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers established in this chapter.

(4) "Division" shall mean the state Division of Professional Regulation.

(5) "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 an individual's ability to perform the work of a speech/language pathologist, audiologist or hearing aid dispenser.

(6) "Hearing aid" shall mean any personal, wearable instrument or device designed for, offered for the purpose of, or represented as, aiding persons with, or compensating for, impaired hearing.

(7) "Hearing aid dispenser" shall mean a person licensed to dispense hearing aids pursuant to this Act and who is engaged in the evaluation or measurement of the power or range of human hearing by means of an audiometer or any other means devised for the purpose of selecting, adapting and distributing or selling of hearing aids. Testing shall not include medical diagnosis or audiologic evaluation. Licensed hearing aid dispensers may provide instruction, orientation and counseling on the use and operation of a hearing aid; and they may use an otoscope or "ear light" to evaluate the feasibility and use of ear molds and ear mold impressions.

(8) "Person" shall mean a corporation, company, association or partnership, as well as an individual. Licenses shall be issued only to individuals under this chapter.

(9) "Practice of audiology" shall mean the application of principles, methods and procedures of measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation and rehabilitation related to hearing and disorders of hearing for the purpose of evaluating, identifying, preventing, ameliorating or modifying such disorders and conditions in individuals and/or groups. For the purpose of this paragraph, the terms "habilitation" and "rehabilitation" shall include, but are not limited to, hearing aid evaluation, recommendation, and fitting and selecting, adapting and distributing or selling of hearing aids.

(10) "Practice of speech/language pathology" shall mean the application of principles, methods and procedures for measurement, testing, evaluation, prediction, counseling, instruction, habilitation or rehabilitation related to the development and disorders of speech, language, voice, rate or rhythm for the purpose of evaluating, preventing, ameliorating or modifying such disorders in individuals and/or groups.

(11) "Speech/language pathologist" shall mean a person who is licensed to practice speech/language pathology pursuant to this act and who offers such services to the public under any title or description of services incorporating the words "speech/language pathologist,"

"speech pathologist," "language pathologist," "speech and/or language therapist," "speech and/or language correctionist," "speech and/or language clinician," "voice therapist," "communicologist," "aphasiologist" or any other similar title or description of service.

(12) "Speech pathology aide" shall mean a person, who meets minimum qualifications that the Board may establish, which permit such an aide to assist speech/language pathologists in their professional endeavors, but only while under the direct supervision of a licensed speech/language pathologist.

(13) "State" shall mean the State of Delaware.

(14) "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 speech/language pathology, audiology and/or the dispensing of hearing aids.

(24 Del. C. 1953 § 3603; 59 Del. Laws, c. 206 § 1; 63 Del. Laws, c. 151 § 4; 65 Del. Laws, c. 224 § 1; 72 Del. Laws, c. 266 § 1; 74 Del. Laws, c. 262 § 80; 77 Del. Laws, c. 154 § 1.)

§ 3703 Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers; appointments; composition; qualifications; term; vacancies; suspension or removal; unexcused absences; compensation.

(a) There is created a State Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers, which shall administer and enforce this chapter.

(b) The Board shall consist of 9 members, appointed by the Governor, who are residents of this State: 3 shall be speech/language pathologists licensed under this chapter; 2 shall be audiologists licensed under this chapter, 1 shall be a hearing aid dispenser licensed under this chapter, and 3 public members. Each professional member of the Board shall be a primary practitioner of that member's specialty. The public members shall not be, nor ever have been, speech/language pathologists, audiologists or hearing aid dispensers; nor members of the immediate family of a speech/language pathologist, audiologist or hearing aid dispenser; shall not have been employed by a speech/language pathologist, audiologist or hearing aid dispenser, or a company engaged in the practice of speech/language pathology, audiology or dispensing hearing aids; shall not have a material interest in the providing of goods and services to speech/language pathologists, audiologists or hearing aid dispensers; nor have been engaged in an activity directly related to speech/language pathology, audiology or dispensing hearing aids. 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 or until replaced by the Governor. Persons who are members of the Board on February 4, 2000, 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 term 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, 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.

(g) No member of the Board, while serving on the Board, shall hold elective office in any professional association of speech/language pathologists, audiologists or hearing aid dispensers; this includes a prohibition against serving as head of a professional association's Political Action Committee (PAC).

(h) The provisions set forth in 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 half 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 according to Division policy; and in addition shall receive not more than $50 for each meeting attended, but not more than $500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(24 Del. C. 1953 § 3607; 59 Del. Laws, c. 206 § 1; 63 Del. Laws, c. 151 § 8; 65 Del. Laws, c. 224 § 1; 67 Del. Laws, c. 368 § 24; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 266 § 1; 77 Del. Laws, c. 154 § 2.)

§ 3704 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 President deems necessary or at the request of a majority of the Board members.

(b) The Board annually shall elect a President and Secretary. Each officer shall serve for 1 year, and shall not succeed himself or herself

for more than 2 consecutive terms.

(c) A majority of the members shall constitute a quorum for the purpose of transacting business, and no disciplinary action shall be taken without the affirmative vote of at least 5 members.

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

(24 Del. C. 1953 § 3607; 59 Del. Laws, c. 206 § 1; 63 Del. Laws, c. 151 § 8; 65 Del. Laws, c. 224 § 1; 67 Del. Laws, c. 368 § 24; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 266 § 1.)

§ 3705 Records.

The Division shall keep a register of all approved applications for license as a speech/language pathologist, audiologist and hearing aid dispenser, 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.

(72 Del. Laws, c. 266 § 1.)

§ 3706 Powers and duties; immunity [Effective until Oct. 17, 2016]

(a) The Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers 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 national, written, standardized examinations in speech/language pathology, audiology and hearing aid dispensing, prepared by a national testing service(s), to be taken by all persons applying for licensure as speech/language pathologists, audiologists and/or hearing aid dispensers; applicants who qualify for licensure by reciprocity shall have achieved a passing score on all parts of the designated written national examination in the applicant's specialty.

(4) Evaluate the credentials of all persons applying for a license to practice speech/language pathology, audiology or to dispense hearing aids in this State or to act as audiology aides or speech pathology aides, in order to determine whether such persons meet the qualifications set forth in this chapter.

(5) Grant licenses to, and renew licenses of all persons who meet the qualifications for licensure, including those persons who apply for temporary licensure.

(6) Establish by rule and regulation continuing education standards required for license renewal.

(7) Evaluate certified records to determine whether an applicant for licensure who previously has been licensed, certified or registered in another jurisdiction to practice speech/language pathology, audiology and dispense hearing aids 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 applicant for such acts or offenses.

(8) Refer all complaints from licensees and the public concerning persons licensed in this chapter or concerning practices of the Board or of the profession, to the Division 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.

(9) Conduct hearings and issue orders in accordance with procedures established pursuant to Chapter 101 of Title 29.

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

(11) Adopt and publish a code of ethics for each professional specialty and promulgate within 60 days of adoption.

(12) Establish and publish standards for electronic equipment used for the purpose of measuring hearing, and require written proof of calibration for such equipment annually.

(b) No member shall participate in any action of the Board involving directly or indirectly any person related in any way by blood or marriage to said member.

(c) The Board shall promulgate regulations specifically identifying those crimes which are substantially related to the practice of speech/language pathology, audiology and/or the dispensing of hearing aids.

(24 Del. C. 1953 § 3608; 59 Del. Laws, c. 206 § 1; 65 Del. Laws, c. 224 § 1; 72 Del. Laws, c. 266 § 1; 74 Del. Laws, c. 262 § 81.)

§ 3706 Powers and duties; immunity [Effective Oct. 17, 2016]

(a) The Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers 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 national, written, standardized examinations in speech/language pathology, audiology and hearing aid dispensing,

prepared by a national testing service(s), to be taken by all persons applying for licensure as speech/language pathologists, audiologists and/or hearing aid dispensers; applicants who qualify for licensure by reciprocity shall have achieved a passing score on all parts of the designated written national examination in the applicant's specialty.

(4) Evaluate the credentials of all persons applying for a license to practice speech/language pathology, audiology or to dispense hearing aids in this State or to act as audiology aides or speech pathology aides, in order to determine whether such persons meet the qualifications set forth in this chapter.

(5) Grant licenses to, and renew licenses of all persons who meet the qualifications for licensure, including those persons who apply for temporary licensure.

(6) Establish by rule and regulation continuing education standards required for license renewal.

(7) Evaluate certified records to determine whether an applicant for licensure who previously has been licensed, certified or registered in another jurisdiction to practice speech/language pathology, audiology and dispense hearing aids 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 applicant for such acts or offenses.

(8) Refer all complaints from licensees and the public concerning persons licensed in this chapter or concerning practices of the Board or of the profession, to the Division 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.

(9) Conduct hearings and issue orders in accordance with procedures established pursuant to Chapter 101 of Title 29.

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

(11) Adopt and publish a code of ethics for each professional specialty and promulgate within 60 days of adoption.

(12) Establish and publish standards for electronic equipment used for the purpose of measuring hearing, and require written proof of calibration for such equipment annually.

(13) Establish requirements for licensed hearing aid dispenser and licensed audiologist to:

a. At the time of the initial examination for fitting and sale of a hearing aid, to notify the prospective purchaser or client of the operation and benefits of telecoil, also known as "t" coil, or "t" switch technology, in using a hearing aid with "hearing loop" technology; and

b. Provide written information explaining telecoil and its uses, including increased access to telephones, and communication with businesses and in the community, and noninvasive access to assistive listening systems.

(b) No member shall participate in any action of the Board involving directly or indirectly any person related in any way by blood or marriage to said member.

(c) The Board shall promulgate regulations specifically identifying those crimes which are substantially related to the practice of speech/language pathology, audiology and/or the dispensing of hearing aids.

(24 Del. C. 1953 § 3608; 59 Del. Laws, c. 206 § 1; 65 Del. Laws, c. 224 § 1; 72 Del. Laws, c. 266 § 1; 74 Del. Laws, c. 262 § 81; 80 Del. Laws, c. 315 § 1.)

Subchapter II

License

§ 3707 License required.

(a) No person shall engage in the practice of speech/language pathology, audiology or dispense hearing aids or hold himself or herself out to the public in this State as being qualified to practice the same; or use in connection with that person's name, or otherwise assume or use, any title or description conveying or tending to convey the impression that the person is qualified to practice speech/language pathology, audiology or dispense hearing aids, unless such person has been duly licensed under this chapter.

(b) Whenever a license to practice as a speech/language pathologist, audiologist hearing aid dispenser in this State has expired or been suspended or revoked, it shall be unlawful for the person to practice speech/language pathology, audiology or dispense hearing aids in this State.

(c) The Board may issue separate licenses in speech/language pathology, audiology and for hearing aid dispensers. A person may be licensed in more than 1 specialty if such person meets the requirements of each specialty for which the person has applied for licensure.

(24 Del. C. 1953 § 3603; 59 Del. Laws, c. 206 § 1; 63 Del. Laws, c. 151 § 4; 65 Del. Laws, c. 224 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 266 § 1.)

§ 3708 Qualifications of applicant; report to Attorney General; judicial review.

(a) An applicant who is applying for licensure under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person:

(1) For licensure as a speech/language pathologist, has met the national requirements for certification of clinical competence issued by the American Speech/Language and Hearing Association (ASHA). The requirements include:

a. Possession of a master's degree or its equivalent from an accredited college or university in accordance with the Board's rules and regulations.

b. A supervised clinical practicum in accordance with the Board's rules and regulations.

c. Completion of 9-months' full-time or 18-months' part-time supervised clinical fellowship year, begun after fulfilling academic and clinical practicum requirements.

d. Successful completion of a national examination in the area of applicant's specialty prepared by a national testing service and approved by the Division.

(2) For licensure as an audiologist, has met the national requirements for certification of clinical competence issued by the American Speech/Language Hearing Association, or has been issued board certification from the American Board of Audiology, or its successors. The requirements include:

a. Possession of a doctoral degree in audiology from an accredited college or university.

b. Successful completion of a national examination in the area of the applicant's specialty prepared by a national testing service approved by the Division.

c. Audiologists licensed prior to July 10, 2009, shall be exempted from the educational requirement set forth in paragraph (a)(2)a. of this section.

(3) For licensure as a hearing aid dispenser, shall submit evidence, verified by oath and satisfactory to the Board, that such person has met the current standards promulgated by the National Institute for Hearing Instrument Studies or its successor; in addition, the applicant shall:

a. Provide verification of a high school diploma or its equivalent.

b. Provide proof of successful completion of a national examination prepared by a national testing service and approved by the Division.

c. An applicant shall complete 6 months of training prior to taking the examination. The Board in its rules and regulations shall establish the frequency of direct supervision during the training period.

d. Provide notarized signature of Delaware-licensed hearing aid dispenser sponsor providing direct supervision and training of applicant.

e. Paragraphs (a)(3)a., c. and d. of this section herein shall not apply to applicants who are licensed audiologists.

(b) All applicants shall meet the following conditions:

(1) Shall not have been the recipient of any administrative penalties regarding their practice of speech/language pathology, audiology or dispensing of hearing aids, including but not limited to fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations, and/or has not entered into any "consent agreements" which contain conditions placed by a Board on that applicant's professional conduct and practice, including any voluntary surrender of a license. The Board, after a hearing, may determine whether such administrative penalty is grounds to deny licensure.

(2) Shall not have any impairment related to drugs, alcohol or a finding of mental incompetence by a physician that would limit the applicant's ability to undertake that applicant's practice in a manner consistent with the safety of the public.

(3) Shall not have a criminal conviction record, nor pending criminal charge relating to an offense the circumstances of which substantially relate to their licensed practice. Applicants who have criminal conviction records or pending criminal charges shall request appropriate authorities to provide information about the conviction or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the conviction or charge is substantially related to the applicant's area of practice. However, 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, may waive this paragraph (b)(3), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of practicing speech/language pathology, audiology or the dispensing of hearing aids in a competent and professional manner.

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

(4) Shall not have been convicted of a felony sexual offense.

(5) Shall submit, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

a. 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 relating to that person.

b. A report of the applicant's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers shall be the screening point for

the receipt of said federal criminal history records.

c. An applicant may not be licensed as a speech/language pathologist, audiologist or hearing aid dispenser until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be licensed by the Board unless a waiver is granted pursuant to paragraph (b)(3) of this section.

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

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

(e) All individuals licensed to practice speech/language pathology, audiology or hearing aid dispensing in this State shall be required to 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.

(24 Del. C. 1953 § 3605; 59 Del. Laws, c. 206 § 1; 63 Del. Laws, c. 151 § 6; 65 Del. Laws, c. 224 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 266 § 1; 74 Del. Laws, c. 262 § 82; 75 Del. Laws, c. 359 §§ 1, 2; 75 Del. Laws, c. 436 § 42; 77 Del. Laws, c. 154 §§ 3-11; 77 Del. Laws, c. 199 § 31; 78 Del. Laws, c. 44 §§ 60, 61; 79 Del. Laws, c. 277 § 12.)

§ 3709 Examination.

(a) In the event an applicant for licensure has not successfully completed the examinations required by this chapter, the Board shall administer or authorize the administration of such examinations described in § 3708(a)(1)d., (a)(2)b. and/or (a)(3)b. of this title. All examinations shall be graded by the testing service providing the examinations. The passing score for all examinations shall be established by the testing agency.

(b) The Board shall provide at least 2 dates annually for the administration of the examinations required by this section. The Board, with the approval of the Division, shall establish the time and place of the examinations.

(c) Persons who fail an examination required by this section may reapply for examination at the next possible date. Persons failing 2 examinations shall submit proof of additional education and/or training as may be required by the Board in the rules and regulations. Such persons may not be reexamined for a period of at least 1 year from the time of the second failure.

(24 Del. C. 1953 § 3614; 59 Del. Laws, c. 206 § 1; 63 Del. Laws, c. 151 § 9; 65 Del. Laws, c. 224 § 1; 72 Del. Laws, c. 266 § 1; 77 Del. Laws, c. 154 § 12.)

§ 3710 Reciprocity.

(a) 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 an applicant who:

(1) Shall present 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. A license in "good standing" is defined in § 3708(b)(1), (2) and (3) of this title; and

(2) Shall present proof of current licensure of clinical competence from the American Speech/Language and Hearing Association, or its successors, in the area in which the applicant is applying for licensure and who, if licensed in another state or states, meets the requirements of § 3708(b)(1), (2) and (3) of this title.

(3) Audiologists licensed prior to July 10, 2009, shall be exempted from the educational requirement set forth in § 3708(a)(2)a. of this title.

(b) An applicant who is licensed or registered in a state whose standards are not substantially similar to those of this State shall have practiced for a minimum of 5 years after licensure, provided, however, that the applicant meets all other qualifications for reciprocity in this section.

(c) An applicant for licensure as a speech/language pathologist who has received a degree from a foreign school, college or university, shall have received a master's degree, or its equivalent, or a doctoral degree, or its equivalent, and shall submit a certified copy of that applicant's school, college or university record for evaluation. An applicant for licensure as an audiologist, who has received a degree from a foreign school, college or university, shall have received a doctoral degree or its equivalent, and shall submit a certified copy of that applicant's school, college or university record for evaluation. Where an applicant for licensure as an audiologist has submitted an application prior to July 10, 2009, the applicant shall have received at least a master's degree, or its equivalent.

(d) In the event that a disciplinary proceeding or unresolved complaint is pending, the applicant shall not be licensed in this State until the proceeding or complaint has been resolved. Applicants for licensure in this State shall be deemed to have given consent to the release of such information and to waive all objections to the admissibility of such information as evidence at any hearing or other proceeding to which the applicant may be subject.

(e) [Repealed.]

(72 Del. Laws, c. 266 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 154 §§ 13-15.)

§ 3711 Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division in its service on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each licensure biennium, the Division, or any other state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate Board fees for the licensure biennium.

(24 Del. C. 1953 § 3612; 59 Del. Laws, c. 206 § 1; 65 Del. Laws, c. 224 § 1; 65 Del. Laws, c. 380 § 6; 72 Del. Laws, c. 266 § 1.)

§ 3712 Issuance and renewal of licenses.

(a) The Board shall issue a license to each applicant who meets the requirements of this chapter for licensure as a speech/language pathologist, audiologist and/or hearing aid dispenser and who pays the fee established under § 3711 of this title.

(b) Each license shall be renewed biennially, in such manner as is determined by the Division, and upon payment of the appropriate fee and submission of a renewal form provided by the Division, and attestation, as set forth in the Board's rules and regulations, that the licensee has met the continuing education requirements established by the Board. In addition, audiologists and hearing aid dispensers shall attest to calibration of electronic equipment used to assess hearing, as set forth in the Board's rules and regulations.

(c) The Board, in its rules and regulations, shall determine the period of time within which a licensee may still renew the licensee's license, notwithstanding the fact that such licensee has failed to renew on or before the renewal date, provided, however, that such period shall not exceed 1 year.

(d) A licensee, upon written request, may be placed in an inactive status for no more than 5 years. Such person, who desires to reactivate that person's license, shall complete a Board-approved application form, submit a renewal fee set by the Division, and submit proof of fulfillment of continuing education requirements in accordance with the rules and regulations of the Board.

(24 Del. C. 1953 § 3617; 59 Del. Laws, c. 206 § 1; 65 Del. Laws, c. 224 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 266 § 1; 77 Del. Laws, c. 154 § 16.)

§ 3713 Temporary license.

(a) The Board may issue a temporary license to practice speech/language pathology or audiology in this State to an applicant who completes the application and pays the temporary license fee; and who, in addition, has completed all academic and clinical practicum requirements in that applicant's specialty but who has not completed a clinical fellowship year (CFY). The notarized application shall be accompanied by a copy of the CFY plan signed by a sponsor holding a valid state license as a speech/language pathologist and/or audiologist. However, an audiology applicant who has obtained a doctoral degree is not required to satisfy the clinical practicum and CFY requirements and may be issued a temporary license to practice audiology in this State upon completion of the application and payment of the temporary license fee.

(b) The Board may issue a temporary license to dispense hearing aids to an applicant waiting to take the examination for licensure who completes the application and pays the application fee. The notarized application shall be accompanied by a statement from a Delaware licensed audiologist or hearing aid dispenser who affirms that the licensed audiologist or hearing aid dispenser shall provide direct supervision and training of the applicant during the period of temporary licensure.

(c) The temporary license shall expire at the end of 1 year from issuance, except that a temporary license issued to an audiologist with a doctoral degree shall expire at the end of 90 days. The temporary license may be renewed once in accordance with the Board's rules and regulations.

(65 Del. Laws, c. 224 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 266 § 1; 77 Del. Laws, c. 154 §§ 17, 18.)

§ 3714 Complaints.

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

(b) When it is determined that an individual is engaging or has engaged in the practice of speech/language pathology, audiology or dispensing of hearing aids, or is using the title "speech/language pathologist," "audiologist," or "hearing aid dispenser" and is not licensed under the laws of this State, the Board shall apply to the Office of the Attorney General to issue a cease and desist order.

(65 Del. Laws, c. 224 § 1; 65 Del. Laws, c. 355 § 1; 72 Del. Laws, c. 266 § 1.)

§ 3715 Grounds for discipline.

(a) A practitioner licensed under this chapter shall be subject to disciplinary actions set forth in § 3716 of this title if after a hearing, the Board finds that the speech/language pathologist, audiologist or hearing aid dispenser:

(1) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license as a speech/language pathologist, audiologist or hearing aid dispenser; has impersonated another person holding a license, or has allowed another person to use that practitioner's license, or has aided or abetted a person not licensed as a speech/language pathologist, audiologist or hearing aid dispenser; to represent himself or herself as a speech/language pathologist, audiologist or hearing aid dispenser.

(2) Has illegally, incompetently or negligently practiced speech/language pathology, audiology or hearing aid dispensing.

(3) Has been convicted of a crime that is substantially related to the practice of speech/language pathology, audiology and/or the dispensing of hearing aids.

(4) A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence therefor.

(5) Has excessively used or abused drugs either in the past 2 years or currently.

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

(7) Has violated a lawful provision of this chapter, or any lawful regulation established thereunder.

(8) Has had the practitioner's license as a speech/language pathologist, audiologist or hearing aid dispenser suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every person licensed as a speech/language pathologist, audiologist or hearing aid dispenser in this State shall be deemed to have given consent to the release of this information by the Board of Speech/Language Pathologists, Audiologists and Hearing Aid Dispensers or other comparable agencies in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses.

(9) Has failed to notify the Board that the practitioner's license as a speech/language pathologist, audiologist or hearing aid dispenser in another jurisdiction has been subject to discipline, or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof; or,

(10) Has a physical condition such that the performance of speech/language pathology, audiology or dispensing of hearing aids is or may be injurious or prejudicial to the public.

(b) Subject to the provisions of 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 speech/language pathology, audiology or dispense hearing aids 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].

(24 Del. C. 1953 § 3618; 59 Del. Laws, c. 206 § 1; 65 Del. Laws, c. 224 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 266 § 1; 74 Del. Laws, c. 262 § 84; 75 Del. Laws, c. 436 § 43.)

§ 3716 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that one of the conditions or violations set forth in § 3715 of this title applies to a practitioner regulated by this chapter:

(1) Issue a letter of reprimand.

(2) Censure a practitioner.

(3) Place a practitioner on probationary status, and require the practitioner to:

a. Report regularly to the Board upon the matters that are the basis of the probation.

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

(4) Suspend any practitioner's license.

(5) Revoke any practitioner's license.

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

(7) The Board shall permanently revoke the license to practice speech/language pathology, audiology or hearing aid dispensing of a person who is convicted of a felony sexual offense.

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

(c) Where a license has been suspended due to a disability of the licensee, the Board may reinstate such license if, after a hearing, the Board is satisfied that the licensee is able to practice with reasonable skill and safety.

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

(e) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(72 Del. Laws, c. 266 § 1; 79 Del. Laws, c. 213 § 2; 79 Del. Laws, c. 277 § 12.)

§ 3717 Hearing procedures.

(a) If a complaint is filed with the Board pursuant to § 8735 of Title 29 alleging violation of § 3715 of this title, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) All hearings shall be 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 be in writing and shall include its reasons for such decision. The Board's decision shall be mailed immediately to the practitioner.

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

(24 Del. C. 1953 § 3619; 59 Del. Laws, c. 206 § 1; 63 Del. Laws, c. 151 §§ 10, 11; 65 Del. Laws, c. 224 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 266 § 1.)

§ 3718 Reinstatement of a suspended license; removal from probationary status; replacement of license.

(a) As a condition to reinstatement of a suspended license, or removal from probationary status, the Board may reinstate such 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 probation.

(b) Where a license or registration has been suspended due to the licensee's inability to practice pursuant to this chapter, the Board may reinstate such license if after a hearing, the Board is satisfied that the licensee is again able to perform the essential functions of a speech pathologist, audiologist or hearing aid dispenser, with or without reasonable accommodations, and there is no longer a significant risk of substantial harm to the health and safety of the individual or others.

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

(d) A new license to replace any license lost, destroyed or mutilated may be issued subject to the rules of the Board. A charge set by the Division shall be made for such issuance.

(72 Del. Laws, c. 266 § 1.)

Subchapter III

Other Provisions

§ 3719 Exemptions.

Nothing in this chapter shall be construed to prevent:

(1) Any person from performing industrial hearing screenings under the supervision of a physician licensed in this State.

(2) Any person who is not licensed under this chapter from engaging in the practice of speech/language pathology or audiology in this State, provided that such services are practiced in cooperation with a person licensed under this chapter and shall be practiced for no more than 30 days in any calendar year. The speech/language pathologist or audiologist shall meet the qualifications and requirements for application for licensure described in this chapter, or shall hold a valid license from another state which has requirements equivalent to this chapter, or shall hold a certificate of clinical competence in speech/language pathology or audiology issued by the American Speech, Language and Audiology Association.

(3) Any person who is licensed to practice speech/language pathology, audiology or dispense hearing aids in any other state, district or foreign country who, as a practicing speech/language pathologist, audiologist or hearing aid dispenser, from entering this State to consult with a licensed speech/language pathologist, audiologist or hearing aid dispenser of this State. Such consultation shall be limited to examination, recommendation and testimony in litigation.

(4) Any student of an accredited school or college of speech/language pathology or audiology from receiving practical training under the personal supervision of a licensed speech/language pathologist or audiologist in this State.

(36 Del. Laws, c. 210 § 6; Code 1935 § 2736; 14 Del. C. 1953 § 3707; 71 Del. Laws, c. 180 § 167E; 72 Del. Laws, c. 266 § 1.)

§ 3720 Penalty.

A person not currently licensed as a speech/language pathologist, audiologist or dispenser of hearing aids under this chapter, when engaging in the practice of speech/language pathology, audiology and/or dispensing of hearing aids, 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 speech/language pathology, audiology, or dispense hearing aids, shall be guilty of a misdemeanor. Upon the first offense, the person shall be fined not less than $500 dollars nor more than $1,000 dollars 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. Justice of the Peace Court shall have jurisdiction

over all violations of this chapter.

(24 Del. C. 1953 § 3622; 59 Del. Laws, c. 206 § 1; 65 Del. Laws, c. 224 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 266 § 1.)

Part

Chapter 38

DIETITIAN/NUTRITIONIST LICENSURE ACT

§ 3801 Statement of purpose.

The intent of this chapter is to establish minimum standards of education, experience and examination for professional dietitians/nutritionists so that the public can readily identify those who meet these minimum standards. It is also the intent of this chapter to provide a licensure process for professional dietitians/nutritionists, a scope of practice for dietetic and nutrition therapy, and to establish "Licensed Dietitian/Nutritionist" as the state-recognized legal title for professional dietitians/nutritionists. It is also the intent of this chapter to assure consumers the right to choose from whom they receive information and advice. Recognition of these goals will protect the health of the public by broadening access to appropriate dietetic and nutrition therapy.

(69 Del. Laws, c. 306 § 1; 76 Del. Laws, c. 49 § 1.)

§ 3802 Definitions.

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

(1) "Board" shall mean the State Board of Dietetics/Nutrition.

(2) "Dietetic and nutrition therapy" shall mean the scope of services utilized in the delivery of preventive nutrition services and/or nutrition therapy. It involves an assessment of the individual's specific nutritional needs and the development and implementation of an intervention plan. The intervention plan can include nutrition education, counseling, administration and monitoring of specialized nutrition support and/or referrals for additional services. This application and practice of "dietetic and nutrition therapy" shall include the following Scope of Practice:

Scope of Practice:

(a) Nutrition assessment to include the establishment of nutritional care plans, including the development of nutritional related priorities, goals and objectives.

(b) Provision of nutrition counseling or education as components of preventive, and restorative health care.

(c) Evaluation and maintenance of appropriate standards of quality in food and nutrition.

(d) Evaluation and education of nutrient-drug interactions.

(e) Interpreting and recommending interventions to meet nutrient needs relative to individual health status, including but not limited to medically prescribed diets, tube feedings and specialized intravenous solutions.

(f) Development, administration, evaluation and consultation regarding nutritional care standards.

(g) Conduct independent research or collaborate in research areas including, but not limited to food and pharmaceutical companies, universities and hospitals by directing or conducting experiments to answer critical nutrition and food science questions and develop nutrition recommendations for the public.

(h) Direct supervision of registered dietetic technicians.

(i) The use of telemedicine in a manner deemed appropriate by regulation. This also may include participation in telehealth as further defined in regulation.

(3) "Dietetics/nutrition" shall mean the integration and application of principles derived from the sciences of food, nutrition, biochemistry, physiology and behavior as an integral part of health-care delivery to achieve and maintain a person's health throughout the life cycle. Its application to health care is both preventive and in response to an illness, injury or condition. The application of dietetics/nutrition to health care shall be called "dietetic and nutrition therapy." The terms "dietetics" and "nutrition" are used interchangeably in this chapter.

(4) "Dietitian" and/or "nutritionist" shall mean a person who engages in the provision of nutrition services. The terms "nutritionist" and "dietitian" are used interchangeably in this chapter.

(5) "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.

(6) "L.D.N." shall be the abbreviation for the title "licensed dietitian/nutritionist".

(7) "License" shall mean any document which indicates that a person is currently licensed by the Board of Dietetics/Nutrition.

(8) "Licensed dietitian/nutritionist" shall mean a person holding a current license under this chapter.

(9) "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.

(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 provision of dietetics/nutrition therapy services.

(12) "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.

(13) "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.

(69 Del. Laws, c. 306 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 § 85; 76 Del. Laws, c. 49 § 1; 80 Del. Laws, c. 80 § 19.)

§ 3803 Board of Dietetics/Nutrition; appointment; composition; qualifications; term of office; suspension or removal; compensation.

(a) Appointment. — The Board of Dietetics/Nutrition shall consist of 5 members who are residents of this State and shall be appointed by the Governor. Members shall be appointed so that the terms of 3 members shall expire 2 years after the initial appointment and that the terms of the remaining 2 members shall expire 3 years after the initial appointment. Thereafter, appointments shall be made for a term of 3 years. A member of the Board shall be eligible for reappointment, but a member shall not be appointed to serve more than 2 consecutive terms. Each term of office shall expire on a date specified in the appointment except that each member shall serve until a successor is duly appointed. A member who was initially appointed to fill a vacancy may successively serve for only 1 additional full term.

(b) Composition and provisions. — Three members shall be Delaware Licensed Dietitian/Nutritionists. The remaining 2 members shall be from the general public, who are not Licensed Dietitians/Nutritionists and are not in any way, connected to the provision of nutrition services either monetarily, through business activity, through educational activity or by their immediate family relations. No member of the Board, while serving on the Board, shall be a president, chair or other elected official of any state professional association for dietitians or nutritionists. The provisions set forth for "employees" in Chapter 58 of Title 29 shall apply to all members of the Board, and to all appointed by or otherwise employed by the Board.

(c) Suspension or removal. — A member of the Board shall be suspended or removed by the Governor for misfeasance, nonfeasance or malfeasance. A member subject to disciplinary proceedings shall be disqualified from the 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.

(d) Compensation. — Each member of the Board shall receive not more than $500 in any calendar year for any services as a member of the Board, including not more than $50 for each meeting which such member attends during that year.

(69 Del. Laws, c. 306 § 1; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 49 § 1.)

§ 3804 Officers; meetings; quorum.

(a) The Board shall elect annually from its membership a chair, vice-chair and secretary.

(b) The Board shall hold a regularly scheduled business meeting at least once each quarter and at such other times as the chair deems necessary or at the request of a majority of Board members.

(c) A majority of members shall constitute a quorum; and no action shall be taken without the affirmative vote of at least 3 members. Any member who fails to attend 3 consecutive meetings, or who fails to attend at least 1/2 of all regular business meetings during any calendar year, shall automatically, upon such occurrence, be deemed to have resigned from office and a replacement shall be appointed.

(d) Minutes of all meetings shall be recorded, and copies of the minutes shall be maintained by the Division of Professional Regulation. At any hearing in which 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.

(69 Del. Laws, c. 306 § 1; 76 Del. Laws, c. 49 § 1.)

§ 3805 Powers and duties.

The Board of Dietetics/Nutrition shall have the 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. Each rule or regulation shall implement or clarify a specific section of this chapter.

(2) Grant or deny a license to an applicant in accordance with the qualifications criteria set forth in this chapter.

(3) Evaluate the credentials of all persons applying for a license as a Licensed Dietitian/Nutritionist in this State, in order to determine whether such persons meet the qualifications for licensing set forth in this chapter.

(4) Designate the application form to be used by all applicants and to process all applications.

(5) Designate the examination to be taken by persons applying for licensure where such examination is required by this chapter.

(6) Refer all complaints from practitioners and from the public 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.

(7) Hold hearings and take such actions as are permitted under the provisions of the Administrative Procedures Act, Chapter 101 of Title 29, and this chapter.

(8) Where it has been determined after a disciplinary hearing, that disciplinary action should be imposed, to designate and impose appropriate disciplinary action after time for appeal has lapsed.

(9) Issue cease and desist orders, injunctive orders and/or seek the imposition of other civil penalties defined in this chapter, and/or fine persons for violating cease and desist orders and/or sue persons for recovery of fines imposed under this chapter, after a hearing conducted in accordance with this chapter and the Administrative Procedures Act [Chapter 101 of Title 29].

(10) Prepare and maintain a registry of Licensed Dietitians/Nutritionists.

(11) Promulgate regulations specifically identifying those crimes which are substantially related to the provision of dietetic and nutrition therapy.

(69 Del. Laws, c. 306 § 1; 74 Del. Laws, c. 262 § 86; 76 Del. Laws, c. 49 § 1.)

§ 3806 Qualifications of applicants.

(a) An applicant who is applying for licensure under this chapter shall have the following qualifications:

(1) A minimum of a baccalaureate degree from a United States (U.S.) regionally accredited college or university. Applicants who have obtained their education outside the U.S. and its territories must have their academic degree or degrees validated as equivalent to the baccalaureate or master's degree conferred by a regionally accredited college or university in the U.S.; and

(2) A major course of study in human nutrition, nutrition education, food and nutrition, dietetics, or food systems management; and

(3) Submitted proof to the Board of the completion of a supervised practice in dietetics/nutrition which consists of a documented supervised practice experience component in dietetics practice, of not less than 900 hours under the supervision of a registered dietitian, a state's licensed healthcare practitioner or an individual with a doctoral degree conferred by a U.S. regionally accredited college or university with a major course study in human nutrition, nutrition education, food and nutrition, dietetics, or food systems management. Supervised practice experience must be completed in the U.S. or its territories. Supervisors who obtained their doctoral degree outside the U.S. and its territories must have their degree validated as equivalent to the doctoral degree conferred by a U.S. regionally accredited college or university; and

(4) Appear at a time and place designated by the Board and submit to examination as to the person's qualification for registration as a L.D.N.

(b) Persons who provide evidence of current registration as a registered dietitian awarded by the Commission on Dietetic Registration, credentialing agency of the American Dietetic Association shall be considered to have met the qualifications for licensure under this chapter in lieu of subsection (a) of this section.

(c) The Board may refuse or reject an applicant if, after hearing, the Board finds that the applicant meets any of the following conditions or actions:

(1) Those specified in § 3811(a)(1)-(5) of this title.

(2) Has been convicted of a crime that is substantially related to the provision of dietetic and nutrition therapy. However, 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, may waive this paragraph (c)(2), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of performing dietetic and nutrition services in a competent and professional manner.

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

(3) Has been the recipient of any administrative penalties from any other jurisdiction or jurisdictions regarding the applicant's practice of dietetic and nutrition therapy, including but not limited to fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations, and/or has entered into any "consent agreements" which contain conditions placed by a Board on the applicant's professional conduct and practice, including any voluntary surrender of a license in lieu of discipline. The Board may determine, after a hearing, whether such administrative penalty is grounds to deny licensure.

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

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

(f) The Board may waive the requirements of this section if the applicant presents with satisfactory evidence of the following in their application for licensure to practice dietetics and provided that the application is filed not later than June 21, 2010: Successful completion of a baccalaureate or higher degree in nutrition from an institution of higher education that is approved by a regional accreditation agency

that is recognized by the Council on Postsecondary Accreditation and Documentation and at least 10 years or greater work experience in the field of nutrition. This individual would be subject to maintain continuing education as outlined in this chapter.

(69 Del. Laws, c. 306 § 1; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 49 § 1; 76 Del. Laws, c. 323 §§ 1, 2; 77 Del. Laws, c. 199 § 32; 78 Del. Laws, c. 44 §§ 62, 63.)

§ 3807 Reciprocity.

Reciprocity will be provided for registered, certified or licensed dietitians or registered, certified or licensed nutritionists from other states provided that the standards for registration, certification and/or licensure in that state are reasonably equivalent to those set forth in § 3806 of this title. Reciprocity applicants must follow the rules and regulations for application established under § 3809 of this title.

(69 Del. Laws, c. 306 § 1; 76 Del. Laws, c. 49 § 1.)

§ 3808 Continuing education.

In order to maintain eligibility for licensure, renewal applicants must submit proof of continuing education. Thirty hours of continuing education are required during the 2-year licensure period. Continuing education hours must meet the requirements of the American Dietetic Association to be valid.

(69 Del. Laws, c. 306 § 1; 76 Del. Laws, c. 49 § 1.)

§ 3809 Issuance and renewal of licenses; fees.

(a) The amount charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board and the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each calendar year, the Division of Professional Regulation, or any other state agency acting on its behalf, shall compute for each separate service or activity the appropriate Board fees for the coming year.

(b) The Board shall issue a license to each applicant who meets the requirements of this chapter for licensure as a dietitian/nutritionist and who pays the established fees.

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

(d) The Board, in its rules and regulation, shall determine the period of time within which a licensee may still renew the licensee's license and determine late fees associated with the license renewal, notwithstanding the fact that such licensee has failed to renew on or before the renewal date, provided, however that such period shall not exceed 1 year.

(e) A licensee, upon written request, may be placed in an inactive status for no more than 5 years. Such person, who desires to reactivate that person's license, shall complete a Board-approved application form, submit a renewal fee, and proof of fulfillment of continuing education requirements in accordance with the rules and regulation of the Board.

(69 Del. Laws, c. 306 § 1; 76 Del. Laws, c. 49 § 1.)

§ 3810 Licensure required.

No person shall represent oneself or engage in the practice of dietetics and nutrition therapy as a Licensed Dietitian/Nutritionist in this State or use the title "Licensed Dietitian," "Licensed Nutritionist," "Nutritionist," "Dietitian," use the letters "L.D.N.", or any combination of above terms and/or abbreviations unless such a person is licensed under this chapter. This chapter does not prohibit or restrict:

(1) Any person licensed in this State under any other act from engaging in the practice for which that person is licensed.

(2) The practice of dietetic and nutrition therapy by a person who is employed by the United States or state government or any of its bureaus, divisions, or agencies while in the discharge of the employee's official duties.

(3) The supervised practice of dietetic and nutrition therapy of person pursuing a course of study leading to a degree in dietetics, nutrition or an equivalent major, as authorized by the Board, from a regionally accredited school or program, if the activities and services constitute a part of a supervised course of study and if the person is designated by a title that clearly indicates the person's status as a student. This period is not to exceed 2 years unless written approval is provided by the Board. The individual will be supervised by an individual licensed under this chapter.

(4) An herbalist, retailer or other person who does not hold himself or herself out to be a dietitian or nutritionist by using 1 or more of the titles restricted by this chapter, who makes recommendations regarding lifestyle, or who markets, distributes, sells, or who recommends, advises, or furnishes nonfraudulent information about, herbs, vitamins, minerals, amino acids, carbohydrates, sugars, enzymes, food concentrates, foods, other food supplements, or dietary supplements. For purposes of this paragraph, "fraud" shall be defined as an intentional misrepresentation for financial gain. Legitimate disagreement about the role of the above-listed nutrients and foods as they apply to human nutrition shall not, in and of itself, constitute fraud.

(5) The practice of the tenets of any religion, sect or denomination whatsoever, provided that a member of such religion, sect or denomination shall not designate himself or herself by any other term or title which implies that such member is engaged in the practice of dietetic and nutrition therapy.

(6) A person presenting a general program of instruction for weight control need not be a Licensed Dietitian/Nutritionist provided the general program is approved in writing by:

a. A dietitian registered by the Commission of Dietetic Registration of the American Dietetic Association; or

b. A licensed physician.

(7) The practice of dietetic and nutrition therapy by a person who is eligible to take the registration examination for dietitians as administered by the Commission of Dietetic Registration, the credentialing agency of the American Dietetic Association. This individual is excluded under this chapter for a period of 1 year upon completion of qualifying experience as set forth by the American Dietetic Association.

(69 Del. Laws, c. 306 § 1; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 49 § 1.)

§ 3811 Grounds for discipline/sanctions/penalties of unlicensed practice.

(a) The following conditions and actions of an applicant or L.D.N. may result in disciplinary action as set forth in subsection (b) of this section if, after a hearing, the Board finds that an applicant or L.D.N.:

(1) Has employed or knowingly cooperated in fraud or material deception in order to be licensed; or

(2) Has engaged in illegal, incompetent or negligent conduct in the provision of dietetic and nutrition therapy; or

(3) Has as a dietitian/nutritionist or otherwise, in the practice of the profession, knowingly engaged in an act of consumer fraud or deception, or engaged in the restraint of competition, or participated in price-fixing activities; or

(4) Has violated the Code of Ethics as established by the American Dietetic Association; or

(5) Has violated a lawful provision of this chapter or any lawful rule or regulation established hereunder; or

(6) Has been convicted of a crime that is substantially related to the provision of dietetic and nutrition therapy.

(b) Persons regulated under this chapter who have been determined to be in violation of this chapter shall be subject to the following disciplinary actions:

(1) Issuance of a letter of reprimand.

(2) Censorship.

(3) Placement on probationary status.

(4) Denial of license.

(5) Suspension of license.

(6) Revocation of license.

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

(d) Penalties of unlicensed practice. —

(1) Where the Board has determined, upon notice and hearing pursuant to Chapter 101 of Title 29 that a person is engaged in the practice of dietetics and nutrition therapy and regulated by this chapter without having lawfully obtained a license or that a person previously licensed under this chapter is engaged in the practice of dietetic and nutrition therapy as regulated by this chapter notwithstanding that the person's license has been suspended or revoked, the Board may issue a cease and desist order. In addition to the power to issue a cease and desist order, the Board may seek an injunctive order prohibiting such unlawful practice and/or seek the imposition of other civil penalties defined by this chapter.

(2) Upon notice and hearing pursuant to Chapter 101 of Title 29, the Board may fine any person who violates such cease and desist order not less than $100 or more than $1000. Each day a violation continues may be deemed a separate offense in the Board's discretion.

(3) Any person who violates any provisions of this chapter or any rules and regulations promulgated hereunder shall be liable for a civil penalty of not more than $2,500 for the first offense; and not more than $5,000 for the second and each subsequent offense, which penalty may be sued for, and recovered by the Board. Nothing in this section shall be construed to prevent prosecution under, or be inconsistent with, Chapter 5 of Title 11.

(e) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(69 Del. Laws, c. 306 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 § 87; 75 Del. Laws, c. 436 § 44; 76 Del. Laws, c. 49 § 1; 79 Del. Laws, c. 213 § 2.)

§ 3812 Administrative procedures.

All procedures under this chapter shall be governed by the Delaware Administrative Procedures Act, Chapter 101 of Title 29.
(69 Del. Laws, c. 306 § 1; 76 Del. Laws, c. 49 § 1.)

Part

Chapter 39

BOARD OF CLINICAL SOCIAL WORK EXAMINERS

§ 3901 Objectives of the Board.

The primary objective of the Board of Clinical Social Work Examiners, to which all other objectives and purposes are secondary, is to protect the general public (specifically those persons who are direct recipients of services regulated by this chapter) through the effective control and regulation of the practice of clinical social work; the licensure, control and regulation of persons who practice clinical social work within Delaware, 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 competency; shall monitor complaints brought against practitioners regulated by the Board; shall adjudicate at formal complaint hearings; shall promulgate rules and regulations; and shall impose sanctions where necessary against practitioners.

(63 Del. Laws, c. 462 § 2; 70 Del. Laws, c. 143 § 1; 77 Del. Laws, c. 224 § 1.)

§ 3902 Definitions.

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

(1) "Board" shall mean the Board of Clinical Social Work Examiners.

(2) "Clinical social work" shall mean the application of social work theory and methods, which may include the person-in-environment perspective, to the assessment, diagnosis, prevention and treatment of biopsychosocial dysfunction, disability and impairment, including mental and emotional disorders, developmental disabilities and substance abuse. The application of social work method and theory includes, but is not restricted to, assessment (excluding administration of the psychological tests which are reserved exclusively for use by licensed psychologists pursuant to Chapter 35 of this title), diagnosis, treatment planning and psychotherapy with individuals, couples, families and groups, case management, advocacy, crisis intervention and supervision of and consultation about clinical social work practice. Such application and 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.

(3) "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.

(4) "Independent practice" means the practice of clinical social work services by a clinical social work practitioner who assumes responsibility for the nature and quality of the services provided to the client in exchange for direct payment or third-party payment.

(5) "Licensed clinical social worker" shall mean any individual duly licensed under this chapter.

(6) "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.

(7) "Practitioner," as used in this chapter, shall mean any individual engaged in the practice of clinical social work.

(8) "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.

(9) "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 clinical social work.

(10) "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.

(11) "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.

(63 Del. Laws, c. 462 § 2; 70 Del. Laws, c. 143 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 106 §§ 1, 2; 74 Del. Laws, c. 262 § 88; 77 Del. Laws, c. 224 §§ 2, 3; 80 Del. Laws, c. 80 § 20.)

§ 3903 License required.

(a) No person shall engage in the independent practice of clinical social work or hold himself or herself out to the public in this State as being qualified to practice the same; or use in connection with that person's name, or otherwise assume or use, any title or description conveying or tending to convey the impression that the person is qualified to practice clinical social work, unless such person has been duly

licensed under this chapter. A person who provides the Board with proof, to the Board's satisfaction, no later than February 1, 2011, that such person has practiced clinical social work for at least 20 years and is currently practicing clinical social work, shall be exempted from this provision, except that such person shall be required to show successful completion of the Association of Social Work Boards (ASWB) clinical examination.

(b) Whenever a license to practice clinical social work in this State has expired or has been suspended or revoked, it shall be unlawful for the person to practice clinical social work in this State.

(63 Del. Laws, c. 462 § 2; 70 Del. Laws, c. 143 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 106 § 3; 77 Del. Laws, c. 224 § 4.)

§ 3904 Board of Clinical Social Work Examiners — Appointment; composition; qualifications; term of office; suspension or removal; compensation.

(a) The Board of Clinical Social Work Examiners shall consist of 7 members appointed by the Governor: Four professional members, who shall be licensed clinical social workers, and 3 public members. To serve on the Board, a public member shall not be, nor ever have been, a clinical social worker, nor a member of the immediate family of a clinical social worker; shall not have been employed by a social work agency; shall not have had a material financial interest in the providing of goods and services to clinical social workers; nor have been engaged in an activity directly related to clinical social work. Such public members shall be accessible to inquiries, comments and suggestions from the general public.

(b) Each member shall serve for a period 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, except that each member shall serve until a successor is duly appointed.

(c) A person who has never served on the Board may be appointed to the Board 2 consecutive times; 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 term has expired since such person last served.

(d) A member of the Board shall be suspended or removed by the Governor for misfeasance, nonfeasance, malfeasance, or neglect of duty. A member subject to disciplinary proceedings 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.

(e) No member of the Board while serving on the Board shall be a president, chairperson or other elected official of a professional association for social workers.

(f) The provisions set forth for employees in Chapter 58 of Title 29, shall apply to all members of the Board, and to all agents appointed or otherwise employed by the Board.

(g) Board members shall be reimbursed for all necessary expenses involved in each meeting, including travel, according to the uniform policy for reimbursement of expenses established by the Division of Professional Regulation; and, in addition, shall receive not more than $50 for each meeting attended, but not more than $500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(63 Del. Laws, c. 462 § 2; 65 Del. Laws, c. 282 § 1; 67 Del. Laws, c. 368 § 25; 70 Del. Laws, c. 143 § 1; 70 Del. Laws, c. 186 § 1.)

§ 3905 Board of Clinical Social Work Examiners — Officers; meetings; quorum.

(a) In the same month of each year the members shall elect, from among their number, a President, a Vice-President and Secretary. Each officer shall serve for 1 year, and may serve no more than 2 consecutive years in the same office.

(b) The Board shall hold regularly scheduled business meetings at least once in each quarter of a calendar year, and at such other times as the President deems necessary, or at the request of a majority of the Board members.

(c) A majority of members shall constitute a quorum; and no action shall be taken without the affirmative vote of at least 4 members. Any member who fails to attend 3 consecutive meetings, or who fails to attend at least 1/2 of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed.

(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.

(63 Del. Laws, c. 462 § 2; 64 Del. Laws, c. 117 § 3; 65 Del. Laws, c. 282 §§ 2, 3; 65 Del. Laws, c. 355 § 1; 70 Del. Laws, c. 143 § 1.)

§ 3906 Board of Clinical Social Work Examiners — Powers and duties.

(a) The Board shall have the 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 of this State [Chapter 101 of Title 29]. 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 a written national examination, prepared by either the national professional association or by a recognized legitimate national testing service and approved by the Division of Professional Regulation. The examination shall be prepared for testing on a

national basis, and not specifically prepared at the request of the Board for its individual use. The national examination shall be taken by persons applying for licensure, except applicants who qualify for licensure by reciprocity;

(4) Provide for the administration of all examinations, including notice and information to applicants;

(5) Evaluate certified records to determine whether an applicant for licensure, who has been previously licensed, certified or registered in another jurisdiction to practice clinical social work, 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;

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

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

(8) Refer all complaints from licensees and the public concerning practitioners, or concerning practices of the Board or of the profession, to the Division of Professional Regulation for investigation pursuant to § 8735(h) 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. Such member shall recuse himself or herself from the deliberations on the complaint;

(9) Determine whether or not a practitioner shall be the subject of a disciplinary hearing; and, if so, to conduct such hearing in accordance with this chapter and the Administrative Procedures Act [Chapter 101 of Title 29];

(10) Conduct hearings and issue orders in accordance with procedures established pursuant to this chapter, Chapter 101 of Title 29, and § 8735 of Title 29. Where such provisions conflict with the provisions of this chapter, this chapter shall govern;

(11) 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;

(12) Bring proceedings in the courts for the enforcement of this chapter.

(b) The Board of Clinical Social Work Examiners shall promulgate regulations specifically identifying those crimes, which are substantially related to clinical social work.

(63 Del. Laws, c. 462 § 2; 70 Del. Laws, c. 143 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 § 89.)

§ 3907 Qualifications of applicants; report to Attorney General; judicial review.

(a) An applicant who is applying for examination and licensure under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person:

(1) Has received a doctoral or master's degree in clinical social work from a college or university accredited by the Council on Social Work Education. In addition, the applicant shall submit proof satisfactory to the Board that, subsequent to the receipt of a master's degree from an accredited school of social work, the applicant has acquired 2 years of clinical social work experience acceptable to the Board. The clinical social work experience shall consist of not less than 3,200 hours, at least 1,600 hours of which shall have been under professional supervision acceptable to the Board. Acceptable supervision shall mean supervision by a licensed clinical social worker. When such supervision is not available, the applicant may be supervised by a master's level degree social worker, a licensed psychologist, or a licensed psychiatrist. Persons holding degrees from programs outside the United States or its territories must provide evidence of training and degree equivalent to accredited programs. These applicants are responsible for providing the Board with an educational credential evaluation from an agency or institution recognized by the Board for this purpose;

(2) Has not engaged in any of the acts or offenses that would be grounds for disciplinary action under this chapter; has no disciplinary proceedings or unresolved complaints pending against that person in any jurisdiction where the applicant previously has been, or currently is, licensed to practice clinical social work. Applicants who have been or who currently are licensed to practice clinical social work in another jurisdiction must provide the Board with a certified statement to this effect from the Board, or from a comparable agency of each jurisdiction in which the applicant has ever been licensed to practice clinical social work. Applicants for licensure in this State shall be deemed to have given consent to the release of such information and to waive all objections to the admissibility of such evidence;

(3) Has not been convicted of a felony sexual offense;

(4) Has submitted, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

a. 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 relating to that person.

b. A report of the applicant's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Board of Clinical Social Worker Examiners shall be the screening point for the receipt of said federal criminal history records.

An applicant may not be licensed as a clinical social worker until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be certified by the Board unless a waiver is granted pursuant to this chapter. The State Bureau of Identification may release any subsequent criminal history to the Board;

(5) Shall not have any impairment related to drugs or alcohol or a finding of mental incompetence by a physician that would limit the applicant's ability to undertake the practice of clinical social work in a manner consistent with the safety of the public; and

(6) Shall provide such information as may be required on an application form furnished by the Board. No application form shall require a picture of the applicant; require information relating to citizenship, place of birth, length of state residency; nor require personal

references.

(b) Where the Board has found, to its satisfaction, that an application is fraudulent, or that false information has been intentionally supplied, 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 applicant feels that the Board has acted without justification; has imposed higher or different standards for the applicant than for other applicants or licensees; or has in some other manner contributed to or caused the failure of such application, the applicant may, within 30 days of such denial, appeal the Board's decision to the Superior Court.

(d) All individuals licensed as a clinical social worker in this State shall be required to 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, 2013, at the applicant's expense, fingerprints and other necessary information in order to obtain a criminal background check.

(63 Del. Laws, c. 462 § 2; 65 Del. Laws, c. 282 § 4; 70 Del. Laws, c. 143 § 1; 77 Del. Laws, c. 224 § 5; 78 Del. Laws, c. 26 §§ 1, 2; 79 Del. Laws, c. 277 § 13.)

§ 3908 Examination.

(a) The Board shall administer, in the same month of each year, or at such times as are determined by the American Association of State Social Work Boards (AASSWB), or its successor, a national clinical examination prepared by the American Association of State Social Work Boards, or its successor. Such national written examination shall be obtained from and graded by the American Association of State Social Work Boards, or its successor. There is no limit on the number of times that an applicant may sit for the national examination.

(b) In the event the applicant has already taken and passed the national clinical examination prepared by the American Association of State Social Work Boards, or its successor, the certificate or other evidence of successful completion shall be accepted, and no further state examination shall be necessary.

(63 Del. Laws, c. 462 § 2; 65 Del. Laws, c. 282 §§ 5, 7; 70 Del. Laws, c. 143 § 1.)

§ 3909 Reciprocity.

An applicant for licensure who is licensed as a clinical social worker in another state shall meet all of the qualifications for licensure under §§ 3907 and 3908 of this title. The applicant shall contact the American Association of State Social Work Boards, or its successor, and obtain and provide to the Board a certified statement as to whether there are any outstanding or ongoing disciplinary actions and/or ethical violations against the applicant or whether the applicant has engaged in any of the acts or offenses that would be grounds for disciplinary action under this chapter. In the event that a disciplinary proceeding or unresolved complaint is pending, the applicant shall not be licensed in this State until the proceeding or complaint has been resolved. Applicants for licensure as licensed clinical social workers in this State shall be deemed to have given consent to the release of such information and to waive all objections to the admissibility of such information as evidence at any hearing or other proceeding to which the applicant may be subject. Each application for licensure shall be accompanied by payment of the application fee.

(63 Del. Laws, c. 462 § 2; 70 Del. Laws, c. 143 § 1; 71 Del. Laws, c. 106 § 4.)

§ 3910 Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board. There shall be a separate fee charged for each service or activity; but, no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each calendar year the Division of Professional Regulation, or any other state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate Board fees for the coming year.

(63 Del. Laws, c. 462 § 2; 65 Del. Laws, c. 355 § 1; 70 Del. Laws, c. 143 § 1.)

§ 3911 Issuance of license; renewal; inactive status; reinstatement.

(a) The Board shall issue a license to each applicant who meets the requirements of this chapter for licensure as a clinical social worker and who pays the fee established under § 3910 of this title.

(b) Each license shall be renewed biennially, in such a manner as is determined by the Division of Professional Regulation, and upon payment of the appropriate fee and submission of a renewal form provided by the Division of Professional Regulation, and proof that the licensee has met the continuing education requirements established by the Board. The license will expire on January 1 of the renewal year. A late fee shall be set by the Division of Professional Regulation. If a practitioner fails to renew the license in 1 year from the renewal date, the practitioner must re-apply for licensure.

(c) Any licensee, upon written request, may be placed in an inactive status for up to 1 year. The Board may extend the inactive status for additional 1 year periods upon written request of the licensee. The renewal fee of a licensee on inactive status will be prorated in accordance with the amount of time a person is on inactive status. The licensee may re-enter practice after written notification to the Board of the licensee's intent to do so and after satisfying all the continuing education requirements and paying the appropriate renewal fee.

(d) A former licensee, whose license has been revoked, and who subsequently is permitted to apply for reinstatement, shall apply for a new license, and shall successfully complete the national clinical examination and shall pay all appropriate fees.

(63 Del. Laws, c. 462 § 2; 65 Del. Laws, c. 355 § 1; 70 Del. Laws, c. 143 § 1.)

§ 3912 Continuing education.

The Board shall require licensees to complete at least 45 continuing education hours for each biennial licensing period. Continuing education may consist of, but not be limited to, additional professional development in the field of clinical social work, including attendance at workshops, seminars, lectures and preparation of a first-time clinical course.

If a licensee shall be unable to complete the required continuing education hours during any biennial licensing period, the Board may extend, for good cause shown by the licensee, the time to complete the required number of hours up to 120 days after the close of the biennial licensing period. The Board shall set forth by regulation the procedures that shall be applicable to such extensions. Such regulations may provide that each application for an extension be accompanied by an appropriate administrative fee as determined by the Division of Professional Regulation.

(63 Del. Laws, c. 462 § 2; 65 Del. Laws, c. 282 § 6; 70 Del. Laws, c. 143 § 1; 71 Del. Laws, c. 106 § 5.)

§ 3913 Privileged communications.

No licensed clinical social worker may disclose any information acquired from persons consulting the social worker in a professional capacity except:

(1) With the written consent of such person; or in the case of death or disability, the written consent of such person's personal representative;

(2) That a licensed clinical social worker shall not be required to treat as confidential a communication that reveals the planning of any violent crime or act;

(3) That any licensed clinical social worker who knows or reasonably suspects child abuse or neglect shall make a report to the Division of Child Protective Services of the Department of Services for Children, Youth and Their Families according to § 904 of Title 16;

(4) When the person waives the privilege by bringing charges against the licensed clinical social worker.

(63 Del. Laws, c. 462 § 2; 70 Del. Laws, c. 143 § 1; 70 Del. Laws, c. 186 § 1.)

§ 3914 Complaints.

A practitioner or member of the public desiring to file a complaint against a practitioner or licensee regulated by the Board shall file a written complaint with the Division of Professional Regulation. All complaints shall be received and investigated by the Division of Professional Regulation in accordance with the procedures as specified in § 8735(h) of Title 29. The Division shall be responsible for issuing a final written report at the conclusion of the investigation.

(63 Del. Laws, c. 462 § 2; 65 Del. Laws, c. 355 § 1; 70 Del. Laws, c. 143 § 1.)

§ 3915 Grounds for discipline; procedure.

(a) Practitioners regulated under this chapter shall be subject to those disciplinary actions set forth in § 3916 of this title if, after a hearing, the Board finds that the practitioner has:

(1) Employed or knowingly cooperated in fraud or material deception in order to be licensed as a clinical social worker; has impersonated another person holding a license, or allowed another person to use the practitioner's license, or aided or abetted a person not licensed as a clinical social worker to represent himself or herself as a clinical social worker;

(2) Illegally, incompetently or negligently practiced clinical social work;

(3) Excessively used or abused drugs either in the past 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 a clinical social worker;

(4) Been convicted of a crime that is substantially related to clinical social work or any offense which would limit the ability of the practitioner to carry out the practitioner's professional duties with due regard for the health and safety of clients; however, 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, may waive this paragraph (a)(4), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of practicing clinical social work in a competent and professional manner.

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

e. The applicant has not been convicted of a felony sexual offense;

(5) Violated a lawful provision of this chapter, or any lawful regulation established thereunder;

(6) Had the practitioner's license, certification or registration as a clinical social worker suspended or revoked, or other disciplinary

action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record; and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every person licensed as a clinical social worker in this State shall be deemed to have given consent to the release of this information by the Board of Clinical Social Work Examiners or other comparable agencies in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses;

(7) Failed to notify the Board that the practitioner's license as a clinical social worker in another state has been subject to discipline, or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof;

(8) Been convicted of a felony sexual offense;

(9) Failed to report child abuse or neglect as required by § 903 of Title 16, or any successor thereto;

(10) Failed to report to the Division of Professional Regulation as required by § 3919 of this title.

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

(c) Subject to the provisions of 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 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.

(63 Del. Laws, c. 462 § 2; 70 Del. Laws, c. 143 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 § 90; 75 Del. Laws, c. 436 § 45; 77 Del. Laws, c. 199 § 33; 78 Del. Laws, c. 26 §§ 3-6; 78 Del. Laws, c. 44 §§ 64, 65.)

§ 3916 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that any of the conditions or violations set forth in § 3915 of this title applies to a practitioner regulated by this chapter:

(1) Issue a letter of reprimand;

(2) Censure a practitioner;

(3) Place a practitioner on probationary status, and require the practitioner to:

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

b. Limit all practice and professional activities to those areas prescribed by the Board; and/or

c. Continue or renew the practitioner's professional education until the required degree of skill has been attained in those areas which are the basis of the probation;

(4) Suspend any practitioner's license;

(5) Revoke a practitioner's license.

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

(c) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(d) Where a license has been suspended due to a disability of the licensee, the Board, at a Board meeting, may reinstate such license if the Board is satisfied that the licensee is able to practice with reasonable skill and safety.

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

(f) The Board shall permanently revoke the license of any person who the Board determines has violated § 3915(a)(8) of this title.

(63 Del. Laws, c. 462 § 2; 70 Del. Laws, c. 143 § 1; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 26 § 7; 79 Del. Laws, c. 213 § 2.)

§ 3917 Hearing procedures.

(a) If a complaint is filed with the Board pursuant to § 8735(h) of Title 29, alleging violation of § 3915 of this title, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) All hearings shall be 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 be in writing and shall include its reasons for such decision. The Board's decision shall be mailed immediately to the practitioner.

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

(63 Del. Laws, c. 462 § 2; 70 Del. Laws, c. 143 § 1; 70 Del. Laws, c. 186 § 1.)

§ 3918 Penalties.

(a) Where the Board has reason to believe that a person is holding himself or herself out to be a clinical social worker within this State without having lawfully obtained a license or that a person previously licensed under this chapter is holding himself or herself out to be a clinical social worker, notwithstanding that the person's license has been suspended or revoked, the Board shall submit a written complaint to the Division of Professional Regulation for investigation. If the investigation confirms such unlawful conduct, the Board shall formally warn such person. If the offense continues, the Board shall make a formal complaint to the Attorney General and may issue a cease and desist order. The complaint and/or order shall include all evidence known to or in possession of the Board.

(b) Where the Board has placed a practitioner on probationary status under certain restrictions or conditions, and the Board has determined that such restrictions or conditions are being or have been violated by the practitioner, the Board, after a hearing on the matter, may suspend or revoke the practitioner's license.

(c) Where a person not currently licensed as a clinical social worker under this chapter is convicted of violating this chapter, such offender, upon the first offense, shall be fined not less than $500 nor more than $1,000 for each offense, and the offender shall pay all costs. Each day a violation continues shall constitute a separate offense. The Court shall order all client fees received for unlawful service to be refunded.

(1) Justices of the peace in the county in which the offense is alleged to have occurred shall have jurisdiction over any violation of this chapter.

(2) Any person convicted of any such offense before a justice of the peace or in any court of competent jurisdiction, other than the Superior Court, may appeal to the Superior Court in the county in which the conviction was had upon giving bond in the sum of $200 to this State with surety satisfactory to such justice or trial court; provided, however, that the appeal is taken and bond given within 7 days from the time of the conviction.

(d) A violation of this chapter shall be cause for revocation of any license issued thereunder, notwithstanding that the same violation may constitute a misdemeanor or felony.

(63 Del. Laws, c. 462 § 2; 70 Del. Laws, c. 143 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 106 §§ 6, 7.)

§ 3919 Duty to report conduct that constitutes grounds for discipline or inability to practice.

(a) Every person to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or any other healthcare provider has engaged in or is engaging in conduct that would constitute grounds for disciplinary action under this chapter or the other healthcare provider's licensing statute.

(b) Every person to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or any other healthcare provider may be unable to practice with reasonable skill and safety to the public by reason of: mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive abuse of drugs, including alcohol.

(c) Every person to whom a license to practice has been issued under this chapter has a duty to report to the Division of Professional Regulation any information that the reporting person reasonably believes indicates that a person certified and registered to practice medicine in this State is or may be guilty of unprofessional conduct or may be unable to practice medicine with reasonable skill or safety to patients by reason of: mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive use or abuse of drugs, including alcohol.

(d) All reports required under subsections (a), (b) and (c) of this section must be filed within 30 days of becoming aware of such information. A person reporting or testifying in any proceeding as a result of making a report pursuant to this section is immune from claim, suit, liability, damages, or any other recourse, civil or criminal, so long as the person acted in good faith and without gross or wanton negligence; good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant.

(78 Del. Laws, c. 26 § 8.)

Part

Chapter 40

REAL ESTATE APPRAISERS

Subchapter I

Council on Real Estate Appraisers

§ 4001 Objectives.

(a) The primary objective of the Council on Real Estate Appraisers, 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 Council 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 Council shall develop standards assuring professional competence; shall monitor complaints brought against practitioners regulated by the Council; shall adjudicate at informal hearings; shall promulgate rules and regulations; and shall impose sanctions where necessary against licensed practitioners.

(75 Del. Laws, c. 105 § 3.)

§ 4002 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) "Appraisal" shall mean an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate as of a specific date. An appraisal may be classified by subject matter into either a valuation or an analysis. A valuation is an estimate of the value of real estate or real property. An analysis is a study of real estate or real property other than estimating value. A competitive market analysis is not an appraisal.

(2) "Appraisal management company" means a corporation, partnership, sole proprietorship, subsidiary or other business entity that directly or indirectly performs appraisal management services, regardless of the use of the term "appraisal management company," "mortgage technology provider," "lender processing services," "lender services," "loan processor," "mortgage services," "real estate closing services provider," "settlement services provider," "vendor management company" or any other term, and that does any of the following:

a. Administers an appraiser panel of independent contract appraisers to perform real property appraisal services in this State for clients.

b. Receives requests for real property appraisal services from clients and, for a fee paid by the client, enters into an agreement with 1 or more independent appraisers to perform the real property appraisal services contained in the request.

c. Otherwise serves as a third-party liaison of appraisal management services between clients and appraisers.

(3) "Appraisal management services" means the process of receiving a request for the performance of real property appraisal services from a client, and for a fee paid by the client, entering into an agreement with 1 or more independent appraisers who are part of an appraiser panel to perform the real property appraisal services contained in the request.

(4) "Appraiser panel" means a group of independent appraisers that has been selected by an appraisal management company to perform real property appraisal services for the appraisal management company.

(5) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment, but does not include an examination of an appraisal for grammatical, typographical or other similar errors that do not communicate an opinion related to the appraiser's data collection, analysis, opinions, conclusions, estimate of value or compliance with the Uniform Standards of Professional Appraisal Practice.

(6) "AQB" shall mean the Appraisal Qualifications Board appointed by the Appraisal Foundation to establish the minimum education, examination, and experience requirements for real estate appraisers providing appraisals in federally-related transactions.

(7) "Certified general real property appraiser" shall mean a person, who has met the certification requirements of this chapter pertaining to the appraisal of residential and nonresidential real property utilized in connection with federally-related transactions, and who holds a current, valid certificate issued under this chapter.

(8) "Certified residential appraiser" shall mean a person, who has met the certification requirements of this chapter, pertaining solely to the appraisal of residential real property utilized in connection with federally-related transactions, and who holds a current, valid certificate issued under this chapter.

(9) "Classroom hour" shall mean 50 minutes out of each 60-minute hour.

(10) "Controlling person" means any of the following:

a. An owner, officer or director of a corporation, partnership or other business entity seeking to offer appraisal management

services in this State.

b. An individual who is employed, appointed or authorized by an appraisal management company and who has the authority to enter into a contractual relationship with clients for the performance of appraisal management services and to enter into agreements with independent appraisers for the performance of real property appraisal services.

c. An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

(11) "Council" shall mean the State Council on Real Estate Appraisers established in this chapter.

(12) "Division" shall mean the State Division of Professional Regulation.

(13) "Excessive use or abuse of drugs" shall mean any use of narcotics, controlled substances, or illegal drugs without a prescription from a licensed practitioner, or the abuse of alcoholic beverage such that it impairs the ability to perform the work of an appraiser.

(14) "Federally-related transaction" shall mean a real estate-related financial transaction, which a federal financial institution regulatory agency, such as HUD/FHA, Fannie Mae and Freddie Mac, or the Resolution Trust Corporation engages in, contracts for, or regulates, and which requires the services of an appraiser.

(15) "FIRREA" shall mean the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the act of July 21, 2010 [P.L. 111-203, 124 Stat. 2190].

(16) "Licensed real property appraiser" shall mean a person, who has met the licensing requirements of this chapter and who may appraise noncomplex 1 to 4 residential units having a transaction value less than $1,000,000 and complex 1 to 4 residential units having a transaction value of $250,000 or less, and who holds a current, valid license issued under this chapter. Licensed appraisers cannot appraise a property with a market value in excess of $1,000,000.

(17) "Person" shall mean an individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, and any other legal entity and includes a legal successor of those entities.

(18) "Personal supervision" shall mean the active oversight by the state-licensed or certified real estate appraiser of the real property appraiser trainee. The trainee may assist in the completion of an appraisal report, including an opinion of value, and may co-sign an appraisal, provided that the trainee has been under the personal supervision of the state certified or licensed real estate appraiser, and provided further that the state-certified or licensed real estate appraiser shall review and sign the appraisal report and accept total responsibility for said appraisal report.

(19) "Real estate appraiser" means any person who advises, consults, or prepares analyses with respect to real estate values, uses, sales, developments or disposition, including acquisitions by eminent domain, or renders opinions relevant to the marketability of real estate, as a whole or partial vocation.

(20) "Real estate-related financial transaction" shall mean a transaction involving the following:

a. Sale, lease, purchase, investment in or exchange of real property, including interests in property or the financing thereof.

b. Refinancing of real property or interests in real property.

c. Use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

(21) "Real property" shall mean 1 or more defined interests, benefits, and rights inherent in the ownership of real estate.

(22) "State" shall mean the State of Delaware.

(23) "Substantially related" shall mean 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 real estate appraisal.

(24) "Trainee" shall mean a person who has completed classroom hours of education on real estate matters satisfactory to the Council, as indicated in the rules and regulations, including classroom hours on the topic of Uniform Standards of Professional Appraisal Practice.

(25) "Uniform Standards of Professional Appraisal Practice" (USPAP) shall mean the standards of appraisal practice established by The Appraisal Foundation.

(75 Del. Laws, c. 105 § 3; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 340 §§ 1, 2; 79 Del. Laws, c. 163 § 1.)

§ 4003 Council on Real Estate Appraisers; appointments; composition; qualifications; term; vacancies; suspension or removal; unexcused absences; compensation.

(a) There is created a State Council on Real Estate Appraisers, which shall administer and enforce this chapter.

(b) The Council shall consist of 9 members, who are residents of this State, and are appointed by the Governor. Four of the 9 members shall be licensed or certified appraisers engaged primarily in the real estate appraisal business or in the appraisal management business, including at least 1 certified general real property appraiser and at least 2 certified residential appraisers. One of the 9 members shall be a certified real estate appraiser also engaged in the real estate brokerage business. One member shall be from the banking community. Three of the 9 members shall be public members. The public members shall not be, nor ever have been, appraisers nor members of the immediate family of an appraiser; shall not have been employed by an appraiser or a company engaged in the practice of appraising; shall not have a material interest in the providing of goods and services to appraisers; nor have been engaged in an activity directly related to appraising. 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 Council 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 member shall remain eligible to participate in Council proceedings unless and until replaced by the Governor.

(d) A person, who has never served on the Council, may be appointed to the Council 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 Council or who has served on the Council for 6 years within any 9-year period, shall again be appointed to the Council until an interim period of at least 1 term 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 Council shall 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 Council business until the charge is adjudicated or the matter is otherwise concluded. A member may appeal any suspension or removal to the Superior Court.

(g) No member of the Council, while serving on the Council, shall hold elective office in any professional association of real estate appraisers; this includes a prohibition against serving as head of the professional association's Political Action Committee (PAC).

(h) The provisions set forth in Chapter 58 of Title 29 shall apply to all members of the Council.

(i) Any member, who is absent without adequate reason for 3 consecutive meetings, or who 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 Council shall be reimbursed for all expenses involved in each meeting, including travel, according to Division policy; and, in addition shall receive not more than $50 for each meeting attended but not more than $500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(75 Del. Laws, c. 105 § 3; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 340 § 3; 79 Del. Laws, c. 163 § 1.)

§ 4004 Organization; meetings; officers; quorum.

(a) The Council 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 Council members.

(b) The Council annually shall elect a chair and vice-chair. Each officer shall serve for 1 year and shall not succeed himself or herself for more than 2 consecutive terms.

(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 at least 5 members of the Council.

(d) Minutes of all meetings shall be recorded and the Division shall maintain copies. 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.

(75 Del. Laws, c. 105 § 3; 70 Del. Laws, c. 186 § 1.)

§ 4005 Records.

The Division shall keep a register of all approved applications for certified real estate appraiser, certified residential real property appraiser, licensed real property appraiser, and real property appraiser trainee, and complete records relating to meetings of the Council, examinations, rosters, changes and additions to the Council's rules and regulations, complaints, hearings, and such other matters as the Council shall determine. Such records shall be prima facie evidence of the proceedings of the Council.

(75 Del. Laws, c. 105 § 3.)

§ 4006 Powers and duties.

(a) The Council on Real Estate Appraisers 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 of this State [Chapter 101 of Title 29]. 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 process all applications.

(3) Designate the written, standardized examination, endorsed by the Appraiser Qualifications Board (AQB), or its successor, and approved by the Council, and graded by the testing service, to be taken by all persons applying for licensure and certification; applicants, who qualify for licensure or certification by reciprocity, shall have achieved a passing score on all parts of the designated examination or a comparable, alternative national or regional examination, if the designated examination was not available at the time of the applicant's original licensure.

(4) Evaluate the credentials of all persons applying for a license or a certificate as an appraiser in this State, in order to determine whether such persons meet the qualifications for licensing or certification set forth in this chapter.

(5) Grant certificates and licenses to, and renew certificates and licenses of, all persons who meet the qualifications for certification or licensure.

(6) Register applicants as real property appraiser trainees.

(7) Issue temporary certificates or licenses to persons who qualify.

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

(9) [Repealed.]

(10) Refer all complaints from certificate holders, licensees and the public concerning certified or licensed appraisers or concerning practices of the Council or of the profession, to the Division for investigation pursuant to § 8735 of Title 29; and assign a member of the Council 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 the Administrative Procedures Act, Chapter 101 of Title 29.

(12) Where it has been determined after a 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 Council on Real Estate Appraisers shall promulgate regulations specifically identifying those crimes which are substantially related to the practice of real estate appraisal.

(75 Del. Laws, c. 105 § 3; 79 Del. Laws, c. 163 § 1.)

Subchapter II

Certificate or License

§ 4007 Certificate or license required.

(a) No person, partnership, association, or corporation shall hold himself, herself, or itself out to the public in this State as being qualified to act as a real estate appraiser, or advertise, or engage in the practice of appraising or assume to act as an appraiser, or use in connection with the person's, partnership's, association's or corporation's name, or otherwise assume or use, any title or description conveying or tending to convey the impression that the person, partnership, association or corporation is qualified to act as an appraiser, unless such person has been duly certified or licensed under this chapter.

(b) Whenever a certificate or license to practice as an appraiser in this State has expired or been suspended or revoked, it shall be unlawful for the person to act as an appraiser in this State.

(c) No person shall act as an appraiser trainee or hold himself or herself out to be an appraiser trainee unless such person has been duly registered by the Council under this chapter.

(75 Del. Laws, c. 105 § 3; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 340 § 4.)

§ 4008 Qualifications of applicant; report to Attorney General; judicial review.

(a) An applicant, who is applying for certification or licensure as an appraiser under this chapter, for the relevant certificate, license or registration, shall submit evidence, verified by oath and satisfactory to the Council, that such person:

(1) Has met the qualifications established by the AQB and incorporated into this section by reference.

(2) Shall not have been the recipient of any administrative penalties regarding that applicant's practice as an appraiser, including but not limited to fines, formal reprimands, license suspensions or revocation, (except for license revocations for nonpayment of license renewal fees), probationary limitations, and/or has not entered into any "consent agreements" which contain conditions placed by a Council on that applicant's professional conduct and practice, including any voluntary surrender of a license. The Council may determine after a hearing whether such administrative penalty is grounds to deny licensure.

(3) Shall not have any impairment related to drugs or alcohol that would limit the applicant's ability to act as an appraiser in a manner consistent with the safety of the public.

(4) Shall not have a criminal conviction record, nor pending criminal charge relating to an offense, the circumstances of which substantially relate to real estate appraising. Applicants, who have criminal conviction records or pending criminal charges, shall request appropriate authorities to provide information about the record or charge directly to the Council in sufficient specificity to enable the Council to make a determination whether the record or charge is substantially related to real estate appraisal. However, after a hearing or review of documentation demonstrating that the applicant meets the specified criteria for a waiver, the Council, by an affirmative vote of a majority of the quorum, may waive this paragraph (a)(4), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of practicing real estate appraisal in a competent and professional manner.

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

(5) Has no disciplinary proceedings or unresolved complaints pending against the applicant in any jurisdiction where the applicant has previously been or currently is licensed, certified, or registered.

(b) Where the Council has found to its satisfaction that an applicant has been intentionally fraudulent, or that false information has been intentionally supplied, 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 applicant feels that the Council has acted without justification, has imposed higher or different standards for the applicant than for other applicants, registrants, certificants or licensees, or has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

(75 Del. Laws, c. 105 § 3; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 436 § 46; 77 Del. Laws, c. 199 § 34; 78 Del. Laws, c. 44 §§ 66, 67.)

§ 4009 Appraiser trainee; requirements of supervision.

(a) Persons, who are presented to the Council by a supervising appraiser for registration as an appraiser trainee, shall provide a notarized statement to the Council that the trainee:

(1) Shall perform only those specific functions, which have been delineated in the supervising appraiser's statement; and

(2) Shall practice only under the direct supervision of a state-certified appraiser; and

(3) Shall identify themselves to the public as a real estate appraisal trainee; and

(4) Shall not have been convicted of a crime that is substantially related to the practice of real estate appraisal. However, after a hearing or review of documentation demonstrating that the applicant meets the specified criteria for a waiver, the Council, by an affirmative vote of a majority of the quorum, may waive this paragraph (a)(4), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of practicing real estate appraisal trainee services in a competent and professional manner.

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

(b) An applicant, who has been registered by the Council as an appraiser trainee, may assist in the completion of an appraisal report, including an opinion of value, and may co-sign an appraisal, provided that the appraiser trainee is actively and personally supervised by a state-certified real estate appraiser.

(c) In addition, the supervising state-certified real estate appraiser shall review and sign all appraisals prepared under the supervising state-certified real estate appraiser's supervision by the appraiser trainee and shall accept total responsibility for the appraisal report.

(d) The Council in its regulations shall determine the number of appraiser trainees that a supervising appraiser may supervise and the requirements of their supervision.

(75 Del. Laws, c. 105 § 3; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 436 § 47; 76 Del. Laws, c. 340 § 5; 77 Del. Laws, c. 199 § 35; 78 Del. Laws, c. 44 §§ 68, 69.)

§ 4010 Temporary license.

(a) A real estate appraiser from another state, who is licensed or certified by the appraiser licensing or certifying agency in such state, may apply for registration to receive temporary licensing or certification privileges in this State by paying all required fees and filing with the Council a notarized application, on a form prescribed by the Council for such purpose, which shall set forth and include:

(1) The applicant's name, address, social security number, and such other information as may be necessary to identify the applicant; and

(2) The type of license or certificate held by the applicant and the license or certificate number;

(3) The dates of licensure or certification and the expiration date of the applicant's current license or certificate;

(4) Whether the license or certificate was issued as a result of passing a licensure or certification examination, by reciprocity, or by some other means;

(5) A statement that the person has met the requirements of § 4008(a)(2), (3), (4), and (5) of this title;

(6) A statement that the applicant agrees to abide by all appraiser laws and rules of this State and to cooperate with any investigation initiated as provided under this chapter;

(7) Identification of the property to be appraised and the anticipated duration of the assignment; and

(8) Such other information as may be necessary to determine the applicant's eligibility for temporary appraiser licensing or certification privileges in this State.

(b) Licensing and certification privileges granted under the provisions of this section shall expire upon completion of the specific appraisal assignment for which the Council has issued the temporary license or certificate.

(c) The Division is empowered to issue a temporary license or certificate to an appraiser from another state, who has documented compliance with the requirements of this section.

(75 Del. Laws, c. 105 § 3.)

§ 4011 Reciprocity.

(a) Upon payment of the appropriate fee and submission and acceptance of a written application on forms provided by the Council, the Council shall grant a license to each applicant, who shall present 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.

(b) An applicant, who is licensed in a state whose standards are not substantially similar to those of this State, shall have practiced for a minimum of 5 years after licensure; provided however, that the applicant meets all other qualifications for reciprocity in this section.

(c) An applicant, who is a graduate of a foreign college or university, and who is not licensed in another state, the District of Columbia, or territory of the United States, shall submit a certified copy of the applicant's college or university record for evaluation by the Council, in addition to fulfilling the applicable requirements for licensure of §§ 4008 and 4009 of this title.

(75 Del. Laws, c. 105 § 3; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 163 § 1.)

§ 4012 Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Council, as well as the proportional expenses incurred by the Division in its service on behalf of the Council. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each licensure biennium, the Division, or any other state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate fees for the licensure biennium. The Division shall charge a biennial fee to licensees and certificate holders for enrollment in the federal roster or registry.

(75 Del. Laws, c. 105 § 3.)

§ 4013 Issuance and renewal of licenses and certification.

(a) The Council shall issue a license to each applicant, who meets all of the requirements of this chapter for licensure or certification as an appraiser and who pays the fee established under § 4012 of this title.

(b) Each license or certificate shall be renewed biennially, in such manner as is determined by the Division, and upon payment of the appropriate fee and submission of a renewal form provided by the Division, and proof that the licensee has met the continuing education requirements established by the Council, and shall meet the requirements of § 4008(a)(2), (3), (4) and (5) of this title.

(c) Licensees and certificate holders shall be enrolled in the Federal roster or registry of state-licensed and state-certified real property appraisers. The licensee or certificate holder shall pay the fee established for that purpose biennially to the State.

(d) The Council, in its rules and regulations, shall determine the period of time within which a licensed or certified appraiser may still renew that appraiser's license, notwithstanding the fact that such licensee or certificate holder has failed to renew on or before the renewal date.

(e) A licensee or certificate holder, upon written request, may be placed in an inactive status in accordance with the Council's rules and regulations. The renewal fee of such person shall be prorated according to the amount of time such person was inactive. Such person may reenter practice upon written notification to the Council of the intent to do so and completion of continuing education as required in the Council's rules and regulations.

(75 Del. Laws, c. 105 § 3; 70 Del. Laws, c. 186 § 1.)

§ 4014 Grounds for discipline.

(a) A practitioner licensed or certified under this chapter shall be subject to disciplinary actions set forth in § 4016 of this title, if, after a hearing, the Council finds that the appraiser:

(1) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license or certificate as an appraiser; has impersonated another person holding a license or certificate, or allowed another person to use that appraiser's license or certificate, or aided or abetted a person not licensed or certified as an appraiser to represent himself or herself as an appraiser.

(2) Has illegally, incompetently or negligently practiced appraising.

(3) Has been convicted of a crime that is substantially related to the practice of real estate appraisal. A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence therefor.

(4) 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 practitioner, or the abuse of alcoholic beverage such that it impairs the practitioner's ability to perform the work of an appraiser.

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

(6) Has had that appraiser's own license or certificate as an appraiser suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Council by certified record; and the Council has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every person licensed or certified as an appraiser in this State shall be deemed to have given consent to the release of this information by the Council or other comparable agencies in another jurisdiction, and have waived all objections to the admissibility of previously adjudicated evidence of such acts or offenses.

(7) Has failed to notify the Council that the appraiser's license or certificate as an appraiser in another state has been subject to discipline, or has been surrendered, suspended, or revoked. A certified copy of the record of disciplinary action, surrender, suspension or

revocation shall be conclusive evidence thereof.

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

(c) Subject to the provisions of subchapter IV of Chapter 101 of Title 29, no license or certificate shall be restricted, suspended, or revoked by the Council, and no practitioner's right to practice appraising shall be limited by the Council 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].

(75 Del. Laws, c. 105 § 3; 70 Del. Laws, c. 186 § 1.)

§ 4015 Complaints.

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

(b) When it is determined that an individual is engaging, or has engaged, in the practice of appraising, or is using the title "appraiser" or other title implying that the individual is competent to act as an "appraiser" and is not licensed or certified under the laws of this State, the Council shall apply to the Office of the Attorney General to issue a cease and desist order.

(75 Del. Laws, c. 105 § 3; 70 Del. Laws, c. 186 § 1.)

§ 4016 Disciplinary sanctions.

(a) The Council may impose any of the following sanctions, singly or in combination, when it finds that 1 of the conditions or violations set forth in § 4014 of this title applies to a practitioner regulated by this chapter:

(1) Issue a letter of reprimand.

(2) Censure a practitioner.

(3) Place a practitioner on probationary status, and require the practitioner to:

a. Report regularly to the Council on the matters, which are the basis of the probation.

b. Limit all practice and professional activities to those areas prescribed by the Council.

(4) Suspend any practitioner's license or certificate.

(5) Revoke any practitioner's license or certificate.

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

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

(c) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(75 Del. Laws, c. 105 § 3; 79 Del. Laws, c. 213 § 2.)

§ 4016A Counseling; letters of concern.

(a) If the Council determines after an investigation that a violation of this chapter or of the rules and regulations enacted pursuant to this chapter warranting formal disciplinary action has not occurred, but that an act or omission of the licensee or certificate holder is a matter of concern and that licensee's or certificate holder's practice may be improved if made aware of the concern, the Council may issue a nondisciplinary confidential letter of concern regarding the licensee's or certificate holder's act or omission.

(b) If a person licensed under this chapter receives a total of 3 letters of concern pursuant to this section, the Council may reasonably require a formal assessment of professional competency to assess the licensee's or certificate holder's ability in order to protect the health and safety of the public. At such hearing, all of the licensee's or certificate holder's letters of concern may be deemed no longer confidential and may be admitted into evidence.

(79 Del. Laws, c. 163 § 1.)

§ 4017 Hearing procedures.

(a) If a complaint is filed with the Council pursuant to § 8735 of Title 29, alleging violation of § 4016 of this title, the Council shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

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

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

(75 Del. Laws, c. 105 § 3; 70 Del. Laws, c. 186 § 1.)

§ 4018 Reinstatement of a suspended license; removal from probationary status; replacement of license.

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

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

(c) A new license to replace any license lost, destroyed or mutilated may be issued subject to the rules of the Council. A charge shall be made for such issuance.

(75 Del. Laws, c. 105 § 3.)

Subchapter III

Other Provisions

§ 4019 Exception.

(a) This chapter shall not apply to any Delaware licensed real estate salesperson or broker, who prepares a competitive market analysis survey used only for the purpose of listing a property for sale or lease, nor to any individual, who prepares real estate appraisals for the licensee's full-time employer for the employer's internal use only, and which is performed in the regular course of employee's position.

(b) Nothing in this chapter shall require a geologist licensed under Chapter 36 of this title to meet the requirements for either certification or licensure, provided that the geologist's written estimate of value is not the sole determinant of a property's value and that any such estimate of value is not used as an appraisal in federally-related transactions.

(c) Nothing in the chapter shall require an auctioneer to meet the requirement for either certification or licensure under this chapter, provided that the auctioneer provides only a verbal estimate of sale and not a written appraisal of the value of any real property.

(d) This chapter shall not invalidate nor shall it apply to real estate tax assessments or reassessments done for municipal or county governments where such appraisals are done by full-time municipal or county government employees acting in the regular course of business.

(e) The Council on Real Estate Appraisers shall develop standards in cooperation with the Delaware Association of Counties and the Executive Director of the League of Local Governments or his or her designee for licensing and training of assessors in order for municipal and county assessment departments to be in compliance within 3 years of the development and adoption of said standards.

(75 Del. Laws, c. 105 § 3; 70 Del. Laws, c. 186 § 1.)

§ 4020 Penalty.

A person, not currently licensed as an appraiser under this chapter, when guilty of engaging in the practice of appraising, or using in connection with the 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 act as an appraiser, such offender shall be guilty of a misdemeanor. Upon the first offense, the person shall be fined not less than $500 or more than $1,000 for each offense. For a second or subsequent conviction, the fine shall be not less than $1,000 or more than $2,000 for each offense. Justice of the Peace Court shall have jurisdiction over all violations of this chapter.

(75 Del. Laws, c. 105 § 3; 70 Del. Laws, c. 186 § 1.)

§ 4021 Criminal background checks of new applicants.

An applicant for licensure or certification under § 4008 or § 4009 of this title shall submit, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

(1) A report of the individual'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 relating to that person.

(2) A report of the individual's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Council shall be the screening point for the receipt of said federal criminal history records.

(79 Del. Laws, c. 163 § 1.)

Subchapter IV

Appraisal Management Companies

§ 4022 Registration of appraisal management companies.

(a) A person shall not directly or indirectly engage or attempt to engage in business as an appraisal management company, directly or indirectly perform or attempt to perform appraisal management services or advertise or hold itself out as engaging in or conducting business as an appraisal management company without first obtaining a registration issued by the Council pursuant to this section, regardless of the entity's use of appraisal management company, mortgage technology company or any other name.

(b) A person who wishes to be registered as an appraisal management company in this State must file a written application with the Council on a form prepared and furnished by the Council and pay a fee in an amount to be determined by the Division of Professional Regulation. The registration required by subsection (a) of this section shall include:

(1) The name, residence address, business address and telephone number of the applicant and the location of each principal office and branch office at which the appraisal management company will conduct business in this State.

(2) The name under which the applicant will conduct business as an appraisal management company.

(3) The name, residence address, business address and telephone number of each person who will have an interest in the appraisal management company as a principal, partner, officer, director or trustee, specifying the capacity and title of each person.

(4) If the person seeking registration is a corporation that is not domiciled in this State, the name and contact information for the company's registered agent for service of process in this State.

(5) A certification that the person seeking registration has a system and process in place to verify that a person being added to the appraiser panel for the appraisal management company's appraisal management services in this State holds a license or certification in good standing in this State.

(6) A certification that the person seeking registration has a system in place to review the work of all independent appraisers that are performing real property appraisal services for the appraisal management company on a periodic basis to confirm that the real property appraisal services are being conducted in accordance with Uniform Standards of Professional Appraisal Practice.

(7) A certification that the person maintains a detailed record of each service request that it receives and the independent appraiser that performs the real property appraisal services for the appraisal management company.

(8) A certification that the person seeking registration has a system in place to train those who select individual appraisers for real property services in this State, to ensure that the selectors have appropriate training in placing appraisal assignments.

(9) Proof of a surety bond of $20,000.

(79 Del. Laws, c. 163 § 2.)

§ 4023 Exemptions from registration.

Nothing in this chapter shall apply to:

(1) An appraisal management company that is a subsidiary owned and controlled by a financial institution that is subject to direct regulation by an agency of the United States government or of this State.

(2) A corporation, partnership, sole proprietorship, subsidiary or other business entity that employs real estate appraisers exclusively on an employer and employee basis for the performance of all real property appraisal services in the normal course of its business and that is responsible for ensuring that the real property appraisal services being performed by its employees are being performed in accordance with Uniform Standards of Professional Appraisal Practice and federal and state law.

(79 Del. Laws, c. 163 § 2.)

§ 4024 Registration form for appraisal management companies.

(a) An applicant for initial and renewal registration as an appraisal management company shall submit to the Council an application on a form prescribed by the Council.

(b) An initial registration granted by the Council pursuant to this chapter is valid for 2 years. Registration renewals are renewed biennially.

(79 Del. Laws, c. 163 § 2.)

§ 4025 Owner requirements for appraisal management companies.

(a) An appraisal management company applying for registration may not be more than 10% owned by a person or have any principal of the company who has had any financial, real estate or mortgage lending industry license or certificate refused, denied, canceled, revoked or voluntarily surrendered in this State or in any other state, unless such license or certificate was subsequently granted or reinstated. This requirement may be waived by appeal and at the discretion of the Council.

(b) Each person that owns more than 10% of an appraisal management company in this State shall:

(1) Submit, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

a. 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 relating to that person.

b. A report of the applicant's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Council on Real Estate Appraisers shall be the screening point for the receipt of said federal criminal history records.

c. An applicant may not be registered until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be registered by the Council unless a waiver is granted pursuant to § 4008(a)(4) of this title. The State Bureau of Identification may release any subsequent criminal history to the Council.

(2) Certify to the Council that the person has never had any financial, real estate or mortgage lending industry license or certificate refused, denied, canceled, revoked or voluntarily surrendered in this State or in any other state, unless such license or certificate was subsequently granted or reinstated. This requirement may be waived by appeal and at the discretion of the Council.

(79 Del. Laws, c. 163 § 2.)

§ 4026 Appraisal management company controlling person.

(a) Each appraisal management company applying to the Council for registration in this State shall designate 1 controlling person that will be the main contact for all communication between the Council and the appraisal management company.

(b) To serve as a controlling person of an appraisal management company, a person shall:

(1) Certify to the Council that the person has never had any financial, real estate or mortgage lending industry license or certificate issued by this State, or any other state, refused, denied, canceled, revoked or voluntarily surrendered, unless such license or certificate was subsequently granted or reinstated. This requirement may be waived by appeal and at the discretion of the Council.

(2)a. A report of the applicant's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Council on Real Estate Appraisers shall be the screening point for the receipt of said federal criminal history records.

b. An applicant may not be registered until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be registered by the Council unless a waiver is granted pursuant to § 4008(a)(4) of this title. The State Bureau of Identification may release any subsequent criminal history to the Council.

(79 Del. Laws, c. 163 § 2.)

§ 4027 Appraisal management company employees.

Any employee of an appraisal management company that performs an appraisal review shall have demonstrated knowledge of the Uniform Standards of Professional Appraisal Practice and hold a valid appraiser license or certification in this or any state.

(79 Del. Laws, c. 163 § 2.)

§ 4028 Agreements with independent appraisers; limitations.

An appraisal management company registered in this State pursuant to this chapter may not enter into contracts or agreements with an independent appraiser for the performance of real property appraisal services in this State unless that person is licensed or certified in good standing with the Council.

(79 Del. Laws, c. 163 § 2.)

§ 4029 Biennial certification; renewal.

(a) Each appraisal management company registered in this State shall certify to the Council on an biennial basis at the time of renewal, on a form prescribed by the Council and after paying the appropriate fee, that the appraisal management company has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company holds a license or certificate in good standing in this State pursuant to the Council.

(b) Each appraisal management company registered in this State shall certify to the Council on a biennial basis, at the time of renewal, that it has a system in place to review the quality of appraisals of all independent appraisers that are performing real property appraisal services for the appraisal management company on a periodic basis to confirm that the real property appraisal services are being conducted in accordance with uniform standards of professional appraisal practice.

(c) Each appraisal management company registered shall certify to the Council on a biennial basis, at the time of renewal, that it maintains a detailed record of each service request that it receives and the name of the independent appraiser that performs the real property appraisal services for the appraisal management company. An appraisal management company shall maintain a detailed record for the same time period that an appraiser is required to maintain an appraisal record for the same real property appraisal activity.

(d) Each appraisal management company registered shall certify to the Council on a biennial basis, at the time of renewal, that it has a system in place to train those who select individual appraisers for real property services in this State, to ensure that the selectors have appropriate training in placing appraisal assignments.

(79 Del. Laws, c. 163 § 2.)

§ 4030 Disclosure of fees.

The appraisal management company shall not prohibit the appraiser from reporting in the appraisal report the fee paid to the appraiser.
(79 Del. Laws, c. 163 § 2.)

§ 4031 Appraiser independence; prohibitions.

(a) Any employee, director, officer or agent of an appraisal management company registered pursuant to this chapter shall not influence or attempt to influence the development, reporting or review of an appraisal through coercion, extortion, collusion, compensation, inducement, intimidation, bribery or any other manner, including:

(1) Withholding or threatening to withhold timely payment for an appraisal.

(2) Withholding or threatening to withhold future business for an independent appraiser or demoting or terminating, or threatening to demote or terminate, an independent appraiser.

(3) Expressly or implicitly promising future business, promotions or increased compensation for an independent appraiser.

(4) Conditioning the request for an appraisal service or the payment of an appraisal fee or salary or bonus on the opinion, conclusion or valuation to be reached or on a preliminary estimate or opinion requested from an independent appraiser.

(5) Requesting that an independent appraiser provide an estimated, predetermined or desired valuation in an appraisal report or provide estimated values or comparable sales at any time before the independent appraiser's completion of an appraisal service.

(6) Providing to an independent appraiser an anticipated, estimated, encouraged or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided.

(7) Providing to an independent appraiser, or any entity or person related to the appraiser, stock or other financial or nonfinancial benefits.

(8) Allowing the removal of an independent appraiser from an appraiser panel, without prior written notice to the appraiser.

(9) Obtaining, using or paying for a second or subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction, unless such action is required by law or there is a reasonable basis to believe that the initial appraisal was flawed or tainted and the basis is clearly and appropriately noted in the loan file or unless the appraisal or automated valuation model is done pursuant to a bona fide prefunding or postfunding appraisal review or quality control process.

(10) Engaging in any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity or impartiality.

(b) An appraisal fee offered or paid may not be based on the predetermined appraised value or range of appraised value of the subject property or the amount of the transaction price.

(c) Subsections (a) and (b) of this section do not prohibit an appraisal management company from requesting that an independent appraiser either:

(1) Provide additional information about the basis for a valuation.

(2) Correct objective factual errors in an appraisal report.

(3) Consider additional appropriate property information.

(79 Del. Laws, c. 163 § 2.)

§ 4032 Payment.

Except in cases of breach of contract or substandard performance of services, each appraisal management company shall make payment to an independent appraiser for the completion of an appraisal or valuation assignment within 45 days after the date on which the independent appraiser transmits or otherwise provides the completed appraisal or valuation study to the appraisal management company or its assignee.

(79 Del. Laws, c. 163 § 2.)

§ 4033 Appraisal reports; alteration; use.

An appraisal management company shall not:

(1) Alter, modify, revise or otherwise change a completed appraisal report submitted by an independent appraiser, including removing the signature of the appraiser.

(2) Use an appraisal report submitted by an independent appraiser for any purpose other than the intended use stated in the report.

(79 Del. Laws, c. 163 § 2.)

§ 4034 Removal of appraisers from appraiser panels.

(a) Except within the first 60 days after an independent appraiser is first added to the appraiser panel of an appraisal management company, an appraisal management company shall not remove an appraiser from its appraiser panel, or otherwise refuse to assign requests for real property appraisal services to an independent appraiser, without notifying the appraiser in writing of the reasons for the appraiser being removed from the appraiser panel of the appraisal management company.

(b) An independent appraiser that is removed from the appraiser panel of an appraisal management company for alleged illegal conduct, violation of the Uniform Standards of Professional Appraisal Practice or violation of state licensing standards may file a complaint with the Council for a review of the decision of the appraisal management company, except that in no case shall the Council make any determination regarding the nature of the business relationship between the appraiser and the appraisal management company that is unrelated to the actions specified in subsection (a) of this section.

(c) If an independent appraiser files a complaint against an appraisal management company pursuant to subsection (b) of this section, the Council shall adjudicate the complaint within a reasonable time.

(d) If after opportunity for a hearing and review, the Council determines that an independent appraiser did not commit a violation of law, a violation of the Uniform Standards of Professional Appraisal Practice or a violation of this chapter, the Council shall order that the appraiser be added to the appraiser panel of the appraisal management company that was the subject of the complaint. The Council shall furnish the appraisal management company with all written documentation and investigation records that support the Council's findings.

(79 Del. Laws, c. 163 § 2.)

§ 4035 Enforcement.

The Council may censure an appraisal management company, conditionally or unconditionally suspend or revoke any registration issued under this chapter or impose civil penalties not to exceed $15,000 per violation if, after a hearing, the Council finds that an appraisal management company is attempting to perform, has performed or has attempted to perform any of the following acts:

(1) Committing any act in violation of this chapter.

(2) Violating any rule adopted by the Council in the interest of the public and consistent with this chapter.

(3) Knowingly making or causing to be made to the Council any false representation of material fact.

(4) Suppressing or withholding from the Council any information that the applicant possesses and that, if submitted by the applicant, would have rendered the applicant ineligible to be registered pursuant to rules adopted by the Council.

(5) Violating the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, the act of July 21, 2010 [P. L. 111-203, 124 Stat. 2190].

(79 Del. Laws, c. 163 § 2.)

§ 4036 Disciplinary hearing.

(a) The Council may conduct disciplinary proceedings in accordance with subchapter III of Chapter 101 of Title 29.

(b) The written notice required by subchapter III of Chapter 101 of Title 29 shall be satisfied by personal service on the controlling person of the registrant or the registrant's agent for service of process in this State or by sending the notice by certified mail to the controlling person of the registrant to the registrant's address on file with the Council.

(79 Del. Laws, c. 163 § 2.)

§ 4037 Rule-making authority.

The Council shall adopt rules that are reasonably necessary to implement, administer and enforce this subchapter.

(79 Del. Laws, c. 163 § 2.)

§ 4038 Effective date.

All appraisal management companies operating in this State as of July 1, 2013, must become registered on or before July 1, 2014.

(79 Del. Laws, c. 163 § 2.)

Part

Chapter 41
HOME INSPECTORS

Subchapter I

Board of Home Inspectors

§ 4101 Objectives.

(a) The primary objective of the Board of Home Inspectors, 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 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 informal hearings; shall promulgate rules and regulations; and shall impose sanctions where necessary against licensed practitioners.

(78 Del. Laws, c. 170 § 1.)

§ 4102 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 Home Inspectors established in this chapter.

(2) "Division" shall mean the State Division of Professional Regulation.

(3) "Excessive use or abuse of drugs" shall mean any use of narcotics, controlled substances, or illegal drugs without a prescription from a licensed practitioner, or the abuse of alcoholic beverage such that it impairs the ability to perform the work of a home inspector.

(4) "Home" shall mean any residential property, or manufactured or modular home, which is a single-family dwelling, duplex, triplex, quadruplex, condominium unit, or cooperative unit. The term does not include the common areas of condominiums or cooperatives.

(5) "Home inspection" shall mean a visual analysis for the purposes of providing a written professional opinion of the condition of a building and its carports and garages, any reasonably accessible installed components and the operation of the building systems, including the controls normally operated by the owner, for the following components of a residential building of 4 units or fewer: heating system; electrical system; cooling system; plumbing system; structural components; foundation; roof covering; exterior and interior components; and site aspects as they affect the building.

(6) "Licensed home inspector" shall mean a person, who has met the licensing requirements of this chapter and who holds a current, valid license issued under this chapter.

(7) "Person" shall mean an individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, and any other legal entity and includes a legal successor of those entities.

(8) "Personal supervision" shall mean the active oversight by the licensed home inspector of the home inspector trainee. The trainee may assist in the completion of a home inspection report, and may co-sign a home inspection report, provided that the trainee has been under the personal supervision of the licensed home inspector, and provided further that the licensed home inspector shall review and sign the home inspection report and accept total responsibility for said home inspection report.

(9) "State" shall mean the State of Delaware.

(10) "Substantially related" shall mean 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 home inspecting.

(11) "Trainee" shall mean a person who has satisfied the requirements as set forth in § 4109 of this title and any requirements as set forth in the rules and regulations as established by the Board.

(78 Del. Laws, c. 170 § 1.)

§ 4103 Board of Home Inspectors; appointments; composition; qualifications; term; vacancies; suspension or removal; unexcused absences; compensation.

(a) There is created a State Board of Home Inspectors, which shall enforce and administer this chapter.

(b) The Board shall consist of 5 members, who are residents of this State, and are appointed by the Governor. Three of the 5 members shall be licensed home inspectors, 1 of which shall be a certified HUD inspector, engaged primarily in the home inspection business. The initial members of the Board required to be licensed home inspectors shall be given a reasonable amount of time after their appointment to the Board to become licensed home inspectors pursuant to the licensure requirements set forth in this chapter. Two of the 5 members shall be public members. A public member shall not be, nor ever have been, a home inspector nor a member of the immediate family of a home inspector; shall not have been employed by a home inspector or a company engaged in the practice of home inspection; shall not have a

material interest in the providing of goods and services to home inspectors; nor have been engaged in an activity directly related to home inspection.

(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 member shall remain eligible to participate in board proceedings unless and until replaced by the Governor.

(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 term 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, 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 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 home inspectors; this includes a prohibition against serving as head of the professional association's political action committee (PAC).

(h) The provisions set forth in 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 who fails to attend at least half 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, according to Division policy; and, in addition shall receive not more than $50 for each meeting attended but not more than $500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(78 Del. Laws, c. 170 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4104 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 Board members.

(b) The Board annually shall elect a chair and vice-chair. Each officer shall serve for 1 year and shall not succeed himself or herself for more than 2 consecutive terms.

(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 at least 3 members of the Board.

(d) Minutes of all meetings shall be maintained and the Division shall maintain copies. 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.

(78 Del. Laws, c. 170 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4105 Records.

The Division shall keep a register of all approved applications for licensed home inspectors and home inspector trainees, 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.

(78 Del. Laws, c. 170 § 1.)

§ 4106 Powers and duties.

(a) The Board of Home Inspectors shall have authority to:

(1) Formulate rules and regulations, with appropriate notice to those affected, including rules and regulations governing any training, experience, or educational requirements to licensure as a home inspector; 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 process all applications;

(3) Designate the written, standardized examination to be taken by all persons applying for licensure and certification. The Board shall determine whether to use an exam that is prepared by a national entity. Applicants who qualify for licensure or certification by reciprocity shall have achieved a passing score on all parts of the designated examination or a comparable, alternative national or regional examination, if the designated examination was not available at the time of the applicant's original licensure;

(4) Evaluate the credentials of all persons applying for a license as a home inspector in this State, in order to determine whether such persons meet the qualifications for licensing set forth in this chapter;

(5) Grant licenses to, and renew licenses of, all persons who meet the qualifications for licensure and delegate license issuance to the Division for applications that meet criteria established by the Board and the Director;

(6) Register applicants as home inspector trainees;

(7) Issue temporary licenses to persons who qualify;

(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 previously has been licensed, certified, or registered in another jurisdiction as a home inspector, 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 applicant for such acts or offenses;

(10) Refer all complaints from licensees and the public concerning licensed home inspectors or concerning practices of the Board or of the profession, to the Division 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 the Administrative Procedures Act, Chapter 101 of Title 29; and

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

(b) The Board of Home Inspectors shall promulgate regulations specifically identifying those crimes which are substantially related to the practice of home inspection.

(78 Del. Laws, c. 170 § 1.)

Subchapter II

License

§ 4107 License required.

(a) No person, partnership, association, or corporation shall hold himself, herself, or itself out to the public in this State as being qualified to act as a home inspector, or advertise, or engage in the practice of inspecting homes or assume to act as a home inspector, or use in connection with the person's, partnership's, association's or corporation's name, or otherwise assume or use, any title or description conveying or tending to convey the impression that the person, partnership, association or corporation is qualified to act as a home inspector, unless such person has been duly licensed under this chapter.

(b) Whenever a license to practice as a home inspector in this State has expired or been suspended or revoked, it shall be unlawful for the person to act as a home inspector in this State.

(c) No person shall act as a home inspector trainee or hold himself or herself out to be a home inspector trainee unless such person has been duly registered by the Board under this chapter.

(78 Del. Laws, c. 170 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4108 Qualifications of applicant; report to Attorney General; judicial review.

(a) An applicant, who is applying for licensure as a home inspector under this chapter, for the relevant license, shall submit evidence, verified by oath and satisfactory to the Board, that such person:

(1) Has successfully completed high school or its equivalent;

(2) Has passed a written, standardized examination as designated by the Board;

(3) Has acquired the required training and experience requirements for licensure as may be established by the Board, including any educational courses of study as established by the Board;

(4) Shall not have been the recipient of any administrative penalties regarding that applicant's practice as a home inspector, including but not limited to fines, formal reprimands, license suspensions or revocation, (except for license revocations for nonpayment of license renewal fees), probationary limitations, and/or has not entered into any "consent agreements" which contain conditions placed by a Board on that applicant's professional conduct and practice, including any voluntary surrender of a license. The Board may determine after a hearing or review of documentation whether such administrative penalty is grounds to deny licensure;

(5) Shall not have any impairment related to drugs or alcohol that would limit the applicant's ability to act as a home inspector in a manner consistent with the safety of the public;

(6) Shall not have been convicted of a crime that is substantially related to the practice of home inspection; however, 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, may waive this paragraph (a)(6), if it finds all of the following:

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

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

court orders pertaining to fines, restitution and community service;

c. The applicant is capable of practicing home inspection in a competent and professional manner; and

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

(7) Has no disciplinary proceedings or unresolved complaints pending against the applicant in any jurisdiction where the applicant has previously been or currently is licensed, certified, or registered.

(8) Has provided evidence that the applicant or the applicant's employer has and will maintain liability and errors and omissions insurance in the form and minimum amount to be determined by the Board in its rules and regulations.

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

(c) Where the application of a person that is not under investigation in this or any other jurisdiction has been refused or rejected and such applicant feels that the Board has acted without justification, has imposed higher or different standards for the applicant than for other applicants, registrants, or licensees, or has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

(d) A person already engaged in the business of performing home inspections as of August 6, 2013, is allowed until November 4, 2013, to comply with the provisions of this chapter for the purpose of qualifying to perform home inspections. Such person will qualify for a license without being required to satisfy paragraphs (a)(1), (a)(2), and (a)(3) of this section if such person can document to the satisfaction of the Board that he or she has conducted not fewer than 250 home inspections in Delaware for compensation or has been engaged in the practice of home inspection for compensation for not fewer than 5 years prior to August 6, 2013. Nothing in this subsection (d) shall exempt a licensed home inspector from complying with any continuing education requirements for licensed home inspectors as may be established by the Board.

(78 Del. Laws, c. 170 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 126 § 1.)

§ 4109 Home inspector trainee; requirements of supervision.

(a) Persons, who are presented to the Board by a supervising home inspector for registration as a home inspector trainee, shall provide a notarized statement to the Board that the trainee:

(1) Shall perform only those specific functions, which have been delineated in the supervising home inspector's statement;

(2) Shall practice only under the direct supervision of a licensed home inspector;

(3) Shall identify themselves to the public as a home inspector trainee;

(4) Shall not have been convicted of a crime that is substantially related to the practice of home inspection; however, 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, may waive this paragraph (a)(4), if it finds all of the following:

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

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

c. The applicant is capable of practicing home inspection in a competent and professional manner; and

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

(5) Has acquired the required training and experience requirements to act as a home inspector trainee as may be established by the Board, including any educational courses of study as established by the Board.

(b) An applicant, who has been registered by the Board as a home inspector trainee, may assist in the completion of a home inspection report, and may co-sign a home inspection, provided that the home inspector trainee is actively and personally supervised by a licensed home inspector.

(c) In addition, the supervising licensed home inspector shall review and sign all home inspection reports prepared under the supervising licensed home inspector's supervision by the home inspector trainee and shall accept total responsibility for the home inspection report.

(d) No person, while registered as a home inspector trainee, shall be required to pay any fee, charge or other thing of value to a supervising licensed home inspector, or be required to execute a covenant not to compete with a supervising licensed home inspector, as a condition of satisfying the home inspector trainee requirements of this subchapter.

(e) The Board in its regulations shall determine the number of home inspector trainees that a supervising home inspector may supervise and the requirements of their supervision.

(78 Del. Laws, c. 170 § 1; 79 Del. Laws, c. 126 § 2; 79 Del. Laws, c. 392 § 1.)

§ 4110 Temporary license.

(a) A home inspector from another state, who is licensed or certified by the home inspector licensing or certifying agency in such state, may apply for registration to receive temporary licensing privileges in this State for the purpose of completing specific home inspection services by paying all required fees and filing with the Board a notarized application, on a form prescribed by the Board for such purpose,

which shall set forth and include:

(1) The applicant's name, address, social security number, and such other information as may be necessary to identify the applicant;

(2) The type of license or certificate held by the applicant and the license or certificate number;

(3) The dates of licensure or certification and the expiration date of the applicant's current license or certificate;

(4) Whether the license or certificate was issued as a result of passing a licensure or certification examination, by reciprocity, or by some other means;

(5) A statement that the person has met the requirements of § 4108(a)(4), (5), (6), and (7) of this title;

(6) A statement that the applicant agrees to abide by all home inspector laws and rules of this State and to cooperate with any investigation initiated as provided under this chapter;

(7) Identification of the property to be inspected and the anticipated duration of the assignment; and

(8) Such other information as may be necessary to determine the applicant's eligibility for temporary home inspector licensing privileges in this State.

(b) Licensing privileges granted under the provisions of this section shall expire upon completion of the specific home inspection assignment for which the Board has issued the temporary license.

(c) The Division is empowered to issue a temporary license to a home inspector from another state, who has documented compliance with the requirements of this section.

(78 Del. Laws, c. 170 § 1.)

§ 4111 Endorsement.

(a) 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 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. A license in "good standing" is defined in § 4108(a)(4), (5), (6), and (7) of this title.

(b) An applicant, who is licensed in good standing, as defined in subsection (a) of this section, in a state whose standards are not substantially similar to those of this State, shall be licensed by endorsement if such person:

(1) Has practiced for a minimum of 1 year, performed at least 75 fee-paid home inspections, and holds the designation of inspector or certified inspector as a member of the American Society of Home Inspectors ("ASHI") or the designation of regular member or certified real estate inspector as a member of the National Association of Home Inspectors ("NAHI"); or

(2) Has practiced for a minimum of 5 years after licensure; provided however, that the applicant meets all other qualifications for endorsement in this section.

(c) An applicant, who is a graduate of a foreign college or university or who has completed formal training as a home inspector in a foreign jurisdiction, and who is not licensed in another state, the District of Columbia, or territory of the United States, shall submit a certified copy of the applicant's college or university record or documentation evidencing formal training as a home inspector for evaluation by the Board, in addition to fulfilling the applicable requirements for licensure of §§ 4108 and 4109 of this title.

(78 Del. Laws, c. 170 § 1; 79 Del. Laws, c. 392 § 2.)

§ 4112 Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division in its service on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. The Division, or any other state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate fees for the licensure biennium.

(78 Del. Laws, c. 170 § 1.)

§ 4113 Issuance and renewal of licenses.

(a) The Board shall issue a license to each applicant, who meets all of the requirements of this chapter for licensure as a home inspector and who pays the fee established under § 4112 of this title.

(b) Each license shall be renewed biennially, in such manner as is determined by the Division, and upon payment of the appropriate fee and submission of a renewal form provided by the Division, and proof that the licensee has met the continuing education requirements established by the Board, and shall meet the requirements of § 4108(a)(4), (5), (6) and (7) of this title. The Board may determine, after a hearing, whether the failure to meet the requirements of § 4108(a)(4), (5), (6) and (7) of this title is grounds to deny renewal. The Board may withhold renewal of any applicant failing to meet the requirements of § 4108(a)(4), (5), (6) and (7) of this title pending investigation and the conclusion of disciplinary proceedings under §§ 4115 and 4116 of this title.

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

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

regulations.

(78 Del. Laws, c. 170 § 1.)

§ 4114 Grounds for discipline.

(a) A practitioner licensed under this chapter shall be subject to disciplinary actions set forth in § 4116 of this title, if, after a hearing, the Board finds that the home inspector:

(1) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license as a home inspector; has impersonated another person holding a license, or allowed another person to use that home inspector's license, or aided or abetted a person not licensed as a home inspector to represent himself or herself as a home inspector.

(2) Has illegally, incompetently or negligently practiced home inspection.

(3) Has been convicted of a crime that is substantially related to the practice of home inspection. A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence therefor.

(4) 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 practitioner, or the abuse of alcoholic beverage such that it impairs the practitioner's ability to perform the work of a home inspector.

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

(6) Has had that home inspector's own license as a home inspector suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record; and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every person licensed as a home inspector in this State shall be deemed to have given consent to the release of this information by the Board or other comparable agencies in another jurisdiction, and have waived all objections to the admissibility of previously adjudicated evidence of such acts or offenses.

(7) Has failed to notify the Board that the home inspector's license as home inspector in another state has been subject to discipline, or has been surrendered, suspended, or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof.

(b) Subject to the provisions of 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 home inspection 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. Notice shall be accomplished by mail to the last address of record provided by the licensee. It is the licensee's responsibility to notify the Division of a change of address within 15 days.

(78 Del. Laws, c. 170 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4115 Complaints.

(a) All complaints shall be received and investigated by the Division in accordance with § 8735 of Title 29.

(b) When it is determined that an individual is engaging, or has engaged, in the practice of home inspection, or is using the title "home inspector" or other title implying that the individual is competent to act as a "home inspector" and is not licensed under the laws of this State, the Board may institute proceedings under 10161 of Title 29 for issuance of a cease and desist order and a fine.

(78 Del. Laws, c. 170 § 1.)

§ 4116 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that 1 of the conditions or violations set forth in § 4114 of this title applies to a practitioner regulated by this chapter:

(1) Issue a letter of reprimand.

(2) Place a practitioner on probationary status, and require the practitioner to:

a. Report regularly to the Board on the matters, which are the basis of the probation.

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

(3) Suspend any practitioner's license.

(4) Revoke any practitioner's license.

(5) Impose a monetary penalty not to exceed $1,000 for each violation.

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

(c)(1) In the event of a formal or informal complaint concerning the activity of a person licensed to practice home inspection that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person's license to practice home inspection, 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. An order temporarily suspending a license to practice home inspection may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney can file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(2) A person whose license to practice home inspection has been temporarily suspended pursuant to this section must be notified of the temporary suspension immediately and in writing. Notification consists of a copy of the complaint and the order of temporary suspension pending a hearing personally served upon the person or sent by certified mail, return receipt requested, to the person's last known address.

(3) A person whose license to practice home inspection has been temporarily suspended pursuant to this section may request an expedited hearing. 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 to practice home inspection.

(4) The Board shall convene a hearing within 60 days of the date of issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If the person requests in a timely manner an expedited hearing, the Board shall convene a hearing within 15 days of the Board's receipt of the request. Upon the final decision of the Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Board.

(78 Del. Laws, c. 170 § 1; 79 Del. Laws, c. 213 § 2.)

§ 4117 Hearing procedures.

(a) If a complaint is filed with the Board pursuant to § 8735 of Title 29, alleging violation of § 4114 of this title, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) All hearings shall be 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 be in writing and shall include its reasons for such decision. The Board's decision shall be mailed immediately to the practitioner.

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

(78 Del. Laws, c. 170 § 1.)

§ 4118 Reinstatement of a suspended license; removal from probationary status.

(a) As a condition to reinstatement of a suspended license, or removal from probationary status, the Board may reinstate such license if, after a hearing or review of documentation, 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 probation.

(b) Applicants 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 probation have been met. Proof that the applicant has met the continuing education requirements of this chapter may also be required, as appropriate.

(78 Del. Laws, c. 170 § 1.)

Subchapter III

Other Provisions

§ 4119 Exception.

Nothing in this chapter prevents:

(1) A person who is employed by a governmental entity from inspecting residential buildings if the inspection is within official duties and responsibilities.

(2) A person from performing a home inspection if the inspection will be used solely by a bank, savings and loan association or credit union to monitor progress on the construction of a residential structure.

(3) A person who is employed as a property manager for a residential structure and whose official duties and responsibilities include inspecting the residential structure from performing an inspection on the structure if the person does not receive separate compensation for the inspection work.

(4) A person who is regulated in another profession, such as a licensed professional engineer or a certified HUD inspector, from acting within the scope of that person's license, registration or certification.

(78 Del. Laws, c. 170 § 1.)

Part

Chapter 44

MANUFACTURED HOME INSTALLATION

Subchapter I

General Provisions

§ 4401 Short title.

This chapter shall be known as and may be cited as the "Manufactured Home Installation Act."

(75 Del. Laws, c. 213 § 1.)

§ 4402 Scope.

This chapter governs the installation of manufactured homes wherever situated in the State of Delaware, and shall apply to single section, multiple section or expandable homes for use as a permanent dwelling.

(75 Del. Laws, c. 213 § 1.)

§ 4403 Definitions.

For the purposes of this chapter, the following terms and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

(1) "Applicant" means any person, individual, natural person who seeks to become licensed as a manufactured housing installer.

(2) "Approval decal" means the decal approved by and purchased from the Board on which an installer shall inscribe the date of setup, the name of the installer, and the number of the installer's license. Affixing an approval decal to the manufactured home data plate signifies the installer's certification that the home was installed in accord with all applicable laws, rules and regulations.

(3) "Authorized inspection agency" means a state, county, or municipal administrative department or agency, or other instrumentality of the State of Delaware, that has been assigned the function of inspecting manufactured home installations to ensure compliance with this chapter and the Board's rules and regulations or inspectors hired by the State, county or municipal administrative department or agency on a contract basis to perform inspections.

(4) "Board" means the Manufactured Home Installation Board.

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

(6) "Homeowner" means, for purposes of this chapter, an individual who owns manufactured housing in Delaware that is used as a residence.

(7) "Installation" means the assembly of manufactured homes on site and the process of affixing manufactured homes to the land by the use of a foundation, footings, utilities, or to an existing building. The term includes the process of affixing manufactured home components to or within the housing structure for which they are designated. It shall also mean the installation of support and or anchoring systems to secure the home to the ground.

(8) "Installation Code" means the requirements for installation of a manufactured home or housing as they are set forth in this chapter.

(9) "Installation instructions" means written instructions provided by the manufacturer in the installation manual, or equivalent, which accompanies each manufactured home when it leaves the factory, and that detail the manufacturers requirements for ground support, anchoring systems, and other work to be completed on site during the installation process. If there are no manufacturer's instructions available then the term means either NCSBCS/ANSI 225.1, 1994 national standards, as amended, or in accordance with plans sealed by a registered professional engineer designed for that specific home.

(10) "Installer" means any person who is engaged in the business of performing manufactured housing installations as they are defined above. Any individual who is acting at all times under the supervision of a licensee need not be licensed in order to assist in the installation of manufactured housing.

(11) "Licensee" means any person who has completed the required training and who has paid the applicable fee for and received a license, under this chapter, for the installation of manufactured housing.

(12)a. "Manufactured home" or "Manufactured housing' means a factory-built, single-family dwelling:

1. Transportable in 1 or more sections, which is either 8 body feet or more in width and 40 body feet or more in length, or, when erected on site, has more than 400 square feet in living area; and

2. With or without a permanent foundation and designed to be used as a year-round dwelling when connected to the required utilities; and

3. If manufactured since June 15, 1976, built in accordance with manufactured housing construction requirements promulgated by the federal Department of Housing and Urban Development (HUD) or by other applicable codes.

b. The terms "manufactured home" and "manufactured housing" are synonymous with the term "manufactured home" as that term is used and defined in Chapter 70 of Title 25, but shall not be interpreted to include any recreational vehicle, recreational trailer,

travel trailer, park trailer, camping trailer, or truck camper as those terms are defined in Chapter 1 of Title 21.

(13) "Manufactured home installation inspector" means any person who holds a manufactured home installation inspector's certificate issued pursuant to this chapter.

(14) "NCSBCS/ANSI 225.1, 1994" means the National Conference of States on Building Codes and Standards, Inc., American National Standard Home Installations, as adopted on January 4, 1994, as amended.

(15) "New manufactured home" means a manufactured home that has not been previously sold or previously installed. Homes that would otherwise have been considered new under this paragraph shall not lose that status as a result of having been set up on a temporary basis for display in a retail sales center, facility or its equivalent.

(16) "Person" means an individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company and any other legal entity and includes a legal successor of those entities.

(17) "Previously owned manufactured home" means any manufactured home that has been previously sold and been subject to an installation as defined herein.

(18) "Recreational vehicle" means a travel trailer, camping trailer, park model trailer, campers, or motor homes which are primarily designed as temporary living quarters for recreational camping, seasonal or travel use and which either have their own motor power or are mounted on or drawn by another vehicle.

(19) "Substantially related" means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the person's fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the work of a manufactured home installer.

(20) "Supervision" means managing the acts of another by overseeing the performance or operation of the person and by taking full responsibility for acts or omissions of the person that are being performed at the direction of a licensee or under the authority of a licensee's license.

(21) "Unauthorized practitioner" means any person, who engages in the occupational practices regulated by the Board, and who is not licensed or certified by the Board to do so.

(75 Del. Laws, c. 213 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 169 §§ 1, 2.)

§ 4404 Division responsibilities; register of licensed installers; Board records; administrative support.

(a) The Division of Professional Regulation shall keep a register of all approved manufactured home installer licensure applications.

(b) The Division shall maintain complete records relating to meetings of the Manufactured Home Installation Board including, but not limited to: minutes, examinations, rosters, changes and additions to the Board's rules and regulations, complaints, hearing records, and such other matters as the Board shall determine. Such records shall be prima facie evidence of the proceedings of the Board.

(c) The Division shall provide administrative support necessary for the Board to carry out its duties under this chapter.

(75 Del. Laws, c. 213 § 1.)

Subchapter II

The Manufactured Home Installation Board

§ 4411 The Manufactured Home Installation Board.

There is created a Manufactured Home Installation Board which shall administer and enforce this chapter.

(75 Del. Laws, c. 213 § 1.)

§ 4412 The Manufactured Home Installation Board; objectives.

(a) The primary objective of the Manufactured Home Installation Board, 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 competence; 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 persons regulated by the Board; shall adjudicate at formal hearings; shall promulgate rules and regulations; and shall impose sanctions where necessary against persons licensed or certified pursuant to this chapter.

(75 Del. Laws, c. 213 § 1.)

§ 4413 The Manufactured Home Installation Board; appointments; composition; qualifications; term; succession; conflicts of interest; public inquiries.

(a) The Board shall consist of 9 members, appointed by the Governor, who are residents of this State. These members shall consist of:

(1) Two manufactured home installers, licensed pursuant to this chapter;

(2) Two manufactured home installation inspectors, certified pursuant to this chapter;

(3) One representative of Delaware manufactured home retailers;

(4) One registered professional engineer with at least 6 years experience in manufactured home planning and design who is authorized to practice in this State; and

(5) Three members of the public.

(b) Except as provided in subsection (c) of this section, each member shall serve a term of 3 years, and may succeed himself or herself; 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, or to replace a member who has held over following the expiration of that member's term of office, 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. Any person appointed to replace a member who has held over following the expiration of that member's term of office, shall serve a term of less than 3 years when necessary to ensure that Board members' terms expire on a rotating annual basis.

(c) A person may be appointed to the Board for up to 2 consecutive terms and, if the person has been twice appointed to the Board or has served on the Board for 6 or more years within any 9-year period, that person shall again be eligible for appointment to the Board only after an interim period of at least 3 years has expired since such person last served.

(d) 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 this section, unless such an amendment or revision amends this section to permit such an appointment.

(e) In addition to the criteria set forth in subsection (a) of this section:

(1) No member of the Board, while serving on the Board, shall hold elective office in any professional association of manufactured home installers, including but not limited to serving as the head of the professional association's Political Action Committee (PAC);

(2) The public members shall be accessible to inquiries, comments, and suggestions from the general public; and

(3) No public member of the Board shall be, or ever have been:

a. A manufactured housing installer;

b. A member of the immediate family of a licensed manufactured housing installer;

c. Employed by a manufactured home installation company or contractor;

d. Materially interested in the providing of goods and services to manufactured home installers;

e. Engaged in an activity directly related to the manufactured home installation business.

(75 Del. Laws, c. 213 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4414 The Manufactured Home Installation Board; vacancies; suspension or removal; member conduct; unexcused absences; compensation.

(a) A member of the Board shall be suspended or removed by the Governor for misfeasance, nonfeasance, malfeasance, misconduct, incompetence, 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.

(b) The provisions set forth in Chapter 58 of Title 29 shall apply to all members of the Board.

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

(d) Each member of the Board shall be reimbursed for all expenses involved in each meeting, including travel, according to Division policy, and, in addition, shall receive not more than $50 for each meeting attended but not more than $500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(75 Del. Laws, c. 213 § 1.)

§ 4415 The Manufactured Home Installation Board; 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 president deems necessary, or, at the request of a majority of Board members.

(b) The Board annually shall elect a president, vice-president, secretary, a complaint officer and an education officer. Each officer shall serve for 1 year and shall not succeed himself or herself for more than 2 consecutive terms.

(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 at least 5 members of the Board.

(d) Minutes of all meetings shall be recorded and delivered to the Division in a timely manner following the meeting. At any hearing where evidence is presented, a record from which a verbatim transcript can be prepared shall be made. The person requesting the transcript shall incur the cost of preparing any transcript.

(75 Del. Laws, c. 213 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4416 The Manufactured Home Installation Board; powers and duties.

(a) The Board shall have all the powers and authority necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the powers set forth in this section in addition to others granted in this chapter.

(b) The Manufactured Home Installation Board may:

(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 application forms to be used by all applicants and process all applications;

(3) Designate the written, standardized examination, approved by the Division, and administered and graded by the testing service, to be taken by all persons applying for licensure, except applicants who qualify for licensure by reciprocity;

(4) Evaluate the credentials of all persons applying for a license as a manufactured home installer, in this State, in order to determine whether such persons meet the qualifications for licensing set forth in this chapter.

(5) Evaluate the credentials of all persons applying for a certificate as a manufactured home installation inspector, in order to determine whether such persons meet the qualifications for certification set forth in this chapter.

(6) Grant licenses to and renew licenses of all persons who meet the qualifications for licensure;

(7) Grant certificates to and renew certifications of all person who meet the qualifications for certification;

(8) Establish by rule and regulation continuing education standards, which shall be a requirement of continued licensure and certification, as well as a requirement for renewal;

(9) Evaluate certified records to determine whether an applicant for licensure or certification, who previously has been licensed, certified or registered in another jurisdiction as a manufactured home installer or installation inspector, 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 applicant for such acts or offenses;

(10) Refer all complaints from licensees and certified installation inspectors and the public concerning licensees and certified installation inspectors, concerning unauthorized practitioners, or concerning practices of the Board or of the profession, to the Division 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 the Administrative Procedures Act, Chapter 101 of Title 29.

(12) Grant a license to, and renew the license of, any person holding an inactive license, as defined in the Board's rules and regulations, provided the individual does not use the license to perform manufactured home installations, and who in addition, submits proof of completion of biennial continuing education requirements.

(13) In the event an installation is not in compliance with this chapter, direct a licensed installer to take such corrective actions as it deems necessary to bring the installation into compliance.

(14) Assess administrative penalties against any unauthorized practitioner.

(15) Designate and impose the appropriate sanction or penalty, after time for appeal has lapsed, when the Board determined after a hearing, that penalties or sanctions should be imposed.

(16) Monitor federal laws and regulations governing manufactured home installations and installation inspections to ensure its continued compliance with them.

(c) The Board shall require that all persons receiving a license, display on the vehicles used in the performance of their work, the words "Licensed Manufactured Home Installer", or the abbreviation "Lic. Mfd. Home Installer" and the number assigned to them, in not less than 2-inch letters and numbers.

(d) The Board shall promulgate regulations specifically identifying those crimes which are substantially related to the work of a manufactured home installer or the practice of manufactured home installation.

(75 Del. Laws, c. 213 § 1; 77 Del. Laws, c. 169 §§ 3-5.)

Subchapter III

Manufactured Home Installation Code

§ 4421 Manufactured home installations.

(a) Every manufactured home installed in Delaware must be installed by a manufactured home installer licensed by the Board pursuant to this chapter.

(b) All manufactured home installations shall performed in a manner consistent with the regulations of the United States Department of Housing and Urban Development and shall be completed:

(1) Pursuant to the requirements of the manufactured home manufacturer's written installation instructions or manual; or

(2) If the manufacturer's written installation instructions or manual is not available, then pursuant to the applicable provisions of NCSBCS/ANSI 225.1, 1994, as amended; or

(3) If the manufacturer's written installation instructions or manual is not available, and the provisions of NCSBCS/ANSI 225.1, 1994, as amended do not apply to the specific manufactured home, then pursuant to a set of plans designed for that specific manufactured home under the seal of a registered professional engineer.

(c) At the discretion of the county where the manufactured home is sited, and for a period not to exceed 6 months, limited exceptions to the above installation requirements may be permitted where installation of a manufactured home is made on a temporary basis, as emergency relief to a resident whose legal dwelling has been damaged or destroyed by fire or other natural disaster until said damage can be repaired or the dwelling replaced with a legal dwelling, or for a temporary installation where a manufactured home is being replaced with anther legal dwelling.

(d) All manufactured home installations shall be inspected pursuant to this chapter, by an employee or contractor of an authorized inspection agency who has been certified by the Board as a manufactured home installation inspector.

(e) This section is intended to establish minimal standards for the installation of any manufactured home within the State of Delaware and to govern the installation of both previously owned manufactured homes and new manufactured homes. These standards are intended to satisfy the standards established by the federal Manufactured Housing Improvement Act of 2000 [P.L. 106-569, Title VI], and shall be liberally construed to that end.

(75 Del. Laws, c. 213 § 1; 77 Del. Laws, c. 169 § 6.)

§ 4422 Installation inspections.

(a) All installations of manufactured homes, whether new or previously owned, shall be subject to a minimum of 2 and a maximum of 5 inspections conducted prior to the owner taking occupancy, and the issuance of a certificate of completion or occupancy. At least 1 inspection shall be performed upon completion of an installation for the purposes of ensuring the safety and stability of the installation and the habitability of the manufactured home. Re-inspections required due to a failure of a previous inspection do not count towards the maximum number of inspections.

(b) Inspections shall be conducted by the land use department or other applicable agency or department of the county in which the manufactured home is located, unless a local government agency that currently performs such inspections on traditional housing desires to assume responsibility for inspections of manufactured housing. If the local government agency declines to do the inspection then the county shall be the authorized inspection agency. Counties or municipalities may hire inspectors on a contract basis to perform inspections on the county's or municipality's behalf, consistent with their current practices for other types of inspections. Such inspectors are subject to the requirements of subsection (d) of this section below. In no event shall any installation be subject to multiple inspections by other jurisdictions.

(c) The county or other local applicable agency which performs the inspection may charge a reasonable fee, as it relates to the actual cost to the inspecting agency, for the inspection procedure.

(d) No person shall undertake an installation inspection pursuant to this chapter without first having been individually certified by the Board pursuant to this chapter.

(75 Del. Laws, c. 213 § 1; 77 Del. Laws, c. 169 § 7.)

§ 4423 Requirement to provide notification of installation information.

All licensed manufactured home installers shall purchase approval decals from the Board, for a fee to be established by the Division. Such decal shall denote the date of setup, the name of the installer, and the number of the installer's license. Approval decals shall be positioned and permanently affixed next to the manufactured home data plate.

(75 Del. Laws, c. 213 § 1.)

Subchapter IV

Licensure and Certification

§ 4431 Licensure requirements; reciprocal licensure.

(a) To obtain a manufactured home installer license, a person must:

(1) Apply to the Board for the license, in a manner designated by the Board;

(2) Pay an application fee established by the Division to offset the administrative costs associated with the functions of the Board;

(3) Be at least 18 years old;

(4) Provide evidence that the applicant or that applicant's employer has and will maintain a surety bond or irrevocable letter of credit issued by a federally-insured financial institution, in the form and minimum amount to be determined by the Board in its rules and regulations, that will cover the cost of repairing all damage to the home and its supports caused by the installer, or the installer's or employer's employees or agents, during the installation. The Board may require the licensed installer to provide proof of the surety bond or irrevocable letter of credit at any time. The licensed installer must notify the Board in writing, within 7 days of any changes or cancellations of the surety bond or irrevocable letter of credit. The employer must notify the Board of the termination of employment of any licensee who is covered by the employer's surety bond or irrevocable letter of credit. Entities or individuals who maintain a surety bond or irrevocable letter of credit as provided in this paragraph are responsible for all acts or omissions of the licensed manufactured home installer and any individual acting under the supervision of or assisting the installer in the installation of manufactured housing;

(5) Provide evidence that the applicant or that applicant's employer has and will maintain liability insurance in the form and minimum

amount to be determined by the Board in its rules and regulations. The Board may require the licensed installer to provide proof of liability insurance at any time. The licensed installer must notify the Board in writing, within 7 days of any changes or cancellations of the liability insurance. The employer must notify the Board of the termination of employment of any licensee who is covered by the employer's liability insurance. Entities or individuals who maintain liability insurance as provided in this paragraph are responsible for all acts or omissions of the licensed manufactured home installer and any individual acting under the supervision of or assisting the installer in the installation of manufactured housing;

(6) Complete the educational requirements established by the Board;

(7) Have passed a licensure test established or adopted by the Board, and presented proof of the same to the Board;

(8) Agree to be responsible for all acts or omissions of any individual acting under the supervision of the applicant while assisting in the installation of manufactured housing;

(9) Not been have been the recipient of any administrative penalties regarding the applicant's actions as a licensed manufactured home installer, including but not limited to fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations, and and/or has not entered into any "consent agreement" which contains conditions placed by a Board on the applicant's professional conduct, including any voluntary surrender of a license. The Board, after a hearing, may determine whether such administrative penalty is grounds to deny licensure; and

(10) Not have a criminal conviction nor pending criminal charge relating to an offense, the circumstances of which substantially relate to actions as a licensed manufactured home installer. Applicants who have a criminal conviction or pending criminal charge shall request appropriate authorities to provide information about the conviction or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the conviction or charge is substantially related to actions as a licensed chemical dependency professional. However, 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, may waive this paragraph (a)(10), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of performing manufactured home installation services in a competent and professional manner.

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

(b) The Board may waive the education and examination requirements and grant a reciprocal license upon the receipt of an application and the payment of the fees to any person who presents proof of current licensure, registration, or certification as a manufactured home installer in any other state, district, or territory of the United States whose laws and regulations governing licensure, registration, or certification are considered by the Board to be substantially similar to the requirements for licensure set forth in this chapter and the Board's rules and regulations.

(75 Del. Laws, c. 213 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 436 § 48; 77 Del. Laws, c. 169 §§ 8, 9; 77 Del. Laws, c. 199 § 36; 78 Del. Laws, c. 44 §§ 70, 71.)

§ 4432 Certification requirements.

The Board may issue a manufactured home installation inspector's certificate to any full-time, part-time, or casual/seasonal employee of an authorized inspection agency who has completed a certification course established or approved by the Board.

(75 Del. Laws, c. 213 § 1.)

§ 4433 License and certification renewal; inactive licenses; refusal to renew; finality of Board's decision.

(a) All licenses issued pursuant to this chapter shall be renewed biennially. All certificates issued pursuant to this chapter shall be renewed on a schedule established by the Board.

(b) The Board may establish requirements to grant an inactive status to any licensee upon request.

(c) Renewal decisions of the Board shall be final when announced to the applicant.

(75 Del. Laws, c. 213 § 1.)

Subchapter V

Disciplinary Proceedings

§ 4441 Grounds for discipline.

(a) A practitioner licensed or certified under this chapter shall be subject to disciplinary actions set forth in § 4443 of this title, if, after a hearing, the Board finds that the practitioner:

(1) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license as a manufactured home

installer or a certificate as a manufactured home installation inspector; has impersonated another person holding a license or certificate, or allowed another person to use that manufactured home installer's license or manufactured home installation inspector's certificate, or aided or abetted a person not licensed as a manufactured home installer or certified as a manufactured home installation inspector to represent himself or herself as a manufactured home installer or manufactured home installation inspector.

(2) Has illegally, incompetently or negligently practiced manufactured home installation or manufactured home installation inspection.

(3) Has been convicted of a crime that is substantially related to the practice of manufactured home installation or manufactured home installation inspection. A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence thereof.

(4) 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 practitioner, or the abuse of alcoholic beverage such that it impairs the practitioner's ability to perform the work of a manufactured home installer or manufactured home installation inspector.

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

(6) Has had that practitioner's manufactured home installer's license or manufactured home installation inspector's certificate suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record; and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every person licensed as a manufactured home installer or certified as a manufactured home installation inspector in this State shall be deemed to have given consent to the release of this information by the Board or other comparable agencies in another jurisdiction, and to have waived all objections to the admissibility of previously adjudicated evidence of such acts or offenses.

(7) Has failed to notify the Board that the manufactured home installer's license or manufactured home installation inspector's certificate in another state has been subject to discipline, or has been surrendered, suspended, or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof.

(8) Has failed to comply with a lawful board order.

(b) Subject to the provisions of subchapter IV of Chapter 101 of Title 29, no license or certificate shall be restricted, suspended, or revoked by the Board, and no practitioner's right to practice manufactured home installation or manufactured home installation inspection 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. Notice shall be accomplished by mail to the last address of record provided by the practitioner. It is the practitioner's responsibility to notify the Division of a change of address within 15 days of that change.

(75 Del. Laws, c. 213 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 171 § 1.)

§ 4442 Hearing procedures.

(a) If a complaint is filed with the Board pursuant to § 8735 of Title 29 alleging violation of § 4441 of this title, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) Where the practitioner is in disagreement with the action of the Board, the practitioner may appeal the Board's decision to the Superior Court within 30 days of the day that notice of the decision is mailed, in accordance with the Administrative Procedures Act, § 10142 of Title 29.

(75 Del. Laws, c. 213 § 1; 79 Del. Laws, c. 171 § 1.)

§ 4443 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 § 4441 of this title applies to a practitioner:

(1) Issue a letter of reprimand;

(2) Place the practitioner on probationary status and require the practitioner to:

a. Report regularly to the Board upon the matters which are the basis for the probation; and/or

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

(3) Impose a monetary penalty as set forth in § 4445(c) of this title;

(4) Suspend any practitioner's license or certificate.

(5) Revoke or permanently revoke any practitioner's license or certificate.

(b) The Board may withdraw or reduce conditions of probation when it finds that deficiencies requiring such action have been remedied.

(c) Where the Board has placed a practitioner on probationary status under certain restrictions or conditions and the Board has determined that such restrictions or conditions are being or have been violated by the practitioner, it may, after a hearing on the matter, suspend or revoke the practitioner's license or certificate.

(79 Del. Laws, c. 171 § 1.)

§ 4444 Temporary suspension pending hearing.

In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the

public health, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(79 Del. Laws, c. 171 § 1.)

§ 4445 Penalties.

(a) Where the Board has determined, upon notice and hearing pursuant to Chapter 101 of Title 29 that a person is engaged in the practice of manufactured home installation or manufactured home installation inspection regulated by this chapter without having lawfully obtained a license or certificate or that a person previously licensed or certified under this chapter is engaged in a practice regulated by this chapter notwithstanding that the person's license or certificate has been suspended or revoked, the Board may issue a cease and desist order. In addition to the power to issue a cease and desist order, the Board may seek an injunctive order prohibiting such unlawful practice and/or seek the imposition of other civil penalties defined by this chapter.

(b) Upon notice and hearing pursuant to Chapter 101 of Title 29, the Board may fine any person who violates such cease and desist order not less than $100 or more than $1,000. Each day a violation continues may be deemed a separate offense in the Board's discretion.

(c) Any person who violates any provisions of this chapter or any rules or regulations promulgated hereunder shall be liable for a civil penalty of not more than $5,000 for the first offense; and not more than $10,000 for the second and each subsequent offense, which penalty may be sued for, and recovered by, the Board. Nothing in this section shall be construed to prevent prosecution under, or be inconsistent with, Title 11.

(d) In addition to the sanctions set forth in subsections (a) and (b) of this section, a person, not currently licensed as a manufactured home installer or certified as a manufactured home installation inspector under this chapter, when guilty of performing manufactured home installation or manufactured home installation inspection, 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 perform manufactured home installation or manufactured home installation inspection, such offender shall be guilty of a misdemeanor. Upon the first offense, the 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. Justice of the Peace Courts shall have jurisdiction over all violations of this chapter.

(79 Del. Laws, c. 171 § 1.)

Part

Chapter 50

BOARD OF FUNERAL SERVICE PRACTITIONERS

§§ 5001 -5016. Objectives; regulation of practitioners; transfer of rights, powers and duties of Board of Services; license required; exceptions; composition of Board; qualifications; term; vacancies; removal of members; members as officers of professional associations; employees; expenses; officers; meetings; quorum; powers and duties; qualifications of applicants for licensure; judicial review; report to Attorney General; examinations; reciprocity; fees; issuance of license; renewal; inactive status; reinstatement; complaints; grounds for discipline; procedure; disciplinary sanctions; hearing procedures; unauthorized practice; violation of probation; second or subsequent offenses.

(Repealed by 66 Del. Laws, c. 225 § 1, effective June 11, 1988.)

Part

Chapter 51

COSMETOLOGY AND BARBERING AND LICENSURE OF AESTHETICIANS

Subchapter I

Board of Cosmetology and Barbering

§ 5100 Objectives.

The primary objective of the Board of Cosmetology and Barbering, to which all other objectives and purposes are secondary, is to protect the general public (specifically those persons who are direct recipients of services regulated by these subchapters) from unsafe practices, and from occupational practices which tend to reduce competition or artificially 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 competency; shall monitor complaints brought against practitioners regulated by the Board; shall adjudicate at formal complaint hearings; shall promulgate rules and regulations; and shall impose sanctions where necessary against practitioners.

(63 Del. Laws, c. 146 § 3; 64 Del. Laws, c. 8 § 1; 69 Del. Laws, c. 178 § 1; 77 Del. Laws, c. 65 § 1.)

§ 5101 Definitions.

As used in this chapter:

(1) "Apprentice" means any person who is engaged in the learning of any or all the practices of cosmetology, barbering, nail technology or electrology from a practitioner licensed in the profession the apprentice is studying. The apprentice may perform or assist the licensed practitioner in any of the functions which the practitioner is licensed to perform.

(2) "Barber" means any person licensed under this chapter who, for a monetary consideration, shaves or trims beards, cuts or dresses hair, gives facial or scalp massages, or treats beards or scalps with preparations made for this purpose.

(3) "Board" means and refers to the state Board of Cosmetology and Barbering, as provided for in this chapter.

(4) "Classroom hour" is defined as 50 minutes of each 60-minute hour.

(5) "Cosmetologist" means any person licensed under this chapter who is not an apprentice or student practicing cosmetology, who shall have the qualifications provided for by this chapter.

(6) "Cosmetology" includes any or all work done for compensation by any person, including, but not be limited to, the embellishment, cleansing and beautification of human hair, such as arranging, dressing, curling, permanent waving, cutting, singeing, pressing, chemically bleaching or coloring, chemically straightening, or similar work, as well as the removal of superfluous hair and nail technology. The term "cosmetology" shall also include, but not be limited to, the massaging, stimulating or beautifying, or similar work, of the scalp, face, arms, hands or the upper body. All work performed under the definition of "cosmetology" may be done by hand or by mechanical or electrical devices and may include the use of cosmetic preparations, tonics, lotions or creams.

(7) "Cosmetology shop" means any place or part thereof wherein cosmetology, barbering, electrology, nail technology, aesthetics, or any of their practices, are performed for compensation, whether or not the establishment holds itself out as a cosmetology shop.

(8) "Division" means the Delaware Division of Professional Regulation.

(9) "Electrologist" means any person licensed under this chapter who, for a monetary consideration, engages in the removal of superfluous hair by use of specially designed electric needles.

(10) "Instructor" means any person who teaches cosmetology, barbering, electrology or nail technology.

(11) "Master barber" means any person licensed under this chapter who, for a monetary consideration, shaves or trims beards, gives facial or scalp massages, treats beards or scalps with preparations made for this purpose, or embellishes, cleans or beautifies human hair, which includes arranging, dressing, curling, permanent waving, cutting, singeing, pressing, chemically bleaching or coloring, chemically straightening, or similar work.

(12) "Nail technician" means any person licensed under this chapter who engages only in the practice of manicuring, pedicuring or sculpting nails, including acrylic nails, of any person.

(13) "Person" means a corporation, company, association or partnership, as well as an individual.

(14) "Professional-in-charge" means a licensee who is responsible for the operation of a cosmetology shop, including ensuring that all employees are licensed, where required by law.

(15) "School of cosmetology," "school of electrology," "school of nail technology," "school of barbering" means any place or part thereof where cosmetology, barbering, electrology, nail technology or any of the practices are taught, whether or not such place holds itself out as such.

(16) "State" means the State of Delaware.

(17) "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 cosmetology, barbering, electrology, nail technology or aesthetics.

(69 Del. Laws, c. 178 § 1; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 158 § 1; 74 Del. Laws, c. 262 § 91; 75 Del. Laws, c. 169 § 1; 77 Del. Laws, c. 65 § 1; 79 Del. Laws, c. 170 § 1; 80 Del. Laws, c. 317 §§ 1, 2.)

§ 5102 Authority to regulate.

The Board of Cosmetology and Barbering shall regulate persons performing any of the functions outlined in the duties of a cosmetologist, barber, electrologist, nail technician, aesthetician or instructor.

(64 Del. Laws, c. 8 § 1; 69 Del. Laws, c. 178 § 1; 77 Del. Laws, c. 65 § 1.)

§ 5103 License requirement; applicability of chapter; exemptions.

(a) No person shall engage in the practice of cosmetology, barbering, electrology, or nail technology, or act as an instructor in said professions, or hold himself or herself out to the public as being qualified to practice the same; or use in connection with that person's name, or otherwise assume or use, any title or description conveying or tending to convey the impression that the person is qualified to practice cosmetology, barbering, electrology, or nail technology, or act as an instructor in said professions, unless such person has been duly licensed under this chapter.

(b) Whenever a license to practice as a cosmetologist, barber, electrologist, or nail technician, or act as an instructor in said professions, has expired or been suspended or revoked, it shall be unlawful for the person to practice cosmetology, barbering, electrology, nail technology, or act as an instructor in said professions.

(c) This chapter shall not be construed to prohibit practice by:

(1) Persons who are licensed to practice cosmetology, barbering, electrology or nail technology in any other state, district or foreign country who, as practicing cosmetologists, barbers, electrologists or nail technicians enter this State to consult with a cosmetologist, barber, electrologist or nail technician of this State. Such consultation shall be limited to less than 30 days in any calendar year.

(2) Any student of an accredited school of cosmetology, barbering, electrology or nail technology who is receiving practical training under the personal supervision of a licensed instructor in cosmetology, barbering, electrology or nail technology.

(3) Any student who is enrolled in a work-study, student-learner, apprenticeship or similar program where the employment is an integral part of the course of study, and the employment is procured and supervised by the Delaware public school system.

(4) Any cosmetologist, barber, electrologist or nail technician, commissioned by any of the armed forces of the United States, or by the United States Public Health Service.

(5) Persons employed to demonstrate, recommend or administer cosmetic preparations, lotions, creams, makeup, perfume or hair appliances or tools intended for home use, for the purposes of effecting retail sales, if those persons neither accept payment from the consumer for that demonstration nor make the demonstration contingent upon the purchase of any product or service.

(6) Persons employed to render cosmetology or hairstyling services in the course of, and incidental to, the business or employers engaged in the theatrical, radio, television or motion picture production industries, modeling or photography.

(7) Persons authorized by the laws of this State to practice medicine and surgery, dentistry, chiropractic and similar occupations, including registered nurses, licensed practical nurses, nurses' aides, physical therapists and physical therapy assistants, when acting within the scope of their profession or occupation.

(8) Persons engaged in the practice of hair braiding. Hair braiding does not include hair cutting, application of dyes, reactive chemicals or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair. Hair braiding may involve the use of hair extensions when the extensions are attached only by natural means.

(d) Shop license; necessity. — No person, firm, corporation, partnership or other legal entity shall operate, maintain or use premises for the offering of or rendering of any 1 or more of the services encompassed in the definition of cosmetology without first having secured a shop license from the Board.

(e) Services rendered in unlicensed shop or school; prohibition; exceptions. — No person shall offer or render any of the services encompassed within the definition of cosmetology in a place which is not licensed as a shop or school, except that a practicing licensee, duly licensed pursuant to this chapter, may render the services which that practicing licensee is licensed to offer, as long as the practicing licensee is sponsored by a licensed shop and a record of those services is maintained by that shop, on the following individuals:

(1) Patients in hospitals, nursing homes, and other licensed health care facilities;

(2) A decedent in a funeral home;

(3) An invalid or handicapped person in the person's place of residence;

(4) Inmates or residents of institutions of the Department of Correction or the Department of Human Services;

(5) Performers or models, prior to, in anticipation of, or during a performance; or

(6) Potential consumers of cosmetic preparations, lotions, creams, makeup or perfume which are intended for home use if the application of the product is made for the purposes of effecting a retail sale and the person neither accepts payment from the consumer for the service, nor makes the provision of the service contingent upon the purchase of any product or service.

(64 Del. Laws, c. 8 § 1; 69 Del. Laws, c. 178 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 65 § 1; 80 Del. Laws, c. 317 § 3.)

§ 5104 Board of Cosmetology and Barbering; appointment; composition; qualifications; term of office; suspension or removal; compensation; continuation of former Board.

(a) The Board of Cosmetology and Barbering shall consist of 11 members appointed by the Governor. With the expiration of the terms of the members in office as of April 15, 2016, the Board composition shall be as follows: 2 cosmetologists, 1 nail technician, 1 barber, 1 aesthetician, 1 cosmetology instructor and 5 public members. To serve on the Board, a public member shall not be, nor ever have been, a cosmetologist, barber, electrologist, nail technician or aesthetician; nor a member of the immediate family of a cosmetologist, barber, electrologist, nail technician or aesthetician; shall not have been employed by a cosmetologist, barber, electrologist, nail technician or aesthetician; shall not have had a material or financial interest in the providing of goods and/or services to a cosmetologist, barber, electrologist, nail technician or aesthetician; nor have been engaged in an activity directly related to cosmetology, barbering, electrology, nail technology or aesthetics. Such public member shall be accessible to inquiries, comments and suggestions from the general public.

(b) Each member shall serve for a term of 3 years, and may successively serve for 1 additional term; provided, however, that where a member was initially appointed to fill a vacancy, such member may successively serve 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.

(c) A person who has never served on the Board may be appointed to serve on 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 term has expired since such person last served.

(d) Any act or vote by a person appointed in violation of subsection (c) 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 (c) of this section, unless such amendment or revision amends this section to permit such an appointment.

(e) A member of the Board shall be suspended or removed by the Governor for misfeasance, nonfeasance or malfeasance. A member subject to disciplinary proceedings shall be disqualified from Board business until the charge is adjudicated or the matter is otherwise concluded.

(f) Any member who fails to attend 3 consecutive regular business meetings, or who fails to attend at least 1/2 of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed by the Governor.

(g) No member of the Board of Cosmetology and Barbering, while serving on the Board, shall be a president, chairperson or other official of a professional cosmetology, barbering, nail technology, electrology or aesthetics association.

(h) The provisions set forth in Chapter 58 of Title 29 shall apply to all members of the Board.

(i) Board members shall receive not more than $50 for each meeting attended, nor more than $500 maximum per member in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(63 Del. Laws, c. 146 § 3; 64 Del. Laws, c. 8 § 1; 67 Del. Laws, c. 368 § 26; 69 Del. Laws, c. 178 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 177 § 1; 73 Del. Laws, c. 158 §§ 2, 3; 77 Del. Laws, c. 65 § 1; 80 Del. Laws, c. 317 § 4.)

§ 5105 Officers; meetings; quorum.

(a) In the same month of each year the members shall elect, from among their number, a president, a vice-president and a secretary for 1 year. Each officer shall serve for 1 year, and may successively serve in the same office for 1 additional term. In the event that the president shall leave the Board, the vice-president shall become president and an election shall be held within 90 days of the president's departure.

(b) The Board shall hold a regularly scheduled business meeting at least once in each quarter of a calendar year, and at such other times as the president deems necessary or at the request of a majority of board members.

(c) A majority of members shall constitute a quorum for the purpose of transacting business. No action shall be taken without the affirmative vote of a majority of the quorum. No disciplinary action shall be taken without the affirmative vote of at least 7 members.

(d) Minutes of all meetings shall be recorded, and copies of the minutes shall be maintained by the Division of Professional Regulation. At any hearing where evidence is presented, such hearing shall be recorded by a court reporter and any stenographic transcript requested shall be at the expense of the party making the request.

(63 Del. Laws, c. 146 § 3; 64 Del. Laws, c. 8 § 1; 65 Del. Laws, c. 355 § 1; 68 Del. Laws, c. 409 § 1; 69 Del. Laws, c. 178 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 65 § 1.)

§ 5106 Powers and duties.

(a) The Board of Cosmetology and Barbering shall have the power to:

(1) Formulate rules and regulations, with appropriate notice given. All rules and regulations shall be promulgated in accordance with the procedures specified in the Administrative Procedures Act, Chapter 101 of Title 29. Each rule or regulation shall implement or clarify a specific section of this chapter;

(2) Designate and process the application form to be used by all applicants; however, no application form shall require a picture of the applicant, require information relating to citizenship, race, place of birth or length of state residency; nor shall it require personal references;

(3) Designate a written examination, prepared by either a national professional association or by a recognized legitimate national testing service;

(4) Provide for the administration of all examinations, subject to the approval of the Division of Professional Regulation, including

notice and information to applicants;

(5) Design and administer practical examinations, subject to the approval of the Division of Professional Regulation, for cosmetology, nail technology, barbering and electrolysis, only;

(6) Grant licenses to, and renew licenses of, all persons who meet the qualifications for licensure and who have paid the appropriate fees as determined by the Division;

(7) Grant temporary licenses to all persons who qualify. Rules and regulations for the issuance of temporary licenses shall be established by the Board;

(8) Refer all complaints from licensees and the public concerning persons licensed by the Board, or concerning practices of the Board or of the profession, to the Division 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;

(9) Conduct hearings and issue orders in accordance with procedures established pursuant to Chapter 101 of Title 29;

(10) 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;

(11) Bring proceedings in the courts for the enforcement of this chapter;

(12) Take such action outlined in § 5117 of this title with regard to unlicensed practitioners;

(13) Evaluate certified records to determine whether an applicant for licensure who previously has been licensed, certified or registered in another jurisdiction to practice cosmetology, barbering, nail technology and/or electrology 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 applicant for such acts or offenses;

(14) Authorize agents of the Division to inspect any shop or school where cosmetology, barbering, electrology, nail technology or aesthetics services are offered, rendered or taught, or any other place where such services are offered, rendered or taught;

(15) Require continuing education of licensees as established by Board rules and regulations;

(16) Prohibit the use of methyl methacrylate (MMA); and

(17) Establish by rule and regulation advanced training requirements to assure that the licensee meets accepted standards of care for different techniques and services.

(b) The Board of Cosmetology and Barbering shall promulgate regulations specifically identifying those crimes which are substantially related to the practice of cosmetology, barbering, electrology, nail technology or aesthetics.

(63 Del. Laws, c. 146 § 3; 64 Del. Laws, c. 8 § 1; 69 Del. Laws, c. 178 § 1; 71 Del. Laws, c. 380 § 1; 73 Del. Laws, c. 158 §§ 4-10; 74 Del. Laws, c. 262 § 92; 75 Del. Laws, c. 169 § 2; 77 Del. Laws, c. 65 § 1; 79 Del. Laws, c. 170 § 1; 80 Del. Laws, c. 317 § 5.)

§ 5107 Qualifications of applicant; judicial review; report to Attorney General.

(a) All persons applying for a license to practice under this chapter:

(1) Shall have successfully completed an education equivalent to a tenth grade education. Instructors shall have successfully completed an education equivalent to completion of a twelfth grade education. Proof of the required education shall be a certified high school transcript or any other document or affidavit which constitutes reliable proof of educational attainment as determined by the Board;

(2) Shall have passed a written and practical examination to the satisfaction of the Board as set forth in board rules and regulations;

(3) Shall have paid the appropriate fee as established by the Division of Professional Regulation. In addition, except as otherwise provided for in this chapter, no individual shall be permitted to sit for an examination or shall be granted a license to practice in any of the professions regulated by this chapter, unless the individual meets the following education requirements, or has successfully completed an apprenticeship. The requirements are for:

a. Cosmetologists. — The successful completion of a minimum of 1,500 classroom hours of continuous training for a complete course in cosmetology. School owners shall have the option of the amount of hours of training per day not to exceed 10 hours and shall be able to choose which days of the week the student works provided the hours accumulated do not exceed 40 hours per week. The Board shall establish by regulation the portion of the 1,500 classroom hours that may be credited to an applicant who previously obtained classroom hours while studying to become an aesthetician, nail technician or electrologist;

b. Apprentice cosmetologists. — The completion of 3,000 hours in an apprenticeship to a licensed cosmetologist with the total number of hours worked per day not to exceed 10 hours, nor to exceed 40 hours per week. The Board shall establish by regulation the portion of the 3,000 apprenticeship hours that may be credited to an applicant who previously obtained apprenticeship hours while studying to become an aesthetician, nail technician or electrologist;

c. Cosmetologist merged instruction and apprenticeship. — The successful completion of 600 classroom hours of concentrated coursework in cosmetology and 1500 hours in an apprenticeship to a licensed cosmetologist with the total number of hours worked per day not to exceed 10 hours, nor to exceed 40 hours per week. Acceptance to the 600-hour program is to be based on a practical examination administered by a Delaware licensed school of cosmetology;

d. Master barbers. — The successful completion of a minimum of 1,500 classroom hours of continuous training for a complete course in barbering, passing of a barber's chemical examination and submission to the Board, pursuant to Board rules and regulations, of an additional 600 hour apprenticeship for chemicals under a master barber or cosmetologist. School owners shall have the option of the amount of hours of training per day not to exceed 10 hours and shall be able to choose which days of the week

the student works provided the hours accumulated do not exceed 40 hours per week. The Board shall establish by regulation the portion of the 1,500 classroom hours that may be credited to an applicant who previously obtained classroom hours while studying to become an aesthetician, nail technician or electrologist. The Board shall establish by regulation the portion of the 3,000 apprenticeship hours that may be credited to an applicant who previously obtained apprenticeship hours while studying to become an aesthetician, nail technician or electrologist. Any barber who was issued a barber's license by the Division prior to April 28, 2008, shall be deemed a master barber;

e. Barbers. — The successful completion of a minimum of 1,500 classroom hours of continuous training for a complete course in barbering, or the completion of 3,000 hours in an apprenticeship to a licensed barber with the total number of hours worked per day not to exceed 10 hours, nor to exceed 40 hours per week;

f. Barbers merged instruction and apprenticeship. — The successful completion of 600 classroom hours of concentrated coursework in barbering and 1500 hours in an apprenticeship to a licensed barber with the total number of hours worked per day not to exceed 10 hours, nor to exceed 40 hours per week. Acceptance to the 600-hour program is to be based on a practical examination administered by a Delaware-licensed school of cosmetology;

g. Nail technicians. — The successful completion of a course of training in nail technology of not less than 300 hours in a school of nail technology or cosmetology; or successful completion of 600 hours as an apprentice under the supervision of a licensed nail technician. In either case, training is not to exceed 10 hours per day or 40 hours per week;

h. Electrologists. — The successful completion of a course of training in electrology of not less than 300 hours in a school of electrology or cosmetology, or successful completion of 600 hours as an apprentice under the supervision of a licensed electrologist. In either case, training is not to exceed 10 hours per day or 40 hours per week;

i. Students. — Any school of cosmetology, barbering, electrology or nail technology which enrolls a student shall file with the Board the name and home address of such student on a quarterly basis, on a form approved by the Board. The Division of Professional Regulation shall keep a register of all enrolled students. Each student shall be at least 16 years of age at the time or enrollment;

j. Cosmetology and barbering instructors. — For cosmetology and barbering, an instructor must have a license in the respective field of cosmetology or barbering and the successful completion of a teacher training course, consisting of at least 500 hours of instruction in a registered school of cosmetology or barbering, or at least 2 years' experience as an active licensed, practicing cosmetologist or barber, supplemented by at least 250 hours of instruction in a teacher training course. In addition, the applicant shall have successfully passed an instructor examination designated by the Board in its rules and regulations. A person licensed as a cosmetology instructor may also become licensed as an electrology instructor, a nail technician instructor and/or an aesthetics instructor. A person licensed as a cosmetology instructor may also become licensed as a barbering instructor if that person successfully completes a course in shaving which shall consist of at least 35 hours of instruction in shaving and is taught by a licensed barbering instructor. Finally, during the first 5 years after June 26, 2010, any barber providing proof that the barber has practiced as a licensed barber for 15 or more years may be licensed as a barbering instructor;

k. Electrology instructor. — An instructor must have a license in electrology and the successful completion of a teacher training course, consisting of at least 500 hours of instruction in a registered school of electrology or cosmetology; or at least 2 years' experience as an active licensed, practicing electrologist, supplemented by at least 250 hours' instruction in a teacher training course. In addition, the applicant shall have successfully passed an examination designated by the Board in its rules and regulations;

l. Nail technician instructor. — An instructor must have a license in nail technology and the successful completion of a teacher training course, consisting of at least 500 hours of instruction in a registered school of cosmetology or nail technology; or at least 2 years' experience as an active licensed, practicing nail technician, supplemented by at least 250 hours of instruction in a teacher training course. Proof of education or experience shall be provided to the satisfaction of the Board. In addition, the applicant shall have successfully passed an examination designated by the Board in its rules and regulations.

(4) Shall not have been the recipient of any administrative penalties regarding that person's licensed practice, including but not limited to fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations, and/or have not entered into any agreements which contain conditions placed by a board on that person's professional conduct and practice, including any voluntary surrender of a license. The Board may, after a hearing, determine whether such administrative penalty is grounds to deny licensure;

(5) Shall not have any impairment related to drugs or alcohol that would limit the applicant's ability to undertake that applicant's licensed practice in a manner consistent with the safety of the public;

(6) Shall not have been convicted of a crime substantially related to the practice of cosmetology, barbering, electrology or nail technology, unless the applicant was previously so licensed or was enrolled in a training program to be so licensed while an offender under the supervision of the Department of Correction prior to July 10, 2001; however, 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, may waive this paragraph (a)(6), if 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 or serving any part of a suspended

sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of practicing cosmetology, barbering, electrology or nail technology in a competent and professional manner.

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

(7) Shall not have a pending criminal charge relating to an offense the circumstances of which substantially relate to the practice of cosmetology, barbering, electrology or nail technology. Applicants who have criminal conviction records or pending criminal charges shall require appropriate authorities to provide information about the record or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the applicant can carry out that applicant's own professional services with due regard for the health and safety of the recipients of those services and the public.

(8) Shall not have any disciplinary proceedings or unresolved complaints pending against that person in any jurisdiction where the applicant previously has been, or currently is, licensed to practice cosmetology, barbering, electrology or nail technology.

(b) As set forth in board rules and regulations, foreign-trained applicants shall provide evidence satisfactory to the Board of training equivalent to that required in paragraph (a)(3) of this section, in addition to meeting all other requirements of this section.

(c) When a person who feels the Board has refused or rejected an application without justification; has imposed higher or different conditions for the person than for other applicants or persons now licensed; or has in some other manner contributed to or caused the failure of such person's application, the applicant may appeal to Superior Court.

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

(64 Del. Laws, c. 8 § 1; 69 Del. Laws, c. 178 § 1; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 158 §§ 11-13; 74 Del. Laws, c. 150 §§ 1, 2; 75 Del. Laws, c. 169 § 3; 75 Del. Laws, c. 436 § 49; 77 Del. Laws, c. 65 § 1; 77 Del. Laws, c. 199 § 37; 78 Del. Laws, c. 44 §§ 72, 73; 79 Del. Laws, c. 170 § 1; 79 Del. Laws, c. 418 § 1.)

§ 5108 Examinations.

(a) There shall be separate written and practical examinations for licensure for barbering, cosmetology, nail technology, electrology and aesthetics which shall be professionally developed and used on a national basis. Each of these examinations shall be offered at least semi-annually. If the required written or practical examination cannot be procured from a professional testing service, the Board may develop the written or practical examination subject to the approval of the Division of Professional Regulation.

(b) No Board member or designee of the Board may administer a practical examination to any student from an educational institution or commercial establishment where the Board member or designee of the Board is employed or has a fiduciary interest therein.

(c) Examination services shall be contracted and approved by the Division of Professional Regulation. Grading will be performed by the contracted testing service where professionally developed examinations are used. All scoring for practical examinations shall be approved by the Division of Professional Regulation.

(d) The Board, in its rules and regulations, shall determine the number of times that an applicant may retake the examination.

(64 Del. Laws, c. 8 § 1; 69 Del. Laws, c. 178 § 1; 70 Del. Laws, c. 430 § 2; 77 Del. Laws, c. 65 § 1.)

§ 5109 Reciprocity.

(a) 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 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. An individual with a license from a state with less stringent requirements than those of this State may obtain a license through reciprocity if the individual can prove to the satisfaction of the Board that the individual has worked in another jurisdiction or jurisdictions in the field for which the individual is seeking a license in Delaware for a period of 3 out of the last 5 years immediately preceding application in this State. All applicants shall submit evidence verified by oath that, in all states in which the applicant is or was licensed, the applicant's license is in good standing as defined in § 5107(a)(4), (5), (6), (7) and (8) of this title.

(b) An applicant who took the applicable written examination in a language other than the English language shall demonstrate the ability to communicate in the English language as determined by board rules and regulations.

(64 Del. Laws, c. 8 § 1; 69 Del. Laws, c. 178 § 1; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 158 § 14; 77 Del. Laws, c. 65 § 1; 79 Del. Laws, c. 170 § 1; 80 Del. Laws, c. 135 § 1.)

§ 5110 Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board. There shall be a separate fee charged for each service or activity; but no fee shall be charged for an activity not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each licensure biennium, the Division, or any other state agency acting on its behalf, shall compute, for each separate service or activity, the appropriate Board fees for

the licensure biennium.

(64 Del. Laws, c. 8 § 1; 65 Del. Laws, c. 355 § 1; 69 Del. Laws, c. 178 § 1; 73 Del. Laws, c. 158 § 15; 77 Del. Laws, c. 65 § 1.)

§ 5111 Issuance of license; renewal; reinstatement; lapsed license.

(a) Each person who has passed the examinations required by this chapter, who has been admitted to practice in this State by reciprocity, or who has otherwise qualified for a license shall, prior to receiving such license, file for and obtain an occupational license from the Division of Revenue, if required, in accordance with Chapter 23 of Title 30. The Board shall issue a license to each person who has qualified for same under this chapter. A duplicate license shall be issued to a practitioner licensed under this chapter upon payment of a fee established by the Division of Professional Regulation. The license shall be clearly marked "DUPLICATE."

(b) Each license shall be renewed biennially, in such manner as is determined by the Division, and upon payment of the appropriate fee, submission of a renewal form provided by the Division, and proof that the licensee has met any continuing education requirements established by the Board. A licensee who has allowed that licensee's license to lapse for less than 1 year may renew that licensee's lapsed license upon submission of a renewal form provided by the Division, payment of a late fee established by the Division, and proof that the licensee has met any continuing education requirements established by the Board. A licensee who has allowed that licensee's license to lapse for longer than 1 year but less than 4 years may reinstate that licensee's lapsed license upon submission of a renewal form provided by the Division, payment of an additional late fee established by the Division, and proof that the licensee has met any continuing education requirements established by the Board. A licensee who has allowed that licensee's license to lapse for longer than 4 years shall complete 1 of the following in order to reinstate that licensee's license:

(1) Retake the practical examination for the profession for which the applicant is applying; or

(2) For cosmetology and barbering, completion of a 1,000-hour apprenticeship; for electrology, completion of a 200-hour apprenticeship; for nail technology, completion of an 85-hour apprenticeship; for aesthetics, completion of a 200-hour apprenticeship. All hours of apprenticeship completed under this section shall be with an individual licensed under this chapter to perform the activities of the profession for which the applicant is applying; or

(3) For cosmetology and barbering, completion of a course of instruction not less than 500 classroom hours; for electrology, completion of a course of instruction not less than 100 hours; for nail technology, completion of a course of instruction not less than 45 hours; for aesthetics, completion of a course of instruction not less than 100 hours. All courses completed under this section shall be at a school of instruction registered in the profession for which the applicant is applying; or

(4) For a licensee who can present proof of current licensure in good standing in another state, the District of Columbia, or territory of the United States, the license may be reinstated, at the discretion of the Board, upon submission of proof of continuous employment in the applicable profession for at least 1 year immediately preceding the date of the request for reinstatement.

(5) For shops and schools, the 2-year period above does not apply. A shop or school that allows its license to lapse has 45 days from the expiration date to apply for reinstatement. After that time, any shop or school must reapply.

(c) A former licensee, who has been penalized for a violation of a provision of this chapter, or whose license has been suspended or revoked, and who subsequently is permitted to apply for reinstatement, shall apply for a new license, successfully complete all examinations, and pay all appropriate fees before the person may be licensed.

(64 Del. Laws, c. 8 § 1; 64 Del. Laws, c. 144 § 1; 69 Del. Laws, c. 178 § 1; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 158 § 16; 77 Del. Laws, c. 65 § 1; 79 Del. Laws, c. 170 § 1.)

§ 5112 Complaints.

(a) All complaints shall be received and investigated by the Division in accordance with § 8735 of Title 29, and the Division shall be responsible for issuing a final written report at the conclusion of its investigation. Investigators of the Division may enter any nail salon, beauty salon, barbershop or aesthetics shop in furtherance of their investigation. Upon a determination that an individual is practicing cosmetology, barbering, electrology, nail technology or aesthetics without a license, the investigator shall request that a Justice of the Peace Court issue a summons for a violation of § 5117(b) or (c) of this title, as applicable. The investigator or the Attorney General or their designee, or any other person authorized by law, shall prosecute the matter. A copy of the investigator's report, including the summons and complaint, shall be sent to the Board. A condition of bond shall be that the accused shall not practice the regulated conduct without first obtaining a license from the Division, and any violations of bond shall be treated as criminal contempt, pursuant to § 1271(3) of Title 11.

(b) Those complaints involving unsanitary conditions or other conditions in any nail salon, cosmetology or beauty salon, barber shop, electrology salon or aesthetics shop which may harm the health of those receiving the services outlined in this chapter shall be investigated by the Division of Public Health.

(64 Del. Laws, c. 8 § 1; 65 Del. Laws, c. 355 § 1; 69 Del. Laws, c. 178 § 1; 71 Del. Laws, c. 299 § 1; 73 Del. Laws, c. 158 §§ 17, 18; 77 Del. Laws, c. 65 § 1.)

§ 5113 Grounds for discipline; procedure.

(a) Practitioners regulated under this chapter shall be subject to those disciplinary actions set forth in § 5114 of this title if, after a hearing, the Board finds that the practitioner has:

(1) Employed or knowingly cooperated in fraud or material deception in order to acquire or renew a license to practice cosmetology, barbering, electrology, nail technology or aesthetics; or impersonated another person holding a license, or has allowed another person to

use that licensee's license;

(2) Been incompetent or negligent in the practice of cosmetology, barbering, electrology, nail technology or aesthetics;

(3) 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 a cosmetologist, barber, electrologist, nail technician or aesthetician;

(4) Been convicted of a crime that is substantially related to the practice of cosmetology, barbering, electrology, nail technology or aesthetics;

(5) As a cosmetologist, barber, electrologist, nail technician or aesthetician, or otherwise in the practice of the profession, knowingly engaged in an act of consumer fraud or deception, engaged in the restraint of competition, or participated in price-fixing activities;

(6) Violated a lawful provision of this chapter, or any lawful regulation established thereunder;

(7) Knowingly employed or cooperated in the hiring or contracting for the services of, or, as the owner or operator of a beauty salon or aesthetics shop, leased space or otherwise entered into a contractual relationship with, any unlicensed person or persons required by this chapter to hold an unrestricted license to practice any of the professions regulated by this chapter;

(8) Violated a standard or regulation adopted by the Department of Health and Social Services for public health assurance in the practice of cosmetology and barbering or in the operation of beauty salons, aesthetics shops and schools of cosmetology, electrology, nail technology, barbering and aesthetics;

(9) Had that practitioner's own license as a cosmetologist, barber, electrologist, nail technician or aesthetician suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record; and provided that the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Each person licensed as a cosmetologist, barber, electrologist, nail technician or aesthetician in this State shall be deemed to have given consent to release of this information by the board of cosmetology and barbering, or other comparable agencies, in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses;

(10) Failed to notify the Board that the person's license as a cosmetologist, barber, electrologist, nail technician or aesthetician in another state has been subject to discipline, or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof.

(b) Subject to subchapter IV of Chapter 101 of Title 29, no license shall be restricted, suspended or revoked by the Board, and no practitioner's rights to practice 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).

(64 Del. Laws, c. 8 § 1; 69 Del. Laws, c. 178 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 441 § 2; 73 Del. Laws, c. 158 §§ 19-23; 74 Del. Laws, c. 262 § 93; 75 Del. Laws, c. 169 §§ 4, 5; 77 Del. Laws, c. 65 § 1.)

§ 5114 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that 1 of the conditions or violations set forth in § 5113 of this title applies to a practitioner regulated by this chapter:

(1) Issue a letter of reprimand;

(2) Impose a civil penalty not to exceed $500 for each violation of this chapter;

(3) Place a practitioner on probationary status, and require the practitioner to:

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

b. Limit all practice and professional activities to those areas prescribed by the Board;

(4) Suspend any practitioner's license;

(5) Revoke a practitioner's license;

(6) Permanently revoke a practitioner's license.

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

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

(64 Del. Laws, c. 8 § 1; 69 Del. Laws, c. 178 § 1; 77 Del. Laws, c. 65 § 1; 79 Del. Laws, c. 170 § 1.)

§ 5115 Temporary suspension pending hearing.

In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person

requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(77 Del. Laws, c. 65 § 1; 79 Del. Laws, c. 213 § 2.)

§ 5116 Hearing procedures.

(a) If a complaint is filed with the Board pursuant to § 8735 of Title 29, alleging a violation of § 5113 of this title, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing shall be conducted in accordance with Chapter 101 of Title 29.

(b) All hearings shall be 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 be in writing and shall include its reasons for such decision. A copy of the decision shall be mailed immediately to the practitioner.

(c) Where the practitioner is in disagreement with the action of the Board, the practitioner may appeal the Board's decision to the Superior Court within 30 days of the day the notice of decision was mailed. Upon such appeal the Court shall hear the evidence on the record. Board action shall not be stayed upon appeal unless so ordered by the Superior Court.

(64 Del. Laws, c. 8 § 1; 69 Del. Laws, c. 178 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 441 § 3; 73 Del. Laws, c. 158 §§ 24-26; 77 Del. Laws, c. 65 § 1.)

§ 5117 Practicing without a license; penalties.

(a) Where the Board has placed a practitioner on probationary status under certain restrictions or conditions, and the Board has determined that such restrictions or conditions are being or have been violated by the practitioner, it may, after a hearing on the matter, suspend or revoke the practitioner's license.

(b) Where a person not currently licensed as a cosmetologist, barber, electrologist, nail technician, aesthetician or instructor, in any of the professions for which a license is required, is convicted of unlawfully practicing cosmetology, barbering, electrology, nail technology or aesthetics in violation of this chapter, such offender shall, upon the first offense, be fined not less than $100 nor more than $500, and shall pay all costs; provided, however, that where it is alleged that such violation has resulted in injury to any person, the offender shall be charged and tried under the applicable provision or provisions of Title 11.

(c) Where a person previously convicted of unlawfully practicing cosmetology, barbering, electrology, nail technology, or aesthetics or instructing in any of the professions for which a license is required under this chapter, is convicted a second or subsequent time of such offense, the fine assessed against such person shall be not less than $500 nor more than $1,000 for each subsequent offense thereafter.

(d) Where a person in violation of this section unlawfully practiced cosmetology, barbering, electrology, nail technology or aesthetics or instruction of these professions, the shop or school owner and/or manager shall, upon the first offense, be fined not less than $500 nor more than $1000, and shall pay all costs. Upon the second offense and each offense thereafter, the shop or school owner and/or manager shall be fined not less than $1000 nor more than $1500.

(64 Del. Laws, c. 8 § 1; 69 Del. Laws, c. 178 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 299 § 2; 72 Del. Laws, c. 176 §§ 1, 2; 77 Del. Laws, c. 65 § 1.)

§ 5118 Licensure of cosmetology shops.

(a) All cosmetology shops must be licensed pursuant to this chapter. Applications for licensure shall be submitted on a form prescribed by the Board, together with the required fees set biennially by the Division of Professional Regulation.

(b) An application for shop licensure shall identify the professional-in-charge and shall include notarized acknowledgement by the person identified as the professional-in-charge. At all times, the professional-in-charge shall be licensed pursuant to this chapter and shall hold a license in good standing as defined in § 5107(a)(4)-(8) of this title. A licensee may serve as professional-in-charge for only 1 shop at any given time. The Board shall be notified in writing of any change in the professional-in-charge within 10 business days of such change.

(c) All cosmetology shops shall renew their licensure biennially, paying fees set by the Division of Professional Regulation. All cosmetology shops shall fully comply with all the rules and regulations promulgated by the Board as provided for in this chapter. Nothing contained in this chapter shall prevent a person from operating a licensed cosmetology shop in the person's home, provided there is full compliance with all applicable health regulations and this chapter.

(d) No cosmetology shop shall accept an apprentice unless said salon or shop shall have on its staff at least 1 individual licensed in the profession for which instruction is being provided; further, that such salon or shop may register 2 additional apprentices for each additional licensed professional attached to its staff. In addition, such salon or shop shall possess the necessary apparatus and equipment for the proper instruction in all subjects for the practices for which a license is required under this chapter; and shall maintain a daily record of the attendance of such apprentice or apprentices, together with the number of hours of apprenticeship; and shall certify to the Board upon termination of such apprenticeship the credits earned. Such instruction shall consist of the necessary training for a complete course comprising all, or the majority, of the practices of cosmetology, barbering, nail technology and electrology as provided in this chapter; and such course shall include theoretical studies and practical demonstrations in sanitation, sterilization and other safety measures, and the use

of antiseptics, cosmetics and electrical appliances, consistent with the practical and theoretical requirements as applicable to cosmetology, barbering, nail technology and electrology as provided for in this chapter.

(e) Any person, firm or corporation teaching any or all of the practices of cosmetology, including barbering, nail technology and electrology, shall be required to comply with all provisions applicable to establishments having apprentices; and any and all rules which may be promulgated by the Board established in accordance with this chapter. No school of cosmetology, barbering, nail technology or electrology or beauty salon, barbershop, nail salon or electrology establishment, shall operate within this State unless a proper license under this chapter has first been obtained. The practice of cosmetology and other professions regulated by this chapter shall not be taught or practiced in this State; except in a duly licensed establishment except as provided for elsewhere in this chapter.

(f) Nothing contained in this chapter shall affect the instructional program of cosmetology as conducted in the public schools of this State. Any student, who has successfully completed the prescribed course in cosmetology in a state public school, shall be eligible to take the examinations required by this chapter.

(69 Del. Laws, c. 178 § 1; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 158 § 27; 77 Del. Laws, c. 65 § 1; 79 Del. Laws, c. 170 § 1; 79 Del. Laws, c. 418 § 2.)

§ 5119 Licensing and requirements of a school.

(a) Each school of barbering, cosmetology, electrology or nail technology shall be licensed pursuant to this chapter and shall comply with the requirements of the Delaware Department of Education. Each school shall employ at least 1 instructor for the first 25 students enrolled, and 1 additional instructor for each additional 25 students enrolled. Each school shall possess apparatus and equipment sufficient for the proper and full teaching of all subjects of its curriculum; shall keep a daily record of the attendance of each student; maintain regular class and instruction hours; establish grades and hold examinations before issuance of diplomas. Each school shall require training for a complete course comprising all, or the majority, of the practices regulated under this chapter, as provided in this chapter, together with the minimum number of hours therein prescribed, and shall include practical demonstrations and theoretical studies, and study in sanitation, sterilization, other safety measures, and the use of antiseptics, cosmetics and electrical appliances, consistent with the practical and theoretical requirements as applicable to any practice for which a license is required under this chapter, as provided in this chapter.

(b) An instructor shall decide when a student of any of the practices for which a license or certification is required under this chapter, is sufficiently competent to perform those services for the public.

(c) Each school for a profession regulated by this chapter shall display, in a conspicuous place within the clinic area of the school, a sign which shall read as follows:

"ALL SERVICES IN THIS SCHOOL PERFORMED BY STUDENTS WHO ARE IN TRAINING."

(d) Each school licensed under this chapter shall afford to its students the full course of instruction required under this chapter, in default of which a proportionate amount of the tuition paid by the student shall be refunded.

(e) Each school licensed under this chapter, but not yet accredited pursuant to subsection (h) of this section, shall maintain the following records for each student:

(1) Daily attendance records;

(2) Scholastic records; and

(3) Financial records.

A school shall submit to the Board a notarized quarterly report on a form approved by the Board. The report shall be submitted by the following dates: April 15, July 15, October 15 and January 15 — and shall include the names and license numbers of the teachers employed and be personally signed by the owner and supervisor of the school. The school may charge the student a fee that covers the reasonable cost of making copies of the records. A school shall retain records of student attendance and scholastic records for a minimum of 5 years. A school that discontinues operation shall comply with Delaware Department of Education requirements with respect to the disposition of student records.

(f) A school that enrolls a transfer student from another cosmetology school shall obtain for that student:

(1) A notarized transcript from the original school listing the hours earned by the student in the required curriculum areas; and

(2) Verification from the appropriate licensing authority that the original school is licensed in that state, in the case of a student transferring from an out-of-state school to a school in Delaware.

(g) Failure to comply with any of the requirements applicable to a school constitutes grounds for immediate revocation of the school's license.

(h) Within 1 year after being licensed by the Board, a school shall submit to the Board proof that it has applied for accreditation with a nationally recognized accrediting agency approved by the Board. Within 3 years after being licensed by the Board, a school shall submit to the Board proof that it is accredited by a nationally recognized accrediting agency. A school that has been continually licensed and in good standing for more than 5 years prior to June 26, 2010, is exempted from this requirement. A school that has been continually licensed in good standing by the Board for less than 5 years prior to June 26, 2010, shall submit proof of accreditation by a nationally recognized accrediting agency before 5 years after June 26, 2010.

(69 Del. Laws, c. 178 § 1; 77 Del. Laws, c. 65 § 1.)

§ 5120 Display of license.

All licenses issued under this chapter shall be prominently displayed conspicuously in the place of business of the licensee. In addition, each main or branch place of business shall have prominently displayed the address and telephone number of the Division of Professional Regulation, which individuals may contact concerning the services of licensees.

(73 Del. Laws, c. 158 § 33; 77 Del. Laws, c. 65 § 1.)

§ 5121 Requirements for apprenticeships.

(a) An individual who chooses to seek eligibility for the cosmetologist, barbering, electrology or nail technician examination by apprenticeship shall apply to the Board for an apprentice permit.

(b) The owner of a shop that employs apprentices shall submit to the Board, on a form provided by the Board, a quarterly report of the hours earned by each apprentice. The reports shall be submitted by the following dates: April 15, July 15, October 15, and January 15.

(c) An apprentice must display that apprentice's own apprenticeship license at that apprentice's own work station, in a place readily visible to anyone receiving that apprentice's services.

(d) An apprentice may not be the employer of the supervising licensee.

(77 Del. Laws, c. 65 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 170 § 1.)

§ 5122 Inspections.

(a) An agent of the Division may enter and inspect during business hours, without prior notice, any shop or school where cosmetology, barbering, electrology, nail technology or aesthetics services are offered, rendered or taught, or any other place where such services are offered, rendered or taught.

(b) An agent of the Division acting pursuant to subsection (a) of this section: may inspect and copy records required to be kept by this chapter; may inspect within reasonable limits and in a reasonable manner the premises and all pertinent equipment; and may inspect other things therein, including records, files, papers and facilities relating to violation of this chapter.

(c) All information gathered under this section shall be kept confidential in accordance with all federal and state laws regarding privacy.

(77 Del. Laws, c. 65 § 1.)

Subchapter II

Aesthetician License

§ 5123 Objectives.

The primary purpose for the licensing of aestheticians is to guarantee to the public that each licensed practitioner has achieved a minimum level of competence as an aesthetician.

(69 Del. Laws, c. 178 § 1; 73 Del. Laws, c. 158 § 32; 77 Del. Laws, c. 65 § 1.)

§ 5124 Definitions.

For the purpose of this subchapter:

(1) "Aesthetician" is a person who practices the cleansing, stimulating, manipulating and beautifying of skin, with hands or mechanical or electrical apparatus or appliances, removes superfluous hair and gives treatments to keep skin healthy and attractive. An aesthetician is not authorized to prescribe medication or provide medical treatments in the same manner as a dermatologist.

(2) "Aesthetics shop" means any place or part thereof wherein aesthetics are performed for compensation, whether or not the establishment holds itself out as an aesthetic shop. This definition shall not apply to places where aesthetics are performed by licensed health care professionals acting within the scope of their licensed profession.

(3) "Apprentice in aesthetics" means any person who is engaged in the learning of any or all the practices of aesthetics from a practitioner licensed in the profession the apprentice is studying. The apprentice may perform or assist the licensed practitioner in any of the functions which the practitioner is certified to perform.

(4) "Board" means the Board of Cosmetology and Barbering.

(5) "School of aesthetics" shall mean any place or part thereof where aesthetics or any of the practices are taught, whether or not such place holds itself out as such.

(69 Del. Laws, c. 178 § 1; 73 Del. Laws, c. 158 § 32; 77 Del. Laws, c. 65 § 1.)

§ 5125 License requirement; applicability of chapter.

(a) No person shall engage in the practice of aesthetics, act as an instructor of aesthetics, or hold himself or herself out to the public as being qualified to practice aesthetics; 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 the person is qualified to practice aesthetics, or act as an instructor of aesthetics, unless such person has been duly licensed under this chapter.

(b) Whenever a license to practice as an aesthetician or act as an instructor of aesthetics has expired or been suspended or revoked, it shall be unlawful for the person to practice aesthetics or act as an instructor of aesthetics.

(c) A person may not seek a license or renewal of license by means of false or fraudulent actions or misrepresentations.

(d) No person, firm, corporation, partnership or other legal entity shall operate, maintain or use premises for the offering or rendering of any 1 or more of the services encompassed in the definition of aesthetics without first having secured a shop license from the Board. Applications for licensure shall be submitted on a form prescribed by the Board, together with the required fees set biennially by the Division of Professional Regulation. All aesthetics shops shall renew their licensure biennially, paying fees set by the Division of Professional Regulation. All aesthetics shops shall fully comply with all the rules and regulations promulgated by the Board as provided for in this chapter.

(67 Del. Laws, c. 299 § 1; 69 Del. Laws, c. 178 § 1; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 158 §§ 28, 29, 32, 34; 77 Del. Laws, c. 65 § 1.)

§ 5126 Exemptions.

Nothing in this subchapter shall prohibit:

(1) A licensed cosmetologist from performing services as an aesthetician;

(2) Persons authorized by the laws of this State to practice medicine and surgery, dentistry, chiropractic or similar professions, including registered nurses, licensed practical nurses, nurses' aides, physical therapists and physical therapy assistants from acting within the scope of their profession or occupation.

(67 Del. Laws, c. 299 § 1; 69 Del. Laws, c. 178 § 1; 73 Del. Laws, c. 158 § 32; 77 Del. Laws, c. 65 § 1.)

§ 5127 Qualifications.

(a) No person shall be licensed under this subchapter unless the person has:

(1) Successfully completed an education equivalent to a tenth grade education. Proof of the required education shall be a certified high school transcript or any other document or affidavit which constitutes reliable proof of educational attainment as determined by the Board;

(2) Completed a course of study of not less than 600 hours in the principles pertaining to the practice of aesthetics; or completed 1200 hours in an apprenticeship to a licensed aesthetician, with the total number of hours worked per day not to exceed 10, nor to exceed 40 per week. An apprenticeship must be completed within 2 years;

(3) Passed the national examination required in § 5128 of this title;

(4) Paid the appropriate fee as established by the Division of Professional Regulation;

(5) Shall not have any impairment related to drugs or alcohol that would limit the applicant's ability to undertake that applicant's licensed practice in a manner consistent with the safety of the public;

(6) Shall not have a criminal conviction record nor pending criminal charge relating to an offense the circumstances of which substantially relate to the practice of aesthetics. Applicants who have criminal conviction records or pending criminal charges shall request appropriate authorities to provide information about the conviction or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the conviction or charge is substantially related to actions as a licensed aesthetician. However, 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, may waive this paragraph (a)(6), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of performing as a licensed aesthetician in a competent and professional manner.

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

(7) Shall not have been the recipient of any administrative penalties regarding that person's licensed practice, including but not limited to fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations, and/or have not entered into any "agreements" which contain conditions placed by a Board on that person's professional conduct and practice, including any voluntary surrender of a license. The Board may, after a hearing, determine whether such administrative penalty is grounds to deny licensure.

(8) Shall not have any disciplinary proceedings or unresolved complaints pending against that person in any jurisdiction where the applicant previously has been, or currently is, licensed to practice aesthetics.

(b) As set forth in Board rules and regulations, foreign-trained applicants shall provide evidence satisfactory to the Board of training equivalent to that required in paragraph (a)(2) of this section, in addition to meeting all other requirements of this section.

(c) When a person who feels the Board has refused or rejected an application without justification; has imposed higher or different conditions for the person than for other applicants or persons now licensed; or has in some other manner contributed to or caused the failure of such person's application, the applicant may appeal to the Superior Court.

(d) Where the Board has found to its satisfaction that an application has been intentionally fraudulent, or that false information has been

intentionally supplied, it shall report its findings to the Attorney General for further action.

(67 Del. Laws, c. 299 § 1; 69 Del. Laws, c. 178 § 1; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 158 § 32; 75 Del. Laws, c. 169 § 6; 75 Del. Laws, c. 436 § 50; 77 Del. Laws, c. 65 § 1; 77 Del. Laws, c. 199 § 38; 78 Del. Laws, c. 44 §§ 74, 75; 79 Del. Laws, c. 170 § 1.)

§ 5128 Examinations.

(a) Examinations for licensure as an aesthetician shall be professionally developed and used on a national basis.

(b) Examination services shall be contracted and approved by the Division of Professional Regulation.

(c) The Division of Professional Regulation or its designee shall administer the examination for licensure. Grading will be performed by the contracted testing service.

(67 Del. Laws, c. 299 § 1; 69 Del. Laws, c. 178 § 1; 73 Del. Laws, c. 158 § 32; 77 Del. Laws, c. 65 § 1.)

§ 5129 Display of certificate.

Each individual licensed under this subchapter shall prominently display the license issued by the Board in a conspicuous part of the office wherein the practice of aesthetics is conducted. In addition, each main or branch office shall have prominently displayed a name and telephone number, of the Division of Professional Regulation, which individuals may contact concerning the services of the licensed aesthetician.

(67 Del. Laws, c. 299 § 1; 69 Del. Laws, c. 178 § 1; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 158 § 32; 77 Del. Laws, c. 65 § 1.)

§ 5130 Fees.

The amount to be charged for each fee imposed under this subchapter shall approximate and reasonably reflect all costs necessary to defray the proportional expenses incurred by the Division in its services pursuant to this subchapter. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this subchapter. The application fee shall not be combined with any other fee or charge. At the beginning of each licensure biennium, the Division, or any other state agency acting on its behalf, shall compute, for each separate service or activity, the appropriate fees for the coming licensure biennium.

(67 Del. Laws, c. 299 § 1; 69 Del. Laws, c. 178 § 1; 73 Del. Laws, c. 158 §§ 31, 32; 77 Del. Laws, c. 65 § 1.)

§ 5131 Reciprocity.

(a) 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 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. An individual with a license from a state with less stringent requirements than those of this State may obtain a license through reciprocity if the individual can prove to the satisfaction of the Board that the individual has worked in another jurisdiction or jurisdictions in the field for which the individual is seeking a license in Delaware for a period of 3 out of the last 5 years immediately preceding application in this State. All applicants shall submit evidence verified by oath that, all states in which the applicant is or was licensed, the applicant's license is in good standing as defined in § 5127(a)(5), (6), (7) and (8) of this title.

(b) An applicant who took the applicable written examination in a language other than the English language shall demonstrate the ability to communicate in the English language as determined by board rules and regulations.

(77 Del. Laws, c. 65 § 1; 79 Del. Laws, c. 170 § 1; 80 Del. Laws, c. 135 § 2.)

§ 5132 Operation of aesthetics schools.

(a) Any school which holds a current license to conduct a school for the purpose of teaching cosmetology and/or its branches, may apply for approval by the Board to teach a course pertaining to the principles of aesthetics. Every school shall at all times be in the charge, and under the immediate supervision, of an aesthetics instructor.

(b) All other schools shall be separately licensed and pay the prescribed fee.

(c) All aesthetics schools shall comply with the requirements of the Delaware Department of Education.

(d) All aesthetic schools must maintain compliance with § 5119 of this title, pertaining to cosmetology and barbering schools. All aesthetic schools must become accredited within 5 years of June 26, 2010, as provided in § 5119(h) of this title.

(67 Del. Laws, c. 299 § 1; 69 Del. Laws, c. 178 § 1; 73 Del. Laws, c. 158 § 32; 77 Del. Laws, c. 65 § 1; 79 Del. Laws, c. 170 § 1.)

§ 5133 Equipment.

Every school shall have, and shall maintain in good working condition, appropriate and sufficient equipment for its entire student body.

(67 Del. Laws, c. 299 § 1; 69 Del. Laws, c. 178 § 1; 73 Del. Laws, c. 158 § 32; 77 Del. Laws, c. 65 § 1; 79 Del. Laws, c. 170 § 1.)

§ 5134 Instructors.

(a) Aesthetic instructors shall have successfully completed an education equivalent to a twelfth grade education. Proof of the required education shall be a certified high school transcript or any other document or affidavit which constitutes reliable proof of educational attainment as determined by the Board. In addition, the applicant shall be licensed pursuant to this chapter and shall have completed a teacher training course, consisting of a minimum of 500 hours of instruction in a registered school of aesthetics, or at least 2 years' experience as an active licensed, practicing aesthetician, supplemented by at least 250 hours of instruction in a teacher training course. In

addition, an aesthetics instructor shall have successfully passed an instructor examination designated by the Board in its rules and regulations. A licensed aesthetician who has been teaching aesthetics prior to enactment of this statute, and who provides the Board with proof, to the Board's satisfaction, of not less than 900 hours of teaching experience at a registered school of aesthetics, shall be exempted from this provision.

(b) As set forth in Board rules and regulations, foreign-trained applicants shall provide evidence satisfactory to the Board of training equivalent to that required in subsection (a) of this section, in addition to meeting all other requirements of this subchapter.

(67 Del. Laws, c. 299 § 1; 69 Del. Laws, c. 178 § 1; 73 Del. Laws, c. 158 § 32; 77 Del. Laws, c. 65 § 1; 79 Del. Laws, c. 170 § 1.)

§ 5135 Course of study.

Each school of aesthetics shall maintain a course of study of not less than 600 hours, extending over a period of a maximum of 160 hours a month. Every school shall maintain regular class hours with a daily schedule.

(67 Del. Laws, c. 299 § 1; 69 Del. Laws, c. 178 § 1; 73 Del. Laws, c. 158 § 32; 77 Del. Laws, c. 65 § 1.)

Part

Chapter 52
NURSING HOME ADMINISTRATORS

Subchapter I

Board of Examiners of Nursing Home Administrators

§ 5201 Objectives.

The primary objective of the Board of Examiners of Nursing Home Administrators, 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 when necessary against licensed practitioners.

(64 Del. Laws, c. 159 § 2; 76 Del. Laws, c. 89 § 1.)

§ 5202 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 Examiners of Nursing Home Administrators established in this chapter.

(2) "Direct supervision" shall mean oversight on the premises of a nursing home.

(3) "Division" shall mean the State Division of Professional Regulation.

(4) "Excessive use or abuse of drugs" shall mean any use of narcotics, controlled substances, or illegal drugs without a prescription from a licensed health care provider, or the abuse of alcoholic beverage such that it impairs that nursing home administrator's ability to perform the work of a nursing home administrator.

(5) "Nursing home" shall mean any licensed residential health facility for aged, infirm, chronically ill or convalescent persons, excluding neighborhood homes and group homes licensed by the Division of Long Term Care Residents Protection, that provides shelter and food to more than 4 persons who:

a. Because of their physical and/or mental condition require a level of care and services suitable to their needs to contribute to their health, comfort, and welfare; and

b. Who are not related within the second degree of consanguinity to the controlling person or persons of the facility.

(6) "Nursing home administrator" shall mean the individual licensed under this chapter to practice nursing home administration.

(7) "Nursing home administrator-in-training" or "AIT" shall mean an individual who is registered with the Board to obtain the experience for licensure under the direct supervision of a preceptor.

(8) "Person" shall mean an individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, and any other legal entity and includes a legal successor of those entities.

(9) "Practice of nursing home administration" shall mean the performance of any act or the making of any decision involved in the planning, organizing, directing, or controlling of the operations of a nursing home, whether or not such acts are performed, or decisions made, by 1 or more persons.

(10) "Preceptor" shall mean a state-licensed nursing home administrator who is qualified under this chapter and approved by the Board to exercise direct supervision of a registered nursing home administrator-in-training.

(11) "State" shall mean the State of Delaware.

(12) "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 nursing home administration.

(64 Del. Laws, c. 159 § 2; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 § 94; 76 Del. Laws, c. 89 § 1.)

§ 5203 Board of Examiners of Nursing Home Administrators; appointments; composition; qualifications; term; vacancies; suspension or removal; unexcused absences; compensation.

(a) There is created a State Board of Examiners of Nursing Home Administrators, which shall administer and enforce this chapter.

(b) The Board shall consist of 9 members, appointed by the Governor, who are residents of this State:

(1) Three nursing home administrators licensed under this chapter;

(2) Two nonadministrator from a profession concerned with the care of chronically ill and infirm, aged persons; and

(3) Four public members.

(c) Except as provided in subsection (e) 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 if 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.

(d) The public members shall not be, nor ever have been, nursing home administrators, nor members of the immediate family of a nursing home administrator; shall not have been employed by a nursing home, nursing home administrator, or a company engaged in the practice of administering nursing homes; shall not have a material interest in the providing of goods and services to nursing homes; nor have been engaged in an activity directly related to nursing home administration. The public members shall be accessible to inquiries, comments and suggestions from the general public.

(e) 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 term has expired since such person last served.

(f) 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.

(g) The Governor may suspend or remove a member of the Board for misfeasance, nonfeasance, malfeasance, misconduct, incompetence, or neglect of duty. A Board member may appeal any suspension or removal to the Superior Court.

(h) No member of the Board, while serving on the Board, shall hold a leadership position in any professional association representing nursing home administrators, or serve as head of a political action committee (PAC) for any professional association representing nursing home administrators.

(i) The provisions set forth in Chapter 58 of Title 29 shall apply to all members of the Board.

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

(k) Each member of the Board shall be reimbursed for all expenses involved in each meeting, including travel, according to Division of Professional Regulation policy; and, in addition shall receive not more than $50 for each meeting attended but not more than $500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(l) A member subject to disciplinary proceedings shall be disqualified from Board business until the charge is adjudicated or the matter is otherwise concluded.

(64 Del. Laws, c. 159 § 2; 67 Del. Laws, c. 366 § 17; 67 Del. Laws, c. 368 § 27; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 § 95; 76 Del. Laws, c. 89 § 1.)

§ 5204 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 President deems necessary, or, at the request of a majority of Board members.

(b) The Board annually shall elect a President, Vice-President, and Secretary. Each officer shall serve for 1 year and shall not succeed himself or herself for more than 2 consecutive terms.

(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 at least 5 members of the Board.

(d) Minutes of all meetings shall be recorded and the Division of Professional Regulation shall maintain copies. At any hearing in which 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.

(64 Del. Laws, c. 159 § 2; 65 Del. Laws, c. 355 § 1; 67 Del. Laws, c. 366 § 18; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 89 § 1.)

§ 5205 Records.

The Division of Professional Regulation shall keep a register of all approved applications for license as a nursing home administrator, registration as a nursing home administrator-in-training, and license as an acting nursing home administrator, 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.

(76 Del. Laws, c. 89 § 1.)

§ 5206 Powers and duties.

The Board of Examiners of Nursing Home Administrators 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 process all applications;

(3) Designate a written national examination, prepared by either a recognized national professional association or by a recognized legitimate national testing service and approved by the Division of Professional Regulation. The examination shall be prepared for testing on a national basis, and not specifically prepared at the request of the Board for its individual use. The examination shall be taken by all persons applying for licensure and graded by a national testing service. Applicants who qualify for licensure by reciprocity shall have achieved a passing score on all parts of the designated national examination or a comparable, alternative national or, if a national examination was not available at the time of the applicant's original licensure, regional examination;

(4) Establish minimum education, training, and experience requirements for licensure as nursing home administrators;

(5) Evaluate the credentials of all persons applying for a license as a nursing home administrator in this State, in order to determine whether such persons meet the qualifications for licensing set forth in this chapter;

(6) Conduct a criminal history background check on all applicants for registration and licensure, including temporary licensure and licensure by reciprocity;

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

(8) Register applicants as nursing home administrators-in-training;

(9) Issue temporary licenses pursuant to § 5211 of this title;

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

(11) Evaluate certified records to determine whether an applicant for licensure, who previously has been licensed, certified, or registered in another jurisdiction as a nursing home administrator, 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 applicant for such acts or offenses;

(12) Refer all complaints from licensees and the public concerning licensed nursing home administrators, 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;

(13) Conduct hearings and issue orders in accordance with the Administrative Procedures Act, Chapter 101 of Title 29;

(14) Promulgate regulations specifically identifying those crimes which are substantially related to the practice of nursing home administration; and

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

(64 Del. Laws, c. 159 § 2; 76 Del. Laws, c. 89 § 1.)

Subchapter II

License

§ 5207 License required.

(a) No person shall engage in the practice of nursing home administration or hold himself or herself out to the public in this State as being qualified to act as nursing home administrator; or use in connection with that person's own name, or otherwise assume or use, any title or description conveying or tending to convey the impression that the person is qualified to act as nursing home administrator, unless such person has been duly licensed under this chapter.

(b) Whenever a license to practice as a nursing home administrator in this State has expired or been suspended or revoked, it shall be unlawful for the person to act as a nursing home administrator in this State.

(c) No person shall act as a nursing home administrator-in-training, or hold out that that person is a nursing home administrator-in-training, unless such person has been duly registered by the Board under this chapter.

(76 Del. Laws, c. 89 § 1; 70 Del. Laws, c. 186 § 1.)

§ 5208 Criminal history background checks.

(a) Applicants for original licensure, licensure by reciprocity, temporary licensure, registration, or licensure renewal shall submit, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

(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 relating to that person; and

(2) A report of the applicant's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534).

(b) The State Bureau of Identification shall be the intermediary for purposes of this section and the Board of Examiners of Nursing Home Administrators shall be the screening point for the receipt of said federal criminal history records.

(76 Del. Laws, c. 89 § 1.)

§ 5209 Qualifications of applicant; report to Attorney General; judicial review.

(a) An applicant applying for original licensure as a nursing home administrator under this chapter shall submit evidence, verified by

oath and satisfactory to the Board, that such person:

(1) Has completed a Board-approved course of study in nursing home administration at an accredited educational institution and meets the educational and experience requirements of the Board, including:

a. Having received a baccalaureate or graduate degree from an accredited college or university with a major in health and human services, hospital administration, nursing or business administration; has been registered by the Board; and successfully completed a 6-month, pre-approved nursing home AIT program under the direct supervision of a Board-approved preceptor; or

b. Having received a baccalaureate or graduate degree in a field other than health and human services, hospital administration, nursing or business administration; has been registered by the Board; and successfully completed a 9-month, pre-approved nursing home AIT program under the direct supervision of a Board-approved preceptor; or

c. Having received an associate degree in any field from an accredited college or university, or holding a current Delaware license as a registered nurse; has been registered by the Board; and successfully completed a 12-month, pre-approved nursing home AIT program under the direct supervision of a Board-approved preceptor;

(2) Has achieved a passing score on all examinations prescribed by the Board;

(3) Has not received any administrative penalties regarding that applicant's own practice as a nursing home administrator, including but not limited to fines, formal reprimands, license suspensions or revocation (other than for nonpayment of renewal fees), probationary limitations, and/or has not entered into any "consent agreements" which contain conditions placed by a licensing board on that applicant's professional conduct and practice, including any voluntary surrender of a license. The Board may determine after a hearing whether an administrative penalty is grounds to deny licensure;

(4) Does not have any impairment related to drugs or alcohol that would limit the applicant's ability to act as a nursing home administrator in a manner consistent with the safety of the public;

(5) Has not been adjudicated mentally incompetent by any court or administrative entity under any circumstances that would limit the applicant's ability to act as a nursing home administrator in a manner consistent with the safety of the public. The Board may determine after a hearing whether such mental incompetence is grounds to deny licensure; and

(6) Has complied with the provisions of § 5208 of this title regarding criminal background records and does not have a criminal conviction record nor pending criminal charge which is substantially related to nursing home administration. However, 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, may waive this paragraph (a)(6), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of practicing nursing home administration in a competent and professional manner.

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

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

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

(64 Del. Laws, c. 159 § 2; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 89 § 1; 77 Del. Laws, c. 199 § 39; 78 Del. Laws, c. 44 §§ 76, 77.)

§ 5210 Criteria for registration as a nursing home administrator-in-training; preceptors; requirements of supervision.

(a) The Board may, upon the written request of a nursing home administrator who wishes to act as a preceptor, register an individual as a nursing home administrator-in-training under the following circumstances:

(1) The preceptor has submitted that preceptor's own request in a form approved by the Board;

(2) The preceptor has been licensed in this State or in any other jurisdiction for at least the 2 years immediately prior to date of the written request;

(3) The written request includes a clear statement by the preceptor agreeing to act as preceptor for the individual for whom that preceptor is seeking registration;

(4) The written request includes a clear statement by the preceptor of the specific functions and responsibilities that the individual for whom the preceptor is seeking registration will perform;

(5) The written request includes a clear statement by both the preceptor and the individual for whom that preceptor is seeking registration indicating that the individual has met the requirements of § § 5208 and 5209(a)(4) through (a)(6) of this title; and

(6) The written request includes, as attachments when necessary, evidence satisfactory to the Board supporting the veracity of the statement required by paragraph (a)(5) of this section.

(b) Persons presented to the Board by a preceptor shall provide a notarized statement to the Board that they will:

(1) Only perform those specific functions which have been delineated in the preceptor's statement;

(2) Only practice under the direct supervision of a preceptor; and

(3) Not represent themselves to the public, residents, or patients as licensed nursing home administrators.

(c) The preceptor shall be responsible and available to provide direction, observation, aid, training, and instruction to the administrator-in-training, including the submission of progress reports. This is an interactive process between the preceptor and the administrator-in-training intended to ensure the extent, quality, and scope of experience of the duties performed as a nursing home administrator.

(d) The Board, in its regulations, shall determine the number of nursing home administrators-in-training that a preceptor may supervise and the requirements of their supervision.

(76 Del. Laws, c. 89 § 1; 70 Del. Laws, c. 186 § 1.)

§ 5211 Temporary licensure.

(a) Immediately upon receipt of an application therefore, the Board may issue a temporary license to an individual who wishes to serve as a temporary nursing home administrator in the event that a facility's licensed nursing home administrator is removed from the position by death or other unexpected cause. The owner, governing body, or other appropriate authority of the nursing home suffering such removal may designate an individual to serve as a temporary nursing home administrator subject to such regulations set forth and approved by the Board. The owner, governing body, or other appropriate authority of the nursing home, not the individual serving as the temporary nursing home administrator, must submit:

(1) A written application for temporary licensure to the Board, in a form approved by the Board, immediately after the individual begins undertaking the functions of a nursing home administrator;

(2) A clear statement that the individual has not held a temporary license issued pursuant to this section within the preceding 12 months;

(3) A clear statement that the individual understands that the temporary license will expire 90 days after the date of its issuance, that the temporary license may only be renewed once, for an additional 90 days, at the Board's discretion, and that the individual is not eligible for a subsequent temporary license within the 12 months immediately following its expiration;

(4) An affidavit from the individual that the individual has 3 years of health care management experience acceptable to the Board; and

(5) Verification that the individual holds either a degree in any field from an accredited college or university or holds a current Delaware license as a registered nurse.

(b) A temporary license issued pursuant to this section shall expire 90 days after the date of its issuance and may only be renewed once, for an additional 90 days, at the Board's discretion. No person having previously been issued a temporary license may, within 12 months following its expiration, be granted a subsequent temporary license pursuant to this section.

(c) The Board shall not grant more than 1 temporary license to be used at a single facility at any 1 time.

(d) The Board shall not grant consecutive temporary licenses for use at a single facility.

(e) No person serving as a nursing home administrator pursuant to this section shall be permitted to concurrently serve as a registered nursing home administrator-in-training.

(f) A temporary license is only valid for the individual named in the license to work as a temporary nursing home administrator in the facility that submitted the temporary licensure application.

(g) The Board shall designate 1 of its members to review temporary licensure applications received between regular Board meetings. The designated Board member will have the authority to approve or deny such applications on behalf of the Board between regular Board meetings. At the subsequent regular Board meeting, the Board will review the temporary licensure application and either ratify or overturn the individual Board member's decision.

(76 Del. Laws, c. 89 § 1; 70 Del. Laws, c. 186 § 1.)

§ 5212 Administrator-in-Training Program.

The Board shall approve an Administrator-In-Training Program that complies with the guidelines of the National Association of Boards of Long-Term Care Administrators (NAB), and contains at a minimum the following:

(1) Introduction and orientation;

(2) Admission procedures;

(3) Medical records requirements;

(4) Resident rights;

(5) Administration;

(6) Food service;

(7) Nursing;

(8) Housekeeping/maintenance/janitorial;

(9) Medical and allied health;

(10) Recreation;

(11) Rehabilitation services;

(12) Social services;
(13) Disaster/emergency services;
(14) Medicare/Medicaid;
(15) Professional ethics; and
(16) Applicable state and federal laws and regulations.
(76 Del. Laws, c. 89 § 1.)

§ 5213 Reciprocity.

Upon payment of the appropriate fee and submission and acceptance of a written application on forms provided by the Board:

(1) The Board shall grant a license to each applicant who 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; and

(2) The Board may grant a license to an applicant who presents proof of current licensure in "good standing" in another state, the District of Columbia, or territory of the United States, whose standards are not substantially similar to those of this state, provided that the applicant shall have practiced in that state for a minimum of 3 years after licensure; and provided further that the applicant would not be prohibited from being licensed pursuant to this chapter because of that applicant's criminal or administrative record, any impairment related to drugs or alcohol, or mental incompetence.

(64 Del. Laws, c. 159 § 2; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 89 § 1.)

§ 5214 Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its service on behalf of the Board. At the beginning of each licensure biennium, the Division of Professional Regulation, or any other state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate Board fees for the licensure biennium.

(64 Del. Laws, c. 159 § 2; 76 Del. Laws, c. 89 § 1.)

§ 5215 Issuance and renewal of licenses.

(a) The Board shall issue a license to each applicant, who meets the requirements of this chapter for licensure as a nursing home administrator and who pays the fee established under § 5214 of this title.

(b) Each license shall be renewed biennially, in such manner as is determined by the Division of Professional Regulation, and upon payment of the appropriate fee and submission of a renewal form provided by the Division of Professional Regulation, 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 nursing home administrator may still renew that administrator's own license, notwithstanding the fact that such licensee has failed to renew on or before the renewal date.

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

(64 Del. Laws, c. 159 § 2; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 89 § 1.)

§ 5216 Grounds for discipline.

(a) A practitioner licensed under this chapter shall be subject to disciplinary actions set forth in § 5218 of this title, if, after a hearing, the Board finds that the nursing home administrator:

(1) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license as a nursing home administrator; has impersonated another person holding a license, or allowed another person to use that practitioner's own license, or aided or abetted a person not licensed as a nursing home administrator to represent himself or herself as a nursing home administrator;

(2) Has illegally, incompetently or negligently practiced nursing home administration;

(3) Has been convicted of any offense, which is substantially related to the practice of nursing home administration. A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence therefore;

(4) Has excessively used or abused drugs either in the past 2 years or currently;

(5) Has engaged in an act of abuse, neglect, mistreatment or financial exploitation of a nursing home resident or patient;

(6) Has violated a lawful provision of this chapter, or any lawful regulation established thereunder;

(7) Has had that practitioner's own license as a nursing home administrator suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided, however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record; and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every person licensed as a nursing home administrator in this State shall be deemed to have given consent to the release of this information by the Board of Examiners of Nursing Home Administrators or other comparable agencies in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses;

(8) Has failed to notify the Board that the practitioner's own license as a nursing home administrator in another state has been subject to discipline, or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof; or

(9) Has a physical condition such that the performance of nursing home administration is or may be injurious or prejudicial to the public.

(b) Subject to the provisions of 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 nursing home administration 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].

(64 Del. Laws, c. 159 § 2; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 89 § 1.)

§ 5217 Complaints.

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

(b) When it is determined that an individual is engaging, or has engaged, in the practice of nursing home administration, or is using the title "nursing home administrator" or other title implying that the individual is competent to act as a "nursing home administrator" and is not licensed under the laws of this State, the Board shall apply to the Office of the Attorney General to issue a cease and desist order.

(64 Del. Laws, c. 159 § 2; 65 Del. Laws, c. 355 § 1; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 89 § 1.)

§ 5218 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that 1 of the conditions or violations set forth in § 5216 of this title applies to a practitioner regulated by this chapter:

(1) Issue a letter of reprimand;

(2) Censure a practitioner;

(3) Place a practitioner on probationary status, and require the practitioner to:

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

b. Limit all practice and professional activities to those areas prescribed by the Board;

(4) Suspend any practitioner's license;

(5) Revoke any practitioner'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 it finds that the deficiencies, which required such action, have been remedied.

(c) In the event of a formal or informal complaint concerning the activity of a licensee that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person'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. An order temporarily suspending a license may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license has been temporarily suspended pursuant to this section may request an expedited hearing. 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.

(d) When a license has been suspended due to a disability of the licensee, the Board may reinstate such license if, after a hearing, the Board is satisfied that the licensee is able to practice with reasonable skill and safety.

(64 Del. Laws, c. 159 § 2; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 § 96; 75 Del. Laws, c. 436 § 51; 76 Del. Laws, c. 89 § 1; 79 Del. Laws, c. 213 § 2.)

§ 5219 Hearing procedures.

(a) If a complaint is filed with the Board pursuant to § 8735 of Title 29, alleging violation of § 5216 of this title, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing shall be conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) All hearings shall be informal without use of rules of evidence. If the Board finds, by a majority vote of all members, that action or actions constituting grounds for discipline have been proven, the Board shall take such action permitted under this chapter, as it deems necessary. The Board's decision shall be in writing and shall include its reasons for such decision. The Board's decision shall be mailed immediately to the practitioner.

(c) If the practitioner is in disagreement with the action of the Board, that practitioner may appeal the Board's decision to the Superior Court within 30 days of service, or of the postmarked date of the copy of the decision mailed to the practitioner whichever is greater. Stays

shall be granted in accordance with § 10144 of Title 29.

(64 Del. Laws, c. 159 § 2; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 89 § 1.)

§ 5220 Reinstatement of a suspended license; removal from probationary status; replacement of license.

(a) As a condition to reinstatement of a suspended license, or removal from probationary status, the Board may reinstate such 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 probation.

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

(c) A new license to replace any license lost, destroyed or mutilated may be issued subject to the rules of the Board. A charge shall be made for such issuance.

(64 Del. Laws, c. 159 § 2; 74 Del. Laws, c. 262 § 97[1]; 76 Del. Laws, c. 89 § 1.)

Subchapter III

Other Provisions

§ 5221 Exemptions.

Nothing in this chapter shall be construed to prevent the practice of nursing home administration by persons registered with the Board and working under the direct supervision of a Delaware licensed nursing home administrator; such licensed nursing home administrator shall be responsible for the activities of the unlicensed person practicing nursing home administration in this State.

(64 Del. Laws, c. 159 § 2; 76 Del. Laws, c. 89 § 1.)

§ 5222 Penalty.

A person, not currently licensed as a nursing home administrator under this chapter, when guilty of engaging in the practice of nursing home administration, or using in connection with that person's own name, or otherwise assuming or using any title or description conveying, or tending to convey the impression that the person is qualified to practice nursing home administration, such offender shall be guilty of a misdemeanor. Upon the first offense, that person shall be fined not less than $500 or more than $1,000 for each offense. For a second or subsequent conviction, the fine shall be not less than $1,000 or more than $2,000 for each offense. Justice of the Peace Courts shall have jurisdiction over all violations of this chapter.

(64 Del. Laws, c. 159 § 2; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 89 § 1.)

Part

Chapter 53
MASSAGE AND BODYWORK

Subchapter I

Board of Massage and Bodywork

§ 5301 Objectives.

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

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, both licensed or certified, or formerly licensed or certified.

(70 Del. Laws, c. 582 § 1.)

§ 5302 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 Massage and Bodywork established in this chapter.

(2) "Division" shall mean the Division of Professional Regulation of the Department of State of Delaware.

(3) "Massage and bodywork therapist" shall mean a person who represents himself or herself to the public by any title or description of services incorporating the words "bodywork," "massage," "massage therapist," "massage therapy," "massage practitioner," "massagist," "masseur," "masseuse," or who engages in the practice of massage and bodywork for a fee, monetary or otherwise.

(4) "Massage technician" shall mean a person, who is certified with the Board to perform certain functions within the practice of massage therapy, and who is authorized by the Board to use any title or description of services incorporating the words "bodywork," "massage," "massage practitioner," "massagist," "masseur," "masseuse," or certified massage technician" but shall be prohibited from using the words "therapist" or "therapy."

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

(6) "Practice of massage and bodywork" shall mean a system of structured touch applied to the superficial or deep tissue, muscle, or connective tissue, by applying pressure with manual means. Such application may include, but is not limited to, friction, gliding, rocking, tapping, kneading, or nonspecific stretching, whether or not aided by massage oils or the application of hot and cold treatments. The practice of massage and bodywork is designed to promote general relaxation, enhance circulation, improve joint mobilization and/or relieve stress and muscle tension, and to promote a general sense of well-being.

(7) "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam; except that "this State" means the State of Delaware.

(8) "Substantially related" means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of massage and bodywork.

(70 Del. Laws, c. 582 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 § 98; 75 Del. Laws, c. 88 § 17(2); 78 Del. Laws, c. 363 § 1.)

§ 5303 Board of Massage and Bodywork; appointments; qualifications; term; vacancies; suspension or removal; unexcused absences; compensation.

(a) There is created a state Board of Massage and Bodywork, which shall administer and enforce this chapter.

(b) The Board shall consist of 7 members appointed by the Governor, who are residents of this State: 4 professional members licensed under this chapter of whom at least 2 but not limited to 2 shall be massage therapists, at least 1 but not limited to 1 of whom shall be a certified massage technician, and 3 of whom shall be public members. The public members shall not be nor ever have been a massage therapist or technician, nor members of the immediate family of a massage therapist or technician, nor have been employed by a massage therapist or technician, nor have a material interest in the providing of goods and services to a massage therapist or technician, nor have been engaged in an activity directly related to massage. 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.

(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 to the Board. 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, 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.

(g) No member of the Board, while serving on the Board, shall hold elective office in any professional association of massage or bodywork practitioners.

(h) The provisions set forth for "employees" in Chapter 58 of Title 29 shall apply to all members of the Board, and to all agents appointed or otherwise employed by 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 and automatically shall be considered to have resigned from the Board.

(j) Each member of the Board shall be reimbursed, according to Division policy, for all expenses involved in each meeting, including travel; and, in addition, shall receive not more than $50 for each meeting attended but not more than $500 in any calendar year. After 10 meetings have been attended, the member shall not be compensated for any subsequent meetings attended in that year.

(68 Del. Laws, c. 236 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 404 § 1; 70 Del. Laws, c. 582 § 1; 78 Del. Laws, c. 363 § 2.)

§ 5304 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 President deems necessary; or at the request of a majority of the Board members.

(b) The Board shall elect, in the same month of each year, a president, vice-president and secretary. Each officer shall serve for 1 year, and may succeed himself or herself for 1 additional term.

(c) A majority of the members shall constitute a quorum for the purpose of transacting business. The affirmative vote of at least 4 members of the Board is required to certify and license applicants or to discipline a certificate or license. All other actions will be by simple majority vote.

(d) Minutes of all meetings shall be recorded and copies shall be maintained by the Division. 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.

(70 Del. Laws, c. 582 § 1; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 363 § 3.)

§ 5305 Records.

The Division shall keep a register of all approved applications for license as massage and bodywork therapist and for certification as massage technician, 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.

(70 Del. Laws, c. 582 § 1.)

§ 5306 Powers and duties.

(a) The Board of Massage and Bodywork 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 of this State [Chapter 101 of Title 29]. 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 process all applications;

(3) Designate the written examination to be taken by all persons applying for licensure as massage and bodywork therapists, subject to approval by the Director of the Division;

(4) If the examination is not otherwise available, to provide for the administration of all examinations, including notice and information to applicants. The Board shall adopt a nationally-prepared and administered massage and bodywork therapy examination, subject to approval by the Director of the Division;

(5) Evaluate the credentials of all persons applying for a license to practice massage and bodywork therapy in Delaware and of all persons applying for certification as massage technicians, in order to determine whether such persons meet the qualifications for licensing or certification set forth in this chapter;

(6) Grant licenses to, and renew licenses and certifications of, all persons who meet the qualifications for licensure and/or renewal of licenses; and grant certificates to persons who meet the qualifications for massage technicians;

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

(8) Evaluate certified records to determine whether an applicant for licensure or certification, who previously has been licensed, certified, or registered in another jurisdiction to practice massage and/or bodywork, 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;

(9) Refer all complaints from licensees and the public concerning licensed massage and bodywork therapists and certified massage technicians, or concerning practices of the Board or of the profession, to the Division 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;

(10) Conduct hearings and issue orders in accordance with procedures established pursuant to this chapter, Chapter 101 of Title 29 and § 8735 of Title 29. Where such provisions conflict with the provisions of this chapter, this chapter shall govern. The Board shall determine whether or not a massage and bodywork therapist or massage technician 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];

(11) When it has been determined, after a disciplinary hearing, that penalties or sanctions should be imposed, to designate and impose the appropriate sanction or penalty;

(12) Adopt rules and regulations concerning advertising by massage and bodywork therapists and massage technicians;

(13) Adopt rules and regulations setting forth unprofessional conduct by massage and bodywork therapists and massage technicians; and

(14) Adopt, pursuant to the Board's rules and regulations, a client disclosure form, which shall be used by all certified massage technicians. The disclosure shall include, at the minimum, a statement that the person providing services is a certified massage technician, and not a licensed massage and bodywork therapist, and, by law, is not authorized to treat medically diagnosed conditions. The disclosure shall be provided to the client at the first session.

(b) The Board of Massage and Bodywork shall promulgate regulations specifically identifying those crimes which are substantially related to the practice of massage and bodywork.

(70 Del. Laws, c. 582 § 1; 74 Del. Laws, c. 262 § 99; 78 Del. Laws, c. 363 § 4.)

Subchapter II

License

§ 5307 License; certification required.

(a) No person shall engage in the practice of massage and bodywork therapy or hold himself or herself out to the public in this State as being qualified to practice massage and bodywork therapy; or use in connection with that person's name, or otherwise assume or use, any title or description conveying or tending to convey the impression that the person is qualified to practice massage and bodywork therapy, unless such person has been duly licensed or certified under this chapter. Massage and bodywork therapists licensed under this chapter may practice massage and/or bodywork therapy on referral or prescription from a licensed medical or osteopathic physician or chiropractor as deemed appropriate by the referring physician or chiropractor. Massage technicians certified under this chapter are prohibited from practicing on referral or prescription from a licensed medical or osteopathic physician or chiropractor and from treating medically diagnosed conditions.

(b) Whenever a license or certificate to practice massage and bodywork in this State has expired or been suspended or revoked, it shall be unlawful for the person to practice massage and bodywork in this State.

(c) No person shall act as a massage technician, or hold himself or herself out as a massage technician, unless such person has been duly certified by the Board under this chapter. Massage technicians shall practice massage and/or bodywork on other than medically diagnosed conditions.

(d) This chapter shall not apply to:

(1) Actions by any person, who is certified or licensed in this State by any other law, and who is engaged in and acting within the scope of the profession or occupation for which that person is certified or licensed;

(2) Actions by any person engaged in an occupation which does not require a certificate or certification, including, but not limited to, physical education teachers, athletic coaches, health or recreation directors, instructors at health clubs or spas, martial arts, water safety and dance instructors, or coaches, who is acting within the scope of activity for which such person is trained; and

(3) Any student of massage who is practicing within the scope of his or her course of study.

(70 Del. Laws, c. 582 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 108 § 1; 78 Del. Laws, c. 363 § 6.)

§ 5308 Qualifications of applicant; report to Attorney General; judicial review.

(a) An applicant who is applying for licensure as a massage and bodywork therapist under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person:

(1) Is at least 18 years of age;

(2) Has completed 500 hours of supervised in-class study as a student in a school which trains massage or bodywork therapists, or as a student in an approved program of massage or bodywork therapy; the school or program of training must include a curriculum of no less than:

a. 100 hours of anatomy and physiology;

b. 300 hours of technique and theory of massage or bodywork therapy;

c. 75 hours of elective courses in the field of massage therapy;

d. 25 hours of ethics, law and contraindications;

(3) Has achieved the passing score on a written, standardized, nationally-prepared and administered examination in massage or bodywork therapy; the passing score shall be as established by the testing agency. If the testing agency has not established a passing score, the Board in conjunction with the Division shall establish the passing score;

(4) Has passed a state-certified examination in cardiopulmonary resuscitation (CPR) training; and possesses current CPR certification. An exception from current CPR certification shall be allowed for persons who have lower limb amputee status;

(5) Has not engaged in any of the acts or offenses that would be grounds for disciplinary action under this chapter;

(6) Has no disciplinary proceedings or unresolved complaints pending against that person in any jurisdiction where the applicant has previously been or currently is licensed to practice massage and/or bodywork therapy;

(7) Has not been the recipient of any administrative penalties regarding that person's practice of massage and bodywork therapy, including but not limited to fines, formal reprimands, license suspensions or revocation (except for license revocations for nonpayment of license renewal fees), probationary limitations and/or has not entered into any "consent agreements" which contain conditions placed by a Board on that person's professional conduct and practice, including any voluntary surrender of a license. The Board may determine, after a hearing, whether such administrative penalty is grounds to deny licensure;

(8) Shall not have any impairment related to drugs or alcohol or a finding of mental incompetence by a physician that would limit the applicant's ability to undertake that applicant's practice in a manner consistent with the safety of the public;

(9) Has not been convicted of a crime that is substantially related to the practice of massage and bodywork. However, 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, may waive this paragraph (a)(9), if 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 or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

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

c. The applicant is capable of practicing massage and bodyworks in a competent and professional manner.

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

(10) Has not been convicted of a felony sexual offense; and

(11) Has submitted, at the applicant's expense, fingerprints and other necessary information in order to obtain the following:

a. 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 relating to that person.

b. A report of the applicant's entire federal criminal history record pursuant to 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 the intermediary for purposes of this section and the Board of Massage and Bodywork shall be the screening point for the receipt of said federal criminal history records.

c. An applicant may not be licensed to practice as a massage therapist until the applicant's criminal history reports have been produced. An applicant whose record shows a prior criminal conviction may not be licensed by the Board unless a waiver is granted pursuant to paragraph (a)(9) of this section.

(b) Where the Board has found to its satisfaction that an applicant has been intentionally fraudulent, or that false information has been intentionally supplied, 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 applicant feels that the Board has acted without justification; has imposed higher or different standards for that applicant than for other applicants or licensees; or has in some other manner contributed to or caused the failure of such application, the applicant may appeal to the Superior Court.

(d) The Board shall grant a license to an applicant, who was previously licensed as a massage therapist in this State, and who has let that applicant's license lapse due to a failure to timely renew said license, subject to the applicant meeting the requirements of subsection (a) of this section, and the continuing education requirements as provided for in the Board's rules and regulations.

(e) Foreign-trained applicants must provide evidence of training and supervision essentially comparable to that cited in paragraph (a)(2) of this section.

(f) All individuals licensed to practice as massage therapists in this State shall be required to 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, 2014, at the applicant's expense, fingerprints and other necessary information in order to obtain a criminal background check.

(70 Del. Laws, c. 582 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 289 §§ 1, 2; 78 Del. Laws, c. 363 § 7.)

§ 5309 Qualifications of applicants for certification as massage technicians.

(a) An applicant who is applying for certification as a massage technician under this chapter shall submit evidence, verified by oath and satisfactory to the Board, that such person meets the requirements of § 5308(a)(5)-(11) and (e) of this title and:

(1) Is at least 18 years of age;

(2) Has completed, as a minimum, a 300-hour course of supervised in-class study of massage that includes a curriculum of no less than:

a. Sixty hours of anatomy and physiology;

b. One hundred-forty hours of theory and technique;

c. Seventy-five hours of elective courses in the field of massage therapy;

d. Twenty-five hours of ethics, law and contraindications

(3) Has passed a state-certified examination in cardio-pulmonary resuscitation (CPR) training; and possesses current CPR certification. An exception from current CPR certification shall be allowed for persons who have lower limb amputee status.

(b) Notwithstanding subsection (a) of this section, an applicant may apply for a temporary massage technician certification under this section after completion of a 200-hour course of supervised in-class study of massage that includes a curriculum of no less than:

(1) Fifty hours of anatomy and physiology;

(2) One hundred and ten hours of theory and technique;

(3) Twenty-five hours of ethics, law, and contraindications; and

(4) Fifteen hours of elective courses.

A temporary massage technician certification, which is subject to all the other provisions and requirements of this chapter, shall be valid for a period of no more than 1 year and may not be renewed or reissued, and shall not be eligible for inactive status.

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

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

(e) All individuals licensed to practice as massage technicians in this State shall be required to 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, 2014, at the applicant's expense, fingerprints and other necessary information in order to obtain a criminal background check.

(70 Del. Laws, c. 582 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 289 §§ 3-8; 75 Del. Laws, c. 130 § 1; 78 Del. Laws, c. 363 § 8.)

§ 5310 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 proof of current licensure, in good standing, in another state, the District of Columbia or territory of the United States, and who, in addition:

(1) Meets the criteria for licensure in good standing as defined in § 5308(a)(5)-(10) of this title for all currently and previously held licenses and has complied with § 5308(a)(11) and (e) of this title;

(2) Has achieved the passing score on a written, standardized nationally-prepared and administered examination in massage or bodywork therapy; the passing score shall be as established by the testing agency. If the testing agency has not established a passing score, the Board in conjunction with the Division shall establish the passing score;

(3) Has practiced massage and bodywork continually for 2 years immediately prior to making application;

(4) Possesses current CPR certification; and

(5) Is at least 18 years of age.

(70 Del. Laws, c. 582 § 1; 74 Del. Laws, c. 289 § 6; 78 Del. Laws, c. 363 § 9.)

§ 5311 Fees.

The amount to be charged for each fee imposed under this chapter shall approximate and reasonably reflect all costs necessary to defray the expenses of the Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its service on behalf of the Board. There shall be a separate fee charged for each service or activity, but no fee shall be charged for a purpose not specified in this chapter. The application fee shall not be combined with any other fee or charge. At the beginning of each calendar year, the Division of Professional Regulation, or any other state agency acting in its behalf, shall compute, for each separate service or activity, the appropriate Board fees for the coming year.

(70 Del. Laws, c. 582 § 1.)

§ 5312 Issuance and renewal of licenses; certification.

(a) The Board shall issue a license or certificate to each applicant who meets the requirements of this chapter for licensure as a massage

and bodywork therapist or certification as a massage technician and who pays the fee established under § 5311 of this title.

(b) Each license or certificate shall be renewed biennially, in such manner as is determined by the Division of Professional Regulation, and upon payment of the appropriate fee and submission of a renewal form provided by the Division of Professional Regulation, and proof that the licensee or certificant 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 massage and bodywork therapist or certified massage technician may still renew such license or certificate, notwithstanding the fact that such licensee or certificant has failed to renew on or before the renewal date.

(d) Any licensee or certificate holder, upon written request, may be placed on inactive status. Any person who desires to reactivate that person's license or certificate shall complete a Board approved application form, submit a reactivation fee set by the Division, submit proof of current CPR certification, and submit evidence of compliance with continuing education requirements in accordance with the Board's rules and regulations.

(70 Del. Laws, c. 582 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 289 § 7; 78 Del. Laws, c. 363 § 10.)

§ 5313 Grounds for discipline.

(a) A practitioner licensed or certified under this chapter shall be subject to disciplinary actions set forth in § 5315 of this title, if, after a hearing, the Board finds that the massage and bodywork therapist or massage technician:

(1) Has employed or knowingly cooperated in fraud or material deception in order to acquire a license as a massage and bodywork therapist or certification as a massage technician; has impersonated another person holding a license or certification, or allowed another person to use the massage or bodywork license or massage technician certification, or aided or abetted a person not licensed as a massage or bodywork therapist or certified as a massage technician to represent that person as a massage or bodywork therapist or massage technician;

(2) Has been convicted of a crime that is substantially related to the practice of massage and bodywork, as set forth in the Board's rules and regulations; a copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence thereof;

(3) Has an impairment related to drugs or alcohol or a finding of mental incompetence by a physician that would limit the practitioner's ability to undertake his or her practice in a manner consistent with the safety of the public;

(4) Has violated a lawful provision of this chapter, or any lawful regulation established thereunder;

(5) Has had that practitioner's license as a massage and bodywork therapist or that practitioner's certificate as massage technician suspended or revoked, or other disciplinary action taken by the appropriate licensing authority in another jurisdiction; provided however, that the underlying grounds for such action in another jurisdiction have been presented to the Board by certified record; and the Board has determined that the facts found by the appropriate authority in the other jurisdiction constitute 1 or more of the acts defined in this chapter. Every person licensed as a massage and bodywork therapist or certified as a massage technician in this State shall be deemed to have given consent to the release of this information by the Board of Massage and Bodywork Therapy or other comparable agencies in another jurisdiction and to waive all objections to the admissibility of previously adjudicated evidence of such acts or offenses;

(6) Has failed to notify the Board that the practitioner's license as a massage and bodywork therapist or certificate as massage technician in another state has been subject to discipline, or has been surrendered, suspended or revoked. A certified copy of the record of disciplinary action, surrender, suspension or revocation shall be conclusive evidence thereof;

(7) Has engaged directly or indirectly in the division, transferring, assigning, rebating or refunding of fees received for professional services or who profits by means of a credit or other valuable consideration such as wages or an unearned commission, discount or gratuity with any person who referred a patient or with any relative or business associate of the referring person. Nothing in this paragraph shall be construed as prohibiting the members of any regularly and properly organized business entity recognized by the Delaware law and comprised of massage therapists from making any division of their total fees among themselves as they determine by contract necessary to defray their joint operating costs; or

(8) Has been guilty of unprofessional conduct, as adopted in the rules and regulations, and which shall include departure from or the failure to conform to the national code of professional ethics and standards of acceptable massage and bodywork practices.

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

(c) Subject to the provisions of this chapter and subchapter IV of Chapter 101 of Title 29, no license shall be disciplined, restricted, suspended or revoked by the Board, and no practitioner's right to practice 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].

(70 Del. Laws, c. 582 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 108 §§ 2, 3; 74 Del. Laws, c. 262 § 100; 75 Del. Laws, c. 436 § 52; 77 Del. Laws, c. 199 § 40; 78 Del. Laws, c. 44 §§ 78, 79; 78 Del. Laws, c. 363 § 11.)

§ 5314 Complaints.

A practitioner or member of the public desiring to file a complaint against a practitioner or licensee, or certificate holder regulated by the Board shall file a written complaint with the Division of Professional Regulation. All complaints shall be received and investigated by the Division in accordance with the procedures as specified in § 8735 of Title 29. The Division shall be responsible for issuing a final written

report at the conclusion of the investigation.

(70 Del. Laws, c. 582 § 1.)

§ 5315 Disciplinary sanctions.

(a) The Board may impose any of the following sanctions, singly or in combination, when it finds that any of the conditions or violations set forth in § 5313 of this title applies to a practitioner regulated by this chapter.

(1) Issue a letter of reprimand;

(2) Place a practitioner on probationary status, and require the practitioner to:

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

b. Limit all practice and professional activities to those areas prescribed by the Board; and/or

c. Continue or renew the practitioner's professional education until the required degree of skill has been attained in those areas which are the basis of the probation;

(3) Suspend any practitioner's license or certification;

(4) Revoke a practitioner's license or certification;

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

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

(c) In the event of a formal or informal complaint concerning the activity of a licensee or certificant that presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person's license or certificate, 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. An order temporarily suspending a license or certificate may not be issued unless the person or the person's attorney received at least 24 hours' written or oral notice before the temporary suspension so that the person or the person's attorney may file a written response to the proposed suspension. The decision as to whether to issue the temporary order of suspension will be decided on the written submissions. 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 unless the temporarily suspended person requests a continuance of the hearing date. If the temporarily suspended person requests a continuance, the order of temporary suspension remains in effect until the hearing is convened and a decision is rendered by the Board. A person whose license or certificate has been temporarily suspended pursuant to this section may request an expedited hearing. 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 or certificate.

(d) Where a licensee or certificant has been suspended due to a disability of the licensee or certificant, the Board, at a Board meeting, may reinstate such licensee or certificant if the Board is satisfied that the licensee or certificant is able to practice with reasonable skill and safety.

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

(f) The Board shall permanently revoke the license or certificate of a person licensed as a massage and bodywork therapist or certified as a massage technician who is convicted of a felony sexual offense.

(70 Del. Laws, c. 582 § 1; 78 Del. Laws, c. 363 § 12; 79 Del. Laws, c. 213 § 2.)

§ 5316 Hearing procedures.

(a) If a complaint is filed with the Board pursuant to § 8735 of Title 29, alleging violation of § 5313 of this title, the Board shall set a time and place to conduct a hearing on the complaint. Notice of the hearing shall be given and the hearing conducted in accordance with the Administrative Procedures Act, Chapter 101 of Title 29.

(b) All hearings shall be 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 be in writing and shall include its reasons for such decision. The Board's decision shall be mailed immediately to the practitioner.

(c) Where the practitioner is in disagreement with the action of the Board, the practitioner may appeal the Board's decision to the Superior Court within 30 days after the date of mailing of the decision. Upon such appeal the Court shall hear the evidence on the record. Stays shall be granted in accordance with § 10144 of Title 29.

(70 Del. Laws, c. 582 § 1; 78 Del. Laws, c. 363 § 13.)

§ 5317 Penalties.

A person not currently licensed as a massage or bodywork therapist or certified as a massage technician under this chapter, when guilty of engaging in the practice of massage or bodywork therapy or of practicing as a massage technician, or using in connection with the practitioner's own name, or otherwise assuming or using any title or description conveying, or tending to convey the impression that the practitioner is qualified to practice massage or bodywork therapy, or to act as a massage technician, such offender shall be guilty of a misdemeanor. Upon the first offense, the practitioner shall be fined not less than $100, nor more than $500 for each offense. For a second or subsequent conviction, the fine shall be not less than $500, nor no more than $1,000 for each offense. Superior Court shall have jurisdiction over all violations of this chapter.

(70 Del. Laws, c. 582 § 1.)

§ 5318 Practice of massage and bodywork on minors.

(a) A parent or legal guardian shall be present when a person licensed or certified to practice massage and bodywork under this chapter provides services to a minor, regardless of the sex of the licensed or certified person and minor. The minor may decline the presence of a parent or legal guardian only with the written consent of the parent or legal guardian. The licensed or certified person shall confirm the identity of the parent or legal guardian, as provided in the Board's rules and regulations.

(b) When a minor is to receive services, the person licensed or certified to practice massage and bodywork under this chapter shall provide notice to the parent or legal guardian of the rights under subsection (a) of this section. The notice shall be provided in written form and shall be posted conspicuously in the location where services will be provided. The specific requirements for notice shall be set forth in the Board's rules and regulations.

(c) For the purposes of this section, "minor" is defined as a person less than 18 years of age.

(79 Del. Laws, c. 169 § 8.)

Part

Chapter 54

DELAWARE UNIFORM ATHLETE AGENTS ACT

§ 5401 Short title.

This chapter may be cited as the "Delaware Uniform Athlete Agents Act."

(73 Del. Laws, c. 144 § 1.)

§ 5402 Definitions.

For purposes of this chapter:

(1) "Agency contract" means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional-sports-services contract or an endorsement contract.

(2) "Athlete agent" means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, grandparent or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) "Athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

(4) "Contact" means a communication, direct or indirect, between an agent and a student-athlete to recruit or solicit the student-athlete to enter into an agency contract.

(5) "Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following or fame obtained because of athletic ability or performance.

(6) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics.

(7) "Person" means an individual, corporation, statutory trust, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; a governmental subdivision, agency or instrumentality; a public corporation; or any other legal or commercial entity.

(8) "Professional-sports-services contract" means an agreement under which an individual is employed or agrees to render services as a player on a professional sports team, with a professional sports organization, or as a professional athlete.

(9) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) "Registration" means registration as an athlete agent pursuant to this chapter.

(11) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(12) "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

(13) "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 provision of services by an athlete agent.

(73 Del. Laws, c. 144 § 1; 73 Del. Laws, c. 329 § 67; 74 Del. Laws, c. 262 § 97[2]; 78 Del. Laws, c. 376 § 1.)

§ 5403 Board of Athlete Agent Examiners; appointments; qualifications; term; vacancies; suspension or removal; compensation; meetings; quorum.

(73 Del. Laws, c. 144 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 262 § 101; 75 Del. Laws, c. 281 §§ 1, 2; Del. Laws, c. 376 § 2, eff July 27, 2012.)

§ 5404 Service of process; subpoenas.

(73 Del. Laws, c. 144 § 1; Del. Laws, c. 376 § 2, eff July 27, 2012.)

§ 5405 Athlete agents: registration required; void contracts.

(73 Del. Laws, c. 144 § 1; Del. Laws, c. 376 § 2, eff July 27, 2012.)

§ 5406 Registration as athlete agent; form; requirements.

(73 Del. Laws, c. 144 § 1; Del. Laws, c. 376 § 2, eff July 27, 2012.)

§ 5407 Certificate of registration; issuance or denial; renewal.

(73 Del. Laws, c. 144 § 1; 74 Del. Laws, c. 262 § 102; 75 Del. Laws, c. 436 § 53; Del. Laws, c. 376 § 2, eff July 27, 2012.)

§ 5408 Suspension, revocation, or refusal to renew registration.

(73 Del. Laws, c. 144 § 1; Del. Laws, c. 376 § 2, eff July 27, 2012.)

§ 5409 Temporary registration.

(73 Del. Laws, c. 144 § 1; Del. Laws, c. 376 § 2, eff July 27, 2012.)

§ 5410 Required form of contract.

(a) An agency contract must be in a record signed or otherwise authenticated by the parties.

(b) An agency contract must state or contain:

(1) The amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(2) A description of any expenses that the student-athlete agrees to reimburse;

(3) A description of the services to be provided to the student-athlete;

(4) The duration of the contract; and

(5) The date of execution.

(c) An agency contract must contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.

(d) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

(e) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

(73 Del. Laws, c. 144 § 1; 78 Del. Laws, c. 376 § 4.)

§ 5411 Notice to educational institution.

(a) Within 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

(b) Within 72 hours after entering into an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that the student-athlete has entered into an agency contract.

(73 Del. Laws, c. 144 § 1; 70 Del. Laws, c. 186 § 1.)

§ 5412 Student-athlete's right to cancel.

(a) A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within 14 days after the contract is signed.

(b) A student-athlete may not waive the right to cancel an agency contract.

(c) If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

(73 Del. Laws, c. 144 § 1.)

§ 5413 Required records.

(a) An athlete agent shall retain the following records for a period of 5 years:

(1) The name and address of each individual represented by the athlete agent;

(2) Any agency contract entered into by the athlete agent; and

(3) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.

(b) [Repealed.]

(73 Del. Laws, c. 144 § 1; 78 Del. Laws, c. 376 § 5.)

§ 5414 Prohibited conduct.

(a) An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, may not:

(1) Give any materially false or misleading information or make a materially false promise or representation;

(2) Furnish anything of value to a student-athlete before the student-athlete enters into the agency contract; or

(3) Furnish anything of value to any individual other than the student-athlete or another athlete agent.

(b) An athlete agent may not intentionally:

(1) Refuse or fail to retain the records required to be retained by § 5413 of this title;

(2) Predate or postdate an agency contract; or

(3) Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

(73 Del. Laws, c. 144 § 1; 78 Del. Laws, c. 376 § 6.)

§ 5415 Criminal penalties.

An athlete agent who violates § 5414 of this title is guilty of a class A misdemeanor. Upon the first offense, the athlete agent shall be fined not less than $500 nor more than $1,000 for each offense, and in addition, may be imprisoned for not more than 1 year. For a second or subsequent conviction, the fine shall be not less than $1,000 nor more than $2,000 for each offense; and in addition the athlete agent may be imprisoned for not more than 1 year.

(73 Del. Laws, c. 144 § 1.)

§ 5416 Civil remedies.

(a) An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of this chapter. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.

(b) Damages of an educational institution under subsection (a) of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of this chapter or was penalized, disqualified or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

(c) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student-athlete.

(d) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.

(e) This chapter does not restrict rights, remedies or defenses of any person under law or equity.

(73 Del. Laws, c. 144 § 1.)

§ 5417 Administrative penalty.

(73 Del. Laws, c. 144 § 1; Del. Laws, c. 376 § 2, eff July 27, 2012.)

§ 5418 Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact similar statutes.

(73 Del. Laws, c. 144 § 1.)

§ 5419 Electronic Signatures in Global and National Commerce Act.

The provisions of this chapter governing the legal effect, validity or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000) [15 U.S.C. § 7002], and supersede, modify and limit the Electronic Signatures in Global and National Commerce Act [15 U.S.C. § 7001 et seq.].

(73 Del. Laws, c. 144 § 1.)

§ 5420 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

(73 Del. Laws, c. 144 § 1.)

Part
Chapter 55
BAIL ENFORCEMENT AGENTS

§ 5501 Purpose.

The Delaware General Assembly declares that it is in the best interest of the citizens of Delaware to require licensure of bail enforcement agents and their agents and employees to prevent unqualified individuals from endangering the public. Therefore, the purpose of this chapter is to promote, preserve and protect the public health, safety and welfare by regulating fugitive recovery. This chapter shall be liberally construed to accomplish this purpose.

(73 Del. Laws, c. 194 § 1.)

§ 5502 Definitions.

(a) "Bail bondsmen" shall mean the person or persons licensed by the Department of Insurance as a bail bonding agent.

(b) "Bail bondsmen association" shall mean any organization or entity that represents the bail bondsmen in the State.

(c) "Bail enforcement agent" ("BEA") as used within this chapter, shall mean any person or cooperative of persons, resident or nonresident, whose services or actions are performed for the purpose of capturing a fugitive, and including, but not limited to, any person who engages in the apprehension and return of persons who are released on bail and who have failed to appear at any stage of the proceedings to answer the charge before any state or federal court.

(d) "Bail enforcement agent association" shall mean any organization or entity that represents the BEA's in the State.

(e) "Bail Enforcement Board" ("Board") means the Delaware Board of Examiners of Bail Enforcement Agents.

(f) "Director" means the officer in charge of the Professional Licensing Section of the Division of State Police.

(73 Del. Laws, c. 194 § 1; 70 Del. Laws, c. 186 § 1; 6 Del. Laws, c. 398 § 2; 77 Del. Laws, c. 457 § 4.)

§ 5503 Board of Examiners of Bail Enforcement Agents.

(a) Creation of the Board. — The Delaware Board of Examiners of Bail Enforcement Agents is created for the protection of the general public and to carry out the functions and duties conferred on it by this chapter.

(b) All legal process and all documents required by law to be serviced or filed with the Board shall be served or filed with the Chairperson at the designated office herein also referred to as the Professional Licensing Section, Division of State Police. All official records of the Board or affidavits by the Chairperson as to the content of such records shall be prima facie evidence of all matters required to be kept by the Board.

(c) The Board will adhere to the Administrative Procedures Act (Chapter 101 of Title 29).

(d) The Board shall:

(1) Investigate alleged violations of the provision of this chapter and of any rules and regulations adopted by the Board;

(2) Promulgate all rules and regulations necessary in carrying out the provisions of this chapter; and

(3) Establish and enforce standards governing the safety and conduct of persons licensed under this chapter.

(77 Del. Laws, c. 457 § 4.)

§ 5504 Board membership and authority.

(a) The Board shall be composed of 9 members who shall be citizens of the State and shall be appointed by the Secretary of Safety and Homeland Security:

(1) The Superintendent of the Division of State Police or a designated representative, who shall be appointed by the Secretary of Safety and Homeland Security as Chairperson of the Board. The Chairperson shall serve on the Board at the pleasure of the Secretary.

(2) A representative of the Delaware Police Chiefs Council;

(3) The Insurance Commissioner or a designated representative;

(4) Two public members, 1 of whom is an attorney admitted to the Delaware Bar;

(5) Two members who have been engaged as bail enforcement agents for a period of 5 consecutive years.

(6) Two members who have been engaged as bail bondsmen for a period of 5 consecutive years.

(b) The public members appointed to the Board shall serve 2-year terms and the professional members shall serve 3-year terms. Members shall retain their appointment until such time as their successors are appointed or they are reappointed.

(c) A member may proxy no more than twice in a calendar year, and must provide the individual's name in advance of the meeting to the Chairperson. A proxy, under this subsection, shall have the same authority as the Board member. There must be a quorum of the Board in order to transact business. A simple majority of the total number of Board members must be present to constitute a quorum. Actions by the Board shall be by a majority of those present at Board meetings where a quorum has been established. All voting shall be done in person and at regular or special meetings of the Board.

(d) The Board shall meet quarterly or at such times to be decided by the majority of the Board. A majority of the Board constitutes a quorum to transact business.

(e) The Board shall, upon approval by the Secretary of Safety and Homeland Security, promulgate rules and regulations necessary in carrying out the provisions of this chapter, and shall establish such other general qualifications for licensure as the Board deems necessary. The Board shall also have the power to suspend, revoke or place on probation any person required to be licensed under this chapter who violates any provisions of this chapter and/or who violates any rules and/or regulations promulgated by the Board. The Board may suspend, revoke, place on probation, fine any applicant who: has committed any act which could result in a felony conviction, or has committed any act that could result in a misdemeanor conviction which involves moral turpitude or a drug offense; or has practiced fraud, deceit or misrepresentation; or has made a material misstatement in any application or renewal for a license.

(f) It is grounds for removal from the Board if a member:

(1) Does not maintain, during the service on the Board, the qualifications required by paragraphs (a)(5) and (6) of this section;

(2) Does not attend at least 1/2 of the regularly scheduled meetings, held by the Board, in a calendar year, excluding meetings held when the person was not a member of the Board; or

(3) Is unable to discharge the members' duties for a substantial part of the term of which the member was appointed because of illness or disability.

(g) If the Director has knowledge that a potential ground for removal exists, the Director shall notify the Chairperson of the Board of the ground.

(h) The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.

(77 Del. Laws, c. 457 § 4; 70 Del. Laws, c. 186 § 1.)

§ 5505 Emergency suspension.

(a) The Director shall be granted the power to impose an emergency suspension on any person licensed under this chapter if, in the opinion of the Director, that failure to take such action could jeopardize the public's safety and welfare.

(b) Any person whose license is suspended by the Director, under subsection (a) of this section shall be granted a full hearing, by the Board, within 10 days from the date that the request for a hearing is received by the Director, provided that the violating party request such a hearing, in writing, to the Director within 5 days of the suspension. With the consent of the person requesting a hearing, the hearing may be schedule at the next quarterly meeting of the Board.

(77 Del. Laws, c. 457 § 4.)

§ 5506 Prohibited conduct.

No person, other than a "law-enforcement officer" as defined by § 222 of Title 11 or an employee of any state court acting at the direction of any judge, commissioner or master of any state court, shall apprehend or detain a suspected fugitive on behalf of another person, including a principal on a bond, who has been released on bail as required by the terms of a bond or the bond has been revoked by court order, unless that person is licensed by the provisions of this chapter and its rules and regulations.

(73 Del. Laws, c. 194 § 1; 74 Del. Laws, c. 110 § 138; 77 Del. Laws, c. 457 § 4.)

§ 5507 Licensing.

(a) The promulgated rules and regulations shall implement the provisions of this chapter regarding the licensure and registration of bail enforcement agents, which may include the term of a license or registration and the qualifications of a licensee, and may charge a fee not to exceed $500 for each application for licensure and each renewal of an existing license.

(b) The Board shall determine all licensing fees to be assessed under this chapter, including application and renewal fees not to exceed the maximum fee permitted in subsection (a) of this section, except as otherwise set forth in this chapter. All fees and fines collected shall be deposited into the Bail Enforcement Regulatory Fund, which Fund shall be a revolving fund and moneys into the Fund shall not revert to the State General Fund. The funds shall be used to defray all expenses incurred in its administration of this chapter, including, but not limited to, background investigations, criminal history investigations and fingerprinting of an applicant and any investigation of any charge made against a licensee.

(c) No person shall be issued a license pursuant to this chapter unless that person submits their name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, address of legal residence and such other information as may be necessary to obtain a report of the applicant's entire criminal history record from the State Bureau of Identification and a report of the applicants entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544.

(d) An applicant, to be licensed under this chapter as a bail enforcement agent, must meet and maintain the following requirements:

(1) Must be at least 21 years of age;

(2) Must not have been convicted of any felony;

(3) Must not have been convicted of any misdemeanor involving moral turpitude or any charge or been involved in any conduct that may impair the performance of the bail enforcement agent and endanger public safety as determined by the Professional Licensing Section;

(4) Must not have been convicted of any misdemeanor involving the act of theft within the last 7 years;

(5) Must not have been convicted of any misdemeanor involving drug offenses within the last 7 years;

(6) Must not have been, as a juvenile, adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony,

unless and until that person has reached their twenty-fifth birthday;

(7) Must not have been convicted, within the last 7 years, of any 2 of the following misdemeanors: offensive touching or assault III;

(8) Must not have been convicted of any offense involving the impersonation of a police officer or a person of trust as defined in Title 11;

(9) Must not have been convicted of any criminal offense involving organized gang activity as defined in Title 11;

(10) If served in the armed forces, must not have received a dishonorable discharge;

(11) Must not be a member or employee of any law-enforcement organization, as defined by the Council of Police Training, or a member or employee of a law-enforcement organization of any other state or federal jurisdiction;

(12) Must meet and maintain the qualifications set and approved by the Board pursuant to this chapter and the rules and regulations as promulgated by the Board and approved by the Secretary of Safety and Homeland Security.

(e) Any person whose license has been suspended, revoked, denied or has been imposed a civil penalty, pursuant to § 5515 of this title, is entitled to a hearing before the Board.

(f) The Board may conduct a criminal history background check pursuant to the procedures set forth in Chapter 85 of Title 11 for the purposes of licensing any individual pursuant to this chapter.

(g) An applicant seeking renewal of their license, under this chapter as a bail enforcement agent, must meet and maintain the requirements pursuant to subsection (d) of this section.

(73 Del. Laws, c. 194 § 1; 74 Del. Laws, c. 110 § 138; 76 Del. Laws, c. 398 § 3; 77 Del. Laws, c. 457 § 4.)

§ 5508 Change of address.

Notification shall be made to the Professional Licensing Section within 14 days after the change of any contact information, including but not limited to, address, phone number (home and cell), and E-mail address of any individual licensed under this chapter. Failure to do so may result in the suspension or revocation of a license.

(77 Del. Laws, c. 457 § 4.)

§ 5509 Identification card, license, and badge.

(a) Anyone required to be licensed under this chapter shall be issued, by the Professional Licensing Section, an identification card, license, and badge which shall expire and be renewable on the fourth anniversary date of the birth of the applicant next following the date of its issuance, unless the birth date is February 29, in which event the license shall expire and be renewable on February 28 every fourth year.

(b) BEA licenses issued prior to July 1, 2010, shall continue in force until the expiration thereof, unless there has been a violation of § 5507 of this title.

(77 Del. Laws, c. 457 § 4.)

§ 5510 Possession of identification card and badge.

Any person who has been issued an identification card and badge by the Professional Licensing Section shall be required to have such card and badge in their possession while in the performance of the person's duties.

(77 Del. Laws, c. 457 § 4.)

§ 5511 Notification of arrest.

Anyone licensed under this chapter shall, excluding weekends and state holidays, notify the Director within 5 days of any arrest which could result in a misdemeanor or felony conviction. Failure to do so may result in the suspension or revocation of a license.

(77 Del. Laws, c. 457 § 4.)

§ 5512 Surrender of expired, revoked or suspended identification cards, licenses and badges; penalty.

Any person to whom an identification card, license and badge may be issued in accordance with this chapter shall surrender such items and all duplicate copies thereof, which have expired or have been revoked or suspended to the Professional Licensing Section of the Delaware State Police.

(77 Del. Laws, c. 457 § 4.)

§ 5513 Jurisdiction.

The Superior Court shall have jurisdiction over violations under this chapter.

(77 Del. Laws, c. 457 § 4.)

§ 5514 Violation of chapter as ground for revocation of identification card, license and badge.

A violation of this chapter shall be cause for revocation of any identification card, license and badge issued thereunder, notwithstanding that the same violation may constitute a misdemeanor or felony.

(77 Del. Laws, c. 457 § 4.)

§ 5515 Penalties.

(a) The Board shall have the power to impose a civil penalty upon any person required to be licensed under this chapter up to $200, per day, for operating without a valid license.

(b) Anyone performing the duties of a BEA pursuant to § 5502 of this title, who is not duly licensed under this chapter shall be guilty of a class F felony.

(73 Del. Laws, c. 194 § 1; 77 Del. Laws, c. 457 § 4.)