

Occupational Therapy, Education and Licensure Board Newsletter

Board Telephone: (717) 783-1389
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Message from the Chair

Hanna Gruen

We are continually challenged to be alert to change that affects practice. Only by our heightened sensitivity to ethical and quality care issues can we truly protect the consumers of occupational therapy throughout the Commonwealth.

We hope that this periodic newsletter provides useful information — both about issues and of the work of your licensure board.

The board continues to meet regularly and invites you to join us at any time. Further, I urge you to contact us with questions, concerns or problems with which we may assist you consultatively or on a more active level.

Suggestions of how we may better serve both the public and our profession are always welcome. Let us hear from you.



Commonwealth of Pennsylvania

Tom Ridge
Governor

Kim Pizzigrilli
Acting Secretary of the Commonwealth

Dorothy Childress
Commissioner
Bureau of Professional
and Occupational Affairs

For more information, visit us through
the Pennsylvania homepage at
www.state.pa.us or visit the
Department of State directly at
www.dos.state.pa.us

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How a Regulation is Adopted

by Joyce McKeever, Deputy Chief Counsel, Pennsylvania Department of State

Each year, licensing boards and commissions in the bureau propose and adopt numerous regulations and amendments to current regulations. Some regulations, such as fees for examinations and renewals, are required by statute. In other instances, boards make changes to long-standing policy or wish to enact new standards of professional conduct for licensees.

Whether a new regulation is necessary, or changes to old regulations are made, all proposed rulemaking of the boards must be adopted under the law and procedures spelled out in the Commonwealth Documents Law, the Commonwealth Attorneys Act and the Regulatory Review Act.

The Commonwealth Documents Law requires the board or commission that wishes to enact a new rule to publish a proposal in the *Pennsylvania Bulletin*, the official publication of important documents for all Commonwealth agencies. The proposal announces the intention of the agency and explains to the public why the regulation is necessary or benefits the public. The public can comment or object to the board's proposal for a period of thirty days after publication. Thereafter, the board can propose a final rulemaking, which is also published in the *Pennsylvania Bulletin*.

The Regulatory Review Act requires the board or commission to submit the proposal to the state House and Senate standing committees which have oversight over all licensing boards

in the bureau and the Independent Regulatory Review Commission (IRRC). The board proposal is submitted to the regulatory reviewers at the time it is published in the *Pennsylvania Bulletin*. The public comments which the board or commission receives are also sent to the committees and the IRRC. In turn, the committees or IRRC submit comments to the board and/or the commission.

Licensing boards and commissions must consider public, legislative and IRRC comments when a final regulation is proposed. An agency has two years from the close of the public comment period to submit a final-form regulation. The final-form regulation is again submitted to the state House and Senate standing committees and to IRRC. The committees and IRRC review the board's final rulemaking. That review results in an action to either approve or disapprove the regulation. The committees have 20 days within which to act to disapprove a regulation. When they do so, IRRC is notified. Thereafter, IRRC meets to consider the final rulemaking. IRRC may disapprove or approve the regulation, irrespective of the action taken by the legislative committees. If IRRC approves the regulation, publication of the final regulation is authorized.

If IRRC disapproves a proposed final regulation, disapproval bars publication in the *Pennsylvania Bulletin*. The board or commission then has a seven-day period in which it may notify the House and Senate committees

and IRRC that it intends to proceed with final rulemaking, notwithstanding the disapproval. If a board or commission decides to resubmit final rulemaking, it may do so within 40 days of IRRC's original disapproval.

The licensing board or commission, as with any state agency, can submit the regulation without any changes or it can make revisions to its proposal and submit a revised regulation which is intended to address the concerns raised in the disapproval. When no changes are made to final form regulation, the committees have 14 days to report a concurrent resolution. A resolution would bar publication unless the Governor successfully (without override) vetoes the resolution.

If a board or commission decides to revise the final rulemaking, the revisions are considered again by the House and Senate committees and IRRC. If both approve the changes, publication of the final regulation is then authorized. If either of the committees or IRRC disapprove the revised regulation, either of the legislative committees may within 14 days report a concurrent resolution barring publication. If the resolution is not reported, the House or Senate fails to adopt, or the Governor successfully vetoes the resolution, the regulation may be published in the *Pennsylvania Bulletin* as final.

Under the Commonwealth Attorneys Act, the Attorney General must approve all regulations before they are final. Once a regulation is published, it becomes law.

Board Disciplines Licensees

On June 12, 1998, the board approved a Consent Agreement in the case of the Bureau of Professional and Occupational Affairs v. **Marsha Bookman**, license no. **OC-000039-L**, of Pittsburgh, Allegheny County. Bookman was reprimanded and assessed a \$1,000 civil penalty for practicing on a lapsed license.

On September 25, 1998, the board approved a Consent Agreement in the case of the Bureau of Professional and Occupational Affairs v. **Suzanne R. Peterson**, license no. **OP-000217-R**, of Phoenixville, Chester County. Peterson was reprimanded and assessed a \$1,000 civil penalty for practicing on a lapsed license.

Meet Our Board Members

Hanna Gruen, of Pittsburgh, Allegheny County, is serving a second term with the board. Gruen earned a bachelor's degree in occupational therapy from Ohio State University in 1957. She is president of Associated Occupational Therapists Inc., where she has been since 1980. Gruen is one of three owners of this private practice. She previously was director of occupational therapy at St. Margaret Memorial Hospital. Gruen is a member of both the American and Pennsylvania Occupational Therapy associations; secretary of the American Occupational Foundation; member of the advisory board for "Occupational Therapy Week," a weekly professional publication; member of the governing board for the Western Pennsylvania chapter of the Arthritis Foundation; and member of the advisory committee for Duquesne University's Occupational Therapy program.

Anita L. Hotchkiss of Erie, is serving a second term as a member of the board. In 1985, she earned a bachelor's degree in occupational therapy from the University of Pittsburgh. Since August 1997, Hotchkiss has been employed as an occupational therapy instructor and field-work coordinator at Gannon University. From March 1992 through August 1997, she was a long term care coordinator at Northstar Health Services/Keystone Rehab. She is a member of both the American and Pennsylvania Occupational Therapy associations, and is currently serving as executive officer for District VII of the Pennsylvania Occupational Therapy Association.

Patricia S. Kilgannon, M.Ed., of Doylestown, Bucks County, is serving a second term as a public member of the board. She earned a bachelor's degree in psychology from Dickinson College and a master's degree in adult and continuing education from Rutgers University. Kilgannon is the executive director of Success Coaching in Doylestown; and is a trainer/counselor for the Council for Adult and Experiential Learning in Chicago. Kilgannon is past president of Toastmasters International and is a lifetime member of the Central Bucks Ambulance and Rescue Unit.

Ruth L. Schemm, Ed.D., of Warrington, Bucks County, is completing her first term as a member of the board. Schemm earned a bachelor's degree from the University of Pennsylvania in 1969. She is professor and chair of the Department of Occupational Therapy and interim dean of health sciences at the University of the Sciences in Philadelphia. She served as president of the Pennsylvania Occupational Therapy Association and presently chairs the Professional Program Directors' Group of AOTA. She has published papers on home therapy programs and is the principal investigator of a grant funded by the Paralyzed Veterans of America.

John F. Yaninek, Esq., of Harrisburg, Dauphin County, was recently sworn-in as a public member. He earned a bachelor's degree from Fordham University in 1986; and a juris doctorate degree from Dickinson School of Law in 1989. Yaninek is an attorney with Mette, Evans and Woodside. He also spent five years in the U.S. Army with the Judge Advocate General's Corps. He is a decorated veteran of Desert Shield/Desert Storm. Yaninek is a member of the American, Pennsylvania and Dauphin County Bar associations; and is a life member of Veterans of Foreign Wars. He is also a member of the American Legion.

Board Members

Hanna Gruen, Chairwoman
Pittsburgh, Allegheny County

Anita Louise Hotchkiss, Secretary
Centerville, Crawford County

Patricia Sharer Kilgannon, M.Ed.
Doylestown, Bucks County

Ruth L. Schemm, Ed.D.
Chalfont, Bucks County

John F. Yaninek, Esq.
Harrisburg, Dauphin County

Dorothy Childress, Commissioner
Bureau of Professional and Occupational Affairs

Board Staff:

Ruth Dunnewold, Esq.
Counsel

Nancy Cowan, Esq.
Prosecutor

Clara Flinchum
Administrator



Board members and staff in recent session

Reporting Suspected Child Abuse

Roles and responsibilities of licensed professionals

How does the Child Protective Services Law impact licensed professionals?

The Pennsylvania Child Protective Services Law (CPSL) was signed into law in 1975 and was amended in 1994. The amendments are intended to further enhance the protection of children from abuse and reabuse; to provide rehabilitative services to ensure the child's well-being; and to preserve, stabilize and protect the integrity of family life, whenever appropriate.

Although many professional licensees have been mandated to report suspected abuse since initial passage of the CPSL, the 1994 amendments are intended to encourage more complete reporting.

The 1994 amendments mandate that the Department of State make training and educational programs and material available for all professional licensing boards whose licensees are responsible for reporting child abuse. In addition, each licensing board with jurisdiction over professional licensees identified as mandated reporters were required to promulgate regulations regarding the responsibilities of reporting. The regulations clarify that the CPSL takes precedence over any professional standard that might otherwise apply in order to protect children from abuse.

Who is required to report suspected child abuse?

Persons, who in the course of their employment, occupation or practice of their profession come into contact with children, shall report or cause a report to be made when they have reasonable cause to suspect that a child coming before them in their professional capacity is an abused child.

Persons under the jurisdiction of the Department of State's Bureau of Professional and Occupational Affairs who are required to report include, but are not limited to, any licensed physician; osteopath; psychologist; funeral director; dentist; optometrist; chiropractor; podiatrist; intern; registered nurse; licensed practical nurse; hospital personnel engaged in the admission, examination, care or treat-

ment of persons; social service workers and mental health professionals. In addition, any person may make such a report if there is reasonable cause to suspect that a child has been abused.

What is child abuse?

Child Abuse, as defined in the CPSL, includes any of the following:

- any recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age;
- an act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18;
- any recent act, failure to act or series of such acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or exploitation of a child under 18;
- serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

The CPSL defines sexual abuse or exploitation as the employment, use, persuasion, inducement, enticement or coercion of any child to engage in or assist any other person to engage in any sexually explicit conduct or any simulation of any sexually explicit conduct for the purpose of producing any visual depiction, including photographing, videotaping, computer depicting or filming, of any sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault or other form of sexual exploitation of children.

Who can be a perpetrator?

A perpetrator can be a parent of a child, or a person responsible for the welfare of a child who provides permanent or temporary care, supervision, mental health diagnosis or treat-

ment, training or control of a child in lieu of parental care, supervision and control. Also, an individual residing in the same home as a child or a paramour of a child's parent, can be a perpetrator.

What is CHILDLINE?

CHILDLINE is a 24 hour toll-free telephone reporting system operated by the Department of Public Welfare to receive reports of suspected child abuse.

What should you do if you suspect a child has been abused?

If you have reasonable cause to suspect that a child has been abused, a report should be made immediately by telephone to **CHILDLINE** at **1-800-932-0313**. Within 48 hours of the oral report, a written report must be made to the appropriate county children and youth agency by the reporter. Forms can be obtained from the county agency.

Whenever the reporter is a member of the staff of a medical or other public or private institution, school, facility or agency, the reporter shall immediately notify the person in charge. Upon notification, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report to the Department of Public Welfare and the county agency. The person in charge shall notify the reporter once the report is made to **CHILDLINE**.

What occurs once a report is filed?

Once a report of suspected child abuse is filed, **CHILDLINE** forwards it to the local county children and youth agency, which must begin an investigation within 24 hours of the report, decide if the report is a valid instance of child abuse, and if so, arrange for or provide the services needed to prevent further mistreatment of the child and preserve the family unit.

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Reporting Suspected Child Abuse *(continued)*

Will the reporter know whether the child was abused and what is being done to protect the child from further abuse?

Reporters may receive information from their county children and youth agency regarding the final status of the report and the services provided for or arranged by the agency.

What happens to the reporter?

Mandated reporters are encouraged to identify themselves and where they can be reached. A

caseworker may need to contact the reporter for additional information. Only the Secretary of the Department of Public Welfare has the authority to release the name of the reporter or anyone who cooperated with the investigation.

Does a reporter face liability?

A person who participates in good faith in making a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse, the taking of photographs or the removal or keeping of a child shall have immunity from civil and criminal liability.

Are there penalties for failing to report suspected child abuse?

A person required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

For more information, please contact the board office.

Child Abuse Reporting Requirements

In January 1997, the board adopted final regulations which set forth mandatory child abuse reporting requirements. All occupational therapists and occupational therapist assistants who, in the course of their employment, occupation or practice of their profession, come into contact with children, are subject to child abuse reporting requirements. Because of the importance of these regulations to all affected occupational therapists and occupational therapist assistants, the text of the regulation is reproduced below:

§41.71 Suspected child abuse — mandated reporting requirements

(a) General rule. Under 23 Pa. C.S. §6311 (relating to persons required to report suspected child abuse), occupational therapists and occupational therapist assistants who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse.

(b) Staff members of public or private agencies, institutions and facilities.

Occupational therapists or occupational therapist assistants who are staff members of a medical or other public or private institution, school facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse. Upon notification by the occupational therapist or occupational therapist assistant, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).

(c) Reporting procedure. Reports of suspected child abuse shall be made by telephone and by written report.

(1) Oral reports. Oral reports of suspected child abuse shall be made immediately by telephone to **CHILDLINE** at (800) 932-0313.

(2) Written reports. Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.

(d) Written reports. Written reports shall be made in a manner and on forms prescribed by the Department of Public Welfare. The following information shall be included in the written reports, if available:

(1) The names and addresses of the child and the parents or other person responsible for the care of the child, if known.

(2) Where the suspected abuse occurred.

(3) The age and sex of the subjects of the report.

(4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or siblings of the child.

(5) The name and relationship of the persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by those persons.

(6) Family composition.

(7) The source of the report.

(8) The person making the report and where that person can be reached.

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Child Abuse Reporting Requirements *(continued)*

(9) The actions taken by the reporting source, including the taking of photographs and x-rays, removal or keeping of the child or notifying the medical examiner or coroner.

(10) Other information which the Department of Public Welfare may require by regulation.

§41.72. Photographs, medical tests and x-rays of child subject to report.

An occupational therapist or occupational therapist assistant may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, x-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and x-rays and may obtain them or duplicates of them upon request.

§41.73. Suspected death as a result of child abuse — mandated reporting requirement.

An occupational therapist or occupational therapist assistant who has reasonable cause to suspect that a child died as a result of child

abuse shall report that suspicion to the coroner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner of the county where the injuries were sustained. §41.74. Immunity from liability.

Under 23 Pa. C.S. §6318 (relating to immunity from liability), an occupational therapist or occupational therapist assistant who participates in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs shall have immunity from civil and criminal liability that might result by reason of the occupational therapist's or occupational therapist assistant's actions. For the purpose of any civil or criminal proceeding, the good faith of the occupational therapist or occupational therapist assistant shall be presumed. The board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of an occupational therapists' or occupational therapist assistants' actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs.

§41.75. Confidentiality — waived.

To protect children from abuse, the reporting requirements of §§41.71-41.73 (relating to suspected child abuse — mandated reporting requirements; photographs, medical tests and x-rays of child subject to report; and suspected death as a result of child abuse — mandated reporting requirement) take precedence over provision of Ethical Principle 5 (relating to confidentiality) in §41.61 (relating to Code of Ethics) and any other ethical principle or professional standard that might otherwise apply to psychologists.

§41.76. Noncompliance.

(a) Disciplinary action. An occupational therapist or occupational therapist assistant who willfully fails to comply with the reporting requirements in §§41.71-41.73 (relating to suspected child abuse — mandated reporting requirements; photographs, medical tests and x-rays of child subject to report; and suspected death as a result of child abuse — mandated reporting requirement) will be subject to disciplinary action under section 16 of the act (63 P.S. §1516).

(b) Criminal penalties. Under 23 Pa. C.S. §6319 (relating to penalties for failure to report), an occupational therapist or occupational therapist assistant who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

Change of Name or Address Reminder

To ensure receipt of a renewal notice or other important information from the board, licensees must contact the board office *as soon as possible* in writing with any changes in name or address. Otherwise, renewals, newsletters, etc., will not reach the correct destination and could result in late fees for renewals. Name changes require a copy of a court order, marriage certificate, divorce decree or other official document. Please send changes to:

State Board of Occupational Therapy
P.O. Box 2649
Harrisburg, PA 17105-2649

Board of Occupational Therapy 1999 Meeting Dates

January 22
March 19
June 18
August 20
October 22
December 10

Meetings, which begin at 9:30 a.m., are open to the public and are usually held at 116 Pine Street in Harrisburg. Please feel free to attend any of these meetings.

Common Sense Regulatory Reform

Governor Ridge's Executive Order

On Feb. 6, 1996, Governor Ridge issued Executive Order 1996-1 requiring agencies, boards and commissions to evaluate their existing regulations and identify obsolete, redundant or burdensome provisions for repeal, and to establish procedures to ensure that any new regulations address a compelling public interest. Most importantly, the Order requires any agency proposing new regulations to justify the proposal in specific and concrete terms and to address definable public health and safety or environmental measures, including an analysis of costs and potential benefits.

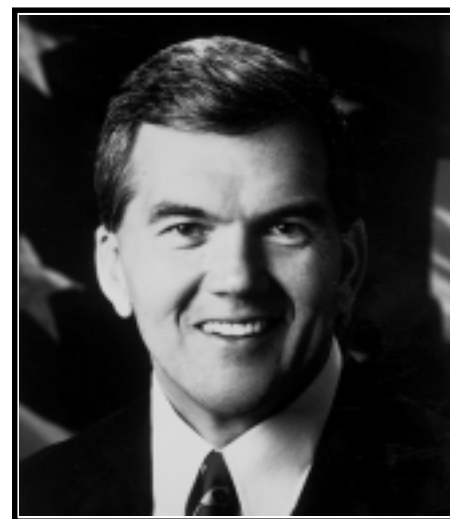
The Order also requires agencies to give the affected regulated community early notice of the proposed regulations in draft form, as well as an opportunity to provide input prior to launching a regulatory package through the formal review process.

The Order identifies the goal of Commonwealth rulemaking as compliance, rather than the issuance of sanctions. The pre-drafting input process is intended to allow regulators and the regulated community to work together infor-

mally to develop manageable solutions to problem-solving, before beginning the formal process controlled by regulatory review statutes. Finally, each agency must give long-term planning notice of its intentions by publishing a regulatory agenda. This agenda is published in the *PA Bulletin* on the first Saturday in February and July of each year.

As experts in their fields, board members are ideally situated to provide meaningful input about changes in their respective practices, and the Occupational Therapy, Education and Licensure Board has begun systematic review and updating of its regulations. Equally important, the board has developed a comprehensive list of organizations consisting of persons affected by the board's rulemaking. These organizations will, in the future, have the benefit of providing early and meaningful pre-drafting input to any regulations proposed by board.

It is anticipated that the process of applying the Executive Order criteria to every regula-



Governor Tom Ridge

tory package will result in both a sharpening of board members' focus and a broadening of their perspectives. As the board works through the review process, it will be in the position of reducing regulatory burdens, where possible, yet ensuring appropriate regulations are in place to protect the public.

Please send comments or suggestions regarding existing regulations to the board office.

To File a Complaint

in Pennsylvania:

1-800-822-2113

out of state:

1-717-783-4854

A complaint form is available on the Department of State's internet site.

The web address is:

www.dos.state.pa.us

If you believe the practice or the service provided by a licensed professional to be unethical, immoral, below an acceptable standard of practice or out of the scope of the profession, you are urged to contact the Bureau of Professional and Occupational Affairs and file a complaint.

Social Security Numbers Required on Applications for Licenses and Renewals

A new state law, effective January 1997, requires that applicants provide their social security numbers on all applications for licenses and licensure renewals.

To comply with this law, the Bureau of Professional and Occupational Affairs (BPOA) is currently updating the forms that individuals use to apply for licensure or to renew their licenses. The social security numbers will be used as an information source by county courts or the Department of Public Welfare for determining whether individuals who are seriously delinquent in their child support obligations hold a license issued through BPOA. This information will allow more effective use of a 1993 statute that authorizes domestic relations courts to order BPOA boards to suspend or deny the issuance or renewal of a license to

individuals who are three months or more in arrears on their support obligations.

Under Section 301.1 (a)(2) of Act 124 of 1996 which amended the Domestic Relations Code, all government agencies are mandated to require the social security number of an individual on any application for a professional or occupational license. The Act also requires government agencies, including BPOA, to provide a licensee's name, address, and social security number to the Department of Public Welfare. The amendments were authorized under the Federal Welfare Reform Act known as the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The Department of Public Welfare is the state agency responsible for enforcing child support orders.

Reporting Elder Abuse: “Voluntary or Mandatory”

Commentary by Jeffrey J. Wood, Esq., Chief Counsel, PA Department of Aging

Jeffrey J. Wood, Esquire, was appointed Chief Counsel to the PA Department of Aging by Gov. Tom Ridge in April 1995. Wood assigns and supervises the Aging legal work, advises Aging Secretary Richard Browdie on matters affecting older Pennsylvanians, and represents Aging in administrative forums, county courts and state appellate courts on elder law issues including contracts, regulations, legislation, constitutional challenges, health care matters, and particularly with the Pharmaceutical Assistance Contract for the Elderly (PACE) Program and older adult protective service intervention in cases of abuse, exploitation and fraud.

The purpose of this commentary is to provide general information, not legal advice, about the issue of "reporting elder abuse".

The Pennsylvania Department of Aging is formally charged by the Older Americans Act (42 U.S.C.A. § 3025(a)) and the Pennsylvania General Assembly (71 P.S. § 581-1) with being an advocate for the interests of older Pennsylvanians at all levels of government. The Department of Aging oversees many services and benefits to older people — most provided through the 52 statewide Area Agencies on Aging, and works with the Governor’s Office and the General Assembly on legislation benefiting older persons. The department has consistently pursued its role as advocate through planning, training and research as well as the administration of federal and state funds for elderly programs through Area Agencies on Aging. The Department of Aging and Area Agencies on Aging are both leaders of, and partners in, what is known as the state and local Aging Services Network.

The Department of Aging and Area Agencies on Aging through The Older Adults Protective Services Act (35 P.S. § 10225.101 *et seq.*) have assisted thousands of older Pennsylvanians to overcome abusive situations or protect them from potential abandonment, abuse, financial exploitation or neglect, including self-neglect. The Act provides that any

person having reasonable cause to believe that an older adult is in need of protective services may report such information to the Area Agency on Aging (35 P.S. § 10225.302(a)). An older adult is defined by the Act as a person in our Commonwealth who is age 60 or over (35 P.S. § 10225.103; see 71 P.S. § 581-2).

The Act, which was effective July 1988¹, enables anybody to voluntarily report suspected abandonment, abuse, financial exploitation or neglect. Abuse is defined in the Act as: the infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish; or as the willful deprivation of necessary goods or services to maintain physical or mental health; or, as any sexual act, harassment or placing one in reasonable fear of serious bodily injury (35 P.S. § 10225.103; see 23 Pa. C.S.A. § 6102 and 18 Pa. C.S.A. § 2301). Consequently, **any person** who has personal knowledge that abuse has been, or is being, perpetrated upon an older adult, may **voluntarily** report such to the Area Agency on Aging.

Notwithstanding, the Act’s voluntary reporting directive, the Act has been amended by Act 13-97, effective December 1997, mandating any employee or administrator of a facility (facility being defined in the Act) who has reasonable cause to suspect that an individual receiving care, services or treatment from a facility is a victim of abuse, shall immediately make a report of such abuse to the Area Agency on Aging (35 P.S. § 10225.701 (a)(1)). Further, any employee or an administrator who has reasonable cause to suspect that such individual is the victim of sexual abuse; serious physical injury or serious bodily injury; or that a death is suspicious shall, in addition to contacting the Area Agency on Aging and the Pennsylvania Department of Aging, immediately contact law enforcement officials to make a report (35 P.S. § 10225.701 (b)(1)). Consequently, **any employee** or an administrator who has knowledge that abuse has been, or is being, perpetrated upon an older adult, is **mandatorily required** to report, depending upon the severity of the abuse, to the Area Agency on Aging, the Department of Aging and law enforcement.

In addition to The Older Adults Protective Services Act’s voluntary and mandatory elder abuse reporting declarations, our Crimes Code (18 Pa. C.S.A. § 101) mandates reporting criminal acts or abuse for certain Commonwealth agencies and for certain medical personnel, when such agencies and personnel are engaged in the performance of their duties. That is, in specific circumstances, the law requires reporting:

The Crimes Code, as amended by Act 28-95, effective September 1995, requires any member or agent of the Commonwealth agencies of the Department of Aging, Department of Health or Department of Public Welfare, when in the course of conducting the performance of regulatory or investigative duties, and having reasonable cause to believe that an individual receiving care, services or treatment has suffered bodily injury or been unlawfully restrained, shall immediately report such criminal act of abuse to the local law enforcement agency or to the Office of Attorney General (18 Pa. C.S.A. § 2713(c)). That is, where personnel or agents of the Department of Aging, Department of Health or Department of Public Welfare have cause to believe that the criminal act of omission defined as “neglect of care-dependent person” has been, or is being, perpetrated, it is mandatory that such Commonwealth agency personnel report to law enforcement or the Attorney General. Consequently, any **employee or agent** of the Department of Aging, Health or Public Welfare **must report** suspected neglect of care-dependent persons.

Further, the Crimes Code, Act 334-72, effective June 1973, directs that a physician, intern or resident, or any person conducting, managing or in charge of any hospital or pharmacy, or in charge of any ward or part of a hospital, to whom shall come or be brought any person suffering from any wound or other injury inflicted, by his own act or by the act of another, by means of a weapon or has injuries inflicted in violation of any penal law of this Commonwealth (18 Pa. C.S.A. § 5106(a)), shall report such criminal act injuries to the local law enforcement agency or to the State Police. Such is **mandatory reporting** for **medical personnel** when injuries sustained are the result of suspected criminal activity.

Reporting Elder Abuse *(continued)*

The Department of Aging continues its efforts to raise public and professional awareness of elder abuse and remains committed to intervening in the lives of our older Pennsylvanians in appropriate cases while avoiding unnecessary infringement of their civil liberties. At the same time, the Department of Aging provides services and legal protection to victims and confidentiality for those who report cases of abuse. The department is looking to the future, planning how to best meet the needs of

Pennsylvania's older citizens and their communities. As we head into the 21st century, our emphasis is on health care and disease prevention, and our mission continues to be to enhance the lives of communities, families and older Pennsylvanians. We need you to carry on this mission. Elder abuse happens everywhere — across the country, across the state and across the street. But you can do something about it. But first, you must open your eyes to the issue.

¹The Act, initially enacted as Act 79-87, but was amended and Sections renumbered by Act 169-96, effective March 1997. Further, the Act was amended by Act 169-96 to add Chapter 5, effective July 1998, relating to criminal background checks for personnel providing care to older adults; however, such discussion is outside the scope of this commentary.

Caring for Our Elderly — Employment Background Checks

Commentary by Jeffrey J. Wood, Esq.

Our senior citizens may be one of our most valuable resources, but they can also become our most vulnerable citizens. The Pennsylvania General Assembly has declared, pursuant to The Older Adults Protective Services Act (Act), it is the policy of our Commonwealth to provide services safeguarding the rights of older adults while protecting them from abuse (35 P.S. § 10225.102). **The purpose of this commentary is to provide general information, not legal advice, about the issue of “criminal background checks for facility employment applicants and employees caring for our elderly”.**

The Act (35 P.S. § 10225.101 *et seq.*) established a program of protective services for the detection and reduction, correction or elimination of abuse to older adults. An older adult is defined by the Act as a person in our Commonwealth who is age 60 or over (35 P.S. § 10225.103; see 71 P.S. § 581-2). The Pennsylvania Department of Aging (PDA) is formally charged by the Older Americans Act (42 U.S.C.A. § 3025(a)) and the Pennsylvania General Assembly (71 P.S. § 581-1) with being an advocate for the interests of older Pennsylvanians at all levels of government. The Pennsylvania Department of Aging oversees many services and benefits to older people — most provided through the 52 statewide Area Agencies on Aging; and works with the Governor's Office and the General Assembly on legislation benefiting older persons.

Through the Act, the Pennsylvania Department of Aging and Area Agencies on Aging have assisted thousands of older Pennsylvanians to overcome abusive situations by intervention in incidents of abuse, including sexual abuse, serious physical injury, serious bodily injury or suspicious death. The Act (Act 79-87), effective July 1988, was amended and Sections renumbered, effective March 1997 (Act 169-96), and with the requirement that personnel caring for our elderly be free from certain criminal convictions, effective July 1998 (Act 169-96). Further, the Act was amended with the mandate of elder abuse reporting, effective December 1997 (Act 13-97), and with additional explanation for criminal background checks, effective July 1998 (Act 13-97); [Act 13-97, relating to mandatory reporting of elder abuse, is outside the scope of this *Comment*].

The Act directs, relative to the issue of criminal background checks, that a facility employment applicant, and a facility employee since July 1, 1997, must be free from certain convictions (35 P.S. § 10225.502 and § 10225.503). Thus, on and after July 1, 1998, facility employment applicants and facility employees employed on and after July 1, 1997, must satisfy conditions of the Act for employment.

A facility is defined in the Act as any of the following: domiciliary care home (see 71 P.S. § 581-2 and § 581-3(a)(16); 6 Pa. Code Chapter 21); a home health care agency, home health care organization or agency which provides care to a care-dependent individual in the individual's place of resident (see 35 P.S. § 448.802a; 28 Pa. Code Chapter 601); a long-term nursing facility (see 35 P.S. § 448.802a; 28 Pa. Code Chapter 201); older adult daily living center (see 62 P.S. § 1511.1 and 71 P.S. § 581-3(a)(17.1)(iv); 6 Pa. Code Chapter 11); or, personal care home (see 62 P.S. § 213; 55 Pa. Code Chapter 2620). The Act delineates an employment applicant or employee as an individual who is employed by a facility, and the terms encompass those contract personnel with older adult direct contact or with unsupervised access to their personal living quarters, including personnel in a contractual relationship to provide care to a care-dependent older adult for monetary consideration in the home or residence.

The criminal background check necessitates all facility applicants to submit with their employment application a criminal history report from the Pennsylvania State Police (35 P.S. § 10225.502(a)(1); see 18 Pa. C.S.A. § 9109). If the applicant is not a resident of Pennsylvania, and has not been a resident of Pennsylvania for the two years immediately

Caring for Our Elderly *(continued)*

proceeding employment application, then in addition to the report from the Pennsylvania State Police a report of federal criminal history record information must be obtained from the Federal Bureau of Investigation (35 P.S. § 10225.502(a)(2); see 28 U.S.C.A. § 534(a)(1)). A facility employee who has continuously been employed at the same facility before and since July 1, 1997 shall not be required to obtain the criminal background check as a condition of continued employment in that facility where employed (35 P.S. § 10225.508(1)).

As result of the criminal background check for applicants and employees, if certain convictions of statutory infractions are evidenced in the report(s), then employment in a facility is forbidden (35 P.S. § 10225.503(a)(1)&(2)). That is, where applicant or employee has a record of certain law convictions, then such individual is prohibited from employment, and shall not be employed, in a facility. The law convictions prohibiting employment involve the Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. § 780-101) and the Pennsylvania Crimes Code (18 Pa. C.S.A. § 101).

Specifically, employment is prohibited where the criminal background check report reveals a felony conviction of The Controlled Sub-

stance, Drug, Device and Cosmetic Act. Likewise, employment is denied where the report lists a conviction of the Crimes Code involving, vis: criminal homicide (§ 2501); aggravated assault (§ 2702); kidnapping (§ 2901); unlawful restraint (§ 2902); rape (§ 3121); statutory sexual assault (§ 3122.1); involuntary deviate sexual intercourse (§ 3123); sexual assault (§ 3124.1); aggravated indecent assault (§ 3125); indecent assault (§ 3126); indecent exposure (§ 3127); arson and related offenses (§ 3301); burglary (§ 3502); robbery (§ 3701); a felony or two or more misdemeanors under: theft by unlawful taking or disposition (§ 3921), theft by deception (§ 3922), theft by extortion (§ 3923), theft of property lost, mislaid, or delivered by mistake (§ 3924), receiving stolen property (§ 3925), theft of services (§ 3926), theft by failure to make required disposition of funds received (§ 3927), unauthorized use of automobiles and other vehicles (§ 3928),; retail theft (§ 3929), library theft (§ 3929.1), theft of trade secrets (§ 3930), theft of unpublished dramas and musical compositions (§ 3931), or, theft of leased property (§ 3932); forgery (§ 4101); securing execution of documents by deception (§ 4114); incest (§ 4302); concealing death of child born out of wedlock (§ 4303); endangering welfare of children (§ 4304); deal-

ing in infant children (§ 4305); intimidation of witnesses or victims (§ 4952); retaliation against witness or victim (§ 4953); a felony promoting prostitution (§ 5902(b)); dissemination of obscene and other sexual materials to minors (§ 5903(c)); admitting minor to show of obscene and other sexual materials (§ 5903(d)); corruption of minors (§ 6301); or, sexual abuse of children (§ 6312).

The Pennsylvania Department of Aging continues its efforts to raise public and professional awareness of elder abuse and remains committed to intervening in the lives of our older Pennsylvanians in appropriate cases while avoiding unnecessary infringement of their civil liberties. The Act provides criminal background checks of personnel caring for our elderly, and is meeting the needs of Pennsylvania's older citizens and their communities to assure protective services. As we head into the 21st century, our emphasis is on health care and disease prevention, and our mission continues to be to enhance the lives of communities, families and older Pennsylvanians...we need you to carry on this mission. But first, we must all open our eyes to older adult protective service issues.

Please see page 8 for biographical information about the author, Jeffrey J. Wood, Esq.

Department of State Creates Web Pages for Each Licensing Board and Commission

In November 1998 Acting Secretary of the Commonwealth Kim Pizzigrilli announced a new online resource to make professional licensure information more accessible to the public. "The Ridge Administration believes the Internet is a valuable tool to make information more accessible to Pennsylvanians," Pizzigrilli said. "Over the last three years, the Department of State has undergone an extensive modernization. Through the use of new technology like the Internet, we are becoming more responsive and more effective in meeting the needs of the public."

The Department of State has expanded its website to include professional licensure information for 27 boards and commissions under its jurisdiction. The website is available through the Pennsylvania homepage at www.state.pa.us or directly through the Department of State's website at www.dos.state.pa.us.

Consumers and licensed professionals who visit the site now will be able to access licensure laws, and application and exam information; to request copies of regulations; to review meeting dates; and to download complaint forms. The new site also marks the first step in the department's efforts to make professional licensure records and board information available to the public via the Internet.

More than 800,000 professionals are licensed and regulated by the boards and commissions under the department's jurisdiction. By improving access to licensure and board information, the department seeks to improve the level of service offered to consumers and professionals who use this information every day.

As part of the Ridge Administration's efforts to improve customer service and provide greater access to public information, the De-

partment of State revised its Internet website to provide better service and to improve efficiency 24 hours a day, seven days a week. The site allows for instant and convenient access to election information and voter registration statistics; tips on charitable giving; fees and filing requirements for incorporating in Pennsylvania; and basic information about the department. In 1997, Pennsylvania became one of the first states in the nation to tabulate and post election returns to the Internet on election night; and in April 1998, the department began posting campaign-finance reports for statewide candidates on the Internet — fulfilling Governor Ridge's pledge to provide greater access to campaign-finance information.

The Pennsylvania Homepage, www.state.pa.us, recently was selected as the best state website in the country by *Government Technology* magazine.

Important Notice Regarding Public Access to Information

by Gerard M. Mackarevich, Deputy Chief Counsel, Pennsylvania Department of State

The Bureau of Professional and Occupational Affairs is sensitive to its licensees' concerns about personal privacy. However, the Pennsylvania Right-to-Know Act, 65 P.S. § 66.1, mandates release of information contained in a "public record" stored by that agency if a member of the public requests it.

The bureau wants you to know that it will take all reasonable steps to safeguard personal information contained in your licensure records. We realize that many of you use your home address on the licensure records maintained by the bureau. However, given the uncertainty over what the Right-to Know Act requires, neither the bureau nor the board that issues your

license can guarantee the confidentiality of the address shown on your licensing record. Therefore, we recommend that, if you have a personal security concern, you might want to consider what many of our licensees have already done: Use a business address or box number as the official address on their licensure records.

Supervision of the Occupational Therapy Assistant

Health care in America is changing. With these changes, many institutions and organizations are downsizing their departments. As these facilities reorganize to continue to provide services to the community, efforts are made to utilize the staff in the most cost effective manner. In many cases the occupational therapy assistant is being asked to do more, possibly with less input and supervision by the occupational therapist.

Proper supervision is important so that the Certified Occupational Therapy Assistant (COTA) is receiving appropriate information for practice. The Occupational Therapist Registered (OTR) needs to communicate information after evaluations regarding goals and treatment planning. Reevaluations will often bring modifications in the treatment plan, and the

COTA will need to be updated. Often the COTA will spend more time with the patient one-on-one and will have valuable information to convey to the OTR in regard to the patient's treatment. This information will be used by the OTR for case management and determining program termination.

The OTR is required to have supervisory contact with the COTA at least 10% of the time worked by the COTA in direct patient care. This means that the OTR must have face-to-face individual contact, telephone communications, contact through written reports or group conferences among the OTR and COTAs. A face-to-face meeting with the individual must occur on site at least once a month. During this on-site visit the OTR must observe the COTA performing treatment. Additional

time and frequency of supervision may vary depending on the type of treatment setting; type of patients being treated; and the competence of the COTA as determined by the OTR, 42 Pa. Code §42.22 (d).

The supervisor is also required to maintain a supervisory plan on each occupational therapy assistant. The supervisor must keep ongoing documentation of regular supervisory visits with the occupational therapy assistant.

Please review the practice act and regulations for specific language. If you feel that you are not correctly being supervised or are being asked to complete activities not in compliance with the board's regulations, report it. To file a complaint, please call 1-800-822-2113.

Supervision of Aides by the Occupational Therapist

As managed care becomes a reality in our profession, we are faced with financial constraints limiting our services. As professionals, we are asked more frequently to utilize aides and other unlicensed personnel in our practice. It is important that we understand the correct supervision and use of an aide.

An occupational aide is an individual assigned by an occupational therapy practitioner to perform delegated, selected skilled tasks in specific situations under the direction and intense (daily) close supervision of an occupational

therapy practitioner. The occupational therapist and/or the occupational therapy assistant is ultimately responsible for the activities of the aide and accountable for the quality of the work the aide performs. Section 42.21 of the board's regulations, 49 Pa. Code 42.21, defines minimum standards of practice. The Occupational Therapist or Occupational Therapy Assistant may delegate **non-treatment** aspects of occupational therapy to the aide. The aide is not allowed to perform any activities that require licensure under the act.

Examples of such **non-treatment** activities include transporting patients; setting up a work area or equipment; performing clerical and housekeeping duties; and attending to personal needs of patients/clients (i.e., may assist patients with such things as cueing and monitoring their activities) 49 Pa. Code §42.21(b). At no time should the aide be evaluating, treating or recording occupational therapy progress notes on the chart. These activities would be considered unlawful and constitute unprofessional conduct.

Future Newsletter Topics

If there is an issue you would like to see addressed in the Pennsylvania State Board of Occupational Therapy Newsletter, please submit your idea in writing to:

**State Board of
Occupational Therapy
"Newsletter"
P.O. Box 2649
Harrisburg, PA 17105-2649**

Verbal Orders

The board continues to receive many questions regarding verbal orders.

Occupational therapists are not currently among those on the Pennsylvania Department of Health's list of licensed professionals permitted to accept verbal orders from physicians; and the board has been in contact with the Department of Health requesting that they consider adding occupational therapists to the list. We are told that the Health Department will be reviewing a number of issues and will take our concerns under advisement.

The board recently developed an initial first draft of a proposed regulation allowing occupational therapists to accept verbal orders under certain circumstances.



P E N N S Y L V A N I A

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Education and Licensure Board**

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