

CLS Objections to Select Boards’ Proposed “Directly Related Crimes” Lists

Community Legal Services (CLS) has listed below those crimes in the Act 53 proposed regulatory package that are, in our view, not “directly related” to the relevant occupations. Because we are unable to evaluate every Boards’ list, we focused on the Boards that most often affect CLS’s low-income clients: Barber Examiners, Cosmetology, Physical Therapy, Occupational Therapy, and Nursing.

The offenses set out below are not ‘directly related’ as defined in the newly-enacted 63 Pa.C.S. §3102 because they do not have “a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the profession, trade or occupation for which the individual seeks licensure.”

- Concern that a licensee has access to a vulnerable population and **has done harm in the past is far too general** and cannot be a basis to deny a license. See, e.g., King v. Bureau of Professional and Occupational Affairs, State Board of Barber Examiners, 195 A.3d 315, 329-330 (Pa.Cmwth. 2018).
- Concern that a **crime could happen at a business location is not a sufficient basis** to deny a license if the crime is not directly related to the practice of the profession. See, e.g., Fulton v. Commonwealth, 169 A.3d 718, 726 (Pa.Cmwth. 2017) (drug dealing is not related to barbering because drugs could be sold at many different commercial establishments, not just barber shops).
- Concern that a crime **could be related to a profession under certain circumstances should be addressed on an individual basis** by the Boards. The Boards can better evaluate the particular facts underlying a crime in order to determine whether it is related to the profession.
- The recency of crimes should be taken into account. Boards should explicitly limit the number of years a conviction is directly related. An offense older than seven years is not an accurate predictor of future behavior. For example, while drug sale may be “directly related” to nursing if it was committed in the past year, it would not be related if the offense was 20 years old. **The Boards should create tiered lists, where certain offenses are considered “directly related” only if, for example, they were committed within the last 5 years.**
- The grading of crimes should be taken into account. If the legislature has decided that an offense is minor and graded it as a summary or lower degree misdemeanor, then it should not serve as a barrier to employment.

We have set out an explanation for our general understand of the nature of each profession and the overall reasons why our listed offenses are not directly related. There are some additional points giving further reasons for some particular offenses.

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Updated, 12/1/2022



State Board of Barber Examiners

The essential work of barbering involves cutting and styling hair. There is no specific concern for vulnerable clients. Barbers do not assume position of special trust over property. Customers are not more vulnerable to theft, violence or fraud than in any commercial establishment. Barbering doesn't involve driving or access to controlled substances. For these reasons the following crimes are not "directly related" to barbering.

- Chapter 27. Assault¹
 - 18 Pa. C.S. § 2702. Aggravated Assault
 - 18 Pa. C.S. § 2705. Recklessly endangering another person.
- Chapter 39. Theft and Related Offenses
 - 18 Pa.C.S. §3921. Theft by unlawful taking or disposition
 - 18 Pa.C.S. §3922. Theft by deception
 - 18 Pa.C.S. § 3924. Theft of property lost, mislaid, or delivered by mistake
 - 18 Pa.C.S. § 3926. Theft of Services
- Chapter 41. Forgery and Fraudulent Practices
 - 18 Pa.C.S. §4107. Deceptive or fraudulent business practices
 - 18 Pa.C.S. §4115. Falsely impersonating persons privately employed
- Additional Drug and Alcohol Offenses²,
 - 35 P.S. § 780-113(a)(30). The manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered [.]³
 - 75 P.C.S.A. § 3802. Driving under the influence of alcohol or controlled substance (felony only)

¹ Act 53 incorporates list of directly related crimes of violence set out at 42 Pa.C.S. § 9714(g). Aggravated assault (all types) and reckless endangerment are not on the 9714(g) list. It is inappropriate and unjustified to exceed Act 53, and include additional, less serious crimes of violence, where there is no direct link between the offense and the occupation. Courts have held that far more serious crimes are not related to barbering. See, e.g., King, 195 A.3d 315, 329-330 (Pa.Cmwlth. 2018) (involuntary deviate sexual intercourse); Kirkpatrick v. BPOA, 117 A.3d 1286, 1294 (Pa.Cmwlth. 2015) (indecent assault).

² Possession with intent to deliver, 35 P.S. 780-113(a)(30) ["PWID"] and DUI are omitted by Cosmetology Board. Logically, crimes not directly related to cosmetology are not directly related to barbering either.

³ Courts have already held: PWID not related to barbering. Fulton v. Commonwealth, 169 A.3d 718, 726 (Pa.Cmwlth. 2017).

State Board of Cosmetology

The essential work of cosmetology involves cutting and styling hair. There are no specific concerns for vulnerable clients. Stylists are not entrusted to care for personal property or sensitive information. Their customers are not more vulnerable to theft, violence or fraud than in any commercial establishment. Cosmetology doesn't involve driving or access to controlled substances. For these reasons, the following crimes are not "directly related" to cosmetology.

- Chapter 27. Assault⁴
 - 18 Pa. C.S. § 2702. Aggravated Assault
 - 18 Pa. C.S. § 2705. Recklessly endangering another person.
- Chapter 39. Theft and Related Offenses
 - 18 Pa. C.S. § 3921. Theft by unlawful taking or disposition
 - 18 Pa. C.S. § 3922. Theft by deception
 - 18 Pa. C.S. § 3924. Theft of property lost, mislaid, or delivered by mistake
 - 18 Pa. C.S. § 3926. Theft of Services
- Chapter 41. Forgery and Fraudulent Practices⁵
 - 18 Pa. C.S. § 4101. Forgery
 - 18 Pa. C.S. § 4104. Tampering with records or identification
 - 18 Pa. C.S. § 4107. Deceptive or fraudulent business practices
 - 18 Pa. C.S. § 4108. Commercial bribery and breach of duty to act disinterestedly
 - 18 Pa. C.S. § 4112. Receiving deposits in a failing financial institution
 - 18 Pa. C.S. § 4113. Misapplication of entrusted property and property of government or financial institutions
 - 18 Pa. C.S. § 4114. Securing execution of documents by deception
 - 18 Pa. C.S. § 4115. Falsely impersonating persons privately employed
 - 18 Pa. C.S. § 4120. Identity theft

⁴ Act 53 incorporates list of directly related crimes of violence set out at 42 Pa.C.S. § 9714(g). Aggravated assault (all types) and reckless endangerment are not on the 9714(g) list. It is inappropriate and unjustified to exceed Act 53, and include additional, less serious crimes of violence, where there is no direct link between the offense and the occupation. Courts have held that far more serious crimes are not related to barbering – and, therefore, logically, not to cosmetology either. See, e.g., King, 195 A.3d 315, 329-330 (Pa.Cmwlth. 2018) (involuntary deviate sexual intercourse); Kirkpatrick v. BPOA, 117 A.3d 1286, 1294 (Pa.Cmwlth. 2015) (indecent assault).

⁵ Chapter 41 Fraud and forgery offenses (other than §§ 4107 & 4115) are omitted by Barbering Board. Logically, crimes not directly related to barbering are not directly related to cosmetology either. Board previously recognized this: in the past, since Beauty Culture Law only permitted discipline for *related* convictions, Board cited only 18 Pa.C.S. § 9124 (permitting revocation for *unrelated* felonies) as grounds to discipline for forgery – but Act 53 revokes application of § 9124 to BPOA. Board cannot now pretend that forgery and related crimes were 'directly related' for all of this time.

State Board of Occupational Therapy

Occupational therapy is the evaluation, analysis, selection and adaptation of activities for individuals whose abilities to cope with the activities of daily living, or perform normal tasks or essential vocational tasks, are threatened or impaired. Therapists are not entrusted to care for personal property; customers not more vulnerable to theft or fraud than in any commercial establishment. Therapists' involvement in billing and reimbursement will vary based on professional setting, and may be minimal – and involve oversight by numerous colleagues - in a large health practice; it is incidental, rather than essential, to the work of therapy. Therapists have no special connection to the administration of law or submission of tax forms. For these reasons, the following crimes are not “directly related” to occupational therapy.

- Chapter 39. Theft and Related Offenses
 - 18 Pa. C.S. §3921 Theft by unlawful taking or disposition
 - 18 Pa. C.S. §3922 Theft by deception
 - 18 Pa. C.S. §3926 Theft of Services
 - 18 Pa. C.S. §3927 Theft by Failure to Make Required Disposition of Funds
- Chapter 41. Forgery and Fraudulent Practices⁶
 - 18 Pa. C.S. §4101 Forgery
 - 18 Pa. C.S. §4104 Tampering with Records and Identification
 - 18 Pa. C.S. §4106 Access Device Fraud
 - 18 Pa. C.S. §4107 Deceptive or fraudulent business practices
 - 18 Pa. C.S. §4108 Commercial Bribery
 - 18 Pa. C.S. §4114 Securing execution of documents by deception
 - 18 Pa. C.S. §4117 Insurance fraud
 - 18 Pa. C.S. §4120 Identity Theft
- Chapter 49. Falsification and Intimidation⁸
 - 18 Pa. C.S. §4902 Perjury
 - 18 Pa. C.S. §4903 False Swearing
 - 18 Pa. C.S. §4904 Unsworn Falsification to Authorities
 - 18 Pa. C.S. §4911 Tampering with Public Records
 - 18 Pa. C.S. §4952 Intimidation of witnesses or victims
 - 18 Pa. C.S. §4953 Retaliation against witness, victim or party
- Chapter 51. Obstructing Governmental Operations
 - 18 Pa. C.S. §5101 Obstructing administration of law or other governmental function
 - 18 Pa. C.S. §5105 Hindering apprehension or prosecution.
 - 18 Pa. C.S. § 5111 Dealing in proceeds of unlawful activity
- Federal offenses
 - 18 U.S.C. §1341 Mail fraud
 - 26 U.S.C. §7206 Filing fraudulent tax returns

⁶ Chapters 41 & 49: These fraud/forgery/falsification crimes encompass potential behaviors that are only distantly related to the work of many occupational therapists. To the extent they suggest a generalized “tendency towards dishonesty,” that is the type of vague, overbroad category of crimes referred to as “lack of good moral character” or “crimes of moral turpitude” – Act 53 explicitly directs boards not to deny/revoke licensure on the basis of crimes that supposedly display a generalized character trait.

Also, several of these offenses (including §§ 4108, 4114, 4117) are omitted by the State Board of Physical Therapy. Logically, crimes not directly related to authorization/billing requirements of physical therapy are not directly related to occupational therapy either.

State Board of Physical Therapy

The essential work of physical therapy involves the evaluation, treatment, and therapeutic management of disabling physical conditions in the general population. Therapists are not entrusted to care for personal property; customers are not more vulnerable to theft, violence, trafficking, or fraud than in any commercial establishment; therapy is not especially focused on children or care-dependent people, when a typical patient is an able-bodied adult with a temporary ailment. Therapists' involvement in billing and reimbursement will vary based on professional setting, and may be minimal – and involve oversight by numerous colleagues - in a large health practice; it is incidental, rather than essential, to the work of therapy. For these reasons, the following crimes are not “directly related” to physical therapy.

- Chapter 27. Assault⁷
 - 18 Pa. C.S. § 2705 (Recklessly endangering another person)
- Chapter 39. Theft and Related Offenses
 - 18 Pa. C.S. § 3921 (Theft by unlawful taking or disposition)
 - 18 Pa. C.S. § 3922 (Theft by deception)
 - 18 Pa. C.S. § 3923 (Theft by extortion)
 - 18 Pa. C.S. § 3927 (Theft by failure to make required disposition of funds received)
- Chapter 41. Forgery and Fraudulent Practices⁸
 - 18 Pa. C.S. § 4101 (Forgery)
 - 18 Pa. C.S. § 4104 (Tampering with records or identification)
 - 18 Pa. C.S. § 4106 (Access device fraud)
 - 18 Pa. C.S. § 4107 (Deceptive or fraudulent business practices)
 - 18 Pa. C.S. § 4117 (Insurance Fraud)
- Chapter 43. Offenses Against the Family⁹
 - 18 Pa. C.S. § 4304 (Endangering the welfare of children)
- Chapter 49. Falsification and Intimidation
 - 18 Pa. C.S. § 4904 (Unsworn falsification to authorities)
 - 18 Pa. C.S. § 4952 (Intimidation of witnesses or victims)

⁷ Act 53 incorporates list of directly related crimes of violence set out at 42 Pa.C.S. § 9714(g). Reckless endangerment is not on the 9714(g) list. It is inappropriate to go beyond the violent crimes enumerated by the legislature, where there is no direct link between the offense and the occupation.

⁸ Chapters 41: These fraud/forgery crimes encompass potential behaviors that are only distantly related to the work of many physical therapists. To the extent they suggest a generalized “tendency towards dishonesty,” that is the type of vague, overbroad category of crimes referred to as “lack of good moral character” or “crimes of moral turpitude” – Act 53 explicitly directs boards not to deny/revoke licensure on the basis of crimes that supposedly display a generalized character trait.

⁹ Endangering the welfare of children is a very commonly charged crime that typically involves an act of omission – something any caregiver could do - not an affirmative commission of abuse.

State Board of Nursing

Nursing means diagnosing and treating human responses to actual or potential health problems through case-finding, teaching, counseling, and provision of care supportive to or restorative of life and well-being, and executing medical regimens.¹⁰ Nurses are not specially entrusted to care for personal property; patients and subordinates are encountered in a wide variety of settings, and are not more vulnerable to theft or fraud than in any commercial establishment. Nurses' involvement in billing and reimbursement will vary based on professional setting. In a large health practice, involvement may be minimal – and will often involve oversight by numerous colleagues. It is incidental, rather than essential, to the work of therapy. Nurses have no special connection to the administration of law. For these reasons, the following crimes are not “directly related” to nursing:

- Chapter 27. Assault¹¹
 - 18 Pa. C.S. § 2701. Simple assault
 - 18 Pa. C.S. § 2706(a)(1). Terroristic threats.
 - 18 Pa. C.S. § 2709. Harassment.
- Chapter 39. Theft¹²
 - 18 Pa. C.S. § 3921. Theft by unlawful taking or disposition.
 - 18 Pa. C.S. § 3922. Theft by deception.
 - 18 Pa. C.S. § 3923. Theft by extortion.
 - 18 Pa. C.S. § 3925. Receiving stolen property.
 - 18 Pa. C.S. § 3929. Retail theft.
 - 18 Pa. C.S. § 3929.3. Organized retail theft.
- Chapter 41. Forgery and Fraudulent Practices
 - 18 Pa. C.S. § 4101. Forgery.
 - 18 Pa. C.S. § 4104. Tampering with records or identification.
 - 18 Pa. C.S. § 4106. Access device fraud.
 - 18 Pa. C.S. § 4114. Securing execution of documents by deception.
 - 18 Pa. C.S. § 4117. Insurance fraud.
 - 18 Pa. C.S. § 4120. Identity theft.
 - 18 Pa. C.S. § 4121. Possession and use of unlawful devices
- Chapter 43. Offenses Against the Family
 - 18 Pa. C.S. § 4304. Endangering welfare of children.¹³
- Chapter 49. Falsification and Intimidation

¹⁰ "The 'Practice of Professional Nursing' means diagnosing and treating human responses to actual or potential health problems through such services as casefinding, health teaching, health counseling, and provision of care supportive to or restorative of life and well-being, and executing medical regimens as prescribed by a licensed physician or dentist." 63 P.S. 212(1).

¹¹ Act 53 incorporates list of directly related crimes of violence set out at 42 Pa.C.S. § 9714(g). These offenses are not on the 9714(g) list. It is inappropriate to go beyond the violent crimes enumerated by the legislature, where there is no direct link between the offense and the occupation. Moreover, harassment is a mere summary offense, the lowest level of offense in Pennsylvania. Such a minor offense cannot be directly related to nursing.

¹² Chapters 39, 41, 49, 51, 73, 76: The many crimes listed by the Board under chapters 39, 41, 49, 51, 73 and 76 encompass potential behaviors that are only distantly related to the work of nurses – and sometimes completely unrelated (e.g. “Theft of unpublished dramas and musical compositions”). To the extent they suggest a generalized “tendency towards dishonesty,” that is the type of vague, overbroad category of crimes referred to as “lack of good moral character” or “crimes of moral turpitude” – Act 53 explicitly directs boards not to deny/revoke licensure on the basis of crimes that supposedly display a generalized character trait. Moreover, the Board is incorrect to assert that crimes of dishonesty have a special relationship to nursing. It is true that we want all people, including nurses, to be honest, but having unmonitored access to an incapacitated patient’s valuables is not an essential part of nursing – it is something that many nurses never experience at all.

¹³ Endangering the welfare of children is a very commonly charged crime that typically involves an act of omission – something any caregiver could do - not an affirmative commission of abuse.

- 18 Pa. C.S. § 4902. Perjury.
- 18 Pa. C.S. § 4903. False swearing.
- 18 Pa. C.S. § 4904. Unsworn falsification to authorities.
- 18 Pa. C.S. § 4905. False alarms to agencies of public safety.
- 18 Pa. C.S. § 4906. False reports to law enforcement authorities.
- 18 Pa. C.S. § 4909. Witness or informant taking bribe.
- 18 Pa. C.S. § 4910. Tampering with or fabricating physical evidence.
- 18 Pa. C.S. § 4914. False identification to law enforcement authorities.
- 18 Pa. C.S. § 4952. Intimidation of witnesses or victims.
- 18 Pa. C.S. § 4953. Retaliation against witness, victim or party.
- 18 Pa. C.S. § 4953.1. Retaliation against prosecutor or judicial official.
- Chapter 51. Obstructing Governmental Operations
 - 18 Pa. C.S. § 5105(a)(3) and (5). Hindering apprehension or prosecution.
 - 18 Pa. C.S. § 5123. Contraband.
- Chapter 73. Trade and Commerce
 - 18 Pa. C.S. § 7313. Buying or exchanging Federal Supplemental Nutrition Assistance Program (SNAP) benefit coupons, stamps, authorization cards or access devices.
 - 18 Pa. C.S. § 7314. Fraudulent traffic in Supplemental Nutrition Assistance Program (SNAP) benefits.
- Chapter 76. Computer Offenses
 - 18 Pa. C.S. § 7611. Unlawful use of computer and other computer crimes
 - 18 Pa. C.S. § 7613. Computer theft.
 - 18 Pa. C.S. § 7615(a)(3). Computer trespass.
- Drug Act Crimes¹⁴
 - 35 P.S. §§ 780-113(a)(16), (31), (32)
- Vehicular Crimes¹⁵
 - 75 Pa. C.S.A. § 3802. Driving under influence of alcohol or controlled substance

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Date: December 1, 2022



¹⁴ We recognize that administering medicines is a central aspect of nursing, so a recent drug addiction or drug crime may be directly related to nursing. For that reason, we have agreed with the Board that many of the drug crimes they listed are directly related. However, we believe that the minor drug crimes of simple possession, simple possession of marijuana and possession of drug paraphernalia (e.g. a pipe) are not directly related. These crimes are minor and do not by themselves indicate drug addiction, especially if they are not recent or repeated.

¹⁵ Most of these crimes are crimes of dishonesty that are not directly related to nursing. See footnote 16. “Duty to give information and render aid” can arise from many situations, including the failure to leave a note after damaging a mailbox. Finally, a DUI conviction – especially if it is not recent or repeated – does not by itself indicate alcoholism. Moreover, alcoholism is not especially related to nursing since nurses do not administer alcohol to patients. A DUI conviction certainly does not indicate drug addiction, as most DUIs involve alcohol rather than drugs. The Board can, of course, evaluate the facts underlying a DUI to determine whether it indicates a recent addition to drugs, which would make the offense related to nursing. The fact that an offense *could in some circumstances* be related to an occupation does not mean it is “directly related.”