

DELAWARE VIOLENT CRIMES COMPENSATION BOARD
ADMINISTRATIVE OFFICE OF THE COURTS
Statutory Authority: 11 Delaware Code, Section 9004 (11 **Del.C.** §9004)

FINAL

ORDER

Introduction

The Violent Crimes Compensation Board of the State of Delaware hereby adopts this Report and Order, pursuant to 29 *Del.C.* §10118, for the purpose of final enactment of the amended regulations attached hereto. The proposed changes further define pecuniary loss, permanent and total disability, and include a definition for secondary victims. They include time frames for submitting requested documentation to the Board to support a claim. The changes reflect statutory changes since the regulations were enacted. The regulations also address collateral sources of compensation.

Summary of Comments

Comments, evidence, and other information were submitted to the Board in the course of public hearings on December 2, 2008 in Dover, Delaware, and on December 9, 2008 in Wilmington, Delaware. Comments were received from: Sherri Gigliotti, a social worker at the Department of Justice Victim Services Unit; Diane Glenn, Dover Police Victim Services; Stephanie Hamilton, Wilmington Police Department Victim Services and Chair of the Victims' Rights Task Force; Polli Funk, Policy Prevention Director for Contact Lifeline and for Sexual Assault Network of Delaware ("SANDS"); Gail Riblett, co-Chair of the Sexual Assault Network of Delaware; Mona Bayard of Wilmington Police Victim Services; Susan Alfree of the Newark Police Victim Services Unit; Mariann Kenville-Moore, Director of Victim Services for the Department of Justice of the State of Delaware; Valerie Merrick of Survivors of Abuse and Recovery ("SOAR"); and Carol Post of the Delaware Coalition against Domestic Violence. These comments were transcribed and provided to the Board members for review.

In addition, written submissions were received from the Delaware Developmental Disabilities Council, the State Council for Persons with Disabilities, the Governor's Advisory Council for Exceptional Citizens, and the Delaware Victims' Rights Task Force. These materials were also reviewed and discussed by the Board.

The various comments contained specific suggestions for changes to the following Rules: Rule 1.1, Rule 2.1, Rule 7.1, Rule 10.3, Rule 17.2, Rule 18.1, Rule 18.2, Rule 18.8, Rule 19.1, Rule 20.4, and Rule 24.1. Counsel provided the Board members with a revised draft of the amendments, incorporating the suggestions received, for purposes of discussion and review by the Board.

Findings of Fact

The Board, upon review of the transcripts of the two public hearings on the proposed amendments to its regulations, and upon review of the written submissions received, determined to make additional changes in the draft amendments, consistent with the specific changes suggested.

The Board further determined that additional recommendations involving broad policy matters and substantive changes in the regulations would be deferred for discussion and possible action in the future.

The final draft of the proposed amendments reflects a process of deliberation and revision dating back several years, and represents an effort by the Board to adopt regulations that better reflect its operations, procedures, and standards with respect to compensation of victims.

Decision of the Board

The Board reviewed the various suggested changes at its meeting on January 6, 2009, and voted at its January 13, 2009 meeting, after further discussion, to make the changes reflected in the attached draft. The specific changes suggested (as set forth above in the Summary of Comments) were adopted, with some modifications.

The Board determined that the changes adopted as a result of public comments were non-substantive in nature. These changes were made to alter only the style and form of the regulations, and to correct technical and typographical errors. In addition, certain changes were made to conform the regulations to changes in the basic law governing the Board's operations. See 29 *Del.C.* §10113(b)(4) and (5). The revised proposal adopted by the Board thus does not constitute a new proposal, and is not subject to the notice requirements of 29 *Del.C.* §10115. Nor is the Board required to repropose the changes adopted on January 13, 2009. 29 *Del.C.* §10118(c).

Text of Rules Adopted

The final version of the proposed amended regulations of the Board is attached hereto.

ADOPTED, this 3rd day of February, 2009 by the undersigned members of the Violent Crimes Compensation Board:

Thomas W. Castaldi, Chairman
Leah Betts, Vice Chairwoman
V. Lynn Gregory, Commissioner
Terry A. Koston, Commissioner
Stephanie I. Liguori, Commissioner

Barbara Brown, Executive Director

301 Violent Crimes Compensation Board Rules and Regulations

1.0 Statement Of Goals (Formerly Rule III)

1.1 The Violent Crimes Compensation Board, hereby, declares that it serves a public purpose, and is of benefit to:

- 1.1.1 ~~individuals who are victimized within the State of Delaware;~~
- 1.1.2 ~~Delaware residents who are victimized without the State of Delaware in possessions or territories of the United States not having eligible crime victim compensation programs;~~
- 1.1.3 ~~Delaware residents who are victimized during acts of terrorism committed outside the United States.~~
- 1.1.4 ~~The Violent Crimes Compensation Board shall promote the welfare of victims of crime by establishing a means of meeting the additional hardships imposed upon the innocent victims of certain crimes, and the family and dependents of those victims.~~
the victims of violent crimes committed within the State of Delaware. [and to Delaware residents who are victims of crimes committed ~~and~~ in States that do not have a funded Victim Compensation Program [and offering equivalent benefits. ~~it~~ It] is the purpose of the Violent Crimes Compensation Board to promote the public welfare by establishing a means of meeting the additional hardships imposed upon the innocent victim of certain crimes, and the family and

dependents of those victims and Delaware residents who are victimized by terrorist attacks committed inside or outside the United States.

2.0 ~~Address Of The Board; Office Hours (Formerly Rule II)~~

- 2.1 ~~All communications of the Board shall be addressed to the "Violent Crimes Compensation Board, State of Delaware", at the office address of the Board or such other address as the Board shall otherwise make known.~~
- 2.2 ~~The office of the Board will be open from 8:00 a.m. until 4:00 p.m. of each weekday except legal holidays, and unless otherwise provided by statute or Executive Order.~~

32.0 Definitions (Formerly Rule I)

- 32.1 The definitions set forth in 11 **Del.C.** Ch. 90 of the Delaware Criminal Code are, hereby adopted by this Board, and incorporated by reference in these rules which reads as follows: Section 9002 "The following words, terms and phrases, when used in this Act, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

'**Board**' shall mean the Violent Crimes Compensation Board as established by this Act;

'**Child**', shall mean an unmarried person who is under eighteen years of age, and shall include the step-child or adopted child of the victim, or child conceived prior to, but born after, the personal injury or death of the victim.

'**Crime**' for purposes of this Chapter shall mean:

- (1) any specific offense set forth in Chapter 5 of Title 11 of the Delaware **[Criminal] Code [as the same appears in Chapter 497, Volume 58, Laws of Delaware]**, if the offense was committed after **[July 1, 1973, the effective date of said Criminal Code]** and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, riot, robbery, unlawful use of explosives, [or] unlawful use of firearms**[, stalking, endangering the welfare of a child, driving under the influence of any alcohol or drug or driving with a prohibited blood alcohol concentration, or hit-and-run, or any act of domestic violence or abuse]**;
- (2) any specific offense set forth in Chapter 3, Title 11 of the Delaware Code if such offense was committed prior to **[July 1, 1973, the effective date of the Delaware Criminal Code, as set forth in Chapter 497, Volume 58, Laws of Delaware,]** and contains the characteristics of murder, rape, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives, or unlawful use of firearms;
- (3) Any specific offense occurring in another state possession or territory of the United States **[in which a person]** whose domicile is in Delaware is a victim, if the offense contain the characteristics of murder, rape, manslaughter, assault, kidnapping, arson, burglary, riot robbery, unlawful use of explosives or unlawful use of firearms as set forth in Chapter 5 of this title. (66 **Del. Laws**, c. 269, Section 11.)
- (4) Any specific act of delinquency by a child, which if committed by an adult would constitute a specific offense set forth in Chapter 5 of this Title, and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives or unlawful use of firearms;
- (5) An act of terrorism, as defined in **[Section 2331 of Title 18 18 U.S.C. §2331, committed outside, or inside], [the] United States [Code, committed outside the United States]** against a resident **[or domiciliary]** of this State. **[(Effective date of amendment 4/8/97.)]**

'**Dependent**' shall mean a person wholly or substantially dependent upon the income of the victim at the time of the victim's death, or would have been so dependent but for the incompetency of the victim due to the injury from which the death resulted, and shall include a child born after the death of such victim;

'Guardian' shall mean a person[, **governmental instrumentality, or private organization who is**] entitled by law or legal appointment to care for and manage the person or property, or both, of a child or incompetent;

'Incompetent' shall mean a person who is incapable of managing his own affairs, as determined by the Board or by a court of competent jurisdiction;

'Personal Injury' shall mean bodily harm, [~~or extreme~~] mental[, **emotional, or psychological harm suffering**], and shall include pregnancy of the victim [**resulting from the crime**].

'Pecuniary Loss' in instances of personal injury shall include medical expenses, including psychiatric care, non-medical remedial care and treatment rendered in accordance with a religious method of healing; hospital expenses; loss of past earnings; [**crime scene cleanup, moving expenses, essential personal safety property, insurance deductibles,**] and loss of future earnings[, **including, but not limited to, reimbursement for vacation, sick, and compensatory time**] because of a disability resulting from such personal injury. 'Pecuniary Loss' in instances of death of the victim shall include funeral and burial expenses and loss of support to the dependents of the victim. Pecuniary loss includes any other expenses actually and necessarily incurred as a result of the personal injury or death, but it does not include property damage. Pecuniary loss", as defined in ~~[11 Del.C.]~~ §9002, shall include only the net amount of enumerated expenses actually and necessarily sustained as a result of personal injury or death occurring due to a crime. Compensation for increased rent or mortgage payments due to relocation of the victim as a result of the crime shall be limited to the net amount of any increase.

"Permanent and total disability" for purposes of §9007(d) shall mean that a victim has sustained a personal injury that prevents the victim from working or functioning, and from which no recovery is expected, within reasonable medical certainty.

"Secondary Victim" shall mean any parent, ~~stepparent, grandparent,~~ son, daughter, spouse, ~~brother or sister of the victim~~ sibling, half-sibling, fiancée, caretaker of the victim; any child who resides on a regular or semi-regular basis with any adult who is the victim of, or convicted of, any crime involving an act of domestic violence; the parents of a victim's spouse; or any other person who resided in the victim's household at the time of the crime or at the time of the discovery of the crime.

'Victim' shall mean a person who is injured or killed by the act of any other person during the commission of a crime as defined in this Chapter.

43.0 Quorum (Formerly Rule XXIII)

- 43.1 Three members shall constitute a quorum for all hearings and business of the Board, except a hearing in which the claimant has requested no more than \$5,000.00 compensation and in that instance a quorum of the Board shall be one (1) member. Where an opinion is divided, the majority shall prevail.

54.0 Meetings (Formerly Rule XXIV)

- 54.1 Meetings shall be held upon notice by the Chairman or the Executive Director at such time and place directed.
- 54.1.1 The Board will maintain a running agenda of all business matters to be discussed and acted upon. Following the hearing of claims, the Board, at its discretion and as time permits, may convene a session to address any matters on its running agenda.
- 54.1.2 A meeting solely for the purpose of addressing Board business shall be held within 30 days. Adopted October 17, 1991. Revised January 7, 1993.

65.0 Seal (Formerly Rule XXV)

- 65.1 The Board shall have a seal for authentication of its orders, awards and proceedings, upon which shall be inscribed the words **VIOLENT CRIMES COMPENSATION BOARD, STATE OF DELAWARE.**

76.0 Rules Of Evidence (Formerly Rule IX)

~~[76.4]~~ The Board is not bound by the Rules of Evidence. Hearsay evidence is admissible.

87.0 Availability Of Rules (Formerly Rule XX)

~~[87.4]~~ The rules of the Board shall be available to the public at the office of the Violent Crimes Compensation Board[, and online through the Board's website]. A copy of these rules and regulations shall be on file with all [the] County law libraries.

98.0 Construction Of Rules (Formerly Rule XXI)

~~[98.4]~~ These rules shall be liberally construed to accomplish the purpose of 11 Del.C. Ch. 90.

409.0 Amendments Of Rules (Formerly Rule XXII)

~~40.4.2~~ 9.1 New rules may be adopted and any rules may be amended or rescinded by the Board at a regular or special meeting following compliance with the Administrative Procedures Act, 29 Del. Laws, c. 101, Subchapter I and II.

~~40.4~~ 9.2 New rules, amendments, or revisions shall become effective the date approved by the Board in accordance with according to 11 Del.C. Ch. 90, [Section §]9004(d), which reads as follows: "The Board shall have the following functions, powers, and duties:

~~40.4.4~~ Section 9004(d) 'to adopt, promulgate, amend, and rescind such rules and regulations as are required to carry out the provisions of this Chapter'."

4410.0 The Secretary; Filing Of Papers (Formerly Rule IV)

4410.1 The Secretary shall have custody of the Board's seal and official records, and shall be responsible for the maintenance and custody of the docket, files and records of the Board, and of its findings, determinations, reports, opinions, orders, rules, regulations and approved forms.

4410.2 All orders and other actions of the Board shall be authenticated or signed by the Secretary or other person as may be authorized by the Board.

4410.3 All pleadings or papers required to be filed with the Board shall be filed in the office of the Board within the time limit, if any, fixed by law or Board rule for such filing; and similarly all requests for official information, copies of official records, or opportunity to inspect public records shall be made to the Secretary of the Board.

4410.4 Crime victims case files and records maintained by the **Violent Crimes Compensation Board** shall fall under the open records provision of the Freedom of Information Act, 29 Del.C. [e- Chapter] 100.

4410.5 Communications addressed to the Board and all petitions, and other pleadings, all reports, exhibits, dispositions, transcripts, orders and other papers or documents, received or filed in the office kept by the Secretary, shall be stamped showing the date of the receipt or filing thereof.

4211.0 Forms (Formerly Rule XIII)

~~[4211.4]~~ The Board shall prepare and furnish claim forms and brochures.

4312.0 Filing Of Claims (Formerly Rule V)

4312.1 In addition to all other statutory requisites, claims must be filed on official forms which include subrogation, authorization, and consent agreements in the office of the Violent Crimes Compensation Board, located at 1500 E. Newport Pike, Suite 10, Wilmington, Delaware, 19804 within one year of the date of the crime.

- 12.2 If the Board, in its investigation of a claim, requires further documentation from the claimant, such documentation must be submitted to the Board no later than 45 days of the date of the Board's request.
- 12.3 A victim who seeks compensation for temporary housing, rent, security deposit, furniture and/or moving expenses must submit documentation, to include an old and new lease, within 45 days of the Board's request therefor.
- 12.4 If the victim seeks compensation for an injury sustained while in the course and scope of employment, the victim must submit a claim for worker's compensation, and provide documentation thereof, before making application to the Board for compensation.

4413.0 Publication Of Claims (Formerly Rule XIX)

~~[4413.4]~~ The Board shall maintain confidentiality of records in accordance with the open records provision of the Freedom of Information Act, 29 **Del.C.** Ch. 100.

4514.0 Investigation Of Claims (Formerly Rule VIII)

~~[4514.4]~~ All claimants must fully cooperate with investigators or representatives of this agency in order to be eligible for an award. In the event that cooperation is refused or denied, the Board may deny a claim for lack of cooperation.

4615.0 Burden Of Proof (Formerly Rule VI)

- 4615.1 In compensation cases, the burden of proof shall be upon the petitioner, ~~it~~ it is also the victim's burden to prove that he or she was an innocent victim of a violent crime, and that he or she cooperated in the apprehension and/or conviction of the perpetrator of the crime.
- 15.2 The victim also has the burden of proving that he/she sustained a loss or incurred an expense as a result of a violent crime that is compensable according to the statutory authority and the Rules of the Board.

4716.0 Exhibits (Formerly Rule VII)

~~[4716.4]~~ Exhibits and case file documents submitted prior to or after the **Violent Crimes Compensation Board's** hearings shall be maintained in accordance with the provisions of the Department of State, Bureau of Archives and Records Management.

4817.0 Subpoenas, Etc. (Formerly Rule XIV)

- 4817.1 Any Board member, and the Executive Director, shall have the power to administer oaths, subpoena witnesses, and compel the production of books, papers, and records relevant to any investigation or hearing authorized by 11 **Del.C.** §9015.
- 4817.2 The Board or any staff member may take, or request, affidavits and ~~[dispositions depositions]~~ depositions of witnesses residing within or without of the State.

4918.0 Hearings (Formerly Rule X)

- 4918.1 Notice of hearings shall be posted in the office of the Violent Crimes Compensation Board **[and online at the Board website at least]** seven days prior to the scheduled hearing dates. Special meetings or rescheduled hearings shall be posted no later than 24 hours prior to the scheduled time.
- 4918.2 The Board may receive as evidence, any statements, documents, information or material, it finds ~~[is are]~~ relevant and of such nature as to afford the parties a fair hearing. The Board may also accept police reports, hospital records and reports, physicians reports, etc., as proof of the crime and injuries sustained, without requiring the presence of the investigating officer or attending physician at the hearing.

- 4918.3 Any claimant may request to be heard by the Board following the initial claim hearing, if he/she is dissatisfied with the decision of the Board. The request to be heard before the Board must be in writing and must be received in the office of the **Violent Crimes Compensation Board** within 15 days of the Board's decision. The written statement must include any and all reasons for the dissatisfaction.
- 4918.4 The Board may arrange for a medical or mental health examination by a physician designated by the Board. A written report of such examination shall be filed by the attending physician with the Board. The physicians's fee shall be paid directly by the Board.
- 4918.5 All witnesses shall testify under oath (or by affirmation), and a record of the proceedings shall be recorded. The Board may examine the claimant and all witnesses.
- 4918.6 Claim hearings shall be open to the public. However, the Board may hold private deliberations under the following circumstances:
- 4918.6.1 When the claim to be considered derives from any sexual offense;
 - 4918.6.2 When the claim to be considered derives from any offense by a child, unless such child has been deemed amenable to the jurisdiction of a criminal court;
 - 4918.6.3 When the claim to be considered derives from any matter not yet adjudicated.
- 4918.7 A claim under \$5,000.00 may be heard by one Board Member
- 4918.8 A request to reopen a claim may be heard by one Member if the reopen request for compensation is less than \$5,000.00. If the reopen request for compensation is more than \$5,000.00, the request to reopen shall be heard by a quorum of the Board.
- 4918.9 If a claim is filed more than one (1) year after the crime occurrence, or if the claim was reported to law enforcement more than 72 hours after the commission of the crime, the claim may be reviewed by one member to accept or deny for processing.
- 18.10 Under no circumstances shall the Board reopen or reinvestigate a case after the expiration of two (2) years from the date of decision rendered by the Board.
- 18.11 Where a victim applies for additional compensation for expenses incurred more than one year from the crime occurrence, the Board may require a new physical or mental examination, in order to ascertain causal connection to the original occurrence.

2019.0 Attorneys (Formerly Rule XI)

- 2019.1 ~~[All eC]~~ claimants have the right to be represented before the Board by an attorney, who is licensed to practice in the State of Delaware. The attorney shall file a notice of appearance.
- 2019.2 Service upon the claimant's attorney shall be deemed as service on the party he/she represents.

2420.0 Attorney Fees (Formerly Rule XII)

- 2420.1 The attorney representing a claimant before this Board must submit an affidavit setting forth the total number of hours expended and describe the nature of the work performed.
- 2420.2 The Attorney's fees shall not exceed \$1,000.00.
- 2420.3 Attorney's fees shall be awarded at the discretion of the Board.
- 2420.4 Attorney's fees may be 15% of the total amount awarded to the victim, but not to exceed \$1000.00; or a fee based on the number of hours spent in representing the claimant. ~~[The Hh]~~ourly fee rate ~~[to will]~~ be determined by the Board.
- 2420.5 No prior agreement between an attorney and a client to pay the attorney a fee out of the client's award will be honored by the Board. Any such arrangement is unlawful.
- 2420.6 Upon application to the Board for attorney's fees, the service rendered the injured victim, as well as the time spent and uniqueness of the case, will be considered in determining the allowance of attorney's fees.
- 20.7 The amount of any attorneys fee award shall not be included within the total compensation subject to the limits set forth in §9007(d).

2221.0 Appeal (Formerly Rule XXII)

- 2221.1 All questions relating to an appeal shall be determined in accordance with Chapter 90, Section 9005, Title 11, of the Delaware Code ~~which reads as follows:~~
- 2221.2 ~~Section 9005(e) "The Board is not compelled to provide compensation in any case, nor is it compelled to award the full amount claimed. The Board may make its award of compensation dependent upon such condition or conditions as it deems desirable.~~
- 22.3 Any claimant who is aggrieved by the Board's decision concerning compensation or any conditions attached to the award of such compensation may appeal to the Superior **[Court Court]** within (30) thirty days of the decision of the Board. Any appeal to Superior Court shall not be de novo.

2322.0 Denial Of Claim; Reduction (Formerly Rule XVIII)

- 2322.1 All questions relating to denial of a claim shall be determined in accordance with Chapter 90, Title 11, Section 9006, of the Delaware Code ~~which reads as follows:~~
- 23.1.1 "The Board shall deny payment of a claim for the following reasons:
- 23.1.1.1 ~~Where the claimant was the perpetrator of the crime on which the claim is based, or was the principal involved in the commission of a crime at the time when the personal injury upon which the claim is based was incurred.~~
 - 23.1.1.2 ~~Where the claimant incurred the personal injury on which the claim is based through collusion with the perpetrator of the crime.~~
 - 23.1.1.3 ~~Where the claimant refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend or convict the perpetrator of the crime in question.~~
 - 23.1.1.4 ~~Where the claim has not been filed within one year after the personal injury on which the claim is based, unless an extension is granted by the Board.~~
 - 23.1.1.5 ~~Where the claimant has failed to report the crime to a law enforcement agency within 72 hours of its occurrence; provided, however, that the Board in its discretion, may waive this requirement if the circumstances of the crime render this requirement unreasonable.~~
 - 23.1.1.6 ~~Where the victim is injured as a result of their own suicide or attempted suicide.~~
 - 23.1.1.7 ~~Where the victim has sustained injuries during a drug related crime in which the victim was an illegal participant.~~
 - 23.1.1.8 ~~Where the victim is delinquent in the payment of an penalty assessment levied pursuant to 11 ~~Del.C.~~ §9012, or in the payment of an order of restitution payable to the Victim Compensation Fund; provided, however, that the Board may condition payment of a claim upon the satisfaction of such delinquencies. In addition, the Board may, for hardship or other good cause, waive the provision of this paragraph in their entirety.~~
- 2322.2 ~~In determining whether or not to make an award under the provisions of this Chapter, or in determining the amount of any award, the Board may consider any circumstances it deems to be relevant, including the behavior of the victim which directly or indirectly contributed to his injury or death; unless such injury or death resulted from the victim's lawful attempt to prevent the commission of a crime or to apprehend an offender. The Board is not compelled to provide compensation in any case, nor is it compelled to award the full amount claimed. The Board may make its award of compensation dependent upon such condition or conditions as it deems desirable.~~
- 23.3 ~~If the victim bears any share of responsibility that caused his injury or death, the Board shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim. A claim may be denied or reduced, if the victim of the personal injury in question, either through negligence or through willful and unlawful conduct, substantially provoked or aggravated the incident, giving rise to the injury.~~

2423.0 Dependency (Formerly Rule XVI)

- 2423.1 All questions relating to dependency shall be determined in accordance with 11 Del.C. Ch. 90 §9002 which reads as follows:
- 2423.2 Section 9002(d) "Dependent shall mean a person who is wholly or substantially dependent upon the income of the victim at the time of the victim's death, or would have been so dependent but for the incompetenc[ye] of the victim due to the injury from which the death resulted, and shall include a child born after the death of such victim."

2524.0 Emergency Awards (Formerly Rule XV)

- ~~[2524.1]~~ The Board will make an emergency award only upon a showing of dire necessity. The claimant, must, in writing, request an emergency award when submitting his claim form and show just cause as to why such an award should be considered. No such award will be made until the police report **[or other official documentation from the appropriate law enforcement agency]** is acquired.

2625.0 Mental Health Practitioner Qualifications/Licensure (Formerly Rule XXIX)

- 2625.1 To be eligible for crime victim's compensation for **[psychological assessments and]** mental health counseling treatment, within and without the State of Delaware, a practitioner possessing an advanced degree in an applied mental health discipline must provide assessment and treatment. The advanced degree should be in Psychiatry, Psychology, Social Work, Counseling, or Psychiatric Nursing.
- 2625.2 To be eligible for crime victim's compensation for ~~adult~~ psychological assessments and mental health counseling treatment, within and without in the State of Delaware, a licensed ~~psychologist or a licensed psychiatrist~~ mental health practitioner must perform the assessment unless waived by the Board provide services.
- 26.3 ~~To be eligible for crime victim's compensation for child psychological assessments, within and without the State of Delaware, a licensed child psychologist or a licensed child psychiatrist must perform the assessment unless waived by the Board.~~
- 26.4 ~~To be eligible for crime victim's compensation for mental health counseling treatment in the State of Delaware, a licensed mental health practitioner must provide services. The five disciplines recognized by the Violent Crimes Compensation Board for payment of mental health counseling benefits is are: Licensed Psychiatrist, Licensed Psychologist, Licensed Clinical Social Worker, Licensed Mental Health Counselor, and Licensed Clinical Nurse Specialist.~~
- 26.5 25.3 Payment for mental health treatment received outside the State of Delaware will be evaluated for practitioner's licensure on a case-by-case basis by the Violent Crimes Compensation Board.
- 26.6 25.4 The Violent Crimes Compensation Board may consider payment for mental health counseling services rendered by an unlicensed provider if the provider is practicing under the direct supervision of a licensed practitioner in one of the disciplines recognized by the Violent Crimes Compensation Board, as set forth in ~~paragraph one, sentence two~~ Rule 27.1 above. The Violent Crimes Compensation Board will decide claims for payment of services rendered by an unlicensed practitioner on a case-by-case basis.

2 DE Reg. 1670 (3/1/99)

27.0 ~~Mental Health Counseling Award (Formerly Rule XXVIII)~~

~~Removed March 11, 1999~~

2 DE Reg. 1670 (3/1/99)

28.0 ~~Mental Suffering Award (Formerly Rule XXVI)~~

~~Removed March 11, 1999 (Prohibited by statute effective February 11, 1992)~~

2 DE Reg. 1670 (3/1/99)

2926.0 Burial Awards (Formerly Rule XXVII)

~~[2926.4]~~ The aggregate award for funeral and burial shall not exceed \$8,500.00

3027.0 Child Victim Counseling and Assessment Program (CCAP) Provisions (Formerly Rule XXX)

~~[3027.4]~~ For the purposes of section 9020(c), up to \$1,200.00 may be paid from the victim's compensation fund on behalf of each child victim of crime for reasonable costs incurred for psychological assessments and short-term counseling.

2 DE Reg. 1670 (3/1/99)

28.0 Collateral Sources of Compensation: Subrogation

- 28.1 Any award made by the Board shall be reduced by the amount, if any, of compensation the claimant has received or will receive as indemnification from any other source, including insurance of any kind. The proceeds of any life insurance policy shall not be deducted from the award. [Source: §9005(1)]
- 28.2 The Board shall deduct from its award the amount of any compensation for personal injury of death arising from the crime or incident and received by the victim, or by the victim's dependents. Such compensation includes payments by or on behalf of the offender, from any insurer, and from any governmental entity. The amount of compensation to be deducted from the Board's award shall be the net amount of compensation paid to the victim, after deductions for costs or attorney fees. The proceeds of any life insurance policy shall not be deducted from the award. [Source: §9008(d)]
- 28.3 Where an award has been made, and the claimant subsequently receives reimbursement from any source set forth above, in Rules 31.1 and 31.2, with the exception of life insurance, the Board may recover reimbursement from the claimant, up to the amount of the award.
- 28.4 Prior to making an award, the Board shall require the claimant to execute an agreement acknowledging the claimant's understanding that any award is net of funds received from collateral sources, and further acknowledging the claimant's obligation to reimburse the Board to the extent of any such funds received from collateral sources.
- 28.5 Any attorney representing a client before the Board is bound by the Rules set forth herein regarding collateral sources of compensation.

32.0 Travel Awards

2 DE Reg. 1670 (3/1/99)

12 DE Reg. 1193 (03/01/09) (Final)