

DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
3000 Board of Professional Counselors of Mental Health and Chemical Dependency
Professionals

Statutory Authority: 24 Delaware Code, Section 3006(a)(1) (24 **Del.C.** §3006(a)(1))
24 **DE Admin. Code** 3000

FINAL

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on February 4, 2005 at a scheduled meeting of the Delaware Board of Professional Mental Health Counselors and Chemical Dependency Professionals to receive comments regarding proposed Regulation 11.0. The proposed regulation identifies crimes substantially related to the practice of mental health counseling and chemical dependency counseling. The proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 7, January 1, 2005.

Background

Under Title 24, Chapter 30, one of the qualifications for licensure as a professional counselor of mental health is that the applicant shall submit evidence verified by oath and satisfactory to the Board that that the applicant “shall not have a criminal conviction record nor pending criminal charge relating to an offense the circumstances of which substantially relate to actions as a licensed professional counselor of mental health or associate counselor of mental health. Applicants who have criminal conviction records or pending criminal charges shall request appropriate authorities to provide information about the conviction or charge directly to the Board in sufficient specificity to enable the Board to make a determination whether the conviction or charge is substantially related to actions as a licensed professional counselor of mental health or associate counselor of mental health.” 24 **Del.C.** §3008(a)(5). 24 **Del.C.** §3013(a)(2), as amended by SB 229, provides that a licensee shall be subject to disciplinary action set forth in § 3015 if, after a hearing, the Board finds that the licensee “has been convicted of a crime that is substantially related to the practice of professional counseling of mental health.” “A copy of the record of conviction certified by the clerk of court entering the conviction shall be conclusive evidence therefor.” 24 **Del.C.** §3013(a)(3).

In addition, a licensed chemical dependency professional shall be subject to disciplinary sanction set forth in §3032 if, after a hearing, the Board finds that the licensee “has been convicted of a crime that is substantially related to the practice of professional counseling of mental health or chemical dependency counseling. A copy of the record of conviction certified by the clerk of the court entering the conviction shall be conclusive evidence thereof.” 24 **Del.C.** §3027(a)(2).

“‘Substantially related’ means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to the practice of professional counseling of mental health and chemical dependency counseling.” 24 **Del.C.** §3002(9).

The Board’s authority to promulgate rules and regulations implementing or clarifying specific sections of Chapter 30 is set forth in 24 **Del.C.** §3006(a)(1). The specific mandate for this rule is set forth in 24 **Del.C.** §3006(c). The proposed regulation specifically identifies those crimes which are substantially related to the practice of professional counseling of mental health and chemical dependency counseling.

Summary of the Evidence

No written comments were received. No public comment was received at the February 4, 2005 hearing.

Findings of Fact with Respect to the Evidence and Information Submitted

The Board carefully reviewed and considered the crimes presented as a compilation of crimes extracted from the **Delaware Code**. The overarching concern of the Board was the safety of the public since practitioners work closely in a position of trust and responsibility with the members of the public they serve gaining access to the details of their clients’ personal, family, business, health and financial information. In addition, they deal with individuals and families who are often in crisis and vulnerable to undue influence and manipulation. The nature of counseling

requires the highest standards of honesty and integrity in dealing with confidential issues and patient records. It also requires that the practitioner is able to exercise appropriate judgment in dealing with a multitude of issues, including but not limited to, a client's criminal conduct, physical disabilities, addictions, behavior disorders, sexual abuse and other mental health issues.

In addition, practitioners work in a variety of settings including, but not limited to, hospitals, clinics, schools, prisons, detention centers and private offices. They frequently counsel individuals on a one to one basis when no one else is present. They are called upon to testify in court proceedings and file reports with courts and governmental agencies.

The "primary objective of the Board of Professional Mental Health Counselors and Chemical Dependency Professionals, to which all other objectives and purposes are secondary, is to protect the general public, specifically those persons who are the direct recipients of services regulated by this chapter, from unsafe practices and from occupational practices which tend to reduce competition or fix the price of services rendered. The secondary objectives of the Board are to maintain minimum standards of licensee competency and to maintain certain standards in the delivery of services to the public." 24 Del.C. § 3001.

The Board finds that the crimes identified in the proposed rule are substantially related to fitness or ability to perform 1 or more of the duties and responsibilities of a professional counselor of mental health and chemical dependency professional in that they involve: the use of physical violence or force, or the threat thereof, toward or upon the person of another; sexual abuse or inappropriate sexual conduct; violation of privacy; dishonesty, or false or fraudulent conduct; mistreatment or abuse of children, the elderly or animals; offenses indicative of issues with power and control; offenses against public administration including but not limited to bribery and perjury, and offenses involving the illegal possession or the misuse or abuse of narcotics, or other addictive substances and those non-addictive substances with a substantial capacity to impair reason or judgment.

In summary, the Board finds that adopting regulation 11.0 as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the health and safety of the general public, particularly the recipients of the services provided by professional counselors of mental health and chemical dependency professionals.

Decision and Effective Date

The Board hereby adopts Regulation 11.0 to be effective 10 days following publication of this order in the *Register of Regulations*.

Text and Citation

The text of the regulation remains as published in *Register of Regulations*, Vol. 8, Issue 7, January 1, 2005, without any changes, and as attached hereto as Exhibit A.

SO ORDERED this ____ day of _____, 2005.

BOARD OF PROFESSIONAL COUNSELORS OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS

David Ciamaricone, LPCMH, President,
Professional Member
James D. Wilson, Ed.D, LPCMH,
Vice-President, Professional Member
Dawn S. Brown, Secretary, Public Member
Jean Gunnells, LPCMH, Professional Member
Joan T. McDonough, Public Member
Carmetah Murray, Public Member

11.0 Crimes substantially related to the provision of mental health counseling and chemical dependency counseling:

11.1 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit any of the following crimes, is deemed to be substantially related to the provision

of mental health counseling and chemical dependency counseling in the State of Delaware without regard to the place of conviction:

- 11.1.1 Menacing. 11 Del.C. §602(a)
- 11.1.2 Aggravated menacing. 11 Del.C. §602(b)
- 11.1.3 Reckless endangering in the first degree. 11 Del.C. §604
- 11.1.4 Abuse of a pregnant female in the second degree. 11 Del.C. §605.
- 11.1.5 Abuse of a pregnant female in the first degree. 11 Del.C. §606.
- 11.1.6 Assault in the third degree. 11 Del.C. §611.
- 11.1.7 Assault in the second degree. 11 Del.C. §612
- 11.1.8 Assault in the first degree. 11 Del.C. §613.
- 11.1.9 Abuse of a sports official; felony. 11 Del.C. §614.
- 11.1.10 Assault by abuse or neglect. 11 Del.C. §615.
- 11.1.11 Terroristic threatening. 11 Del.C. §621(a) and (b).
- 11.1.12 Unlawfully administering drugs. 11 Del.C. §625.
- 11.1.13 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11 Del.C. §626.
- 11.1.14 Criminally negligent homicide. 11 Del.C. §631.
- 11.1.15 Manslaughter. 11 Del.C. §632.
- 11.1.16 Murder by abuse or neglect in the second degree. 11 Del.C. §633
- 11.1.17 Murder by abuse or neglect in the first degree. 11 Del.C. §634.
- 11.1.18 Murder in the second degree. 11 Del.C. §635.
- 11.1.19 Murder in the first degree. 11 Del.C. §636.
- 11.1.20 Promoting suicide. 11 Del.C. §645.
- 11.1.21 Abortion. 11 Del.C. §651.
- 11.1.22 Self abortion. 11 Del.C. §652.
- 11.1.23 Issuing abortifacient articles. 11 Del.C. §653.
- 11.1.24 Sexual harassment. 11 Del.C. §763.
- 11.1.25 Indecent exposure in the second degree. 11 Del.C. §764.
- 11.1.26 Indecent exposure in the first degree. 11 Del.C. §765.
- 11.1.27 Incest. 11 Del.C. §766.
- 11.1.28 Unlawful sexual contact in the third degree. 11 Del.C. §767.
- 11.1.29 Unlawful sexual contact in the second degree. 11 Del.C. §768.
- 11.1.30 Unlawful sexual contact in the first degree. 11 Del.C. §769.
- 11.1.31 Rape in the fourth degree. 11 Del.C. §770.
- 11.1.32 Rape in the third degree. 11 Del.C. §771.
- 11.1.33 Rape in the second degree. 11 Del.C. §772.
- 11.1.34 Rape in the first degree. 11 Del.C. §773.
- 11.1.35 Sexual extortion. 11 Del.C. §776.
- 11.1.36 Bestiality. 11 Del.C. §777.
- 11.1.37 Continuous sexual abuse of a child. 11 Del.C. §778.
- 11.1.38 Dangerous crime against a child. 11 Del.C. §779.
- 11.1.39 Female genital mutilation. 11 Del.C. §780.
- 11.1.40 Unlawful imprisonment in the second degree. 11 Del.C. §781.
- 11.1.41 Unlawful imprisonment in the first degree. 11 Del.C. §782.
- 11.1.42 Kidnapping in the second degree. 11 Del.C. §783.
- 11.1.43 Kidnapping in the first degree. 11 Del.C. §783A.
- 11.1.44 Acts constituting coercion. 11 Del.C. §791.
- 11.1.45 Arson in the third degree. 11 Del.C. §801.
- 11.1.46 Arson in the second degree. 11 Del.C. §802.
- 11.1.47 Arson in the first degree. 11 Del.C. §803
- 11.1.48 Cross or religious symbol burning. 11 Del.C. §805.
- 11.1.49 Trespassing with intent to peer or peep into a window of another. 11 Del.C. §820.
- 11.1.50 Burglary in the third degree. 11 Del.C. §824.
- 11.1.51 Burglary in the second degree. 11 Del.C. §825.
- 11.1.52 Burglary in the first degree. 11 Del.C. §826.
- 11.1.53 Robbery in the second degree. 11 Del.C. §831.
- 11.1.54 Robbery in the first degree. 11 Del.C. §832.

11.1.55 Carjacking in the second degree. 11 Del.C. §835.
11.1.56 Carjacking in the first degree. 11 Del.C. §836.
11.1.57 Theft; felony. 11 Del.C. §841.
11.1.58 Theft; false pretense. 11 Del.C. §843.
11.1.59 Theft; false promise. 11 Del.C. §844.
11.1.60 Extortion. 11 Del.C. §846.
11.1.61 Misapplication of property. 11 Del.C. §848.
11.1.62 Theft of rented property; felony. 11 Del.C. §849.
11.1.63 Receiving stolen property. 11 Del.C. §851
11.1.64 Identity theft. 11 Del.C. §854.
11.1.65 Forgery. 11 Del.C. §861.
11.1.66 Possession of forgery devices. 11 Del.C. §862.
11.1.67 Falsifying business records. 11 Del.C. §871.
11.1.68 Tampering with public records in the second degree 11 Del.C. §873.
11.1.69 Tampering with public records in the first degree. 11 Del.C. §876.
11.1.70 Offering a false instrument for filing. 11 Del.C. §877.
11.1.71 Issuing a false certificate. 11 Del.C. §878.
11.1.72 Bribery. 11 Del.C. §881.
11.1.73 Bribe receiving. 11 Del.C. §882.
11.1.74 Defrauding secured creditors. 11 Del.C. §891.
11.1.75 Fraud in insolvency. 11 Del.C. §892.
11.1.76 Interference with levied-upon property. 11 Del.C. §893.
11.1.77 Issuing a bad check; felony. 11 Del.C. §900.
11.1.78 Unlawful use of credit card; felony. 11 Del.C. §903.
11.1.79 Reencoder and scanning devices. 11 Del.C. §903A.
11.1.80 Criminal impersonation. 11 Del.C. §907.
11.1.81 Criminal impersonation, accident related. 11 Del.C. §907A.
11.1.82 Criminal impersonation of a police officer. 11 Del.C. §907B.
11.1.83 Unlawfully concealing a will. 11 Del.C. §908.
11.1.84 Securing execution of documents by deception. 11 Del.C. §909.
11.1.85 Fraudulent conveyance of public lands. 11 Del.C. §911.
11.1.86 Fraudulent receipt of public lands. 11 Del.C. §912.
11.1.87 Insurance fraud. 11 Del.C. §913.
11.1.88 Health care fraud. 11 Del.C. §913A.
11.1.89 Home improvement fraud. 11 Del.C. §916.
11.1.90 New home construction fraud. 11 Del.C. §917.
11.1.91 Misuse of computer system information. 11 Del.C. §935.
11.1.92 Bigamy. 11 Del.C. §1001.
11.1.93 Bigamous marriage contracted outside of the State. 11 Del.C. §1002.
11.1.94 Dealing in children. 11 Del.C. §1100.
11.1.95 Abandonment of child. 11 Del.C. §1101.
11.1.96 Endangering the welfare of a child. 11 Del.C. §1102.
11.1.97 Endangering the welfare of an incompetent person. 11 Del.C. §1105.
11.1.98 Unlawfully dealing with a child. 11 Del.C. §1106.
11.1.99 Sexual exploitation of a child. 11 Del.C. §1108.
11.1.100 Unlawfully dealing in child pornography. 11 Del.C. §1109.
11.1.101 Possession of child pornography. 11 Del.C. §1111.
11.1.102 Sexual offenders; prohibitions from school zones. 11 Del.C. §1112.
11.1.103 Sexual solicitation of a child. 11 Del.C. §1112A.
11.1.104 Criminal non-support and aggravated criminal non-support. 11 Del.C. §1113.
11.1.105 Bribery. 11 Del.C. §1201
11.1.106 Receiving a bribe; felony. 11 Del.C. §1203.
11.1.107 Improper influence. 11 Del.C. §1207.
11.1.108 Perjury in the third degree. 11 Del.C. §1221.

11.1.109 Perjury in the second degree. 11 **Del.C.** §1353.
11.1.147 Permitting prostitution. 11 **Del.C.** §1355.
11.1.148 Obscenity. 11 **Del.C.** §1361.
11.1.149 Obscene literature harmful to minors. 11 **Del.C.** §1365.
11.1.150 Outdoor motion picture theatres. 11 **Del.C.** §1366.
11.1.151 Possessing a destructive weapon. 11 **Del.C.** §1444.
11.1.152 Unlawfully dealing with a dangerous weapon; felony. 11 **Del.C.** §1445.
11.1.153 Possession of a deadly weapon during commission of a felony. 11 **Del.C.** §1447.
11.1.154 Possession of a firearm during commission of a felony. 11 **Del.C.** §1447A.
11.1.155 Possession and purchase of deadly weapons by persons prohibited. 11 **Del.C.** §1448.
11.1.156 Receiving a stolen firearm. 11 **Del.C.** §1450.
11.1.157 Theft of a firearm. 11 **Del.C.** §1451.
11.1.158 Giving a firearm to person prohibited. 11 **Del.C.** §1454.
11.1.159 Engaging in a firearms transaction on behalf of another. 11 **Del.C.** §1455.
11.1.160 Possession of a weapon in a Safe School and Recreation Zone. 11 **Del.C.** §1457.
11.1.161 Removing a firearm from the possession of a law enforcement officer. 11 **Del.C.** §1458.
11.1.162 Organized Crime and Racketeering. 11 **Del.C.** §1504.
11.1.163 Victim or Witness Intimidation. 11 **Del.C.** §§3532 & 3533.
11.1.164 Abuse, neglect, mistreatment or financial exploitation of residents or patients. 16 **Del.C.** §1136(a), (b) and (c).
11.1.165 Prohibited acts A under the Uniform Controlled Substances Act. 16 **Del.C.** §4751(a), (b) and (c).
11.1.166 Unlawful delivery of non controlled substance. 16 **Del.C.** §4752A.
11.1.167 Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, Lysergic Acid Diethylamide (L.S.D.), designer drugs, or 3,4-methylenedioxymethamphetamine (MDMA). 16 **Del.C.** §4753A (a)(1)-(9).
11.1.168 Prohibited acts under the Uniform Controlled Substances Act. 16 **Del.C.** §4756(a)(1)-(5) and (b).
11.1.169 Distribution to persons under 21 years of age. 16 **Del.C.** §4761.
11.1.170 Purchase of drugs from minors. 16 **Del.C.** §4761A
11.1.171 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property; penalties; defenses. 16 **Del.C.** §4767
11.1.172 Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship. 16 **Del.C.** §4768
11.1.173 Drug paraphernalia-Manufacture and sale; delivery to a minor; felony. 16 **Del.C.** §§4771 and 4774.
11.1.174 Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs; third and fourth offenses. 23 **Del.C.** §2302(a) and §2305 (3) and (4).
11.1.175 Obtaining benefit under false representation. 31 **Del.C.** §1003.
11.1.176 Reports, statements and documents. 31 **Del.C.** §1004.
11.1.177 Kickback schemes and solicitations. 31 **Del.C.** §1005.
11.1.178 Conversion of payment. 31 **Del.C.** §1006.
11.1.179 Driving a vehicle while under the influence or with a prohibited alcohol content; third and fourth offenses. 21 **Del.C.** §4177 (3) and (4).
11.1.180 Duty of driver involved in accident resulting in injury or death to any person; felony. 21 **Del.C.** §4202.
11.1.181 Prohibited trade practices against infirm or elderly. 6 **Del.C.** §2581
11.1.182 Prohibition of intimidation [under the Fair Housing Act]; 6 **Del.C.** §4619
11.1.183 Auto Repair Fraud victimizing the infirm or elderly. 6 **Del.C.** §4909A
11.1.184 Unauthorized Acts against a Service Guide or Seeing Eye Dog 7 **Del.C.** §1717
11.1.185 Interception of Communications Generally; Divulging Contents of Communications 11 **Del.C.** §2402
11.1.186 Breaking and Entering, Etc. to Place or Remove Equipment 11 **Del.C.** §2410
11.1.187 Divulging Contents of Communications. 11 **Del.C.** §2422
11.1.188 Installation and Use Generally [of pen trace and trap and trace devices]. 11 **Del.C.** §243.
11.1.189 Attempt to Intimidate. 11 **Del.C.** §3534
11.1.190 Failure of child-care provider to obtain information required under §8561 or for those

providing false information; felony. 11 Del.C. §8562

11.1.191 Providing false information when seeking employment in a public school. 11 Del.C. §8572

11.1.192 Filing False Claim [under Victims' Compensation Fund]. 11 Del.C. §9016

11.1.193 Alteration, Theft or Destruction of Will. 12 Del.C. §210.

11.1.194 Failure of Physician to file report of abuse or neglect pursuant to 16 Del.C. §903.

11.1.195 Coercion or intimidation involving health-care decisions and falsification, destruction of a document to create a false impression that measures to prolong life have been authorized; felony. 16 Del.C. §2513 (b).

11.1.196 [Failure to make] Reports of Persons who are Subject to Loss Consciousness. 24 Del.C. §1763.

11.1.197 Abuse, neglect, exploitation or mistreatment of infirm adult. 31 Del.C. §3913(a), (b) and (c).

11.2 Crimes substantially related to provision of mental health counseling and chemical dependency counseling shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Board of Professional Counselors of Mental Health and Chemical Dependency Professionals is available at:**

<http://www.professionallicensing.state.de.us/boards/profcounselors/index.shtml>

8 DE Reg. 1456 (4/1/05)