

DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
3900 Board of Clinical Social Work Examiners
Statutory Authority: 24 Delaware Code, Section 3906(1) (24 **Del.C.** §3906(a)(1))
24 **DE Admin. Code** 3900

ORDER

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on February 14, 2005 at a scheduled meeting of the Delaware Board Clinical Social Work Examiners to receive comments regarding proposed Regulation 11.0. The proposed regulation identifies crimes substantially related to the practice of clinical social work as mandated by SB 229 enacted by the 142nd General Assembly. The proposed regulation was published in the *Register of Regulations*, Vol. 8, Issue 7, January 1, 2005.

Background

Under Title 24, Chapter 39, one of the qualifications for licensure is that the applicant shall submit evidence that the applicant “has not engaged in any of the acts or offenses that would be grounds for disciplinary action under this chapter; has no disciplinary proceedings or unresolved complaints pending against that person in any jurisdiction where the applicant previously has been, or currently is, licensed to practice clinical social work.” 24 **Del.C.** §3907(a)(2). 24 **Del.C.** §3915 (a)(4), as amended by SB 229, provides that practitioners shall be subject to those disciplinary actions set forth in §3916 of this title if, after a hearing, the Board finds that the practitioner “has been convicted of a crime that is substantially related to clinical social work or any offense which would limit the ability of the practitioner to carry out the practitioner’s professional duties with due regard for the health and safety of clients.”

“‘Substantially related’ means the nature of the criminal conduct, for which the person was convicted, has a direct bearing on the fitness or ability to perform 1 or more of the duties or responsibilities necessarily related to clinical social work.” 24 **Del.C.** §3902(5).

The Board’s authority to promulgate rules and regulations implementing or clarifying specific sections of Chapter 39 is set forth in 24 **Del.C.** §3906(a)(1). The specific mandate for this rule is set forth in 24 **Del.C.** §3906(b). The proposed regulation specifically identifies those crimes which are substantially related to the practice of clinical social work.

Summary of the Evidence and Information Submitted

No written comments were received.

Gail Levinson, LSCW, and President of the Delaware Clinical Social Work Society inquired as to whether the age or circumstance of the person who is convicted of one of the crimes on the list would be factored into considering that person for licensure. Counsel for the Board responded that statute as written does not allow the Board to consider time frame or context of a particular offense. If the conviction is on the Board’s list it is a basis for denial of licensure. If a person is already licensed and reports a conviction during their next renewal, the conviction could be a basis for discipline. Ms. Levinson also inquired as to the number of other States that have a similar law. Counsel for the Board responded that she was unaware of any other States that have an identical law. Dr. Carroll stated that she attended the Association of Social Workers in Virginia and brought up what was happening in Delaware and people around the country and in Canada were very surprised. Mr. Toole responded that the sponsor of the bill was establishing Delaware as a model for other jurisdictions. Mr. Carter added the Board was concerned about offenses committed when individuals were 18 or 19 and thought long and hard to determine the offenses selected as pertinent to social workers.

Ms. Levinson commented that she thought the Board did a good job compared to other professions. She also sent the list to the Executive Director of the Clinical Social Work Federation and to the person in charge of legislative affairs and they did not see any thing particularly out of line. She commended the Board on its choices.

Finally, she commented that she had concerns about the State going in this direction when she is not seeing aggressive action on unlicensed practice but stated that that was another matter for later.

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 the licensed practitioners work with individuals who are in situations that make them vulnerable to abuse and undue influence and include children and the elderly. The clinical social worker also has access to confidential client information concerning health, family issues and financial information.

The “primary objective of the Board of Clinical Social Work Examiners, to which all other objectives and purposes are secondary, is to protect the general public (specifically those persons who are direct recipients of services regulated by this chapter) from unsafe practices, and from occupational practices which tend to reduce competition or fix the price of services rendered.” 24 **Del.C.** §3901.

The Board appreciates Ms. Levinson’s comments but finds no basis to make changes to the proposed rule based upon the substance of her public comment.

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 clinical social worker 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 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 and call in to question the ability of the practitioner to carry out the practitioner’s professional duties with due regard for the health and safety of clients; and offenses which call into question the judgment of the practitioner as it relates to the ability to aid others.

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 clinical social work services.

Decision and Effective Date

The Board hereby adopts the 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 rule remains as published in *Register of Regulations*, Vol. 8, Issue 7, January 1, 2005, and as attached hereto as Exhibit A.

SO ORDERED this 21st day of March, 2005.

BOARD OF CLINCIAL SOCIAL WORK EXAMINERS

Dr. Maria Carroll, Professional Member, President
Gloria Ho- Ruggerio, Professional Member, Vice President
Robert Carter, Public Member
Winnie Lewis, Public Member
Traci McDowell, Public Member
Ralph Robinson, Jr., Professional Member
Timothy J. Toole, Professional Member

11.0 Crimes substantially related to the practice of social work:

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 practice of social work in the State of Delaware without regard to the place of conviction:

- 11.1.1 Aggravated menacing. 11 Del.C. §602(b).**
- 11.1.2 Reckless endangering in the first degree. 11 Del.C. §604.**
- 11.1.3 Abuse of a pregnant female in the second degree. 11 Del.C. §605.**
- 11.1.4 Abuse of a pregnant female in the first degree. 11 Del.C. §606.**

- 11.1.5 Assault in the second degree. 11 Del.C. §612.
- 11.1.6 Assault in the first degree. 11 Del.C. §613.
- 11.1.7 Abuse of a sports official; felony. 11 Del.C. §614.
- 11.1.8 Assault by abuse or neglect. 11 Del.C. §615.
- 11.1.9 Terroristic threatening; felony. 11 Del.C. §621.
- 11.1.10 Unlawfully administering drugs. 11 Del.C. §625.
- 11.1.11 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs. 11

Del.C. §626.

- 11.1.12 Manslaughter. 11 Del.C. §632.
- 11.1.13 Murder by abuse or neglect in the second degree. 11 Del.C. §633.
- 11.1.14 Murder by abuse or neglect in the first degree. 11 Del.C. §634.
- 11.1.15 Murder in the second degree. 11 Del.C. §635.
- 11.1.16 Murder in the first degree. 11 Del.C. §636.
- 11.1.17 Promoting suicide. 11 Del.C. §645.
- 11.1.18 Abortion. 11 Del.C. §651.
- 11.1.19 Incest. 11 Del.C. §766.
- 11.1.20 Unlawful sexual contact in the third degree. 11 Del.C. §767.
- 11.1.21 Unlawful sexual contact in the second degree. 11 Del.C. §768.
- 11.1.22 Unlawful sexual contact in the first degree. 11 Del.C. §769.
- 11.1.23 Rape in the fourth degree. 11 Del.C. §770.
- 11.1.24 Rape in the third degree. 11 Del.C. §771.
- 11.1.25 Rape in the second degree. 11 Del.C. §772.
- 11.1.26 Rape in the first degree. 11 Del.C. §773.
- 11.1.27 Sexual extortion. 11 Del.C. §776.
- 11.1.28 Bestiality. 11 Del.C. §777.
- 11.1.29 Continuous sexual abuse of a child. 11 Del.C. §778.
- 11.1.30 Dangerous crime against a child. 11 Del.C. §779.
- 11.1.31 Female genital mutilation. 11 Del.C. §780. 11.1.32 Unlawful imprisonment in the first degree. 11

Del.C. §782.

- 11.1.33 Kidnapping in the second degree. 11 Del.C. §783.
- 11.1.34 Kidnapping in the first degree. 11 Del.C. §783A.
- 11.1.35 Acts constituting coercion. 11 Del.C. §791.
- 11.1.36 Arson in the first degree. 11 Del.C. §803.
- 11.1.37 Burglary in the third degree. 11 Del.C. §824.
- 11.1.38 Burglary in the second degree. 11 Del.C. §825.
- 11.1.39 Burglary in the first degree. 11 Del.C. §826.
- 11.1.40 Possession of burglar's tools or instruments facilitating theft. 11 Del.C. §828.
- 11.1.41 Robbery in the second degree. 11 Del.C. §831.
- 11.1.42 Robbery in the first degree. 11 Del.C. §832.
- 11.1.43 Carjacking in the second degree. 11 Del.C. §835.
- 11.1.44 Carjacking in the first degree. 11 Del.C. §836.
- 11.1.45 Extortion. 11 Del.C. §846.
- 11.1.46 Identity theft. 11 Del.C. §854.
- 11.1.47 Forgery. 11 Del.C. §861.
- 11.1.48 Falsifying business records. 11 Del.C. §871.
- 11.1.49 Tampering with public records in the second degree 11 Del.C. §873.
- 11.1.50 Tampering with public records in the first degree. 11 Del.C. §876.
- 11.1.51 Issuing a false certificate. 11 Del.C. §878.
- 11.1.52 Criminal impersonation. 11 Del.C. §907.
- 11.1.53 Criminal impersonation, accident related. 11 Del.C. §907A.
- 11.1.54 Criminal impersonation of a police officer. 11 Del.C. §907B.
- 11.1.55 Insurance fraud. 11 Del.C. §913.
- 11.1.56 Health care fraud. 11 Del.C. §913A.
- 11.1.57 Misuse of computer system information. 11 Del.C. §935.
- 11.1.58 Dealing in children. 11 Del.C. §1100.
- 11.1.59 Endangering the welfare of a child. 11 Del.C. §1102.
- 11.1.60 Endangering the welfare of an incompetent person. 11 Del.C. §1105.

- 11.1.61 Sexual exploitation of a child. 11 Del.C. §1108.
- 11.1.62 Unlawfully dealing in child pornography. 11 Del.C. §1109.
- 11.1.63 Possession of child pornography. 11 Del.C. §1111.
- 11.1.64 Sexual offenders; prohibitions from school zones. 11 Del.C. §1112.
- 11.1.65 Sexual solicitation of a child. 11 Del.C. §1112A.
- 11.1.66 Perjury in the second degree. 11 Del.C. §1222.
- 11.1.67 Perjury in the first degree. 11 Del.C. §1223.
- 11.1.68 Making a false written statement. 11 Del.C. §1233.
- 11.1.69 Terroristic threatening of public officials or public servants. 11 Del.C. §1240.
- 11.1.70 Assault in a detention facility; Class B felony. 11 Del.C. §1254.
- 11.1.71 Sexual relations in a detention facility. 11 Del.C. §1259.
- 11.1.72 Bribing a witness. 11 Del.C. §1261.
- 11.1.73 Bribe receiving by a witness. 11 Del.C. §1262.
- 11.1.74 Tampering with a witness. 11 Del.C. §1263.
- 11.1.75 Interfering with child witness. 11 Del.C. §1263A.
- 11.1.76 Bribing a juror. 11 Del.C. §1264.
- 11.1.77 Bribe receiving by a juror. 11 Del.C. §1265.
- 11.1.78 Tampering with physical evidence. 11 Del.C. §1269.
- 11.1.79 Criminal contempt of a domestic violence protective order. 11 Del.C. §1271A.
- 11.1.80 Hate crimes. 11 Del.C. §1304.
- 11.1.81 Aggravated harassment. 11 Del.C. §1312.
- 11.1.82 Stalking; felony 11 Del.C. §1312A.
- 11.1.83 Cruelty to animals; felony. 11 Del.C. §1325.
- 11.1.84 Violation of privacy. 11 Del.C. §1335.
- 11.1.85 Bombs, incendiary devices, Molotov cocktails and explosive devices. 11 Del.C. §1338.
- 11.1.86 Adulteration. 11 Del.C. §1339.
- 11.1.87 Promoting prostitution in the first degree. 11 Del.C. §1353.
- 11.1.88 Possessing a destructive weapon. 11 Del.C. §1444.
- 11.1.89 Unlawfully dealing with a dangerous weapon; felony. 11 Del.C. §1445.
- 11.1.90 Organized Crime and Racketeering. 11 Del.C. §1504.
- 11.1.91 Victim or Witness Intimidation 11 Del.C. §3532 & 3533.
- 11.1.92 Abuse, neglect, mistreatment or financial exploitation of residents or patients. 16 Del.C. §1136(a), (b) and (c).
- 11.1.93 Prohibited acts A under the Uniform Controlled Substances Act. 16 Del.C. §4751(a), (b) and (c).
- 11.1.94 Prohibited acts B under the Uniform Controlled Substances Act. 16 Del.C. §4752(a) and (b).
- 11.1.95 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).
- 11.1.96 Distribution to persons under 21 years of age. 16 Del.C. §4761.
- 11.1.97 Purchase of drugs from minors. 16 Del.C. § 4761A.
- 11.1.98 Drug paraphernalia; delivery to a minor 16 Del.C. §4774 (c).
- 11.1.99 Obtaining benefit under false representation. 31 Del.C. §1003.
- 11.1.100 Reports, statements and documents. 31 Del.C. §1004.
- 11.1.101 Kickback schemes and solicitations. 31 Del.C. §1005.
- 11.1.102 Conversion of payment. 31 Del.C. §1006.
- 11.1.103 Driving a vehicle while under the influence or with a prohibited alcohol content; third and fourth offenses. 21 Del.C. §4177 (3) and (4).
- 11.1.104 Prohibited trade practices against infirm or elderly. 6 Del.C. §2581.
- 11.1.105 Prohibition of intimidation [under the Fair Housing Act]; felony. 6 Del.C. §4619.
- 11.1.106 Auto Repair Fraud victimizing the infirm or elderly. 6 Del.C. §4909A.
- 11.1.107 Interception of Communications Generally; Divulging Contents of Communications 11 Del.C. §2402.
- 11.1.108 Manufacture, Possession or Sale of Intercepting Device. 11 Del.C. §2403.
- 11.1.109 Breaking and Entering, Etc. to Place or Remove Equipment 11 Del.C. §2410.
- 11.1.110 Obstruction, Impediment or Prevention of Interception. 11 Del.C. §2412.

- 11.1.111 Obtaining, Altering or Preventing Authorized Access. 11 Del.C. §2421.
- 11.1.112 Divulging Contents of Communications. 11 Del.C. §2422.
- 11.1.113 Installation and Use Generally [of pen trace and trap and trace devices]. 11 Del.C. §243.
- 11.1.114 Attempt to Intimidate. 11 Del.C. §3534.
- 11.1.115 Disclosure of Expunged Records. 11 Del. C. § 4374.
- 11.1.116 Providing false information when seeking employment in a public school. 11 Del.C. §8572.
- 11.1.117 Failure of Physician to file report of abuse or neglect pursuant to 16 Del.C. §903.
- 11.1.118 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).
- 11.1.119 Failure of Physician to report persons subject to loss of consciousness. 24 Del.C. §1763.
- 11.1.120 Abuse, neglect, exploitation or mistreatment of infirm adult. 31 Del.C. §3913(a), (b) and (c).
- 11.2 Crimes substantially related to the practice of social work 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 Clinical Social Work Examiners is available at:**

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

8 DE Reg. 1600 (5/1/05)