

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
3800 BOARD OF DIETETICS/NUTRITION
Statutory Authority: 24 Delaware Code, Section 3805(1) (24 **Del.C.** §3805(1))
24 **DE Admin. Code** 3800

FINAL

ORDER

3800 State Board of Dietetics/Nutrition

The Delaware Board of Dietetics/Nutrition pursuant to 24 **Del.C.** §3805(1), proposed to revise its regulations. The proposed amendments to the regulations seek to further clarify the scope of practice of a Dietitian/Nutritionist by defining various terms set forth in the Board's enabling statute.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Following publication in the Delaware *Register of Regulations* on July 1, 2015, a public hearing was held on August 14, 2015. Written comment periods were held open for thirty days, and an additional fifteen days following the public hearing. At the hearing, the Board accepted as evidence and marked as the Board's Exhibits 1 and 2 documentation of publication of the notice of the public hearing in the *News Journal* and the *Delaware State News*. The Board further marked the following public comments as Board Exhibits:

At the time of the deliberations, the Board considered the following documents:

Board Exhibit 1 - Affidavit of publication of the public hearing notice in the *News Journal*;

Board Exhibit 2 - Affidavit of publication of the public hearing notice in the *Delaware State News*;

Board Exhibit 3 - A summary of the public comments provided by Ana Maria Puente and Susan Testa during the May 8, 2015 Board meeting. Ms. Puente is a first year student at University of Maryland, Integrated Health Program, and Ms. Testa developed the University of Maryland, Integrated Health Program;

Board Exhibit 4 - May 8, 2015 written public comments provided by Ginger Hodulik, certified nutrition specialist (CNS) in New Jersey and Pennsylvania;

Board Exhibit 5 - May 14, 2015 written public comment from Karen Siclare, CNS, Associate Director of the Nutrition Institute at the University of Bridgeport;

Board Exhibit 6 - May 8, 2015 written public comments from Krista Noelle, LDN from the University of Maryland, Integrated Health Program;

Board Exhibit 7 - August 14, 2015 written public comments provided by Donna Trader of the Delaware Academy of Nutrition and Dietetics during the fifteen day 29 **Del.C.** §10118(a) second public comment period;

Board Exhibit 8 - Written public comment from Judy Stone, Legislative Policy Director for the Board for Certification of Nutrition Specialists, provided during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

There was no verbal testimony given at the public hearing on August 14, 2015. The public comments provided during the May 8, 2015 Board meeting were summarized and marked as exhibits at the time of the hearing as were the written public comment received during the fifteen day 29 **Del.C.** §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.
2. Ms. Puente commented that she believes Delaware should include other credentials for licensure, such as CNS. The Board noted that the proposed regulations do not address credentials for licensure.
3. Ms. Testa testified that the definition of "Nutrition Assessment" mentions parenteral nutrition and noted that parenteral nutrition is not an assessment tool, but a dietary tool.
4. The Board found that a nutrition assessment of an individual receiving parenteral or enteral nutrition should include an evaluation of how such nutrition impacts how nutrition will be provided to that individual, as such, although parenteral enteral nutrition is a dietary tool, it is a dietary tool that should be considered when performing a nutrition assessment.

5. Ms. Hodulik commented that she is concerned that the proposed language is a way to deny licensure to applicants who do not have training in enteral/parenteral nutrition or in administration of food and nutrition care systems. She suggested that the Board include language such as "may include" rather than the more definitive "includes." Finally, Ms. Hodulik suggested that the Board change Regulation 2.3, which was not included in the proposed changes to the regulations.
6. The Board found that language such as "may include" could be interpreted to mean that a nutrition assessment only needs to include one or two of the tools set forth in the definition when such conduct would not be a sufficient nutrition assessment.
7. Ms. Siclare recommended that the two definitions that include dietetic specific job activities, "Nutrition Assessment" and "Nutrition Care Plan" be reworded to indicate the list of specific skills may be included. In addition, Ms. Siclare noted her opposition to any language that could be interpreted to require non-RD nutritionists to demonstrate skills "not required of them in practice." As such, Ms. Siclare requested that the Board re-write the definitions to clarify that dietetic specific skills will not be required of applicants who are not dietitians. Finally, Ms. Siclare requested that the Board recognize CNS practice experience along with the CNS exam.
8. Ms. Noelle requested that the Board amend its regulations to grant licensure to holders of the CNS credential.
9. Ms. Stone commented that the Board should add language such as "may include" to the definition of nutrition assessment and eliminate "enteral and parenteral nutrition" from the definition. Ms. Stone suggested that the Board eliminate its proposed definition for "Nutritional Care Plan" and instead utilize a shorter, more broad definition.
10. In regard to the comments from Ms. Siclare, Ms. Noelle, and Ms. Stone, the Board pointed out that a change regarding the CNS credential was not addressed by the proposed regulations and would have to take place in the statute, not the regulations. The Board does not have the power to amend the statute, as such power lies with the Delaware General Assembly. In addition, the Board noted that it proposed to clarify the scope of practice to ensure that only competent licensed professionals are partaking in the activities set forth in the statutory and regulatory scope of practice. By clarifying the scope of practice, the Board is in no way altering the qualifications for licensure. In other words, the Board is not requiring that all applicants for licensure be qualified to perform every task set forth in the defined scope of practice; rather, the Board is ensuring that anyone who performs such tasks in Delaware must be a licensed dietitian/nutritionist, regardless of whether such person is an RD or a CNS.
11. Ms. Trader suggested that the Board change the term "medical nutrition therapy" to "dietetic and nutrition therapy" to mirror the statute.
12. The Board noted that the term "medical nutrition" was set forth in a different definition and the Board sought to clarify what that meant.
13. Ms. Trader suggested minor technical changes such as removing a comma and adding the word nutrition before intervention, education and counseling in the definition of "medical nutrition therapy."
14. The Board agreed with these suggestions and will incorporate them into the proposed regulations pursuant to 29 **Del.C.** §10113(b)(4), which allows for "[n]onsubstantive changes in existing regulations to alter style or form or to correct technical errors."
15. Ms. Trader suggested that the Board add a definition for "nutrition intervention" but the Board found that such a definition would be no different than the definition for "nutrition assessment."
16. Ms. Trader suggested that the Board add the term "ordering" to the definition of "nutritional care plan."
17. The Board agreed with this suggestion but found that it could add "ordering" to the definition at a later date, and insofar as the Board has been attempting to implement the proposed regulations for at least one year, it did not want to delay the process further by having another hearing on the same regulations to effectuate only that change.
18. Pursuant to 24 **Del.C.** §3805(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.
19. The proposed changes amend Board's Regulations seek to further clarify the scope of practice of a Dietitian/ Nutritionist by defining various terms set forth in the Board's enabling statute.
20. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed changes to the Board's rules and regulations.
21. For the reasons stated above, the Board finds no reason to amend the regulations as proposed.

DECISION AND ORDER CONCERNING THE REGULATIONS

Having found that the proposed changes to the regulations are necessary as outlined herein, the Board finds that the

regulations shall be adopted as final in the form as proposed. The exact text of the regulations, as amended, are attached to this order as Exhibit A. These changes will become effective ten days following publication of this order in the Delaware *Register of Regulations* on April 1, 2016.

IT IS SO ORDERED this 12th day of February, 2016 by the Delaware Board of Dietetics/Nutrition.

Maryann Eastep, L.D.N., President

Jackie Griffith, Public Member

Jaime Sherman, L.D.N., Vice President

Lucinda Mancuso, L.D.N.

Timothy Bane, Public Member (absent)

3800 State Board of Dietetics/Nutrition

1.0 Definitions

"Medical nutrition therapy" means the use of specific nutrition services to treat, or rehabilitate an illness, injury, or condition. Medical nutrition therapy includes nutrition assessment, intervention, education, and counseling.

"Nutrition assessment" means the evaluation of the nutritional needs of individuals or groups based on appropriate nutrient intake, biochemical values, anthropometric measures, physical and metabolic parameters, socio-economic factors, current medical diagnosis and medications, enteral and parenteral nutrition or dietary data to determine nutrient needs and recommend appropriate medical nutrition therapy.

"Nutrition Care Services" means assessing the nutritional needs of individuals or groups, determining resources and constraints in the practice setting, and providing appropriate nutritional recommendations, counseling or education.

"Nutrition counseling" means advising and assisting individuals or groups on appropriate nutritional intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status.

"Nutritional Care Plan" means a plan of care developed by a licensed Dietitian/Nutritionist that includes: the design and implementation of nutrition programs/plans, which include goals and objectives for individuals and groups for the maintenance of health and prevention of disease; the design and implementation of therapeutic nutrition regimens, including enteral and parenteral nutrition for the management of nutritionally related health disorders; establishing priorities, goals, and objectives that meet nutritional needs and are consistent with available resources and constraints; developing, implementing, and managing nutrition care systems; and evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition care services.

"Nutritional care standards" means policies and procedures pertaining to the provision of nutritional care in institutional and community settings.

"Nutritional education" means a planned program based on learning objectives with expected outcomes designed to modify nutrition-related behaviors.

42.0 Qualifications of Applicants

42.1 Major Course of Study

42.1.1 A major course of study [24 **Del.C.** §3806(2)] must include 3 semester credits with content in biochemistry, 3 semester credits with content in human physiology, and 12 semester credits of courses with major content in human nutrition and/or dietetics including 3 semester credits in nutrition and disease or diet therapy.

42.2 Foreign Degrees:

42.2.1 An agency authorized to validate foreign academic degrees equivalent to the Baccalaureate or Master's Degree conferred by a regionally accredited college or University in the U.S. includes the following:

International Consultants of Delaware, Inc., P.O. Box 8629, Philadelphia, PA 19101 - www.icdel.com

IERF Credentials Evaluation Services, Inc., 3665 Culver City, CA 90231-3665) - www.ierf.org

World Education Services, Inc., (5087 Bowling Green Station, New York, NY 10274-5087) - www.wes.org

Education Credential Evaluators, Inc., (P.O. Box 5140740, Milwaukee, WI 53203-3470) -www.ece.org

Josef Silny & Associates, International Education Consultants, 7107 SW 102 Ave. Miami, FL 33173) - www.jsilny.com

42.3 Supervised Practice

- 42.3.1 Proof of completion of supervised practice experience of 900 hours [24 Del.C. §3806(a)(3)] is required and may be demonstrated by documenting completion of a Commission on Accreditation for Dietetic Education (CADE) program. CADE is the accrediting agency for the American Dietetic Association (ADA); or
- 42.3.2 At least 900 hours of supervised participation in nutrition services. The scope of activities may include observation, but must include direct client/patient involvement. The 900 hours must be concurrent with and/or following completion of the academic requirements for certification and need not be a paid experience. The following will define the equivalent professional practice experience and verification necessary:
 - 42.3.2.1 Each supervisor shall have administrative responsibility for the area of the professional practice experience OR provide a letter from the area's administrator showing approval for him/her to officially function as a supervisor of the applicant's experience for the purposes of this chapter.
 - 42.3.2.2 The supervisor shall have access to relevant patient/client records in the site of the professional practice experience. In order to guide the applicant and to have a basis for evaluation, the supervisor shall review performance by periodic observation, either directly or by some recording of the nutrition services.
 - 42.3.2.3 If there is more than one supervisor and/or facility for different parts of the experience, information and verification of each part is required.
 - 42.3.2.4 The applicant shall provide to the Board for each supervisor/facility
 - 42.3.2.4.1 the name and address of the facility providing the professional practice experience and name of the area within the facility where the professional practice experience occurred.
 - 42.3.2.4.2 the name, address, phone and title of the official supervisor who is supervising the qualifying experience for purpose of obtaining the certification. The supervisor for the purpose of certification may be different than the administrative supervisor of the unit in the facility.
 - 42.3.2.4.3 a summary of the nature of nutrition services performed, along with dates and hours spent performing them.
 - 42.3.2.4.4 evidence that the supervisor was either a registered dietitian, a licensed dietitian or a certified dietitian/nutritionist or a certified nutrition specialist in Delaware or any other state at the time of supervision; or the supervisor was a licensed health care professional or individual with a doctoral degree from an accredited college or university with expertise in human nutrition. A copy of the current license, certification, or registration must be provided.
 - 42.3.2.4.5 the applicant will send the description of the qualifying experience noted above to the professional practice experience supervisor for verification.
 - 42.3.2.4.6 Each supervisor must review the evidence provided by the applicant and verify that the information is true including
 - 42.3.2.4.6.1 that the applicant participated in nutrition services under his/her supervision, indicating the total number of hours.
 - 42.3.2.4.6.2 that the applicant performed the nutrition services at a satisfactory level and followed the Code of Ethics in the course of this qualifying experience.

42.4 Examination

- 42.4.1 The satisfactory completion of the registration examination established by the Commission on Dietetic Registration (CDR), the examination of the Certification Board for Nutrition Specialists (CBNS) or another national examination acceptable to the Board and approved by the Director of Professional Regulation is required. [24 Del.C. §3806(a)(4)].
 - 42.4.1.1 The passing score shall be the passing score established by the exam provider.
- 42.4.2 The cost of the examination shall be borne by the applicant.
- 42.5 Individuals seeking a waiver under the provisions of 24 Del. C. §3806(f) of the qualifications for licensure specified in 24 Del. C. §3806(a)(1)-(4) and 24 Del. C. §3806(b) must document at least 10 years or greater work experience in the field of nutrition as defined in 24 Del. C. §3802(3) acceptable to the Board.

13 DE Reg. 414 (09/01/09)

23.0 Reciprocity

- 23.1 The Board may grant licensure to registered, certified or licensed dietitians/nutritionists holding a valid license issued by another jurisdiction whose standards of licensure are equal to or greater than those of 24 Del.C. Ch. 38.

- 23.2 The applicant shall include, as part of the application, copies of state licensing and/or practice statutes and regulations pertaining to the practice of dietetics and nutrition for each jurisdiction through which he/she is seeking reciprocity.
- 23.3 The Applicant shall include letters of good standing from all jurisdictions in which the applicant is licensed or registered.
- 23.4 “Standards of licensure” as used in 24 Del.C. §3807, shall refer to the qualifications of applicants set forth at §3806.

13 DE Reg. 414 (09/01/09)

34.0 Continuing Professional Education

- 34.1 "Continuing professional education" (CPE) as specified in the Dietician/Nutritionist Licensure Act, 24 Del.C. §3808, must meet the content requirements of The American Dietetic Association for CPE credit. One hour of CPE credit shall be given for each hour of CPE activity.
 - 34.1.1 To renew his or her license a LDN must obtain thirty (30) hours of CPE during each two year certification period.
 - 34.1.1.1 CPE requirements shall be prorated for new LDNs as follows: If the new LDN has been licensed less than 1 year, CPE is not required for renewal, if the new LDN has been licensed for more than 1 year but less than 2 years, half of the 30 CPE hours (15 hours) are required. If licensed for 2 or more years, the full 30 hours of CPE is required.
 - 34.1.1.2 Extensions of time: An extension of time to complete CPE requirements will be granted to any LDN who can demonstrate to the Board an acceptable cause. The LDN must petition the Board for an extension. Should the Board deny the request, the LDN must complete the requirements to maintain licensure. Examples of circumstances for which the Board may grant extensions of time include, but are not limited to, prolonged illness or extended absence from the country.
- 34.2 Proof of continuing education is satisfied with an attestation by the licensee that he or she has satisfied the requirements of Rule 34.0.
 - 34.2.1 Attestation may be completed electronically if the renewal is accomplished online. In the alternative, paper renewal documents that contain the attestation of completion may be submitted.
 - 34.2.2 Licensees selected for random audit will be required to supplement the attestation with attendance verification pursuant to Rule 34.3.
- 34.3 Random audits will be performed by the Board to ensure compliance with the CPE requirements.
 - 34.3.1 The Board will notify LDNs within sixty (60) days after the license renewal date that they have been selected for audit.
 - 34.3.2 LDNs selected for random audit shall be required to submit verification within ten (10) days of receipt of notification of selection for audit.
 - 34.3.3 Verification shall include such information necessary for the Board to assess whether the course or other activity meets the CPE requirements in Rule 34.0, which may include, but is not limited to, the following information:
 - 34.3.3.1 Proof of attendance. While course brochures may be used to verify contact hours, they are not considered to be acceptable proof for use of verification of course attendance.
 - 34.3.3.2 Date of CPE course;
 - 34.3.3.3 Instructors of CPE course;
 - 34.3.3.4 Sponsor of CEU course;
 - 34.3.3.5 Title of CPE course; and
 - 34.3.3.6 Number of hours of CPE course.
 - 34.3.4 The CPE activities must be performed within the two year period prior to renewal of licensure. If an activity overlaps two renewal periods, the date of completion of the activity determines the date in which the activity can be reported.
 - 34.3.5 The current document published by CDR, describing CPE guidelines for registered dietitians shall be used as a guide to interpret requirements of CDR for CPE.
 - 34.3.6 The Board will accept the decisions of CDR and CBNS for appropriateness of CPE activities and reserves the right to approve or disapprove any other activity deemed appropriate for CPE, using current CDR standards as criteria.
 - 34.3.7 The Board may establish maximum hours allowed for any type of activity in the two-year period.
 - 34.3.7.1 A maximum of 15 CPE hours shall be allowed for selfstudy programs.

~~34~~.3.7.2 A maximum of 6 CPE hours shall be allowed for exhibits.

~~34~~.3.7.3 A maximum of 10 CPE hours shall be allowed for poster presentations.

~~34~~.4 The Board shall review all documentation requested of any licensee shown on the audit list. If the Board determines the licensee has met the requirements, the licensee's license shall remain in effect. If the Board initially determines the licensee has not met the requirements, the licensee shall be notified and a hearing may be held pursuant to the Administrative Procedures Act. This hearing will be conducted to determine if there are any extenuating circumstances justifying the apparent noncompliance with these requirements. Unjustified noncompliance of these regulations shall be considered grounds for discipline in the practice of dietetics and nutrition, pursuant to 24 **Del.C.** §3811. The minimum penalty for unjustified noncompliance shall be a letter of reprimand.

~~34~~.5 Any licensee denied renewal or disciplined pursuant to these rules and regulations may contest such ruling by filing an appeal pursuant to the Administrative Procedures Act.

11 DE Reg. 226 (08/01/07)

13 DE Reg. 414 (09/01/09)

45.0 Licensure-Renewal

~~45~~.1 The biennial licensure period expires on May 31 of every odd-numbered year. A licensee may have his/her license renewed by submitting a renewal application to the Board by the renewal date and upon payment of the renewal fee prescribed by the Division of Professional Regulation (Division) along with an attestation of completion of the continuing education requirements. License renewal may be accomplished online at the Division's website. Alternatively, licensees may submit paper renewal documents. Requests for paper renewal forms must be directed to the Division.

~~45~~.2 Any licensee who fails to renew his/her license by the renewal date may reactivate his/her license during the one (1) year period immediately following the license expiration date provided the licensee pays a late fee in addition to the prescribed renewal fee, submits an application on an appropriate form to the Board and provides proof that he/she completed the required continuing education.

~~45~~.3 No LDN will be permitted to renew his/her license once the one-year period has expired but the former licensee may re-apply under the same conditions that govern applicants for licensure under 24 **Del.C.** Ch. 38.

13 DE Reg. 414 (09/01/09)

56.0 Code of Ethics. [24 Del.C. §3811(a)(4).]

~~56~~.1 The LDN provides professional service with objectivity and with respect for the unique needs and values of individuals, avoiding discrimination on the basis of race, creed, gender, national origin, age or disability.

~~56~~.2 The LDN accurately presents professional qualifications and credentials and does not permit the use of these credentials by an unqualified person.

~~56~~.3 The LDN remains free of conflict of interest and promotes or endorses products/services in a manner that is neither false nor misleading.

~~56~~.4 The LDN assumes responsibility and accountability for personal competence in practice through continuing professional education and adherence to accepted standards of practice.

~~56~~.5 The LDN shall recognize and exercise professional judgment within the limits of his/her qualifications and shall not accept or perform professional responsibilities which the LDN is not qualified to perform.

~~56~~.6 The LDN practices nutrition/dietetics based on scientific principles and current substantiated information without personal bias, enabling clients to make informed decisions.

~~56~~.7 The LDN maintains the confidentiality of information obtained from clients and maintains records relating to services provided to a client in the course of a professional relationship.

~~56~~.8 The LDN conducts himself/herself with honesty, integrity and fairness, advertises services in a factual, straightforward manner, and fulfills professional commitments in good faith.

~~56~~.9 The LDN shall not engage in dietetic practice while under the influence of alcohol or drugs which impair the provision of such practice.

~~56~~.10 The LDN shall be responsible for reporting alleged misrepresentation or violations of the Code of Ethics to the State Committee of Dietetics/Nutrition.

13 DE Reg. 414 (09/01/09)

67.0 Crimes Substantially Related To Provision Of Dietetic/Nutrition Services.

~~67~~.1 For the purposes of this section the following definition shall apply:

67.1.1 **“Conviction”** means a verdict of guilty by whether entered by a judge or jury, or a plea of guilty or a plea of nolo contendere or other similar plea such as a “Robinson” or “Alford” plea unless the individual has been discharged under §1024 of Title 10 (domestic violence diversion program) or by §4764 of Title 16 (first offenders controlled substances diversion program). Including all crimes prohibited by or punishable under Title 18 of the United States Code Annotated (U.S.C.A.) such as, but not limited to, Federal Health Care offenses.

67.2 Conviction of any of the following crimes in Title 11, or of the attempt to commit or of a conspiracy to commit or conceal or of solicitation to commit the following crimes, is deemed to be a crime substantially related to the provision of Dietetics/Nutrition services as a LDN in the State of Delaware without regard to the place of conviction:

67.2.1 §501 Criminal solicitation in the third degree

67.2.2 §502 Criminal solicitation in the second degree

67.2.3 §503 Criminal solicitation in the first degree

67.2.4 §511 Conspiracy in the third degree

67.2.5 §512 Conspiracy in the second degree

67.2.6 §513 Conspiracy in the first degree

67.2.7 §601 Offensive touching; Class A Misdemeanor

67.2.8 §602. Menacing;

67.2.9 §603. Reckless endangering in the second degree;

67.2.10 §604. Reckless endangering in the first degree;

67.2.11 §605. Abuse of a pregnant female in the second degree;

67.2.12 §606. Abuse of a pregnant female in the first degree;

67.2.13 §611. Assault in the third degree;

67.2.14 §612. Assault in the second degree;

67.2.15 §613. Assault in the first degree;

67.2.16 §615 Assault by abuse or neglect;

67.2.17 §621 Terroristic threatening;

67.2.18 §625 Unlawfully administering drugs;

67.2.19 §626 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs;

67.2.20 §629 Vehicular assault in the first degree;

67.2.21 §630 Vehicular homicide in the second degree;

67.2.22 §630A Vehicular homicide in the first degree;

67.2.23 §631 Criminally negligent homicide;

67.2.24 §632 Manslaughter;

67.2.25 §633 Murder by abuse or neglect in the second degree;

67.2.26 §634 Murder by abuse or neglect in the first degree;

67.2.27 §635 Murder in the second degree;

67.2.28 §636 Murder in the first degree;

67.2.29 §645 Promoting suicide.

Sexual Offenses

67.2.30 §763 Sexual harassment;

67.2.31 §764 Indecent exposure in the second degree;

67.2.32 §765 Indecent exposure in the first degree;

67.2.33 §766 Incest;

67.2.34 §767 Unlawful sexual contact in the third degree;

67.2.35 §768 Unlawful sexual contact in the second degree;

67.2.36 §769 Unlawful sexual contact in the first degree;

67.2.37 §770 Rape in the fourth degree;

67.2.38 §771 Rape in the third degree;

67.2.39 §772 Rape in the second degree;

67.2.40 §773 Rape in the first degree;

67.2.41 §776 Sexual extortion;

- 67.2.42 §777 Bestiality;
 - 67.2.43 §778 Continuous sexual abuse of a child;
 - 67.2.44 §780 Female genital mutilation.
 - 67.2.45 §781 Unlawful imprisonment in the second degree;
 - 67.2.46 §782 Unlawful imprisonment in the first degree;
 - 67.2.47 §783 Kidnapping in the second degree;
 - 67.2.48 §783A Kidnapping in the first degree;
 - ~~67.2.5049~~§791 Acts constituting coercion;
- 67.3 Any crime which involves dishonesty or false, fraudulent or aberrant behavior and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code Annotated**:
- 67.3.1 §801 Arson in the third degree;
 - 67.3.2 §802 Arson in the second degree;
 - 67.3.3 §803 Arson in the first degree;
 - 67.3.4 §811 Criminal mischief, Felony.
 - 67.3.5 §820 Trespassing with intent to peer or peep into a window or door of another;
 - 67.3.6 §824 Burglary in the third degree;
 - 67.3.7 §825 Burglary in the second degree;
 - 67.3.8 §826 Burglary in the first degree;
 - 67.3.9 §828 Possession of burglar's tools or instruments facilitating theft;
- Robbery
- 67.3.10 §831 Robbery in the second degree;
 - 67.3.11 §832 Robbery in the first degree.
 - 67.3.12 §835 Carjacking in the second degree;
 - 67.3.13 §836 Carjacking in the first degree;
 - 67.3.14 §840 Shoplifting; Felony
 - 67.3.15 §841 Theft;
 - 67.3.16 §846 Extortion;
 - 67.3.17 §854 Identity theft;
 - 67.3.18 §860 Possession of shoplifter's tools or instruments facilitating theft;
 - 67.3.19 §861 Forgery
 - 67.3.20 §862 Possession of forgery devices;
 - 67.3.21 §871 Falsifying business records;
 - 67.3.22 §873 Tampering with public records in the second degree;
 - 67.3.23 §876 Tampering with public records in the first degree;
 - 67.3.24 §877 Offering a false instrument for filing;
 - 67.3.25 §878 Issuing a false certificate;
 - ~~67.3.256~~§903 Unlawful use of credit card; Felony.
 - ~~67.3.267~~§903 A Re-encoder and scanning devices;
 - ~~67.3.278~~§906 Deceptive business practices;
 - ~~67.3.289~~§907B Criminal impersonation of a police officer;
 - ~~67.3.2930~~§908 Unlawfully concealing a will;
 - ~~67.3.301~~§909 Securing execution of documents by deception;
 - ~~67.3.342~~§913 Insurance fraud;
 - ~~67.3.323~~§913A Health care fraud;
- 67.4 Any crime which involves misuse or abuse of children or animals and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code Annotated**:
- 67.4.1 §1100 Dealing in children;
 - 67.4.2 §1101 Abandonment of child;
 - 67.4.3 §1102 Endangering the welfare of a child;
 - 67.4.4 §1105 Endangering the welfare of an incompetent person;
 - 67.4.5 §1106 Unlawfully dealing with a child;
 - 67.4.6 §1107 Endangering children;

- 67.4.7 §1108 Sexual exploitation of a child;
- 67.4.8 §1109 Unlawfully dealing in child pornography;
- 67.4.9 §1111 Possession of child pornography;
- 67.4.10 §1112 Sexual offenders; prohibitions from school zones.
- 67.4.11 §1112A Sexual solicitation of a child;
- 67.4.12 §1113 Criminal non-support and aggravated criminal non-support.
- 67.4.13 §1325 Cruelty to animals;
- 67.4.14 §1326 Animals; fighting and baiting prohibited;
- 67.4.15 §1327 Maintaining a dangerous animal, felony;
- 67.5 Any crime which involves offenses against the public order the commission of which may tend to bring discredit upon the profession and which are thus substantially related to one's fitness to practice such profession and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code Annotated**:
 - 67.5.1 §1201 Bribery;
 - 67.5.2 §1203 Receiving a bribe;
 - 67.5.3 §1207 Improper influence;
 - 67.5.4 §1211 Official misconduct
 - 67.5.5 §1212 Profiteering
 - 67.5.6 §1221 Perjury in the third degree;
 - 67.5.7 §1222 Perjury in the second degree;
 - 67.5.8 §1223 Perjury in the first degree;
 - 67.5.9 §1233 Making a false written statement; class
 - 67.5.10 §1240 Terroristic threatening of public officials or public servants
 - 67.5.11 §1245 Falsely reporting an incident, felony;
 - 67.5.12 §1250 Offenses against law-enforcement animals;
 - 67.5.13 §1254 Assault in a detention facility;
 - 67.5.14 §1256 Promoting prison contraband, felony;
 - 67.5.15 §1257A Use of an animal to avoid capture, felony;
 - 67.5.16 §1261 Bribing a witness;
 - 67.5.17 §1262 Bribe receiving by a witness;
 - 67.5.18 §1263 Tampering with a witness;
 - 67.5.19 §1263A Interfering with child witness;
 - 67.5.20 §1264 Bribing a juror;
 - 67.5.21 §1265 Bribe receiving by a juror;
 - 67.5.22 §1266 Tampering with a juror;
 - 67.5.23 §1267 Misconduct by a juror;
 - 67.5.24 §1269 Tampering with physical evidence;
 - 67.5.275§1273 Unlawful grand jury disclosure;
- 67.6 Any crime which involves offenses against a public health order and decency which may tend to bring discredit upon the profession, specifically including the below listed crimes from Title 11 of the **Delaware Code Annotated** which evidence a lack of appropriate concern for the safety and well being of another person or persons in general or sufficiently flawed judgment to call into question the individuals ability to make health care decisions or advise upon health care related matters for other individuals.
 - 67.6.1 §1302 Riot;
 - 67.6.2 §1304 Hate crimes;
 - 67.6.3 §1312 Aggravated harassment;
 - 67.6.4 §1312A Stalking. felony;
 - 67.6.5 §1313 Malicious interference with emergency communications;
 - 67.6.6 §1331 Desecration;
 - 67.6.7 §1332 Abusing a corpse;
 - 67.6.8 §1333 Trading in human remains and associated funerary objects.
 - 67.6.9 §1335 Violation of privacy;

- 67.6.10 §1338 Bombs, incendiary devices, Molotov cocktails and explosive devices;
 - 67.6.11 §1339 Adulteration;
 - 67.6.12 §1340 Desecration of burial place.
 - 67.6.13 §1341 Lewdness;
 - 67.6.14 §1351 Promoting prostitution in the third degree;
 - 67.6.15 §1352 Promoting prostitution in the second degree;
 - 67.6.16 §1353 Promoting prostitution in the first degree;
 - 67.6.17 §1355 Permitting prostitution;
 - 67.6.2218§1361 Obscenity; acts constituting;
 - 67.6.2319§1365 Obscene literature harmful to minors
- 67.7 Any crime which involves 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 shall include by way of example and not of limitation the following crimes listed in Chapter 47 of Title 16 of the **Delaware Code Annotated**:
- 67.7.1 §4751 Prohibited acts A;
 - 67.7.2 §4752 Prohibited acts B;
 - 67.7.3 §4752A Unlawful delivery of noncontrolled substance;
 - 67.7.4 §4753A Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, L.S.D., or designer drugs;
 - 67.7.5 §4754A Possession and delivery of noncontrolled prescription drug (felony);
 - 67.7.6 §4755 Prohibited acts E;
 - 67.7.7 §4756 Prohibited acts;
 - 67.7.8 §4757 Hypodermic syringe or needle; delivering or possessing (felony); disposal (felony);
 - 67.7.9 §4761 Distribution to persons under 21 years of age;
 - 67.7.10 §4761A Purchase of drugs from minors;
 - 67.7.11 §4767 Distribution, delivery, or possession of controlled substance within 1,000 feet of school property;
 - 67.7.12 §4768 Distribution, delivery or possession of controlled substance in or within 300 feet of park, recreation area, church, synagogue or other place of worship;
 - 67.7.13 §4774 Drug Paraphernalia (felony).
- 67.8 Any crime which involves the misuse or illegal possession or sale of a deadly weapon or dangerous instrument and shall include by way of example and not of limitation the following crimes listed in Title 11 of the **Delaware Code Annotated**:
- 67.8.1 §1442 Carrying a concealed deadly weapon;
 - 67.8.2 §1443 Carrying a concealed dangerous instrument;
 - 67.8.3 §1444 Possessing a destructive weapon;
 - 67.8.4 §1445a Unlawfully dealing with a dangerous weapon (felony);
 - 67.8.5 §1446 Unlawfully dealing with a switchblade knife;
 - 67.8.6 §1447 Possession of a deadly weapon during commission of a felony;
 - 67.8.7 §1447A Possession of a firearm during commission of a felony;
 - 67.8.8 §1448 Possession and purchase of deadly weapons by persons prohibited;
 - 67.8.9 §1448A Criminal history record checks for sales of firearms
 - 67.8.10 §1449 Wearing body armor during commission of felony;
 - 67.8.11 §1450 Receiving a stolen firearm;
 - 67.8.12 §1451 Theft of a firearm;
 - 67.8.13 §1452 Unlawfully dealing with knuckles-combination knife;
 - 67.8.14 §1453 Unlawfully dealing with martial arts throwing star;
 - 67.8.15 §1454 Giving a firearm to person prohibited;
 - 67.8.16 §1455 Engaging in a firearms transaction on behalf of another;
 - 67.8.17 §1456 Unlawfully permitting a minor access to a firearm;
 - 67.8.18 §1457 Possession of a weapon in a Safe School and Recreation Zone;
 - 67.8.19 §1458 Removing a firearm from the possession of a law enforcement officer;
 - 67.8.20 §1459 Possession of a weapon with a removed, obliterated or altered serial number;
 - 67.8.21 §1504 Organized Crime & Racketeering;

- 67.8.22 §3532 Acts of Intimidation;
- 67.8.23 §3533 Aggravated act of intimidation;
- 67.8.24 §3534 Attempt to Intimidate;

Other Crimes

- 67.8.25 Title 16 §1136 Violations – neglect or abuse of patient or resident of nursing facilities;
 - 67.8.26 Title 23 §2302 – Operation of a vessel or boat while under the influence of intoxicating liquor or drugs (Felony under §2305);
 - 67.8.27 Title 30 §571 Attempt to evade or defeat tax;
 - 67.8.28 Title 30 §572 Failure to collect or pay over tax;
 - 67.8.29 Title 30 §574 Fraud and false statements (felony);
 - 67.8.30 Title 31 §§1003,1004 and 1005 (felony under §1007);
 - 67.8.31 Title 21 §2810 Driving after judgment prohibited;
 - 67.8.32 Title 21 §4177 Driving a vehicle while under the influence or with a prohibited alcohol content, (felony);
 - 67.8.33 Title 21 §4177J Drinking while driving prohibited;
 - 67.8.34 Title 21 §6704 Receiving or transferring stolen vehicle
 - 67.8.35 Title 21 §6705 Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identify, (felony);
 - 67.8.36 Title 7 §1717 Unauthorized Acts against a Service Guide or Seeing Eye Dog, (class D felony);
 - 67.8.37 Title 11 §2402 Interception of Communications Generally; Divulging Contents of Communications;
 - 67.8.38 Title 11 §2403 Manufacture, Possession or Sale of Intercepting Device ;
 - 67.8.39 Title 11 §2410 Breaking and Entering, Etc. to Place or Remove Equipment;
 - 67.8.40 Title 11 §2412 Obstruction, Impediment or Prevention of Interception;
 - 67.8.41 Title 11 §2421 Obtaining, Altering or Preventing Authorized Access;
 - 67.8.42 Title 11 §2422 Divulging Contents of Communications;
 - 67.8.43 Title 11 §2431 Installation and Use Generally [of pen trace and trap and trace devices];
 - 67.8.44 Title 11 §8523 Penalties [Criminal History Record Information-penalties for violation of reporting provision re: SBI], (felony);
 - 67.8.45 Title 11 §8562 - for failure of child-care provider to obtain information [Criminal History Record Information] required under §8561 or for those providing false information;
 - 67.8.46 Title 11 §8572 [Providing false information when seeking employment in a public school];
 - 67.8.47 Title 16 §914 Penalty for Violation [of reporting requirements involving abuse under §903];
 - 67.8.48 Title 16 §2513 Penalties [relating to improper health-care decisions] (falsification, destruction of a document to create a false impression that measures to prolong life have been authorized);
 - 67.8.49 Title 16 §7112 Penalties [for violations of chapter [Sale, Use, Etc., of Explosive Materials other than §7103] (felony);
 - 67.8.50 Title 23 §2303 Operation of a Vessel or Boat while under the Influence of Intoxicating Liquor and/or Drugs (Felony);
 - 67.8.51 Title 31 §3913 Violations [knowing or reckless abuse of an infirm adult];
- 67.9 Any crime which is a violation of Title 24, Chapter 38 (Dietetics and Nutrition Practice Act) as it may be amended from time to time.
- 67.10 Crimes substantially related to the provision of services as a LDN 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.

8 DE Reg. 1288 (03/01/05)

11 DE Reg. 226 (07/01/07)

13 DE Reg. 414 (09/01/09)

78.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

- 78.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.
- 78.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the

individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

- 78.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).
- 78.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.
- 78.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, ~~if appropriate, as outlined in subsection 5.8 of this section as~~ appropriate.
- 78.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:
- 78.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.
- 78.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.
- 78.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.
- 78.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.
- 78.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.
- 78.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.
- 78.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.
- 78.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time

during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

- ~~78~~.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.
- ~~78~~.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.
- ~~78~~.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.
- ~~78~~.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

13 DE Reg. 414 (09/01/09)

19 DE Reg. 933 (04/01/16) (Final)