

State of Wisconsin



2017 Assembly Bill 902

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2017 WISCONSIN ACT 328

AN ACT *to renumber and amend* 227.51 (3); *to amend* 440.205, 440.22 (1), 440.22 (2), 448.02 (4), 448.02 (8) (a), 448.02 (9) (intro.), 448.675 (2) and 450.01 (24); and *to create* 227.51 (3) (c) of the statutes; **relating to:** wholesale distributors subject to Pharmacy Examining Board requirements and enforcement and disciplinary authority of the Department of Safety and Professional Services and attached boards and credentialing boards.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 227.51 (3) of the statutes is renumbered 227.51 (3) (a) and amended to read:

227.51 (3) (a) Except as otherwise specifically provided by law, no revocation, suspension, annulment, or withdrawal of any license is lawful unless the agency gives notice by mail to the licensee of facts or conduct which warrant the intended action and the licensee is given an opportunity to show compliance with all lawful requirements for the retention of the license.

(b) If an agency finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the agency may order the summary suspension of a license ~~may be ordered~~ pending proceedings for revocation or other action. Such proceedings shall be promptly instituted and determined.

SECTION 2. 227.51 (3) (c) of the statutes is created to read:

227.51 (3) (c) If an agency finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, the agency may order the summary limitation of a license pending proceedings for revocation or other action. Such

proceedings shall be promptly instituted and determined. This paragraph applies only to an agency described in s. 440.03 (1).

SECTION 3. 440.205 of the statutes is amended to read:

440.205 Administrative warnings. If the department or a board, examining board, or affiliated credentialing board in the department determines during an investigation that there is evidence of misconduct by a credential holder, the department, board, examining board, or affiliated credentialing board may close the investigation by issuing an administrative warning to the credential holder. The department or a board, examining board or affiliated credentialing board may issue an administrative warning under this section only if the department or board, examining board or affiliated credentialing board determines that no further action is warranted because the complaint involves ~~a first occurrence~~ of a minor violation and the issuance of an administrative warning adequately protects the public by putting the credential holder on notice that any subsequent violation may result in disciplinary action. If an administrative warning is issued, the credential holder may obtain a review of the administrative warning through a personal appearance before the department, board, examining

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

board, or affiliated credentialing board that issued the administrative warning. Administrative warnings do not constitute an adjudication of guilt or the imposition of discipline and may not be used as evidence that the credential holder is guilty of the alleged misconduct. However, if a subsequent allegation of misconduct by the credential holder is received by the department or a board, examining board or affiliated credentialing board in the department, the matter relating to the issuance of the administrative warning may be reopened and disciplinary proceedings may be commenced on the matter, or the administrative warning may be used in any subsequent disciplinary proceeding as evidence that the credential holder had actual knowledge that the misconduct that was the basis for the administrative warning was contrary to law. The record that an administrative warning was issued shall be a public record. The contents of the administrative warning shall be private and confidential. The department shall promulgate rules establishing uniform procedures for the issuance and use of administrative warnings.

SECTION 4. 440.22 (1) of the statutes is amended to read:

440.22 (1) In this section, “costs of the proceeding” means the compensation and reasonable expenses of hearing examiners and of prosecuting attorneys for the department, examining board or affiliated credentialing board, or other board, a reasonable disbursement for the service of process or other papers, amounts actually paid out for certified copies of records in any public office, postage, telephoning, adverse examinations and depositions and copies, expert witness fees, witness fees and expenses, compensation and reasonable expenses of experts, paralegals, real estate specialists, and investigators, and compensation and expenses of a reporter for recording and transcribing testimony.

SECTION 5. 440.22 (2) of the statutes is amended to read:

440.22 (2) In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board, or other board in the department orders suspension, limitation, or revocation of the credential, assesses a forfeiture, or reprimands the holder, the department, examining board, affiliated credentialing board, or other board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department. Interest shall accrue on costs assessed under this subsection at a rate of 12 percent per year compounded annually beginning on the date that payment of the costs are due as ordered by the department, examining board, affiliated credentialing board, or other board. Upon the request of the department of safety and professional services, the department of justice may commence an action to

recover costs assessed under this subsection and any accrued interest.

SECTION 6. 448.02 (4) of the statutes, as affected by 2013 Wisconsin Act 240, is amended to read:

448.02 (4) ~~SUSPENSION OR LIMITATION~~ PENDING HEARING. (a) The board may summarily suspend or limit any license or certificate granted by the board when the board has in its possession evidence establishing probable cause to believe that the holder of the license or certificate has violated the provisions of this subchapter and that it is necessary to suspend or limit the license or certificate immediately to protect the public health, safety, or welfare. The holder of the license or certificate shall be granted an opportunity to be heard during the determination of probable cause. The board chair and 2 board members designated by the chair or, if the board chair is not available, the board vice-chair and 2 board members designated by the vice-chair, shall exercise the authority granted by this paragraph to ~~suspend~~ summarily ~~suspend~~ or limit a license or certificate in the manner provided under par. (b).

(b) An order of summary suspension or limitation shall be served upon the holder of the license or certificate in the manner provided in s. 801.11 for service of summons. The order of summary suspension or limitation shall be effective upon service or upon actual notice of the summary suspension or limitation given to the holder of the license or certificate or to the attorney of the license or certificate holder, whichever is sooner. A notice of hearing commencing a disciplinary proceeding shall be issued no more than 10 days following the issuance of the order of summary suspension or limitation. The order of summary suspension or limitation remains in effect until the effective date of a final decision and order in the disciplinary proceeding against the holder or until the order of summary suspension or limitation is discontinued by the board following a hearing to show cause. The holder of the license or certificate shall have the right to request a hearing to show cause why the order of summary suspension or limitation should not be continued and the order of summary suspension or limitation shall notify the holder of the license or certificate of that right. If a hearing to show cause is requested by the holder of the license or certificate, the hearing shall be scheduled on a date within 20 days of receipt by the board of the request for the hearing to show cause.

SECTION 7. 448.02 (8) (a) of the statutes, as affected by 2013 Wisconsin Act 240, is amended to read:

448.02 (8) (a) After an investigation by the board under sub. (3) (a) or by the department under s. 440.03 (3m) or (5), the board may issue a private and confidential administrative warning to a holder of a license or certificate if the board determines that there is evidence of misconduct by him or her. The board may issue an administrative warning under this paragraph only if the

board determines that no further action is warranted because the matter involves ~~a first occurrence~~ of minor misconduct and the issuance of an administrative warning adequately protects the public by putting the holder of the license or certificate on notice that any subsequent misconduct may result in disciplinary action. The board shall review the determination if the holder of the license or certificate makes a personal appearance before the board. Following the review, the board may affirm, rescind or modify the administrative warning. A holder of a license or certificate may seek judicial review under ch. 227 of an affirmation or modification of an administrative warning by the board.

SECTION 8. 448.02 (9) (intro.) of the statutes is amended to read:

448.02 (9) JUDICIAL REVIEW. (intro.) No injunction, temporary injunction, stay, restraining order or other order may be issued by a court in any proceeding for review that suspends or stays an order of the board to discipline a physician under sub. (3) (c) or to suspend or limit a physician's license under sub. (4), except upon application to the court and a determination by the court that all of the following conditions are met:

SECTION 9. 448.675 (2) of the statutes is amended to read:

448.675 (2) SUSPENSION OR LIMITATION PENDING HEARING. The affiliated credentialing board may summarily suspend or limit a license granted by the affiliated credentialing board for a period not to exceed 30 days pending hearing if the affiliated credentialing board has in its possession evidence establishing probable cause to believe that the licensee has violated the provisions of

this subchapter and that it is necessary to suspend or limit the license immediately to protect the public health, safety or welfare. The licensee shall be granted an opportunity to be heard during the determination of whether or not probable cause exists. The affiliated credentialing board may designate any of its officers to exercise the authority granted by this subsection to ~~suspend~~ summarily suspend or limit a license, for a period not exceeding 72 hours. If a license has been summarily suspended or limited by the affiliated credentialing board or any of its officers, the affiliated credentialing board may, while the hearing is in progress, extend the initial period of suspension or limitation for not more than an additional 30 days. If the licensee has caused a delay in the hearing process, the affiliated credentialing board may subsequently suspend or limit the license from the time the hearing is commenced until a final decision is issued or may delegate such authority to the hearing examiner.

SECTION 10. 450.01 (24) of the statutes is amended to read:

450.01 (24) "Wholesale distributor" means a person engaged in the wholesale distribution of prescription drugs, including manufacturers, repackagers, own-label distributors, private label distributors, jobbers, brokers, warehouses, including manufacturers' and distributors' warehouses, manufacturers' exclusive distributors, manufacturers' authorized distributors of record, prescription drug wholesalers and distributors, independent wholesale prescription drug traders, ~~3rd-party logistics providers~~, retail pharmacies that conduct wholesale distribution, and chain pharmacy warehouses that conduct wholesale distribution.