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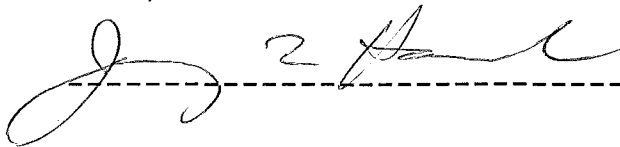
JUN 9 1993  
1:15 pm  
Revisor of Statutes  
Bureau

STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE  
LAW ENFORCEMENT STANDARDS BOARD

I, Jerry Hancock, Secretary of the Law Enforcement Standards Board and custodian of the official records, certify that the annexed rules, relating to pre-employment drug testing of applicants for law enforcement and jail officer employment, were duly approved and adopted by this board on December 1, 1992.

I further certify that this copy has been compared by me with the original on file in this department and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 123 West Washington Avenue in the city of madison, this 9th day of June, 1993.



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ORDER OF THE LAW ENFORCEMENT STANDARDS BOARD

Renumbering, amending, repealing and recreating and creating administrative rules

Introduction:

The Law Enforcement Standards Board proposes an order to renumber LES 1.03(3) to (12) to be LES 1.03(5), (6), (11), (15) to (18), (20), (22) and (23); and to create LES 1.03(3), (4), (7) through (10), (12) through (14), (19) and (21) and LES 2.02 relating to pre-employment drug testing of applicants for positions as law enforcement and jail officers.

Analysis:

Statutory Authority: 165.85(4)(c)  
Statute Interpreted: 165.85(4)(c)

The following proposed rules establish that an applicant seeking to be employed as a law enforcement or jail officer must submit to a drug test for the presence of amphetamines, cannabis opiates, cocaine and phencyclidine. Refusal to take the test, failure to appear for the test at the scheduled date, time and place without just cause or a positive test result for one of the listed controlled substances makes the applicant ineligible for employment or certification as a law enforcement or jail officer. The rule requires the Law Enforcement Standards Board to adopt specifications for drug testing laboratories and collection sites.

The Law Enforcement Standards Board further proposes to amend LES 2.01(1)(d) pertaining to an improved General Educational Development (GED) standard for law enforcement and jail officer applicants.

Analysis:

Statutory Authority: 165.85(4)(c)  
Statute Interpreted: 165.85(4)(c)

The following proposed rule improves the educational requirement for an applicant seeking to be employed as a law enforcement or jail officer. A person attempting to achieve the educational standard through General Education Development (GED) testing must attain a high school equivalency diploma instead of a certificate of general educational development. Testing for a diploma requires more highly developed levels of critical thinking and problem solving.

The Law Enforcement Standards Board additionally proposes to repeal and recreate LES 3.04(1)(c) relating to the reidentification of a basic law enforcement training course title.

Analysis:

Statutory Authority: 165.85(4)(b)1  
Statute Interpreted: 165.85(4)(b)1

The following proposed rule removes a trademarked course title and reidentifies that basic law enforcement training subject by using a generic course title.

Analyses prepared by the Wisconsin Department of Justice, Training and Standards Bureau

SECTION 1. LES 1.03(3) to (12) are renumbered:

LES 1.03(5), (6), (11), (15) to (18), (20), (22) and (23).

SECTION 2. LES 1.03(3)(4)(7)through (10)(12) through (14)(19) and (21) are created to read:

LES 1.03(3) Applicant means a person, including a currently employed law enforcement or jail officer, seeking employment as a law enforcement or jail officer in the state of Wisconsin.

(4) Approved Laboratory means a laboratory certified by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration.

(7) Collection Site means a place designated by the approved laboratory where the applicant goes for the purpose of providing a urine specimen to be analyzed for the presence of drugs.

(8) Collection Site Person means a person who instructs and assists applicants at a collection site and who receives and makes an initial examination of the urine specimen provided by those individuals.

(9) Confirmatory Test means a testing of the urine specimen performed, after an initial screening test of that specimen, by a gas chromatography/mass spectrometry (GC/MS) testing procedure or an equally rigorous scientific test approved by the board.

(10) Controlled Substance has the meaning specified in Section 161.01(4), Stats.

(12) Drug means a controlled substance as defined in Section 161.01(4), Stats.

(13) Initial Positive Test Result means a finding by an initial screening test of the presence in the tested urine of any

of the controlled substances or classes of controlled substances or their metabolites identified in s. LES 2.02(5)(b) in levels at or above the threshold detection levels identified in s. LES 2.02(5)(b).

(14) Initial Screening Test means a test of the urine specimen accomplished by immunoassay or an equally rigorous scientific test approved by the board.

(19) Positive Test Result means a finding by a confirmatory test of the presence in the tested urine of any of the controlled substances or their metabolites identified in s. LES 2.02(5)(c) in levels at or above the threshold detection levels identified in s. LES 2.02(5)(c).

(21) Prospective Employing Agency means the state or any political subdivision of the state considering employing an applicant as a law enforcement officer or any political subdivision of the state considering employing an applicant as a jail officer.

SECTION 3. LES 2.01(1)(d) is amended to read:

LES 2.01(1)(d) The applicant shall possess a Wisconsin high school diploma or a diploma issued by an out of state high school accredited by an appropriate agency of the state or shall have passed the general education development diploma test or any other test recommended by the Wisconsin department of public instruction as indicating high school ~~graduation~~ diploma level.

SECTION 4. LES 2.02(1) is created to read:

LES 2.02 PRE-EMPLOYMENT DRUG TESTING (1) TESTING REQUIREMENT. (a) The applicant shall submit to a drug test for the presence of the following controlled substances or classes of controlled substances or their metabolites:

1. amphetamines
2. cannabis or cannabinoids
3. opiates
4. cocaine
5. phencyclidine (PCP)

(b) The drug test shall be accomplished through analysis of a urine specimen from the applicant. Other specimens of blood, breath, saliva or hair may be used when minimum standards equivalent with those for urine specimens have been established by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration. The specimen collected may only be used for either of the following:

1. Tests required under par.(a).
2. Tests for other controlled substances as determined by the prospective employing agency.

(c) The costs of the urine sample collection and analysis shall be borne by the prospective employing agency.

LES 2.02(2) is created to read:

LES 2.02(2) NOTICE OF TESTING REQUIREMENT. Notice of the date, time, and place of the drug test sample collection shall be given to the applicant no more than 3 days prior to the date of

the scheduled collection. The notice shall inform the applicant that appearance for the drug test specimen collection at the stated date, time, and place is mandatory and that failure to appear without just cause to the satisfaction of the prospective employing agency or refusal to provide the specimen shall result in denial of certification by the board. The notice shall inform the applicant that a positive test result for which the applicant cannot provide a legitimate explanation to the satisfaction of the board shall result in the applicant being denied employment and being denied certification by the board. The notice shall state that the test results may be disclosed only:

(a) To the board.

(b) To the prospective employing agency or any other prospective employing agency.

(c) To the applicant or applicant's designee.

(d) To the prospective employer's designee or the board's designee, if disclosed for a purpose related to or in conjunction with an applicant's challenge to a positive test result, or an administrative action, court proceeding, or other proceeding in which the applicant challenges a denial of employment or certification.

(e) By lawful order of a court.

(f) As otherwise required by law.

LES 2.02(3) is created to read:

LES 2.02(3) SPECIMEN COLLECTION. The urine specimen shall be collected at a collection site designated by the approved laboratory specified by the prospective employing agency for the

drug testing.

(a) The applicant providing the specimen shall be positively identified by the collection site person by use of a valid photo driver's license, valid passport, or valid military identification card. If proper identification is not available, the specimen shall not be collected without contacting the prospective employing agency to make other arrangements for positive identification.

(b) The specimen shall be obtained from the applicant in a manner that complies with laboratory and collection site specifications adopted by the board and published in the policy and procedures manual of the board.

LES 2.02(4) is created to read:

LES 2.02(4) CONSEQUENCES OF POSITIVE TEST RESULT, FAILURE TO APPEAR OR REFUSAL. A positive test result for which the applicant cannot provide an explanation to the satisfaction of the board, refusal to provide the urine specimen for the drug test, or failure to appear to provide the urine specimen at the scheduled date, time, and place without just cause to the satisfaction of the prospective employing agency shall result in the applicant being denied certification by the board.

LES 2.02(5)(a) is created to read:

LES 2.02(5)(a) Testing Procedure. The drug test required by sub(1) shall be performed by an approved laboratory chosen by the prospective employing agency. Specifications for approved laboratories shall be published in the policy and procedures



manual of the board.

(a) The testing procedure shall consist of:

1. an initial screening test
2. a confirmatory test when there is a positive initial test result.

LES 2.02(5)(b) Controlled Substances. The initial screening test shall be done for the presence of amphetamines, cannabis or cannabinoids, opiates, cocaine and phencyclidine (PCP) or their metabolites in tested urine in levels at or above threshold detection levels established by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration.

LES 2.02(5)(c) Confirmation Tests. The confirmation test shall be done for the presence of amphetamines, cannabis or cannabinoids (Delta-9-tetrahydrocannabinol-9-carboxylic acid), opiates (morphine, codeine), cocaine (Benzoylecgonine) and phencyclidine (PCP) in tested urine in levels at or above threshold detection levels established by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration. Each applicant who receives a positive confirmation test shall be allowed to submit information in explanation of test results.

LES 2.02(6) is created to read:

LES 2.02(6) NOTICE OF TEST RESULTS; APPLICANT RIGHTS. The testing laboratory shall forward any positive test results to the board as well as to the prospective employing agency.

(a) Within 10 working days after receipt of the test result

report from the testing laboratory, the prospective employing agency shall inform the applicant in writing of a positive test result.

(b) If an applicant wishes to challenge a positive test result, the applicant shall, within 5 working days after receiving notice of a positive test result, submit in writing to the prospective employing agency and to the board information that the applicant believes provides a legitimate explanation for the positive test result. The applicant shall provide to the board written waivers of confidentiality for information the board believes is necessary for it to determine if there is a legitimate explanation for the positive test result.

(c) 1. Within 20 working days after receipt of the information in (b), the board shall determine if there is an acceptable legitimate explanation for the applicant's positive test result.

2. The applicant, at the applicant's expense, may select from a list of physicians approved by the board, a physician who is not the applicant's personal physician, to review the test documentation and applicant's explanatory information. The physician shall provide a written report to the board rendering an opinion and supporting rationale as to whether or not there is a legitimate explanation for the positive test result. The board shall consider this report in making its final determination.

3. The applicant shall cooperate in any investigation by the board or the selected physician needed to reach their respective determinations. Failure to cooperate shall be deemed a withdrawal of the applicant's challenge to the positive test

result.

4. The board shall immediately forward a written report of its findings and determination to the applicant and to the prospective employing agency.

5. The board shall approve a list of physicians qualified and acceptable to review drug analysis results. The list shall be published in the policy and procedures manual of the board and updated as required.

(d) Alternative Appeal Procedures. The board may approve alternative procedures by prospective employing agencies to assure applicant rights.

LES 2.02(7) is created to read:

LES 2.02(7) DRUG TEST RESULTS; CONFIDENTIALITY. (a) The prospective employing agency shall ensure that only personnel necessary to the employment decision have access to drug test records.

(b) All records pertaining to drug tests performed pursuant to sub. 1 shall remain confidential, except that the records may be released to:

(1) To the board.

(2) To the prospective employing agency or any other prospective employing agency.

(3) To the applicant or applicant's designee.

(4) To the prospective employing agency's designee, or the board's designee for a purpose related to or in conjunction with an applicant's challenge to a positive test result or an administrative action, court proceeding, or other proceeding in

which the applicant challenges a denial of employment or board certification.

(5) By lawful order of a court.

(6) As otherwise required by law.

(c) An applicant may provide written permission for any other release of records pertaining to the drug tests.

(d) The prospective employing agency shall provide copies of all necessary documentation and reports under this section to the board.

SECTION 5. LES 3.04(1)(c) is repealed and recreated to read:

LES 3.04(1)(c) Use defensive and arrest tactics.

EFFECTIVE DATES: This rule should take effect 90 days following publication in the Wisconsin Administrative Report as provided in s. 227.22(2) (Intro.), Stats.

Dated: 6/9/93

Agency: Jerry Hancock

Jerry Hancock, Secretary