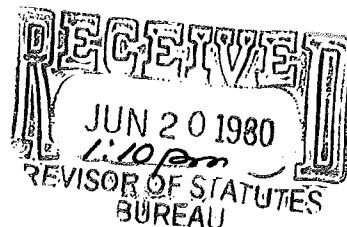


PW-MH 61

CERTIFICATE



STATE OF WISCONSIN )  
 ) SS  
DEPT. OF HEALTH & SOCIAL SERVICES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Donald E. Percy, Secretary of the Department of Health and Social Services and custodian of the official records of said department do hereby certify that the annexed rules relating to standards for alcohol and other drug abuse programs were duly approved and adopted by this department on June 20, 1980.

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

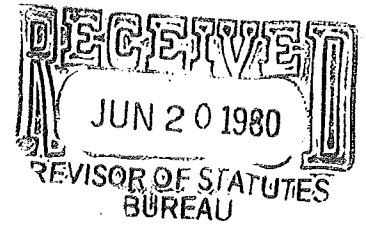
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 20th day of June, A.D. 1980.

SEAL:

Donald E. Percy, Secretary  
Department of Health and Social Services

*Dept. of Health 8-1-80*

ORDER OF THE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
ADOPTING, AMENDING  
OR REPEALING RULES



Relating to rules concerning PW-MH 61, Standards for Alcohol and Other Drug Abuse Programs.

Analysis prepared by the Department of Health and Social Services:

The effect of this repeal will be to eliminate the requirement that individuals recovering from alcohol or drug abuse be drug free for two years prior to employment. The present requirement is in contradiction to Title V, Section 504 of the Federal Rehabilitation Act of 1973, nondiscrimination on Basis of Handicap. The Federal Rules do not permit the history of a previously diagnosed handicap to be considered as a condition of employment.

Department Response to Recommendations of Legislative Council - Clearinghouse Rule 79-25.

The Federal Rehabilitation Act of 1973, Title V, Section 504, item J of sub-part A, provides three categories of the definition of handicapped. Recovering alcoholics and drug addicts fall in the second category of the definition ". . . any person who (ii) has a record of such impairment . . ."

To disqualify a job applicant, based on their previous history of a diagnosed handicap, without any indication that they have an impairment that would interfere with their ability to perform the essential functions of the job at the time of application would be a clear case of discrimination.

We also considered the Clearinghouse recommendation to modify the Administrative Rules in question to deal with current use by recovering employees rather than past use by prospective recovering employees. It is our opinion that while this may be possible, it would bring us into another problematic arena that can have far-reaching and unsuspected ramifications.

The list of problems that this would generate can be enumerated if necessary. However, it should suffice to point out that at the root of all of them is the reality that the impact of using any chemical in respect to interference with one's ability to carry out the functions of a job depends upon the disposition of the individual user. This is true regardless of the substance, the quantity of consumption, and the pattern of use. The same can be said of all individuals recovering or not. Therefore, it would seem pointless to try to develop rules to cover the infinite possibilities of individual cases. Our Department has long held that employees who have a problem with their use of psycho active substances can be most fairly dealt with through an Employee Assistance Program. While such a program requires an effort and responsible actions by the employer, it has proven to be the most effective methodology for dealing with this and other problems that cause work related dysfunctions.

Attached is a copy of the fiscal note.

Pursuant to authority vested in the Department of Health and Social Services by section 227.014(2), Wis. Stats., and sections 51.42(12) and 51.45(8), the Department of Health and Social Services hereby repeals rules interpreting section 51.42(12), Wis. Stats., as follows:

PW-MH 61.04(1)(i) is repealed.  
PW-MH 61.05(1)(b) is repealed.  
PW-MH 61.05(1)(c)3 is repealed.

The repeals contained in this order shall take effect on the first day of the month following its publication in the Wisconsin Administrative Register as provided in section 227.026(1).

Dated:

WISCONSIN DEPARTMENT OF HEALTH  
AND SOCIAL SERVICES

Seal:

  
\_\_\_\_\_  
DONALD E. PERCY  
SECRETARY

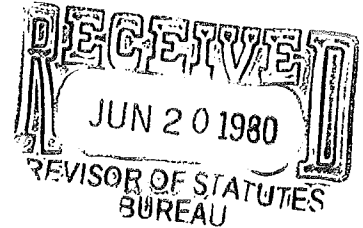


State of Wisconsin \ DEPARTMENT OF HEALTH AND SOCIAL SERVICES

OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

119 KING STREET  
MADISON, WISCONSIN 53702  
PHONE (608) 266-9664

June 20, 1980



Mr. Orland Prestegard  
Revisor of Statutes  
411 West, State Capitol  
Madison, Wisconsin 53702

Dear Mr. Prestegard:

As provided in section 227.023, Wis. Stats., there is hereby submitted a certified copy of PW-MH 61, Standards for Alcohol and Other Drug Abuse Programs.

This rule is being submitted to the Secretary of State as required by section 227.023, Wis. Stats.

Sincerely,

Donald E. Percy  
SECRETARY

Enclosure