

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## ***RULES CLEARINGHOUSE***

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## **CLEARINGHOUSE RULE 99-015**

### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### **1. Statutory Authority**

Section DOC 330.11 (1) (b) states that, in a hearing regarding the pharmacological treatment of a probationer or parolee, no privilege other than the attorney-client privilege is applicable. However, s. 227.45 (1), Stats., states that an agency or hearing examiner in a contested case must give effect to the rules of privilege recognized by law. Is the pharmacological treatment hearing not a contested case or does specific statutory authority exist for s. DOC 330.11 (1) (b)?

#### **2. Form, Style and Placement in Administrative Code**

a. In s. DOC 330.05 (1), the title should either be deleted or a title should be created for sub. (2) as well. [See s. 1.05 (1), Manual, and s. DOC 330.11.] If titles are used for these subsections, they should be written in solid capital letters. [See s. 1.05 (2) (c), Manual.]

b. In s. DOC 330.07 (2), the word “will” should be replaced by the word “shall.”

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In s. DOC 330.01, “s. 304.06 Stats.” should be replaced with “s. 304.06 (1q) (a), Stats.” This comment also applies to s. DOC 330.03 (14).

b. In s. DOC 330.06 (2), the notation “s.” should be inserted before the cross-reference.

c. In s. DOC 330.15 (5), it appears that the reference to “sub (3)” should be replaced by a reference to “s. DOC 330.11 (3) (a).”

### 5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The introductory clause for the rule-making order should state that the order creates ch. DOC 330.

b. In the plain language analysis, the statutes listed as statutory authority and statutes interpreted should be listed in numerical order. In addition, the initial statement of statutory authority is not consistent with the statement of authority in s. DOC 330.02. These statements should be reconciled.

c. In the first paragraph of the analysis, the word “promulgated” should be inserted following the phrase “These rules are.” In the second paragraph, the word “offenders” should be replaced by the word “offender’s.”

d. In s. DOC 330.03 (intro.), the sentence should end with a colon. Also, a comma should be inserted after “indicated.”

e. In s. DOC 330.03 (1), “levels of” should be inserted before “testosterone.”

f. In s. DOC 330.03 (15), “of corrections” should be deleted. Also, “employee” should be spelled “employe.”

g. Section DOC 330.03 (16) should be rewritten to read: “Therapeutic level” means the hormone level that, as determined by the treating physician, is the intended effect of pharmacological treatment on an offender.

h. In s. DOC 330.04 (2) and (4), “when” should be replaced with “if.”

i. In s. DOC 330.04, it appears that sub. (3) should precede sub. (2) in order to accurately track the chronology of events in determining that pharmacological treatment is required. Also, in sub. (2), the use of the word “may” implies that the department may determine that a serious child sex offender should not be the subject to pharmacological treatment under certain circumstances. However, these circumstances are not specified.

j. In s. DOC 330.05 (2) (a), the word “a” should be inserted before the phrase “psychiatric history.” In sub. (2) (b), the phrase “an antiandrogen or chemical equivalent” should be replaced by the defined term “pharmacological treatment.” In sub. (2) (d), where are the protocols for treatment, clinical and medical evaluations to be found?

k. In s. DOC 330.06 (1), “A” should be replaced with “The” and “to be” should be inserted before “a proper medical subject.”

l. In s. DOC 330.07 (1), could there be clarification as to how the department will establish rules and conditions of supervision regarding pharmacological treatment in writing? In addition, should these rules also specify possible sanctions an offender may face?

m. It appears that ss. DOC 330.06 and 330.07 should follow the rule provisions regarding the pharmacological treatment hearing.

n. In s. DOC 330.10, it would be helpful to have a citation to indicate what the program review committee process is. [See also s. DOC 330.14 (2).]

o. In s. DOC 330.11 (1) (intro.), the introduction should contain introductory material, such as, "In the hearing:".

p. In s. DOC 330.11 (3) (a) 2. and 3., the sentences should begin with "That the offender."

q. In s. DOC 330.12, the word "or" should be inserted before the word "supervision" and the word "in" should be inserted before the phrase "the direct supervision."

r. In s. 330.14 (1), it is unclear what is meant by "division administrator" in this section. Since this is the only time the phrase is used in the chapter, it would be clearer to delete the definition and clarify in s. DOC 330.03 (4) to which division administrator or administrators an offender of the department may appeal.

s. Section DOC 330.17 (1) should clarify that an offender may be sanctioned only for refusing to take medications after there has been a hearing (unless waived) at which it was determined that the department could order that the offender take the medications. Also, in sub. (1), the first comma should be replaced by the word "or."