

CR 90-26

CERTIFICATE

STATE OF WISCONSIN

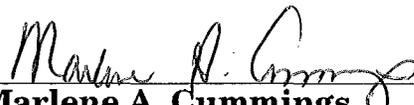
DEPARTMENT OF REGULATION AND LICENSING

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Marlene A. Cummings, Secretary of the Wisconsin Department of Regulation and Licensing and custodian of the official records of the Department, do hereby certify that the annexed rules were duly approved and adopted by the Department of Regulation and Licensing on the 7th day of December, 1990.

I further certify that said copy has been compared by me with the original on file in this office 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 1400 East Washington Avenue, Madison, Wisconsin, this 7th day of December, 1990.



Marlene A. Cummings
Secretary
Department of Regulation
and Licensing

RECEIVED

DEC 10 1990
3:10pm
Revisor of Statutes
Bureau

2-1-91

DEC 10 1990

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING

Revisor of Statutes
Bureau

IN THE MATTER OF RULE-MAKING	:	ORDER OF THE
PROCEEDINGS BEFORE THE	:	DEPARTMENT OF REGULATION AND
DEPARTMENT OF REGULATION	:	LICENSING ADOPTING RULES
AND LICENSING	:	Clearinghouse Rule 90-26

ORDER

An order of the Department of Regulation and Licensing to create chapter RL 7 of the administrative code relating to the impaired professionals procedure.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutory authority: ss. 15.08 (5) (b), 227.11 (2) (a), 440.03, Stats.
Statutes interpreted: s. 440.03, Stats.

These proposed rules are necessitated by the need to protect the public from licensees who are impaired. The rules offer an option to impaired licensees, in some cases, instead of the formal disciplinary procedure. Qualified licensees without other substantial violations and committed to their own recovery and rehabilitation may utilize this procedure. The department does not minimize prosecution of serious violations. It does, however, deal with impairment within the department's enforcement jurisdiction.

TEXT OF RULE

CHAPTER RL 7
IMPAIRED PROFESSIONALS PROCEDURE

RL 7.01 AUTHORITY AND INTENT.

RL 7.02 DEFINITIONS.

RL 7.03 REFFERAL TO AND ELIGIBILITY FOR THE PROCEDURE.

RL 7.04 REQUIREMENTS FOR PARTICIPATION.

RL 7.05 AGREEMENT FOR PARTICIPATION.

RL 7.06 STANDARDS FOR APPROVAL OF TREATMENT FACILITIES OR INDIVIDUAL THERAPISTS.

RL 7.07 INTRADEPARTMENTAL REFERRAL.

RL 7.08 RECORDS.

RL 7.09 REPORT.

RL 7.10 APPLICABILITY OF PROCEDURES TO DIRECT LICENSING BY THE DEPARTMENT.

SECTION 1. Chapter RL 7 is created to read:

CHAPTER RL 7 (title)

IMPAIRED PROFESSIONALS PROCEDURE

RL 7.01 AUTHORITY AND INTENT. (1) The rules in this chapter are adopted pursuant to authority in ss. 15.08 (5) (b), 51.30, 146.82, 227.11, and 440.03, Stats.

(2) The intent of the department in adopting rules in this chapter is to protect the public from licensees who are impaired by reason of their abuse of alcohol or other drugs. This goal will be advanced by providing an option to the formal disciplinary process for qualified licensees committed to their own recovery. This procedure is intended to apply when allegations are made that a licensee has practiced a profession while impaired by alcohol or other drugs or when a licensee contacts the department and requests to participate in the procedure. It is not intended to apply in situations where allegations exist that a licensee has committed violations of law, other than practice while impaired by alcohol or other drugs, which are substantial. The procedure may then be utilized in selected cases to promote early identification of chemically dependent professionals and encourage their rehabilitation. Finally, the department's procedure does not seek to diminish the prosecution of serious violations but rather it attempts to address the problem of alcohol and other drug abuse within the enforcement jurisdiction of the department.

(3) In administering this program, the department intends to encourage board members to share professional expertise so that all boards in the department have access to a range of professional expertise to handle problems involving impaired professionals.

RL 7.02 DEFINITIONS. In this chapter: (1) "Board" means any examining board attached to the department and the real estate board.

(2) "Board liaison" means the board member designated by the board as responsible for approving licensees for the impaired professionals procedure under s. RL 7.03, for monitoring compliance with the requirements for participation under s. RL 7.04 and for performing other responsibilities delegated to the board liaison under these rules.

(3) "Department" means the department of regulation and licensing.

(4) "Division" means the division of enforcement in the department.

(5) "Informal complaint" means any written information submitted by any person to the division, department or any board which requests that a disciplinary proceeding be commenced against a licensee or which alleges facts, which if true, warrant discipline. "Informal complaint" includes requests for disciplinary proceedings under s. 440.20, Stats.

(6) "Licensee" means a person holding any license, permit, certificate or registration granted by the department or any board.

(7) "Procedure" means the impaired professionals procedure.

RL 7.03 REFERRAL TO AND ELIGIBILITY FOR THE PROCEDURE. (1) All informal complaints involving allegations of impairment due to alcohol or chemical dependency shall be screened and investigated pursuant to s. RL 2.035. After investigation, informal complaints involving impairment may be referred to the procedure and considered for eligibility as an alternative to formal disciplinary proceedings under ch. RL 2.

(2) A licensee who has been referred to the procedure and considered for eligibility shall be provided with an application for participation, a summary of the investigative results in the form of a draft statement of conduct to be used as a basis for the statement of conduct under s. RL 7.05 (1) (a), and a written explanation of the licensee's options for resolution of the matter through participation in the procedure or through the formal disciplinary process pursuant to ch. RL 2.

(3) Eligibility for the procedure shall be determined by the board liaison who shall review all relevant materials including investigative results and the licensee's application for participation. Eligibility shall be determined upon criteria developed by each licensing authority which shall include at a minimum the licensee's past or pending criminal, disciplinary or malpractice record, the circumstances of the licensee's referral to the department, the seriousness of other alleged violations and the licensee's prognosis for recovery. The decision on eligibility shall be consistent with the purposes of these procedures as described in s. RL 7.01 (2).

(4) Prior to the signing of an agreement for participation the licensee shall obtain a comprehensive assessment for chemical dependency from a treatment facility or individual therapist approved under s. RL 7.06. The licensee shall arrange for the treatment facility or individual therapist to file a copy of its assessment with the board liaison. The assessment shall include a statement describing the licensee's prognosis for recovery. The board liaison and the licensee may agree, in writing, to waive this requirement.

(5) If a licensee is determined to be ineligible for the procedure, the licensee shall be referred to the division for prosecution.

(6) A licensee determined to be ineligible for the procedure by the board liaison may, within 10 days of notice of the determination, request the board to review the board liaison's adverse determination.

RL 7.04 REQUIREMENTS FOR PARTICIPATION. (1) A licensee who participates in the procedure shall:

(a) Sign an agreement for participation under s. RL 7.05;

(b) Remain free of alcohol, controlled substances, and prescription drugs, unless prescribed for a valid medical purpose;

(c) Timely enroll and participate in a program for the treatment of chemical dependency conducted by a facility or individual therapist approved pursuant to s. RL 7.06;

(d) Comply with any treatment recommendations and work restrictions or conditions deemed necessary by the board liaison;

(e) Submit random witnessed screens for alcohol or controlled substances, as required by the board liaison;

(f) Execute releases valid under state and federal law in the form shown in Appendix I to allow the board liaison access to the licensee's counseling, treatment and monitoring records;

(g) Have the licensee's supervising therapist and work supervisors file quarterly reports with the board liaison;

(h) Notify the board liaison of any changes in the licensee's employer within 5 days; and

(i) File quarterly reports documenting the licensee's attendance at meetings of self-help groups such as alcoholics anonymous or narcotics anonymous.

(2) If the board liaison determines, based on consultation with the person authorized to provide treatment to the licensee or monitor the licensee's enrollment or participation in the procedure, or monitor any drug screening requirements or restrictions on employment under sub. (1), that a licensee participating in the procedure has failed to meet any of the requirements set under sub. (1), the board liaison may request that the board dismiss the licensee from the procedure. The board shall review the complete record in making this determination. If the licensee is dismissed the matter shall be referred to the division.

(3) If a licensee violates the agreement and the board liaison does not dismiss and refer the licensee to the division, then a new admission under s. RL 7.05 (1) (a) shall be obtained for violations which are substantiated.

RL 7.05 AGREEMENT FOR PARTICIPATION. (1) The agreement for participation in the procedure shall at a minimum include:

(a) A statement describing conduct the licensee agrees occurred relating to participation in the procedure and an agreement that the statement may be used as evidence in any disciplinary proceeding under ch. RL 2;

(b) An acknowledgement by the licensee of the need for treatment for chemical dependency;

(c) An agreement to participate at the licensee's expense in an approved treatment regimen;

(d) An agreement to submit to random, witnessed drug screens at the licensee's expense, if deemed necessary by the board;

(e) An agreement to submit to practice restrictions at any time during the treatment regimen as deemed necessary by the board;

(f) An agreement to furnish the department with signed consents for release of information from treatment providers and employers to the board liaison for the purpose of monitoring the licensee's participation in the procedure;

(g) An agreement to authorize the board liaison to release information described in s. RL 7.05 (1) (a), (c), and (e), the fact that a licensee has been dismissed under s. RL 7.07 (3) (a) or violated terms of the agreement in s. RL 7.04 (b) to (e) and (h) concerning the licensee's participation in the procedure to the employer, therapist or treatment facility identified by the licensee and an agreement to authorize the board liaison to release the results of random, witnessed drug screens under s. RL 7.05 (1) (d) to the therapist identified by the licensee; and

(h) An agreement to participate in the procedure for a period of time as established by the board.

(2) The board or board liaison may include additional requirements for an individual licensee, if the circumstances of the informal complaint or the licensee's condition warrant additional safeguards.

(3) The board or board liaison may include a promise of confidentiality that all or certain records shall remain closed and not available for public inspection and copying.

RL 7.06 STANDARDS FOR APPROVAL OF TREATMENT FACILITIES OR INDIVIDUAL THERAPISTS. (1) The board or board liaison shall approve a treatment facility designated by a licensee for the purpose of participation in the procedure if:

(a) The facility is certified by appropriate national or state certification agencies;

(b) The treatment program focus at the facility is on the individual with drug and alcohol abuse problems;

(c) Facility treatment plans and protocols are available to the board liaison;

(d) The facility has a random witnessed monitoring program of blood or urine as part of its treatment, or if drug and alcohol screens are not included, the facility personnel assigned to the care of the licensee support such screens as an adjunct to the treatment they provide; and

(e) The facility, through the licensee's supervising therapist, agrees to file reports as required by the board liaison, including quarterly progress reports and immediate reports if a licensee withdraws from therapy, submits a positive blood or urine screen, relapses, or is believed to be in an unsafe condition to practice.

(2) As an alternative to participation by means of a treatment facility, a licensee may designate an individual therapist for the purpose of participation in the procedure. The board liaison shall approve an individual therapist who:

(a) Has credentials and experience determined by the board liaison to be in the licensee's area of need;

(b) Agrees to perform an appropriate assessment of the licensee's therapeutic needs and to establish and implement a comprehensive treatment regimen for the licensee;

(c) Forwards copies of the therapist's treatment regimen and office protocols to the board liaison;

(d) Agrees to establish a random witnessed monitoring program of blood or urine as part of the licensee's treatment regimen, or if drug or alcohol screens are not established through the therapist, the therapist agrees to support such screens as an adjunct to the treatment provided; and

(e) Agrees to file reports as required by the board liaison, including quarterly progress reports and immediate reports if a licensee withdraws from therapy, submits a positive blood or urine screen, relapses, or is believed to be in an unsafe condition to practice.

(3) If a board liaison does not approve a treatment facility or therapist as requested by the licensee, the licensee may, within 10 days of notice of the determination, request the board to review the board liaison's adverse determination.

RL 7.07 INTRADEPARTMENTAL REFERRAL. (1) A licensee who contacts the department and requests to participate in the procedure shall be referred to the board liaison for determination of acceptance into the procedure.

(2) The division may refer individuals named in informal complaints to the board liaison for acceptance into the procedure.

(3) The board liaison may refer cases involving the following to the division for investigation or prosecution:

(a) Licensees participating in the procedure who are dismissed for failure to meet the requirements of their rehabilitation program or who otherwise engage in behavior which should be referred to prevent harm to the public;

(b) Licensees who apply and who are determined to be ineligible for the procedure where the board liaison is in possession of information indicating a violation of law;

(c) Licensees who do not complete an agreement for participation where the board liaison is in possession of information indicating a violation of law; or,

(d) Licensees initially referred by the division to the board liaison who fail to complete an agreement for participation.

RL 7.08 RECORDS. (1) CUSTODIAN. All records relating to the procedure including applications for participation, agreements for participation and reports of participation shall be maintained in the custody of the department secretary or the secretary's designee.

(2) AVAILABILITY OF PROCEDURE RECORDS FOR PUBLIC INSPECTION. Any requests to inspect procedure records shall be made to the custodian. The custodian shall evaluate each request on a case by case basis using the applicable law relating to open records and giving appropriate weight to relevant factors in order to determine whether public interest in nondisclosure outweighs the public interest in access to the records, including the reputational interests of the licensee, the importance of confidentiality to the functional integrity of the procedure, the existence of any pledge of confidentiality, statutory or common law rules which accord a status of confidentiality to the records and the likelihood that release of the records will impede an investigation.

(3) TREATMENT RECORDS. Treatment records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by county departments under ss. 51.42 or 51.437, Stats., and their staffs and by treatment facilities are confidential under s. 51.30, Stats., and shall not be made available for public inspection.

(4) PATIENT HEALTH CARE RECORDS. Patient health care records are confidential under s. 146.82, Stats., and shall not be made available to the public without the informed consent of the patient or of a person authorized by the patient or as provided under s. 146.82 (2), Stats.

RL 7.09 REPORT. The board liaison shall report on the procedure to the board at least twice a year and if requested to do so by a board.

RL 7.10 APPLICABILITY OF PROCEDURES TO DIRECT LICENSING BY THE DEPARTMENT. This procedure may be used by the department in resolving complaints against persons licensed directly by the department if the department has authority to discipline the licensee. In such cases, the department secretary shall have the authority and responsibility of the "board" as the term is used in the procedure and shall designate an employee to perform the responsibilities of the "board liaison."

Appendix I

CONSENT FOR RELEASE OF INFORMATION

I, (#1), hereby authorize (#2) to provide the board liaison for the Department of Regulation and Licensing Impaired Professionals Procedure, P.O. Box 8935, Madison, Wisconsin 53708, or persons designated by the board liaison who are directly involved in administration of the procedure, with (#3). I further authorize (#4) to discuss with the board liaison or the board liaison's designee any matter relating to the records provided and to allow the board liaison or the board liaison's designee to examine and copy any records or information relating to me.

I hereby also authorize the board liaison or the board liaison's designee to provide (#5) with copies of any information provided to the board liaison pursuant to this consent for release of information authorizing the release of information to the board liaison from those persons and institutions.

This consent for release of information is being made for the purposes of monitoring my participation in the Impaired Professionals Procedure, and any subsequent procedures before the Wisconsin (#6); and for the further purpose of permitting exchange of information between the board liaison or the board liaison's designee and persons or institutions involved in my participation in the Impaired Professionals Procedure where such exchange is necessary in the furtherance of my treatment.

Unless revoked earlier, this consent is effective until (#7). I understand that I may revoke this consent at any time and that information obtained as a result of this consent may be used after the above expiration date or revocation. A reproduced copy of this consent form shall be as valid as the original.

I understand that should I fail to execute this consent for release of information, I shall be ineligible to participate in the Impaired Professionals Procedure. I also understand that should I revoke this consent prior to completion of my participation in the Impaired Professionals Procedure, I will be subject to dismissal from the procedure.

I understand that the recipient of information provided pursuant to this Consent for Release of Information is not authorized to make any further disclosure of the information without my specific written consent, or except as otherwise permitted or required by law.

Dated this _____ day of _____, 19_____.

Signature of IPP Participant

Participant's Date of Birth

INSERTIONS

1. Participant
2. Persons and institutions provided with releases for provision of information to the department
3. Examples: Drug and alcohol treatment records
Mental health/psychiatric treatment records
Personnel records; work records
Results of blood or urine screens
4. Persons or institutions given authorization
5. Persons or institutions given authorization in the first paragraph
6. Name of board
7. Date to which consent is effective

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22(2)(intro), Stats.

Dated 12/7/90

Agency



Marlene A. Cummings, Secretary
Department of Regulation
and Licensing

RULES-239
12/06/90

RECEIVED

DEC 10 1990

Revisor of Statutes
Bureau

CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

DATE: December 10, 1990

TO: Gary Poulson
Assistant Revisor of Statutes

FROM: Pamela Haack, Administrative Assistant
Department of Regulation and Licensing

SUBJECT: Final Rulemaking Order

RECEIVED
DEC 10 1990
Revisor of Statutes
Bureau

Agency: DEPARTMENT OF REGULATION AND LICENSING

Clearinghouse Rule: 90-26

Attached is a copy and a certified copy of a final order adopting rules.

Would you please publish these rules in the code.

Thank you.