

CERTIFICATE

**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Marlene A. Cummings, Secretary, Wisconsin Department of Regulation and Licensing and custodian of the official records of the Department of Regulation and Licensing, hereby certify that the annexed rules were duly approved and adopted by the Department of Regulation and Licensing on the 4th day of December, 1998.

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.

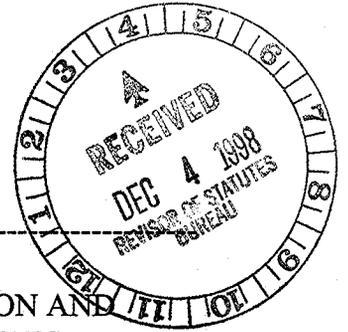


IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 1400 East Washington Avenue, Madison, Wisconsin this 4th day of December, 1998.

Marlene A. Cummings

**Marlene A. Cummings, Secretary
Department of Regulation and
Licensing**

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING



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 98-107)

ORDER

An order of the Department of Regulation and Licensing to *create* chapter RL 8 and Appendix I of ch. RL 8, relating to the issuance and use of administrative warnings.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: s. 227.11 (2), Stats., and s. 440.205, Stats., as created by 1997 Wisconsin Act 139.

Statutes interpreted: s. 440.205, Stats.

Section 440.205, Stats., as created by 1997 Wisconsin Act 139, authorizes the issuance and use of administrative warnings by the Department of Regulation and Licensing, as well as by any board, examining board or affiliated credentialing board in the department. These proposed rules are submitted pursuant to the statute's requirement that it "promulgate rules establishing uniform procedures for the issuance and use of administrative warnings." Accordingly, the proposed rules would be available to all credentialing authorities referenced in chs. 440 to 480, Stats. This would include the Medical Examining Board which received the authority to issue administrative warnings by virtue of 1997 Wisconsin Act 311.

Section RL 8.01 sets forth the authority and scope of the rule establishing uniform procedures for the issuance and use of administrative warnings by the department and credentialing authorities established under chs. 440 to 480, Stats.

Section RL 8.02 provides definitions of several key terms within the statute and under the rule. One of the primary requirements under the statute for permitting the issuance of an administrative warning is that the matter must involve "a first occurrence of a minor violation."

Section RL 8.02 (5) defines a "first occurrence" as one in which the credential holder has not previously been: (a) the subject of a disciplinary proceeding pursuant to a formal complaint; (b) the subject of an informal complaint from the public alleging the same or similar conduct; or (c) the subject of formal disciplinary action in Wisconsin or another jurisdiction.

Section RL 8.02 (6) defines the included phrase “minor violation” as one in which: (a) no significant harm was caused by the credential holder’s conduct; (b) continued practice would cause no immediate danger to the public; (c) the likely result of any disciplinary proceeding brought against the credential holder would be a reprimand or educational limitation; and (d) the credential holder has not previously received an administrative warning.

Section RL 8.03 requires that an administrative warning may only be issued following a determination by the issuing credentialing authority that there is specific evidence of misconduct respecting a minor violation [as defined in s. RL 8.02 (6)], which is a first occurrence [as described under s. RL 8.02 (5)], and which, if issued, will adequately protect the public. These criteria are set forth in the rule to reflect the findings required under the language contained within 1997 Wisconsin Act 139.

Section RL 8.04 sets forth the form and procedure for notifying a credential holder respecting the issuance of an administrative warning.

Sections RL 8.06 and 8.06 address the procedures by which a credential holder may obtain a review of the administrative warning issued by a credentialing authority. Respectively, they provide the credential holder with 20 days to request a review of the administrative warning, and for the disciplinary authority to notify the credential holder of the time and place for the review within 45 days of the receipt of the request. Section RL 8.06 (2) to (5) set forth general procedures applicable to handling the review process.

Section RL 8.07 addresses the applicable fees for obtaining a transcript of the review conducted for appeal or other purposes.

TEXT OF RULE

SECTION 1. Chapter RL 8 is created to read:

CHAPTER RL 8

ADMINISTRATIVE WARNINGS

RL 8.01 AUTHORITY AND SCOPE. Rules in this chapter are adopted under the authority of s. 440.205, Stats., to establish uniform procedures for the issuance and use of administrative warnings.

RL 8.02 DEFINITIONS. As used in s. 440.205, Stats., and in this chapter:

(1) “Credential” means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480, Stats.

(2) “Department” means the department of regulation and licensing.

(3) "Disciplinary authority" means the department or an attached examining board, affiliated credentialing board or board having authority to reprimand a credential holder.

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

(5) "First occurrence" means any of the following:

(a) The credential holder has never been charged as a respondent in a formal complaint filed under ch. RL 2.

(b) Other than the matter pending before the disciplinary authority, no informal complaint alleging the same or similar misconduct has been filed with the department against the credential holder.

(c) The credential holder has not been disciplined by a disciplinary authority in Wisconsin or another jurisdiction.

(6) "Minor violation" means all of the following:

(a) No significant harm was caused by misconduct of the credential holder.

(b) Continued practice by the credential holder presents no immediate danger to the public.

(c) If prosecuted, the likely result of prosecution would be a reprimand or a limitation requiring the credential holder to obtain additional education.

(d) The complaint does not warrant use of prosecutorial resources.

(e) The credential holder has not previously received an administrative warning.

(7) "Misconduct" means a violation of a statute or rule related to the profession or other conduct for which discipline may be imposed under chs. 440 to 480, Stats.

RL 8.03 FINDINGS BEFORE ISSUANCE OF AN ADMINISTRATIVE WARNING.

Before issuance of an administrative warning, a disciplinary authority shall make all of the following findings:

(1) That there is specific evidence of misconduct by the credential holder.

(2) That the misconduct is a first occurrence for the credential holder.

(3) That the misconduct is a minor violation of a statute or rule related to the profession or other conduct for discipline may be imposed.

(4) That issuance of an administrative warning will adequately protect the public.

RL 8.04 ISSUANCE OF AN ADMINISTRATIVE WARNING. (1) An administrative warning shall be substantially in the form shown in Appendix I.

(2) An administrative warning may be issued to a credential holder by mailing the administrative warning to the last address provided by the credential holder to the department. Service by mail is complete on the date of mailing.

RL 8.05 REQUEST FOR A REVIEW OF AN ADMINISTRATIVE WARNING. A credential holder who has been issued an administrative warning may request the disciplinary authority to review the issuance of the administrative warning by filing a written request with the disciplinary authority within 20 days after the mailing of the administrative warning. The request shall be in writing and set forth:

(1) The credential holder's name and address.

(2) The reason for requesting a review.

RL 8.06 PROCEDURES. The procedures for an administrative warning review are:

(1) Within 45 calendar days of receipt of a request for review, the disciplinary authority shall notify the credential holder of the time and place of the review.

(2) No discovery is permitted. A credential holder may inspect records under s. 19.35, Stats., the public records law.

(3) The disciplinary authority or its designee shall preside over the review. The review shall be recorded by audio tape unless otherwise specified by the disciplinary authority.

(4) The disciplinary authority shall provide the credential holder with an opportunity to make a personal appearance before the disciplinary authority and present a statement. The disciplinary authority may request the division to appear and present a statement on issues raised by the credential holder. The disciplinary authority may establish a time limit for making a presentation. Unless otherwise determined by the disciplinary authority, the time for making a personal appearance shall be 20 minutes.

(5) If the credential holder fails to appear for a review, or withdraws the request for a review, the disciplinary authority may note the failure to appear in the minutes and leave the administrative warning in effect without further action.

RL 8.07 TRANSCRIPTION FEES. (1) The fee charged for a transcript of a review under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of \$1.75 per page and a copying charge of \$.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of \$.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of \$.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigence signed under oath.

SECTION 2. Appendix I of Chapter RL 8 is created to read:

APPENDIX I

State of Wisconsin

DEPARTMENT OF REGULATION AND LICENSING
[DISCIPLINARY AUTHORITY]
ADMINISTRATIVE WARNING

This administrative warning is issued by the {disciplinary authority} to {credential holder} pursuant to s. 440.205, Stats. The {disciplinary authority} makes the following findings:

- 1) That there is evidence of professional misconduct by {credential holder}, to wit:
- 2) That this misconduct is a first occurrence for {credential holder}.
- 3) That this misconduct is a minor violation of {statute or rule}.
- 4) That issuance of this administrative warning will adequately protect the public and no further action is warranted.

Therefore, the {disciplinary authority} issues this administrative warning and hereby puts the {credential holder} on notice that any subsequent violation may result in disciplinary action. The investigation of this matter is hereby closed.

Date: _____

Signature of authorized representative
For {Disciplinary Authority}

Right to Review

You may obtain a review of this administrative warning by filing a written request with the {disciplinary authority} within 20 days of mailing of this warning. The review will offer the credential holder an opportunity to make a personal appearance before the {disciplinary authority}.

*The record that this administrative warning was issued is a public record.
The content of this warning is private and confidential.*

(END OF TEXT OF RULE)

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 12/4/98

Agency Marlene A. Cummings
Marlene A. Cummings, Secretary
Department of Regulation and Licensing

g:\rules\warning.doc
12/4/98



State of Wisconsin

DEPARTMENT OF REGULATION AND LICENSING

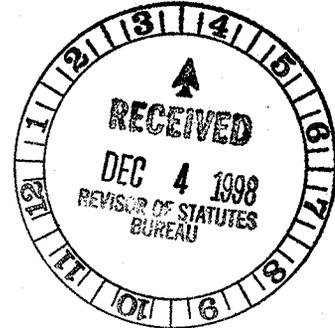
CORRESPONDENCE/MEMORANDUM

DATE: December 4, 1998

TO: Gary Poulson
Assistant Revisor of Statutes

FROM: Pamela A. Haack, Administrative Rules Coordinator
Department of Regulation and Licensing
Office of Administrative Rules

SUBJECT: Final Order Adopting Rules



Agency: DEPARTMENT OF REGULATION AND LICENSING

Attached is a copy and a certified copy of a final order adopting rules relating to the issuance and use of administrative warnings. Would you please publish these rules in the register.

Please stamp or sign a copy of this letter to acknowledge receipt.

Thank you.