WISCONSIN STATUTES

AND

ADMINISTRATIVE CODE

RELATING TO THE PRACTICE OF NURSING

APRIL 2003

State of Wisconsin
Department of Regulation and Licensing
Board of Nursing
1400 E. Washington Avenue
PO Box 8935
Madison WI 53708

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INTRODUCTION

The Board of Nursing licenses and regulates nurses. The Board of Nursing is composed of members of the profession and public members who are appointed by the Governor and confirmed by the Senate.

The Department of Regulation and Licensing is an umbrella agency providing administrative services to various professional boards. Within the department the Bureau of Health Service Professions provides administrative services to the Board of Nursing. Questions about board business may be directed to the board in care of the Bureau of Health Service Professions, PO Box 8935, Madison WI 53708.

This book contains statutes and rules relevant to the regulation and practice of the nursing profession in Wisconsin. These statutes and rules are part of the law of Wisconsin. To assist in using these materials, a subject index is included at the end of the book. Only a limited number of statutes and rules are included in this book.

The development of the law in this area is ongoing. Therefore, these rules and statutes may be revised subsequent to the printing of this book. Most local libraries maintain current sets of the Wisconsin Administrative Code and the Wisconsin Statutes. These documents as well as other state publications are available from the Department of Administration, Document Sales Division, PO Box 7840, Madison WI 53707.

All Wisconsin Statutes and Administrative Codes are available on the Internet at the following addresses:

Statutes: http://www.legis.state.wi.us/rsb/statutes.html

Rules: http://www.legis.state.wi.us/rsb/code/codtoc.html

CHAPTER 15
STRUCTURE OF THE EXECUTIVE BRANCH

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SUBCHAPTER I
GENERAL PROVISIONS

15.001 Declaration of policy. **(1) THREE BRANCHES OF GOVERNMENT.** The "republican form of government" guaranteed by the U.S. constitution contemplates the separation of powers within state government among the legislative, the executive and the judicial branches of the government. The legislative branch has the broad objective of determining policies and programs and review of program performance for programs previously authorized, the executive branch carries out the programs and policies and the judicial branch has the responsibility for adjudicating any conflicts which might arise from the interpretation or application of the laws. It is a traditional concept of American government that the 3 branches are to function separately, without intermingling of authority, except as specifically provided by law.

(2) GOALS OF EXECUTIVE BRANCH ORGANIZATION. (a) As the chief administrative officer of the state, the governor should be provided with the administrative facilities and the authority to carry out the functions of the governor's office efficiently and effectively within the policy limits established by the legislature.

(b) The administrative agencies which comprise the executive branch should be consolidated into a reasonable number of departments and independent agencies consistent with executive capacity to administer effectively at all levels.

(c) The integration of the agencies in the executive branch should be on a functional basis, so that programs can be coordinated.

(d) Each agency in the executive branch should be assigned a name commensurate with the scope of its program responsibilities, and should be integrated into one of the departments or independent agencies of the executive branch as closely as the conflicting goals of administrative integration and responsiveness to the legislature will permit.

(3) GOALS OF CONTINUING REORGANIZATION. Structural reorganization should be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and the coordination of existing programs in response to changing emphasis or public needs, and should be consistent with the following goals:

(a) The organization of state government should assure its responsiveness to popular control. It is the goal of reorganization to improve legislative policy–making capability and to improve the administrative capability of the executive to carry out these policies.

(b) The organization of state government should facilitate communication between citizens and government. It is the goal of reorganization through coordination of related programs in function–oriented departments to improve public understanding of government programs and policies and to improve the relationships between citizens and administrative agencies.

(c) The organization of state government shall assure efficient and effective administration of the policies established by the legislature. It is the goal of reorganization to promote efficiency by improving the management and coordination of state services and by eliminating overlapping activities.

History: 1991 **a.** 316.

15.01 Definitions. In this chapter: **(1g)** "Affiliated credentialing board" means a part–time body that meets all of the following conditions:

(a) Is attached to an examining board to regulate a profession that does not practice independently of the profession regulated by the examining board or that practices in collaboration with the profession regulated by the examining board.

(b) With the advice of the examining board to which it is attached, sets standards of professional competence and conduct for the profession under the affiliated credentialing board's supervision, reviews the qualifications of prospective new practitioners, grants credentials, takes disciplinary action against credential holders and performs other functions assigned to it by law.

(1r) "Board" means a part–time body functioning as the policy–making unit for a department or independent agency or a part–time body with policy–making or quasi–judicial powers.

(2) "Commission" means **a** 3–member governing body in charge of a department or independent agency or of a division or other subunit within a department, except for the Wisconsin waterways commission which shall consist of 5 members, the parole commission which shall consist of 8 members, and the Fox River management commission which shall consist of 7 members. **A** Wisconsin group created for participation in a continuing interstate body, or the interstate body itself, shall be known as a "commission", but is not a commission for purposes of s. 15.06. The parole commission created under s. 15.145 (1) shall be known as a "commission", but is not a commission for purposes of s. 15.06. The sentencing commission created under s. 15.105 (27) shall be known as a "commission" but is not a commission for purposes of s. 15.06 (1) to (4m), (7), and (9).

(3) "Committee" means a part–time body appointed to study a specific problem and to recommend a solution or policy alternative with respect to that problem, and intended to terminate on the completion of its assignment. Because of their temporary nature, committees shall be created by session law rather than by statute.

(4) "Council" means a part–time body appointed to function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government, except the Wisconsin land council has the powers specified in s. 16.965 (3) and (5) and the powers granted to agencies under ch. 227, the Milwaukee River revitalization council has the powers and duties specified in s. 23.18, the council on physical disabilities has the powers and duties specified in s. 46.29 (1) and (2), and the state council on alcohol and other drug abuse has the powers and duties specified in s. 14.24.

(5) "Department" means the principal administrative agency within the executive branch of Wisconsin state government, but does not include the independent agencies under subch. III.

(6) "Division," "bureau," "section" and "unit" means the subunits of a department or an independent agency, whether specifically created by law or created by the head of the department or the independent agency for the more economic and efficient administration and operation of the programs assigned to the department or independent agency. The office of justice assistance in the department of administration and the office of credit unions in the

department of financial institutions have the meaning of "division" under this subsection. The office of the long– term care ombudsman under the board on aging and long–term care and the office of educational accountability in the department of public instruction have the meaning of "bureau" under this subsection.

(7) "Examining board" means a part–time body which sets standards of professional competence and conduct for the profession under its supervision, prepares, conducts and grades the examinations of prospective new practitioners, grants licenses, investigates complaints of alleged unprofessional conduct and performs other functions assigned to it by law. "Examining board" includes the board of nursing.

(8) "Head", in relation to a department, means the constitutional officer, commission, secretary or board in charge of the department. "Head", in relation to an independent agency, means the commission, commissioner or board in charge of the independent agency.

(9) "Independent agency" means an administrative agency within the executive branch created under subch. III.

History: 1977 c. 29, 234; 1979 c. 34; 1983 a. 27, 189, 371, 410, 538; 1985 a. 29, 120, 180; 1987 a. 27, 342, 399; 1989 a. 31, 107, 202; 1991 a. 39, 269, 315; 1993 a. 16, 107, 210, 215; 1995 a. 27 ss. 74 and 9145 (1); 1995 a. 442, 462; 1997 a. 27, 237; 2001 a. 16, 105, 109.

15.02 Offices, departments and independent agencies. The constitutional offices, administrative departments and independent agencies which comprise the executive branch of Wisconsin state government are structured as follows:

(1) SEPARATE CONSTITUTIONAL OFFICES. The governor, lieutenant governor, secretary of state and state treasurer each head a staff to be termed the "office" of the respective constitutional officer.

(2) PRINCIPAL ADMINISTRATIVE UNITS. The principal administrative unit of the executive branch is a "department" or an "independent agency". Each such unit shall bear a title beginning with the words "State of Wisconsin" and continuing with "department of..." or with the name of the independent agency. **A** department may be headed by a constitutional officer, a secretary, a commission or a board. An independent agency may be headed by a commission, a commissioner or a board.

(3) INTERNAL STRUCTURE. (a) The secretary of each department may, subject to sub.(4), establish the internal structure within the office of secretary so as to best suit the purposes of his or her department. No secretary may authorize the designation of "assistant secretary" as the official position title of any employee of his or her department.

(b) For field operations, departments may establish district or area offices which may cut across divisional lines of responsibility.

(c) For their internal structure, all departments shall adhere to the following standard terms, and independent agencies are encouraged to review their internal structure and to adhere as much as possible to the following standard terms:

1. The principal subunit of the department is the "division". Each division shall be headed by an "administrator". The office of justice assistance in the department of administration and the office of credit unions in the department of financial institutions have the meaning of "division" and the executive staff director of the office of justice assistance in the department of administration and the director of credit unions have the meaning of "administrator" under this subdivision.

2. The principal subunit of the division is the "bureau". Each bureau shall be headed by a "director". The office of the long– term care ombudsman under the board on aging and long–term care and the office of educational accountability in the department of public instruction have the meaning of "bureau" under this subdivision.

2m. Notwithstanding subds. 1. and 2., the principal subunit of the department of tourism is the "bureau", which shall be headed by a "director".

3. If further subdivision is necessary, bureaus may be divided into subunits which shall be known as "sections" and which shall be headed by "chiefs" and sections may be divided into subunits which shall be known as "units" and which shall be headed by "supervisors".

(4) INTERNAL ORGANIZATION AND ALLOCATION OF FUNCTIONS. The head of each department or independent agency shall, subject to the approval of the governor, establish the internal organization of the department or independent agency and allocate and reallocate duties and functions not assigned by law to an officer or any subunit of the department or independent agency to promote economic and efficient administration and operation of the department or independent agency. The head may delegate and redelegate to any officer or employee of the department or independent agency any function vested by law in the head. The governor may delegate the authority to approve selected organizational changes to the head of any department or independent agency.

History: 1971 c. 261; 1973 c. 12; 1975 c. 39; 1977 c. 29; 1979 c. 221; 1987 a. 27,399; 1993 a. 16, 184,215,491; 1995 a. 27 ss. 75, 76, 76c and 9145 (1); 1997 a. 27.

Limits of internal departmental reorganization discussed. 61 Atty. **Gen.** 306.

15.03 Attachment for limited purposes. Any division, office, commission, council or board attached under this section to a department or independent agency or a specified division thereof shall be a distinct unit of that department, independent agency or specified division. Any division, office, commission, council or board so attached shall exercise its powers, duties and functions prescribed by law, including rule making, licensing and regulation, and operational planning within the area of program responsibility of the division, office, commission, council or board, independently of the head of the department or independent agency, but budgeting, program coordination and related management functions shall be performed under the direction and supervision of the head of the department or independent agency, except that with respect to the office of the commissioner of railroads, all personnel and biennial budget requests by the office of the commissioner of railroads shall be provided to the department of transportation as required under s. 189.02 (7) and shall be processed and properly forwarded by the public service commission without change except as requested and concurred in by the office of the commissioner of railroads.

History: 1981 c. 347; 1983 a. 27; 1993 a. 123; 1999 a. 9.

15.04 Heads of departments and independent agencies; powers and duties. (1) DUTIES. Each head of a department or independent agency shall:

(a) ***Supervision.*** Except as provided in s. 15.03, plan, direct, coordinate and execute the functions vested in the department or independent agency.

(b) ***Budget.*** Biennially compile a comprehensive program budget which reflects all fiscal matters related to the operation of the department or independent agency and each program, subprogram and activity therein.

(c) Advisory bodies. In addition to any councils specifically created by law, create and appoint such councils or committees as the operation of the department or independent agency requires. Members of councils and committees created under this general authority shall serve without compensation, but may be reimbursed for their actual and necessary expenses incurred in the performance of their duties and, if such reimbursement is made, such reimbursement in the case of an officer or employee of this state who represents an agency as a member of such a council or committee shall be paid by the agency which pays the officer's or employee's salary.

(d) ***Biennial report.*** On or before October 15 of each odd–numbered year, submit to the governor and the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), a report on the performance and operations of the department or independent agency during the preceding biennium, and projecting the goals and objectives of the department or independent agency as developed for the program budget report. The secretary of administration may prescribe the format of the report and may require such other information deemed appropriate. Each department or independent agency shall provide a copy of its biennial report to legislators upon request. Any department or independent agency may issue such additional reports on its findings and recommendations as its operations require. **A** department or independent agency may, on or before October 15, submit an annual report prepared by it, in place of the biennial report required under this paragraph, if the submission of the annual reports is approved by the secretary of administration.

(e) ***Seal.*** Have authority to adopt a seal for the department or independent agency.

(f) ***Bonds.*** Have authority to require that any officer or employee of the department or independent agency give an official bond under ch.

19, if the secretary of administration agrees that the position held by such officer or employee requires bonding.

(g) ***Discrimination review.*** In order to determine whether there is any arbitrary discrimination on the basis of race, religion, national origin, sex, marital status or sexual orientation as defined in s. 111.32 (13m), examine and assess the statutes under which the head has powers or regulatory responsibilities, the procedures by which those statutes are administered and the rules promulgated under those statutes. If the department or agency head finds any such discrimination, he or she shall take remedial action, including making recommendations to the appropriate executive, legislative or administrative authority.

(i) ***Records and forms management program.*** Establish and maintain a records and forms management program.

(j) ***Records and forms officer.*** Appoint a records and forms officer, who shall be responsible for compliance by the department or independent agency with all records and forms management laws and rules and who may prevent any form from being put into use.

(k) ***Form numbering and filing system.*** Establish a numbering and filing system for forms.

(m) ***Notice on forms.*** See that each form used by the department or independent agency to seek information from municipalities, counties or the public contains on the first page of the form, or in the instructions for completing the form, a conspicuous notice of the authorization for the form, whether or not completing the form is voluntary, if it is not voluntary, the penalty for failure to respond and whether or not any personally identifiable information, as defined under s. 19.62 (5), requested in the form is likely to be used for purposes other than for which it is originally being collected. This paragraph does not apply to state tax forms.

(2) DEPUTY. Each secretary of a department or head of an independent agency under s. 230.08 (2) (L) may appoint a deputy who shall serve at the pleasure of the secretary or agency head outside the classified service. The deputy shall exercise the powers, duties and functions of the secretary or head in the absence of the secretary or head, and shall perform such other duties as the secretary or head prescribes. The adjutant general may appoint 2 deputies as provided in s. 21.18 (1). In this subsection "secretary" includes the attorney general and the state superintendent of public instruction.

(3) DEPUTY APPROVALS. Positions for which appointment is made under sub.(2) may be authorized **only** under s. 16.505.

History: 1971 c. 125; 1975 c. 94; 1977 c. 196, 273, 418, 447; 1979 c. 221; 1981 c. 112,350; 1981 c. 391 s. 210; 1983 a. 27, 524; 1985 a. 29; 1985 a. 180 ss. 2 to 4, 30m; 1985 a. 332; 1987 a. 147 s. 25; 1987 a. 186; 1989 a. 248; 1991 a. 39, 189; 1995 a. 27; 1997 a. 73.

15.05 Secretaries. (1) SELECTION. (a) If a department is under the direction and supervision of a secretary, the secretary shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(b) Except as provided in pars.(c) and (d), if a department is under the direction and supervision of a board, the board shall appoint a secretary to serve at the pleasure of the board outside the classified service. In such departments, the powers and duties of the board shall be regulatory, advisory and policy-making, and not administrative. All of the administrative powers and duties of the department are vested in the secretary, to be administered by him or her under the direction of the board. The secretary, with the approval of the board, shall promulgate rules for administering the department and performing the duties assigned to the department.

(c) The secretary of natural resources shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(d) The secretary of agriculture, trade and consumer protection shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(3) EXECUTIVE ASSISTANT. Each secretary may appoint an executive assistant to serve at his or her pleasure outside the classified service. The executive assistant shall perform duties as the secretary prescribes. In this subsection, "secretary" includes the attorney general, the adjutant general, the director of the technical college system and the state superintendent of public instruction.

(3m) FIELD DISTRICT OR FIELD AREA DIRECTORS. Each secretary may appoint a director under the classified service for each district or area office established in his or her department under s. 15.02 (3) (b).

(4) OFFICIAL OATH. Each secretary shall take and file the official oath prior to assuming office.

(5) EXECUTIVE ASSISTANT APPROVALS. Positions for which appointment is made under sub.(3) may be authorized only under s. 16.505.

History: 1973 c. 90; 1977 c. 4, 196; 1985 a. 18; 1985 a. 332 s. 251 (3); 1989 a. 31, 169; 1993 a. 399; 1995 a. 27.

A secretary, appointed by the governor, could be removed only by the governor, even though the general appointment statute had been amended to provide that the secretary is appointed by a board to serve at the board's pleasure. Moses v. Board of Veterans Affairs, 80 Wis. 2d 411, 259 N.W.2d 102 (1977).

15.06 Commissions and commissioners. (1) SELECTION OF MEMBERS. (a) Except as otherwise provided in this subsection, the members of commissions shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 6-year terms expiring on March 1 of the odd-numbered years.

(ag) Members of the Wisconsin waterways commission shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 5-year terms.

(ar) The commissioner of railroads shall be nominated by the governor, and with the advice and consent of the senate appointed, for a 6-year term expiring on March 1 of an odd-numbered year.

(b) The commissioner of insurance shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor. The governor may remove from office the commissioner of insurance who was appointed for a fixed term before August 1, 1987.

(d) The members of the personnel commission shall be nominated by the governor, and with the advice and consent of the senate appointed, for 5-year terms, subject to the following conditions:

1. At least one member shall be licensed to practice law in this state.

2. They shall possess some professional experience in the field of personnel or labor relations.

3. No member may hold any other position in state employment.

4. No member, when appointed or for 3 years immediately prior to the date of appointment, may have been an officer of a committee in any political party, partisan political club or partisan political organization or have held or been a candidate for any partisan elective public office. No member may become a candidate for or hold any such office.

5. At no time may more than 2 members be adherents of the same political party.

6. Each member of the commission shall be a U.S. citizen and shall have been a resident of this state for at least 3 years.

(2) SELECTION OF OFFICERS. Each commission may annually elect officers other than a chairperson from among its members as its work requires. Any officer may be reappointed or reelected. At the time of making new nominations to commissions, the governor shall designate a member or nominee of each commission to serve as the commission's chairperson for a 2-year term expiring on March 1 of the odd-numbered year except that:

(a) Commencing March 1, 1979, and thereafter, the labor and industry review commission shall elect one of its members to serve as the commission's chairperson for a 2-year term expiring on March 1 of the odd-numbered year.

(3) FULL-TIME OFFICES. (a) A commissioner may not hold any other office or position of profit or pursue any other business or vocation, but shall devote his or her entire time to the duties of his or her office. This paragraph does not apply to:

1. The commissioner of insurance.

3. The members of the Wisconsin waterways commission.

(b) The commissioner of insurance shall not engage in any other occupation, business or activity that is in any way inconsistent with the performance of the duties of the commissioner of insurance, nor shall the commissioner hold any other public office.

(4) CHAIRPERSON; ADMINISTRATIVE DUTIES. The administrative duties of each commission shall be vested in its chairperson, to be administered by the chairperson under the statutes and rules of the commission and subject to the policies established by the commission.

(4m) EXECUTIVE ASSISTANT. Each commission chairperson under s. 230.08 (2) (m) and each commissioner of the public service commission may appoint an executive assistant to serve at his or her

pleasure outside the classified service. The executive assistant shall perform duties as the chairperson or commissioner prescribes.

(5) FREQUENCY OF MEETINGS; PLACE. Every commission shall meet on the call of the chairperson or a majority of its members. Every commission shall maintain its offices in Madison, but may meet or hold hearings at such other locations as will best serve the citizens of this state.

(6) QUORUM. A majority of the membership of a commission constitutes a quorum to do business, except that vacancies shall not prevent a commission from doing business. This subsection does not apply to the parole commission.

(7) REPORTS. Every commission attached to a department shall submit to the head of the department, upon request of that person not more often than annually, a report on the operation of the commission.

(8) OFFICIAL OATH. Every commissioner shall take and file the official oath prior to assuming office.

(9) EXECUTIVE ASSISTANT APPROVALS. Positions for which appointment is made under sub.(4m) may be authorized only under s. 16.505.

History: 1971 c. 193,307; 1977 c. 29, 196, 274; 1981 c. 347; 1983 a. 27,371, 410, 538; 1985 a. 29; 1987 a. 27,403; 1989 a. 31; 1991 a. 39, 269, 316; 1993 a. 16, 123; 1995 a. 27; 1997 a. 27; 2001 a. 16.

A single member of the personnel commission is empowered to act as the commission when 2 of the 3 commission positions are vacant. 68 Atty. Gen. 323.

A commissioner designated as chairperson of the commission under sub.(2) is not appointed to a new position, and Art. IV. s. 26. precludes a salary increase based on that designation. 76 Atty. Gen. 52.

Sub.(3) (a) prohibits a commissioner from pursuing business interests that would prevent properly fulfilling the duties of the office. 77 Atty. Gen. 36.

15.07 Boards. (1) SELECTION OF MEMBERS. (a) If a department or independent agency is under the direction and supervision of a board, the members of the board, other than the members serving on the board because of holding another office or position, shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve for terms prescribed by law, except:

1. Members of the higher educational aids board shall be appointed by the governor without senate confirmation.

2. Members of the elections board shall be appointed as provided in s. 15.61.

3. Members of the employee trust funds board appointed or elected under s. 15.16 (1) (a), (b), (d) and (f) shall be appointed or elected as provided in that section.

4. Members of the investment board appointed under s. 15.76 (3) shall be appointed as provided in that section.

5. The members of the educational communications board appointed under s. 15.57 (5) and (7) shall be appointed as provided in that section.

6. Members of the University of Wisconsin Hospitals and Clinics Board appointed under s. 15.96 (8) shall be appointed by the governor without senate confirmation.

(b) For each board not covered under par.(a), the governor shall appoint the members of the board, other than the members serving on the board because of holding another office or position and except as otherwise provided, for terms prescribed by law except that all members of the following boards, or all members of the following boards specified in this paragraph, other than the members serving on a board because of holding another office or position, shall be nominated by the governor, and with the advice and consent of the senate appointed, for terms provided by law:

1. Banking review board.
2. College savings program board.
3. Credit union review board.
5. Savings and loan review board.
8. Real estate board.
9. Board on aging and long-term care.
10. Land and water conservation board.
11. Waste facility siting board.
12. Prison industries board.
14. Deferred compensation board.
15. The 3 members of the lower Wisconsin state riverway board appointed under s. 15.445 (3) (b) 7.
15m. The members of the state fair park board appointed under s. 15.445 (4) (a) 3. to 5.
16. Land information board.

Note: Subd. 16. is repealed eff. 9-1-03 by 1997 Wis. Act 27.

17. Real estate appraisers board.
18. Savings bank review board.
19m. Auctioneer board.
20. The 3 members of the Kickapoo reserve management board appointed under s. 15.445 (2) (b) 3.
22. Private employer health care coverage board.

Note: Subd. 22. is repealed eff. 1-1-10 by 1999 Wis. Act 9.

(c) Except as provided under par.(cm), fixed terms of members of boards shall expire on May 1 and, if the term is for an even number of years, shall expire in an odd-numbered year.

(cm) The term of one member of the ethics board shall expire on each May 1. The terms of 3 members of the development finance board appointed under s. 15.155 (1) (a) 6. shall expire on May 1 of every even-numbered year and the terms of the other 3 members appointed under s. 15.155 (1) (a) 6. shall expire on May 1 of every odd-numbered year. The terms of the 3 members of the land and water conservation board appointed under s. 15.135 (4) (b) 2. shall expire on January 1. The term of the member of the land and water conservation board appointed under s. 15.135 (4) (b) 2m. shall expire on May 1 of an even-numbered year. The terms of members of the real estate board shall expire on July 1. The terms of the appraiser members of the real estate appraisers board and the terms of the auctioneer and auction company representative members of the auctioneer board shall expire on May 1 in an even-numbered year.

(cs) No member of the auctioneer board, real estate appraisers board or real estate board may be an officer, director or employee of a private organization that promotes or furthers any profession or occupation regulated by that board.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every board shall elect a chairperson, vice chairperson and secretary each of whom may be reelected for successive terms, except that:

(a) The chairperson and vice chairperson of the investment board shall be designated biennially by the governor.

(b) The chairperson of the board on health care information shall be designated biennially by the governor.

(d) The officers elected by the board of regents of the University of Wisconsin System and the technical college system board shall be known as a president, vice president and secretary.

(e) The representative of the department of justice shall serve as chairperson of the claims board and the representative of the department of administration shall serve as its secretary.

(f) The state superintendent of public instruction or his or her designated representative shall serve as chairperson of the school district boundary appeal board.

(g) A representative of the department of justice designated by the attorney general shall serve as nonvoting secretary to the law enforcement standards board.

(h) The chairperson of the state fair park board shall be designated annually by the governor from among the members appointed under s. 15.445 (4) (a) 3., 4. and 5.

(j) At its first meeting in each even-numbered year, the state capitol and executive residence board shall elect officers for 2-year terms.

(k) The governor shall serve as chairperson of the governor's work-based learning board.

(L) The governor shall serve as chairperson of the information technology management board and the chief information officer shall serve as secretary of that board.

(3) FREQUENCY OF MEETINGS. (a) If a department or independent agency is under the direction and supervision of a board, the board shall meet quarterly and may meet at other times on the call of the chairperson or a majority of its members. If a department or independent agency is under the direction and supervision of a board, the board shall, in addition, meet no later than August 31 of each even-numbered year to consider and approve a proposed budget of the department or independent agency for the succeeding fiscal biennium.

(b) Except as provided in par.(bm), each board not covered under par.(a) shall meet annually, and may meet at other times on the call of the chairperson or a majority of its members. The auctioneer board, the real estate board and the real estate appraisers board shall also meet on the call of the secretary of regulation and licensing or his or her designee within the department.

(bm) 1. The board on health care information shall meet 4 times each year and may meet at other times on the call of the chairperson or a majority of the board's members.

2. The environmental education board shall meet 4 times each year and may meet at other times on the call of the chairperson.

3. The auctioneer board shall meet at least 4 times each year.

4. The information technology management board shall meet at least 4 times each year and may meet at other times on the call of the chairperson.

(4) QUORUM. A majority of the membership of a board constitutes a quorum to do business and, unless a more restrictive provision is adopted by the board, a majority of a quorum may act in any matter within the jurisdiction of the board. This subsection does not apply to actions of the ethics board or the school district boundary appeal board as provided in ss. 19.47 (4) and 117.05 (2) (a).

(5) REIMBURSEMENT FOR EXPENSES; COMPENSATION. Except as provided in sub.(5m), the members of each board shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an officer or employee of this state who represents an agency as a member of a board to be paid by the agency which pays the member's salary. The members shall receive no compensation for their services, except that the following members of boards, except full–time state officers or employees, also shall be paid the per diem stated below for each day on which they were actually and necessarily engaged in the performance of their duties:

(a) Members of the investment board, $50 per day.

(b) Members of the banking review board, $25 per day but not to exceed $1,500 per year.

(c) Members of the auctioneer board, $25 per day.

(d) Members of the board of agriculture, trade and consumer protection, not exceeding $35 per day as fixed by the board with the approval of the governor, but not to exceed $1,000 per year.

(e) In lieu of a per diem, the members of the technical college system board shall receive $100 annually.

(f) Members of the teachers retirement board, appointive members of the Wisconsin retirement board, appointive members of the group insurance board, members of the deferred compensation board and members of the employee trust funds board, $25 per day.

(g) Members of the savings and loan review board, $10 per day.

(gm) Members of the savings bank review board, $10 per day.

(h) Voting members of the land and water conservation board, $25 per day.

(i) Members of the educational approval board, $25 per day.

(j) Members of the state fair park board, $10 per day but not to exceed $600 per year.

(k) Members of the ethics board, $25 per day.

(L) Members of the school district boundary appeal board, $25 per day.

(n) Members of the elections board, $25 per day.

(o) Members of the burial sites preservation board, $25 per day.

(r) Members of the real estate board, $25 per day.

(s) Members of the credit union review board, $25 per day but not to exceed $1,500 per year.

(t) Members of the waste facility siting board who are town or county officials, $35 per day.

(w) Members of the lower Wisconsin state riverway board, $25 per day.

(x) Members of the real estate appraisers board, $25 per day.

(y) Members of the Kickapoo reserve management board, $25 per day.

(5m) LIMITATIONS ON SALARY AND EXPENSES. (b) ***Lower Wisconsin state riverway board.*** The members, except for the chairperson, of the lower Wisconsin state riverway board shall be reimbursed under sub.(5) for only their necessary and actual travel expenses incurred in the performance of their duties, or shall be paid $25 plus mileage incurred in the performance of their duties, whichever is greater. The chairperson of the lower Wisconsin state riverway board shall be reimbursed for all his or her actual and necessary expenses incurred in the performance of his or her duties. The lower Wisconsin state riverway board shall determine which expenses of the chairperson are actual and necessary before reimbursement.

(6) REPORTS. Every board created in or attached to a department or independent agency shall submit to the head of the department or independent agency, upon request of that person not more often than annually, a report on the operation of the board.

(7) OFFICIAL OATH. Each member of a board shall take and file the official oath prior to assuming office.

History: 1971 c. 100 s. 23; 1971 c. 125, 261, 270, 323; 1973 c. 90, 156, 299, 334; 1975 c. 39, 41, 422; 1977 c. 29 ss. 24, 26, 1650m (3); 1977 c. 203, 211,418,427; 1979 c. 34, 110, 221, 346; 1981 c. 20, 62, 94, 96, 156,314,346, 374,391; 1983 a. 27,282,403; 1985 a. 20, 29, 316; 1987 a. 27, 119, 142, 354, 399, 403; 1989 a. 31, 102, 114,219,299, 340; 1991 a. 25, 39, 116,221,269,316; 1993 a. 16, 75, 102, 184,349,399,490; 1995 a. 27,216,247; 1997a.27; 1999 a. 9, 44, 181, 197; 2001 a. 16.

"Membership" as used in sub.(4) means the authorized number of positions and not the number of positions that are currently occupied. 66 Atty. Gen. 192.

15.08 Examining boards and councils. (1) SELECTION OF MEMBERS. All members of examining boards shall be residents of this state and shall, unless otherwise provided by law, be nominated by the governor, and with the advice and consent of the senate appointed. Appointments shall be for the terms provided by law. Terms shall expire on July 1. No member may serve more than 2 consecutive terms. No member of an examining board may be an officer, director or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

(1m) PUBLIC MEMBERS. (a) Public members appointed under s. 15.405 or 15.407 shall have all the powers and duties of other members except they shall not prepare questions for or grade any licensing examinations.

(am) Public members appointed under s. 15.405 or 15.407 shall not be, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the board, examining board or examining council to which they are appointed, shall not be married to any person so licensed, certified, registered or engaged, and shall not employ, be employed by or be professionally associated with any person so licensed, certified, registered or engaged.

(b) The public members of the chiropractic examining board, the dentistry examining board, the hearing and speech examining board, the medical examining board, perfusionists examining council, respiratory care practitioners examining council and council on physician assistants, the board of nursing, the nursing home administrator examining board, the veterinary examining board, the optometry examining board, the pharmacy examining board, the marriage and family therapy, professional counseling, and social work examining board, and the psychology examining board shall not be engaged in any profession or occupation concerned with the delivery of physical or mental health care.

(c) The membership of each examining board and examining council created in the department of regulation and licensing after June 1, 1975, shall be increased by one member who shall be a public member appointed to serve for the same term served by the other members of such examining board or examining council, unless the act relating to the creation of such examining board or examining council provides that 2 or more public members shall be appointed to such examining board or examining council.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every examining board shall elect from among its members a chairperson, vice chairperson and, unless otherwise provided by law, a secretary. Any officer may be reelected to succeed himself or herself.

(3) FREQUENCY OF MEETINGS. (a) Every examining board shall meet annually and may meet at other times on the call of the chairperson or of a majority of its members.

(b) The medical examining board shall meet at least 12 times annually.

(c) The hearing and speech examining board shall meet at least once every 3 months.

(4) QUORUM. (a) A majority of the membership of an examining board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the examining board.

(b) Notwithstanding par.(a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two–thirds of the voting membership of the examining board.

(5) GENERAL POWERS. Each examining board: (a) May compel the attendance of witnesses, administer oaths, take testimony and receive proof concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the examining board.

(6) **IMPROVEMENT OF THE PROFESSION.** In addition to any other duties vested in it by law, each examining board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade or profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each examining board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

(7) COMPENSATION AND REIMBURSEMENT FOR EXPENSES. Each member of an examining board shall, unless the member is a full–time salaried employee of this state, be paid a per diem of $25 for each day on which the member was actually and necessarily engaged in the performance of examining board duties. Each member of an examining board shall be reimbursed for the actual and necessary expenses incurred in the performance of examining board duties.

(8) **OFFICIAL OATH.** Every member of an examining board shall take and file the official oath prior to assuming office.

(9) **ANNUAL REPORTS.** Every examining board shall submit to the head of the department in which it is created, upon request of that person not more often than annually, a report on the operation of the examining board.

(10) SEAL. Every examining board may adopt a seal.

History: 1971 *c.* 40; 1975 c. 86, 199; 1977 *c.* 418; 1979 *c.* 32; 1979 **c.** 34 **ss.** 32e to 32s, 2102 (45) **(a);** 1979 **c.** 221; 1981 *c.* 94; 1983 **a.** 403, 524; 1985 **a.** 332,340; 1987 **a.** 399; 1989 **a.** 229, 316, 359; 1991 **a.** 39, 160, 316; 1993 **a.** 105, 107, 184, 490; 1995 **a.** 245; 1997 **a.** 175; 1999 **a.** 180; 2001 **a.** 80, 89, 105.

Selection and terms of officers of regulatory and licensing boards are discussed. 75 Atty. **Gen.** 247 (1986).

15.085 Affiliated credentialing boards. (1) SELECTION OF MEMBERS. All members of affiliated credentialing boards shall be residents of this state and shall, unless otherwise provided by law, be nominated by the governor, and with the advice and consent of the senate appointed. Appointments shall be for the terms provided by law. Terms shall expire on July 1. No member may serve more than 2 consecutive terms. No member of an affiliated credentialing board may be an officer, director or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

(1m) PUBLIC MEMBERS. (a) Public members appointed under s. 15.406 shall have all of the powers and duties of other members except that they shall not prepare questions for or grade any licensing examinations.

(am) Public members appointed under s. 15.406 shall not be, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the affiliated credentialing board to which they are appointed, shall not be married to any person so licensed, certified, registered or engaged, and shall not employ, be employed by or be professionally associated with any person so licensed, certified, registered or engaged.

(b) The public members of the physical therapists affiliated credentialing board, podiatrists affiliated credentialing board or occupational therapists affiliated credentialing board shall not be engaged in any profession or occupation concerned with the delivery of physical or mental health care.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every affiliated credentialing board shall elect from among its members a chairperson, vice chairperson and, unless otherwise provided by law, a secretary. Any officer may be reelected to succeed himself or herself.

(3) FREQUENCY OF MEETINGS. (a) Every affiliated credentialing board shall meet annually and may meet at other times on the call of the chairperson or of a majority of its members.

(b) The chairperson of an affiliated credentialing board shall meet at least once every 6 months with the examining board to which the affiliated credentialing board is attached to consider all matters of joint interest.

(4) QUORUM. (a) A majority of the membership of an affiliated credentialing board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the affiliated credentialing board.

(b) Notwithstanding par.(a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two–thirds of the membership of the affiliated credentialing board.

(5) GENERAL POWERS. Each affiliated credentialing board:

(a) May compel the attendance of witnesses, administer oaths, take testimony and receive proof concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession. In addition to any other procedure under ch. 227 relating to the promulgation of rules, when promulgating a rule, other than an emergency rule under s. 227.24, an affiliated credentialing board shall do all of the following:

1. Submit the proposed rule to the examining board to which the affiliated credentialing board is attached. The proposed rule shall be submitted under this subdivision at least 60 days before the proposed rule is submitted to the legislative council staff under s. 227.15 (1).

2. Consider any comments on a proposed rule made by the examining board to which the affiliated credentialing board is attached, if the examining board submits the comments to the affiliated credentialing board within 30 days after a public hearing on the proposed rule under s. 227.18 or, if no hearing is held, within 30 days after the proposed rule is published under s. 227.16 (2) (e).

3. Include, in the report submitted to the legislature under s. 227.19 (2), any comments on the proposed rule submitted by the examining board under subd. 2. and the affiliated credentialing board's responses to those comments.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the affiliated credentialing board.

(6) **IMPROVEMENT OF THE PROFESSION.** In addition to any other duties vested in it by law, each affiliated credentialing board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade or profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each affiliated credentialing board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

(7) COMPENSATION AND REIMBURSEMENT FOR EXPENSES. Each member of an affiliated credentialing board shall, unless the member is a full–time salaried employee of this state, be paid a per diem of $25 for each day on which the member was actually and necessarily engaged in the performance of affiliated credentialing board duties. Each member of an affiliated credentialing board shall be reimbursed for the actual and necessary expenses incurred in the performance of affiliated credentialing board duties.

(8) **OFFICIAL OATH.** Every member of an affiliated credentialing board shall take and file the official oath prior to assuming office.

(9) **ANNUAL REPORTS.** Every affiliated credentialing board shall submit to the head of the department in which it is created, upon request of that person not more often than annually, a report on the operation of the affiliated credentialing board.

(10) SEAL. Every affiliated credentialing board may adopt a seal.

History: 1993 **a.** 107; 1997 **a.** 175; 1999 **a.** 180.

15.09 Councils. (1) SELECTION OF MEMBERS. (a) Unless otherwise provided by law, the governor shall appoint the members of councils for terms prescribed by law. Except as provided in par.(b), fixed terms shall expire on July 1 and shall, if the term is for an even number of years, expire in an odd–numbered year.

(b) The terms of the members of the council on recycling shall expire as specified under s. 15.347 **(17)** (c).

(2) SELECTION OF OFFICERS. Unless otherwise provided by law, at its first meeting in each year every council shall elect a chairperson,

vice chairperson and secretary from among its members. Any officer may be reelected for successive terms. For any council created under the general authority of s. 15.04 (1) (c), the constitutional officer or secretary heading the department or the chief executive officer of the independent agency in which such council is created shall designate an employee of the department or independent agency to serve as secretary of the council and to be a voting member thereof.

(3) LOCATION AND FREQUENCY OF MEETINGS. Unless otherwise provided by law, every council shall meet at least annually and shall also meet on the call of the head of the department or independent agency in which it is created, and may meet at other times on the call of the chairperson or a majority of its members. A council shall meet at such locations as may be determined by it unless the constitutional officer or secretary heading the department or the chief executive officer of the independent agency in which it is created determines a specific meeting place.

(4) QUORUM. Except as otherwise expressly provided, a majority of the membership of a council constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the council.

(5) POWERS AND DUTIES. Unless otherwise provided by law, a council shall advise the head of the department or independent agency in which it is created and shall function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government.

(6) REIMBURSEMENT FOR EXPENSES. Members of a council shall not be compensated for their services, but members of councils created by statute shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an elective or appointive officer or employee of this state who represents an agency as a member of a council to be paid by the agency which pays his or her salary.

(7) REPORTS. Unless a different provision is made by law for transmittal or publication of a report, every council created in a department or independent agency shall submit to the head of the department or independent agency, upon request of that person not more often than annually, a report on the operation of the council.

(8) OFFICIAL OATH. Each member of a council shall take and file the official oath prior to assuming office.

History: 1971 c. 211; 1977 c. 29; 1977 c. 196 s. 131; 1979 c. 34,346; 1983 a. 27,388, 410; 1985 a. 84; 1989 a. 335; 1991 a. 39,189; 1993 a. 184.

SUBCHAPTER II
DEPARTMENTS

15.40 Department of regulation and licensing; creation. There is created a department of regulation and licensing under the direction and supervision of the secretary of regulation and licensing.

History: 1971 c. 270 s. 104; 1975 c. 39; 1977 c. 29; 1977 c. 196 s. 131, 1977 c. 418 ss. 24 to 27.

15.405 Same; attached boards and examining boards.

(1) ACCOUNTING EXAMINING BOARD. There is created an accounting examining hoard in the department of regulation and licensing. The examining board shall consist of 7 members, appointed for staggered 4–year terms. Five members shall hold certificates as certified public accountants and be eligible for licensure to practice in this state. Two members shall he public members.

(2) EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS. There is created an examining board of architects, landscape architects, professional engineers, designers and land surveyors in the department of regulation and licensing. Any professional member appointed to the examining board shall be registered to practice architecture, landscape architecture, professional engineering, the design of engineering systems or land surveying under ch. 443. The examining board shall consist of the following members appointed for 4–year terms: 3 architects, 3 landscape architects, 3 professional engineers, 3 designers, 3 land surveyors and 10 public members.

(a) In operation, the examining board shall be divided into an architect section, a landscape architect section, an engineer section, a designer section and a land surveyor section. Each section shall consist of the 3 members of the named profession appointed to the examining board and 2 public members appointed to the section. The examining board shall elect its own officers, and shall meet at least twice annually.

(b) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of registration, and all other matters of interest to either the architect, landscape architect, engineer, designer or land surveyor section shall be acted upon solely by the interested section.

(c) All matters of joint interest shall be considered by joint meetings of all sections of the examining hoard or of those sections to which the problem is of interest.

(2m) EXAMINING BOARD OF PROFESSIONAL GEOLOGISTS, HYDROLOGISTS AND SOIL SCIENTISTS. (a) There is created in the department of regulation and licensing an examining board of professional geologists, hydrologists and soil scientists consisting of the following members appointed for 4–year terms:

1. Three members who are professional geologists licensed under ch. 470.
2. Three members who are professional hydrologists licensed under ch. 470.
3. Three members who are professional soil scientists licensed under ch. 470.
4. Three public members.

(b) In operation, the examining board shall be divided into a professional geologist section, a professional hydrologist section and a professional soil scientist section. Each section shall consist of the 3 members of the named profession appointed to the examining board and one public member appointed to the section. The examining board shall elect its own officers, and shall meet at least twice annually.

(c) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of licenses, and all other matters of interest to either the professional geologist, hydrologist or soil scientist section shall be acted upon solely by the interested section.

(d) All matters of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the matter is of interest.

(3) AUCTIONEER BOARD. (a) There is created in the department of regulation and licensing an auctioneer board consisting of the following members appointed for &year terms:

1. Four members, each of whom is registered under ch. 480 as an auctioneer, or is an auction company representative, as defined in s. 480.01 (3), of an auction company that is registered under ch. 480 as an auction company.
2. Three public members.

(b) No member of the board may serve more than 2 terms.

(5) CHIROPRACTIC EXAMINING BOARD. There is created a chiropractic examining board in the department of regulation and licensing. The chiropractic examining board shall consist of 6 members, appointed for staggered 4–year terms. Four members shall be graduates from a school of chiropractic and licensed to practice chiropractic in this state. Two members shall be public members. No person may be appointed to the examining board who is in any way connected with or has a financial interest in any chiropractic school.

(59) CONTROLLED SUBSTANCES BOARD. There is created in the department of regulation and licensing a controlled substances board consisting of the attorney general, the secretary of health and family services and the secretary of agriculture, trade and consumer protection, or their designees; the chairperson of the pharmacy examining board or a designee; and one psychiatrist and one pharmacologist appointed for 3–year terms.

(6) DENTISTRY EXAMINING BOARD. There is created a dentistry examining board in the department of regulation and licensing consisting of the following members appointed for 4–year terms:

(a) Six dentists who are licensed under ch. 447.

(b) Three dental hygienists who are licensed under ch. 447. Notwithstanding s. 15.08 (1m) (a), the dental hygienist members may participate in the preparation and grading of licensing examinations for dental hygienists.

(c) Two public members.

(6m) HEARING AND SPEECH EXAMINING BOARD. There is created a hearing and speech examining board in the department of regulation and licensing consisting of the following members appointed for 4–year terms:

(a) Three hearing instrument specialists licensed under subch. I of ch. 459.

(b) One otolaryngologist.

(c) 1. One audiologist registered under subch. III of ch. 459. This subdivision applies during the period beginning on December 1, 1990, and ending on June 30, 1993.

2. One audiologist licensed under subch. II of ch. 459. This subdivision applies after June 30, 1993.

(d) 1. One speech–language pathologist registered under subch. III of ch. 459. This subdivision applies during the period beginning on December 1, 1990, and ending on June 30, 1993.

2. One speech–language pathologist licensed under subch. II of ch. 459. This subdivision applies after June 30, 1993.

(e) Two public members. One of the public members shall be a hearing aid user.

(7) MEDSCAL EXAMINING BOARD. (a) There is created a medical examining board in the department of regulation and licensing.

(b) The medical examining board shall consist of the following members appointed for staggered 4-year terms:

1. Nine licensed doctors of medicine.

2. One licensed doctor of osteopathy.

3. Three public members.

(c) The chairperson of the patients compensation fund peer review council under s. 655.275 shall serve as a nonvoting member of the medical examining board.

(7c) MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING, AND SOCIAL WORK EXAMINING BOARD. (a) There is created a marriage and family therapy, professional counseling, and social work examining board in the department of regulation and licensing consisting of the following members appointed for 4–year terms:

1. Four social worker members who are certified or licensed under ch. 457.

2. Three marriage and family therapist members who are licensed under ch. 457.

3. Three professional counselor members who are licensed under ch. 457.

4. Three public members who represent groups that promote the interests of consumers of services provided by persons who are certified or licensed under ch. 457.

(am) The 4 members appointed under par.(a) 1. shall consist of the following:

1. One member who is certified under ch. 457 as an advanced practice social worker.

2. One member who is certified under ch. 457 as an independent social worker.

3. One member who is licensed under ch. 457 as a clinical social worker.

4. **At** least one member who is employed as a social worker by a federal, state or local governmental agency.

(b) In operation, the examining board shall be divided into a social worker section, a marriage and family therapist section and a professional counselor section. The social worker section shall consist of the 4 social worker members of the examining board and one of the public members of the examining board. The marriage and family therapist section shall consist of the 3 marriage and family therapist members of the examining board and one of the public members of the examining board. The professional counselor section shall consist of the 3 professional counselor members of the examining board and one of the public members of the examining board.

(c) **All** matters pertaining to granting, denying, limiting, suspending, or revoking a certificate or license under ch. 457, and all other matters of interest to either the social worker, marriage and family therapist, or professional counselor section shall be acted upon solely by the interested section of the examining board.

(d) **All** matters that the examining board determines are of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the problem is of interest.

(e) Notwithstanding s. 15.08 (4) (a), at a joint meeting of all sections of the examining board, a majority of the examining board constitutes a quorum to do business only if at least 8 members are present at the meeting. **At** a meeting of a section of the examining board or a joint meeting of 2 or more of the sections of the examining board, each member who is present has one vote, except as provided in par.(f).

(f) **At** a joint meeting of the social worker section and one or both of the other sections of the examining board, each member who is present has one vote, except that the social worker members each have three–fourths of a vote if all 4 of those members are present.

(7g) BOARD OF NURSING. There is created a board of nursing in the department of regulation and licensing. The board of nursing shall consist of the following members appointed for staggered 4–year terms: 5 currently licensed registered nurses under ch. 441; 2 currently licensed practical nurses under ch. 441; and 2 public members. Each registered nurse member shall have graduated from a program in professional nursing and each practical nurse member shall have graduated from a program in practical nursing accredited by the state in which the program was conducted.

(7m) NURSING HOME ADMSNISTRATOR EXAMSNSNG BOARD. There is created a nursing home administrator examining board in the department of regulation and licensing consisting of 9 members appointed for staggered 4–year terms and the secretary of health and family services or a designee, who shall serve as a nonvoting member. Five members shall be nursing home administrators licensed in this state. One member shall be a physician. One member shall be a nurse licensed under ch. 441. Two members shall be public members. No more than 2 members may be officials or full–time employees of this state.

(8) OPTOMETRY EXAMINING BOARD. There is created an optometry examining board in the department of regulation and licensing. The optometry examining board shall consist of 7 members appointed for staggered 4–year terms. Five of the members shall be licensed optometrists in this state. Two members shall be public members.

(9) PHARMACY EXAMINING BOARD. There is created a pharmacy examining board in the department of regulation and licensing. The pharmacy examining board shall consist of 7 members appointed for staggered 4–year terms. Five of the members shall be licensed to practice pharmacy in this state. Two members shall be public members.

(10m) PSYCHOLOGY EXAMINING BOARD. There is created in the department of regulation and licensing a psychology examining board consisting of 6 members appointed for staggered 4–year terms. Four of the members shall be psychologists licensed in this state. Each of the psychologist members shall represent a different specialty area within the field of psychology. Two members shall be public members.

(10r) REAL ESTATE APPRAISERS BOARD. (a) There is created a real estate appraisers board in the department of regulation and licensing consisting of the following members appointed for 4–year terms:

1. Three appraisers who are certified or licensed under ch. 458.

2. One assessor, as defined in s. 458.09 (1).

3. Three public members.

(b) Of the appraiser members of the board, one shall be certified under s. 458.06 as a general appraiser, one shall be certified under s. 458.06 as a residential appraiser and one shall be licensed under s. 458.08 as an appraiser. No public member of the board may be connected with or have any financial interest in an appraisal business or in any other real estate–related business. Section 15.08 (Im) (am) applies to the public members of the board. No member of the board may serve more than 2 consecutive terms.

(c) Notwithstanding **s.** 15.07 (4), a majority of the board constitutes a quorum to do business only if at least 2 of the members present are appraiser members and at least one of the members present is a public member.

(11) REAL ESTATE BOARD. There is created a real estate board in the deparhnent of regulation and licensing. The real estate board shall consist of 7 members appointed to staggered 4–year terms. Four of the members shall be real estate brokers or salespersons licensed in this state. Three members shall be public members. Section 15.08 (1m) (am) applies to the public members of the real estate board. No member may serve more than 2 terms. The real estate board does not have rule–making authority.

(12) VETERSNARY EXAMINING BOARD. There is created a veterinary examining board in the department of regulation and licensing. The veterinary examining board shall consist of **8** members appointed for staggered 4–year terms. Five of the members shall be licensed veterinarians in this state. One member shall be a veterinary technician certified in this state. Two members shall be public

members. No member of the examining board may in any way be financially interested in any school having a veterinary department or a course of study in veterinary or animal technology.

(16) FUNERAL DIRECTORS EXAMINING BOARD. There is created a funeral directors examining board in the department of regulation and licensing. The funeral directors examining board shall consist of 6 members appointed for staggered 4–year terms. Four members shall be licensed funeral directors under ch. 445 in this state. Two members shall be public members.

(17) BARBERING AND COSMETOLOGY EXAMINING BOARD. There is created a barbering and cosmetology examining board in the department of regulation and licensing. The barbering and cosmetology examining board shall consist of 9 members appointed for 4–year terms. Four members shall be licensed barbers or cosmetologists, 2 members shall be public members, one member shall be a representative of a private school of barbering or cosmetology, one member shall be a representative of a public school of barbering or cosmetology and one member shall be a licensed electrologist. Except for the 2 members representing schools, no member may be connected with or have any financial interest in a barbering or cosmetology school.

History: 1973 c. 90, 156; 1975 c. 39, 86, 199,200,383,422; 1977 c. 26, 29, 203; 1977 c. 418; 1979 c. 34 ss. 45, 47 to 52; 1979 c. 221, 304; 1981 c. 94 ss. 5, 9; 1981 c. 356; 1983 a. 27,403,485, 538; 1985 a. 340; 1987 a. 257 s. 2; 1987 a. 264,265,316; 1989 a. 316, 340; 1991 a. 39, 78, 160, 189, 269; 1993 a. 16, 102, 463, 465, 491; 1995 a. 27 s. 9126 (19); 1995 a. 225; 1995 a. 305 s. 1; 1995 a. 321,417; 1997 a. 96,252,300; 2001 a. 16, 80.

A medical school instructor serving without compensation is ineligible to serve on the hoard ofmedical examiners. *62* Atty. Gen. 193.

An incumbent real estate examining board member is entitled to hold over in office until a successor is duly appointed and confirmed by the senate. The hoard was without authority to reimburse the nominee for expenses incurred in attending a meeting during an orientation period prior to confirmation. 63 Atty. Gen. 192.

15.406 Same; attached affiliated credentialing boards.

(1) PHYSICAL THERAPISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a physical therapists affiliated credentialing board consisting of the following members appointed for &year terms:

(a) Three physical therapists who are licensed under subch. III of ch. 448.

(am) One physical therapist assistant licensed under subch. III of ch. 448.

Note: Par. (am) is created eff. 4–1-04 by 2001 Wis. Act 70.

(b) One public member.

(2) DIETITIANS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a dietitians affiliated credentialing board consisting of the following members appointed for &year terms:

(a) Three dietitians who are certified under subch. V of ch. 448.

(b) One public member.

(3) PODIATRISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a podiatrists affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three podiatrists who are licensed under subch. IV of ch. 448.

(b) One public member.

(4) ATHLETIC TRAINERS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, an athletic trainers affiliated credentialkg board consisting of the following members appointed for 4–year terms:

(a) Four athletic trainers who are licensed under subch. VI of ch. 448 and who have not been issued a credential in athletic training by a governmental authority in a jurisdiction outside this state. One of the athletic trainer members may also be licensed under ch. 446 or 447 or subch. 11,111or IV of ch. 448.

(b) One member who is licensed to practice medicine and surgery under subch. II of ch. 448 and who has experience with athletic training and sports medicine.

(c) One public member.

(5) OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, an occupational therapists affiliated credentialing board consisting of the following members appointed for &year terms:

(a) Three occupational therapists who are licensed under subch. VII of ch. 448.

(b) Two occupational therapy assistants who are licensed under subch. VI of ch. 448.

(c) Two public members.

History: 1993 a. 107,443; 1997 a. 75, 175; 1999 a. 9, 180; 2001 a. 70.

15.407 Same; councils. (1m) RESPIRATORY CARE PRACTITIONERS EXAMINING COUNCIL. There is created a respiratory care practitioners examining council in the department of regulation and licensing and serving the medical examining board in an advisory capacity in the formulating of rules to be promulgated by the medical examining board for the regulation of respiratory care practitioners. The respiratory care practitioners examining council shall consist of 3 certified respiratory care practitioners, each of whom shall have engaged in the practice of respiratory care for at least 3 years preceding appointment, one physician and one public member. The respiratory care practitioner and physician members shall be appointed by the medical examining board. The members of the examining council shall serve 3–year terms. Section 15.08 (1) to (4) (a) and (6) to (10) shall apply to the respiratory care practitioners examining council.

(2) COUNCIL ON PHYSICIAN ASSISTANTS. There is created a council on physician assistants in the department of regulation and licensing and serving the medical examining board in an advisory capacity. The council's membership shall consist of:

(a) The vice chancellor for health sciences of the University of Wisconsin–Madison or the vice chancellor's designee.

(b) One public member appointed by the governor for a 2–year term.

(c) Three physician assistants selected by the medical examining board for staggered 2–year terms.

(2m) PERFUSIONISTS EXAMINING COUNCIL. There is created a perfusionists examining council in the department of regulation and licensing and serving the medical examining board in an advisory capacity. The council shall consist of the following members appointed for 3–year terms:

(a) Three licensed perfusionists appointed by the medical examining board.

(b) One physician who is a cardiothoracic surgeon or a cardiovascular anesthesiologist and who is appointed by the medical examining board.

(c) One public member appointed by the governor.

(3) EXAMINING COUNCILS; BOARD OF NURSING. The following examining councils are created in the department of regulation and licensing to serve the board of nursing in an advisory capacity. Section 15.08 (1) to (4) (a) and *(6)* to (10), applies to the examining councils.

(a) ***Registered nurses.*** There is created an examining council on registered nurses to consist of 4 registered nurses of not less than 3 years' experience in nursing, appointed by the board of nursing for staggered 4–year terms.

(b) ***Practical nurses.*** There is created an examining council on licensed practical nurses to consist of one registered nurse, 3 licensed practical nurses and one registered nurse who is a faculty member of an accredited school for practical nurses, appointed by the board of nursing for staggered 3–year terms. No member may be a member of the examining council on registered nurses.

(4) COUNCIL ON SPEECH–LANGUAGE PATHOLOGY AND AUDIOLOGY. There is created a council on speech–language pathology and audiology in the department of regulation and licensing and serving the hearing and speech examining board in an advisory capacity. The council shall consist of the following members appointed for 3–year terms:

(a) Three speech–language pathologists licensed under subch. II of ch. 459.

(b) Two audiologists licensed under subch. II of ch. 459.

(5) COUNCIL ON REAL ESTATE CURRICULUM AND EXAMINATIONS. There is created in the department of regulation and licensing a council on real estate curriculum and examinations consisting of 7 members appointed for 4–year terms. Five members shall be real estate brokers or salespersons licensed under ch. 452 and 2 members shall be public members. Of the real estate broker or salesperson members, one member shall be a member of the real estate board appointed by the real estate board, at least 2 members shall be

licensed real estate brokers with at least 5 years of experience as real estate brokers, and at least one member shall be a licensed real estate salesperson with at least 2 years of experience as a real estate salesperson. Of the 2 public members, at least one member shall have at least 2 years of experience in planning or presenting real estate educational programs. No member of the council may serve more than 2 consecutive terms.

(6) PHARMACIST ADVISORY COUNCIL. There is created a pharmacist advisory council in the department of regulation and licensing and serving the pharmacy examining board in an advisory capacity. The council shall consist of the following members appointed for 3–year terms:

(a) Two pharmacists licensed under ch. 450 appointed by the chairperson of the pharmacy examining board.

(b) One physician licensed under subch. II of ch. 448 appointed by the chairperson of the medical examining board.

(c) One nurse licensed under ch. 441 appointed by the chairperson of the board of nursing.

(7) MASSAGE THERAPY AND BODYWORK COUNCIL. (a) There is created a massage therapy and bodywork council in the department of regulation and licensing, serving the department in an advisory capacity. The council shall consist of 7 members, appointed for 4–year terms, who are massage therapists or bodyworkers certified under ch. 460 and who have engaged in the practice of massage therapy or bodywork for at least 2 years preceding appointment.

(b) In appointing members under par.(a), the governor shall ensure, to the maximum extent practicable, that the membership of the council is diverse, based on all of the following factors:

1. Massage or bodywork therapies practiced in this state.

2. Affiliation and nonaffiliation with a professional association for the practice of massage therapy or bodywork.

3. Professional associations with which massage therapists or bodyworkers in this state are affiliated.

4. Practice in urban and rural areas in this state.

Note: Sub. (7) is created eff. 3–1–03 by 2001 Wis. Act 74.

History: 1973 c. 149; 1975 c. 39.86, 199, 383, 422; 1977 c. 418; 1979 c. 34 ss. 46, 53; 1981 c. 390 s. 252; 1985 a. 332 s. 251 (1); 1987 a. 399; 1989 a. 229, 316, 341, 359; 1991 a. 316; 1993 a. 105, 107; 1997 a. 68, 175; 1997 a. 237 s. 727m; 1999 a. 32, 180, 186; 2001 a. 74, 89.

CHAPTER 19
GENERAL DUTIES OF PUBLIC OFFICIALS

SUBCHAPTER II
PUBLIC RECORDS AND PROPERTY

19.34 Procedural infomiation.

19.34 Procedural information. (1) Each authority shall adopt, prominently display and make available for inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and the established times and places at which, the legal custodian under s. 19.33 from whom, and the methods whereby, the public may obtain information and access to records in its custody, make requests for records, or obtain copies of records, and the costs thereof. This subsection does not apply to members of the legislature or to members of any local governmental body.

(2) (a) Each authority which maintains regular office hours at the location where records in the custody of the authority are kept shall permit access to the records of the authority at all times during those office hours, unless otherwise specifically authorized by Iaw.

(b) Each authority which does not maintain regular office hours at the location where records in the custody of the authority are kept shall:

I. Permit access to its records upon at least 48 hours' written or oral notice of intent to inspect or copy a record; or

2. Establish a period of at least 2 consecutive hours per week during which access to the records of the authority is permitted. In such case, the authority may require 24 hours' advance written or oral notice of intent to inspect or copy a record.

(c) An authority imposing a notice requirement under par. (b) shall include a statement of the requirement in its notice under sub.(1), if the authority is required to adopt a notice under that subsection.

(d) If a record of an authority is occasionally taken to a location other than the location where records of the authority are regularly kept, and the record may be inspected at the place at which records of the authority are regularly kept upon one business day's notice, the authority or legal custodian of the record need not provide access to the record at the occasional location.

History: 1981 c. 335.

CHAPTER 48
CHILDREN'S CODE

SUBCHAPTER XX
MISCELLANEOUS PROVISIONS

48.981 Abused or neglected children and abused unborn children.

SUBCHAPTER XX
MISCELLANEOUS PROVISIONS

48.981 Abused or neglected children and abused unborn children. (1) DEFINITIONS. In this section:

(ag) "Agency" means a county department, the department in a county having a population of 500,000 or more or a licensed child welfare agency under contract with a county department or the department in a county having a population of 500,000 or more to perform investigations under this section.

(am) "Caregiver" means, with respect to a child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect, any of the following persons:

1. The child's parent, grandparent, great-grandparent, stepparent, brother, sister, stepbrother, stepsister, half brother, or half sister.
2. The child's guardian.
3. The child's legal custodian.
4. A person who resides or has resided regularly or intermittently in the same dwelling as the child.
5. An employee of a residential facility or residential care center for children and youth in which the child was or is placed.
6. A person who provides or has provided care for the child in or outside of the child's home.
7. Any other person who exercises or has exercised temporary or permanent control over the child or who temporarily or permanently supervises or has supervised the child.
8. Any relative of the child other than a relative specified in subd.1.

(b) "Community placement" means probation; extended supervision; parole; aftercare; conditional transfer into the community under s. 51.35 (1); conditional transfer or discharge under s. 51.37 (9); placement in a Type 2 child caring institution or a Type 2 secured correctional facility authorized under s. 938.539 (5); conditional release under s. 971.17; supervised release under s. 980.06 or 980.08; participation in the community residential confinement program under s. 301.046, the intensive sanctions program under s. 301.048, the corrective sanctions program under s. 938.533, the intensive supervision program under s. 938.534 or the serious juvenile offender program under s. 938.538; or any other placement of an adult or juvenile offender in the community under the custody or supervision of the department of corrections, the department of health and family services, a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 or any other person under contract with the department of corrections, the department of health and family services or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 to exercise custody or supervision over the offender.

(cs) "Indian child" means any unmarried person who is under the age of 18 years and is affiliated with an Indian tribe or band in any of the following ways:

1. As a member of the tribe or band.
2. As a person who is both eligible for membership in the tribe or band and is the biological child of a member of the tribe or band.

(ct) "Indian unborn child" means an unborn child who, when born, may be eligible for affiliation with an Indian tribe or band in any of the following ways:

1. As a member of the tribe or band.
2. As a person who is both eligible for membership in the tribe or band and the biological child of a member of the tribe or band.

(d) "Neglect" means failure, refusal or inability on the part of a parent, guardian, legal custodian or other person exercising temporary or permanent control over a child, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child.

(f) "Record" means any document relating to the investigation, assessment and disposition of a report under this section.

(fm) "Relative" means a parent, grandparent, great-grandparent, stepparent, brother, sister, first cousin, 2nd cousin, nephew, niece, uncle, aunt, step-grandparent, stepbrother, stepsister, half brother, half sister, brother–in–law, sister–in–law, step-uncle, or step-aunt.

(g) "Reporter" means a person who reports suspected abuse or neglect or a belief that abuse or neglect will occur under this section.

(h) "Subject" means a person or unbom child named in a report or record as any of the following:

1. A child who is the victim or alleged victim of abuse or neglect or who is threatened with abuse or neglect. 1m. An unborn child who is the victim or alleged victim of abuse or who is at substantial risk of abuse.
2. A person who is suspected of abuse or neglect or who has been determined to have abused or neglected a child or to have abused an unborn child.

(i) "Tribal agent" means the person designated under 25 CFR 23.12 by an Indian tribe or band to receive notice of involuntary child custody proceedings under the Indian child welfare act, 25 USC 1901 to 1963.

(2) PERSONS REQUIRED TO REPORT. (a) [, group home, as described in s. 48.625 (1m,] Any of the following persons who has reasonable cause to suspect that a child seen by the person in the course of professional duties has been abused or neglected or who has reason to believe that a child seen by the person in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur shall, except as provided under sub. (2m), report as provided in sub. (3):

NOTE: The bracketed language was inserted into s. 48.981 (2) by 2001 Wis. Act 69, but was not taken into account by the treatment of s. 48.981 (2) by 2001 Wis. Act 103. Corrective legislation to move the language to its correct location in subd. 18. is pending.

1. A physician.
2. A coroner.
3. A medical examiner.
4. A nurse.
5. A dentist.
6. A chiropractor.
7. An optometrist.
8. An acupuncturist.
9. A medical or mental health professional not otherwise specified in this paragraph.
10. A social worker.
11. A marriage and family therapist.
12. A professional counselor.
13. A public assistance worker, including a financial and employment planner, as defined in s. 49.141 (1) (d).
14. A school teacher.
15. A school administrator
16. A school counselor.
17. A mediator under s. 767.11.
18. A child–care worker in a day care center [, group home, as described in s. 48.625 (1m),] or residential care center for children and youth.

NOTE: The bracketed language was inserted into s. 48.981 (2) by 2001 Wis. Act 69, but was not taken into account by the treatment of s. 48.981 (2) by 2001 Wis. Act 103. Corrective legislation to move the language to its correct location in subd. 18. is pending.

19. A day care provider.
20. An alcohol or other drug abuse counselor.
21. A member of the treatment staff employed by or working under contract with a county department under s. 46.23, 51.42, or 51.437 or a residential care center for children and youth.
22. A physical therapist. 22m. A physical therapist assistant.

NOTE: 2001 Wis. Act 70 creates the term "physical therapist assistant" and provides for the licensing of physical therapist assistants effective 4–1-04.

23. An occupational therapist.
24. A dietitian.

25. A speech–language pathologist.
26. An audiologist.
27. An emergency medical technician.
28. A first responder.
29. A police or law enforcement officer.

(b) A court–appointed special advocate who has reasonable cause to suspect that a child seen in the course of activities under s. 48.236 (3) has been abused or neglected or who has reason to believe that a child seen in the course of those activities has been threatened with abuse and neglect and that abuse or neglect of the child will occur shall, except as provided in sub. (2m), report as provided in sub. (3).

(c) Any person not otherwise specified in par. (a) or (b), including an attorney, who has reason to suspect that a child has been abused or neglected or who has reason to believe that a child has been threatened with abuse or neglect and that abuse or neglect of the child will occur may report as provided in sub. (3).

(d) Any person, including an attorney, who has reason to suspect that an unborn child has been abused or who has reason to believe that an unborn child is at substantial risk of abuse may report as provided in sub. (3).

(e) No person making a report under this subsection may be discharged from employment for so doing.

(2m) EXCEPTION TO REPORTING REQUIREMENT. (a) The purpose of this subsection is to allow children to obtain confidential health care services.

(b) In this subsection:

1. "Health care provider" means a physician, as defined under s. 448.01 (5), a physician assistant, as defined under s. 448.01 (6), or a nurse holding a certificate of registration under s. 441.06 (1) or a license under s. 441.10 (3).

2. "Health care service" means family planning services, as defined in s. 253.07 (1) (b), 1995 stats., pregnancy testing, obstetrical health care or screening, diagnosis and treatment for a sexually transmitted disease.

(c) Except as provided under pars. (d) and (e), the following persons are not required to report as suspected or threatened abuse, as defined in s. 48.02 (1) (b), sexual intercourse or sexual contact involving a child:

1. A health care provider who provides any health care service to a child.

4. A person who obtains information about a child who is receiving or has received health care services from a health care provider.

(d) Any person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has reason to suspect any of the following:

1. That the sexual intercourse or sexual contact occurred or is likely to occur with a caregiver.

2. That the child suffered or suffers from a mental illness or mental deficiency that rendered or renders the child temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.

3. That the child, because of his or her age or immaturity, was or is incapable of understanding the nature or consequences of sexual intercourse or sexual contact.

4. That the child was unconscious at the time of the act or for any other reason was physically unable to communicate unwillingness to engage in sexual intercourse or sexual contact.

5. That another participant in the sexual contact or sexual intercourse was or is exploiting the child.

(e) In addition to the reporting requirements under par. (d), a person described under par. (c) 1. or 4. shall report as required under sub. (2) if he or she has any reasonable doubt as to the voluntariness of the child's participation in the sexual contact or sexual intercourse.

(3) REPORTS; INVESTIGATION. (a) ***Referral of report.*** 1. A person required to report under sub. (2) shall immediately inform, by telephone or personally, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department or the sheriff or city, village, or town police department of the facts and circumstances contributing to a suspicion of child abuse or neglect or of unborn child abuse or to a belief that abuse or neglect will occur.

2. The sheriff or police department shall within 12 hours, exclusive of Saturdays, Sundays, or legal holidays, refer to the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department all cases reported to it. The county department, department, or licensed child welfare agency may require that a subsequent report be made in writing.

3. A county department, the department, or a licensed child welfare agency under contract with the department shall within 12 hours, exclusive of Saturdays, Sundays, or legal holidays, refer to the sheriff or police department all cases of suspected or threatened abuse, as defined in s. 48.02 (1) (b) to (f), reported to it. For cases of suspected or threatened abuse, as defined in s. 48.02 (1) (a), (am), or (gm), or neglect, each county department, the department, and a licensed child welfare agency under contract with the department shall adopt a written policy specifying the kinds of reports it will routinely report to local law enforcement authorities.

4. If the report is of suspected or threatened abuse, as defined in s. 48.02 (1) (b) to (f), the sheriff or police department and the county department, department, or licensed child welfare agency under contract with the department shall coordinate the planning and execution of the investigation of the report.

(b) ***Duties of local law enforcement agencies.*** 1. Any person reporting under this section may request an immediate investigation by the sheriff or police department if the person has reason to suspect that the health or safety of a child or of an unborn child is in immediate danger. Upon receiving such a request, the sheriff or police department shall immediately investigate to determine if there is reason to believe that the health or safety of the child or unborn child is in immediate danger and take any necessary action to protect the child or unborn child.

2. If the investigating officer has reason under s. 48.19 (1) (c) or (cm) or (d) 5. or 8. to take a child into custody, the investigating officer shall take the child into custody and deliver the child to the intake worker under s. 48.20. 2m. If the investigating officer has reason under s. 48.193 (1) (c) or (d) 2. to take the adult expectant mother of an unborn child into custody, the investigating officer shall take the adult expectant mother into custody and deliver the adult expectant mother to the intake worker under s. 48.203.

3. If the sheriff or police department determines that criminal action is necessary, the sheriff or police department shall refer the case to the district attorney for criminal prosecution. Each sheriff and police department shall adopt a written policy specifying the kinds of reports of suspected or threatened abuse, as defined in s. 48.02 (1) (b) to (f), that the sheriff or police department will routinely refer to the district attorney for criminal prosecution.

(bm) ***Notice of report to Indian tribal agent.*** In a county which has wholly or partially within its boundaries a federally recognized Indian reservation or a bureau of Indian affairs service area for the Ho–Chunk tribe, if a county department which receives a report under par. (a) pertaining to a child or unborn child knows that the child is an Indian child who resides in the county or that the unborn child is an Indian unborn child whose expectant mother resides in the county, the county department shall provide notice, which shall consist only of the name and address of the child or expectant mother and the fact that a report has been received about that child or unborn child, within 24 hours to one of the following:

1. If the county department knows with which tribe or band the child is affiliated, or with which tribe or band the unborn child, when born, may be eligible for affiliation, and it is a Wisconsin tribe or band, the tribal agent of that tribe or band.

2. If the county department does not know with which tribe or band the child is affiliated, or with which tribe or band the unborn child, when born, may be eligible for affiliation, or the child or expectant mother is not affiliated with a Wisconsin tribe or band, the tribal agent serving the reservation or Ho–Chunk service area where the child or expectant mother resides.

3. If neither subd. 1. nor 2. applies, any tribal agent serving a reservation or Ho–Chunk service area in the county.

(c) Duties of county departments. 1. Within 24 hours after receiving a report under par. (a), the agency shall, in accordance with the authority granted to the department under s. 48.48 (17) (a) 1. or the county department under s. 48.57 (1) (a), initiate a diligent investigation to determine if the child or unborn child is in need of protection or services. The investigation shall be conducted in accordance with standards established by the department for conducting child abuse and neglect investigations or unborn child abuse investigations. If the investigation is of a report of child abuse or neglect or of threatened child abuse or neglect by a caregiver specified in sub. (1) (am) 5. to 8. who continues to have access to the child or a caregiver specified in Sub.(1) (am) 1. to 4., or of a report that does not disclose who is suspected of the child abuse or

neglect and in which the investigation does not disclose who abused or neglected the child, the investigation shall also include observation of or an interview with the child, or both, and, if possible, an interview with the child's parents, guardian or legal custodian. If the investigation is of a report of child abuse or neglect or threatened child abuse or neglect by a caregiver who continues to reside in the same dwelling as the child, the investigation shall also include, if possible, a visit to that dwelling. At the initial visit to the child's dwelling: the person making the investigation shall identify himself or herself and the agency involved to the child's parents, guardian or legal custodian. The agency may contact, observe or interview the child at any location without permission from the child's parent, guardian or legal custodian if necessary to determine if the child is in need of protection or services, except that the person making the investigation may enter a child's dwelling only with permission from the child's parent, guardian or legal custodian or after obtaining a court order to do so.

2. a. If the person making the investigation is an employee of the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department and he or she determines that it is consistent with the child's best interest in terms of physical safety and physical health to remove the child from his or her home for immediate protection, he or she shall take the child into custody under s. 48.08 (2) or 48.19 (1) (c) and deliver the child to the intake worker under s. 48.20.

b. If the person making the investigation is an employee of a licensed child welfare agency which is under contract with the county department and he or she determines that any child in the home requires immediate protection, he or she shall notify the county department of the circumstances and together with an employee of the county department shall take the child into custody under s. 48.08 (2) or 48.19 (1) (c) and deliver the child to the intake worker under s. 48.20.

2m. a. If the person making the investigation is an employee of the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department and he or she determines that it is consistent with the best interest of the unborn child in terms of physical safety and physical health to take the expectant mother into custody for the immediate protection of the unborn child, he or she shall take the expectant mother into custody under s. 48.08 (2), 48.19 (1) (cm) or 48.193 (1) (c) and deliver the expectant mother to the intake worker under s. 48.20 or 48.203.

b. If the person making the investigation is an employee of a licensed child welfare agency which is under contract with the county department and he or she determines that any unbom child requires immediate protection, he or she shall notify the county department of the circumstances and together with an employee of the county department shall take the expectant mother of the unborn child into custody under s. 48.08 (2), 48.19 (1) (cm) or 48.193 (1) (c) and deliver the expectant mother to the intake worker under s. 48.20 or 48.203.

3. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department determines that a child, any member of the child's family or the child's guardian or legal custodian is in need of services or that the expectant mother of an unborn child is in need of services, the county department, department or licensed child welfare agency shall offer to provide appropriate services or to make arrangements for the provision of services. If the child's parent, guardian or legal custodian or the expectant mother refuses to accept the services, the county department, department or licensed child welfare agency may request that a petition be filed under s. 48.13 alleging that the child who is the subject of the report or any other child in the home is in need of protection or services or that a petition be filed under s. 48.133 alleging that the unborn child who is the subject of the report is in need of protection or services.

4. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall determine, within 60 days after receipt of a report, whether abuse or neglect has occurred or is likely to occur. The determination shall be based on a preponderance of the evidence produced by the investigation. A determination that abuse or neglect has occurred may not be based solely on the fact that the child's parent, guardian or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child. In making a determination that emotional damage has occurred, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall give due regard to the culture of the subjects. This subdivision does not prohibit a court from ordering medical services for the child if the child's health requires it.

5. The agency shall maintain a record of its actions in connection with each report it receives. The record shall include a description of the services provided to any child and to the parents, guardian or legal custodian of the child or to any expectant mother of an unborn child. The agency shall update the record every 6 months until the case is closed.

5m. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department determines under subd.4. that a specific person has abused or neglected a child, the county department, department or licensed child welfare agency, within 15 days after the date of the determination, shall notify the person in writing of the determination, the person's right to appeal the determination and the procedure by which the person may appeal the determination, and the person may appeal the determination in accordance with the procedures established by the department under this subdivision. The department shall promulgate rules establishing procedures for conducting an appeal under this subdivision. Those procedures shall include a procedure permitting an appeal under this subdivision to be held in abeyance pending the outcome of any criminal proceedings or any proceedings under s. 48.13 based on the alleged abuse or neglect or the outcome of any investigation that may lead to the filing of a criminal complaint or a petition under s. 48.13 based on the alleged abuse or neglect.

6. The agency shall, within 60 days after it receives a report from a person required under sub. (2) to report, inform the reporter what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report.

6m. If a person who is not required under sub. (2) to report makes a report and is a relative of the child, other than the child's parent, or is a relative of the expectant mother of the unborn child, that person may make a written request to the agency for information regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report. An agency that receives a written request under this subdivision shall, within 60 days after it receives the report or 20 days after it receives the written request, whichever is later, inform the reporter in writing of what action, if any, was taken to protect the health and welfare of the child or unborn child, unless a court order prohibits that disclosure, and of the duty to keep the information confidential under sub. (7) (e) and the penalties for failing to do so under sub. (7) (f). The agency may petition the court ex parte for an order prohibiting that disclosure and, if the agency does so, the time period within which the information must be disclosed is tolled on the date the petition is filed and remains tolled until the court issues a decision. The court may hold an ex parte hearing in camera and shall issue an order granting the petition if the court determines that disclosure of the information would not be in the best interests of the child or unborn child.

7. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall cooperate with law enforcement officials, courts of competent jurisdiction, tribal governments and other human services agencies to prevent, identify and treat child abuse and neglect and unborn child abuse. The county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department shall coordinate the development and provision of services to abused and neglected children, to abused unborn children to families in which child abuse or neglect has occurred, to expectant mothers who have abused their unborn children, to children and families when circumstances justify a belief that abuse or neglect will occur and to the expectant mothers of unborn children when circumstances justify a belief that unborn child abuse will occur.

8. Using the format prescribed by the department, each county department shall provide the department with information about each report that the county department receives or that is received by a licensed child welfare agency that is under contract with the county department and about each investigation that the county department or a licensed child welfare agency under contract with

the county department conducts. Using the format prescribed by the department, a licensed child welfare agency under contract with the department shall provide the department with information about each report that the child welfare agency receives and about each investigation that the child welfare agency conducts. This information shall be used by the department to monitor services provided by county departments or licensed child welfare agencies under contract with county departments or the department. The department shall use non-identifying information to maintain statewide statistics on child abuse and neglect and on unbom child abuse, and for planning and policy development purposes.

9. The agency may petition for child abuse restraining orders and injunctions under s. 48.25 (6).

(cm) Contract with licensed child welfare agencies. A county department may contract with a licensed child welfare agency to fulfill the county department's duties specified under par. (c) 1., 2.b., 2m.b., 5., 6., 6m. and 8. The department may contract with a licensed child welfare agency to fulfill the department's duties specified under par. (c) 1., 2.a., 2m.b., 3., 4., 5., 5m., 6., 6m., 7., 8. and 9. in a county having a population of 500,000 or more. The confidentiality provisions specified in sub. (7) shall apply to any licensed child welfare agency with which a county department or the department contracts.

(d) ***Independent investigation.*** 1. In this paragraph, "agent" includes, but is not limited to, a foster parent, treatment foster parent or other person given custody of a child or a human services professional employed by a county department under s. 51.42 or 51.437 or by a child welfare agency who is working with a child or an expectant mother of an unborn child under contract with or under the supervision of the department in a county having a population of 500,000 or more or a county department under s. 46.22.

2. If an agent or employee of an agency required to investigate under this subsection is the subject of a report, or if the agency determines that, because of the relationship between the agency and the subject of a report, there is a substantial probability that the agency would not conduct an unbiased investigation, the agency shall, after taking any action necessary to protect the child or unborn child, notify the department. Upon receipt of the notice, the department, in a county having a population of less than 500,000 or a county department or child welfare agency designated by the department in any county shall conduct an independent investigation. If the department designates a county department under s. 46.22, 46.23, 51.42 or 51.437, that county department shall conduct the independent investigation. If a licensed child welfare agency agrees to conduct the independent investigation, the department may designate the child welfare agency to do so. The powers and duties of the department or designated county department or child welfare agency making an independent investigation are those given to county departments under par. (c).

(4) IMMUNITY FROM LIABILITY. Any person or institution participating in good faith in the making of a report, conducting an investigation, ordering or taking of photographs or ordering or performing medical examinations of a child or of an expectant mother under this section shall have immunity from any liability, civil or criminal, that results by reason of the action. For the purpose of any proceeding, civil or criminal, the good faith of any person reporting under this section shall be presumed. The immunity provided under this subsection does not apply to liability for abusing or neglecting a child or for abusing an unbom child.

(5) CORONER'S REPORT. Any person or official required to report cases of suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report the fact to the appropriate medical examiner or coroner. The medical examiner or coroner shall accept the report for investigation and shall report the findings to the appropriate district attorney; to the department or, in a county having a population of 500,000 or more, to a licensed child welfare agency under contract with the department; to the county department and, if the institution making the report initially is a hospital, to the hospital.

(6) PENALTY. Whoever intentionally violates this section by failure to report as required may be fined not more than $1,000 or imprisoned not more than 6 months or both.

(7) CONFIDENTIALITY. (a) All reports made under this section, notices provided under sub. (3) (bm) and records maintained by an agency and other persons, officials and institutions shall be confidential. Reports and records may be disclosed only to the following persons:

1. The subject of a report, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

1m. A reporter described in sub. (3) (c) 6m. who makes a written request to an agency for information regarding what action, if any, was taken to protect the health and welfare of the child or unborn child who is the subject of the report, unless a court order under sub. (3) (c) 6m. prohibits disclosure of that information to that reporter, except that the only information that may be disclosed is information in the record regarding what action, if any, was taken to protect the health and welfare of the child or unbom child who is the subject of the report.

2. Appropriate staff of an agency or a tribal social services department.

2m. A person authorized to provide or providing intake or dispositional services for the court under s. 48.067, 48.069 or 48.10.

2r. A person authorized to provide or providing intake or dispositional services under s. 938.067, 938.069 or 938.10.

3. An attending physician for purposes of diagnosis and treatment.

3m. A child's parent, guardian or legal custodian or the expectant mother of an unborn child, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

4. **A** child's foster parent, treatment foster parent or other person having physical custody of the child or a person having physical custody of the expectant mother of an unborn child, except that the person or agency maintaining the record or report may not disclose any information that would identify the reporter.

5. **A** professional employee of a county department under s. 51.42 or 51.437 who is working with the child or the expectant mother of the unborn child under contract with or under the supervision of the county department under s. 46.22 or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

6. A multidisciplinary child abuse and neglect or unborn child abuse team recognized by the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

6m. **A** person employed by a child advocacy center recognized by the county board, the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department, to the extent necessary to perform the services for which the center is recognized by the county board, the county department, the department or the licensed child welfare agency.

8. A law enforcement officer or law enforcement agency or a district attorney for purposes of investigation or prosecution.

8m. The department of corrections, the department of health and family services, a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 or any other person under contract with the department of corrections, the department of health and family services or a county department under s. 46.215, 46.22, 46.23, 51.42 or 51.437 to exercise custody or supervision over a person who is subject to community placement for purposes of investigating or providing services to a person who is subject to community placement and who is the subject of a report. In making its investigation, the department of corrections, department of health and family services, county department or other person shall cooperate with the agency making the investigation under sub. (3) (c) or (d).

9. A court or administrative agency for use in a proceeding relating to the licensing or regulation of a facility regulated under this chapter.

10. A court conducting proceedings under s. 48.21 or 48.213, a court conducting proceedings related to a petition under s. 48.13, 48.133 or 48.42 or a court conducting dispositional proceedings under subch. VI or VIII in which abuse or neglect of the child who is the subject of the report or record or abuse of the unbom child who is the subject of the report or record is an issue.

10g. A court conducting proceedings under s. 48.21, a court conducting proceedings related to a petition under s. 48.13 (3m) or (10m) or a court conducting dispositional proceedings under subch. VI in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

10j. A court conducting proceedings under s. 938.21, a court conducting proceedings relating to a petition under ch. 938 or a

court conducting dispositional proceedings under subch. VI of ch. 938 in which abuse or neglect of the child who is the subject of the report or record is an issue.

10m. A tribal court, or other adjudicative body authorized by a tribe or band to perform child welfare functions, that exercises jurisdiction over children and unborn children alleged to be in need of protection or services for use in proceedings in which abuse or neglect of the child who is the subject of the report or record or abuse of the unborn child who is the subject of the report or record is an issue.

10r. A tribal court, or other adjudicative body authorized by a tribe or band to perform child welfare functions, that exercises jurisdiction over children alleged to be in need of protection or services for use in proceedings in which an issue is the substantial risk of abuse or neglect of a child who, during the time period covered by the report or record, was in the home of the child who is the subject of the report or record.

11. The county corporation counsel or district attorney representing the interests of the public, the agency legal counsel and the counsel or guardian ad litem representing the interests of a child in proceedings under subd.10., 10g. or 10j. and the guardian ad litem representing the interests of an unborn child in proceedings under subd.10.

11m. An attorney representing the interests of an Indian tribe or band in proceedings under subd. 10m. or 10r., of an Indian child in proceedings under subd. 10m. or 10r. or of an Indian unborn child in proceedings under subd. 10m.

11r. A volunteer court–appointed special advocate designated under s. 48.236 (1) or person employed by a court–appointed special advocate program recognized by the chief judge of a judicial administrative district under s. 48.07 (5), to the extent necessary for the court–appointed special advocate to perform the advocacy services specified in s. 48.236 (3) that the court–appointed special advocate was designated to perform in proceedings related to a petition under s. 48.13.

12. A person engaged in bona fide research, with the permission of the department. Information identifying subjects and reporters may not be disclosed to the researcher.

13. The department, a county department under s. 48.57 (1) (e) or (hm) or a licensed child welfare agency ordered to conduct a screening or an investigation of a stepparent under s. 48.88 (2) (c).

14. A grand jury if it determines that access to specified records is necessary for the conduct of its official business. 14m. A judge conducting proceedings under s. 968.26.

15. A child fatality review team recognized by the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department.

15g. A citizen review panel established or designated by the department or a county department.

15m. A coroner, medical examiner or pathologist or other physician investigating the cause of death of a child whose death is unexplained or unusual or is associated with unexplained or suspicious circumstances.

17. A federal agency, state agency of this state or any other state or local governmental unit located in this state or any other state that has a need for a report or record in order to carry out its responsibility to protect children from abuse or neglect or to protect unborn children from abuse.

(am) Notwithstanding par. (a) (intro.), a tribal agent who receives notice under sub. (3) (bm) may disclose the notice to a tribal social services department.

(b) Notwithstanding par. (a), either parent of a child may authorize the disclosure of a record for use in a child custody proceeding under s. 767.24 or 767.325 or in an adoption proceeding under s. 48.833, 48.835, 48.837 or 48.839 when the child has been the subject of a report. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(c) Notwithstanding par. (a), the subject of a report may authorize the disclosure of a record to the subject's attorney. The authorization shall be in writing. Any information that would identify a reporter shall be deleted before disclosure of a record under this paragraph.

(cm) Notwithstanding par. (a), an agency may disclose information from its records for use in proceedings under s. 48.25 (6), 813.122 or 813.125.

(cr) 1. Notwithstanding par. (a) and subject to subd.3., an agency may disclose to the general public a written summary of the information specified in subd.2. relating to any child who has died or been placed in serious or critical condition, as determined by a physician, as a result of any suspected abuse or neglect that has been reported under this section if any of the following circumstances apply:

a. A person has been charged with a crime for causing the death or serious or critical condition of the child as a result of the suspected abuse or neglect, or the district attorney indicates that a person who is deceased would have been charged with a crime for causing the death or serious or critical condition of the child as a result of the suspected abuse or neglect, but for the fact that the person is deceased.

b. A judge, district attorney, law enforcement officer, law enforcement agency or any other officer or ,agency whose official duties include the investigation or prosecution of crime has previously disclosed to the public, in the performance of the official duties of the officer or agency, that the suspected abuse or neglect of the child has been investigated under sub. (3) or that child welfare services have been provided to the child or the child's family under this chapter.

c. A parent, guardian or legal custodian of the child or the child, if 14 years of age or over, has previously disclosed or authorized the disclosure of the information specified in subd.2.

2. If an agency is permitted to disclose information under subd.1. relating to a child who has died or been placed in serious or critical condition as a result of any suspected abuse or neglect that has been reported under this section, the agency may disclose all of the following information from its records:

a. A description of any investigation made by the agency in response to the report of the suspected abuse or neglect, a statement of the determination made by the agency under sub. (3) (c) 4. with respect to the report and the basis for that determination, a statement of whether any services were offered or provided to the child, the child's family or the person suspected of the abuse or neglect and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as the child who is the subject of the report.

b. Whether any previous report of suspected or threatened abuse or neglect of the child has been made to the agency and the date of the report, a statement of the determination made by the agency under sub. (3) (c) 4. with respect to the report and the basis for that determination, a statement of whether any services were offered or provided to the child, the child's family or the person suspected of the abuse or neglect and a statement of whether any other action was taken by the agency to protect the child who is the subject of the report or any other child residing in the same dwelling as the child who is the subject of the report.

c. Whether the child or the child's family has received any services under this chapter prior to the report of suspected abuse or neglect that caused the child's death or serious or critical condition or any previous report of suspected or threatened abuse or neglect.

3. An agency may not disclose any of the information described in subd.2. if any of the following applies:

a. The agency determines that disclosure of the information would be contrary to the best interests of the child who is the subject of the report, the child's siblings or any other child residing in the same dwelling as the child who is the subject of the report or that disclosure of the information is likely to cause mental, emotional or physical harm or danger to the child who is the subject of the report, the child's siblings, any other child residing in the same dwelling as the child who is the subject of the report or any other person.

b. The district attorney determines that disclosure of the information would jeopardize any ongoing or future criminal investigation or prosecution or would jeopardize a defendant's right to a fair trial.

c. The agency determines that disclosure of the information would jeopardize any ongoing or future civil investigation or proceeding or would jeopardize the fairness of such a proceeding,

d. Disclosure of the information is not authorized by state law or rule or federal law or regulation.

e. The investigation under sub. (3) of the report of the suspected abuse or neglect has not been completed, in which case the agency may only disclose that the report is under investigation.

f. Disclosure of the information would reveal the identity of the child who is the subject of the report, the child's siblings, the child's parent, guardian or legal custodian or any other person residing in the same dwelling as the child, and information that would reveal

the identity of those persons has not previously been disclosed to the public.

g. Disclosure of the information would reveal the identity of a reporter or any other person who provides information relating to the suspected abuse or neglect of the child.

4. Any person who requests the information specified in subd.2. under the circumstances specified in subd.1. and whose request is denied may petition the court to order the disclosure of that information. On receiving a petition under this subdivision, the court shall notify the agency, the district attorney, the child and the child's parent, guardian or legal custodian of the petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence and hear argument relating to the disclosure of the information. The court shall make an in camera inspection of the information sought to be disclosed and shall order disclosure of the information, unless the court finds that any of the circumstances specified in subd.3. apply.

5. Any person acting in good faith in disclosing or refusing to disclose the information specified in subd.2. under the circumstances specified in subd.1. is immune from any liability, civil or criminal, that may result by reason of that disclosure or nondisclosure. For purposes of any proceeding, civil or criminal, the good faith of a person in disclosing or refusing to disclose the information specified in subd.2. under the circumstances specified in subd.1. shall be presumed.

(d) Notwithstanding par. (a), the department may have access to any report or record maintained by an agency under this section.

(e) A person to whom a report or record is disclosed under this subsection may not further disclose it, except to the persons and for the purposes specified in this section.

(f) Any person who violates this subsection, or who permits or encourages the unauthorized dissemination or use of information contained in reports and records made under this section, may be fined not more than $1,000 or imprisoned not more than 6 months or both.

(8) EDUCATION, TRAINING AND PROGRAM DEVELOPMENT AND COORDINATION. (a) The department, the county departments, and a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more to the extent feasible shall conduct continuing education and training programs for staff of the department, the county departments, licensed child welfare agencies under contract with the department or a county department, law enforcement agencies, and the tribal social services departments, persons and officials required to report, the general public, and others as appropriate. The programs shall be designed to encourage reporting of child abuse and neglect and of unborn child abuse, to encourage self–reporting and voluntary acceptance of services and to improve communication, cooperation, and coordination in the identification, prevention, and treatment of child abuse and neglect and of unborn child abuse. Programs provided for staff of the department, county departments, and licensed child welfare agencies under contract with county departments or the department whose responsibilities include the investigation or treatment of child abuse or neglect shall also be designed to provide information on means of recognizing and appropriately responding to domestic abuse, as defined in s. 46.95 (1) (a). The department, the county departments, and a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more shall develop public information programs about child abuse and neglect and about unborn child abuse.

(b) The department shall to the extent feasible ensure that there are available in the state administrative procedures, personnel trained in child abuse and neglect and in unborn child abuse, multidisciplinary programs and operational procedures and capabilities to deal effectively with child abuse and neglect cases and with unborn child abuse cases. These procedures and capabilities may include, but are not limited to, receipt, investigation and verification of reports; determination of treatment or ameliorative social services; or referral to the appropriate court.

(c) In meeting its responsibilities under par. (a) or (b), the department, a county department or a licensed child welfare agency under contract with the department in a county having a population of 500,000 or more may contract with any public or private organization which meets the standards set by the department. In entering into the contracts the department, county department or licensed child welfare agency shall give priority to parental organizations combating child abuse and neglect or unborn child abuse.

(d) 1. Each agency staff member and supervisor whose responsibilities include investigation or treatment of child abuse and neglect or of unborn child abuse shall successfully complete training in child abuse and neglect protective services and in unborn child abuse protective services approved by the department. The training shall include information on means of recognizing and appropriately responding to domestic abuse, as defined in s. 46.95 (1) (a). The department shall monitor compliance with this subdivision according to rules promulgated by the department.

2. Each year the department shall make available training programs that permit intake workers and agency staff members and supervisors to satisfy the requirements under subd.1. and s. 48.06 (1) (am) 3. and (2) (c).

(9) ANNUAL REPORTS. Annually, the department shall prepare and transmit to the governor, and to the legislature under s. 13.172 (2), a report on the status of child abuse and neglect programs and on the status of unborn child abuse programs. The report shall include a full statistical analysis of the child abuse and neglect reports, and the unborn child abuse reports, made through the last calendar year, an evaluation of services offered under this section and their effectiveness, and recommendations for additional legislative and other action to fulfill the purpose of this section. The department shall provide statistical breakdowns by county, if requested by a county.

(10) CURRENT LIST OF TRIBAL AGENTS. The department shall annually provide to each agency described in sub. (3) (bm) (intro.) a current list of all tribal agents in the state.

History: Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84, 149, 192; 2001 a. 16, 38, 59, 69, 70, 103, 105.

Even if the authority for a warrantless search can be inferred from ch. 48, those provisions cannot supercede the constitutional provisions prohibiting unreasonable searches and seizures. State v. Boggess, 115 Wis. 2d 443, 340 N.W.2d 516 (1983).

Section 48.981, 1983 stats., is not unconstitutionally vague. State v. Hurd, 135 Wis. 2d 266, 400 N.W.2d 42 (Ct. App. 1986).

Immunity under sub. (4) extends to reporters who report the necessary information to another who they expect to and who does report to proper authorities. Investigating the allegation prior to reporting does not run afoul of the immediate reporting requirement of sub. (3) and does not affect immunity. Allegations of negligence by reporters are not sufficient to challenge the good faith requirement of sub. (4). Phillips v. Behnke, 192 Wis. 2d 552, 531 N.W.2d 619 (Ct. App. 1995).

To overcome the presumption of good faith under sub. (4), more than a violation of sub. (3) is required. It must also be shown that the violation was "conscious" or "intentional." Drake v. Huber, 218 Wis. 2d 672, 582 N.W.2d 74 (Ct. App. 1998).

This section provides no basis for civil liability against a person who may, but is not required to, report abuse. Gritzner v. Michael R. 2000 WI 68, 235 Wis. 2d 781, 611 N.W.2d 906.

To "disclose" information under sub. (7), the recipient must have been previously unaware of the information at the time of the communication. The state has the burden to prove beyond a reasonable doubt that the disclosure took place. Sub. (7) is a strict liability statute; intent is not an element of a violation. State v. Polashek. 2002 WI 74. ___ Wis. 2d ___, 646 N.W.2d 330.

The duty to report suspected cases of child abuse or neglect under s. 48.981 (3) (a) prevails over any inconsistent term in s. 51.30. 68 Atty. Gen. 342.

Consensual sexual conduct involving a 16 and 17 year old does not constitute child abuse. 72 Atty. Gen. 93.

Medical or mental health professionals may report suspected child abuse under the permissive provisions of sub. (2) when the abuser, rather than victim, is seen in the course of professional duties. Section 51.30 does not bar such reports made in good faith. 76 Atty. Gen. 39.

Contracting out for services under this section is discussed. 76 Atty. Gen. 286. Disclosure under sub. (7) (a) 1. and (c) is mandatory. 77 Atty. Gen. 84.

The responsibility of county departments of social services to investigate allegations of child abuse and neglect is discussed. Department staff members may interview a child on public school property and may exclude school personnel from the interview. School personnel cannot condition on–site interviews on notification of the child's parents. 79 Atty. Gen. 48.

Members of a social services board in a county with a county executive or a county administrator may be granted access to child abuse and neglect files under s. 48.981 if access is necessary for the performance of their statutory duties. 79 Atty. Gen. 212.

A district attorney or corporation counsel may reveal the contents of a report made under s. 48.981 in the course of a criminal prosecution or one of the civil proceedings enumerated under sub. (7) (a) 10. 81 Atty. Gen. 66.

County departments have authority to transport a child to a county–recognized child advocacy center for the purpose of an investigatory interview without consent of the primary caretaker, if to do so is necessary to an investigation of alleged child maltreatment. OAG 3–98.

The confrontation clause does not require a defendant's access to confidential child abuse reports; due process requires that the court undertake an in camera inspection of the file to determine whether it contains material exculpatory evidence. Pennsylvania v. Ritchie, 480 U.S. 39 (1987).

This section does not authorize a private cause of action for failure to report. Isley v. Capucian Province, 880 F. Supp. 1138 (1995).

69.18 Death records. (1) REGISTRATION OF DEATHS.(a) Any one of the following may move a corpse for the purpose of final disposition:

1. A funeral director licensed under ch. 445 acting in person or through the agency of another funeral director licensed under ch. 445.

2. **A** member of the decedent's immediate family who personally prepares for and conducts the final disposition of the decedent.

3. A person acting under s. 157.02 or 445.16.

(b) Any person who moves a corpse under par.(a) shall file a certificate of death for the corpse under this subsection on a form prescribed by the state registrar under any one of the following circumstances:

1. The death occurred in this state.

2. The corpse was found in this state.

3. The corpse was removed in this state from a conveyance which was moving at the time of death.

4. The corpse was found in interstate waters and removed in this state.

(bm) A person required to file a certificate of death under par.(b) shall obtain the information required for the certificate of death from the next of kin or the best qualified person or source available. The person filing the certificate of death shall enter his or her signature on the certificate and include his or her address and the date of signing and shall present or mail the certificate, within 24 hours after being notified of the death, to the physician, coroner or medical examiner responsible for completing and signing the medical certification. Within 2 days after receipt of the medical certification, the person filing the certificate of death shall mail or present the certificate of death in:

1. The registration district of the place of death if the death occurred in this state.

2. The registration district where the corpse was found or removed if the place of death is not in this state or is unknown, is removed in this state from a conveyance which was moving at the time of death or is found in interstate waters and removed in this state.

(c) A hospital, a nursing home, as defined in s. 50.01 (3), or a hospice, as defined in s. 50.90 (1), which is the place of death of a person may prepare a certificate of death for the person and give the certificate to the person who moves the corpse under par.(a).

(d) A hospital, nursing home, or hospice, as defined in s. 50.90 (1) (c), may not release a corpse to any person under par.(a) unless the person presents a notice of removal on a form prescribed by the state registrar, in duplicate, to the administrator of the hospital, nursing home, or hospice. The administrator shall retain one copy and forward the other copy to the local registrar of the registration district in which the hospital, nursing home, or hospice is located.

(e) 1. If a death is a miscarriage and 20 weeks or more have elapsed between the mother's last normal menstrual period and delivery or the stillbirth weighs 350 grams or more, one of the following shall submit, within 5 days after delivery, a fetal death report to the state registrar:

a. If the miscarriage occurs at or on route to a hospital, the individual who manages the hospital or the hospital's medical records.

b. If the miscarriage does not occur at or on route to a hospital, the funeral director or other person authorized by at least one parent of the stillbirth.

2. Except as provided under subd. I., no fetal death report is required.

(1m) FORMAT Beginning on January 1, 2003, a certificate of death shall consist of the following parts:

(a) Fact-of-death information, which shall include all of the following:

1. The name and other identifiers of the decedent, including the decedent's social security number, if any.

2. The date, time, and place that the decedent was pronounced dead.

3. The manner of the decedent's death.

4. The identity of the person certifying the death.

5. The dates of certification and filing of the certificate of death.

(b) Extended fact-of-death information, which includes all of the following:

1. All information under par.(a).

2. Information on final disposition and cause of death.

3. Injury-related data.

(c) Statistical-use-only information, which includes all of the following:

1. All information other than that under par.(b) that is collected on the standard death record form recommended by the federal agency responsible for national vital statistics.

2. Other data, as directed by the state registrar, including race, educational background, and health risk behavior.

(2) MEDICAL CERTIFICATION. a) On the form for a certificate of death prescribed by the state registrar under sub.(1) (b), the state registrar shall provide for a medical certification to be completed under this subsection.

(b) If a person under the care of a physician dies from the illness or condition for which the care is given and a coroner or medical examiner does not certify the cause of death under par.(d) 1., the physician shall complete and sign a medical certification for the death under par.(f) and mail the medical certification within 5 days after the pronouncement of death or present the medical certification to the person responsible for filing the death certificate under sub.(1) within 6 days after the pronouncement of death.

(c) If the physician under par.(b) is absent or gives his or her written approval, the medical certification under par.(b) may be completed and signed by any one of the following who has access to the medical history of the decedent:

1. If any other physician assisted in attending the decedent, the other physician.

2. The chief medical officer of the hospital or nursing home in which the death occurred.

3. The physician who performed an autopsy on the decedent.

(d) 1. Except as provided under par.(e), if a death is the subject of a coroner's or medical examiner's determination under s. 979.01 or 979.03, the coroner or medical examiner or a physician supervised by a coroner or medical examiner in the county where the event which caused the death occurred shall complete and sign the medical certification for the death and mail the death certificate within 5 days after the pronouncement of death or present the certificate to the person responsible for filing the death certificate under sub.(1) within 6 days after the pronouncement of death.

2. Except as provided under par.(e), if the decedent **was** not under the care of a physician for the illness or condition from which the person died, the coroner or medical examiner, or a physician supervised by a coroner or medical examiner, in the county of the place of death shall complete and sign the medical certification for the death and mail the death certificate within 5 days after the pronouncement of death or present the certificate to the person responsible for filing the death certificate under sub.(1) within 6 days after the pronouncement of death.

3. For a medical certification under this paragraph, except a medical certification of the cause of death of an indigent, a coroner or medical examiner may charge a fee established by the county board, not to exceed an amount reasonably related to the actual and necessary cost of providing the medical certification. The coroner or medical examiner, or the physician employed by

the coroner or medical examiner, shall mail or present a medical certification as required under subd. 1., whether or not the fee has been paid.

(e) Unless the person is a physician supervised by a coroner or medical examiner, no person may act under par.(d) if the subject of the death certificate was his or her patient or a patient in a hospital, or nursing home, as defined in s. 50.01 (3), in which he or she has direct care of any patient.

(f) 1. A person signing a medical certification under par.(b), (c) or (d) shall describe, in detail, on a form prescribed by the state registrar, the cause of death, show the duration of each cause, the sequence of each cause if the cause of death was multiple and, if the cause was disease, the evolution of the disease. The person shall describe a disease in medical terms and may not limit the description to symptoms or conditions resulting from disease. if the cause of a death is medically certified under par.(d), the coroner or medical examiner shall describe any violence related to the cause of death, its effect on the decedent and whether it was accidental, suicidal, homicidal or undetermined.

2. If a person signing a medical certification under par.(b), (c) or (d) fails to satisfy the requirements of subd. 1., the medical certification shall be deemed incomplete and unsigned and may be returned to the person for completion.

3. A person signing a medical certification under par.(b), (c) or (d) shall note on the certificate if the cause of death of the subject of the certificate is unknown, undetermined or if the determination of the cause of death is pending and shall submit to the state registrar within 30 days after the pronouncement of death an amendment to the medical certification which satisfies the requirements of subd. I., except that such amendment may exclude information which is unavailable pending the determination of an inquest under s. 979.04.

(3) REQUIREMENTS FOR DISPOSITION OF A CORPSE OR STILLBIRTH. (a) Except as provided under par.(c) or (e), the person who has moved a corpse under sub.(1) (a) shall complete a report for final disposition, on a form supplied by the state registrar, and, within 24 hours after being notified of the death, mail or present a copy of the report to the coroner or medical examiner in the county of the place of death and mail or present a copy to the local registrar in the registration district of the place of death. If the cause of death is subject to an investigation under s. 979.01 or 979.03, the report for final disposition shall be submitted to the coroner or medical examiner in the county in which the event which caused the death occurred.

(b) If a medical certification for a corpse is required under sub.(2) (d), no person may embalm the corpse or effect its final disposition without satisfying the requirements for a report under par.(a) and without obtaining the written permission of the person required to complete the medical certification under sub.(2) (d).

(c) No person may effect a final disposition of a corpse brought into this state unless the corpse is accompanied by written authorization for final disposition under the law of another state.

(d) No person may remove a corpse from this state if the place of death was in this state unless the corpse is accompanied by a copy of the report for final disposition. If a medical certification is required for the corpse under sub.(2) (d), the corpse must be accompanied by the report and the written permission of the coroner or medical examiner to embalm and effect final disposition. No person may remove a stillbirth from this state if the delivery of the stillbirth was in this state unless the stillbirth is accompanied by a report for final disposition.

(e) Except as provided under par.(d), no report under par.(a) is required to effect final disposition of a stillbirth. No person may effect final disposition of a stillbirth without the written authorization of any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of authorization, and in the absence of actual notice of opposition by a member of the same or a prior class:

1. A parent of the stillbirth.
2. An adult brother or sister of the stillbirth.
3. A grandparent of the stillbirth.
4. Any other person authorized or under obligation to dispose of the stillbirth.

(f) Every person in charge of a place in which interment or other disposition of corpses occurs shall maintain a written record of every corpse interred there. The record shall include the name of the decedent, the place of death, the date of burial and the name and address of the funeral director or other person in charge of the funeral.

(g) If a deceased person had a disease which the department determines is communicable and dangerous to the public health, the corpse of the person may not be moved nor final disposition effected except under conditions prescribed by the department.

(4) AUTHORIZATION FOR DISINTERMENT AND REINTERMENT.

(a) Subject to s. 157.111, the coroner or medical examiner of the county in which a decedent's corpse is interred shall issue an authorization for disinterment and reinterment upon receipt of an order of a court of competent jurisdiction or upon receipt of a written application for disinterment and reinterment signed by the person in charge of the disinterment and by any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of application, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class:

I. The decedent's spouse.
2. An adult son or daughter of the decedent.
3. Either parent of the decedent.
4. An adult brother or sister of the decedent.
5. A guardian of the person of the decedent at the time of the decedent's death.
6. Any other person authorized or under obligation to dispose of the decedent's corpse.

(bm) A cemetery authority may disinter and reinter buried human remains as provided under s. 157.112 without first obtaining an authorization under par.(a).

History: 1985 a. 315; 1985 a. 332 s. 253; 1989 a. 307; 1993 a. 386; 1995 a. 357; 1997 a. 114; 2001 a. 16.

Cross Reference: See also **chs.** HFS **135 and 136,** Wis. adm. **code.** Sub.(2) (f) **does not require a death certificate to state the basis** of **a patient's treatment** or **the** type **of treatment.** *Neuman v.* **Circuit** *Court* **for Marathon County, 231** Wis. **2d 440, 605** N.W.2d **280 (Ct. App. 1999).**

CHAPTER 146
MISCELLANEOUS HEALTH PROVISIONS

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146.81 Health care records; definitions. In ss. 146.81 to 146.84:

(1) "Health care provider" means any of the following:

(a) A nurse licensed under ch. 441.

(b) A chiropractor licensed under ch. 446.

(c) A dentist licensed under ch. 447.

(d) A physician, physician assistant, perfusionist, or respiratory care practitioner licensed or certified under subch. II of ch. 448.

(dg) A physical therapist licensed under subch. III of ch. 448.

(dr) A podiatrist licensed under subch. IV of ch. 448.

(em) A dietitian certified under subch. V of ch. 448.

(eq) An athletic trainer licensed under subch. VI of ch. 448.

(es) An occupational therapist or occupational therapy assistant licensed under subch. VII of ch. 448.

(f) An optometrist licensed under ch. 449.

(fm) A pharmacist licensed under ch. 450.

(g) An acupuncturist certified under ch. 451.

(h) A psychologist licensed under ch. 455.

(hg) A social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457.

(hm) A speech–language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.

(hp) A massage therapist or bodyworker certified under ch. 460.

NOTE: Par.(hp) is shown as amended eff. 3–1–03 by 2001 Wis. Act 74. Prior to 3–1–03 it reads:

(hp) A massage therapist or bodyworker issued a license of registration under subch. XI of ch. 440.

(i) A partnership of any providers specified under pars.(a) to

(j) A corporation or limited liability company of any providers specified under pars.(a) to (hp) that provides health care services.

(k) An operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.

(L) A hospice licensed under subch. IV of ch. 50.

(m) An inpatient health care facility, as defined in s. 50.135 (1).

(n) A community–based residential facility, as defined in s. 50.01 (1g).

(p) A rural medical center, as defined in s. 50.50 (11).

(2) "Informed consent" means written consent to the disclosure of information from patient health care records to an individual, agency or organization that includes all of the following:

(a) The name of the patient whose record is being disclosed.

(b) The type of information to be disclosed.

(c) The types of health care providers making the disclosure.

(d) The purpose of the disclosure such as whether the disclosure is for further medical care, for an application for insurance, to obtain payment of an insurance claim, for a disability determination, for a vocational rehabilitation evaluation, for a legal investigation or for other specified purposes.

(e) The individual, agency or organization to which disclosure may be made.

(f) The signature of tbe patient or the person authorized by the patient and, if signed by a person authorized by the patient, the relationship of that person to the patient or the authority of the person.

(g) The date on which the consent is signed.

(h) The time period during which the consent is effective.

(3) "Patient" means a person who receives health care services from a health care provider.

(4) "Patient health care records" means all records related to the health of a patient prepared by or under the supervision of a health care provider, including the records required under s. 146.82 (2) (d) and (3) (c), but not those records subject to s. 51.30, reports collected under s. 69.186, records of tests administered under s. 252.15 (2) (a) 7., 343.305, 938.296 (4) or (5) or 968.38 (4) or (5), fetal monitor tracings, as defined under s. 146.817 (1), or a pupil's physical health records maintained by a school under s. 118.125. "Patient health care records" also includes health summary forms prepared under s. 302.388 (2).

(5) "Person authorized by the patient" means the parent, guardian or legal custodian of a minor patient, as defined in s. 48.02 (8) and (11), the person vested with supervision of the child under s. 938.183 or 938.34 (4d), (4h), (4m) or (4n), the guardian of a patient adjudged incompetent, as defined in s. 880.01 (3) and (4), the personal representative or spouse of a deceased patient, any person authorized in writing by the patient or a health care agent designated by the patient as a principal under ch. 155 if the patient has been found to be incapacitated under s. 155.05 (2), except as limited by the power of attorney for health care instrument. If no spouse survives a deceased patient, "person authorized by the patient" also means an adult member of the deceased patient's immediate family, as defined in s. 632.895 (1) (d). A court may appoint a temporary guardian for a patient believed incompetent to consent to the release of records under this section as the person authorized by the patient to decide upon the release of records, if no guardian has been appointed for the patient.

History: 1979 c. 221; 1981 c. 39 s. 22; 1983 a. 27; 1983 a. 189 s. 329 (1); 1983 a. 535; 1985 a. 315; 1987 a. 27, 70, 264; 1987 a. 399 ss. 403br, 491r; 1987 a. 403; 1989 a. 31, 168, 199, 200, 229, 316, 359; 1991 a. 39, 160, 269; 1993 a. 27, 32, 105, 112, 183, 385, 443, 496; 1995 a. 27 s. 9145 (1); 1995 a. 77, 98, 352; 1997 a. 27, 67, 75, 156, 175; 1999 a. 9, 32, 151, 180, 188; 2001 a. 38, 70, 74, 80, 89.

146.815 Contents of certain patient health care records.

(1) Patient health care records maintained for hospital inpatients shall include, if obtainable, the inpatient's occupation and the industry in which the inpatient is employed at the time of admission, plus the inpatient's usual occupation.

(2) (a) If a hospital inpatient's health problems may be related to the inpatient's occupation or past occupations, the inpatient's physician shall ensure that the inpatient's health care record contains available information from the patient or family about these occupations and any potential health hazards related to these occupations.

(b) If a hospital inpatient's health problems may be related to the occupation or past occupations of the inpatient's parents, the inpatient's physician shall ensure that the inpatient's health care record contains available information from the patient or family about these occupations and any potential health hazards related to these occupations.

(3) The department shall provide forms that may be used to record information specified under sub.(2) and shall provide guidelines for determining whether to prepare the occupational history required under sub.(2). Nothing in this section shall be construed to require a hospital or physician to collect information required in this section from or about a patient who chooses not to divulge such information.

History: 1981 c. 214.

146.817 Preservation of fetal monitor tracings and microfilm copies. (1) In this section, "fetal monitor tracing" means documentation of the heart tones of a fetus during labor and delivery of the mother of the fetus that are recorded from an electronic fetal monitor machine.

(2) (a) Unless a health care provider has first made and preserved a microfilm copy of a patient's fetal monitor tracing, the health care provider may delete or destroy part or all of the patient's fetal monitor tracing only if 35 days prior to the deletion or destruction the health care provider provides written notice to the patient.

(b) If a health care provider has made and preserved a microfilm copy of a patient's fetal monitor tracing and if the health care provider has deleted or destroyed part or all of the patient's fetal monitor tracing, the health care provider may delete or destroy part or all of the microfilm copy of the patient's fetal monitor tracing only if 35 days prior to the deletion or destruction the health care provider provides written notice to the patient.

(c) The notice specified in pars.(a) and (b) shall be sent to the patient's last–known address and shall inform the patient of the imminent deletion or destruction of the fetal monitor tracing or of the microfilm copy of the fetal monitor tracing and of the patient's right, within 30 days after receipt of notice, to obtain the fetal monitor tracing or the microfilm copy of the fetal monitor tracing from the health care provider.

(d) The notice requirements under this subsection do not apply after 5 years after a fetal monitor tracing was first made.

History: *1987 a. 27, 399,403.*

146.819 Preservation or destruction of patient health care records. (1) Except as provided in sub.(4), any health care provider who ceases practice or business as a health care provider or the personal representative of a deceased health care provider who was an independent practitioner shall do one of the following for all patient health care records in the possession of the health care provider when the health care provider ceased business or practice or died:

(a) Provide for the maintenance of the patient health care records by a person who states, in writing, that the records will be maintained in compliance with ss. 146.81 to 146.835.

(b) Provide for the deletion or destruction of the patient health care records.

(c) Provide for the maintenance of some of the patient health care records, as specified in par.(a), and for the deletion or destruction of some of the records, as specified in par.(b).

(2) If the health care provider or personal representative provides for the maintenance of any of the patient health care records under sub.(1), the health care provider or personal representative shall also do at least one of the following:

(a) Provide written notice, by 1st class mail, to each patient or person authorized by the patient whose records will be maintained, at the last–known address of the patient or person, describing where and by whom the records shall be maintained.

(b) Publish, under ch. 985, a class 3 notice in a newspaper that is published in the county in which the health care provider's or decedent's health care practice was located, specifying where and by whom the patient health care records shall be maintained.

(3) If the health care provider or personal representative provides for the deletion or destruction of any of the patient health care records under sub.(1), the health care provider or personal representative shall also do at least one of the following:

(a) Provide notice to each patient or person authorized by the patient whose records will be deleted or destroyed, that the records pertaining to the patient will be deleted or destroyed. The notice shall be provided at least 35 days prior to deleting or destroying the records, shall be in writing and shall be sent, by 1st class mail, to the last–known address of the patient to whom the records pertain or the last–known address of the person authorized by the patient. The notice shall inform the patient or person authorized by the patient of the date on which the records will be deleted or destroyed, unless the patient or person retrieves them before that date, and the location where, and the dates and times when, the records may be retrieved by the patient or person.

(b) Publish, under eh. 985, a class 3 notice in a newspaper that is published in the county in which the health care provider's or decedent's health care practice was located, specifying the date on which the records will be deleted or destroyed, unless the patient or person authorized by the patient retrieves them before that date, and the location where, and the dates and times when, the records may be retrieved by the patient or person.

(4) This section does not apply to a health care provider that is any of the following:

(a) A community–based residential facility or nursing home licensed under s. 50.03.

(b) A hospital approved under s. 50.35.

(c) A hospice licensed under s. 50.92.

(d) A home health agency licensed under s. 50.49 (4).

(f) A local health department, as defined in s. 250.01 (4), that ceases practice or business and transfers the patient health care records in its possession to a successor local health department.

History: *1991 a. 269, 1993 a. 21; 1999 a. 9.*

Cross Reference: See also ch. Med *21,* Wis. adm. code.

146.82 Confidentiality of patient health care records.

(1) CONFIDENTIALITY. All patient health care records shall remain confidential. Patient health care records may be released only to the persons designated in this section or to other persons with the informed consent of the patient or of a person authorized by the patient. This subsection does not prohibit reports made in compliance with s. 146.995, 253.12 (2) or 979.01 or testimony authorized under s. 905.04 (4) (h).

(2) ACCESS WITHOUT INFORMED CONSENT. (a) Notwithstanding sub.(1), patient health care records shall be released upon request without informed consent in the following circumstances:

1. To health care facility staff committees, or accreditation or health care services review organizations for the purposes of conducting management audits, financial audits, program monitoring and evaluation, health care services reviews or accreditation.

2. To the extent that performance of their duties requires access to the records, to a health care provider or any person acting under the supervision of a health care provider or to a person licensed under s. 146.50, including medical staff members, employees or persons serving in training programs or participating in volunteer programs and affiliated with the health care provider, if any of the following is applicable:

a. The person is rendering assistance to the patient.

b. The person is being consulted regarding the health of the patient.

c. The life or health of the patient appears to be in danger and the information contained in the patient health care records may aid the person in rendering assistance.

d. The person prepares or stores records, for the purposes of the preparation or storage of those records.

3. To the extent that the records are needed for billing, collection or payment of claims.

4. Under a lawful order of a court of record.

5. In response to a written request by any federal or state governmental agency to perform a legally authorized function, including but not limited to management audits, financial audits, program monitoring and evaluation, facility lieensure or certification or individual licensure or certification. The private pay patient, except if a resident of a nursing home, may deny access granted under this subdivision by annually submitting to a health care provider, other than a nursing home, a signed, written request on a form provided by the department. The provider, if a hospital, shall submit a copy of the signed form to the patient's physician.

6. For purposes of research if the researcher is affiliated with the health care provider and provides written assurances to the custodian of the patient health care records that the information will be used only for the purposes for which it is provided to the researcher, the information will not be released to a person not connected with the study, and the final product of the research will not reveal information that may serve to identify the patient whose records are being released under this paragraph without the informed consent of the patient. The private pay patient may deny access granted under this subdivision by annually submitting to the health care provider a signed, written request on a form provided by the department.

7. To a county agency designated under s. 46.90 (2) or other investigating agency under s. 46.90 for purposes of s. 46.90 (4) (a) and (5) or to the county protective services agency designated under s. 55.02 for purposes of s. 55.043. The health care provider may release information by initiating contact with the county agency or county protective services agency without receiving a request for release of the information from the county agency or county protective services agency.

8. To the department under s. 255.04. The release of a patient health care record under this subdivision shall be limited to the information prescribed by the department under s. 255.04 (2).

9. a. In this subdivision, "abuse" has the meaning given in s. 51.62 (1) (ag); "neglect" has the meaning given in s. 51.62 (1) (br); and "parent" has the meaning given in s. 48.02 (13), except that "parent" does not include the parent of a minor whose custody is transferred to a legal custodian, as defined in s. 48.02 (11), or for whom a guardian is appointed under s. 880.33.

b. Except as provided in subd. 9. c. and d., to staff members of the protection and advocacy agency designated under s. 51.62 (2) or to staff members of the private, nonprofit corporation with which the agency has contracted under s. 51.62 (3) (a) 3., if any, for the purpose of protecting and advocating the rights of a person with developmental disabilities, as defined under s. 51.62(1) (am), who resides in or who is receiving services from an inpatient health care facility, as defined under s. 51.62 (1) (b), or a person with mental illness, as defined under s. 51.62 (1) (bm).

c. If the patient, regardless of age, has a guardian appointed under s. 880.33, or if the patient is a minor with developmental disability, as defined in s. 51.01 *(5)* (a), who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 880.33, information concerning the patient that is obtainable by staff members of the agency or nonprofit corporation with which the agency has Contracted is limited, except as provided in subd. 9. e., to the nature of an alleged rights violation, if any; the name, birth date and county of residence of the patient; information regarding whether the patient was voluntarily admitted, involuntarily committed or protectively placed and the date and place of admission, placement or commitment; and the name, address and telephone number of the guardian of the patient and the date and place of the guardian's appointment or, if the patient is a minor with developmental disability who has a parent or has a guardian appointed under s. 48.831 and does not have a guardian appointed under s. 880.33, the name, address and telephone number of the parent or guardian appointed under s. 48.831 of the patient.

d. Except as provided in subd. 9. e., any staff member who wishes to obtain additional information about a patient described in subd. 9. c. shall notify the patient's guardian or, if applicable, parent in writing of the request and of the guardian's or parent's right to object. The staff member shall send the notice by mail to the guardian's or, if applicable, parent's address. If the guardian or parent does not object in writing within 15 days after the notice is mailed, the staff member may obtain the additional information. If the guardian or parent objects in writing within 15 days after the notice is mailed, the staff member may not obtain the additional information.

e. The restrictions on information that is obtainable by staff members of the protection and advocacy agency or private, nonprofit corporation that are specified in subd. 9. c. and d. do not apply if the custodian of the record fails to promptly provide the name and address of the parent or guardian; if a complaint is received by the agency or nonprofit corporation about a patient, or if the agency or nonprofit corporation determines that there is probable cause to believe that the health or safety of the patient is in serious and immediate jeopardy, the agency or nonprofit corporation has made a good–faith effort to contact the parent or guardian upon receiving the name and address of the parent or guardian, the agency or nonprofit corporation has either been unable to contact the parent or guardian or has offered assistance to the parent or guardian to resolve the situation and the parent or guardian has failed or refused to act on behalf of the patient; if a complaint is received by the agency or nonprofit corporation about a patient or there is otherwise probable cause to believe that the patient has been subject to abuse or neglect by a parent or guardian; or if the patient is a minor whose custody has been transferred to a legal custodian, as defined in s. 48.02 (11) or for whom a guardian that is an agency of the state or a county has been appointed.

10. To persons as provided under s. 655.17 (7) (b), as created by 1985 Wisconsin Act 29, if the patient files a submission of controversy under s. 655.04 (1), 1983 stats., on or after July 20, 1985 and before June 14, 1986, for the purposes of s. 655.17 (7) (b), as created by 1985 Wisconsin Act 29.

11. To a county department, as defined under s. 48.02 (2g), a sheriff or police department or a district attorney for purposes of investigation of threatened or suspected child abuse or neglect or suspected unborn child abuse or for purposes of prosecution of alleged child abuse or neglect, if the person conducting the investigation or prosecution identifies the subject of the record by name. The health care provider may release information by initiating contact with a county department, sheriff or police department or district attorney without receiving a request for release of the information. A person to whom a report or record is disclosed under this subdivision may not further disclose it, except to the persons, for the purposes and under the conditions specified in s. 48.981 (7).

12. To a school district employee or agent, with regard to patient health care records maintained by the school district by which he or she is employed or is an agent, if any of the following apply: a. The employee or agent has responsibility for preparation or storage of patient health care records. b. Access to the patient health care records is necessary to comply with a requirement in federal or state law.

13. To persons and entities under s. 940.22.

14. To a representative of the board on aging and long–term care, in accordance with s. 49.498 (5) (e).

15. To the department under s. 48.60 *(5)* (c), 50.02 *(5)* or 51.03 (2) or to a sheriff, police department or district attorney for purposes of investigation of a death reported under s. 48.60 *(5)* (a), 50.035 *(5)* (b), 50.04 (2t) (b) or 51.64 (2).

16. To a designated representative of the long–term care ombudsman under s. 16.009 (4), for the purpose of protecting and advocating the rights of an individual 60 years of age or older who resides in a long–term care facility, as specified in s. 16.009 (4) (b).

17. To the department under s. 50.53 (2).

18. Following the death of a patient, to a coroner, deputy coroner, medical examiner or medical examiner's assistant, for the purpose of completing a medical certificate under s. 69.18 (2) or investigating a death under s. 979.01 or 979.10. The health care provider may release information by initiating contact with the office of the coroner or medical examiner without receiving a request for release of the information and shall release information upon receipt of an oral or written request for the information from the coroner, deputy coroner, medical examiner or medical examiner's assistant. The recipient of any information under this subdivision shall keep the information confidential except as necessary to comply with s. 69.18, 979.01 or 979.10.

18m. If the subject of the patient health care records is a child or juvenile who has been placed in a foster home, treatment foster home, group home, residential care center for children and youth, or a secured correctional facility, including a placement under s. 48.205, 48.21, 938.205, or 938.21 or for whom placement in a foster home, treatment foster home, group home, residential care center for children and youth, or secured correctional facility is recommended under s. 48.33 (4), 48.425 (1) (g), 48.837 (4) (c), or 938.33 (3) or (4), to an agency directed by a court to prepare a court report under s. 48.33 (I), 48.424 (4) (b), 48.425 (3), 48.831 (2), 48.837 (4) (c), or 938.33 (1), to an agency responsible for preparing a court report under s. 48.365 (2g), 48.425 (1), 48.831 (2), 48.837 (4) (c), or 938.365 (2g), to an agency responsible for preparing a permanency plan under s. 48.355 (2e), 48.38, 48.43 (1) (c) or (5) (c), 48.63 (4) or *(5)* (c), 48.831 (4) (e), 938.355 (2e), or 938.38 regarding the child or juvenile, or to an agency that placed the child or juvenile or arranged for the placement of the child or juvenile in any of those placements and, by any of those agencies, to any other of those agencies and, by the agency that placed the child or juvenile or arranged for the placement of the child or juvenile in any of those placements, to the foster parent or treatment foster parent of the child or juvenile or the operator of the group home, residential care center for children and youth, or secured correctional facility in which the child or juvenile is placed, as provided in s. 48.371 or 938.371.

19. To an organ procurement organization by a hospital pursuant to s. 157.06 *(5)* (b) 1.

20. If the patient health care records do not contain information and the circumstances of the release do not provide information that would permit the identification of the patient.

21. To a prisoner's health care provider, the medical staff of a prison or jail in which a prisoner is confined, the receiving institution intake staff at a prison or jail to which a prisoner is being transferred or a person designated by a jailer to maintain

prisoner medical records, if the disclosure is made with respect to a prisoner's patient health care records under s. 302.388 or to the department of corrections if the disclosure is made with respect to a prisoner's patient health care records under **s.** 302.388 (4).

(b) Except as provided in **s.** 610.70 (3) and (5), unless authorized by a court of record, the recipient of any information under par.(a) shall keep the information confidential and may not disclose identifying information about the patient whose patient health care records are released.

(c) Notwithstanding sub.(1), patient health care records shall be released to appropriate examiners and facilities in accordance with **ss.** 971.17 (2) (e), (4) (c) and (7) (c), 980.03 (4) and 980.08 (3). The recipient of any information from the records shall keep the information confidential except as necessary to comply with s. 971.17 or ch. 980.

(d) For each release of patient health care records under this subsection, the health care provider shall record the name of the person or agency to which the records were released, the date and time of the release and the identification of the records released.

(3) REPORTS MADE WITHOUT INFORMED CONSENT. (a) Notwithstanding sub.(1), a physician who treats a patient whose physical or mental condition in the physician's judgment affects the patient's ability to exercise reasonable and ordinary control over a motor vehicle may report the patient's name and other information relevant to the condition to the department of transportation without the informed consent of the patient.

(b) Notwithstanding sub.(1), an optometrist who examines a patient whose vision in the optometrist's judgment affects the patient's ability to exercise reasonable and ordinary control over a motor vehicle may report the patient's name and other information relevant to the condition to the department of transportation without the informed consent of the patient.

(c) For each release of patient health care records under this subsection, the health care provider shall record the name of the person or agency to which the records were released, the date and time of the release and the identification of the records released.

History: 1979 c. 221; 1983 a. 398; 1985 a. 29, 241, 332, 340; 1987 a. 40, 70, 127, 215,233, 380, 399; 1989 a. 31, 102,334,336; 1991 a. 39; 1993 a. 16, 27,445, 479; 1995 a. 98, 169, 417; 1997 a. 35, 114, 231, 272, 292, 305; 1999 a. 32, 78, 83, 114, 151; 2001 a. 38, 59, 69, 105.

Because under s. 905.04 (4) (f) there is no privilege for chemical tests for intoxication, results of a test taken for diagnostic purposes are admissible in an OMVWI trial without patient approval. City of Muskego v. Godec, 167 Wis. 2d 536, 482 N.W.2d 79 (1992).

Patient billing records requested by the state in a fraud investigation under s. 46.25 [now s. 49.221 may be admitted into evidence under the exception to confidentiality found under sub. (2) (a) 3. State **v.** Allen, 200 Wis. 2d 301, 546 N.W.2d 517 (1996).

This section does not restrict access to medical procedures and did not prevent a police officer from being present during an operation. State **v.** Thompson, 222 Wis. 2d 179,585 N.W.2d 905 (Ct. App. 1998).

The provision of confidentiality for patient health records is not an absolute bar to the release of information without the patient's informed consent. Sub. (2) provides numerous exceptions. Information of previous assaultive behavior by a nursing home resident was not protected by the physician–patient privilege and was subject to release by "lawful court order." Crawford v. Care Concepts, Inc. 2001 WI App 45, 243 Wis. 2d 119, 625 N.W.2d 876. Disclosure of patient health care **records** in Wisconsin. Lehner, WBB Aug. 1984.

Confidentiality of Medical **Records.** Meili. Wis. Law. Feb. 1995.

146.83 Access to patient health care records. (1) Except as provided in s. 51.30 or 146.82 (2), any patient or other person may, upon submitting a statement of informed consent:

(a) Inspect the health care records of a health care provider pertaining to that patient at any time during regular business hours, upon reasonable notice.

(b) Receive a copy of the patient's health care records upon payment of fees, as established by rule under sub.(3m).

(c) Receive a copy of the health care provider's X–ray reports or have the X–rays referred to another health care provider of the patient's choice upon payment of fees, as established by rule under sub.(3m).

(1m) (a) A patient's health care records shall be provided to the patient's health care provider upon request and, except as provided in **s.** 146.82(2), with a statement of informed consent.

(b) The health care provider under par.(a) may be charged reasonable costs for the provision of the patient's health care records.

(2) The health care provider shall provide each patient with a statement paraphrasing the provisions of this section either upon admission to an inpatient health care facility, as defined in **s.** 50.135 (1), or upon the first provision of services by the health care provider.

(3) The health care provider shall note the time and date of each request by a patient or person authorized by the patient to inspect the patient's health care records, the name of the inspecting person, the time and date of inspection and identify the records released for inspection.

(3m) (a) The department shall, by rule, prescribe fees that are based on an approximation of actual costs. The fees, plus applicable tax, are the maximum amount that a health care provider may charge under sub.(1) (b) for duplicate patient health care records and under sub.(1) (c) for duplicate X–ray reports or the referral of X–rays to another health care provider of the patient's choice. The rule shall also permit the health care provider to charge for actual postage or other actual delivery costs. In determining the approximation of actual costs for the purposes of this subsection, the department may consider all of the following factors: 1. Operating expenses, such as wages, rent, utilities, and duplication equipment and supplies. **2.** The varying cost of retrieval of records, based on the different media on which the records are maintained. 3. The cost of separating requested patient health care records from those that are not requested. 4. The cost of duplicating requested patient health care records. **5.** The impact on costs of advances in technology.

(b) By January 1, 2006, and every 3 years thereafter, the department shall revise the rules under par.(a) to account for increases or decreases in actual costs.

(4) No person may do any of the following:

(a) Intentionally falsify a patient health care record.

(b) Conceal or withhold a patient health care record with intent to prevent or obstruct an investigation or prosecution or with intent to prevent its release ***to*** the patient, to his or her guardian appointed under ch. 880, to his or her health care provider with a statement of informed consent, or under the conditions specified in s. 146.82 (2), or to a person with a statement of informed consent.

(c) Intentionally destroy or damage records in order to prevent or obstruct an investigation or prosecution.

History: 1979 c. 221; 1989 a. 56; 1993 a. 27, 445; 1997 a. 157; 2001 a. 109.

Sub.(1) (b) does not preclude certification of a class action in a suit to recover unreasonable fees charged for copies of health care records. Cruz **v. All** Saints Healthcare System, Inc. 2001 WI App 67, 242 Wis. 2d 432,625 N.W.2d 344.

146.835 Parents denied physical placement rights. A parent who has been denied periods of physical placement under s. 767.24 (4) (b) or 767.325 (4) may not have the rights of a parent or guardian under this chapter with respect to access to that child's patient health care records under s. 146.82 or 146.83.

History: 1987 a. 355.

146.836 Applicability. Sections 146.815, 146.82, 146.83 (4) and 146.835 apply to all patient health care records, including those on which written, drawn, printed, spoken, visual, electromagnetic or digital information **is** recorded or preserved, regardless of physical form or characteristics.

History: 1999 a. 78.

146.84 Violations related to patient health care records.

(1) ACTIONS FOR VIOLATIONS; DAMAGES; INJUNCTION. (a) A custodian of records incurs no liability under par.(bm) for the release of records in accordance with **s.** 146.82 or 146.83 while acting in good faith.

(b) Any person, including the state or any political subdivision of the state, who violates **s.** 146.82 or 146.83 in a manner that is knowing and willful shall be liable to any person injured as a result of the violation for actual damages to that person, exemplary damages of not more than $25,000 and costs and reasonable actual attorney fees.

(bm) Any person, including the state or any political subdivision of the state, who negligently violates s. 146.82 or 146.83 shall be liable to any person injured as a result of the violation for actual damages to that person, exemplary damages of not more than $1,000 and costs and reasonable actual attorney fees.

(c) An individual may bring an action to enjoin any violation of s. 146.82 or 146.83 or to compel compliance with **s.** 146.82 or 146.83 and may, in the same action, seek damages as provided in this subsection.

(2) PENALTIES. (a) Whoever does any of the following may be fined not more than $25,000 or imprisoned for not more than 9 months or both:

1. Requests or obtains confidential information under s. 146.82 or 146.83 (1) under false pretenses.

2. Discloses confidential information with knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm.

3. Violates s. 146.83 (4).

(b) Whoever negligently discloses confidential information in violation of s. 146.82 is subject to a forfeiture of not more than $1,000 for each violation.

(c) Whoever intentionally discloses confidential information in violation of s. 146.82, knowing that the information is confidential, and discloses the information for pecuniary gain may be fined not more than $100,000 or imprisoned not more than 3 years and 6 months, or both.

(3) DISCIPLINE OF EMPLOYEES. Any person employed by the state or any political subdivision of the state who violates s. 146.82 or 146.83, except a health care provider that negligently violates s. 153.50 (6) (c), may be discharged or suspended without pay.

(4) EXCEPTIONS. This section does not apply to any of the following:

(a) Violations by a nursing facility, as defined under s. 49.498 (1) (i), of the right of a resident of the nursing facility to confidentiality of his or her patient health care records.

(b) Violations by a nursing home, as defined under s. 50.01 (3), of the right of a resident of the nursing home to confidentiality of his or her patient health care records.

History: 1991 a. 39; 1993 a. 445; 1999 a. 9, 79.

Sub.(1) (b) does **not preclude certification of a class action in a suit to recover unreasonable fees charged for copies of health care records.** Cruz **v. All Saints Healthcare System, Inc. 2001 WI App 67, 242** Wis. **2d 432, 625** N.W.2d **344.**

146.885 Acceptance of assignment for medicare. The department shall annually provide aging units, as defined in s. 46.82 (1) (a), with enrollment cards for and materials explaining the voluntary program that is specified in s. 71.55 (10) (b), for distribution to individuals who are eligible or potentially eligible for participation in the program. The state medical society shall supply the department with the enrollment cards and the explanatory materials for distribution under this section.

History: 1989 a. 294, 359; Stats. 1989 s. 146.885; 1991 a. 235.

146.89 Volunteer health care provider program. (1) In this section, "volunteer health care provider" means an individual who is licensed as a physician under ch. 448, dentist under ch. 447, registered nurse, practical nurse or nurse–midwife under ch. 441, optometrist under ch. 449 or physician assistant under ch. 448 or certified as a dietitian under subch. V of ch. 448 and who receives no income from the practice of that health care profession or who receives no income from the practice of that health care profession when providing services at the nonprofit agency specified under sub.(3).

(2) (a) **A** volunteer health care provider may participate under this section only if he or she submits a joint application with a nonprofit agency to the department of administration and that department approves the application. The department of administration shall provide application forms for use under this paragraph.

(b) The department of administration may send an application to the medical examining board for evaluation. The medical examining board shall evaluate any application submitted by the department of administration and return the application to the department of administration with the board's recommendation regarding approval.

(c) The department of administration shall notify the volunteer health care provider and the nonprofit agency of the department's decision to approve or disapprove the application.

(d) Approval of an application of a volunteer health care provider is valid for one year. If a volunteer health care provider wishes to renew approval, he or she shall submit a joint renewal application with a nonprofit agency to the department of administration. The department of administration shall provide renewal application forms that are developed by the department of health and family services and that include questions about the activities that the individual has undertaken as a volunteer health care provider in the previous 12 months.

(3) Any volunteer health care provider and nonprofit agency whose joint application is approved under sub.(2) shall meet the following applicable conditions:

(a) The volunteer health care provider shall provide services under par.(b) without charge at the nonprofit agency, if the joint application of the volunteer health care provider and the nonprofit agency has received approval under sub.(2) (a).

(b) The nonprofit agency may provide the following health care services:

1. Diagnostic tests.
2. Health education.
3. Information about available health care resources.
4. Office visits.
5. Patient advocacy.
6. Prescriptions.
7. Referrals to health care specialists.
8. Dental services, including simple tooth extractions and any necessary suturing related to the extractions, performed by a dentist who is a volunteer health provider.

(c) The nonprofit agency may not provide emergency medical services, hospitalization or surgery, except as provided in par.(b) 8.

(d) The nonprofit agency shall provide health care services primarily to low–income persons who are uninsured and who are not recipients of any of the following:

2. Medical assistance under subch. IV of ch. 49.
3. Medicare under 42 USC 1395–1395ccc.

(4) Volunteer health care providers who provide services under this section are, for the provision of these services, state agents of the department of health and family services for purposes of ss. 165.25 (6), 893.82 (3) and 895.46.

History: 1989 a. 206; 1991 a. 269; 1993 a. 28, 490; 1995 a. 27 ss. 4378 to 4380, 9126 (19); 1997 a. 27, 57, 67; 1999 a. 23.

146.905 Reduction in fees prohibited. (1) Except as provided in sub.(2), a health care provider, as defined in s. 146.81 (1), that provides a service or a product to an individual with coverage under a disability insurance policy, as defined in s. 632.895 (1) (a), may not reduce or eliminate or offer to reduce or eliminate coinsurance or a deductible required under the terms of the disability insurance policy.

(2) Subsection (1) does not apply if payment of the total fee would impose an undue financial hardship on the individual receiving the service or product.

History: 1991 a. 250; 1995 a. 225.

146.91 Long–term care insurance. (1) In this section, "long–term care insurance" means insurance that provides coverage both for an extended stay in a nursing home and home health services for a person with a chronic condition. The insurance may also provide coverage for other services that assist the insured person in living outside a nursing home including but not limited to adult day care and continuing care retirement communities.

(2) The department, with the advice of the council on long–term care insurance, the office of the commissioner of insurance, the board on aging and long–term care and the department of employee trust funds, shall design a program that includes the following:

(a) Subsidizing premiums for persons purchasing long–term care insurance, based on the purchasers' ability to pay.

(b) Reinsuring by the state of policies issued in this state by long–term care insurers.

(c) Allowing persons to retain liquid assets in excess of the amounts specified in s. 49.47 (4) (b) 3g., 3m. and 3r., for purposes of medical assistance eligibility, if the persons purchase long–term care insurance.

(3) The department shall collect any data on health care costs and utilization that the department determines to be necessary to design the program under sub.(2).

(5) In designing the program, the department shall consult with the federal department of health and human services to determine the feasibility of procuring a waiver of federal law or regulations that will maximize use of federal medicaid funding for the program designed under sub.(2).

(6) The department, with the advice of the council on long–term care insurance, may examine use of tax incentives for the sale and purchase of long–term care insurance.

History: 1987 a. 27; 1989 a. 56.

146.93 Primary health care program. (1) (a) From the appropriation under s. 20.435 (4) *(gp)*, the department shall maintain a program for the provision of primary health care services based on the primary health care program in existence on June 30, 1987. The department may promulgate rules necessary to implement the program.

(c) The department shall seek to obtain a maximum of donated or reduced–rate health care services for the program and shall seek to identify and obtain a maximum of federal funds for the program.

(2) The program under sub.(1) (a) shall provide primary health care, including diagnostic laboratory and X–ray services, prescription drugs and nonprescription insulin and insulin syringes.

(3) The program under sub.(1) (a) shall be implemented in those counties with high unemployment rates and within which a maximum of donated or reduced–rate health care services can be obtained.

(4) The health care services of the program under sub.(1) (a) shall be provided to any individual residing in a county under sub.(3) who meets all of the following criteria:

(a) The individual is either unemployed or is employed less than 25 hours per week.

(b) The individual's family income is not greater than 150% of the federal poverty line, as defined under 42 USC 9902 (2).

(c) The individual does not have health insurance or other health care coverage and is unable to obtain health insurance or other health care coverage.

History: 1985 a. 29; 1987 a. 27; 1989 a. 31; 1999 a. 9.

146.95 Patient visitation. (1) DEFINITIONS. In this section:

(a) "Health care provider" has the meaning given in s. 155.01 (7).

(b) "Inpatient health care facility" has the meaning given in s. 252.14 (1) (d).

(c) "Treatment facility" has the meaning given in s. 51.01 (19).

(2) PATIENT–DESIGNATED VISITORS. (a) Any individual who is 18 years of age or older may identify to a health care provider at an inpatient health care facility at any time, either orally or in writing, those persons with whom the individual wishes to visit while the individual is a patient at the inpatient health care facility. Except as provided in par.(b), no inpatient health care facility may deny visitation during the inpatient health care facility's regular visiting hours to any person identified by the individual.

(b) Subject to s. 51.61 for a treatment facility, an inpatient health care facility may deny visitation with a patient to any person if any of the following applies:

1. The inpatient health care facility or a health care provider determines that the patient may not receive any visitors.

2. The inpatient health care facility or a health care provider determines that the presence of the person would endanger the health or safety of the patient.

3. The inpatient health care facility determines that the presence of the person would interfere with the primary operations of the inpatient health care facility.

4. The patient has subsequently expressed in writing to a health care provider at the inpatient health care facility that the patient no longer wishes to visit with the person. Unless subd. 2. applies, an inpatient health care facility may not under this subdivision deny visitation to the person based on a claim by someone other than a health care provider that the patient has orally expressed that the patient no longer wishes to visit with that person.

History: 1997 a. 153.

146.96 Uniform claim processing form. Beginning no later than July 1, 2004, every health care provider, as defined in s. 146.81 (1), shall use the uniform claim processing form developed by the commissioner of insurance under s. 601.41 (9) (b) when submitting a claim to an insurer.

History: 2001 a. 109.

146.99 Assessments. The department shall, within 90 days after the commencement of each fiscal year, assess hospitals, as defined in s. 50.33 (2), a total of $1,500,000, in proportion to each hospital's respective gross private–pay patient revenues during the hospital's most recently concluded entire fiscal year. Each hospital shall pay its assessment on or before December 1 for the fiscal year. All payments of assessments shall be deposited in the appropriation under s. 20.435 (4) (gp).

History: 1985 a. 29; 1987 a. 27; 1989 a. 31; 1991 a. 269; 1999 a. 9.

146.995 Reporting of wounds and burn injuries. (1) In this section:

(a) "Crime" has the meaning specified in s. 949.01 (1).

(b) "Inpatient health care facility" has the meaning specified in s. 50.135 (1).

(2) (a) Any person licensed, certified or registered by the state under ch. 441, 448 or 455 who treats a patient suffering from any of the following shall report in accordance with par.(b): 1. A gunshot wound. 2. Any wound other than a gunshot wound if the person has reasonable cause to believe that the wound occurred as a result of a crime. 3. Second–degree or 3rd–degree burns to at least 5% of the patient's body or, due to the inhalation of superheated air, swelling of the patient's larynx or a burn to the patient's upper respiratory tract, if the person has reasonable cause to believe that the burn occurred as a result of a crime.

(b) For any mandatory report under par.(a), the person shall report the patient's name and the type of wound or burn injury involved as soon as reasonably possible to the local police department or county sheriffs office for the area where the treatment is rendered.

(c) Any such person who intentionally fails to report as required under this subsection may be required to forfeit not more than $500.

(3) Any person reporting in good faith under sub.(2), and any inpatient health care facility that employs the person who reports, are immune from all civil and criminal liability that may result because of the report. In any proceeding, the good faith of any person reporting under this section shall be presumed.

(4) The reporting requirement under sub.(2) does not apply under any of the following circumstances:

(a) The patient is accompanied by a law enforcement officer at the time treatment is rendered.

(b) The patient's name and type of wound or burn injury have been previously reported under sub.(2).

(c) The wound is a gunshot wound and appears to have occurred at least 30 days prior to the time of treatment.

History: 1987 a. 233; 1991 a. 39; 1993 a. 27.

146.997 Health care worker protection. (1) DEFINITIONS. In this section:

(a) "Department" means the department of workforce development.

(b) "Disciplinary action" has the meaning given in s. 230.80 (2).

(c) "Health care facility" means a facility, as defined in s. 647.01 (4), or any hospital, nursing home, community–based residential facility, county home, county infirmary, county hospital, county mental health complex or other place licensed or approved by the department of health and family services under s. 49.70, 49.71, 49.72, 50.03, 50.35, 51.08 or 51.09 or a facility under s. 45.365, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

(d) "Health care provider" means any of the following:

1. A nurse licensed under ch. 441.

2. A chiropractor licensed under ch. 446.

3. A dentist licensed under ch. 447. 4. A physician, podiatrist, perfusionist, or physical therapist licensed under ch. 448.

NOTE: Subd. 4 is shown below as affected by 2001 Wis. Acts 70 and 89, eff. 4–1-04. 4. A physician, podiatrist, perfusionist, physical therapist, or physical therapist assistant licensed under ch. 448.

5. An occupational therapist, occupational therapy assistant, physician assistant or respiratory care practitioner certified under ch. 448.

6. A dietician certified under subch. V of ch. 448.

7. An optometrist licensed under ch. 449.

8. A pharmacist licensed under ch. 450.

9. An acupuncturist certified under ch. 451.

10. A psychologist licensed under ch. 455.

11. A social worker, marriage and family therapist or professional counselor certified under ch. 457.

12. A speech–language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.

13. A massage therapist or bodyworker issued a certificate under ch. 460.

NOTE: Subd. 13. is shown as amended eff. 3-1-03 by 2001 Wis. Act 74. Prior to 3-1-03 it reads: 13. A massage therapist or bodyworker issued a license of registration under *subch.* XI of ch. 440.

14. An emergency medical technician licensed under s. 146.50 (5) or a first responder.

15. A partnership of any providers specified under subds. 1. to 14.

16. A corporation or limited liability company of any providers specified under subds. 1. to 14. that provides health care services.

17. An operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.

18. A hospice licensed under subch. IV of ch. 50 19. **A** rural medical center, as defined in s. 50.50 (1 1). 20. A home health agency, as defined in s. 50.49 (1) (a).

(2) REPORTING PROTECTED. (a) Any employee of a health care facility or of a health care provider who is aware of any information, the disclosure of which is not expressly prohibited by any state law or rule or any federal law or regulation, that would lead a reasonable person to believe any of the following may report that information to any agency, as defined in s. 111.32 (6) (a), of the state; to any professionally recognized accrediting or standard– setting body that has accredited, certified or otherwise approved the health care facility or health care provider; to any officer or director of the health care facility or health care provider; or to any employee of the health care facility or health care provider who is in a supervisory capacity or in a position to take corrective action:

1. That the health care facility or health care provider or any employee of the health care facility or health care provider has violated any state law or rule or federal law or regulation.

2. That there exists any situation in which the quality of any health care service provided by the health care facility or health care provider or by any employee of the health care facility or health care provider violates any standard established by any state law or rule or federal law or regulation or any clinical or ethical standard established by a professionally recognized accrediting or standard–setting body and poses a potential risk to public health or safety.

(h) An agency or accrediting or standard–setting body that receives a report under par.(a) shall, within 5 days after receiving the report, notify the health care facility or health provider that is the subject of the report, in writing, that a report alleging a violation specified in par.(a) 1. or 2. has been received and provide the health care facility or health care provider with a written summary of the contents of the report, unless the agency, or accrediting or standard–setting body determines that providing that notification and summary would jeopardize an ongoing investigation of a violation alleged in the report. The notification and summary may not disclose the identity of the person who made the report.

(c) Any employee of a health care facility or health care provider may initiate, participate in or testify in any action or proceeding in which a violation specified in par.(a) 1. or 2. is alleged.

(d) Any employee of a health care facility or health care provider may provide any information relating to an alleged violation specified in par.(a) 1. or 2. to any legislator or legislative committee.

(3) DISCIPLINARY ACTION PROHIBITED. (a) No health care facility or health care provider and no employee of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person because the person reported in good faith any information under sub.(2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub.(2) (c) or provided in good faith any information under sub.(2) (d) or because the health care facility, health care provider or employee believes that the person reported in good faith any information under sub.(2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub.(2) (c) or provided in good faith any information under sub.(2) (d).

(b) No health care facility or health care provider and no employee of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person on whose behalf another person reported in good faith any information under sub.(2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub.(2) (c) or provided in good faith any information under sub.(2) (d) or because the health care facility, health care provider or employee believes that another person reported in good faith any information under sub.(2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub.(2) (c) or provided in good faith any information under sub.(2) (d) on that person's behalf.

(c) For purposes of pars.(a) and (b), an employee is not acting in good faith if the employee reports any information under sub.(2) (a) that the employee knows or should know is false or misleading, initiates, participates in or testifies in any action or proceeding under sub.(2) (c) based on information that the employee knows or should know is false or misleading or provides any information under sub.(2) (d) that the employee knows or should know is false or misleading.

(4) ENFORCEMENT. (a) Subject to par.(b), any employee of a health care facility or health care provider who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub.(3) may file a complaint with the department under s. 106.54 (6). **If** the department finds that a violation of sub.(3) has been committed, the department may take such action under s. 111.39 as will effectuate the purpose of this section.

(b) Any employee of a health care facility operated by an agency, as defined in s. 111.32 (6) (a), of the state who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub.(3) may file a complaint with the personnel commission under s. 230.45 (1) (L). If the personnel commission finds that a violation of sub.(3) has been committed, the personnel commission may take such action under s. 111.39 as will effectuate the purpose of this section.

(c) Section 111.322 (2m) applies to a disciplinary action arising in connection with any proceeding under par.(a) or (b).

(5) CIVIL PENALTY. Any health care facility or health care provider and any employee of a health care facility or health care provider who takes disciplinary action against, or who threatens to take disciplinary action against, any person in violation of sub.(3) may be required to forfeit not more than $1,000 for a first violation, not more than $5,000 for a violation committed within 12 months of a previous violation and not more than $10,000 for a violation committed within 12 months of 2 or more previous violations. The 12–month period shall be measured by using the dates of the violations that resulted in convictions.

(6) POSTING OF NOTICE. Each health care facility and health care provider shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth employees' rights under this section. Any health care facility or health care provider that violates this subsection shall forfeit not more than $100 for each offense.

History: 1999 **a. 176, 186; 2001 a. 38,** 70, 74, **89,** 105.

CHAPTER 252
COMMUNICABLE DISEASES

252.10 **Public health dispensaries.**
252.14 Discrimination **related to acquired immunodeficiency syndrome**
252.15 **Restrictions on use of a test** for HIV.

252.10 Public health dispensaries. (1) A local health department may request from the department certification to establish and maintain a public health dispensary for the diagnosis and treatment of persons suffering from or suspected of having tuberculosis. Two or more local health departments may jointly establish, operate and maintain public health dispensaries. The department shall certify a local health department to establish and maintain a public health dispensary if the local health department meets the standards established by the department by rule. The department of health and family services may withhold, suspend or revoke a certification if the local health department fails to comply with any rules promulgated by the department. The department shall provide the local health department with reasonable notice of the decision to withhold, suspend or revoke certification. The department shall offer the local health department an opportunity to comply with the rules and an opportunity for a fair hearing. Certified local health departments may contract for public health dispensary services. If the provider of those services fails to comply, the department may suspend or revoke the local health department's certification. The department may establish, operate and maintain public health dispensaries and branches in areas of the state where local authorities have not provided public health dispensaries.

(6) (a) The state shall credit or reimburse each dispensary on an annual or quarterly basis for the operation of public health dispensaries established and maintained in accordance with this section and rules promulgated by the department.

(b) The department shall determine by rule the reimbursement rate under par. (a) for services.

(g) The reimbursement by the state under pars. (a) and (b) shall apply only to funds that the department allocates for the reimbursement under the appropriation under s. 20.435 (5) (e).

(7) Drugs necessary for the treatment of mycobacterium tuberculosis shall be purchased by the department from the appropriation under s. 20.435 (5) (e) and dispensed to patients through the public health dispensaries, local health departments, physicians or advanced practice nurse prescribers.

(9) Public health dispensaries shall maintain such records as are required by the department to enable them to carry out their responsibilities designated in this section and in rules promulgated by the department. Records may be audited by the department.

(10) All public health dispensaries and branches thereof shall maintain records of costs and receipts which may be audited by the department of health and family services.

History: 1971 c. 81; 1971 **c.** 211 s. 124; 1973 **c.** 90; 1975 **c.** 39, 198, 224; 1975 c. 413 ss. 2, 18; **Stats.** 1975 s. 149.06; 1977 **c.** 29; 1981 c. 20 ss. 1446, 2202 (20) **(c);** 1983 **a.** 27; 1985 **a.** 29; 1991 **a.** 39, 160; 1993 **a.** 27 ss. 406, 407, 409, 411 to 414; Stats. 1993 s. 252.10, 1993 **a.** 443; 1995 **a.** 27 ss. 6318, 9126 (19), 9145 (1); 1997 **a.** 27, 75, 156, 175,252; 1999 a. 9, 32, 186.

Cross Reference: See also ch. *HFS 145*, Wis. *adm.* **code.** .

252.14 Discrimination related to acquired immunodeficiency syndrome. (1) In this section:

(ad) "Correctional officer" has the meaning given in s. 301.28 (1).

(am) "Fire fighter" has the meaning given in s. 102.475 (8) (b).

(ar) "Health care provider" means any of the following:

1. **A** nurse licensed under ch. 441.
2. A chiropractor licensed under ch. 446.
3. **A** dentist licensed under ch. 447.
4. A physician licensed under subch. II of ch. 448.

4c. **A** perfusionist licensed under subch. II of ch. 448.

NOTE: Subd. 4c. is created eff. 1–1–03 by 2001 Wis. Act 89.

4e. A physical therapist licensed under subch. III of ch. 448.

NOTE: Subd. 4e. is amended eff. 4–1–04 by 2001 Wis. Act 70 to read: 4e. A physical therapist or physical therapist assistant licensed under subch. 111 of ch. 448.

4g. **A** podiatrist licensed under subch. IV of ch. 448.

4m. **A** dietitian certified under subch. V of ch. 448.

4p. *An* occupational therapist or occupational therapy assistant licensed under subch. VII of ch. 448.

4q. An athletic trainer licensed under subch. VI of ch. 448.

5. An optometrist licensed under ch. 449.

6. A psychologist licensed under ch. 455.

7. **A** social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457.

NOTE: Subd. 7. is shown as amended eff. 11–1–02 by 2001 Wis. Act 80. Prior to 11–1–02 it reads:

7. A social worker, marriage and family therapist or professional counselor certified under ch. 457.

8. **A** speech–language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.

9. An employee or agent of any provider specified under subds. 1. to 8.

10. A partnership of any provider specified under subds. 1. to 8.

11. A corporation of any provider specified under subds. 1. to 8. that provides health care services.

12. An operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.

13. An emergency medical technician licensed under s. 146.50 (5).

14. A physician assistant licensed under ch. 448. 15. **A** first responder.

(c) "Home health agency" has the meaning specified in s. 50.49 (1) (a).

(d) "Inpatient health care facility" means a hospital, nursing home, community–based residential facility, county home, county mental health complex or other place licensed or approved by the department under s. 49.70, 49.71, 49.72, 50.02, 50.03, 50.35, 51.08 or 51.09 or a facility under s. 45.365, 48.62, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

(2) No health care provider, peace officer, fire fighter, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper, home health agency, inpatient health care facility or person who has access to a validated test result may do any of the following with respect to an individual who has acquired immunodeficiency syndrome or has a positive test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, solely because the individual has HIV infection or an illness or medical condition that is caused by, arises from or is related to HIV infection:

(a) Refuse to treat the individual, if his or her condition is within the scope of licensure or certification of the health care provider, home health agency or inpatient health care facility.

(am) If a peace officer, fire fighter, correctional officer, state patrol officer, jailer or keeper of **a** jail or person designated with custodial authority by the jailer or keeper, refuse to provide services to the individual.

(b) Provide care to the individual at a standard that is lower than that provided other individuals with like medical needs.

(bm) If a peace officer, fire fighter, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper, provide services to the individual at a standard that is lower than that provided other individuals with like service needs.

(c) Isolate the individual unless medically necessary.

(d) Subject the individual to indignity, including humiliating, degrading or abusive treatment.

(3) A health care provider, home health agency or inpatient health care facility that tests an individual for HIV infection shall provide counseling about HIV and referral for appropriate health care and support services as necessary. A health care provider, home health agency or inpatient health care facility that treats an individual who has an HIV infection or acquired

immunodeficiency syndrome shall develop and follow procedures that shall ensure continuity of care for the individual in the event that his or her condition exceeds the scope of licensure or certification of the provider, agency or facility.

(4) Any person violating Sub. (2) is liable to the patient for actual damages and costs, plus exemplary damages of up to $5,000 for an intentional violation. In determining the amount of exemplary damages, a court shall consider the ability of a health care provider who is an individual to pay exemplary damages.

History: 1989 a. 201; 1991 a. 32, 39, 160, 189, 269. 315; 1993 a. 27 ss. 326 to 331; Stats. 1993 s. 252.14; 1993 a. 105, 190, 252, 443; 1993 a. 490 s. 143; 1993 a. 491, 495; 1995 a. 27 ss. 6322, 9145 (1); 1997 a. 27, 35, 67, 75, 175; 1999 a. 9, 32, 180; 2001 a. 70, 80, 89.

252.15 Restrictions on use of a test for HIV.

(1) DEFINITIONS. In this section: (ab) "Affected person" means an emergency medical technician, first responder, fire fighter, peace officer, correctional officer, person who is employed at a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper, health care provider, employee of a health care provider or staff member of a state crime laboratory.

(ad) "Correctional officer" has the meaning given in s. 301.28 (1).

(af) "Emergency medical technician" has the meaning given in s. 146.50 (1) (e).

(aj) "Fire fighter" has the meaning given in s. 102.475 (8) (b).

(am) "Health care professional" means a physician who is licenskd under ch. 448 or a registered nurse or licensed practical nurse who is licensed under ch. 441.

(ar) "Health care provider" means any of the following: 1. A person or entity that is specified in s. 146.81 (1), but does not include a massage therapist or bodyworker issued a certificate under ch. 460.

NOTE: Subd. 1. is shown as amended eff. 3-1-03 by 2001 Wis. Act 74. Prior to 3-1-03 it reads: 1. A person or entity that is specified in s. 146.81 (1), but does not include a massage therapist or bodyworker issued a license of registration under subch. XI of ch. 440.

2. A home health agency.

3. An employee of the Mendota mental health institute or the Winnebago mental health institute.

(cm) "Home health agency" has the meaning given in s. 50.49 (1) (a).

(d) "Informed consent for testing or disclosure" means consent in writing on an informed consent for testing or disclosure form by a person to the administration of a test to him or her for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV or to the disclosure to another specified person of the results of a test administered to the person consenting.

(e) "Informed consent for testing or disclosure form" means a printed document on which a person may signify his or her informed consent for testing for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV or authorize the disclosure of any test results obtained.

(eg) "Relative" means a spouse, parent, grandparent, stepparent, brother, sister, first cousin, nephew or niece; or uncle or aunt within the 3rd degree of kinship as computed under s. 990.001 (16). This relationship may be by blood, marriage or adoption.

(em) "Significantly exposed" means sustained a contact which carries a potential for a transmission of HIV, by one or more of the following:

1. Transmission, into a body orifice or onto mucous membrane, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial or amniotic fluid; or other body fluid that is visibly contaminated with blood.

2. Exchange, during the accidental or intentional infliction of a penetrating wound, including a needle puncture, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial or amniotic fluid; or other body fluid that is visibly contaminated with blood.

3. Exchange, into an eye, an open wound, an oozing lesion, or where a significant breakdown in the epidermal barrier has occurred, of blood; semen; vaginal secretions; cerebrospinal, synovial, pleural, peritoneal, pericardial or amniotic fluid; or other body fluid that is visibly contaminated with blood.

6. Other routes of exposure, defined as significant in rules promulgated by the department. The department in promulgating the rules shall consider all potential routes of transmission of HIV identified by the centers for disease control of the federal public health service.

(fm) "Universal precautions" means measures that a health care provider, an employee of a health care provider or other individual takes in accordance with recommendations of the federal centers for disease control for the health care provider, employee or other individual for prevention of HIV transmission in health- care settings.

(2) INFORMED CONSENT FOR TESTING OR DISCLOSURE. (a) No health care provider, blood bank, blood center or plasma center may subject a person to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV unless the subject of the test first provides informed consent for testing or disclosure as specified under par. (b), except that consent to testing is not required for any of the following:

1. Except as provided in subd. 1g., a health care provider who procures, processes, distributes or uses a human body part or human tissue donated as specified under s. 157.06 (6) (a) or (b) shall, without obtaining consent to the testing, test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV in order to assure medical acceptability of the gift for the purpose intended. The health care provider shall use as a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV a test or series of tests that the state epidemiologist finds medically significant and sufficiently reliable to detect the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV. If the validated test result of the donor from the test or series of tests performed is positive, the human body part or human tissue donated for use or proposed for donation may not be used.

1g. If a medical emergency, as determined by the attending physician of a potential donee and including a threat to the preservation of life of the potential donee, exists under which a human body part or human tissue that has been subjected to testing under subd. 1. is unavailable, the requirement of subd. 1. does not apply.

2. The department, a laboratory certified under 42 USC 263a or a health care provider, blood bank, blood center or plasma center may, for the purpose of research and without first obtaining written consent to the testing, subject any body fluids or tissues to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

3. The medical director of a center for the developmentally disabled, as defined in s. 51.01 (3), or a mental health institute, as defined in s. 51.01 (12), may, without obtaining consent to the testing, subject a resident or patient of the center or institute to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV if he or she determines that the conduct of the resident or patient poses a significant risk of transmitting HIV to another resident or patient of the center or institute.

4. A health care provider may subject an individual to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, without obtaining consent to the testing from the individual, if all of the following apply:

a. The individual has been adjudicated incompetent under ch. 880, is under 14 years of age or is unable to give consent because he or she is unable to communicate due to a medical condition.

b. The health care provider obtains consent for the testing from the individual's guardian, if the individual is adjudicated incompetent under ch. 880; from the individual's parent or guardian, if the individual is under 14 years of age; or from the individual's closest living relative or another with whom the individual has a meaningful social and emotional relationship if the individual is not a minor nor adjudicated incompetent.

6. A health care professional acting under an order of the court under subd. 7. or s. 938.296 (4) or (5) or 968.38 (4) or (5) may, without first obtaining consent to the testing, subject an individual to a test or a series of tests to detect the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV. No sample used for laboratory test purposes under this subdivision may disclose the name of the test subject, and, notwithstanding

Sub. (4) (c), the test results may not be made part of the individual's permanent medical record.

7. a. If all of the conditions under subd. 7. ai. to c. are met, an emergency medical technician, first responder, 'fire fighter, peace officer, correctional officer, person who is employed at a secured correctional facility, as defined in s. 938.02 (15m), a secured child caring institution, as defined in s. 938.02 (15g), or a secured group home, as defined in s. 938.02 (15p), state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper who, during the course of providing care or services to an individual; or a peace officer, correctional officer, state patrol officer, jailer or keeper of a jail or person designated with custodial authority by the jailer or keeper who, while searching or arresting an individual or while controlling or transferring an individual in custody; or a health care provider or an employee of a health care provider who, during the course of providing care or treatment to an individual or handling or processing specimens of body fluids or tissues of an individual; or a staff member of a state crime laboratory who, during the course of handling or processing specimens of body fluids or tissues of an individual; is significantly exposed to the individual may subject the individual's blood to a test or a series of tests for the presence of **HIV,** antigen or non-antigenic products of **HIV** or an antibody to **HIV** and may receive disclosure of the results.

ai. The affected person uses universal precautions, if any, against significant exposure, and was using universal precautions at the time that he or she was significantly exposed, except in those emergency circumstances in which the time necessary for use of the universal precautions would endanger the life of the individual.

ak. **A** physician, based on information provided to the physician, determines and certifies in writing that the affected person has been significantly exposed. The certification shall accompany the request for testing and disclosure. If the affected person who is significantly exposed is a physician, he or she may not make this determination or certification. The information that is provided to a physician to document the occurrence of a significant exposure and the physician's certification that an affected person has been significantly exposed, under this subd. **7.** ak., shall be provided on a report form that is developed by the department of commerce under s. 101.02 (19) (a) or on a report form that the department of commerce determines, under s. 101.02 (19) (b), is substantially equivalent to the report form that is developed under s. 101.02 (19) (a).

am. The affected person submits to a test for the presence of **HIV,** antigen or non-antigenic products of **HIV** or an antibody to **HIV,** as soon as feasible or within a time period established by the department after consulting guidelines of the centers for disease control of the federal public health service, whichever is earlier.

ap. Except as provided in subd. 7. av. to c., the test is performed on blood that is drawn for a purpose other than testing for the presence of **HIV,** antigen or non-antigenic products of **HIV** or an antibody to **HIV.**

ar. The individual, if capable of consenting, has been given an opportunity to be tested with his or her consent and has not consented.

at. The individual has been informed that his or her blood may be tested for the presence of **HIV,** antigen or non-antigenic products of **HIV** or an antibody to **HIV;** that the test results may be disclosed to no one, including that individual, without his or her con sent, except to the person who is certified to have been significantly exposed; that, if the person knows the identity of the individual, he or she may not disclose the identity to any other person except for the purpose of having the test or series of tests performed; and that a record may be kept of the test results only if the record does not reveal the individual's identity.

av. If blood that is specified in subd. 7. ap. is unavailable, the person who is certified under subd. 7. ak. to have been significantly exposed may request the district attorney to apply to the circuit court for his or her county to order the individual to submit to a test or a series of tests for the presence of **HIV,** antigen or non-antigenic products of **HIV** or an antibody to **HIV** and to disclose the results to that person. The person who is certified under subd. 7. *ak.* to have been significantly exposed shall accompany the request with the certification under subd. 7. ak.

b. Upon receipt of a request and certification under the requirements of this subdivision, a district attorney shall, as soon as possible so as to enable the court to provide timely notice, apply to the circuit court for his or her county to order the individual to submit to a test or a series of tests as specified in subd. 7. a., administered by a health care professional, and to disclose the results of the test or tests as specified in subd. 7. c.

c. The court shall set a time for a hearing on the matter under subd. 7. a. within 20 days after receipt of a request under subd. 7. b. The court shall give the district attorney and the individual from whom a test is sought notice of the hearing at least 72 hours prior to the hearing. The individual may have counsel at the hearing, and counsel may examine and cross-examine witnesses. If the court finds probable cause to believe that the individual has significantly exposed the affected person, the court shall, except as provided in subd. 7. d., order the individual to submit to a test or a series of tests for the presence of **HIV,** antigen or non-antigenic products of **HIV** or an antibody to **HIV.** The court shall require the health care professional who performs the test or series of tests to refrain from disclosing the test results to the individual and to disclose the test results to the affected person and his or her health care professional. No sample used for laboratory test purposes under this subd. 7. c. may disclose the name of the test subject.

d. The court is not required to order the individual to submit to a test under subd. 7. c. if the court finds substantial reason relating to the life or health of the individual not to do so and states the reason on the record.

7m. The test results of an individual under subd. 7. may be disclosed only to the individual, if he or she so consents, to anyone authorized by the individual and to the affected person who was certified to have been significantly exposed. **A** record may be retained of the test results only if the record does not reveal the individual's identity. If the affected person knows the identity of the individual whose blood was tested, he or she may not disclose the identity to any other person except for the purpose of having the test or series of tests performed.

(am) 1. **A** health care provider who procures, processes, distributes or uses human sperm donated as specified under s. 157.06 (6) (a) or (b) shall, prior to the distribution or use and with informed consent under the requirements of par. (b), test the proposed donor for the presence of **HIV,** antigen or non-antigenic products of **HIV** or an antibody to **HIV** in order to assure medical acceptability of the gift for the purpose intended. The health care provider shall use as a test for the presence of **HIV,** antigen or non-antigenic products of **HIV** or an antibody to **HIV** a test **or** series of tests that the state epidemiologist finds medically significant and sufficiently reliable under s. 252.13 (1r) to detect the presence of **HIV,** antigen or non-antigenic products of **HIV** or an antibody to **HIV.** The health care provider shall test the donor initially and, if the initial test result is negative, shall perform a 2nd test on a date that is not less than 180 days from the date of the procurement of the sperm. No person may use the donated sperm until the health care provider has obtained the results of the 2nd test. If any validated test result of the donor for the presence of **HIV,** antigen or non-antigenic products of **HIV** or an antibody to **HIV** is positive, the sperm donated for use may not be used and, if donated, shall be destroyed.

2. **A** health care provider who procures, processes, distributes or uses human ova donated as specified under s. 157.06 (6) (a) or (b) shall, prior to the distribution or use and with informed consent under the requirements of par. (b), test the proposed donor for the presence of **HIV,** antigen or non-antigenic products of **HIV** or an antibody to **HIV** in order to assure medical acceptability of the gift for the purpose intended.

(b) The health care provider, blood bank, blood center or plasma center that subjects a person to a test for the presence of **HIV,** antigen or non-antigenic products of **HIV** or an antibody to **HIV** under pars. (a) and (am) shall, in instances under those paragraphs in which consent is required, provide the potential test subject with an informed consent form for testing or disclosure that shall contain the following information and on the form shall obtain the potential test subject's signature or may, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), instead obtain the signature of the health care agent:

1. The name of the potential test subject who is giving consent and whose test results may be disclosed and, if the potential test subject has executed a power of attorney for health care

instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the name of the health care agent.

2. **A** statement of explanation to the potential test subject that the test results may be disclosed as specified under Sub. *(5)* (a) and either a listing that duplicates the persons or circumstances specified under Sub. (5) (a) 2. to 19. or a statement that the listing is available upon request.

3. Spaces specifically designated for the following purposes:

a. The signature of the potential test subject or, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), of the health care agent, providing informed consent for the testing and the date on which the consent is signed.

b. The name of a person to whom the potential test subject or, if the potential test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent, authorizes that disclosure of test results be made, if any, the date on which the consent to disclosure is signed, and the time period during which the consent to disclosure is effective.

(bm) The health care provider that subjects a person to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV under par. (a) 3. shall provide the test subject and the test subject's guardian, if the test subject is incompetent under ch. 880, with all of the following information:

1. **A** statement of explanation concerning the test that was performed, the date of performance of the test and the test results.

2. **A** statement of explanation that the test results may be disclosed as specified under Sub. *(5)* (a) and either a listing that duplicates the persons or circumstances specified under Sub. (5) (a) 2. to 18. or a statement that the listing is available upon request.

(3) WRITTEN CONSENT TO DISCLOSURE. **A** person who receives a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV under Sub. (2) (b) or, if the person has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent may authorize in writing a health care provider, blood bank, blood center or plasma center to disclose the person's test results to anyone at any time subsequent to providing informed consent for disclosure under Sub. (2) (b) and a record of this consent shall be maintained by the health care provider, blood bank, blood center or plasma center so authorized.

(4) RECORD MAINTENANCE. **A** health care provider, blood bank, blood center or plasma center that obtains from a person a specimen of body fluids or tissues for the purpose of testing for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV shall:

(a) Obtain from the subject informed consent for testing or disclosure, as provided under Sub. (2).

(b) Maintain a record of the consent received under par. (a).

(c) Maintain a record of the test results obtained. **A** record that is made under the circumstances described in Sub. **(2)** (a) 7m. may not reveal the identity of the test subject.

(5) CONFIDENTIALITY OF TEST. (a) **An** individual who is the subject of a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV or the individual's health care agent, if the individual has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), may disclose the results of the individual's test to anyone. **A** person who is neither the individual nor the individual's health care agent may not, unless he or she is specifically authorized by the individual to do so, disclose the individual's test results except to the following persons or under the following circumstances:

1. To the subject of the test and, if the test subject has executed a power of attorney for health care instrument under ch. 155 and has been found to be incapacitated under s. 155.05 (2), the health care agent.

2. To a health care provider who provides care to the test subject, including those instances in which a health care provider provides emergency care to the subject.

3. To an agent or employee of a health care provider under subd. 2. who prepares or stores patient health care records, as defined in s. 146.81 (4), for the purposes of preparation or storage of those records; provides patient care; or handles or processes specimens *of* body fluids or tissues.

4. To a blood bank, blood center or plasma center that subjects a person to a test under Sub. (2) (a), for any of the following purposes: a. Determining the medical acceptability of blood or plasma secured from the test subject. b. Notifying the test subject of the test results. c. Investigating HIV infections in blood or plasma.

5. To a health care provider who procures, processes, distributes or uses a human body part donated as specified under s. 157.06 *(6)* (a) or (b), for the purpose of assuring medical acceptability of the gift for the purpose intended.

6. To the state epidemiologist or his or her designee, for the purpose of providing epidemiologic surveillance or investigation or control of communicable disease.

7. To a funeral director, as defined under s. 445.01 (5) or to other persons who prepare the body of a decedent for burial or other disposition or to a person who performs an autopsy or assists in performing an autopsy.

8. To health care facility staff committees or accreditation or health care services review organizations for the purposes of conducting program monitoring and evaluation and health care services reviews.

9. Under a lawful order of a court of record except as provided under s. 901.05.

10. To a person who conducts research, for the purpose of research, if the researcher:

a. Is affiliated with a health care provider under subd. 3.

b. Has obtained permission to perform the research from an institutional review board.

c. Provides written assurance to the person disclosing the test results that use of the information requested is only for the purpose under which it is provided to the researcher, the information will not be released to a person not connected with the study, and the final research product will not reveal information that may identify the test subject unless the researcher has first received informed consent for disclosure from the test subject.

11. To a person, including a person exempted from civil liability under the conditions specified under s. 895.48, who renders to the victim of an emergency or accident emergency care during the course of which the emergency caregiver is significantly exposed to the emergency or accident victim, if a physician, based on information provided to the physician, determines and certifies in writing that the emergency caregiver has been significantly exposed and if the certification accompanies the request for disclosure.

12. To a coroner, medical examiner or an appointed assistant to a coroner or medical examiner, if one or more of the following conditions exist:

a. The possible HIV–infected status is relevant to the cause of death of a person whose death is under direct investigation by the coroner, medical examiner or appointed assistant.

b. The coroner, medical examiner or appointed assistant is significantly exposed to a person whose death is under direct investigation by the coroner, medical examiner or appointed assistant, if a physician, based on information provided to the physician, determines and certifies in writing that the coroner, medical examiner or appointed assistant has been significantly exposed and if the certification accompanies the request for disclosure.

13. To a sheriff, jailer or keeper of a prison, jail or house of correction or a person designated with custodial authority by the sheriff, jailer or keeper, for whom disclosure is necessitated in order to permit the assigning of a private cell to a prisoner who has a positive test result.

14. If the test results of a test administered to an individual are positive and the individual is deceased, by the individual's attending physician, to persons, if known to the physician, with whom the individual has had sexual contact or has shared intravenous drug use paraphernalia.

15. To anyone who provides consent for the testing under Sub. (2) (a) 4. b., except that disclosure may be made under this subdivision only during a period in which the test subject is adjudicated incompetent under ch. 880, is under 14 years of age or is unable to communicate due to a medical condition.

17. To an alleged victim or victim, to a health care professional, upon request as specified in s. 938.296 (4) (e) or *(5)* (e) or 968.38 (4) (c) or *(5)* (c), who provides care to the alleged victim or victim and, if the alleged victim or victim is a minor, to the parent or

guardian of the alleged victim or victim, under s. 938.296 (4) or (5) or 968.38 (4) or (5).

18. To an affected person, under the requirements of Sub. (2) (a) 7.

19. If the test was administered to a child who has been placed in a foster home, treatment foster home, group home, residential care center for children and youth, or secured correctional facility, as defined in s. 938.02 (15m), including a placement under s. 48.205, 48.21, 938.205, or 938.21 or for whom placement in a foster home, treatment foster home, group home, residential care center for children and youth, or secured correctional facility is recommended under s. 48.33 (4), 48.425 (1) (g), 48.837 (4) (c), or 938.33 (3) or (4), to an agency directed by a court to prepare a court report under s. 48.33 (1), 48.424 (4) (b), 48.425 (3), 48.831 (2), 48.837 (4) (c), or 938.33 (1), to an agency responsible for preparing a court report under s. 48.365 (2g), 48.425 (1), 48.831 (2), 48.837 (4) (c), or 938.365 (2g), to an agency responsible for preparing a permanency plan under s. 48.355 (2e), 48.38, 48.43 (1) (c) or (5) (c), 48.63 (4) or (5) (c), 48.831 (4) (e), 938.355 (2e), or 938.38 regarding the child, or to an agency that placed the child or arranged for the placement of the child in any of those placements and, by any of those agencies, to any other of those agencies and, by the agency that placed the child or arranged for the placement of the child in any of those placements, to the child's foster parent or treatment foster parent or the operator of the group home, residential care center for children and youth, or secured correctional facility in which the child is placed, as provided in s. 48.371 or 938.371.

NOTE: Subd. 19. is shown as affected by two acts of the 2001 legislature and as merged by the revisor under s. 13.93 (2) (c).

20. To a prisoner's health care provider, the medical staff of a prison or jail in which a prisoner is confined, the receiving institution intake staff at a prison or jail to which **a** prisoner is being transferred or a person designated by a jailer to maintain prisoner medical records, if the disclosure is made with respect to the prisoner's patient health care records under s. 302.388, to the medical staff of a jail to whom the results are disclosed under s. 302.388 (2) (c) or (d), to the medical staff of a jail to which a prisoner is being transferred, if the results are provided to the medical staff by the department of corrections as part of the prisoner's medical file, to a health care provider to whom the results are disclosed under s. 302.388 (2) (c) or (f) or the department of corrections if the disclosure is made with respect to a prisoner's patient health care records under s. 302.388 (4).

(b) **A** private pay patient may deny access to disclosure of his or her test results granted under par. (a) 10. if he or she annually submits to the maintainer of his or her test results under Sub. (4) (c) a signed, written request that denial be made.

(5m) AUTOPSIES; TESTING OF CERTAIN CORPSES. Notwithstanding s. 157.05, a corpse may be subjected to a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV and the test results disclosed to the person who has been significantly exposed under any of the following conditions:

(a) If a person, including a person exempted from civil liability under the conditions specified under s. 895.48, who renders to the victim of an emergency or accident emergency care during the course of which the emergency caregiver is significantly exposed to the emergency or accident victim and the emergency or accident victim subsequently dies prior to testing for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, and if a physician, based on information provided to the physician, determines and certifies in writing that the emergency caregiver has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall be ordered by the coroner, medical examiner or physician who certifies the victim's cause of death under s. 69.18 (2) (b), (c) or (d).

(b) If a funeral director, coroner, medical examiner or appointed assistant to a coroner or medical examiner who prepares the corpse of a decedent for burial or other disposition or a person who performs an autopsy or assists in performing an autopsy is significantly exposed to the corpse, and if a physician, based on information provided to the physician, determines and certifies in writing that the funeral director, coroner, medical examiner or appointed assistant has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall be ordered by the attending physician of the funeral director, coroner, medical examiner or appointed assistant who is so exposed.

(c) If a health care provider or an agent or employee of a health care provider is significantly exposed to the corpse or to a patient who dies subsequent to the exposure and prior to testing for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV, and if a physician who is not the health care provider, based on information provided to the physician, determines and certifies in writing that the health care provider, agent or employee has been significantly exposed and if the certification accompanies the request for testing and disclosure. Testing of a corpse under this paragraph shall be ordered by the physician who certifies that the significant exposure has occurred.

(5r) SALE OF TESTS WITHOUT APPROVAL PROHIBITED. No person may sell or offer to sell in this state a test or test kit to detect the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV for self–use by an individual unless the test or test kit is first approved by the state epidemiologist. In reviewing a test or test kit under this subsection, the state epidemiologist shall consider and weigh the benefits, if any, to the public health of the test or test kit against the risks, if any, to the public health of the test or test kit.

(6) EXPANDED DISCLOSURE OF TEST RESULTS PROHIBITED. No person to whom the results of a test for the presence of HIV, antigen or non-antigenic products of HIV or an antibody to HIV have been disclosed under Sub. (5) (a) or (5m) may disclose the test results except as authorized under Sub. (5) (a) or (5m).

(7) REPORTING OF POSITIVE TEST RESULTS. (a) Notwithstanding ss. 227.01 (13) and 227.10 (1), for the purposes of this subsection, the state epidemiologist shall determine, based on the preponderance of available scientific evidence, the procedures necessary in this state to obtain a validated test result and the secretary shall so declare under s. 250.04 (1) or **(2)** (a). The state epidemiologist shall revise this determination if, in his or her opinion, changed available scientific evidence warrants a revision, and the secretary shall declare the revision under s. 250.04 (1) or (2) (a).

(b) If a positive, validated test result is obtained from a test subject, the health care provider, blood bank, blood center or plasma center that maintains a record of the test results under Sub. (4) (c) shall report to the state epidemiologist the following information:

1. The name and address of the health care provider, blood bank, blood center or plasma center reporting.

2. The name and address of the subject's health care provider, if known.

3. The name, address, telephone number, age or date of birth, race and ethnicity, sex and county of residence of the test subject, if known.

4. The date on which the test was performed.

5. The test result.

6. Any other medical or epidemiological information required by the state epidemiologist for the purpose of exercising surveillance, control and prevention of HIV infections.

(c) Except as provided in Sub. (7m), a report made under par. (b) may not include any of the following:

1. Information with respect to the sexual orientation of the test subject.

2. The identity of persons with whom the test subject may have had sexual contact.

(d) This subsection does not apply to the reporting of information under s. 252.05 with respect to persons for whom a diagnosis of acquired immuno-deficiency syndrome has been made.

(7m) REPORTING OF PERSONS SIGNIFICANTLY EXPOSED. If a positive, validated test result is obtained from a test subject, the test subject's physician who maintains a record of the test result under Sub. (4) (c) may report to the state epidemiologist the name of any person known to the physician to have been significantly exposed to the test subject, only after the physician has done all of the following:

(a) Counseled the test subject to inform any person who has been significantly exposed to the test subject.

(b) Notified the test subject that the name of any person known to the physician to have been significantly exposed to the test subject will be reported to the state epidemiologist.

(8) CIVIL LIABILITY. (a) Any person violating Sub. (2), (5) (a), (5m), (6) or (7) (c) is liable to the subject of the test for actual damages, costs and reasonable actual attorney fees, plus exemplary damages of up to $1,000 for a negligent violation and up to $25,000 for an intentional violation.

(b) The plaintiff in an action under par. (a) has the burden of proving by a preponderance of the evidence that a violation occurred under Sub. (2), (5) (a), (5m), (6) or (7) (c). A conviction under Sub. (2), (5) (a), (5m), (6) or (7) (c) is not a condition precedent to bringing an action under par. (a).

(9) **PENALTIES.** Whoever intentionally discloses the results of a blood test in violation of Sub. (2) (a) 7m., (5) (a) or (5m) and thereby causes bodily harm or psychological harm to the subject of the test may be fined not more than $25,000 or imprisoned not more than 9 months or both. Whoever negligently discloses the results of a blood test in violation of Sub. (2) (a) 7m., (5) (a) or (5m) is subject to a forfeiture of not more than $1,000 for each violation. Whoever intentionally discloses the results of a blood test in violation of Sub. (2) (a) 7m., (5) (a) or (5m), knowing that the information is confidential, and discloses the information for pecuniary gain may be fined not more than $100,000 or imprisoned not more than 3 years and 6 months, or both.

(10) DISCIPLINE OF EMPLOYEES. Any employee of the state or a political subdivision of the state who violates this section may be discharged or suspended without pay.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136,256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298.359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332,334, 337,340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323,9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74; s. 13.93 (2) (c).

No claim for a violation of Sub. (2) was stated when the defendants neither conducted HIV tests nor were authorized recipients of the test results. Hillman v. Columbia County, 164 Wis. 2d 376,474 N.W.2d 913 (Ct. App. 1991).

This section does not prevent a court acting in equity from ordering an HIV test where this section does not apply. Syring v. Tucker, 174 Wis. 2d 787, 498 N.W.2d 370 (1993).

This section has no bearing on a case in which a letter from the plaintiff to the defendant pharmacy contained a reference to a drug used only to treat AIDS, but did not disclose the results of an HIV test or directly disclose that the defendant had AIDS. Doe v. American Stores, Co. 74 F. Supp. 2d 855 (1999).

Confidentiality of Medical Records. Meili. Wis. Law. Feb. 1995.

CHAPTER 341
REGISTRATION OF VEHICLES

SUBCHAPTER I
REGISTRATION

341.14 Application for and issuance of special plates.

341.14 Application for and issuance of special plates. The department shall issue special plates as specified in this section under the following circumstances:

(1) If any resident of this state who is registering or has registered an automobile, or a motor truck, dual purpose motor home or dual purpose farm truck which has a gross weight of not more than 8,000 pounds, a farm truck which has a gross weight of not more than 12,000 pounds or a motor home submits a statement once every 4 years, as determined by the department, from the U.S. department of veterans affairs certifying to the department that the resident is, by reason of injuries sustained while in the active U.S. military service, a person with a disability that limits or impairs the ability to walk, the department shall procure, issue and deliver to the veteran, plates of a special design in lieu of the plates which ordinarily would be issued for the vehicle, and shall renew the plates. The plates shall have a light blue background except for a white border not to exceed one inch at top and bottom, and blue lettering, except that the word "VET" and the identifying number shown on the plates shall be colored red. The plates shall be so designed as to readily apprise law enforcement officers of the fact that the vehicle is owned by a disabled veteran and is entitled to the parking privileges specified in s. 346.50 (2). No charge in addition to the registration fee shall be made for the issuance or renewal of such plates.

(1a) If any resident of this state, who is registering or has registered an automobile, or a motor truck, dual purpose motor home or dual purpose farm truck which has a gross weight of not more than 8,000 pounds, a farm truck which has a gross weight of not more than 12,000 pounds or a motor home, submits a statement once every 4 years, as determined by the department, from a physician licensed to practice medicine in any state, from an advanced practice nurse licensed to practice nursing in any state, from a physician assistant licensed or certified to practice in any state, from a chiropractor licensed to practice chiropractic in any state or from a Christian Science practitioner residing in this state and listed in the Christian Science journal certifying to the department that the resident is a person with a disability that limits or impairs the ability to walk, the department shall procure, issue and deliver to the disabled person plates of a special design in lieu of plates which ordinarily would be issued for the vehicle, and shall renew the plates. The plates shall be so designed as to readily apprise law enforcement officers of the fact that the vehicle is owned by a non veteran disabled person and is entitled to the parking privileges specified in s. 346.50 (2a). No charge in addition to the registration fee shall be made for the issuance or renewal of such plates.

(1e) (a) If any resident of this state, who is registering or has registered a motorcycle, submits a statement once every 4 years, as determined by the department, from a physician licensed to practice medicine in any state, from an advanced practice nurse licensed to practice nursing in any state, from a physician assistant licensed or certified to practice in any state, from a chiropractor licensed to practice chiropractic in any state, from a Christian Science practitioner residing in this state and listed in the Christian Science journal or from the U.S. department of veterans affairs certifying to the department that the resident is a person with a disability that limits or impairs the ability to walk, the department shall procure, issue and deliver to the disabled person a plate of a special design in lieu of the plate which ordinarily would be issued for the motorcycle, and shall renew the plate. The statement shall state whether the disability is permanent or temporary and, if temporary, the opinion of the physician, advanced practice nurse, physician assistant, chiropractor, practitioner or U.S. department of veterans affairs as to the duration of the disability. The plate shall be so designed as to readily apprise law enforcement officers of the fact that the motorcycle is owned by a disabled person and is entitled to the parking privileges specified in s. 346.50 (2a). No charge in addition to the registration fee may be made for the issuance or renewal of the plate.

(b) If the department determines that the disability of a person submitting a statement under (a) is temporary, a temporary operation plate may be issued to the person under s. 341.09 (8). A plate issued under s. 341.09 (8) shall be considered a special registration plate issued under this subsection for purposes of s. 346.50 (2a) and (3), 346.503 (1), 346.505 (2), 349.13 (1m) or 349.145.

(1m) If any licensed driver submits to the department a statement once every 4 years, as determined by the department, from a physician licensed to practice medicine in any state, from an advanced practice nurse licensed to practice nursing in any state, from a physician assistant licensed or certified to practice in any state, from a chiropractor licensed to practice chiropractic in any state or from a Christian Science practitioner residing in this state and listed in the Christian Science journal certifying that another person who is regularly dependent on the licensed driver for transportation is a person with a disability that limits or impairs the ability to walk, the department shall issue and deliver to the licensed driver plates of a special design in lieu of the plates which ordinarily would be issued for the automobile or motor truck, dual purpose motor home or dual purpose farm truck having a gross weight of not more than 8,000 pounds, farm truck having a gross weight of not more than 12,000 pounds or motor home, and shall renew the plates. The plates shall be so designed as to readily apprise law enforcement officers of the fact that the vehicle is operated by a licensed driver on whom a disabled person is regularly dependent and is entitled to the parking privileges specified in s. 346.50 (2a). No charge in addition to the registration fee may be made for the issuance or renewal of the plates. The plates shall conform to the plates required in sub. (1a).

(1q) If any employer who provides an automobile, or a motor truck, dual purpose motor home or dual purpose farm truck which has a gross weight of not more than 8,000 pounds, a farm truck which has a gross weight of not more than 12,000 pounds or a motor home, for an employee's use submits to the department a statement once every 4 years, as determined by the department, from a physician licensed to practice medicine in any state, from an advanced practice nurse licensed to practice nursing in any state, from a physician assistant licensed or certified to practice in any state, from a chiropractor licensed to practice chiropractic in any state or from a Christian Science practitioner residing in this state and listed in the Christian Science journal certifying that the employee is a person with a disability that limits or impairs the ability to walk, the department shall issue and deliver to such employer plates of a special design in lieu of the plates which ordinarily would be issued for the vehicle, and shall renew the plates. The plates shall be so designed as to readily apprise law enforcement officers of the fact that the vehicle is operated by a disabled person and is entitled to the parking privileges specified in s. 346.50 (2a). No charge in addition to the registration fee may be made for the issuance or renewal of the plates. The plates shall conform to the plates required in sub. (1a).

(1r) (a) If any resident of this state who is registering or has registered an automobile, or a motor truck, dual purpose motor home or dual purpose farm truck which has a gross weight of not more than 8,000 pounds, a farm truck which has a gross weight of not more than 12,000 pounds or a motor home submits a statement once every 4 years, as determined by the department, certifying to the department that the vehicle is leased to a person who qualifies for special plates under sub. (1) or (1a) together with the information required under (1) or (1a), the department shall issue and deliver to the resident, plates of the appropriate special design under (1) or (1a) in lieu of the plates which ordinarily would be issued for the vehicle, and shall renew the plates. No charge in addition to the registration fee shall be made for the issuance or

renewal of the plates. No plates may be issued and delivered to a resident under this paragraph on or after January 1, 1998.

(b) If the lessor of a vehicle under (a) does not continue to lease the vehicle to the disabled person as certified to the department, the lessor shall dispose of the special plates in a manner prescribed by the department and shall obtain replacement plates for the vehicle. No charge in addition to the registration fee for the vehicle, if due, may be made for the issuance of replacement plates under this paragraph.

(2) Upon compliance with the laws relating to registration of automobiles and motor homes; motor trucks, dual purpose motor homes, and dual purpose farm trucks which have a gross weight of not more than 8,000 pounds; and farm trucks which have a gross weight of not more than 12,000 pounds, including payment of the prescribed registration fees therefor plus an additional fee of $15 when registration plates are issued accompanied by an application showing satisfactory proof that the applicant is the holder of an unexpired amateur radio station license issued by the federal communications commission, the department shall issue registration plates on which, in lieu of the usual registration number, shall be inscribed in large legible form the call letters of such applicant as assigned by the federal communications commission. The fee for re-issuance of a plate under this subsection shall be $15.

(2m) Upon compliance with laws relating to registration of motor vehicles, including payment of the prescribed fee, and an additional fee of $15 when the original or new registration plates are issued and accompanied by an application showing satisfactory proof that the applicant has a collector's identification number as provided in s. 341.266 (2) (d), the department shall issue registration plates on which, in lieu of the usual registration number, shall be inscribed the collector's identification number issued under s. 341.266 (2) (d). The words "VEHICLE COLLECTOR' shall be inscribed across the lower or upper portion of the plate at the discretion of the department. Additional registrations under this subsection by the same collector shall bear the same collector's identification number followed by a suffix letter for vehicle identification. Registration plates issued under this subsection shall expire annually.

(3) Upon request therefor by the state or a county or municipality or federally recognized Indian tribe or band which is registering a vehicle owned by it and to be used in law enforcement work, to be used by investigators for the office of the state public defender or to be used for operation under s. 20.916 (7), the department shall issue the same type of registration plate as it would issue for a privately owned vehicle of the same type in lieu of the type of plate it ordinarily would issue for a vehicle owned by the state or by a county or municipality or Indian tribe or band. This subsection does not affect the registration fee to be charged.

(4) For antique motor vehicles as specified in s. 341.265. The special plate for an antique motorcycle under this subsection shall be the same size as the usual registration plate for a motorcycle that is not an antique motorcycle.

(4m) For special interest vehicles as specified in s. 341.266.

(4r) For reconstructed and homemade vehicles as specified in s. 341.268.

(5) Upon application by any person awarded the congressional medal of honor and submission of proper proof thereof, the department shall issue special plates so designed as to indicate such award. No charge whatever shall be made for the issuance of such plates.

(6) (a) Upon application to register an automobile or a motor truck or dual purpose farm truck which has a gross weight of not more than 8,000 pounds by any person who was a member of any of the U.S. armed services and who was held as a prisoner of war during any of the conflicts described in s. 45.35 (5) (e) 2. to 8. or in Bosnia, Grenada, Lebanon, Panama, Somalia or a Middle East crisis under s. 45.34, and upon submission of a statement from the U.S. department of veterans affairs certifying that the person was a prisoner of war during one of the conflicts described in s. 45.35 (5) (e) 2. to 8. or in Bosnia, Grenada, Lebanon, Panama, Somalia or a Middle East crisis under s. 45.34, the department shall issue to the person a special plate which is colored red, white and blue and which has the words "ex–prisoner of war" placed on the plate in the manner designated by the department.

(c) A person who maintains no more than one registration under this subsection at one time shall not be charged a fee for registration of the vehicle or issuance of the plates.

(d) For each additional vehicle, a person who maintains more than one registration under this subsection at one time shall be charged a fee of $15 for issuance or re-issuance of the plates in addition to the annual registration fee for the vehicle. Except as provided in (c), a motor truck or dual purpose farm truck registered under this subsection shall be registered under this paragraph.

(6m) (a) Upon application to register an automobile or motor truck which has a gross weight of not more than 8,000 pounds by any person who is a resident of this state and a member or retired member of the national guard, the department shall issue to the person special plates whose colors and design shall be determined by the department and which have the words "Wisconsin guard member" placed on the plates in the manner designated by the department. The department shall consult with or obtain the approval of the adjutant general with respect to any word or symbol used to identify the national guard. An additional fee of $15 shall be charged for the issuance or re-issuance of the plates. Registration plates issued under this subsection shall expire annually.

(b) Except as provided in (c), if an individual in possession of special plates under this subsection or of personalized plates under s. 341.145 (1) (b) does not maintain membership in the national guard during a year which is not a plate issuance year, the individual shall dispose of the special plates in a manner prescribed by the department.

(c) Paragraph (b) does not apply to an individual who is a retired member of the national guard.

(6r) (a) In this subsection and s. 341.145 (1) (c), "authorized special group" means a special group enumerated in **(f)** or designated by the department under par. (fm).

(b) 1. Upon application to register an automobile or motor home, or a motor truck, dual purpose motor home or dual purpose farm truck which has a gross weight of not more than 8,000 pounds, or a farm truck which has a gross weight of not more than 12,000 pounds, by any person who is a resident of this state and a member of an authorized special group, the department shall issue to the person special plates whose colors and design shall indicate that the vehicle is owned by a person who is a member of the applicable special group. The department may not issue any special group plates under par. (f) *55.* until 6 months after the department has received information sufficient for the department to determine that any approvals required for use of any logo, trademark, trade name or other commercial symbol designating the professional football team have been obtained.

2. An additional fee of $15 shall be charged for the issuance or reissuance of the plates for special groups specified under par. **(f).**

3. An additional fee of $15 shall be charged for the issuance or reissuance of a plate issued for a special group designated by the department under par. (fm). The department shall deposit in the general fund and credit to the appropriation account under s. 20.395 (5) (cj) all fees collected under this subdivision.

4. An additional fee of $20 that is in addition to the fee under subd. 2. shall be charged for the issuance or renewal of a plate issued on an annual basis for a special group specified under (f) 35. to 47. An additional fee of $40 that is in addition to the fee under subd. 2. shall be charged for the issuance or renewal of a plate issued on a biennial basis for a special group specified under (f) 35. to 47. if the plate is issued or renewed during the first year of the biennial registration period or $20 for the issuance or renewal if the plate is issued or renewed during the 2nd year of the biennial registration period. The fee under this subdivision is deductible as a charitable contribution for purposes of the taxes under ch. 71.

5. An additional fee of $25 that is in addition to the fee under subd. 2. shall be charged for the issuance or renewal of a plate issued on an annual basis for the special group specified under (f) 50. ***An*** additional fee of $50 that is in addition to the fee under subd. ***2.*** shall be charged for the issuance or renewal of a plate issued on the biennial basis for the special group specified under (f) 50. if the plate is issued or renewed during the first year of the biennial registration period or $25 for the issuance or renewal if the plate is issued or renewed during the 2nd year of the biennial registration period. All moneys received under this subdivision in

excess of the initial costs of production of the special group plate under (9 50. or $15,000, whichever is less, shall be deposited in the conservation fund and credited to the appropriation under s. 20.370 (1) (fs). To the extent permitted under ch. 71, the fee under this subdivision is deductible as a charitable contribution for purposes of the taxes under ch. 71.

6. An additional fee of $20 that is in addition to the fee under subd. 2. shall be charged for the issuance or renewal of a plate issued on an annual basis for the special group specified under (9 53. An additional fee of $40 that is in addition to the fee under subd. 2. shall be charged for the issuance or renewal of a plate issued on a biennial basis for the special group specified under (9 53. if the plate is issued or renewed during the first year of the biennial registration period or $20 for the issuance or renewal if the plate is issued or renewed during the 2nd year of the biennial registration period. All moneys received under this subdivision in excess of the initial costs of data processing for the special group plate under (9 53. or $35,000, whichever is less, shall be deposited in the children's trust fund. To the extent permitted under ch. 71, the fee under this subdivision is deductible as a charitable contribution for purposes of the taxes under ch. 71.

7. An additional fee of $25 that is in addition to the fee under subd. 2. shall be charged for the issuance or renewal of a plate issued on an annual basis for the special group specified under (9 54. An additional fee of $50 that is in addition to the fee under subd. 2. shall be charged for the issuance or renewal of a plate issued on the biennial basis for the special group specified under (f) 54. if the plate is issued or renewed during the first year of the biennial registration period or $25 for the issuance or renewal if the plate is issued or renewed during the 2nd year of the biennial registration period. All moneys received under this subdivision in excess of the initial costs of production of the special group plate under (9 54. or $196,700, whichever is less, shall be deposited in the conservation fund and credited to the appropriation under s. 20.370 (5) (au). To the extent permitted under ch. 71, the fee under this subdivision is deductible as a charitable contribution for purposes of the taxes under ch. 71.

8. An additional fee of $25 that is in addition to the fee under subd. 2. shall be charged for the issuance or renewal of a plate issued on an annual basis for the special group specified under (9 55. An additional fee of $50 that is in addition to the fee under subd. 2. shall be charged for the issuance or renewal of a plate issued on the biennial basis for the special group specified under (9 55. if the plate is issued or renewed during the first year of the biennial registration period or $25 for the issuance or renewal if the plate is issued or renewed during the 2nd year of the biennial registration period. For each professional football team for which plates are produced under (9 55., all moneys received under this subdivision in excess of the initial costs of data processing for the special group plate related to that team under (f) 55. or $35,000, whichever is less, shall be deposited in the general fund and credited as follows:

a. An amount equal to the costs of licensing fees under (h) that are related to that team shall be credited to the appropriation account under s. 20.395 (5) (cL).

b. The remainder after crediting the appropriation account as provided in subd. 8. a. shall be credited to the appropriation account under s. 20.395 (1) (ig). The department of transportation shall identify and record the percentage of moneys that are attributable to each professional football team represented by a plate under (9 55.

(c) Special group plates shall display the word "Wisconsin", the name of the applicable authorized special group, a symbol representing the special group, not exceeding one position, and identifying letters or numbers or both, not exceeding 6 positions and not less than one position. The department shall specify the design for special group plates, but the department shall consult the president of the University of Wisconsin System before specifying the word or symbol used to identify the special groups under (9 35. to 47., the secretary of natural resources before specifying the word or symbol used to identify for the special group under (9 50. and the chief executive officer of the professional football team and an authorized representative of the league of professional football teams described in s. 229.823 to which that team belongs before specifying the design for the applicable special group plate under (9 5.5. Special group plates under (9 50. shall be as similar as possible to regular registration plates in color and design.

(d) The department shall specify the word or words comprising the special group name and the symbol to be displayed upon special group plates for a group associated with a branch of the armed services or a related organization after consultation with the appropriate state or federal representative of that service or organization. Special group plates for a group associated with a branch of the armed services or a related organization shall be colored red, white and blue.

(e) The department shall specify one combination of colors for special group plates for groups or organizations which are not military in nature and not special group plates under (9 35. to 47. and 50. and for each professional football team under (f) 55. The department shall specify one combination of colors for special group plates under (9 35. to 47. The department shall specify the word or words comprising the special group name and the symbol to be displayed upon special group plates for a group or organization which is not military in nature after consultation with the chief executive officer in this state of the group or organization. The department shall require that the word or words and symbol for a university specified under (f) 35. to 47. be a registration decal or tag and affixed to the special group plate and be of the colors for a university specified under (9 35. to 47. that the president of the University of Wisconsin System specifies.

(9 The department shall issue special group plates under this subsection for the following authorized special groups:

1. U.S. army.
Im. U.S. Army retired.
2. U.S. army reserve.
3. U.S. army veterans.
4. U.S. navy.
4m. U.S. navy retired.
5. U.S. navy reserve.
6. U.S. navy veterans.
7. U.S. air force.
7m. U.S. air force retired.
8. U.S. air force reserve.
9. U.S. air force veterans.
10. U.S. coast guard.
10m. U.S. coast guard retired.
11. U.S. coast guard reserve.
12. U.S. coast guard veterans.
13. U.S. marine corps.
13m. U.S. marine corps retired.
14. U.S. marine corps reserve.
15. U.S. marine corps veterans.
16. World War I veterans.
17. World War II veterans.
18. Korean War veterans.
19. Vietnam War veterans.
20. Persons awarded the distinguished service cross medal.
21. Persons awarded the air force cross medal.
22. Persons awarded the navy cross medal.
23. Persons awarded the distinguished service medal from any branch of the U.S. armed forces.
24. Persons awarded the silver star medal.
25. Persons awarded the legion of merit medal.
26. Persons awarded the distinguished flying cross medal.
27. Persons awarded the soldier's medal.
28. Persons awarded the navy and marine corps medal.
29. Persons awarded the airman's medal.
30. Persons awarded the coast guard medal.
31. Persons awarded the bronze star medal.
32. Persons awarded the purple heart medal.
33. Fire fighters.
34. Rescue squad members.
35. Persons interested in obtaining a plate with University of Wisconsin–Eau Claire on it.
36. Persons interested in obtaining a plate with University of Wisconsin–Green Bay on it.
37. Persons interested in obtaining a plate with University of Wisconsin–Lacrosse on it.
38. Persons interested in obtaining a plate with University of Wisconsin–Madison on it.
39. Persons interested in obtaining a plate with University of Wisconsin–Milwaukee on it.

40. Persons interested in obtaining a plate with University of Wisconsin–Oshkosh on it.

41. Persons interested in obtaining a plate with University of Wisconsin–Parkside on it.

42. Persons interested in obtaining a plate with University of Wisconsin–Platteville on it.

43. Persons interested in obtaining a plate with University of Wisconsin–River Falls on it.

44. Persons interested in obtaining a plate with University of Wisconsin–Stevens Point on it.

45. Persons interested in obtaining a plate with University of Wisconsin–Stout on it.

46. Persons interested in obtaining a plate with University of Wisconsin–Superior on it.

47. Persons interested in obtaining a plate with University of Wisconsin–Whitewater on it. 48. Emergency medical technicians.

49. Persian Gulf War veterans.

49m. Somalia War veterans.

50. Persons interested in supporting endangered resources.

51. Veterans of the attack on Pearl Harbor who were stationed in Hawaii on December 7, 1941.

53. Persons interested in obtaining a plate with the words "Celebrate Children" on it to show their support of the prevention of child abuse and neglect.

54. Persons interested in obtaining a plate supporting Ducks Unlimited, Inc., and its conservation efforts in the United States, Canada and Mexico.

55. Persons interested in expressing their support of a professional football team, as described in s. 229.823, whose home stadium, as defined in s. 229.821 (8), is in this state.

(fm) 1. In addition to the special groups specified under (f), any group or organization may apply to the department for designation as an authorized special group. The department shall designate any group or organization that meets all of the following criteria as an authorized special group:

a. The group or organization is not organized or operated for profit.

b. The group or organization is not a political committee, as defined in s. 11.01 (4), or a political group, as defined in s. 11.01 (10).

c. The group or organization is not a church, a synagogue, a mosque or any organization, whether or not organized under ch. 187, that operates under a creed.

d. The group or organization does not promote, practice or encourage hatred or any form of discrimination.

e. The group or organization does not carry connotations offensive to good taste or decency, or that would be misleading, or in conflict with the enumeration or designation of any other authorized special group.

2. The application for designation as an authorized special group shall include all of the following:

a. A deposit of $15,500 that shall be returned to the group or organization if the application is denied or, if the application is approved, $15 times the number of special group plates issued to members of the authorized special group in the first year of issuance of the special group plate shall be returned to the group or organization, up to a maximum of $12,000.

b. A certification by the group or organization that any approvals required for use of any logo, trademark, trade name or other commercial symbol related to the group or organization have been obtained and that the group or organization shall be responsible for any licensing fees related to the word or words or the symbol on special group plates for the group or organization.

c. Any other information that the department reasonably requires to determine whether the group or organization is entitled by law to designation as an authorized special group.

4. If the application for designation as an authorized special group is denied, the department shall promptly return the application to the group or organization, together with a notice stating the reason for the denial. All decisions of the department with respect to applications under this paragraph shall be final and not subject to judicial review under ch. 227.

5. The department may not assist any group or organization in the use of special group plates in any fund–raising effort by the group or organization.

6. The department shall establish by rule procedures for the designation of authorized special groups under this paragraph and for the issuance or the discontinuation of issuance of special group plates under this subsection to members of an authorized special group.

7. Except for the authorized special group enumerated under (f) 55., after October 1, 1998, additional authorized special groups may only be special groups designated by the department under this paragraph. The authorized special groups enumerated in *(f)* shall be limited solely to those special groups specified under (f) on October 1, 1998, except for the authorized special group enumerated under *(f)* 55. This subdivision does not apply to the special group specified under **(f)** 54.

(g) If an individual in possession of special plates under *(f)* 33., 34. or 48. or of personalized plates under s. 341.145 (1) (c) of the same color and design as special plates under **(f)** 33., 34. or 48. does not maintain membership in the applicable authorized special group during a year that is not a plate issuance year, the individual shall dispose of the special plates in a manner prescribed by the department.

(h) From the appropriation under s. 20.395 *(5)* (cL), the department shall pay reasonable licensing fees relating to the word or words or the symbol on special group plates under *(f)* 55.

(6w) Upon application to register a motorcycle by any person who is a resident of this state and a veteran of the U.S. armed forces, the department shall issue to the person a special plate whose colors and design shall indicate that the vehicle is owned by a veteran of the U.S. armed forces. The department shall specify the design of the special plate. The special plate shall be colored red, white, and blue and be 4 inches by 7 inches in size. An additional fee of $15 shall be charged for the issuance or reissuance of the plate.

(7) The department shall disseminate information to all applicants for registration plates under (1), (1a), (1e), (1m) or (1q) relating to the parking privileges granted under s. 346.50 (2), (2a) or (3) and their right to request enforcement of s. 346.505.

(8) If a special plate for a group associated with a branch of the armed services or otherwise military in nature has been issued to a person under this section, upon application by the surviving spouse of the person, the department may permit the surviving spouse to retain the plate. If the plate has been returned to the department or surrendered to another state, the department may reissue the plate to the surviving spouse. The department shall charge an additional fee of $15 to reissue the plate. This subsection does not apply to a special plate issued under s. 341.14 (1) or (Ir).

History: 1971 c. 164 s. 83; 1971 c. 299; 1975 c. 384, 417; 1977 c. 16; 1977 c. 29 ss. 1417, 1418, 1654 (7) (a), (e); 1977 c. 43, 183, 292, 418, 447; 1979 c. 236; 1981 c. 255: 1983 a. 227.430.511: 1985 a. 29.55: 1985 a. 87 ss. 1.5: 1985 a. 124.202: 1985 a. 332 ss. 191, 251 (4); 1987 a. 19, 64, 112, 145, 315, 399, 403; 1989 a. 31, 54, 56, 137, 302, 304, 312, 359; 1991 a. 2, 39, 100, 240; 1993 a. 16, 291, 303, 415, 491; 1995 a. 147, 253, 255, 445: 1997 a. 27, 67, 252, 255; 1999 a. 9, 32, 80, 92, 167, 186; 2001 a. 16, 38.

Legislative Council Note, 1977: Sub. (3) is amended to enable a federally recognized Indian tribe or band to obtain regishation plates for vehicles used by the tribe or band in law enforcement work. These plates are to be of the same type as would normally be issued for use on a privately owned vehicle but the registration fees charged would be the same as provided for plates issued under section 341.26 (2m), relating to special registration fees for vehicles owned by the state or by a county or municipality. [Bill 850–A]

CHAPTER 343
OPERATORS' LICENSES

343.51 Special identification cards *for* physically disabled

343.51 Special identification cards for physically disabled. (1) Any person who qualifies for registration plates of a special design under s. 341.14 (1), (1a), (1m) or (1q) or any other person with a disability that limits or impairs the ability to walk may request from the department a special identification card that will entitle any motor vehicle, other than a motorcycle, parked by, or under the direction of, the person, or a motor vehicle, other than a motorcycle, operated by or on behalf of the organization when used to transport such a person, to parking privileges under s. 346.50 (2), (2a) and (3). The department shall issue the card at a fee to be determined by the department, upon submission by the applicant, if the applicant is an individual rather than an organization, of a statement from a physician licensed to practice medicine in any state, from an advanced practice nurse licensed to practice nursing in any state, from a physician assistant licensed or certified to practice in any state, from a chiropractor licensed to practice chiropractic in any state or from a Christian Science practitioner residing in this state and listed in the Christian Science journal that the person is a person with a disability that limits or impairs the ability to walk. The statement shall state whether the disability is permanent or temporary and, if temporary, the opinion of the physician, advanced practice nurse, physician assistant, chiropractor or practitioner as to the duration of the disability. The department shall issue the card upon application by an organization on a form prescribed by the department if the department believes that the organization meets the requirements under this subsection.

(1m) The form for application for a special identification card under sub. (1) shall include the information required under s. 85.103 (2).

(2) (a) The department shall prescribe the form and size of identification cards issued under this section and shall promulgate rules regarding the issuance and use of the cards. The identification cards shall be designed and displayed so as to enable law enforcement officers to determine that the vehicle, when parked, is entitled to parking privileges under s. 346.50 (2), (2a) and (3), but shall not be unnecessarily conspicuous when the vehicle is operated. The department may establish an expiration date for any special identification card issued prior to July 1, 1994. Except as provided in par. (b), any special identification card issued after June 30, 1994, shall be valid for 4 years.

(b) The department shall issue special identification cards which are valid for limited periods of time if the physician's statement required by sub. (1) indicates that the applicant's disability is temporary.

(c) At least 30 days prior to the expiration of the card, the department shall mail a renewal application to the last–known address of each identification card holder. The application shall include all of the information required for issuance of a special identification card under sub. (1). The fee for a renewal identification card shall be the fee established by the department under sub. (1). Except as provided in par. (b), each card shall be valid for 4 years.

(3) The department shall disseminate information to all applicants for a special identification card under sub. (1) relating to the parking privileges granted under s. 346.50 (2), (2a) or (3) and their right to request enforcement of s. 346.505.

History: 1979 c. **276; 1981** c. **119,255; 1985** a. **87** s. 5; **1985 a. 202,332; 1987** a. **19; 1989** a. **304; 1991** a. **240, 269; 1993 a. 16; 1995 a. 147; 1997 a. 27, 67, 252; 1999 a. 88.**

346.50 Exceptions to stopping and parking restrictions.

(1) The prohibitions against stopping or leaving a vehicle stand contained in ss. 346.51 to 346.54 and 346.55 do not apply when:

(a) The vehicle becomes disabled while on the highway in such a manner or to such an extent that it is impossible to avoid stopping or temporarily leaving the vehicle in the prohibited place; or

(b) The stopping of the vehicle is necessary to avoid conflict with other traffic or to comply with traffic regulations or the directions of a traffic officer or traffic control sign or signal.

(c) The vehicle of a public utility, as defined in s. 196.01 (5), a telecommunications carrier, as defined in s. 196.01 (8m), or a rural electric cooperative is stopped or left standing and is required for maintenance, installation, repair, construction or inspection of its facilities by the public utility or a rural electric cooperative when warning signs, flags, traffic cones, or flashing yellow lights or barricades, have been placed to warn approaching motorists of any obstruction to the traveled portion of the highway.

(2) Except as provided in sub. (3m), a motor vehicle bearing a special registration plate issued under s. 341.14 (1) or (1r) (a) to a disabled veteran or on his or her behalf is exempt from any ordinance imposing time limitations on parking in any street or highway zone and parking lot, whether municipally owned or leased, or both municipally owned and leased or a parking place owned or leased, or both owned and leased by a municipal parking utility, with one–half hour or more limitation but otherwise is subject to the laws relating to parking. Where the time limitation on a metered stall is one–half hour or more, no meter payment is required. Parking privileges granted by this subsection are limited to the disabled veteran to whom or on whose behalf the special plates were issued and to qualified operators acting under the disabled veteran's express direction with the disabled veteran present.

(2a) Except as provided in sub. (3m), a motor vehicle bearing special registration plates issued under s. 341.14 (1a), (1e), (1m), (1q) or (1r) (a) or a motor vehicle, other than a motorcycle, upon which a special identification card issued under s. 343.51 is displayed or a motor vehicle registered in another jurisdiction upon which is displayed a registration plate, a card or an emblem issued by the other jurisdiction designating the vehicle as a vehicle used by a physically disabled person is exempt from any ordinance imposing time limitations on parking in any street or highway zone and parking lot, whether municipally owned or leased, or both municipally owned and leased or a parking place owned or leased, or both owned and leased by a municipal parking utility, with one–half hour or more limitation but otherwise is subject to the laws relating to parking. Where the time limitation on a metered stall is one–half hour or more, no meter payment is required. Parking privileges granted by this subsection are limited to the following:

(a) A person to whom plates were issued under s. 341.14 (1a).

(b) A qualified operator acting under the express direction of a person to whom plates were issued under s. 341.14 (1a) when such person is present.

(c) A person to whom plates were issued under s. 341.14 (1m) when the disabled person for whom the plates were issued is present.

(d) A person for whom plates were issued under s. 341.14 (1q).

(e) A qualified operator acting under the express direction of a person for whom plates were issued under s. 341.14 (1q) when such person is present.

(f) A person for whom plates were issued under s. 341.14 (1r) (a).

(g) A qualified operator acting under the express direction of a person for whom plates were issued under s. 341.14 (1r) (a) when the person is present.

(h) A person or organization to whom a special identification card was issued under s. 343.51.

(j) A qualified operator acting under the express direction of a person to whom a special identification card was issued under s. 343.51 when such person is present.

(k) A qualified operator of a motor vehicle registered in another jurisdiction upon which is displayed a registration plate, a card or an emblem issued by the other jurisdiction designating the vehicle as a vehicle used by a physically disabled person if the vehicle is transporting the disabled person for whom the plate, card or emblem was issued.

(L) A person to whom a plate was issued under s. 341.14 (1e

(m) A qualified operator acting under the express direction of a person to whom a plate was issued under s. 341.14 (1e) when such person is present.

(3) Except as provided in sub. (3m), a vehicle bearing special registration plates issued under s. 341.14 (1), (1a), (1e), (1m), (1q) or (1r) (a) or a motor vehicle, other than a motorcycle, upon which a special identification card issued under s. 343.51 is displayed or a motor vehicle registered in another jurisdiction upon which is displayed a registration plate, a card or an emblem issued by the other jurisdiction designating the vehicle as a vehicle used by a person with a physical disability is exempt from s. 346.505 (2) (a) or any ordinance in conformity therewith prohibiting parking, stopping or standing upon any portion of a street, highway or parking facility reserved for persons with physical disabilities by official traffic signs indicating the restriction. Stopping, standing and parking privileges granted by this subsection are limited to the persons listed under subs. (2) and (2a) (a) to (m).

(3m) (a) In this subsection, "motor vehicle used by a physically disabled person" has the meaning given in s. 346.503 (1

(b) The city council of a 1st or 2nd class city may enact an ordinance imposing a 3–hour or less limitation on parking of a motor vehicle used by a physically disabled person upon any portion of a street, highway or parking facility reserved by the city for physically disabled persons by official traffic signs indicating the restriction if the following conditions are complied with:

1. Before enactment, the city council seeks the advice and recommendation of a disabled parking council of at least 7 members established by an ordinance of the city or, if the city has established a disabled parking enforcement assistance council under s. 349.145, by that council, and holds a public hearing on the proposal. The majority of the members of any disabled parking council shall be appointed by the city council from among those residents of the city to whom or on whose behalf the department has issued a special registration plate under s. 341.14 (1) to (1r) or a special identification card under s. 343.51.

2. The ordinance may apply to not more than one–third of the number of spaces reserved by the city for use by a motor vehicle used by a physically disabled person, and no time limitation may be imposed on a reserved space in a parking facility unless an adjacent space without any such time limitation is reserved for use by a motor vehicle used by a physically disabled person. The ordinance shall require that the disabled parking council or, if applicable, the disabled parking enforcement assistance council give advice and make a recommendation on the location of such reserved spaces.

3. The official traffic sign for such reserved spaces shall include information on the applicable time limitation for use by a motor vehicle used by a physically disabled person.

4. The ordinance may not impose a penalty for a violation of the ordinance that is greater than the penalty for violation of any ordinance of the city imposing time limitations on parking upon any portion of a street, highway or parking facility.

5. The ordinance shall require the city to submit a report by December 31 of each odd–numbered year to the council on physical disabilities under s. 46.29 (1) (fm) on implementation and administration of the ordinance, including an evaluation of the effectiveness of time limitations imposed by the ordinance. With respect to spaces reserved by the city for use by a motor vehicle used by a physically disabled person upon any portion of a street, highway or parking facility, the report shall include the total number of spaces; the total number of spaces in a parking facility and the number of those spaces that are subject to a time limitation, and the duration of any such limitation; and the total number of spaces upon a street or highway and the number of those spaces that are subject to a time limitation, and the duration of any such limitation.

(4) In subs. (2) and (2a), the terms "municipal" and "municipally" include county.

History: 1977 c. 29,418; 1979 c. 55,276,288; 1981 c. 119; 1981 c. 255 ss. 5, 6, 13; 1983 a. 53 s. 114; 1983 a. 227; 1985 a. 87; 1989 a. 304; 1991 a. 239; 1993 a. 256, 496; 1995 a. 422; 1997 a. 92.

CHAPTER 440
DEPARTMENT OF REGULATION AND LICENSING

SUBCHAPTER I
GENERAL PROVISIONS

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Cross reference: See also RL, Wis. adm. code

SUBCHAPTER I
GENERAL PROVISIONS

440.01 Definitions. (1) In chs. 440 to 480, unless the context requires otherwise:

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

(am) "Financial institution" has the meaning given in s. 705.01 (3).

(b) "Grant" means the substantive act of an examining board, section of an examining board, affiliated credentialing board or the department of approving the applicant for credentialing and the preparing, executing, signing or sealing of the credentialing.

(c) ''Issue'' means the procedural act of the department of transmitting the credential to the person who is credentialed.

(d) "Limit", when used in reference to limiting a credential, means to impose conditions and requirements upon the holder of the credential, and to restrict the scope of the holder's practice.

(dm) "Renewal date" means the date on which a credential expires and before which it must be renewed for the holder to maintain without interruption the rights, privileges and authonty conferred by the credential

(e) "Reprimand means to publicly warn the holder of a credential.

(f) "Revoke", when used in reference to revoking a credential, means to completely and absolutely terminate the credential and all rights, privileges and authority previously conferred by the credential.

(g) "Secretary" means the secretary of regulation and licensing.

(h) "Suspend, when used in reference to suspending a credential, means to completely and absolutely withdraw and withhold for a period of time all rights, privileges and authority previously conferred by the credential.

(2) In this subchapter: (a) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480.

(b) "Credentialing" means the acts of an examining board, section of an examining board, affiliated credentialing board or the department that relate to granting, issuing, denying, limiting, suspending or revoking a credential.

(bm) "Credentialing board" means an examining board or an affiliated credentialing board in the department.

(c) "Examining board" includes the board of nursing.

(cs) "Minority group member" has the meaning given in s. 560.036 (1) (f).

(cv) "Psychotherapy" has the meaning given in s. 457.01 (8m).

(d) "Reciprocal credential" means a credential granted by an examining 'board, section of an examining board, affiliated credentialing board or the department to an applicant who holds a credential issued by a governmental authority in a jurisdiction outside this state authorizing or qualifying the applicant to perform acts that are substantially the same as those acts authorized by the credential granted by the examining board, section of the examining board, affiliated credentialing board or department.

History: 1977 c. 418; 1979 c. 34; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1991 a. 39; 1993 a. 102. 107: 1995 a. 233. 333: 1997 a. 35 s. 448: 1997 a. 237 ss. 532. 539m; 1999 a. 9 s. 2915; 2001 a. 80.

Procedural due process and the separation of functions in state occupational licensing agencies. 1974 WLR 833.

440.02 Bonds. Members of the staff of the department who are assigned by the secretary to collect moneys shall be bonded *in* an amount equal to the total receipts of the department for any month.

440.03 General duties and powers of the department.

(1) The department may promulgate rules defining uniform procedures to be used by the department, the real estate board, the real estate appraisers board, and all examining boards and affiliated credentialing boards attached to the department or an examining board, for receiving, filing and investigating complaints, for commencing disciplinary proceedings and for conducting hearings.

(1m) The department may promulgate rules specifying the number of business days within which the department or any examining board or affiliated credentialing board in the department must review and make a determination on an application for a permit, as defined in s. 560.41 (2), that is issued under chs. 440 to 480.

(2) The department may provide examination development services, consultation and technical assistance to other state agencies, federal agencies, counties, cities, villages, towns, national or regional organizations of state credentialing agencies, similar credentialing agencies in other states, national or regional accrediting associations, and nonprofit organizations. The department may charge a fee sufficient to reimburse the department for the costs of providing such services. In this subsection, "nonprofit organization" means a nonprofit corporation as defined in s. 181.0103 (17), and an organization exempt from tax under 26 USC 501.

(3) If the secretary reorganizes the department, no modification may be made in the powers and responsibilities of the examining boards or affiliated credentialing boards attached to the department or an examining board under s. 15.405 or 15.406.

(3m) The department may investigate complaints made against a person who has been issued a credential under chs. 440 to 480.

(3q) Notwithstanding sub.(3m), the department of regulation and licensing shall investigate any report that it receives under s. 146.40 (4r) (am) 2. or (em).

(4) The department may issue subpoenas for the attendance of witnesses and the production of documents or other materials prior to the commencement of disciplinary proceedings.

(5) The department may investigate allegations of negligence by physicians licensed to practice medicine and surgery under ch. 448.

(5m) The department shall maintain a toll–free telephone number to receive reports of allegations of unprofessional conduct, negligence or misconduct involving a physician licensed under subch. I1 of ch. 448. The department shall publicize the toll– free telephone number and the investigative powers and duties of the department and the medical examining board as widely as possible

in the state, including in hospitals, clinics, medical offices and other health care facilities.

(6) The department shall have access to any information contained in the reports filed with the medical examining board, an affiliated credentialing board attached to the medical examining board and the board of nursing under s. 655.045, as created by 1985 Wisconsin Act 29, and s. 655.26.

(7) The department shall establish the style, content and format of all credentials and of all forms for applying for any credential issued or renewed under chs. 440 to 480. All forms shall include a place for the information required under sub.(1 Im) (a). Upon request of any person who holds a credential and payment of a $10 fee, the department may issue a wall certificate signed by the governor.

(7m) The department may promulgate rules that establish procedures for submitting an application for a credential or credential renewal by electronic transmission. Any rules promulgated under this subsection shall specify procedures for complying with any requirement that a fee be submitted with the application. The rules may also waive any requirement in chs. 440 to 480 that an application submitted to the department, an examining board or an affiliated credentialing board be executed, verified, signed, sworn or made under oath, notwithstanding ss. 440.26 (2) (b), 440.42 (2) (intro.), 440.91 (2) (intro.), 443.06 (1) (a), 443.10 (2) (a), 445.04 (2), 445.08 (4), 445.095 (1) (a), 448.05 (7), 450.09 (1) (a), 452.10 (1) and 480.08 (2m).

(8) The department may promulgate rules requiring holders of certain credentials to do any of the following:

(a) Display the credential in a conspicuous place in the holder's office or place of practice or business, if the holder is not required by statute to do so.

(b) Post a notice in a conspicuous place in the holder's office or place of practice or business describing the procedures for filing a complaint against the holder.

(9) The department shall include all of the following with each biennial budget request that it makes under s. 16.42:

(a) A recalculation of the administrative and enforcement costs of the department that are attributable to the regulation of each occupation or business under chs. 440 to 480 and that are included in the budget request.

(b) A recommended change to each fee specified under s. 440.05 (1) for an initial credential for which an examination is not required, under s. 440.05 (2) for a reciprocal credential and under s. 440.08 (2) (a) for a credential renewal if the change is necessary to reflect the approximate administrative and enforcement costs of the department that are attributable to the regulation of the particular occupation or business during the period in which the initial or reciprocal credential or credential renewal is in effect and, for purposes of the recommended change to each fee specified under s. 440.08 (2) (a) for a credential renewal, to reflect an estimate of any additional moneys available for the department's general program operations, during the budget period to which the biennial budget request applies, as a result of appropriation transfers that have been or are estimated to be made under s. 20.165 (1) (i) prior to and during that budget period.

(11) The department shall cooperate with the department of health and family services to develop a program to use voluntary, uncompensated services of licensed or certified professionals to assist the department of health and family services in the evaluation of community mental health programs in exchange for continuing education credits for the professionals under ss. 448.40 (2) (e) and 455.065 (5).

(11m) (a) Each application form for a credential issued or renewed under chs. 440 to 480 shall provide a space for the department to require each of the following, other than an individual who does not have a social security number and who submits a statement made or subscribed under oath or affirmation as required under par.(am), to provide his or her social security number:

1. An applicant for an initial credential or credential renewal. If the applicant is not an individual, the department shall require the applicant to provide its federal employer identification number.

2. An applicant for reinstatement of an inactive license under s. 452.12 (6) (e).

(am) If an applicant specified in par.(a) 1. or 2. is an individual who does not have a social security number, the applicant shall submit a statement made or subscribed under oath that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A credential or license issued in reliance upon a false statement submitted under this paragraph is invalid.

(b) The department shall deny an application for an initial credential or deny an application for credential renewal or for reinstatement of an inactive license under s. 452.12 (6) (e) if any information required under par.(a) is not included in the application form or, in the case of an applicant who is an individual and who does not have a social security number, if the statement required under par.(am) is not included with the application form.

(c) The department of regulation and licensing may not disclose a social security number obtained under par.(a) to any person except the coordinated licensure information system under s. 441.50 (7); the department of workforce development for purposes of administering s. 49.22; and, for a social security number obtained under par.(a) 1., the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

(12m) The department of regulation and licensing shall cooperate with the departments of justice and health and family services in developing and maintaining a computer linkup to provide access to information regarding the current status of a credential issued to any person by the department of regulation and licensing, including whether that credential has been restricted in any way.

(13) The department may conduct an investigation to determine whether an applicant for a credential issued under chs. 440 to 480 satisfies any of the eligibility requirements specified for the credential, including whether the applicant does not have an arrest or conviction record. In conducting an investigation under this subsection, the department may require an applicant to provide any information that is necessary for the investigation or, for the purpose of obtaining information related to an arrest or conviction record of an applicant, to complete forms provided by the department of justice or the federal bureau of investigation. The department shall charge the applicant any fees, costs or other expenses incurred in conducting the investigation under this subsection.

(14) (a) 1. The department shall grant a certificate of registration as a music therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as a music therapist by the Certification Board for Music Therapists, National Music Therapy Registry, American Music Therapy Association or by another national organization that certifies, registers or accredits music therapists.

b. The organization that certified. registered or accredited the person under subd. 1. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that he or she is certified, registered or accredited as required under subd.1. a.

2. The department shall grant a certificate of registration as an art therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as an art therapist by the Art Therapy Credentials Board or by another national organization that certifies, registers or accredits art therapists.

b. The organization that certified, registered or accredited the person under subd.2. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that he or she is certified, registered or accredited as required under subd.2. a.

3. The department shall grant a certificate of registration as a dance therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as a dance therapist by the American Dance Therapy Association or by another national organization that certifies, registers or accredits dance therapists.

b. The organization that certified, registered or accredited the person under subd.3. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that

he or she is certified, registered or accredited as required under subd.3. a.

(am) The department may promulgate rules that establish requirements for granting a license to practice psychotherapy to a person who is registered under par.(a). Rules promulgated under this paragraph shall establish requirements for obtaining such a license that are comparable to the requirements for obtaining a clinical social worker, marriage and family therapist, or professional counselor license under ch. 457. If the department promulgates rules under this paragraph, the department shall grant a license under this paragraph to a person registered under par.(a) who pays the fee specified in s. 440.05 (1) and provides evidence satisfactory to the department that he or she satisfies the requirements established in the rules.

(b) A person who is registered under par.(a) shall notify the department in writing within 30 days if an organization specified in par.(a) 1. a., 2. a. or 3. a. revokes the person's certification, registration, or accreditation specified in par.(a) 1. a., 2. a., or 3. a. The department shall revoke a certificate of registration granted under par.(a) if such an organization revokes such a certification, registration, or accreditation. If the department revokes the certificate of registration of a person who also holds a license granted under the rules promulgated under par.(am), the department shall also revoke the license.

(c) The renewal dates for certificates granted under par.(a) and licenses granted under par.(am) are specified in s. 440.08 (2) (a). Renewal applications shall be submitted to the department on a form provided by the department and shall include the renewal fee specified in s. 440.08 (2) (a) and evidence satisfactory to the department that the person's certification, registration, or accreditation specified in par.(a) 1. a., 2. a. or 3. a. has not been revoked.

(d) The department shall promulgate rules that specify the services within the scope of practice of music, art, or dance therapy that a person who is registered under par.(a) is qualified to perform. The rules may not allow a person registered under par.(a) to perform psychotherapy unless the person is granted a license under the rules promulgated under par.(am).

Cross reference: See also chs. RL 140, **141, and** 142, Wis. adm. **code.**

(e) Subject to the rules promulgated under sub.(1), the department may make investigations and conduct hearings to determine whether a violation of this subsection or any rule promulgated under par.(d) has occurred and may reprimand a person who is registered under par.(a) or holds a license granted under the rules promulgated under par.(am) or may deny, limit, suspend, or revoke a certificate of registration granted under par.(a) or a license granted under the rules promulgated under par.(am) if the department finds that the applicant or certificate or license holder has violated this subsection or any rule promulgated under par.(d).

(f) A person who is registered under par.(a) or holds a license granted under the rules promulgated under par.(am) who violates this subsection or any rule promulgated under par.(d) may be fined not more than $200 or imprisoned for not more than 6 months or both.

(15) The department shall promulgate rules that establish the fees specified in ss. 440.05 (10) and 440.08 **(2)** (d).

(16) Annually, the department shall distribute the form developed by the medical and optometry examining boards under 2001 Wisconsin Act 16, section 9143 (3c), to all school districts and charter schools that offer kindergarten, to be used by pupils to provide evidence of eye examinations under s. 118.135.

History: 1977 **c.** 418 ss. 24, 792; 1979 **c.** 34, 221, 337; 1981 **c.** 94; 1985 **a.** 29, 340; 1989 a. 31,340; 1991 **a.** 39; 1993 a. **16,** 102, 107,443,445,490,491; 1995 **a.** 27 ss. 6472g, 6472j, 9126 (19); 1995 a. 233; 1997 a. 27, 75, 79; 1997 **a.** 191 **ss.** 312,313, 318; 1997 a. 231, 237: 1997 a. 261 ss. 1 to 4, 7. 10, 13; 1997 a. 311: 1999 a. 9, 32; 2001 **a.** 16, 66, 80.

Cross reference: ***See*** also **RL,** Wis. adm. **code.**

440.035 General duties of examining boards and affiliated credentialing boards. Each examining board or affiliated credentialing board attached to the department or an examining board shall:

(1) Independently exercise its powers, duties and functions prescribed by law with regard to rule–making, credentialing and regulation.

(2) Be the supervising authority of all personnel, other than shared personnel, engaged in the review, investigation or handling of information regarding qualifications of applicants for credentials, examination questions and answers, accreditation, related investigations and disciplinary matters affecting persons who are credentialed by the examining board or affiliated credentialing board, or in the establishing of regulatory policy or the exercise of administrative discretion with regard to the qualifications or discipline of applicants or persons who are credentialed by the examining board, affiliated credentialing board or accreditation.

(3) Maintain, in conjunction with their operations, in central locations designated by the department, all records pertaining to the functions independently retained by them.

(4) Compile and keep current a register of the names and addresses of all persons who are credentialed to be retained by the department and which shall be available for public inspection during the times specified in s. 230.35 (4) (a). The department may also make the register available to the public by electronic transmission.

History: 1977 **c.** 418 ss. 25,793,929 (41); 1979 **c.** 32 s. 92 (1); 1979 **c.** 34; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 107; 1997 a. 27,191,237.

440.04 Duties of the secretary. The secretary shall: **(1)** Centralize, at the capital and in such district offices as the operations of the department and the attached examining boards and affiliated credentialing boards require, the routine housekeeping functions required by the department, the examining boards and the affiliated credentialing boards.

(2) Provide the bookkeeping, payroll, accounting and personnel advisory services required by the department and the legal services, except for representation in court proceedings and the preparation of formal legal opinions, required by the attached examining boards and affiliated credentialing boards.

(5) With the advice of the examining boards or affiliated credentialing boards:

(a) Provide the department with such supplies, equipment, office space and meeting facilities as are required for the efficient operation of the department.

(b) Make all arrangements for meetings, hearings and examinations.

(c) Provide such other services as the examining boards or affiliated credentialing boards request.

(6) Appoint outside the classified service an administrator for any division established in the department and a director for any bureau established in the department as authorized in s. 230.08 (2). The secretary may assign any bureau director appointed in accordance with this subsection to serve concurrently as a bureau director and a division administrator.

(7) Unless otherwise specified in chs. 440 to 480, provide examination development, administration, research and evaluation services as required.

(8) Collect data related to the registration of speech–language pathologists and audiologists under subch. III of ch. 459 and, on January 15, 1993, report the data and recommendations on whether the licensure of speech–language pathologists and audiologists under subch. 11 of ch. 459 is appropriate to the chief clerk of each house of the legislature for distribution in the manner provided under s. 13.172 (2).

(9) Annually prepare and submit a report to the legislature under s. 13.172 (2) on the number of minority group members who applied for licensure as a certified public accountant under ch. 442, the number who passed the examination required for licensure as a certified public accountant and the number who were issued a certified public accountant license under ch. 442, during the preceding year.

History: 1977 **c.** 418 s. 26; 1979 **c.** 34; 1981 c. 20; 1985 **a.** 29; 1987 a. 27; 1989 a. 316; 1991 a. 39; 1993 a. **102,** 107; 1995 **a.** 333.

440.042 Advisory committees. (1) The secretary may appoint persons or advisory committees to advise the department and the boards, examining boards and affiliated credentialing boards in the department on matters relating to the regulation of credential holders. The secretary shall appoint an advisory committee to advise the department on matters relating to carrying out the duties specified in s. 440.982 and making investigations, conducting hearings and taking disciplinary action under s. 440.986. A person or an advisory committee member appointed under this subsection shall serve without compensation, but may be reimbursed for his

or her actual and necessary expenses incurred in the performance of his or her duties.

(2) Any person who in good faith testifies before the department or any examining board, affiliated credentialing board or board in the department or otherwise provides the department or any examining board, affiliated credentialing board or board in the department with advice or information on a matter relating to the regulation of a person holding a credential is immune from civil liability for his or her acts or omissions in testifying or otherwise providing such advice or information. The good faith of any person specified in this subsection shall be presumed in any civil action and an allegation that such a person has not acted in good faith must be proven by clear and convincing evidence.

History: 1993 a. 16 ss. 3269,3299; 1993 a. 107; 1997 a. 156; 1999 a. 32.

440.045 Disputes. Any dispute between an examining board or an affiliated credentialing board and the secretary shall be arbitrated by the governor or the governor's designee after consultation with the disputants.

History: 1977 c. 418 s. 27; 1979 c. 34; 1993 a. 107.

The relationship between the department, cosmetology examining board, and governor is discussed. 70 Atty. Gen. 172.

440.05 Standard fees. The following standard fees apply to all initial credentials, except as provided in ss. 440.42, 440.43, 440.44, 440.51, 444.03, 444.05, 444.11, 447.04 (2) (c) 2., 449.17, 449.18 and 459.46:

(1) (a) Initial credential: $53. Each applicant for an initial credential shall pay the initial credential fee to the department when the application materials for the initial credential are submitted to the department.

(b) Examination: If an examination is required, the applicant shall pay an examination fee to the department. If the department prepares, administers, or grades the examination, the fee to the department shall be an amount equal to the department's best estimate of the actual cost of preparing, administering, or grading the examination. If the department approves an examination prepared, administered, and graded by a test service provider, the fee to the department shall be an amount equal to the department's best estimate of the actual cost of approving the examination, including selecting, evaluating, and reviewing the examination.

(2) Reciprocal credential, including any credential described in s. 440.01 (2) (d) and any credential that permits temporary practice in this state in whole or in part because the person holds a credential in another jurisdiction: The applicable credential renewal fee under s. 440.08 (2) (a) and, if an examination is required, an examination fee under sub.(1).

(6) Apprentice, journeyman, student or other temporary credential, granted pending completion of education, apprenticeship or examination requirements: $10.

(7) Replacement of lost credential, name or address change on credential, issuance of duplicate credential or transfer of credential: $10.

(9) Endorsement of persons who are credentialed to other states: $10.

(10) Expedited service: If an applicant for a credential requests that the department process an application on an expedited basis, the applicant shall pay a service fee that is equal to the department's best estimate of the cost of processing the application on an expedited basis, including the cost of providing counter or other special handling services.

History: 1977 c. 29,418; 1979 c. 34; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1983 a. 27; 1985 a. 29; 1987 a. 264, 265, 329, 399, 403; 1989 a. 31,229, 307, 316, 336,340,341,359; 1991 a. 39,269,278,315; 1993 a. 16; 1995 a. 27; 1997 a. 27, 96; 1999 a. 9; 2001 a. 16.

Cross reference: See also ch. RL 4, Wis. adm. code.

440.055 Credit card payments. (2) If the department permits the payment of a fee with use of a credit card, the department shall charge a credit card service charge for each transaction. The credit card service charge shall be in addition to the fee that is being paid with the credit card and shall be sufficient to pay the costs to the department for providing this service to persons who request it, including the cost of any services for which the department contracts under sub.(3).

(3) The department may contract for services relating to the payment of fees by credit card under this section.

History: 1995 a. 21; 1999 a. 9.

440.06 Refunds and reexaminations. The secretary may establish uniform procedures for refunds of fees paid under s. 440.05 or 440.08 and uniform procedures and fees for reexaminations under chs. 440 to 480.

History: 1977 c. 418; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1991 a. 39; 1993 a. 102.

Cross reference: See also ch. RL 4, Wis. adm. code.

440.07 Examination standards and services. (1) In addition to the standards specified in chs. 440 to 480, examinations for credentials shall reasonably relate to the skills likely to be needed for an applicant to practice in this state at the time of examination and shall seek to determine the applicant's preparedness to exercise the skills.

(2) The department, examining board or affiliated credentialing board having authority to credential applicants may do any of the following:

(a) Prepare, administer and grade examinations.

(b) Approve, in whole or in part, an examination prepared, administered and graded by a test service provider.

(3) The department may charge a fee to an applicant for a credential who fails an examination required for the credential and requests a review of his or her examination results. The fee shall be based on the cost of the review. No fee may be charged for the review unless the amount of the fee or the procedure for determining the amount of the fee is specified in rules promulgated by the department.

History: 1987 a. 27; 1991 a. 39; 1993 a. 102,107.

Cross reference: See also ch. RL 4, Wis. adm code. Department of Regulation and Licensing test scores were subject to disclosure under the open records law. Munroe v. Braatz, 201 Wis. 2d 442,549 N.W.2d 452 (Ct. App. 1996).

440.08 Credential renewal. (1) NOTICE OF RENEWAL. The department shall give a notice of renewal to each holder of a credential at least 30 days prior to the renewal date of the credential. Notice may be mailed to the last address provided to the department by the credential holder or may be given by electronic transmission. Failure to receive a notice of renewal is not a defense in any disciplinary proceeding against the holder or in any proceeding against the holder for practicing without a credential. Failure to receive a notice of renewal does not relieve the holder from the obligation to pay a penalty for late renewal under sub.(3).

(2) RENEWAL DATES, FEES AND APPLICATIONS. (a) Except as provided in par.(b) and in ss. 440.51, 442.04, 444.03, 444.05, 444.11, 448.065, 447.04 (2) (c) 2., 449.17, 449.18 and 459.46, the renewal dates and renewal fees for credentials are as follows:

1. Accountant, certified public: January 1 of each even–numbered year; $59.

3. Accounting corporation or partnership: January 1 of each even–numbered year; $56.

4. Acupuncturist: July 1 of each odd–numbered year; $70.

4m. Advanced practice nurse prescriber: October 1 of each even–numbered year; $73.

5. Aesthetician: July 1 of each odd–numbered year; $87.

6. Aesthetics establishment: July 1 of each odd–numbered year; $70.

7. Aesthetics instructor: July 1 of each odd–numbered year; $70.

8. Aesthetics school: July 1 of each odd–numbered year; $115.

9. Aesthetics specialty school: July 1 of each odd–numbered year; $53.

11. Appraiser, real estate, certified general: January 1 of each even–numbered year; $162.

11m. Appraiser, real estate, certified residential: January 1 of each even–numbered year; $167.

12. Appraiser, real estate, licensed: January 1 of each even–numbered year; $185.

13. Architect: August 1 of each even–numbered year; $60.

14. Architectural or engineering firm, partnership or corporation: February 1 of each even–numbered year; $70.

14f. Athletic trainer: July 1 of each even–numbered year; $53.

14g. Auction company: January 1 of each odd–numbered year; $56.

14r. Auctioneer: January 1 of each odd–numbered year; $174.

15. Audiologist: February 1 of each odd–numbered year; $106.

16. Barbering or cosmetology establishment: July 1 of each odd–numbered year; $56.

17. Barbering or cosmetology instructor: July 1 of each odd–numbered year; $91.
18. Barbering or cosmetology manager: July 1 of each odd–numbered year; $71.
19. Barbering or cosmetology school: July 1 of each odd–numbered year; $138.
20. Barber or cosmetologist: July 1 of each odd–numbered year; $63.
21. Cemetery authority: January 1 of each odd–numbered year; $343.
22. Cemetery preneed seller: January 1 of each odd–numbered year; $61.
23. Cemetery salesperson: January 1 of each odd–numbered year; $90.
23m. Charitable organization: August 1 of each year; $15.
24. Chiropractor: January I of each odd–numbered year; $168.
25. Dental hygienist: October 1 of each odd–numbered year; $57.
26. Dentist: October 1 of each odd–numbered year; $131.
26m. Dentist, faculty member: October 1 of each odd–numbered year; $131.
27. Designer of engineering systems: February 1 of each even–numbered year; $58.
27m. Dietitian: November 1 of each even–numbered year; $56.
28. Drug distributor: June 1 of each even–numbered year; $70.
29. Drug manufacturer: June 1 of each even–numbered year; $70.
30. Electrologist: July 1 of each odd–numbered year; $76.
31. Electrology establishment: July 1 of each odd–numbered year; $56.
32. Electrology instructor: July 1 of each odd–numbered year; $86.
33. Electrology school: July 1 of each odd–numbered year; $71.
34. Electrology specialty school: July 1 of each odd–numbered year; $53.
35. Engineer, professional: August 1 of each even–numbered year; $58.
35m. Fund–raising counsel: September 1 of each even–numbered year; $53.
36. Funeral director: January 1 of each even–numbered year; $135.
37. Funeral establishment: June 1 of each odd–numbered year; $56.
38. Hearing instrument specialist: February 1 of each odd–numbered year; $106.
38g. Home inspector: January 1 of each odd–numbered year; $53.
38m. Landscape architect: August 1 of each even–numbered year; $56.
39. Land surveyor: February 1 of each even–numbered year; $77.
42. Manicuring establishment: July 1 of each odd–numbered year; $53.
43. Manicuring instructor: July I of each odd–numbered year; $53.
44. Manicuring school: July 1 of each odd–numbered year; $118.
45. Manicuring specialty school: July 1 of each odd–numbered year; $53.
46. Manicurist: July 1 of each odd–numbered year; $133.
46m. Marriage and family therapist: July 1 of each odd–numbered year; $84.
46r. Massage therapist or bodyworker: March 1 of each odd–numbered year; $53.

NOTE: Subd. 46r. is created eff. 3–1–03 by 2001 Wis. Act 74.

48. Nurse, licensed practical: May 1 of each odd–numbered year; $69.
49. Nurse, registered: March 1 of each even–numbered year; $66.
50. Nurse–midwife: March 1 of each even–numbered year; $70.
51. Nursing home administrator: July 1 of each even–numbered year; $120.
52. Occupational therapist: November 1 of each odd–numbered year; $59.
53. Occupational therapy assistant: November 1 of each odd–numbered year; $62.
54. Optometrist: January 1 of each even–numbered year; $65.
54m. Perfusionist: November 1 of each odd–numbered year; $56.
55. Pharmacist: June 1 of each even–numbered year; $97.
56. Pharmacy: June 1 of each even–numbered year; $56.
57. Physical therapist: November 1 of each odd–numbered year; $62.
57m. Physical therapist assistant: November 1 of each odd–numbered year; $44.

NOTE: Subd. 57m. is created eff. 4–1-04 by 2001 Wis. Act 70.

58. Physician: November 1 of each odd–numbered year; $106.
59. Physician assistant: November 1 of each odd–numbered year; $72.
60. Podiatrist: November 1 of each odd–numbered year; $150.
61. Private detective: September 1 of each even–numbered year; $101.
62. Private detective agency: September 1 of each even–numbered year; $53.
63. Private practice school psychologist: October 1 of each odd–numbered year; $103.
63g. Private security person: September 1 of each even–numbered year; $53.
63m. Professional counselor: July 1 of each odd–numbered year; $76.
63t. Professional fund–raiser: September 1 of each even–numbered year; $93.
63u. Professional geologist: August 1 of each even–numbered year; $59.
63v. Professional geology, hydrology or soil science firm, partnership or corporation: August 1 of each even–numbered year; $53.
63w. Professional hydrologist: August 1 of each even–numbered year; $53.
63x. Professional soil scientist: August 1 of each even–numbered year; $53.
64. Psychologist: October 1 of each odd–numbered year; $157.
65. Real estate broker: January 1 of each odd–numbered year; $128.
66. Real estate business entity: January 1 of each odd–numbered year; $56.
67. Real estate salesperson: January 1 of each odd–numbered year; $83.
67m. Registered interior designer: August 1 of each even–numbered year; $56.
67q. Registered massage therapist or bodyworker: March I of each odd–numbered year; $53.

NOTE: Subd. 67q. is repealed eff. 3–1–03 by 2001 Wis. Aet 74.

67v. Registered music, art or dance therapist: October 1 of each odd–numbered year; $53.
67x. Registered music, art, or dance therapist with psychotherapy license: October 1 of each odd–numbered year; $53.
68. Respiratory care practitioner: November 1 of each odd–numbered year; $65.
68d. Social worker: July 1 of each odd–numbered year; $63.
68h. Social worker, advanced practice: July 1 of each odd–numbered year; $70.
68p. Social worker, independent: July 1 of each odd–numbered year; $58.
68t. Social worker, independent clinical: July 1 of each odd–numbered year; $73.
68v. Speech–language pathologist: February 1 of each odd–numbered year; $63.
69. Time–share salesperson: January 1 of each odd–numbered year; $119.
70. Veterinarian: January 1 of each even–numbered year; $105.
71. Veterinary technician: January 1 of each even–numbered year; $58.

(b) The renewal fee for an apprentice, journeyman, student or temporary credential is $10. The renewal dates specified in par.(a) do not apply to apprentice, journeyman, student or temporary credentials.

(c) Except as provided in sub.(3), renewal applications shall include the applicable renewal fee specified in pars.(a) and (b).

(d) If an applicant for credential renewal requests that the department process an application on an expedited basis, the

applicant shall pay a service fee that is equal to the department's best estimate of the cost of processing the application on an expedited basis, including the cost of providing counter or other special handling services.

(3) LATE RENEWAL.(a) Except as provided in rules promulgated under par.(b), if the department does not receive an application to renew a credential before its renewal date, the holder of the credential may restore the credential by payment of the applicable renewal fee specified in sub.(2) (a) and by payment of a late renewal fee of $25.

(b) The department or the interested examining board or affiliated credentialing board, as appropriate, may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restore the credential, in addition to the applicable requirements for renewal established under chs. 440 to 480, that the department, examining board or affiliated credentialing board determines is necessary to protect the public health, safety or welfare. The rules may not require the holder to complete educational requirements or pass examinations that are more extensive than the educational or examination requirements that must be completed in order to obtain an initial credential from the department, the examining board or the affiliated credentialing board.

(4) DENIAL OF CREDENTIAL RENEWAL.(a) ***Generally.*** If the department or the interested examining board or affiliated credentialing board, as appropriate, determines that an applicant for renewal has failed to comply with sub.(2) (c) or (3) or with any other applicable requirement for renewal established under chs. 440 to 480 or that the denial of an application for renewal of a credential is necessary to protect the public health, safety or welfare, the department, examining board or affiliated credentialing board may summarily deny the application for renewal by mailing to the holder of the credential a notice of denial that includes a statement of the facts or conduct that warrant the denial and a notice that the holder may, within 30 days after the date on which the notice of denial is mailed, file a written request with the department to have the denial reviewed at a hearing before the department, if the department issued the credential, or before the examining board or affiliated credentialing board that issued the credential.

(b) ***Applicability.*** This subsection does not apply to a denial of a credential renewal under s. 440.12 or 440.13 (2) (b).

History: 1991 a. 39 ss. 3305,3313; 1991 a. 78, 160, 167, 269,278,315; 1993 a. 3, 16, 102, 105, 107, 443, 463, 465; 1993 a. 490 ss. 228 to 230, 274, 275; 1995 a. 27, 233, 321, 322, 461; 1997 a. 27, 75, 81, 96, 156, 191, 237, 261, 300; 1999 a. 9, 32; 2001 a. 16, 70, 74, 80, 89.

440.11 Change of name or address. (1) An applicant for or recipient of a credential who changes his or her name or moves from the last address provided to the department shall notify the department of his or her new name or address within 30 days of the change in writing or in accordance with other notification procedures approved by the department.

(2) The department or any examining board, affiliated credentialing board or board in the department may serve any process, notice or demand on the holder of any credential by mailing it to the last–known address of the holder as indicated in the records of the department, examining board, affiliated credentialing board or board.

(3) Any person who fails to comply with sub.(1) shall be subject to a forfeiture of $50.

History: 1987 a. 27; 1991 a. 39; 1993 a. 107; 1997 a. 27.

440.12 Credential denial, nonrenewal and revocation based on tax delinquency. Notwithstanding any other provision of chs. 440 to 480 relating to issuance or renewal of a credential, the department shall deny an application for an initial credential or credential renewal or revoke a credential if the department of revenue certifies under s. 73.0301 that the applicant or credential holder is liable for delinquent taxes, as defined in s. 73.0301 (1) (c).

History: 1997 a. 237.

Cross reference: *See* also ch. RL 9, Wis. adm code.

440.13 Delinquency in support payments; failure to comply with subpoena or warrant. (1) In this section:

(b) "Memorandum of understanding" means a memorandum of understanding entered into by the department of regulation and licensing and the department of workforce development under s. 49.857.

(c) "Support" has the meaning given in s. 49.857 (1) (g).

(2) Notwithstanding any other provision of chs. 440 to 480 relating to issuance of an initial credential or credential renewal, as provided in the memorandum of understanding:

(a) With respect to a credential granted by the department, the department shall restrict, limit or suspend a credential or deny an application for an initial credential or for reinstatement of an inactive license under s. 452.12 (6) (e) if the credential holder or applicant is delinquent in paying support or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to support or paternity proceedings.

(b) With respect to credential renewal, the department shall deny an application for renewal if the applicant is delinquent in paying suppdrt or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 *(5)* and related to support or paternity proceedings.

(c) With respect to a credential granted by a credentialing board, a credentialing board shall restrict, limit or suspend a credential held by a person or deny an application for an initial credential when directed to do so by the department.

History: 1997 a. 191,237.

440.14 Nondisclosure of certain personal information.

(1) this section: (a) "List" means information compiled or maintained by the department or a credentialing board that contains the personal identifiers of 10 or more individuals.

(b) "Personal identifier" means a name, social security number, telephone number, street address, post–office box number or 9–digit extended zip code.

(2) If a form that the department or a credentialing board requires an individual to complete in order to apply for a credential or credential renewal or to obtain a product or service from the department or the credentialing board requires the individual to provide any of the individual's personal identifiers, the form shall include a place for the individual to declare that the individual's personal identifiers obtained by the department or the credentialing board from the information on the form may not be disclosed on any list that the department or the credentialing board furnishes to another person.

(3) If the department or a credentialing board requires an individual to provide, by telephone or other electronic means, any of the individual's personal identifiers in order to apply for a credential or credential renewal or to obtain a product or service from the department or a credentialing board, the department or the credentialing board shall ask the individual at the time that the individual provides the information if the individual wants to declare that the individual's personal identifiers obtained by telephone or other electronic means may not be disclosed on any list that the department or the credentialing board furnishes to another person.

(4) The department or a credentialing board shall provide to an individual upon request a form that includes a place for the individual to declare that the individual's personal identifiers obtained by the department or credentialing board may not be disclosed on any list that the department or credentialing board furnishes to another person.

(5) (a) The department or a credentialing board may not disclose on any list that it furnishes to another person a personal identifier of any individual who has made a declaration under sub.(2), (3) or (4).

(b) Paragraph (a) does not apply to a list that the department or a credentialing board furnishes to another state agency, a law enforcement agency or a federal governmental agency. In addition, par.(a) does not apply to a list that the department or the board of nursing furnishes to the coordinated licensure information system under s. 441.50 (7). A state agency that receives a list from the department or a credentialing board containing a personal identifier of any individual who has made a declaration under sub.(2), (3) or (4) may not disclose the personal

identifier to any person other than a state agency, a law enforcement agency or a federal governmental agency.

History: 1999 a. 88; 2001 a. *66.*

440.142 Reporting potential causes of public health emergency. (1) A pharmacist or pharmacy shall report to the department of health and family services all of the following:

(a) An unusual increase in the number of prescriptions dispensed or nonprescription drug products sold for the treatment of medical conditions specified by the department of health and family services by rule under s. 252.02 (7).

(b) An unusual increase in the number of prescriptions dispensed that are antibiotic drugs.

(c) The dispensing of a prescription for treatment of a disease that is relatively uncommon or may be associated with bioterrorism, as defined in s. 166.02(1).

(2) (a) Except as provided in par.(b), a pharmacist or pharmacy may not report personally identifying information concerning an individual who is dispensed a prescription or who purchases a nonprescription drug product as specified in sub.(1) (a), (b), or (c).

(b) Upon request by the department of health and family services, a pharmacist or pharmacy shall report to that department personally identifying information other than a social security number concerning an individual who is dispensed a prescription or who purchases a nonprescription drug product as specified in sub.(1) (a), (b), or (c).

History: 2001 a. 109.

440.20 Disciplinary proceedings. (1) Any person may file a complaint before the department or any examining board, affiliated credentialing board or board in the department and request the department, examining board, affiliated credentialing board or board to commence disciplinary proceedings against any holder of a credential.

(3) The burden of proof in disciplinary proceedings before the department or any examining board, affiliated credentialing board or board in the department is a preponderance of the evidence.

(4) In addition to any grounds for discipline specified in chs. 440 to 480, the department or appropriate examining board, affiliated credentialing board or board in the department may reprimand the holder of a credential or deny, limit, suspend or revoke the credential of any person who intentionally violates s. 252.14 (2) or intentionally discloses the results of a blood test in violation of s. 252.15 *(5)* (a) or (5m).

History: 1977 c. 418; 1979 c. 34; 1985 a. 29; 1989 a. 31,201; *1991* **a. 39; 1993 a. 16, 27, 102, 107,490.**

The constitutionality of sub.(3) **is upheld.** Gandhi **v. Medical Examining Board, 168** Wis. **2d 299,483** N.W.2d **295 (Ct. App. 1992).**

A hearing is not required for a complaint filed under **this section. 68 Atty. Gen. 30.**

The "preponderance of the **evidence"** burden **of proof under** sub.(3) **does not violate the due process rights of a licensee. 75 Atty. Gen. 76.**

440.205 Administrative warnings. If the department or a board, examining board or affiliated credentialing board in the department determines during an investigation that there is evidence of misconduct by a credential holder, the department, board, examining board or affiliated credentialing board may close the investigation by issuing an administrative warning to the credential holder. The department or a board, examining board or affiliated credentialing board may issue an administrative warning under this section only if the department or board, examining board or affiliated credentialing board determines that no further action is warranted because the complaint involves a first occurrence of a minor violation and the issuance of an administrative warning adequately protects the public by putting the credential holder on notice that any subsequent violation may result in disciplinary action. If an administrative warning is issued, the credential holder may obtain a review of the administrative warning through a personal appearance before the department, board, examining board or affiliated credentialing board that issued the administrative warning. Administrative warnings do not constitute an adjudication of guilt or the imposition of discipline and may not be used as evidence that the credential holder is guilty of the alleged misconduct. However, if a subsequent allegation of misconduct bv the credential holder is received by the department or a board, examining board or affiliated credentialing board in the department, the matter relating to the issuance of the administrative warning may be reopened and disciplinary proceedings may be commenced on the matter, or the administrative warning may be used in any subsequent disciplinary proceeding as evidence that the credential holder had actual knowledge that the misconduct that was the basis for the administrative warning was contrary to law. The record that an administrative warning was issued shall be a public record. The contents of the administrative warning shall be private and confidential. The department shall promulgate rules establishing uniform procedures for the issuance and use of administrative warnings.

History: 1997 a. *139.*

Crass reference: See also ch. RL **8,** Wis. **adm. code.**

440.21 Enforcement of laws requiring credential. (1) The department may conduct investigations, hold hearings and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 480.

(2) If, after holding a public hearing, the department determines that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may issue a special order enjoining the person from the continuation of the practice or use of the title.

(3) In lieu of holding a public hearing, if the department has reason to believe that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may petition the circuit court for a temporary restraining order or an injunction as provided in ch. 813.

(4) (a) Any person who violates a special order issued under sub.(2) may be required to forfeit not more than $10,000 for each offense. Each day of continued violation constitutes a separate offense. The attorney general or any district attorney may commence an action in the name of the state to recover a forfeiture under this paragraph.

(b) Any person who violates a temporary restraining order or an injunction issued by a court upon a petition under sub.(3) may be fined not less than $25 nor more than $5,000 or imprisoned for not more than one year in the county jail or both.

History: 1991 a. 39; 1993 a. 102.

Cross reference: See also ch. RL 3, Wis. adm. code.

440.22 Assessment of costs. (1) In this section, "costs of the proceeding" means the compensation and reasonable expenses of hearing examiners and of prosecuting attorneys for the department, examining board or affiliated credentialing board, a reasonable disbursement for the service of process or other papers, amounts actually paid out for certified copies of records in any public office, postage, telephoning, adverse examinations and depositions and copies, expert witness fees, witness fees and expenses, compensation and reasonable expenses of experts and investigators, and compensation and expenses of a reporter for recording and transcribing testimony.

(2) In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department. Interest shall accrue on costs assessed under this subsection at a rate of 12% per year beginning on the date that payment of the costs are due as ordered by the department, examining board, affiliated credentialing board or board. Upon the request of the department of regulation and licensing, the department of justice may commence an action to recover costs assessed under this subsection and any accrued interest.

(3) In addition to any other discipline imposed, if the department, examining board, affiliated credentialing board or board assesses costs of the proceeding to the holder of the credential under sub.(2), the department, examining board, affiliated credentialing board or board may not restore, renew or otherwise issue any credential to the holder until the holder has made payment to the department under sub.(2) in the full amount assessed, together with any accrued interest.

History: 1987 a. 27; 1991 a. 39; 1993 a. 107; 1997 a. 27.

The collection of costs assessed under this section may not be pursued in an independent action for a money judgment. The costs may be collected only as a

condition of reinstatement of the disciplined practitioner's credentials. State **v.** Dunn, 213 Wis. 2d 363,570 N.W.2d 614 (Ct. App. 1997).

440.23 Cancellation of credential; reinstatement. **(1)** If the holder of a credential pays a fee required under **s.** 440.05 (1) or (6), 440.08, 444.03, 444.05, 444.11 or 459.46 (2) (b) by check or debit or credit card and the check is not paid by the financial institution upon which the check is drawn or if the demand for payment under the debit or credit card transaction is not paid by the financial institution upon which demand is made, the department may cancel the credential on or after the 60th day after the department receives the notice from the financial institution, subject to sub.(2).

(2) At least 20 days before canceling a credential, the department shall mail a notice to the holder of the credential that informs the holder that the check or demand for payment under the debit or credit card transaction was not paid by the financial institution and that the holder's credential may be canceled on the date determined under sub.(1) unless the holder does all of the following before that date:

(a) Pays the fee for which the unpaid check or demand for payment under the credit or debit card transaction was issued.

(b) If the fee paid under par.(a) is for renewal and the credential has expired, pays the applicable penalty for late renewal specified in **s.** 440.08 (3).

(c) Pays the charge for an unpaid draft established by the depository selection board under **s.** 20.905 (2).

(3) Nothing in sub.(1) or (2) prohibits the department from extending the date for cancellation to allow the holder additional time to comply with sub.(2) (a) to (c).

(4) A cancellation of a credential under this section completely terminates the credential and all rights, privileges and authority previously conferred by the credential.

(5) The department may reinstate a credential that has been canceled under this section only if the previous holder complies with sub.(2) (a) to (c) and pays a $30 reinstatement fee.

History: 1989 a. 31; 1991 a. 39, 189,269,278,315; 1993 a. 16; 1995 a. 27; 1999 a. 9.

440.25 Judicial review. The department may seek judicial review under ch. 227 of any final disciplinary decision of the medical examining board or affiliated credentialing board attached to the medical examining board. The department shall be represented in such review proceedings by an attorney within the department. Upon request of the medical examining board or the interested affiliated credentialing board, the attorney general may represent the board. If the attorney general declines to represent the board, the board may retain special counsel which shall be paid for out of the appropriation under **s.** 20.165 (1) (g).

History: 1985 a. 340; 1993 a. 107.

CHAPTER 441

BOARD OF NURSING

SUBCHAPTER I
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Cross-reference: See definitions in s. 440.01.

SUBCHAPTER I

REGULATION OF NURSING

Cross Reference: See also N, Wis. adm. code.

441.001 Definitions. In this subchapter:

(1) COMPENSATION. "Compensation" includes indirect compensation, direct compensation, and the expectation of compensation, whether actually received or not.

(2) NURSE. Except as provided under s. 441.08, "nurse," when used without modification or amplification, means only a registered nurse.

(2m) "Nursing," when used without modification or amplification, means professional nursing.

(3) PRACTICAL NURSING. (a) "Practical nursing" means the performance for compensation of any simple acts in the care of convalescent, subacutely or chronically ill, injured or infirm persons, or of any act or procedure in the care of the more acutely ill, injured or infirm under the specific direction of a nurse, physician, podiatrist licensed under ch. 448, dentist licensed under ch. 447 or optometrist licensed under ch. 449, or under an order of a person who is licensed to practice medicine, podiatry, dentistry or optometry in another state if that person prepared the order after examining the patient in that other state and directs that the order be carried out in this state.

(b) In par. (a), "simple act" means an act to which all of the following apply:

1. The act does not require any substantial nursing skill, knowledge, or training, or the application of nursing principles based on biological, physical, or social sciences, or the understanding of cause and effect in the act.

2. The act is one that is of a nature of those approved by the board for the curriculum of schools for licensed practical nurses.

(4) PROFESSIONAL NURSING. "Professional nursing" means the performance for Compensation of any act in the observation or care of the ill, injured, or infirm, or for the maintenance of health or prevention of illness of others, that requires substantial nursing skill, knowledge, or training, or application of nursing principles based on biological, physical, and social sciences,. Professional nursing includes any of the following:

(a) The observation and recording of symptoms and reactions.

(b) The execution of procedures and techniques in the treatment of the sick under the general or special supervision or direction of a physician, podiatrist licensed under ch. 448, dentist licensed under ch. 447 or optometrist licensed under ch. 449, or under an order of a person who is licensed to practice medicine, podiatry, dentistry or optometry in another state if the person making the order prepared the order after examining the patient in that other state and directs that the order be carried out in this state.

(c) The execution of general nursing procedures and techniques.

(d) Except as provided in s. 50.04 (2) (b), the supervision of a patient and the supervision and direction of licensed practical nurses and less skilled assistants.

History: 1975 c. 303; 1977 c. 86; 1981 c. 314,317; 1983 a. 189; 1983 a. 273 s. 8; 1987 a. 264; 1991 a. 181; 1997 a. 62; 1999 a. 22; 2001 a. 107 ss. 72, 75 to 80; Stats. 2001 s. 441.001.

This section is not a safety statute. Leahy v. Kenosha Memorial Hospital, 118 Wis. 2d 441,348 N.W.2d 607 (Ct. App. 1984).

441.01 Board of nursing. (1) In this subchapter, "board" means board of nursing.

(3) The board may establish minimum standards for schools for professional nurses and schools for licensed practical nurses, including all related clinical units and facilities, and make and provide periodic surveys and consultations to such schools. It may also establish rules to prevent unauthorized persons from practicing professional nursing. It shall approve all rules for the administration of this chapter in accordance with ch. 227.

(4) The board shall direct that those schools which qualify be placed on the accredited list of schools for professional nurses or of schools for licensed practical nurses on application and proof of qualifications; and shall make a study of nursing education and initiate rules and policies to improve it.

(5) The board may promote the professional education of graduate registered nurses licensed in Wisconsin, through creation of scholarships available to such graduate registered nurses, by foundation of professorships in nursing courses in Wisconsin colleges and universities, by conducting educational meetings, seminars, lectures, demonstrations and the like open to registered nurses, by publication and dissemination of technical information or by other similar activities designed to improve the standards of the nursing profession in this state. The board may promote the training of licensed practical nurses through support of workshops and institutes and by conducting meetings, lectures, demonstrations and the like open to licensed practical nurses.

(6) The board shall investigate any nurse anesthetist who is found to have acted negligently by a panel established under s. 655.02, 1983 stats., or by a court.

History: 1971 c. 125; 1975 c. 37; 1977 c. 29,418; 1979 c. 34; 1983 a. 253,1983 a. 273 ss. 2, 8; 1985 a. 340; 1987 a. 264; 1999 a. 22.

Cross Reference: See also chs. N 1 and 2, Wis. adm. code.

441.04 Requisites for examination as a registered nurse. Any person who has graduated from a high school or its equivalent as determined by the board, does not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, holds a diploma of graduation from an accredited school of nursing and, if the school is located outside this state, submits evidence of general and professional educational qualifications comparable to those required in this state at the time of graduation may apply to the department for licensure by the board as a registered nurse, and upon payment of the fee specified under s. 440.05 (1) shall be entitled to examination.

History: 1971 c. 125; 1975 c. 39, 199; 1977 c. 29; 1979 c. 337; 1981 c. 380; 1981 c. 391 s. 211; 1987 a. 264.

441.05 Examination for nurses. The examining council on registered nurses shall prepare or select written questions in areas it determines and prescribe rules, subject to the approval of the board, for conducting examinations and the preservation of the examination papers for one year. Examinations shall be held at least twice a year at times and places designated by the examining council, and at least 30 days' public notice shall be given. Examinations may also be held at other times and places with or without public notice as directed by the examining council. The examining council may also proctor an examination of another state for the convenience of a candidate and charge such fee therefor as the department fixes to cover the actual cost of the service rendered.

History: 1977 c. 29.

Cross Reference: *See* also ch. N 2, **Wis.** adm. code.

441.06 Licensure; civil liability exemption. (1) An applicant for licensure as a registered nurse who complies with the requirements of this subchapter and satisfactorily passes an examination shall receive a license. The holder of such a license of another state or temtory or province of Canada may be granted a license without examination if the holder's credentials of general and professional educational qualifications and other qualifications are comparable to those required in this state during the same period and if the board is satisfied from the holder's employment and professional record that the holder is currently competent to practice the profession. The board shall evaluate the credentials and determine the equivalency and competency in each case. The application for licensure without examination shall be accompanied by the fee prescribed in s. 440.05 (2).

(2) The holder of the license is a "registered nurse", may append "R.N." to his or her name and is authorized to practice professional nursing.

(3) A registered nurse practicing for compensation shall, on or before the applicable renewal date specified under s. 440.08 (2) (a), submit to the board on furnished forms a statement giving name, residence, and other facts that the board requires, with the applicable renewal fee specified under s. 440.08 (2) (a).

(4) No person may practice or attempt to practice professional nursing, nor use the title, letters, or anything else to indicate that he or she is a registered or professional nurse unless he or she is licensed under this section. No person not so licensed may use in connection with his or her nursing employment or vocation any title or anything else to indicate that he or she is a trained, certified or graduate nurse. This subsection does not apply to any person who is licensed to practice nursing by a jurisdiction, other than this state, that has adopted the nurse licensure compact under s. 441.50.

(6) No person licensed as a registered nurse under this section is liable for any civil damages resulting from his or her refusal to perform sterilization procedures or to remove or aid in the removal of a human embryo or fetus From a person, if the refusal is based on religious or moral precepts.

History: 1971 c. 125,215; 1973 c. 159: 1975 c. 39, 199; 1977 c. 29, 164; 1979 c. 34,162; 1987 a. 27.264; 1991 a. 39; 1999 a. 22; 2001 a. 107.

Cross Reference: *See* also chs. N 3 and 5, Wis. adm. code.

441.07 Revocation. (1) The board may, after disciplinary proceedings conducted in accordance with rules promulgated under s. 440.03 (1), revoke, limit, suspend or deny renewal of a license of a registered nurse, a nurse–midwife or a licensed practical nurse, may revoke, limit, suspend or deny renewal of a certificate to prescribe drugs or devices granted under s. 441.16, or may reprimand a registered nurse, nurse–midwife or licensed practical nurse, if the board finds that the person committed any of the following:

(a) Fraud in the procuring or renewal of the certificate or license.

(b) One or more violations of this subchapter or any rule adopted by the board under the authority of this subchapter.

(c) Acts which show the registered nurse, nurse–midwife or licensed practical nurse to be unfit or incompetent by reason of negligence, abuse of alcohol or other drugs or mental incompetency.

(d) Misconduct or unprofessional conduct.

(e) A violation of any state or federal law that regulates prescribing or dispensing drugs or devices, if the person has a certificate to prescribe drugs or devices under s. 441.16.

(f) A violation of the requirements of s. 253.10 (3) (c) 2., 3., 4., 5., 6. or 7.

(1m) The board may use any information obtained by the board or the department under s. 655.17 (7) (b), as created by 1985 Wisconsin Act 29, in investigations and disciplinary proceedings, including public disciplinary proceedings, conducted under this chapter.

(2) The board may reinstate a revoked license, no earlier than one year following revocation, upon receipt of an application for reinstatement. This subsection does not apply to a license that is revoked under s. 440.12.

History: 1977 c. 418; 1979 c. 317,337; 1981 c. 162; 1983 a. 273 s. 8; 1985 a. 29, 340; 1987 a. 264; 1993 a. 138; 1995 a. 309 1997 a. 237; 1999 a. 22.

Cross Reference: **See** also ch. N 7, **Wis.** adm. code.

441.08 Temporary permit. A nurse who has graduated from an accredited school but is not licensed in this state may be granted a temporary permit upon payment of the fee specified in s. 440.05 (6) by the board to practice for compensation until the nurse can qualify for licensure. The temporary permit may be renewed once. Further renewals may be granted in hardship cases. The board may promulgate rules limiting the use and duration of temporary permits and providing for revocation of temporary permits.

History: 1971 c. 125; 1977 c. 29; 1979 c. 337; 1987 a. 264.

Cross Reference: *See* also ch. N 5, **Wis.** adm. code.

441.10 Licensed practical nurses. (1) PREREQUISITES FOR EXAMINATION AS LICENSED PRACTICAL NURSES. A person who is 18 years of age or older, does not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, has completed 2 years of high school or its equivalent as determined by the board and holds a diploma of graduation from an accredited school for licensed practical nurses approved by that board, may apply to the board for licensing as a licensed practical nurse, and, upon payment of the examination fee specified in s. 440.05 (1), shall be entitled to take an examination. Any school for licensed practical nurses, in order to be accredited, must offer a course of not less than 9 months.

(2) EXAMINATION. The examining council on licensed practical nurses shall prepare or select written questions in areas it determines and prescribe rules, subject to the approval of the board, for the examination of those desirous of becoming licensed practical nurses, and the examination papers of all applicants shall be preserved for one year. Examinations shall be held at least twice annually at times and places designated by the board, and at least 30 days' public notice shall be given of each examination. Examinations may also be held at other times and places with or without public notice as directed by the examining council. The examining council may also proctor an examination of another state for the convenience of a candidate and shall charge such fee therefor as the department fixes to cover the actual cost of the services rendered.

(3) LICENSING. (a) On complying with this subchapter relating to applicants for licensure as licensed practical nurses, and passing an examination, the applicant shall receive a license as a licensed practical nurse. The holder of the license is a "licensed practical nurse" and may append the letters "L.P.N." to his or her name. The board may reprimand or may limit, suspend or revoke the license of a licensed practical nurse under s. 441.07.

(b) On or before the applicable renewal date specified under s. 440.08 (2) (a), a licensed practical nurse practicing for compensation shall submit to the board, on forms furnished by the

department, an application for license renewal, together with a statement giving name, residence, nature and extent of practice as a liccnscd practical nurse during the prior year and prior unreported years, and other facts bearing upon current compctcncy that the board requires, accompanied by the applicable license renewal fee specified under s. 440.08 *(2)*(a).

(c) No license is required for practical nursing, but no person without a license may hold himself or herself out as a licensed practical nurse or licensed attendant, use the title or letters "Trained Practical Nurse" or "T.P.N.", "Licensed Practical Nurse" or "L.P.N.", "Licensed Attendant" or **"L.A.",** "Trained Attendant" or "T.A.", or otherwise seek to indicate that he or she is a licensed practical nurse or licensed attendant. No licensed practical nurse or licensed attendant may use the title, or otherwise seek to act as a registered, licensed, graduate or professional nurse. Anyone violating this subsection shall be subject to the penalties prescribed by **s.** 441.13. The board shall grant without examination a license as a licensed practical nurse to any person who was on July 1, 1949, a licensed attendant. This paragraph does not apply to any person who is licensed to practice practical nursing by a jurisdiction, other than this state, that has adopted the nurse licensure compact under **s. 441**.50.

(d) The board may license without examination any person who has been licensed as a licensed attendant or licensed practical nurse in another state or territory or province of Canada if the person's general education, training, prior practice and other qualifications, in the opinion of the board, are at least comparable to those of this state for licensed practical nurses and current licensing or renewal. The fee for licensing without examination is specified in **s.** 440.05 **(2).**

(e) The board may grant a temporary permit to a practical nurse who has graduated from an accredited school but **is** not licensed in this state, upon payment of the fee specified in s. 440.05 (6), to practice for compensation until the practical nurse qualifies for licensure. The board may grant further renewals in hardship cases. The board may promulgate rules limiting the use and duration of temporary permits and providing for revocation of temporary permits.

History: 1971 **c.** 125.215; 1975 c. 39, 199; 1977 c. 29, 418; 1979 c. 34, 162,337; 1981 **c.** 380; 1981 **c.** 391 **s.** 211; 1983 **a** 273 ss. 3, 8; 1987 **a.** 27,264; 1991 a. 39; 1999 a. 22; 2001 a. 107.

Cross Reference: ***See*** also **ch.** N 6, **Wis. adm. code.**

441.115 Exceptions; temporary practice. (1) This chapter shall not be construed to affect nursing by friends, members of the family or undergraduates in an accredited school, nor be construed to interfere with members of religious communities or orders having charge of hospitals or taking care of the sick in their homes, except that none of such excepted persons while engaged in such activities shall represent himself or herself as a registered, trained, certified or graduate nurse unless registered under this subchapter.

(2) (a) In this subsection, "nursing credential" means a license, permit or certificate of registration or certification that is granted to a person by another state or territory or by a foreign country or province and that authorizes or qualifies the person holding the credential to perform acts that are substantially the same as those performed by a person licensed as a registered nurse or licensed practical nurse under this subchapter. In this paragraph, "state or territory" excludes any state or territory that has adopted the nurse licensure compact under s. 441.50.

(b) A person who holds a current, valid nursing credential may practice professional or practical nursing in this state, as provided under par. (c), for not more than **72** consecutive hours each year without holding a license granted by the board under this subchapter if the board determines that the requirements for the nursing credential that the person holds are substantially equivalent to the requirements for licensure under this subchapter. Except in an emergency, the person shall provide to the board, at least **7** days before practicing professional or practical nursing for the person who is specified under par. (c) **2.,** written notice that includes the name of the person providing notice, the type of nursing credential that the person holds and the name of the state, territory, foreign country or province that granted the nursing credential. In the event of an emergency, the person shall provide to the board written notice that includes the information otherwise required under this paragraph, as soon as practicable.

(c) A person who is permitted to practice professional or practical nursing under par. (b) may practice professional or practical nursing only for the following persons:

1. **A** person who is being transported through or into this state for the purpose of receiving medical care.

2. A person who is in this state temporarily, if the person is a resident of the state, territory, country or province that granted the nursing credential to the person permitted to practice professional or practical nursing under par. (b).

History: 1983 **a** 189 s. 273; 1995 a. 146; 1999 a. 22.

Cross **Reference: See** also **ch.** N 6, Wis. **adm. code.**

441.12 Administration; nonaccredited schools. (1) The board shall enforce this chapter and cause the prosecution of persons violating it.

(2) No person shall operate in this state a school for professional nurses or a school for practical nurses unless the same shall be accredited by the board. No solicitation shall be made in this state of the sale of, or registration in, a course by correspondence or conducted without the state for practical nurses unless all written material used in such solicitation plainly states in type as large as any other type on the material that the course is not accredited in this state for training of practical nurses.

History: 1979 **c.** 34.

441.13 Penalty. (1) Any person violating this subchapter or knowingly employing another in violation of this subchapter may be fined not more than *$250* or imprisoned not more than one year in the county jail.

(2) No action may be brought or other proceeding had to recover compensation for professional nursing services unless at the time such services were rendered the person rendering the same was a registered nurse or had a temporary permit issued under this subchapter.

(3) The remedy of injunction may be used in enforcing this subchapter.

History: 1999 **a.** 22.

441.15 Nurse–midwives. (1) In this section:

(a) ''Collaboration''means a process that involves *2* or more health care professionals working together and, when necessary, in each other's presence, and in which each health care professional contributes his or her expertise to provide more comprehensive care than one health care professional alone can offer.

(b) "Practice of nurse–midwifery" means the management of women's health care, pregnancy, childbirth, postpartum care for newborns, family planning, and gynecological services consistent with the standards of practice of the American College of Nurse–Midwives and the education, training, and experience of the nurse–midwife.

(2) No person may engage in the practice of nurse–midwifery unless each of the following conditions is satisfied:

(a) The person is issued a license by the board under sub. (3) (a).

(b) The practice occurs in a health care facility approved by the board by rule under sub. *(3)*(c), in collaboration with a physician with postgraduate training in obstetrics, and pursuant to a written agreement with that physician.

(c) Except as provided in sub. *(5)*(a), the person has in effect the malpractice liability insurance required under the rules promulgated under sub. *(5)*(b) [sub. *(5)*(bm)].

NOTE: The bracketed language indicates the correct cross–reference. Corrective legislation is pending.

(3) (a) The board shall grant a license to engage in the practice of nurse–midwifery to any person licensed as a registered nurse

under this subchapter or in a party state, as defined in s. 44 1.50(2) (j), who does all of the following:

1. Submits evidence satisfactory to the board that he or she meets the educational and training prerequisites established by the board for the practice of nurse–midwifery.

2. Pays the fee specified under **s.** 440.05 (I).

3. If applicable, submits evidence satisfactory to the board that he or she has in effect the malpractice liability insurance required under the rules promulgated under sub. *(5)* (b) [sub. (5) (bm)].

NOTE: The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

(b) On or before the applicable renewal date specified under **s.** 440.08 (2) (a), a person issued a license under par. (a) and practicing nurse–midwifery shall submit to the board on fiimished forms a statement giving his or her name, residence, and other information that the board requires by rule, with the applicable renewal fee specified under **s.** 440.08 (2) (a). If applicable, the person shall also submit evidence satisfactory to the board that he or she has in effect the malpractice liability insurance required under the rules promulgated under sub. (5) (b) [sub. *(5)* (bm].

NOTE: The bracketed language indicates the correct cross–reference. Corrective legislation is pending.

(c) The board shall promulgate rules necessary to administer this section, including the establishment of appropriate limitations on the scope of the practice of nurse--midwifery, the facilities in which such practice may occur and the granting of temporary permits to practice nurse--midwifery pending qualification for certification.

(4) **A** nurse–midwife who discovers evidence that any aspect of care involves any complication which jeopardizes the health or life of a newborn or mother shall consult with the collaborating physician under sub. ***(2)*** (b) or the physician's designee, or make a referral as specified in a written agreement under sub. (2) (b).

(5) (a) Except for any of the following, no person may practice nurse–midwifery unless he or she has in effect malpractice liability insurance in an amount that is at least the minimum amount specified in rules promulgated under par. (bm):

1. **A** federal, state, county, city, village, or town employee who practices nurse–midwifery within the scope of his or her employment.

2. **A** person who is considered to be an employee of the federal public health service under 42 USC 233 (g).

3. **A** person whose employer has in effect malpractice liability insurance that provides coverage for the person in an amount that is at least the minimum amount specified in the rules.

4. **A** person who does not provide care for patients.

(bm) The board shall promulgate rules establishing the minimum amount of malpractice liability insurance that **is** required for a person to practice nurse–midwifery, which shall be the same as the amount established by the board under **s.** 441.16 (3) (e).

History: 1979 c. 317; 1983 a. 273; 1987 a. 264: 1991 a. 39; 1999 a. 22; 2001 a. 52, 10.5, 107.

NOTE: Chapter 317, taws of 1979, which created this section, states legislative intent in Section 1.

Cross Reference: See also ch. N 5, Wis. adm. **code.**

441.16 Prescription privileges of nurses. (1) In this section:

(a) "Device" has the meaning given in **s.** 450.01 (6).

(b) "Drug" has the meaning given in **s.** 450.01 (10) and includes all of the following:

1. Prescription drugs, as defined in **s.** 450.01 (20) (a).

2. Controlled substances, as defined in **s.** 961.01 (4).

(c) "Prescription order" has the meaning given in **s.** 450.01 (21).

(2) The board shall grant a certificate to issue prescription orders to an advanced practice nurse who meets the education, training and examination requirements established by the board for a certificate to issue prescription orders, and who pays the fee specified under **s.** 440.05 (1).

(3) The board shall promulgate rules necessary to administer this section, including rules for all of the following:

(a) Establishing the education, training or experience requirements that a registered nurse must satisfy to be an advanced practice nurse. The rules promulgated under this paragraph shall require a registcred nurse to have education, training or experience that is in addition to the education, training or experience required for licensure as a registered nurse.

(am) Establishing the appropriate education, training and examination requirements that an advanced practice nurse must satisfy to qualify for a certificate to issue prescription orders.

(b) Defining the scope of practice within which an advanced practice nurse may issue prescription orders.

(c) Specifying the classes of drugs, individual drugs or devices that may not be prescribed by an advanced practice nurse.

(cm) Specifying the conditions to be met for a registered nurse to do the following:

1. Administer a drug prescribed by an advanced practice nurse who is certified to issue prescription orders.

2. Administer a drug at the direction of an advanced practice nurse who is certified to issue prescription orders.

(d) Establishing procedures for maintaining a certificate to issue prescription orders, including requirements for continuing education.

(e) Establishing the minimum amount of malpractice liability insurance coverage that an advanced practice nurse shall have if he or she is certified to issue prescription orders. The board shall promulgate rules under this paragraph in consultation with the commissioner of insurance.

(4) Every advanced practice nurse who is certified to issue prescription orders shall annually submit to the board evidence satisfactory to the board that he or she has in effect malpractice liability insurance coverage in the minimum amounts required by the rules of the board.

(5) An advanced practice nurse who is certified to issue prescription orders may not delegate the act of issuing a prescription order to any nurse who is not certified to issue prescription orders.

(6) Nothing in this section prohibits a nurse from issuing a prescription order as an act delegated by a physician.

History: 1993 a. 138; **1995 a. 448.**

Cross Reference: See also ch. N 8, Wis. adm. **code.**

SUBCHAPTER II

NURSE LICENSURE COMPACT

441.50 Nurse licensure compact. *(1)* ARTICLE I – FINDINGS AND DECLARATION OF PURPOSE. (a) The party states find all of the following:

1. That the health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws.

2. That violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public.

3. That the expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation.

4. That new practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex.

5. That the current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

(b) The general purposes of this compact are as follows:

1. To facilitate the states' responsibility to protect the public's health and safety.

2. To ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation.

3. To facilitate the exchange of infonnation between party states in the areas of nurse regulation, investigation and adverse actions.

4. To promote compliance with the laws governing the practice of nursing in each jurisdiction.

5. To invest all party states with the authority to hold a nurse accountable for meeting all statc practice laws in the statc in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

(2) ARTICLE II - DEFINITIONS **As** used in this compact:

(a) "Adverse action" means a home or remote state action.

(b) "Alternative program" means a voluntary, nondisciplinary monitoring program approved by a nurse licensing board.

(c) "Coordinatcd licensure information system" means an integrated process for collecting, storing and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.

(d) "Current significant investigative information" means any of the following:

1. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

2. Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

(e) "Home statc" means the party state that is the nurse's primary state of residence.

(f) "Home state action" means any administrative. civil, equitable or criminal action permitted by the home state's laws that are imposed on a nurse by the home state's licensing board or other authority including actions against an individual's license, such as revocation, suspension, probation or any other action that affects a nurse's authorization to practice.

(g) "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

(h) "Multistate licensure privilege" means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical/vocational nurse in such party state. **All** party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege, such as revocation, suspension, probation or any other action that affects a nurse's authorization to practice.

(i) "Nurse" means a registered nurse or licensed practical/vocational nurse, as those terms are defined by each party's state practice laws.

(j) "Party state" means any state that has adopted this compact.

(k) "Remote state" means a party state, other than the home state, where the patient is located at the time nursing care is provided, or, in the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located.

(L) "Remote state action" means any of the following:

1. Any administrative, civil, equitable or criminal action permitted by a remote state's laws that are imposed on a nurse by the remote state's licensing board or other authority including actions against an individual's multistate licensure privilege to practice in the remote state.

2. Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards thereof.

(m) "State" means a state, territory, or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

(n) "State practice laws" means those individual party state's laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" does not include the initial qualifications for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

(3) ARTICLE III - GENERAL PROVISIONS AND JURISDICTION (a) **A** license to practice registered nursing issued by a home state to a resident in that statc will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registercd nurse in such party state. **A** license to practice licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical/vocational nurse in such party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

(b) Party states may, in accordance with state due process laws, limit or revoke the multistate licensure privilege of any nurse to practice in their state and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(c) Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

(d) This compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

(e) Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

(4) ARTICLE IV - APPLICATIONS FOR LICENSURE IN A PARTY STATE. (a) Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

(b) **A** nurse in a party statc shall hold licensure in only one party state at a time, issued by the home state.

(c) **A** nurse who intends to change his or her primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses will not be issued by a party state until after a nurse provides evidence of the change in his or her primary state of residence satisfactory to the new home state's licensing board.

(d) 1. When a nurse changes his or her primary state of residence by moving between two party states, and obtains a license from the new home state, the license from the former home state is no longer valid.

2. When a nurse changes his or her primary state of residence by moving from a nonparty state to a party state, and obtains a license from the new home state, the individual state license issued by the nonparty state is not affected and will remain in full force if so provided by the laws of the nonparty state.

3. When a nurse changes his or her primary state of residence by moving from a party state to a nonparty state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

(5) ARTICLE V – ADVERSE ACTIONS. In addition to the general provisions described in sub. (3), the following provisions apply:

(a) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

(b) The licensing board of a party state shall have the authority to complete any pending investigations for a nurse who changes his or her primary state of residence during the course of such investigations. It shall also have the authority to take appropriate actions, and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

(c) A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the license issued by the home state.

(d) For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

(e) The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

(f) Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain nonpublic if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

(6) ARTICLE VI – ADDITIONAL AUTHORITIES INVESTED IN PARTY STATE NURSE LICENSING BOARDS. Notwithstanding any other powers, party state nurse licensing boards shall have the authority to do any of the following:

(a) If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.

(b) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses, or the production of evidence from another party state, or both, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witnesses or evidence, or both, are located.

(c) Issue cease and desist orders to limit or revoke a nurse's authority to practice in their state.

(d) Promulgate uniform rules and regulations as provided for in sub. (8) (c).

(7) ARTICLE VII – COORDINATED LICENSURE INFORMATION SYSTEM. (a) All party states shall participate in a cooperative effort to create a coordinated database of all licensed registered nurses and licensed practical/vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(b) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials, to the coordinated licensure information system.

(c) Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(d) Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

(e) Any personally identifiable information obtained by a party state's licensing board from the coordinated licensure information system may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(f) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information, shall also be expunged from the coordinated licensure information system.

(g) The compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection and exchange of information under this compact.

NOTE: Par. (g) was created as par. *(e)* by 1999 Wis. Act 22 and was renumbered by the revisor under s. 13.93 (1) (b).

(8) ARTICLE VIII – COMPACT ADMINISTRATION AND INTERCHANGE OF INFORMATION. (a) The secretary of the department, or his or her designee, shall be the administrator of this compact for this state.

(b) The compact administrator of each party state shall furnish to the compact administrator of each other party state any information and documents including, but not limited to, a uniform data set of investigations, identifying information, licensure data and disclosable alternative program participation information to facilitate the administration of this compact.

(c) Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this compact. These uniform rules shall be adopted by party states, under the authority invested under sub. (6) (d).

(9) ARTICLE IX – IMMUNITY. No party state or the officers or employees or agents of a party state's nurse licensing board who acts in accordance with the provisions of this compact shall be liable on account of any act or omission in good faith while engaged in the performance of their duties under this compact. Good faith in this article shall not include willful misconduct, gross negligence or recklessness.

(10) ARTICLE X – ENTRY INTO FORCE, WITHDRAWAL AND AMENDMENT. (a) This compact shall enter into force and become

effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 6 months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

(b) No withdrawal shall affect the validity or applicability by the licensing boards of states remaining party to the compact of any report of adverse action occurring prior to the withdrawal.

(c) Nothing contained in this compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.

(11) ARTICLE XI – CONSTRUCTION AND SEVERABILITY. (a) This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

(b) In the event party states find a need for settling disputes arising under this compact, the party states may submit the issues in dispute to an arbitration panel that will be comprised of an individual appointed by the compact administrator in the home state, an individual appointed by the compact administrator in the remote state or states involved and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute. The decision of a majority of the arbitrators shall be final and binding.

History: 1999 a *22,* **185. s 13.93**(1) (b)

CHAPTER 450
PHARMACY EXAMINING BOARD

450.01 Definitions.
450.10 Disciplinary proceedings; immunity; orders
450.11 Prescription drugs and prescription devices.

450.01 Definitions. In this chapter:

(7) "Dispense" means to deliver a prescribed drug or device to an ultimate user or research subject by or pursuant to the prescription order of a practitioner, including the compounding, packaging or labeling necessary to prepare the prescribed drug or device for delivery.

450.10 Disciplinary proceedings; immunity; orders.

(1) (a) In this subsection, "unprofessional conduct" includes, but is not limited to:

1. Making any materially false statement or giving any materially false information in connection with an application for a license or for renewal or reinstatement of a license.

2. Violating this chapter or, subject to s. 961.38 (4r), ch. 961 or any federal or state statute or rule which substantially relates to the practice of the licensee.

3. Practicing pharmacy while the person's ability to practice is impaired by alcohol or other drugs or physical or mental disability or disease.

4. Engaging in false, misleading or deceptive advertising.

5. Making a substantial misrepresentation in the course of practice which is relied upon by another person.

6. Engaging in conduct in the practice of the licensee which evidences a lack of knowledge or ability to apply professional principles or skills.

7. Obtaining or attempting to obtain compensation by fraud or deceit.

8. Violating any order of the board. (b) Subject to subch. II of ch. 111 and the rules adopted under s. 440.03 (1), the board may reprimand the licensee or deny, revoke, suspend or limit the license or any combination thereof of any person licensed under this chapter who has:

1. Engaged in unprofessional conduct.

2. Been adjudicated mentally incompetent by a court.

3. Been found guilty of an offense the circumstances of which substantially relate to the practice of the licensee.

(2) In addition to or in lieu of a reprimand or denial, limitation, suspension or revocation of a license under sub. (1), the board may, for the violations enumerated under sub. (1), assess a forfeiture of not more than $1,000 for each separate offense. Each day of violation constitutes a separate offense.

(3) (a) In this subsection, "health care professional" means any of the following:

1. A pharmacist licensed under this chapter.

2. A nurse licensed under ch. 441.

3. A chiropractor licensed under ch. 446.

4. A dentist licensed under ch. 447.

5. A physician, physician assistant, podiatrist, physical therapist, occupational therapist or occupational therapy assistant licensed under ch. 448.

NOTE: Subd. 5. is amended eff. 4~1–04 by 2001 Wis. Act 70 to read: 5. A physician, physician assistant, podiatrist, physical therapist, physical therapist assistant, occupational therapist, or occupational therapy assistant licensed under ch. 448.

5m. A dietitian certified under subch. V of ch. 448.

5q. An athletic trainer licensed under subch. VI of ch. 448.

6. An optometrist licensed under ch. 449.

7. An acupuncturist certified under ch. 451.

8. A veterinarian licensed under ch. 453.

9. A psychologist licensed under ch. 455.

10. A social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457.

NOTE Subd. 10. is shown as amended eff. 11–1-02 by 2001 Wis. Act 80. Prior to 11-1-02 it reads: 10. A social worker, marriage and family therapist or professional counselor certified under ch. 457.

11. A speech–language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.

(b) Any health care professional who in good faith provides another health care professional with information concerning a violation of this chapter or ch. 961 by any person shall be immune from any civil or criminal liability that results from any act or omission in providing such information. In any administrative or court proceeding, the good faith of the health care professional providing such information shall be presumed.

(4) (a) The secretary may, in case of the need for emergency action, issue general and special orders necessary to prevent or correct actions by any pharmacist under this section that would be cause for suspension or revocation of a license.

(b) Special orders may direct a pharmacist to cease and desist from engaging in particular activities.

History: 1985 a. 146; 1987 a. 264, 399; 1989 a. 31, 316; 1991 a. 39, 160; 1993 a. 222, 443; 1995 a. 27 s. 9145 (1); 1995 a. 448; 1997 a. 27, 67.75. 175: 1999 a. 9.32. 180; 2001 a. 70, 80.

Cross Reference: See also ch. Phar 10, Wis. adm. code.

450.11 Prescription drugs and prescription devices.

(1) DISPENSING. No person may dispense any prescribed drug or device except upon the prescription order of a practitioner. All prescription orders shall specify the date of issue, the name and address of the patient, the name and address of the practitioner, the name and quantity of the drug product or device prescribed, directions for the use of the drug product or device and, if the order is written by the practitioner, the signature of the practitioner. Any oral prescription order shall be immediately reduced to writing by the pharmacist and filed according to sub. (2).

(1m) ELECTRONIC TRANSMISSION. Except as provided in s. 453.068 (1) (c) 4., a practitioner may transmit a prescription order electronically only if the patient approves the transmission and the prescription order is transmitted to a pharmacy designated by the patient.

(2) PRESCRIPTION ORDER FILE. Every prescription order shall be filed in a suitable book or file and preserved for at least 5 years. Subject to s. 961.38 (2), prescription orders transmitted electronically may be filed a

CHAPTER 632
INSURANCE CONTRACTS IN SPECIFIC LINES

SUBCHAPTER VI
DISABILITY INSURANCE

632.895 Mandatory coverage.

(1) DEFINITIONS. In this section: (a) "Disability insurance policy" means surgical, medical, hospital, major medical or other health service coverage but does not include hospital indemnity policies or ancillary coverages such as income continuation, loss of time or accident benefits.

(b) "Home care" means care and treatment of an insured under a plan of care established, approved in writing and reviewed at least every 2 months by the attending physician, unless the attending physician determines that a longer interval between reviews is sufficient, and consisting of one or more of the following:

1. Part–time or intermittent home nursing care by or under the supervision of a registered nurse.

2. Part–time or intermittent home health aide services which are medically necessary as part of the home care plan, under the supervision of a registered nurse or medical social worker, which consist solely of caring for the patient.

3. Physical or occupational therapy or speech–language pathology or respiratory care.

4. Medical supplies, drugs and medications prescribed by a physician and laboratory services by or on behalf of a hospital, if necessary under the home care plan, to the extent such items would be covered under the policy if the insured had been hospitalized.

5. Nutrition counseling provided by or under the supervision of one of the following, where such services are medically necessary as part of the home care plan:

a. **A** registered dietitian.

b. **A** dietitian certified under subch. V of ch. 448, if the nutrition counseling is provided on or after July 1, 1995.

6. The evaluation of the need for and development of a plan, by a registered nurse, physician extender or medical social worker, for home care when approved or requested by the attending physician.

(c) "Hospital indemnity policies" means policies which provide benefits in a stated amount for confinement in a hospital, regardless of the hospital expenses actually incurred by the insured, due to such confinement.

(d) "Immediate family" means the spouse, children, parents, grandparents, brothers and sisters of the insured and their spouses.

(2) HOME CARE. (a) Every disability insurance policy which provides coverage of expenses incurred for inpatient hospital care shall provide coverage for the usual and customary fees for home care. Such coverage shall be subject to the same deductible and coinsurance provisions of the policy as other covered services. The maximum weekly benefit for such coverage need not exceed the usual and customary weekly cost for care in a skilled nursing facility. If an insurer provides disability insurance, or if 2 or more insurers jointly provide disability insurance, to an insured under 2 or more policies, home care coverage is required under only one of the policies.

(b) Home care shall not be reimbursed unless the attending physician certifies that:

1. Hospitalization or confinement in a skilled nursing facility would otherwise be required if home care was not provided.

2. Necessary care and treatment are not available from members of the insured's immediate family or other persons residing with the insured without causing undue hardship.

3. The home care services shall be provided or coordinated by a state–licensed or medicare–certified home health agency or certified rehabilitation agency.

(c) If the insured was hospitalized immediately prior to the commencement of home care, the home care plan shall also be initially approved by the physician who was the primary provider of services during the hospitalization.

(d) Each visit by a person providing services under a home care plan or evaluating the need for or developing a plan shall be considered as one home care visit. The policy may contain a limit on the number of home care visits, but not less than 40 visits in any 12–month period, for each person covered under the policy. Up to 4 consecutive hours in a 24–hour period of home health aide service shall be considered as one home care visit.

(e) Every disability insurance policy which purports to provide coverage supplementing parts **A** and B of Title XVIII of the social security act shall make available and if requested by the insured provide coverage of supplemental home care visits beyond those provided by parts **A** and B, sufficient to produce an aggregate coverage of 365 home care visits per policy year.

(f) This subsection does not require coverage for any services provided by members of the insured's immediate family or any other person residing with the insured.

(g) Insurers reviewing the certified statements of physicians as to the appropriateness and medical necessity of the services certified by the physician under this subsection may apply the same review criteria and standards which are utilized by the insurer for all other business.

Cross Reference: See also s. Ins 3.54, Wis. adm. **Code**

(3) SKILLED NURSING CARE. Every disability insurance policy filed after November 29, 1979, which provides coverage for hospital care shall provide coverage for at least **30** days for skilled nursing care to patients who enter a licensed skilled nursing care facility. **A** disability insurance policy, other than a medicare supplement policy or medicare replacement policy, may limit coverage under this subsection to patients who enter a licensed skilled nursing care facility within 24 hours after discharge from a general hospital. The daily rate payable under this subsection to a licensed skilled nursing care facility shall be no less than the maximum daily rate established for skilled nursing care in that facility by the department of health and family services for purposes of reimbursement under the medical assistance program under subch. IV of ch. 49. The coverage under this subsection shall apply only to skilled nursing care which is certified as medically necessary by the attending physician and is recertified as medically necessary every 7 days. If the disability insurance policy is other than a medicare supplement policy or medicare replacement policy, coverage under this subsection shall apply only to the continued treatment for the same medical or surgical condition for which the insured had been treated at the hospital prior to entry into the skilled nursing care facility. Coverage under any disability insurance policy governed by this subsection may be subject to a deductible that applies to the hospital care coverage provided by the policy. The coverage under this subsection shall not apply to care which is essentially domiciliary or custodial, or to care which is available to the insured without charge or under a governmental health care program, other than a program provided under ch. 49.

(4) KIDNEY DISEASE TREATMENT. (a) Every disability insurance policy which provides hospital treatment coverage on an expense incurred basis shall provide coverage for hospital inpatient and outpatient kidney disease treatment, which may be limited to dialysis, transplantation and donor–related services, in an amount not less than $30,000 annually, as defined by the department of health and family services under par. (d).

(b) No insurer is required to duplicate coverage available under the federal medicare program, nor duplicate any other insurance coverage the insured may have. Other insurance coverage does not include public assistance under ch. 49.

(c) Coverage under this subsection may not be subject to exclusions or limitations, including deductibles and coinsurance factors, which are not generally applicable to other conditions covered under the policy.

(d) The department of health and family services may by rule impose reasonable standards for the treatment of kidney diseases required to be covered under this subsection, which shall not be inconsistent with or less stringent than applicable federal standards.

(5) COVERAGE OF NEWBORN INFANTS. (a) Every disability insurance policy shall provide coverage for a newly born child of the insured from the moment of birth.

(b) Coverage for newly born children required under this subsection shall consider congenital defects and birth abnormalities as an injury or sickness under the policy and shall cover functional repair or restoration of any body part when necessary to achieve normal body functioning, but shall not cover cosmetic surgery performed only to improve appearance.

(c) If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy may require that notification of the birth of a child and payment of the required premium or fees shall be furnished to the insurer within 60 days after the date of birth. The insurer may refuse to continue coverage beyond the 60-day period if such notification is not received, unless within one year after the birth of the child the insured makes all past-due payments and in addition pays interest on such payments at the rate of 5 1/2% per year.

(d) If payment of a specific premium or subscription fee is not required to provide coverage for a child, the policy or contract may request notification of the birth of a child but may not deny or refuse to continue coverage if such notification is not furnished.

(e) This subsection applies to all policies issued or renewed after May 5, 1976, and to all policies in existence on June 1, 1976. All policies issued or renewed after June 1, 1976, shall be amended to comply with the requirements of this subsection.

Cross Reference: ***See* also** s. **Ins 3.38, Wis. adm code.**

(5m) COVERAGE OF GRANDCHILDREN. Every disability insurance policy issued or renewed on or after May 7, 1986, that provides coverage for any child of the insured shall provide the same coverage for all children of that child until that child is 18 years of age.

(6) EQUIPMENT AND SUPPLIES FOR TREATMENT OF DIABETES. Every disability insurance policy which provides coverage of expenses incurred for treatment of diabetes shall provide coverage for expenses incurred by the installation and use of an insulin infusion pump, coverage for all other equipment and supplies, including insulin, used in the treatment of diabetes and coverage of diabetic self-management education programs. Coverage required under this subsection shall be subject to the same deductible and coinsurance provisions of the policy as other covered expenses, except that insulin infusion pump coverage may be limited to the purchase of one pump per year and the insurer may require the insured to use a pump for 30 days before purchase.

(7) MATERNITY COVERAGE. Every group disability insurance policy which provides maternity coverage shall provide maternity coverage for all persons covered under the policy. Coverage required under this subsection may not be subject to exclusions or limitations which are not applied to other maternity coverage under the policy.

(8) COVERAGE **OF** MAMMOGRAMS. (a) In this subsection:

1. "Direction" means verbal or written instructions, standing orders or protocols.

2. "Low-dose mammography" means the X-ray examination of a breast using equipment dedicated specifically for mammography, including the X-ray tube, filter, compression device, screens, films and cassettes, with an average radiation exposure delivery of less than one rad mid-breast, with 2 views for each breast.

3. "Nurse practitioner" means an individual who is licensed as a registered nurse under ch. 441 or the laws of another state and who satisfies any of the following:

a. Is certified as a primary care nurse practitioner or clinical nurse specialist by the American nurses' association or by the national board of pediatric nurse practitioners and associates.

am. Holds a master's degree in nursing from an accredited school of nursing.

b. Before March 31, 1990, has successfully completed a formal one-year academic program that prepares registered nurses to perform an expanded role in the delivery of primary care, includes at least 4 months of classroom instruction and a component of supervised clinical practice, and awards a degree, diploma or certificate to individuals who successfully complete the program.

c. Has successfully completed a formal education program that is intended to prepare registered nurses to perform an expanded role in the delivery of primary care but that does not meet the requirements of subd. 3. b., and has performed an expanded role in the delivery of primary care for a total of 12 months during the 18-month period immediately before July 1, 1978.

(b) 1. Except as provided in subd. **2.** and par.(f), every disability insurance policy that provides coverage for a woman age 45 to 49 shall provide coverage for that woman of 2 examinations by low-dose mammography performed when the woman is age 45 to 49, if all of the following are satisfied:

a. Each examination by low-dose mammography is performed at the direction of a licensed physician or a nurse practitioner, except as provided in par. (e).

b. The woman has not had an examination by low-dose mammography within 2 years before each examination is performed.

2. A disability insurance policy need not provide coverage under subd. 1. to the extent that the woman had obtained one or more examinations by low-dose mammography while between the ages of 45 and 49 and before obtaining coverage under the disability insurance policy.

(c) Except as provided in par. **(9,** every disability insurance policy that provides coverage for a woman age 50 or older shall provide coverage for that woman of an annual examination by low-dose mammography to screen for the presence of breast cancer, if the examination is performed at the direction of a licensed physician or a nurse practitioner or if par. (e) applies.

(d) Coverage is required under this subsection despite whether the woman shows any symptoms of breast cancer. Except as provided in pars. (b), (c) and (e), coverage under this subsection may only be subject to exclusions and limitations, including deductibles, co-payments and restrictions on excessive charges, that are applied to other radiological examinations covered under the disability insurance policy.

(e) A disability insurance policy shall cover an examination by low-dose mammography that is not performed at the direction of a licensed physician or a nurse practitioner but that is otherwise required to be covered under par. (b) or (c), if all of the following are satisfied:

1. The woman does not have an assigned or regular physician or nurse practitioner when the examination is performed.

2. The woman designates a physician to receive the results of the examination.

3. Any examination by low-dose mammography previously obtained by the woman was at the direction of a licensed physician or a nurse practitioner.

(9 This subsection does not apply to any of the following:

1. A disability insurance policy that only provides coverage of certain specified diseases.

2. A health care plan offered by a limited service health organization, as defined in s. 609.01 (3).

3. A medicare replacement policy, a medicare supplement policy or a long-term care insurance policy.

(9) DRUGS FOR TREATMENT OF HIV INFECTION. (a) In this subsection, "HIV infection" means the pathological state produced by a human body in response to the presence of HIV, as defined in s. 631.90 (1).

(b) Except as provided in par. (d), every disability insurance policy that is issued or renewed on or after April 28, 1990, and that provides coverage of prescription medication shall provide coverage for each drug that satisfies all of the following:

1. Is prescribed by the insured's physician for the treatment of HIV infection or an illness or medical condition arising from or related to HIV infection.

2. Is approved by the federal food and drug administration for the treatment of HIV infection or an illness or medical condition arising from or related to HIV infection, including each investigational new drug that is approved under 21 CFR 312.34 to 312.36 for the treatment of HIV infection or an illness or medical condition arising from or related to HIV infection and that is in, or has completed, a phase 3 clinical investigation performed in accordance with 21 CFR 312.20 to 312.33.

3. If the drug is an investigational new drug described in subd. 2., is prescribed and administered in accordance with the treatment protocol approved for the investigational new drug under 21 CFR 312.34 to 312.36.

(c) Coverage of a drug under par. (b) may be subject to any co-payments and deductibles that the disability insurance policy applies generally to other prescription medication covered by the disability insurance policy.

(d) This subsection does not apply to any of the following:

1. **A** disability insurance policy that covers only certain specified diseases.

2. **A** health care plan offered by a limited service health organization, as defined in s. 609.01 (3).

3. **A** medicare replacement policy or a medicare supplement policy.

(10) LEAD POISONING SCREENING. (a) Except as provided in par. (b), every disability insurance policy and every health care benefits plan provided on a self–insured basis by a county board under s. 59.52 (11), by a city or village under s. 66.0137 (4), by a political subdivision under s. 66.0137 (4m), by a town under s. 60.23 (25), or by a school district under s. 120.13 (2) shall provide coverage for blood lead tests for children under 6 years of age, which shall be conducted in accordance with any recommended lead screening methods and intervals contained in any rules promulgated by the department of health and family services under s. 254.158.

(b) This subsection does not apply to any of the following:

1. **A** disability insurance policy that covers only "certain specified diseases.

2. **A** health care plan offered by a limited service health organization, as defined in s. 609.01 (3).

3. **A** long–term care insurance policy, as defined in **s.** 600.03 (28g).

4. **A** medicare replacement policy, as defined in **s.** 600.03 (28p).

5. **A** medicare supplement policy, as defined in **s.** 600.03 (28r).

(11) TREATMENT FOR THE CORRECTION OF TEMPOROMANDIBULAR DISORDERS. (a) Except as provided in par. (e), every disability insurance policy, and every self–insured health plan of the state or a county, city, village, town or school district, that provides coverage of any diagnostic or surgical procedure involving a bone, joint, muscle or tissue shall provide coverage for diagnostic procedures and medically necessary surgical or non-surgical treatment for the correction of temporomandibular disorders if all of the following apply:

1. The condition is caused by congenital, developmental or acquired deformity, disease or injury.

2. Under the accepted standards of the profession of the health care provider rendering the service, the procedure or device is reasonable and appropriate for the diagnosis or treatment of the condition.

3. The purpose of the procedure or device is to control or eliminate infection, pain, disease or dysfunction.

(b) 1. The coverage required under this subsection for non-surgical treatment includes coverage for prescribed intraoral splint therapy devices.

2. The coverage required under this subsection does not include coverage for cosmetic or elective orthodontic care, periodontic care or general dental care.

(c) 1. The coverage required under this subsection may be subject to any limitations, exclusions or cost–sharing provisions that apply generally under the disability insurance policy or self–insured health plan.

2. Notwithstanding subd. 1., the coverage required under this subsection for diagnostic procedures and medically necessary non-surgical treatment for the correction of temporomandibular disorders may not exceed $1,250 annually.

(d) Notwithstanding par. (c) 1., an insurer or a self–insured health plan of the state or a county, city, village, town or school district may require that an insured obtain prior authorization for any medically necessary surgical or non-surgical treatment for the correction of temporomandibular disorders.

(e) This subsection does not apply to any of the following:

1. **A** disability insurance policy that covers only dental care.

2. **A** medicare supplement policy, as defined in s. 600.03 (28r).

(12) HOSPITAL AND AMBULATORY SURGERY CENTER CHARGES AND ANESTHETICS FOR DENTAL CARE. (a) In this subsection, "ambulatory surgery center" has the meaning given in 42 CFR 416.2.

(b) Except as provided in par. (d), every disability insurance policy, and every self–insured health plan of the state or a county, city, village, town or school district, shall cover hospital or ambulatory surgery center charges incurred, and anesthetics provided, in conjunction with dental care that is provided to a covered individual in a hospital or ambulatory surgery center, if any of the following applies:

1. The individual is a child under the age of 5.

2. The individual has a chronic disability that meets all of the conditions under s. 230.04 (9r) (a) **2.** a., b. and c.

3. The individual has a medical condition that requires hospitalization or general anesthesia for dental care.

(c) The coverage required under this subsection may be subject to any limitations, exclusions or cost–sharing provisions that apply generally under the disability insurance policy or self–insured plan.

(d) This subsection does not apply to a disability insurance policy that covers only dental care.

(13) BREAST RECONSTRUCTION. (a) Every disability insurance policy, and every self–insured health plan of the state or a county, city, village, town or school district, that provides coverage of the surgical procedure known as a mastectomy shall provide coverage of breast reconstruction of the affected tissue incident to a mastectomy.

(b) The coverage required under par. (a) may be subject to any limitations, exclusions or cost–sharing provisions that apply generally under the disability insurance policy or self–insured health plan.

(14) COVERAGE OF IMMUNIZATIONS. (a) In this subsection: 1. "Appropriate and necessary immunizations" means the administration of vaccine that meets the standards approved by the U.S. public health service for such biological products against at least all of the following:

a. Diphtheria.
b. Pertussis.
c. Tetanus.
d. Polio.
e. Measles.
f. Mumps.
g. Rubella.
h. Hemophilus influenza B.
i. Hepatitis **B.**
j. Varicella.

2. "Dependent" means a spouse, an unmarried child under the age of 19 years, an unmarried child who is a full–time student under the age of 21 years and who is financially dependent upon the parent, or an unmarried child of any age who **is** medically certified as disabled and who is dependent upon the parent.

(b) Except as provided in par. (d), every disability insurance policy, and every self–insured health plan of the state or a county, city, town, village or school district, that provides coverage for a dependent of the insured shall provide coverage of appropriate and necessary immunizations, from birth to the age of 6 years, for a dependent who **is** a child of the insured.

(c) The coverage required under par. (b) may not be subject **to** any deductibles, co-payments, or coinsurance under the policy or plan. This paragraph applies to a defined network plan, as defined in **s.** 609.01 (1b), only with respect to appropriate and necessary immunizations provided by providers participating, as defined in s. 609.01 (3m), in the plan.

(d) This subsection does not apply to any of the following:

1. **A** disability insurance policy that covers only certain specified diseases.

2. **A** disability insurance policy that covers only hospital and surgical charges.

3. **A** health care plan offered by a limited service health organization, as defined in **s.** 609.01 (3), or by a preferred provider plan, **as** defined in s. 609.01 (4), that is not a defined network plan, as defined in **s.** 609.01 (1b).

4. **A** long–term care insurance policy, as defined in **s.** 600.03 (28g).

5. **A** medicare replacement policy, as defined in s. 600.03 (28p).

6. **A** medicare supplement policy, as defined in s. 600.03 (28r).

History: 1981 c. 39 **ss.** 4 to 12, 18, 20; 1981 c. 85, 99; 1981 c. 314 **ss.** 122, 123, 125; 1983 a. 36,429; 1985 a. 29, 56,311; 1987 a. 195, 327,403; 1989 a. 129, 201, 229,316,332,359; 1991 a. 32, 45, 123; 1993 a. 443,450; 1995 a. 27 **ss.** 7048,9126 (19); 1995 a. 201, 225; 1997 a. 27, 35, 75, 175, 237; 1999 a. 32, *115;* 1999 **a.** *150* s. 672; 2001 a. 16.

The commissioner can reasonably construe sub. (3) to require an insurer to pay a facility's charge for care up to the maximum department of health and social services rate. Mutual Benefit v. Insurance Commissioner, 151 Wis. 2d 411, 444 N.W.2d 450 (Ct. App. 1989).

Sub. (2) (g) does not prohibit an insurer from contracting away the right to review medical necessity. The provision does not apply until the insurer has shown that its own determination is relevant to an insurance contract Schroeder v. Blue Cross & Blue Shield, 153 Wis. 2d **165,** 450 N.W.2d 470 **(Ct.** App. 1989).

CHAPTER 655
HEALTH CARE LIABILITY AND PATIENTS COMPENSATION

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Cross–reference: *See* definitions in ss. 600.03 and 628.02.
Cross referenee: See also ch. Ins 17, Wis. adm. code.

SUBCHAPTER I
GENERAL PROVISIONS

655.001 Definitions. In this chapter: (1) "Board of governors" means the board created under s. 619.04 (3).

(2) "Claimant" means the person filing a request for mediation under s. 655.44 or 655.445.

(4) "Department" means the department of health and family services.

(6) "Fiscal year" means the period beginning on July 1 and ending on the following June 30.

(7) "Fund" means the patients compensation fund under s. 655.27.

(7t) "Health care practitioner" means a health care professional, as defined in s. 180.1901 (1m), who is an employee of a health care provider described in s. 655.002 (1) (d), (e), or (f) and who has the authority to provide health care services that are not in collaboration with a physician under s. 441.15 (2) (b) or under the direction and supervision of a physician or nurse anesthetist.

(8) "Health care provider" means a person to whom this chapter applies under s. 655.002 (1) or a person who elects to be subject to this chapter under s. 655.002 (2).

(9) "Nurse anesthetist" means a nurse licensed under ch. 441 or in a party state, as defined in s. 441.50 (2) (j), who is certified as a nurse anesthetist by the American association of nurse anesthetists.

(10) "Patient" means an individual who received or should have received health care services from a health care provider or from an employee of a health care provider acting within the scope of his or her employment.

(10m) "Physician" means a medical or osteopathic physician licensed under ch. 448.

(11) "Principal place of practice" means any of the following:

(a) The state in which a health care provider furnishes health care services to more than 50% of his or her patients in a fiscal year.

(b) The state in which a health care provider derives more than 50% of his or her income in a fiscal year from the practice of his or her profession.

(12) "Representative" means the personal representative, spouse, parent, guardian, attorney or other legal agent of a patient.

(13) "Respondent" means the person alleged to have been negligent in a request for mediation filed under s. 655.44 or 655.445.

History: 1975 c. 37, 79; 1977 c. 26 s. 75; 1977 c. 131; 1977 c. 203 s. 106; Sup. Ct. Order, 88 Wis. 2d xiii (1979); 1979 c. 124, 185,355; 1983 a. 189 s. 329 (5); 1985 a. 340; 1987 a. 27, 182,264,403; 1989 a. 187; 1991 a. 214; 1993 a. 473; 1995 a. 27 s. 9126 (19); 1999 a. 22; 2001 a. 52.

Medical malpractice panels: The Wisconsin approach. Kravat. 61 MLR 55. A summary of the new statutes governing medical malpractice. Saichek. WBB Oct. 1986.

Recent developments in Wisconsin medical malpractice law. 1974 WLR 891.

Testing the constitutionality of medical malpractice legislation: The Wisconsin medical malpractice act of 1975. 1977 WLR 838.

See also: *State* ex rel. *Strykowski* v. Wilkie, 81 Wis. 2d 491.

655.002 Applicability. (1) MANDATORY PARTICIPATION. Except as provided in s. 655.003, this chapter applies to all of the following:

(a) A physician or a nurse anesthetist for whom this state is a principal place of practice and who practices his or her profession in this state more than 240 hours in a fiscal year.

(b) A physician or a nurse anesthetist for whom Michigan is a principal place of practice, if all of the following apply:

1. The physician or nurse anesthetist is a resident of this state.

2. The physician or nurse anesthetist practices his or her profession in this state or in Michigan or a combination of both more than 240 hours in a fiscal year.

3. The physician or nurse anesthetist performs more procedures in a Michigan hospital than in any other hospital. In this subdivision, "Michigan hospital" means a hospital located in Michigan that is an affiliate of a corporation organized under the laws of this state that maintains its principal office and a hospital in this state.

(c) A physician or nurse anesthetist who is exempt under s. 655.003 (1) or (3), but who practices his or her profession outside the scope of the exemption and who fulfills the requirements under par.(a) in relation to that practice outside the scope of the exemption. For a physician or a nurse anesthetist who is subject to this chapter under this paragraph, this chapter applies only to claims arising out of practice that is outside the scope of the exemption under s. 655.003 (1) or (3).

(d) A partnership comprised of physicians or nurse anesthetists and organized and operated in this state for the primary purpose of providing the medical services of physicians or nurse anesthetists.

(e) A corporation organized and operated in this state for the primary purpose of providing the medical services of physicians or nurse anesthetists.

(f) A cooperative sickness care association organized under ss. 185.981 to 185.985 that operates a nonprofit sickness care plan in this state and that directly provides services through salaried employees in its own facility.

(g) An ambulatory surgery center that operates in this state.

(h) A hospital, as defined in s. 50.33 (2) (a) and (c), that operates in this state.

(i) An entity operated in this state that is an affiliate of a hospital and that provides diagnosis or treatment of, or care for, patients of the hospital.

(j) A nursing home, as defined in s. 50.01 (3), whose operations are combined as a single entity with a hospital described in par.(h), whether or not the nursing home operations are physically separate from the hospital operations.

(2) OPTIONAL PARTICIPATION. All of the following may elect, in the manner designated by the commissioner by rule under s. 655.004, to be subject to this chapter:

(a) A physician or nurse anesthetist for whom this state is a principal place of practice but who practices his or her profession fewer than 241 hours in a fiscal year, for a fiscal year, or a portion of a fiscal year, during which he or she practices his or her profession.

(b) Except as provided in sub.(1) (b), a physician or nurse anesthetist for whom this state is not a principal place of practice, for a fiscal year, or a portion of a fiscal year, during which he or she practices his or her profession in this state. For a health care provider who elects to be subject to this chapter under this paragraph, this chapter applies only to claims arising out of practice that is in this state and that is outside the scope of an exemption under s. 655.003 (1) or (3).

History: 1987 a. 27; 1991 a. 214.

In an action governed by ch. 655, no claim may be brought by adult children for loss of society and companionship of an adult parent; s. 895.04 is inapplicable to ch. 655 actions. Dziadosz v. Zirneski, 177 Wis. 2d 59, 501 N.W.2d 828 (Ct. App. 1993).

In an action governed by ch. 655, no recovery may be had by a parent for the loss of society and companionship of an adult child. Wells Estate v. Mt. Sinai Medical Center, 183 Wis. 2d 666, 515 N.W.2d 705 (1994).

Chapter 655 does not control all actions against HMO's. It applies only to negligent medical acts or decisions made in the course of rendering medical care. A bad faith tort action may be prosecuted against an HMO that has denied a request for coverage without a legal basis. McEvoy v. Group Health Cooperative, 213 Wis. 2d 507, 570 N.W.2d 397 (1997).

655.003 Exemptions for public employees and facilities and volunteers. Except as provided in s. 655.002 (1) (c), this chapter does not apply to a health care provider that is any of the following:

(1) A physician or a nurse anesthetist who is a state, county or municipal employee, or federal employee or contractor covered under the federal tort claims act, as amended, and who is acting within the scope of his or her employment or contractual duties.

(2) A facility that is exempt under s. 50.39 (3) or operated by any governmental agency.

(3) A physician or a nurse anesthetist who provides professional services under the conditions described in s. 146.89, with respect to those professional services provided by the physician or nurse anesthetist for which he or she is covered by s. 165.25 and considered an agent of the department, as provided in s. 165.25 (6) (b).

History: 1989 a. 187, 206; 1991 a. 214.

655.004 Rule–making authority. The director of state courts, department and commissioner may promulgate such rules under ch. 227 as are necessary to enable them to perform their responsibilities under this chapter.

History: 1975 c. 37; Sup. Ct. Order, 88 Wis. 2d xiii (1979); 1987 a. 27; Stats. 1987 s. 655.004; 1989 a. 187 s. 28.

Cross reference: See also ch. DC I, Wis. adm. code.

655.005 Health care provider employees. (1) Any person listed in s. 655.007 having a claim or a derivative claim against a health care provider or an employee of the health care provider, for damages for bodily injury or death due to acts or omissions of the employee of the health care provider acting within the scope of his or her employment and providing health care services, is subject to this chapter.

(2) The fund shall provide coverage, under s. *655.27*, for claims against the health care provider or the employee of the health care provider due to the acts or omissions of the employee acting within the scope of his or her employment and providing health care services. This subsection does not apply to any of the following:

(a) An employee of a health care provider if the employee is a physician or a nurse anesthetist or is a health care practitioner who is providing health care services that are not in collaboration with a physician under s. 441.15 (2) (b) or under the direction and supervision of a physician or nurse anesthetist.

(b) A service corporation organized under s. 180.1903 by health care professionals, as defined under s. 180.1901 (1m), if the board of governors determines that it is not the primary purpose of the service corporation to provide the medical services of physicians or nurse anesthetists. The board of governors may not determine under this paragraph that it is not the primary purpose of a service corporation to provide the medical services of physicians or nurse anesthetists unless more than 50% of the shareholders of the service corporation are neither physicians nor nurse anesthetists.

(2t) Subsection (2) does not affect the liability of a health care provider described in s. 655.002 (1) (d), (e) or (f) for the acts of its employees.

History: 1985 a. 340; 1987 a. 27; Stats. 1987 s. 655.005; 1989 a. 187; 1991 a. 214; 1993 a. 473; 1995 a. 167; 2001 a. 52.

655.006 Remedy. (1) (a) On and after July 24, 1975, every patient, every patient's representative and every health care provider shall be conclusively presumed to have accepted to be bound by this chapter.

(b) Except as otherwise specifically provided in this chapter, this subsection also applies to minors.

(2) This chapter does not apply to injuries or death occurring, or services rendered, prior to July 24, 1975.

History: 1975 c. 37; 1987 a. 27; Stats. 1987 s. 655.006.

655.007 Patients' claims. On and after July 24, 1975, any patient or the patient's representative having a claim or any spouse, parent, minor sibling or child of the patient having a derivative claim for injury or death on account of malpractice is subject to this chapter.

History: 1975 c. 31, 199; 1983 a. 253; 1997 a. 89.

This chapter was inapplicable to a 3rd–party claim based on contract in which no bodily injury was alleged. Northwest General Hospital v. Yee, 115 Wis. 2d 59, 339 N.W.2d 583 (1983).

In this section "child" refers to a minor child. An adult child cannot assert a claim based on medical malpractice committed against the adult child's parent. Ziulkowski v. Nierengarten, 210 Wis. 2d 98, 565 N.W.2d 164 (Ct. App. 1997).

Section 893.55 (4) (f) makes the limits on damages applicable to medical malpractice death cases, but does not incorporate classification of wrongful death claimants entitled to bring such actions, which is controlled by this section. As such, adult children do not have standing to bring such an action. The exclusion of adult children does not violate equal protection. Czapinski v. St. Francis Hospital, Inc. 2000 WI 80, 236 Wis. 2d 316, 613 N.W.2d 120

655.009 Actions against health care providers. An action to recover damages on account of malpractice shall comply with the following:

(1) COMPLAINT. The complaint in such action shall not specify the amount of money to which the plaintiff supposes to be entitled.

(2) MEDICAL EXPENSE PAYMENTS. The court or jury, whichever is applicable, shall determine the amounts of medical expense payments previously incurred and for future medical expense payments.

(3) VENUE. Venue in a court action under this chapter is in the county where the claimant resides if the claimant is a resident of this state, or in a county specified in s. 801.50 (2) (a) or (c) if the claimant is not a resident of this state.

History: 1975 c. 37, 198, 199; 1983 a. 253; 1985 a. 340.

Discretionary changes of venue under s. 801.52 are applicable to actions under ch. 655. Hoffman v. Memorial Hospital of Iowa County, 196 Wis. 2d 505, 538 N.W.2d 627 (Ct. App. 1995).

655.01 Forms. The director of state courts shall prepare and cause to be printed, and upon request furnish free of charge, such forms and materials as the director deems necessary to facilitate or promote the efficient administration of this chapter.

History: 1975 c. 37, 199; Sup. Ct. Order, 88 Wis. 2d xiii (1979); 1989 a. 187 s. 28.

655.013 Attorney fees. (1) With respect to any act of malpractice after July 24, 1975, for which a contingency fee arrangement has been entered into before June 14, 1986, the compensation determined on a contingency basis and payable to all attorneys acting for one or more plaintiffs or claimants is subject to the following unless a new contingency fee arrangement is entered into that complies with subs.(1m) and (1t):

(a) The determination shall not reflect amounts previously paid for medical expenses by the health care provider or the provider's insurer.

(b) The determination shall not reflect payments for future medical expense in excess of $25,000.

(1m) Except as provided in sub.(1t), with respect to any act of malpractice for which a contingency fee arrangement is entered

into on and after June 14, 1986, in addition to compensation for the reasonable costs of prosecution of the claim, the compensation determined on a contingency basis and payable to all attorneys acting for one or more plaintiffs or claimants is subject to the following limitations:

(a) Except as provided in par.(b), 33 1/3% of the first $1,000,000 recovered.

(b) Twenty–five percent of the first $1,000,000 recovered if liability is stipulated within 180 days after the date of filing of the original complaint and not later than 60 days before the first day of trial.

(c) Twenty percent of any amount in excess of $1,000,000 recovered.

(1t) A court may approve attorney fees in excess of the limitations under sub.(1m) upon a showing of exceptional circumstances, including an appeal.

(2) An attorney shall offer to charge any client in a malpractice proceeding or action on a per diem or per hour basis. Any such agreement shall be made at the time of the employment of the attorney. *An* attorney's fee on a per diem or per hour basis is not subject to the limitations under sub.(1) or (Im).

History: 1975 c. 37, 199; 1985 a. 340.

655.015 *Future* medical expenses. If a settlement or judgment under this chapter resulting from an act or omission that occurred on or after May 25, 1995, provides for future medical expense payments in excess of $100,000, that portion of future medical expense payments in excess of an amount equal to $100,000 plus an amount sufficient to pay the costs of collection attributable to the future medical expense payments, including attorney fees reduced to present value, shall be paid into the fund. The commissioner shall develop by rule a system for managing and disbursing those moneys through payments for these expenses, which shall include a provision for the creation of a separate accounting for each claimant's payments and for crediting each claimant's account with a proportionate share of any interest earned by the fund, based on that account's proportionate share of the fund. The commissioner shall promulgate a rule specifying the criteria that shall be used to determine the medical expenses related to the settlement or judgment, taking into consideration developments *in* the provision of health care. The payments shall be made under the system until either the account is exhausted or the patient dies.

History: 1975 c. 37; 1977 c. 29; 1979 c. 34, 154; 1983 a. 158; 1985 a. 340; 1991 a. 214; 1995 a. 10.

655.016 Claim by minor sibling for loss of society and companionship. Subject to s. 655.017, a sibling of a person who dies as a result of malpractice has a cause of action for damages for loss of society and companionship if the sibling was a minor at the time of the deceased sibling's death. This section does not affect any other claim available under this chapter.

History: 1997 a. 89.

655.017 Limitation on noneconomic damages. The amount of noneconomic damages recoverable by a claimant or plaintiff under this chapter for acts or omissions of a health care provider if the act or omission occurs on or after May 25, 1995, and for acts or omissions of an employee of a health care provider, acting within the scope of his or her employment and providing health care services, for acts or omissions occurring on or after May 25, 1995, is subject to the limits under s. 893.55 (4) (d) and (f).

History: 1985 a. 340; 1995 a. 10.

The statutory cap on the recovery of noneconomic damages in medical malpractice cases is constitutional. Guzman v. St. Francis Hospital, Inc. 2001 WI App 21, 240 Wis. 2d 559, 623 N.W.2d 776.

Tort Reform: It's Not About Victims. . .It's About Lawyers. Scoptur. Wis. Law. June 1995.

655.019 Information needed to set fees. The department shall provide the director of state courts, the commissioner and the board of governors with information on hospital bed capacity and occupancy rates as needed to set fees under s. 655.27 (3) or 655.61.

History: 1985 a. 340; 1989 a. 187 s. 28; 1991 a. 214.

SUBCHAPTER III
INSURANCE PROVISIONS

655.23 Limitations of liability; proof of financial responsibility. (3) (a) Except as provided in par.(d), every health care provider either shall insure and keep insured the health care provider's liability by a policy of health care liability insurance issued by an insurer authorized to do business in this state or shall qualify as a self–insurer. Qualification as a self–insurer is subject to conditions established by the commissioner and is valid only when approved by the commissioner. The commissioner may establish conditions that permit a self–insurer to self–insure for claims that are against employees who are health care practitioners and that are not covered by the fund.

(b) Each insurance company issuing health care liability insurance that meets the requirements of sub.(4) to any health care provider shall, at the times prescribed by the commissioner, file with the commissioner in a form prescribed by the commissioner a certificate of insurance on behalf of the health care provider upon original issuance and each renewal.

(c) Each self–insured health care provider furnishing coverage that meets the requirements of sub.(4) shall, at the times and in the form prescribed by the commissioner, file with the commissioner a certificate of self–insurance and a separate certificate of insurance for each additional health care provider covered by the self–insured plan.

(d) If a cash or surety bond furnished by a health care provider for the purpose of insuring and keeping insured the health care provider's liability was approved by the commissioner before April 25, 1990, par.(a) does not apply to the health care provider while the cash or surety bond remains in effect. A cash or surety bond remains in effect unless the commissioner, at the request of the health care provider or the surety, approves its cancellation.

(4) (a) A cash or surety bond under sub.(3) (d) shall be in amounts of at least $200,000 for each occurrence and $600,000 for all occurrences in any one policy year for occurrences before July 1, 1987, $300,000 for each occurrence and $900,000 for all occurrences in any one policy year for occurrences on or after July 1, 1987, and before July 1, 1988, and $400,000 for each occurrence and $1,000,000 for all occurrences in any one policy year for occurrences on or after July 1, 1988.

(b) 1. Except as provided in par.(c), before July 1, 1997, health care liability insurance may have provided either occurrence or claims–made coverage. The limits of liability shall have been as follows:

a. For occurrence coverage, at least $200,000 for each occurrence and $600,000 for all occurrences in any one policy year for occurrences before July 1, 1987, $300,000 for each occurrence and $900,000 for all occurrences in any one policy year for occurrences on or after July 1, 1987, and before July 1, 1988, and $400,000 for each occurrence and $1,000,000 for all occurrences in any one policy year for occurrences on or after July 1. 1988. and before Julv 1. 1997.

'b. For claims–made coverage, at least $200,000 for each claim arising from an occurrence before July 1, 1987, regardless of when the claim is made, and $600,000 for all claims in any one reporting year for claims made before July 1, 1987, $300,000 for each claim arising from an occurrence on or after July 1, 1987, and before July 1, 1988, regardless of when the claim is made, and $900,000 for all claims in any one reporting year for claims made on or after July 1, 1987, and before July 1, 1988, and $400,000 for each claim arising from an occurrence on or after July 1, 1988, and before July 1, 1997, regardless of when the claim is made, and $1,000,000 for all claims in any one reporting year for claims made on or after July 1, 1988, and before July 1, 1997.

2. Except as provided in par.(c), on and after July 1, 1997, health care liability insurance may provide either occurrence or claims–made coverage. The limits of liability shall be as follows:

a. For occurrence coverage, at least $1,000,000 for each occurrence and $3,000,000 for all occurrences in any one policy year for occurrences on or after July 1, 1997.

b. For claims–made coverage, at least $1,000,000 for each claim arising from an occurrence on or after July 1, 1997, and $3,000,000 for all claims in any one reporting year for claims made on or after July 1, 1997.

(c) 1. Except as provided in subd.2., self–insurance shall be in amounts of at least $200,000 for each occurrence and $600,000 for all occurrences in any one policy year for occurrences before July 1, 1987, $300,000 for each occurrence and $900,000 for all occurrences in any one policy year for occurrences on or after July 1, 1987, and before July 1, 1988, $400,000 for each occurrence and $1,000,000 for all occurrences in any one policy year for occurrences on or after July 1, 1988, and before July 1, 1997, and $1,000,000 for each occurrence and $3,000,000 for all occurrences in any one policy year for occurrences on or after July 1, 1997.

2. Notwithstanding subd.1., in the discretion of a self–insured health care provider, self–insurance may be in an amount that is less than $1,000,000 but not less than $600,000 for each occurrence on or after July 1, 1997, and before July 1, 1999, and less than $1,000,000 but not less than $800,000 for each occurrence on or after July 1, 1999, and before July 1, 2001.

(d) The commissioner may promulgate such rules as the commissioner considers necessary for the application of the liability limits under par.(b) to reporting years following termination of claims–made coverage, including rules that provide for the use of actuarial equivalents.

(5) While health care liability insurance, self–insurance or a cash or surety bond under sub.(3) (d) remains in force, the health care provider, the health care provider's estate and those conducting the health care provider's business, including the health care provider's health care liability insurance carrier, are liable for malpractice for no more than the limits expressed in sub.(4) or the maximum liability limit for which the health care provider is insured, whichever is higher, if the health care provider has met the requirements of this chapter.

(5m) The limits set forth in sub.(4) shall apply to any joint liability of a physician or nurse anesthetist and his or her corporation or partnership under s. 655.002 (1) (d) or (e).

(6) Any person who violates this section or **s.** 655.27 (3) (a) **is** subject to **s.** 601.64. For purposes of **s.** 601.64 (3) (c), each week of delay in compliance with this section or **s.** 655.27 (3) (a) constitutes a new violation.

(7) Each health care provider shall comply with this section and with **s.** 655.27 (3) (a) before exercising any rights or privileges conferred by his or her health care provider's license. The commissioner shall notify the board that issued the license of a health care provider that has not complied with this section or with s. 655.27 (3) (a). The board that issued the license may suspend, or refuse to issue or to renew the license of any health care provider violating this section or **s.** 655.27 (3) (a).

(8) No health care provider who retires or ceases operation after July 24, 1975, shall be eligible for the protection provided under this chapter unless proof of financial responsibility for all claims arising out of acts of malpractice occurring after July 24, 1975, is provided to the commissioner in the form prescribed by the commissioner.

History: 1975 c. 37, 79, 199; 1977 c. 131; 1983 a. 158; 1985 a. 340; 1989 a. 56 s. 259; 1989 a. 187 ss. 14 to 19, 29; 1989 a. 332; 1991 a. 214; 1993 a. 473; 1997 a. 11.

An insurer is liable under sub.(5) up to its policy limits. Patients Fund v. St. Paul Ins. Co. 116 Wis. 2d 537. 342 N.W.2d 693 (1984).

That a self–insurance plan could have or should have been approved is irrelevant. Under sub.(3) (a) the plan must actually be approved for a provider to be qualified as a self–insurer. Patients Compensation Fund v. St. Mary's Hospital, 209 Wis. 2d 17, 561 N.W.2d 797 (Ct. App. 1997).

Any liability of a person who is health care provider under ch. 655, while doing a provider's business, is limited to the amount of primary coverage mandated by sub.(4). Since the Fund is obligated to pay any amounts above this limit, the Fund does not have subrogation rights against the non–provider, or his or her insurer. Patients Compensation Fund v. Lutheran Hospital, 223 Wis. 2d 439, 588 N.W.2d 35 (1999).

This section is not preempted by federal law. Opthalmic Mutual Insurance Co. v. Muisser, 143 F.3d 1062 (1998).

655.24 Insurance policy forms. (1) No insurer may enter into or issue any policy of health care liability insurance until its policy form has been submitted to and approved by the commissioner under **s.** 631.20 (1) (a). The filing of a policy form by any insurer with the commissioner for approval shall constitute, on the part of the insurer, a conclusive and unqualified acceptance of all provisions of this chapter, and an agreement by it to be bound hereby as to any policy issued by it to any health care provider.

(1m) Notwithstanding sub.(1), the issuance of a policy of health care liability insurance by an insurer to a health care provider constitutes, on the part of the insurer, a conclusive and unqualified acceptance of all of the provisions of this chapter, and an agreement by it to be bound under the provisions of this chapter as to any policy issued by it to a health care provider.

(2) Every policy issued under this chapter shall be deemed conclusively to provide all of the following:

(a) That the insurer agrees to pay in full all of the following:

1. Attorney fees and other costs incurred in the settlement or defense of any claims.

2. Any settlement, arbitration award or judgment imposed against the insured under this chapter up to the limits expressed in s. 655.23 (4), or the maximum liability limit for which the health care provider is insured, whichever is greater.

3. Any portion or all of the interest, as determined by the board of governors, on an amount recovered against the insured under this chapter for which the insured is liable under s. 807.01 (4), 814.04 (4) or 815.05 (8).

(b) That any termination of the policy by cancellation or nonrenewal is not effective as to patients claiming against those covered by the policy unless the insured has been notified as provided in sub.(3) and **s.** 631.36, except that an insurer may cancel a health care provider's policy under s. 631.36 (2) if the health care provider is no longer licensed to practice medicine or nursing.

(3) A notice of cancellation or nonrenewal that is required under sub.(2) (b) issued to a health care provider who is a natural person must inform the health care provider that his or her license to practice medicine or nursing may be suspended or not renewed if the health care provider has no insurance or insufficient insurance. The insurer shall retain a copy of each notice issued under sub.(2) (b) for not less than 10 years from the date of mailing or delivery of the notice and shall furnish a copy to the commissioner upon request.

(4) The insurer shall, upon termination of a policy of health care liability insurance issued under this chapter by cancellation or nonrenewal, notify the commissioner of the termination.

History: 1975 c. 37; 1977 c. 131; 1985 a. 340; 1989 a. 187; 1991 a. 214; 1999 a. 9.

655.245 Insurance policy limitations. (1) No policy of health care liability insurance may permit a health care provider to reject any settlement agreed upon between the claimant and the insurer.

(2) A policy of health care liability insurance may permit the insurer to make payments for medical expenses prior to any determination of fault. Such payments are not an admission of fault. Such payments may be deducted from any judgment or arbitration award, but shall not be repaid regardless of the judgment or award. Nothing in this subsection shall restrict the insurer's right of comparative contribution or indemnity in accordance with the laws of this state.

History: 1975 c. 37.

655.25 Availability and effectiveness for health care liability insurance. No policy of health care liability insurance written under the provisions of **s.** 619.04 may be canceled or nonrenewed except for nonpayment of premiums unless the health care provider's license is revoked by the appropriate licensing board. A health care provider whose license is revoked shall be permitted to buy out in cases of a claims–made policy.

History: 1975 c. 37; 1995 a. 85.

655.26 Reports on claims paid. (1) In addition to any information required by the commissioner under s. 601.42, by the 15th day of each month, each insurer that writes health care liability insurance in this state and each self–insurer approved under **s.** 655.23 (3) (a) shall report the following information to the medical examining board and the board of governors on each claim paid during the previous month for damages arising out of the rendering of health care services:

(a) The name and address of the policyholder or self–insured entity and the name and address of any individual on whose behalf the claim was paid.

(b) The profession of the individual or the type of facility or entity on whose behalf the claim was paid.

(c) The health care provider's medical specialty, if the provider is a physician.

(d) A description of the injury, including its cause and severity.

(e) Whether the claim was paid as a result of a settlement, a patients compensation panel award or a court award.

(f) The amount of the payment.

(g) The number and amounts of any previous claims paid by the insurer or self–insurer for damages arising out of the rendering of health care services by the insured, the self–insurer or the employees of the insured or self–insurer. Only claims paid on or after July 20, 1985, are required to be reported under this paragraph.

(h) Any additional information requested by the medical examining board or the board of governors.

(2) By the 15th day of each month, the board of governors shall report the information specified in sub.(1) to the medical examining board for each claim paid by the fund during the previous month for damages arising out of the rendering of health care services by a health care provider or an employee of a health care provider.

(3) If more than one payment will be made on a claim, the first report filed under sub.(1) or (2) after the first payment is made on the claim shall include the total amount of the award or settlement and the projected schedule and amounts of payments.

(4) Any person who in good faith provides information to the medical examining board or the board of governors under this section is immune from civil liability for his or her acts or omissions in providing such information.

History: 1985 a. 29,340; 1989 a. 187; 1991 a. 214.

SUBCHAPTER IV
PATIENTS COMPENSATION FUND

655.27 Patients compensation fund. (1) FUND. There is created a patients compensation fund for the purpose of paying that portion of a medical malpractice claim which is in excess of the limits expressed in **s.** 655.23 (4) or the maximum liability limit for which the health care provider is insured, whichever limit is greater, paying future medical expense payments under s. 655.015 and paying claims under sub.(1m). The fund shall provide occurrence coverage for claims against health care providers that have complied with this chapter, and against employees of those health care providers, and for reasonable and necessary expenses incurred in payment of claims and fund administrative expenses. The coverage provided by the fund shall begin July 1, 1975. The fund shall not be liable for damages for injury or death caused by an intentional crime, as defined under s. 939.12, committed by a health care provider or an employee of a health care provider, whether or not the criminal conduct is the basis for a medical malpractice claim.

(1m) PEER REVIEW ACTIVITIES. (a) The fund shall pay that portion of a claim described in par.@) against a health care provider that exceeds the limit expressed in **s.** 655.23 (4) or the maximum liability limit for which the health care provider is insured, whichever limit is greater.

(b) A health care provider who engages in the activities described in s. 146.37 (1g) and (3) shall be liable for not more than the limits expressed under s. 655.23 (4) or the maximum liability limit for which the health care provider is insured, whichever limit is greater, if he or she is found to be liable under s. 146.37, and the fund shall pay the excess amount, unless the health care provider is found not to have acted in good faith during those activities and the failure to act in good faith is found by the trier of fact, by clear and convincing evidence, to be both malicious and intentional.

(2) FUND ADMINISTRATION AND OPERATION. Management Of the fund shall be vested with the board of governors. The commissioner shall either provide staff services necessary for the operation of the fund or, with the approval of the board of governors, contract for all or part of these services. Such a contract is subject to s. 16.765, but is otherwise exempt from subch. IV of ch. 16. The commissioner shall adopt rules governing the procedures for creating and implementing these contracts before entering into the contracts. At least annually, the contractor shall report to the commissioner and to the board of governors regarding all expenses incurred and subcontracting arrangements. If the board of governors approves, the contractor may hire legal counsel as needed to provide staff services. The cost of contracting for staff services shall be funded from the appropriation under **s.** 20.145 (2) (u).

(3) FEES **(a)** ***Assessment.*** Each health care provider shall pay an annual assessment, which, subject to pars.(b) to (br), shall be based on the following considerations:

1. Past and prospective loss and expense experience in different types of practice.

2. The past and prospective loss and expense experience of the fund.

2m. The loss and expense experience of the individual health care provider which resulted in the payment of money, from the fund or other sources, for damages arising out of the rendering of medical care by the health care provider or an employee of the health care provider, except that an adjustment to a health care provider's fees may not be made under this subdivision prior to the receipt of the recommendation of the patients compensation fund peer review council under s. 655.275 *(5)* (a) and the expiration of the time period provided, under **s.** 655.275 (7), for the health care provider to comment or prior to the expiration of the time period under **s.** 655.275 (5) (a).

3. Risk factors for persons who are semiretired or part–time professionals.

4. For a health care provider described in **s.** 655.002 (1) (d), (e) or (f), risk factors and past and prospective loss and expense experience attributable to employees of that health care provider other than employees licensed as a physician or nurse anesthetist.

(am) ***Assessments for peer review council.*** The fund, a mandatory health care liability risk–sharing plan established under s. 619.04 and a private health care liability insurer shall be assessed, as appropriate, fees sufficient to cover the costs of the patients compensation fund peer review council, including costs of administration, for reviewing claims paid by the fund, plan and insurer, respectively, under s. 655.275 (5). The fees shall be set by the commissioner by rule, after approval by the board of governors, and shall be collected by the commissioner for deposit in the fund. The costs of the patients compensation fund peer review council shall be funded from the appropriation under s. 20.145 (2) (um).

(b) ***Fees established.*** 1. The commissioner, after approval by the board of governors, shall by rule set the fees under par.(a). The rule shall provide that fees may be paid annually or in semiannual or quarterly installments. In addition to the prorated portion of the annual fee, semiannual and quarterly installments shall include an amount sufficient to cover interest not earned and administrative costs incurred because the fees were not paid on an annual basis. This paragraph does not impose liability on the board of governors for payment of any part of a fund deficit.

2. With respect to fees paid by physicians, the rule shall provide for not more than 4 payment classifications, based upon the amount of surgery performed and the **risk** of diagnostic and therapeutic services provided or procedures performed.

2m. In addition to the fees and payment classifications described under subds.1. and 2., the commissioner, after approval by the board of governors, may by rule establish a separate payment classification for physicians satisfying **s.** 655.002 (1) (b) and a separate fee for nurse anesthetists satisfying **s.** 655.002 (1) (b) which take into account the loss experience of health care providers for whom Michigan is a principal place of practice.

(bg) ***Fee increase.*** 1. Every rule under par.(b) shall provide for an automatic increase in a health care provider's fees, except as provided in subd.2., if the loss and expense experience of the fund and other sources with respect to the health care provider or an employee of the health care provider exceeds either a number of claims paid threshold or a dollar volume of claims paid threshold, both as established in the rule. The rule shall specify applicable amounts of increase corresponding to the number of claims paid and the dollar volume of awards in excess of the respective thresholds.

2. The rule shall provide that the automatic increase does not apply if the board of governors determines that the performance of the patients compensation fund peer review council in making recommendations under **s.** 655.275 (5) (a) adequately addresses the consideration set forth in par.(a) 2m.

(br) ***Limit on fees.*** Every rule setting fees for a particular fiscal year under par.(b) shall ensure that the fees assessed do not exceed the greatest of the following:

I. The estimated total dollar amount of claims to be paid during that particular fiscal year.

2. The fees assessed for the fiscal year preceding that particular fiscal year, adjusted by the commissioner of insurance to reflect changes in the consumer price index for all urban consumers, U.S. city average, for the medical care group, as determined by the U.S. department of labor.

3. Two hundred percent of the total dollar amount disbursed for claims during the calendar year preceding that particular fiscal year.

(c) Collection arid deposit of fees. Fees under pars.(a) and (b) and future medical expense payments specified for the fund under s. 655.015 shall be collected by the commissioner for deposit into the fund in a manner prescribed by the commissioner by rule.

(d) ***Rule not effective; fees.*** If the rule establishing fees under par.(b) does not take effect prior to June 2 of any fiscal year, the commissioner may elect to collect fees as established for the previous fiscal year. If the commissioner so elects and the rule subsequently takes effect, the balance for the fiscal year shall be collected or refunded or the remaining semiannual or quarterly installment payments shall be adjusted except the commissioner may elect not to collect, refund or adjust for minimal amounts.

(e) Podiatrist fees. The commissioner, after approval by the board of governors, may by rule assess fees against podiatrists for the purpose of paying the fund's portion of medical malpractice claims and expenses resulting from claims against podiatrists based on occurrences before July 1, 1986.

(4) FUND ACCOUNTING AND AUDIT. (a) Moneys shall be withdrawn from the fund by the commissioner only upon vouchers approved and authorized by the board of governors.

(b) **All** books, records and audits of the fund shall be open to the general public for reasonable inspection, with the exception of confidential claims information.

(c) Persons authorized to receive deposits, withdraw, issue vouchers or otherwise disburse any fund moneys shall post a blanket fidelity bond in an amount reasonably sufficient to protect fund assets. The cost of such bond shall be paid from the fund.

(d) Annually after the close of a fiscal year, the board of governors shall furnish a financial report to the commissioner. The report shall be prepared in accordance with accepted accounting procedures and shall include the present value of all claims reserves, including those for incurred but not reported claims as determined by accepted actuarial principles, and such other information as may be required by the commissioner. The board of governors shall furnish an appropriate summary of this report to all fund participants.

(e) The board of governors shall submit a quarterly report to the state investment board and the department of administration projecting the future cash flow needs of the fund. The state investment board shall invest moneys held in the fund in investments with maturities and liquidity that are appropriate for the needs of the fund as reported by the board of governors in its quarterly reports under this paragraph. All income derived from such investments shall be credited to the fund.

(f) The board of governors shall submit a functional and progress report to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under **s.** 13.172(3), on or before March 1 of each year.

(g) The hoard of governors may cede reinsurance to an insurer authorized to do business in this state under ch. 611, 613, 614 or 618 or pursue other loss funding management to preserve the solvency and integrity of the fund, subject to approval by the commissioner. The commissioner may prescribe controls over or other conditions on such use of reinsurance or other loss–funding management mechanisms.

(5) CLAIMS PROCEDURES. (a) 1. Any person may file a claim for damages arising out of the rendering of medical care or services or participation in peer review activities under s. 146.37 within this state against a health care provider or an employee of a health care provider. A person filing a claim may recover from the fund only if the health care provider or the employee of the health care provider has coverage under the fund, the fund is named as a party in the action, and the action against the fund is commenced within the same time limitation within which the action against the health care provider or employee of the health care provider must be commenced.

2. Any person may file an action for damages arising out of the rendering of medical care or services or participation in peer review activities under s. 146.37 outside this state against a health care provider or an employee of a health care provider. A person filing an action may recover from the fund only if the health care provider or the employee of the health care provider has coverage under the fund, the fund is named as a party in the action, and the action against the fund is commenced within the same time limitation within which the action against the health care provider or employee of the health care provider must be commenced. If the rules of procedure of the jurisdiction in which the action is brought do not permit naming the fund as a party, the person filing the action may recover from the fund only if the health care provider or the employee of the health care provider has coverage under the fund and the fund is notified of the action within 60 days of service of process on the health care provider or the employee of the health care provider. The board of governors may extend this time limit if it finds that enforcement of the time limit would be prejudicial to the purposes of the fund and would benefit neither insureds nor claimants.

3. If, after reviewing the facts upon which the claim or action is based, it appears reasonably probable that damages paid will exceed the limits in **s.** 655.23 (4), the fund may appear and actively defend itself when named as a party in an action against a health care provider, or **an** employee of a health care provider, that has coverage under the fund. In such action, the fund may retain counsel and pay out of the fund attorney fees and expenses including court costs incurred in defending the fund. The attorney or law firm retained to defend the fund shall not be retained or employed by the board of governors to perform legal services for the board of governors other than those directly connected with the fund. Any judgment affecting the fund may be appealed as provided by law. The fund may not be required to file any undertaking in any judicial action, proceeding or appeal.

(b) **It** shall be the responsibility of the insurer or self–insurer providing insurance or self–insurance for a health care provider who is also covered by the fund to provide an adequate defense of the fund on any claim filed that may potentially affect the fund with respect to such insurance contract or self–insurance contract. The insurer or self–insurer shall act in good faith and in a fiduciary relationship with respect to any claim affecting the fund. No settlement exceeding an amount which could require payment by the fund may be agreed to unless approved by the board of governors.

(c) It shall be the responsibility of any health care provider with a cash or surety bond in effect under **s.** 655.23 (3) (d) to provide an adequate defense of the fund on any malpractice claim filed or any claim filed under sub.(1m) that may potentially affect the fund. The health care provider shall act in good faith and in a fiduciary relationship with respect to any claim affecting the fund. No settlement exceeding **an** amount which could require payment by the fund may be agreed to unless approved by the board of governors.

(d) A person who has recovered a final judgment or a settlement approved by the board of governors against a health care provider, or an employee of a health care provider, that has coverage under the fund may file a claim with the board of governors to recover that portion of such judgment or settlement which is in excess of the limits in **s.** 655.23 (4) or the maximum liability limit for which the health care provider is insured, whichever limit is greater. In the event the fund incurs liability for future payments exceeding $1,000,000 to any person under a single claim as the result of a settlement or judgment that is entered into or rendered under this chapter for an act or omission that occurred on or after May 25, 1995, the fund shall pay, after deducting the reasonable costs of collection attributable to the remaining liability, including attorney fees reduced to present value, the full medical expenses each year, plus an amount not to exceed $500,000 per year that will pay the remaining liability over the person's anticipated lifetime, or until the liability is paid in full. If the remaining liability is not paid before the person dies, the fund may pay the remaining liability in a lump sum. Payments shall be made from money collected and paid into the fund under sub.(3) and from interest earned thereon. For claims subject to a periodic payment made under this paragraph, payments shall be made until the claim has been paid in full, except as provided in **s.** 655.015. Periodic payments made

under this paragraph include direct or indirect payment or commitment of moneys to or on behalf of any person under a single claim by any funding mechanism. No interest may be paid by the fund on the unpaid portion of any claim filed under this paragraph, except as provided under **s.** 807.01 (4), 814.04 (4) or 815.05 (8).

(e) Claims filed against the fund shall be paid in the order received within 90 days after filing unless appealed by the fund. If the amounts in the fund are not sufficient to pay all of the claims, claims received after the funds are exhausted shall be immediately payable the following year in the order in which they were received.

(6) INTEGRITY OF FUND. The fund shall be held in trust for the purposes of this chapter and may not be used for purposes other than those of this chapter.

(7) ACTIONS AGAINST INSURERS, SELF–INSURERS OR PROVIDERS. The board of governors may bring an action against an insurer, self–insurer or health care provider for failure to act in good faith or breach of fiduciary responsibility under sub.(5) (b) or (c).

History: 1975 c. 37, 79, 199; 1977 c. 29, 131; 1979 c. 34, 194; 1981 c. 20; 1983 a. 27, 158; 1985 a. 340; 1987 a. 27, 186,247, 399; 1989 a. 102, 187,332; 1991 a. 214, 315; 1993 a. 473; 1995 a. 10; 2001 a. 65.

The patients compensation fund has the authority to **sue** an insurer that refuses to contribute to the settlement of a claim against its insured. Wisconsin Patients Compensation Fund v. WHCLIP, 200 Wis. 2d 599,547 N.W.2d 578 (1996).

The denial of a postverdict motion to add the Fund to an action where an excess verdict was returned was appropriate. Granting the motion would have denied the fund's right under sub.(5) to appear and actively defend itself in the action. Goff v. Seldera, 202 Wis. 2d 601,550 N.W.2d 144(Ct. App. 1996).

Sub.(4) (h) does not provide an "explicit and unequivocal" exemption to the open records law. Any denial of an open records request under this section must state with "sufficient specificity" a public policy reason for refusing to release the requested records. Chavala v. Bubolz, 204 Wis. 2d 82,552 N.W.2d 892 (Ct. App. 1996).

When a hospital's violation of the federal Emergency Medical Treatment and Active Labor Act for failure to provide treatment results from a negligent medical act or a decision made in rendering care, the Fund has an obligation to provide excess coverage. When the hospital's violation **results** from an economic decision, the fund has no duty to provide coverage. Burks v. St. Joseph Hospital, 227 Wis. 2d 811, 596 N.W.2d 391 (1999).

A medical malpractice plaintiff is required to name the fund as a party but may **do** so after the period prescribed in **s.** 893.55 has passed so long as the health care providers are sued before the statute of limitations has run. Anderson v. Sauk Prairie Memorial Hospital, 2000 WI App 108,235 Wis. 2d 249,612 N.W.2d 369.

The requirement in sub.(5) (b) that the primary insurer provide the Fund an adequate defense does not require that the insurer's attorneys must assume an attorney–client relationship with the fund. Patients Compensation Fund **v.** Physicians Insurance Co. of Wisconsin, 2000 WI App 248,239 Wis. 2d 360,620 N.W.2d 457.

655.275 Patients compensation fund peer review council. (1) DEFINITION. In this section, "council" means the patients compensation fund peer review council.

(2) APPOINTMENT. The board of governors shall appoint the members of the council. Section 15.09, except **s.** 15.09 (4) and (8), does not apply to the council. The board of governors shall designate the chairperson, vice chairperson and secretary of the council and the terms to be served by council members. The council shall consist of 5 persons, not more than 3 of whom are physicians who are actively engaged in the practice of medicine in this state. The chairperson shall be a physician and shall serve as an ex officio nonvoting member of the medical examining board.

(3) MEETINGS. The council shall meet at the call of the chairperson of the board of governors or the chairperson of the council. The council shall meet at the location determined by the person calling the meeting.

(4) REPORTS. The council shall submit to the chairperson of the board of governors, upon request of the chairperson but not more often than annually, a report on the operation of the council.

(5) DUTIES. (a) The council shall review, within one year of the date of first payment on the claim, each claim that is paid by the fund, a mandatory health care liability risk–sharing plan established under *s.* 619.04, a private health care liability insurer or a self–insurer for damages arising out of the rendering of medical care by a health care provider or an employee of the health care provider and shall make recommendations to all of the following:

1. The commissioner and the board of governors regarding any adjustments to be made, under s. 655.27 (3) (a) 2m., to fund fees assessed against the health care provider, based on the paid claim.

2. The commissioner and the board of governors regarding any adjustments to be made, under s. 619.04 (5) (b), to premiums assessed against a physician under a mandatory health care liability risk–sharing plan established under **s.** 619.04, based on the paid claim.

3. **A** private health care liability insurer regarding adjustments to premiums assessed against a physician covered by private insurance, based on the paid claim, if requested by the private insurer.

(b) In developing recommendations under par.(a), the council may consult with any person and shall consult with the following:

1. If a claim was paid for damages arising out of the rendering of care by a physician, with at least one physician from the area of medical specialty of the physician who rendered the care and with at least one physician from the area of medical specialty of the medical procedure involved, if the specialty area of the procedure is different than the specialty area of the physician who rendered the care.

2. If a claim was paid for damages arising out of the rendering of care by a nurse anesthetist, with at least one nurse anesthetist.

(6) FEES. Fees sufficient to cover the council's costs, including costs of administration, shall be collected under s. 655.27 (3) (am).

(7) NOTICE OF RECOMMENDATION. The council shall notify the affected health care provider, in writing, of its recommendations to the commissioner, the board of governors or a private insurer made under sub.(5). The notice shall inform the health care provider that the health care provider may submit written comments on the council's recommendations to the commissioner, the board of governors or the private insurer within a reasonable period of time specified in the notice.

(8) PATIENT RECORDS. The council may obtain any information relating to any claim it reviews under this section that is in the possession of the commissioner or the board of governors. The council shall keep patient health care information confidential as required by s. 146.82 (2) (b).

(9) **IMMUNITY.** Members of the council and persons consulting with the council under sub.(5) (b) are immune from civil liability for acts or omissions while performing their duties under this section.

(10) MEMBERS AND CONSULTANTS' EXPENSES. Notwithstanding *s.* 15.09 (6), any person serving on the council and any person consulting with the council under sub.(5) (b) shall be paid at a rate established by the commissioner by rule.

History: 1985 a. 340; 1989 a. 187; 1991 a. 214, 315; 1999 a. 9.

SUBCHAPTER VI
MEDIATION SYSTEM

655.42 Establishment of mediation system. (1) LEGISLATIVE INTENT. The legislature intends that the mediation system provide the persons under sub.(2) with an informal, inexpensive and expedient means for resolving disputes without litigation and intends that the director of state courts administer the mediation system accordingly.

(2) MEDIATION SYSTEM. The director of state courts shall establish a mediation system complying with this subchapter not later than September 1, 1986. The mediation system shall consist of mediation panels that assist in the resolution of disputes, regarding medical malpractice, between patients, their representatives, spouses, parents or children and health care providers.

History: 1985 a. 340; 1989 a. 187 s. 28.

655.43 Mediation requirement. The claimant and all respondents named in a request for mediation filed under **s.** 655.44 or 655.445 shall participate in mediation under this subchapter.

History: 1985 a. 340.

655.44 Request for mediation prior to court action. (1) REQUEST AND FEE. Beginning September 1, 1986, any person listed in **s.** 655.007 having a claim or a derivative claim under this chapter for bodily injury or death because of a tort or breach of contract based on professional services rendered or that should have been rendered by a health care provider may file a request for mediation and shall pay the fee under s. 655.54.

(2) CONTENT OF REQUEST. The request for mediation shall be in writing and shall include all of the following information:

(a) The claimant's name and city, village or town, county and state of residence.

(b) The name of the patient.

(c) The name and address of the health care provider alleged to have been negligent in treating the patient.

(d) The condition or disease for which the health care provider was treating the patient when the alleged negligence occurred and the dates of treatment.

(e) A brief description of the injury alleged to have been caused by the health care provider's negligence.

(3) DELIVERY OR REGISTERED MAIL. The request for mediation shall be delivered in person or sent by registered mail to the director of state courts.

(4) STATUTE OF LIMITATIONS. Any applicable statute of limitations is tolled on the date the director of state courts receives the request for mediation if delivered in person or on the date of mailing if sent by registered mail. The statute remains tolled until 30 days after the last day of the mediation period under s. 655.465 (7).

(5) NO COURT ACTION COMMENCED BEFORE MEDIATION. Except as provided in s. 655.445, no court action may be commenced unless a request for mediation has been filed under this section and until the expiration of the mediation period under s. 655.465 (7).

(6) NOTICE OF COURT ACTION TO DIRECTOR OF STATE COURTS. A claimant who files a request for mediation under this section and who commences a court action after the expiration of the mediation period under s. 655.465 (7) shall send notice of the court action by 1st class mail to the director of state courts.

History: 1985 a. 340; 1989 a. 187 s. 28.

A request for mediation of a claim naming only one doctor did not toll the statute of limitations applicable to claims against doctors not named in the mediation request. Dipple v. Wisconsin Patients Compensation Fund, 161 Wis. 2d 854, 468 N.W.2d 789 (Ct. App. 1991).

When a care provider was deceased, it was sufficient to name the deceased provider in the mediation request rather than a legal entity, such as the estate or the provider's insurer. In that case, the tolling of the statute of limitations under sub.(4) is effective against an insurer and the Wisconsin Patients Compensation Fund. Failure to name the Fund as a party to an action brought against the insurer within the 30–day period under sub.(4) barred the claim against the fund. Geiger v. Wisconsin Health Care Liability Insurance Plan, 196 Wis. 2d 474, 538 N.W.2d 830 (Ct. App. 1995).

The limitation periods under s. 893.55 (1) (a) and (b) are both tolled by the filing of a request for mediation under sub.(4). Landis v. Physicians Insurance Company of Wis. Inc., 2001 WI 86, 245 Wis. 2d 1, 628 N.W.2d 893.

Sub.(5) does not mandate dismissal for filing an action before the expiration of the statutory mediation period. When a plaintiff fails to comply with sub.(5), the circuit court retains discretion to determine the appropriate sanction. Ocasio v. Froedtert Memorial Lutheran Hospital, 2002 WI 89, ___ Wis. 2d ___, 646 N.W.2d 381.

Delivery of a mediation request by regular mail is not determinative of the validity of the request Geisel v. Odulio, 807 F. Supp. 500 (1992).

Failure to name the patient compensation fund in a mediation request did not exempt the fund from the tolling of the statute of limitations under sub.(4). Geisel v. Odulio, 807 F. Supp. 500 (1992).

655.445 Request for mediation in conjunction with court action. (1) COMMENCING ACTION, REQUEST AND FEE. Beginning September 1, 1986, any person listed in s. 655.007 having a claim or a derivative claim under this chapter for bodily injury or death because of a tort or breach of contract based on professional services rendered or that should have been rendered by a health care provider shall, within 15 days after the date of filing an action in court, file a request for mediation. The request shall be prepared and delivered in person or sent by registered mail to the director of state courts, in the form and manner required under s. 655.44 (2) and (3), together with a notice that a court action has been commenced and the fee under s. 655.54 shall be paid.

(2) SCHEDULING. All time periods under s. 802.10 (3) are tolled on the date of filing the court action. The time periods remain tolled until the expiration of the mediation period under s. 655.465 (7).

(3) NO COURT PROCEEDINGS BEFORE MEDIATION. For actions filed under sub.(1), no discovery may be made and no trial, pretrial conference or scheduling conference may be held until the expiration of the mediation period under s. 655.465 (7).

History: 1985 a. 340; 1989 a. 187 s. 28; Sup. Ct Order No. 95-04, 191 Wis. 2d xxi (1995).

Mailing is not the equivalent of filing. Mailing is to send postal matter. Filing entails delivery to the intended recipient. Hoffman v. Rankin, 2002 WI App 189, ___ Wis. 2d ___, 649 N.W.2d 350.

655.45 Reports to licensing bodies. (1) For the quarter beginning on July 1, 1986, and for each quarter thereafter, the director of state courts shall file reports complying with sub.(2) with the medical examining board, the physical therapists affiliated credentialing board, the podiatrists affiliated credentialing board, the board of nursing and the department, respectively, regarding health care providers licensed by the respective bodies.

(1m) For the quarter beginning on July 1, 1995, and for each quarter thereafter, the director of state courts shall file reports complying with sub.(2) with the dietitians affiliated credentialing board regarding health care providers certified by the dietitians affiliated credentialing board.

(2) The reports under subs.(1) and (1m) shall set forth all of the following:

(a) The names of all health care providers who are named as defendants in court actions of which the director of state courts receives notice under s. 655.44 (6) or 655.445 (1) during the quarter.

(b) Whether any court action of which the director of state courts received notice under s. 655.44 (6) or 655.445 (1) was disposed of by settlement, compromise, stipulation agreement, dismissal default or judgment during the quarter and the amount of the settlement or award to the claimant, if any, to the extent the director of state courts has any of the information under this paragraph.

History: 1985 a. 340; 1989 a. 187 s. 28; 1993 a. 107, 443; 1997 a. 75, 175.

655.455 Notice to health care providers and fund. The director of state courts shall serve notice of a request for mediation upon all health care providers named in the request, at the respective addresses provided in the request, and upon the fund, by registered mail within 7 days after the director of state courts receives the request if delivered in person or within 10 days after the date of mailing of the request to the director of state courts if sent by registered mail.

History: 1985 a. 340; 1989 a. 187 s. 28; 2001 a. 65.

15–day time limit for filing request for mediation after commencement of court action is directory, rather than mandatory. Eby v. Kozarek, 153 Wis. 2d 75, 450 N.W.2d 249 (1990).

655.465 Mediation panels; mediation period. (1) MEDIATION PANEL FOR DISPUTE. The director of state courts shall appoint the members of a mediation panel under sub.(2) and send notice to the claimant and all respondents by registered mail. The notice shall inform the claimant and all respondents of the names of the persons appointed to the mediation panel and the date, time and place of the mediation session. The director of state courts may change the date, time or place of the mediation session as necessary to accommodate the parties, subject to the requirement that the mediation session be held before the expiration of the mediation period under sub.(7).

(2) APPOINTMENT OF MEDIATORS. Each mediation panel shall consist of the following members appointed by the director of state courts:

(a) One public member who is neither an attorney nor a health care provider and who is selected from a list of public member mediators prepared every 2 years, or more frequently upon request of the director of state courts, by the governor or, if any person resigns or is unable to serve as a public member mediator, from a list of alternates prepared by the director of state courts.

(b) One attorney who is licensed to practice law in this state.

(c) One health care provider as follows:

1. Except as provided in subds.4. and 5., if all respondents named in the request for mediation are physicians, a physician who is licensed to practice in this state and who is selected from a list prepared by a statewide organization of physicians designated by the director of state courts.

2. Except as provided in subds.4. and 5., if none of the respondents named in the request for mediation is a physician, a health care provider who is licensed to practice in this state in the same health care field as the respondent and who is selected from a list prepared by the department or the examining board or affiliated credentialing board that regulates health care providers in that health care field.

3. Except as provided in subds.4. and 5., if more than one respondent is named in the request for mediation at least one of whom is a physician and at least one of whom is not, a health care provider who is licensed to practice in this state and who is

selected from the list under subd.1. or 2., as determined by the director of state courts.

4. If the director of state courts determines that a list under subd.1. or 2. is inadequate to permit the selection of an appropriate health care provider, a health care provider who is licensed to practice in this state and who is selected from an additional list prepared by the director of state courts.

5. If the director of state courts determines that lists under subds.1. or 2. and 4. are inadequate to permit the selection of an appropriate health care provider for a particular dispute, a health care provider who is licensed to practice in this state and who is selected by the director of state courts.

(3) FILLING VACANCIES. If a person appointed to a mediation panel under sub.(1) resigns from or is unable to serve on the mediation panel, the director of state courts shall appoint a replacement selected in the same manner as the predecessor appointee.

(4) CONFLICT OF INTEREST. No person may serve on a mediation panel if the person has a professional or personal interest in the dispute.

(5) **COMPENSATION.** Each mediator shall be compensated $150 plus actual and necessary expenses for each day of mediation conducted. Compensation and expenses shall be paid out of the appropriation under s. 20.680 (2) (qm) upon such authorizations as the director of state courts may prescribe.

(6) IMMUNITY AND PRESUMPTION OF GOOD FAITH. (a) A mediator is immune from civil liability for any good faith act or omission within the scope of the mediator's performance of his or her powers and duties under this subchapter.

(b) It is presumed that every act or omission under par.(a) is a good faith act or omission. This presumption may be overcome only by clear and convincing evidence.

(7) MEDIATION PERIOD. The period for mediation shall expire 90 days after the director of state courts receives a request for mediation if delivered in person or within 93 days after the date of mailing of the request to the director of state courts if sent by registered mail, or within a longer period agreed to by the claimant and all respondents and specified by them in writing for purposes of applying ss. 655.44 (4) and (5) and 655.445 (3).

History: 1985 a. 340; 1989 a. 187 s. 28; 1989 a. 359; 1993 a. 107.

A claimant's failure to participate in mediation within the 90-day period under sub.(7) does not require dismissal. The court may determine appropriate the sanction. Schulz v. Nienhuis, 152 Wis. 2d 434,448 N.W.2d 655 (1989).

If a party wishes to reschedule a mediation **session** for a time outside the 90-day statutory period, the party must obtain a written agreement to do so. If a respondent requests a rescheduling without providing a mutually agreed upon date within the 90 days and no written agreement is obtained, the mediation period does not terminate until the rescheduled mediation session is completed. Seaquist v. Physicians Ins, Co. 192 Wis. 2d 530,531 N.W.2d 437 (Ct. App. 1995).

Completion of mediation within the period under sub.(7) is not a jurisdictional prerequisite for maintenance of a medical malpractice suit. Bertorello v. St. Joseph's Hospital of Marshfield, 685 F. Supp. 192 (W. D. Wis. 1988).

655.54 Filing fee. Requests for mediation filed with the director of state courts are subject to a filing fee of $11. The filing fee shall be paid into the mediation fund under s. 655.68.

History: 1985 a. 340; 1989 a. 187 s. 28.

655.58 Mediation procedure. (1) NO RECORD. Mediation shall be conducted without a stenographic record or any other transcript.

(2) NO EXAMS, SUBPOENAS, OATHS. No physical examinations or production of records may be ordered, no witnesses may be subpoenaed and no oaths may be administered in mediation, whether by a mediation panel or member thereof or as a result of application to a court by any person.

(3) NO EXPERT WITNESSES; PANEL CONSULTANTS PERMITTED.

(a) Except as provided in par.(b), no expert witnesses, opinions or reports may be submitted or otherwise used in mediation.

(b) The mediation panel or any member thereof may consult with any expert, and upon authorization of the director of state courts may compensate the expert from the appropriation under s. 20.680 (2) (qm).

(4) PATIENT RECORDS CONFIDENTIAL EXCEPT TO PARTIES. All patient health care records in the possession of a mediation panel shall be kept confidential by all members of the mediation panel and all other persons participating in mediation. Every person participating in mediation shall make available to one another and all members of the mediation panel all patient health care records of the patient named in the request for mediation that are in the person's possession.

(5) **COUNSEL PERMITTED.** Any person participating in mediation may be represented by counsel authorized to act for his or her respective client.

History: 1985 a. 340; 1989 a. 187 s. 28.

655.61 Funding. (1) The mediation fund created under s. 655.68 shall be financed from fees charged to health care providers. The director of state courts shall, by February 1 annually, determine the revenues needed for the operation of the mediation system during the succeeding fiscal year and inform the board of governors of that amount. The director of state courts shall also inform the board of governors of the number of requests for mediation involving each type of health care provider set out in s. 655.002 for the most recent fiscal year for which statistics are available. The board of governors shall, by rule, set fees to charge health care providers at a level sufficient to provide the necessary revenue.

(1m) Notwithstanding sub.(1), the board of governors may exempt any type of health care provider set out in s. 655.002 from payment of the annual fee based on a low number of requests for mediation involving that type of health care provider.

(2) The annual fees under sub.(1) shall be collected in a manner prescribed by rule of the commissioner. The commissioner shall pay all money collected under sub.(1) into the mediation fund created under s. 655.68.

History: 1985 a. 340; 1989 a. 187; 1991 a. 214.

SUBCHAPTER VII
MEDIATION FUND

655.68 Mediation fund. (1) CREATION. There is created a mediation fund to pay the administrative expenses of the mediation system created under subch. VI.

(2) ADMINISTRATION AND OPERATION. Management of the mediation fund is vested with the director of state courts.

(3) FEES. The mediation fund is financed from fees generated under ss. 655.54 and 655.61.

(4) ACCOUNTING AND FINANCIAL REPORTS. (a) Any person authorized to receive deposits, withdraw moneys, issue vouchers or otherwise disburse mediation fund moneys shall post a blanket fidelity bond in an amount reasonably sufficient to protect mediation fund assets. The cost of the bond shall be paid from the mediation fund.

(b) The state investment board shall invest money held in the mediation fund in short-term, fixed-return, interest-bearing investments. All income derived from these investments returns to the mediation fund.

(c) On or before March 1 annually, the director of state courts shall submit a report on the operation of the mediation system and on the status of the mediation fund to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3).

History: 1985 a. 340; 1987 a. 186; 1989 a. 187 s. 28; 1991 a. 214

CHAPTER *895*
MISCELLANEOUS GENERAL PROVISIONS

895.70 Sexual exploitation by a therapist.
895.73 Service representatives.

895.70 Sexual exploitation by a therapist. (1) DEFINITIONS. In this section:

(a) "Physician" has the meaning designated in s. 448.01 (5).

(b) "Psychologist" means a person who practices psychology, as described in s. 455.01 (5).

(c) "Psychotherapy" has the meaning designated in s. 455.01 (6).

(d) "Sexual contact" has the meaning designated in s. 940.225 (5) (b).

(e) "Therapist" means a physician, psychologist, social worker. marriage and family therapist, professional counselor, nurse, chemical-dependency counselor, member of the clergy or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy.

(2) CAUSE OF ACTION. (a) Any person who suffers, directly or indirectly, a physical, mental or emotional injury caused by, resulting from or arising out of sexual contact with a therapist who is rendering or has rendered to that person psychotherapy, counseling or other assessment or treatment of or involving any mental or emotional illness, symptom or condition has a civil cause of action against the psychotherapist for all damages resulting from, arising out of or caused by that sexual contact. Consent is not an issue in an action under this section, unless the sexual contact that is the subject of the action occurred more than 6 months after the psychotherapy, counseling, assessment or treatment ended.

(b) Notwithstanding ss. 801.09 (I), 801.095, 802.04 (1) and 815.05 (lg) (a), in an action brought under this section, the plaintiff may substitute his or her initials, or fictitious initials, and his or her age and county of residence for his or her name and address on the summons and complaint. The plaintiffs attorney shall supply the court the name and other necessary identifying information of the plaintiff. The court shall maintain the name and other identifying information, and supply the information to other parties to the action, in a manner that reasonably protects the information from being disclosed to the public.

(c) Upon motion by the plaintiff, and for good cause shown, or upon its own motion, the court may make any order that justice requires to protect:

1. A plaintiff who is using initials in an action under this section from annoyance, embarrassment, oppression or undue burden that would arise if any information identifying the plaintiff were made public.

2. A plaintiff in an action under this section from unreasonably long, repetitive or burdensome physical or mental examinations.

3. The confidentiality of information which under law is confidential, until the information is provided in open court in an action under this section.

(3) PUNITIVE DAMAGES. A court or jury may award punitive damages to a person bringing an action under this section.

(4) CALCULATION OF STATUTE OF LIMITATIONS. An action under this section is subject to s. 893.585. (

(5) SILENCE AGREEMENTS. Any provision in a contract or agreement relating to the settlement of any claim by a patient against a therapist that limits or eliminates the right of the patient to disclose sexual contact by the therapist to a subsequent therapist, the department of regulation and licensing, the department of health and family services, the patients compensation fund peer review council or a district attorney is void.

History: 1985 a. 275; 1987 a. 352; 1991 a. 160, 217; 1995 a. 27 s. 9126 (19); 1999 a. 85.

Under sub. (2) consent is not an issue and, as such, an instruction regarding the victim's contributory negligence was improper. **Block v.** Gomez, 201 Wis. 2d 795, 549 N.W.2d 783 (Ct. App. 1996).

This section grants no cause of action against a therapist's employer. L.L.N. v. Clauder, 203 Wis. 2d 570, 552 N.W.2d 879 (Ct. App. 1996

895.73 Service representatives. (1) DEFINITIONS. In this section:

(a) "Abusive conduct" means domestic abuse, as defined under s. 46.95 (1) (a), 813.12 (1) (am), or 968.075 (1) (a), harassment, as defined under s. 813.125 (1), sexual exploitation by a therapist under s. 940.22, sexual assault under s. 940.225, child abuse, as defined under s. 813.122 (1) (a), or child abuse under ss. 948.02 to 948.11.

(b) "Complainant" means an adult who alleges that he or she was the subject of abusive conduct or who alleges that a crime has been committed against him or her.

(c) "Service representative" means an individual member of an organization or victim assistance program who provides counseling or support services to complainants or petitioners and charges no fee for services provided to a complainant under sub. (2) or to apetitioner under s. 813.122.

(2) RIGHT TO BE PRESENT. A complainant has the right to select a service representative to attend, with the complainant, hearings, depositions and court proceedings, whether criminal or civil, and all interviews and meetings related to those hearings, depositions and court proceedings, if abusive conduct is alleged to have occurred against the complainant or if a crime is alleged to have been committed against the complainant and if the abusive conduct or the crime is a factor under s. 767.24 or is a factor in the complainant's ability to represent his or her interest at the hearing, deposition or court proceeding. The complainant shall notify the court orally, or in writing, of that selection. A service representative selected by a complainant has the right to be present at every hearing, deposition and court proceeding and all interviews and meetings related to those hearings, depositions and court proceedings that the complainant is required or authorized to attend. The service representative selected by the complainant has the right to sit adjacent to the complainant and confer orally and in writing with the complainant in a reasonable manner during every hearing, deposition or court proceeding and related interviews and meetings, except when the complainant is testifying or is represented by private counsel. The service representative may not sit at counsel table during a jury trial. The service representative may address the court if permitted to do so by the court.

(3) FAILURE TO EXERCISE RIGHT NOT GROUNDS FOR APPEAL. The failure of a complainant to exercise a right under this section is not a ground for an appeal of a judgment of conviction or for any court to reverse or modify a judgment of conviction.

History: 1991 a. 276; 1995 a. 220; 2001 a. 109.

CHAPTER 905

EVIDENCE — PRIVILEGES

905.01 Privileges recognized only as provided.
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905.02 Required reports privileged by statute.
905.03 Lawyer–client privilege.
905.04 Physician–patient, registered nurse–patient, chiropractor–patient, psychologist–patient, social worker-patient, marriage and family therapist–patient and professional counselor–patient privilege.
905.045 Domestic violence or sexual assault advocate–victim privilege.
905.05 Husband—wife privilege.
905.06 Communications to members of the clergy.
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905.09 Law enforcement records.
905.10 Identity of informer.
905.11 Waiver of privilege by voluntary disclosure.
905.12 Privileged matter disclosed under compulsion or without opportunity to claim privilege.
905.13 Comment upon or inference from claim of privilege; instruction.
905.14 Privilege in crime victim compensation proceedings.
905.15 Privilege in use of federal tax return information.

NOTE: Extensive comments by the Judicial Council Committee and the Federal Advisory Committee are printed with chs. 901 to 911 in 59 Wis. 2d. The court did not adopt the comments but ordered them printed with the rules for information purposes.

905.01 Privileges recognized only as provided. Except as provided by or inherent or implicit in statute or in rules adopted by the supreme court or required by the constitution of the United States or Wisconsin, no person has a privilege to:

(1) Refuse to be a witness; or

(2) Refuse to disclose any matter; or

(3) Refuse to produce any object or writing; or

(4) Prevent another from being a witness or disclosing any matter or producing any object or writing.

History: Sup. Ct. Order, 59 Wis. 2d R1, R101 (1973).

This section precludes courts from recognizing common law privileges not contained in the statutes, or the U.S. or Wisconsin constitutions. Privileges and confidentialities granted by statute are strictly interpreted. Davison v. St. Paul Fire & Marine Insurance Co. 75 Wis. 2d 190, 248 N.W.2d 433 (1977).

A defendant did not have standing to complain that a physician's testimony violated the witness's physician/patient's privilege under s. 905.04: the defendant was not authorized to claim the privilege on the patient's behalf. State v. Echols, 152 Wis. 2d 725, 449 N.W.2d 320 (Ct. App. 1989).

As s. 907.06 (1) prevents a court from compelling an expert to testify, it logically follows that a litigant should not be able to so compel an expert and a privilege to refuse to testify is implied. Burnett v. Alt, 224 Wis. 2d 72, 559 N.W.2d 21 (1999).

905.015 Interpreters for persons with language difficulties, limited English proficiency, or hearing or speaking impairments. If an interpreter for a person with a language difficulty, limited English proficiency, as defined in s. 885.38 (1) (b), or a hearing or speaking impairment interprets as an aid to a communication which is privileged by statute, rules adopted by the supreme court, or the U.S. or state constitution, the interpreter may be prevented from disclosing the communication by any person who has a right to claim the privilege. The interpreter may claim the privilege but only on behalf of the person who has the right. The authority of the interpreter to do so is presumed in the absence of evidence to the contrary.

History: 1979 c. 137; 1985 a. 266; 2001 a. 16.

905.02 Required reports privileged by statute. A person, corporation, association, or other organization or entity, either public or private, making a return or report required by law to be made has a privilege to refuse to disclose and to prevent any other person from disclosing the return or report, if provided by law. A public officer or agency to whom a return or report is required by law to be made has a privilege to refuse to disclose the return or report if provided by law. No privilege exists under this section in actions involving false swearing, fraudulent writing, fraud in the return or report, or other failure to comply with the law in question.

History: Sup. Ct. Order. 59 Wis. 2d RI, R109 (1973).

This section applies only to privileges specifically and unequivocally provided by law against the disclosure of specific materials. Davison v. St. Paul Fire & Marine Insurance Co. 75 Wis. 2d 190, 248 N.W.2d 433 (1977).

905.03 Lawyer–client privilege. (1) DEFINITIONS As used in this section:

(a) A "client" is a person, public officer, or corporation. association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services from the lawyer.

(b) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(c) A "representative of the lawyer" is one employed to assist the lawyer in the rendition of professional legal services.

(d) A communication is "confidential" if not intended to be disclosed to 3rd persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(2) GENERAL RULE OF PRIVILEGE. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client: between the client or the client's representative and the client's lawyer or the lawyer's representative; or between the client's lawyer and the lawyer's representative; or by the client or the client's lawyer to a lawyer representing another in a matter of common interest; or between representatives of the client or between the client and a representative of the client; or between lawyers representing the client.

(3) WHO MAY CLAIM THE PRIVILEGE. The privilege may be claimed by the client, the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer at the time of the communication may claim the privilege but only on behalf of the client. The lawyer's authority to do so is presumed in the absence of evidence to the contrary.

(4) EXCEPTIONS There is no privilege under this rule:

(a) *Furtherance of crime or fraud.* If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud; or

(b) *Claimants through same deceased client.* As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction; or

(c) *Breach of duty by lawyer or client.* As to a communication relevant to an issue of breach of duty by the lawyer to the lawyer's client or by the client to the client's lawyer; or

(d) *Document attested by lawyer:* As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness; or

(e) ***Joint clients.*** **As** to a communication relevant to a matter of common interest between 2 or more clients if the communication was made by any of them to a lawyer retained or consulted in common. when offered in an action between any of the clients.

History: Sup. Ct. Order. 59 Wis. 2d R1, R111 (1973); 1991 a. 32.

That there was a communication from a client to an attorney is insufficient to find the communication is privileged. Jax v. Jax, 73 Wis. 2d 572,243 N.W.2d 831 (1975).

There is not a general exception to the lawyer–client privilege in legal malpractice cases. The extent of the privilege is discussed. Dyson v. Hempe. 140 Wis. 2d 792, 413 N.W.2d 379 (Ct. App. 1987).

When a defendant alleges ineffective assistance of counsel, the lawyer–client privilege is waived to the extent that counsel must answer questions relevant to the allegation. State v. Flores, 170 Wis. 2d 272.488 N.W.2d 116 (Ct. App. 1992).

A litigant's request to see his or her file that is in the possession of current or fonner counsel does not waive the attorney–client and work product privileges and does not allow other parties to the litigation discovery of those files. Borgwardt v. Redlin, 196 Wis. 2d 342,538 N.W.2d 581 (Ct. App. 1995).

Waiver of attomey–client privilege is not limited to direct attacks on attorney performance. An attempt to withdraw a plea on the grounds that it was not knowingly made raised the issue of attorney performance and resulted in a waiver *of* the attorney–client privilege. State v. Simpson, 200 Wis. 2d 798,548 N.W.2d 105 (Ct. App. 1996).

Attomey-client privilege is not waived by a broadly worded insurance policy cooperation clause in a coverage dispute. There is not a common interest exception to the privilege when the attorney was not consulted in common by two clients. State v. Hydrite Chemical Co. 220 Wis. 2d 51, 582 N.W.2d 411 (Ct. App. 1998).

The attomey–client privilege is waived when the privilege holder attempts to prove a claim or defense by disclosing or describing an attomey–client communication. State v. Hydrite Chemical Co. 220 **Wis.** 2d 51, 582 N.W.2d 411 (Ct. App. 1998).

A videotaped interview of a crime victim conducted by the alleged perpetrator's spouse was not privileged as attorney communication because it was made in the presence of a 3rd–party, the victim, and was not confidential. Estrada v. State, 228 Wis. 2d 459, 596 N.W.2d 496 (Ct. App. 1999).

A former director cannot act on behalf of the client corporation and waive the lawyer–client privilege. Even though documents were created during the fonner director's tenure as a director, a former director is not entitled to documents in the corporate lawyer's files. Lane v. Sharp Packaging Systems. 2002 WI 28, 251 Wis. 2d 68,640 N.W.2d 788.

Billing records are communications from the attorney to the client, and producing those communications violates the lawyer–client privilege if production *of* the documents reveals the substance of lawyer–client communications. Lane **v.** Sharp Packaging Systems, 2002 WI 28. 251 Wis. 2d 68. 640 N.W.2d 788.

The test for invoking the crime–fraud exception under sub. (4) (a) is whether there is reasonable cause to believe that the attomey's services were utilized in furtherance of the ongoing unlawful scheme. If a prima facie case is established, an in camera review *of the* requested documents is required to determine **if** the exception applies. Lane v. Sharp Packaging Systems, 2002 WI 28,251 Wis. 2d 68,640 N.W.2d 788.

Both present and fonner counsel may testify on the issue of a defendant's competency to proceed to trial. In close cases, particularly if concerns of malingering are present, **a** competency determination may depend on opinions of counsel. State v. Meeks, 2002 WI App 65,251 Wis. 2d 361.643 N.W.2d 526.

Attomey–client privilege in Wisconsin. Stover and Koesterer. 59 MLR 227.

Attomey–client privilege: Wisconsin's approach to exceptions. 72 MLR 582 (1989).

905.04 Physician–patient, registered nurse–patient, chiropractor–patient, psychologist–patient, social worker–patient, marriage and family therapist–patient and professional counselor–patient privilege. (1) DEFINITIONS In this section:

(a) "Chiropractor" means a person licensed under **s.** 446.02, or a person reasonably believed by the patient to be a chiropractor.

(b) **A** communication or information is "confidential" if not intended to be disclosed to 3rd persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication or information or persons who are participating in the diagnosis and treatment under the direction of the physician, *registered nurse*, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor, including the members of the patient's family.

(bm) "Marriage and family therapist" means an individual who is licensed as a marriage and family therapist under ch. 457 or an individual reasonably believed by the patient to be a marriage and family therapist.

(c) "Patient" means an individual, couple, family or group of individuals who consults with or is examined or interviewed by a physician, registered nurse, chiropractor. psychologist, social worker, marriage and family therapist or professional counselor.

(d) "Physician" means a person as defined in s. 990.01 (28), or reasonably believed by the patient so to be.

(dm) "Professional counselor" means an individual who is licensed as a professional counselor under ch. 457 or an individual reasonably believed by the patient to be a professional counselor.

(e) "Psychologist" means a licensed psychologist, as that term is defined in **s.** 455.01 (4), or a person reasonably believed by the patient to be a psychologist.

(f) "Registered nurse" means a nurse who is licensed under s. 44 1.06 or licensed as a registered nurse in a party state, as defined in s. 441.50 (2) (j), or a person reasonably believed by the patient to be a registered nurse.

(g) "Social worker" means an individual who is certified or licensed as a social worker, advanced practice social worker, independent social worker, or clinical social worker under ch. 457 or an individual reasonably believed by the patient *to* be a social worker, advanced practice social worker, independent social worker, or clinical social worker.

(2) GENERAL RULE OF PRIVILEGE A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated for purposes of diagnosis or treatment of the patient's physical, mental or emotional condition, among the patient, the patient's physician, the patient's registered nurse, the patient's chiropractor, the patient's psychologist, the patient's social worker, the patient's marriage and family therapist, the patient's professional counselor or persons, including members of the patient's family, who are participating in the diagnosis or treatment under the direction of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family thempist or professional counselor.

(3) WHO MAY CLAIM THE PRIVILEGE The privilege may be claimed by the patient, by the patient's guardian or conservator, or by the personal representative of a deceased patient. The person who was the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor may claim the privilege but only on behalf of the patient. The authority so to do is presumed in the absence of evidence to the contrary.

(4) EXCEPTIONS. (a) ***Proceedings for hospitalization, guardianship, protective services or protective placement.*** There is no privilege under this rule as to communications and information relevant to an issue in proceedings to hospitalize the patient for mental illness, to appoint a guardian under s. 880.33, for court–ordered protective services or protective placement or for review of guardianship, protective services or protective placement orders, if the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor in the course of diagnosis or treatment has determined that the patient is in need of hospitalization, guardianship, protective services or protective placement.

(am) ***Proceedings for guardianship.*** There is no privilege under this rule as to information contained in a statement concerning the mental condition of the patient furnished to the court by a physician or psychologist under s. 880.33 (1).

(b) ***Examination by order of judge.*** If the judge orders an examination of the physical, mental or emotional condition of the patient, or evaluation of the patient for purposes of guardianship, protective services or protective placement, communications made and treatment records reviewed in the course thereof are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.

(c) ***Condition or element of claim or defense.*** There is no privilege under this section as to communications relevant to or within the scope of discovery examination of an issue of the physical, mental or emotional condition of a patient in any proceedings in which the patient relies upon the condition as an element of the patient's claim or defense, or, after the patient's death, in any pro-

ceeding in which any party relies upon the condition as an element of the party's claim or defense.

(d) *Homicide trials.* There is no privilege in trials for homicide when the disclosure relates directly to the facts or immediate circumstances of the homicide.

(e) *Abused or neglected child or abused unborn child.* 1. In this paragraph:

a. "Abuse" has the meaning given in **s.** 48.02 (1).

b. "Neglect" has the meaning given in **s.** 48.981 (1) (d).

2. There is no privilege in situations where the examination of an abused or neglected child creates a reasonable ground for an opinion of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor that the abuse or neglect was other than accidentally caused or inflicted by another.

3. There is no privilege in situations where the examination of the expectant mother of an abused unborn child creates a reasonable ground for an opinion of the physician, registered nurse, chiropractor, psychologist, social worker, marriage and family therapist or professional counselor that the physical injury inflicted on the unborn child was caused by the habitual lack of self–control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

(f) *Tests for intoxication.* There is no privilege concerning the results of or circumstances surrounding any chemical tests for intoxication or alcohol concentration, as defined in **s.** 340.01 (1v).

(g) *Paternity proceedings.* There is no privilege concerning testimony about the medical circumstances of a pregnancy or the condition and characteristics of a child in a proceeding to determine the paternity of that child under ss. 767.45 to 767.53.

(h) *Reporting wounds and burn injuries.* There is no privilege regarding information contained in a report under s. 146.995 pertaining to a patient's name and type of wound or bum injury.

(i) *Providing services to court injuvenile matters.* There is no privilege regarding information obtained by an intake worker or dispositional staff in the provision of services under s. 48.067, 48.069, 938.067 or 938.069. An intake worker or dispositional staff member may disclose information obtained while providing services under **s.** 48.067 or 48.069 only as provided in s. 48.78 and may disclose infonnation obtained while providing services under **s.** 938.067 or 938.069 only as provided in s. 938.78.

History: Sup. Ct. Order, 59 Wis. 2d R121; 1975 c. 393; 1977 c. 61,418; 1979 c. 32 s. 92 (1); 1979 c. 221,352; 1983 a. 400,535; 1987 a. 233,263; Sup. Ct. Order, 151 Wis. 2d xxi (1989); 1991 a. 32, 39, 160; 1993 a. 98; 1995 a. 77,275,436; 1997 a. 292; 1999 a. 22; 2001 a. 80.

Sub. (4) (a) applies to proceedings to extend a commitment under the sex crimes act. State v. Hungerford, 84 Wis. 2d 236, 267 N.W.2d 258 (1978).

By entering a plea of not guilty by reason of mental disease or defect, the defendant lost the physician-patient privilege by virtue of s. 905.04 (4) (c) and the confidentiality of treatment records under s. 51.30 (4) @) 4. State v. Taylor, 142 Wis. 2d 36.4 I7 N.W.2d 192 (Ct. App. 1987).

A psychotherapist's duty to 3rd *parties* for *dangerous* patients' intentional behavior is discussed. Schuster v. Altenberg, 144 Wis. 2d 223,424 N.W.2d 159 (1988).

A defendant did not have standing to complain that a physician's testimony violated a witness's physician-patient's privilege under s. 905.04; the defendant was not authorized to claim the privilege on the patient's behalf. State v. Echols, 152 Wis. 2d 725,449 N.W.2d 310 (Ct. App. 1989).

Under sub. (4) (g), the history of a pregnancy is discoverable. The court may permit discovery of the history as long as information regarding the mother's sexual relations outside of the conceptive period is eliminated. In re Paternity of J.S.P. 158 Wis. 2d 100,461 N.W.2d 794 (Ct. App. 1990).

Because under sub. (4) (f) there is no privilege for chemical tests for intoxication, *the* results of a test taken for diagnostic purposes are admissible in an OMVWI trial. City of Muskego v. Godec, 167 Wis. 2d 536,482 N.W.2d 79 (1992).

A patient's mere presence in a physician's office is not within the ambit of this privilege. A defendant charged with trespass to a medical facility, s. 943.145, is entitled to compulsory process to determine if any patients present at the time of the alleged incident had relevant evidence. State v. Migliorino. 170 Wis. 2d 576,489 N.W.2d 678 (Ct. App. 1992).

To be entitled to an in camera inspection **of** privileged records, a criminal defendant must show that the sought after evidence is relevant and may he necessary to a fair determination of guilt or innocence, Failure of the record's subject to agree to inspection is grounds for sanctions, including suppressing the record subject's testimony. State v. Shiffra, 175 Wis. 2d 600.499 N.W.2d 719 (Ct. App. 1993).

The patient's objectively reasonable expectations of confidentiality from the medical provider are the proper gauge of the privilege. State v. Locke, 177 Wis. 2d 590, 502 N.W.2d 891 (Ct. App. 1993).

When a patient's medical condition is at issue the patient–client privilege gives way. Wikrent v. Toys "R" Us, 179 Wis. 2d 297,507 N.W.2d 130 (Ct. App. 1993).

Ex parte contacts between several treating physicians after the commencement of litigation did not violate this section. This section applies only to judicial proceedings and places restrictions on lawyers, not physicians. Limited ex parte contacts between defense counsel and plaintiffs physicians are permissible, but ex parte discovery is not. Steinberg v. Jensen, 194 Wis. 2d 440, 534 N.W.2d 361 (1995).

There is no general exception to privileged status for communications gathered from incarcerated persons. State v. Joseph P. 200 Wis. 2d 227,546 N.W.2d 4Y4 (Ct. App. 1996).

Both initial sex offender commitment and discharge hearings under ch. 980 are 'proceedings for hospitalization" within the exception to the privilege under sub. (4) (a). State v. Zanelli, 212 Wis. 2d 358, 569 N.W.2d 301 (Ct. App. 1997).

A party may not challenge on appeal an in camera review of records conducted at his own request. State v. Darcy N. **K.** 218 W (d) 640,581 N.W.2d 567 (Ct. App. 1998).

This section does not regulate the conduct of physicians outside of a courtroom. Accordingly it does not give a patient the right to exclude others from a treahnent area. State v. Thompson, 222 Wis. 2d 179,585 N.W.2d 905 (Ct. App. 1998).

When a motion bas been made seeking a minor victim's health care records, the state shall give notice to the victim and tlie victim's parents, providing a reasonable time to object to the disclosure. If the victim does not expressly consent to disclosure, the state shall not waive the materiality hearing under *Schiffra.* Jessica J.L. v. State, 223 Wis. 2d 622,589 N.W.2d 660 (Ct. App. 1998).

The psychotherapist–patient privilege does not automatically or absolutely foreclose the introduction of a therapeutic communication. When a therapist had reasonable cause to believe a patient was dangerous and that contacting police would prevent harm and facilitate the patient's hospitalization, the patient's statements fell within a dangerous patient exception to the privilege. State v. Agacki, 226 Wis. 2d 349,595 N.W.2d 31 (Ct. App. 1999).

Under the *Schiffra* test, an ***in camera*** inspection of the victim's mental health records was allowed. The defendant established more than the mere possibility that the requested records might be necessary for a fair determination of guilt **or** innocence. State v. Walther, 2001 W I App 23,240 Wis. 2d 619,623 N.W.2d 205.

Release of records containing information of previous assaultive behavior by a nursing home resident was not prohibited by the physician–patient privilege. **A** nursing home resident does not have a reasonable expectation of privacy in assaultive conduct. The information may be released by court order. Crawford v. Care Concepts, Inc. 2001 WI App 45,243 Wis. 2d 119,625 N.W.2d 876.

An in camera inspection of confidential records under *Schiffra* is not restricted to mental health records. State v. Navarro, 2001 WI App 225, 248 Wis. 2d 396, 636 N.W.2d 481.

The preliminary showing for an in camera review of a victim's mental health records requires a defendant to ***set*** forth, in good faith, a specific factual basis demonstrating a reasonable likelihood that the records contain relevant information necessary to a determination of guilt or innocence and is not merely cumulative of other evidence available to the defendant. The information will be "necessary to a determination of guilt or innocence" if it "tends to create a reasonable doubt that might not otherwise exist. State v. Green, 2002 WI 68, 253 Wis. 2d 356,646 N.W.2d 298.

The privilege under this section is not a principle of substantive **law,** but merely an evidentiary rule applicable at all stages of civil and criminal proceedings, except actual trial on the merits in homicide cases. 64 Atty. Gen. 82.

A person claiming a privilege in a communication with a person who was not a medical provider under sub. (1) (d) to (g) ha.. the burden of establishing that he or she reasonably believed the person to he a medical provider. U.S. v. Schwenson, 942 **F.** Supp. 902 (1996).

905.045 Domestic violence or sexual assault advocate–victim privilege. (1) DEFINITIONS. In this section:

(a) "Abusive conduct" means abuse, as defined in **s.** 813.122 (1) (a), of a child, as defined in s. 48.02 (2), interspousal battery, as described under s. 940.19 or 940.20 (1m), domestic abuse, **as** defined in **s.** 813.12 (1) (am), or sexual assault under ***s.*** 940.225.

(b) "Advocate" means an individual who is an employee of or a volunteer for an organization the purpose of which is to provide counseling, assistance, or support services free of charge to a victim.

(c) A communication or information is "confidential" if not intended to be disclosed to 3rd persons other than persons present to further the interest of the person receiving counseling, assistance, or support services, persons reasonably necessary for the transmission of the communication or infomiation, and persons who are participating in providing counseling, assistance, or support services under the direction of an advocate, including family members of the person receiving counseling, assistance, or support services and members of any group of individuals with whom the person receives counseling, assistance, or support services.

(d) "Victim" means an individual who has been the subject of abusive conduct or who alleges that he or she has been the subject

of abusive conduct. It is immaterial that the abusive conduct has not been reported to any government agency.

(2) GENERAL RULE OF PRIVILEGE. **A** victim has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made or information obtained or disseminated among the victim, an advocate who is acting in the scope of his or her duties as an advocate, and persons who are participating in providing counseling. assistance, or support services under the direction of an advocate, if the communication was made or the information was obtained or disseminated for the purpose of providing counseling, assistance, or support services to the victim.

(3) 'WHO MAY CLAIM THE PRIVILEGE. The privilege may be claimed by the victim, by the victim's guardian or conservator, or by the victim's personal representative if the victim is deceased. The advocate may claim the privilege on behalf of the victim. The advocate's authority to do so is presumed in the absence of evidence to the contrary.

(4) EXCEPTIONS. Subsection (2) does not apply to any report concerning child abuse that **an** advocate is required to make under s. 48.981.

(5) RELATIONSHIP TO S.905.04. If a communication or information that is privileged under sub. *(2)* is also a communication or information that is privileged under s. 905.04 (2), the provisions of s. 905.04 supersede this section with respect to that communication or information.

History: 2001 a. 109.

905.05 Husband–wife privilege. (1) GENERAL RULE OF PRIVILEGE. **A** person has a privilege to prevent the person's spouse or former spouse From testifying against the person as to any private communication by one to the other made during their marriage.

(2) WHO MAY CLAIM THE PRIVILEGE. The privilege may be claimed by the person or by the spouse on the person's behalf. The authority of the spouse *to* do so is presumed in the absence of evidence *to* the contrary.

(3) EXCEPTIONS. There is no privilege under this rule:

(a) If both spouses or former spouses are parties to the action.

(b) In proceedings in which one spouse or former spouse is charged with a crime against the person or property of the other or of a child of either, or with a crime against the person or property of a 3rd person committed in the course of committing a crime against the other.

(c) In proceedings in which a spouse or former spouse is charged with a crime of pandering or prostitution.

(d) If one spouse or former spouse has acted as the agent of the other and the private communication relates to matters within the scope of the agency.

History: Sup. Ct. Order, 59 Wis. 2d R1, R130 (1973); 1991 a. 32.

Cross–reference: As to testimony of husband and wife in paternity action regarding child born in wedlock, see **s.** 891.39.

A wife's testimony as to statements made by her husband was admissible when the statements were made in the presence of 2 witnesses. Abraham v. State, 47 Wis. 2d **44,** 176 N.W.2d 349 (1970).

Spouses can he compelled to testify **as** to whether the other **was** working or collecting unemployment insurance, since such facts are known to 3rd persons. Kain v. State, 48 Wis. 2d 212, 179 N.W.2d 777 (1970).

A wife's observation, without her husband's knowledge, of her hushand's criminal act committed on a public street was neither a "communication" nor "private" within meaning of **sub. (1).** State v. Sabin, 79 Wis. 2d 302,255 N.W.2d 320 (1977).

"Child" under sub. (3)(b) includes a foster child. State v. Michels, 141 Wis. 2d 81, 414 N.W.2d 311 (Ct. App. 1987).

905.06 Communications to members of the clergy. (1) DEFINITIONS. **As** used in this section:

(a) **A** "member of the clergy" is a minister, priest, rabbi, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting the individual.

(b) **A** communication is "confidential" if made privately and not intended for further disclosure except *to* other persons present in furtherance of the purpose of the communication.

(2) GENERAL RULE OF PRIVILEGE. **A** person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a member of the clergy in the member's professional character as a spiritual adviser.

(3) WHO MAY CLAIM THE PRIVILEGE. The privilege may be claimed by the person, by the person's guardian or conservator, or by the person's personal representative if the person is deceased. The member of the clergy may claim the privilege on behalf of the person. The member of the clergy's authority so to do is presumed in the absence of evidence to the contrary.

History: Sup. Ct.Order.59 Wis. 2d R1, R135 (1973); 1991 a.32.

An out–of–court disclosure by a priest that the defendant **would** lead police to the victim's grave was not privileged under this section. State v. Kunkel, 137 Wis. 2d 172,404 N.W.2d 69 (Ct. App. 1987).

The privilege under sub. (1) belongs to the person against whom testimony is being offered. While an accused may invoke the privilege to prevent his or her spouse from testifying against him or her, the witness spouse may not not invoke it to prevent his or her own testimony. Umhoefer v. Police and Fire Commission of the City of Mequon, 2002 WI App 217, ___ Wis. 2d. ___, 652 N.W.2d 412.

Should Clergy Hold the Priest–Penitent Privilege? Mazza. 82 MLR 171 (1998).

905.065 Honesty testing devices. (1) DEFINITION. In this section, "honesty testing device" means a polygraph, voice stress analysis, psychological stress evaluator or any other similar test purporting to test honesty.

(2) GENERAL RULE OF THE PRIVILEGE. **A** person has a privilege to refuse to disclose and to prevent another from disclosing any oral or written communications during or any results of an examination using an honesty testing device in which the person was the test subject.

(3) 'WHOMAY CLAIM PRIVILEGE. The privilege may bc claimed by the person, by the person's guardian or conservator or by the person's personal representative, if the person is deceased.

(4) EXCEPTION. There is no privilege under this section if there is a valid and voluntary written agreement between the test subject and the person administering the test.

History: 1979 c. 319.

A distinction exists between an inquiry into the taking of a polygraph and an inquiry into its results. An offer to take a polygraph is relevant to an assessment of an offeror's credibility. State v. Wofford, 202 Wis. 2d 524, 551 N.W.2d 46 (Ct. App. 1996).

The results ***of*** polygraph examinations are inadmissible in civil cases. While an offer to to take a polygraph examination may be relevant to the offeror's credibility, that a person agreed to a polygraph at the request of law enforcement has not been found admissible and could not he without proof that the person believed the results would accurately indicate whether he or she was lying. Estate of Neurnann v. Neumann, 2000 WI App 61,242 Wis. 2d 205,626 N.W.2d 821.

905.07 Political vote. Every person has a privilege to refuse to disclose the tenor of the person's vote at a political election conducted by secret ballot unless the vote was cast illegally.

History: Sup. Ct. Order, 59 Wis. 2d R1, R139 (1973); 1991 a. 32.

905.08 Trade secrets. **A** person has a privilege, which may be claimed by the person or the person's agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret as defined in s. 134.90 (1) (c), owned by the person, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the judge shall take such protective measure as the interests of the holder of the privilege and of the parties and the furtherance ofjustice may require.

History: Sup. Ct. **Order,** 59 Wis. 2d R1, R140 (1973); 1985 a. 236.

905.09 Law enforcement records. The federal government or a state or a subdivision thereof has a privilege to refuse to disclose investigatory files, reports and returns for law enforcement purposes except to the extent available by law to a person other than the federal government, a state or subdivision thereof.

The privilege may be claimed by an appropriate representative of the federal government, a state or a subdivision thereof.

History: Sup. Ct. Order, 59 Wis. 2d R1. R142 (1973).

905.10 Identity of informer. (1) RULE OF PRIVILEGE. The federal government or a state or subdivision thereof has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

(2) WHO MAY CLAIM. The privilege may be claimed by an appropriate representative of the federal government, regardless of whether the information was furnished to an officer of the government or of a state or subdivision thereof. The privilege may be claimed by an appropriate representative of a state or subdivision if the information was furnished to an officer thereof.

(3) EXCEPTIONS. (a) *Voluntary disclosure; informer a witness.* No privilege exists under this rule if the identity of the informer or the informer's interest in the subject matter of the informer's communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the federal government or a state or subdivision thereof.

(b) *Testimony on merits.* If it appears from the evidence in the case or from other showing by a **party** that an informer may be able to give testimony necessary to a fair deterniination of the issue of guilt or innocence in a criminal case or of a material issue on the merits in a civil case to which the federal government or a state or subdivision thereof is a **party,** and the federal government or a state or subdivision thereof invokes the privilege, the judge shall give the federal government or a state or subdivision thereof an opportunity to show in camera facts relevant to determining whether the informer can, in fact, supply that testimony. The showing will ordinarily be in the form of affidavits but the judge may direct that testimony be taken if the judge finds that the matter cannot be resolved satisfactorily upon affidavit. If the judge finds that there is a reasonable probability that the informer can give the testimony, and the federal government or a state or subdivision thereof elects not to disclose the informer's identity, the judge on motion of the defendant in a criminal case shall dismiss the charges to which the testimony would relate, and the judge may do so on the judge's own motion. In civil cases, the judge may make an order that justice requires. Evidence submitted to the judge shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the federal government, state or subdivision thereof. All counsel and parties shall be permitted to be present at every stage of proceedings under this subdivision except a showing in camera at which no counsel or party shall be permitted to be present.

(c) *Legality of obtaining evidence.* If information from an informer is relied upon to establish the legality of the means by which evidence was obtained and the judge is not satisfied that the information was received from an informer reasonably believed to be reliable or credible, the judge may require the identity of the informer to be disclosed. The judge shall on request of the federal government, state or subdivision thereof, direct that the disclosure be made in camera. **All** counsel and parties concerned with the issue of legality shall be permitted to be present at every stage of proceedings under this subdivision except a disclosure in camera at which no counsel or party shall be permitted to be present. If disclosure of the identity of the informer is made in camera, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and the contents shall not otherwise be revealed without consent of the appropriate federal government, state or subdivision thereof.

History: Sup. Ct. Order, 59 Wis. 2d R1, R143 (1973): 1991 a. 32.

The trial judge incorrectly determined whether an informer's testimony was necessary to a fair trial. The proper test is whether the testimony the informer can give is relevant to an issue material to the defense and necessary to the determination of guilt or innocence. It is not for the judge to determine whether the testimony will be helpful. State v. Outlaw, 108 Wis. 7d 112, 321 N.W.2d 145 (1982).

The application of the informer privilege to communications tending to identify the informer and considerdtion by !he trial court under sub. (3) (c) of the privileged information in determining reasonable suspicion for an investigative seizure is discussed. State v. Gordon. 159 Wis. 2d 335, 464 NW 91 (Ct. App. 1990).

When the defendant knew an informant's identity but sought to put the infomiant's role **as** an infonnant before the jury to support his defense that the informant actually coinmitted the crime, the judge erred in not permitting the jury to hear the evidence. State v. Gerard, 180 Wis. 2d 327, 509 N.W.2d 112 (Ct. **App.** 1993).

The state **is** the holder of the privilege; disclosure by an informer's attorney is not "by the informer's own action." The privilege does not die with the informer. State v. Lass, 194 Wis. 2d 592.535 N.W.2d 904 (Ct. App. 1995).

The trial court erred when upon finding affidavits of confidential infonnants i t on its won initiative and without contacting either party's attorney, requested additional information from law enforcement. Under the statute, if affidavits are insufficient, the court must hold an in camera hearing and take the testimony of the informants to determine if their testimony is relevant and material to the defendant's defense. State v. Vanmanivong, 2001 WI App 299.249 Wis. 2d 350, 638 N.W.2d 348.

When there was sufficient evidence in the record to peniiit a rational court to conclude that a reasonable probability existed that the informant could provide relevant testimony necessary to a fair determination on the issue of guilt or innocence, the decision to forego an in camera hearing was within the discretion of the trial court. State v. Norfleet, 2002 WI App 140,254 Wis. 2d 569. 254 N.W.2d 569.

905.11 Waiver of privilege by voluntary disclosure. A person upon whom this chapter confers a privilege against disclosure of the confidential matter or communication waives the privilege if the person or his or her predecessor, while holder of the privilege, voluntarily discloses or consents to disclosure of any significant part of the matter or communication. This section does not apply if the disclosure is itself a privileged communication.

History: **Sup.** Ct. Order, 59 Wis. 2d R1, R150 (1973); 1987 a. 355: Sup. Ct. **Order** No. 9343, 179 Wis. 2d xv (1993).

Testimony of an accomplice who waived her privilege is admissible even though she had not been tried or granted immunity. State v. Wells, 51 **Wis.** 2d 477, 187 N.W.2d 328 (1971).

A litigant's request to see his or her file that is in the possession of current or former counsel does not waive the attorney–client and **work** product privileges and does not allow other parties to the litigation discovery of those files. Borgwardt v. Redlin, 196 Wis. 2d 342, 538 N.W.2d 581 (Ct. App. 1995).

905.12 Privileged matter disclosed under compulsion or without opportunity to claim privilege. Evidence of a statement or other disclosure of privileged matter is not admissible against the holder of the privilege **if** the disclosure was (a) compelled erroneously or (b) made without opportunity to claim the privilege.

History: Sup. Ct. Order, 59 Wis. 2d R1, R151 (1973).

905.13 Comment upon or inference from claim of privilege; instruction. (1) COMMENT OR INFERENCE NOT PERMITTED. The claim of a privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel. No inference may be drawn therefrom.

(2) CLAIMING PNVILEGE WITHOUT KNOWLEDGE OF JURY. In jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

(3) JURY INSTRUCTION. Upon request, any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

(4) APPLICATION; SELF–INCRIMINATION. Subsections (1) to (3) do not apply in a civil case with respect to the privilege against self–incrimination.

History: Sup. Ct. Order, 59 Wis. 2d R1, R153 (1973); 1981 c. 390.

The prohibition against allowing comments on or drawing an inference from a 3rd–party witness's refusal to testify on 5th amendment grounds does not deny a criminal defendant's constitutional right to equal protection. State v. Heft, 185 Wis. 2d 289, **517** N.W.2d 494 (1994).

905.14 Privilege in crime victim compensation proceedings. (1) Except as provided in sub. (2), no privilege under this chapter exists regarding communications or records relevant to an issue of the physical, mental or emotional condition of the claimant or victim in a proceeding under ch. 949 in which that condition is an element.

(2) The lawyer–client privilege applies in a proceeding under ch. 949.

History: 1979 c. **189.**

905.15 Privilege in use of federal tax return information. (1) An employee of the dcpartmcnt of health and family services, the departnicnt of workforce development or a county department under s. 46.215, 46.22 or 46.23 or a member of a governing body of a federally recognized American Indian tribe who is authorized by fcdcral law to have access to or awareness of the federal tax return information of another in the performance of duties under s. 49.19 or 49.45 or 7 USC 2011 to 2049 may claim privilege to refuse to disclose the information and the source or method by which he or she received or otherwise became aware of the information.

(2) An employee or member specified in sub. (1) may not waive the right to privilege under sub. (1) or disclose federal tax return information or the source of that information except as provided by federal law.

History: 1989 a. 31; 1995 a. 27 ss. 7225, 9126 (19), 9130 (4); 1997 a. 3.

CHAPTER 940
CRIMES AGAINST LIFE AND BODILY SECURITY

BODILY SECURITY

940.22 **Sexual exploitation by therapist; duty** to report
940.225 **Sexual assault.**

940.22 Sexual exploitation by therapist; duty to report.

(1) DEFINITIONS. In this section: (a) "Department" means the department of regulation and licensing.

(b) "Physician" has the meaning designated in **s.** 448.01 (5).

(c) "Psychologist" means a person who practices psychology, as described in s. 455.01 (5).

(d) "Psychotherapy" has the meaning designated in s. 455.01 (6).

(e) "Record" means any document relating to the investigation, assessment and disposition of a report under this section.

(f) "Reporter" means a therapist who reports suspected sexual contact between his or her patient or client and another therapist.

(g) "Sexual contact" has the meaning designated in **s.** 940.225 ***(5)*** (b).

(h) "Subject" means the therapist named in a report or record as being suspected of having sexual contact with a patient or client or who has been determined to have engaged in sexual contact with a patient or client.

(i) "Therapist" means a physician, psychologist, social worker, marriage and family therapist, professional counselor, nurse, chemical dependency counselor, member of the clergy or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy.

(2) SEXUAL CONTACT PROHIBITED. Any person who is or who holds himself or herself out to be a therapist and who intentionally has sexual contact with a patient or client during any ongoing therapist –patient or therapist-client relationship, regardless of whether it occurs during any treatment, consultation, interview or examination, is guilty of a Class F felony. Consent is not an issue in an action under this subsection.

NOTE: Sub. (2) is shown as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it reads:

(2) SEXUAL CONTACT PROHIBITED. Any person who is or who holds himself or herself out to be a therapist and who intentionally has sexual contact with a patient or client during any ongoing therapist–patient or therapist-client relationship, regardless of whether it occurs during any treatment, consultation, interview or examination, is guilty of a Class C felony. Consent is not an issue in an action under this subsection.

(3) REPORTS OF SEXUAL CONTACT. (a) If a therapist has reasonable cause to suspect that a patient or client he or she has seen in the course of professional duties is a victim of sexual contact by another therapist or a person who holds himself or herself out to be a therapist in violation of sub.(2), as soon thereafter as practicable the therapist shall ask the patient or client if he or she wants the therapist to make a report under this subsection. The therapist shall explain that the report need not identify the patient or client as the victim. If the patient or client wants the therapist to make the report, the patient or client shall provide the therapist with a written consent to the report and shall specify whether the patient's or client's identity will be included in the report.

(b) Within 30 days after a patient or client consents under par.(a) to a report, the therapist shall report the suspicion to:

1. The department, if the reporter believes the subject of the report is licensed by the state. The department shall promptly communicate the information to the appropriate examining board or affiliated credentialing board.

2. The district attorney for the county in which the sexual contact is likely, in the opinion of the reporter, to have occurred, if subd. 1. is not applicable.

(c) **A** report under this subsection shall contain only information that is necessary to identify the reporter and subject and to express the suspicion that sexual contact has occurred in violation of sub.(2). The report shall not contain information as to the identity of the alleged victim of sexual contact unless the patient or client requests under par.(a) that this information be included.

(d) Whoever intentionally violates this subsection by failing to report as required under pars.(a) to (c) is guilty of a Class **A** misdemeanor.

(4) CONFIDENTIALITY OF REPORTS AND RECORDS. (a) *All reports* and records made from reports under sub.(3) and maintained by the [illegible] department, examining [illegible] affiliated credentialing [illegible] attorneys and other persons, officials and [illegible] shall be confidential and [illegible] exempt from [illegible] s. 19. [illegible] (1). Information [illegible] the identity of a [illegible] victim of sexual contact by a th[illegible] shall not be disclosed by a reporter or by persons who [illegible] received or [illegible] access to a rep[illegible] or record unless disclosure i[illegible] consented [illegible] in writing by the victim [illegible] alleged victim. The report [illegible] f information [illegible] (b) (3) and the di[illegible] e of a report or record under this subsection [illegible] violate [illegible] y p[illegible] r n's [illegible] il ili[illegible] fo[illegible] i dai[illegible] ing [illegible] confidentiality [illegible] patient health care records, as [illegible] d in [illegible] 81 (4) [illegible] required under s. 146.82. Reports and records may be di[illegible] ty to appropriate staff of a district [illegible] or a l[illegible] enforce[illegible] gency [illegible] his state for purposes [illegible] or [illegible]

b) 1. The department, a district [illegible] y, a examining board or [illegible] affiliat[illegible] credentialing board within this state may [illegible] io[illegible] fr[illegible] a report [illegible] record on the same subject.

2. If [illegible] department receives 2 or more [illegible]) regarding the same subject, the department sh[illegible] information fr[illegible] the reports t[illegible] the appropriate district attorneys and may inform the [illegible] reporters that [illegible] report has been received regarding [illegible] e same subject.

3. If a district attorney [illegible] or more reports under [illegible](3) gar[illegible] the same subject, the di[illegible] may inform t[illegible] appli[illegible] le reporters that another report has been received [illegible] the same subject.

[illegible] reporters receive the information under subd. 2. or 3 , they [illegible] inform the applicable patients or [illegible] another report was received regarding [illegible] e [illegible]

(c) **A** person [illegible] a report or record is disclosed under this sub[illegible] may not further di[illegible] it, *except to the* persons and for the *purposes specified* i[illegible]

[illegible] violates this subsection, or permits or [illegible] the unauthorized [illegible] or use of information contained in [illegible] and records made under this [illegible], is guilty of a [illegible] *misdemeanor.*

(5) IMMUNITY FROM LIABILITY. [illegible] ny person or institution [illegible] in [illegible] d faith [illegible] the making of a [illegible] or *record* [illegible] der this section is immune from any civil or [illegible] liability *that* results [illegible] reason [illegible] the action. For the [illegible] of [illegible] il or criminal action or proceeding, any [illegible] reporting under this [illegible] [illegible] be [illegible] in good [illegible] The immunity [illegible] under [illegible] not apply to liabil[illegible] lti[illegible] from sexual contact by a th[illegible] rapi[illegible] with a patient or client.

History: 1983 **a.** 434; 1985 **a.** 275, 1987 **a.** [illegible] 380; 1991 **a.** 160; 1993 **a.** 107; 1995 **a.** 300; 2001 a[illegible] 109.

This section applies [illegible] engaged in professional [illegible] patient [illegible] ship. A [illegible] conduct [illegible] counseling is not engaged as a professional therapist. State v. [illegible] 196 Wis. 2d 768, 540 N.W [illegible] 208 (Ct. App. 1995).

94 Sexual assault.

(1) FI[illegible] DEGREE SEXUAL ASSAULT. Whoever does any of the foll[illegible] is guilty [illegible] a [illegible] B [illegible] ty

(a) H[illegible] sexual contact or sexual [illegible] with another [illegible] without consent of that person and causes pregnancy or [illegible] bodily [illegible] *that person.*

[illegible] sexual contact or sexual intercourse with another person without consent [illegible] f that person [illegible] use or [illegible] of use of a dangerous weapon [illegible] any article used or fashioned in a manner to lead the victim reasonably to believe it to be a [illegible] ng [illegible]

(c) Is [illegible] id or [illegible] by one or more other persons and has sexual contact [illegible] r sexual [illegible] urse [illegible] ith another *person without consent of* that person by use or threat of force or violence.

(2) SEC[illegible] DEGREE SEXUAL ASSAUL[illegible] Whoever does any of the following is guilty of a Class C fel[illegible] y:

NOTE: S[illegible] b. (2) (intro.) is sho[illegible] n as amended eff. 2–1–03 by 2001 Wis. Act 109. Prior to 2–1–03 it [illegible] d

(2) SECOND DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class BC felony:

(a) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(b) Has sexual contact or sexual intercourse with another person without consent of that person and causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim.

(c) Has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person's conduct, and the defendant knows of such condition.

(cm) Has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of appraising the person's conduct, and the defendant knows of such condition.

(d) Has sexual contact or sexual intercourse with a person who the defendant knows is unconscious.

(f) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without the consent of that person.

(g) Is an employee of a facility or program under s. 940.295 (2) (b), (c), (h) or (k) and has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program.

(3) THIRD DEGREE SEXUAL ASSAULT. Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class G felony. Whoever has sexual contact in the manner described in sub.(5) (b) 2. with a person without the consent of that person is guilty of a Class G felony.

NOTE: Sub. (3) is shown as amended eff. 2-1-03 by 2001 Wis. Act 109. Prior to 2-1-03 it reads:

(3) THIRD DEGREE SEXUAL ASSAULT. Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class D felony. Whoever has sexual contact in the manner deserbed in sub. (5) (b) 2. with a person without the consent of that person is guilty of a Class D felony.

(3m) FOURTH DEGREE SEXUAL ASSAULT. Except as provided in sub.(3), whoever has sexual contact with a person without the consent of that person is guilty of a Class A misdemeanor.

(4) CONSENT. "Consent", as used in this section, means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. Consent is not an issue in alleged violations of sub.(2) (c), (cm), (d) and (g). The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence, subject to the provisions of s. 972.11 (2): (b) A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct.

(c) A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(5) DEFINITIONS. In this section: (ag) "Inpatient facility" has the meaning designated in s. 51.01 (10).

(ai) "intoxicant" means any controlled substance, controlled substance analog or other drug, any combination of a controlled substance, controlled substance analog or other drug or any combination of an alcohol beverage and a controlled substance, controlled substance analog or other drug. "Intoxicant" does not include any alcohol beverage.

(am) "Patient" means any person who does any of the following: 1. Receives care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or (k), from an employee of a facility or program or from a person providing services under contract with a facility or program. 2. Arrives at a facility or program under s. 940.295 (2) (b), (c), (h) or (k) for the purpose of receiving care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or (k), from an employee of a facility or program under s. 940.295 (2) (b), (c), (h) or (k), or from a person providing services under contract with a facility or program under s. 940.295 (2) (b), (c), (h) or (k).

(ar) "Resident" means any person who resides in a facility under s. 940.295 (2) (b), (c), (h) or (k).

(b) "Sexual contact" means any of the following:

1. intentional touching by the complainant or defendant, either directly or through clothing by the use of any body part or object, of the complainant's or defendant's intimate parts if that intentional touching is either for the purpose of sexually degrading; or for the purpose of sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under s. 940.19 (1).

2. intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant.

(c) "Sexual intercourse" includes the meaning assigned under s. 939.22 (36) as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required.

(d) "State treatment facility" has the meaning designated in s. 51.01 (15).

(6) MARRIAGE NOT A BAR TO PROSECUTION. A defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant.

(7) DEATH OF VICTIM. This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.

History: 1975 c. 184,421; 1977 c. 173; 1979 c. 24, 25, 175, 221; 1981 c. 89, 308, 309,310,311; 1985 a. 134; 1987 a. 245,332,352; 1987 a. 403 ss. 235,236,256; 1993 a. 445; 1995 a. 69; 1997 a. 220; 2001 a. 109.

Legislative Council Note, 1981: Presently, [in sub.(5) (a)] the definition of "sexual intercourse" in the sexual assault statute includes any intrusion of any part of a person's body or of any object into the genital or anal opening of another person. This proposal clarifies that the intrusion of the body part or object may be caused by the direct act of the offender (defendant) or may occur as a result of an act by the victim which is done in compliance with instructions of the offender (defendant). [Bill 630–S] Failure to resist is not consent under sub.(4). State v. Clark, 87 Wis. 2d 804, 275 N.W.2d 715 (1979).

Injury by conduct regardless of life is not a lesser–included crime of first-degree sexual assault. Hagenkord v. State, 94 Wis. 2d 250,287 N.W.2d 834 (Ct App. 1979).

Separate acts of sexual intercourse, each different in kind from the others and differently defined in the statutes, constitute separate chargeable offenses. State v. Eisch, 96 Wis. 2d 25,291 N.W.2d 800 (1980).

The trial court did not err in denying the accused's motions to compel psychiatric examination of the victim and for discovery of the victim's past addresses. State v. Lederer, 99 Wis. 2d 430,299 N.W.2d 457 (Ct. App. 1980).

The verdict was unanimous in a rape case even though the jury was not required to specify whether the sexual assault was vaginal or oral. State v. Lomagro, 113 Wis. 2d 582,335 N.W.2d 583 (1983).

A jury instruction that touching the "vaginal area" constituted sexual contact was correct. State v. Morse, 126 Wis. 2d 1,374 N.W.2d 388 (Ct. App. 1985).

"Unconscious" as used in sub.(2) (d) is a loss of awareness that may be caused hy sleep. State v. Curtis, 144 Wis. 2d 691,424 N.W.2d 719 (Ct. App. 1988).

The probability of exclusion and paternity are generally admissible in a sexual assault action in which the assault allegedly resulted in the birth of a child, but the probability of paternity is not generally admissible. HLA and red blood cell test results showing the paternity index and probability of exclusion were admissible statistics. State v. Hartman, 145 Wis. 2d 1,426 N.W.2d 320 (1988).

Attempted fourth–degree sexual assault is not an offense under Wisconsin law. State v. Cvorovic, 158 Wis. 2d 630,462 N.W.2d 897 (Ct. App. 1990).

The "use or threat of force or violence" under sub.(2) (a) does not require that the force he directed toward compelling the victim's submission, but includes forcible contact or the force used as the means of making contact. State v. Bonds, 165 Wis. 2d 27,477 N.W.2d 265 (1991).

A dog may be a dangerous weapon under sub.(1) (b). State v. Sinks, 168 Wis. 2d 245, 483 N.W.2d 286 (Ct App. 1992).

Convictions under both subs.(1) (d) and (2) (d) did not violate doublejeopardy. State v. Sauceda, 168 Wis. 2d 486, 485 N.W.2d 1 (1992). A defendant's lack of intent to make a victim believe that he was armed was irrelevant in finding a violation of sub.(1) (h); if the victim's belief that the defendant was armed was reasonable, that is enough. State v. Hubanks, 173 Wis. 2d 1, 496 N.W.2d 96 (Ct. App. 1992).

Sub.(2) (d) is not unconstitutionally vague. Expert evidence regarding sleep based solely on a hypothetical situation similar, but not identical, to the facts of the case was inadmissible. State v. Pittman, 174 Wis. 2d 255,496 N.W.2d 74 (1993).

Convictions under both sub.(2) (a) and (e) did not violate double jeopardy. State v. Selmon, 175 Wis. 2d 155,877 N.W.2d 498 (Ct App. 1993).

"Great bodily harm" is a distinct element under sub.(1) (a) and need not be caused by the sexual act. State v. Schambow, 176 Wis. 2d 286, N.W.2d (Ct. App. 1993).

Intent is not an element of sub.(2) (a); lack of an intent element does not render this provision constitutionally invalid. State v. Neumann, 179 Wis. 2d 687, 508 N.W.2d 54 (Ct. App. 1993).

A previous use of force, and the victim's resulting fear, was an appropriate basis for finding that a threat of force existed under sub.(2) (a). State v. Speese, 191 Wis. 2d 205, 528 N.W.2d 63 (Ct. App. 1995).

Violation of any of the provisions of this section does not immunize the defendant from violating the same or another provision in the course of sexual misconduct Two acts of vaginal intercourse are sufficiently different in fact to justify separate charges under sub.(1) (d). State v. Kruzycki, 192 Wis. 2d 509,531 N.W.2d 429 (Ct. App. 1995).

Sub.(2) (c) is not unconstitutionally vague. State v. Smith, 215 Wis. 2d 84, 572 N.W.2d 496 (Ct App. 1997).

For a guilty plea to a sexual assault charge to be knowingly made, a defendant need not he informed of the potential of being required to register as a convicted sex offender under s. 301.45 or that failure to register could result in imprisonment, as the commitment is a collateral, not direct, consequence of the plea. State v. Bollig, 2000 WI 6,232 Wis. 2d 561,605 N.W.2d 199.

Conviction on 2 counts of rape, for acts occurring 25 minutes apart in the same location, did not violate double jeopardy. Harrell v. Israel, 478 F. Supp. 752 (1979).

A conviction for attempted 1st degree sexual assault based on circumstantial evidence did not deny due process. Upshaw v. Powell, 478 F. Supp. 1264 (1979).

CHAPTER 961

UNIFORM CONTROLLED SUBSTANCES ACT

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NOTE: See Chapter **161, 1993–94** Stats., **for** detailed notes on actions by the Controlled Substances Board. (Chapter **961** was renumbered **from** ch. **161** by **1995 Wis. Act 448.)**

961.001 Declaration of intent. The legislature finds that the abuse of controlled substances constitutes a serious problem for society. As a partial solution, these laws regulating controlled substances have been enacted with penalties. The legislature, recognizing a need for differentiation among those who would violate these laws makes this declaration of legislative intent:

(1g) Many of the controlled substances included in this chaptcr have useful and legitimate medical and scientific purposes and are ncccssary to maintain the health and gcncral welfare of the people of this state.

(1m) The manufacture, distribution, delivery, possession and use of controlled substances for other than legitimate purposes have a substantial and detrimental effect on the health and general welfare of the people of this state.

(1r) Persons who illicitly traffic commercially in controlled substances constitute a substantial menace to the public health and safety. The possibility of lengthy terms of imprisonment must exist as a deterrent to trafficking by such persons. Upon conviction for trafficking, such persons should be sentenced in a manner which will deter further trafficking by them, protect the public from their pernicious activities, and restore them to legitimate and socially useful endeavors.

(2) Persons who habitually or professionally engage in commercial trafficking in controlled substances and prescription drugs should, upon conviction, be sentenced to substantial terms of imprisonment to shield the public from their predatory acts. However, persons addicted to or dependent on controlled substances should, upon conviction, be sentenced in a manner most likely to produce rehabilitation.

(3) Upon conviction, persons who casually use or experiment with controlled substances should receive special treatment geared toward rehabilitation. The sentencing of casual users and experimenters should be such as will best induce them to shun further contact with controlled substances and to develop acceptable alternatives to drug abuse.

History: 1971 c. 219; 1995 a. 448 ss. 107 to 110, 462, 463; Stats. 1995 s. 961.001.

SUBCHAPTER I

DEFINITIONS

961.01 Definitions. As used in this chapter:

(1) "Administer", unless the context otherwise requires, means to apply a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(a) A practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or

(b) The patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent", unless the context otherwise requires, means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. "Agent" does not include

a common or contract carrier, public warehouse keeper or employee of the carrier or warehouse keeper while acting in the usual and lawful course of the carrier's or warehouse keeper's business.

(2m) (a) "Anabolic steroid" means any drug or hormonal substance, chemically or pharmacologically related to testosterone, except estrogens, progestin, and corticosteroids, that promotes muscle growth. The term includes all of the substances included in s. 961.18 (7), and any of their esters, isomers, esters of isomers, salts and salts of esters, isomers and esters of isomers, that are theoretically possible within the specific chemical designation, and if such esters, isomers, esters of isomers, salts and salts of esters, isomers and esters of isomers promote muscle growth.

(b) Except as provided in par. (c), the term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the United States Secretary of Health and Human Services for such administration.

(c) If a person prescribes, dispenses or distributes such steroid for human use. such person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of par. (a).

(4) "Controlled substance" means a drug, substance or immediate precursor included in schedules I to V of subch. 11.

(4m) (a) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance included in schedule I or II and:

1. Which has a stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II; or

2. With respect to a particular individual, which the individual represents or intends to have a stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or 11.

(b) "Controlled substance analog" does not include:

1. A controlled substance;

2. A substance for which there is an approved new drug application;

3. A substance with respect to which an exemption is in effect for investigational use by a particular person under 21 USC 355 to the extent that conduct with respect to the substance is permitted by the exemption; or

4. Any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(5) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(6) "Deliver" or "delivery", unless the context otherwise requires, means the actual, constructive or attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is any agency relationship.

(7) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a Practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(8) "Dispenser" means a practitioner who dispenses.

(9) "Distribute" means to deliver other than by administering or dispensing a controlled substance or controlled substance analog.

(10) "Distributor" means a person who distributes.

(10m) "Diversion" means the transfer of any controlled substance from a licit to an illicit channel of distribution or use.

(11) (a) "Drug" means any of the following:

1. A substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary or any supplement to any of them.

2. A substance intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or animals.

3. A substance, other than food, intended to affect the structure or any function of the body of humans or animals.

4. A substance intended for use as a component of any article specified in subd. 1., 2. or 3.

(b) "Drug" does not include devices or their components, parts or accessories.

(11m) "Drug enforcement administration" means the drug enforcement administration of the U.S. department of justice or its successor agency.

(12) "Immediate precursor" means a substance which the controllcd substances board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary *to* prevent, curtail or limit manufacture.

(12g) "Isomer" means an optical isomer, but in ss. 961.14 (2) (er) and **(qs)** and 961.16 (2) (b) 1. "isomer" includes any geometric isomer: in ss. 961.14 (2) (cg), (tg) and (xm) and 961.20 **(4)** (am) "isomer" includes any positional isomer; and in ss. 961.14 (2) (rj) and (4) and 961.18 (2m) "isomer" includes any positional or geometric isomer.

(12m) "Jail or correctional facility" means any of the following:

(a) A Type 1 prison, as defined in s. 301.01 (5).

(b) A jail, as defined in s. 302.30.

(c) A house of correction.

(d) A Huber facility under s. 303.09.

(e) A lockup facility, as defined in s. 302.30.

(f) A work camp under s. 303.10.

(13) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of, or to produce, prepare, propagate, compound, convert or process, a controlled substance or controlled substance analog, directly or indirectly, by extraction from substances of natural origin, chemical synthesis or a combination of extraction and chemical synthesis, including to package or repackage or the packaging or repackaging of the substance, or to label or to relabel or the labeling or relabeling of its container. "Manufacture" does not mean to prepare, compound, package, repackage, label or relabel or the preparation, compounding, packaging, repackaging, labeling or relabeling of a controlled substance:

(a) By a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(b) By a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

(14) "Marijuana" means all parts of the plants of the genus Cannabis, whether growing or not; the seeds thereof the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant,

its seeds or resin, including tetrahydrocannabinols. "Marijuana" does include the mature stalks if mixed with other parts of the plant, but docs not include fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufachire, salt, derivative, mixture or preparation of the mature stalks (except the resin cxtractcd therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

(14m) "Multiunit public housing project" means a public housing project that includes 4 or more dwelling units in a single parcel or in contiguous parcels.

(15) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium and substances derived from opium, and any compound, derivative or preparation of opium or substances derived from opium, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation. The term docs not include the isoquinoline alkaloids of opium.

(bm) Synthetic opiate, and any derivative of synthetic opiate, including any of their isomers, esters, ethers, esters and ethers of isomers, salts and salts of isomers, esters, ethers and esters and ethers of isomers that are theoretically possible within the specific chemical designation.

(c) Opium poppy, poppy straw and concentrate of poppy straw.

(d) Any compound, mixture or preparation containing any quantity of any substance included in pars. (a) to (c).

(16) "Opiate" means any substance having an addiction–forming or addiction–sustaining liability similar to morphine or being capable of conversion into a drug having addiction–forming or addiction–sustaining liability. "Opiate" includes opium, substances derived from opium and synthetic opiates. "Opiate" does not include, unless specifically scheduled as a controlled substance under **s.** 961.11, the dextrorotatory isomer of 3–niethoxy–N–methylmorphinan and its salts (dextromethorphan). "Opiate" does include the racemic and levorotatory forms of dextromethorphan.

(17) "Opium poppy" means any plant of the species Papaver somniferum L., except its seeds.

(18) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(19) "Practitioner" means:

(a) A physician, advanced practice nurse, dentist, veterinarian, podiatrist, optometrist, scientific investigator or, subject to **s.** 448.21 (3), a physician assistant, or other person licensed, registered, certified or otherwise permitted to distribute, dispense, conduct research with respect to, administer or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in this state.

(b) A pharmacy, hospital or other institution licensed, registered or otherwise permitted *to* distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state.

(20) "Production", unless the context otherwise requires, includes the manufacturing of a controlled substance or controlled substance analog and the planting, cultivating, growing or harvesting of a plant from which a controlled substance or controlled substance analog is derived.

(20g) "Public housing project" means any housing project or development administered by a housing authority, as defined in **s.** 16.30 (2).

(20h) "Public transit vehicle" means any vehicle used for providing transportation service to the general public.

(20i) "Scattered--site public housing project" means a public housing project that does not include 4 or more dwelling units in a single parcel or in contiguous parcels.

(21) "Ultimate user" means an individual who lawfully possesses a controlled substance for that individual's own use or for the use of a member of that individual's household or for administering to an animal owned by that individual or by a member of that individual's household.

(21m) "Vehicle" has the meaning given in **s.** 939.22 (44).

(22) "Youth center" means any center that provides, on a regular basis, recreational, vocational, academic or social services activities for persons younger than 21 years old or for those persons and their families.

History: 1971 c. 219; 1979 c. 89; 1981 c. 200,206: 1983 a. **500** s. 43; 1989 a. 31; CSB2.21; 1993 a. 87, 129.138, 184,281.482; 1995 a. 281 s. 2; 1995 a. 448 ss. 112 to 143,247,248,464 to 468; Stats. 1995 s. 961.01; 1997 a. 35 s. 338; 1997 a. ***67;*** 1999 a. ***85.***

A constructive delivery under sub. (6) may be found if a single actor leaves a **substance** somewhere for later retrieval by another. State **v.** Wilson, 180 **Wis.** 2d 414, 509 N.W.2d 128 (Ct. App. 1993).

Day care centers are a subset of "youth centers" **as** defined in s. 961.01(22) and come within the definition of places listed **in s.** 961.49 **(2).** State v. Van Riper, 222 Wis. 2d 197, 586 N.W.2d 198 (Ct. App. 1998).

SUBCHAPTER II

STANDARDS AND SCHEDULES

961.11 Authority to control. (1) The controlled substances board shall administer this subchapter and may add substances to or delete or reschedule all substances listed in the schedules in ss. 961.14, 961.16, 961.18. 961.20 and 961.22 pursuant to the rule–making procedures of ch. 227.

(1m) In making a determination regarding a substance, the board shall consider the following:

(a) The actual or relative potential for abuse;

(b) The scientific evidence of its pharmacological effect, if known;

(c) The state of current scientific knowledge regarding the substance;

(d) The history and current pattern of abuse;

(e) The scope, duration and significance of abuse;

(f) The risk to the public health;

(g) The potential of the substance to produce psychological or physical dependence liability; and

(h) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

(Ir) The controlled substances board may consider findings of the federal food and drug administration or the drug enforcement administration as prima facie evidence relating to one or more of the determinative factors.

(2) After considering the factors enumerated in sub. (lm), the controlled substances board shall make findings with respect to them and promulgate a rule controlling the substance upon finding that the substance has a potential for abuse.

(3) The controlled substances board, without regard to the findings required by sub. (2) orss. 961.13, 961.15, 961.17, 961.19 and 961.21 or the procedures prescribed by subs. (1), (1m), (lr) and (2), may add an immediate precursor to the same schedule in which the controlled substance of which it is an immediate precursor is included or to any other schedule. If the board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(4) If a substance is designated, rescheduled or deleted as a controlled substance under federal law and notice thereof is given to the controlled substances board, the board by affirmative action shall similarly treat the substance under this chapter after the expiration of 30 days from the date of publication in the federal register of a final order designating the substance **as** a controlled substance or rescheduling or deleting the substance or from the date of issuance of an order of temporary scheduling under 21 USC 811

(h), unless within that 30-day period, the board or an interested party objects to the treatment of the substance. If no objection is made, the board shall promulgate, without making the determinations or findings required by subs. (1), (1m), (1r) and (2) or s. 961.13, 961.15: 961.17, 961.19 or 961.21, a final rule, for which notice of proposed rule making is omitted, designating, rescheduling, temporarily scheduling or deleting the substance. If an objection is made the board shall publish notice of receipt of the objection and the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the board shall make a determination with respect to the treatment of the substance as provided in subs. (1), (1m), (1r) and (2) and shall publish its decision, which shall be final unless altered by statute. Upon publication of an objection to the treatment by the board, action by the board under this chapter is stayed until the board promulgates a rule under sub. (2).

(4m) The controlled substances board, by rule and without regard to the requirements of sub. (Im), may schedule a controlled substance analog as a substance in schedule I regardless of whether the substance is substantially similar to a controlled substance in schedule I or II, if the board finds that scheduling of the substance on an emergency basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under 21 USC 355. Upon receipt of notice under s. 961.25, the board shall initiate scheduling of the controlled substance analog on an emergency basis under this subsection. The scheduling of a controlled substance analog under this subsection expires one year after the adoption of the scheduling rule. With respect to the finding of an imminent hazard to the public safety, the board shall consider whether the substance has been scheduled on a temporary basis under federal law or factors under sub. (Im) (d), (e) and (f), and may also consider clandestine importation, manufacture or distribution, and, if available, information concerning the other factors under sub. (1m). The board may not promulgate a rule under this subsection until it initiates a mle-making proceeding under subs. (1), (1m), (1r) and (2) with respect to the controlled substance analog. A rule promulgated under this subsection lapses upon the conclusion of the rule-making proceeding initiated under subs. (1), (1m), (1r) and (2) with respect to the substance.

(5) The authority of the controlled substances board to control under this section does not extend to intoxicating liquors, as defined in s. 139.01 (3), to fermented malt beverages as defined in s. 125.02, or to tobacco.

(6) (a) The controlled substances board shall not have authority to control a nonnarcotic substance if the substance may, under the federal food, drug and cosmetic act and the laws of this state, be lawfully sold over the counter without a prescription.

(b) If the board finds that any nonnarcotic substance barred from control under this chapter by par. (a) is dangerous to or is being so used as to endanger the public health and welfare, it may request the department ofjustice in the name of the state to seek a temporary restraining order or temporary injunction under ch. 813 to either ban or regulate the sale and possession of the substance. The order or injunction shall continue until the adjournment of the legislature convened next following its issuance. In making its findings as to nonnarcotic substances under this paragraph, the board shall consider the items specified in sub. (1m).

History: 1971 c. 219, 307; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1981 c. 79 s. 18; 1983 a. 189 s. 329 (13); 1995 a. 448 ss. 145 to 152, 469, 470; Stats. 1995 s. 961.11.

Cross Reference: See also CSB, Wis. adm. code.

961.115 Native American Church exemption. This chapter does not apply to the nondrug use of peyote and mescaline in the bona fide religious ceremonies of the Native American Church.

History: 1971 c. 219; 199.5a. 448 s. 153; Stats. 1995 s. 961.115.

Because the exemption is based upon the unique cultural heritage of Native Americans, it is not an unconstitutional classification. State v. Peck, 143 Wis. 2d 624.422 N.W.2d 160 (Ct. App. 1988).

961.12 Nomenclature. The controlled substances listed in or added to the schedules in ss. 961.14, 961.16, 961.18, 961.20 and 961.22 may be listed or added by any official, common, usual, chemical or trade name used for the substance.

History: 1971 c. 219: 199.5a. 448 s. 154; Stats. 1995 s. 961.12.

961.13 Schedule I tests. (1m) The controlled substances board shall add a substance to schedule I upon finding that the substance:

(a) Has high potential for abuse;

(b) Has no currently accepted medical use in treatment in the United States; and

(c) Lacks accepted safety for use in treatment under medical supervision.

(2m) The controlled substances board may add a substance to schedule 1 without making the findings required under sub. (1in) if the substance is controlled under schedule I of 21 USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. 219; 1995 a. 448 ss. 155, 156, 471; Stats. 1995 s. 961.13.

961.14 Schedule I. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule I:

(2) SYNTHETIC OPIATES. Any material, compound, mixture or preparation which contains any quantity of any of the following synthetic opiates, including any of their isomers, esters, ethers, esters and ethers of isomers, salts and salts of isomers, esters, ethers and esters and ethers of isomers that are theoretically possible within the specific chemical designation:

(a) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenylethyl)-4-piperidinyl]-N-phenylacetamide);

(ag) Acetylmethadol;

(am) Allylprodine;

(b) Alphacetylmethadol (except levo-alphacetylmethadol (LAAM));

(bm) Alphameprodine;

(c) Alphamethadol;

(cd) Alpha-methylfentanyl (N-[1-(I-methyl-2-phenylethyl)-4-piperidinyl]-N-phenyIpropanamide);

(cg) Alpha-methylthiofentanyl (N-{1-[1-methyl-2-(2-thienyl)ethyl]-4-piperidinyl}-N-phenylpropanamide);

(cm) Benzethidine;

(d) Betacetylmethadol;

(dg) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenylethyl)-4-piperidinyl]-N-phenylpropanamide);

(dm) Betameprodine;

(e) Betamethadol;

(em) Betaprodine;

(er) Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenylethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);

(f) Clonitazene;

(fm) Dextromoramide;

(gm) Diampromide;

(h) Diethylthiambutene;

(hg) Difenoxin;

(hm) Dimenoxadol;

(j) Dimepheptanol;

(jm) Dimethylthiambutene;

(k) Dioxaphetyl butyrate;

(km) Dipipanone;

(m) Ethylmethylthiambutene;

(mm) Etonitazene;

(n) Etoxeridine;

(nm) Furethidine;

(p) Hydroxypethidine;

(pm) Ketobeniidone;

(q) Levomoramide;

(qm) Levophenacylmorphan;

(qs) 3–methylfentanyl (N–[3–methyl–1–(2–phenylethyl)–4–piperidinyl]–N–phenylpropanamide);

(r) Morpheridine;

(rg) MPPP (1–methyl–4–phenyl–4–propionoxypiperidine);

(rj) 3–inethylthiofentanyl (N–β–methyl–1–[2–(2–thienyl)ethyl]–4–piperidinyl}–N–phenylpropanamide);

(rm) Noracymethadol;

(s) Norlevorphanol;

(sm) Normethadone;

(t) Norpipanone;

(tg) Para–fluorofentanyl (N–[1–(2–phenylethyl)–4–piperidinyl]–N–(4–fluorophenyl)propanamide);

(tm) Phenadoxone;

(u) Phenampromide;

(um) Phenomorphan;

(v) Phenoperidine;

(vg) PEPAP (1–(2–phenylethyl)–4–phenyl–4–acetoxypiperidine);

(vm) Piritramide;

(w) Proheptazine;

(wm) Properidine;

(wn) Propiram;

(x) Racemoramide;

(xm) Thiofentanyl (N–{1–[2–(2–thienyl)ethyl]–4–piperidinyl}–N–phenylpropanamide);

(xr) Tilidine;

(y) Trimeperidine.

(3) SUBSTANCES DERIVED FROM OPIUM. Any material, compound, mixture or preparation which contains any quantity of any of the following substances derived from opium, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Acetorphine;

(b) Acetyldihydrocodeine;

(c) Benzylmorphine;

(d) Codeine methylbromide;

(e) Codeine–N–oxide;

(f) Cyprenorphine;

(g) Desomorphine;

(h) Dihydromorphine;

(hm) Drotebanol;

(j) Etorphine, except its hydrochloride salts;

(k) Heroin;

(m) Hydromorphinol;

(n) Methyldesorphine;

(p) Methyldihydromorphine;

(q) Morphine methylbromide;

(r) Morphine methylsulfonate;

(s) Morphine–N-oxide;

(t) Myrophine;

(u) Nicocodeine;

(v) Nicomorphine;

(w) Normorphine;

(x) Pholcodine;

(y) Thebacon.

(4) HALLUCINOGENIC SUBSTANCES. Any material, compound, mixture or preparation which contains any quantity of any of the following hallucinogenic substances, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation, in any form including a substance, salt, isomer or salt of an isomer contained in a plant, obtained from a plant or chemically synthesized:

(a) 3,4–methylenedioxyamphetamine, commonly known as "MDA";

(ag) 3,4–methylenedioxyethylamphetamine, commonly known as "MDE;

(am) 3,4–methylenedioxymethamphetamine, commonly known as "MDMA";

(ar) N–hydroxy–3,4–methylenedioxyamphetamine;

(b) 5–methoxy–3,4–methylenedioxyamphetamine;

(bm) 4–ethyl–2,5–dimethoxyamphetamine, commonly known as "DOET";

(c) 3,4,5–trimethoxyamphetamine;

(cm) Alpha–ethyltryptamine;

(d) Bufotenine;

(e) Diethyltryptamine;

(f) Dimethyltryptamine;

(g) 4–methyl–2,5–dimethoxyamphetamine, commonly known as "STP";

(h) Ibogaine;

(j) Lysergic acid diethylamide, commonly known as "LSD";

(m) Mescaline, in any form, including mescaline contained in peyote, obtained from peyote or chemically synthesized;

(mn) Parahexyl (3–hexyl–1–hydroxy–7, 8, 9, 10–tetrahydro--6, 6, 9–trimethyl–6H–dibenzo(b, d)pyran);

(n) Phencyclidine, commonly known as "PCP";

(p) N-ethyl–3–piperidyl benzilate;

(q) N–methyl–3–piperidyl benzilate;

(r) Psilocybin;

(s) Psilocin;

(t) Tetrahydrocannabinols, commonly known as "THC", in any form including tetrahydrocannabinols contained in marijuana, obtained from marijuana or chemically synthesized;

(u) 1–[1–(2–thienyl)cyclohexyl]piperidine, which is the thiophene analog of phencyelidine;

(ud) 1–[1–(2–thienyl)cyclohexyl]pyrrolidine, which is the thiophene pyrrolidine analog of phencyclidine;

(ug) N–ethyl–1–phenylcyclohexylamine, which is the ethylamine analog of phencyclidine;

(ur) 1–(1–phenylcyclohexyl)pyrrolidine, which is the pyrrolidine analog of phencyclidine;

(v) 2,5–dimethoxyamphetamine;

(w) 4–bromo–2,5–dimethoxyamphetamine, commonly known as "DOB";

(wg) 4–bromo–2,5–dimethoxy–beta–phenylethylamine, commonly known as "2C–B" or "Nexus";

(x) 4–methoxyamphetamine.

(5) DEPRESSANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(ag) Gamma–hydroxybutyric acid (commonly known as gamma hydroxybutyrate or "GHB") and gamma–butyrolactone.

(am) Mecloqualone.

(b) Methaqualone.

(6) IMMEDIATE PRECURSORS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances or their salts:

(a) Immediate precursors to phencyclidine:

1. 1–phenylcyclohexylamine.

2. 1–piperidinocyclohexanecarbonitrile.

(7) STIMULANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(ag) Cathinone.

(am) Aminorex.

(b) Fenethylline.

(c) N–ethylamphetamine.

(d) 4–methylaminorex.

(e) N,N–dimethylamphetamine.

(L) Mcthcathinone.

(p) 4–methylthioamphetamine, commonly known as "4–MTA."

History: 1971 c. 219; 1981 *c.* 206; CSB 2.16, 2.15, 2.17, 2.18, 2.19, 2.20; 1989 a. 121; CSB 2.21; 19933.98, 118; CSB 2.22; 1995 a. 225; 1995 a. 448 ss. 157 to 165; Stats. 1995s. 961.14; 1997 a. 220; 1999 a. 21; 2001 a. 16.

NOTE: See 1979–80 Statutes and 1993–94 Statutes for nates on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

A chemical test need not be specifically for marijuana in order to **be** probative beyond a reasonable doubt. State v. Wind, 60 Wis. 2d 267, 208 N.W.2d 357 (1973).

THC is properly classified as Schedule I substance. State v. Olson, 127 Wis. 2d 412.380 N.W.2d 375 (Ct. App. 1985).

Stems and branches supporting marijuana leaves or buds are not "mature stalks" under sub. (14). State v. **Martinez,** 210 Wis. 2d 397, 563 N.W.2d **922** (Ct App. 1997).

961.15 **Schedule II tests.** (lrn) The controlled substances board shall add a substance to schedule II upon finding that:

(a) The substance has high potential for abuse;

(b) The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(c) The abuse of the substance may lead to severe psychological or physical dependence.

(2m) The controlled substances board may add a substance to schedule II without making the findings required under sub. (lm) if the substance is controlled under schedule II of 21 USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. **219;** 1995 a. 448 ss. 166, 167, 472; Stats. 1995 s. 961.15.

961.16 **Schedule II.** Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule II:

(2) SUBSTANCES OF PLANT ORIGIN. Any material, compound, mixture or preparation which contains any quantity of any of the following substances in any form, including a substance contained in a plant, obtained from a plant, chemically synthesized or obtained by a combination of extraction from a plant and chemical synthesis:

(a) Opium and substances derived from opium, and any salt, compound, derivative or preparation of opium or substances derived from opium. Apomorphine, dextrorphan, nalbuphinc, butorphanol, nalmefene, naloxone and naltrexone and their respective salts and the isoquinoline alkaloids of opium and their respective salts are excluded from this paragraph. The following substances, and any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation, are included in this paragraph:

1. Opium, including raw opium, opium extracts, opium fluid extracts, powdered opium, granulated opium and tincture of opium.

2. Opium poppy and poppy straw.

3. Concentrate of poppy straw, which is the crude extract of poppy straw in either liquid, solid or powder form containing the phenanthrene alkaloids of the opium poppy.

4. Codeine.

4m. Dihydrocodeine.

4r. Dihydroctorphine.

5. Ethylmorphine.

6. Etorphinc hydrochloride.

7. Hydrocodone, also known as dihydrocodeinone

8. Hydromorphonc, also known as dihydromorphinone.

9. Metopon.

10. Morphine.

11. Oxycodonc.

12. Oxymorphone.

13. Thebaine.

(b) Coca leaves and any salt, compound, derivative or preparation of coca leaves. Decocainized coca leaves or extractions which do not contain cocaine or ecgonine are excluded from this paragraph. The following substances and any of their salts, esters, isomers and salts of esters and isomers that are theoretically possible within the specific chemical designation, are included in this paragraph:

1. Cocaine.

2. Ecgonine.

(3) SYNTHETIC OPIATES Any material, compound, mixture or preparation which contains any quantity of any of the following synthetic opiates, including any of their isomers, esters, ethers, esters and ethers of isomers, salts and salts of isomers, esters, ethers and esters and ethers of isomers that are theoretically possible within the specific chemical designation:

(a) Alfentanil;

(am) Alphaprodine;

(b) Anileridine;

(c) Bezitramide;

(cm) Carfentanil;

(e) Diphenoxylate;

(f) Fentanyl;

(g) Isomethadone;

(gm) Levo–alphacetylmethadol (LAAM);

(h) Levomethorphan;

(j) Levorphanol:

(k) Meperidine, also known as pethidine;

(mj Meperidine—Intermediate—A, 4–cyano–1–methyl–4–phenylpiperidine;

(n) Meperidine—Intermediate—B, ethyl-4–phenylpiperidine–4–carboxylate;

(p) Meperidine—Intermediate—C, 1–methyl–4–phenylpiperidine–4–carboxylic acid;

(q) Metazocine;

(r) Methadone;

(s) Methadone --Intermediate, 4-cyano–2–dimethylamino–4, 4–diphenylbutane;

(t) Moramide—Intermediate, 2–methyl–3–morpholino–1, 1–diphenylpropanecarboxylicacid;

(u) Phenazocine;

(v) Piminodine;

(w) Racemethorphan;

(x) Racemorphan;

(xm) Remifentanil;

(y) Sufentanil.

(5) STIMULANTS Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Amphetamine.

(b) Methamphetamine.

(c) Phenmetrazine.

(d) Methylphenidate.

(7) DEPRESSANTS. Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Amobarbital;

(am) Glutethimide;

(b) Pentobarbital;

(c) Secobarbital.

(8) IMMEDIATE PRECURSORS. Any material, compound, mixture or preparation which contains any quantity of the following substances:

(a) An immediate precursor to amphetamine or methamphetamine:

1. Phenylacetonc, commonly known as "P2P".

(10) HALLUCINOGENIC SUBSTANCES. (b) Nabilone (another name for nabilone is (+)-trans-3- (1,1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy -6, 6-dimethyl-9H-dibenzo [b,d] pyran-9-one).

History: 1971 c. 219; **1981** c. 6, 206; CSB 2.16, 2.17, 2.19; 1989 a. 121; CSB 2.21; 1993 **a. 98: CSB 2.22:** 1995 **a. 448 ss.** 168 to **178,473; Stats. 1995 s. 961.16; CSB 2.25; CSB 2.26.**

NOTE: See 1979-80 Statutes and 1993-94 Statutes for notes on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

At a preliminary hearing, **the state** must **show that a substance was probably** l-cocaine **rather** than d-cocaine. **State v. Russo, 101 Wis. 2d 206,303** N.W.2d **846** (Ct. **App.** 1981).

961.17 Schedule III tests. (1m) The controlled substances board shall add a substance to schedule III upon finding that:

(a) The substance has a potential for abuse less than the substances included in schedules I and II;

(b) The substance has currently accepted medical use in treatment in the United States; and

(e) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(2m) The controlled substances board may add a substance to schedule III without making the findings required under sub. (1m) if the substance is controlled under schedule III of 21 USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 **c. 219;** 1995 **a. 448 ss. 179, 180,474; Stats.** 1995 **s. 961.17.**

961.18 Schedule III. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule III:

(2m) STIMULANTS Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Benzphetamine:

(b) Chlorphentermine;

(c) Clortermine;

(c) Phendimetrazine.

(3) DEPRESSANTS Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Any substance which contains a derivative of barbituric acid;

(b) Chlorhexadol;

(d) Lysergic acid;

(e) Lysergic acid amide;

(f) Methyprylon;

(11) Sulfondiethylmcthanc;

(j) Sulfonethylmethane;

(k) Sulfonmethane;

(km) Tiletamine and Zolazepam in combination;

(in) Any compound, mixture, or preparation containing any of the following drugs and one or more other active medicinal ingredients not included in any schedule:

1. Amobarbital.
2. Secobarbital.
3. Pentobarbital.

(n) Any of the following drugs in suppository dosage form approved by the federal food and drug administration for marketing only as a suppository:

1. Amobarbital.
2. Secobarbital.
3. Pentobarbital.

(4) OTHER SUBSTANCES Any material, compound, mixture or preparation which contains any quantity of any of the following substances, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(ak) Ketamine.

(an) Nalorphine.

(4m) HALLUCINOGENIC SUBSTANCES. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. food and drug administration approved drug product. (Other names for dronabinol are (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6. 9-trimethyl-3-pentyl-6H-dibenzo(b, d)pyran-1-ol, and (-) - delta-9-(trans)-tetrahydrocannabinol.)

(5) NARCOTIC DRUGS Any material, compound, mixture or preparation containing any of the following narcotic drugs or their salts, isomers or salts of isomers, calculated as the free anhydrous base or alkaloid, in limited quantities as follows:

(a) Not more than 1.8 grams of codeine per 100 milliliters or per 100 grams or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(b) Not more than 1.8 grams of codeine per 100 milliliters or per 100 grams or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(c) Not more than 300 milligrams of hydrocodone per 100 milliliters or per 100 grams or not more than 15 milligrams per dosage unit, with a four-fold or greater quantity of an isoquinoline alkaloid of opium.

(d) Not more than 300 milligrams of hydrocodone per 100 milliliters or per 100 grams or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or per 100 grams or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Not more than 300 milligrams of ethylmorphine per 100 milliliters or per 100 grams or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts.

(g) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(h) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) EXCEPTIONS The controlled substances board may except by rule any compound, mixture or preparation containing any stimulant or depressant substance included in sub. (2m) or (3)

from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(7) ANABOLIC STEROIDS. Any material, compound, mixture, or preparation containing any quantity of any of the following anabolic steroids. including any of their esters, isomers, esters of isomers, salts and salts of esters, isomers and esters of isomers that are theoretically possible within the specific chemical designation:

(a) Boldenone;
(b) 4–chlorotestosterone, which is also called clostebol;
(c) Dehydrochloromethyltestosterone;
(d) 4–dihydrotestosterone, which is also called stanolone;
(e) Drostanolone;
(f) Ethylestrenol;
(g) Fluoxymesterone;
(h) Formebulone, which is also called fromebolone;
(i) Mesterolone;
(j) Methandienone, which is also called methandrostenolone;
(k) Methandriol;
(L) Methenolone;
(m) Methyltestosterone;
(n) Mibolerone;
(o) Nandrolone;
(p) Norethandrolone;
(q) Oxandrolone;
(r) Oxymesterone;
(s) Oxymetholone;
(t) Stanozolol;
(u) Testolactone;
(v) Testosterone;
(w) Trenbolone.

History: 1971c.219; **1981**c. 6; 1981c. 206 ss. 32 to 40, 57; CSB 2.19, 2.21; 1995 a. 448 ss. 181 to 200, 475, 476; **Stats.** *1995* s. 961.18: 1997 a. 220; CSB 2.25.

NOTE: See 1993–94 Statutes for notes on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

961.19 Schedule IV tests. (1m) The controlled substances board shall add a substance to schedule IV upon finding that:

(a) The substance has a low potential for abuse relative to substances included in schedule 111;

(b) The substance has currently accepted medical use in treatment in the United States; and

(c) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances included in schedule III.

(2m) The controlled substances board may add a substance to schedule IV without making the findings required under sub. (1m) if the substance is controlled under schedule IV of 21 USC **812** (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 **c.** 219; 1995 **a.** 448 ss 201,202,477, Stats. 1995 s. 961.19

961.20 Schedule IV. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule. the following controlled substances are listed in schedule IV:

(2) DEPRESSANTS Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Alprazolam;
(am) Barbital;
(ar) Bromazepam;
(av) Camazepam;
(b) Chloral betaine;
(c) Chloral hydrate;
(cd) Clobazam;
(cg) Clotiazepam;
(cm) Chlordiazepoxide:
(cn) Clonazepam;
(co) Cloxazolam;
(cp) Clorazepate;
(cq) Delorazepam:
(cr) Diazepam;
(es) Dichloralphenazone;
(cu) Estazolam;
(d) Ethchlorvynol;
(e) Ethinamate;
(ed) Ethyl loflazepate;
(eg) Fludiazepam;
(ej) Flunitrazepam;
(em) Flurazepam;
(eo) Halazepam;
(ep) Haloxazolam;
(eq) Ketazolam;
(er) Lorazepam;
(es) Loprazolam;
(eu) Lormetazepam;
(ew) Mebutamate;
(ey) Medazepam;
(f) Mcthohcxital;
(g) Meprobamate;
(h) Methylphenobarbital, which is also called mephobarbital;
(hg) Midazolam;
(hh) Nimetazepam;
(hj) Nitrazepam;
(hk) Nordiazepam;
(hm) Oxazepam;
(hr) Oxazolam;
(j) Paraldehyde;
(k) Petrichloral;
(m) Phenobarbital;
(md) Pinazepam;
(mg) Prazepam;
(mm) Quazepam;
(n) Temazepam;
(ng) Tetrazepam;
(nm) Triazolam;
(o) Zaleplon;
(p) Zolpidem.

(2m) STIMULANTS Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Diethylpropion.
(ad) Cathine.
(ag) N,N–dimethyl–1,2–diphenylethylamine, commonly known as "SPA".
(ak) Ephedrine, if ephedrine is the only active medicinal ingredient or if there are only therapeutically insignificant quantities of another active medicinal ingredient.
(ar) Fencamfamine.

(at) Fenproporex.

(bm) Mazindol.

(br) Mefenorex.

(bu) Modafinil.

(c) Pemoline, including its organometallic complexes and chelates.

(d) Phenterminc.

(e) Pipradrol.

(f) Sibutramine.

(3) NARCOTIC DRUGS CONTAINING NONNARCOTIC ACTIVE MEDICINAL INGREDIENTS. Any compound, mixture or preparation containing any of the following narcotic drugs or their salts, isomers or salts of isomers, in limited quantities as set forth below, calculated as the free anhydrous base or alkaloid, which also contains one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(a) Not more than 1.0 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(4) OTHER SUBSTANCES. Any material, compound, mixture or preparation which contains any quantity of any of the following substances or their salts:

(a) Dextropropoxyphene (Alpha–(+)–4–dimethylamino–1, 2–diphenyl–3–methyl–2–propionoxybutane).

(am) Fenfluramine, including any of its isomers and salts of isomers.

(b) Pentazocine, including any of its isomers and salts of isomers.

(c) Butorphanol, including any of its isomers and salts of isomers.

(5) EXCEPTIONS. The controlled substances board may except by rule any compound, mixture or preparation containing any depressant substance included in sub. *(2)* from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

History: 1971 c. 219; 1979 c. 32; 1981 c. 206 ss. 34m, 41 to 52; CSB 2.15, 2.19, 2.21: 1993 a. 468: 1995 a. 448 ss. 203 to 220, 478, 479; Stats. 1995 s. 961.20; CSB 2.24, 2.25, 2.28.

NOTE: See 1979–80 Statutes and 1993–94 Statutes for notes on actions by controtted substances board under s. 161.11 *(1)*, *1993* Stats.

961.21 Schedule V tests. (1m) The controlled substances board shall add a substance to schedule V upon finding that:

(a) The substance has low potential for abuse relative to the controlled substances included in schedule IV;

(b) The substance has currently accepted medical use in treatment in the United States; and

(c) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances included in schedule IV.

(2m) The controlled substances board may add a substance to schedule V without making the findings required by sub. (1m) if the substance is controlled under schedule V of 21 USC 811 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. 219; 1995 a. 448 ss. 221, 222,480; Stats. 1995 s. 961.21.

961.22 Schedule V. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule V:

(1m) NARCOTIC DRUGS. Any material, compound, mixture or preparation containing any quantity of any of the following substances, including any of their salts, isomers and salts of isomers that are thcoretically possible within the specific chemical designation:

(a) Buprenorphine.

(2) NARCOTIC DRUGS CONTAINING NONNARCOTIC ACTIVE MEDICINAL INGREDIENTS. Any compound, mixture or preparation containing any of the following narcotic drugs or their salts, isomers or salts of isomers, in limited quantities as set forth below, calculated as the Free anhydrous base or alkaloid, which also contains one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(a) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(b) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(c) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(d) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(e) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(f) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(3) STIMULANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Pyrovalerone.

History: 1971 c. 219; 1981 c. 206; CSB 2.15; 1985 a. 135; CSB 2.17; 1995 a. 448 ss. 223 to 227,481; Stats. 1995 s. 961.22.

961.23 Dispensing *of* schedule V substances. The dispensing of schedule V substances is subject to the following conditions:

(1) That they be dispensed and sold in good faith as a medicine, and not for the purpose of evading this chapter.

(2) That they be sold at retail only by a registered pharmacist when sold in a retail establishment.

(3) That, when sold in a retail establishment, they bear the name and address of the establishment on the immediate container of said preparation.

(4) That any person purchasing such a substance at the time of purchase present to the seller that person's correct name and address. The seller shall record the name and address and the name and quantity of the product sold. The purchaser and the seller shall sign the record of this transaction. The giving of a false name or false address by the purchaser shall be prima facie evidence of a violation of s. 961.43 (1) (a).

(5) That no person may purchase more than 8 ounces of a product containing opium or more than 4 ounces of a product containing any other schedule V substance within a 48–hour period without the authorization of a physician, dentist or veterinarian nor may more than 8 ounces of a product containing opium or more than 4 ounces of a product containing any other schedule V substance be in the possession of any person other than a physician, dentist, veterinarian or pharmacist at any time without the authorization of a physician, dentist or veterinarian.

History: 1971 c. 219; 1973 c. 12 s. 37; 1981 c. 206; 1993 a. 482; 1995 a. 448 s 228. Stats. 1995 s. 961.23.

961.24 Publishing *of* updated schedules. The controlled substances board shall publish updated schedules annually. The failure of the controlled substances board to publish an updated schedule under this section is not a defense in any administrative or judicial proceeding under this chapter.

History: 1971 c. 219; 1993 a. 213; 1995 a. 448 s. 229; Stats. 1995 s. 961.24.

961.25 Controlled substance analog treated as a schedule I substance. A controlled substance analog, to the extent it is intended for human consumption. shall be treated, for the purposes of this chapter, as a substance included in schedule I, unless a different treatment is specifically provided. No later than 60 days after the commencement of a prosecution concerning a controlled substancc analog, the district attorney shall provide the controlled substances board with information relevant to emergency scheduling under s. 961.11 (4m). After a final determination by the controlled substances board that the controlled substance analog should not be scheduled, no prosecution relating to that substancc as a controlled substancc analog may be commenced or continued.

History: 1995 a 448.

SUBCHAPTER III

REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES

961.31 Rules. The pharmacy examining board may promulgate rules relating to the manufacture, distribution and dispensing of controlled substances within this state.

History: 1971 c. 219; 1995 a. 448 s. 231; Stats. 1995 s. 961.31.

Cross Reference: See also ch. Phar 8, Wis. adm. code.

961.32 Possession authorization. (1) Persons registered under federal law to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances in this state to the extent authorized by their federal registration and in conformity with the other provisions of this chapter.

(2) The following persons need not be registered under federal law to lawfully possess controlled substances in this state:

(a) An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if the agent or employee is acting in the usual course of the agent's or employee's business or employment;

(b) A common or contract carrier or warehouse keeper, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(c) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a schedule V substance.

(d) Any person cxcmpted under federal law, or for whom federal registration requirements have been waived.

History: 1971 c. 219,336; 1983 a. 500 s. 43; 1993 a 482; 1995 a. 448 s. 232; Stats. 1995 s. 961.32.

A doctor or dentist who dispenses drugs to a patient within the course of professional practice is not subject to criminal liability. State v. Townsend, 107 Wis. 2d 24, 318 N.W.2d 361 (1982).

961.335 Special use authorization. (1) Upon application the controlled substances board may issue a permit authorizing a person to manufacture, obtain, possess, use, administer or dispense a controlled substance for purposes of scientific research, instructional activities, chemical analysis or other special uses, without restriction because of enumeration. No person shall engage in any such activity without a permit issued under this section. except that an individual may be designated and authorized to receive the permit for a college or university department. research unit or similar administrative organizational unit and students, laboratory technicians, research specialists or chemical analysts under his or her supervision may be permitted possession and use of controlled substances for these purposes without obtaining an individual permit.

(2) A permit issued under this section shall be valid for one year from the date of issue.

(3) The fee for a permit under this section shall be an amount determined by the controlled substances board but shall not exceed $25. No fee may be charged for permits issued to employees of state agencies or institutions.

(4) Permits issued under this section shall be effective only for and shall specify:

(a) The name and address of the permittee.

(b) The nature of the project authorized by the permit,

(c) The controlled substances to be used in the project, by name if included in schedule I, and by name or schedule if included in any other schedule.

(d) Whether dispensing to human subjects is authorized.

(5) **A** permit shall be effective only for the person, substances and project specified on its face and for additional projects which derive directly from the stated project. Upon application, a valid permit may be amended to add a further activity or to add further substances or schedules to the project permitted thereunder. The fee for such amendment shall be determined by the controlled substances board but shall not exceed *$5*.

(6) Persons who possess a valid permit issued under this section are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

(7) The controlled substances board may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative or other proceeding to identify or to identify to the board the individuals who are the subjects of research for which the authorization was obtained.

(8) The controlled substances board may promulgate rules relating to the granting of special use permits including, but not limited to, requirements for the keeping and disclosure of records other than those that may be withheld under sub. (7), submissions of protocols, filing of applications and suspension or revocation of permits.

(9) The controlled substances board may suspend or revoke a permit upon a finding that there is a violation of the rules of the board.

History: 1971 c. 219; 1975 c. 110,199; 1977 c. 26; 1995 a. 448 s. 233; Stats. 1995 s. 961.335.

961.34 Controlled substances therapeutic research. Upon the request of any practitioner, the controlled substances board shall aid the practitioner in applying for and processing an investigational drug permit for marijuana under 21 USC *355* (i). If the federal food and drug administration issues an investigational drug permit, the controlled substances board shall approve which pharmacies can distribute the marijuana to patients upon written prescription. Only pharmacies located within hospitals are eligible to receive the marijuana for distribution. The controlled substances board shall also approve which practitioners can write prescriptions for the marijuana.

History: 1981 c. i93; 1983 a. *189* s. *329* (*18*); 1985 a. 146 s. 8; *1995* a. 448 ss. 16 to 19: Stats. 1995 s. 961.34.

961.36 Controlled substances board duties relating to diversion control and prevention, compliance with controlled substances law and advice and assistance. (1) The controlled substances board shall regularly prepare and make available to state regulatory, licensing and law enforcement agencies descriptive and analytic reports on the potential for diversion and actual patterns and trends of distribution, diversion and abuse within the state of certain controlled substances the board selects that are listed in s. 961.16, 961.18, 961.20 or 961.22.

(1m) At the request of the department of regulation and licensing or a board, examining board or affiliated credentialing board in the department of regulation and licensing, the controlled substances board shall provide advice and assistance in matters

related to the controlled substances law to the dcpartmcnt or to the board, examining board or affiliated credentialing board in the department making the request for advice or assistance.

(2) The controlled substances board shall enter into written agreements with local, state and federal agencies to improve the identification of sources of diversion and to improve enforcement of and compliance with this chapter and other laws and regulations pertaining to unlawful conduct involving controlled substances. An agreement must specify the roles and responsibilities of each agency that has information or authority to identify, prevent or control drug diversion and drug abuse. The board shall convene periodic meetings to coordinate a state diversion prevention and control program. The board shall assist and promote cooperation and exchange of information among agencies and with other states and the federal government.

(3) The controlled substances board shall evaluate the outcome of its program under this section and shall annually submit a report to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172(3), on its findings with respect to its effect on distribution and abuse of controlled substances, including recommendations for improving control and prevention of the diversion of controlled substances.

History: 1981 c. 200; 1987 a. 186; 1995 a. 305 ss. 2, 3; 1995 a. 448 s. 234; Stats. 1995 s. 961.36; 1997 a. 35 s. 339.

961.38 Prescriptions. (lg) In this section, "medical treatment" includes dispensing or administering a narcotic drug for pain, including intractable pain.

(lr) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance included in schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the pharmacy examining board, schedule II drugs may be dispensed upon oral or electronic prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with rules of the pharmacy examining board promulgated under s. 961.31. No prescription for a schedule II substance may be refilled.

(3) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug, shall not be dispensed without a written, oral or electronic prescription of a practitioner. The prescription shall not be filled or refilled except as designated on the prescription and in any case not more than 6 months after the date thereof, nor may it be refilled more than 5 times, unless renewed by the practitioner.

(4) A substance included in schedule V may be distributed or dispensed only for a medical purpose, including medical treatment or authorized research.

(4g) A practitioner may dispense or deliver a controlled substance to or for an individual or animal only for medical treatment or authorized research in the ordinary course of that practitioner's profession.

(4r) A pharmacist is immune from any civil or criminal liability and from discipline under s. 450.10 for any act taken by the pharmacist in reliance on a reasonable belief that an order purporting to be a prescription was issued by a practitioner in the usual course of professional treatment or in authorized research.

(5) No practitioner shall prescribe, orally, electronically or in writing, or take without a prescription a controlled substance included in schedule I, II, III or IV for the practitioner's own personal use.

History: 1971 c. 219; 1975 c. 190, 421; 1977 c. 203; 1995 a. 448 ss. 235 to 240, 483 to 485; Stats. 1995 s. 961.38; 1997 a. 27.

961.39 Limitations on optometrists. An optometrist who is certified under s. 449.18:

(1) May not prescribe or administer a controlled substance included in schedule I or II.

(2) May prescribe or administer only those controlled substances included in schedules III, IV and V that are permitted for prescription or administration under the rules promulgated under s. 449.18 (8).

(3) Shall include with each prescription order all of the following:

(a) A statement that he or she is certified under s. 449.18.

(b) The indicated use of the controlled substance included in schedule III, IV or V so prescribed.

(4) May not dispense other than by prescribing or administering.

History: 1989 a. 31; 1995 a. 448 s. 241; Stats. 1995 s. 961.39.

961.395 Limitation on advanced practice nurses. (1) An advanced practice nurse who is certified under s. 441.16 may prescribe controlled substances only as permitted by the rules promulgated under s. 441.16 (3).

(2) An advanced practice nurse certified under s. 441.16 shall include with each prescription order the advanced practice nurse prescriber certification number issued to him or her by the board of nursing.

(3) An advanced practice nurse certified under s. 441.16 may dispense a controlled substance only by prescribing or administering the controlled substance or as otherwise permitted by the rules promulgated under s. 441.16 (3).

Ifistory: 1995 a. 448.

SUBCHAPTER IV

OFFENSES AND PENALTIES

961.41 Prohibited acts A—penalties. (1) MANUFACTURE, DISTRIBUTION OR DELIVERY. Except as authorized by this chapter, it is unlawful for any person to manufacture, distribute or deliver a controlled substance or controlled substance analog. Any person who violates this subsection is subject to the following penalties:

(a) *Schedule I* and *II* narcotic *drugs generally.* Except as provided in par. (d), if a person violates this subsection with respect to a controlled substance included in schedule I or II which is a narcotic drug, or a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class E felony.

(b) Schedule *I, II,* und *III* nonnarcotic drugs generally Except as provided in pars. (cm) and (e) to (hm), if a person violates this subsection with respect to any other controlled substance included in schedule I, II, or III, or a controlled substance analog of any other controlled substance included in schedule I or II, the person is guilty of a Class H felony.

(cm) Cocaine and cocaine base. If the person violates this subsection with respect to cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, and the amount manufactured, distributed, or delivered is:

lg. One gram or less, the person is guilty of a Class G felony.

lr. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

2. More than 5 grams but not more than 15 grams, the person is guilty of a Class E felony.

3. More than 15 grams but not more than 40 grams, the person is guilty of a Class D felony.

4. More than 40 grams. the person is guilty of a Class C felony.

(d) Heroin. If the person violates this subsection with respect to heroin or a controlled substance analog of heroin and the amount manufactured, distributed or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams; the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(e) *Phencyclidine, amphetamine, methamphetamine, and methcathinone.* If the person violates this subsection with respect to phencyclidine, amphetamine, methamphetamine, or methcathinone, or a controlled substance analog of phencyclidine, amphetamine, methamphetamine, or methcathinone, and the amount manufactured, distributed, or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(f) *Lysergic acid diethylamide.* If the person violates this subsection with respect to lysergic acid diethylamide or a controlled substance analog of lysergic acid diethylamide and the amount manufactured, distributed, or delivered is:

1. One gram or less, the person is guilty of a Class G felony.

2. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

3. More than 5 grams, the person is guilty of a Class E felony.

(g) *Psilocin and psilocybin.* If the person violates this subsection with respect to psilocin or psilocybin, or a controlled substance analog of psilocin or psilocybin, and the amount manufactured, distributed or delivered is:

1. One hundred grams or less, the person is guilty of a Class G felony.

2. More than 100 grams but not more than 500 grams, the person is guilty of a Class F felony.

3. More than 500 grams, the person is guilty of a Class E felony.

(h) *Tetrahydrocannabinols.* If the person violates this subsection with respect to tetrahydrocannabinols, included under s. 961.14 (4)(t), or a controlled substance analog of tetrahydrocannabinols, and the amount manufactured, distributed or delivered is:

1. Two hundred grams or less, or 4 or fewer plants containing tetrahydrocannabinols, the person is guilty of a Class I felony.

2. More than 200 grams but not more than 1,000 grams, or more than 4 plants Containing tetrahydrocannabinols but not more than 20 plants containing tetrahydrocannabinois, the person is guilty of a Class H felony.

3. More than 1,000 grams but not more than *2,500* grams, or more than 20 plants containing tetrahydrocannabinols but not more than 50 plants containing tetrahydrocannabinols, the person is guilty of a Class G felony.

4. More than 2,500 grams but not more than 10,000 grams, or more than 50 plants containing tetrahydrocannabinols but not more than 200 plants containing tetrahydrocannabinols, the person is guilty of a Class F felony.

5. More than 10,000 grams, or more than *200* plants containing tetrahydrocannabinols, the person is guilty of a Class E felony.

(hm) *Certain other schedule I controlled substances und ketamine.* If the person violates this subsection with respect to gamma–hydroxybutyric acid, gamma–butyrolactone, 3,4–methylenedioxymethamphetamine, 4–bromo–2,5–dimethoxy–beta– phenylethylamine, 4–methylthioamphetamine, ketamine, or a controlled substance analog of gamma–hydroxybutyric acid, gamma–butyrolactone, 3,4–methylenedioxymethamphetamine, 4–bromo–2,5–dimethoxy–beta–phenylethylamine, or 4–methylthioamphetamine and the amount manufactured, distributed, or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than *3* grams but not more than 10 grams, the person is guilty of a Class E felony.

3. Morc than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(i) *Schedule IV drugs generally.* Except as provided in par. (im), if a person violates this subscction with respect to a substance included in schedule IV, the person is guilty of a Class H felony.

(im) *Flunitrazepam.* If a person violates this subsection with respect to flunitrazepam and the amount manufactured, distributed, or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than *3* grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(j) *Schedule V drugs.* If a person violates this subsection with respect to a substance included in schedule V, the person is guilty of a Class I felony.

(m) POSSESSION WITH INTENT TO MANUFACTURE, DISTRIBUTE OR DELIVER Except as authorized by this chapter, it is unlawful for any person to possess, with intent to manufacture, distribute or deliver, a controlled substance or a controlled substance analog. Intent under this subsection may be demonstrated by, without limitation because of enumeration, evidence of the quantity and monetary value of the substances possessed, the possession of manufacturing implements or paraphernalia, and the activities or statements of the person in possession of the controlled substance or a controlled substance analog prior to and after the alleged violation. Any person who violates this subsection is subject to the following penalties:

(a) *Schedule I and 11 narcotic drugs generally.* Except as provided in par. (d). if a person violates this subsection with respect to a controlled substance included in schedule I or II which is a narcotic drug or a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class E felony.

(b) *Schedule I, II, and III nonnarcotic drugs generally.* Except as provided in pars. (cm) and (e) to (hm), if a person violates this subsection with respect to any other controlled substance included in schedule I, II, or III, or a controlled substance analog of any other controlled substance included in schedule I or II, the person is guilty of a Class H felony.

(cm) *Cocaine and cocaine base.* If a person violates this subsection with respect to cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, and the amount possessed, with intent to manufacture, distribute or deliver, is:

1g. One gram or less, the person is guilty of a Class G felony.

1r. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

2. More than 5 grams but not more than 15 grams, the person is guilty of a Class E felony.

3. More than 15 grams but not more than 40 grams, the person is guilty of a Class D felony.

4. More than 40 grams, the person is guilty of a Class C felony.

(d) *Heroin.* If a person violates this subsection with respect to heroin or a controlled substance analog of heroin and the amount possessed, with intent to manufacture, distribute or deliver, is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(e) *Phencyclidine, amphetamine, methamphetamine, and methcathinone.* If a person violates this subsection with respect to phencyclidine, amphetamine, methamphetamine, or methca-

thinone, or a controlled substance analog of phencyclidine, amphetamine, methamphetamine, or methcathinone, and the amount possessed, with intent to manufacture, distribute, or deliver, is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. Morc than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(f) *Lysergic acid diethylamide.* If a person violates this subsection with respect to lysergic acid diethylamide or a controlled substance analog of lysergic acid diethylamide and the amount possessed, with intent to manufacture, distribute or deliver, is:

1. One gram or less, the person is guilty of a Class G felony.

2. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

3. More than 5 grams, the person is guilty of a Class E felony.

(g) *Psilocin and psilocybin.* If a person violates this subsection with respect to psilocin or psilocybin, or a controlled substance analog of psilocin or psilocybin, and the amount possessed, with intent to manufacture, distribute or deliver, is:

1. One hundred grams or less, the person is guilty of a Class G felony.

2. More than 100 grams but not more than 500 grams, the person is guilty of a Class F felony.

3. More than 500 grams, the person is guilty of a Class E felony.

(h) *Tetrahydrocannabinols.* If a person violates this subsection with respect to tetrahydrocannabinols, included under s. 961.14 (4) (t), or a controlled substance analog of tetrahydrocannabinols, and the amount possessed, with intent to manufacture, distribute, or deliver, is:

1. Two hundred grams or less, or 4 or fewer plants containing tetrahydrocannabinols, the person is guilty of a Class I felony.

2. More than 200 grams but not more than 1,000 grams, or more than 4 plants containing tetrahydrocannabinols but not more than 20 plants containing tetrahydrocannabinols, the person is guilty of a Class **H** felony.

3. More than 1,000 grams but not more than 2,500 grams, or more than *20* plants containing tetrahydrocannabinols but not more than 50 plants containing tetrahydrocannabinols, the person is guilty of a Class G felony.

4. More than 2,500 grams but not more than 10,000 grams, or more than 50 plants containing tetrahydrocannabinols but not more than 200 plants containing tetrahydrocannabinols, the person is guilty of a Class F felony.

5. More than 10,000 grams, or more than 200 plants containing tetrahydrocannabinols, the person is guilty of a Class E felony.

(hm) *Certain other schedule I controlled substances and ketamine.* If the person violates this subsection with respect to gamma–hydroxybutyric acid, gamma–butyrolactone, 3,4–methylenedioxymethamphetamine 4–bromo–2,5–dimethoxy–beta–phenylethylamine, 4–methylthioamphetamine, ketamine, or a controlled substance analog of gamma–hydroxybutyric acid, gamma–butyrolactone, 3,4–methylenedioxymethamphetamine 4–bromo–2,5–dimethoxy–beta–phenylethylamine, or 4–methylthioamphetamine is subject to the following penalties if the amount possessed, with intent to manufacture, distribute, or deliver is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(i) *Schedule IV drugs generally.* Except as provided in par. (im), if a person violates this subsection with respect to a substance included in schedule IV, the person is guilty of a Class H felony.

(im) *Flunitrazepam.* If a person violates this subsection with respect to flunitrazepam and the amount possessed, with intent to manufacture, distribute, or deliver, is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(j) *Schedule V drugs.* If a person violates this subsection with respect to a substance included in schedule V, the person is guilty of a Class I felony.

(1n) PIPERIDINE POSSESSION. (a) No person may possess any quantity of piperidine or its salts with the intent to use the piperidine or its salts to manufacture a controlled substance or controlled substance analog in violation of this chapter.

(b) No person may possess any quantity of piperidine or its salts if he or she knows or has reason to know that the piperidine or its salts will be used to manufacture a controlled substance or controlled substance analog in violation of this chapter.

(c) A person who violates par. (a) or (b) is guilty of a Class F felony.

(1q) PENALTY RELATING TO TETRAIIYDROCANNABINOLS IN CERTAIN CASES. Under **s.** 961.49 (2), 1999 stats., and subs. (1) (h) and (1m) (h), if different penalty provisions apply to a person depending on whether the weight of tetrahydrocannabinols or the number of plants containing tetrahydrocannabinols is considered, the greater penalty provision applies.

(1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under **s.** 961.49 *(2)* (b), 1999 stats., and subs. (1) and (1m), an amount includes the weight of cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, methcathinone or tetrahydrocannabinols or any controlled substance analog of any of these substances together with any compound, mixture, diluent, plant material or other substance mixed or combined with the controlled substance or controlled substance analog. In addition, in determining amounts under subs. (1) (h) and (Im) (h), the amount of tetrahydrocannabinols means anything included under s. 961.14 (4) (t) and includes the weight of any marijuana.

(1x) CONSPIRACY. Any person who conspires, **as** specified in **s.** 939.3 1, to commit a crime under sub. (1) (cm) to (h) or (1m) (cm) to (h) is subject to the applicable penalties under sub. (1) (cm) to (h) or (Im) (cm) to (h).

(2) COUNTERFEIT SUBSTANCES. Except as authorized by this chapter, it is unlawful for any person to create, manufacture, distribute, deliver or possess with intent to distribute or deliver, a counterfeit substance. Any person who violates this subsection is subject to the following penalties:

(a) *Counterfeit schedule I and II narcotic drugs.* If a person violates this subsection with respect to a counterfeit substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class E felony.

(b) *Counterfeit schedule I, II, III, and IV drugs.* Except as provided in pars. (bm) and (cm), if a person violates this subsection with respect to any other counterfeit substance included in schedule I, 11,111, or IV, the person is guilty of a Class H felony.

(bm) A counterfeit substance that is a counterfeit of phencyclidine, methamphetamine, lysergic acid diethylamide, gamma–hydroxybutyric acid, gamma–butyrolactone, 3,4–methylenedioxymethamphetamine 4–bromo–2,5–dimethoxy–beta–phenylethyl– amine, 4–methylthioamphetamine, or ketamine is punishable by the applicable fine and imprisonment for manufacture, distribution, delivery, or

possession with intent to manufacture, distribute, or deliver, of the genuine controlled substance under sub. (1) or (Im).

(cm) *Counterfeit flunitrazepam.* A counterfeit substance which is flunitrazepam, is punishable by the applicable fine and imprisonment for manufacture, distribution, delivery, or possession with intent to manufacture, distribute, or deliver, of the genuine controlled substance under sub. (1) or (lm).

(d) *Counterfeit schedule V drugs.* If a person violates this subsection with respect to a counterfeit substance included in schedule V, the person is guilty of a Class I felony.

(3g) POSSESSION. No person may possess or attempt to possess a controlled substance or a controlled substance analog unless the person obtains the substance or the analog directly from, or pursuant to a valid prescription or order of, a practitioner who is acting in the course of his or her professional practice, or unless the person is otherwise authorized by this chapter to possess the substance or the analog. Any person who violates this subsection is subject to the following penalties:

(am) *Schedule I and II narcotic drugs.* If a person possesses a controlled substance included in schedule I or II which is a narcotic drug, or possesses a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class I felony.

(b) *Other drugs generally.* Except as provided in pars. (c), (d), (e) and **(f),** if the person possesses or attempts to possess a controlled substance or controlled substance analog, other than a controlled substance included in schedule I or 11 that is a narcotic drug or a controlled substance analog of a controlled substance included in schedule I or II that is a narcotic drug, the person is guilty of a misdemeanor, punishable under s. 939.61.

(c) *Cocaine and cocaine base.* If a person possess or attempts to possess cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, the person shall be fined not more than $5,000 and may be imprisoned for not more than one year in the county jail upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

(d) *Certain hallucinogenic and stimulant drugs.* If a person possesses or attempts to possess lysergic acid diethylamide, phencyclidine, amphetamine, methamphetamine, methcathinone, psilocin or psilocybin, or a controlled substance analog of lysergic acid diethylamide, phencyclidine, amphetamine, methamphetamine, methcathinone, psilocin or psilocybin, the person may be fined not more than $5,000 or imprisoned for not more than one year in the county jail or both upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

(e) *Tetrahydrocannabinols.* If a person possesses or attempts to possess tetrahydrocannabinols included under s. 961.14 (4) (t), or a controlled substance analog of tctrahydrocannabinols, the person may be fined not more than $1,000 or imprisoned for not more than 6 months or both upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

(f) *Gamma–hydroxybutyric acid, gamma–butyrolactone, ketamine, or flunitrazepam.* If a person possesses or attempts to possess gamma–hydroxybutyric acid, gamma–butyrolactone, ketamine or flunitrazepain, the person is guilty of a Class H felony.

(4) IMITATION CONTROLLED SUBSTANCES. (am) 1. No person may knowingly distribute or deliver, attempt to distribute or deliver or cause to be distributed or delivered a noncontrolled substance and expressly or impliedly represent any of the following to the recipient:

a. That the substance is a controlled substance.

b. That the substance is of a nature, appearance or effect that will allow the recipient to display, sell, distribute, deliver or use the noncontrolled substance as a controlled substance, if the representation is made under circumstances in which the person has reasonable cause to believe that the noncontrolled substance will be used or distributed for use as a controlled substance.

2. Proof of any of the following is prima facie evidence of a representation specified in subd. 1. a. or b.:

a. The physical appearance of the finished product containing the substance is substantially the same as that of a specific controlled substance.

b. The substance is unpackaged or is packaged in a manner normally used for the illegal delivery of a controlled substance.

c. The substance is not labeled in accordance with 21 USC 352 or 353.

d. The person distributing or delivering, attempting to distribute or deliver or causing distribution or delivery of the substance to be made states to the recipient that the substance may be resold at a price that substantially exceeds the value of the substance.

3. A person who violates this paragraph **is** guilty of a Class I felony.

(bm) It is unlawful for any person to agree, consent or offer to lawfully manufacture, deliver, distribute or dispense any controlled substance to any person, or to offer, arrange or negotiate to have any controlled substance unlawfully manufactured, delivered, distributed or dispensed, and then manufacture, deliver, distribute or dispense or offer, arrange or negotiate to have manufac-hired, delivered, distributed or dispensed to any such person a substance which is not a controlled substance. Any person who violates this paragraph may be fined not more than $500 or imprisoned for not more than 6 months or both.

(5) DRUG ABUSE PROGRAM IMPROVEMENT SURCHARGE. (a) When a court imposes a fine for a violation of this section, it shall also impose a drug abuse program improvement surcharge in an amount of 50% of the fine and penalty assessment imposed.

(b) The clerk of the court shall collect and transmit the amount to the county treasurer as provided in **s.** 59.40 ***(2)***(m). The county treasurer shall then make payment to the state treasurer as provided in s. 59.25 (3) (f) 2.

(c) All moneys collected from drug surcharges shall be deposited by the state treasurer in and utilized in accordance with s. 20.435 (6) (gb).

History: 1971 c. 219,307; 1973c. 12; 1981 c. 90,314; 1985 a. 328; 1987 a. 339, 403; 1989 a. 31, 56, 121; 1991 a.39; 138; 1993 a. 98, 118, 437, 482; 1995 a. 201; 1995 **a.** 448 ss. 243 to 266,487 to 490; Stats. 1995 s. 961.41; 1997 a. 220,283; 1999 **a.** 21, 32, 48, 57; 2001 a. 16,109.

An inference of intent could be drawn from possession of hashish with a street value of $2,000 to $4,000 and opium with a street value of $20,000 to 524,000. State v. Trimbell, 64 Wis. 2d 379,219 N.W.2d 369 (1974).

No presumption of intent to deliver is raised by sub. (Im). The statute merely lists evidence from which intent may be inferred. State ***ex*** rel. Bena v. Hon. John J. Crosetto, 73 Wis. 2d **261**, 243 N.W.2d 442 (1976).

Evidence of a defendant's possession of a pipe containing burnt residue of marijuana was insufficientto impute knowledge to the defendant of possession of a controlled substance. Kabat v. State. 76 Wis. 2d 224.251 N.W.2d 38 (1977).

This section prohibits the act of manufacture, as defined in 161.01 (13) [now 961.01 (13)]. Possession of a controlled substance created by an accused is not required for conviction. This section is not unconstitutionally vague. State **ex** rel. Bell v. Columbia County Ct. 82 Wis. 2d 401,263 N.W.2d 162 (1978).

A conviction under sub. (1m) was upheld when the defendant possessed 1/3 gram of cocaine divided into 4 packages and evidence of defendant's prior sales of other drugs was admitted under s. 904.04 (2) as probative of intent to deliver the cocaine. Peasley v. State, 83 Wis. 2d 224,265 N.W.2d 506 (19781.

Testimony that weapons were found at the accused's home was admissible as part of the chain of facts relevant to the accused's intent to deliver heroin State v. Wedgeworth. 100 Wis. 2d 514, 302 N.W.2d 810 (1981).

Being a procuring agent of the huyer is not a valid defense to a charge under this section. By facilitating a drug deal. the defendant was party to the crime. State v. Hecht, 116 Wis. 2d 605, 342 N.W.2d 721 (1984).

When police confiscated a large quantity of drugs from an empty honie and the next day searched the defendant upon his return to the home, confiscating a small quantity of the same drugs. the defendant's conviction for the lesser--included offense of possession and the greater offense of possession with intent to deliver did not violate double jeopardy. State v. Stevens, 123 Wis. 2d 303,367 N.W.2d 788 (1985).

The defendant was properly convicted of attempted delivery of cocaine even though a noncontrolled substance was delivered. State v. Cooper, 127 Wis. 2d 429, 380 N.W.2d 383 (Ct. App. 1985).

Possession is not a lesser included offense of manufacturing. State v. Peck, 143 Wis. 2d 624, 422 N.W.2d 160 (Ct. App. 1988).

Identification of a controlled substance can he established by circumstantial evidence such as lay experience based on familiarity through prior use, trading, or law enforcement. State v. Anderson, 176 Wis. 2d 196, N.W.2d (Ct. App. 1993).

A conspiracy under sub. (1x) must involve at least 2 people with each subject to the same penalty for the conspiracy. If the huyer of drugs is guilty of misdemeanor possession only, a felony conspiracy charge may not he brought against the buyer. State v. Smith, 189 Wis. 2d 496,525 N.W.2d 264 (1995).

The state is not required to prove that a defendant knew the exact nature or precise chemical name of a possessed controlled substance. The state must only prove that the defendant knew or believed that the substance was a controlled substance. State v. Sartin, 200 Wis. 2d 47,546 N.W.2d 449 (1996).

A delivery conspiracy under sub. (Ix) requires an agreement between a buyer and a seller that the buyer will deliver at least some of the controlled substance to a 3rd party. State v. Cavallari. 214 Wis. 2d 42. 571 N.W.2d 176 (Ct. App. 1997).

Standing alone, the presence of drugs in someone's system is insufficient to support a conviction for possession, but it is circumstantial evidence of prior possession. Evidence that the defendant was selling drugs is irrclcvant to a charge of simple possession. Evidence that the defendant had nioney but no job does not have a tendency to prove possession. State v. Griffin. 220 Wis. 2d 371, 584 N.W.2d 127 (Ct. App. 1998)

Double jeopardy was not violated when the defendant was convicted of separate offenses under s. 161.41 [now 961.411 for simultaneous delivery of different controlled substances. Leonard v. Warden, Dodge Correctional Inst. 631 F. Supp. 1403 (1986).

961.42 Prohibited acts B—penalties. (1) It is unlawful for any person knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for manufacturing, keeping or delivering them in violation of this chapter.

(2) Any person who violates this section is guilty of a Class I felony.

History: 1971 c. 219; 1995 a. 448 s. 267; Stats. 1995 s. 961.42; 1997 a. 283; 2001 a. 109.

"Keeping" a substance under sub. (1) means more than simple possession; it means keeping for the purpose of warehousing or storage for ultimate manufacture or delivery. State v. Brooks, 124 Wis. 2d 349,369 N.W.2d 183 (Ct. App. 1985)

961.43 Prohibited acts C—penalties. (1) It is unlawful for any person:

(a) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(b) Without authorization, to make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as:

1. To make a counterfeit substance; or

2. To duplicate substantially the physical appearance, form, package or label of a controlled substance.

(2) Any person who violates this section is guilty of a Class H felony.

History: 1971 c. 219; 1981 c. Y0; 1995 a. 448 s. 268; Stats. 1995 s. 961.43; 1997 a. 283; 2001 a. 109.

961.435 Specific penalty. Any person who violates s. 961.38 (5) may be fined not more than $500 or imprisoned not more than 30 days or both.

History: 1975 c. 190; 1995 a. 448 s. 269; Stats. 1995 s. 961.435.

961.437 Possession and disposal of waste from manufacture of methamphetamine. (1) In this section:

(a) "Dispose of' means discharge, deposit, inject, dump, spill, leak or place methamphetamine manufacturing waste into or on any land or water in a manner that may permit the waste to be emitted into the air, to be discharged into any waters of the state or otherwise to enter the environment.

(b) "Intentionally" has the meaning given in s. 939.23 (3).

(c) "Methamphetamine manufacturing waste" means any solid, semisolid, liquid or contained gaseous material or article that results from or is produced by the manufacture of methamphetamine or a controlled substance analog of methamphetamine in violation of this chapter.

(2) No person may do any of the following:

(a) Knowingly possess methamphetamine manufacturing waste.

(b) Intentionally dispose of methamphetamine manufacturing waste.

(3) Subsection (2) does not apply to a person who possesses or disposes of methamphetamine manufacturing waste under all of the following circumstances:

(a) The person is storing, treating or disposing of the methamphetamine manufacturing waste in compliance with chs. 287,289, 291 and 292 or the person has notified a law enforcement agency of the existence of the methamphetamine manufacturing waste.

(b) The methamphetamine manufacturing waste had previously been possessed or disposed of by another person in violation of sub. (2).

(4) A person who violates sub. (2) is subject to the following penalties:

(a) For a first offense, the person is guilty of a Class H felony.

(b) For a 2nd or subsequent offense, the person is guilty of a Class F felony.

(5) Each day of a continuing violation of sub. (2) (a) or (b) constitutes a separate offense.

History: 1999 a. 129; 2001 a. 109.

961.44 Penalties under other laws. Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

History: 1971 c. 219; 1995 a. 448 s. 271; Stats. 1995 s. 961.44.

961.45 Bar to prosecution. If a violation of this chapter is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

History: 1971 c. 219; 1995 a. 448 s. 272; Stats. 1995 s. 961.45.

Under this section, a "prosecution" is to be equated with a conviction or acquittal. The date on which a sentence is imposed is not relevant to the determination of whether a 'prosecution" has occurred. State v. Petty, 201 Wis. 2d 337,548 N.W.2d 817 (1996).

This section bars a Wisconsin prosecution under ch. 961 for the same conduct on which a prior federal conviction is based. The restriction is not limited to the same crime as defined by its statutory elements. State v. Hansen, 2001 WI 53,243 Wis. 328, 627 N.W. 2d 195.

961.455 Using a child for illegal drug distribution or manufacturing purposes. (1) Any person who has attained the age of 17 years who knowingly solicits, hires, directs, employs or uses a person who is under the age of 17 years for the purpose of violating s. 961.41 (1) is guilty of a Class F felony.

(2) The knowledge requirement under sub. (1) does not require proof of knowledge of the age of the child. It is not a defense to a prosecution under this section that the actor mistakenly believed that the person solicited, hired, directed, employed or used under sub. (1) had attained the age of 18 years, even if the mistaken belief was reasonable.

(3) Solicitation under sub. (1) occurs in the manner described under s. 939.30, but the penalties under sub. (1) apply instead of the penalties under s. 939.30.

(4) If the conduct described undcr sub. (1) results in a violation under s. 961.41 (1), the actor is subject to prosecution and conviction undcr s. 961.41 (1) or this section or both.

History: 1989 a. 121; 1991 a. 153; 1995 a. 27; 1995 a. 448 ss. 273 to 275; Stats. 1995 s. 961.455; 1997 a. 283; 2001 a. 109.

961.46 Distribution to persons under age 18. If a person 17 years of age or over violates s. 961.41 (1) by distributing or delivering a controlled substance or a controlled substance analog to a person 17 years of age or under who is at least 3 years his or her junior, the applicable maximum term of imprisonment prescribed under s. 961.41 (1) for the offense may be increased by not more than 5 years.

History: 1971 c. 219; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1991 a. 90, 116, 490; 1995 a. 27; 1995 a. 448 ss. 276 to 279; Stats. 1995 s. 961.46; 1999 a. 48, 57; 2001 a. 109.

961.47 Conditional discharge for possession or attempted possession as first offense. (1) Whenever any person who has not previously been convicted of any offense under this chapter, or of any offense under any statute of the United States or of any state or of any county ordinance relating to controlled substances or controlled substance analogs, narcotic drugs, marijuana or stimulant, depressant or hallucinogenic drugs, pleads guilty to or is found guilty of possession or attempted possession of a controllcd substance or controlled substance analog under s. 961.41 (3g) (b), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him or her on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him or her. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for 2nd or subsequent convictions under s. 961.48. There may be only one discharge and dismissal under this section with respect to any person.

(2) Within 20 days after probation is granted under this section, the clerk of court shall notify the department of justice of the name of the individual granted probation and any other information required by the department. This report shall be upon forms provided by the department.

History: 1971 c. 219; 1985 a 29; 1989 a. 121; 1991 a. 39; 1995 a. 448 s. 285; Stats. 1995 s. 961.47.

A disposition of probation without entering a judgment of guilt. was not appealable because there was no judgment. If a defendant desires either a final judgment or order in the nature of a final judgment for appeal purposes, he or she has only to withhold consent. State v. Ryback, 64 Wis. 2d 574, 219 N.W.2d 263 (1974).

The reference to s. 161.41 (3) [now 961.41 (3g) (b)] in sub. (1) means that proceedings may only be deferred for convictions for crimes encompassed by s. 161.41 (3) [now 961.41 (3g) (b)]. State v. Boyer, 198 Wis. 2d 837. 543 N.W.2d 562 (Ct. App. 1995).

961.472 Assessment; certain possession or attempted possession offenses. (1) In this section, "facility" means an approved public treatment facility, as defined under s. 51.45 (2) (c).

(2) Except as provided in sub. (5), if a person pleads guilty or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g) (am), (c), or (d), the court shall order the person to comply with an assessment of the person's use of controlled substances. The court's order shall designate a facility that is operated by or pursuant to a contract with the county department established under s. 51.42 and that is certified by the department of health and family services to provide assessment services to perform the assessment and, if appropriate, to develop a proposed treatment plan. The court shall notify the person that noncompliance with the order limits the court's ability to determine whether the treatment option under s. 961.475 is appropriate. The court shall also notify the person of the fee provisions under s. 46.03 (18) (fm).

(3) The facility shall submit an assessment report within 14 days to the court. At the request of the facility, the court may extend the time period by not more than 20 additional workdays. The assessment report may include a proposed treatment plan.

(4) The court shall consider the assessment report in determining whether the treatment option under s. 961.475 is appropriate.

(5) If the court finds that a person under sub. (2) is already covered by or has recently completed an assessment under this section or a substantially similar assessment, the court is not required to make the order under sub. (2).

History: 1985 a 328; 1987 a. 339; 1989 a. 121; 1993 a. 118; 1995 a. 27 s. 9126 (19); 1995 a. 448 s. 286; Stats. 1995 s. 961.472; 1999 a. 48; 2001 a. 109.

961.475 Treatment option. Whenever any person pleads guilty to or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g), the court may, upon request of the person and with the consent of a treatment facility with special inpatient or outpatient programs for the treatment of drug dependent persons, allow the person to enter the treatment programs voluntarily for purposes of treatment and rehabilitation. Treatment shall be for the period the treatment facility feels is necessary and required, but shall not exceed the maximum sentence allowable unless the person consents to the continued treatment. At the end of the necessary and required treatment, with the consent of the court, the person may be released from sentence. If treatment efforts are ineffective or the person ceases to cooperate with treatment rehabilitation efforts, the person may be remanded to the court for completion of sentencing.

History: 1971 c. 219, 336; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 118; 1995 a. 448 s. 287; Stats. 1995 s. 961.475.

961.48 Second or subsequent offenses. (1) If a person is charged under sub. (2m) with a felony offense undcr this chapter that is a 2nd or subsequent offense as provided undcr sub. (3) and the person is convicted of that 2nd or subsequent offense, the maximum term of imprisonment for the offense may be increased as follows:

(a) By not more than 6 years, if the offense is a Class C or D felony.

(b) By not more than 4 years, if the offense is a Class E, F, G, H, or I felony.

(2m) (a) Whenever a person charged with a felony offense under this chapter may be subject to a conviction for a 2nd or subsequent offense, he or she is not subject to an enhanced penalty under sub. (1) unless any applicable prior convictions are alleged in the complaint, indictment or information or in an amended complaint, indictment or information that is filed under par. (b) 1. A person is not subject to an enhanced penalty under sub. (1) for an offense if an allegation of applicable prior convictions is withdrawn by an amended complaint filed under par. (b) 2.

(b) Notwithstanding s. 971.29 (1), at any time before entry of a guilty or no contest plea or the commencement of a trial, a district attorney may file without leave of the court an amended complaint, information or indictment that does any of the following:

1. Charges an offense as a 2nd or subsequent offense under this chapter by alleging any applicable prior convictions.

2. Withdraws the charging of an offense as a 2nd or subsequent offense under this chapter by withdrawing an allegation of applicable prior convictions.

(3) For purposes of this section, a felony offense under this chapter is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor offense under this chapter or under any statute of the United States or of any state relating to controlled substances or controlled substance analogs,

narcotic drugs, marijuana or depressant, stimulant or hallucinogenic drugs.

History: 1971 c.219; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 482, 490; 1995 a. 402; 1995 a. 448 s. 288; Stats. 1995 s. 961.48; 1997 a. 35 ss. 340, 584: 1997 a. 220; 1999 a. 48: 2001 a. 109.

The trial court erred in imposing a 2nd sentence on a defendant convicted of a 2nd violation of 161.41 (1) (a) and 161.14 (3) (k) [now 961.41 (1) (a) and 961.13 (3) (k)]. While the repeater statute, 161.48 [now 961.48], allows imposition of a penalty not exceeding twice that allowable for a 1st offense, it does not of itself create a crime and cannot support a separate and independent sentence. Olson v. Slate. 69 Wis. 2d 605.230 N.W.2d 634.

For offenses under ch. 161 [now 961], the court may apply this section or s. 939.62. but not both. State v. Ray, 166 Wis. 2d 855,481 N.W.2d 288 (Ct. App. 1992).

In sentencing a defendant when the maximum sentence is doubled under this section, the court considers the same factors it considers in all sentencing, including prior convictions. State v. Canadeo, 168 Wis. 2d 559,484 N.W.2d 340 (Ct. App. 1992).

Sentencing under this section was improper when the defendant did not admit a prior conviction and the state did not offer proof of one. State v. Coolidge. 173 Wis. 2d 783, 496 N.W.2d 701 (Ct. App. 1993).

Sub. (4) sets forth a limitation on the 2nd or subsequent offense: the previous offense may be any conviction under ch. 161 [now 961]. State v. Robertson, 174 Wis. 2d 36, 496 N.W.2d 221 (Ct. App. 1993).

This section is self-executing; a prosecutor may not prevent the imposition of the sentences under this section by not charging the defendant as a repeater. State v. Young, 180 Wis. 2d 700,511 N.W.2d 309 (Ct. App. 1993).

Conviction under this section for a second or subsequent offense does not require proof of the prior offense at trial beyond a reasonable doubt. State v. Miles, 221 Wis. 2d 56,584 N.W.2d 704 (Ct. App. 1998).

A conviction for possessing drug paraphernalia under s. 961.573 qualifies as a prior offense under sub. (3). State v. Moline, 229 Wis. 2d 38, 598 N.W.2d 929 (Ct. App. 1999).

961.49 Distribution of or possession with intent to deliver a controlled substance on or near certain places. If any person violates s. 961.41 (1) (cm), (d), (e), (f), (g) or (h) by delivering or distributing, or violates s. 961.41 (Im) (cm), (d), (e), (f), (g) or (h) by possessing with intent to deliver or distribute, cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, methcathinone or any form of tetrahydrocannabinols or a controlled substance analog of any of these substances and the delivery, distribution or possession takes place under any of the following circumstances, the maximum term of imprisonment prescribed by law for that crime may be increased by 5 years:

(1) While the person is in or on the premises of a scattered-site public housing project.

(2) While the person is in or on or otherwise within 1,000 feet of any of the following:

(a) A state, county, city, village or town park.

(b) A jail or correctional facility.

(c) A multiunit public housing project.

(d) A swimming pool open to members of the public.

(e) A youth center or a community center.

(f) Any private or public school premises.

(g) A school bus, as defined in s. 340.01 (56).

(3) While the person is in or on the premises of an approved treatment facility, as defined in s. 51.01 (2), that provides alcohol and other drug abuse treatment.

(4) While the person is within 1,000 feet of the premises of an approved treatment facility, as defined in s. 51.01 (2), that provides alcohol and other drug abuse treatment, if the person knows or should have known that he or she is within 1,000 feet of the premises of the facility or if the facility is readily recognizable as a facility that provides alcohol and other drug abuse treatment.

History: 1985 a. 328; 1987 a 332,339,403; 1989 a 31,107,121; 1991 a. 39; 1993 a. 87, 98, 118, 281, 490, 491; 1995 a. 448 s. 289,491; Stats. 1995 s. 961.49; 1997 a. 283.327; 1999 a. 32, 48, 57; 2001 a. 109.

Scienter is not an element of this section. State v. Hermann, **164** Wis. 2d 269,474 N.W.2d 906 (Ct. App. 1991).

A university campus is not a "school" within the meaning of s. 161.49 [now 961.49]. State v. Andrews, 171 Wis. **2d** 217,491 N.W.2d 504 (Ct. App. 1992).

Anyone who passes within a zone listed in sub. (1) while in possession of a controlled substance with an intent to deliver it somewhere is subject to the penalty enhancer provided by this section whether or not the arrest is made within the zone and whether or no! there is an intent to deliver the controlled substance within the zone, State v. Rasmussen. 195 Wis. 2d 109,536 N.W.2d 106 (Ct. App. 1995).

School "premises" begin at the school property line. Slate v. Hall, 196 Wis. 2d 850, 540 N.W.2d 219 (Ct. App. 1995).

The penalty enhancer for sales close to parks does not violate due process and is not unconstitutionally vague. The ordinary meaning of "parks" includes undeveloped parks. Proximity *to* a park is rationally related *to* protecting public health and safety from drug sale activities. State v. Lopez, 207 Wis. 2d 415, 559 N.W.2d 264 (Ct. App. 1996).

Day care centers are a subset of "youth centers" as defined in s. 961.01122) and come within the definition of places listed in s. 961.49 **(2).** State v. Van Riper. 222 Wis. 2d 197,586 N.W.2d 198 (Ct. App. 1998).

This section contains two elemental facts—a distance requirement and a particularized protected place—both of which must be submitted to the jury and proven beyond a reasonable doubt. State v. Harvey, 2002 WI 93, 254 Wis. 2d 442, 647 N.W.2d 189.

961.495 Possession or attempted possession of a controlled substance on or near certain places. If any person violates s. 961.41 (3g) by possessing or attempting to possess a controlled substance included in schedule I or II, a controlled substance analog of a controlled substance included in schedule I or II or ketamine or flunitrazepam while in or on the premises of a scattered-site public housing project, while in or on or otherwise within 1,000 feet of a state, county, city, village or town park, a jail or correctional facility, a multiunit public housing project, a swimming pool open to members of the public, a youth center or a community center, while in or on or otherwise within 1,000 feet of any private or public school premises or while in or on or otherwise within 1,000 feet of a school bus, as defined in s. 340.01 (56), the court shall, in addition to any other penalties that may apply to the crime, impose 100 hours of community service work for a public agency or a nonprofit charitable organization. The court shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored. Any organization or agency acting in good faith to which a defendant is assigned pursuant to an order under this section has immunity from any civil liability in excess of $25,000 for acts or omissions by or impacting on the defendant.

History: 1989 a 31,121; 1991 a. 39; 1993 a. 87, 118, 281, 490; 1995 a. 448 s. 290; Stats. 1995 s. 961.495; 1999 a. 57.

961.50 Suspension or revocation of operating privilege. (1) If a person is convicted of any violation of this chapter, the court shall, in addition to any other penalties that may apply to the crime, suspend the person's operating privilege, as defined in s. 340.01 (40), for not less than 6 months nor more than 5 years. The court shall immediately take possession of any suspended license and forward it to the department of transportation together with the record of conviction and notice of the suspension. The person is eligible for an occupational license under s. 343.10 as follows:

(a) For the first such conviction, at any time.

(b) For a 2nd conviction within a 5-year period, after the first 60 days of the suspension or revocation period.

(c) For a 3rd or subsequent conviction within a 5-year period, after the first 90 days of the suspension or revocation period.

(2) For purposes of counting the number of convictions under sub. (1), convictions under the law of a federally recognized American Indian tribe or band in this state, federal law or the law of another jurisdiction, as defined in s. 343.32 (Im) (a), for any offense therein which, if the person had committed the offense in this state and been convicted of the offense under the laws of this state, would have required suspension or revocation of such person's operating privilege under this section, shall be counted and given the effect specified under sub. (1). The 5-year period under this section shall be measured from the dates of the violations which resulted in the convictions.

(3) If the person's license or operating privilege is currently suspended or revoked or the person does not currently possess a valid operator's license issued under ch. 343, the suspension or revocation under this section is effective on the date on which the person is first eligible and applies for issuance, renewal or reinstatement of an operator's license under ch. 343.

History: 1991 a. 39; 1993 a. 16,180; 1995 a. 448 s. 291; Stats. 1995 s. 961.50; 1997 a. 84.

A suspension imposed pursuant to this section is not a "presumptive minimum sentence" under s. 961.438. A minimum 6-month suspension is mandatory. State v. Herman. 2002 WI App 78.250 Wis. 2d 166,640 N.W.2d 539.

SUBCHAPTER V

ENFORCEMENT AND ADMTNISTRATIVE PROVISIONS

961.51 Powers of enforcement personnel. (I) Any officer or employee of the pharmacy examining board dcsignatcd by the examining board may:

(a) Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas and summonses issued under the authority of this state;

(b) Make arrests without warrant for any offense under this chapter committed in the officer's or employee's presence, or if the officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing a violation of this chapter which may constitute a felony; and

(c) Make seizures of property pursuant to this chapter.

(2) This section does not affect the responsibility of law enforcement officers and agencies to enforce this chapter, nor the authority granted the department of justice under s. 165.70.

History: 1971 c. 219: 1985 a. 29,1993 a. 482; 1995 a. 448 s. 293, Stats. 1995 s 961.51.

961.52 Administrative inspections and warrants. (I) Issuance and execution of administrative inspection warrants shall be as follows:

(a) A judge of a court of record, upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspcction warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.

(b) A warrant shall issue only upon an affidavit of a designated officer or employee of the pharmacy examining board or the department of justice having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the judge shall issue a warrant identifying the area, premises, building or conveyance to be inspected, the purpose of the inspcction, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

I. State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

2. Be directed to a person authorized by law to execute it;

3. Command the person to whom it is directed to inspect the area, premises, building or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

4. Identify the item or types of property to be seized, if any;

5. Direct that it be served during normal business hours and designate the judge to whom it shall be returned.

(c) A warrant issued pursuant to this section must be executed and returned within 10 days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(d) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of court for the county in which the inspection was made.

(2) The pharmacy examining board and the department of justice may make administrative inspections of controlled premises in accordance with the following provisions:

(a) For purposes of this section only, "controlled premises" means:

1. Places where persons authorized under s. 961.32 to possess controlled substances in this state are required by federal law to keep records; and

2. Places including factories, warehouses, establishments and conveyances in which persons authorized under s. 961.32 to possess controlled substances in this state are permitted by federal law to hold, manufacture, compound, process, sell, deliver or otherwise dispose of any controlled substance.

(b) When authorized by an administrative inspection warrant issued pursuant to sub. (1), an officer or employee designated by the pharmacy examining board or the department of justice, upon presenting the warrant and appropriate credentials to the owner, operator or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(c) When authorized by an administrative inspection warrant, an officer or employee designated by the pharmacy examining board or the department of justice may:

I. Inspect and copy records relating to controlled substances;

2. Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in par. (e), all other things therein, including records, files, papers, processes, controls and facilities bearing on violation of this chapter; and

3. Inventory any stock of any controlled substance therein and obtain samples thereof.

(d) This section does not prevent entries and administrative inspections, including seizures of property, without a warrant:

1. If the owner, operator or agent in charge of the controlled premises consents;

2. In situations presenting imminent danger to health or safety;

3. In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

4. In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

5. In all other situations in which a warrant is not constitutionally required.

(e) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator or agent in charge of the controlled premises consents in writing.

History: 1971 c. 219; 1983 a. 538; 1985 a. 29; 1993 a. 482; 1995 a. 448 s. 294; Stats. 1995 s. 961.52.

961.53 Violations constituting public nuisance. Violations of this chapter constitute public nuisances under ch. 823, irrespective of any criminal prosecutions which may be or are commenced based on the same acts.

History: 1971 c. 219; Sup. Ct. Order, 67 Wis. 2d 585.775 (1975); 1995 a. 448 s. 295; Stats. 1995 s. 961.53.

961.54 Cooperative arrangements and confidentiality. The department of justice shall cooperate with federal, state and local agencies in discharging its responsibilities concerning traffic

in controlled substances and in suppressing the abuse of controlled substances. To this end, it may:

(1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) Coordinate and coopcrate in training programs concerning controlled substance law enforcement at local and state levels;

(3) Cooperate with the bureau by establishing a centralized unit to accept, catalog, file and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state and local law enforcement purposes. It shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under s. 961.335 (7); and

(4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

History: 1971 c. 219,336; 1975 c. 110; 1995 a. 448 s. 296; Stats. 1995 s. 961.54.

961.55 Forfeitures. (1) The following are subject to forfeiture:

(a) All controlled substances or controlled substance analogs which have been manufactured, delivered, distributed, dispensed or acquired in violation of this chapter.

(b) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, distributing, importing or exporting any controlled substance or controlled substance analog in violation of this chapter.

(c) All property which is used, or intended for use, as a container for property described in pars. (a) and (b).

(d) All vehicles which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in pars. (a) and (b) or for the purpose of transporting any property or weapon used or to be used or received in the commission of any felony under this chapter, but:

1. No vehicle used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the vehicle is a consenting party or privy to a violation of this chapter;

2. No vehicle is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent. This subdivision does not apply to any vehicle owned by a person who is under 16 years of age on the date that the vehicle is used, or is intended for use, in the manner described under par. (d) (intro.), unless the court determines that the owner is an innocent bona fide owner;

3. A vehicle is not subject to forfeiture for a violation of s. 961.41 (3g) (b), (c), (d), (e) or (f); and

4. If forfeiture of a vehicle encumbered by a bona fide perfected security interest occurs, the holder of the security interest shall be paid from the proceeds of the forfeiture if the security interest was perfected prior to the date of the commission of the felony which forms the basis for the forfeiture and he or she neither had knowledge of nor consented to the act or omission.

(e) All books. records, and research products and materials, including formulas, microfilm, tapes and data, which are used, or intended for use, in violation of this chapter.

(f) All property, real or personal, including money, directly or indirectly derived from or realized through the commission of any crime under this chapter.

(g) Any drug paraphernalia, as defined in s. 961.571, used in violation of this chapter.

(2) Property subject to forfeiture under this chapter may be seized by any officer or employee designated in s. 961.51 (1) or (2) or a law enforcement officer upon process issued by any court of record having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) The officer or employee or a law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The officer or employee or a law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter, that the property was derived from or realized through a crime under this chapter or that the property is a vehicle which was used as described in sub. (1) (d).

(3) In the event of seizure under sub. (2), proceedings under sub. (4) shall be instituted promptly. All dispositions and forfeitures under this section and ss. 961.555 and 961.56 shall be made with due provision for the rights of innocent persons under sub. (1) (d) 1., 2. and 4. Any property seized but not forfeited shall be rctuined to its rightful owner. Any person claiming the right to possession of property seized may apply for its rehm to the circuit court for the county in which the property was seized. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property returned if:

(a) The property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or

(b) All proceedings in which it might be required have been completed.

(4) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the sheriff of the county in which the seizure was made subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the person seizing the property may:

(a) Place the property under seal;

(b) Remove the property to a place designated by it; or

(c) Require the sheriff of the county in which the seizure was made to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(5) When property is forfeited under this chapter, the agency whose officer or employee seized the property may:

(a) Retain it for official use;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The agency may use 50% of the amount received for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs and the costs of investigation and prosecution reasonably incurred. The remainder shall be deposited in the school fund as proceeds of the forfeiture. If the property forfeited is money, all the money shall be deposited in the school fund;

(c) Require the sheriff of the county in which the property was seized to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the bureau for disposition.

(6) Controlled substances included in schedule I and controlled substance analogs of controlled substances included in schedule I that are possessed, transferred, sold, offered for sale or attempted to be possessed in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Con-

trolled substances included in schedule I and controlled substance analogs of controlled substances included in schedule I that are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(6m) Flunitrazcpam or ketamine that is possessed, transferred, sold, offered for sale or attempted to be possessed in violation of this chapter is contraband and shall be seized and summarily forfeited to the state. Flunitrazepam or ketamine that is seized or comes into the possession of the state, the owner of which is unknown, is contraband and shall be summarily forfeited to the state.

(7) Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(8) The failure, upon demand by any officer or employee designated in s. 961.51 (1) or (2), of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate federal registration, or proof that the person is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

History: 1971 c. 219,307; 1981 c. 267; 1985 a. 245.328; 1987 a. 339; 1989 a. 121; 1993 a. 118,482; 1995 a. 448 ss. 297 to 305; Stats. 1995 s. 961.55; 1997 a. 220: 1999 a. 48, 57, 110; 2001 a. 109.

A vehicle obtained out of state and used to transport a controlled substance is subject to forfeiture under sub. (1) (d). State v. S & S Meats, Inc. 92 Wis. 2d 64, 284 N.W.2d 712 (Ct. App. 1979).

A vehicle subject to sub. (1) (d) 4 is not subject to forfeiture unless the **secured** party consents. State v. Fouse, 120 Wis. 2d 471,355 N.W.2d 366 (Ct. App. 1984).

Under sub. (1) (f), the state may seize property from an owner not charged with a crime. State v. Hooper, 122 Wis. 2d 748,364 N.W.2d 175 (Ct. App. 1985).

The "seized but not forfeited" language of s. 961.55 (3) means that the portion of that subsection related to return of property is only triggered by an unsuccessful forfeiture action brought by the state; in the event that the district attorney elects not to bring a forfeiture action, a person seeking the return of seized property may do *so* under **s.** 968.20. Jones v. State, 226 Wis. 2d 565,594 N.W.2d 738 (1999).

961.555 Forfeiture proceedings. (1) TYPE OF ACTION, WHERE BROUGHT. In an action brought to cause the forfeiture of any property seized under s. 961.55, the court may render a judgment in rem or against a party personally, or both. The circuit court for the county in which the property was seized shall have jurisdiction over any proceedings regarding the property when the action is commenced in state court. Any property seized may be the subject of a federal forfeiture action.

(2) COMMENCEMENT. (a) The district attorney of the county within which the property was seized shall commence the forfeiture action within 30 days after the seizure of the property, except that the defendant may request that the forfeiture proceedings be adjourned until after adjudication of any charge concerning a crime which was the basis for the seizure of the property. The request shall be granted. The forfeiture action shall be commenced by filing a summons, complaint and affidavit of the person who seized the property with the clerk of circuit court, provided service of authenticated copies of those papers is made in accordance with ch. 801 within 90 days after filing upon the person from whom the property was seized and upon any person known to have a bona fide perfected security interest in the property.

(b) Upon service of an answer, the action shall be set for hearing within 60 days of the service of the answer but may be continued for cause or upon stipulation of the parties.

(c) In counties having a population of 500,000 or more, the district attorney or corporation counsel may proceed under par. (a).

(d) If no answer is served or no issue of law or fact has been joined and the time for that service or joining issue has expired, or if any defendant fails to appear at trial after answering or joining issue, the court may render a default judgment as provided in s. 806.02.

(3) BURDEN OF PROOF. The state shall have the burden of satisfying or convincing to a reasonable certainty by the greater weight of the credible evidence that the property is subject to forfeiture under s. 961.55.

(4) ACTION AGAINST OTHER PROPERTY OF THE PERSON. The court may order the forfeiture of any other property of a defendant up to the value of property found by the court to be subject to forfeiture under s. 961.55 if the property subject to forfeiture meets any of the following conditions:

(a) Cannot be located.

(b) Has been transferred or conveyed to, sold to or deposited with a 3rd party.

(c) Is beyond the jurisdiction of the court.

(dj Has been substantially diminished in value while not in the actual physical custody of the law enforcement agency.

(e) Has been commingled with other property that cannot be divided without difficulty.

History: 1971 c. 219; **Sup.** Ct. Order, 67 Wis. 2d 585,752 (1975); 1981 c. 113, 267: Sup. **Ct.** Order, 120 Wis. 2d xiii; 1985 a. 245: 1989 a. 121: 1993 a. 321; 1995 a. 448 s. 306; Stats. 1995 s. 961.555; 1997 a. 187.

Judicial Council Committee Note, 1974: The district attorney would be required to file within the 15 [now 30] day period. The answer need not be verified. [Re Order effective **Jan.** 1, 19761

Judicial Council Note, 1984: Sub. (2) (a) has been amended by allowing 60 days after the action is commenced for service of the summons, complaint and affidavit on the defendants. The prior statute. requiring service within 30 days after seizure of the property, was an exception to the general rule of **s.** 801.02 (2), stats. [Re Order effective Jan. 1, 1985]

The time provisions of **sub.** (2) are mandatory and jurisdictional. State v. Rosen, 72 Wis. 2d 200,240 N.W.2d 168 (1976).

Persons served under sub. (2) (a) must be named **as** defendants. **An** action cannot be brought against an inanimate object as a sole "defendant." State v. One 1973 Cadillac, 95 Wis. 2d 641,291 N.W.2d 626 (Ct. App. 1980).

An affidavit under sub. (2) (a) must be executed hy a person who was present at the seizure or who ordered the seizure and received reports from those present at the seizure. State v. Hooper, 122 Wis. 2d 748, 364 N.W.2d 175 (Ct. App. 1985).

Sub. (2) (b) requires a hearing be held. not set, within 60 days of the service of the answer and allows a continuance only when it is applied for within the 60 day period. State v. Baye, 191 Wis. 2d 334, 528 N.W.2d 81 (Ct. App. 1995).

961.56 Burden of proof; liabilities. (I) It is not necessary for the state to negate any exemption or exception in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.

(2) In the absence of proof that a person is the duly authorized holder of an appropriate federal registration or order form, the person is presumed not to be the holder of the registration or form. The burden of proof is upon the person to rebut the presumption.

(3) No liability is imposed by this chapter upon any authorized state, county or municipal officer or employee engaged in the lawful performance of the officer's or employee's duties.

History: 1971 c. 219,307; 1993 a. 482; 1995 a. 448 **s.** 307; Stats. 1995 s. 961.56.

961.565 Enforcement reports. On or before November 15 annually, the governor and the attorney general shall submit a joint report to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2) describing the activities in this state during the previous year to enforce the laws regulating controlled substances. The report shall contain recommendations for improving the effectiveness of enforcement activities and other efforts to combat the abuse of controlled substances.

History: 1989 **a.** 122; 1995 **a.** 448 **s.** 308; Stats. 1995 **s.** 961.565.

SUBCHAPTER VI

DRUG PARAPHERNALIA

961.571 Definitions. In this subchapter:

(1) (a) "Drug paraphernalia" means all equipment, products and materials of any kind that are used, designed for use or primarily intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackag-

ing, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog in violation of this chapter. "Drug paraphernalia" includes, but is not limited to, any of the following:

1. Kits used, designed for use or primarily intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant that is a controlled substance or from which a controlled substance or controlled substance analog can be derived.

2. Kits used, designed for use or primarily intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs.

3. Isomerization devices used, designed for use or primarily intended for use in increasing the potency of any species of plant that is a controlled substance.

4. Testing equipment used, designed for use or primarily intended for use in identifying, or in analyzing the strength, effectiveness or purity of, controlled substances or controlled substance analogs.

5. Scales and balances used, designed for use or primarily intended for use in weighing or measuring controlled substances or controlled substance analogs.

6. Diluents and adulterants, such as quinine hydrochloride, mannitol, niannite, dextrose and lactose, used, designed for use or primarily intended for use in cutting controlled substances or controlled substance analogs.

7. Separation gins and sifters used, designed for use or primarily intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.

8. Blenders, bowls, containers. spoons and mixing devices used, designed for use or primarily intended for use in compounding controlled substances or controlled substance analogs.

9. Capsules, balloons, envelopes and other containers used, designed for use or primarily intended for use in packaging small quantities of controlled substances or controlled substance analogs.

10. Containers and other objects used, designed for use or primarily intended for use in storing or concealing controlled substances or controlled substance analogs.

11. Objects used, designed for use or primarily intended for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

a. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls.

b. Water pipes.

c. Carburetion tubes and devices.

d. Smoking and carburetion masks.

e. Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.

f. Miniature cocaine spoons and cocaine vials.

g. Chamber pipes.

h. Carburetor pipes.

i. Electric pipes.

j. Air–driven pipes.

k. Chilams.

L. Bongs.

m. Ice pipes or chillers.

(b) "Drug paraphernalia" excludes:

1. Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting substances into the human body.

2. Any items, including pipes, papers and accessories, that are designed for use or primarily intended for use with tobacco products.

(2) "Primarily" means chiefly or mainly.

History: 1989 a. 121; 1991 a. 140; 1995 a. 448 s. 310; Stats. 1995 s. 961.571.

A tobacco pipe is excluded from the definition of drug paraphernalia under **sub.** (1) (h) 2. The presence of residue of a controlled substance in the pipe does not change that result. State v. Martinez, 210 Wis. 2d 397, 563 N.W.2d 922 (Ct. App. 1997).

961.572 Determination. (1) In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other legally relevant factors, the following:

(a) Statements by an owner or by anyone in control of the object concerning its use.

(b) The proximity of the object, in time and space, to a direct violation of this chapter.

(c) The proximity of the object to controlled substances or controlled substance analogs.

(d) The existence of any residue of controlled substances or controlled substance analogs on the object.

(e) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is designed for use or primarily intended for use as drug paraphernalia.

(f) Instructions, oral or written, provided with the object concerning its use.

(g) Descriptive materials accompanying the object that explain or depict its use.

(h) Local advertising concerning its use.

(i) The manner in which the object is displayed for sale.

(j) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.

(k) The existence and scope of legitimate uses for the object in the community.

(L) Expert testimony concerning its use.

(2) In determining under this subchapter whether an item is designed for a particular use, a court or other authority shall consider the objective physical characteristics and design features of the item.

(3) In determining under this subchapter whether an item is primarily intended for a particular use, a court or other authority shall consider the subjective intent of the defendant.

History: 1989 a. 121; 1991 a. 140; 1995 a. 448 s. 311; Stats. 1995 s. 961.572.

961.573 Possession of drug paraphernalia. (1) No person may use, or possess with the primary intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack. store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or controlled substance analog in violation of this chapter. Any person who violates this subsection may be fined not more than $500 or imprisoned for not more than 30 days or both.

(2) Any person who violates sub. (1) who is under 17 years of age is subject to a disposition under s. 938.334 (2e).

(3) No person may use, or possess with the primary intent to use, drug paraphernalia to manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack or store methamphetamine or a controlled substance analog of methamphet-

amine in violation of this chapter. Any person who violates this subsection is guilty of a Class H felony.

History: 1989 a. 121; 1991 a. 39, 140: 1995 a. 27, 77; 1995 a. 448 ss. 312 to 314, 492; Stats. 1995 s. 961.573: 1999 a. 129; 2001 a. 109.

961.574 Manufacture or delivery of drug paraphernalia. (1) No person may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be primarily used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or controlled substance analog in violation of this chapter. Any person who violates this subsection may be fined not more than $1,000 or imprisoned for not more than 90 days or both.

(2) Any person who violates sub. (1) who is under 17 years of age is subject to a disposition under s. 938.344 (2e).

(3) No person may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be primarily used to manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack or store methamphetamine or a controlled substance analog of methamphetamine in violation of this chapter. Any person who violates this subsection is guilty of a Class H felonv.

History: 1989 a. 121; 1991 a.39, 140; 1995 a. 27, 77; 1995 a. 448 ss. 315 to 317, 493; **Stats.** 1995 s. 961.574; *1999* a. 129; 2001 a. 109.

961.575 Delivery of drug paraphernalia to a minor. (1) Any person 17 years of age or over who violates s. 961.574 (1) by delivering drug paraphernalia to a person 17 years of age or under who is at least 3 years younger than the violator may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(2) Any person who violates this section who is under 17 years of age is subject to a disposition under s. 938.344 (2e).

(3) Any person 17 years of age or over who violates s. 961.574 (3) by delivering drug paraphernalia to a person 17 years of age or under is guilty of a Class G felony.

History: 1989 a. 121; 1991 a. 39: 1995 a. 27, 77; 1995 a. 448 ss. 318,494; Stats. 1995 s. 961.575; 1999 a. 129; 2001 a. 109.

961.576 Advertisement of drug paraphernalia. No person may place in any newspaper, magazine, handbill or other publication any advertisement, knowing that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed for use or primarily intended for use as drug paraphernalia in violation of this chapter. Any person who violates this section may be fined not more than $500 or imprisoned for not more than 30 days or both.

History: 1989 a. 121; 1991 a. 140; 1995 a. 448 s. 319: Stats. 1995 s. 961.576.

961.577 Municipal ordinances. Nothing in this subchaptcr precludes a city, village or town from prohibiting conduct that is the same as that prohibited by s. 963.573 (2), 961.574 *(2)* or 961.575 *(2)*.

History: 1989 a. 121; 1995 a. 448 s. 320; Stats. 1995 s. 961.577.

SUBCHAPTER VII

MISCELLANEOUS

961.61 Uniformity of interpretation. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

History: 1971 c. 219; 1995 a. 448 s. 322: Stats. 1995 s. 961.61.

961.62 Short title. This chapter may be cited as the "Uniform Controlled Substances Act".

History: 1971 c. 219; 1995 a. 448 s. 323; *Stats.* 1995 s. 961.62.

Chapter N 1

PROGRAM APPROVAL FOR SCHOOLS OF NURSING

N 1.01 Authority and intent.
N 1.02 Definitions.
N 1.03 Board approval of new nursing programs.
N 1.04 Continuation of approval of schools based on accreditation by a board recognized nursing accreditation agency.
N 1.05 Continuation of approval of schools based on compliance with board standards.
N 1.06 Standards for school approval or continuing approval.
N 1.07 Changes requiring approval of the board.
N 1.08 Closure of approved school.
N 1.09 Exceptions.

Note: Chapter N 1 as it existed on January 31, 1983 was repealed and a new chapter N 1 was created effective January 1, 1983.

N 1.01 Authority and intent. (1) The rules in this chapter are adopted pursuant to authority of **ss.** 15.08 (5) (b) and 227.11, Stats.

(2) The intent of the board of nursing in adopting rules in this chapter is to reduce duplication that has existed between the board and national accreditation processes for nursing schools, to clarify requirements, and to develop efficient timelines for the nursing school approval process.

History: Cr. Register, January, 1983. No. 325, eff. 2–1–83; am. (2), Register, August, 1989, No. 404. eff. 9–1–89; correction in (1) made under s. 13.93(2m) (b) 7., Stats., Register. August, 1989, No. 404; **correction in (1) made under s. 13.93(2m) (b)7., Stats., Register, October, 2000, No. 538.**

N 1.02 Definitions. (1) "Approval" means that status of the school upon graduation of the first class after standards have been met.

(2) "Authorization to admit" means permission to admit the first class of nursing students and conduct a nursing program of professional or practical nursing prior to graduation of the first class.

(3) "Board" means the state of Wisconsin board of nursing.

(4) "Educational adniinistrator" means the registered nurse faculty member whose primary responsibility is to administer the educational program in nursing regardless of any title assigned by the governing institution.

(5) "Faculty" means registered nurses meeting standards and employed by the governing institution for the purpose of administration, teaching, evaluation, guidance and research in nursing.

(6) "Governing institution" means the body, agency or institution which has authority to conduct a school of nursing that meets the standards under **s.** N 1.06.

(7) "Practical nursing program" means a school of nursing organized and administered by a vocational, technical and adult education system or an independent school at a post secondary level which awards the graduate a diploma in practical nursing upon meeting requirements of the school.

(8) "Probationary status " means the status assigned to a school upon a finding that any board imposed requirement related to standards under **s.** N 1.06 has not been met, for the purpose of affording the school an opportunity to meet the requirements of the board before approval is withdrawn.

(9) "Professional nursing program" means the following types of school of nursing programs only:

(a) "Associate degree program" which is offered through a school of nursing organized and administered by a technical college or institute, a college or university which awards the graduate an associate degree in nursing upon meeting the requirements of the institution. This includes associate degree progression programs for the licensed trained practical nurse.

(b) "Baccalaureate degree program" which is offered through a school of nursing organized and administered by a senior college or university that awards the graduate a baccalaureate degree in nursing upon meeting the requirements of the institution. This includes articulation programs for associate degree– and diploma–registered nurses.

(c) "Diploma program" which is offered in a school of nursing organized and administered by a hospital or independent school that awards the graduate a diploma upon meeting the requirements of the school.

(10) "Regionally accredited" means that a college or university or other educational institution conforms with the standards of education prescribed by a regional accrediting commission recognized by the U.S. commissioner of education.

(11) "School" means school for professional nurses or school for practical nurses.

(12) "Standards" means those measures or indicators of acceptability as defined in **s.** N 1.06.

(13) "Survey" means a planned visit by a board representative to a school, an institution or agency for the purpose of conferring with administrative, instructional and service personnel; visiting educational and service facilities; and, reviewing and evaluating program plans, activities, records and reports.

(14) "Transcript" means a legible and official copy of the student's original record which bears the seal of the institution or a notarization and the signature of the registrar or educational administrator.

(15) "Withdraw approval" means removal by the board of authorization to admit or removal of approval of a nursing program following a board imposed probationary status during which board standards continue to be unmet.

History: Cr. Register, January, 1983, No. 325, eff. 2–1–83; r. and recr. (1). r. (5) and (7), renum. (2) to (4), (8), (10) and (11) to be (3) to (5), (7), (13) and (14), cr. (2), (8), (10) to (12) and (15), am. (6) and (9) (intro.). Register, July, 1989, No. 403, eff. 8–1–89.

N 1.03 Board approval of new nursing programs. (1) NEW NURSING PROGRAMS. All new nursing programs not previously approved or granted authorization to admit by the board as of July 1, 1988 are required to be approved by the board under the procedures prescribed in this section.

Note: The effective date of September 1, 1989, rather than the **July** 1, 1988 date in this subsection controls approval standards for new nursing programs.

(2) AUTHORIZATION TO PLAN A **PROGRAM**. An institution planning to establish and conduct a program in professional or practical nursing shall:

(a) Provide for nursing expertise to develop the written proposal.

(b) File an application and submit to the board a written program proposal in accordance with the board's procedures for proposed programs at least 12 months prior to the anticipated opening date.

Note: A copy of the application for proposed programs may he obtained from the Bureau of Health Service Professions. **P.O.** Box 8935, Madison, Wisconsin 53708–8935.

(c) Identify in the written proposal the administrative and organizational structure of the governing institution and its relation-

ship to the nursing program, the type of program, curriculum plan, instructional methods, projected use of clinical facilities and resources, and plan for employment of faculty.

(d) The board shall notify the governing institution of the action taken on the application and written proposal.

(3) AUTHORIZATION TO ADMIT STUDENTS. (a) The board shall authorize admissions of the first class of nursing students if it is satisfied that board standards under s. N 1.06 will be met based on submission of evidence of the following:

1. Appointment of an educational administrator who meets standards under s. N 1.06 (4) (a) or (b).

2. A statement of philosophy, purpose, objectives, conceptual framework and description of courses developed by faculty.

3. Evidence that faculty meet standards under s. N 1.06 (4) (c) or (d); and

4. Evidence that clinical facilities have been selected according to standards under s. N 1.06 (3) (e).

(b) Authorization to admit succeeding classes shall be withdrawn if new faculty and clinical facilities do not meet standards.

(4) APPROVAL. (a) A school shall be eligible for approval upon graduation of its first class. The board shall base its decision to grant approval on the following evidence: Self-evaluation report of the total curriculum and program completed by the school within 6 months of graduation of the first graduating class, addressing compliance with standards under s. N 1.06, the success rate of graduates on the national council licensure examination, survey report by the board representative, and other facts relating to compliance with board standards.

(b) A certificate of approval shall be issued to an approved school.

History: Cr. Register. January, 1983, No. 325, eff. 2-1-83; am. (1), (2) (b) and (c), cr. (2) (d), r. and recr. (3), r. (4) and (5), renum. (6) to be (4) and am. Register, August, 1989, No. 404, eff. 9-1-89.

N 1.04 Continuation of approval of schools based on accreditation by a board recognized nursing accreditation agency. (1) Schools which have received accreditation from a board recognized nursing accreditation agency shall file evidence of initial accreditation with the board, and thereafter shall file notice of any change in school accreditation status.

(2) The board shall continue to grant approval to schools filing evidence of accreditation under sub. (I).

(3) Schools holding approval based on sub. (2) shall be responsible for complying with standards under s. N 1.06.

(4) If the board finds that standards under s. N 1.06 are not being met, it may place a school on probationary status. The following situations are cause for review by the board to determine if standards are being met:

(a) Complaints relating to violations of standards under s. N 1.06 which the board has verified;

(b) A success rate by the school's graduates on the national council licensure examination of less than the national percent passing on an annual basis over a 2-year period;

(c) Withdrawal or change of school accreditation status by a board recognized nursing accreditation agency or a general academic accreditation agency;

(d) Failure to report and obtain board approval of changes that require approval of the board under s. N 1.07;

(e) Providing false or misleading information to students or the public Concerning the nursing program; or

(f) Violation of any of the rules under this chapter.

(5) The board may withdraw approval for a school to conduct a nursing program if it finds that standards continue to be unmet following a board imposed probationary status.

(6) The board shall make available recommendations to assist a school to reestablish approval under s. N 1.06.

History: Cr. Register, January, 1983, No. 325, eff. 2-1-83; am. Register. July, 1989, No. 403. eff. 8-1-89.

N 1.05 Continuation of approval of schools based on compliance with board standards. (1) Schools that do not hold accreditation from a board recognized nursing accreditation agency shall be responsible for meeting standards prescribed in s. N 1.06.

(2) Schools in sub. (1) shall file self-evaluation reports and other documents as the board may require including documents submitted to or by nursing accreditation agencies, and shall be evaluated by the board or its representatives.

(3) If the board finds that standards under s. N 1.06 are not being met. it may place a school on probationary status. The following situations are cause for review by the board to determine if standards are being met:

(a) Complaints relating to violations of standards under s. N 1.06 which the board has verified;

(b) A success rate by the school's graduates on the national council licensure examination of less than the national percent passing on an annual basis over a 2-year period;

(c) Denial of school accreditation by a board-recognized nursing accreditation agency or a general academic accreditation agency;

(d) Failure to report and obtain board approval of changes that require approval of the board under s. N 1.07;

(e) Providing false or misleading information to students or the public concerning the nursing program; **or,**

(f) Violation of any of the rules of this chapter.

(4) The board may withdraw approval for a school to conduct a nursing program if it finds that standards continue to be unmet following a board imposed probationary status.

(5) The board shall make available recommendations to assist a school to reestablish approval under s. N 1.06.

History: Cr. Register, January, 1983, No. 325. eff. 2-1-83; r. and recr. Register, July, 1989, No. 403, eff. 8-1-89.

N 1.06 Standards for school approval or continuing approval. Except as provided in s. N 1.04, professional or practical nursing schools seeking approval or continuing approval shall provide evidence of meeting the following standards as prescribed in s. N 1.03 or **1.05:**

(1) ORGANIZATION AND ADMINISTRATION OF THE PROGRAM To be eligible for approval by the board. a program must have the following:

(a) ***Governing institution.*** The governing institution shall assume legal responsibility for the overall conduct of the program.

1. The governing institution shall designate an educational administrator, establish administrative policies, and provide sufficient financial support, resources and facilities for the operation of the program.

2. The governing institution shall provide an organizational chart and written plan which describes the relationship of the nursing program to the governing institution and the organization of the nursing program.

3. The governing institution shall submit evidence of being regionally accredited.

(b) *Administrative policies.* 1. There shall be written administrative policies which are in accord with those of the governing institution.

2. There shall be written contracts between the school and institutions which offer associated academic study, clinical facilities and agencies for related services.

3. The educational administrator shall have authority and responsibility for the development, implementation and evaluation of the program.

4. There shall be provisions for a system of records and reports essential to the operation of the nursing program.

5. There shall be written personnel policies for the faculty which include position expectations and faculty rights and responsibilities.

(2) CURRICULUM. The curriculum shall be based on a stated purpose, philosophy, conceptual framework, and program objectives expressed in terms of required student competencies. Clinical and theoretical learning experiences shalt be consistent with the stated program objectives. Curricular content shall reflect current nursing practice and encompass health needs throughout the life span.

(a) *Professional nursing curriculum.* All professional nursing programs shall include correlated theory and clinical experience in at least the following areas. This shall not prohibit a flexible curriculum that would provide appropriate integration of the various subject areas:

1. 'Area of general education'. The curriculum in the area of general education shall include:

a. Scientific knowledge basic to nursing practice which includes principles from the biological and physical sciences.

b. Human and cultural knowledge which includes currently accepted concepts and principles from the social and behavioral sciences and are basic to understanding motivation and behavior.

2. 'Area of nursing education'. The curriculum in the area of nursing education shall include theory and selected experiences designed to enable students to provide nursing care which shall promote, maintain, and restore physical and mental health of the individual throughout the life span. Upon completion of the program, the graduate shall be able to:

a. Use the nursing process to plan and provide nursing care.

b. Apply knowledge derived from the scientific, human and cultural areas to meet health needs.

c. Individualize nursing care during preventive, maintenance, restorative and terminal phases.

d. Promote positive health practices.

e. Understand the roles and relationship of nurses to other health care providers.

f. Plan for health services with individuals, families, communities and health care providers.

g. Practice professional nursing according to the legal standards of ch. N 6.

h. Function as a responsible, accountable nursing professional.

i. Identify the need for continued competency.

j. Recognize the impact of historical trends in nursing.

(b) *Practical nursing curriculum.* All practical nursing programs shall include correlated theory and clinical experience in at least the areas specified in subds. I. to 3. This shall not prohibit a flexible curriculum that provides appropriate integration of the various subject areas:

1. Area of health, growth and development. a. General aspects of human structure and body function.

b. General aspects of health, signs of physical and emotional health and nonnal development, effects of emotional climate upon the health, attitudes and behavior of individuals and the family as a social unit.

2. Area of personal and vocational relationships. a. Basic principles of human relationships.

b. Legal and ethical responsibilities in nursing.

3. 'Area of nursing education'. The curriculum shall provide content with experiences in meeting basic nursing needs of the individual throughout the life span. Upon completion of the program, the graduate shall be able to:

a. Identify basic needs of a patient.

b. Employ common nursing measures to meet basic needs of patients.

c. Observe and report relevant data regarding a patient's health status.

d. Use communication techniques to assist patients to achieve identified goals.

e. Establish positive relationships with patients and other health team members.

f. Practice practical nursing according to the legal standards of ch. N 6.

g. Identify the need for continued competency.

(3) INSTRUCTION. Instruction shall be based on written objectives which give direction to planning student experiences.

(a) A variety of teaching methods shall be used to facilitate student learning.

(b) Criteria based on written objectives shall be used in the evaluation of student learning.

(c) Clinical laboratory learning experiences shall be supervised by nursing faculty meeting standards under sub. (4).

(d) There shall be written contracts with an adequate number of clinical facilities and resources to meet the program objectives.

(e) Standards used in the selection of clinical facilities shall include the following:

1. Identification that the clinical experience to be gained from the clinical facility is consistent with the nursing program objectives;

2. Willingness on the part of the clinical facility and nursing program to cooperate in promoting the nursing program clinical objectives as demonstrated in a formal written agreement between administrations; and

3. Identification by the school that the practice of the registered nurse and the licensed practical nurse at the clinical facility is within the legal scope of practice under s. 441.11 (3) and (4), Stats.

(9 Evidence of meeting standards shall be documented on forms provided by the board and kept on file in the school of nursing office. The forms shall be made available to the board upon request.

Note: A copy of the form may be obtained from the Bureau of Health Service Professions P.O. Box 8935, Madison, Wisconsin 53708–8935.

(4) FACULTY. The faculty shall be adequate in number and academic and professional qualifications to develop, implement and evaluate the program in nursing in relation to its stated purpose, philosophy, objectives, and conceptual framework, number and size of classes admitted annually, and the clinical facilities used in the program. A faculty member appointed prior to the effective date of these rules shall be considered to meet standards under par. (a), (b), (c) or (d) unless a change in appointment occurs. Faculty members appointed on or after July 1, 1988 shall have the following qualifications for approval:

Note: The effective date of September 1, 1989. rather than the July 1, 1988 date in this subsection controls faculty qualifications.

(a) The educational administrator of a professional nursing education program shall hold a current license to practice as a registered nurse in Wisconsin, have a minimum of 2 years of full–time or equivalent direct care experience as a practicing nurse, 3 years of experience in nursing education within the last 10 years, and hold a master's degree with a major in nursing.

(b) The educational administrator of a practical nursing education program shall hold a current license to practice as a registered nurse in Wisconsin, have a minimum of 2 years of full–time or equivalent direct care experience as a practicing nurse, 3 years of experience in nursing education within the last 10 years, and hold a master's degree with a major in nursing or a related field.

(c) **A** nurse faculty member who teaches nursing courses in a professional nursing program shall hold a current license to practice as aregistered nurse in Wisconsin, have at feast 2 years of full—time or equivalent direct care experience as a practicing nurse, be employed in nursing within the last **5** years and hold amaster's degree with a major in nursing.

(d) **A** nurse faculty member who teaches nursing courses in a practical nursing program shall hold a current license to practice as a registered nurse in Wisconsin, have at least **2** years of full—time or equivalent direct care experience as a practicing nurse, be employed in nursing within the last five years and hold a baccalaureate degree with a major in nursing.

(e) The ratio of students to faculty in the clinical area shall allow for meeting clinical course objectives and safe patient care.

(f) The educational administratorof the nursing education program shall be responsible for ensuring that individual faculty members are academically and professionally qualified, and that faculty staff is adequate to carry out program objectives.

(g) Evidence of meeting faculty standards shall be on file in the school of nursing office and available to the board upon request.

(h) **An** educational administrator who desires to hire a nurse faculty member who does not fit the specific requirements of this chapter shall apply to the board under **s.** N 1.09.

(5) EVALUATION. There shall be systematic and periodic evaluation of the total program.

History: Cr. Register, January, 1983, No. **325,** eff. 2–1–83; am. (intro.), renum. (1) **to (3)** to **be (2)** to (4) and am. **(2)** (intro.), (a) (intro.), **1.** a., 2. a. and d. **through** g., (b) (intro.), 1. b., 3. f., (3) (c) and (d), (e) 3., (4), cr. (1) and (5), Register, August, 1989, No. **404, eff. 9-1-89.**

N 1.07 Changes requiring approval of the board. Schools approved under this chapter shall notify the board of any of the following changes which require approval of the board

(1) Plan for voluntary or involuntary closure of the school;

(2) Changes that alter the program's compliance with ch. N 1 in the areas of organization and administration, curriculum, instruction, or faculty; or

(3) Change in ownership.

History: Cr. Register, January, **1983,** No. 325. **eff. 2-1 -83;** am. Register. **August, 1989, No. 404.** eff. **9-1-89.**

N 1.08 Closure of approved school. Uponvoluntary or involuntary closure of a school, the school shall:

(1) Make provisions for students to complete their nursing education;

(2) Assure continuing access to transcripts by former students and graduates for **a** minimum of 50 years; and

(3) Surrender the certificate of approval to the board,

History: Cr. Register, January, **1983,** No. **325.** cff. **2–1–83;** am. Register, **August, 1989, No. 404,** eff. **9-1-89.**

N 1.09 Exceptions. Requests for exceptions to the rules under this chapter may be considered by the board.

History: Cr. Register. January, **1983,** *No.* 325, *eff* **2-1-83.**

Chapter N 2

LICENSURE BY EXAMINATION

N 2.01 Authority and intent.
N 2.02 Definitions.
N 2.03 Qualifications for examination,
N 2.04 Application procedure for R.N. and L.P.N. applicants.
N 2.05 Licensure examination.
N 2.06 Temporary permits.
N 2.07 Examining councils.

Note: Chapter N 4 as it existed on July 31, 1981 was repealed and a new chapter N 4 was created effective August 1, 1981. Chapter N 4 as it existed on March 31, 1984 was repealed and a new chapter N 2 was created effective April 1, 1984.

N 2.01 Authority and intent. (1) This chapter is adopted pursuant to authority of ss. 15.08, 227.11 and 441.01 (3), Stats.

(2) The intent of the board of nursing in adopting rules in this chapter is to specify the requirements and procedures for obtaining a license by examination as a registered nurse or a licensed practical nurse, to outline the board's policies and procedures on exam administration, to set forth qualifications and procedures for obtaining a temporary permit, and to provide rules governing the board's examining councils.

History: Cr. **Register, March, 1984. No. 339, eff. 4-1-84; am.** *(2).* **Register, May, 1990,** No. **413, eff.** 5-1-90; **correction in** (1) **made under s. 13.93** (2m) (b) **7., Stats., Register, May,** 1990, No. **413, eff. 6-1-90.**

N 2.02 Definitions. As used in this chapter:

(1) "Board" means board of nursing.

(2) "Board-approved school" means an institution located in the United States, a U.S. territory, or a province of Canada which has a school, college, program or department of nursing which meets standards of the board or holds accreditation by a board-recognized nursing accreditation agency.

(3) "Bureau" means the bureau of health service professions within the department of regulation and licensing.

(4) "Direct supervision" means immediate availability to continually coordinate, direct and inspect at first hand the practice of another.

(5) "L.P.N." means licensed practical nurse.

(5m) "NCLEX" means national council licensure examination.

(6) "R.N." means registered nurse.

Note: The bureau is located at Room 174, 1400 **East Washington Avenue, Madison, Wisconsin.**

History: Cr. Register, March, 1984, No. **339. eff. 4-1-84; renum.** (1), (2), **(4) to (6) to be** (2), (1), (5), **(6) and (4) and am.** (2), **(4) and** (5) **am.** (3), **Register. May, 1990, No. 413,** *eff.* 6-1-90; **CR 01-049: am.** *(2), cr. (5m),* **Register Oetober 2001 No. 550, eff. 11-1-01.**

N 2.03 Qualifications for examination. (1) REGISTERED NURSE APPLICANTS. An applicant is eligible for the examination for registered nurses if the applicant:

(a) Does not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, Stats.;

(b) Has graduated from high school or its equivalent; and,

(c) Has graduated from a board-approved school of professional nursing. An applicant who has graduated from a school of professional nursing other than a board-approved school shall be required to take and satisfactorily complete a board-approved qualifying examination prior to admission to the NCLEX.

(2) LICENSED PRACTICAL NURSE APPLICANTS. An applicant is eligible for the examination for practical nurses if the applicant:

(a) Does not have an arrest or conviction record subject to ss. 111.321, 111.322 and 111.335, Stats.;

(b) Has completed *2* years of high school or its equivalent;

(c) Has graduated from a board-approved school of practical nursing. An applicant who has graduated from a school of practical nursing other than a board--approved school shall be required to demonstrate English competency prior to admission to the NCLEX.

History: Cr. Register, March, 1984, No. **339, eff. 4-1-84; am.** (1) (b) **to fd) and (2) (b) and (c), Register. May, 1990, No. 413. eff. 6-1-90; CR 01-049: am.** (1) **(c) and (2) (c), r. (1) (d) and (2) (d), Register October 2001 No. 550, eff. 11-1-01.**

N 2.04 Application procedure for R.N. and L.P.N. applicants. (1) Each applicant shall file with the bureau a completed, notarized application on forms provided by the bureau. The application shall include the signature of the applicant.

(2) Schools of professional nursing other than board-approved schools shall forward, directly to the bureau, official transcripts of nursing education for applicants who were graduated from the school. The bureau may accept certified credentials directly from the commission on graduates of foreign nursing schools attesting to receipt of the original transcript or documentation of the applicant's nursing education directly from the school of nursing.

(3) Certification of graduation from a board-approved school shall be completed by the educational administrator of the nursing education program or other person designated by the educational administrator. The certification of graduation shall be filed with the bureau prior to the determination of eligibility. An applicant who is unable to submit educational certification from a foreign country shall request that the board make a determination of educational qualifications.

(4) All statements and documents written in a foreign language shall be accompanied by notarized translations. The cost of the translation shall be paid by the applicant.

(6) An applicant who has graduated from a school of professional nursing other than a board-approved school shall submit a valid certificate issued by the commission on graduates of foreign nursing schools.

(7) An applicant who has a pending criminal charge or has been convicted of any crime or ordinance violation shall provide the board all related information necessary for the board to determine whether the circumstances of the arrest or conviction or other offense substantially relate to the circumstances of the licensed activity.

(8) An applicant who is unable to submit the educational credentials required by this section may submit an explanation of his or her inability to submit required credentials together with other evidence of education. The board shall determine whether the applicant's explanation and other evidence are sufficient.

History: Cr. Register, March, 1984, No. 339, eff. 4-1-84; am. (3), **(5) and** (6), cr. (8), **Register.** May, 1990, No. **413, eff. GI-90; am.** (2), **Register, June, 1993,** No. **450, eff. 7-1-93: am.** (1) (intro.) **and** (3), r. (1) **(c). Register, December, 1993, No. 456, eff.** I--1-94; **CR 01-049: renum. (1) (intro) and (1) (a) to be (1) and am., r. (1) (b) and (5), am. (2) and (6), Register October 2001** *No.* **550, eff. 11-1-01.**

N 2.05 Licensure examination. (1) DEFINITION. In this section, "NCLEX" means national council licensure examination.

(2) ADMINISTRATION. (a) The examination accepted by the board is the NCLEX.

(b) NCLEX shall be administered at least twice yearly for both R.N. and L.P.N. applicants.

(c) The board shall notify the applicant of eligibility for admission to the examination. The applicant shall contact the examination provider and schedule the examination date and time within one year from the time the notice of eligibility is received and pay the fee specified in s. 440.05 (1), **Stats.** The applicant must reapply if an examination is not taken within one year.

(d) Specific instructions shall be provided at the beginning of the examination.

(e) *An* applicant who violates examination security or national examination administration rules may be denied licensure by the board. Violations include, but are not limited to, answering questions after time allotted for the examination has expired, or bringing notes or exam aids for use during the exam.

(3) NURSING BEHAVIORS TESTED. (a) Nursing behaviors tested are the basic principles of the practice of professional nursing or the practice of practical nursing.

(b) The test plan identifying nursing behaviors on which the NCLEX is based shall be furnished to schools or individuals on request.

(4) PASSING SCORES. (a) *Registered nurse licensure.* The passing score on the NCLEX for registered nurse licensure is set by the board in advance of the examination. An applicant obtaining a passing score on the NCLEX may be eligible for licensure as a registered nurse.

(b) *Licensed practical nurse licensure.* The passing score on the NCLEX for practical nurse licensure is set by the board in advance of the examination. An applicant obtaining a passing score on the NCLEX may be eligible for licensure as a licensed practical nurse.

(5) RESULTS. (a) The board shall send written notification of results to applicants.

(b) An unsuccessful applicant may request to review or challenge, or both, his or her examination results. The request must be received by the bureau within 30 days of the postmark on the mailing of results.

(c) The cost of a review or challenge, or both, of results shall be paid by the applicant, as established by the national council and s. RL 4.05.

(6) FAILURE AND REEXAMINATION. An applicant who fails to earn a passing score on the examination for licensure may be scheduled for reexamination.

Note: A list of all current examination fees may be obtained at no charge from the Office of Examinations. Department of Regulation and Licensing, 1400 East Washington Avenue, **P.O.** Box 8935, Madison, WI 53708.

History: Cr. Register, March, 1984, No. 339, eff. 4–1–84; am. (4) (b), Register, May. 1990, No. 413, eff. 6–1–90; am. (2) (a), **(b),** (5) (b) and (c), r. and recr. (2) (c), renum. (6) (a) to be (6) and am. r. (6) (b), Register, December, 1993, No. 456, eff. 1–1–94; am. (6), Register, June, 1994, No. 462, eff. 7–1–94.

N *2.06* Temporary permits. (1) ELIGIBILITY. (a) An applicant for R.N. licensure or L.P.N. licensure who has graduated from a board–approved school of professional or practical nursing, and who has paid the fee specified in s. 440.05 (6), Stats., may be eligible for a temporary permit *to* practice. To maintain eligibility, **an** applicant shall schedule and take the examination prior to the expiration date of the temporary permit. Exceptions may be granted in hardship cases, if an affidavit is filed with the board identifying the hardship. Except as provided in par. (b), an applicant for a temporary permit shall schedule and take the examination prior to the expiration date of the temporary permit.

(b) An applicant for a temporary permit who is unable to take or complete a scheduled examination prior to the expiration of the temporary permit because of an unforeseen hardship, including but not limited to illness of the applicant, the illness or death of a family member of the applicant, an accident or a natural disaster, may renew the temporary permit as provided under sub. (4) (b) if the applicant files an affidavit with the board identifying the reason that the applicant was unable to take or complete the scheduled examination.

(2) SUPERVISION REQUIRED. The holder of a temporary permit shall not practice beyond the scope of the license the holder is seeking to obtain. The holder is required to practice under the direct supervision of an R.N.

(3) TITLE. (a) *Registered nurse applicants.* Only an applicant for R.N. licensure who holds a valid permit under this section or s. N 3.05 (4) (a) may use the title "graduate nurse" or the letters "G.N."

(b) *Licensed practical nurse applicants.* Only an applicant for L.P.N. licensure who holds a valid permit under this section or s. N 3.05 (4) (b) may use the title "graduate practical nurse" or the letters "G.P.N."

(4) DURATION. (a) The duration of temporary permits granted by the board is for a period of 3 months or until the holder receives failing examination results, whichever is shorter. The permit of a candidate who is unsuccessful on the examination is void upon receipt of the examination results by the holder and shall be returned by the holder to the board immediately. Failure *to* return the permit promptly shall, without further notice or process, result in a board order to revoke the permit.

(b) **A** temporary permit may **be** renewed once for a period of 3 months.

(c) **A** second renewal for a 3–month period may be granted in hardship cases, if an affidavit is filed with the board identifying the hardship. "Hardship cases", as used in this paragraph, includes the inability to take or complete a scheduled examination because of illness, family illness or death, accident or natural disaster or because the person is waiting for examination results.

(d) Practice under temporary permits, including renewals under pars. (b) and (c), may not exceed 9 months total duration.

(5) DENIAL. **A** temporary permit may be denied any applicant for any of the reasons in sub. (6) for which the board may revoke a temporary permit or for the misrepresentation of being a registered nurse or graduate nurse, or a licensed practical nurse or graduate practical nurse.

(6) REVOCATION. **A** temporary permit may, after notice and hearing, be revoked by the board for any of the following reasons:

(a) Violation of any of the rules of conduct for registered nurses or licensed practical nurses set forth in ch. N **7.**

(b) Failure to pay the required fees under s. 440.05 (6), **Stats.**

(c) Provision of fraudulent information on an application for licensure.

(7) INELIGIBILITY FOR TEMPORARY PERMITS. An applicant who fails a licensing examination in any state may apply for admission to another examination in Wisconsin, but shall not be eligible for any temporary permit.

History: Cr. Register, March, 1984, No. 339, eff. 4–1–84; am. (1), (2) and (6) (a), Register, May, 1990. No. 413, eff. 6–1–90; am. (1), (4) (a) and (d), Register. December, 1993, No. 456, eff. 1–1–94; renum. (1) to be (1) (a) and am., cr. (1) (b), Register, June, 1995, No. 474, eff. 7–1–95.

N *2.07* Examining councils. (1) DUTIES. The duties of the examining councils on registered nurses and licensed practical nurses include the review of test items for the R.N. or L.P.N. licensing exams on behalf of the board, and assistance in exam monitoring.

(2) QUALIFICATIONS. (a) *R.N. council.* Qualifications for appointment to the R.N. council are a current Wisconsin license to practice professional nursing and experience in nursing practice or nursing education within 3 years immediately preceding the appointment.

(b) *L.P.N. council.* Qualifications for appointment to the L.P.N. council are:

1. Registered nurse members of the council shall have a current Wisconsin license to practice professional nursing and experience as a supervisor of L.P.N.s in practice or as an educator of practical nursing students within 3 years immediately preceding the appointment.

2. L.P.N. mcmbcrs of the council shall have a current Wisconsin license to practice practical nursing and experience in practical nursing within 3 years immediately preceding the appointment.

(3) COMPOSITION (a) *R.N. council.* The R.N. council shall consist of 4 members, including one R.N. member of the board, and representatives from both nursing practice and nursing education.

(b) *L.P.N. council.* The L.P.N. council shall consist of 5 members, including one L.P.N. member of the board, **2** L.P.N. members at large, one R.N. member who supervises L.P.N. practice and one R.N. member who instructs practical nursing students.

(4) APPOINTMENT PROCEDURES (a) The board shall send to nursing related organizations, schools and others a call for nominations for open council appointments prior to the expiration of a term.

(b) Nominations for council appointments shall be filed with the bureau. Consent of the person nominated shall be included. Self-nominations are allowed.

(c) The board shall appoint a nominee from those submitted.

(5) TERM OF APPOINTMENT (a) *R.N.* ***council.*** The board shall appoint members to the R.N. council for staggered 4-year terms.

(b) *L.P.N. council.* The board shall appoint members to the L.P.N. council for staggered 3-year terms.

(c) *Changes in qualifications.* A member of either council whose qualifications change after appointment by the board may continue serving the term of appointment if approved by the board.

(6) TERMINATION OF COUNCIL MEMBERS The board may terminate the appointment of a council member prior to the expiration of the term under sub. *(5)* if it finds the member is not satisfactorily carrying out any of the duties under sub. (1), or if the member is found to have violated exam security provisions or rules of the board.

History: Cr. Register, **March,** 1984, No. 339, **eff.** 4-1-84; **am.** (1), Register, December, 1993, No. **456,** eff. 1-1-94.

Chapter N 3

LICENSURE BY ENDORSEMENT

N 3.01 Authority and intent.
N 3.02 Definitions.
N 3.03 Qualifications for endorsement.
N 3.04 Application procedure for R.N. and L.P.N. applicants.
N 3.05 Temporary permits.

Note: Chapter N 5 as it existed on July 31, 1981 was repealed and a new chapter N 5 was created effective August 1, 1981. Chapter N 5 as it existed on March 31, 1984 was repealed and a new chapter N 3 was created effective April 1, 1984.

N 3.01 Authority and intent. (1) This chapter is adopted pursuant to authority of ss. 15.08, 227.11, 441.01 (3), Stats.

(2) The intent of the board of nursing in creating this chapter is to specify the requirements and procedures for obtaining a license by endorsement as a registered nurse and for obtaining a license by endorsement as a licensed practical nurse.

History: Cr. Register, March, 1984, No. 339. eff. 4–1–84; **am.** (2), Register, May, 1990, No. 413, eff. 6–1–90; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1990, No. 413.

N 3.02 Definitions. As used in this chapter:

(1) "Board–approved school" means an institution which has a school, college, program or department of nursing which meets standards of the board or holds accreditation by a board–recognized nursing accreditation agency.

(2) "Board" means board of nursing.

(3) "Bureau" means bureau of health service professions within the department of regulation and licensing.

(4) "L.P.N." means licensed practical nurse.

(4m) "NCLEX" means national council licensure examination.

(5) "R.N." means registered nurse.

(6) "Direct supervision" means immediate availability to continually coordinate, direct and inspect at first hand the practice of another.

Note: The bureau is located at Room 174, 1400 East Washington Avenue, Madison, Wisconsin.

History: Cr. Register, March, 1984, No. 339, eff. 4–1–84; **am.** (1), (3), (4) and (6), Register, May, 1990, No. 413, eff. 6–1–90; CR 01–049: cr. (4m), Register October 2001 No. 550, eff. 11–1–01.

N 3.03 Qualifications for endorsement. (1) REGISTERED NURSE APPLICANT. (a) A registered nurse holding a license in another state, U.S. territory or province of Canada, or a registered nurse who has held a current license in a state which has adopted the nurse licensure compact within the 5 years prior to application, who has graduated from a board approved school of professional nursing may become licensed in Wisconsin provided the applicant meets all of the following:

1. Subject to ss. 111.321, 111.322 and 111.335, Stats., does not have an arrest or conviction record.

2. Has passed the national council licensure examination for registered nurses or the state board test pool examination for registered nurses or other examination approved by the board.

3. Has a license against which no disciplinary action has been taken in any of the states, territories or provinces in which the applicant has held a license.

4. Has not been terminated from any employment related to nursing in another state for reasons of negligence or incompetence.

5. Is licensed in another state, U.S. territory or province, the requirements for licensure of which are substantially equivalent to the requirements for licensure in this state at the time of original licensure.

(b) A registered nurse holding a license in another state or U.S. territory or province of Canada who has not graduated from a board–approved school of professional nursing may become licensed in Wisconsin provided the applicant meets all of the following:

1. Has graduated from a school of professional nursing in this country or the country of original licensure.

2. If originally licensed in a foreign country, has passed the licensure examination in the country of original licensure.

3. Has passed the national council licensure examination for registered nurses or the state board test pool examination for registered nurses or other examination approved by the board.

4. Verifies at least 2 years of full–time or equivalent practice as a registered nurse within the last 5 years.

5. Verifies competency in the English language.

6. Has a license against which no disciplinary action has been taken in any of the states, territories, provinces or countries in which the applicant has held a license.

7. Has not been terminated from any employment related to nursing in another state. territory, province or country for reasons of negligence or incompetence.

8. If originally licensed in another state, U.S. territory or province, proves that the requirements for licensure in that state, territory or province were substantially equivalent to the requirements for licensure in this state at the time of original licensure.

9. Subject to ss. 111.321, 111.322 and 111.335, Stats., does not have an arrest or conviction record.

(2) LICENSED PRACTICAL NURSE APPLICANTS (a) A practical nurse holding a license in another state, U.S. territory or province of Canada, or a licensed practical nurse who has held a current license in another state which has adopted the nurse licensure compact within the 5 years prior to application, who has graduated from a board–approved school of practical nursing may become licensed in Wisconsin provided the applicant meets all of the following:

1. Subject to ss. 111.321, 111.322 and 111.335, Stats., does not have an arrest or conviction record.

2. Has passed the national council licensure examination for practical nurses or the state board test pool examination for practical nurses or other examination approved by the board.

3. Has a license against which no disciplinary action has been taken in any of the states, territories or provinces in which the applicant has held a license.

4. Has not been terminated from any employment related to nursing in another state for reasons of negligence or incompetence.

5. Is licensed in another state, U.S. territory or province, the requirements for licensure of which are substantially equivalent to the requirements for licensure in this state at the time of original licensure.

(b) A practical nurse holding a license in another state or U.S. territory or province of Canada who has not graduated from a board–approved school of practical nursing may become licensed in Wisconsin provided the applicant meets all of the following:

1. Has graduated from a school of practical nursing in this country or the country of original licensure.

2. If originally licensed in a foreign country, has passed the licensure examination in the country of original licensure.

3. Has passed the national council licensure examination for practical nurses or the state board test pool examination for practical nurses or other examination approved by the board.

4. Verifies at least 2 years of full–time or equivalent practice as a practical nurse within the last 5 years.

5. Verifies competency in the English language.

6. Has a liccnsc against which no disciplinary action has been taken in any of the states, territories, provinces or countries in which the applicant has held a license.

7. Has not been terminated from any employment related to nursing in another state, territory, province or country for reasons of negligence or incompetence.

8. If originally licensed in another state, U.S. territory or province, proves that the requirements for licensure in that state, territory or province were substantially equivalent to the requirements for licensure in this state at the time of original licensure.

9. Subject toss. 111.321, 111.322 and 111.335, Stats., does not have an arrest or conviction record.

Note: A list of methods by which English competency may be demonstrated is available at the board office located at P.O. **Box** 8935, 1400 East Washington Avenue, Madison, Wisconsin 53708.

History: Cr. Register, March, 1984, No. 339, eff. 4–1–84: **am.** (1) (intro.), r. (1) (b) and (2) (b). renum. (1) *(c)* to (1) and (2) (c) to (1) to be (1) (b) to (e) and **(2)** (b) to (e) and am. (1) (b) and (c) (intro.), and (2) (b) and *(c)* (intro.), cr. **(1)** *(c)* 1. to 6. and *(2)* (c) 1. to 6., Register, May, 1990, No. 413, 6–1–90; CR 01–049: r. and recr., Register October 2001 No. 550, eff. 11–1–01; **Reprinted to correct printing error in (2) (a) 2., (b) 1. to 4., Register November 2001 No. 551.**

N 3.04 Application procedure for R.N. and L.P.N. applicants. (1) Each applicant shall file a completed, signed and notarized application on forms provided by the bureau, along with the fee specified under s. 440.05 (1), Stats. The application shall include all of the following:

(a) **A** statcmcnt of graduation forwarded directly from the applicant's school of nursing indicating date applicant completed the nursing program.

(b) Verification of license forwarded from the state, territory or province in which the original license by examination was issued.

(c) If originally licensed in a foreign country, verification of having passed the licensure examination in the country of original licensure.

(d) Notarized translations of all statements and documents written in a foreign language. The cost of the translation shall be paid by the applicant.

(2) Applicants who have a pending criminal charge or have been convicted of any crime or ordinance violation shall provide the board all related information necessary for the board to determine whether the circumstances of the arrest, conviction or other offense are substantially related to the circumstances of the licensed activity.

History: Cr. Register, March, 1984, No. 339, eff. 4–1-84; am. *(2)* and (6), Register, May, 1990. No. 413. eff. 6–1–90; CR 01–049: am. (1) (intro.). r. (1) (a) and (b). (5) and (6), renum. (2), (3), (4) and (7) to be (1) (a), (b), (d) and (2) and am.. cr. (1) *(c)*, Register October 2001 No. 550, eff. 11–1–01.

N 3.05 Temporary permits. (1) DEFINITIONS. In this section:

(a) "G.N." means graduate nurse.

(b) "G.P.N." means graduate practical nurse.

(2) An R.N. or L.P.N. licensed in any state. U.S. territory, or province of Canada may be granted a temporary permit from the board upon receipt of a completed application, demonstrating that the applicant has met the rcquircments of s. N 3.03 (1) or (2), the fee specified in s. 440.05 (2), Stats., and the permit fee specified in s. 440.05 (6), Stats.

(3) SUPERVISION REQUIRED. **A** G.N. or G.P.N. not licensed in another jurisdiction who holds a valid permit under this section shall practice under the direct supervision of a registered nurse.

(4) TITLE. (a) Only an applicant for R.N. licensure who holds a valid permit under this section or s. N 2.06 (3) (a) shall be permittcd to use the title "graduate nurse" or the letters "G.N."

(b) Only an applicant for L.P.N. licensure who holds a valid permit under this section or s. N 2.06 (3) (b) shall be permitted to use the title "graduate practical nurse" or the letters "G.P.N."

(c) An applicant licensed as an R.N. in another jurisdiction who holds a valid permit under this section may use the title "registered nurse" or the letters "R.N." and may practice without supervision of an R.N.

(d) An applicant licensed as an L.P.N. in another jurisdiction who holds a valid permit under this section may use the title "licensed practical nurse" or the letters "L.P.N." and shall be supervised according to the standards of practice for L.P.N.s under s. N 6.04.

(5) DURATION. (a) The duration of temporary permits granted by the board is for a period of 3 months. The permit of a candidate who is unsuccessful on the examination in another state is void upon receipt of the examination results by the holder and shall **be** returned to the board immediately. Failure to return the permit promptly shall, without further notice or process, result in a board order to revoke the permit.

(b) **A** temporary permit may be renewed once for a period of 3 months. **A** permit may not be renewed for graduates not registered or licensed in another jurisdiction unless exam results have not yet been issued.

(c) **A** second renewal for a 3–month period may be granted in hardship cases, provided an affidavit is filed with the board identifying the hardship. "Hardship cases", as used in this paragraph, includes the inability to take or complete a scheduled examination because of illness, family illness or death, accident or natural disaster or the awaiting of verification of licensure from another state.

(d) Practice under temporary permits, including renewals under pars. (b) and (c) may not exceed 12 months total duration.

(6) DENIAL. **A** temporary permit may be denied any applicant for any of the grounds for which the board may revoke a temporary permit, or for the misrepresentation of being an R.N., G.N., L.P.N. or G.P.N. without holding a valid temporary permit under this section.

(7) REVOCATION. **A** temporary permit may, after hearing, be revoked for any of the following reasons:

(a) Violation of any of the rules of conduct for registered nurses and licensed practical nurses set forth in ch. N **7,**

(b) Failure to pay the required fees under s. 440.05 (6), Stats., and

(c) Provision of fraudulent information on an application for licensure.

History: Cr. Register, March, 1984, No. 339. eff. 4–1–84; am. (2), (3). (4) (d) and (7) (a), Register, May, 1990, No. 413, eff. 6–1–90; CR 01–049: renum. **(2)** (a) to be (2) and am., r. *(2)* (b) and *(c)*, Register October 2001 No. 550, eff. 11–1–01.

Chapter N 4

LICENSURE OF NURSE–MIDWIVES

N 4.01 Authority and intent.
N 4.02 Definitions.
N 4.03 Qualifications for licensure.
N 4.04 Application procedures for licensure.
N 4.05 Temporary permits.
N 4.06 Scope of practice.
N 4.07 Limitations on the scope of practice.
N 4.08 Licensure and exception.
N 4.09 Health care facilities where practice shall occur.

Note: Chapter N **6** as it existed on September 30, 1985 **was** renumbered Chapter N **4,** effective October 1, 1985.

N 4.01 Authority and intent. (1) The rules in this chapter are adopted pursuant to authority of ss. 15.08 (5), 227.11 and 441.15, Stats.

(2) The intent of the board of nursing in adopting rules in this chapter, interpreting s. 441.15, Stats., is to specify the requirements for obtaining licensure as a nurse–midwife; the scope of practice of nurse–midwifery; and the types of facilities in which such practice may occur.

History: Cr. Register, December. 1981, No. 312, eff. 1–1–82; **am.** (2), Register, May, 1990, No. 413, eff. 61–90; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1990, No. 413.

N 4.02 Definitions. As used in this chapter:

(1) "Board" means board of nursing.

(2) "Bureau" means bureau of health service professions within the department of regulation and licensing, located at 1400 East Washington Avenue, Madison, Wisconsin.

(3) "Complications" means those conditions which jeopardize the health or life of the newborn or mother and which deviate from normal as defined in the formal written agreement and as recognized in the nurse–midwife profession, including but not limited to: hemorrhage, heart disease, diabetes, infection, hypertension of pregnancy and hemolytic disease of the newborn.

(4) "Formal written agreement" means an agreement between the supervising physician and the nurse–midwife which is permanently recorded, dated and signed by both parties, is available for inspection upon reasonable request, and consists of at least the following: framework of mutually approved protocols including conditions of supervision and referral, clearly delineated lines of referral in the event the supervising physician is not available, health care facilities to bc used and evidence of annual review.

(5) "General supervision by a physician" means the assumption of responsibility, hy a physician trained in obstetrics, of medical procedures which are or may be required in the course of nurse–midwifery practice. General supervision shall not be construed to mean the physical presence of the supervising physician. Supervision includes, but is not limited to:

(a) Participation in the construction of written protocol;

(b) Availability for Consultation or collaborative management of deviations from normal.

(6) "Nurse–midwife" means a nurse–midwife licensed by the board.

(7) "Refer to the supervising physician" means consultation with the supervising physician which may lead to co–management or assumption of the patient's care by the physician.

(8) "Direct supervision" means immediate availability to continually coordinate, direct and inspect at first hand the practice of another.

History: Cr. Register, December, 1981, No. 312, eff. 1–1–82; cr. (8), Register, September, 1985, No. 357, eff. 10–1–85; am. (2), (6) and (8), Register, May, 1990, No. 413, eff. 6–1–90.

N 4.03 Qualifications for licensure. An applicant for licensure as a nurse–midwife shall he granted licensure by the board, provided that the applicant:

(1) Has completed an educational program in nurse–midwifery approved by the American college of nurse–midwives;

(2) Holds a certificate issued by the American college of nurse–midwives; and,

(3) Is currently licensed to practice as a professional nurse in Wisconsin, or is currently licensed to practice professional nursing in another state which has adopted the nurse licensure compact.

History: Cr. Register. December, 1981, No. 312, eff, 1–1–82; **am. (intro.)** and (3), Register, May, 1990, No. 413, eff. 6–1–90; CR 01–046: **am. (3), Register October 2001 No. 550, eff. 11–1–01.**

N 4.04 Application procedures for licensure. (1) An applicant for licensure to practice as a nurse–midwife shall file a completed, notarized application on a form provided by the bureau. The application shall include:

(a) Signature of the applicant;

(b) **Fee** specified under s. 440.05 (1), Stats.:

(c) Evidence of completion of an educational program in nurse–midwifery approved by the American college **of** nurse–midwives and evidence of certification as a nurse–midwife from the American college of nurse–midwives;

(d) Identification of current licensure as a professional nurse in Wisconsin or of current licensure in another state which has adopted the nurse licensure compact, including the license number and renewal information.

(2) A separate license shall be issued by the board for the practice of nurse–midwifery.

(3) Renewal of a license to practice nurse–midwifery shall be conducted as a separate procedure from the renewal of the nurse's license as a professional nurse.

(4) The applicant for renewal shall inform the board whether the certificate issued to him or her by the American college of nurse–midwives has been revoked or suspended.

History: Cr. Register, December, 1981, No. 312, eff. 1–1–82; am. (1) (intro.), (c) and (d) and (3), Register. May, 1990, No. 413, eff. 6–1–90; CR **01–046: am. (1)** (d) and **(3), er. (4), Register** October **2001 No. 550, eff. 11–1–01.**

N 4.05 Temporary permits. (1) ELIGIBILITY. An applicant for licensure as a nurse–midwife who has completed an educational program in nurse–midwifery approved by the American college of nurse–midwives, who is currently licensed to practice as a professional nurse in Wisconsin and who has paid the fee specified in s. 440.05 (6), Stats., may be eligible for a temporary permit to practice nurse–midwifery.

(2) ISSUING A TEMPORARY PERMIT. The bureau of health service professions shall issue a temporary permit to an eligible applicant within one week of the determination of eligibility.

(3) SUPERVISION REQUIRED. The holder of a temporary permit shall practice under the direct supervision of a nurse–midwife certified under s. 441.15, Stats., or a physician. The holder may not

practice beyond the scope of practice of a nurse–midwife as set forth in s. N 4.06.

(4) TITLE. The holder of a valid temporary permit under this section may use the title "graduate nurse–midwife" or the letters "G.N.M.".

(5) DURATION. (a) Except as provided in pars. (b) to (e), the duration of a temporary permit granted by the board is:

1. For applicants who have been granted a temporary permit to practice as a registered nurse, the period which coincides with the registered nurse temporary permit.

2. For other applicants, 6 months.

(b) The temporary permit of a candidate who is unsuccessful on the examination administered by the American college of nurse–midwives is void upon receipt of the examination results by the holder and shall be returned by the holder to the board immediately. Failure to return the permit promptly shall, without further notice or process, result in a board order to revoke the permit.

(c) **A** temporary permit may be renewed once for a period of 3 months.

(d) **A** second renewal for a 3–month period may be granted in hardship cases if an affidavit is filed with the board identifying the hardship. "Hardship cases", as used in this paragraph, includes the inability to take or complete a scheduled examination because of illness, family illness or death, accident or natural disaster or because the person is awaiting examination results.

(e) Practice under temporary permits, including renewals under pars. (c) and (d), may not exceed 12 months total duration.

(6) DENIAL. **A** temporary permit may be denied an applicant for any of the reasons in sub. **(7)** for which the board may revoke a temporary permit or for the misrepresentation of being a nurse–midwife or a graduate nurse–midwife before the granting of a permit under this section.

(7) REVOCATION. **A** temporary permit may, after notice and hearing, be revoked by the board for any of the following reasons:

(a) Violation of any of the rules of conduct for registered nurses in ch. N 7 or for violation of the rules governing nurse–midwives under ch. N 4.

(b) Failure to pay the required fees under **s.** 440.05 (6), Stats.

(c) Provision of fraudulent information on an application for licensure.

History: Cr. Register, September, 1985, No. 357, eff. 10–1–85; r. and recr. (5) (a), am. (1) to (3) and (6), Register, **May,** 1990, No. **413,** eff. 6–1–90.

N 4.06 Scope of practice. (1) The scope of practice is the overall management of care of a woman in normal childbirth and the provision of prenatal, intrapartal, postpartal and nonsurgical contraceptive methods and care for the mother and the newborn.

(2) The nurse–midwife shall practice under the general supervision of a physician with training in obstetrics pursuant to a formal written agreement with that physician.

(3) The nurse–midwife shall immediately refer to the supervising physician a patient with any complication discovered by the nurse–midwife.

(4) Upon referral to the supervising physician, the nurse–midwife may manage that part of the care of the patient which is appropriate to the knowledge and skills of the nurse–midwife.

History: Cr. Register, December, 1981, No. 312, eff. 1–1–82; renum. from N. 6.05, Register, September, 1985, No. 357, eff. 10–1–85.

N 4.07 Limitations on the scope of practice. (1) The nurse–midwife shall not be involved in the independent management of patients with complications and shall refer those patients to the physician.

(2) The nurse–midwife may not perform deliveries by mechanical means or by Caesarean section.

(3) The nurse–midwife may not assume responsibilities, either by physician–delegation or otherwise, which he or she is not competent to perform by education, training or experience.

(4) Following notification of a physician as required by s. 441.15 (4), Stats., a nurse–midwife may continue to manage the delivery when complications occur if emergency measures are required and the physician has not yet arrived.

History: Cr. Register, December, 1981, No. 312, eff. 1–1–82; renum. from N. 6.06, Register, September. 1985, No. 357, eff. 10–1–85.

N 4.08 Licensure and exception. (1) No person may practice or attempt to practice nurse–midwifery or use the title or letters "Certified Nurse–Midwife" or "C.N.M.", "Nurse–Midwife" or "N.M.", or anything else to indicate that he or she is a nurse–midwife unless he or she is licensed under this chapter.

(2) Nothing in this chapter shall be construed either to prohibit or to require a license under this chapter for any person lawfully practicing professional nursing within the scope of a license granted under ch. 441, Stats.

History: Cr. Register, December, 1981, No. 312, eff. 1–1–82; renum. from N. 6.07, Register, September, 1985, No. 357, eff. 10–1–85; am. Register, **May,** 1990, No. 413. eff. 6–1–90.

N 4.09 Health care facilities where practice shall occur. A health care facility where the practice of nurse–midwifery may occur is one that has adequate equipment and personnel for conducting and monitoring the normal scope of practice and that has available methods for referral to or communication with a higher level care facility if the need arises.

(2) Deliveries may be arranged for only in a facility which has adequate sanitation, thermal regulation, staffing, communication systems and medical back–up.

(3) The above limitations do not apply to care given in emergency circumstances.

History: Cr. Register, December, 1981, No. 312, eff. 1–1–82; renum. from N. 6.08, Register, September, 1985, No. 357, **eff.** 10–1–85.

Chapter N 5

RENEWAL OF LICENSE

N 5.01 Authority and intent.
N 5.02 Definitions.
N 5.03 Current license required for practice.
N 5.07 Duplicate renewal card.
N 5.08 Renewal after 5 years.

N 5.01 Authority and intent. (1) The rules in this chapter are adopted pursuant to authority of ss. 15.08, 227.11, 440.08 (3) (b), and 441.01 (3), Stats., and interpret ss. 440.08 (3) (b), 441.06 (3), (4), 441.10 (3) (b), (c) and 441.15 (3) (b), Stats.

(2) The intent of the board of nursing in adopting rules in this chapter is to specify the requirements and procedures for renewal of the license of a registered nurse, an advanced practice nurse prescriber, a licensed practical nurse, or a nurse–midwife, for obtaining a duplicate renewal card, and for notifying the bureau of health service professions of name or address changes.

History: Cr. Register, September, 1985, No. 357. eff. 10–1–85; **am.** (2), Register, May, 1990, No. 413, eff. 6–1–90; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1990, No. 413; am. (l), Register, June, 1993, No. 450. eff. 7–1–93; am. (2), Register, February, 1995, No. 470, eff. 3–1–95: correction in (l) made under s. 13.93 (2m) (b) 7.. Stats, Register, October, 2000, No. 538.

N 5.02 Definitions. As used in this chapter:

(1) "Bureau" means bureau of health service professions within the department of regulation and licensing.

(2) "Certificate" means a certificate of an advanced practice nurse prescriber.

(3) "Certificate holder" means a person holding a certificate as an advanced practice nurse prescriber.

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

(5) "License" means a license of a registered nurse, licensed practical nurse or nurse mid–wife.

(6) "Licensee" means a person licensed as a registered nurse, licensed practical nurse under **s.** 441.10, Stats., or nurse mid–wife.

Note: The bureau and department are located at 1400 East Washington Avenue, Madison, Wisconsin. The mailing address for the bureau and department is P.O. Box 8935, Madison, Wisconsin 53708–8935.

History: Cr. Register. September, 1985, No. 357, eff. 10–1–85; **am.** (1), r. (2), (3), (7) and (8), renum. (4) to (6) to be (2) to (4) and am. (3) and (4), Register, May, 1990, No. 413, eff. 6–1–90; renum. (2) to (4) to be (4) to (6) and cr. (2) and (3), Register, February. 1995, No. 470, eff. 3–1–95.

N 5.03 Current license required for practice. (1) REGISTERED NURSES. Except as provided for in **s.** N 3.05 (4) (cj, no person may practice or attempt to practice professional nursing, nor use the title, letters or anything else to indicate that he or she is a registered or professional nurse unless he or she has been granted a license under s. 441.06 (1), Stats., and holds a current license.

(2) LICENSED PRACTICAL NURSES. Except as provided for in s. N 3.05 (4) (d), no person may hold himself or herself out as a licensed practical nurse nor use the title or letters "Licensed Practical Nurse" or "L.P.N.", unless he or she has been granted a license under s. 441.10 (3) (a) or (d), Stats., and holds a current license.

(3) NURSE–MIDWIVES. No person may practice or attempt to practice nurse–midwifery, nor use the title or letters "Certified Nurse–Midwife" or "C.N.M.", "Nurse–Midwife'' or "N.M.", or anything else to indicate that he or she is a nurse–midwife unless he or she has been granted a license under s. 441.15 (3) (a), Stats., and holds a current license.

(4) ADVANCED PRACTICE NURSES. No person may use the title "advanced practice nurse" or append to his or her name the letters "A.P.N." unless he or she meets the qualifications described in **s.** N 8.02 (1).

(5) ADVANCED PRACTICE NURSE PRESCRIBERS. No person may practice or attempt to practice as an advanced practice nurse prescriber or use the title "advanced practice nurse prescriber" or append to his or her name the letters "A.P.N.P.", or otherwise indicate that he or she is certified to practice as an advanced practice nurse prescriber unless he or she is both currently certified under s. 441.16 (2), Stats., and is currently certified by a national certifying body approved by the board as a nurse practitioner, certified nurse–midwife, certified registered nurse anesthetist or clinical nurse specialist.

History: Cr. Register, September, 1985, No. 357, eff. 10–1–85; **am.** Register, May, 1990, No. 413, eff. 6–1–90; cr. (4) and (5), Register, February: 1995, No. 470, eff. 3–1–95.

N 5.07 Duplicate renewal card. (1) A duplicate renewal card may be issued to a registered nurse, advanced practice nurse prescriber, licensed practical nurse or nurse–midwife whose card has been lost, stolen, or destroyed, or whose name or address has been changed, upon the filing with the bureau of an application for duplicate renewal card. The application shall include:

(a) A completed identification statement supplied by the bureau, which includes the reason for requesting the duplicate card;

(b) Fee specified in **s.** 440.05 (7), Stats.; and,

(c) Returned current renewal card if the duplicate card is requested due to name or address change.

(2) A duplicate renewal card issued for lost, stolen or destroyed cards shall be marked "duplicate".

History: Cr. Register, September, 1985, No. 357, eff. 10–1–85; ***am.*** (1) (intro.), Register, February, 1995, No. 470, eff. 3–1–95.

N 5.08 Renewal after 5 years. (1) The board may, in the exercise of its discretion, require a credential holder who has failed to renew his or her license within 5 years after ***its*** renewal date to demonstrate continued competence in the practice of nursing as a prerequisite to credential renewal.

(2) (a) The board may require demonstration of competence by various methods, including but not limited to written or oral examination, documentation of nursing work in other jurisdictions, or documentation of current education or experience in the field. Any examination or education required under this section shall not be more extensive than the educational or examination requirements for an initial credential from the board.

(b) An applicant for renewal who has failed to renew his or her license within 5 years, and who **is** unable to document nursing work in other jurisdictions, or document current education or experience in the field, may apply to the board for a limited license to enable the applicant to complete a nursing refresher course approved by the board. Upon successful completion of an approved nursing refresher course, the license–holder may petition the board for reinstatement of a full license.

(3) An advanced practice nurse certified to issue prescription orders who has failed to renew the certificate within 5 years after its renewal date shall, as a condition for renewal, show evidence

of meeting **all** current requirements for a certificate under s. N 8.03.

History: Cr Register, June, 1993, No ***450.*** eff **7-L-93, cr** (3). **Register,** *February,* 1995, No 470, **eff** 3-1-95. **cr. (2) (b), Register, December, 2000, No. 540, eff. 1-1-01.**

Chapter N 6

STANDARDS OF PRACTICE FOR REGISTERED NURSES AND LICENSED PRACTICAL NURSES

N 6.01 Authority and intent.
N 6.02 Definitions.
N 6.03 Standards of practice for registered nurses.
N 6.04 Standards of practice for licensed practical nurses.
N 6.05 Violations of standards.

Note: Chapter N 10 **as** it existed on September 30, 1985 **was** renumbered Chapter N 6, effective 10–1–85.

N 6.01 Authority and intent. (1) This chapter is adopted pursuant to authority of ss. 15.08 (5) (b), 227.11 and 441.11 (3) and (4), Stats., and interprets the statutory definitions of professional and practical nursing.

(2) The intent of the board of nursing in adopting this chapter is to specify minimum practice standards for which R.N.s and L.P.N.s are responsible, and to clarify the scope of practice for R.N.s and L.P.N.s.

History: Cr. Register, May, 1983, No. 329, eff. 6–1–83; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1990, No. 413.

N 6.02 Definitions. As used in this chapter,

(1) "Basic nursing care" means care that can be performed following a defined nursing procedure with minimal modification in which the responses of the patient to the nursing care are predictable.

(2) "Basic patient situation" as determined by an R.N., physician, podiatrist, dentist or optometrist means the following 3 conditions prevail at the same time in a given situation:

(a) The patient's clinical condition is predictable;

(b) Medical or nursing orders are not changing frequently and do not contain complex modifications; and,

(c) The patient's clinical condition requires only basic nursing care.

(3) "Complex patient situation" as determined by an R.N., physician, podiatrist, dentist or optometrist means any one or more of the following conditions exist in a given situation:

(a) The patient's clinical condition is not predictable;

(b) Medical or nursing orders are likely to involve frequent changes or complex modifications; or,

(c) The patient's clinical condition indicates care that is likely to require modification of nursing procedures in which the responses of the patient to the nursing care are not predictable.

(4) "Delegated medical act" means acts delegated to an R.N. or L.P.N. by a physician, podiatrist, dentist or optometrist.

(5) "Delegated nursing act" means acts delegated to an L.P.N. or less--skilled assistant by an R.N.

(6) "Direct supervision" means immediate availability to continually coordinate, direct and inspect at first hand the practice of another.

(7) "General supervision" means regularly to coordinate, direct and inspect the practice of another.

(8) "Nursing diagnosis" means a judgment made by **an** R.N. following a nursing assessment of a patient's actual or potential health needs for the purpose of establishing a nursing care plan.

(9) "Patient" means a person receiving nursing care by an R.N. or L.P.N. performing nursing services for compensation.

(10) "Protocol" means a precise and detailed written plan for a regimen of therapy.

(11) "R.N." means a registered nurse licensed under ch. 441, Stats.

(12) "L.P.N." means a licensed practical nurse licensed under ch. 441, Stats.

History: Cr. Register, May. 1983, No. 329, eff. 6-1-83; reprinted to correct error in (7), Register, July, 1983, No. 331; am. (5) **and (12),** Register, May, 1990, No. 413, eff. 6-1–90: **CR 00–167: am. (2) (intro.), (3) (intro.) and (4), Register August 2001 No.** 548, **eff. 9–1–01**.

N 6.03 Standards of practice for registered nurses. (1) GENERAL NURSING PROCEDURES. An R.N. shall utilize the nursing process in the execution of general nursing procedures in the maintenance of health, prevention of illness or care of the ill. The nursing process consists of the steps of assessment, planning, intervention and evaluation. This standard is met through performance of each of the following steps of the nursing process:

(a) *Assessment.* Assessment is the systematic and continual collection and analysis of data about the health status of a patient culminating in the formulation of a nursing diagnosis.

(b) *Planning.* Planning is developing a nursing plan of care for a patient which includes goals and priorities derived from the nursing diagnosis.

(c) *Intervention.* Intervention is the nursing action to implement the plan of care by directly administering care or by directing and supervising nursing acts delegated to L.P.N.'s or less skilled assistants.

(d) *Evaluation.* Evaluation is the determination of a patient's progress or lack of progress toward goal achievement which may lead to modification of the nursing diagnosis.

(2) PERFORMANCE OF DELEGATED MEDICAL ACTS. In the performance of delegated medical acts an R.N. shall:

(a) Accept only those delegated medical acts for which there are protocols or written or verbal orders;

(b) Accept only those delegated medical acts for which the R.N. is competent to perform based on his or her nursing education, training or experience;

(c) Consult with a physician, podiatrist, dentist or optometrist in cases where the R.N. knows or should know a delegated medical act may harm a patient; and,

(d) Perform delegated medical acts under the general supervision or direction of a physician, podiatrist, dentist or optometrist.

(3) SUPERVISION AND DIRECTION OF DELEGATED NURSING ACTS. In the supervision and direction of delegated nursing acts an R.N. shall:

(a) Delegate tasks commensurate with educational preparation and demonstrated abilities of the person supervised;

(b) Provide direction and assistance to those supervised;

(c) Observe and monitor the activities of those supervised; and,

(d) Evaluate the effectiveness of acts performed under supervision.

History: Cr. Register, May, 1983, No. 329, eff. 6-1–83; am. (1) (c) and (2) (intro.), Register, May, 1990, No. 413, eff. 6–1–90; **CR 00–167: am. (2) (c) and (d), Register August 2001 No.** 548, **eff. 9–1–01**.

N 6.04 Standards of practice for licensed practical nurses. (1) PERFORMANCE OF ACTS IN BASIC PATIENT SITUATIONS. In the performance of acts in basic patient situations, the L.P.N.

shall, under the general supervision of an R.N. or the direction of a physician, podiatrist, dentist or optometrist:

(a) Accept only patient care assignments which the L.P.N. is competent to perform;

(b) Provide basic nursing care;

(c) Record nursing care given and report to the appropriate person changes in the condition of a patient;

(d) Consult with an R.N., physician, podiatrist, dentist or optometrist in cases where an L.P.N. knows or should know a delegated nursing or medical act may harm a patient; and,

(e) Perform the following other acts when applicable:

1. Assist with the collection of data;

2. Assist with the development and revision of a nursing care plan;

3. Reinforce the teaching provided by an R.N., physician, podiatrist, dentist or optometrist and provide basic health care instruction; or,

4. Participate with other health team members in meeting basic patient needs.

(2) PERFORMANCE OF ACTS IN COMPLEX PATIENT SITUATIONS. In the perfomiance of acts in complex patient situations the L.P.N. shall:

(a) Meet standards under sub. (1) under the general supervision of an R.N., physician, podiatrist, dentist or optometrist.

(b) Perform delegated nursing or medical acts beyond basic nursing care under the direct supervision of an R.N., physician, podiatrist, dentist or optometrist. An L.P.N. shall, upon request of the board, provide documentation of his or her nursing education, training or experience which prepare the L.P.N. to competently perform these assignments.

(3) ASSUMPTION OF CHARGE NURSE POSITION IN NURSING HOMES. In assuming the position of charge nurse in a nursing home as defined in s. 50.04 (2) (b), Stats., an L.P.N. shall:

(a) Follow written protocols and procedures developed and approved by an R.N.;

(b) Manage and direct the nursing care and other activities of L.P.N.s and nursing support personnel under the general supervision of an R.N.; and,

(c) Accept the charge nurse position only if prepared to competently perform this assignment based on his or her nursing education, including education, training or experience or active involvement in education or training for responsibilities not included in the basic L.P.N. curriculum.

History: Cr. Register. May, 1983, No. 329, eff. 6–1–83; **CR 00–167: am. (1) (intro.), (d), (e) 3., (2) (a) and (b), Register August 2001 No. 548, eff. 9–1–01.**

N 6.05 Violations of standards. A violation of the standards of practice constitutes unprofessional conduct or misconduct and may result in the board limiting, suspending, revoking or denying renewal of the license or in the board reprimanding an R.N. or L.P.N.

History: Cr. Register, May, 1983, No. 329, eff. 6–1–83; **am.** Register, May, 1990, No. 413, eff. 6–1–90.

Chapter N 7

RULES OF CONDUCT

N 7.01 Authority and intent.
N 7.02 Definitions.
N 7.03 Negligence, abuse of alcohol or other drugs or mental incompetency.
N 7.04 Misconduct or unprofessional conduct.

Note: Chapters N 7 and 11 as they existed on September 30,1985 were repealed and a new Chapter N 7 was created effective October 1, 1985.

N 7.01 Authority and intent. (1) The rules in this chapter are adopted pursuant to authority of ss. 15.08 and 227.11, Stats., and interpret s. 441.07, Stats.

(2) The intent of the board of nursing in adopting this chapter is to specify grounds for limiting, suspending, revoking or denying renewal of a license or for reprimanding a licensee.

History: Cr. Register, September, 1985, No. 357, eff. 10–1–85; am. (2). Register, May, 1990, No. 413, eff. 6–1–90; correction in (1) under s. 13.93(2m) (b) 7., Stats., Register, May, 1990, No. 413.

N 7.02 Definitions. As used in this chapter:

(1) "Board means board of nursing.

(2) "Drug" has the meaning contained in s. 450.06, Stats.

(3) "License" means a license of a registered nurse, licensed practical nurse or nurse–midwife.

(4) "Licensee" means a person licensed as a registered nurse, licensed practical nurse under s. 441.10, Stats., or nurse–midwife.

(5) "Patient" means any person receiving nursing care for which the nurse is compensated.

Note: The board office is located at 1400 East Washington Avenue, Madison, Wisconsin. The board's mailing address is P.O. Box 8935, Madison, Wisconsin 53708–8935.

History: Cr. Register, September, 1985, No. 357, eff. 10–1–85.

N 7.03 Negligence, abuse of alcohol or other drugs or mental incompetency. (1) As used in s. 441.07 (1) (c), Stats., "negligence" means a substantial departure from the standard of care ordinarily exercised by a competent licensee. "Negligence" includes but is not limited to the following conduct:

(a) Violating any of the standards of practice set forth in ch. N 6;

(b) An act or omission demonstrating a failure to maintain competency in practice and methods of nursing care;

(c) Failing to observe the conditions, signs and symptoms of a patient, record them, or report significant changes to the appropriate person;

(d) Failing to execute a medical order unless the order is inappropriate and the licensee reports the inappropriate order to a nursing supervisor or other appropriate person;

(e) Executing an order which the licensee knew or should have known would harm or present the likelihood of harm to a patient;

(f) Failing to report to a nursing supervisor or appropriate person the existence of a medical or nursing order which the licensee knew or should have known would harm or present the likelihood of harm to a patient; or,

(g) Offering or performing services as a licensed practical nurse or registered nurse for which the licensee is not qualified by education, training or experience.

(2) "Abuse of alcohol or other drugs" is the use of alcohol or any drug to an extent that such use impairs the ability of the licensee to safely or reliably practice.

(3) "Mental incompetency" is evidenced by conduct which reflects an impaired ability of the licensee to safely or reliably perform duties. "Mental incompetency" also includes, but is not limited to, adjudication of incompctcnce by a court of law.

History: Cr. Register, September, 1985, No. 357, eff. 10–1–85; am (1) (intro.), (d) to (g), (2) and (3), Register, May, 1990, No. 413. eff. 61–90.

N 7.04 Misconduct or unprofessional conduct. As used in s. 441.07 (1) (d), Stats., "misconduct or unprofessional conduct" means any practice or behavior which violates the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient or the public. "Misconduct or unprofessional conduct" includes, but is not limited to, the following:

(1) Violating, or aiding and abetting a violation of any law substantially related to the practice of professional or practical nursing. A certified copy of a judgment of conviction is prima facie evidence of a violation;

(2) Administering, supplying or obtaining any drug other than in the course of legitimate practice or as otherwise prohibited by law;

(3) Failing to report to the board or to institutional supervisory personnel any violation of the rules of this chapter by a licensee. This provision does not require a nurse to report treatment information which would fall within the nurse–patient privilege set forth in s. 905.04 (1) (b), Stats.;

(4) Abusing a patient by any single or repeated act of force, violence, harassment, deprivation, neglect, or mental pressure which reasonably could cause physical pain or injury, or mental anguish or fear;

(5) Practicing beyond the scope of practice permitted by law:

(6) Falsifying or inappropriately altering patient records;

(7) Having disciplinary action through final board adjudication taken against one's license in another jurisdiction;

(8) Impersonating another licensee;

(9) Failing or refusing to render nursing services to a patient because of the patient's race, color, sex, age, beliefs, national origin or handicap;

(10) Revealing to other personnel not engaged in the care of the patient or to members of the public information which concerns a patient's medical condition unless release of the information is authorized by the patient or required or authorized by law. This provision shall not be construed to prevent a licensee from cooperating with the board or the department of regulation and licensing in the investigation of complaints;

(11) Engaging in inappropriate sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient. For the purposes of this subsection, an adult receiving psychiatric nursing services shall continue to be a patient for one year after the termination of professional services. If the person receiving psychiatric nursing services is a minor, the person shall continue to be a patient for the purposes of this subsection for one year after termination of services, or for one year after the patient reaches the age of majority, whichever is longer;

(12) Obtaining or attempting to obtain anything of value from a patient without the patient's consent;

(13) Obtaining or attempting to obtain any compensation by fraud, misrepresentation, deceit or undue influence in the course of nursing practice;

(13m) Violating any provision of s. 441.16, Stats., or ch. N 8.

(14) Violating any term, provision or condition of any order of the board; or,

(15) Violating any rule of the board.

History: Cr. Register, September, 1985, No. 357, eff. 10–1–85; am. (3), (7), (8) and (10), Register, May, 1990, No. 413, eff. GI–90; am. (11), Register, October, 1992, No. 442, eff. 11–1–92; cr. (13m), Register, February, 1995, No. 470, eff. 3–1–95.

Chapter N 8

CERTIFICATION OF ADVANCED PRACTICE NURSE PRESCRIBERS

N 8.01 Authority and intent.
N 8.02 Definitions.
N 8.03 Qualifications for certification as an advanced practice nurse prescriber.
N 8.04 Application procedure.
N 8.05 Continuing education.
N 8.06 Prescribing limitations.
N 5.07 Prescription orders.
N 8.08 Malpractice insurance coverage.
N 8.09 Dispensing.
N 8.10 Case management and collaboration with *other* health care professionals.

N 8.01 Authority and intent. (1) The rules in this chapter are adopted pursuant to authority of ss. 15.08 (5) (b), 227.11 (2) and 441.16, Stats., and interpret s. 441.16, Stats.

(2) The intent of the board of nursing in adopting rules in this chapter is to specify education, training or experience that a registered nurse must satisfy to call himself or herself an advanced practice nurse; to establish appropriate education, training and examination requirements that an advanced practice nurse must satisfy to qualify for a certificate to issue prescription orders; to define the scope of practice within which an advanced practice nurse prescriber may issue prescription orders; to specify the classes of drugs, individual drugs or devices that may not be prescribed by an advanced practice nurse prescriber; to specify the conditions to be met for a registered nurse to administer a drug prescribed or directed by an advanced practice nurse prescriber; to establish procedures for maintaining a certificate to issue prescription orders, including requirements for continuing education; and to establish the minimum amount of malpractice insurance required of an advanced practice nurse prescriber.

History: Cr. Register, February, 1995, No 470, eff 3–1–95.

N 8.02 Definitions. As used in this chapter:

(1) "Advanced practice nurse" means a registered nurse who possesses the following qualifications:

(a) The registered nurse has a current license to practice professional nursing in this state, or has a current license to practice professional nursing in another state which has adopted the nurse licensure compact;

(b) The registered nurse is currently certified by a national certifying body approved by the board as a nurse practitioner, certified nurse–midwife, certified registered nurse anesthetist or clinical nurse specialist; and,

(c) For applicants who receive national certification as a nurse practitioner, certified nurse–midwife, certified registered nurse anesthetist or clinical nurse specialist after July 1, 1998, the registered nurse holds a master's degree in nursing or a related health field granted by a college or university accredited by a regional accrediting agency approved by the board of education in the state in which the college or university is located.

(2) "Advanced practice nurse prescriber" means an advanced practice nurse who has been granted a certificate to issue prescription orders under s. 441.16 (2), Stats.

(3) "Board" means the board of nursing.

(4) "Clinical pharmacology/therapeutics" means the identification of individual and classes of drugs, their indications and contraindications, their likelihood of success, their side–effects and their interactions, as well as, clinical judgment skills and decision–making, based on thorough interviewing, history–taking, physical assessment, test selection and interpretation, pathophysiology, epidemiology, diagnostic reasoning, differentiation of conditions, treatment decisions, case evaluation and non–pharmacologic interventions.

(5) "Collaboration" means a process which involves 2 or more health care professionals working together, in each other's presence when necessary, each contributing one's respective area of expertise to provide more comprehensive care than one alone can offer.

(6) "Health care profcssional" has the meaning given under s. 180.1901 (1m), Stats.

(6m) "One contact hour" means a period of attendance in a continuing education program of at least 50 minutes.

(7) "Patient health care record" has the meaning given under s. 146.81 (4), Stats.

History: Cr. Register, February, 1995. No. 470, eff. 3–1–95; CR 00–168: cr. (6m), Register August 2001 No. 548, eff. 9–1–01; **CR 01–046:** am. **(1) (a). Register October 2001 No. 550, eff. 11–1–01.**

N 8.03 Qualifications for certification as an advanced practice nurse prescriber. An applicant for initial certification to issue prescription orders shall be granted a certificate by the board if the applicant complies with all of the following:

(1) Has a current license to practice as a professional nurse in this state or has a current license to practice professional nursing in another state which has adopted the nurse ticensure compact.

(2) Is currently certified by a national certifying body approved by the board as a nurse practitioner, certified nurse–midwife, certified registered nurse anesthetist or clinical nurse specialist.

(3) For applicants who receive national certification as a nurse practitioner, certified nurse–midwife, certified registered nurse anesthetist or clinical nurse specialist after July 1, 1998, holds a master's degree in nursing or a related health field granted by a college or university accredited by a regional accrediting agency approved by the state board of education in the state in which the college or university is located.

(4) Has completed at least 45 contact hours in clinical pharmacology/therapeutics within 3 years preceding the application for a certificate to issue prescription orders.

(5) Has passed a jurisprudence examination for advanced practice nurse prescribers.

History: Cr. Register. February, 1995, No. 470, eff. 3–1–95; **CR 01–046:** am. **(1), Register October 2001 No. 550. eff. 11–1–01.**.

N 8.04 Application procedure. An applicant for a certificate to practice as an advanced practice nurse prescriber shall file a completed notarized application on a form provided by the board, The application shall include:

(1) The signature of the applicant.

(2) The fee specified under s. 440.05 (1), Stats.

(3) Evidence of current certification by a national certifying body approved by the board as a nurse practitioner, certified nurse–midwife, certified registered nurse anesthetist or clinical nurse specialist.

(4) For applicants who receive national certification as a nurse practitioner, certified nurse–midwife, certified registered nurse anesthetist or clinical nurse specialist after July 1, 1998, certification of the grant of a master's degree in nursing or a related health field from, and submitted directly to the board by a college or university accredited by a regional accrediting agency approved by

the state board of education in the state in which the collcgc or university is located.

(5) Satisfactory evidence of completion of at least 45 contact hours in clinical pharmacology/therapeutics within 3 years preceding the application for a certificate.

Note: Application forms are available on request to the Board of Nursing, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

History: Cr. Register, February, 1995, No. 470, eff. 3-1-95.

N **8.05 Continuing education. (1)** Every advanced practice nurse prescriber shall submit to the board evidence of having completed an average of at least 8 contact hours per year in clinical pharmacology/therapeutics relevant to the advanced practice nurse prescriber's area of practice.

(2) Evidence of completion of continuing education meeting the requirements of sub. (1) shall be submitted to the board on a schedule consistent with the schedule for submission of evidence of continuing education hours established by the advanced practice nurse prescriber's national certifying body.

(3) Every advanced practice nurse prescriber shall retain for a minimum period of 4 years, and shall make available to the board or its agent upon request, certificates of attendance issued by the program sponsor for all continuing education programs for which he or she claims credit for purposes of renewal of his or her certificate.

History: Cr. Register, February, 1995, No. 470, eff. 3–1–95; CR 00–168: cr. (3), Register August 2001 No. 548, eff. 9–1–01.

N **8.06 Prescribing limitations.** The advanced practice nurse prescriber:

(1) May issue only those prescription orders appropriate to the advanced practice nurse prescriber's areas of competence, as established by his or her education, training or experience.

(2) May not issue a prescription order for any schedule **I** controlled substance.

(3) May not prescribe, dispense or administer any amphetamine, sympathomimetic amine drug or compound designated as a schedule II controlled substance pursuant to the provisions of **s.** 961.16(5), Stats., to or for any person except for any of the following:

(a) Use as an adjunct to opioid analgesic compounds for the treatment of cancer--related pain.

(b) Treatment of narcolepsy.

(c) Treatment of hyperkinesis.

(d) Treatment of drug--induced brain dysfunction.

(e) Treatment of epilepsy.

(f) Treatment of depression shown to be refractory to other therapeutic modalities.

(4) May not prescribe, order, dispense or administer any anabolic steroid for the purpose of enhancing athletic performance or for other nonmedical purpose.

(5) Shall, in prescribing or ordering a drug for administration by a registered nurse or licensed practical nurse under **s.** 441.16 (3) (cm), Stats., present evidence to the nurse and to the administration of the facility where the prescription or order is to be carried out that the advanced practice nurse prescriber is properly certified to issue prescription orders.

History: Cr. Register, February, 1995, No. 470, eff. 3–1–95; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, October. 2000, No. 538.

N **8.07 Prescription orders. (1)** Prescription orders issued by an advanced practice nurse prescribers shall:

(a) Specify the date of issue.

(b) Specify the name and address of the patient.

(c) Specify the name, address and business telephone number of the advanced practice nurse prescriber.

(d) Specify the name and quantity of the drug product or device prescribed, including directions for use.

(e) Bear the signature of the advanced practice nurse prescriber.

(2) Prescription orders issued by advanced practice nurse prescribers for a controlled substance shall be written in ink or indelible pencil or shall be typewritten, and shall contain the practitioner's controlled substances number.

History: Cr. Register. February, 1995, No. 470, eff. 3–1–95.

N **8.08 Malpractice insurance coverage. (1)** Advanced practice nurse prescribers who prescribe independently shall maintain in effect malpractice insurance evidenced by one of the following:

(a) Personal liability coverage in the amounts specified in **s.** 655.23 (4), Stats.

(b) Coverage under a group liability policy providing individual coverage for the nurse in the amounts set forth in **s.** 655.23 (4), Stats. An advanced practice nurse prescriber covered under one or more such group policies shall certify on forms provided by the board that the nurse will independently prescribe only within the limits of the policy's coverage, or shall obtain personal liability coverage for independent prescribing outside the scope of the group liability policy or policies.

(2) Notwithstanding sub. (1), an advanced practice nurse prescriber who practices as an employee of this state or a governmental subdivision, as defined under **s.** 180.0103, Stats., is not required to maintain in effect malpractice insurance coverage, but the nurse shall certify on forms provided by the board that the nurse will prescribe within employment policies.

(3) An advanced practice nurse prescriber who prescribes under the supervision and delegation of a physician or CRNA shall certify on forms provided by the board that the nurse complies with **s.** N 6.03 (2) and (3), regarding delegated acts.

(4) An advanced practice nurse prescriber who prescribes in more than one setting or capacity shall comply with the provisions of subs. (1), (2) and (3) applicable to each setting or capacity. An advanced practice nurse prescriber who is not an employee of this state or a governmental subdivision, and who prescribes independently in some situations and prescribes under the supervision and delegation of a physician or CRNA in other situations, shall meet the requirements of sub. (1) with respect to independent prescribing and the requirements of sub. (3) with respect to delegated prescribing.

Note: Forms are available from the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(5) Every advanced practice nurse who is certified to issue prescription orders shall annually submit to the board satisfactory evidence that he or she has in effect malpractice insurance required by sub. (1).

History: Cr. Register, February, 1995, No. 470, eff. 3–1–95; r. and recr. (1), renum. (2) to be (5) and cr. (2), (3) and (4), Register. October, 1996, No. 490, eff. 11–1–96.

N **8.09 Dispensing. (1)** Except as provided in sub. (2), advanced practice nurse prescribers shall restrict their dispensing of prescription drugs to complimentary samples dispensed in original containers or packaging supplied by a pharmaceutical manufacturer or distributor.

(2) An advanced practice nurse prescriber may dispense drugs to a patient if the treatment facility at which the patient is treated is located at least 30 miles from the nearest pharmacy.

History: Cr. Register. February, 1995, No. 470, eff. 3–1–95.

N **8.10 Case management and collaboration with other health care professionals. (1)** Advanced practice nurse prescribers shall communicate with patients through the use of modem communication techniques.

(2) Advanced practice nurse prescribers shall facilitate collaboration with other health care professionals, at least 1 of whom shall be a physician, through the use of modem communication techniques.

(3) Advanccd practicc nurse prescribers shall facilitate referral of patient health care records to other health care professionals and shall notify patients of their right to have their health care records referred to other health care professionals.

(4) Advanccd practicc nurse prescribers shall provide a summary of a patient's health care records, including diagnosis, surgeries, allergies and current medications to other health care providers as a means of facilitating case management and improved collaboration.

(5) The board shall promote communication and collaboration among advanced practice nurses, physicians and other health care professionals, including notification to advanced practice nurses of mutual educational opportunities and available communication networks.

(6) To promote case management, the advanced practice nurse prescriber may order laboratory testing, radiographs or electrocardiograms appropriate to his or her area of competence as established by his or her education, training, or experience.

(7) Advanced practice nurse prescribers shall work in a collaborative relationship with a physician. The collaborative relationship is a process in which an advanced practice nurse prescriber is working with a physician, in each other's presence when necessary, to deliver health care services within the scope of the practitioner's professional expertise. The advanced practice nurse prescriber and the physician must document this relationship.

History: Cr. Register, February, 1995, No. 470, eff. 3–1–95; cr. *(6)* and (7), Register, October, 2000, No. 538, eff. 11–1–00.

ADVANCED PRACTICE NURSE REQUIREMENTS & GUIDELINES

INTRODUCTION

The information in this section is a guide to prescribing controlled substances in Wisconsin. The material presented in this section will be included in the Wisconsin jurisprudence examination for advanced practice nurses applying for an advanced practice nurse prescriber certificate from the Wisconsin Department of Regulation and Licensing. This section provides a summary of key aspects of federal controlled substances laws, guidelines for various prescribing practices, and Wisconsin requirements regarding prescriptive practice; reviewing it is not a substitute for consulting the appropriate law or agency for answers to specific questions.

The proper use of controlled substances is essential to the health and welfare of the public. The abuse of controlled substances is a serious social and health problem throughout the United States. As a registered nurse and advanced practice nurse prescriber, you share the responsibility for preventing drug misuse, abuse and diversion.

- You have an ethical responsibility to prescribe controlled substances appropriately, and to guard against their abuse while assuring their availability to your patients.

- You have a professional and legal responsibility to protect your practice from becoming an easy target for unlawful attempts to divert drugs, thus obviating the possibility of enforcement or disciplinary actions against you and loss of professional esteem.

- You have a social responsibility to help protect society from drug abuse.

INFORMING THE D.E.A. OF PRACTICE LOCATION

According to 1301.23 of the federal drug code, any change in principal practice location needs to be reported to the Federal Drug Enforcement Administration. Also, in order to prescribe, a D.E.A. registration number is required.

PRESCRIBING CONTROLLED SUBSTANCES FOR FAMILY MEMBERS

According to Opinion 8.19: Self-Treatment or Treatment of Immediate Family Members from the American Medical Association Council on Ethical and Judicial Affairs, it is not appropriate for APNP's to prescribe controlled substances to immediate family members.

PRESCRIBING NARCOTICS FOR DRUG DEPENDENCY

HOW SHOULD I DEAL WITH PATIENTS WHO ARE DRUG ABUSERS?

Prescribing a controlled substance only for a person's drug abuse problem is not **a** legitimate medical practice, and is unlawful according to 1306.04(c) of the federal drug enforcement code. If you encounter a person seeking controlled substances for an addiction, you should consider confronting the person or family and arranging for appropriate detoxification, treatment or counseling services.

DETERMINING LEGITIMACY OF PATIENT STORIES

CON ARTISTS

It is a felony under state and federal law for a person to acquire a controlled substance by misrepresentation, fraud, forgery, or deception, so you should immediately report suspicious activities to the local police, and alert your colleagues to be aware of possible deceptive practices.

SECURING BLANK PRESCRIPTION FORMS

Forgery can be a major source of drug diversion. Prescription orders are forged on blank prescription forms stolen from physicians' offices, nurses' offices, hospitals, and clinics. Whole pads or single sheets may be taken, especially if they are in plain view. Forgers will alter a legitimate prescription order by changing the renewal instructions or quantity to be dispensed, by erasing the name of the drug prescribed and replacing it with the name of a controlled substance and by supplying a DEA registration number.

Prescription pads are extremely valuable and should be treated appropriately. Consider having two types of pads, one labeled "not for controlled substances" and the other "for controlled substances only." Any pads used for controlled substances should be concealed or secured. Improve the security of prescription pads by following these rules:

- Store all unused prescription pads in a safe place.
- Minimize the number of pads in use at one time.
- Have prescription blanks numbered consecutively when printed to more easily identify if any are missing.
- Never sign prescription blanks in advance.
- Prescriptions should be written in ink or indelible pencil or be typewritten.
- Write out the amount of medication prescribed in addition to using an Arabic or Roman numerals.
- Do not use your prescription blanks for writing notes or memos.
- Do not leave prescription pads in unattended examining rooms, office areas, or in your bag or car where they can be easily stolen.

SCHEDULE II VEFUFICATION BY PHARMACISTS

According to Chapter N8 of the Board of Nursing, it is unprofessional conduct to prescribe any amphetamine, sympathomimetic amine drug or compound designated as a schedule II controlled substance except for the treatment of narcolepsy, hyperkinesis, drug-induced brain dysfunction, epilepsy, depression shown to be refractory to other therapeutic modalities, or as an adjunct to opiod analgesic compounds for the treatment of cancer-related pain.

Based on the above rule, Wisconsin pharmacists are likely to verify prescription orders for most Schedule II stimulants with the prescriber before dispensing them.

Chapter Med 17

STANDARDS FOR DISPENSING AND PRESCRIBING DRUGS

Med 17.01 Authority and purpose
Med 17.02 Definitions.
ivied 17.03 Packaging.
Med 17.04 Labeling.
Med 17.05 Recordkeeping.
Med 17.06 Prescription orders by **nurses** and ancillary health care personnel.

Med 17.01 Authority and purpose. (1) The rules in this chapter are adopted pursuant to authority in ss. 15.08 (5) (b), 227.1 1 and ch. 448, Stats.

(2) The rules in this chapter are adopted to specify standards practitioners shall follow in dispensing prescription drugs for the protection of the public.

History: Cr. Register, September; 1982, No. 321, eff. 10–1–82; correction in (1) made under s. 13.93(2m) (b) 7., Stats., Register. May, 1989, No. 401.

Med 17.02 Definitions. (1) "Controlled substance" has the meaning under s. 961.01 (4), Stats.

(2) "Practitioner" means a person holding a license to practice medicine and surgery.

(3) "Prescription drug" has the meaning under s. 450.01 (20), Stats.

History: Cr. Register, September, 1982, No. 321, eff. 10–1–82; correction in (3) made under s. 13.93(2m) (b) 7., Stats., Register, May. 1989, No. 401; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, February, 1997, No. 494; **am. (2), Register, December, 1999, No. 528, eff. 1–1–00.**

Med 17.03 Packaging. A prescription drug dispensed by a practitioner shall be dispensed in a child–resistant container if it is a substance requiring special packaging under 16 CFR 1700.14 (1982) of the federal poison prevention packaging act.

History: Cr. Register. September, 1982, No. 321, eff. 10–1–82.

Med 17.04 Labeling. (1) A prescription drug dispensed by a practitioner shall contain a legible label affixed to the immediate container disclosing:

(a) The name and address of the facility from which the prescribed drug is dispensed;

(b) The date on which the prescription is dispensed;

(c) The name of the practitioner who prescribed the drug or device;

(d) The full name of the patient;

(e) The generic name and strength of the prescription drug dispensed unless the prescribing practitioner requests omission of the name and strength of the drug dispensed; and,

(f) Directions for use of the prescribed drug and cautionary statements, if any, contained in the prescription or required by law.

(2) NONAPPLICATION OF LABELING RFQUIREMENTS The labeling requirement specified in sub. (1) does not apply to complimentary samples dispensed by a practitioner in original containers or packaging supplied to the practitioner by a pharmaceutical manufacturer or distributor.

History: Cr. Register. September, 1982, No. 321, eff. 10–1–82.

Med 17.05 Recordkeeping. (1) PRESCRIPTION DRUGS. (a) A practitioner shall maintain complete and accurate records of each prescription drug received, dispensed or disposed of in any other manner.

(b) All prescription drugs dispensed by a practitioner shall be recorded in the patient record.

(2) CONTROLLED SUBSTANCES. (a) Records required by the federal controlled substances act and ch. 961, Stats., shall be maintained at the location where the drug is received, distributed or dispensed and be available for inspection by authorized persons for at least 5 years from the date of such record.

(b) Controlled substances dispensed by a practitioner shall be recorded as follows:

1. **As** provided in this section; and

2. On a separate log, in a separate bound log book in which each schedule of controlled substances dispensed is recorded separately and in chronological order with the following information:

a. The name of the substance.

b. Dosage form and strength of the substance.

c. Name and address of the person for whom dispensed.

d. Date of dispensing.

e. Quantity dispensed.

f. Name or initials of practitioner who dispensed the substance.

History: Cr. Register, September, 1982, No. 321, eff. 10–1–82; correction in (2) (a) made under **s.** 13.93 (2m) (b) 7., Stats., Register, February, 1997, No. 494.

Med 17.06 Prescription orders by nurses and ancillary health care personnel. Prescription orders prepared by professional nurses and ancillary health care personnel, as delegated and supervised by a practitioner under s. 448.03 (2) (e), Stats., shall contain in addition to other information required by this chapter, the name, address and telephone number of the delegating practitioner and the name, address and signature of the person preparing the prescription order.

History: Cr Register, **July,** 1994, No. 463, eff. 8–1–94.

Chapter Phar 7

PHARMACY PRACTICE

Phar 7.01 Minimum procedures for compounding and dispensing.
Phar 7.015 Pharmacy technicians.
Phar 7.02 Prescription label; name of drug or drug product dispensed.
Phar 7.03 Prescription renewal limitations.
Phar 7.04 Return or exchange of health items.
Phar 7.05 Prescription records.
Phar 7.065 Answering machines in pharmacies.
Phar 7.07 Medication profile record system.
Phu 7.08 Prescription orders transmitted electronically.
Phar 7.09 Automated dispensing systems.
Phar 7.10 Administration of drug products and devices other than vaccines.

Phar 7.01 Minimum procedures for compounding and dispensing. (1) Except as provided in sub. (4), a pharmacist or pharmacist--intern who compounds or dispenses according to a prescription order shall follow the procedures described in this rule and other applicable procedures. The pharmacist or pharmacist–intern as directed and supervised by a pharmacist shall:

(a) Receive electronic or oral prescription orders of a prescriber, review all original and renewal prescription orders, whether electronic, written or oral, and determine therapeutic compatibility and legality of the prescription order. The review shall include, when indicated or appropriate, consultation with the prescriber.

(b) Read and interpret a prescriber's directions for use for the purpose of accurately transferring the instructions to the prescription label.

(c) Select, compound, mix, combine, measure, count and otherwise prepare drugs needed to dispense a prescription except that an agent of the pharmacist may procure, measure or count prefabricated dosage forms if a pharmacist verifies accuracy of the agent's action.

(d) Make a final check on the accuracy and correctness of the prescription. For all original and renewed prescriptions, the prescription order record shall identify the pharmacist responsible for the prescription.

(e) Give the patient or agent appropriate consultation relative to the prescription except that prescriptions may be delivered by an agent of the pharmacist to a patient's residence if the delivery is accompanied by appropriate directions and an indication that consultation is available by contacting the pharmacist. The consultation requirement applies to original and renewal prescription orders and, except when prescriptions are delivered to a patient's residence, is not satisfied by only offering to provide consultation.

(em) Transfer the prescription to the patient or agent of the patient.

(f) Receive, when required by law and standard professional practice, permission to renew from authorized prescribers, and note on the prescription order, medication profile record or uniformly maintained and readily retrievable document the following information:

1. Date renewed.
2. Name of practitioner authorizing renewal, if different from the original prescriber.
3. Quantity of drug dispensed.
4. Identification of the pharmacist renewing the prescription.

(2) Subsection (1) (d) and (e) does not prohibit institutional pharmacists or community pharmacists serving institutions from receiving prescription orders, dispensing and returning prescription medications consistent with accepted inpatient institutional drug distribution systems. Subsection (1) applies to any institutional pharmacy dispensing to outpatients, including prescriptions for discharged patients.

(3) A pharmacist may supervise no more than one pharmacy intern and 4 pharmacy technicians engaged in compounding and dispensing activities as described in sub. (l), except a higher ratio may be authorized by the board upon request to and approval by the board of a specific plan describing the manner in which additional interns or pharmacy technicians shall be supervised.

(4) A system for compounding and dispensing not in conformance with subs. (1) to (3) may be used if reviewed and approved by the board.

History: Cr. Register. January. 1983, **No.** 325, eff. 2–1–83; **am.** (1) (intro.), (d) **and** (f) (intro.), Register, August, 1991, No. 428, **eff.** 9-1–91; am. (1) **(e),** Register, January, 1996, No. 481. eff. 2–1–96; am. (1) (a), (e), (f) (intro)., **(3)** and cr. (1) *(em),* Register, December, 1998. No. 516, eff. 1–1–99; **am.** (l) (a), Register. November, 1999, No. 527, eff. 12–1–99; am. (3), Register, April. 2001, No. 544, eff. 5–1-01.

Phar 7.015 Pharmacy technicians. (1) As used in this section, "pharmacy technician" means a non–pharmacist or non–pharmacist intern who, under the general supervision of a pharmacist who regularly coordinates, directs and inspects the activities of the pharmacy technician, assists the pharmacist in the technical and nonjudgmental functions related to the practice of pharmacy in the processing of prescription orders and inventory management. "Pharmacy technician" does not include ancillary persons which include, clerks, secretaries, cashiers or delivery persons, who may be present in the pharmacy.

(2) A pharmacist may delegate technical dispensing functions to a pharmacy technician, but only under the general supervision of the pharmacist where the delegated functions are performed. Technical dispensing functions include:

(a) Accepting written or electronic prescription orders of the prescribing practitioner or from the prescribing practitioner's agent.

(b) Accepting original oral prescription orders from the prescribing practitioner or prescribing practitioner's agent, if the conversation is recorded and listened to and verified by the pharmacist prior to dispensing.

(c) Requesting authorization for a refill from the prescribing practitioner.

(d) Accepting oral authorization for a refill from the prescribing practitioner or prescribing practitioner's agent, provided there are no changes to the original prescription order.

(e) Accepting a request from a patient to refill a prescription.

(f) Obtaining and entering patient or prescription data into the patient information system.

(g) Preparing a prescription label.

(h) Retrieving medication from stock, counting or measuring medication, and placing the medication in its final container.

(i) Reconstituting prefabricated dosage forms.

(j) Compounding pharmaceuticals pursuant to written policies and procedures.

(k) Affixing a prescription label to its final container.

(L) Placing ancillary information on the prescription label.

(m) Prepackaging and labeling drugs for dispensing by a pharmacist.

(n) Preparing unit dose carts for final review by a pharmacist.

(o) Retrieving and transporting stock medication to and from pharmacist approved areas.

(p) Other technical functions that do not require the professional judgment of a pharmacist.

(3) A pharmacy technician may not do any of the following:

(a) Provide the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order.

(b) Perform any of the following tasks:

1. Participate in final drug utilization reviews.

2. Make independent therapeutic alternate drug selections.

3. Participate in final drug regimen screening, including screening for therapeutic duplication, drug–to–drug interactions, incorrect dosage, incorrect duration of treatment, drug allergy reactions and clinical abuse or misuse.

4. Perform any act necessary to be a managing pharmacist.

5. Administer any prescribed drug products, devices or vaccines.

(c) Provide patient counseling, consultation, or patient specific judgment, such as interpreting or applying information, including advice relating to therapeutic values, potential hazards and uses.

(d) Transfer the prescription to the patient or agent of the patient.

(4) The pharmacist shall provide the final verification for the accuracy, validity, Completeness, and appropriateness of the patient's prescription prior to the delivery of the prescription to the patient or the patient's representative.

History: Cr. Register, April, 2001, No. 544, eff. 5–1–01.

Phar 7.02 Prescription label; name of drug or drug product dispensed. No prescription drug may be dispensed unless the prescription label discloses the brand name and strength, or the generic name, strength, and manufacturer or distributor of the drug or drug product dispensed unless the prescribing practitioner requests omission of the above information. The prescription label shall not contain the brand or generic name of any drug or drug product other than that actually dispensed.

History: Cr. Register, January, 1983, No. 325, eff. 2–1–83; Register, August. 1991, No. 428, eff. 9–1–91; am. Register, January, 1996, No. 481, **eff.** 2–1–96.

Phar 7.03 Prescription renewal limitations. A prescription order for any drug other than controlled substances, which bears renewal authorization permitting the pharmacist to renew the prescription as needed (PRN) by the patient, shall not be renewed beyond one year from the date originally prescribed. No prescription order containing either specific or PRN renewal authorization is valid after the patient–physician relationship has ceased.

History: Cr. Register. January, 1983, No. 325, eff. 2–1–83; Register, August, 1991, No. 428, eff. 9–1–91.

Phar 7.04 Return or exchange of health items. (1) In this section:

(a) "Health item" means drugs, devices, hypodermic syringes, needles or other objects for injecting a drug, medicines, or items of personal hygiene.

(bj "Inpatient health care facility" means any hospital, nursing home, county home, county mental hospital, tuberculosis sanitarium or similar facility, but does not include community–based residential facilities, jails or prison facilities.

(2) No health items after taken from a pharmacy where sold, distributed or dispensed, may be returned, except for any of the following:

(a) From an inpatient health care facility, provided they are in their original containers and the pharmacist determines the contents are not adulterated or misbranded.

(b) Where the health items were dispensed in error, were defective, adulterated, misbranded, or dispensed beyond their expiration date.

(c) When in the professional judgment of the pharmacist substantial harm could result to the public or a patient if they were to remain in the possession of the patient, patient's family or agent, or other person.

(3) Health items returned to a pharmacy pursuant to sub. *(2)* (b) and (c), may not be sold, resold, or repackaged and sold or resold, given away, or otherwise distributed or dispensed. Returned health items shall either be destroyed at the pharmacy or delivered for destruction or other disposal by an authorized person or entity.

(4) It is not a "return" for a patient or agent of a patient to deliver a previously dispensed drug or device to a pharmacy for the purpose of repackaging and relabeling of that previously dispensed drug or device, and subsequent return of the drug or device for the same patient's use.

Note: The DEA does not permit the return of controlled substances to a pharmacy from a non–DEA registrant under any circumstances.

History: **Cr.** Register, January, 1983, No. 325, eff. 2–1–83; **am.** Register, August, 1991, No. 428, eff. 9–1–91; r. and recr., Register, December, 1998. No. 516, cff. 1–1–99.

Phar 7.05 Prescription records. (1) A record of all prescriptions dispensed shall be maintained for a period of 5 years after the date of the last renewal.

(2) All systems used for maintaining a record of any prescription dispensing shall include:

(a) Patient's identification.

(b) Name, strength and dosage form of the drug product dispensed.

(c) Quantity dispensed.

(d) Date of all instances of dispensing.

(e) Practitioner's identification.

(f) Pharmacist's identification.

(g) Retrieval designation.

(3) (a) Except as provided in sub. (5), the transfer of prescription order information for the purpose of dispensing is permissible between pharmacies on an unlimited basis pursuant to the following requirements:

1. The transfer is communicated directly between 2 pharmacists and the pharmacist making the transfer records the following information:

a. The word "VOID' is written on the face of the invalidated prescription order.

b. The name and address of the pharmacy to which it is transferred, the name of the pharmacist receiving the prescription order, the date and the name of the pharmacist transferring the information are recorded on the reverse side of the invalidated prescription order.

(b) The pharmacist receiving the transferred prescription order information shall record in writing the following:

1. The word "TRANSFER" on the face of the transferred prescription order.

2. The date of issuance of the original prescription order.

3. The original number of renewals authorized on the original prescription order.

5. The number of valid renewals remaining and the date of the last renewal.

6. The pharmacy's name, address, and the prescription order number from which the prescription order information was transferred.

7. The name of the pharmacist making the transfer.

8. The name, address and telephone number of the pharmacy from which the original prescription order was transferred if different from subd. 6.

(c) The original and transferred prescription orders shall be maintained for a period of 5 years from the date of the last renewal.

(4) A written copy of any prescription order for a prescribed drug provided by a pharmacist shall be identified in writing as "COPY — FOR INFORMATION ONLY". No prescribed drug may be dispensed based on an information copy.

(5) The transfer of original prescription order information for the purpose of renewal dispensing of a controlled substance is permissible between 2 pharmacies only on a one–time basis. However, pharmacies having access to a common central processing unit are not limited in the transfer of original prescription order information pertaining to controlled substances for the purpose of renewal dispensing if prior written approval is received from the board.

Note: This procedure requires a variance from the federal dmg enforcement administration (DEA) for controlled substances. Requests shall be filed with the Administrator, Drug Enforcement Administration, Department of Justice, Washington, D.C. 20537.

(6) A computerized system may be used for maintaining a record, as required under this section, of prescription dispensing and transfers of prescription order infomiation for the purposes of renewal dispensing, if the system:

(a) Is capable of producing a printout of any prescription data which the user pharmacy is responsible for maintaining. The system shall be designed so that the pharmacy can receive the printout within 48 hours after requesting the printout.

(b) **Is** equipped with an auxiliary procedure which, during periods of down–time, shall be used for documentation of prescription dispensing. The auxiliary procedure shall ensure that prescription renewals are authorized by the original prescription order, that the maximum number of prescription renewals has not been exceeded and that all of the appropriate data are retained for on–line entry as soon as the computer system is again available for use.

History: Cr. Register, January, 1983, No. 325, eff. 2–1–83; cr. (5), Register, September. 1987, No. 381, eff. 10–1–87; CR 00–165: am. (3) (a) (intro.), (b) 6., (c), **(5)** and ***(6)*** (intro.), r. (3) (b) 4., cr. (3) (b) 8.. Register July 2001, No. 547 eff. 8–1-01.

Phar 7.065 Answering machines in pharmacies. Oral prescription orders may be received at a pharmacy via a telephone answering device and dispensed by the pharmacist if the voice of the physician or physician's agent is known to the pharmacist, and provided other requirements of reducing the prescription order to writing, labeling and filing are met.

History: Cr. Register, December, 1998, No. **516,** eff. 1–1–99.

Phar 7.07 Medication profile record system. (1) An individual medication profile record system shall be maintained in all pharmacies for persons for whom prescriptions, original or renewal, are dispensed for outpatient use. The system shall be capable of permitting the retrieval of information. The system need not be limited to individual medication profile records.

(2) The following minimum information shall be retrievable:

(a) Patient name, or other identifying information.

(b) Address of the patient.

(c) Birth date of the patient if obtainable.

(d) Name of the drug product dispensed.

(e) Strength of the drug product dispensed.

(f) Dosage form of the drug product dispensed.

(g) Quantity of the drug product dispensed.

(h) Directions for use.

(i) Retrieval designation assigned to the prescription order.

(j) Date of all instances of dispensing, for original and renewal prescriptions.

(k) Practitioner identification.

Note: This subsection incorporates renewal dispensing information required by federal law (**21** CFR 1306.22) and state law (s. 450.11 (5), Stats.).

(3) The pharniacist shall be responsible for attempting to ascertain and record any patient allergies, adverse drug reactions, drug idiosyncrasies, and any chronic conditions which may affect drug therapy as communicated by the patient or agent of the patient. If none, this should **be** indicated.

(4) At the time a prescription order **is** reviewed by the pharmacist for dispensing, the pharmacist shall review the medication profile record of the patient for the previously dispensed medication history and shall determine whether the prescription order presented should be dispensed.

(5) Medication profile records, if used as the only documentation of renewal dispensing, shall be maintained for a period of not less than 5 years following the date of the last entry. If the profile records are not used as the only documentation of renewal dispcnsing they shall be maintained for a period of not less than 1 year from the date of the last entry.

History: Cr. Register, January, 1989, No. 397, eff. 2–1–89; renum. from Phar 7.08, Register, August, 1991, No. 428, eff. 9–1–91; am. (1), Register, December, 1998, No. 516, eff. 1–1–99.

Phar 7.08 Prescription orders transmitted electronically. (1) Except as provided in **s.** 453.068 (1) (c) **4.,** Stats., and as otherwise prohibited by law, prescription orders may be accepted and dispensed if they have been transmitted electronically from a practitioner or his or her designated agent to a pharmacy via computer modem or other similar electronic device. Prescription orders transmitted by facsimile machine are not considered electronic prescription orders; but rather, written prescription orders.

Note: Prescription orders for schedule [illegible] controlled substances may not be transmitted electronically except as emergency orders, subject to the same requirements for oral emergency orders for schedule II controlled substances. See s. 961.38 (1r) and (2), **Stats.,** and s. Phar 8.09.

(2) A pharmacist may dispense a prescription pursuant to a prescription order transmitted electronically, if the pharmacist assures the prescription order does all of the following:

(a) Was sent only to the pharmacy of the patient's choice and only at the option of the patient, with no intervening person or third party having access to the prescription order other than to forward it to the pharmacy.

(b) Identifies the individual sender's name and telephone number for oral confirmation, the time and date of transmission, and the pharmacy intended to receive the transmission.

(c) Is designated "electronically transmitted prescription", or with similar words or abbreviations to that effect.

(d) Contains all other information that is required in a prescription order.

(3) The prescribing practitioner's electronic signature, or other secure method of validation shall be provided with a prescription order electronically transmitted via computer modem or other similar electronic device.

(4) Any visual or electronic document received in connection with an electronically transmitted prescription order shall be accessible only within the professional service area of rhe pharmacy to protect patient confidentiality and assure security.

(5) A pharmacist who receives a prescription order electronically shall ensure the security, integrity and confidentiality of the prescription order and any information contained in the order. To maintain the confidentiality of patient records, the electronic system shall have adequate security and system safeguards designed to prevent and detect unauthorized access, modification, or manipulation of patient records. Once the prescription has been dispensed, any alterations in prescription order drug data shall be documented including the identification of the pharmacist responsible for the alteration.

(6) Access to the electronic mail system for the receipt of prescription orders electronically may only be acquired by use of a password or passwords, known only to individuals authorized to access the system.

(7) A pharmacist may not use any electronic device to circumvent his or her responsibilities with regard to documenting, authenticating and verifying prescription orders or in order to circumvent other pharmacy laws.

History: Cr. Register, November, 1999, No. 527. eff. 12–1–99.

Phar 7.09 Automated dispensing systems. (1) In this section:

(a) "Automated dispensing system" means a mechanical system that perform operations or activities, other than compounding or administration, relative to the storage, packaging, dispensing or distribution of medications, and which collects, controls, and maintains all transaction information.

(b) "Inpatient health care facility" means any hospital, nursing home, county home, county mental hospital, or tuberculosis sanitorium, but does not include community–based residential facilities.

(2) An automated dispensing system may be used in a community pharmacy, as provided in this section.

(3) An automated dispensing system may be used as provided in this section by an institutional pharmacy serving an inpatient health care facility, that has an established program of receiving prescription orders, and dispensing and returning prescription medications consistent with accepted inpatient institutional drug distribution systems. An automated dispensing system used by an institutional pharmacy shall only be located in that institutional pharmacy or within the inpatient health care facility.

(4) The managing pharmacist of a community pharmacy or an institutional pharmacy is responsible for all of the following:

(a) Assuring that the automated dispensing system is in good working order and accurately dispenses the correct strength, dosage form, and quantity of the drug prescribed and complying with the recordkeeping and security safeguards pursuant to sub. *(5).*

(b) Implementing an ongoing quality assurance program that monitors performance of the automated dispensing system, which is evidenced by written policies and procedures.

(c) Providing the board with prior written notice of the installation or removal of an automated dispensing system. The notice provided shall include, but is not limited to the:

1. Name and address of the pharmacy.

2. Initial location of the automated dispensing system. The automated dispensing system may thereafter be relocated within the pharmacy or inpatient health care facility without providing subsequent notification to the board.

3. Identification of the managing pharmacist.

(d) Assigning, discontinuing or changing personnel access to the system.

(e) Assuring that access to the medications comply with state and federal laws.

(f) Assuring that the automated dispensing system is stocked accurately and in accordance with established written policies and procedures.

(5) An automated dispensing system shall comply with the following provisions:

(a) A pharmacy shall maintain on–site the following documentation relating to an automated dispensing system:

1. Name and address of the pharmacy or inpatient health care facility where the system is being used.

2. The system manufacturer's name, model and serial number.

3. Description of how the system is used.

4. Written quality assurance procedures to determine continued appropriate use of the system.

5. Except as required pursuant to par. (b), written policies and procedures for system operation, safety, security, accuracy, access and malfunction.

(b) **All** written policies and procedures shall be maintained in the pharmacy responsible for the automated dispensing system.

(c) An automated dispensing system shall have adequate security systems and procedures, evidenced by written policies and procedures to prevent unauthorized access to maintain patient confidentiality and to comply with federal and state laws.

(d) Records and data kept by the automated dispensing system shall meet the following requirements:

1. All events involving the contents of the automated dispensing systems must be recorded electronically.

2. Records shall be maintained by the pharmacy and be available to the board. Records shall include:

a. The time and location of the system accessed.

b. Identification of the individual accessing the system.

c. Type of transaction.

d. Name, strength, dosage form and quantity of the drug accessed.

e. Name of the patient for whom the drug was ordered.

f. Such additional information as the managing pharmacist may deem necessary.

(e) The stocking of all medications in the automated dispensing system shall be accomplished by qualified personnel under no less than the general supervision of a licensed pharmacist; except that when an automated dispensing system is located within a pharmacy the supervision must be direct.

(f) **A** record of medications stocked into an automated dispensing system shall be maintained for 5 years and shall include identification of the person stocking and pharmacist checking for accuracy.

(g) **All** containers of medications stored in the automated dispensing system shall be packaged and labeled in accordance with state and federal law.

(h) All aspects of handling controlled substances shall meet the requirements of all state and federal law.

(i) The automated dispensing system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated dispensing system, in accordance with state and federal law.

(j) The automated dispensing system shall provide a mechanism for securing and accounting for medication returned to the system and accounting for wasted medications in accordance with state and federal law.

History: Cr. Register, October, 2000, No. 538, eff. 11–1–00.

Phar 7.10 Administration of drug products and devices other than vaccines. **A** pharmacist may administer a drug product, as defined in **s.** 450.01 (11), Stats., or device, as defined in **s.** 450.01 (6), Stats., in the course of teaching a patient self–administration techniques except a pharmacist may not administer by injection a prescribed drug product or device unless he or she satisfies each of the following:

(1) The pharmacist has successfully completed 12 hours in a course of study and training, approved by the American council on pharmaceutical education or the board, in injection techniques, emergency procedures and record keeping.

(2) The pharmacist has in effect liability insurance against loss, expense and liability resulting from errors, omissions or neglect in the administration by injection of prescribed drug products or devices in an amount that is not less than $1,000,000 for each occurrence and $2,000,000 for all occurrences in any one policy year. The pharmacist shall maintain proof that he or she satisfies this requirement and, upon request, shall provide copies of such proof to the department or board.

(3) The pharmacist has written procedures regarding the administration by injection of a prescribed drug product or device in the course of teaching self–administration techniques to a patient.

Note: To administer a vaccine a pharmacist **must** meet the requirements in s. 450.035. Stats.

History: Cr. Register, December, **1999.** No. 528, **eff.** 1–1–00.

Chapter Phar 8

REQUIREMENTS FOR CONTROLLED SUBSTANCES

Phar 8.01 Scope.
Phar 8.02 Records.
Phar 8.03 Filing prescription orders.
Phar 8.04 Purpose of issue of prescription order.
Phar 8.05 Dispensing.
Phar 8.06 Renewing prescriptions.
Phar 8.07 Partial dispensing.
Phar 8.08 Labeling prescriptions.
Phar 8.09 Emergency dispensing.
Phar 8.10 Disclosure of suspicious orders of controlled substances.
Phar 8.11 Controlled substances in emergency kits for long term care facilities.
Phar 8.12 Prescription orders transmitted by facsimile machine.

Phar 8.01 Scope. Procedures governing the manufacture, distribution and dispensing of controlled substances pursuant to ch. 961, Stats., are set forth generally by that chapter and specifically by sections of this chapter and chs. Phar 12 and 13.

History: Cr. Register, January, 1983, No. 325, eff. 2–1–83; am. Register. August, 1991, No. 428, eff. 9–1–91; am. Register, December, 1998, No. 516, eff. 1–1–99.

Phar 8.02 Records. (1) Any pharmacy, practitioner, or other federal drug enforcement administration registrant, as referenced in ch. 961, Stats., shall maintain complete and accurate records of each controlled substance received, manufactured, distributed, dispensed or disposed of in any other manner.

(2) Records required by the federal controlled substances act and ch. 961, Stats., shall be maintained at the location where the drug is received, manufactured, distributed or dispensed, and be available for inspection by authorized persons for at least 5 years from the date of such record. Financial and shipping records such as invoices and packing slips, but not executed order forms, may be kept at a central location. A complete and accurate biennial physical inventory of all schedule II, III, IV and V controlled substances pursuant to ss. 961.16, 961.18, 961.20 and 961.22, Stats., and ch. CSB 2 on hand shall be made in conformance with all applicable federal and state laws.

(3) Required records shall be maintained as follows:

(a) Records of schedule II controlled substances, other than prescription orders, shall be maintained separately from all other records.

(b) Records of schedule III, IV and V controlled substances shall be maintained either separately or in such form that the information required is readily retrievable from the registrant's ordinary records.

(c) The official drug enforcement administration order forms, DEA form 222, used in the procurement and distribution of schedule II substances shall be maintained at the locations from which the drug was distributed and where it is received.

(d) Any person authorized to manufacture, distribute or dispense controlled substances shall maintain complete and accurate records with the following information:

1. The name of the substance.

2. The dosage form, strength and quantity of the substance.

3. The quantity and date of distribution as well as the name, address and DEA registration number of the person to whom distributed.

4. The number of units and date of receipt as well as the name, address and DEA registration number of the person from whom received.

5. The name and address of the person for whom dispensed, date of dispensing, quantity dispensed and name or initials of the individual who dispensed the substance.

(e) Records for dispensed schedule V substances shall be maintained as follows:

1. If a schedule V drug is dispensed pursuant to the prescription order of a practitioner, the prescription shall be labeled properly and the order filed in accordance with the requirements for schedule III and IV orders.

2. If a schedule V drug is dispensed other than pursuant to a prescription order, the dispenser shall make the record required by s. 961.23, Stats., in a bound controlled substance V register at the time of the transaction.

(f) Any pharmacy, practitioner or other drug enforcement administration registrant authorized to possess controlled substances shall notify the regional office of the drug enforcement administration, the local police, and the pharmacy examining board of the theft or loss of any controlled substances upon discovery of such theft or loss.

Note: The Drug Enforcement Administration regional office is at 1800 Dirksen Federal Building, 219 S. Dearborn, Chicago, Illinois 60604.

History: Cr. Register, January, 1983, No. 325, eff. 2–1–83; am. (3) (f), r. (4) (a) and (b), Register, August, 1991, No. 428, eff. 9–1–91; am. (1), (2) and (3) (e) 2., Register, December, 1998, No. 516, eff. 1–1–99.

Phar 8.03 Filing prescription orders. (1) All controlled substance prescription orders shall be maintained on file, in chronological order, for a period of at least 5 years. The orders shall be readily accessible to enforcement personnel authorized by s. 961.51, Stats.

(2) Schedule II prescription orders may be filed separately from all other orders or they may be filed with those for schedule III, IV and V drugs provided all orders in the file for schedule III, IV and V drugs are stamped in red ink with the letter "C" one inch in height, in the lower right hand comer of the order. Under no circumstances may schedule II orders be filed together with those for non-controlled drugs.

(3) Schedule III, IV and V prescription orders may be filed with those for non–controlled drugs provided that orders for schedule III, IV and V drugs are stamped in red ink with the letter "C" one inch in height in the lower right hand corner of the order or orders for schedule III, IV and V substances may be filed separately. However, if a pharmacy employs an automated data processing system or other electronic recordkeeping system for prescription orders which permits identification by prescription order number and retrieval of original documents by prescriber's name, patient's name, drug dispensed, and date filled, then the requirement to mark the hard copy prescription order with a red "C" is waived.

History: Cr. Register, January, 1983, No. 325, eff. 2–1–83; am. (2) and (3). Register, August, 1991, No. 428, eff. 9–1–91; am. (1) and (3), Register, December, 1998, No. 516, eff. 1–1–99.

Phar 8.04 Purpose of issue of prescription order. (1) Prescription orders for controlled substances shall be issued for a legitimate medical purpose by individual practitioners acting in the usual course of professional practice. Responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who dispenses the prescription. An order purporting to be a prescription order not issued in the usual course of professional treatment or in legitimate and authorized research is not a prescription order within the meaning and intent of ss. 450.01 (21) and 961.38, Stats. The person knowingly dis-

pensing pursuant to such a purported order, as well as the person issuing it, shall be subject to the penalties provided for violation of the provision of law relating to controlled substances.

(2) A prescription order issued by a practitioner to obtain controlled substances for the purpose of general dispensing or administration to patients by the practitioner is not valid.

History: Cr. Register, January, 1983. No. 325, eff. 2–1–83; am. Register, August, 1991, No. 428, eff. 9–1–91; am.(1), Register, December, 1998, No. 516, eff. 1–1–99.

Phar 8.05 Dispensing. (1) All controlled substance prescription orders shall be dated as of, and signed on, the day issued and shall contain the full name and address of the patient, the drug name, strength, dosage form, quantity prescribed, directions for use and the name, address and registration number of the practitioner. Prescription orders shall be written with ink or indelible pencil or be typewritten and shall be signed by the practitioner. Orders for controlled substances may be issued only by individual practitioners who are authorized to prescribe controlled substances by the jurisdiction in which he or she is licensed to practice and registered or exempt from registration under the federal controlled substances act.

(2) A pharmacist may dispense a controlled substance listed in schedule II, III or IV only pursuant to a prescription order issued by an individual practitioner. The order shall be initialed and dated by the dispensing pharmacist as of the date the prescription is dispensed. If the person accepting the medication pursuant to any prescription order for a schedule II controlled substance, specified in **s.** 961.16, Stats., is not personally known to the pharmacist, there shall be written in ink, on the reverse side, the printed name, signature and address of the person.

(3) An individual practitioner may dispense directly a controlled substance listed in schedule II, III or IV provided that the prescription container is labeled and records are maintained in accordance with the requirements of this code.

(4) A prescription containing a controlled substance listed in schedule II may be dispensed only pursuant to a written order signed by the prescribing individual practitioner, except in emergency situations. A prescription for a controlled substance listed in schedule II may not be dispensed more than 60 days after the date of issue on the prescription order.

(7) A prescription order for a controlled substance may not be dispensed unless the prescription order contains all of the information required in sub. (1). For any controlled substance prescription order, a pharmacist may not add, modify or clarify the patient's name, the controlled substance prescribed, except for generic substitution as permitted by law, and the prescribing practitioner's signature. After consultation with the prescribing practitioner, a pharmacist may add, modify or clarify the strength, dosage form, quantity prescribed, date of issuance and directions for use for a schedule II controlled substance prescription order. For a schedule II controlled substance prescription order, a pharmacist may add, modify or clarify the registration number of the practitioner, and the address of the practitioner and the patient if that information is verifiable and retrievable from information maintained by the pharmacist or is obtained through consultation with the practitioner. A pharmacist may add, modify or clarify any information allowed in this subsection missing from a prescription order for a schedule III, IV or V controlled substance that is verifiable and retrievable from information maintained by the pharmacist or that is obtained through consultation with a practitioner. A patient may only provide information to a pharmacist to add, modify or clarify the patient's address. The prescription order shall be initialed and dated by the pharmacist and shall indicate the addition, modification or clarification of information and the manner by which the pharmacist obtained that information.

History: Cr. Register, January, 1983, No. 325, eff. 2–1–83; am.(1), (2). (3) and (5), cr. (6), Register, **August,** 1991, No. 428, eff. 9–1–91; cr. (7), Register, January, 1996, No. 481, eff. 2–1–96; am. (4), Register, February, 1996, No. 482, eff. 3–1–96; am. (2), Register, December, 1998, No. 516, eff. 1–1–99; am. (1) and (7), r. (6). Register, February, 2001, No. 542, eff. 3–1–01; **CR 01–154: am. (4), r. (5), Register 2002 No. 559, eff. 8–1–02.**

Phar 8.06 Renewing prescriptions. (1) No prescription containing a schedule II substance may be renewed.

(2) The prescribing practitioner may authorize renewals of schedule III or IV controlled substances on the original prescription order or through an electronic or oral renewal authorization transmitted to the pharmacist. The following conditions must be met:

(a) The pharmacist obtaining the electronic or oral authorization shall note on the prescription order, medication profile record or readily retrievable and uniformly maintained document the following information:

1. Date authorization is received.
2. Quantity of drug authorized.
3. Number of renewals.
4. Identification of practitioner authorizing the renewals if different from the original prescriber.
5. Identification of the pharmacist who received the authorization.

(b) The quantity of each renewal authorized is equal to or less than the quantity authorized for the initial dispensing of the original prescription.

(3) No prescription containing a controlled substance listed in schedule III or IV may be dispensed or renewed more than 6 months after the date on which the prescription order was issued and no prescription authorized to be renewed may be renewed more than 5 times.

(4) A prescription containing a drug listed in schedule V may be renewed only as expressly authorized by the practitioner.

History: Cr. Register, January, 1983, No. 325, **eff.** 2–1–83; renum. **(2)** and **(3)** to be (3) and **(4)** and am. (3), cr. (2), Register, August, 1991, No. 428, eff. 9–1–91; am. (2) (intro.) and (a) (intro.), Register, November, 1999, No. 527, eff. 12–1–99.

Phar 8.07 Partial dispensing. (1) A pharmacist may partially dispense a prescription containing a controlled substance listed in schedule III, IV and V.

(2) The partial dispensing of a prescription containing a controlled substance listed in schedule II is permissible, if the pharmacist is unable to supply the full quantity called for in a written or emergency electronic or oral prescription order, and the pharmacist makes a notation of the quantity supplied on the face of the written prescription order or written record of the emergency electronic or oral prescription order. The remaining portion of the prescription may be dispensed within 72 hours of the first partial dispensing. If the remaining portion is not dispensed within the 72 hour period, the pharmacist shall so notify the prescribing individual practitioner. No further quantity may be supplied beyond the 72 hours without a new prescription order.

(3) Prescription orders for schedule II controlled substances written for patients in long term care facilities (LTCF) or for patients with a medical diagnosis documenting a terminal illness may be dispensed in partial quantities to include individual dosage units. The prescribing practitioner may document a terminal illness by writing upon the face of the prescription order the phrase "terminal illness" or words of similar meaning. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist shall contact the prescribing practitioner prior to partially dispensing the prescription. Documentation of a terminal illness, whether substantiated by the presence of an appropriate phrase written upon the face of the prescription order or through pharmacist contact with the prescribing practitioner, shall be placed within the individual medication profile record maintained under **s.** Phar 7.07. The pharmacist shall record on the prescription order whether the patient is "terminally ill" or an "LTCF patient." A prescription order that is partially dispensed and does not contain the notation "terminally ill" or "LTCF

patient" shall be deemed to have been dispensed in violation of this section. For each partial dispensing, the dispensing pharmacist shall record on the back of the prescription order or on another appropriate record, uniformly maintained and readily rctricvable, the date of the partial dispensing, quantity dispensed, remaining quantity authorized to be dispensed and the identification of the dispensing pharmacist. Subsequent partial dispensing is not permitted under this section if the patient becomes deceased, or is no longer diagnosed as terminally ill, or no longer resides within an LTCF. The total quantity of a schedule II controlled substance dispensed by partial dispensing may not exceed the total quantity prescribed. Prescription orders for schedule II controlled substances for patients in an LTCF or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed **60** days from the issue date unless terminated earlier by the discontinuance of medication.

(4) Information pertaining to current prescription orders for schedule 11 controlled substances for patients in an LTCF or for patients with a medical diagnosis documenting a terminal illness may be maintained in a computerized system if the system has the capability to permit:

(a) Display or printout of: the original prescription order designation; date of issue; identification of prescribing practitioner; identification of patient; name and address of the LTCF or name and address of the hospital or residence of the patient; identification of medication authorized, including dosage form, strength and quantity; listing of partial quantities that have been dispensed under each prescription order and the information required in sub. (3).

(b) Immediate (real time) updating of the prescription order record each time there is partial dispensing of the prescription.

(c) Retrieval of partially dispensed schedule II prescription information identical to that required by s. Phar **7.05** (2) for all prescription renewal information.

History: Cr. **Register, January. 1983, No. 325, eff. 2–1–83; r. and** recr. **Register, August, 1991,** No. **428, eff. 9–1–91; am.** (3), **(4)** (intro.) and (a), r. (5), **Register, September, 1994, No. 465, eff.** 10–1–94; **am.** (2), **Register, November, 1999,** No. **527, eff. 12–1–99.**

Phar 8.08 Labeling prescriptions. (1) The pharmacist dispensing a prescription containing a controlled substance shall affix to the immediate container a label showing the date of dispensing; the pharmacy name and address; serial number of the prescription; full name of the patient: name of the prescribing practitioner; directions for use: and cautionary statements, contained in the prescription order or required by law.

(2) Practitioners who personally dispense any controlled substance to patients in the course of their professional practice other than by prescribing or administering shall conform to ch. Med **17,** standards for dispensing drugs.

History: Cr. **Register, January, 1983, No. 325, eff. 2–1-83; am. Register. August, 1991,** No. **428, eff. 9–1–91.**

Phar 8.09 Emergency dispensing. (1) For the purpose of authorizing an electronic or oral prescription order for a schedule II controlled substance, the term "emergency" means those situations in which the prescribing practitioner determines that:

(a) Immediate administration of the controlled substance is necessary for proper treatment of the patient.

(b) No appropriate alternative treatment is available, including the administration of a drug which is not a schedule II controlled substance.

(c) It is not reasonably possible for the prescribing practitioner to provide a written prescription order to be presented to the pharmacist prior to dispensing.

(2) In an cmergcncy a pharmacist may dispense a controlled substance listed in schedule II upon receiving electronic or oral authorization of a practitioner if:

(a) The quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period.

(b) The prescription order is immediately reduced to writing by the pharmacist and contains all information required in **s.** Phar **8.05,** except for the signature of the practitioner.

(3) If the practitioner is not known to the pharmacist, the pharmacist shall make a reasonable effort to determine that the electronic or oral authorization came from an authorized practitioner, which may include a call back to the prescribing practitioner using the practitioner's phone number as listed in the telephone directory and other good faith efforts to insure the practitioner's identity.

(4) Within **7** days after authorizing an emergency electronic or oral prescription order, the practitioner shall cause a written order for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of s. Phar **8.05,** the order shall contain on its face "authorization for emergency dispensing" and the date of the electronic or oral order. The written order may be delivered to the pharmacist in person or by mail, but if delivered by mail it shall be postmarked within the **7** day period. Upon receipt, the dispensing pharmacist shall attach this prescription order to the electronic or oral emergency order reduced to writing under sub. **(2)** (b). The pharmacist shall notify the board or department of regulation and licensing if the practitioner fails to deliver the written order. Failure of the pharmacist to provide notification shall void the authority conferred by this section to dispense without a written order of a practitioner.

History: Cr. **Register,** January, **1983, No. 325, eff. 2–1–83; am. Register, August,** 1991, **No. 428, eff. 9–1–91; am.** (4), Register, **December,** 1998, No. **516, eff. 1–1–99; am.** (1) **(intro.), (2)** (intro.), **(3) and** (4), **Register, November, 1999,** No. **527, eff. 12–1–99.**

Phar 8.10 Disclosure of suspicious orders of controlled substances. Manufacturers and distributors of controlled substances shall disclose suspicious orders of controlled substances. Suspicious orders include, without limitation because of enumeration, orders of unusual size, orders deviating substantially from a normal pattern and orders of unusual frequency. The liccnsec shall notify the regional office of the DEA and the board of all suspicious orders.

History: Cr. **Register, August, 1991,** No. **428, eff. 9–1–91.**

Phar 8.11 Controlled substances in emergency kits for long term care facilities. Long term care facilities which arc not registered with the DEA shall meet all of the following requirements regarding emergency kits containing controlled substances:

(1) The source of supply must be a DEA registered hospital, pharmacy or practitioner.

(2) The pharmaceutical services committee of the facility shall establish security safeguards for each emergency kit stored in the LTCF which shall include the designation of individuals who may have access to the emergency kits and a specific limitation of the type and quantity of controlled substances permitted to be placed in each emergency kit.

(3) A pharmacist shall be responsible for proper control and accountability for such emergency kits within the LTCF which includes the requirement that the LTCF and the providing DEA registered hospital, pharmacy or practitioner maintain complete and accurate records of the controlled substances placed in the emergency kits, the disposition of those controlled substances, plus the requirement to take at least monthly physical inventories.

(4) The pharmaceutical services committee will establish the cmergency medical conditions under which the controlled substances may be administered to patients in the LTCF which shall include the requirement that medication be administered by authorized personnel only as expressly authorized by an individ-

ual **DEA** rcgistcrcd practitioner and in compliance with all applicable federal and state laws.

(5) Noncompliance with this rule may result in revocation, denial or suspension of the privilege of having or placing emergency kits, containing controlled substances, in LTCF.

History: Cr. Register. August, 1991, No. 428, eff. 9–1–91.

Phar 8.12 Prescription orders transmitted by facsimile machine. (1) PRESCRIPTION DRUGS OTHER THAN SCHEDULE II CONTROLLED SUBSTANCES. A pharmacist may dispense a prescription drug, other than a schedule II controlled substance, pursuant to a prescription order transmitted by a facsimile machine from the practitioner or the practitioner's agent to the dispensing pharmacy if all of the following conditions are met:

(a) The transmitted facsimile prescription order shall contain all of the information required for a valid written prescription order. The order shall also contain the time and date of the transmission, as well as the telephone number and name of the transmitter.

(b) Unless the facsimile paper is non–fading, the facsimile prescription order received shall be duplicated by copy machine or other similar device and the copy must be physically attached to the order received.

(2) SCHEDULE II CONTROLLED SUBSTANCES. A pharmacist may not dispense a schedule II controlled substance pursuant to a prescription order transmitted by a facsimile machine unless all of the conditions stated in sub. (1) are satisfied, and any of the following conditions are met:

(a) The prescription order is written for a schedule II controlled substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular. subcutaneous or intraspinal infusion, and is transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

(b) The prescription order is written for a schedule II controlled substance for a patient in a long term care facility, and is transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

(c) The prescription order is written for a schedule II controlled substance for a patient enrolled in a hospice certified by medicare under Title XVIII or licensed by this state, and is transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile.

(3) PRESCRIPTION ORDERS TRANSMITTED BY FACSIMILE CONSIDERED WRITTEN ORDERS. For all purposes under chs. 450 and 961, Stats., and the rules of the board, a prescription order transmitted by facsimile machine shall be considered the original written prescription order.

History: Cr. Register, December, 1998. No. **516,** eff 1–1–99.

Chapter Phar 10

STANDARDS OF PROFESSIONAL CONDUCT

Phar 10.01 Authority.
Phar 10.02 Definitions.
Phar 10.03 Unprofessional conduct

Phar 10.01 Authority. The rules in this chapter are adopted pursuant to the authority in ss. 15.08, 227.11 and 450.02, Stats.

History: Cr. Register, January, 1980, No. 289, eff. 2–1–80; renum. from Phar 5.01, Register, January, 1983, No. 325, eff. 2–1–83; correction made under s. 13.93 (2m) (b) **7., Stats., Register, July, 1993, No. 451.**

Phar 10.02 Definitions. In this chapter:

(1) "Dispense" has the meaning given in **s.** 450.01 (7), Stats.

(2) "Drug" has the meaning given in **s.** 450.01 (10), Stats.

(3) "Patient" has the meaning given in **s.** 450.01 (14), Stats.

History: Cr. Register, **January,** 1980, No. **289, eff. 2–1–80; renum. from Phar 5.02 and** r. (4), **Register. January:** 1983, No. **325, eff. 2–1–83;** am. (1), **(2) and** (3), **Register, December,** 1998, No. **516, eff. 1–1–99.**

Phar 10.03 Unprofessional conduct. The following, without limitation because of enumeration, are violations of standards of professional conduct and constitute unprofessional conduct in addition to those grounds specified under s. 450.10 (1), Stats.:

(1) Administering, dispensing, supplying or obtaining a drug other than in legitimate practice, or as prohibited by law;

(2) Engaging in any pharmacy practice which constitutes a danger to the health, welfare, or safety of patient or public, including but not limited to, practicing in a manner which substantially departs from the standard of care ordinarily exercised by a pharmacist which harmed or could have harmed a patient;

(3) Dispensing a drug which the pharmacist should have known would harm the patient for whom the medication was prescribed;

(4) Dispensing or causing to be dispensed a drug which is outdated or contaminated or known by the pharmacist to be unsafe for consumption;

(5) Falsifying patient records;

(6) Disclosing to the public information concerning a patient without the consent of the patient unless the information is requested by the pharmacy examining board or the department of regulation and licensing or unless release is otherwise authorized by law;

(7) Failing to report to the pharmacy examining board any pharmacy practice which constitutes a danger to the health, safety or welfare of patient or public;

(7m) Failing to report to the board information that reasonably suggests there is a probability that a prescription drug or device dispensed by a pharmacist has caused or contributed to the substantial bodily injury or death of a customer or patient.

(8) Providing false information to the pharmacy examining board or its agent;

(9) Refusing to render professional services to a person because of race, color, sex, religion, or age;

(10) Aiding or abetting the unlicensed practice of pharmacy;

(11) Advertising in a manner which is false, deceptive or misleading;

(12) Dispensing sample drug products for any financial consideration;

(13) Exercising undue influence on or taking unfair advantage of a patient in the promotion or sale of services, drugs or other products for the financial gain of the pharmacist or a third party;

(14) Participating in rebate or fee–splitting arrangements with health practitioners or with health care facilities;

(15) Furnishing a prescriber with any prescription order blanks imprinted with the name of a specific pharmacist or pharmacy;

(16) Using secret formula or code in connection with prescription orders;

(17) Having a pharmacist license revoked or suspended in another state or United States jurisdiction or having been subject to other disciplinary action by the licensing authority thereof;

(18) Violating or attempting to violate any formal disciplinary order of the board.

(19) Practicing without a current license.

History: Cr. **Register, January, 1980, No. 289, eff. 2–1–80; renum. from Phar 5.03, Register, January, 1983, No. 325, eff. 2–1–83; am. (intro.), r.** (1), (2), (7), **(13) and** (22), **renum.** (3) **to** (6), **(8) to** (12), **(14) to (21) to be** (1) **to** (17), **Register, August, 1991. No. 428,** eff. **9–1–91;** am. (17), **cr.** (18), **Register, July, 1993, No. 451, eff. 8–1–93;** cr. (7m) **and** (19), **Register, December, 1998, No. 516, eff. 1–1–99.**

Chapter RL 1

PROCEDURES TO REVIEW DENIAL OF AN APPLICATION

RL 1.01	Authority and scope.	RL 1.08	Procedure.
RL 1.03	Definitions.	RL 1.09	Conduct of hearing.
RL 1.04	Examination failure: retake and hearing.	RL 1.10	Service.
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RL 1.07	Request for hearing.	RL 1.13	Transcription fees.

RL 1.01 Authority and scope. Rules in this chapter are adopted under authority in s. 440.03 (1), Stats., for the purpose of governing review of a decision to deny an application. Rules in this chapter do not apply to denial of an application for renewal of a credential. Rules in this chapter shall apply to applications received on or after July 1, 1996.

Note: Procedures used for denial of an application for renewal of a credential are found in Ch. RL 2, Wis. Admin. Code and s. 227.01 (3) (b). Stats.

History: Cr. Register, October, 1985, No. 358, eff. 11–1–85; **am., Register, July, 1996, Nu. 487, eff. 8-1–96.**

RL 1.02 Scope. History: Cr. Register, October, 1985, No. 358, **eff. 11–1–85; r., Register, July, 1996, No. 487, eff. 8-1–96.**

RL 1.03 Definitions. In this chapter:

(1) "Applicant" means any person who applies for a credential from the applicable credentialing authority. "Person" in this subsection includes a business entity.

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

(3) "Credentialing authority" means the department or an attached examining board, affiliated credentialing board or board having authority to issue or deny a credential.

(4) "Denial review proceeding" means a class 1 proceeding as defined in **s.** 227.01 (3) (a), Stats., in which a credentialing authority reviews a decision to deny a completed application for a credential.

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

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

History: Cr. Register, October. 1985, No. 358, eff. 11–1–85; correction in **(4)** made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389; am. **(I),** (4), **r. (2), renum. (3) to be (5), cr. (2), (3), (6), Register, July, 1996, No. 487, eff. 8-1–96.**

RL 1.04 Examination failure: retake and hearing. (1) An applicant may request a hearing to challenge the validity, scoring or administration of an examination if the applicant has exhausted other available administrative remedies, including, but not limited to, internal examination review and regrading, and if either:

(a) The applicant is no longer eligible to retake a qualifying examination.

(b) Reexamination is not available within 6 months from the date of the applicant's last examination.

(2) A failing score on an examination does not give rise to the right to a hearing if the applicant is eligible to retake the examination and reexamination is available within 6 months from the date of the applicant's last examination.

Note: An applicant is not eligible for a license until his or her application is complete. An application is not complete until an applicant has submitted proof of having successfully passed any required qualifying examination. **If** an applicant fails the qualifying examination, hut has the right to retake it within 6 months, the applicant is not entitled to a hearing under this chapter.

History: Cr.. Register, July, 1996, No. 487, eff. 8-1–96.

RL 1.05 Request for hearing. History: Cr. Register, October, 1985, No. 358, eff. 11–1–85; corrections in (2) (a) and (b) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389; **r. Register. July, 1996, No. 487, eff. 8-1–96.**

RL 1.05 Notice of intent to deny and notice of denial. (1) NOTICE OF INTENT TO DENY. (a) A notice of intent to deny may be issued upon an initial determination that the applicant does not meet the eligibility requirements for a credential. A notice of intent to deny shall contain a short statement in plain language of the basis for the anticipated denial, specify the statute, rule or other standard upon which the denial will be based and state that the application shall be denied unless, within 45 calendar days from the date of the mailing of the notice, the credentialing authority receives additional information which shows that the applicant meets the requirements for a credential. The notice shall be substantially in the form shown in Appendix I.

(b) If the credentialing authority does not receive additional information within the 45 day period, the notice of intent to deny shall operate as a notice of denial and the 45 day period for requesting a hearing described in **s.** RL 1.07 shall commence on the date of mailing of the notice of intent to deny.

(c) If the credentialing authority receives additional information within the 45 day period which fails to show that the applicant meets the requirements for a credential, a notice of denial shall be issued under sub. (2).

(2) NOTICE ***OF*** DENIAL. If the credentialing authority determines that an applicant does not meet the requirements for a credential, the credentialing authority shall issue a notice of denial in the form shown in Appendix II. The notice shall contain a short statement in plain language of the basis for denial, specify the statute, rule or other standard upon which the denial is based, and be substantially in the form shown in Appendix II.

History: Cr., Register, July, 1996, eff. 8–1–96.

RL 1.06 Parties to a denial review proceeding. Parties to a denial review proceeding are the applicant, the credentialing authority and any person admitted to appear under s. 227.44 (2m), Stats.

History: Cr. Register, October, 1985, No. 358, *eff.* 11–1–85; *renum.* **from RL 1.04 and** am., **Register, July, 1996, No. 487, *eff.* 8-1–96.**

RL 1.07 Request for hearing. An applicant may request a hearing within 45 calendar days after the mailing of a notice of denial by the credentialing authority. The request shall be in writing and set forth all of the following:

(1) The applicant's name and address.

(2) The type of credential for which the applicant has applied.

(3) A specific description of the mistake in fact or law which constitutes reasonable grounds for reversing the decision to deny the application for a credential. If the applicant asserts that a mistake in fact was made, the request shall include a concise statement of the essential facts which the applicant intends to prove at the hearing. If the applicant asserts a mistake in law was made, the request shall include a statement of the law upon which the applicant relies.

History: Cr., Register, July, 1996, No. 487, eff. 8-1–96.

RL 1.08 Procedure. The procedures for a denial review proceeding are:

(1) REVIEW OF REQUEST FOR WEARING. Within 45 calendar days of receipt of a request for hearing, the credentialing authority or its designee shall grant or deny the request for a hearing on a denial of a credential. A request shall be granted if requirements in **s.** RL 1.07 are met, and the credentialing authority or its designee shall

notify the applicant of the time, place and nature of the hearing. If the requirements in s. RL 1.07 are not met, a hearing shall be denied, and the credentialing authority or its designee shall inform the applicant in writing of the reason for denial. For purposes of a petition for review under s. 227.52, Stats., a request is denied if a response to a request for hearing is not issued within 45 calendar days of its receipt by the credentialing authority.

(2) DESIGNATION OF PRESIDING OFFICER. An administrative law judge employed by the department shall preside over denial hearings, unless the credentialing authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employe by the department, except that the administrative law judge may not be an employe in the division.

(3) DISCOVERY Unless the parties otherwise agree, no discovery is permitted, except for the taking and preservation of evidence as provided in ch. 804, Stats., with respect to witnesses described in s. 227.45 (7) (a) to (d), Stats. An applicant may inspect records under s. 19.35, Stats., the public records law.

(4) BURDEN OF PROOF. The applicant has the burden of proof to show by evidence satisfactory to the credentialing authority that the applicant meets the eligibility requirements set by law for the credential.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.09 Conduct of hearing. (1) RECORD **A** stenographic, electronic or other record shall bc made of all hearings in which the testimony of witnesses is offered as evidence, and of other oral proceedings when requested by a party.

(2) ADJOURNMENTS The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(3) SUBPOENAS (a) Subpoenas for the attendance of any witness at **a** hearing in the proceeding may be issued in accordance with s. 227.45 (6m), Stats.

(b) **A** presiding officer may issue protective orders according to the provisions of s. 805.07, Stats.

(4) MOTIONS All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(5) EVIDENCE The credentialing authority and the applicant shall have the right to appear in person or by counsel, to call. examine and cross–examine witnesses and to introduce evidence into the record. If the applicant submits evidence of eligibility for a credential which was not submitted to the credentialing authority prior to denial of the application, the presiding officer may request the credentialing authority to reconsider the application and the evidence of eligibility not previously considered.

(6) BRIEFS. The presiding officer may require the filing of briefs.

(7) LOCATION OF HEARING. **All** hearings shall be held at the offices of the department in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.10 Service. Service of any document on an applicant may be made by mail addressed to the applicant at the last address filed in writing by the applicant with the credentialing authority. Service by mail is complete on the date of mailing.

History: Cr. Register, October, 1985, No. 358, eff. 11–1–85; **renum. from RL 1.06 and am., Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.11 Failure to appear. In the event that neither the applicant nor his or her representative appears at the time and place designated for the hearing, the crcdentialing authority may take action based upon the record as submitted. By failing to appear, an applicant waives any right to appeal before the credentialing authority which denied the license.

History: Cr. Register, October, 1985. No. 358, eff. 11–1–85; **renum. from RL 1.07 and am., Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.12 Withdrawal of request. A request for hearing may be withdrawn at any time. Upon receipt of a request for withdrawal, the credentialing authority shall issue an order affirming the withdrawal of a request for hearing on the denial.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.13 Transcription fees. (1) The fee charged for a transcript of a proceeding 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 indigency signed under oath. For purposes of this section, a determination of indigency shall be based on the standards used for making a determination of indigency under s. 977.07, Stats.

History: Cr., Register, July, 1996, No. 487, eff. 8–1–96.

Chapter RL 1

APPENDIX I

NOTICE OF INTENT TO DENY

[DATE]
[NAME and
ADDRESS OF APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Intent to Deny

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALING AUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL]. On the basis of the application submitted, the [CREDENTIALING AUTHORITY] intends to deny your application for reasons identified below unless, within 45 calendar days from the date of the mailing of this notice, the [CREDENTIALING AUTHORITY] receives additional information which shows that you meet the requirements for a credential.

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE, RULE OR OTHER STANDARD UPON
WHICH THE DENIAL WILL BE BASED]

If the [CREDENTIALING AUTHORITY] does not receive additional information within the 45 day period, this notice of intent to deny shall operate as a notice of denial and the 45 day period you have for requesting a hearing shall commence on the date of mailing of this notice of intent to deny.

_____
[Designated Representative of Credentialing Authority]

PLEASE NOTE that you have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. RL 1 of the Wisconsin Administrative Code. If you do not submit additional information in support of your application, you may request a hearing within 45 calendar days after the mailing of this notice. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708–8935

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential, and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing of the [CREDENTIALING AUTHORITY'S'] decision. Under s. RL 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued with 45 days of its receipt by the [CREDENTIALING AUTHORITY]. Time periods for a petition for review begin to run 45 days after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

Chapter RL 1

APPENDIX II

NOTICE OF DENIAL

[DATE]
[NAME and
ADDRESS OF APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Denial

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALING AUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL] and denies the application for the following reasons:

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE, RULE OR OTHER STANDARD UPON
WHICH THE DENIAL WILL BE BASED]

_____
[Designated Representative of Credentialing Authority]

PLEASE NOTE that you have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. RL 1 of the Wisconsin Administrative Code. You may request a hearing within 45 calendar days after the mailing of this notice of denial. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708–8935

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential, and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing of the [CREDENTIALING AUTHORITY'S] decision. Under s. RL 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued within 45 days of its receipt by the [CREDENTIALING AUTHORITY]. Time periods for a petition for review begin to run 45 days after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

Chapter RL 2

PROCEDURES FOR PLEADING AND HEARINGS

RL 2.01 Authority.
RL 2.02 Scope; kinds of proceedings.
RL 2.03 Definitions.
RL 2.035 Receiving informal complaints.
RL 2.036 Procedure for settlement conferences.
RL 2.037 Parties to a disciplinary proceeding.
RL 2.04 Commencement of disciplinary proceedings.
RL 2.05 Pleadings to be captioned.
RL 2.06 Complaint.
RL 2.07 Notice ofhearing.
RL 2.08 Service and filing of complaint, notice of hearing and other papers.
RL 2.09 Answer.
RL 2.10 Administrative law judge.
RL2.11 Prehearing conference.
RL 2.12 Settlements.
RL 2.13 Discovery.
RL2.14 Default.
RL2.15 Conduct of hearing.
RL 2.16 Witness fees and costs.
RL 2.17 Transcription fees.
RL 2.18 Assessment of costs.

RL 2.01 Authority. The rules in ch. RL 2 are adopted pursuant to authority in s. 440.03 (1), Stats., and procedures in ch. 227, Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. Register, May, 1982, No. **317,** eff. 6–1–82.

RL 2.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in class 2 proceedings, as defined in s. 227.01 (3) (b), Stats., against licensees before the department and all disciplinary authorities attached to the department, except that s. RL 2.17 applies also to class 1 proceedings, as defined in s. 227.01 (3) (a), Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. Register, May, 1982, No. 317, eff. 6–1–82; corrections made under s. 13.93(2m)(b)7., Stats., Register, **May,** 1988, No. 389; am. Register, June, 1992, No. 438. eff. 7–1–92.

RL 2.03 Definitions. In this chapter:

(1) "Complainant" means the person who signs a complaint.

(2) "Complaint" means a document which meets the requirements of ss. RL 2.05 and 2.06.

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

(4) "Disciplinary authority" means the department or the attached examining board or board having authority to revoke the license of the holder whose conduct is under investigation.

(5) "Disciplinary proceeding" means a proceeding against one or more licensees in which a disciplinary authority may determine to revoke or suspend a license, to reprimand a licensee, to limit a license, to impose a forfeiture, or to refuse to renew a license because of a violation of law.

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

(7) "Informal complaint" means any written information submitted to the division or any disciplinary authority by any person which requests that a disciplinary proceeding be commenced against a licensee or which alleges facts, which if true, warrant discipline.

(8) "Licensee" means aperson, partnership, corporation or association holding any license, permit, certificate or registration granted by a disciplinary authority or having any right to renew a license, permit, certificate or registration granted by a disciplinary authority.

(9) "Respondent" means the person against whom a disciplinary proceeding has been commenced and who is named as respondent in a complaint.

(10) "Settlement conference" means a proceeding before a disciplinary authonty or its designee conducted according to s. RL 2.036, in which a conference with one or more licensee is held to attempt to reach a fair disposition of an informal complaint prior to the commencement of a disciplinary proceeding.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; **am.** (1) and (6), renum. (7) and (8) to be (8) and (9), cr. (7), Register, May, 1982, No. 317, eff. 61 – 82; r. (1), renum. (2) to (4) to be (1) to (3), cr. (4) and (10), **am.** (5), (71 and (8), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.035 Receiving informal complaints. All informal complaints received shall be referred to the division for filing, screening and, if necessary, investigation. Screening shall be done by the disciplinary authority, or, if the disciplinary authority directs, by a disciplinary authority member or the division. In this section, screening is a preliminary review of complaints to determine whether an investigation is necessary. Considerations in screening include, but are not limited to:

(1) Whether the person complained against is licensed;

(2) Whether the violation alleged is a fee dispute;

(3) Whether the matter alleged, if taken as a whole, is trivial; and

(4) Whether the matter alleged is a violation of any statute, rule or standard of practice.

History: Cr. Register, May, 1982, No. 317, eff. 61 – 82; am. (intro.) and (3), Register, June. 1992, No. 438, eff. 7–1–92.

RL 2.036 Procedure for settlement conferences. At the discretion of the disciplinary authority, a settlement conference may be held prior to the commencement of a disciplinary proceeding, pursuant to the following procedures:

(1) SELECTION OF INFORMAL COMPLAINTS. The disciplinary authority or its designee may determine that a settlement conference is appropriate during an investigation of an informal complaint if the information gathered during the investigation presents reasonable grounds to believe that a violation of the laws enforced by the disciplinary authority has occurred. Considerations in making the determination may include, but are not limited to:

(a) Whether the issues arising out of the investigation of the informal complaint are clear, discrete and sufficiently limited to allow for resolution in the informal setting of a settlement conference; and

(b) Whether the facts of the informal complaint are undisputed or clearly ascertainable from the documents received during investigation by the division.

(2) PROCEDURES. When the disciplinary authority or its designee has selected an informal complaint for a possible settlement conference, the licensee shall be contacted by the division to determine whether the licensee desires to participate in a settlement conference. **A** notice of settlement conference and a description of settlement conference procedures, prepared on forms prescribed by the department, shall be sent to all participants in ad-

vance of any settlement conference. A settlement conference shall not be held without the consent of the licensee. No agreement reached between the licensee and the disciplinary authority or its designee at a settlement conference which imposes discipline upon the licensee shall be binding until the agreement is reduced to writing, signed by the licensee, and accepted by the disciplinary authority.

(3) ORAL STATEMENTS AT SETTLEMENT CONFERENCE. Oral statements made during a settlement conference shall not be introduced into or made part of the record in a disciplinary proceeding.

History: Cr. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.037 Parties to a disciplinary proceeding. Parties to a disciplinary proceeding are the respondent, the division and the disciplinary authority before which the disciplinary proceeding is heard.

History: Cr. Register, May, 1982, No. 317, eff. 6–1–82; renum. from RL 2.036 and am., Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.04 Commencement of disciplinary proceedings. Disciplinary proceedings are commenced when a notice of hearing is filed in the disciplinary authority office or with a designated administrative law judge.

History: Cr. Register. February, 1979, No. 278, eff. 3–1–79; am. Register, June. 1992, No. 438. eff. 7–1–92.

RL 2.05 Pleadings to be captioned. All pleadings, notices, orders, and other papers filed in disciplinary proceedings shall be captioned: "BEFORE THE _____" and shall be entitled: "IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST _____, RESPONDENT."

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78.

RL 2.06 Complaint. A complaint may be made on information and belief and shall contain:

(1) The name and address of the licensee complained against and the name and address of the complainant;

(2) A short statement in plain language of the cause for disciplinary action identifying with reasonable particularity the transaction, occurrence or event out of which the cause arises and specifying the statute, rule or other standard alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the complainant demands that the disciplinary authority hear evidence relevant to matters alleged in this complaint, determine and impose the discipline warranted, and assess the costs of the proceeding against the respondent:" and,

(4) The signature of the complainant.

History: Cr. Register, October, 1975, No. 274. eff. 11–1–78: am. (intro.), (3) and (4), Register, June, 1992. No. 438, eff. 7–1–92.

RL 2.07 Notice of hearing. (1) A notice of hearing shall be sent to the respondent at least 10 days prior to the hearing, unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

(2) A notice of hearing to the respondent shall be substantially in the form shown in Appendix I and signed by a disciplinary authority member or an attorney in the division.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (2) (intro.), Register, February, 1979, No. 278, eff. 3–1–79; r. and recr. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.08 Service and filing of complaint, notice of hearing and other papers. (1) The complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14 (2), Stats. Service by mail is complete upon mailing.

(2) Any paper required to be filed with a disciplinary authority may be mailed to the disciplinary authority office or, if an administrative law judge has been designated to preside in the matter, to the administrative law judge and shall be deemed filed on receipt at the disciplinary authority office or by the administrative law judge. An answer under s. RL 2.09, and motions under s. RL 2.15 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the disciplinary authority. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after receipt by the disciplinary authority.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (2), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.09 Answer. (1) An answer to a complaint shall state in short and plain terms the defenses to each cause asserted and shall admit or deny the allegations upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a complaint are admitted when not denied in the answer.

(4) An answer to a complaint shall be filed within 20 days from the date of service of the complaint.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (4). Register, February, 1979, No. 278, eff. 3–1–79; am. (1), (3) and (4), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.10 Administrative law judge. (1) DESIGNATION. Disciplinary hearings shall be presided over by an administrative law judge employed by the department unless the disciplinary authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employe by the department, except that the administrative law judge may not be an employe in the division.

(2) AUTHORITY. An administrative law judge designated under this section to preside over any disciplinary proceeding has the authority described in s. 227.46 (1), Stats. Unless otherwise directed by a disciplinary authority pursuant to s. 227.46 (3), Stats., an administrative law judge presiding over a disciplinary proceeding shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case.

(3) SERVICE OF PROPOSED DECISION. Unless otherwise directed by a disciplinary authority, the proposed decision shall be served by the administrative law judge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the disciplinary authority objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; r. and recr. (1), Register, November. 1986, No. 371, eff. 12–1–86; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389; am. Register. June, 1992, No. 438, eff. 7–1–92.

RL 2.11 Prehearing conference. In any matter pending before the disciplinary authority the complainant and the respondent, or their attorneys, may be directed by the disciplinary authority or administrative law judge to appear at a conference or to participate in a telephone conference to consider the simplifica-

tion of issues, the necessity or desirability of amendments to the pleadings, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; **am.** Register. June, 1992, No. 438, eff. 1992.

RL 2.12 Settlements. No stipulation or settlement agreement disposing of a complaint or informal complaint shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the disciplinary authority.

History: Cr. Register. October, 1978. No. 274, eff. 11–1–78; am. Register, June, 1992, No. 438. eff. 7–1–91.

RL 2.13 Discovery. The person prosecuting the complaint and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats. or other remedies as are appropriate for failure to comply with such orders may be made by the presiding officer.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78.

RL 2.14 Default. If the respondent fails to answer as required by s. RL 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence. The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter.

History: Cr. Register, October, 1978. No. 274, eff. 11–1–78; am. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.15 Conduct of hearing. (1) PRESIDING OFFICER. The hearing shall be presided over by a member of the disciplinary authority or an administrative law judge designated pursuant to s. RL 2.10.

(2) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) EVIDENCE. The complainant and the respondent shall have the right to appear in person or by counsel, to call, examine, and cross–examine witnesses and to introduce evidence into the record.

(4) BRIEFS. The presiding officer may require the filing of briefs.

(5) MOTIONS. All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(6) ADJOURNMENTS. The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07(5), Stats. A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) A presiding officer may issue protective orders according to the provision the provisions of s. 805.07, Stats.

(8) LOCATION OF HEARING. All hearings shall be held at the offices of the department of regulation and licensing in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr. Register, October, 1978, No. 274. eff. 11–1–78; am. (1), **(5)** and (6), cr. (X), Register, June, 1992, No. 438. eff. 7–1–92.

RL 2.16 Witness fees and costs. Witnesses subpoenaed at the request of the division or the disciplinary authority shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78: **am.** Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.17 Transcription fees. (1) The fee charged for a transcript of a proceeding 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 S.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 arnong 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 indigency signed under oath.

History: Cr. Register, October, 1978. No. 274, eff. 11–1–78; am. (1) Register, **May,** 1982, No. 317, eff. 6–1–82; r. and recr. Register, **June,** 1992, No. 438, eff. 7–1–92; **am.(1)** (b), Register, August, 1993, No. 452, eff. 9–1–93.

RL 2.18 Assessment of costs. (1) The proposed decision of an administrative law judge following hearing shall include a recommendation whether all or part of the costs of the proceeding shall be assessed against the respondent.

(2) If a respondent objects to the recommendation of an administrative law judge that costs be assessed, objections to the assessment of costs shall be filed, along with any other objections to the proposed decision, within the time established for filing of objections.

(3) The disciplinary authority's final decision and order imposing discipline in a disciplinary proceeding shall include a determination whether all or part of the costs of the proceeding shall be assessed against the respondent.

(4) When costs are imposed, the division and the administrative law judge shall file supporting affidavits showing costs incurred within 15 days of the date of the final decision and order. The respondent shall file any objection to the affidavits within 30 days of the date of the final decision and order. The disciplinary authority shall review any objections, along with the affidavits, and affirm or modify its order without a hearing.

History: Cr. Register, June, 1992, No. 438, eff. 7–1–92.

Chapter RL 2
APPENDIX I
NOTICE OF HEARING

THE STATE OF WISCONSIN

To each person named above as a respondent:

You are hereby notified that disciplinary proceedings have been commenced against you before the (#1). The Complaint, which is attached to this Notice, states the nature and basis of the proceeding. This proceeding may result in disciplinary action taken against you by the (#2). This proceeding is a class 2 proceeding as defined in **s.** 227.01 (3) (b), Wis. **Stats.**

Within 20 days from the date of service of the complaint, you must respond with a written Answer to the allegations of the Complaint. You may have an attorney help or represent you. The Answer shall follow the general rules of pleading contained in **s.** RL 2.09. If you do not provide a proper Answer within 20 days, you will be found to be in default, and a default judgment may be entered against you on the bais of the complaint and other evidence and the (#3) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.

The original of your Answer should be filed with the Administrative Law Judge who has been designated to preside over this matter pursuant to **s.** RL 2.10, who is:

(#4)
Department of Regulation and Licensing
Office of Board Legal Services
P. **O.** Box 8935
Madison, Wisconsin 53708

You should also file a copy of your Answer with the complainant's attorney, who is:

(#5)
Department of Regulation and Licensing
Division of Enforcement
P. **O.** Box 8935
Madison, Wisconsin 53708

A hearing on the matters contained in the Complaint will be held at the time and location indicated below:

Hearing Date, **Time and Location**

Date:	(#6)
Time:	(#7)
Location:	Room(#8)
	1400 East Washington Ave
	Madison, Wisconsin

or as soon thereafter as the matter may be heard. The questions to be determined at this hearing are whether the license previously issued to you should be revoked or suspended, whether such license should be limited, whether you should be reprimanded, whether, if authorized by law, a forfeiture should be imposed, or whether any other discipline should be imposed on you. You may be represented by an attorney at the hearing. The legal authority and procedures under which the hearing is to be held is set forth in **s.** 227.44, Stats., **s. (** #9), Stats., ch. RL 2, and s. (#10).

If you do not appear for hearing at the time and location set forth above, you will be found to be in default, and a default judgment may be entered against you on the basis of the complaint and other evidence and the (#11) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.

If you choose to be represented by an attorney in this proceeding, the attorney **is** requested to file a Notice of Appearance with the disciplinary authority and the Administrative Law Judge within 20 days of your receiving this Notice.

Dated at Madison, Wisconsin this _____ day of, _____ 20

_____
Signature of Licensing Authority Member or Attorney
(#12)

INSERTIONS

1. Disciplinary authority
2. Disciplinary authority
3. Disciplinary authority
4. Administrative Law Judge
5. Complainant's attorney
6. Date of hearing
7. Time of hearing
8. Location of hearing
9. Legal authority (statute)
10. Legal authority (administrative code)
11. Disciplinary authority
12. Address and telephone number of person signing the complaint

Chapter RL 3

ADMINISTRATIVE INJUNCTIONS

RL 3.01	Authority.	RL 3.09	Administrative law judge
RL 3.02	Scope; kinds of proceedings.	RL3.10	Prehearing conference.
RL 3.03	Definitions.	RL3.11	Settlements.
RL 3.04	Pleadings to be captioned.	RL **3.12**	Discovery.
RL 3.05	Petition for administrative injunction.	RL3.13	Default.
RL 3.06	Notice of hearing.	RL 3.14	Conduct of hearing.
RL 3.07	Service and filing of petition, notice **of** hearing and other papers	RL 3.15	Witness fees and costs.
RL 3.08	Answer.	RL 3.16	Transcription fees.

RL 3.01 Authority. The rules in ch. RL 3 are adopted pursuant to authority in **ss.** 440.03 (1) and 440.21, Stats.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in public hearings before the department to determine and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and for issuance of an administrative injunction.

History: Cr Register, July. 1993, No 451, eff 8–1–93

RL 3.03 Definitions. In this chapter:

(1) "Administrative injunction" means a special order enjoining a person from the continuation of a practice or use of a title without a credential required under chs. 440 to 459, Stats.

(2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 459, Stats.

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

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

(5) "Petition" means a document which meets the requirements of **s.** RL 3.05.

(6) "Respondent" means the person against whom an administrative injunction proceeding has been commcnccd and who is named as respondent in a petition.

History: Cr Register, July, 1993, No 451. eff. 8–1–93

RL 3.04 Pleadings to be captioned. All pleadings, notices. orders, and other papers filed in an administrative injunction proceeding shall be captioned: "BEFORE THE DEPARTMENT OF REGULATION AND LICENSING and shall be entitled: "IN THE MATTER OF **A** PETITION FOR AN ADMINISTRATIVE INJUNCTION INVOLVING _____, RESPONDENT."

History: Cr. Register, July, 1993, No 451, eff. 8–1–93.

RL 3.05 Petition for administrative injunction. A petition for an administrative injunction shall allege that a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats. A petition may be made on information and belief and shall contain:

(1) The name and address of the respondent and the name and address of the attorney in the division who is prosecuting the petition for the division;

(2) A short statement in plain language of the basis for the division's belief that the respondent has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and specifying the statute or rule alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the division demands that a public hearing be held and that the department issue a special order enjoining the person from the continuation of the practice or use of the title;" and,

(4) The signature of an attorney authorized by the division to sign the petition.

History: Cr. Register, July. 1993, No. 451, eff. 8–1–93.

RL 3.06 Notice of hearing. (1) A notice of hearing shall be sent to the respondent by the division at least 10 days prior to the hearing, except in the case of an emergency in which shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

(2) A notice of hearing to the respondent shall be essentially in the form shown in Appendix **I** and signed by an attorney in the division.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.07 Service and filing of petition, notice of hearing and other papers. (1) The petition, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14 (2), Stats. Service by mail is complete upon mailing.

(2) Any paper required to be filed with the department may be mailed to the administrative law judge designated to preside in the matter and shall be deemed filed on receipt by the administrative law judge. An answer under **s.** RL 3.08, and motions under **s.** RL 3.14 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the department. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after receipt by the department.

History Cr. Register, **July,** 1993, No. 451, eff. 8–1–93.

RL 3.08 Answer. (1) An answer to a petition shall state in short and plain terms the defenses to each allegation asserted and shall admit or deny the allegations upon which the division relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or to provide a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a petition are admitted when not denied in the answer.

(4) An answer to a petition shall be filed within 20 days from the date of service of the petition.

History: Cr. Register. July, 1993, No. 451, eff. 8–1–93.

RL 3.09 Administrative law judge. (1) DESIGNATION. Administrative injunction proceedings shall be presided over by an administrative law judge. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employe by the department. The administrative law judge may not be an employe in the division.

(2) AUTHORITY. An administrative law judge designated undcr this section has the authority described in s. 227.46 (1), Stats. Unless otherwise directed under s. 227.46 (3), Stats., an administrative law judge shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted by the department as the final decision in the case.

(3) SERVICE OF PROPOSED DECISION. The proposed decision shall be served by the administrative law judge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the department objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.10 Prehearing conference. In any matter pending before the department, the division and the respondent may be directed by the administrative law judge to appear at a conference or to participate in a telephone conference to consider the simplification of issues, the necessity or desirability of amendments to the pleading, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

History: Cr. Register, July, 1993, No. 451. eff. 8–1–93.

RL 3.11 Settlements. No stipulation or settlement agreement disposing of a petition or informal petition shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the department.

History: Cr. Register, July, 1993, No. 451, eff. **8-1–93.**

RL 3.12 Discovery. The division and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats., or other remedies as are appropriate for failure to comply with such orders may be made by the administrative law judge.

History: Cr. Register, July. 1993, No. 451, eff. 8–1–93.

RL 3.13 Default. If the respondent fails to answer as required by s. RL 3.08 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the department may make findings and enter an order on the basis of the petition and other evidence. The department may, for good cause, relieve the respondent from the effect of the findings and permit the respondent to answer and defend at any time before the department enters an order or within a reasonable time thereafter.

History: Cr. Register, July. 1993, No. 451, eff. 8–1–93.

RL 3.14 Conduct of hearing. (1) ADMINISTRATIVE LAW JUDGE. The hearing shall be presided over by an administrative law judge designated pursuant to s. RL 3.09.

(2) RECORD. **A** stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) EVIDENCE. The division and the respondent shall have the right to appear in person or by counsel, to call, examine, and cross–examine witnesses and to introduce evidence into the record.

(4) BRIEFS. The administrative law judge may require the filing of briefs.

(5) MOTIONS. (a) *How made.* An application to the administrative law judge for an order shall be by motion which, unless made during a hearing or prehearing conference, shall be in writing, state with particularity the grounds for the order, and set forth the relief or order sought.

(b) *Filing.* A motion shall be filed with the administrative law judge and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(c) *Supporting* ***papers.*** Any briefs or other papers in support of a motion, including affidavits and documentary evidence, shall be filed with the motion.

(6) ADJOURNMENTS. The administrative law judge may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07(5), Stats. A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) An administrative law judge may issue protective orders according to the provisions of s. 805.07, Stats.

(8) LOCATION OF HEARING. All hearings shall be held at the offices of the department in Madison unless the administrative law judge determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr. Register, July, 1993, No. 451. eff. 8–1–93.

RL 3.15 Witness fees and costs. Witnesses subpoenaed at the request of the division shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.16 Transcription fees. (1) The fee charged for a transcript of a proceeding 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.

Note: The State Operational Purchasing Bulletin may be obtained from the Department of Administration, State Bureau of Procurement, 101 **E.** Wilson Street, **6th** Floor, P.O. Box 7867, Madison, Wisconsin 53707–7867.

(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 an affidavit showing that the person is indigent according to the standards adopted in rules of the state public defender under ch. 977, Stats.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

Chapter RL 3

APPENDIX I

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULAITON AND LICENSING

IN THE MATTER OF A PETITION : FOR AN ADMINISTRATIVE; NOTICE OF INJUNCTION INVOLVING : HEARING

(#1),
Respondent.

NOTICE OF HEARING

TO: (#2)

You are hereby notified that a proceeding for an administrative injunction has been commenced against you by the Department of Regulation and Licensing. The petition attached to this Notice states the nature and basis of the proceeding. This proceeding may result in a special order against you under **s.** 440.21, Stats., enjoining you from the continuation of a practice or use of a title.

A HEARING ON THE MATTERS CONTAINED IN THE PETITION WILL BE HELD AT:

Date: (#3) Time: (#4)
Location: Room (#5),
1400 East Washington Avenue
Madison, Wisconsin

or as soon thereafter as the matter may be heard.
The questions to be determined at this hearing are whether (#6).

Within 20 days from the date of service of the Notice, you must respond with a written Answer to the allegations of the Petition. You may have an attorney help or represent you. Your Answer must follow the rules of pleading in **s.** RL 3.08 of the Wisconsin Administrative Code. File your Answer with the Administrative Law Judge for this matter who is:

(#7), Department of Regulation and Licensing, Office of Board Legal Services,
P.O. Box 8935,
Madison, Wisconsin 53708

Please file a copy of your answer with the division's attorney, who is:

(#8), Division of Enforcement,
Department of Regulation and Licensing,
P.O. Box 8935,
Madison, Wisconsin 53708

If you do not provide a proper Answer within 20 days or do not appear for the hearing, you will be found to be in default and a special order may be entered against you enjoining you from the continuation of a practice or use of a title. If a special order is issued as a result of this proceeding and thereafter you violate the special order, you may be required to forfeit not more than $10,000 for each offense.

You may be represented by an attorney at the hearing. This proceeding is a class 2 proceeding as defined in **s.** 227.01 (3) (b), Stats. If you choose to be represented by an attorney in this proceeding, the attorney is requested to file a Notice of Appearance with the Administrative Law Judge and the division within 20 days after you receive this Notice.

The legal authority and procedures under which the hearing is **to** be held are set forth in ss. 227.21, 440.44, (#9), Stats., and ch. RL 3, Wis. Admin. Code.

Dated at Madison, Wisconsin this _____day of____20__ .

_____
(...#10...), Attorney

INSERTIONS
1. Respondent
2. Respondent with address
3. Date of hearing
4. Time of hearing
5. Place of hearing
6. Issues for hearing
7. Administrative Law Judge
8. Division of Enforcement attorney
9. Legal authority (statute)
10. Division of Enforcement attorney

Chapter RL 4

DEPARTMENT APPLICATION PROCEDURES AND APPLICATION FEE POLICIES

RL 4.01 Authorization.
RL 4.02 Definitions.
RL 4.03 Time for review and determination of credential applications.
RL 4.04 Fees for examinations, reexaminations and proctoring examinations.
RL 4.05 Fee for test review.
RL 4.06 Refunds.

RL 4.01 Authorization. The following rules are adopted by the department of regulation and licensing pursuant to ss. 440.05, 440.06 and 440.07, Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; **am. Register, July, 1996, No. 487, eff. 8–1–96.**

RL 4.02 Definitions. (1) "Applicant" means a person who applies for a license, permit, certificate or registration granted by the department or a board.

(2) "Authority" means the department or the attached examining board or board having authority to grant the credential for which an application has been filed.

(3) "Board" means the board of nursing and any examining board attached to the department.

(4) "Departmcnt" means the department of regulation and licensing.

(5) "Examination" means the written and practical tests required of an applicant by the authority.

(6) "Service provider" means a party other than the department or board who provides examination services such as application processing, examination products or administration of examinations.

History: Cr. Register. October, 1978, No. 274, eff. 11–1–78; **renum. (1) to (4) to be (4), (3), (1). (5) and am. (5), cr. (2) and (6), Register, July, 1996, No. 487, eff. 8–1–96.**

RL 4.03 Time for review and determination of credential applications. (1) TIME LIMITS. An authority shall review and make a determination on an original application for a credential within 60 business days after a completed application is received by the authority unless a different period for review and determination is specified by law.

(2) COMPLETED APPLICATIONS. An application is completed when all materials necessary to make a determination on the application and all materials requested by the authority have been received by the authority.

(3) EFFECT OF DELAY. A delay by an authority in making a determination on an application within the time period specified in this section shall bc reported to the permit information center under s. 227.1 16, Stats. Delay by an authority in making a determination on an application within the time period specified in this section does not relieve any person from the obligation to secure approval from the authority nor affect in any way the authority's responsibility to interpret requirements for approval and to grant or deny approval.

History: Cr. Register, August 1992, No. 440, eff. 9–1–92; **renum. from RL 4.06 and am., Register, July, 1996, No.** 487, **eff. 8–1–96.**

RL 4.04 Fees for examinations, reexaminations and proctoring examinations. (1) EXAMINATION FEE SCHEDULE. A list of all current examination fees may be obtained at no charge from the Office of Examinations, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

(3) EXPLANATION OF PROCEDURES FOR SETTING EXAMINATION FEES. (a) Fees for examinations shall be established under s. 440.05 (1) (b), Stats., at the department's best estimate of the actual cost of preparing, administering and grading the examination or obtaining and administering an approved examination from a service provider.

(bj Examinations shall be obtained from a service provider through competitive procurement procedures described in ch. Adm 7.

(c) Fees for examination services provided by the department shall bc established based on an estimate of the actual cost of the examination services. Computation of fees for examination services provided by the department shall include standard component amounts for contract administration services, test development serviccs and written and practical test administration services.

(d) Examination fees shall be changed as needed to reflect changes in the actual costs to the department. Changes to fees shall be implemented according to par. (e).

(ej Examination fees shall be effective for examinations held 45 days or more after the date of publication of a notice in application forms. Applicants who have submitted fees in an amount less than that in the most current application form shall pay the correct amount prior to administration of the examination. Overpayments shall be refunded by the department. Initial credential fees shall become effective on the date specified by law.

(4) REEXAMINATION OF PREVIOUSLY LICENSED INDIVIDUALS. Fees for examinations ordered as part of a disciplinary proceeding or late renewal under s. 440.08 (3) (b), Stats., are equal to the fee set for reexamination in the most recent examination application form, plus $10 application processing.

(5) PROCTORING EXAMINATIONS FOR OTHEK STATES. (a) Examinations administered by an authority of the state may be proctored for persons applying for credentials in another state if the person has been determined eligible in the other state and meets this state's application deadlines. Examinations not administered by an authority of the state may only be proctored for Wisconsin residents or licensees applying for credentials in another state.

(b) Department fees for proctoring examinations of persons who are applying for a credential in another state are equal to the cost of administering the examination to those persons, plus any additional cost charged to the department by the service provider.

History: Cr. Register, October, 1978. No. 274, eff. 11–1–78; r. and recr. Register, May, 1986. No. 365, eff. 6–1–86; am. Register, December, 1986, No. 372, eff. 1–1–87; am. Register, September, 1987, No. 381, eff. 10–1–87; am. (3), Register, September, 1988, No. 393, eff. 10–1–88; am. (3), Register, September. 1990, No. 417, eff. 10–1–90; r. and recr. (1) to (3), cr. (4), renum. Figure and am. Register, April. 1992. No. 436, eff. 5–1–92; am. (4) Figure, cr. (5), Register, **July,** 1993, No. 451. eff. 8–1–93; r. **and** recr. Register, November, 1993, No. 455, eff. 12–1–93; **r. (2), am. (3) (a), (b), (c). (e), (4). (5), Register, July, 1996, No.** 487, **eff. 8–1–96.**

RL 4.05 Fee for test review. (1) The fee for supervised review of examination results by a failing applicant which is conducted by the department is $28.

(2) The fee for review of examination results by a service provider is the fee established by the service provider.

History: Cr. Register, April, 1992. No. 436, eff. 5–1–92; **am. Register, July, 1996, No.** 487, **eff. 8–1–96.**

RL 4.06 Refunds. (1) A refund of all but $10 of the applicant's examination fee and initial credential fee submitted to the department shall be granted if any of the following occurs:

(a) An applicant is found to be unqualified for an examination administered by the authority.

(b) An applicant is found to be unqualified for a credential for which no examination is required.

(c) **An** applicant withdraws an application by written notice to the authority at least 10 days in advance of any scheduled examination.

(d) An applicant who fails to take an examination administered by the authority either provides written notice at least 10 days in advance of the examination date that the applicant is unable to take the examination, or if written notice was not provided, submits a written explanation satisfactory to the authority that the applicant's failure to take the examination resulted from extreme personal hardship.

(2) An applicant eligible for a refund may forfeit the refund and choose instead to take an examination administered by the authority within 18 months of the originally scheduled examination at no added fee.

(3) An applicant who misses an examination as a result of being called to active military duty shall receive a full refund. The applicant requesting the refund shall supply a copy of the call up orders or a letter from the commanding officer attesting to the call up.

(4) Applicants who pay fees to service providers other than the department are subject to the refund policy established by the service provider.

History: Cr. Register. October. 1978, No. 274. eff. 11–1–78; **am.** (2) (intro.), Register, May, 1986, No. 365, eff. 6–1–86; **am.** (1) and (2) (intro.), renum. (2) (c) and (3) to be *(3)* and (4). cr. (5), Register, September, 1987, No. 381, **eff.** 10–1–87; r. and recr. (1) and (4), Register. **April,** 1992, No. 436. eff. 5–1–92; r. (2). renum. (3) to (5) to be (2) to (4), Register. July, 1993, No. 451, eff. 8–1–93; **renum. from RL 4.03 and am., Register, July, 1996, No. 487, eff. 8–1–96.**

Chapter RL 6

SUMMARY SUSPENSIONS

RL 6.01 Authority and intent.
RL 6.02 Scope.
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RL 6.04 Petition for summary suspension.
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RL 6.06 Issuance of summary suspension order.
RL 6.07 Contents of summary suspension order.
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RL 6.09 Hearing to show cause.
RL 6.10 Commencement of disciplinary proceeding
RL6.11 Delegation.

RL 6.01 Authority and intent. (1) This chapter is adopted pursuant to authority in ss. 227.11 (2) (a) and 440.03 (1), Stats., and interprets s. 227.51 (3), Stats.

(2) The intent of the department in creating this chapter is to specify uniform procedures for summary suspension of licenses, permits, certificates or registrations issued by the department or any board attached to the department in circumstances where the public health, safety or welfare imperatively requires emergency action.

History: Cr. Register, May, 1988, No. 389, eff. 6–1–88.

RL 6.02 Scope. This chapter governs procedures in all summary suspension proceedings against licensees before the department or any board attached to the department. To the extent that this chapter is not in conflict with s. 448.02 (4), Stats., the chapter shall also apply in proceedings brought under that section.

History: Cr. Register, May, 1988, No. 389, eff. 6-1–88.

RL 6.03 Definitions. In this chapter:

(1) "Board" means the bingo control board, real estate board or any examining board attached to the department.

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

(3) "Disciplinary proceeding" means a proceeding against one or more licensees in which a licensing authority may determine to revoke or suspend a license, to reprimand a licensee, or to limit a license.

(4) "License" means any license, permit, certificate, or registration granted by a board or the department or a right to renew a license, permit, certificate or registration granted by a board or the department.

(5) "Licensee" means aperson, partnership, corporation or association holding any license.

(6) "Licensing authority" means the bingo control board, real estate board or any examining board attached to the department, the department for licenses granted by the department, or one acting under a board's or the department's delegation under s. RL 6.11.

(7) "Petitioner" means the division of enforcement in the department.

(8) "Respondent" means a licensee who is named as respondent in a petition for summary suspension.

History: Cr Register, May, 1988, No 389, eff 6-1–88

RL 6.04 Petition for summary suspension. (1) A petition for a summary suspension shall state the name and position of the person representing the petitioner, the address of the petitioner, the name and licensure status of the respondent, and an assertion of the facts establishing that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

(2) A petition for a summary suspension order shall be signed upon oath by the person representing the petitioner and may be made on information and belief.

(3) The petition shall be presented to the appropriate licensing authority.

History: Cr. Register. May, 1988, No 389, eff. 6-1–88.

RL 6.05 Notice of petition to respondent. Prior to the presenting of the petition, the petitioner shall give notice to the respondent or respondent's attorney of the time and place when the petition will be presented to the licensing authority. Notice may be given by mailing a copy of the petition and notice to the last-known address of the respondent as indicated in the records of the licensing authority as provided in s. 440.1 1 (2), Stats. as created by 1987 Wis. Act 27. Notice by mail is complete upon mailing. Notice may also be given by any procedure described in s. 801.11, Stats.

History: Cr. Register. May, 1988, No 389, eff. 6-1–88.

RL 6.06 Issuance of summary suspension order. (1) If the licensing authority finds that notice has been given under s. RL 6.05 and finds probable cause to belicvc that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license, the licensing authority may issue an order for summary suspension. The order may be issued at any time prior to or subsequent to the commencement of a disciplinary proceeding under s. RL 2.04.

(2) The petitioner may establish probable cause under sub. (1) by affidavit or other evidence.

(3) The summary suspension order shall be effective upon service under s. RL 6.08, or upon actual notice of the summary suspension order to the respondent or respondent's attorney, whichever is sooner, and continue through the effective date of the final decision and order made in the disciplinary proceeding against the respondent, unless the license is restored under s. RL 6.09 prior to a formal disciplinary hearing.

History: Cr Register, May, 1988, No 389, eff. 6-1–88.

RL 6.07 Contents of summary suspension order. The summary suspension order shall include the following:

(1) A statement that the suspension order is in effect and continues until the effective date of a final order and decision in the disciplinary proceeding against the respondent, unless otherwise ordered by the licensing authority;

(2) Notification of the respondent's right to request a hearing to show cause why the summary suspension order should not be continued;

(3) The name and address of the licensing authority with whom a request for hearing should be filed;

(4) Notification that the hearing to show cause shall be scheduled for hearing on a date within 20 days of receipt by the licensing authority of respondent's request for hearing, unless a later time is requested by or agreed to by the respondent;

(5) The identification of all witnesses providing evidence at the time the petition for summary suspension was presented and identification of the evidence used as a basis for the decision to issue the summary suspension order;

(6) The manner in which the respondent or the respondent's attorney was notified of the petition for summary suspension; and

(7) A finding that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

History: Cr. Register, May, 1988. No. 389, eff. 6–1–88.

RL 6.08 Service of summary suspension order. An order of summary suspension shall be served upon the respondent in the manner provided in s. 801.11, Stats., for service of summons.

History: Cr. Register, May, 1988, No. 389, eff. 6-1–88.

RL 6.09 Hearing to show cause. (1) The respondent shall have the right to request a hearing to show cause why the summary suspension order should not be continued until the effective date of the final decision and order in the disciplinary action against the respondent.

(2) The request for hearing to show cause shall be filed with the licensing authority which issued the summary suspension order. The hearing shall be scheduled and heard promptly by the licensing authority but no later than 20 days after the filing of the request for hearing with the licensing authority, unless a later time is requested by or agreed to by the licensee.

(3) At the hearing to show cause the petitioner and the respondent may testify, call, examine and cross–examine witnesses, and offer other evidence.

(4) At the hearing to show cause the petitioner has the burden to show by a preponderance of the evidence why the summary suspension order should be continued.

(5) At the conclusion of the hearing to show cause the licensing authority shall make findings and an order. If it is determined that the summary suspension order should not be continued, the suspended license shall be immediately restored.

History: Cr. Register, May, 1988. No. 389, eff. 6-1–88.

RL 6.10 Commencement of disciplinary proceeding. (1) A notice of hearing commencing a disciplinary proceeding under s. RL 2.06 against the respondent shall be issued no later than 10 days following the issuance of the summary suspension order or the suspension shall lapse on the tenth day following issuance of the summary suspension order. The formal disciplinary proceeding shall be determined promptly.

(2) If at any time the disciplinary proceeding is not advancing with reasonable promptness, the respondent may make a motion to the hearing officer or may directly petition the appropriate board, or the department, for an order granting relief.

(3) If it is found that the disciplinary proceeding is not advancing with reasonable promptness, and the delay is not as a result of the conduct of respondent or respondent's counsel, a remedy, as would be just, shall be granted including:

(a) An order immediately terminating the summary suspension; or

(b) An order compelling that the disciplinary proceeding be held and determined by a specific date.

History: Cr. Register, May, 1988, No. 389, eff. 6-1–88.

RL 6.11 Delegation. (1) A board may by a two–thirds vote:

(a) Designate under s. 227.46(1), Stats., a member of the board or an employe of the department to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. RL 6.09; or

(b) Appoint a panel of no less than two--thirds of the membership of the board to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. RL 6.09.

(2) In matters in which the department is the licensing authority, the department secretary or the secretary's designee shall rule on a petition for summary suspension, issue a summary suspension order, and preside over and rule in a hearing provided for in s. RL 6.09.

(3) Except as provided in s. 227.46(3), Stats., a delegation of authority under subs. (1) and (2) may be continuing.

History: Cr. Register. May, 1988, No. 389, eff. 6–1–88.

Chapter RL 7

IMPAIRED PROFESSIONALS PROCEDURE

RL 7.01 Authority and intent,
RL 7.02 Definitions.
RL 7.03 Referral 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
RL 7.11 Approval of drug testing programs.

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 credential holders 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 credential holders committed to their own recovery. This procedure is intended to apply when allegations are made that a credential holder has practiced a profession while impaired by alcohol or other drugs or when a credential holder contacts the department and requests to participate in the procedure. It is not intended to apply in situations where allegations exist that a credential holder 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 expcrtisc to handle problems involving impaired professionals.

History: Cr. Register. January, 1991, No. 421, eff. 2–1–91; **am.** (2), Register, July, 1996, No. 487, eff. 8–1–96.

RL 7.02 Definitions. In this chapter:

(1) "Board" means any examining board or affiliated credentialing 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 credential holders 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.

(2a) "Coordinator" means a department employee who coordinates the impaired professionals procedure.

(2b) 'Credential holder" means a person holding any license, permit, certificate or registration granted by the department or any board.

(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 credential holder or which alleges facts, which if true, warrant discipline. "Informal complaint" includes requests for disciplinary proceedings under s. 440.20, Stats.

(6) "Medical review officer" means a medical doctor or doctor of osteopathy who is a licensed physician and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positivc test result together with an individual's medical history and any other relevant biomedical information.

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

(8) "Program" means any entity approved by the department to provide the full scope of drug testing services for the department.

History: Cr Register, January, 1991, No. 421, **eff.** 2–1–91; am. (1), (2), (5), cr. (2a), (2b), r (6), Register, July, 1996, No. **487,** eff. 8–1–96, **cr. *(6)* and (8), Register, January, 2001, No. 541, eff. 2–1–01.**

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 credential holder 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 credential holder'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 and coordinator who shall review all relevant materials including investigative results and the credential holder's application for participation. Eligibility shall be determined upon criteria developed by each credcntialing authority which shall include at a minimum the credential holder's past or pending criminal, disciplinary or malpractice record, the circumstances of the credential holder's referral to the department, the seriousness of other alleged violations and the credential holder'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). The board liaison shall have responsibility to make the determination of eligibility for the procedure.

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

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

(6) A credential holder determined to be ineligible for the procedure by the board liaison or the department may, within 10 days of notice of the determination, request the credentialing authority to review the adverse determination.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; am. (2) to (6), Register, July, 1996. No. 487, eff. 8–1–96.

RL 7.04 Requirements for participation. (1) A credential holder 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.

(cj 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.

(dj Comply with any treatment recommendations and work restrictions or conditions deemed necessary by the board liaison or department.

(e) Submit random monitored blood or urine samples for the purpose of screening for alcohol or controlled substances provided by a drug testing program approved by the department under s. RL 7.11, as required.

(f) Execute releases valid under state and federal law in the form shown in Appendix I to allow access to the credential holder's counseling, treatment and monitoring records.

(g) Have the credential holder's supervising therapist and work supervisors file quarterly reports with the coordinator.

(h) Notify the coordinator of any changes in the credential holder's employer within 5 days.

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

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

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

History: Cr. Register. January, 1991, No. 421. eff. 2–1–91; am. Register. July, 1996, No. 487, eff. 8–1–96: **am.** (1) **(e), Register, January, 2001, No.** 541, **eff.** 2–1-01.

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 credential holder 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 credential holder of the need for treatment for chemical dependency;

(c) An agreement to participate at the credential holder's expense in an approved treatment regimen.

(d) *An* agreement to submit to random monitored drug screens provided by a drug testing program approved by the department under s. RL 7.11 at the credential holder's cxpcnse, if deemed necessary by the board liaison.

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

(f) An agreement to furnish the coordinator with signed consents for release of information from treatment providers and employers authorizing the release of information to the coordinator and board liaison for the purpose of monitoring the credential holder's participation in the procedure.

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

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

(2) The board liaison may include additional requirements for an individual credential holder, if the circumstances of the informal complaint or the credential holder'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.

History: Cr. Register, January, 1991, No. 421. eff. 2–1–91; **am.** (1) (a) to (g) and (2), Register, July, 1996, No. 487, eff. 8–1–96; **am. (1) (d), Register, January, 2001, No.** 541, **eff.** 2–1-01.

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 credential holder 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 and coordinator.

(d) The facility, through the credential holder's supervising therapist, agrees to file reports as required, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, 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 credential holder 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 credential holder's area of need.

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

(c) Forwards copies of the therapist's treatment regimen and office protocols to the coordinator.

(d) Agrees to file reports as required to the coordinator, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, 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 credential holder, the credential holder may, within 10 days of notice of the determination, request the board to review the board liaison's adverse determination.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; am. Register, July, 1996, No. 487. eff. 8–1–96; **r. (1) (d) and (2) (d), renum. (1) (e) and (2) *(e)* to be (1) (d) and (2) (d) and am., Register, January, 2001, No.** 541, **eff.** 2–1-01.

RL 7.07 Intradepartmental referral. (1) A credential holder who contacts the department and requests to participate in the procedure shall be referred to the board liaison and the coordinator for detennination 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) Credential holders 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) Credential holders 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) Credential holders who do not complete an agreement for participation where the board liaison is in possession of information indicating a violation of law.

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

History: Cr. Register, January, 1991, No. 421. eff. 2–1–91; **am. (1), (3)** (a) to (d), Register, **July.** 1996, No. 487, eff. 8–1–96.

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 credential holder, 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 s. 51.42 or 51.437, Stats., and their staffs and by treatment facilities are confidential under **s. 5**1.30, 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.

History: Cr. Register, January, 1991, No. 421. eff. 2–1–91; **am.** (2), Register, **July,** 1996, No. 487, eff. 8–1–96.

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

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; **am.** Register, July, **1996,** No. 487. eff. 8–1–96.

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 credential holder. 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."

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; am. Register, **July,** 1996, No. 487, **eff.** 8–1–96.

RL 7.11 Approval of drug testing programs. The department shall approve drug testing programs for use by credential holders who participate in drug and alcohol monitoring programs pursuant to agreements between the department or boards and credential holders, or pursuant to disciplinary orders. To be approved as a drug testing program for the department, programs shall satisfactorily meet all of the following standards in the areas of program administration, collection site administration, laboratory requirements and reporting requirements:

(1) Program administration requirements are:

(a) The program shall enroll participants by setting up an account, establishing a method of payment and supplying preprinted chain–of–custody forms.

(b) The program shall provide the participant with the address and phone number of the nearest collection sites and shall assist in locating a qualified collection site when traveling outside the local area.

(c) Random selection of days when participants shall provide specimens shall begin upon enrollment and the program shall notify designated department staff that selection has begun.

(d) The program shall maintain a nationwide 800 number or an internet website that is operational **24** hours per day, **7** days per week to inform participants of when to provide specimens.

(e) The program shall maintain and make available **to** the department through an internet website data that are updated on a daily basis verifying the date and time each participant was notified after random selection to provide a specimen, the date, time and location each specimen was collected, the results of drug screen and whether or not the participant complied as directed.

(f) The program shall maintain internal and external quality of test results and other services.

(g) The program shall maintain the confidentiality of participants in accordance with s. 146.82, Stats.

(h) The program shall inform participants of the total cost for each drug screen including the cost for program administration, collection, transportation, analysis, reporting and confirmation. Total cost shall not include the services of a medical review officer.

(i) The program shall immediately report to the department if the program, laboratory or any collection site fails to comply with this section. The department may remove a program from the approved list if the program fails to comply with this section.

(j) The program shall make available to the department experts to support a test result for **5** years after the test results are released to the department.

(k) The program shall not sell or otherwise transfer or transmit names and other personal identification information of the participants to other persons or entities without permission from the department. The program shall not solicit from participants presently or formerly in the monitoring program or otherwise contact participants except for purposes consistent with administering the program and only with permission from the department.

(L) The program and laboratory shall not disclose to the participant or the public the specific drugs tested.

(2) Collection site administration requirements are:

(a) The program shall locate, train and monitor collection sites for compliance with the U.S. department of transportation collection protocol under 49 CFR 40.

(b) The program shall require delivery of specimens to the laboratory within 24 hours of collection.

(3) Laboratory requirements are:

(a) The program shall utilize a laboratory that is certified by the U.S. department of health and human services, substance abuse and mental health services administration under 49 CFR 40. If the laboratory has had adverse or corrective action, the department shall evaluate the laboratory's compliance on a case by case basis.

(b) The program shall utilize a laboratory capable of analyzing specimens for drugs specified by the department.

(c) Testing of specimens shall be initiated within 48 hours of pickup by courier.

(d) All positive drug screens shall be confirmed utilizing gas chromatography in combination with mass spectrometry, mass spectrometry, or another approved method.

(e) The laboratory shall allow department personnel to tour facilities where participant specimens are tested.

(4) The requirements for reporting of results are:

(a) The program shall provide results of each specimen to designated departmcnt personnel within 24 hours of processing.

(b) The program shall inform designated departmcnt personnel of confirmed positive test results on the same day the test results are confirmed or by the next business day if the results are confirmed after hours, on the weekend or on a state or federal holiday.

(c) The program shall fax, e–mail or electronically transmit laboratory copies of drug test results at the request of the department.

(d) The program shall provide a medical review officer upon request and at the expense of the participant, to review disputed positive test results.

(e) The program shall provide chain–of–custody transfer of disputed specimens *to* an approved independent laboratory for retesting at the request of the participant or the department.

History: Cr. Register, January, 2001, Nu. 541, eff. 2-1-01.

Chapter RL 7

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 infonnation to the board liaison from those persons and institutions.

In the event of my dismissal from the Impaired Professionals Procedure, I hereby also authorize the board liaison or the board liaison's designee to provide the Division of Enforcement with the results of any investigation conducted in connection with my application to participate in the Impaired Professionals Procedure and with any documentation, including patient health care records, evidencing my failure to meet participation requirements.

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 or to provide information to the Division of Enforcement in the event of my dismissal from the Impaired Professionals Procedure.

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 rcleascs 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

Chapter RL 8

ADMINISTRATIVE WARNINGS

RL 8.01	Authority and scope.	RL 8.05	Request for a review of an administrative warning.
RL 8.02	Definitions.	RL 8.06	Procedures.
RL 8.03	Findings before issuance of an administrative warning.	RL 8.07	Transcription fees.
RL 8.04	**Issuance** of an administrative warning.		

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.

History: Cr. Register, January, 1999, No. 517, eft 2–1–99.

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 bcen filed with the department against the credential holder.

(c) The credential holder has not bcen 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 crcdential holder presents no immediate danger to the public.

(cj 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.

(ej 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.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.03 Findings before issuance of an administrative warning. Before issuance of an administrative warning, a disciplinary authonty 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.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

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.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

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 he in writing and set forth:

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

(2) The reason for requesting a review.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

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 rcvicw, the disciplinary authority may note the failure to appear in the minutes and leave the administrative warning in effect without further action.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

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.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

Chapter RL 8

APPENDIX I

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.

Chapter RL 9

DENIAL OF RENEWAL APPLICATION BECAUSE APPLICANT IS LIABLE FOR DELINQUENT TAXES

RL 9.01 Authority.
RL 9.02 Scope, nature of proceedings
RL Y.03 Definitions.
RL 9.04 Procedures for requesting the department of revenue to certify whether an applicant for renewal is liable for delinquent taxes.
RL 9.05 Denial of renewal.

RL 9.01 Authority. The rules in ch. RL 9 arc adopted under the authority in s. **440.03,** Stats.

History: Emerg. cr. eff. 11–14–96; Cr. Register. August, 1996, No. 488, eff. 9–1–96.

RL 9.02 Scope; nature of proceedings. The rules in this chapter govern the procedures for requesting the Wisconsin department of revenue to certify whether an applicant is liable for delinquent taxes owed to this state under s. 440.08 (4) (b), Stats., as created by 1995 Wis. Act **27** and amended by 1995 Wis. Act **233,** to review denial of an application for rcncwal because the applicant is liable for delinquent taxes.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

RL 9.03 Definitions. In this chapter:

(1) "Applicant" means a person who applies for renewal of a credential. "Person" in this subsection includes a business entity.

(2) "Credential" has the meaning in s. 440.01 **(2)** (a), Stats.

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

(4) "Liable for any delinquent taxes owed to this state" has the meaning set forth in s. **73.0301** (1) (c), Stats.

History Emerg. cr eff. **11–14–96; Cr. Register, August, 1996, No.** 488, **eff. 9–1–96, correction in (4) made under s. 13.93 (2m) (b) 7., Stats.**

RL 9.04 Procedures for requesting the department of revenue to certify whether an applicant for renewal is liable for delinquent taxes. (1) RENEWAL APPLICATION FORM If the department receives a renewal application that does not include the information required by s. **440.08** (2g) (b), Stats., the application shall be denied unless the applicant provides the missing information within **20** days after the department first received the application.

Note: 1997 Wis Act 191 repealed s. 440 08 (2g) (b), **Stats**

(2) SCREENING FOR LIABILITY FOR DELINQUENT TAXES The name and social security number or federal employer identification number of an applicant shall be compared with information at the Wisconsin department of revenue that identifies individuals and organizations who are liable for delinquent taxes owed to this state.

(3) NOTICE OF INTENT TO DENY BECAUSE OF TAX DELINQUENCY. If an applicant is identified as being liable for any delinquent taxes owed to this state in the screening process under sub. (2), the Wisconsin department of revenue shall mail a notice to the applicant at the last known address of the applicant according to s. 440.11, Stats., or to the address identified in the applicant's renewal application, if different from the address on file in the department. The notice shall state that the application for renewal submitted by the applicant shall be denied unless, within 10 days From the date of the mailing of the notice, the department of regulation and licensing receives a copy of a certificate of tax clearance issued by the Wisconsin department of revenue which shows that the applicant is not liable for delinquent state taxes or unless the Wisconsin department of revenue provides documentation to the department showing that the applicant is not liable for delinquent state taxes.

(4) OTHER REASONS FOR DENIAL. If the department determines that grounds for denial of an application for renewal may exist other than the fact that the applicant is liable for any delinquent taxes owed to this state, the department shall make a determination on the issue of tax delinquency before investigating other issues of renewal eligibility.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

RL 9.05 Denial of renewal. The department shall deny an application for credential renewal if the applicant fails to complete the information on the application form under s. RL 9.04 or if the Wisconsin department of revenue certifies or affirms its certification under s. 440.08 (4) (b) **3.,** Stats., that the applicant is liable for delinquent taxes and the department does not receive a current certificate of tax clearance or the Wisconsin department of revenue does not provide documentation showing that the applicant is not liable for delinquent taxes within the time required under s. RL 9.04 **(2)** and **(3).** The department shall mail a notice of denial to the applicant that includes a statement of the facts that warrant the denial under s. 440.08 (4) **(b),** Stats., and a notice that the applicant may file a written request with the department to have the denial reviewed at a hearing before the Wisconsin department of revenue.

Note: Section 440.08 (4) (b) 3., Stats., referred to **here was repealed by 1997 Wis. Act 237 and a new, unrelated s. 440.08 (4)** (b) **recreated.**

History: Emerg. er. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

Chapter HFS 145

CONTROL OF COMMUNICABLE DISEASES

Subchapter I — General Provisions
HFS 145.01 Statutory authority.
HFS 145.02 Purpose and scope.
HFS 145.03 Definitions.
HFS 145.04 Reports of communicable diseases.
HFS 145.05 Investigation and control of communicable diseases.
HFS 145.06 General statement of powers for control of communicable disease.
HFS 145.07 Special disease control measures.

Subchapter II — Tuberculosis
HFS 145.08 Definitions.
HFS 145.09 Laboratory procedures.
HFS 145.10 Restriction and management of patients and contacts.
HFS 145.11 Discharge from isolation or confinement.
HFS 145.12 Certification of public health dispensaries.
HFS 145.13 Dispensary reimbursement.

Subchapter III — Sexually Transmitted Disease
HFS 145.14 Definitions.
HFS 145.15 Case reporting.
HFS 145.16 Reporting of cases delinquent in treatment.
HFS 145.17 Determination of sources and contacts.
HFS 145.18 Criteria for determination of suspects.
HFS 145.19 Examination of suspects.
HFS 145.20 Commitment of suspects.
HFS 145.21 Treatment of minors.
HFS 145.22 Treatment guidelines.

Note: Chapter HSS 145 was renumbered chapter HFS 145 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June. 1997, No. 498.

Subchapter I — General Provisions

HFS 145.01 Statutory authority. This chapter is promulgated under the authority of ss. 252.02 (4), 252.06 (1), 252.07 (1p) and (11), 252.10 (1), 252.10 (6) (a) and (b), 252.11 (1) and (1m), 254.51 (3) and 990.01 (5g), Stats.

History: Cr. Register, April, 1984, No. 340, eff. 5–1–84; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; am. Register, March, 2000, No. 531, eff. 4-00; correction made under s. 13.93 (2m) (b) 7., Stats., Register, March, 2002 No. 555; CR 01–105: am. Register March 2002 No. 555, eff. 4–1-02.

HFS 145.02 Purpose and scope. This chapter establishes a surveillance system for the purpose of controlling the incidence and spread of communicable diseases. This surveillance system consists of timely and effective communicable disease reporting, means of intervention to prevent transmission of communicable diseases, and investigation, prevention and control of outbreaks by local health officers and the department, and in addition provides information otherwise pertinent to understanding the burden of communicable disease on the general population.

History: Cr. Register, April, 1984, No. 340, eff. 5–1–84; am. Register, March, 2000, No. 531, eff. 4–1–00.

HFS 145.03 Definitions. In this chapter:

(1) "Advanced practice nurse prescriber" means an advanced practice nurse, as defined in s. N 8.02 (1), who under s. 441.16 (2), Stats., has been granted a certificate to issue prescription orders.

(2) "Case" means a person determined to have a particular communicable disease on the basis of clinical or laboratory criteria or both.

(3) "Chief medical officer" means the person appointed by the state health officer under s. 250.02 (2), Stats., to provide public health consultation and leadership in the program area of acute and communicable disease and who serves also as state epidemiologist for that program area.

(4) "Communicable disease" means a disease or condition listed in Appendix **A** of this chapter.

(5) "Control" means to take actions designed to prevent the spread of communicable diseases.

(6) "Conveyance" means any publicly or privately owned vehicle used for providing transportation services.

(7) "Date of onset" means the day on which the case or suspected case experienced the first sign or symptom of the communicable disease.

(8) "Day care center" has the meaning prescribed in s. 48.65, Stats., and includes nursery schools that fit that definition.

(9) "Department" means the department of health and family services.

(10) "Food handler" means a person who handles food utensils or who prepares, processes or serves food or beverages for people other than members of his or her immediate household.

(11) "Health care facility" has the meaning prescribed in s. 155.01 (6), Stats., and includes providers of ambulatory health care.

(12) "HIV" means human immunodeficiency virus.

(13) "Individual case report form" means the form provided by the department for the purpose of reporting communicable diseases.

(14) "Investigation" means a systematic inquiry designed to identify factors which contribute to the occurrence and spread of communicable diseases.

(15) "Laboratory" means any facility certified under 42 USC 263a.

(16) "Local health department" means an agency of local government that takes any of the forms specified in s. 250.01(4), Stats.

(17) "Local health officer" has the meaning prescribed in s. 250.01 (5), Stats., and applies to the person who is designated as the local health officer for the place of residence of a case or suspected case of communicable disease.

(18) "Organized program of infection control" means written and implemented policies and procedures for the purpose of surveillance, investigation, control and prevention of infections in a health care facility.

(19) "Other disease or condition having the potential to affect the health of other persons" means a disease that can be transmitted from one person to another but that is not listed in Appendix **A** of this chapter and therefore is not reportable under this chapter, although it is listed in *Control of Communicable Diseases Manual*, 16th edition (1995), edited by Abram S. Benenson, and published by the American Public Health Association.

Note: The handbook, Control of Communicable Diseases *Manual*, 16th edition (1995), edited by Abram S. Benenson, is on file in the Department's Division of Public Health, the Reviser of Statutes Bureau and the Secretary of State's Office, and is available for purchase from the American Public Health Association, 1015 Fifteenth St., NW, Washington, D.C., 20005.

(20) "Outbreak" means the occurrence of communicable disease cases, in a particular geographical area of the state, in excess of the expected number of cases.

(21) "Personal care" means the service provided by one person to another person who is not a member of his or her immediate household for the purpose of feeding, bathing, dressing, assisting with personal hygiene, changing diapers, changing bedding and other services involving direct physical contact.

(22) "Physician" means an individual possessing the degree of doctor of medicine or doctor of osteopathy or an equivalent degree as determined by the medical examining board, and holding a license granted by the board under s. 448.01 (5), Stats.

(23) "Public building" means any privately or publicly owned building which is open to the public.

(24) "Public health intervention" means an action designed to promote and protect the health of the public.

(25) "State epidemiologist" means the person appointed by the state health officer under s. 250.02 (1), Stats., to be the person in charge of communicable disease control for the state who serves also as chief medical officer for the acute and communicable disease program area.

(26) "Surveillance" means the systematic collection of data pertaining to the occurrence of specific diseases, the analysis and interpretation of these data and the dissemination of consolidated and processed information to those who need to know.

(27) "Suspected case" means a person thought to have a particular communicable disease on the basis of clinical or laboratory criteria or both.

History: Cr. Register, April, 1984, No. 340, eff. **5–1–84; am.** (2) and (1I), Register, February. 1989, No. 398. eff. 3–1–89: correction in (8) and (9) made under s. 13.93 (2m) **(b)** 7., **Stats.,** Register, August. 1995, No. 476; r. and recr. Register, March, 2000, No. 531, eff. 4–1–00.

HFS 145.04 Reports of communicable diseases. (1) RESPONSIBILITY FOR REPORTING. (a) Any person licensed under ch. 441 or 448, Stats., knowing of or in attendance on a case or suspected case shall notify the local health officer or, if required under Appendix A of this chapter, the state epidemiologist, in the manner prescribed in this section.

(b) Each laboratory shall rcport the identification or suspected identification of a disease--causing organism or laboratory findings indicating the presence of a communicable disease to the local health officer or, if required under Appendix A of this chapter, to the state epidemiologist.

(c) Each health care facility shall ensure that reports are made to the local health officer or, *if* required under Appendix A of this chapter, to the state epidemiologist, in the manner specified in sub. (3). When a case is identified or suspected in a health care facility having an organized program of infection control, the person in charge of the infection control program shall ensure that the case or suspected case is reported to the local health officer or, if required under Appendix **A** of this chapter, to the state epidemiologist, minimizing unnecessary duplication.

(d) Any teacher, principal or nurse serving a school or day care center knowing of a case or suspected case in the school or center shall notify the local health officer or, if required under Appendix A of this chapter, the state epidemiologist, in the manner prescribed in this section.

(e) Any person who knows or suspects that a person has a communicable disease shall report the facts to the local health officer or, if required under Appendix A of this chapter, to the state epidemiologist.

(g) Nothing in this subsection lessens the requirement for confidentiality of HIV test results under **s.** 252.15, Stats.

(2) CONTENT OF REPORT. (a) Each report under sub. (1) (a) to (d) of a case or suspected case of a communicable disease to the local health officer or the state epidemiologist shall include the name and address of the person reporting and of the attending physician, if any, the diagnosed or suspected disease, the name of the ill or affected individual, that individual's address and telephone number, age or date of birth, race and ethnicity, sex, county of residence, date of onset of the disease, name of parent or guardian if a minor, and other facts the department or local health officer requires for the purposes of surveillance, control and prevention of communicable disease.

(b) Reports may be written or verbal. Written reports shall be on the individual case rcport form provided by the department and distributed by the local health officer or on a fonn containing the information required under par. (a). Reports shall be submitted to the local health officer or, if required under Appendix A of this chapter, *to* the state epidemiologist.

(c) Reports by laboratories of the identification or suspected identification of a disease–causing organism or laboratory findings indicating the presence of a communicable disease shall be made to the local health officer or, if required under Appendix A of this chapter, to the state epidemiologist. These reports shall include the name of the individual affected or ill, the individual's address, telephone number, county of residence, age or date of birth, the name of the attending physician and the identity or suspected identity of the organism or the laboratory findings.

(d) All information provided under this subsection shall remain confidential except as may be needed for the purposes of investigation, control and prevention of communicable diseases.

(3) URGENCY **OF** REPORTS. (a) A person, laboratory or health care facility required to report under sub. (1) shall rcport communicable diseases of urgent public health importance as listed in category **I** of Appendix A of this chapter to the local health officer immediately upon identification of a case or suspected case. If the local health officer is unavailable, the report shall be made immediately to the state epidemiologist.

(b) **A** person, laboratory or health care facility required to report under sub. (1) shall report communicable diseases of less urgent public health importance as listed in categories II and III of Appendix A of this chapter to the local health officer or, if required under Appendix A, to the state epidemiologist, by individual case report form or by telephone within 72 hours of the identification of a case or suspected case.

(c) A person, laboratory or health care facility required to report under sub. (1) shall report the total number of cases or suspected cases of the other communicable diseases listed in Appendix A to the local health officer on a weekly basis.

(4) HANDLING OF REPORTS BY THE LOCAL HEALTH OFFICER. (a) The local health officer shall notify the state epidemiologist immediately of any cases or suspected cases reported under sub. (3) (a).

(b) At the close of each week, the local health officer shall notify the state epidemiologist in writing on a form provided by the department of all cases of reported diseases listed in Appendix A.

(c) Local health departments serving jurisdictions within the same county may, in conjunction with the department, establish a combined reporting system to expedite the reporting process.

History: Cr. Register, April, 1984, No. 340, eff. 5–1–84; am. **(1),** (2) (a) to **(c),** (3) (a) and (b), cr. (1m), Register, February, 1989, No. 398, eff. 3–1–89; correction in (1m) made under s. 13.93 (2m) (b) 7., **Stats..** Register, August, 1995, No. 476; renum. and am. (1m) **to** be (1) (g), **am. (3)** (a), (4) (a) and cr. (4) (c), Register, March, 2000, No. 531, eff. 4–1–00.

HFS 145.05 Investigation and control of communicable diseases. (1) The local health officer shall use all reasonable means to confirm in a timely manner any case or suspcted case of a communicable disease and shall ascertain so far as possible all sources of infection and exposures to the infection. Follow–up and investigative information shall be completed by the local health officer and reported to the state epidemiologist on forms provided by the department.

(2) Local health officers shall follow the methods of control set out in section 9 under each communicable disease listed in the 16th edition (1995) of ***Control of Communicable Diseases Manual***, edited by Abram S. Benenson, published by the American Public Health Association, unless specified otherwise by the state epidemiologist. Specific medical treatment shall be prescribed by a physician or an advanced practice nurse prescriber.

(3) Any person licensed under ch. 441 or 448, Stats., attending a person with a communicable disease shall instruct the person in the applicable methods of control contained in *Control of Communicable Diseases Manual*, 16th edition (1995), edited by Abram S. Benenson, published by the American Public Health Association, unless specified otherwise by the state epidemiologist, and shall cooperate with the local health officer and the department in their investigation and control procedures.

(4) The department in cooperation with the local health officer shall institute special disease surveillances, follow–up reports and control measures consistent with contemporary epidemiologic practice in order to study and control any apparent outbreak or unusual occurrence of communicable diseases.

Note: The handbook, *Control of Communicable Diseases Manual*, 16th edition (1995), edited by Abram S. Benenson, is on file in the Department's Division of Public Health, the Revisor of Statutes Bureau and the Secretary of State's Office, and is available for purchase from the American Public Health Association, 1015 Fifteenth St., NW, Washington, DC 20005.

History: Cr. Register, April, 1984, No. 340, eff. 5–1–84; am. (2) and (3), Register, February, 1989, No. 398, eff. 3–1–89; am. (2) and (3), Register, March, 2000, No. 531, eff. 4–1–00.

HFS 145.06 General statement of powers for control of communicable disease. (1) APPLICABILITY. The general powers under this section apply to all communicable diseases listed in Appendix A of this chapter and any other infectious disease which the chief medical officer deems poses a threat to the citizens of the state.

(2) PERSONS WHOSE SUBSTANTIATED CONDITION POSES A THREAT TO OTHERS. A person may be considered to have a contagious medical condition which poses a threat to others if that person has been medically diagnosed as having any Communicable disease and exhibits any of the following:

(a) A behavior which has been demonstrated epidemiologically to transmit the disease to others or which evidences a careless disregard for the transmission of the disease to others.

(b) Past behavior that evidences a substantial likelihood that the person will transmit the disease to others or statements of the person that are credible indicators of the person's intent to transmit the disease to others.

(c) Refusal to complete a medically directed regimen of examination and treatment necessary to render the disease noncontagious.

(d) A demonstrated inability to complete a medically directed regimen of examination and treatment necessary to render the disease noncontagious, as evidenced by any of the following:

1. A diminished capacity by reason of use of mood--altering chemicals, including alcohol.

2. A diagnosis as having significantly below average intellectual functioning.

3. An organic disorder of the brain or a psychiatric disorder of thought, mood, perception, orientation or memory.

4. Being a minor, or having a guardian appointed under ch. 880, Stats., following documentation by a court that the person is incompetent.

(e) Misrepresentation by the person of substantial facts regarding the person's medical history or behavior, which can be demonstrated epidemiologically to increase the threat of transmission of disease.

(f) Any other willful act or pattern of acts or omission or course of conduct by the person which can be demonstrated epidemiologically to increase the threat of transmission of disease to others.

(3) PERSONS WHOSE SUSPECTED CONDITION POSES A THREAT TO OTHERS. A person may be suspected of harboring a contagious medical condition which poses a threat to others if that person exhibits any of the factors noted in sub. (2) and, in addition, demonstrates any of the following without medical evidence which refutes it:

(a) Has been linked epidemiologically to exposure to a known case of communicable disease.

(b) Has clinical laboratory findings indicative of a communicable disease.

(c) Exhibits symptoms that are medically consistent with the presence of a communicable disease.

(4) AUTHORITY TO CONTROL COMMUNICABLE DISEASES. When it comes to the attention of an official empowered under s. 250.02 (1), 250.04 (1) or 252.02 (4) and (6), Stats., or under s. 252.03 (1) and (2), Stats., that a person is known to have or is suspected of having a contagious medical condition which poses a threat to others, the official may direct that person to comply with any of the following, singly or in combination, as appropriate:

(a) Participate in a designated program of education or counseling.

(b) Participate in a defined program of treatment for the known or suspected condition.

(c) Undergo examination and tests necessary to identify a disease, monitor its status or evaluate the effects of treatment on it.

(d) Notify or appear before designated health officials for verification of status, testing or direct observation of treatment.

(e) Cease and desist in conduct or employment which constitutes a threat to others.

(f) Reside part–time or full--time in an isolated or segregated setting which decreases the danger of transmission of the communicable disease.

(g) Be placed in an appropriate institutional treatment facility until the person has become noninfectious.

(5) FAILURE TO COMPLY WITH DIRECTIVE. When a person fails to comply with a directive under sub. (4), the official who issued the directive may petition a court of record to order the person to comply. In petitioning a court under this subsection, the petitioner shall ensure all of the following:

(a) That the petition is supported by clear and convincing evidence of the allegation.

(b) That the respondent has been given the directive in writing, including the evidence that supports the allegation, and has been afforded the opportunity to seek counsel.

(c) That the remedy proposed is the least restrictive on the respondent which would serve to correct the situation and to protect the public's health.

(6) HAZARDS TO HEALTH. Officials empowered under ss. 250.02 (1), 250.04 (1) and 252.02 (4) and (6), Stats., or under s. 252.03 (1) and (2), Stats., may direct persons who own or supervise real or physical property or animals and their environs, which present a threat of transmission of any communicable disease under sub. (1), to do what is reasonable and necessary to abate the threat of transmission. Persons failing or refusing to comply with a directive shall come under the provisions of sub. (5) and this subsection.

History: Cr. Register, March, 2000, No. 531, eff. 4–1–00.

HFS 145.07 Special disease control measures. (1) SCHOOLS AND DAY CARE CENTERS. Any teacher, principal, director or nurse serving a school or day care center may send home, for the purpose of diagnosis and treatment, any pupil suspected of having a communicable disease or of having any other disease or condition having the potential to affect the health of other students and staff including but not limited to pediculosis and scabies. The teacher, principal, director or nurse authorizing the action shall ensure that the parent, guardian or other person legally responsible for the child or other adult with whom the child resides and the nurse serving the child's school or day care center are immediately informed of the action. A teacher who sends a pupil home shall also notify the principal or director of the action.

(2) PERSONAL CARE. Home health agency personnel providing personal care in the home and persons providing personal care in

health care facilitics, day carc centers and other comparable facilitics shall refrain from providing care while they are able to transmit a communicable disease through the provision of that carc, in accord with the methods of communicable disease control contained in Centers for Disease Control and Prevention, "Guideline for Infection Control in Health Care Personnel, 1998," unless specified otherwise by the state epidemiologist.

Note: The publication, Centers for Disease Control and Prevention, "Guideline for Infection Control in Health Care Personnel, 1998," is on file in the Department's Division of Public Health, the Revisor of Statutes Bureau and the Secretary of State's Office, and is available for purchase from the National Technical Information Service (NTIS), U.S. Dept. of Commerce, 5285 Port Royal Road, Springfield. VA 22161. (703) 486-4650.

(3) FOOD HANDLERS. Food handlers shall refrain from handling food while they have a disease in a form that is communicable by food handling, in accord with the methods of communicable disease control contained in *Control of Communicable Diseases Manual,* 16th edition (1995), editcd by Abram S. Benenson, and published by the American Public Health Association, unless specified otherwise by the state epidemiologist.

Note: The handbook ***Control of Communicable Disease Manual***, 16th edition (1995), edited by Abram S. Benenson, is on file in the Department's Division of Public Health, the Revisor of Statutes Bureau and the Secretary of State's Office, and is available for purchase from the American Public Health Association, 1015 Fifteenth St., NW, Washington D.C. 20005.

(4) PREVENTION OF OPHTHALMIA NEONATORUM. The attending physician or midwife shall ensure placement of 2 drops of a one percent solution of silver nitrate, or a 1–2 centimeter ribbon of an ophthalmic ointment containing 0.5% erythromycin or one percent tetracycline, in each eye of a newborn child as soon as possible after delivery but not later than one hour after delivery. No more than one newborn child may be treated from an individual container.

History: Cr. Register, April, 1984, No. 340, eff. 5–1–84; r. and recr. (4), Register, November, 1984, No. 347, eff. 12–1–84; am. (1) to (3), Register. February, 1989, No. 398, eff. 3–1–89; renum. from HFS 145.06 and am., Register, March, 2000, No. 531, eff. 4–1–00.

Subchapter II — Tuberculosis

HFS 145.08 Definitions. In this subchapter:

(1) "Case management" means the creation and implementation of an individualized treatment plan for a person with tuberculosis infection or disease that ensures that the person receives appropriate treatment and support services in a timely, effective, and coordinated manner.

(2) "Confinement" means the restriction of a person with tuberculosis to a specified place in order to prevent the transmission of the disease to others, to prevent the development of drug–resistant organisms or to ensure that the person receives a complete course of treatment.

(3) "Contact" means a person who shares air with a person who has infectious tuberculosis.

(4) "Contact investigation" means the process of identifying, examining, evaluating and treating a person at risk of infection with Mycobacterium tuberculosis due to recent exposure to infectious tuberculosis or suspected tuberculosis.

(5) "Directly observed therapy" means the ingestion of prescribed anti–tuberculosis medication that is observed by a health care worker or other responsible person acting under the authority of the local health department.

(6) "Infectious tuberculosis" means tuberculosis disease of the respiratory tract capable of producing infection or disease in others, as demonstrated by the presence of acid–fast bacilli in the sputum or bronchial secretions, or by radiographic and clinical findings.

(7) "Isolate" means a population of Mycobacterium tuberculosis bacteria that has been obtained in pure culture medium.

(8) "Isolation" means the separation of persons with infectious tuberculosis from other persons, in a place and under conditions that will prevent transmission of the infection.

(9) "Licenscd prescriber" mcans an advanced practice nurse prescriber, a physician assistant, or other person licensed to prescribe medication under Wisconsin law.

(10) "Public health dispensary" means a program of a local health department or group of local health departments to prevent and control tuberculosis disease and infection by the identification, medical evaluation, treatment and management of persons at risk for tuberculosis infection or disease.

(11) "Repository" means a central location at the Wisconsin State Laboratory of Hygiene for receipt and storage of patient isolates of Mycobacterium tuberculosis.

(12) "Sputum conversion" means the conversion of serial sputum cultures for Mycobacterium tuberculosis from positive to negative, in response to effective treatment.

(13) "Suspected tuberculosis" means an illness marked by symptoms, signs, or laboratory tests that may be indicative of infectious tuberculosis such as prolonged cough, prolonged fever, hemoptysis, compatible radiographic findings or other appropriate medical imaging findings.

(14) "Tuberculosis disease" means an illness determined by clinical or laboratory criteria or both to be caused by Mycobacterium tuberculosis.

(15) "Tuberculosis infection" means an infection with Mycobacterium tuberculosis in a person who has no symptoms of tuberculosis disease and is not infectious.

History: Cr. Register, April, 1984, No. 340, eff. 5–1-84; r. and recr. Register, March, 2000, No. 531, eff. 4–1–00; **CR 01–105: r. and recr. Register March 2002 No. 555, eff. 4 – 142.**

HFS 145.09 Laboratory procedures. (1) Any laboratory that receives a specimen for tuberculosis testing shall report all positive results as specified in s. HFS 145.04, including those obtained by an out–of–state laboratory, to the local health officer and to the department. The laboratory shall also submit an isolate from a patient with a positive culture to the state repository.

Note: Isolates for the state repository should be sent to: Mycobacteriology Laboratory, State Laboratory of Hygiene, Room 121, 465 Henry Mall, Madison, WI 53706.

(2) Any laboratory that performs primary culture for mycobacteria shall perform organism identification using an approved rapid testing procedure specified in the official statement of the Association of Public Health Laboratories, unless specified otherwise by the state epidemiologist. The laboratory shall ensure at least 80% of culture–positive specimens are reported as either Mycobacterium tuberculosis complex or not Mycobacterium tuberculosis complex within 21 calendar days of the laboratory's receipt of the specimens.

Note: The official statement of the Association of Public Health Laboratory entitled "Mycobacterium tuberculosis: assessing your laboratory" is on file in the Revisor of Statutes Bureau and the Secretary of State's Office, and is available from the Depamnent's Division of Public Health, P.O. Box 2659, Madison, WI 53701–2659.

(3) Any laboratory that identifies Mycobacterium tuberculosis shall ensure that antimicrobial drug susceptibility tests are performed on all initial isolates. The laboratory shall report the results of these tests to the local health officer or the department.

Note: Reports may be submitted to the Department's Division of Public Health, P.O. Box 2659, Madison, WI 53701–2659.

History: Cr. Register, April, 1984, No. 340, eff. 5–1–84; am. (1), Register, February, 1989, No. 398, eff. 3–1–89: r. and recr. Register, March, 2000, No. 531, eff. 4–1–00; **CR 01–105: r. and recr. Register March 2002 No. 555, eff. 4–1–02.**

HFS 145.10 Restriction and management of patients and contacts. (1) All persons with infectious tuberculosis or suspected tuberculosis, and their contacts, shall exercise all reasonable precautions to prevent the infection of others, under the methods of control set out in section 9 under tuberculosis, pages *525* to **530,** listed in the 17th edition (2000) of ***Control of Communicable Diseases Manual,*** editcd by James Chin, published by the American Public Health Association, unless specified otherwise by the state epidemiologist.

Note: The handbook ***Control of Communicable Diseases Manual,*** 17th edition (2000). edited by James Chin, is on file in the Revisor of Statutes Bureau and the Secretary of State's Office, and is available for purchase from the American Public Health Association, 800 I Street. NW, Washington, DC 20001–3710.

(2) All persons with infectious tuberculosis or suspected tuberculosis shall be excluded from work, school and other premises that cannot be maintained in a manner adequate to protect others from being exposed to tuberculosis, as detemiined by the local health officer.

(3) Official statements of the American Thoracic Society shall be considered in the treatment of tuberculosis, unless specified otherwise by the state epidemiologist. Specific medical treatment shall be prescribed by a physician or other licensed prescriber.

Note: The official statements of the American Thoracic Society may be found in the Centers for Disease Control and Prevention's recommendations and report "Targeted Tuberculin Testing and Treatment of Latent Tuberculosis Infection." The report may be found in the Morbidity and Mortality Weekly Report, June 9, 2000, Vol. 49, No. RR–6. The American Thoracic Society's "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children" may be found in the ***American Journal of Respiratory and Critical Care Medicine,*** vol. 149, 1994, pp. 1359–1374. These reports are on file in the Revisor of Statutes Bureau and the Secretary of State's Office, and are available from the Department's Division of Public Health, P.O. **Box** 2659, Madison, WI 53701–2659.

(4) (a) Any physician or licensed prescriber who treats a person with tuberculosis disease shall report all of the following to the local health officer:

1. The date of the person's sputum conversion.

2. The date of the person's completion of the tuberculosis treatment regimen.

(b) The physician or his or her designee shall immediately report to the local health officer when a person with tuberculosis disease does any of the following:

1. Terminates treatment against medical advice,

2. Fails to comply with the medical treatment plan.

3. Fails to comply with measures to prevent transmission.

4. Leaves the hospital against the advice of a physician.

(5) Upon receiving a report under sub. (4) (b), the local health officer shall immediately investigate and transmit the report to the department.

(6) The local health officer or the department may do any of the following:

(a) Order a medical evaluation of a person.

(b) Require a person to receive directly observed therapy.

(c) Require a person to be isolated under ss. 252.06 and 252.07 (5), Stats.

(d) Order the confinement of a person if the local health officer or the department decides that confinement is necessary and all of the following conditions are met:

1. The department or local health officer notifies a court in writing of the confinement.

2. The department or local health officer provides to the court a written statement from a physician that the person has infectious tuberculosis or suspected tuberculosis.

3. The department or local health officer provides to the court evidence that the person has refused to follow a prescribed treatment regimen or, in the case of a person with suspected tuberculosis, has refused to undergo a medical examination under par. (a) to confirm whether the person has infectious tuberculosis.

4. In the case of a person with a confirmed diagnosis of infectious tuberculosis, the department or local health officer determines that the person poses an imminent and substantial threat to himself or herself or to the public health. The department or the local health officer shall provide to the court a written statement of that determination.

(e) If the department or local health officer orders the confinement of a person under par. (d), a law enforcement officer, or other person authorized by rhe local public health officer, shall transport the person, if necessary, to a location that the department or local health officer determines will meet the person's need for medical evaluation, isolation and treatment.

(f) No person may be confined under par. (d) for more than 72 hours, excluding Saturdays, Sundays and legal holidays, without a court heanng under sub. (7) to determine whether the confinement should continue.

(7) (a) If the department or a local health officer wishes to confine a person for more than 72 hours, the department or a local health officer may petition any court for a hearing to determine whether a person with infectious or suspected tuberculosis should be confined for longer than 72 hours. The department or local health officer shall include in the petition documentation that demonstrates all the following:

1. The person named in the petition has infectious tuberculosis; the person has noninfectious tuberculosis but is at high risk of developing infectious tuberculosis; or that the person has suspected tuberculosis.

2. The person has failed to comply with the prescribed treatment regimen or with any rules promulgated by the department under s. 252.07 (11), Stats.; or that the disease is resistant to the medication prescribed to the person.

3. **All** other reasonable means of achieving voluntary compliance with treatment have been exhausted and no less restrictive alternative exists; or that no other medication to treat the resistant disease is available.

4. The person poses an imminent and substantial threat to himself or herself or to the public health.

(b) If the department or a local health officer petitions the court for a hearing under par. (a), the department or local health officer shall provide the person who is the subject of the petition written notice of a hearing at least 48 hours before a scheduled hearing is to be held. Notice of the hearing shall include all the following information:

1. The date, time and place of the hearing.

2. The grounds, and underlying facts, upon which confinement of the person is being sought.

3. An explanation of the person's rights under sub. (8).

4. The proposed actions to be taken and the reasons for each action.

(8) A person who is the subject of a petition for a hearing under sub. (6) (a) has the right to appear at the hearing, the right to present evidence and cross–examine witnesses and the right to be represented by counsel. At the time of the filing of the petition, the court shall assure that the person who is the subject of the petition is represented by counsel. If the person claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations under s. 977.07 (1), Stats. If the person is a child, the court shall rcfcr that child to the state public defender who shall appoint counsel for the child without a determination of indigency, as provided in s. 48.23 (4), Stats. Unless good cause is shown, a hearing under this paragraph may be conducted by telephone or live audiovisual means, if available.

(9) An order issued by the court under sub. (6) (a) may be appealed as a matter of right. An appeal shall be heard within **30** days after the appeal is filed. An appeal does not stay the order.

(10) If the court orders confinement of a person under sub. (6) (a), the person shall remain confined until the department or local health officer, with the concurrence of a treating physician, determines that treatment is complete or that the person is no longer a substantial threat to himself or herself or to the public health. If the person is to be confined for more than 6 months. the court shall review the confinement every 6 months, beginning with the conclusion of the initial 6–month confinement period.

(11) (a) If the administrative officer of the facility where a person is isolated or confined has good cause to believe that the person may leave the facility, the officer shall use any legal means to restrain the person from leaving.

(b) The local health officer or a person designated by the local health officer shall monitor all persons under isolation or confinement as needed to ascertain that the isolation or confinement is being maintained.

(c) The local health officer or a person designated by the local health officer shall monitor all persons with tuberculosis disease until treatment is successfully completed.

(12) The local health officer or the department may order an examination of a contact to detect tuberculosis. Contacts shall be reexamined at times and in a manner as the local health officer may require.

History: Cr. Register, April, 1984, No. 340, eff. 5–1–84; r. and recr. Register, March, 2000, No. 531, eff. 4–1–00; CR **01–105: r.** and recr. Register March **2002** No. **555,** eff. **4–1-02..**

HFS 145.11 Discharge from isolation or confinement. The local health officer or the department shall authorize the release of a person from isolation or confinement if all the following conditions are met:

(1) An adequate course of chemotherapy has been administered for a minimum of 2 weeks and there is clinical evidence of improvement, such as a decrease in symptom severity, radiographic findings indicating improvement, or other medical determination of improvement.

(2) Sputum or bronchial secretions are free of acid–fast bacilli.

(3) Specific arrangements have been made for post–isolation or post–confinement care.

(4) The person is considered by the local health officer or the department not to be a threat to the health of the general public and is likely to comply with the remainder of the treatment regimen.

History: Cr. Register, April, 1984, No. 340, eff. 5–1–84; r. and recr. Register, March, 2000, No. 531, eff. 4–1–00; CR **01–105: r.** and recr. Register March **2002 No. 555,** eff. **4-1-02..**

HFS 145.12 Certification of public health dispensaries. (1) A local health department or 2 or more local health departments jointly may be certified by the department as a public health dispensary under s. 252.10, Stats., if the public health dispensary provides or ensures provision of all of the following:

(a) Tuberculin skin testing.

(b) Medication for treatment of tuberculosis disease and infection.

(e) Directly observed therapy,

(d) Tuberculosis contact investigation.

(e) Case management.

(f) Sputum specimen collection and induction.

(g) Medical evaluation by a physician or nurse.

(h) Chest radiographs.

(i) Collection of serologic specimens.

(2) A local health department that meets the requirements under sub. (1) and wishes to be certified as a public health dispensary shall submit a request for certification to the department. The request for certification shall include a list of the tuberculosis–related services provided or arranged for and a plan for tuberculosis prevention and control at the local level, including tuberculin skin testing of high–risk groups as defined by the Centers for Disease Control and Prevention.

Note: "High–risk groups" are defined in the Centers for Disease Control and Prevention report, "Targeted Tuberculin Testing and Treatment of Latent Tuberculosis Infection." The report may be found in the Morbidity and Mortality Weekly Report, June 9,2000, Vol. 49, No. RR–6, and is on file in the Revisor of Statutes Bureau, the Secretary of State's Office, and is available from the Department's Division of Public Health, P.O. **Box** 2659, Madison, WI 53701–2659.

(3) Upon authority of s. 252.10, Stats., the department shall review the request for certification as a public health dispensary and the related local health department operations within **6** months of receiving the application. The department shall either issue a written certificate signed by the state health officer or deny the application and provide a written explanation of the recommendations for improvement needed before the department reconsiders the request for certification.

(4) (a) The department shall review the operations of the public health dispensary at least every 5 years.

(b) The department may withhold, suspend or revoke its certification if the local health department fails to comply with any of the following:

1. Applicable federal or state statutes, or federal regulations or administrative rules pertaining to medical assistance, occupational safety, public health, professional practice, medical records and confidentiality.

2. The official statement of the national tuberculosis controllers association.

Note: The official statement of the National Tuberculosis Controllers Association entitled 'Tuberculosis Nursing: a Comprehensive Guide to Patient Care" is on file in the Revisor of Statutes Bureau and the Secretary of State's Office, and is available from the National Tuberculosis Controllers Association, 2951 Flowers Road South, Suite 102, Atlanta, GA 30341–5533.

3. The official statements of the American Thoracic Society.

Note: The official statements of the American Thoracic Society may be found in the Centers for Disease Control and Prevention's recommendations and report "Targeted Tuberculin Testing and Treatment of Latent Tuberculosis Infection." The report may be found in the Morbidity and Mortality Weekly **Report,** June 9, 2000, **Vol.** 49, No. RR–6. The American Thoracic Society's "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children" may be found in the American *Journal of Respiratory* and Critical Care ***Medicine,*** vol. 149, 1994, pp. 1359–1374. The American Thoracic Society's "Diagnostic Standards and Classification of Tuberculosis in Adults and Children may be found in American Journal of Respiratory and *Critical* Care *Medicine*, vol. 161, 2000, pp. 1376–1**395.** These reports are on file in the Revisor of Statutes Bureau and the Secretary of State's Office, and **are** available from the Department's Division of Public Health, P.O. Box 2659, Madison, WI 53701–2659.

4. The directives of the state health officer made under s. 252.02 (6), Stats.

(c) The department shall provide the local health department with at least 30 days notice of the department's decision to withhold, suspend or revoke its certification.

(5) (a) A department action under **sub.** (3) or (4) is subject to administrative review under ch. 227, Stats. To request a hearing under ch. 227, the public health dispensary shall file, within 10 working days after the date of the department's action, a written request for a hearing under s. 227.42, Stats. **A** request is considered filed on the date the division of hearings and appeals receives the request. A request by facsimile is complete upon transmission. If the request is filed by facsimile transmission between 5 P.M. and midnight, it shall be considered received on the following day.

Note: A hearing request should be addressed to the Department of Administration's Division of Hearings and Appeals, P. **O. Box** 7875, Madison, WI 53707. Hearing requests may be delivered in person to that office at 5005 University Avenue, Room 201, Madison, WI. Hearing requests may be faxed to 608–264–9885.

(b) The division of hearings and appeals shall hold an administrative hearing under s. 227.44, Stats., within 30 calendar days after receipt of the request for the administrative hearing, unless the public health dispensary consents to an extension of that time period. The division of hearings and appeals shall issue a proposed decision to the department no later than 30 calendar days after holding the hearing, unless the department and the public health dispensary agree to a later date.

(6) Public health dispensaries or the department may contract with other agencies, institutions, hospitals, and persons for the necessary space, equipment, facilities and personnel to operate a public health dispensary or for provision of medical consultation.

(7) If a public health dispensary charges fees for its services, the dispensary shall do all the following:

(a) Establish a fee schedule that is based upon the reasonable costs the public health dispensary incurs.

(b) Forward a copy of the fee schedule and any subsequent changes to the department.

(8) (a) Public health dispensaries and branches thereof shall maintain records containing all the following:

1. The name of each person served.

2. The date of service for each person served.

3. The type of service provided to each person.

4. The amount the dispensary billed and received for providing service to each person.

(b) The department may audit the records of public health dispensary and branches specified under par. (a).

History: Cr. Register, March, 2000, No. 531, eff. 4–1–00; **CR 01–105: r.** and rerr. **Register** March 2002 **No. 555, eff.** 4–1-02..

HFS 145.13 Dispensary reimbursement. (1) REIMBURSABLE SERVICES. Public health dispensary services reimbursable by the department shall include at least the following:

(a) Tuberculin skin testing of high–risk persons as defined by the Centers for Disease Control and Prevention. The administration and reading of a tuberculin skin test shall be considered one visit. Tuberculin skin tests administered to persons who are not defined as high–risk by the Centers for Disease Control and Prevention, such as school employees, are not reimbursable.

Note: "High-risk persons" are defined in the Centers for Disease Control and Prevention report, "Targeted Tuberculin Testing and Treatment of Latent Tuberculosis Infection." The report may be found in the Morbidity and Mortality Weekly Report, June 9, 2000, Vol. 49, No. RR-6, and is on file in the Revisor of Statutes **Bureau,** the Secretary of State's Office, and **is** available from the Department's Division of Public Health, P.O. ***Box*** 2659, Madison. WI 53701–2659.

(b) One chest radiograph for a person with a newly identified significant skin test result, including interpretation and consultation services.

(c) One follow–up chest radiograph, including interpretation and consultation services, to document response to therapy.

(d) An initial medical evaluation and one interim medical evaluation, as needed.

(e) Blood specimen collection for one baseline and up to 3 follow–up liver function tests.

(f) Visits to collect initial diagnostic sputum specimens, either freely coughed or induced, and follow–up specimens to monitor successful treatment, up to a total of 3 initial and 6 follow–up specimens.

(g) Sputum induction for collection of up to 3 specimens for initial diagnosis and 3 for documentation of sputum conversion.

(h) Case management visits and visits to provide directly observed therapy to persons with tuberculosis disease up to a maximum of 66 visits.

(2) REIMBURSEMENT RATE. (a) The department shall reimburse public health dispensaries on a quarterly basis for services provided under sub. (1) to clients who are not recipients of medical assistance until the biennial appropriation under **s.** 20.435 (5) (e), Stats., is totally expended. Reimbursement shall be at least at the medical assistance program rate in effect at the time of the delivery of the service.

(b) Public health dispensaries may claim reimbursement from the medical assistance program under ss. 49.43 to 49.497, Stats., and chs. HFS 101 to 108 for services under sub. (1) provided to persons eligible for medical assistance under **s.** 49.46 (1) (a) 15., Stats.

History: Cr. Register, March, 2000, No. 531, eff. 4–1–00; CR 01–105: Cr. Register March 2002 No. 555, eff. 4–1–02..

Subchapter III — Sexually Transmitted Disease

HFS 145.14 Definitions. In this subchapter:

(1) "Commitment" means the process by which a court of record orders the confinement of a person to a place providing treatment.

(2) "Contact" means a person who had physical contact with a case that involved the genitalia of one of them during a period of time which covers both the maximum incubation period for the disease and the time during which the case showed symptoms of the disease, or could have either infected the case or been infected by the case.

(3) "Minor" means a person under the age of 18.

(4) "Sexually transmitted diseases" means syphilis, gonorrhea, chancroid, genital herpes infection, chlamydia trachomatis, and sexually transmitted pelvic inflammatory disease.

(5) "Source" means the person epidemiologic evidence indicates is the origin of an infection.

(6) "Suspect" means a person who meets the criteria in **s.** HFS 145.18.

History: Cr. Register, April, 1984, No. 340, eff. 5–1–84; renum. and am. from HFS 145.12. Register, March, 2000, No. 531, eff. 4–1–00.

HFS 145.15 Case reporting. Any administrator of a health care facility, state correctional institution or local facility subject to ch. DOC 350, who has knowledge of a case of a sexually transmitted disease shall report the case by name and address to the local health officer. If the services of an attending physician are available in an institution or health care facility, the physician or a designee shall report as described in s. HFS 145.04 (1) (a). The administrator shall ensure that this reporting requirement is fulfilled.

History: Cr. Register, April, 1984, No. 340, eff. 5–1–84; correction made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1991, No. 430; renum. and **am.** from HFS 145.13, Register, March, 2000, No. 531, eff. 4–1–00.

HFS 145.16 Reporting of cases delinquent in treatment. Whenever any person with a sexually transmitted disease fails to return within the time directed to the physician or advanced practice nurse prescriber who has treated that person, the physician or advanced practice nurse prescriber or a designee shall report the person, by name and address, to the local health officer and the department as delinquent in treatment.

History: Cr. Register, April, 1984, No. 340, eff. 5–1–84; renum. and am. from **HFS** 145.14, Register, March. 2000, No. 531, eff. 4–1–00.

HFS 145.17 Determination of sources and contacts. Physicians accepting cases for treatment shall determine the probable source of infection and any other contacts, and shall attempt to diagnose and treat those persons, or shall request that the local health officer or the department do so.

History: Cr. Register, April, 1984, No. 340, eff. 5–1–84; renum. from **HFS** 145.15, Register, March, 2000, No. 531, eff. 4–1–00.

HFS 145.18 Criteria for determination of suspects. Any person falling into one or more of the following categories is designated as a suspect:

(1) Persons identified as sexual contacts of a sexually transmitted disease case;

(2) Persons having positive laboratory or clinical findings of sexually transmitted disease; and

(3) Persons in whom epidemiologic evidence indicates a sexually transmitted disease may exist.

History: Cr. Register, April, 1984, No. 340, eff. 5–1–84; renum. from **HFS** 145.16, Register, March, 2000, No. 531, eff. 4–1–00.

HFS 145.19 Examination of suspects. Local health officers shall require the examination of suspects. The examination shall include a physical examination and appropriate laboratory and clinical tests.

History: Cr. Register, April, 1984. No. 340, eff. 5–1–84; renum. from **HFS** 145.17, Register, March, 2000, No. 531, eff. 4–1–00.

HFS 145.20 Commitment of suspects. If, following the order of a local health officer or the department, a suspect refuses or neglects examination or treatment, a local health officer or the department shall file a petition with a court to have the person committed to a health care facility for examination, treatment or observation.

History: Cr. Register, April, 1984. No. 340, eff. 5–1–84; renum. from **HFS** 145.18, Register, March, 2000, No. 531, eff. 4–1–00.

HFS 145.21 Treatment of minors. A physician or advanced practice nurse prescriber may treat a minor with a sexually transmitted disease or examine and diagnose a minor for the presence of the disease without obtaining the consent of the

minor's parents or guardian. The physician or advanced practice nurse prescriber shall incur no civil liability solely by reason of the lack of consent of the minor's parents or guardian, as stated in s. 252.11 (Im), Stats.

History: Cr. Register, April, 1984, No. 340. eff. 5–1–84; renum. and am. from HFS 145.19, Register, March. 2000, No. 531, eff. 4–1–00.

HFS 145.22 Treatment guidelines. Nationally recognized guidelines, including the "1998 Guidelines for Treatment of Sexually Transmitted Diseases" published by the U.S. Department of Health and Human Services, shall be considered in the treatment of sexually transmitted diseases. Specific medical treatment shall be prescribed by a physician or advanced practice nurse prescriber.

Note: The publication, "1998 Guidelines for Treatment of Sexually Transmitted Diseases," is on file in the Department's Division of Public Health, the Revisor of Statutes Bureau and the Secretary of State's Office, and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402–9325. Telephone: (202) 512–1800.

History: Cr. Register. April, 1984. No. 340, eff. 5–1–84; renum. and am. from HFS 145.20, Register. March, 2000. No. 531, eff. 4–1–00.

Chapter HFS 145

APPENDIX A
COMMUNICABLE DISEASES

CATEGORY I:

The following diseases are of urgent public health importance and shall be reported **IMMEDIATELY** to the patient's local health officer upon identification of a case or suspected case. In addition to the immediate report, complete and mail an Acute and Communicable Diseases Case Report (DOH 4151) to the address on the form within 24 hours. Public health intervention is expected as indicated. See **s.** HFS 145.04 (3) (a).

Anthrax[1,4,5]
Botulism[1,4]
Botulism, infant[1,2,4]
Cholera[1,3,4]
Diphtheria[1,3,4,5]
Foodbome or waterborne outbreaks[1,2,3,4]
Haemophilus influenzae invasive disease, (including epiglottitis)[1,2,3,5]
Hantavirus infection[1,2,4,5]
Hepatitis A[1,2,3,4,5]
Hepatitis E[3,4]
Measles[1,2,3,4,5]
Meningococcal disease[1,2,3,4,5]
Pertussis (whooping cough)[1,2,3,4,5]
Plague[1,4,5]
Poliomyelitis[1,4,5]
Rabies (human)[1,4,5]
Ricin toxin[4,5]
Rubella[1,2,4,5]
Rubella (congenital syndrome)[1,2,5]
Smallpox[4,5]
Tuberculosis[1,2,3,4,5]
Yellow fever[1,4]

CATEGORY 11:

The following diseases shall be reported to the local health officer on an Acute and Communicable Disease Case Report (DOH 4151) or by other means within 72 hours of the identification of a case or suspected case. See **s.** HFS 145.04 (3) (b).

Amebiasis[3,4]
Arboviral infection (encephalitis/meningitis)[1,2,4]
Babesiosis[4,5]
Blastomycosis[5]
Brucellosis[1,4]
Campylobacteriosis (campylobacter infection)[3,4]
Cat Scratch Disease (infection caused by Bartonella species)[5]
Cryptosporidiosis[1,2,3,4]
Cyclosporiasis[1,4,5]
Ehrlichiosis[1,5]
Encephalitis, viral (other than arboviral)
E. coli 0157:H7, and other enterohemorrhagic E. coli, enteropathogenic E. coli, enteroinvasive E. coli, enterotoxigenic E coli.[1,2,3,4]
Giardiasis[3,4]
Hemolytic uremic syndrome[1,2,4]
Hepatitis B[1,2,3,4,5]
Hepatitis C[1,2]
Hepatitis non–A, non–B, (acute)[1,2]
Hepatitis D[2,3,4,5]
Histoplasmosis[5]
Kawasaki disease[2]
Legionellosis[1,2,4]
Leprosy (Hansen Disease)[1,2,3,4,5]
Leptospirosis[4]
Listeriosis[2,4]
Lyme disease[1,2]
Malaria[1,2,4]
Meningitis, bacterial (other than Haemophilus influenzae or meningococcal)[2]
Meningitis, viral (other than arboviral)
Mumps[1,2,4,5]
Mycobacterial disease (nontuberculous)
Psittacosis[1,2,4]
Q Fever[4,5]
Reye syndrome[2]
Rheumatic fever (newly diagnosed and meeting the Jones criteria)[5]
Rocky Mountain spotted fever[1,2,4,5]
Salmonellosis[1,3,4]
Sexually transmitted diseases:
- Chlamydia trachomatis infection[2,4,5]
- Genital herpes infection (first episode identified by health care provider)[2]
- Gonorrhea[1,2,4,5]
- Pelvic inflammatory disease[2]
- Syphilis[1,2,4,5]

Shigellosis[1,3,4]
Streptococcal disease (all invasive disease caused by Groups A and B Streptococci)
Streptococcus pneumoniae invasive discase (invasive pneumococcal)[1]
Tetanus[1,2,5]
Toxic shock syndrome[1,2]
Toxic substance related diseases:
- Infant methemoglobinemia
- Lead intoxication (specify Pb levels)
- Other metal and pesticide poisonings

Toxoplasmosis
Trichinosis[1,2,4]
Tularemia[4]
Typhoid fever[1,2,3,4]
Typhus fever[4]
Varicella (chicken pox) – report by number of cases only
Yersiniosis[3,4]
Suspected outbreaks of other acute or occupationally–related diseases

CATEGORY JJJ:

The following diseases shall be reported to the state epidemiologist on an AIDS Case Report (DOH 4264) or a Wisconsin Human Immunodeficiency Virus (HIV) Infection Confidential Case Report (DOH 4338) or by other means within 72 hours after identification of a case or suspected case. See s. 252.15 (7) (b), Stats., and s. HFS 145.04 (3) (b).

Acquired Immune Deficiency Syndrome (AIDS) [1,2,4]

Human immunodeficiency virus (HIV) infection[2,4]

CD4 + T–lymphocyte count < 200/μL, or CD4 + T–lymphocyte percentage of total lymphocytes of < 14[2]

Key:

[1]Infectious diseases designated as notifiable at the national level.

[2]Wisconsin or CDC follow–up form is required. Local health departments have templates of these forms in the Epinet manual.

[3]High–risk assessment by local health department is needed to determine if patient or member of patient's household is employed in food handling, day care or health care.

[4]Source investigation by local health department is needed.

[5]Immediate treatment is recommended, i.e., antibiotic or biologic for the patient or contact or both.

FILING A COMPLAINT

COMPLAINTS AND THE DISCIPLINARY PROCESSED

Board Authority for Professional Discipline

Each of the licensing boards in the department has statutory authority to take disciplinary action against licensees who engage in unprofessional conduct or violate other rules/statutes of the board. Unprofessional conduct typically includes: practicing fraudulently, negligently, or incompetently, practicing while being impaired by alcohol, drugs or mental disability, conviction for a crime related to the licensed practice and similar serious matters.

In taking disciplinary action, boards have the authority to reprimand a licensee, to suspend, revoke, or limit a license. The purposes of professional discipline, as defined by the Wisconsin Supreme court, are: 1) to protect the public, 2) to promote the rehabilitation of the licensee, 3) to deter other licensees from engaging in similar conduct and 4) to publicly express disapproval of certain conduct.

How to File A Complaint

Anyone who wishes to file a complaint against a licensee of a board or a complaint involving activity with the jurisdiction of that board should do so in writing. Preferably a complaint form should be completed. Complaint forms are available either through the department or the Examining Board offices at 1400 East Washington Avenue, Madison, Wisconsin, mailing address, P.O. Box 8935, Madison, Wisconsin, 53708. The complaint forms should be completed in detail, including the who, what, when, and where of a situation. The information should be set forth in chronological order as best as it can be recalled. If written documents are involved, copies should be included.

How the Complaint Is Processed

After a complaint is received, it is logged in the department's Division of Enforcement and then screened to determine whether or not the matter is something over which the board has jurisdiction; and, if so, to identify the statute or rule that may have been violated. If the board does have jurisdiction, the complaint is assigned to an attorney and investigator for investigation.

The attorney and the investigator confer during the course of the investigation. In addition, a member of the board may be assigned as an advisor in the case. Investigative contacts can be made by telephone, letter, personal interview or any combination of those procedures. The investigation involves gathering relevant facts of the case. Persons with knowledge of the case are contacted. This usually includes the person who made the complaint and the person about whom the complaint was made. If treatment records are involved, they will be obtained. Confidentially of the records will be maintained as required by law.

Once the investigation is complete, the investigator, attorney and board advisor review the results of the investigation and come to a preliminary decision on whether the case should be closed with no action taken, or whether formal disciplinary action should be commenced.

If the preliminary determination is for case closure, that recommendation, along with relevant findings, is presented by the investigator to the members of the board in closed session at a scheduled board meeting. If the board concurs, the file is closed by board motion. Letters are then sent to the person who filed the complaint and to the licensee, explaining that the case was closed and the reasons for closure.

If the determination by the investigative team is to commence disciplinary action, the Division of Enforcement attorney prepares all necessary documents, including a formal complaint against the licensee, and the matter is scheduled for a hearing.

How The Formal Comulaint is Resolved

Disciplinary hearings are conducted by hearing examiners, who are attorneys. While the statutes give the board the authority to preside over hearings without the use of a hearing examiner, most boards request that a hearing examiner be used. Furthermore, if the board members made the decision to issue a complaint, an examiner must be used. This ensures that the prosecutorial and adjudicative functions are separate, and that a fair and impartial decision is made.

The hearing examiner will generally schedule a pre-hearing conference between the parties. The major purposes of the pre-hearing conference are to set forth the issues in the case, determine what matters can be resolved without the need for formal testimony, and to establish a schedule for bringing the matter to hearing. Some of the cases, that may lead to the issuance of a formal complaint, are resolved by stipulation between the parties. Of course, such stipulations are subject to the approval of the board involved.

If a formal hearing is necessary, in most cases the hearing examiner presides over it. All testimony is under oath and transcribed. The parties are expected to call whatever witnesses are necessary. The process is very much like a trial. The length of the hearings can range from a few hours to several days. Once the hearing is complete, the hearing examiner prepares proposed findings of fact, proposed conclusions of law and a proposed decision. This is filed with the board, which reviews the decision and determines whether to affirm, reverse or amend it. If a member of the board participated in the investigation, that person is not involved in the board's decision on the case.

The board's options in disciplinary matters are: dismissing the com laint, reprimanding the licensee, limiting, suspending or revoking the licensee's license, or, in some instances, assessing a Forfeiture against the licensee. Boards do not have the authority to ,award monetary damages or to get money back that a party may believe is due. If a party is dissatisfied with a board decision, the decision can be appealed to circuit court. A circuit court decision can in turn be appealed to higher courts.

The above steps set forth very generally the process that takes place if a complaint is filed against a licensee of one of the boards attached to the department. Each case is different, and some variations may occur among the boards.

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