

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE APPLICATION :

FOR A REAL ESTATE SALESPERSONS	:	
LICENSE FOR	:	FINAL DECISION
	:	AND ORDER
BRETT G POLENSKY,	:	LS0502012REB
APPLICANT	:	

Applicant Brett G. Polensky has filed an application for a credential to practice as a real estate salesperson in the state of Wisconsin. Information received in the application process reflects the following conviction record for the Applicant:

- 06/12/1996 – ordinance violation – Operate after revocation/suspension (Case#96TR005561)
- 06/17/1996 – ordinance violation – OWI operate after suspension (Case#96TR002926)
- 01/02/1997 – misdemeanor – OWI (2nd) (Case#96CT000168)
- 03/17/1997 – misdemeanor – Operate after revocation/suspension (Case#96CT002014)
- 03/18/1997 – misdemeanor – Resisting or Obstructing an officer (Case#96CM000394)
- 03/18/1997 – misdemeanor - Possession of drug paraphernalia (Case#96CM000635)
- 03/18/1997 – felony – Hit and run-involve injury (Case#96CF000447)
- 03/18/1997 – misdemeanor – OWI operating after revocation (4th) (Case#96CT000629)
- 03/18/1997 – felony – Battery to law officers; misdemeanor – resisting or obstructing an officer, disorderly conduct, possess drug paraphernalia, bail jumping (Case#96CF000463)
- 07/20/1998 – misdemeanor – ordinance violation – Jet ski – violate slow no wake requirement (Case#98FO000962)
- 10/30/1998 – misdemeanor – Disorderly conduct (Case#98CM000379)
- 09/09/1999 – misdemeanor – Carrying concealed weapon (Case#99CM001785)
- 08/13/2001 – ordinance violation – Operate without carrying license (Case#01CT000191)
- 05/01/2001 – ordinance violation – Fail/display snowmobile registration (Case#01FO000200)
- 01/16/2003 – misdemeanor – OAWI (Case#02CT001015)
- 12/12/2003 – misdemeanor – Disorderly conduct, resisting or obstructing an officer (Case#CM000530)
- 09/28/2004 – misdemeanor – Disorderly conduct (Case#04CM000214)
- 09/28/2004 – misdemeanor – Criminal damage to property (2 counts), disorderly conduct (Case#04CM000091)

The facts and circumstances of these convictions are substantially related to the practice of a real estate salesperson. The department and Applicant have entered into a Stipulation by which the department agrees to issue, and Applicant agrees to accept a limited real estate salesperson’s license, subject to specified terms and conditions.

Based upon the Stipulation and information of record herein, the Department adopts the attached Stipulation and makes the following:

CONCLUSIONS OF LAW

1. The Wisconsin Department of Regulation and Licensing has jurisdiction over this matter pursuant to Wis. Stat. § 452.05(1)(a) and authority to enter into a stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).
2. Applicant by the conduct described above is subject to disciplinary action against his license pursuant to Wis. Stat. § 452.14(3).

ORDER

NOW, THEREFORE, IT IS ORDERED that Brett G. Polensky is GRANTED a REAL ESTATE SALESPERSON'S LICENSE, subject to the following LIMITATIONS, TERMS AND CONDITIONS:

SUSPENSION

- A. The license of Brett G. Polensky to practice as a real estate salesperson in the State of Wisconsin is SUSPENDED for a period of FIVE (5) years.

STAY OF SUSPENSION

- B.1. The suspension shall be STAYED upon Applicant providing proof acceptable to the Department or Department Monitor that Applicant is in compliance with the provisions of Sections C and D of this Order.
- B.2. The Department or Department Monitor may without hearing remove the stay upon receipt of information that Applicant is in substantial or repeated violation of any provision of Sections C or D of this Order.
- B.3. The Department may immediately re-impose this suspension upon its providing notice of the removal of the stay to Applicant either by:
- (a) Mailing to Applicant's last-known address provided to the Department of Regulation and Licensing pursuant to Wis. Stat. § 440.11; or
 - (b) Actual notice to Applicant or Applicant's attorney.
- B.4. The Department or Department Monitor may reinstate the stay, if provided with sufficient information that Applicant is in compliance with the Order and that it is inappropriate for the suspension to remain in effect. Whether to reinstate the stay shall be wholly in the discretion of the Department.
- B.5. If Applicant requests a hearing on the removal of the stay, a hearing shall be held using the procedures set forth in Wis. Admin. Code ch. RL 1. The hearing shall be scheduled and held in a timely manner. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITION AND LIMITATIONS

Treatment Required

- C.1. Applicant shall enter into and maintain participation in the following treatment programs: (a) anger/stress management and (b) drug and alcohol treatment at treatment facilities (Treatment Provider) acceptable to the Department. Applicant shall participate in, cooperate with and follow all treatment recommended by Treatment Provider.
- C.2. Applicant shall provide Treatment Provider with a copy of this Final Decision and Order immediately.

C.3. Applicant's Treatment Provider shall be responsible for coordinating Applicant's rehabilitation, drug monitoring and treatment program as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to Department Monitor (See D.1., below). If Applicant's Treatment Provider becomes unable or unwilling to continue to serve as a treatment provider, Applicant shall immediately seek approval of a successor treatment provider by the Department or Department Monitor.

C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treatment Provider. The Department reserves the right to set minimum therapy/treatment requirements for Applicant. Therapy may end only upon a determination by the Department or Department Monitor pursuant to a petition by Applicant for modification. (See D.4., below.)

C.5. Applicant's Treatment Provider shall submit formal written reports to Department Monitor on a quarterly basis, as directed by Department Monitor. These reports shall assess Applicant's progress in the anger management, drug and alcohol treatment program. Treatment Provider shall report immediately to Department Monitor any violation or suspected violation of this Order.

Releases

C.6. Applicant shall provide and keep on file with his Probation Agent, Treatment Provider, all treatment facilities and personnel, laboratories and collection sites current releases complying with state and federal laws. The releases shall allow the Department, its designee, and any employee of the Department of Regulation and Licensing, Division of Enforcement to: (a) obtain all urine, blood and hair specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Applicant's treatment and rehabilitation. Copies of these releases shall immediately be filed with Department Monitor.

AA/NA Meetings

C.7. Applicant shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by his Treatment Provider. Attendance of Applicant at such meetings shall be verified and reported monthly to Treatment Provider. The Department reserves the right to set a minimum attendance requirement for Applicant.

Sobriety

C.8. Applicant shall abstain from all personal use of alcohol.

C.9. Applicant shall abstain from all personal use of controlled substances as defined in § 961.01(4), Stats., except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Applicant shall disclose Applicant's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Applicant shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Applicant's treatment with, and provide copies of treatment records to, Treatment Provider and the Department or Department Monitor.

C.10. Applicant shall refrain from the consumption of over-the-counter medications or other substances which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Applicant's treatment and rehabilitation.

C.11. Applicant shall report all medications and drugs, over-the-counter or prescription, taken by Applicant to Treatment Provider within 24 hours of ingestion or administration, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. If Applicant has not provided a release as required by C.9 above, within 24 hours of a request by Treatment Provider or the Department or Department Monitor, Applicant shall provide releases in compliance with state and federal laws. The releases shall authorize the person who prescribed, dispensed, administered or ordered the medication to discuss Applicant's treatment with, and provide copies of treatment records to, the requester.

Drug and Alcohol Screens

C.12. Within thirty (30) days of this Order, Applicant shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department ("Approved Program"). A list of Approved Programs pursuant to Wis. Adm. Code § RL 7.11 is available from the Department Monitor.

C.13 At the time Applicant enrolls in the Approved Program, Applicant shall review all of the rules and procedures made available by the Approved Program. Failure to comply with all requirements for participation in drug and alcohol monitoring established by the Approved Program is a violation of this Order. The requirements shall include:

- (a.) Contact with the Approved Program as directed on a daily basis, including vacations, weekends and holidays.
- (b.) Production of a urine specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.

C.14. Applicant is responsible for obtaining urine screens at a frequency of not less than 54 times per year. The Department recognizes that at present, applicant has 26 random urine screens per year under the terms of his probation. The Approved Program shall require the testing of urine specimens at a frequency of not less than **28** times per year, for the first year of this Order. If at any time the frequency of the applicant's probation screens is reduced, the applicant shall notify the Department Monitor, so that the Approved Program can proportionately increase the number of screens it requires. After the first year, the frequency may be reduced only upon a determination by the Department or Department Monitor after receiving a petition for modification as required by D.4., below.

C.15. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances or alcohol, Applicant shall promptly submit to additional tests or examinations as the Treatment Provider or the Department or Department Monitor shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.

C.16. In addition to any requirement of the Approved Program, the Department or Department Monitor may require Applicant to: (a) submit additional urine specimens, (b) submit blood, hair or breath specimens, (c) furnish any specimen in a directly witnessed manner.

C.17. All confirmed positive test results shall be presumed to be valid. Applicant must prove by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody.

C.18. The Approved Program shall submit information and reports to the Department Monitor in compliance with the requirements of Wis. Adm. Code § RL 7.11. The Approved Program shall immediately report to Treatment Provider all specimens suspected to have been tampered with or which are positive or suspected positive for controlled substances or alcohol.

Practice Limitations

C.19. Applicant shall practice only under the general supervision of a licensed real estate broker approved by the Department or Department Monitor and only in a work setting pre-approved by the Department or Department Monitor.

C.20. Applicant shall provide a copy of this Final Decision and Order immediately to supervisory personnel at all settings where Applicant works or applies to work as a real estate salesperson.

C.21. It is Applicant's responsibility to arrange for written reports from supervisors to be provided to the Department Monitor on a quarterly basis, as directed by Department Monitor. These reports shall assess Applicant's work performance.

C.22. Applicant shall report to the Department any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

MISCELLANEOUS

Department Monitor

D.1. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 267-3817
department.monitor@drl.state.wi.us

Required Reporting

D.2. Applicant is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Applicant shall promptly notify Department Monitor of any suspected violations of any of the terms and conditions of this Order by Applicant and any failures of the Treatment provider, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order.

D.3. Applicant shall comply with all terms of probation and/or parole imposed upon him, and make arrangements with his probation/parole officer to notify the Department Monitor **immediately** of any violation of probation/parole terms. In addition, Applicant shall make arrangements for the submission of quarterly reports from his probation/parole office attesting to the status of his participation in probation/parole. Applicant shall provide the Board with current releases complying with state and federal laws, authorizing release and access to his probation and parole records.

Change of Treatment Provider or Approved Program by Department

D.4. If the Department or Department Monitor determines the Treatment Provider or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Department or Department Monitor may direct that Applicant continue treatment and rehabilitation under the direction of another Treatment Provider or Approved Program.

Petitions for Modification

D.5. Applicant may petition the Department for modification of the terms of this Order. Any such petition shall be accompanied by a written recommendation from Applicant's Treatment Provider expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of §227.01(3)(a), Stats., and Applicant shall not have a right to any further hearings or proceedings on the denial.

Costs of Compliance

D.6. Applicant shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Additional Discipline

D.7. In addition to being a basis for removal of the stay of this suspension, violation of any term of this Order may be the basis for a separate disciplinary action under Wis. Stat. § 452.14.

Dated at Madison, Wisconsin this 1st day of February, 2005.

Steven M. Gloe

On behalf of the Department of Regulation and Licensing