

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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BEFORE THE WISCONSIN CERTIFICATION BOARD

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EDWIN O. SCHOENING,  
Appellant,

vs.

WISCONSIN CERTIFICATION BOARD,  
Respondent.

HEARING COMMITTEE DECISION  
Complaint #2003-23

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The Executive Committee of the Wisconsin Certification Board (WCB) issued a Decision dated June 12, 2004 concerning complaint #2003-23 calling for imposition of sanctions against Edwin O. Schoening, Respondent, a copy of which is annexed hereto. Respondent submitted a request for appeal hearing to the WCB. A hearing was held on November 29, 2005, commencing at 9:00 AM in Room 121A at 1400 East Washington Avenue, Madison, Wisconsin before a Hearing Committee comprised of the undersigned persons.

Respondent Edwin O. Schoening appeared at the hearing in person and by his attorney, John Gower, 400 East Highland Drive, P.O. Box 39, Oconto Falls, WI 54154. The Executive Committee appeared by its attorneys Halling & Cayo, S.C., 320 E. Buffalo St., Suite 700, Milwaukee, WI 53202, by attorney David Halling.

Based on the testimony and other evidence presented at the hearing, the Hearing Committee makes the following Findings of Fact and Conclusions and Disciplinary Sanction.

FINDINGS OF FACT

1. Edwin O. Schoening (Respondent) whose current address is 8807 Gauthier Lane, Suring, Wisconsin 54174, has been a Wisconsin Certification Board (WCB) certified alcohol/drug counselor since June 6, 1997 and is paid to June 6, 2005.

2. On August 5, 2002, in Shawano County Circuit Court, Case #2002CM000275, Respondent was found guilty on a plea of no contest of violating Wis. Stat. § 947.01, Disorderly Conduct, a misdemeanor.

3. On August 5, 2002, in Shawano County Circuit Court, Case #2002CM000419, Respondent was found guilty on a plea of no contest of two counts of violating Wis. Stat. § 813.12(8), Knowingly Violate a Domestic Abuse Order, a misdemeanor.

4. On August 5, 2002, in Shawano County Circuit Court, Case #2002CM000459, Respondent was found guilty on a plea of no contest of two counts of violating Wis. Stat. § 813.12(8), Knowingly Violate a Domestic Abuse Order, a misdemeanor.

5. On November 19, 2003, 2002, in Shawano County Circuit Court, Case #2002CM000750, following a jury trial, Respondent was found guilty of:

- a. violating Wis. Stat. § 947.01, Disorderly Conduct, a misdemeanor.
- b. violating Wis. Stat. § 813.12(8), Knowingly Violate a Domestic Abuse Order, a misdemeanor.

6. The Shawano County Circuit Court determined that Respondent was a repeat

offender, and subject to a penalty enhancer under Wis. Stat. § 939.62, Habitual Criminality. On November 19, 2003 in Shawano County Circuit Court, Respondent was sentenced to four years in State Prison and incarcerated. Subsequently Respondent was granted parole and released.

7. A Division of Correction program review summary dated June 3, 2004 described Respondent's offenses as follows:

"OFFENSE: INVOLVED DC HD & KNOWINGLY VIOLATE A DOMESTIC ABUSE ORDER WITH A 4 YR SENTENCE. SUBJECT WAS SERVING 2 YRS PROBATION FOR DC & 3 CTS KNOWINGLY VIOLATE DOMESTIC ABUSE ORDER FOR OFFENSES THAT OCCURRED BETWEEN 4/-2 & 6/02 WHEN HE & HIS WIFE WERE ENGAGED IN VERBAL ARGUMENT. HE CHOKED HER, SPIT ON HER & THREATENED TO KILL HIMSELF & HER WHEN HE DISCOVERED SHE WAS CONTEMPLATING A DIVORCE."  
(Exhibit R2).

8. Respondent's criminal convictions relate to his ability to practice in the substance abuse counseling profession. Specifically, Respondent's convictions evidence a lack of objectivity, an impulsivity, and difficulty in managing feelings and controlling anger. These traits are incompatible with effective substance abuse counseling and would present a danger to clients if Respondent engages in counseling at this time.

9. The circumstances of the crimes committed by Respondent substantially relate to the circumstances of the substance abuse counseling profession. The counseling profession frequently presents opportunities that would put the Respondent in the position of counseling persons who are in, or close to, the situations he was in when he committed domestic abuse order violations. Respondent's criminal convictions reveal character traits of impulsivity and lack of objectivity that could well be stimulated when he is counseling drug and alcohol abusers who have domestic problems, resulting in danger to the client and leading to possible violations of domestic abuse orders by clients.

## CONCLUSIONS

A. The Hearing Committee concludes that Respondent's criminal convictions of Disorderly Conduct, Knowingly Violating a Domestic Abuse Order, and a finding of Habitual Criminality do impact Respondent's ability to practice in the substance abuse counseling profession.

B. The Hearing Committee finds that the Respondent did breach Rule 3.1 of the Counselor Code of Conduct which prohibits: "A conviction for any felony or misdemeanor relating to the counselor's ability to practice the substance abuse counseling profession shall be grounds for disciplinary action."<sup>1</sup>

C. Wis. Stat. §§ 111.321, 111.322 and 111.335, which generally prohibit discrimination in licensing on the basis of conviction record, do not prohibit the Wisconsin Certification Board from suspending, limiting or revoking the certificate of Respondent on the grounds of his convictions because the circumstances of Respondent's criminal convictions of Disorderly Conduct, Knowingly Violating a Domestic Abuse Disorder, and a finding of Habitual Criminality substantially relate to the circumstances of the licensed activity of a substance abuse counselor.

## DISCIPLINARY SANCTION

Pursuant to Section VI. F. of the WCB Counselor Code of Conduct (Rev. 1996), Edwin O. Schoening's certification as an alcohol/drug counselor III is hereby **SUSPENDED** commencing on June 4, 2005 (the date of the Executive Committee's decision) for a period of at least 24 months and continuing until Respondent has met all of the terms of suspension set forth below. Following reinstatement, Respondent's certificate shall be **LIMITED** for a period of one year according to the terms of limitation described below.

### TERMS OF SUSPENSION

1. Respondent shall provide a copy of this Decision immediately to his parole agent as well as to supervisory personnel at all settings where Respondent works or applies to work.
2. Respondent shall comply with all terms of his parole or probation and make arrangements with his parole officer to notify the WCB immediately of any violation of terms his parole or probation.
3. Respondent shall report to the WCB any change of employment status, residence, address or telephone number within five (5) days of the date of a change.
4. Respondent shall report to the WCB if he is convicted of any misdemeanor or felony in this state or elsewhere within 48 hours after entry of judgment.
5. At the time of his application for reinstatement, Respondent shall arrange with his probation and parole officer to submit a report to the Certification Authority stating whether he has complied with all terms of parole and probation imposed upon him.

### TERMS OF LIMITATION

6. Upon reinstatement, Respondent's practice shall be under the supervision of a Professional Mentor for a period of 1 year. Respondent shall obtain a Professional Mentor acceptable to the Certification Authority prior to commencing practice. The Professional Mentor shall be the individual responsible for supervision of Respondent's practice of substance abuse counseling. At the discretion of the Certification Authority or its designee, supervision may include weekly meetings, review of charts selected by the Professional Mentor, and any other actions deemed appropriate by the Professional Mentor to determine that Respondent is practicing in a professional and competent manner. The Professional Mentor may designate another qualified health care provider acceptable to the Board to exercise the duties and responsibilities of the Professional Mentor in an absence of more than three weeks. In the event that the Professional Mentor is unable or unwilling to continue to serve as Respondent's professional mentor, the Certification Authority may in its sole discretion select a successor Professional Mentor. The Professional Mentor shall have no duty or liability to any client or third party, and the Mentor's sole duty is to the Certification Authority.
7. Respondent shall arrange for his Professional Mentor to provide written reports to the Certification Authority. These reports shall be filed at least once each month and shall assess Respondent's work performance. Respondent's Professional Mentor shall immediately report to Certification Authority any conduct or condition of the Respondent which may constitute unprofessional conduct, a violation of this Order, or a danger to the public or a patient.

8. The Certification Authority shall suspend Respondent's certificate if it finds that, at any time after June 4, 2004, Respondent violated this order, committed a violation of the Counselor Code of Conduct, is a danger to the public or patient, or was convicted of a any felony or misdemeanor relating to a counselor's ability to practice the substance abuse counseling profession.

9. Respondent shall be responsible for all costs and expenses incurred in conjunction with the mentoring, supervision and any other expenses associated with compliance with the terms of this Order.

#### TRANSFER OF REGULATORY AUTHORITY TO DEPARTMENT OF REGULATION AND LICENSING

The Hearing Committee recognizes that under 2005 Wisconsin Act 25, administration of the certification law for alcohol and drug counselors will be transferred to the Wisconsin Department of Regulation and Licensing in 2006 and that a person certified as an alcohol and drug counselor III will be certified as an independent substance abuse counselor at the time of transfer. 2005 Wisconsin Act 25, § 2337L. The Hearing Committee intends that its order remain in effect and apply to Respondent at the time he applies for reinstatement irrespective of whether the Wisconsin Certification Board or the Department of Regulation and Licensing is the agency having the authority to grant or deny Respondent's application. In this decision, the term "Certification Authority" is used to refer to either the Wisconsin Certification Board or the Department of Regulation and Licensing, depending on which agency has the authority to grant certification at the time of Respondent's application for reinstatement.

Wisconsin Certification Board Hearing Committee

Sheryl L. Graeber  
Les Higgenbottom  
William Stone

Signed for the hearing committee this 16<sup>th</sup> day of December, 2005,



William Dusso, (nonvoting member and hearing officer).<sup>2</sup>

<sup>1</sup> The rule provides, in full:

**Rule 3.1** A conviction for any felony or misdemeanor relating to the counselor's ability to practice the substance abuse counseling profession shall be grounds for disciplinary action.

Discussion: A certificate of conviction shall be deemed conclusive evidence of a counselor's guilt of the felony or misdemeanor for which he or she has been convicted. If that felony or misdemeanor relates to the individual's ability to practice the substance abuse counseling profession, the fact of conviction shall also be proof of violation of this Rule. Some specific examples within this section include but are not limited to crimes involving violence, use or sale of drugs, fraud, theft, sexual misconduct, or other felonies. All proceedings in which the sentence has been deferred, suspended, or a conviction expunged shall be deemed a conviction within the meaning of this section.

<sup>2</sup> Except for details concerning the suspension and mentoring program, the hearing committee made its decision in deliberations following the hearing on November 29, 2005. Details of the decision were determined through telephone and e-mail communications. The Hearing committee authorized the hearing officer to sign the decision for the committee.