

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
	:	
CLARENCE JOHNSON,	:	Order <u>0000869</u>
RESPONDENT.	:	

Division of Enforcement Case # 09 RSA 038

The parties to this action for the purposes of Wis. Stats. § 227.53 are:

Clarence Johnson
9730 37th Place N, #301
Plymouth, MN 55441

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Secretary of the Department. The Secretary has reviewed this Stipulation and considers it acceptable.

Accordingly, the Secretary in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Clarence Johnson, Respondent, date of birth January 2, 1955, is certified by the Department of Regulation and Licensing as a(n):
 - a. Clinical Substance Abuse Counselor in the state of Wisconsin, pursuant to certificate number 1876, which was first granted December 16, 1994.

- b. Independent Clinical Supervisor in the state of Wisconsin, pursuant to certificate number 11458, which was first granted May 26, 1999.

2. Respondent's last known address reported to the Department of Regulation and Licensing is 9730 37th Place N, #301, Plymouth, Minnesota 55441.

3. Respondent was working at the Dewey Center Community Based Residential Facility in Wauwatosa, Wisconsin when he met Patient W.F.. Patient W.F. was admitted in 2008 as an inpatient to the Dewey Center for substance abuse where the Respondent was a substance abuse counselor.

4. Patient W.F. was discharged in 2009, and upon that discharge, Respondent and Patient W.F. began a friendship. Respondent requested to borrow money from Patient W.F., which Patient W.F. allowed. Patient W.F. describes himself as a gay man, and Respondent as a married, fundamentalist Christian. The two would frequently meet for coffee, lunch and dinner to discuss personal subjects, such as their lives and relationships. Respondent would ask to borrow money, and Patient W.F. did loan him money on a few occasions.

5. On November 5, 2009, Respondent and Patient W.F. had planned to meet at a restaurant for dinner after Patient W.F. was done with work. Shortly before meeting at the restaurant, Respondent phoned Patient W.F., asking to meet at Patient W.F.'s business, a funeral home, instead of the restaurant. Patient W.F. found this request to be unusual, but agreed to let Respondent come to the funeral home.

6. Respondent reports that he had taken Robitussin DM, an over-the-counter cough suppressant and expectorant. Respondent further reports that he had been drinking before arriving at Patient W.F.'s funeral home. Once arriving, Respondent requested a drink, and Patient W.F. offered him vodka. Respondent drank what he describes as a "medium" glass of vodka. Patient W.F. did not consume any alcohol.

7. Respondent says he has no memory of the remainder of the evening, and believes that he was in an alcohol induced psychosis.

8. Patient W.F. states that Respondent's cell phone was constantly ringing, as Respondent's wife was trying to contact him. Respondent did answer his wife's call once, but just to tell her he was at the funeral home.

9. Respondent pushed Patient W.F. to the floor and restrained him there.

10. Respondent's wife arrived at the funeral home and entered the room. Patient W.F. took advantage of Respondent's distracted attention on his wife's entrance and called the police. The police transported Respondent to the hospital for an emergency detention.

CONCLUSIONS OF LAW

1. The Wisconsin Department of Regulation and Licensing has jurisdiction over this matter pursuant to Wis. Stat. § 440.88(6) and has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

2. Respondent, by engaging in the conduct as set out above, has committed unprofessional conduct as defined by Wis. Admin. Code § RL 164.01(2)(m) and is subject to discipline pursuant to Wis. Stat. § 440.88(6).

ORDER

IT IS ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, effective the date of this Order:

SUSPENSION

- A.1. The certificates previously issued to Clarence Johnson to practice as a Clinical Substance Abuse Counselor and Independent Clinical Supervisor are SUSPENDED for an indefinite period.
- A.2. Respondent shall mail or physically deliver all indicia of certification to the Department Monitor within 14 days of the effective date of this Order.
- A.3. Upon a showing by Respondent of continuous, successful compliance for a period of at least five (5) years with the terms of this Order, including at least 600 hours of active practice as a substance abuse counselor for every year the suspension is stayed, the Secretary may grant a petition by the Respondent under paragraph D.4. for return of full certification. At the Secretary's discretion, the 5-year period may be started anew for every substantial or repeated violation of any provision of Sections C or D of this Order.
- A.4. The Secretary may, on his own motion or at the request of the Department Monitor, grant full certification at any time.

STAY OF SUSPENSION

- B.1. The suspension shall not be stayed immediately, but shall be stayed upon Respondent petitioning the Secretary and providing proof, which is determined by the Secretary or his designee to be sufficient, that Respondent has been in compliance with the provisions of Sections C and D of this Order for the most recent three (3) consecutive months.
- B.2. The Secretary or his designee may, without hearing, remove the stay upon receipt of information that Respondent is in substantial or repeated violation of any provision of Sections C or D of this Order. Repeated violation is defined as the multiple violation of the same provision or violation of more than one provision. The Secretary may, in conjunction with any removal of any stay, prohibit the Respondent for a specified period of time from seeking a reinstatement of the stay under paragraph B.4.
- B.3. This suspension becomes reinstated immediately upon notice of the removal of the stay being provided to Respondent either by:

- (a) Mailing to Respondent's last-known address provided to the Department of Regulation and Licensing pursuant to Wis. Stat. § 440.11; or
 - (b) Actual notice to Respondent or Respondent's attorney.
- B.4. The Secretary or his designee may reinstate the stay, if provided with sufficient information that Respondent is in compliance with the Order and that it is appropriate for the stay to be reinstated. Whether to reinstate the stay shall be wholly in the discretion of the Secretary or his designee.
- B.5. If Respondent 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 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within 60 days of receipt of Respondent's request, unless waived by Respondent. Requesting a hearing does not stay the suspension during the pendency of the hearing process.

CONDITIONS AND LIMITATIONS

Treatment Required

- C.1. Respondent shall enter into, and shall continue, in a drug and alcohol treatment at a treatment facility (Treater) acceptable to the Secretary or his designee. Respondent shall participate in, cooperate with, and follow all treatment recommended by Treater.
- C.2. Respondent shall immediately provide Treater with a copy of this Final Decision and Order and all other subsequent orders.
- C.3. Treater shall be responsible for coordinating Respondent'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 the Department Monitor (See D.1., below). If Treater is unable or unwilling to serve as Treater, Respondent shall immediately seek approval of a successor Treater by the Secretary or his designee.
- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater, but not less than once weekly for the first year of the stayed suspension. Therapy may end only upon a determination by the Secretary or his designee after receiving a petition for modification as required by D.4., below.
- C.5. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress in the drug and alcohol treatment program. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

Releases

- C.6. Respondent shall provide and keep on file with Treater, all treatment facilities and personnel, laboratories and collections sites current releases complying with state and federal laws. The releases shall allow the Secretary, his designee, and any employee of the Department of Regulation and Licensing, Division of Enforcement to: (a) obtain all specimen screening results and patient health care and treatment records and reports, and (b) discuss the progress of Respondent's treatment and rehabilitation. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.7. Respondent shall attend Narcotics Anonymous and/or Alcoholic Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater, but not less than one meeting per week. Attendance of Respondent at such meetings shall be verified and reported monthly to Treater and the Department Monitor.

Sobriety

- C.8. Respondent shall abstain from all personal use of alcohol.
- C.9. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent 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 Respondent's treatment with, and provide copies of treatment records to, Treater and the Secretary or his designee.
- C.10. Respondent shall abstain from all use 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 Respondent's treatment and rehabilitation.
- C.11. Within 24 hours of ingestion or administration, Respondent shall report to Treater and the Department Monitor all medications and drugs, over-the-counter or prescription, taken by Respondent, shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs, and shall provide the Department Monitor with a copy of the prescription. If Respondent has not provided a release as required by C.9 above, within 24 hours of a request by Treater or the Secretary or his designee, Respondent 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 Respondent's treatment with, and provide copies of treatment records to, the requester.

Drug and Alcohol Screens

- C.12. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department pursuant to Wis. Adm. Code § RL 7.11 ("Approved Program"). A list of Approved Programs is available from the Department Monitor.
- C.13. At the time Respondent enrolls in the Approved Program, Respondent 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 – including any positive test for any controlled substance or alcohol - is a substantial 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 specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.

- C.14. The Approved Program shall require the testing of urine specimens at a frequency of not less than 48 times per year, for the first year of this Order. After the first year, the frequency may be reduced only upon a determination by the Secretary or his designee after receiving a petition for modification as required by D.4., below.
- C.15. The Department Monitor, Secretary or his designee shall determine the tests to be performed upon the specimens. If any specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Treater or the Secretary or his designee 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 Secretary or his designee may require Respondent to do any or all of the following: (a) submit additional specimens, (b) submit specimens of blood, hair, breath, urine, fingernail, saliva, and any additional tissue or product of the body, the collection of which does not require piercing the skin, (c) furnish any specimen in a directly witnessed manner.
- C.17. All confirmed positive test results shall be presumed to be valid. Respondent 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.

Practice Limitations

- C.19. Respondent shall not work as a substance abuse counselor or independent clinical supervisor in any capacity unless Respondent is in full compliance with the rehabilitation and treatment programs as specified and approved under this Order.
- C.20. Respondent shall practice only under the direct supervision of a clinical substance abuse counselor or other licensed health care professional approved by the Secretary or his designee and only in a work setting pre-approved by the Secretary or his designee.
- C.21. Respondent shall provide a copy of this Final Decision and Order and all other subsequent orders immediately to supervisory personnel at all settings where Respondent works as a substance abuse counselor or care giver or provides health care, currently or in the future.
- C.22. It is Respondent's responsibility to arrange for written reports from supervisors to be provided to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance, and shall include the number of hours of active practice of substance abuse counseling worked during that quarter.
- C.23. Respondent shall report to the Department Monitor 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
Wisconsin 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

Required Reporting by Respondent

- D.2. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Respondent shall promptly notify the Department Monitor of any failures of the Treater, treatment facility, Approved Program or collection sites to conform to the terms and conditions of this Order. Respondent shall promptly notify the Department Monitor of any violations of any of the terms and conditions of this Order by Respondent. Additionally, every three (3) months the Respondent shall notify the Department Monitor of the Respondent's compliance with the terms and conditions of the Order, and shall provide the Department Monitor with a current address and home telephone number.

Change of Treater or Approved Program by Secretary

- D.3. If the Secretary or his designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Secretary or his designee may direct that Respondent continue treatment and rehabilitation under the direction of another Treater or Approved Program.

Petitions for Modification of Limitations or Termination of Order

- D.4. Respondent may petition the Secretary for modification of the terms of this Order or termination, however no such petition for modification shall occur earlier than one year from the date of this Order, no such petition shall be made any earlier than three months from the date the Secretary has acted on the last such petition, and no such petition for termination shall occur other than in compliance with paragraph A.3. Any such petition for modification shall be accompanied by a written recommendation from Respondent's Treater 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 Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.

Costs of Compliance

- D.5. Respondent 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.

Costs of Proceeding

- D.6. Respondent shall pay costs of six hundred seventy-five dollars (\$675.00) to the Department of Regulation and Licensing, within ninety (90) days of this Order. In the event Respondent fails to timely submit any payment of costs, the Respondent's certificates SHALL BE SUSPENDED, without further notice or hearing, until Respondent has paid the Costs in full, including any accrued interest.

Additional Discipline

- D.7. In addition to any other action authorized by this Order or law, violation of any term of this Order may be the basis for a separate disciplinary action pursuant to Wis. Stat. § 440.88.

Dated at Madison, Wisconsin this 25th day of May, 2011.

By:


For the Department of Regulation and Licensing