

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
ROY A. HENCE, :
RESPONDENT. :
 : **0002688**

Division of Legal Services and Compliance¹ Case No. 13 RSA 006

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

Roy A. Hence
2802 Dryden Drive # 301
Madison, WI 53704

Wisconsin Department of Safety and Professional Services
P.O. Box 8935
Madison, WI 53708-8935

Division of Legal Services and Compliance
Wisconsin Department of Safety and Professional Services
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Wisconsin Department of Safety and Professional Services (Department). The Department has reviewed this Stipulation and considers it acceptable.

Accordingly, the Department adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Roy A. Hence (dob January 3, 1963) is certified in the State of Wisconsin as a substance abuse counselor-in-training, having certificate number 15908-130, first issued on November 10, 2009 and current through February 28, 2015. Mr. Hence's most recent address on file with the Department is 2802 Dryden Drive # 301, Madison, Wisconsin 53704.

¹ The Division of Legal Services and Compliance was formerly known as the Division of Enforcement.

2. At all times relevant to this proceeding, Respondent was working as a clinical substance abuse counselor-in-training in Wisconsin.

3. On March 8, 2011, a criminal complaint was filed by the District Attorney for Dodge County (Dodge County Case Number 2011 CF 0057). The criminal complaint accused Respondent of one (1) count of operating a motor while impaired (5th or 6th offense), a violation of Wis. Stats. §346.63(1)(a), and of one (1) count of operating a motor vehicle with a prohibited alcohol concentration (5th or 6th), a violation of Wis. Stats. §346.63(1)(b).

4. On October 13, 2011, Respondent entered a guilty plea and was convicted of one count of operating while intoxicated – 5th or 6th offense, a violation of Wis. Stats. § 346.63(1)(a). On December 14, 2011, Respondent was sentenced to 22 months in state prison, 36 months of extended supervision, and his driver license was revoked for 36 months.

5. In resolution of this matter, Respondent consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Department of Safety and Professional Services has jurisdiction to act in this matter pursuant to Wis. Stat. § 440.88, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in the Findings of Fact, Respondent Roy A. Hence violated Wis. Admin. Code § SPS 164.01(2)(b) by violating any law or rule substantially related to practice of a substance abuse professional.

3. As a result of the violations noted in the Conclusions of Law, Respondent Roy A. Hence is subject to discipline pursuant to Wis. Stat. § 440.88(6).

ORDER

1. The attached Stipulation is accepted.

2. The substance abuse counselor-in-training certificate issued to Roy A. Hence, (certificate number 15908-130) is SUSPENDED as follows:

SUSPENSION

A.1. The certificate of Roy A. Hence, certificate number 15908-130, to practice as a substance abuse counselor-in-training in the State of Wisconsin is SUSPENDED for an indefinite period.

- A.2. Respondent shall mail or physically deliver all indicia of Wisconsin substance abuse counselor-in-training certificate to the Department Monitor within fourteen (14) days of the effective date of this order. Limited credentials can be printed from the Department of Safety and Professional Services website at <http://dsps.wi.gov/index.htm>
- 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 substance abuse counselor-in-training for every year the suspension is stayed, the Department may grant a petition by the Respondent under paragraph D.6. for return of full Wisconsin licensure. The Department may, on its own motion or at the request of the Department Monitor, grant full Wisconsin licensure at any time.

STAY OF SUSPENSION

- B.1. The suspension of Respondent's Wisconsin substance abuse counselor-in-training certificate may be stayed upon Respondent petitioning the Department and providing proof, which is determined by the Department or its designee to be sufficient, that Respondent is in compliance with the provisions of Sections C and D of this Order.
- B.2. The Department or its 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. A substantial violation includes, but is not limited to, a positive drug or alcohol screen. A repeated violation is defined as the multiple violation of the same provision or violation of more than one provision. The Department 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 Safety and Professional Services pursuant to Wis. Stat. § 440.11; or
 - (b) Actual notice to Respondent or Respondent's attorney.
- B.4. The Department or its 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 Board or its 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 § SPS 2. The hearing shall be held in a timely manner with the evidentiary portion of the hearing being completed within sixty (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, drug and alcohol treatment with a Treater acceptable to the Department or its designee ("Treater"). 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 and treatment 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 required by this Order, Respondent shall immediately seek approval of a successor Treater by the Board or its designee.
- C.4. The rehabilitation program shall include individual and/or group therapy sessions at a frequency to be determined by Treater. Therapy may end only with the approval of the Department or its 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 drug and alcohol treatment. 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 Department, its designee, and any employee of the Department of Safety and Professional Services, Division of Legal Services and Compliance to: (a) obtain all specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress

of Respondent's treatment and rehabilitation with Treater and treatment facilities and personnel, laboratories and collection sites. Copies of these releases shall immediately be filed with the Department Monitor.

AA/NA Meetings

- C.7. Respondent shall attend Narcotics Anonymous and/or Alcoholics Anonymous meetings or an equivalent program for recovering professionals, at the frequency recommended by Treater, but no less than twice per week. Attendance of Respondent at such meetings shall be verified and reported quarterly 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 Department or its designee. Copies of these releases shall immediately be filed with the Department Monitor.
- C.10. Respondent shall abstain from all use of over-the-counter medications or other substances (including but not limited to natural substances such as poppy seeds) which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation. It is Respondent's responsibility to educate himself about the medications and substances which may violate this paragraph, and to avoid those medications and substances.
- C.11. Respondent shall report to Treater and the Department Monitor all prescription medications and drugs taken by Respondent. Reports must be received within twenty four (24) hours of ingestion or administration of the medication or drug, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. Each time the prescription is filled or refilled, Respondent shall immediately arrange for the prescriber or pharmacy to fax and mail copies of all prescriptions to the Department Monitor.
- C.12. Respondent shall provide the Department Monitor with a list of over-the-counter medications and drugs that they may take from time to time. Over-the-counter medications and drugs that mask the consumption of controlled substances or of

alcohol, create false positive screening results, or interfere with Respondent's treatment and rehabilitation, shall not be taken unless ordered by a physician and approved by Treater, in which case the drug must be reported as described in paragraph C.11.

Drug and Alcohol Screens

- C.13. Respondent shall enroll and begin participation in a drug and alcohol monitoring program which is approved by the Department ("Approved Program").
- C.14. 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 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 urine, blood, sweat, fingernail, hair, saliva or other specimen at a collection site designated by the Approved Program within five (5) hours of notification of a test.
- C.15. The Approved Program shall require the testing of specimens at a frequency of not less than forty-nine (49) times per year, for the first year of this Order. After the first year, Respondent may petition the Department on an annual basis for a modification of the frequency of tests. The board may adjust the frequency of testing on its own initiative at any time.
- C.16. If any urine, blood, sweat, fingernail, hair, saliva or other specimen is positive or suspected positive for any controlled substances or alcohol, Respondent shall promptly submit to additional tests or examinations as the Department or its designee shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
- C.17. In addition to any requirement of the Approved Program, the Department or its designee may require Respondent to do any or all of the following: (a) submit additional specimens; (b) furnish any specimen in a directly witnessed manner; or (c) submit specimens on a more frequent basis.
- C.18. 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, fault in the chain of custody or other valid defense.
- C.19. The Approved Program shall submit information and reports to the Department Monitor as directed.

Practice Limitations

- C.20. Respondent may work as substance abuse counselor in a setting in which Respondent has access to controlled substances. If Treater subsequently recommends restrictions on such access, the Department or its designee may impose such restrictions.
- C.21. Respondent shall practice only under the direct supervision of a licensed substance abuse counselor or other licensed counseling professional approved by the Department or its designee.
- C.22. Respondent shall practice only in a work setting pre-approved by the Department or its designee.
- C.23. Respondent shall not work in any site where alcoholic beverages are sold or consumed.
- C.24. 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, currently or in the future.
- C.25. 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 substance abuse counselor practice worked during that quarter. If a report indicates poor performance, the Department may institute appropriate corrective limitations, or may revoke a stay of the suspension, in its discretion.
- C.26. Respondent 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
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

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.
- D.3. 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 Department

- D.4. If the Department or its designee determines the Treater or Approved Program has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Department or its 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.5. Respondent may petition the Department on an annual basis for modification of the terms of this Order, however no such petition for modification shall occur earlier than one (1) year from the date of the initial stay of the suspension. Any 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.
- D.6. Respondent may petition the Department for termination of this Order anytime after five (5) years from the date of the initial stay of the suspension. However, no petition for termination shall be considered without a showing of continuous, successful compliance with the terms of the Order, for at least five years.

Costs of Compliance

- D.7. 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.8. Respondent shall pay costs of \$445.08 to the Department of Safety and Professional Services, within one hundred and eighty days (180) days of this Order. Payment should be directed to the attention of the Department Monitor at the address in paragraph D.1., above. In the event Respondent fails to timely submit any payment of costs, the Respondent's certification (certificate number 15908-130) may, in the discretion of the Department or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

Additional Discipline

- D.9. 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. § 440.20(4).

3. This Order is effective on the date of its signing.

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

By:


Michael J. Berndt, Chief Legal Counsel
On Behalf of the Department

10/22/13
Date