

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 APPLICATION FOR A	:	
SUBSTANCE ABUSE COUNSELOR	:	
CREDENTIAL	:	ORDER GRANTING
	:	LIMITED LICENSE
	:	
BENJAMIN S. HIRTE, SAC-IT,	:	
APPLICANT.	:	ORDER 0008952

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

Benjamin S. Hirte, SAC-IT
Milton, WI 53563

Department of Safety and Professional Services
4822 Madison Yards Way
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 resolution of this application. The Wisconsin Department of Safety and Professional Services (Department) adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. On or about February 18, 2021, Benjamin S. Hirte (Applicant) filed an application (#792291) for a Wisconsin Substance Abuse Counselor license.

2. Information received in the application process establishes Applicant has the following conviction history:

A. On or about April 22, 2022 – Operating While Intoxicated (OWI) 3rd, a misdemeanor conviction.

i. According to the criminal complaint, Applicant was in his vehicle at an intersection at approximately 2:38 in the morning. His right turn signal was activated, but he was not in the right turn lane. He was stopped long enough for a Sheriff's Deputy to pass the vehicle, turn around, and approach. Applicant was discovered slouched over the steering wheel, unconscious. Once the Deputy was able to wake Applicant, it was immediately made apparent that he was

intoxicated, as Applicant was slurring his speech and having difficulty communicating. Applicant's blood test revealed a blood alcohol content of .25, more than three (3) times the legal limit. Applicant was charged with OWI 3rd due to a prior OWI (1st) conviction in 2015 and an OWI (2nd) conviction in 2017.

B. In a letter dated December 6, 2021, Applicant's Treater provided the following information:

- i. Applicant started seeing Treater regularly in 2018 and 2019, resuming regular meetings in 2020 after the date of his pending charge.
- ii. Applicant started seeing an addiction counselor in 2021.
- iii. Applicant reported that he has had alcohol relapses since his OWI but has not had any relapses since August of 2021.
- iv. Treater notes that Applicant is strongly motivated to stay sober, and he could still work effectively as a Substance Abuse Counselor-in-Training if he were to remain sober.
- v. Treater recommended the following restrictions:
 - a. Abstinence from alcohol and any drugs without a valid prescription;
 - b. Direct supervision;
 - c. Periodic supervisory reports;
 - d. Periodic treater reports;
 - e. Continued therapy, no less than once per month, with quarterly reports to the Department Monitor;
 - f. Continued attendance at Alcoholics Anonymous or Narcotics Anonymous, no less than once per week; and
 - g. Creation of a relapse prevention plan and quarterly reports reflecting on follow through with the relapse plan.

3. On or about March 24, 2022, given Applicant's conviction and impairment history, Applicant was issued a limited SAC-IT credential in Order 7908. A copy of Order 7908 is attached and incorporated by reference.

4. On or about January 13, 2022, Applicant applied for a full Licensed Practical Counselor (LPC) credential. Department Monitoring noticed several concerns of potential non-compliance with Order 7908. Due to the this, the LPC Section informed Applicant the decision on Applicant's full LPC application was tabled, until Applicant provided additional information.

A. Applicant subsequently submitted explanations and additional documentation about the concerns raised by the LPC Section. After reviewing Applicant's response, the Section found Applicant adequately addressed the concerns and offered Applicant a limited LPC license, which required Applicant comply with the terms of Order 7908.

5. On or about October 13, 2022, Applicant was issued LPC limited license Order 8187.

6. On or about November 16, 2023, application #792291, was sent for legal review.

A. On or about December 7, 2023, the Department Monitor confirmed Applicant is in compliance with the terms of Order 7908 and Order 8187.

7. Applicant has not yet established the requisite two (2) years of compliance with Order 7908.

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

CONCLUSIONS OF LAW

1. The Department has jurisdiction to act in this matter pursuant to Wis. Stat. § 440.88(6), and is authorized to enter the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. Pursuant to Wis. Stat. § 440.88(6), the Department may deny or limit the certification of any Substance Abuse Counselor for any unprofessional conduct.

3. Pursuant to Wis. Admin. Code § SPS 164.01(2)(h), the Department may deny or limit the certification of any Substance Abuse Counselor for using alcohol or any drug to an extent that such use impairs the ability of the substance abuse professional to safely or reliably practice.

4. By the conduct described in the Finding of Fact, Applicant violated Wis. Stat. § 440.88(6) and Wis. Admin. Code § SPS 164.01(2)(h) by using alcohol to an extent that such use impairs his ability to safely or reliably practice.

5. As a result of the above Findings of Fact and Conclusions of Law, Applicant is subject to limitations on his license pursuant to Wis. Stat. § 440.88(6) and Wis. Admin. Code § SPS 164.01(2)(h).

ORDER

1. The attached Stipulation is accepted.
2. Applicant's ability to practice as a Substance Abuse Counselor in the State of Wisconsin is LIMITED as follows:
 - A. For a period of at least two (2) years from the date of this Order¹ Applicant shall comply with the following requirements relating to drug and alcohol monitoring:
 - i. Applicant shall continue to be enrolled and participate in a drug and alcohol monitoring program which is approved by the Department (Approved Program).
 - ii. At the time Applicant enrolls in the Approved Program, Applicant shall review 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. The Approved Program shall require the testing of specimens at a frequency of not less than twenty-four (24) times per year, (one (1) of which must be a hair test at the Department's discretion) for at least the first year of this Order. Thereafter, the Department may adjust the frequency of testing on its own initiative at any time.
 - iii. Applicant shall abstain from all personal use of alcohol.
 - iv. Applicant 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. Applicant shall disclose Applicant's

¹ If you successfully demonstrate continuous successful compliance under your current Order #7908 (as determined in the sole discretion of the Department), the Department will credit your compliance with Order #7908 toward this Order.

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, the Department or its designee. Copies of these releases shall immediately be filed with the Department of Safety and Professional Services Monitor (Department Monitor).

- v. Applicant shall report to the Department Monitor all prescription medications and drugs taken by Applicant. 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, Applicant shall immediately arrange for the prescriber or pharmacy to mail copies of all prescriptions to the Department Monitor.
- vi. Applicant shall provide the Department Monitor with a list of over-the-counter medications and drugs that he may take from time to time. Over-the-counter medications and drugs that mask the consumption of controlled substances or alcohol, create false positive screening results, or interfere with Applicant's treatment and rehabilitation, shall not be taken unless ordered by a physician, in which case the drug must be reported as described in paragraph 3.A.iv.
- vii. All positive tests are presumed valid and may result in automatic suspension of licensure by the Department or the Department's designee. Applicant must prove by a preponderance of the evidence an error in collection, testing, fault in the chain of custody, or other valid defense.
- viii. If any urine, blood, sweat, fingernail, hair, saliva, or other specimen is positive or suspected positive for any controlled substances or alcohol, Applicant 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.

- B. For a period of at least two (2) years from the date of this Order² Applicant shall comply with the following Alcohol and Other Drug Abuse (AODA) treatment, AODA support group, and relapse prevention plan requirements:
- i. Within thirty (30) days of the date of this Order, Applicant shall provide proof to the Department Monitor that Applicant is continuing AODA counseling with an AODA counseling provider (Treater), whose credential is in good standing, and approved by the Department. Applicant shall participate in, cooperate with, and follow all treatment recommended by Treater.
 - ii. Applicant shall immediately provide Treater with a copy of this Order and all other subsequent orders.
 - iii. Applicant 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 and any employee of the Department 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 the Department Monitor.
 - iv. Applicant's treatment shall include individual and/or group therapy sessions at a frequency to be determined by Treater, but not less than once a month. Therapy may end only upon a determination by the Department or its designee after receiving a petition for modification, including a recommendation from Treater expressly approving termination of therapy.
 - v. Treater 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. If Treater is unable or unwilling to serve as Treater, Applicant shall immediately seek approval of a successor Treater by the Department or its designee.
 - vi. Treater shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Applicant's progress in the mental health

² If you successfully demonstrate continuous successful compliance under your current Order #7908 (as determined in the sole discretion of the Department), the Department will credit your compliance with Order #7908 toward this Order.

treatment sessions, abstinence from all substances, and drug and alcohol testing. Treater shall report immediately to the Department Monitor any violation or suspected violation of this Order.

- vii. Applicant shall attend Alcoholics Anonymous meetings, Narcotics Anonymous meetings, or other Department-approved equivalent program for recovering professionals, no less than once per week. Applicant shall provide proof of attendance on a quarterly basis to the Department Monitor.
- viii. Within thirty (30) days of the date of this Order, Applicant shall complete and submit a relapse prevention plan which shall address, but is not limited to, the following items:
 - a. Describe your attitude about sobriety and what will help you sustain your motivation/commitment to sobriety;
 - b. Identify your goals;
 - c. What motivates you;
 - d. What consequences are likely if you relapse;
 - e. Identify your triggers and/or warning signs, and your specific plan to avoid drinking or using;
 - f. Who you will contact for support and assistance;
 - g. Emergency planning; what you will do if you encounter a crisis or a stressful situation that triggers a strong urge to use or drink;
 - h. Changing your routine is important in staying sober; how you will begin and end each day in a way that supports sobriety and recovery;
 - i. Do you foresee any obstacles/barrier to implementing this plan? What will you do about these roadblocks?
 - j. How will you remain accountable?
- ix. Applicant shall submit self-reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. The reports shall include a summary of Respondent's compliance with the terms and conditions of the Order in the previous quarter and provide an update on Applicant's relapse prevention plan follow through.

- C. For a period of two (2) years from the date of this Order,³ Applicant shall comply with the following practice limitations:
- i. Applicant shall show a copy of this Order to his current and any future employer(s). Applicant shall provide the Department Monitor with written acknowledgement from each employer that a copy of this Order has been received. Such acknowledgement shall be provided to the Department Monitor within fourteen (14) days of beginning new employment and/or within fourteen (14) days of the date of this Order for employment current as of the date of this Order.
 - ii. It is Applicant's responsibility to arrange for quarterly written reports from his Substance Abuse Counselor supervisors(s) to be submitted to the Department Monitor on a quarterly basis, beginning ninety (90) days from the date of this Order. These reports shall describe the circumstances of Applicant's employment, assess his work performance, and verify that he is in compliance with the laws governing the practice of a Substance Abuse Counselor-in-Training and the terms of this Order.
 - iii. Applicant shall commit no new violations of law and shall report all law enforcement contacts leading to arrest, charge or conviction, including DWI/OWI, and municipal ordinance violations, to the Department Monitor within forty-eight (48) hours of any such event, including any convictions resulting from pending charges. This includes Rock County case 2020CT430.

3. 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 the Department Monitor of any suspected violations of any of the terms and conditions of this Order by Applicant.

4. The Department Monitor is the individual designated by the Department as its agent to coordinate compliance with the terms of this Order. Any information required by this Order shall be mailed, or delivered to:

DEPARTMENT MONITOR
Department of Safety and Professional Services
Division of Legal Services & Compliance
P.O. Box 7190, Madison, WI 53707-7190
Telephone: (608) 267-3817
dspsmonitoring@wi.gov

³ If you successfully demonstrate continuous successful compliance under your current Order #7908 (as determined in the sole discretion of the Department), the Department will credit your compliance with Order #7908 toward this Order.

Information may also be submitted online via the Department's Monitoring Case Management System at: <https://app.wi.gov/DSPSMonitoring>

5. Applicant may petition the Department on an annual basis for modification of the terms of this Order. Any petition for modification shall be accompanied by a written recommendation from Applicant'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 Applicant shall not have a right to any further hearings or proceedings on the denial.

6. Applicant may petition the Department for full, unrestricted licensure upon demonstration of continuous, successful practice in compliance with the terms of this Order, together with compliance under Order 7908 (issued March 24, 2022), for at least two (2) years in total. "Practice in compliance" includes the submission of work reports, the content of which are satisfactory to the Department or its designee. Any such petition shall be accompanied by a written recommendation from Applicant's current employer and clinical supervisor. The Department may grant or deny any petition, in its discretion, or may modify this Order as it sees fit.

7. Applicant shall be responsible for all costs and expenses associated with compliance with the terms of this Order.

8. If Applicant violates any term of this Order, Applicant's license may, in the discretion of the Department or its designee, be SUSPENDED, without further notice or hearing, until Applicant has complied with the terms of the Order. The Department may, in addition and/or in the alternative, refer any violation of this Order to the Department's Division of Legal Services and Compliance for further investigation and action.

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

Dated at Madison, Wisconsin this 24 day of January, 2024.



Aloysius Rohmeyer, Chief Legal Counsel
On behalf of the Department of Safety
and Professional Services

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF APPLICATION FOR A
SUBSTANCE ABUSE COUNSELOR
CREDENTIAL

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STIPULATION

BENJAMIN S. HIRTE, SAC-IT,
APPLICANT.

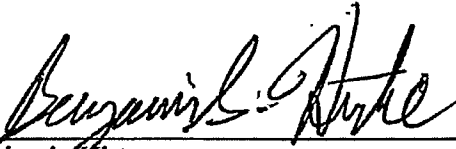
ORDER 0008952

It is stipulated between Applicant and the Wisconsin Department of Safety and Professional Services (Department) as follows:

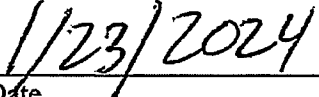
1. Applicant filed an application (#792291) to for a Substance Abuse Counselor credential.
2. Information received by the Department reflects a basis for denial of licensure.
3. Based upon the information of record, the Department agrees to issue, and Applicant agrees to accept, an Order for a Substance Abuse Counselor credential, subject to the terms and conditions set forth in the attached Order adopting the Stipulation.
4. Applicant understands that by signing this Stipulation, Applicant voluntarily and knowingly waives the following rights:
 - the right to request a hearing related to the denial of the licensure;
 - the right to confront and cross-examine the witnesses against Applicant;
 - the right to call witnesses on Applicant's behalf and to compel their attendance by subpoena;
 - the right to testify on Applicant's own behalf;
 - the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
 - the right to petition for rehearing; and
 - all other applicable rights afforded to Applicant under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.
5. Applicant is aware of Applicant's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.
6. Applicant agrees to the adoption of the attached Order Granting Limited License by the Department. The parties to the Stipulation consent to the entry of the attached Order Granting Limited License without further notice, appearance, or consent of the parties.

7. Applicant waives all rights to any appeal of the Department's Order, as adopted in the form as attached.


8. Applicant is informed that the Order Granting Limited License is a public record and will be published in accordance with standard procedure.



Benjamin Hirte
Milton, WI 53563
Application No. 792291



Date



Aloysius Rohmeyer, Chief Legal Counsel
Department of Safety and Professional Services
4822 Madison Yards Way
P.O. Box 8935
Madison, WI 53708-8935

1/24/2024

Date