

Chapter SPS 164

UNPROFESSIONAL CONDUCT SUBSTANCE ABUSE PROFESSIONALS

SPS 164.01 Unprofessional conduct.

Note: Chapter RL 164 was renumbered chapter SPS 164 under s. 13.92 (4) (b) 1., Stats., Register November 2011 No. 671.

SPS 164.01 Unprofessional conduct. (1) For the purposes of this chapter:

(a) "Department" means the department of safety and professional services.

(b) "Substance abuse professional" means the holder of any license, permit, certificate, or registration issued by the department pursuant to s. 440.88, Stats., or issued by the Wisconsin certification board.

(2) Unprofessional conduct comprises any practice or behavior that violates the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a patient or the public. Misconduct or unprofessional conduct includes the following:

(a) Submitting fraudulent, deceptive, or misleading information in conjunction with an application for a credential.

(b) Violating, or aiding and abetting a violation of, any law or rule substantially related to practice as a substance abuse professional. A certified copy of a judgment of conviction is prima facie evidence of a violation.

Note: Pursuant to s. SPS 4.09, all credential holders licensed by the department need to report a criminal conviction within 48 hours after entry of a judgment against them. The department form for reporting convictions is available on the department's web site at <http://dps.wi.gov/Home>.

(c) Having a license, certificate, permit, registration, or other practice credential granted by another state or by any agency of the federal government to practice as a substance abuse professional, which the granting jurisdiction limits, restricts, suspends, or revokes, or having been subject to other adverse action by a licensing authority, any state agency or an agency of the federal government, including the denial or limitation of an original credential, or the surrender of a credential, whether or not accompanied by findings of negligence or unprofessional conduct. A certified copy of a state or federal final agency decision is prima facie evidence of a violation of this provision.

(d) Failing to notify the department that a license, certificate or registration for the practice of any profession issued to the substance abuse professional has been revoked, suspended, limited or denied, or subject to any other disciplinary action by the authorities of any jurisdiction.

(e) Violating or attempting to violate any term, provision, or condition of any order of the department.

(f) Performing or offering to perform services for which the substance abuse professional is not qualified by education, training or experience.

(fm) Allowing students or supervisees to perform services for which the substance abuse professional is not qualified by education, training, or experience to perform.

(g) Practicing or attempting to practice while the substance abuse professional is impaired as a result of any illness that impairs the substance abuse professional's ability to appropriately carry out his or her professional functions in a manner consistent with the safety of patients or the public.

(h) Using alcohol or any drug to an extent that such use impairs the ability of the substance abuse professional to safely or reliably practice, or practicing or attempting to practice while the sub-

stance abuse professional is impaired due to the utilization of alcohol or other drugs.

(i) Engaging in false, fraudulent, misleading or deceptive behavior associated with the practice as a substance abuse professional, including advertising, billing practices, or reporting or falsifying or inappropriately altering patient records.

(j) Discriminating in practice on the basis of age, race, color, sex, religion, creed, national origin, ancestry, disability, gender identity, or sexual orientation.

(k) Revealing to other personnel not engaged in the care of a patient or to members of the public information which concerns a patient's identity or condition unless release of the information is authorized by the patient or required or authorized by law. This provision shall not be construed to prevent a credential holder from cooperating with the department in the investigation of complaints.

(L) Abusing a patient by any single or repeated act of force, violence, harassment, deprivation, neglect, or mental pressure which reasonably could cause physical pain or injury, mental anguish, or fear.

(m) Engaging in inappropriate sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient. For the purposes of this subsection, an adult shall continue to be a patient for 2 years after the termination of professional services. If the person receiving services is a minor, the person shall continue to be a patient for the purposes of this subsection for 2 years after termination of services, or for one year after the patient reaches age 18, whichever is longer.

(n) Failing to avoid dual relationships or relationships that may impair the substance abuse professional's objectivity or create a conflict of interest.

(o) Obtaining or attempting to obtain anything of value from a patient without the patient's consent.

(p) Obtaining or attempting to obtain any compensation by fraud, misrepresentation, deceit or undue influence in the course of practice.

(q) Offering, giving or receiving commissions, rebates or any other forms of remuneration for a patient referral.

(r) Failing to provide the patient or patient's authorized representative a reasonable description of anticipated tests, consultation, reports, fees, billing, therapeutic regimen or schedule, or failing to inform a patient of financial interests which might accrue to the substance abuse professional for referral to or for any use of service, product or publication.

(s) Failing to conduct an assessment, evaluation, or diagnosis as a basis for treatment provided.

(t) Failing to maintain adequate records relating to services provided a patient in the course of a professional relationship.

(u) Failing to make reasonable efforts to notify a patient or a patient's authorized representative when professional services will be interrupted or terminated by the substance abuse professional.

(v) Engaging in a single act of gross negligence or in a pattern of negligence as a substance abuse professional.

(w) Failing to respond honestly and in a timely manner to a request for information from the department. Taking longer than

30 days to respond to a department request creates a rebuttable presumption that the response is not timely.

(x) Failing to report to the department or to supervisory personnel any violation of the rules of this chapter by a substance abuse professional.

(y) Disclosing supervisee confidences, except as follows:

1. As mandated by law.

2. To prevent a clear and immediate danger to a person.

3. In educational or training settings where there are multiple supervisors who share responsibility for training of the supervisee.

History: CR 06-060: cr. Register December 2006 No. 612, eff. 1-1-07; correction in (1) (a) made under s. 13.92 (4) (b) 6., Stats., Register November 2011 No. 671; **2017 Wis. Act 262: cr. (2) (fm), am. (2) (j) (k), (x), cr. (2) (y) Register April 2018 No. 748, eff. 5-1-18.**