

CERTIFICATE

**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Marlene A. Cummings, Secretary, Wisconsin Department of Regulation and Licensing and custodian of the official records of the Department of Regulation and Licensing, hereby certify that the annexed rules were duly approved and adopted by the Department of Regulation and Licensing on the 21st day of May, 1996.

I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

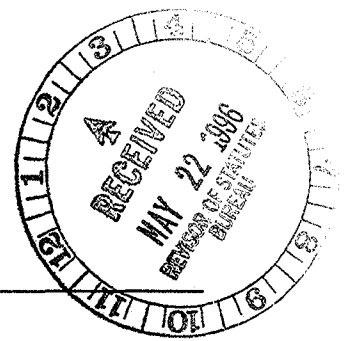
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 1400 East Washington Avenue, Madison, Wisconsin this 21st day of May, 1996.



**Marlene A. Cummings, Secretary
Department of Regulation and
Licensing**



STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING



IN THE MATTER OF RULE-MAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION
DEPARTMENT OF REGULATION : AND LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 95-211)

An order of the Department of Regulation and Licensing to repeal RL 1.02, 1.03 (2) and 1.05; to renumber RL 1.03 (3); to renumber and amend RL 1.03 (4), 1.04, 1.06 (title), 1.06 and 1.07; to amend ch. RL 1 (title), 1.01 (title), 1.01 and 1.03 (1); and to create RL 1.03 (2), (3) and (6), 1.04, 1.05, 1.07, 1.08, 1.09, 1.12 and 1.13 relating to procedures to review denials of credentials.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2) and 440.03 (1), Stats.

Statutes interpreted: ss. 440.035 (1), 440.07, 440.75, 440.64 (3), 440.93, 442.05, 444.02, 446.03, 447.07, 448.06 (2), 449.07, 450.10, 451.14 (2), 453.07 (2), 454.15 (2), 455.09, 457.26 (2), 458.26 (3), 459.10, 459.34 (2) and 480.24 (2), Stats.

In this proposed rule-making order the Department of Regulation and Licensing makes changes to Chapter RL 1 relating to procedures for contesting a denial of an occupational credential issued by the department or a credentialing authority attached to the department. The rules clarify existing procedures for an applicant who wishes to contest denial of an application at a hearing.

Under these proposed rules, an applicant does not have a right to a hearing to challenge a failing score on an examination if the applicant is eligible to retake the examination within 6 months after the applicant's latest credential examination.

The rules permit credentialing authorities to issue a notice of intent to deny for the purpose of affording the applicant a final opportunity to submit information which shows that the applicant meets requirements for a credential. The rules require that when an application is denied the applicant shall receive a notice in a specific format.

The procedural rules that apply to a request for hearing are included in the chapter, including rules describing what must be in a request for hearing, the standards used to review a request for hearing, and how the request is reviewed.

The chapter includes the procedural rules which regulate a hearing and rules on assigning the hearing officer, service of documents, default, withdrawal of a request for hearing, and transcription fees.

TEXT OF RULE

SECTION 1. Chapter RL 1 (title) is amended to read:

CHAPTER RL 1 (title)

PROCEDURES ON TO REVIEW DENIAL OF
LICENSE AN APPLICATION

SECTION 2. RL 1.01 (title) and 1.01 are amended to read:

RL 1.01 (title) AUTHORITY AND SCOPE. Rules in this chapter are adopted under authority in s. 440.03 (1), Stats., for the purpose of governing a denial proceeding review of a decision to deny an application. Rules in this chapter do not apply to denial of an application for renewal of a credential. Rules in this chapter shall apply to applications received on or after July 1, 1996.

Note: Procedures used for denial of an application for renewal of a credential are found in Ch. RL 2, Wis. Admin. Code and s. 227.01 (3) (b), Stats.

SECTION 3. RL 1.02 is repealed.

SECTION 4. RL 1.03 (1) is amended to read:

RL 1.03 (1) "Applicant" means any person who applies for a license credential from the department or any board applicable credentialing authority. "Person" in this subsection includes a business entity.

SECTION 5. RL 1.03 (2) is repealed.

SECTION 6. RL 1.03 (3) is renumbered RL 1.03 (5).

SECTION 7. RL 1.03 (4) is amended to read:

RL 1.03 (4) "Denial review proceeding" means a class 1 proceeding as defined in s. 227.01 (3) (a), Stats., in which the department or a board may determine a credentialing authority reviews a decision to deny an a completed application for a license credential.

SECTION 8. RL 1.03 (2), (3), and (6) are created to read:

(2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480, Stats.

(3) "Credentialing authority" means the department or an attached examining board, affiliated credentialing board or board having authority to issue or deny a credential.

(6) "Division" means the division of enforcement in the department.

SECTION 9. RL 1.04 is renumbered RL 1.06 and amended to read:

RL 1.06 (title) PARTIES TO A DENIAL REVIEW PROCEEDING. Parties to a denial review proceeding are ~~an~~ the applicant, ~~and the department or board having authority to issue the license credentialing authority and any person admitted to appear under s. 227.44 (2m), Stats.~~

SECTION 10. RL 1.04 is created to read:

RL 1.04 EXAMINATION FAILURE: RETAKE AND HEARING. (1) An applicant may request a hearing to challenge the validity, scoring or administration of an examination if the applicant has exhausted other available administrative remedies, including, but not limited to, internal examination review and regrading, and if either:

(a) The applicant is no longer eligible to retake a qualifying examination.

(b) Reexamination is not available within 6 months from the date of the applicant's last examination.

(2) A failing score on an examination does not give rise to the right to a hearing if the applicant is eligible to retake the examination and reexamination is available within 6 months from the date of the applicant's last examination.

Note: An applicant is not eligible for a license until his or her application is complete. An application is not complete until an applicant has submitted proof of having successfully passed any required qualifying examination. If an applicant fails the qualifying examination, but has the right to retake it within 6 months, the applicant is not entitled to a hearing under this chapter.

SECTION 11. RL 1.05 is repealed.

SECTION 12. RL 1.05 is created to read:

RL 1.05 NOTICE OF INTENT TO DENY AND NOTICE OF DENIAL. (1) NOTICE OF INTENT TO DENY. (a) A notice of intent to deny may be issued upon an initial determination that the applicant does not meet the eligibility requirements for a credential. A notice of intent to deny shall contain a short statement in plain language of the basis for the anticipated denial, specify the statute, rule or other standard upon which the denial will be based and state that the application shall be denied unless, within 45 calendar days from the date of the mailing of the notice, the credentialing authority receives additional information which shows that the applicant meets the requirements for a credential. The notice shall be substantially in the form shown in Appendix I.

(b) If the credentialing authority does not receive additional information within the 45 day period, the notice of intent to deny shall operate as a notice of denial and the 45 day period for requesting a hearing described in s. RL 1.07 shall commence on the date of mailing of the notice of intent to deny.

(c) If the credentialing authority receives additional information within the 45 day period which fails to show that the applicant meets the requirements for a credential, a notice of denial shall be issued under sub. (2).

(2) NOTICE OF DENIAL. If the credentialing authority determines that an applicant does not meet the requirements for a credential, the credentialing authority shall issue a notice of denial in the form shown in Appendix II. The notice shall contain a short statement in plain language of the basis for denial, specify the statute, rule or other standard upon which the denial is based, and be substantially in the form shown in Appendix II.

SECTION 13. RL 1.06 and 1.07 are renumbered RL 1.10 and 1.11 and amended to read:

RL 1.10 SERVICE. Service of ~~a notice of denial~~ any document on an applicant may be made by mail addressed to ~~an~~ the applicant at the last address filed in writing by the applicant with the ~~department or board~~ credentialing authority. Service by mail is complete on the date of mailing.

RL 1.11 FAILURE TO APPEAR. In the event that neither the applicant nor his or her representative appears at the time and place designated for the hearing, the ~~department or board~~ credentialing authority may take action based upon the record as submitted. By failing to appear, an applicant waives any right to appeal before the ~~department or board~~ credentialing authority which denied the credential.

SECTION 14. RL 1.07, 1.08, 1.09, 1.12 and 1.13 are created to read:

RL 1.07 REQUEST FOR HEARING. An applicant may request a hearing within 45 calendar days after the mailing of a notice of denial by the credentialing authority. The request shall be in writing and set forth all of the following:

- (1) The applicant's name and address.
- (2) The type of credential for which the applicant has applied.
- (3) A specific description of the mistake in fact or law which constitutes reasonable grounds for reversing the decision to deny the application for a credential. If the applicant asserts that a mistake in fact was made, the request shall include a concise statement of the essential facts which the applicant intends to prove at the hearing. If the applicant asserts a mistake in law was made, the request shall include a statement of the law upon which the applicant relies.

RL 1.08 PROCEDURE. The procedures for a denial review proceeding are:

(1) **REVIEW OF REQUEST FOR HEARING.** Within 45 calendar days of receipt of a request for hearing, the credentialing authority or its designee shall grant or deny the request for a hearing on a denial of a credential. A request shall be granted if requirements in s. RL 1.07 are met, and the credentialing authority or its designee shall notify the applicant of the time, place and nature of the hearing. If the requirements in s. RL 1.07 are not met, a hearing shall be denied, and the credentialing authority or its designee shall inform the applicant in writing of the reason for denial. For purposes of a petition for review under s. 227.52, Stats., a request is denied if a response to a request for hearing is not issued within 45 calendar days of its receipt by the credentialing authority.

(2) **DESIGNATION OF PRESIDING OFFICER.** An administrative law judge employed by the department shall preside over denial hearings, unless the credentialing authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employe by the department, except that the administrative law judge may not be an employe in the division.

(3) **DISCOVERY.** Unless the parties otherwise agree, no discovery is permitted, except for the taking and preservation of evidence as provided in ch. 804, Stats., with respect to witnesses described in s. 227.45 (7) (a) to (d), Stats. An applicant may inspect records under s. 19.35, Stats., the public records law.

(4) **BURDEN OF PROOF.** The applicant has the burden of proof to show by evidence satisfactory to the credentialing authority that the applicant meets the eligibility requirements set by law for the credential.

RL 1.09 CONDUCT OF HEARING. (1) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence, and of other oral proceedings when requested by a party.

(2) ADJOURNMENTS. The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(3) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 227.45 (6m), Stats.

(b) A presiding officer may issue protective orders according to the provisions of s. 805.07, Stats.

(4) MOTIONS. All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(5) EVIDENCE. The credentialing authority and the applicant shall have the right to appear in person or by counsel, to call, examine and cross-examine witnesses and to introduce evidence into the record. If the applicant submits evidence of eligibility for a credential which was not submitted to the credentialing authority prior to denial of the application, the presiding officer may request the credentialing authority to reconsider the application and the evidence of eligibility not previously considered.

(6) BRIEFS. The presiding officer may require the filing of briefs.

(7) LOCATION OF HEARING. All hearings shall be held at the offices of the department in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

RL 1.12 WITHDRAWAL OF REQUEST. A request for hearing may be withdrawn at any time. Upon receipt of a request for withdrawal, the credentialing authority shall issue an order affirming the withdrawal of a request for hearing on the denial.

RL 1.13 TRANSCRIPTION FEES. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of \$1.75 per page and a copying charge of \$.25 per page. If 2 or more

persons request a transcript, the department shall charge each requester a copying fee of \$.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of \$.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath. For purposes of this section, a determination of indigency shall be based on the standards used for making a determination of indigency under s. 977.07, Stats.

Chapter RL 1

APPENDIX I
NOTICE OF INTENT TO DENY

[DATE]
[NAME and
ADDRESS OF APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Intent to Deny

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALING AUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL]. On the basis of the application submitted, the [CREDENTIALING AUTHORITY] intends to deny your application for reasons identified below unless, within 45 calendar days from the date of the mailing of this notice, the [CREDENTIALING AUTHORITY] receives additional information which shows that you meet the requirements for a credential.

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE, RULE OR OTHER STANDARD UPON
WHICH THE DENIAL WILL BE BASED]

If the [CREDENTIALING AUTHORITY] does not receive additional information within the 45 day period, this notice of intent to deny shall operate as a notice of denial and the 45 day period you have for requesting a hearing shall commence on the date of mailing of this notice of intent to deny.

[Designated Representative of Credentialing Authority]

PLEASE NOTE that you have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. RL 1 of the Wisconsin Administrative Code. If you do not submit additional information in support of your application, you may request a hearing within 45 calendar days after the mailing of this notice. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

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

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential, and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing of the [CREDENTIALING AUTHORITY'S] decision. Under s. RL 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued within 45 days of its receipt by the [CREDENTIALING AUTHORITY]. Time periods for a petition for review begin to run 45 days after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

Chapter RL 1

APPENDIX II
NOTICE OF DENIAL

[DATE]
[NAME and
ADDRESS OF APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Denial

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALING AUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL] and denies the application for the following reasons:

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE, RULE OR OTHER STANDARD UPON
WHICH THE DENIAL WILL BE BASED]

[Designated Representative of Credentialing Authority]

PLEASE NOTE that you have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. RL 1 of the Wisconsin Administrative Code. You may request a hearing within 45 calendar days after the mailing of this notice of denial. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

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

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential, and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing of the [CREDENTIALING AUTHORITY'S] decision. Under s. RL 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued within 45 days of its receipt by the [CREDENTIALING AUTHORITY]. Time periods for a petition for review begin to run 45 days

after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register pursuant to s. 227.22 (2) (intro.), Stats.

Dated 5/20/96

Agency Marlene A. Cummings
Marlene A. Cummings, Secretary
Department of Regulation and Licensing

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5/20/96

CORRESPONDENCE/MEMORANDUM

STATE OF WISCONSIN

DATE: May 22, 1996

TO: Gary Poulson
Assistant Revisor of Statutes

FROM: Pamela A. Haack, Rules Center Coordinator
Department of Regulation and Licensing
Office of Administrative Rules



SUBJECT: Final Order Adopting Rules

Agency: DEPARTMENT OF REGULATION AND LICENSING

Clearinghouse Rule 95-211

Attached is a copy and a certified copy of a final order adopting rules. Would you please publish these rules in the register.

Please stamp or sign a copy of this letter to acknowledge receipt.

Thank you.