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16.06.08 - RULES AND MINIMUM STANDARDS FOR DUI EVALUATORS

000. LEGAL AUTHORITY.
Under authority vested in the Idaho Department of Health and Welfare by Title 18, Chapter 80, Section 18-8005(9), the Director of the Department of Health and Welfare by Section 56-1003, Idaho Code and in the Idaho Board of Health and Welfare by Section 39-111, Idaho Code, the Department and the Board adopts the following rules for DUI evaluators in the state of Idaho. (4-11-06)

001. TITLE AND SCOPE.

01. Title. These rules are to be cited in full as Idaho Department of Health and Welfare Rules, IDAPA 16.06.08, "Rules and Minimum Standards for DUI Evaluators." (4-5-00)

02. Scope. Under Section 18-8005(9), Idaho Code, the Department is given the authority to approve DUI Evaluators. The Department has determined to put in place a licensing process for approval of DUI Evaluators. It is the purpose of these rules to establish minimum standards for the approval, issuance, renewal, denial, suspension or revocation of the DUI evaluator license, to establish licensing fees charged by the Department for applicants seeking approval, evaluators seeking renewal, and to set forth rules for conducting evaluations by licensed evaluators. Licensed DUI evaluators are considered by the Department, under these rules, qualified to provide DUI evaluations of persons who plead guilty to, or are found guilty of, a violation of Section 18-8004 or Section 18-8006, Idaho Code. (4-11-06)

002. WRITTEN INTERPRETATIONS.
There are no written interpretations that apply to these rules. (4-11-06)

003. ADMINISTRATIVE APPEALS.
All administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (4-11-06)

004. INCORPORATION BY REFERENCE.
No documents have been incorporated by reference into these rules. (4-11-06)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (4-11-06)

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (4-11-06)

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (4-11-06)

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (4-11-06)

05. Internet Website. The Department's internet website is found at http://www.healthandwelfare.idaho.gov/. (4-11-06)

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.
Any use or disclosure of Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." (4-11-06)

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Certified, Credentialed or Licensed Alcohol/Drug Counselor. A counselor possessing voluntary certification or licensure by a recognized state or national alcohol/drug abuse/addiction counselor credentialing or certifying organization. Knowledge and skills may be acquired through a combination of specialized training, education and experience. (4-11-06)

02. Continuing Education. Department approved course work which may be from an accredited university or college in alcohol and drug abuse studies, social work, psychology, or counseling and guidance; workshops or seminars on the subjects of alcohol and drug evaluation, treatment or prevention issues sponsored by state licensed facilities, state or federal government or other accredited educational institutions, and distance education classes. All continuing education hours must be specific to substance use disorders and their evaluation and treatment or related to chemical dependency counseling. (4-11-06)

03. Defendant. A Person who has been charged with, pled guilty to, or found guilty of driving under the influence of alcohol, drugs or any other intoxicating substances; or any crime as set forth under Title 18, Chapter 80, Idaho Code. (4-11-06)

04. Department. The state of Idaho Department of Health and Welfare. (12-31-91)

05. Director. The Director of the state of Idaho Department of Health and Welfare or his designee. (12-31-91)

06. DUI. Driving while under the influence of alcohol, drugs or intoxicating substances. (12-31-91)

07. DUI Evaluation. The process of obtaining information through a face-to-face interview with the defendant in order to determine the nature and the extent of the defendant's use of alcohol or drugs and to recommend appropriate risk reduction education or treatment services. (4-11-06)

08. Idaho Board of Alcohol/Drug Counselor's Certification, Inc. (IBADCC). Affiliated with the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC), the IBADCC is the certifying agency that oversees credentialing of Certified Alcohol/Drug Counselors (CADC), Advanced Certified Alcohol/Drug Counselors (ACADC), Certified Clinical Supervisors (CCS), and Certified Prevention Specialists (CPS) in the state of Idaho. The IBADCC may be contacted at the following address and telephone number: 270 N. 27th Street, Suite B, Boise, ID 83702 (208) 395-1078. (4-11-06)

09. Licensed DUI Evaluator. The licensed person qualified to provide diagnostic impression, assessment, or evaluation services to DUI defendants in the state of Idaho. For the purposes of these rules and regulations, a licensed DUI evaluator may constitute a facility. (4-11-06)

10. Licensee. The person who has been approved and issued a license under Section 200 of these rules. (4-11-06)

11. Peer Review. A quality assurance process by which a team of DUI Evaluators and Department staff convene to review evaluations for consistency with minimum standards as described in Section 700 of these rules. (4-11-06)

12. Quality Assurance Process. The combination of technical and peer reviews of evaluations to assure the evaluations consistently meet minimum standards. (4-11-06)

13. Substance Related Violation. Any withheld judgment or conviction in which substance use is identified as a contributing factor. (4-5-00)

14. Technical Review. The quality assurance process of the Department evaluating the accuracy, legibility, appropriateness, and completeness of Department required forms and reporting formats used during DUI

evaluations. (4-11-06)

011. -- 199. (RESERVED).

200. LICENSURE.

01. Application for a License. An individual seeking a DUI Evaluator license must submit a completed application on forms provided by the Department, accompanied by the documents noted in Subsection 225.02. In addition, the applicant must submit a statement of fees to be charged for services and an application fee of twenty-five dollars ($25). (4-11-06)

a. An application packet will not be processed until it is complete and all required documentation is received. (4-11-06)

b. The application fee is not refundable and will not be returned. (4-11-06)

c. By signing the application the individual represents that the information is true and accurate and they accept the responsibility to comply with these rules. (4-11-06)

d. The individual signs a conflict disclosure or acknowledgement that the individual cannot perform both the evaluation and provide the recommended services unless they have a waiver from the court. (4-11-06)

02. Application Review. The Department must initiate a review within fifteen (15) days of receipt of the forms, documents, and fee described in Subsection 200.01. A determination by the Department as to whether an individual has complied with this chapter must be rendered within forty-five (45) days from the date of receipt of the completed application. (4-11-06)

03. DUI Evaluator Examination. Upon completion of the application review, where the individual meets minimum qualifications, the individual will be issued notification that they are eligible to take the examination. The Department will arrange testing for individuals found to have complied with this chapter. Upon successful completion of testing and meeting all requirements set forth in the rules, the Department will issue a license. The individual may take the examination twice during a twelve (12) month period from the date of the notification letter. An individual who fails the examination twice during the twelve (12) month period may submit a new application and reapply for a license at the end of the twelve (12) months following the notification letter. (4-11-06)

04. License Period, Posting Requirement, and Notification of Changes. When the individual has met all of the qualifications and passed the examination the Department will issue a license. The license, unless suspended or revoked, will be in effect for a period not to exceed one (1) calendar year from the date of issue printed on the license. The license will apply only to the person named therein and is not transferable. The license must be posted in a conspicuous location for client observation. The Department must be notified by a licensee in writing of any changes in address, phone number or fees within thirty (30) days of the change. (4-11-06)

05. Responsibility of Licensee. A licensee is responsible for knowing the standards and rules applying to his license at all times. (4-11-06)

06. Quality Assurance Process Participation. A licensee must participate in the quality assurance process as requested by the Department. (4-11-06)

201. -- 224. (RESERVED).

225. QUALIFICATIONS.
In addition to the requirements in Section 200 of these rules, an individual must also meet the following qualifications for licensure. (4-11-06)

01. Evaluator Qualifications. In order for the applicant to be licensed as a DUI evaluator, the applicant must meet the following criteria: (4-11-06)

a. Has professional experience supervised by a Certified, Credentialed or Licensed Alcohol/Drug Counselor in which a minimum of seven hundred twenty (720) cumulative hours were spent in the performance of alcohol/drug evaluation or treatment over the three (3) year period immediately prior to the application date; and (4-11-06)

b. Holds one (1) of the following professional certifications or licenses: (4-11-06)

i. Is an IBADCC Certified Alcohol/Drug Counselor or IBADCC Advanced Certified Alcohol/Drug Counselor; or (4-11-06)

ii. Is an Idaho Licensed, Licensed Clinical, or Licensed Masters Social Worker; or (4-11-06)

iii. Is an Idaho Licensed Professional Counselor; and (4-11-06)

iv. Is an Idaho Licensed Marriage and Family Therapist or Idaho Registered Marriage and Family Therapist Intern; and (4-11-06)

c. Applicants must successfully pass the competency-based DUI Evaluator examination. (4-11-06)

d. The applicant must have attended a minimum of twenty (20) hours of Department approved continuing education course work related to substance abuse screening, assessment, confidentiality, and referral within the twelve (12) months prior to applying for a license. (4-11-06)

02. Documentation. The application submitted to the Department for licensure as a DUI evaluator must be accompanied by: (4-11-06)

a. A current copy of professional licenses, or certifications. (4-11-06)

b. A detailed employment history showing dates and hours of supervised employment experience in an alcohol/drug evaluation or treatment program, the name of the program, the name of the direct supervisor and a copy of their certification credential or license as an alcohol/drug counselor, and the nature of the duties performed. (4-11-06)

c. Verification of attendance at the course work described in Subsection 225.01.d. of these rules. (4-11-06)

03. Examination. The examination required by Subsection 200.03 of these rules will be administered a minimum of twice per year under the direction of the Department at times and locations to be announced by the Department. (4-11-06)

04. License Granted Prior to July 1, 2006. If an individual was granted a license prior to July 1, 2006, and met the rule requirements at that time, he may continue to have his license renewed using those qualifications until such time as his license expires without renewal or the license is revoked by the Department. (4-11-06)

226 -- 249. (RESERVED).

250. RENEWAL OF LICENSE.
The licensee is responsible for renewing the license in accordance with this chapter and requesting a renewal packet from the Department. No license will be renewed, except as provided in Section 250 of these rules. (4-11-06)

01. Renewal Application. At least sixty (60) days prior to the expiration of the license, the licensee must apply for a renewal of the license on forms provided by the Department. The Department is not responsible for notifying the licensee of these time lines and failure to receive notice from the Department does not waive or extend renewal deadlines. The application must be accompanied by a twenty-five dollar ($25) renewal fee payable to the Department. (4-11-06)

a. A renewal packet will not be processed until it is complete and all required documentation is received. (4-11-06)

b. The renewal fee is not refundable and will not be returned. (4-11-06)

c. By signing the renewal application the individual represents that the information is true and accurate and they accept the responsibility to comply with these rules. (4-11-06)

d. The individual signs a conflict disclosure or acknowledgement that the individual cannot perform both the evaluation and provide the recommended services unless they have a waiver from the court. (4-11-06)

02. Continuing Education Credits. The licensee must participate in a minimum of twelve (12) hours of Department approved substance abuse related continuing education each year, and submit verification of continuing education credits with the renewal application. (4-11-06)

03. Current Copy of Certification or License. The licensee must have a copy of current Idaho Board of Alcohol/Drug Counselor's Certification; copy of Idaho Licensed, Licensed Clinical, or Licensed Masters Social Worker license; Idaho Licensed Professional Counselor license; Idaho Licensed Marriage and Family Therapist license; or Idaho Registered Marriage and Family Therapist Intern license. A licensee must at all times hold a current certification or professional license in order to meet the educational requirement in Subsection 225.01 of these rules. (4-11-06)

04. License Renewed for One Year. Following the application review, the licensee meeting the requirements of this chapter, will have their license renewed for a period not to exceed one (1) year. (4-11-06)

05. Denial of Renewal. Failure to renew a license prior to the expiration date will result in a denial of renewal and the licensee will be required to comply with the requirements and procedures for obtaining an initial license. (4-11-06)

06. Expired License. A person whose license has expired cannot represent themselves as a DUI Evaluator and offer or provide DUI evaluations. (4-11-06)

07. Removal of Evaluator's Name from Directory. Following a thirty (30) day lapse in renewal of license, the DUI Evaluator's name will be removed from the Department's DUI Evaluator's Directory. (4-11-06)

251. -- 274. (RESERVED).

275. DENIAL, SUSPENSION OR REVOCATION OF LICENSE.
The Department may deny, suspend or revoke the license for any of the following reasons: (4-11-06)

01. Substance-Related Violation. If an applicant or licensee has a substance-related violation within the past two (2) years, the license may be revoked or denied for a period of two (2) years. (4-11-06)

02. Failure to Comply. If the licensee has failed to comply with any portion of this chapter. (4-11-06)

03. Conflict of Interest. If the licensee demonstrates a conflict of interest by providing both the DUI evaluation and treatment or by referring the client to the licensee's employer or business associate, unless this requirement is waived in writing by the sentencing court. (4-11-06)

04. Determination of Misrepresentation of Application. If there has been a criminal, civil, or administrative determination that the applicant or licensee has committed misrepresentation in the preparation of the application or other documents required by the Department. (4-11-06)

05. Determination of Fraud or Gross Negligence. If there has been a criminal, civil, or administrative determination that the applicant or licensee has committed fraud or gross negligence while operating as a licensed DUI evaluator. (4-11-06)

06. Felony Conviction. If an applicant or licensee has been convicted of a felony within the past three (3) years. (4-11-06)

07. Determination of Any Illegal Act. If there has been a criminal, civil, or administrative determination that the licensee has committed, permitted, or aided and abetted the commission of any illegal act while holding a DUI Evaluator license. (4-11-06)

08. Inadequate Knowledge or Performance. If the applicant or licensee demonstrates inadequate knowledge, performance, or both by repeated substandard peer and quality assurance reviews. (4-11-06)

09. Failure to Furnish Data, Information or Records. If the applicant or licensee fails to furnish any data, information or records as requested by the Department. (4-11-06)

10. Refusal to Participate in Quality Assurance Process. If the applicant or licensee refuses or fails to participate in the peer review and quality assurance process. (4-11-06)

11. Second Revocation. Upon a second revocation, no further licenses will be issued. (4-11-06)

12. Result of Department Action. The following conditions apply as a result of action taken by the Department: (4-11-06)

a. A person whose license has been denied, suspended or revoked cannot offer or provide DUI evaluations and may not represent themselves as DUI Evaluators. (4-11-06)

b. Within thirty (30) days of the license being denied, suspended or revoked, the DUI Evaluator's name will be removed from the Department's DUI Evaluator's Directory. (4-11-06)

13. Notice and Hearing. The Department must give the applicant or licensee notice of intent to suspend, deny, or revoke approval, the right to appeal in accordance with the provisions of Idaho Department of Health and Welfare Rules, IDAPA 16.05.03, Sections 600, et seq., "Rules Governing Contested Cases and Declaratory Rulings." (4-11-06)

14. Return of License. The DUI evaluator license is the property of the state of Idaho and must be returned to the Department immediately upon the denial, suspension, or revocation of the license, or if the operation is discontinued by the voluntary action of the licensee. (4-11-06)

276. -- 299. (RESERVED).

300. INSPECTIONS.
The Department reserves the right to inspect any office, files, client records, or other materials of any licensee to ascertain compliance with these rules. (4-11-06)

301. -- 499. (RESERVED).

500. DUI EVALUATIONS.

01. Record System. The DUI evaluator must maintain a record system of client files for a minimum of five (5) years. Client files will minimally include the written evaluation, supporting documents, and use the same client identifier to correspond with the data collected for statistical reporting as described in Section 600 of these rules. (4-11-06)

02. Individual DUI Evaluation. The DUI evaluation conducted by the licensee must be composed of the minimum following items: (4-11-06)

a. All DUI evaluations must have a one (1) page typed summary sheet, and the evaluation report consistent with Idaho Supreme Court Misdemeanor Criminal Rule 9.4. A list of approved screening tools can be requested from the Department at the address located in Section 005 of these rules. Criminal Rule 9.4 may be found

at the following website: www.isc.idaho.gov/rulestxt.htm. (4-11-06)

b. All evaluations must include a face-to-face interview between the licensee and the defendant. (4-11-06)

03. Distribution of the DUI Evaluation. (3-10-88)

a. With the defendant's written consent, the evaluator will forward the original evaluation directly to the court. (4-11-06)

b. The defendant must be provided with a copy of the DUI evaluation. (4-11-06)

c. The DUI evaluator must abide by all applicable Federal and State laws requiring confidentiality of patient/client records. (4-11-06)

d. The DUI evaluator is prohibited from releasing the evaluation to anyone other than the Department for the purposes of compliance inspection and peer review without the written authorization of the defendant. (4-5-00)

e. One (1) copy of the original evaluation, including all supporting documentation and associated Department required forms, must be maintained in the licensee's record system for a minimum of five (5) years from the date the evaluation was conducted. (4-11-06)

f. Photocopies of evaluations required for peer review and quality assurance will have personal identification data rendered illegible and replaced by the client number used on the statistical reporting forms. (4-11-06)

501. -- 599. (RESERVED).

600. STATISTICAL REPORTING.
All licensees must submit required client data on each defendant in the format prescribed by the Department. (4-11-06)

01. Collected Information. Specific client data information collection is to be recorded in the format prescribed by the Department. (4-11-06)

02. Additional Forms. It is the responsibility of the Licensee to contact the Department when additional forms are needed. (4-11-06)

03. Data Reported Monthly. The data is to be forwarded to the Department on a monthly basis by the fifteenth day of each month. (4-11-06)

601. -- 699. (RESERVED).

700. QUALITY ASSURANCE, PEER AND TECHNICAL REVIEW.
The Department will develop policies concerning the composition of peer review teams, standardized assessment tools, standardized formats, scoring scales, and recommendations for quality and performance improvements. (4-11-06)

701. -- 799. (RESERVED).

800. ADVISORY BOARD.
The Department may convene an advisory board. The advisory board consists of members from the community and the Department. The board will provide feedback on program performance and suggestions for program improvement. (4-11-06)

801. -- 999. (RESERVED).

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