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**IDAPA 16
TITLE 06
Chapter 08**

16.06.08 - RULES AND MINIMUM STANDARDS FOR DUI EVALUATORS

000. LEGAL AUTHORITY.

Under authority vested in the Idaho State Board of Health and Welfare by Title 18, Chapter 80, Section 18-8005(5) and by Title 39, Chapter 3, Idaho Code, the Board adopts the following rules for a DUI evaluators in the state of Idaho. (12-31-91)

001. TITLE.

These rules are to be cited in full as Idaho Department of Health and Welfare Rules, IDAPA 16, Title 06, Chapter 08, "Rules and Minimum Standards for DUI Evaluators." (12-31-91)

002. -- 004. (RESERVED).

005. PURPOSE.

01. Setting Rules. It is the purpose of these rules to establish minimum standards for the issuance, denial, suspension and/or revocation of the approval of a DUI evaluator license, to establish licensing fees charged by the Department for evaluators seeking approval, and to set forth rules for conducting evaluations to be conducted by the evaluator. (3-10-88)

02. Approved Services. DUI evaluator applications shall be considered by the Department pursuant to these rules and regulations 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. (3-10-88)

006. -- 099. (RESERVED).

100. DEFINITIONS.

(12-31-91)

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

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

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

04. DUI Evaluation. The process of obtaining information in order to determine the nature and the extent of the offender's use of alcohol or drugs and to recommend appropriate services. (12-31-91)

05. Licensed DUI Evaluator. The licensed person qualified to provide diagnostic, assessment or evaluation services to DUI offenders in the state of Idaho. For the purposes of these rules and regulations, an approved DUI evaluator may constitute a facility. (12-31-91)

06. Licensee. The person who has been approved and issued a license pursuant to Subsection 200.02. (12-31-91)

07. Licensing Agency. The state of Idaho Department of Health and Welfare. (12-31-91)

08. Operating License. A one (1) year license issued by the licensing agency to DUI evaluators complying with these rules. (12-31-91)

09. Substance Abuse Related Continuing Education. Course work 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. (12-31-91)

101. -- 199. (RESERVED).

200. LICENSURE.

01. Application for an Initial License. (12-31-91)
- a. An individual who desires to be approved as a DUI evaluator must submit a completed application to the Department on forms provided by the Department, along with an application fee of twenty-five dollars (\$25). (3-10-88)
- b. The application must be accompanied by those documents noted in Subsection 400.01. (12-31-91)
- c. The applicant must submit a statement of the fees to be charged for services. (3-10-88)
02. Issuance of Operating License. (3-10-88)
- a. Upon receipt of the completed application, the Department will review and determine within fifteen (15) days if the application complies with these rules. (1-1-84)
- b. An investigation of the applicant may be conducted within fifteen (15) days of receipt of the application. (3-10-88)
- c. If the application review and subsequent investigation is conducted and shows the applicant satisfactorily complies with this chapter, the Department will issue an operating license. (12-31-91)
- i. The license will be in effect for a period not to exceed one (1) year. The license will apply only to the person named therein and is not transferable. No license will be renewed, except as provided by Subsection 200.03. (12-31-91)
- ii. The license must be posted in a conspicuous location for client observation. (3-10-88)
03. Notification of Changes. The Department shall be notified of any changes in address, phone number or fees within thirty (30) days. (3-10-88)
04. Expiration and Renewal of License. (3-10-88)
- a. Each license to operate as a DUI evaluator will, unless suspended or revoked, expire on June 30 of each year. (3-10-88)
- b. At least sixty (60) days prior to the expiration of the license, the licensee will apply for a renewal of the license on forms provided by the Department. The application shall be accompanied by a twenty-five dollar (\$25) renewal fee payable to the Department. (3-10-88)
- c. The licensee must attend a minimum of six (6) hours of substance abuse related continuing education per year, and will provide verification of attendance with the renewal application. (3-10-88)
- d. Following the application review, the licensee meeting the requirements of this chapter, will have their licenses renewed for a period not to exceed one (1) year. (3-10-88)
05. Denial, Suspension or Revocation of License. The Department may deny, suspend or revoke the license of a DUI evaluator for any of the following reasons: (3-10-88)
- a. If the applicant has been convicted of a DUI violation within the past year. (3-10-88)
- b. If the licensee is convicted of a DUI violation, the license shall be revoked for a period of one (1)

- year. (3-10-88)
- c. If the licensee has failed to comply with this chapter (12-31-91)
 - d. 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 by the sentencing court. (9-14-90)
 - e. If there has been a criminal, civil, or administrative determination that the licensee has committed misrepresentation in the preparation of the application or other documents required by the Department. (3-10-88)
 - f. If there has been a criminal, civil, or administrative determination that the licensee has committed fraud or gross negligence while operating as a licensed DUI evaluator. (3-10-88)
 - g. If the licensee has been convicted of a felony within the past three (3) years. (3-10-88)
 - h. 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 operating as a licensed alcohol and drug abuse evaluator. (1-1-84)
 - i. If the licensee demonstrates inadequate knowledge and/or performance by repeatedly recommending treatment programs for clients determined by review not to need treatment programs. (1-1-84)
 - j. If the licensee fails to furnish any data, information or records as requested. (3-10-88)
06. Notice and Hearing. The Department must give the 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, Title 05, Chapter 03, Sections 300, et seq., "Rules Governing Contested Cases and Declaratory Rulings." (12-31-91)
07. 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. (3-10-88)

201. -- 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, and with Section 18-8004(4), Idaho Code. (3-10-88)

301. -- 399. (RESERVED).

400. QUALIFICATIONS.

01. Qualifications of Staff. In order for the applicant to be licensed as a DUI evaluator, the applicant shall meet the following criteria: (3-10-88)
- a. Is a currently licensed medical physician; or (3-10-88)
 - b. Is a Level II Certified Alcohol and Drug Counselor certified by the Idaho Board of Alcohol/Drug Counselor Certification; or (3-10-88)
 - c. Has passed the Substance Abuse Program's DUI examination for DUI evaluators; and (3-10-88)
 - i. Is a graduate from an accredited college or university with a baccalaureate degree in social or health sciences; or (3-10-88)

ii. Has three (3) years of directly supervised or supervisory work experience in a social service or alcohol/drug evaluation or treatment program for a minimum of thirty (30) hours per week. (3-10-88)

02. Documentation. The application submitted to the Department for licensure as a DUI evaluator shall be accompanied by: (3-10-88)

a. A current copy of the physician's medical license; or (3-10-88)

b. A current copy of the Level II Certified Alcohol and Drug Counselor certificate; or (3-10-88)

c. A certified copy of college transcripts verifying graduation from a college or university with a baccalaureate degree in social or health sciences; or (3-10-88)

d. A detailed employment history showing dates and hours per week of employment in a social service or alcohol/drug evaluation or treatment program, the name of the program, the name of the direct supervisor, and the nature of the duties performed. (3-10-88)

03. Written Test. The written test required by Subsection 400.01.d. shall be administered a minimum of twice per year by the Department at times and locations to be announced by the Department. (12-31-91)

401. -- 499. (RESERVED).

500. DUI EVALUATIONS.

01. Record System. The DUI evaluator must maintain a record system of client files for a minimum of three (3) years. Client files will minimally include the written evaluation and supporting documents stated in Subsections 500.02 and 500.03. (12-31-91)

02. Individual DUI Evaluation. The DUI evaluation conducted by the licensee shall be composed of the minimum following items: (3-10-88)

a. The client reported citations and final dispositions of previous arrests for DUI, reckless driving offenses, inattentive driving, verified by the Idaho Department of Law Enforcement. (12-31-91)

b. Documentation of the client's blood alcohol content at the time of the current arrest and previous arrests within the last five (5) years. (3-10-88)

c. Any reported refusal to take a breath or blood test. (3-10-88)

d. Previous attendance at driving schools, court ordered alcohol schools or detoxification, inpatient, intermediate or outpatient treatment for problem drinking, alcoholism, or drug abuse (including information regarding success/failure of prior programs). (3-10-88)

e. A description of the client's use of alcohol and/or other drugs and the extent to which alcohol or drugs have contributed to the development of problems within the client's major life areas, including: (3-10-88)

i. Family; (1-1-84)

ii. Social; (1-1-84)

iii. Financial; (1-1-84)

iv. Job - School; (1-1-84)

v. Legal; and (1-1-84)

vi. Health. (1-1-84)

- f. Psychological testing is not a required evaluation procedure. (3-10-88)
 - g. Prior record as required by defendant. (3-10-88)
 - h. Defendant's version of current incident. (3-10-88)
 - i. Results of evidentiary tests as reported by defendant. (3-10-88)
 - j. Results and explanation of any tests administered by the evaluator. (3-10-88)
 - k. Defendant's self-assessment. (3-10-88)
 - 03. Report to the Court. With the written consent of the client, the final report shall be submitted to the court in accordance with the format contained in Department form HW-0344. (12-31-91)
 - 04. Distribution of the DUI Evaluation. (3-10-88)
 - a. With the client's written consent, the evaluator will forward the original evaluation directly to the court. (3-10-88)
 - b. The defendant shall be provided with a copy of the DUI evaluation. (3-10-88)
 - c. The DUI evaluator is prohibited from releasing the evaluation to anyone other than the court and the defendant without the written authorization of the defendant. (3-10-88)
- 501. -- 599. (RESERVED).**
- 600. STATISTICAL REPORTING.**
All licensees shall submit individual client data on forms supplied by the Department. (3-10-88)
- 601. -- 995. (RESERVED).**
- 996. ADMINISTRATIVE PROVISIONS.**
Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16, Title 05, Chapter 03, Sections 000, et seq., "Rules Governing Contested Cases and Declaratory Rulings." (12-31-91)
- 997. CONFIDENTIALITY OF RECORDS.**
Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 05, Chapter 01, "Rules Governing the Protection and Disclosure of Department Records." (12-31-91)
- 998. INCLUSIVE GENDER.**
For the purposes of these rules, words used in the masculine gender include the feminine, or vice versa, where appropriate. (3-10-88)
- 999. SEVERABILITY.**
Idaho Department of Health and Welfare Rules, IDAPA 16, Title 06, Chapter 08, are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion of this chapter. (1-1-84)