

# Open Meeting Notice

Meeting: Veterinary Examining Board  
Date & Time: Tuesday, February 13, 2018 11:00 A.M.  
Location: DATCP; 2811 Agriculture Drive, Room 456; Madison WI 53718

*The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a record of the actions of the Board.*

## AGENDA

### 11:00 A.M. OPEN SESSION – CALL TO ORDER – ROLL CALL

**APPEARANCE – Department of Agriculture, Trade, and Consumer Protection (DATCP) Office of the Secretary: Cheryl Daniels, DATCP Attorney and VEB Board Counsel; Matt Tompach, Administrative Policy Advisor; Kelly Markor, Executive Staff Assistant;**

## ADMINISTRATIVE RULE MATTERS

**VE 7 - Permanent Rule to amend Wis. Admin. Code § VE 7, relating to Complementary, Alternative and Integrative Therapies – Final Board approval**

**VE 11- Permanent Rule to create Wis. Admin. Code § VE 11, relating to a Veterinary Professional Assistance Procedure – Final Board approval**

**VE 11 – Emergency Rule in effect, Wis. Admin. Code § VE 11, relating to a Veterinary Professional Assistance Program - Board Approval to request extension**

## ADJOURNMENT

To find out more about the meetings or to request documents to be used in connection with the meetings, write to:

### DATCP - OFFICE OF THE SECRETARY

**Matthew Tompach**

PO Box 8911

Madison, WI 53708

608/224-5024 or by TDD line 608/224-5058

For the hearing or visually impaired, non-English speaking, or for those with other personal circumstances which might make communication at the meeting/hearing difficult, this agency will, to the maximum extent possible, provide aids including an interpreter, or a non-English, large print or taped version of hearing documents. Please contact the address or phone number listed above as soon as possible.

This agency, to the maximum extent possible, holds all meetings in facilities that are physically accessible to persons with disabilities. For questions about accessibility, contact the meeting's sponsoring division.

# Board memo



**DATE:** February 7, 2018  
**TO:** Veterinary Examining Board (VEB)  
**FROM:** Cheryl Furstace Daniels, VEB Legal Counsel *CFD*  
**SUBJECT:** VE 7 – Complementary, Alternative and Integrative Therapies; Final Draft Rule  
**PRESENTED BY:** Cheryl Furstace Daniels

**REQUESTED ACTION:**

At the February 13, 2018, VEB meeting, the VEB will consider final language for a proposed rule revision in ch. VEB 7, Wis. Adm. Code, to clarify the circumstances under which a veterinarian may make a referral of a veterinary client to another licensed professional, or supervise a certified veterinary technician, for the provision of complementary, alternative, or integrative therapies, as defined in s. VEB 1.02 (3m), Wis. Adm. Code, on the client’s animal.

**SUMMARY:**

*Background*

The VEB administers ch. 89, Stats., as well as the administrative rules in VE 1-10, Wis. Adm. Code, and in the administration of these statute and rules, VEB may issue administrative orders imposing discipline for unprofessional conduct related to the practice of veterinary medicine, including issuing an administrative warning to, or reprimanding, any person holding a veterinary medical license, or denying, revoking, suspending, limiting, the person’s license, as specified by statute.

There is a current definition, in s. VE 1.02 (3m), Wis. Adm. Code, of veterinary complementary, alternative, and integrative therapies (“CAITs”). However, that definition does not specify how these CAITs are to be treated within the practice of veterinary medicine. There have been numerous requests made to the VEB, from veterinarians, certified veterinary technicians, and members of other licensed professions, to clarify the referral relationship that a veterinarian may have with these other professionals for the veterinarian’s clients, and the delegation to certified veterinary technicians for the provision of CAITs upon a veterinarian’s animal patients.

*Rule Content*

The VEB proposes to create a rule, s. VE 7.025, specifying that a veterinarian may make a referral to another Wisconsin-licensed professional, so long as the other professional gives evidence to the veterinarian of his or her license in good standing with the Wisconsin Department of Safety and Professional Services, to perform the type of CAIT for which the referral is made, and his or her education, training, and experience in performing that type of CAIT on an animal. The proposed rule includes a provision that the veterinarian-client-patient relationship (“VCPR”), as defined in s. 89.02(8), Stats., does not extend to the CAIT provided by the other professional, where the veterinarian

demonstrates meeting the requirements in making the referral or the client obtains a therapy provider for the client's animal without a referral.

In addition, the VEB proposes to create an additional provision, within s. VE 7.02 delegation of veterinary medical acts, for the veterinarian to delegate to a certified veterinary technician the performance of a CAIT on an animal patient, where the certified veterinary technician is not a licensed professional performing a CAIT. By including this provision in the section on delegation of veterinary medical acts, the VEB makes clear that the technician's CAIT performance is under the direct supervision of the veterinarian, who will continue to have all of the supervisory responsibilities specified in this section, and within the VCPR.

### *Analysis and Supporting Documents Used to Determine Effect on Small Business*

This rule was developed with the assistance of a VEB-appointed rules advisory committee that included five Wisconsin-licensed veterinarians, two Wisconsin-certified veterinary technicians, two Wisconsin-licensed members of other professions who provide complimentary, alternative, or integrative therapies on animals, two public members, and a VEB member as a liaison to the Board. The committee looked at practices in other states, consulted with veterinary medical groups, and brought expertise on the use of these CAITs in assisting animals for their health and well-being. Written comments were collected after posting the rule for a 30-day period, oral comments were made during the four rule hearings in Eau Claire, Green Bay, Waukesha and Madison, and additional written comments during the remainder of the public comment period, which ended on January 31, 2018.

### *Effect on Small Business*

This rule change is anticipated to have an effect on small business, as many veterinary practices that will be subject to this definition change, are small businesses. However, it is not expected to have any adverse economic impact on these veterinary small businesses.

Instead, the proposed rule is anticipated to have a positive impact for veterinarians, certified veterinary technicians, and other Wisconsin-licensed professionals, as it clarifies the steps a veterinarian shall use to make a referral to another professional for CAITs and the delegation for these CAITs to certified veterinary technicians under the veterinarian's supervision. The VEB has received many requests for just this type of guidance from veterinarians, other professions practicing these therapies, and certified veterinary technicians in Wisconsin. Comments from licensed professionals, at hearings and in writing, were very supportive of the clarification, believing it will be very beneficial for the development of these businesses, but more importantly, for the health of these animal patients.

There were comments, in the initial posting for economic impact, at the four hearings, and in written comments after the hearing, specifically about animal massage therapy. The rule clarifies that a veterinarian, in order to transfer the client-patient for the therapy to the other professional, must make the referral to a professional licensed for that therapy in Wisconsin. Some persons who perform animal massage therapy have been trained or have experience in this modality, but are not licensed massage therapists, although others animal massage therapists are Wisconsin-licensed massage therapists.

The rule only limits the veterinarian, in making a direct referral, to make it to a person who is licensed in Wisconsin to perform this therapy, and some of the commenters felt this was an unfair limitation. These commenters, including non-licensed animal massage therapists and some animal owners, requested that animal massage therapy be exempted as a therapy under this rule. However, by the statutory definition

“to practice veterinary medicine” in s. 89.02 (6), Stats., and the administrative rule definition of “complementary, alternative and integrative therapies” in s. VE 1.02 (3m), Wis. Adm. Code, animal massage therapy is within the statutory definition of the practice of veterinary medicine, and the advisory committee came to the conclusion that the VEB is not statutorily authorized to make the exemption in the rule. In addition, while at least one commenter made reference to Illinois, veterinary CAITs are under specific statutory provisions. And while Colorado and Indiana exempt animal massage therapy and equine massage therapy, respectively, from the practice of veterinary medicine, each state does so by statute.

In addition, some of the comments seem to be indicate that they thought the rule also limited an animal owner’s choice in this regard. Although the initial draft tried to clarify that the rule does not affect that choice, the final rule’s provision has additional language to clarify that the rule does not interfere with the relationship between any animal owner and a person the animal owner chooses to perform a CAIT on the owner’s animal.

Given the statutory and administrative rule definitions that animal massage therapy, and all other CAITs are within the practice of veterinary medicine, the rule also clarifies that a veterinarian using this referral process to another licensed professional transfers the patient-client relationship for the therapy provision, from the veterinarian to the other licensed professional, who will have their own professional client-patient relationship with the animal owner and patient. Only where a certified veterinary technician is delegated by the veterinarian to perform a CAIT, will the performance of the CAIT be under the direct supervision of the veterinarian and within the VCPR. This is a very specific assurance that veterinarians and other licensed professionals believe is important to make clear the professional who has the responsibilities in this regard.

This rule is not expected to have a substantial adverse economic effect on “small business” so it is not subject to the delayed “small business” effective date provided in s. 227.22(2) (e), Stats.

### *Environmental Impact*

This rule will have no environmental impact.

### *Summary of, and Comparison with Existing or Proposed Federal Statutes and Regulations*

There are no federal regulations governing the practice of veterinary medical surgeries.

### *Comparison with Rules in Adjacent States*

Illinois’s veterinary medicine and surgery practice act defines CAITs very similarly to the current definition in s. VE 1.02(9), Wis. Adm. Code. The act specifically allows a member in good standing of another licensed or regulated profession within any state or an Illinois-approved member of an organization or group to provide hands-on active participation in the treatment and care of a patient, within a veterinarian-client-patient relationship and with informed consent from the client, so long as the member works under the supervision of the veterinarian. The veterinarian maintains the veterinarian-client-patient relationship, but is immune from civil and criminal liability for the member’s assistance, except for willful and wanton conduct. The other professional may not state or imply in any way that they are licensed or engaging in the practice of veterinary medicine.

Iowa's and Michigan's veterinary statutes and rules do not address this issue.

Within Minnesota's practice of veterinary medicine act, there is a provision that specifically states that the act does not prohibit a licensed chiropractor from registering with its chiropractor board and performing animal chiropractic on animals that have been referred to the chiropractor by a veterinarian.

### *Public Hearings*

On December 19, 2017, the VEB received a report from the Legislative Council Rules Clearinghouse. VEB staff has incorporated all the minor changes suggested in the report.

VEB staff held public hearings on January 9, 2018, in Eau Claire, Wisconsin, on January 10, 2018, in Green Bay, Wisconsin, on January 11, 2018, in Waukesha, Wisconsin, and on January 12, 2018, in Madison, Wisconsin. The VEB held open the record for written comments until January 31, 2018.

Speaking in opposition to the rule at the Eau Claire hearing was Valerie Perzina, Grains & Mains Equine Massage Therapy, N14467 STH 35, Trempealeau, WI 54661. She also wrote a comment opposing the rule to the extent that it did not exempt animal massage therapy as non-invasive and a Wisconsin-licensed professional is no more qualified to perform the therapy. In addition, she believed the rule limited the animal owner's right to choose and the veterinarian's right to recommend care.

Registering for information at the Green Bay hearing was Lynn Marie Kutz, representing the Wisconsin Chapter of the American Massage Therapy Association, 224 Ledgeview Ave., Fond du Lac, WI 54935. She did speak to the benefits of the training in massage therapy, generally, and the fact that a Wisconsin license has the person overseen by a board, in terms of professional standards.

Speaking at the Waukesha hearing was Susan MacLean, 7211 W. Waterford Rd, Hartford, WI 53027, opposing the part of the rule that limits veterinarian referrals to Wisconsin-licensed professionals, as negatively impacting the veterinarian's ability to refer the patient and client to the best practitioner for the therapy and negatively impacting relationships between veterinarians and non-licensed CAIT practitioners.

Speaking at the Madison hearing were the following persons:

1. Attorney Jordan Lamb, representing the Wisconsin Veterinary Medical Association, spoke and wrote a comment supporting the proposed creation of Wis. Admin. Code §§ VE 7.02 (3) (d) and 7.025. The WVMA believes the rules provide certainty to the veterinarians, beneficial for encouraging small business development, economic growth and provides a mechanism for collaboration between Wisconsin-licensed professionals.
2. Annie Seefeldt, DC, 931 County Road B West, Roseville, MN 55113, a Minnesota-licensed and formerly Wisconsin-licensed chiropractor, spoke in favor of the proposal, as the referral procedure is similar to rules in place in Minnesota for nearly ten years. The Minnesota program has been very successful and supports integrated approaches for animal care. She mentioned that, if passed, she would reinstate her Wisconsin license and also mentioned that there is Canine Performance Events national trials will be in New Richmond, Wisconsin in June, 2019 and this rule can make it that much easier for Wisconsin-licensed professionals to work together to assist the dogs that will be at this event.

3. Greg Gage, owner of Therasage EMC, 2214 Kennedy Road, Janesville, WI 53545, spoke in opposition to the proposal as it relates to animal massage therapy. He stated that having animal massage therapists who have gone through their training now having to have additional training and hold a Wisconsin health care license will have economic implications. He also spoke of the new proposed change requiring a referral from a veterinarian and the impact it would have on animal owners.

In addition, the following persons e-mailed comments to the VEB:

Commenting in opposition to requiring a veterinarian, if making a referral for animal massage therapy, to make the referral to a Wisconsin-licensed massage therapist:

Kayla Kraynik, Tabatha Williams, Marcia Duvall, Bonnie Dittmer, Kathy Leese, Linda Bassani, Dianna Peschel, Janet Barlow, Marissa Geis, Annie Halverson, Jill Lorenz, Josey Pirkel, Jill Steffensen

Commenting in favor of the proposed rule:

Janet Ducra, Kathy Pierzina, Thereasa Wirkus, Pedro Rivera, DVM

#### *Next Steps*

If the VEB and the Governor approve this rule, the VEB will transmit the final rule to the Legislature for review by the appropriate legislative committees. If the Legislature takes no action on the rule, the VEB Chair will sign the final rulemaking order and transmit it for publication. This rule will not have a significant adverse economic effect on "small business" so it is not subject to the delayed "small business" effective date provided in s. 227.22(2) (e), Stats.





# Rule

**PROPOSED ORDER  
OF THE WISCONSIN VETERINARY EXAMINING BOARD  
ADOPTING RULES**

- 1 The Wisconsin veterinary examining board hereby proposes the following rule *to create* VE 7.02
- 2 (3) (d) and VE 7.025; *relating to* the provision of complementary, alternative, and integrative
- 3 therapies, and affecting small business.

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**Analysis Prepared by the Veterinary Examining Board**

The Wisconsin Veterinary Examining Board (VEB) proposes a rule revision in ch. VEB 7, Wis. Adm. Code, to clarify the circumstances under which a veterinarian may make a referral of a veterinary client to another licensed professional, or supervise a certified veterinary technician, for the provision of complementary, alternative, or integrative therapies, as defined in s. VEB 1.02 (3m), Wis. Adm. Code, on the client's animal.

***Statutes Interpreted***

Statute Interpreted: ss. 89.01 (6) and 89.05 (1), Stats.

***Statutory Authority***

Statutory Authority: s. 89.03 (1), Stats.

***Explanation of Statutory Authority***

VEB has specific authority, under the provisions cited above, to adopt rules establishing the scope of practice permitted for veterinarians.

***Related Statutes and Rules***

VEB administers ch. 89, Stats., as well as the administrative rules in VE 1-10, Wis. Adm. Code, and in the administration of these statute and rules, VEB may issue administrative orders imposing discipline for unprofessional conduct related to the practice of veterinary medicine, including issuing an administrative warning to, or reprimanding, any person holding a veterinary medical license, or denying, revoking, suspending, limiting, the person's license, as specified by statute.

### ***Plain Language Analysis***

There is a current definition, in s. VE 1.02 (3m), Wis. Adm. Code, of veterinary complementary, alternative, and integrative therapies (“CAITs”). However, that definition does not specify how these CAITs are to be treated within the practice of veterinary medicine. There have been numerous requests made to the VEB, from veterinarians, certified veterinary technicians, and members of other licensed professions, to clarify the referral relationship that a veterinarian may have with these other professionals for the veterinarian’s clients, and the delegation to certified veterinary technicians for the provision of CAITs upon a veterinarian’s animal patients.

The VEB proposes to create a rule, s. VE 7.025, specifying that a veterinarian may make a referral to another Wisconsin-licensed professional, so long as the other professional gives evidence to the veterinarian of his or her license in good standing with the Wisconsin Department of Safety and Professional Services, to perform the type of CAIT for which the referral is made, and his or her education, training, and experience in performing that type of CAIT on an animal. The proposed rule includes a provision that the veterinarian-client-patient relationship (“VCPR”), as defined in s. 89.02(8), Stats., does not extend to the CAIT provided by the other professional, where the veterinarian demonstrates meeting the requirements in making the referral or the client obtains a therapy provider for the client’s animal without a referral.

In addition, the VEB proposes to create an additional provision, within s. VE 7.02 delegation of veterinary medical acts, for the veterinarian to delegate to a certified veterinary technician the performance of a CAIT on an animal patient, where the certified veterinary technician is not a licensed professional performing a CAIT. By including this provision in the section on delegation of veterinary medical acts, the VEB makes clear that the technician’s CAIT performance is under the direct supervision of the veterinarian, who will continue to have all of the supervisory responsibilities specified in this section, and within the VCPR.

### ***Summary of, and Comparison with Existing or Proposed Federal Statutes and Regulations***

There are no federal regulations governing the practice of veterinary complementary, alternative, and integrative therapies.

### ***Comparison with Rules in Adjacent States***

Illinois’s veterinary medicine and surgery practice act defines CAITs very similarly to the current definition in s. VE 1.02(9), Wis. Adm. Code. The act specifically allows a member in good standing of another licensed or regulated profession within any state or an Illinois-approved member of an organization or group to provide hands-on active participation in the treatment and care of a patient, within a veterinarian-client-patient relationship and with informed consent from the client, so long as the member works under the supervision of the veterinarian. The veterinarian maintains the veterinarian-client-patient relationship, but is immune from civil and criminal liability for the member’s assistance, except for willful and wanton conduct. The other professional may not state or imply in any way that they are licensed or engaging in the practice of veterinary medicine.

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### *Analysis and Supporting Documents Used to Determine Effect on Small Business*

This rule was developed with the assistance of a VEB-appointed rules advisory committee that included five Wisconsin-licensed veterinarians, two Wisconsin-certified veterinary technicians, two Wisconsin-licensed members of other professions who provide complimentary, alternative, or integrative therapies on animals, two public members, and a VEB member as a liaison to the Board. The committee looked at practices in other states, consulted with veterinary medical groups, and brought expertise on the use of these CAITs in assisting animals for their health and well-being. Written comments were collected after posting the rule for a 30-day period, oral comments were made during the four rule hearings in Eau Claire, Green Bay, Waukesha and Madison, and additional written comments during the remainder of the public comment period, which ended on January 31, 2018.

### *Effect on Small Business*

This rule change is anticipated to have an effect on small business, as many veterinary practices that will be subject to this definition change, are small businesses. However, it is not expected to have any adverse economic impact on these veterinary small businesses.

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There were comments, in the initial posting for economic impact, at the four hearings, and in written comments after the hearing, specifically about animal massage therapy. The rule clarifies that a veterinarian, in order to transfer the client-patient for the therapy to the other professional, must make the referral to a professional licensed for that therapy in Wisconsin. Some persons who perform animal massage therapy have been trained or have experience in this modality, but are not licensed massage therapists, although others animal massage therapists are Wisconsin-licensed massage therapists.

The rule only limits the veterinarian, in making a direct referral, to make it to a person who is licensed in Wisconsin to perform this therapy, and some of the commenters felt this was an unfair limitation. These commenters, including non-licensed animal massage therapists and some animal owners, requested that animal massage therapy be exempted as a therapy under this rule. However, by the statutory definition "to practice veterinary medicine" in s. 89.02 (6), Stats., and

the administrative rule definition of “complementary, alternative and integrative therapies” in s. VE 1.02 (3m), Wis. Adm. Code, animal massage therapy is within the statutory definition of the practice of veterinary medicine, and the advisory committee came to the conclusion that the VEB is not statutorily authorized to make the exemption in the rule. In addition, while at least one commenter made reference to Illinois, veterinary CAITs are under specific statutory provisions. And while Colorado and Indiana exempt animal massage therapy and equine massage therapy, respectively, from the practice of veterinary medicine, each state does so by statute.

In addition, some of the comments seem to be indicate that they thought the rule also limited an animal owner’s choice in this regard. Although the initial draft tried to clarify that the rule does not affect that choice, the final rule’s provision has additional language to clarify that the rule does not interfere with the relationship between any animal owner and a person the animal owner chooses to perform a CAIT on the owner’s animal.

Given the statutory and administrative rule definitions that animal massage therapy, and all other CAITs are within the practice of veterinary medicine, the rule also clarifies that a veterinarian using this referral process to another licensed professional transfers the patient-client relationship for the therapy provision, from the veterinarian to the other licensed professional, who will have their own professional client-patient relationship with the animal owner and patient. Only where a certified veterinary technician is delegated by the veterinarian to perform a CAIT, will the performance of the CAIT be under the direct supervision of the veterinarian and within the VCPR. This is a very specific assurance that veterinarians and other licensed professionals believe is important to make clear the professional who has the responsibilities in this regard.

This rule is not expected to have a substantial adverse economic effect on “small business” so it is not subject to the delayed “small business” effective date provided in s. 227.22(2) (e), Stats.

***VEB Contact  
Where and When Comments May Be Submitted***

Questions and comments related to this this rule may be directed to:

Cheryl Daniels, Board Counsel  
Veterinary Examining Board  
c/o Department of Agriculture, Trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708-8911  
Telephone: (608) 224-5026  
E-Mail: [Cheryl.Daniels@Wisconsin.gov](mailto:Cheryl.Daniels@Wisconsin.gov)

Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this rule hearing draft is approved by the Veterinary Examining Board.

4           **SECTION 1.** VE 7.02(3) (d) is created to read:

5           **7.02 (3)** (f) Except to certified veterinary technicians who are also licensed professionals  
6 governed by the provisions in s. VE 7.025, the provision of any complementary, alternative, or  
7 integrative therapy, as defined in s. VE 1.02 (3m).

8           **SECTION 2.** VE 7.025 is created to read:

9           **7.025 Veterinary referral to a license holder in another profession. (1)** A veterinarian  
10 may make a referral to a client, for treatment of a patient by a license holder in another profession,  
11 using complementary, alternative, or integrative therapies, as defined in s. VE 1.02 (3m), if the  
12 license holder, to whom the client and patient are referred, provides all of the following evidence  
13 to the veterinarian for performing the type of therapy for which the referral is being made:

14           (a) The license holder's current licensing in good standing, with the applicable board  
15 through the department of safety and professional services.

16           (b) The license holder's education, training, and experience in performing the therapy on  
17 an animal.

18           **(2)** The veterinarian-client-patient relationship, as defined in s. 89.02 (8), Stats., does not  
19 extend to the provision of any complementary, alternative, or integrative therapy performed on a  
20 veterinarian's patient, under either of the following circumstances:

21           (a) The therapy is performed by a license holder in another profession, where the  
22 veterinarian demonstrates meeting the requirements, in sub. (1), for making the referral to the  
23 license holder.

24           (b) The veterinarian's client obtains any complementary, alternative, or integrative therapy  
25 services for a veterinarian's patient without a referral by the veterinarian.

26           **SECTION 3.    EFFECTIVE DATE.** This rule takes effect on the first day of the month  
27 following publication in the Wisconsin administrative register, as provided under s.  
28 227.22(2)(intro.).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**VETERINARY EXAMINING BOARD**

By \_\_\_\_\_  
Member of the Board

# Reg Flex



## Wisconsin Veterinary Examining Board

### Regulatory Flexibility Analysis

***Rule Subject:*** Standards of Practice and Unprofessional Conduct for Veterinarians – Veterinary Complementary, Alternative, and Integrative Therapies

***Adm. Code Reference:*** VE 7

***Rules Clearinghouse #:*** 17-084

***DATCP Docket #:*** 16-VER-7

#### *Rule Summary*

The Wisconsin Veterinary Examining Board (VEB) proposes a rule revision in ch. VEB 7, Wis. Adm. Code, to clarify the circumstances under which a veterinarian may make a referral of a veterinary client to another licensed professional, or supervise a certified veterinary technician, for the provision of complementary, alternative, or integrative therapies, as defined in s. VEB 1.02 (3m), Wis. Adm. Code, on the client's animal.

There is a current definition, in s. VE 1.02 (3m), Wis. Adm. Code, of veterinary complementary, alternative, and integrative therapies ("CAITs"). However, that definition does not specify how these CAITs are to be treated within the practice of veterinary medicine. There have been numerous requests made to the VEB, from veterinarians, certified veterinary technicians, and members of other licensed professions, to clarify the referral relationship that a veterinarian may have with these other professionals for the veterinarian's clients, and the delegation to certified veterinary technicians for the provision of CAITs upon a veterinarian's animal patients.

The VEB proposes to create a rule, s. VE 7.025, specifying that a veterinarian may make a referral to another Wisconsin-licensed professional, so long as the other professional gives evidence to the veterinarian of his or her license in good standing with the Wisconsin Department of Safety and Professional Services, to perform the type of CAIT for which the referral is made, and his or her education, training, and experience in performing that type of CAIT on an animal. The proposed rule includes a provision that the veterinarian-client-patient relationship ("VCPR"), as defined in s. 89.02(8), Stats., does not extend to the CAIT provided by the other professional, where the veterinarian demonstrates meeting the requirements in making the referral or the client obtains a therapy provider for the client's animal without a referral.

In addition, the VEB proposes to create an additional provision, within s. VE 7.02 delegation of veterinary medical acts, for the veterinarian to delegate to a certified veterinary technician the performance of a CAIT on an animal patient, where the certified veterinary technician is not a licensed professional performing a CAIT. By including this provision in the section on delegation of veterinary medical acts, the VEB makes clear that the technician's CAIT performance is under the direct supervision of the veterinarian, who will continue to have all of the supervisory responsibilities specified in this section, and within the VCPR.

#### *Small Businesses Affected*

This rule change is anticipated to have an effect on small business, as many veterinary practices that will be subject to this definition change, are small businesses. However, it is not expected to have any adverse economic impact on these veterinary small businesses.

Instead, the proposed rule is anticipated to have a positive impact for veterinarians, certified veterinary technicians, and other Wisconsin-licensed professionals, as it clarifies the steps a veterinarian shall use to make a referral to another professional for CAITs and the delegation for these CAITs to certified veterinary technicians under the veterinarian's supervision. The VEB has received many requests for just this type of guidance from veterinarians, other professions practicing these therapies, and certified veterinary technicians in Wisconsin. Comments from licensed professionals, at hearings and in writing, were very supportive of the clarification, believing it will be very beneficial for the development of these businesses, but more importantly, for the health of these animal patients.

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This rule is not expected to have a substantial adverse economic effect on "small business" so it is not subject to the delayed "small business" effective date provided in s. 227.22(2) (e), Stats.

### *Reporting, Bookkeeping and other Procedures*

The rule would not require any additional reporting, bookkeeping, or other procedures.

### *Professional Skills Required*

The proposed rule does not require any new professional skills.

### *Accommodation for Small Business*

While this rule change is anticipated to have an effect on small business, as many veterinary practices are small business, it is anticipated that the effect of certainty for veterinarians in making referrals to other licensed professionals will be positive for both persons. While some unlicensed massage therapists, performing equine massage therapy, requested an exemption to allow veterinary referrals, given the current statutory definition of the practice of veterinary medicine and the administrative rule definition of CAITs for animals, the VEB does not have the authority to make the exemption in the rule. The rule makes clear that this only deals with veterinarian referrals and supervision of certified veterinary technicians, and does not impact the relationship between an animal owner and any person the animal owner chooses to perform a CAIT on the owner's animal.

### *Conclusion*

The expectation by those advocating for the rule change, including veterinarians, certified veterinary technicians, and other licensed professionals in Wisconsin, is that it will result in greater use of complementary, alternative, and integrative therapies as additional tools for the benefit of animals and their owners.

This rule is not expected to have a substantial adverse economic effect on "small business" so it is not subject to the delayed "small business" effective date provided in s. 227.22(2) (e), Stats.

Dated this 7<sup>th</sup> day of February, 2017.

STATE OF WISCONSIN  
VETERINARY EXAMINING BOARD

By Cheryl Furstace Daniels  
Cheryl Furstace Daniels  
Board Counsel

# Fiscal Estimate

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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1. Type of Estimate and Analysis

Original  Updated  Corrected

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2. Administrative Rule Chapter, Title and Number

VE 7, Standards of Practice and Unprofessional Conduct for Veterinarians

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3. Subject

Creating referral and delegation rules for veterinary complementary, alternative, and integrative therapies

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4. Fund Sources Affected

GPR  FED  PRO  PRS  SEG  SEG-S

5. Chapter 20, Stats. Appropriations Affected

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6. Fiscal Effect of Implementing the Rule

No Fiscal Effect  Increase Existing Revenues  Increase Costs  
 Indeterminate  Decrease Existing Revenues  Could Absorb Within Agency's Budget  
 Decrease Cost

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7. The Rule Will Impact the Following (Check All That Apply)

State's Economy  Specific Businesses/Sectors  
 Local Government Units  Public Utility Rate Payers  
 Small Businesses (if checked, complete Attachment A)

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8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes  No

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9. Policy Problem Addressed by the Rule

The Veterinary Examining Board ("VEB") administers ch. 89, Stats., as well as the administrative rules in VE 1-10, Wis. Adm. Code. There is a current definition, in s. VE 1.02 (3m), Wis. Adm. Code, of veterinary complementary, alternative, and integrative therapies ("CAITs"). However, that definition does not specify how these CAITs are to be treated within the practice of veterinary medicine. There have been numerous requests made to the VEB from veterinarians, certified veterinary technicians, and members of other licensed professions to clarify the referral relationship that a veterinarian may have with these other professionals, and the delegation to certified veterinary technicians, for the provision of CAITs upon a veterinarian's animal patients.

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10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

This proposed rule change is anticipated to affect all licensed veterinarians, some certified veterinary technicians, and other Wisconsin-licensed professionals who have education, training, and experience in practicing complementary, alternative, and integrative therapies on animals. This rule change is anticipated to have an effect on small business, as many veterinarian practices and other licensed professionals, subject to this proposed rule change, practice within small businesses.

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11. Identify the local governmental units that participated in the development of this EIA.

Local governmental units are not impacted by this rule and did not participate in development of this EIA.

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12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule is expected to have no substantial adverse economic and fiscal impact.

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13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The proposed rule is anticipated to have a positive impact for veterinarians, certified veterinary technicians, and other Wisconsin-licensed professionals, as it clarifies the steps a veterinarian shall use to make a referral to another professional for CAITs and the delegation for these CAITs to certified veterinary technicians under the veterinarian's

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## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

supervision. The VEB has received many requests for just this type of guidance from veterinarians, other professions practicing these therapies, and certified veterinary technicians in Wisconsin. The alternative is to do nothing and have uncertainty in the professions as to the extent that a veterinarian may make a referral to another licensed professional, or delegate to a certified veterinary technician, for the provision of therapies that the veterinarian believes will potentially be of benefit to their animal patients, given that CAITs are within the statutory definition of the practice of veterinary medicine.

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### 14. Long Range Implications of Implementing the Rule

The expectation by those advocating for the rule change is that it will result in greater use of complementary, alternative, and integrative therapies as additional tools for the benefit of animals and their owners.

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### 15. Compare With Approaches Being Used by Federal Government

There are no federal regulations governing the practice of veterinary medical surgeries.

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### 16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois's veterinary medicine and surgery practice act defines CAITs very similarly to the current definition in s. VE 1.02(9), Wis. Adm. Code. The act specifically allows a member in good standing of another licensed or regulated profession within any state or an Illinois-approved member of an organization or group to provide hands-on active participation in the treatment and care of a patient, within a veterinarian-client-patient relationship and with informed consent from the client, so long as the member works under the supervision of the veterinarian. The veterinarian maintains the veterinarian-client-patient relationship, but is immune from civil and criminal liability for the member's assistance, except for willful and wanton conduct. The other professional may not state or imply in any way that they are licensed or engaging in the practice of veterinary medicine.

Iowa's and Michigan's veterinary statutes and rules do not address this issue.

Within Minnesota's practice of veterinary medicine act, there is a provision that specifically states that the act does not prohibit a licensed chiropractor from registering with its chiropractor board and performing animal chiropractic on animals that have been referred to the chiropractor by a veterinarian.

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### 17. Comments Received in Response to Web Posting and VEB Response

There were comments, in the initial posting for economic impact, at the four hearings, and in written comments after the hearing, specifically about animal massage therapy. The rule clarifies that a veterinarian, in order to transfer the client-patient for the therapy to the other professional, must make the referral to a professional licensed for that therapy in Wisconsin. Some persons who perform animal massage therapy have been trained or have experience in this modality, but are not licensed massage therapists, although others animal massage therapists are Wisconsin-licensed massage therapists.

The rule only limits the veterinarian, in making a direct referral, to make it to a person who is licensed in Wisconsin to perform this therapy, and some of the commenters felt this was an unfair limitation. These commenters, including non-licensed animal massage therapists and some animal owners, requested that animal massage therapy be exempted as a therapy under this rule. However, by the statutory definition "to practice veterinary medicine" in s. 89.02 (6), Stats., and the administrative rule definition of "complementary, alternative and integrative therapies" in s. VE 1.02 (3m), Wis. Adm. Code, animal massage therapy is within the statutory definition of the practice of veterinary medicine, and the advisory committee came to the conclusion that the VEB is not statutorily authorized to make the exemption in the rule. In addition, while at least one commenter made reference to Illinois, veterinary CAITs are under specific statutory provisions. And while Colorado and Indiana exempt animal massage therapy and equine massage therapy, respectively, from the practice of veterinary medicine, each state does so by statute.

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## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

In addition, some of the comments seem to be indicate that they thought the rule also limited an animal owner's choice in this regard. Although the initial draft tried to clarify that the rule does not affect that choice, the final rule's provision has additional language to clarify that the rule does not interfere with the relationship between any animal owner and a person the animal owner chooses to perform a CAIT on the owner's animal.

Given the statutory and administrative rule definitions that animal massage therapy, and all other CAITs are within the practice of veterinary medicine, the rule also clarifies that a veterinarian using this referral process to another licensed professional transfers the patient-client relationship for the therapy provision, from the veterinarian to the other licensed professional, who will have their own professional client-patient relationship with the animal owner and patient. Only where a certified veterinary technician is delegated by the veterinarian to perform a CAIT, will the performance of the CAIT be under the direct supervision of the veterinarian and within the VCPR. This is a very specific assurance that veterinarians and other licensed professionals believe is important to make clear the professional who has the responsibilities in this regard.

17. Contact Name Cheryl Daniels, VEB Legal Counsel	18. Contact Phone Number (608) 224-5026
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This document can be made available in alternate formats to individuals with disabilities upon request.

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

### ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The comments indicate that at least some persons practicing massage therapy on animals, particularly horses, may be impacted because they would be required to become licensed massage therapists in order to establish a referral relationship with veterinarians. However, it is unclear how many of these persons will be affected. In addition, the proposed rule clarifies that it does not impact the relationship between an animal owner and the person they may select to perform a CAIT on the animal.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

This rule was developed with the assistance of a VEB-appointed rules advisory committee that included five Wisconsin-licensed veterinarians, two Wisconsin-certified veterinary technicians, two Wisconsin-licensed members of other professions who provide complimentary, alternative, or integrative therapies on animals, two public members, and a VEB member as a liaison to the Board. The committee looked at practices in other states, consulted with veterinary medical groups, and brought expertise on the use of these CAITs in assisting animals for their health and well-being. The committee also listened to comments from stakeholders at their meetings

In addition, the comments from the website posting were considered before the proposed rule was completed.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

While there was consideration for the requests to exempt animal massage therapy from the referral requirements, the exemption was rejected due to the statutory definition of the practice of veterinary medicine, and the administrative rule definition of CAITs, both of which include animal massage therapy and, therefore, the VEB does not have the authority to exempt animal massage therapy in the rule.

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5. Describe the Rule's Enforcement Provisions

The rule will only be enforced if there is a well-founded complaint against a veterinarian, for not following the referral requirements or supervisory requirements, is established.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
-



# Board memo



**DATE:** February 6, 2018  
**TO:** Veterinary Examining Board (VEB)  
**FROM:** Cheryl Furstace Daniels, VEB Legal Counsel *CFD*  
**SUBJECT:** VE 11 Permanent Rule – Veterinary Professional Assistance Program; Final Draft Rule  
**PRESENTED BY:** Cheryl Furstace Daniels

**REQUESTED ACTION:**

At the February 13, 2018, VEB meeting, the VEB will consider final language for a proposed rule to create ch. VE 11 (Veterinary Professional Assistance Program.) The proposed rule creates both a voluntary and a disciplinary component to address veterinary professionals that are impaired by alcohol, drugs or other chemicals, or mental health issues.

**SUMMARY:**

*Background*

VEB administers ch. 89, Stats., as well as the administrative rules in VE 1-10, Wis. Adm. Code, and in the administration of these statute and rules, VEB may issue administrative orders imposing discipline for unprofessional conduct related to the practice of veterinary medicine, including issuing an administrative warning to, or reprimanding, any person holding a veterinary medical license, or denying, revoking, suspending, limiting, the person's license, as specified by statute.

When the VEB was transferred, for administrative purposes, from the Department of Safety and Professional Services (DSPS) to the Department of Agriculture, Trade and Consumer Protection (DATCP), while these specific administrative code chapters that pertained to its operations were transferred, none of the general DSPS administrative code chapters pertaining to all the credentialing boards were made a part of the VE rules, including ch. SPS 7, Professional Assistance Procedure.

To correct this, 2017 Wisconsin Act 59 included an amendment to Wis. Stat. ch. 89, relating to the authority of the VEB to write rules, requiring the VEB to write rules for a procedure for addressing allegations that a person licensed or certified by the VEB under this chapter has practiced as a veterinarian or veterinary technician while impaired by alcohol or other drugs or that his or her ability to practice is impaired by alcohol or other drugs, and for assisting a person licensed by the VEB under this chapter who requests to participate in the procedure or who requests assistance in obtaining mental health services. In promulgating rules under this subsection, the VEB shall seek to facilitate early identification of chemically dependent veterinarians or veterinary technicians and encourage their rehabilitation.

### ***Rule Content***

The newly created ch. VE 11, Veterinary Professional Assistance Program, specifies the authority and purpose of the rules; definitions used in the chapter; contracting requirements for a third-party program administrator; use of the confidential voluntary program component by impaired veterinary professionals; referral to and eligibility for credential holders to use the disciplinary program, including participation requirements and agreement terms; approval of service providers, including those providing alcohol, drug or other chemical testing services; record requirements, including confidentiality provisions; and reports to the VEB.

The rule ensures early identification of impaired veterinary professionals, as required in statute, by providing that the program has a confidential, voluntary component for those persons, so long as the professional is not a credential holder with an outstanding complaint before the board's disciplinary process. The rules promulgated under this subsection may be used in conjunction with the formal disciplinary process under this chapter and this rule does so with a disciplinary component in the program that may be utilized through either a stipulation, between a credential holder and board or disciplinary counsel, or a board order. The rule specifies the contracting requirements for another entity to administer the program.

### ***Analysis and Supporting Documents Used to Determine Effect on Small Business***

The VEB looked at the current rules in effect under ch. SPS 7, Wis. Adm. Code, with regard to professional assistance programs that apply to other professions, and also at other states that have professional assistance programs. The Wisconsin Veterinary Medical Association (WVMA) sent comments to the board in support of the proposal. There were no comments related to any adverse effect on small business, after posting the rule for a two-week period, before the rule was sent to hearing, or during and after having four rule hearings in Eau Claire, Green Bay, Waukesha and Madison.

### ***Effect on Small Business***

This rule change is anticipated to have an effect on small business, as many veterinarian professionals practice in small businesses. However, as the rule is designed for early identification and treatment of alcohol and other drug and mental health impairments in veterinary professionals, this should have a positive impact on veterinary small businesses in assisting with professional assessment and treatment before the impairment affects the practice. In addition, this rule will also ensure that persons, subject to these rules, are on notice as to procedures, within the VEB's jurisdiction, that will be utilized in the disciplinary process. Finally, the cost of the program will be absorbed within the current budget of the VEB and no additional fees will be assessed against credential holders to pay for the program.

### ***Environmental Impact***

This rule will have no environmental impact.

### ***Summary of, and Comparison with Existing or Proposed Federal Statutes and Regulations***

There are no federal regulations governing the practice of veterinary medical surgeries.

### *Comparison with Rules in Adjacent States*

In Illinois, a veterinarian who has been determined by a qualified health care professional to be impaired shall enter into an agreement with the state's Department of Financial and Professional Regulation-Division of Professional Regulation ("Division"), in which the veterinarian agrees to participate in a program designed to provide care and treatment specifically for health care professionals and which has been approved by the Division. The agreement may include, but not be limited to, the length of the program, the status of the licensee while in a treatment program, and a termination clause whereby both parties may terminate the agreement at any time.

There is nothing specific in the Iowa Veterinary Practice Act regarding a veterinary professional assistance program. However, the Act does allow the Iowa Board of Veterinary Medicine to have a licensee submit to a physical or mental examination by a designated physician.

There is nothing in the Michigan Veterinary Practice Act regarding a specific veterinary professional assistance program. However, Michigan has a Health Professional Recovery Committee that includes veterinarians. The purpose of this committee is to establish the general components of the health professional recovery program and a mechanism for monitoring health professionals who may be impaired.

There is nothing in the Minnesota Veterinary Practice Act regarding a specific veterinary professional assistance program. However, the Board has the authority to issue an order directing the regulated person to submit to a mental or physical examination or chemical dependency evaluation. Veterinarians may participate in the state's Health Professionals Services Program.

### *Public Hearings*

On December 28, 2017, the VEB received a report from the Legislative Council Rules Clearinghouse. VEB staff has incorporated all the minor changes suggested in the report and made the following changes, based upon the comments in the report.

- The report suggested that the VEB consider adding a procedure, similar to one in s. SPS 7.03 (3), Wis. Adm. Code, for handling informal complaints involving allegations of impairment. Currently, the VEB has no informal complaint procedure, but does have a procedure to have disciplinary counsel, upon direction of the VEB Screening Panel, stipulate settlements with credential holders in the disciplinary process. The rule was amended to include this current alternative procedure as another method for a credential holder to be allowed to apply for eligibility to enter the disciplinary program within the veterinary professional assistance program.
- The report suggested that the rule clarify how the terms "service provider" and "service" are used throughout the rule. The rule was amended to make clear that the program approves all "service providers" that provide services of assessment, testing for alcohol, drugs or other chemicals, treatment, rehabilitation, monitoring, and support for any specified impairments by the use of alcohol, other drugs or chemicals, or of mental health.
- The report suggested and the rule was amended to specify that an impaired veterinary professional sign a confidential participation agreement with the program to enter the voluntary

program component, which includes receiving referrals to services that the program contracts for with service providers.

- The report made some suggestions about inconsistent and unclear wording concerning a possible confidentiality provision within the disciplinary program. However, after reviewing the statutes, this rule provision was removed, as not specifically authorized by s. 89.03 (3), Stats., and contrary to the operation of subch. II of ch. 19, Stats., involving public records. The rule specifically maintains all confidentiality requirements that are in statute for the VEB, program, and service provider records created, maintained, and distributed by operation of this program.

VEB staff held public hearings on January 9, 2018, in Eau Claire, Wisconsin, on January 10, 2018, in Green Bay, Wisconsin, on January 11, 2018, in Waukesha, Wisconsin, and on January 12, 2018, in Madison, Wisconsin. The VEB held open the record for written comments until January 31, 2018.

Speaking at the Madison hearing, and following up with written comments, was Attorney Jordan Lamb, on behalf of the Wisconsin Veterinary Medical Association. The WVMA registered in favor of the rule, but also requested a clarification as to a confidentiality provision in the disciplinary process, which was ultimately removed from the rule, as addressed in the fourth bullet point above. The WVMA was also in favor of adding a rule provision specifying, as part of the contract for a program provider, that the provider, its board members, employees and agents shall be immune from suit for conduct within the scope of their functions without malice and in reasonable belief that their actions were warranted, including conduct and actions performed by the terms of a contract with DATCP or the VEB. However, the new rule does not incorporate this suggested amendment because s. 89.03 (3), Stats., does not authorize the VEB to include such an immunity provision in the rule.

### *Next Steps*

If the VEB and the Governor approve this rule, the VEB will transmit the final rule to the Legislature for review by the appropriate legislative committees. During this time period, the VEB will need to request an extension of ch. VE 11 Emergency Rule, promulgated on November 22, 2017, and due to expire on April 20, 2018, in order for the development of the program to continue while the permanent rule process is ongoing. If the Legislature takes no action to stop the rule, the VEB Chair will sign the final rulemaking order and transmit it for publication. This rule will not have a significant adverse economic effect on “small business” so it is not subject to the delayed “small business” effective date provided in s. 227.22(2) (e), Stats.

# Rule

**PROPOSED ORDER  
OF THE WISCONSIN VETERINARY EXAMINING BOARD  
ADOPTING RULES**

1           The Wisconsin veterinary examining board hereby proposes the following permanent rule  
2 *to amend* s. VE 1.02 (intro.) and *to create* ch. VE 11, *relating to* a veterinary professional  
3 assistance program and affecting small business.

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**Analysis Prepared by the Veterinary Examining Board**

This permanent rule, in conjunction with a proposed emergency rule, creates ch. VE 11, “Veterinary Professional Assistance Program”, to implement s. 89.03(3), Stats., created by the Legislature in 2017 Wisconsin Act 59, the Budget Bill. S. 89.03 (3), Stats., states that the veterinary examining board (“VEB”) shall promulgate rules specifying a procedure for addressing allegations that a person licensed or certified by the VEB under this chapter has practiced as a veterinarian or veterinary technician while impaired by alcohol or other drugs or that his or her ability to practice is impaired by alcohol or other drugs, and for assisting a person licensed by the VEB under this chapter who requests to participate in the procedure or who requests assistance in obtaining mental health services. In promulgating rules under this subsection, the VEB shall seek to facilitate early identification of chemically dependent veterinarians or veterinary technicians and encourage their rehabilitation. The rules promulgated under this subsection may be used in conjunction with the formal disciplinary process under this chapter. The VEB may contract with another entity to administer the procedure specified under the rules promulgated under this subsection.

***Statutes Interpreted***

Statutes Interpreted: s. 89.03, Stats. (title) “Rules.”

***Statutory Authority***

Statutory Authority: s. 89.03 (3), Stats.

***Explanation of Statutory Authority***

The VEB has been given specific authority, pursuant to s. 89.03 (3), Stats., to adopt rules specifying a procedure for addressing allegations that a person licensed or certified by the VEB under this chapter has practiced as a veterinarian or veterinary technician while impaired by alcohol or other drugs or that his or her ability to practice is impaired by alcohol or other drugs,

and for assisting a person licensed by the VEB under this chapter who requests to participate in the procedure or who requests assistance in obtaining mental health services. In promulgating rules under this subsection, the VEB shall seek to facilitate early identification of chemically dependent veterinarians or veterinary technicians and encourage their rehabilitation. The rules promulgated under this subsection may be used in conjunction with the formal disciplinary process under this chapter.

### ***Related Statutes and Rules***

Since the transfer of the Department of Safety and Professional Services' (DSPS) limited purposes authority over the VEB in January 2016 to the Department of Agriculture, Trade and Consumer Protection ("DATCP"), the VEB has utilized ch. 89, Stat., and chs. VE 1-10, Wis. Adm. Code, to oversee the operations of the VEB.

### ***Plain Language Analysis***

When the VEB was transferred from DSPS to DATCP, the specific administrative code chapters that pertained to its operations were transferred. However, none of the general DSPS administrative code chapters pertaining to all the credentialing boards were made a part of the VE rules, including ch. SPS 7, Professional Assistance Procedure.

To correct this, 2017 Wisconsin Act 59 included an amendment to the statute, relating to the authority of the VEB to write rules, to require the VEB to write rules for a procedure for addressing allegations that a person licensed or certified by the VEB under this chapter has practiced as a veterinarian or veterinary technician while impaired by alcohol or other drugs or that his or her ability to practice is impaired by alcohol or other drugs, and for assisting a person licensed by the VEB under this chapter who requests to participate in the procedure or who requests assistance in obtaining mental health services.

The newly created ch. VE 11, Veterinary Professional Assistance Program, specifies the authority and purpose of the rules; definitions used in the chapter; contracting requirements for a third-party program administrator; use of the confidential voluntary program component by impaired veterinary professionals; referral to and eligibility for credential holders to use the disciplinary program, including participation requirements and agreement terms; approval of service providers, including those providing alcohol, drug or other chemical testing services; record requirements, including confidentiality provisions; and reports to the VEB.

The rule ensures early identification of impaired veterinary professionals, as required in statute, by providing that the program has a confidential, voluntary component for those persons, so long as the professional is not a credential holder with an outstanding complaint before the board's disciplinary process. The rules promulgated under this subsection may be used in conjunction with the formal disciplinary process under this chapter and this rule does so with a disciplinary component in the program that may be utilized through either a stipulation, between a credential holder and board or disciplinary counsel, or a board order. The rule specifies the contracting requirements for another entity to administer the program.



## *Federal and Surrounding State Programs*

### **Federal Programs**

There are no federal regulations governing professional assistance programs for veterinary professionals.

### **Surrounding State Programs**

In Illinois, a veterinarian who has been determined by a qualified health care professional to be impaired shall enter into an agreement with the state's Department of Financial and Professional Regulation-Division of Professional Regulation ("Division"), in which the veterinarian agrees to participate in a program designed to provide care and treatment specifically for health care professionals and which has been approved by the Division. The agreement may include, but not be limited to, the length of the program, the status of the licensee while in a treatment program, and a termination clause whereby both parties may terminate the agreement at any time.

There is nothing specific in the Iowa Veterinary Practice Act regarding a veterinary professional assistance program. However, the Act does allow the Iowa Board of Veterinary Medicine to have a licensee submit to a physical or mental examination by a designated physician.

There is nothing in the Michigan Veterinary Practice Act regarding a specific veterinary professional assistance program. However, Michigan has a Health Professional Recovery Committee that includes veterinarians. The purpose of this committee is to establish the general components of the health professional recovery program and a mechanism for monitoring health professionals who may be impaired.

There is nothing in the Minnesota Veterinary Practice Act regarding a specific veterinary professional assistance program. However, the Board has the authority to issue an order directing the regulated person to submit to a mental or physical examination or chemical dependency evaluation. Veterinarians may participate in the state's Health Professionals Services Program.

### *Analysis and Supporting Documents Used to Determine Effect on Small Business*

The VEB looked at the current rules in effect under ch. SPS 7, Wis. Adm. Code, with regard to professional assistance programs that apply to other professions, and also at other states that have professional assistance programs.

### *Effect on Small Business*

This rule change is anticipated to have an effect on small business, as many veterinarian professionals practice in small businesses. However, as the rule is designed for early identification and treatment of alcohol and other drug and mental health impairments in veterinary professionals, this should have a positive impact on veterinary small businesses in assisting with professional assessment and treatment before the impairment affects the practice. In addition, this rule will also ensure that persons, subject to these rules, are on notice as to procedures, within the VEB's jurisdiction, that will be utilized in the disciplinary process.



17 VE 11.16 Records.

18 VE 11.18 Reports to board.

19 **VE 11.01 Authority and purpose.** Pursuant to s. 89.03 (3), Stats., the board adopts these  
20 rules specifying a procedure for addressing allegations that a person licensed or certified by the  
21 board under this chapter has practiced as a veterinarian or veterinary technician while impaired  
22 by alcohol or other drugs or that his or her ability to practice is impaired by alcohol or other  
23 drugs, and for assisting a person licensed by the board under this chapter who requests to  
24 participate in the procedure or who requests assistance in obtaining mental health services. In  
25 promulgating rules under s. 89.03 (3), Stats., the board shall seek to facilitate early identification  
26 of chemically dependent veterinarians or veterinary technicians and encourage their  
27 rehabilitation. The rules promulgated under s. 89.03 (3), Stats., may be used in conjunction with  
28 the formal disciplinary process under ch. 89, Stats.

29 **VE 11.02 Definitions.** As used this chapter:

30 **(1)** "Complaint" means any written information submitted by any person to the board which  
31 requests that a disciplinary proceeding be commenced against a credential holder or which alleges  
32 facts, which if true, warrant discipline.

33 **(2)** "Credential holder" means a person holding any license, permit, certificate, or registration  
34 granted by the board.

35 **(3)** "Disciplinary counsel" means the attorney bringing complaints against credential holders  
36 before the board.

37       **(4)** “Disciplinary program” means the component of the veterinary professional assistance  
38 program that may be utilized, as part of a stipulation by a credential holder and the board, for  
39 settling unprofessional conduct by the credential holder.

40       **(5)** “Impaired” means the inability of a veterinary professional to practice veterinary medicine  
41 or veterinary technology with reasonable skill and safety to patients by reason of illness,  
42 inebriation, excessive use of drugs, narcotics, alcohol, chemicals or other substances, or as a result  
43 of any physical or mental condition.

44       **(6)** “Impaired veterinary professional” means a credential holder, a veterinarian student studying  
45 or working in Wisconsin, or an unlicensed veterinary assistant working in Wisconsin, who  
46 voluntarily seeks assistance because of a self-identified alcohol, drug or other chemical, or mental  
47 health impairment.

48       **(7)** “Medical review officer” means a medical doctor or doctor of osteopathy who is a licensed physician  
49 and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and  
50 evaluate an individual's confirmed positive test result together with an individual's medical history and any  
51 other relevant biomedical information.

52       **(8)** “Program” means any entity contracted by the board to provide the veterinary professional  
53 assistance program on behalf of the board.

54       **(9)** “Screening panel” means the board committee that reviews complaints to see if investigation  
55 by disciplinary counsel is warranted and reviews possible settlements and orders against credential  
56 holders.

57 (10) "Service provider" means any program-approved provider of assessment, testing,  
58 treatment, rehabilitation, monitoring, and support for any specified impairments by the use of  
59 alcohol, other drugs or chemicals, or of mental health. The term includes any person supervising  
60 the credential holder while working as a veterinary professional.

61 (11) "Voluntary program" means the component of the veterinary professional assistance  
62 program that an impaired veterinary professional, as defined in subs. (5), may utilize for assistance  
63 with a self-identified alcohol, drug or other chemical, or mental health impairment, through a  
64 participation agreement with the program.

65 **VE 11.04 Contract for program. (1)** The board may enter into a contract with a nonprofit  
66 corporation or veterinary professional association to provide a veterinary professional assistance  
67 program, which may include any or all of the following:

68 (a) Contracting with assessment, testing, treatment, rehabilitation, monitoring, or support  
69 service providers, in accordance with the requirements in VE 11.12 and VE 11.14. The program  
70 shall inform all service providers, and update changes in this information as soon as possible, of  
71 the employees in the program designated to receive required information from the service provider.

72 (b) Receiving and evaluating reports of suspected impairment from any source.

73 (c) Intervening in cases of verified impairment.

74 (d) Signing a confidential participation agreement with impaired veterinary professionals for  
75 making referrals to them to utilize services, from service providers contracted with under par. (a),  
76 outside the disciplinary process.

77 (e) Referring and monitoring services to credential holders, within the board's disciplinary  
78 process.

79 (f) Providing post-treatment monitoring and support to impaired veterinary professionals in the  
80 voluntary program and credential holders in the disciplinary program.

81 (h) Reporting program statistical information to the board.

82 (i) Reporting all required information in the disciplinary program, so the board may carry out its  
83 disciplinary authority under s. VE 7.07, Wis. Adm. Code.

84 **(2)** The board and the program, as part of the contract, shall agree to eligibility criteria for  
85 credential holders to be accepted into the disciplinary program, to fulfill the requirements in s.  
86 89.03 (3), Stats.

87 **(3)** The board and the program, as part of the contract, shall agree to eligibility criteria for  
88 impaired veterinary professionals to be accepted into the voluntary program, to fulfill the  
89 requirements in s. 89.03 (3), Stats. The program may not accept a credential holder to the voluntary  
90 program, if the board's disciplinary process has an outstanding complaint against that credential  
91 holder.

92 **(4)** Except for information produced for the board under pars. (1) (h) and (i), all information,  
93 interviews, records, reports, statements, memoranda, or other documents furnished to or produced  
94 by the program, are confidential.

95 **VE 11.06 Referral to and eligibility for disciplinary program. (1)** The board, or  
96 disciplinary counsel upon direction by the screening panel, may stipulate with a credential holder  
97 in the disciplinary process, to refer the credential holder to the disciplinary program as part of a

98 settlement for uncontested unprofessional conduct on the part of the credential holder. The  
99 stipulation shall include language that a referral does not guarantee acceptance of the credential  
100 holder by the disciplinary program and the potential consequences if the credential holder is not  
101 accepted in the disciplinary program or does not complete the terms of acceptance. The stipulation,  
102 or a separate stipulation or order, may include other discipline to be completed by the credential  
103 holder, separate from the disciplinary program.

104 **(2)** The program shall supply a referred credential holder an application for participation. As  
105 part of the application, the credential holder agrees that all relevant materials from the board's  
106 disciplinary proceedings may be released to the program to make its determination as to the  
107 applicant's eligibility.

108 **(3)** The program shall determine the credential holder's eligibility, based upon the criteria in the  
109 contract, by reviewing all relevant materials, including investigative results and the credential  
110 holder's application for participation.

111 **(4)** The program shall inform the credential holder and board if the holder is ineligible for  
112 acceptance. A credential holder determined to be ineligible for the disciplinary program may,  
113 within 10 days of notice of the determination, request the board to review the adverse  
114 determination.

115 **VE 11.08 Requirements for disciplinary program participation. (1)** A credential holder  
116 who participates in the disciplinary program shall do all of the following:

117 (a) Sign a participation agreement with the program and provide a copy to the board.

118 (b) Obtain a comprehensive assessment for alcohol, drug or other chemical, or mental health  
119 impairments from an approved service provider, including submitting to any required testing, and  
120 arrange for the service to file a copy of its assessment with the program. The program may agree  
121 to waive this requirement.

122 (c) Remain free of alcohol, if diagnosed as an impairment, or controlled substances and  
123 prescription drugs unless prescribed for a valid medical purpose.

124 (d) Timely enroll and participate in any approved service, as required by the assessment or  
125 agreed to by the credential holder and program, if the assessment is waived pursuant to par. (b).

126 (e) Comply with any treatment recommendations, work restrictions, or conditions deemed  
127 necessary by a testing, assessment, or treatment service provider.

128 (f) Submit any required random monitored physiological specimens to a service provider for the  
129 purpose of screening for alcohol, drug or other chemical substances.

130 (g) Execute releases, valid under state and federal law, to allow the program access to the  
131 credential holder's counseling, treatment, and monitoring records.

132 (h) Have the credential holder's service and work supervisors file quarterly reports with the  
133 program.

134 (i) Notify the program of any changes in the credential holder's employer within 5 days.

135 (j) File quarterly reports documenting the credential holder's attendance at meetings of self-help  
136 support groups.



137       **(2)** If the program determines, based on consultation with any service provider authorized to  
138 provide testing, treatment, or monitoring of the credential holder, that a credential holder  
139 participating in its program has failed to meet any of the requirements set under sub. (1), the  
140 program shall make a written determination if it will continue to allow the credential holder to use  
141 its program and obtain a new participation agreement with any additional requirements,  
142 determined by the program. The program shall notify the board of any determinations under this  
143 subsection.

144       **(3)** Upon notification of the failure and program continuation, the board shall make a review to  
145 determine whether the credential holder should be referred for further discipline. The board shall  
146 review the complete record in making this determination.

147       **VE 11.10 Disciplinary program participation agreement. (1)** The credential holder's  
148 participation agreement in the disciplinary program shall at a minimum include:

149       (a) A statement describing the credential holder's conduct, relating to participation in the  
150 program.

151       (b) An acknowledgement by the credential holder of the impairment needing treatment.

152       (c) An agreement to participate, at the credential holder's expense if necessary, in an approved  
153 treatment regimen.

154       (d) An agreement to submit to random monitored alcohol, drug or other chemical screens at the  
155 credential holder's expense, by a service provider for alcohol, drug or other chemical testing  
156 approved by the program under s. VE 11.14, if deemed necessary by the program.

157 (e) An agreement to submit to practice restrictions at any time during the treatment regimen, as  
158 deemed necessary by the program.

159 (f) An agreement to furnish the program with signed consents for release of information from  
160 service providers and employers, authorizing the release of information to the program and board  
161 for the purpose of monitoring the credential holder's participation in the program.

162 (g) An agreement authorizing the program to release, to the employer or any service provider  
163 identified by the credential holder, all of the following:

- 164 1. The information described in pars. (a), (c), and (e).
- 165 2. If the credential holder violates the terms of the disciplinary program under VE 11.08 (1)
- 166 3. If the credential holder is dismissed from the disciplinary program, pursuant to VE 11.08 (2).

167 (h) An agreement authorizing the program to release the results of random monitored alcohol,  
168 drug or other chemical screens under par. (d), to any service provider identified by the credential  
169 holder.

170 (i) An agreement to participate in the program for a period of time, as established by the  
171 stipulation between the credential holder and board or disciplinary counsel.

172 **(2)** The program may include additional requirements for an individual credential holder, if the  
173 credential holder's condition warrants additional safeguards.

174 **VE 11.12 Approval of service providers. (1)** The program may approve a service provider  
175 designated by a credential holder for the purpose of participation in the program if:

176 (a) The service provider is a facility where all of the following applies:

- 177 1. The facility is certified by appropriate national or state certification agencies.
- 178 2. The treatment program focus at the facility is on the individual with an impairment of the  
179 same type as has been identified in the credential holder.
- 180 3. Facility treatment plans and protocols are available to the program.
- 181 4. The facility, through the facility's supervising therapist for the credential holder, agrees to  
182 file reports as required, including quarterly progress reports and immediate reports if a credential  
183 holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.
- 184 (b) The service provider is an individual therapist who:
- 185 1. Has credentials and experience determined by the program to be in the credential holder's  
186 area of need.
- 187 2. Agrees to perform an appropriate assessment of the credential holder's therapeutic needs  
188 and to establish and implement a comprehensive treatment regimen for the credential holder.
- 189 3. Forwards copies of the therapist's treatment regimen and office protocols to the program.
- 190 4. Agrees to file reports as required to the program, including quarterly progress reports and  
191 immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in  
192 an unsafe condition to practice.
- 193 **(2)** If the program does not approve any service provider, as requested by the credential holder,  
194 the credential holder may, within 10 days of notice of the determination, request the board to  
195 review the program's adverse determination.

196 **VE 11.14 Approval of service providers for alcohol, drug or other chemical testing. (1)**

197 The program shall approve service providers for use by credential holders, who participate in  
198 alcohol, drug or other chemical monitoring programs pursuant to stipulations between the board  
199 and credential holders or pursuant to disciplinary orders.

200 **(2)** To be approved as a service provider for alcohol, drug or other chemical testing, the service  
201 provider shall satisfactorily meet all of the following requirements for administration, collection  
202 site, laboratory, and reporting: (a) *Administration.*

203 1. The service provider shall enroll credential holders by setting up an account, establishing  
204 a method of payment and supplying preprinted chain-of-custody forms.

205 2. The service provider shall provide the credential holder with the address and phone number  
206 of the nearest collection sites and shall assist in locating a qualified collection site when traveling  
207 outside the local area.

208 3. The service provider shall begin random selection of days, when credential holders shall  
209 provide specimens, upon enrollment and the service shall notify the program that selection has  
210 begun.

211 4. The service provider shall maintain a nationwide toll-free access or an internet website that  
212 is operational 24 hours per day, 7 days per week to inform credential holders of when to provide  
213 specimens and is able to document the date and time of contacts by credential holders.

214 5. The service provider shall maintain and make available to the program and service  
215 providers for treatment, through an internet website, data that are updated on a daily basis verifying  
216 the date and time each randomly selected credential holder was notified to provide a specimen, the

217 date, time and location each specimen was collected, the results of screening, and whether or not  
218 the credential holder complied as directed.

219 6. The service provider shall maintain internal and external quality of test results and other  
220 services.

221 7. The service provider shall maintain the confidentiality of credential holders, in accordance  
222 with s. 146.82, Stats.

223 8. The service provider shall inform credential holders of the total cost for each alcohol, drug  
224 or other chemical screen including the cost for program administration, collection, transportation,  
225 analysis, reporting and confirmation. Total cost shall not include the services of a medical review  
226 officer.

227 9. The service provider shall immediately report to the program, if the service provider,  
228 laboratory or any collection site fails to comply with this section. The program may remove a  
229 service provider from the approved list if the service provider fails to comply with this section.

230 10. The service provider shall make available to the program, experts to support a test result  
231 for 5 years after the test results are released to the program.

232 11. The service provider shall not sell or otherwise transfer or transmit names and other  
233 personal identification information of the credential holders to other persons or entities without  
234 permission from the program and board. The service shall not solicit from credential holders  
235 presently or formerly in the monitoring program or otherwise contact credential holders, except  
236 for purposes consistent with administering the program and only with permission from the program  
237 and board.

238 12. The service provider and laboratory shall not disclose to the credential holder or the public  
239 the specific alcohol, drugs or other chemicals tested.

240 (b) *Collection site.*

241 1. The service provider shall locate, train and monitor collection sites for compliance with  
242 the U.S. department of transportation collection protocol under 49 CFR 40.

243 2. The service provider shall require delivery of specimens to the laboratory within 24 hours  
244 of collection.

245 (c) *Laboratory.*

246 1. The service provider shall utilize a laboratory that is certified by the U.S. department of  
247 health and human services, substance abuse and mental health services administration under 49  
248 CFR 40. If the laboratory has had adverse or corrective action, the program shall evaluate the  
249 laboratory's compliance on a case by case basis.

250 2. The service provider shall utilize a laboratory capable of analyzing specimens for alcohol,  
251 drugs or other chemicals specified by the program.

252 3. Testing specimens shall be initiated within 48 hours of pickup by courier.

253 4. All positive screens shall be confirmed utilizing gas chromatography in combination with  
254 mass spectrometry, mass spectrometry, or another approved method.

255 5. The laboratory shall allow the program personnel to tour facilities where participant  
256 specimens are tested.

257 (d) *Report results.*

258 1. The service provider shall provide results of each specimen to designated program  
259 personnel within 24 hours of processing.

260 2. The service provider shall inform designated program personnel of confirmed positive test  
261 results on the same day the test results are confirmed or by the next business day if the results are  
262 confirmed after hours, on the weekend or on a state or federal holiday.

263 3. The service provider shall fax, e-mail or electronically transmit laboratory copies of test  
264 results at the request of the program.

265 4. The service provider shall provide a medical review officer upon request and at the expense  
266 of the credential holder, to review disputed positive test results.

267 5. The service provider shall provide chain-of-custody transfer of disputed specimens to an  
268 approved independent laboratory for retesting at the request of the credential holder, the program  
269 or board.

270 **VE 11.16 Records. (1) CUSTODIAN.** All records relating to the program including  
271 applications for participation, agreements for participation, and reports of participation shall be  
272 maintained by the program, on behalf of the board as custodian.

273 **(2) PUBLIC RECORDS REQUESTS.** Requests to inspect program records shall be made to the  
274 custodian. The custodian shall evaluate each request on a case by case basis using applicable law  
275 relating to public records and giving appropriate weight to relevant factors in order to determine  
276 whether public interest in nondisclosure outweighs the public interest in access to the records. The  
277 fact of a credential holder's participation in the program and the status of that participation may be  
278 disclosed to credentialing authorities of other jurisdictions.

279       **(3) TREATMENT RECORDS.** Treatment records concerning individuals who are receiving or who  
280 at any time have received services for mental illness, developmental disabilities, alcoholism, or  
281 drug dependence which are maintained by the board, by county departments under s. 51.42 or  
282 51.437, Stats., and their staffs, and by treatment facilities are confidential under s. 51.30, Stats.,  
283 and shall not be made available for public inspection.

284       **(4) PATIENT HEALTH CARE RECORDS.** Patient health care records are confidential under s.  
285 146.82, Stats., and shall not be made available to the public without the informed consent of the  
286 patient or of a person authorized by the patient or as provided under s. 146.82 (2), Stats.

287       **VE 11.18 Reports to board.** The program shall report to the board at least once a year and  
288 at other times, if requested to do so by the board.

289       **SECTION 3. EFFECTIVE DATE AND INITIAL APPLICABILITY.** This rule takes effect on the  
290 first day of the month following publication in the Wisconsin administrative register, as provided  
291 under s. 227.22 (2) (intro.).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

WISCONSIN VETERINARY EXAMINING BOARD

By \_\_\_\_\_  
Member of the Board



# Reg Flex

**Wisconsin Veterinary Examining Board**  
**Final Regulatory Flexibility Analysis**

**Rule Subject:** Veterinary Professional Assistance Program  
**Adm. Code Reference:** VE 11  
**Rules Clearinghouse #:** 17-083  
**DATCP Docket #:** 17-VER-11

*Rule Summary*

When the Veterinary Examining Board (“VEB”) was transferred from the Department of Safety and Professional Services (“DSPS”) to the Department of Agriculture, Trade and Consumer Protection (“DATCP”), for administrative purposes, the specific administrative code chapters that pertained to its operations were transferred. However, none of the general DSPS administrative code chapters pertaining to all the credentialing boards were made a part of the VE rules, including ch. SPS 7, Professional Assistance Procedure.

To correct this, 2017 Wisconsin Act 59 included an amendment to the statute, relating to the authority of the VEB to write rules, to require the VEB to write rules for a procedure for addressing allegations that a person licensed or certified by the VEB under this chapter has practiced as a veterinarian or veterinary technician while impaired by alcohol or other drugs or that his or her ability to practice is impaired by alcohol or other drugs, and for assisting a person licensed by the VEB under this chapter who requests to participate in the procedure or who requests assistance in obtaining mental health services.

The newly created ch. VE 11, Veterinary Professional Assistance Program, specifies the authority and purpose of the rules; definitions used in the chapter; contracting requirements for a third-party program administrator; use of the confidential voluntary program component by impaired veterinary professionals; referral to and eligibility for credential holders to use the disciplinary program, including participation requirements and agreement terms; approval of service providers, including those providing alcohol, drug or other chemical testing services; record requirements, including confidentiality provisions; and reports to the VEB.

The rule ensures early identification of impaired veterinary professionals, as required in statute, by providing that the program has a confidential, voluntary component for those persons, so long as the professional is not a credential holder with an outstanding complaint before the board’s disciplinary process. The rules promulgated under this subsection may be used in conjunction with the formal disciplinary process under this chapter and this rule does so with a disciplinary component in the program that may be utilized through either a stipulation, between a credential holder and VEB or disciplinary counsel, or a VEB order. The rule specifies the contracting requirements for another entity to administer the program.

*Small Businesses Affected*

This rule change is anticipated to have an effect on small business, as many veterinarian professionals practice in small businesses. However, as the rule are designed for early identification and treatment of alcohol and other drug and mental health impairments in veterinary professionals, this should have a positive impact on veterinary small businesses in assisting with professional assessment and treatment before the impairment affects the practice. In addition, this rule will also ensure that persons, subject to

these rules, are on notice as to procedures, within the VEB's jurisdiction, that will be utilized in the disciplinary process. Finally, the cost of the program will be absorbed within the current budget of the VEB and no additional fees will be assessed against credential holders to pay for the program. No comments were received from the posting for economic and fiscal impact.

***Reporting, Bookkeeping and other Procedures***

The rule would not require any additional reporting, bookkeeping, or other procedures for veterinary small businesses. There would be additional reporting requirements and procedures for any entity awarded a contract from the VEB to administer the Veterinary Professional Assistance Program.

***Professional Skills Required***

The proposed rule does not require any new professional skills.

***Accommodation for Small Business***

This rule, as written, comports with specific statutory language, directing the VEB to write rules for a veterinary professional assistance program. It was written with the individual veterinary professionals and small veterinary businesses in mind, and no accommodation is required.

***Conclusion***

The expectation by those advocating for the rule change, including veterinarians and certified veterinary technicians, is that these rules are needed for assistance to impaired veterinary professionals

This rule is not expected to have a substantial adverse economic effect on "small business" so it is not subject to the delayed "small business" effective date provided in s. 227.22(2) (e), Stats.

Dated this 6<sup>th</sup> day of February, 2018.

STATE OF WISCONSIN  
VETERINARY EXAMINING BOARD

By Cheryl Furstace Daniels  
Cheryl Furstace Daniels  
Board Counsel

# Fiscal Estimate

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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1. Type of Estimate and Analysis

Original  Updated  Corrected

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2. Administrative Rule Chapter, Title and Number

VE 11, Veterinary Professional Assistance Program

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3. Subject

Creating rules for contracting for a program to assist impaired veterinary professionals

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4. Fund Sources Affected

GPR  FED  PRO  PRS  SEG  SEG-S

5. Chapter 20, Stats. Appropriations Affected

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6. Fiscal Effect of Implementing the Rule

No Fiscal Effect  Increase Existing Revenues  Increase Costs  
 Indeterminate  Decrease Existing Revenues  Could Absorb Within Agency's Budget  
 Decrease Cost

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7. The Rule Will Impact the Following (Check All That Apply)

State's Economy  Specific Businesses/Sectors  
 Local Government Units  Public Utility Rate Payers  
 Small Businesses (if checked, complete Attachment A)

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8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes  No

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9. Policy Problem Addressed by the Rule

When the Veterinary Examining Board ("VEB") was transferred from the Department of Safety and Professional Services ("DSPS") to the Department of Agriculture, Trade and Consumer Protection ("DATCP"), for administrative purposes, the specific administrative code chapters that pertained to its operations were transferred. However, none of the general DSPS administrative code chapters pertaining to all the credentialing boards were made a part of the VE rules, including SPS 7, Professional Assistance Procedure.

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10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

This rule change is anticipated to have an effect on small business, as many veterinarian professionals practice in small businesses. However, as the rule are designed for early identification and treatment of alcohol and other drug and mental health impairments in veterinary professionals, this should have a positive impact on veterinary small businesses in assisting with professional assessment and treatment before the impairment affects the practice. In addition, this rule will also ensure that persons, subject to these rules, are on notice as to procedures, within the VEB's jurisdiction, that will be utilized in the disciplinary process.

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11. Identify the local governmental units that participated in the development of this EIA.

Local governmental units are not impacted by this rule and did not participate in development of this EIA.

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12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule is expected to have no substantial adverse economic and fiscal impact.

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13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This emergency rule creates ch. VE 11, "Veterinary Professional Assistance Program", to implement s. 89.03(3), Stats., created by the Legislature in 2017 Wisconsin Act 59, the Budget Bill (1) The new statutory s. 89.03 (3), Stats., states that the veterinary examining board ("VEB") shall promulgate rules specifying a procedure for addressing allegations that a person licensed or certified by the VEB under this chapter has practiced as a veterinarian or veterinary technician while impaired by alcohol or other drugs or that his or her ability to practice is impaired by alcohol or other drugs, and

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## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

for assisting a person licensed by the VEB under this chapter who requests to participate in the procedure or who requests assistance in obtaining mental health services.

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14. Long Range Implications of Implementing the Rule

The expectation by those advocating for the rule change is that it will result in greater assistance to veterinary professionals struggling with alcohol, other drug, or mental health impairments.

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15. Compare With Approaches Being Used by Federal Government

There are no federal regulations governing the practice of veterinary medical surgeries.

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16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

In Illinois, a veterinarian who has been determined by a qualified health care professional to be impaired shall enter into an agreement with the state's Department of Financial and Professional Regulation-Division of Professional Regulation ("Division"), in which the veterinarian agrees to participate in a program designed to provide care and treatment specifically for health care professionals and which has been approved by the Division. The agreement may include, but not be limited to, the length of the program, the status of the licensee while in a treatment program, and a termination clause whereby both parties may terminate the agreement at any time.

There is nothing specific in the Iowa Veterinary Practice Act regarding a veterinary professional assistance program. However, the Act does allow the Iowa Board of Veterinary Medicine to have a licensee submit to a physical or mental examination by a designated physician.

There is nothing in the Michigan Veterinary Practice Act regarding a specific veterinary professional assistance program. However, Michigan has a Health Professional Recovery Committee that includes veterinarians. The purpose of this committee is to establish the general components of the health professional recovery program and a mechanism for monitoring health professionals who may be impaired.

There is nothing in the Minnesota Veterinary Practice Act regarding a specific veterinary professional assistance program. However, the Board has the authority to issue an order directing the regulated person to submit to a mental or physical examination or chemical dependency evaluation. Veterinarians may participate in the state's Health Professionals Services Program.

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17. Comments Received in Response to Web Posting and VEB Response

There were no comments received in response to the web posting and no comments of any adverse effects on small business were received at any of the four public hearings or before the hearing record was closed on January 31, 2018.

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17. Contact Name

Cheryl Daniels, VEB Legal Counsel

18. Contact Phone Number

(608) 224-5026

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This document can be made available in alternate formats to individuals with disabilities upon request.

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

### ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

While the program will have costs, the cost of the program will be absorbed within the current budget of the VEB and no additional fees will be assessed against credential holders to pay for the program.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

This rule was developed after reviewing current DSPS rules on the same subject and also looking at other programs from states with robust veterinary professional assistance programs

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

While not directly in the rule, the cost of the program will be absorbed without any additional fees imposed on credential holders.

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5. Describe the Rule's Enforcement Provisions

The rule will use stipulations between the impaired credential holder and the VEB, or VEB disciplinary orders, when the credential holder is in a disciplinary action, for the credential holder to use the program as part of the discipline imposed by the VEB

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes     No
-