



State of Wisconsin
Veterinary Examining Board

Governor Tony Evers
Dr. Hunter Lang, DVM, Chair

Telehealth Advisory Committee

Meeting Minutes

Thursday, March 4, 2021, 9:00AM

Members Present: Stacy M Adams Sherman; Randall Lee Bond; Bob Nagel; Wilfred Schuler; Scott Spaulding; Susan B Krebsbach; Melanie Goble; Karen Hershberger-Braker; Rebecca A Krull; Chanda Holschbach; Erika Froeming; Teri Kleist; **Members Absent:** Shawn Hook;

Staff Facilitating: Melissa Mace; Angela Fisher; Cheryl Daniels;

Agenda

I. Introductions

The Committee members and the categories of veterinarians and certified veterinary technicians (CVT) they represent are as follows:

Stacy M Adams Sherman

Veterinarian, large and small animal, Wisconsin Veterinary Medical Association representative

Randall Lee Bond

Veterinarian, large animal, recommended by Sexing Technologies

Bob Nagel

Veterinarian, large animal, recommended by Dairy Business Association

Wilfred Schuler

Veterinarian, large animal

Scott Spaulding

Veterinarian, equine and small animal

Susan B Krebsbach

Veterinarian, small animal

Melanie Goble

Veterinarian, small animal

Shawn Hook (absent)

Veterinarian, small animal

Karen Hershberger-Braker

Veterinarian, small animal

Rebecca A Krull
Veterinarian, small animal

Chanda Holschbach
CVT

Erika Froeming
CVT

Teri Kleist
CVT

II. Background

A. Overview

The purpose of the Telehealth Advisory Committee is to provide recommendations for telehealth regulatory framework in Wisconsin to the Veterinary Examining Board (VEB), in relation to statement of scope SS 064-20.

The Telehealth Advisory Committee is limited to the telehealth portion of statement of scope.

The VEB's rule proposal must comply with existing state statutes, and recommendations from the Telehealth Committee should also comply with existing state statutes.

The Telehealth Advisory Committee is a governmental body and must comply with Wisconsin open meetings law.

After the Telehealth Advisory Committee provides recommendations to the VEB, the Board will determine what to include in a hearing draft. Members of the public will be able to provide comments in response to the hearing draft through a public hearing and comment period. If there are significant comments received during the public hearing and comment period, the VEB may ask the Telehealth Advisory Committee to hold one more meeting, which would likely be in October.

B. Relevant Statutes

The meeting materials include a link to Wis. Stat. ch. 89, as well as the text of key sections relevant to the discussion of telehealth:

- s. 89.02 (6) – the definition of the “practice of veterinary medicine”
- s. 89.02 (8) – the definition of the “veterinarian-client-patient relationship”
- s. 89.068 (1) (c) – prescribing, dispensing and administering requirements

C. Open Meetings

The meeting materials include a summary of Wisconsin open meetings law. The point of the Wisconsin open meetings law is that the public should be able to listen in and have access to what is being done by any governmental body. Technology has made it much easier for people to contact one another, but there would be a problem if it is done in a way that it is not open to the public.

If members start emailing/calling/texting each other and start making decisions about what they will discuss at the next meeting, that could create a walking quorum. A walking quorum is what happens when there is a chain of members discussing items.

The best way to share comments and information with the other members is to send an email to the staff (Angela Fisher), who can share it with the rest of the committee members through bcc so that there is not an accidental violation created by members responding to one another.

Discussing the telehealth committee with members of the public is not a violation of the statute.

III. Discuss Telehealth Regulation

- Regulatory Role of the Veterinary Examining Board

Questions came up from members throughout the discussion that related to the role of the Veterinary Examining Board (VEB) in the practice of veterinary medicine.

Staff explained to members that the regulations are not just for those who have high standards of care. The standards and minimums are set in rule to ensure that everyone is meeting a minimum standard of care and to provide guidance to those who need it. The rules also help the public and licensee to understand what is acceptable.

Staff explained that the Board is not permitted to create rules that are protectionist for the profession, without there being a significant reason for the rule to protect the public. The Board functions to protect animal health and public health. Staff explained that there was a United States Supreme Court case that dealt with teeth whitening in North Carolina dentistry rules. The court ruled that the dentistry board could not pass rules that limited teeth whitening if the board could not make a link between protection of the public and what the rule was prescribing. There is particularly strong scrutiny to prevent boards that are primarily made up of licensees from creating rules that could be protectionist of the profession. The Board is looking at the protection of the public, not the profession.

- Telehealth Regulatory Considerations

The meeting materials included the following common telehealth regulatory considerations:

1. Define where the practice takes place
2. Establishing a Veterinary-Client-Patient-Relationship (VCPR)

3. What are the differences between providing general advice, tele-triage (emergency care), and telemedicine?
4. Can medication be prescribed using tele-technologies? In what circumstances? What requirements must be met?
5. Are the records requirements any different when an exam is completed using telemedicine technology?
6. What is the standard of veterinary care for a telehealth encounter?
7. What is the scope of telemedicine? Is it limited to the veterinarian treating the patient and communicating with the client, or can it be used to supervise treatment?
8. What other terms need to be defined to make telehealth rules clear? For example, tele triage?
9. In all of the above circumstances, should the framework look at companion animals and food and fiber livestock practices differently?

Members added the following items for consideration:

10. Do we need a separate permit to practice telemedicine, and does that have a different scope or requirements/ability to do things?
11. Specific CE required for those utilizing telemedicine?
12. How does telemedicine apply to tele-supervision, supervision of medical services delegated to others (as allowed)?
13. Secure technologies when utilizing telemedicine technologies?

1. Define where the practice takes place

A majority of other jurisdictions say that telehealth takes place in the location where the animal is when telehealth technology is used.

A member expressed support of using where the animal is located, because it is a consistent approach.

A member expressed that from the human standpoint it does not matter where the patient is as long as the relationship was established.

A member expressed that if a client-patient goes on vacation to another state, the vet still has the VCPR and still gives medical advice.

A member expressed that telehealth shrinks the geography and makes vets accessible to patients in remote locations, and expressed that a nationwide licensure would be appropriate for telehealth technology.

A member expressed support of using the location where the VCPR was established, and expressed that it is especially important for practices near state borders that would not want the client-patient to have to cross state lines in order to do a video chat.

A member expressed that the crux of the matter is having a valid VCPR, and expressed concern about potential abuses without a good VCPR.

A member expressed support of the AAVSB definition of where the VCPR is established. Another member expressed agreement.

A member working on a telehealth platform expressed that a majority of consultations do not need to be done by a veterinarian, and expressed that the decisions made using telehealth technology are similar to decisions that have previously been made over phone calls. The member also expressed that veterinarians need to be responsible for making those decisions and does not need additional regulation.

A member expressed that this work is already being done and that additional regulations may not be necessary, because telephones have been used for years now.

A member expressed that this work already being done and that it will come down to how the VCPR is defined to expand this to more circumstances.

A member expressed that defining what telehealth is will be important, because the use of the telephone may not be considered telehealth.

Staff clarified that some of the proposals used as examples are very simple. For example: explaining how the VCPR is established, requiring that the veterinarian be held to the same standards of care as in any other practice, and leaving it to the veterinarian's discretion to determine whether telehealth is appropriate and adequate in a given circumstance. Staff also explained that part of the reason for this rule package is to make the rules clearer to address frequently asked questions.

A member expressed that the technology is changing rapidly, that surgery may be in the not-too-distant future, and that the discussion may be overanalyzing.

Staff explained that the Board needs to define things enough that, if there is a problem, the Board has the ability to say that the veterinarian committed unprofessional conduct and can take action. If things are not defined enough, at least to the outer boundaries, then the Board would not be giving licensees enough notice to be able to say that they have done something wrong. Defining those outer boundaries is one of the responsibilities of the Board.

A member expressed that the easiest thing is to base it on where the animal is, especially as it relates to licensing, but that it may be more correct to base it more on the human model.

A member asked why telehealth technology would be looked at differently than a surgical laser. Staff explained that there is a definition in the statute of the VCPR and that how the VCPR is established will be an important question. Staff clarified that the purpose of this discussion is to develop the framework, and that through the discussion we may find that there do not need to be differences but that the discussion still needs to be had for due diligence.

2. Establishing a Veterinary-Client-Patient-Relationship (VCPR)

The question is: can the VCPR be established using a telehealth platform, or can it be established without a physical exam and/or visit to the premises? It is important to note that the definition of the VCPR is set by statute and cannot be changed as a part of this rule package. The statutory definition of the VCPR is:

Wis. Stat. s. 89.02 (8) "Veterinarian-client-patient relationship" means a relationship between a veterinarian, a client and the patient in which all of the following apply:

- (a) The veterinarian has assumed the responsibility for making medical judgments regarding the health of the patient and the patient's need for medical treatment, and the client has agreed to accept those medical judgments and to follow the related instructions of the veterinarian.
- (b) The veterinarian has sufficient knowledge of the patient to initiate a general or preliminary diagnosis of the medical condition of the patient because the veterinarian has recently examined the patient or has made medically appropriate and timely visits to the premises on which the patient is kept.
- (c) The veterinarian is readily available for follow-up treatment of the patient if the patient has an adverse reaction to veterinary treatment.

A member proposed that the establishment of the VCPR be expanded, and described telehealth visits for behavioral consultations, especially for remote locations in Wisconsin, to help more animals and clients.

A member asked for clarification on the lack of the word physical in the statute. Staff explained that the statute was originally put into place, the word examined would have been assumed to mean in-person and that technology has since expanded. If it would include virtual exams, it is important to have that clarified in rule so that it is clear how the Board would treat virtual examinations.

A member expressed that the standards should be the same as an in-person setting, and gave an example of an aggressive dog that could not be physically examined even in an in-person setting.

A member asked if the statute would need to be changed or if language could be added to rule. Staff explained that statute may be expansive enough that language could be put into rule to clarify what in-person and virtual exams mean for the establishment of a VCPR. Staff explained that it is important to give everyone notice through rule language, not just veterinarians but also the public, so it is clear what those standards are.

A member expressed that a large amount of the income that large animal veterinarians have is through prescribing medications to large dairies, and expressed concerns about someone from California getting a license in Wisconsin, establishing a VCPR through telemedicine, and prescribing those medications for cheaper.

A member expressed that there are wide differences between dairies, that consumer scrutiny on dairies is continuing to increase, and that consumers would like to see a strong VCPR established on dairies. The member expressed that handling decisions over telephone varies based on the dairy and the knowledge and capacities on that dairy.

A member suggested that if the VCPR is established virtually, then both the veterinarian and the patient must be located in the state. The member also expressed that it is important to have access to the medical records to be able to make decisions virtually, which happens frequently in emergency relief. The member expressed that it would not be reasonable to establish a VCPR virtually without medical records.

A member expressed that there are specific instances where the vet would not be able to rely on the client enough to establish a valid VCPR remotely.

A member expressed that the wording should be inclusive of upcoming technology so that it does not need to be restructured as technology evolves.

A member expressed that the wording could include something along the lines of “examinations can be procured through available technology” so that includes technology that could be developed in the future.

Staff explained that, in reference to the members’ discussion about the veterinarian being licensed in Wisconsin, that the Board is tasked with protecting the public. The vet would need to be licensed in Wisconsin for the Board to have jurisdiction over what the veterinarian is doing, Wisconsin statutes require anyone practicing veterinary medicine in Wisconsin to be licensed, and the Board would likely not be able or willing to give up jurisdiction over situations based in Wisconsin.

Staff explained that the veterinarian also needs to be available for follow-up care in case of any reaction to the treatment provided.

A member expressed that the vet needs to be around if anything happens.

A member asked why the vet could not follow-up with telehealth as well. Staff explained that the vet is responsible for that patient. If a follow-up with telehealth would work, then that would be fine. If the follow-up would have to be in-person, then the question is has the vet done enough to provide for other care, such as emergency care, in case the follow-up needs to be in-person.

A member expressed that if an in-person follow-up is necessary, such as surgery, the vet could refer the client-patient to another vet, such as a surgery or emergency vet, and the first vet could still manage the case remotely. The member expressed that it boils down to the veterinarian’s judgement.

Staff explained that it is the veterinarian's responsibility to make that judgement and be responsible for that, just like with the delegation of veterinary services.

A member asked whether telehealth would be different in kennel situations. Another member described horse barn situations and expressed that it would not, and that it still comes down to the vet's judgement.

A member asked whether there are competitive forces in the international world, that veterinarians might provide services from another country. Staff explained that if any vet is providing veterinary services to an animal located in Wisconsin, the Board would require that vet to be licensed in Wisconsin. That requirement is statutory and is a part of the Board's role in protecting the public.

A member asked what happens if a vet is doing telehealth for an animal that has travelled to another state. Staff explained that the Board tends to look at these types of practice against the minimum standard. The Board knows that clients call the doctor during vacations, etc, and that is acceptable so long as the VCPR is still in place and the animal and client are returning to the state. If the client or patient move to another state, that is when the other state would say the vet needs to be licensed in that state to be practicing veterinary medicine on the patient.

A member asked what happens if someone is not licensed. Staff explained that you cannot practice without a license. Practicing without a license is a crime. There can be a cease and desist letter, there can be a restraining order, there can be injunctions, and anyone who violates a special order where they were told not to practice can be ordered to forfeit \$10,000 for each offense, each day continues a separate offense, and the person can be jailed.

A member asked if the other state is notified if a vet in another state, who is licensed and practicing in Wisconsin, violates Wisconsin rules. Staff explained that yes, the Board does notify the other states when there are violations involving a veterinarian practicing in multiple states.

A member expressed support of not requiring a physical exam, asked whether online practices could be licensed in Wisconsin and conduct telemedicine if a physical exam is not required, and expressed concerns that online practices could encroach on business. Staff explained that the Board is not permitted to create rules that are protectionist for the profession, without there being a significant reason for the rule to protect the public. The Board functions to protect animal health and public health. Staff explained that there was a United States Supreme Court case that dealt with teeth whitening in North Carolina dentistry rules. The court ruled that the dentistry board could not pass rules that limited teeth whitening if the board could not make a link between protection of the public and what the rule was prescribing. There is particularly strong scrutiny to prevent boards that are primarily made up of licensees from creating rules that could be protectionist of the profession. The Board is looking at the protection of the public, not the profession. If virtual visits can be done, then they need to be done on an even basis.

A member expressed support of the AAVSB language. Another member expressed agreement.

A member has a contact working on telemedicine on the human side and will send information to staff to share with the other Committee members.

A member asked if the location of the animal matters after a VCPR is established. Staff clarified that it would matter what the other state says if the animal is in that state when the telemedicine occurs.

A member expressed concerns with the VCPR being established virtually, and explained that most often the client will say what they think is happening with the animal but when the vet physically examines the animal they find that it was nothing like what the client thought. The member expressed that a vet cannot get an appropriate full physical exam, at least initially, through the telehealth technologies that currently exist. The member expressed support of requiring the initial VCPR to be established in-person. The member expressed that the aggressive dogs that cannot be physically examined are the exception, not the rule.

A member expressed that there are certain situations that doing a physical exam is necessary but that it comes down to the veterinarian's judgement. The member expressed that visualization can provide a lot of the information to determine whether the animal needs to be physically examined.

Staff explained to members that the regulations are not just for those who have high standards of care. The standards and minimums are set in rule to ensure that everyone is meeting a minimum standard of care and to provide guidance to those who need it. The rules also help the public and licensee to understand what is acceptable.

- **Summary**

In response to question one, most members expressed support of defining telehealth as taking place in the location where the VCPR was established.

In response to question two, most members expressed support of the language used in the AAVSB example, because it provides for more ability to use telehealth technology while providing continuity of care through records and allows for the VCPR to be established using telehealth technology.

The next meeting is Thursday, March 25th, at 9:00 a.m. At that next meeting, the Committee will continue going through the list of questions.