State of Wisconsin Governor Scott Walker

Veterinary Examining Board Dr. Philip C. Johnson, DVM, Chair

VETERINARY EXAMINING BOARD

CR 106 Board Room, 2811 Agriculture Drive, Madison, Wisconsin Contact: Matt Tompach (608) 224-5024
October 26, 2016

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

9:00 A.M. OPEN SESSION – CALL TO ORDER – ROLL CALL

A. Introductions

B. Approval of the Agenda

C. Approval of Board Meeting Minutes of July 20, 2016

APPEARANCE – Jim Penrod, Executive Director, American Association of Veterinary State Boards (AAVSB). Department of Agriculture, Trade, and Consumer Protection (DATCP): Lauren Van Buren and Cheryl Daniels, DATCP Attorneys; Matt Tompach, Administrative Policy Advisor; Sally Ballweg, License/Permit Program Associate; Kelly Markor, Executive Staff Assistant. Introductions and Discussion.

D. Public Comments

E. Administrative Updates

1. U.S. Department of Education (DoE) Accreditation Letter to States - Informational

F. American Association of Veterinary State Boards (AAVSB) Matters

1. Presentation by Jim Penrod, AAVSB Executive Director
2. AAVSB Annual Meeting, September 22-24, 2016, Scottsdale, AZ
   - **a)** Telemedicine
   - **b)** Other Issues

G. Legislative/Administrative Rule Matters

1. Rulemaking Update
   - **a)** VE 1 – Approval of Draft for Hearing
   - **b)** Oct. 14, 2016 Wisconsin Veterinary Medical Association Convention Listening

DRAFT

Session on amending Wisconsin Administrative Code Chs. VE 1-10

c) VEB Rules Advisory Committee.

d) UW Faculty Licensee Continuing Education Update – Memo/Certification Statement

2. Professional Assistance Program (PAP) Update

H. Licensing/Exam Inquiries

1. Accreditation of Educational Programs by Board

a) Danielle Smith

I. Scope of Practice

1. Vaccine Administration

2. Veterinary Supervision

a) Dr. Marty Greer

b) Dr. Mike McQueen

c) Dr. Maya Meinhold

d) Jennie Roadt

J. Future Meeting Dates and Times

1. Screening Committee Meeting Dates for 2016

2. Board Meeting Dates for 2017

K. Future Agenda Items

CONVENE TO CLOSED SESSION to deliberate on cases following hearing (§ 19.85 (1) (a), Stats.); to consider licensure or certification of individuals (§ 19.85 (1) (b), Stats.); to consider closing disciplinary investigations with administrative warnings (§ 19.85 (1) (b), Stats.); to consider individual histories or disciplinary data (§ 19.85 (1) (f), Stats.); and to confer with legal counsel (§ 19.85 (1) (g), Stats.).

L. Deliberation on Proposed Stipulations, Final Decisions and Orders

1. 07 VET 033 T.O.

2. 07 VET 041 A.D.

3. 13 VET 033 J.K.

4. 14 VET 038 R.M.

5. 15 VET 024 B.M.

6. 16 VET 006 H.W.

7. 16 VET 032 B.K.

M. Review of Veterinary Examining Board Pending Cases Status Report as of October 14, 2016

RECONVENE TO OPEN SESSION IMMEDIATELY FOLLOWING CLOSED SESSION

DRAFT

N. Open Session Items Noticed Above not Completed in the Initial Open Session

O. Vote on Items Considered or Deliberated Upon in Closed Session, if Voting is Appropriate

P. Ratification of Licenses and Certificates

ADJOURNMENT

The Board may break for lunch sometime during the meeting and reconvene shortly thereafter.

DRAFT

U.S. Department of Education (DoE) Accreditation Letter to States - Informational

State of Wisconsin
Department of Agriculture, Trade and Consumer Protection

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Matt Tompach	2) Date When Request Submitted: October 11, 2016 Items will be considered late if submitted after 12:00 p.m. on the deadline date.

3) Name of Board, Committee, Council, Sections:

VEB

4) Meeting Date:	5) Attachments:	6) How should the item be titled on the agenda page?
Oct. 26, 2016	☒ Yes ☐ No	U.S. Department of Education (DoE) Accreditation Letter to States

7) Place Item in:	8) Is an appearance before the Board being scheduled?	9) Name of Case Advisor(s), if required:
☒ Open Session ☐ Closed Session	☐ Yes (Fill out Board Appearance Request) ☒ No	

10) Describe the issue and action that should be addressed:

Federal Department of Education student financial aid standards may put at risk accreditation of professional education programs run by certain educational institutions, including certain veterinary technician education programs.

11) Authorization

Matt Tompach **Oct. 11, 2016**

Signature of person making this request Date

Supervisor (if required) Date

Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date

Directions for including supporting documents:
1. This form should be attached to any documents submitted to the agenda.
2. Post Agenda Deadline items must be authorized by a Supervisor and the Executive Director.
3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.

Revised 11/2015

Longfield, Kelly M - DATCP

From: Dies, David <David.Dies@eab.wisconsin.gov>
Sent: Tuesday, August 30, 2016 1:17 PM
To: Ross, Dave - DSPS; Brancel, Ben - DATCP
Subject: Certification/Licensure Requirements
Attachments: USDOE Accreditation Letter to States 2016-08-23.pdf

Secretary Ross and Secretary Brancel,

I am sharing with you the attached letter issued by the U.S. Department of Education as it contains important information that may affect regulatory bodies supported by the Department of Safety and Professional Services or the Department of Agriculture Trade and Consumer Protection. Based on a review of ACICS-accredited institutions that are approved by the EAB, and that offer programs leading to some type of certification/licensure, it seems the following individuals could be adversely affected.

- Accounting students attending Globe University, Harrison College (online), ITT Technical Institute, Minneapolis Business College or Virginia College (online) who want to become CPAs.
- Veterinary Technician students attending Globe University or Rockford Career College who want to become certified.

You may wish to share this information with the respective regulatory bodies. If would like to discuss this matter further, please do not hesitate to contact me.

David C. Dies
Executive Secretary
Educational Approval Board | State of Wisconsin

Phone: 608-267-7733
Email: david.dies@eab.wisconsin.gov
Office: 431 Charmany Drive, Suite 102 | Madison, Wisconsin 53719
Website: http://eab.state.wi.us

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August 23, 2016

Dear State Colleague:

In order for a postsecondary educational institution to be eligible to participate in the Federal student aid programs, the institution must be both accredited by an accrediting agency recognized by the Department and be authorized by the State in which the institution is located.

As you may know, in June the National Advisory Committee on Institutional Quality and Integrity (NACIQI) recommended that the Department of Education (Department) deny recognition to the Accrediting Council for Independent Colleges and Schools (ACICS). As the Department's Senior Department Official considers the recommendation to deny recognition, we are writing to inform you of the potential consequences that a decision to deny recognition could have on institutions and students in your state.

In most cases, if the Department decides to deny recognition to ACICS, institutions accredited by that agency may remain eligible for Federal student aid for 18 months while seeking accreditation from another recognized accrediting agency. If an institution gains new accreditation from a recognized accreditor during that period, the institution will remain eligible for Federal student aid if it otherwise meets eligibility requirements. However, if at the end of 18 months an institution has not gained accreditation by another recognized agency, that institution will lose eligibility for Federal student aid.

Additionally, if ACICS loses Departmental recognition, there could be impacts to institutions' ability to comply with certain state authorization and licensure/certification requirements. This is because some state postsecondary boards and oversight agencies have included accreditation by a Department-recognized agency as one of the prerequisites for authorizing the institution to operate in the state or for its programs to fulfill prerequisites for students to become licensed or certified in certain professions. If a state has such a requirement and if the agency that accredits an institution in that state ceases to be recognized by the Department, there are several possible immediate consequences, depending on the circumstances and applicable state law:

1. If a state requires accreditation by a Department-recognized agency as a condition of state authorization to provide postsecondary education, and the institution's accreditor loses recognition, unless the state has a mechanism to permit the institution to remain authorized, the institution would immediately lose eligibility for Federal student aid. There is no provision for an institution that loses state authorization to continue to be eligible for Federal student aid during the 18 months following the loss of recognition of the institution's accrediting agency.

2. Under the Department's Gainful Employment regulations at 34 CFR 668.414(d)(3), in each state in which the institution either is located or is otherwise required to obtain approval under 34 CFR 600.9, all Gainful Employment programs must satisfy the applicable educational prerequisites that the state sets for the programs' students to be licensed or certified in the occupations for which the programs prepare students. We are aware that some states require an institution to be accredited by a Department-recognized institutional accrediting agency in order for programs offered by that institution to satisfy educational prerequisites for licensure or certification of the programs' students in certain professions. Such state requirements would no longer be met by programs provided by institutions without a Department-recognized accreditor, and those programs would immediately lose eligibility for Federal student aid on the day that the accreditor loses recognition. There is no provision for a Gainful Employment program that ceases to satisfy state requirements for licensure or certification to continue to be eligible for Federal student aid during the 18 months following the loss of recognition of the institution's accrediting agency.

3. Currently-enrolled students may not be able to take licensure or certification exams and become employed in the professions for which their programs prepared them if the state or a professional organization requires institutional accreditation by a Department-recognized accrediting agency for that institution's program to lead to licensure or certification of students, and that institution's accreditor loses recognition by the Department.

In order to identify institutions and students that may be impacted by the possible loss of recognition by ACICS, we ask that you review the requirements in your state—both for authorization in general and for licensure/certification—to determine whether your state has any requirement that an institution or a program be accredited by a Department-recognized agency. We also request your assistance in identifying institutions or programs in your state that may be affected should the Department choose to deny recognition to ACICS.

If you determine that a loss of recognition by ACICS would impact your state, we ask that you notify the Department at CaseTeams@ed.gov, and include information regarding:

- The authorization or licensure/certification requirements that institutions cannot meet without accreditation by an agency recognized by the Department;
- The state agency responsible for oversight of the applicable requirements; and
- The institutions in your state that are impacted, if known.

We thank you for your attention to this very important and time-sensitive matter that may have a significant impact upon students in your state.

Robin S. Minor
Chief Compliance Officer
Federal Student Aid

Presentation by Jim Penrod, AAVSB Executive Director

State of Wisconsin
Department of Agriculture, Trade and Consumer Protection

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Oct. 26, 2016	☐ Yes ☐ No	Presentation by Jim Penrod, AAVSB Executive Director

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☒ Open Session ☐ Closed Session	☒ Yes (Fill out Board Appearance Request) ☐ No	

10) Describe the issue and action that should be addressed:

Presentation by AAVSB Executive Director Jim Penrod on state Board services available through the association.

11) Authorization

Matt Tompach **Oct. 11, 2016**

Signature of person making this request Date

Supervisor (if required) Date

Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date

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Revised 11/2015

Opportunities with the AAVSB

Finding the Right Fit

Information on the Board of Directors and Committees of the AAVSB®

September 2016

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About the AAVSB®

The American Association of Veterinary State Boards is organized as a 501(c)(3) nonprofit corporation, a membership association dedicated to serving veterinary regulatory boards in the interest of public protection. The AAVSB membership includes the veterinary regulatory boards in **60 jurisdictions** including all of the United States, District of Columbia, Puerto Rico, the U.S. Virgin Islands, and seven Canadian provinces (Alberta, British Columbia, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Saskatchewan).

Programs & Services

Program for Assessment of Veterinary Education Equivalence (**PAVE®**) is designed to evaluate the education equivalence of international veterinary graduates (graduates of non-accredited veterinary programs outside of the U.S. and Canada) on behalf of participating Member Boards.

Registry of Approved Continuing Education (**RACE®**) develops and applies uniform standards related to providers and programs of continuing education (CE) in veterinary medicine. The goal is to serve and support the Member Boards by ensuring that all RACE-approved programs meet appropriate standards of quality CE.

Veterinary Information Verifying Agency (**VIVA®**) is a centralized database of veterinarian and veterinary technician credential information and a source of verified data for Member Boards. The VIVA database includes national exam scores, education, license history and reported discipline.

Veterinary Continuing Education Tracking (**VCET®**) is a centralized repository for veterinary CE information; an extension of VIVA with linkage to RACE approved programs. VCET is a free service and offers online access for individual licensees to submit their CE courses and transmit reports to Member Boards in a uniform format.

Veterinary Technician National Examination (**VTNE®**) is owned and administered by the AAVSB and is used to evaluate entry-level veterinary technicians' competency to practice and be credentialed. Most states and provinces require a passing score on the VTNE as one criterion for licensure.

State and Provincial Assessment (**SPA℠**) is a program which allows the AAVSB to administer their online state & provincial jurisprudence examinations**.**

Member Services

The AAVSB also provides services specifically for the membership, one of which is the Annual Meeting & Conference. This setting allows Members the invaluable opportunity to network, receive relevant training and education, and participate and vote at the Delegate Assembly. Other Member Services include the Practice Act Model (PAM), Annual Member Board Profile Survey, newsletters and other special e-communications, outreach, and discussion forums via "MyAAVSB."

General Information

The AAVSB's success depends on the volunteer efforts provided by the Board of Directors, Committees, and specially appointed Ad-hoc Committees and Task Forces. There are many ways to get involved in the Association, and all eligible candidates are encouraged to consider the opportunity to serve.

This booklet is designed to help potential Board of Directors and Committee members understand the responsibilities and time commitments for each position. Per the AAVSB Bylaws, positions are designated, elected or appointed.

Committee	Hours Per Year	Days of Travel	Members
Board of Directors	150	14	10 elected members
Finance	12	4.5	5 members; 2 designated; 3 appointed
Nominating	12	3	3 members; 2 elected; 1 appointed
Bylaws	24	3	At least 5 members; all appointed
Conference	30	3	At least 6 members; all appointed
RACE	105	5	At least 5 members; all appointed
PAVE	90	12	At least 7 members; all appointed
VTNE	70	7	At least 12 members; all appointed

The Board of Directors, Committee Members and Task Force Members are expected to support the AAVSB's mission and adhere to the confidentiality and code of conduct policies and all other applicable association policies to include the AAVSB's technology protocols.

All appropriate travel expenses to participate in the in-person Board and Committee meetings are reimbursed by the AAVSB per the travel policy.

Interest

For additional information, Annual Meeting attendees may either complete the Volunteer Interest Form found in the Conference Manual and return it to an AAVSB staff member or contact the AAVSB office for additional information at 1-877-698-8482 or aavsb@aavsb.org.

Board of Directors

Composition per the AAVSB Bylaws

There shall be ten members of the Board of Directors including four Officers (President, Immediate Past President, President-Elect and Treasurer) and six directors at large. The Officers may, at times be collectively referred to as the Executive Committee.

Qualifications per the AAVSB Bylaws

Officers

To be eligible to serve as an Officer, a candidate shall, when nominated and elected, be currently serving on the Board of Directors, be a Delegate, Alternate Delegate, or be a member of a Member Board.

Directors at Large

To be eligible to serve as a Director at Large, a candidate shall when nominated be a Delegate, Alternate Delegate, member of a Member Board or have served as a member of a Member Board as of June 1st of the year preceding the election year.

If a Director ceases to meet eligibility criteria stated above, such Board of Director member shall, after completion of the current term, be eligible to serve one additional term on the Board of Directors.

Authority/Purpose per the AAVSB Bylaws

The Board of Directors shall manage the affairs of the Association, including the establishment of an annual budget for the Association and the transaction of all business for and on behalf of the Association as authorized under the Bylaws. The Board of Directors shall carry out the resolutions, actions, or policies as authorized by the Delegates, subject to the provisions of the Association Articles of Incorporation and Bylaws.

Director Responsibilities

- Understand Board's responsibilities in governing the organization and setting the course for its future, including distinctions between governance and management roles.
- Accept the legal duties of loyalty, care, and obedience, and ensure legal and ethical integrity. Comply with applicable laws, regulations, Bylaws, policies and code of conduct of the AAVSB.
- Recruit, hire, support and develop the Executive Director (ED) to lead and manage the AAVSB into the future. Assess the performance of the Executive Director.
- Assure the availability of adequate resources and ensure the overall strength and health of the organization to include the long term financial stability of the AAVSB. Safeguard the use of resources and assets including appropriate management of risk.
- Determine the AAVSB's strategic direction and determine short-term and long-term goals. Support and be committed to accomplishing the mission, vision, values and strategic goals.
- Review and approve annual budgets, audit, and Form 990.
- Stay informed and be supportive of the governing documents of the organization, Articles of Incorporation, Bylaws, policies, strategic plan, and understand current budget and financial statements.

Director Responsibilities (cont'd)

- Prepare for and attend Board of Director meetings, planning meetings, and assigned committee and/or task force meetings.
- Engage in regular Board assessment and development planning.
- Determine organization's core programs and services, strengthen programs and services and make sure programs are consistent with the mission.
- Establish proactive policies to guide executive decision making and link plans and policies to resource allocation.
- Facilitate effective two-way, ongoing communication and maintain strong relationships between the organization and its key stakeholders.
- Enhance the external image and credibility of the organization.
- Understand that all power rests with the full Board of Directors, not individual directors.
- Share wisdom and insight to help the Board of Directors make sound decisions and policies.
- Perform the functions and work of the Board of Directors to the best of one's ability and regularly self-evaluate personal performance on the Board.
- Resign from the Board of Directors when no longer able to support the mission or devote the necessary time.

President Responsibilities

- As a partner to the Executive Director (ED) and other Board members, provide leadership and direction to the Board to make sure the mission, vision, and values of the organization are achieved.
- Enhance understanding of the organization's Articles of Incorporation, Bylaws, policies, financial and legal situation, and strategic plan.
- Model appropriate behavior and set high standards for Board conduct.
- Address the membership at the Annual Meeting and preside over the Delegate Assembly.
- Act as a spokesperson to the larger community.
- Preside over the Board and Executive Committee meetings.
  - Work with ED to develop agendas.
  - Make sure matters are dealt with in an orderly, efficient matter to include guiding and stimulating discussion and keeping the meetings on track. Balance discussion with efficiency in moving through agendas.
  - Guide and mediate Board actions with respect to organizational priorities and governance and lead the Board in handling difficult issues. Intervene if conflicts of interest or confidentiality issues arise.

President Responsibilities (cont'd)

- Ensure Board members understand their jobs and are able to fulfill expectations.
  - Play a crucial role in new Board member orientation and work with the ED to carry out orientation and training.
  - See that the Board functions effectively, interacts with management effectively, and fulfills all of its duties.
  - Create opportunities for continuing education for Board members.
  - Mentor the President-Elect.
  - Periodically consult with Board members on their roles and help them assess their performance.
- Work closely with, while not micromanaging, the ED.
  - Provide support and serve as a sounding board and advisor to the ED.
  - Partner with the ED to ensure Board decisions are carried out.
  - Work with the Executive Committee to coordinate an annual evaluation of the ED and ensure the ED is compensated fairly.
  - Serve as liaison between the ED and the full Board.
- Per the Bylaws:
  - Appoint a third member of the Nominating Committee and name Chair.
  - Upon approval of the Board of Directors, appoint the non-designated members to the Finance Committee.
  - Appoint non-voting liaisons from the Board of Directors to Committees as appropriate.
  - Appoint Ad-hoc Committees and Task Forces as needed, with approval from the Board of Directors.

Treasurer Responsibilities

- Serve as the Chairperson of the Finance Committee (FC).
- Facilitate Committee meetings and related functions. Guide, mediate and stimulate discussion. Make sure matters are dealt with in an orderly, efficient matter to include keeping discussions on track and seeking consensus.
- Work with the Executive Director (ED) and management staff as assigned by the ED to develop agendas, work plans, and orientation/training for Committee members.
- Work with the ED and management staff to develop a concise understanding of the internal financial functions of the organization.
- Deliver a Treasurer's report at each Board of Directors meeting.
- Work with the ED, CPA consultant, and assigned management staff to make sure that appropriate financial and investment reports are made available to the Board on a timely basis.

Treasurer Responsibilities (cont'd)

- Create Treasurer's Report for the membership in collaboration with ED and assigned management staff. Deliver Treasurer's Report to the membership during the business session of the AAVSB Annual Meeting.
- Assist the ED, assigned management staff, and the CPA consultant in the preparation of the annual operating and capital budgets. Present the budgets to the FC for their input and to the Board of Directors for final approval.
- Review the annual audit as prepared by the organizations' outside auditor and the Form 990 as prepared by the CPA consultant. Facilitate the presentation of both documents to the FC for their input, and present both documents to the Board of Directors for their final approval.
- Sign the Form 990.
- Ensure ongoing review (with the FC) of accounting policies, investment policies, and insurance coverage. Present FC recommendations to the Board of Directors for final approval.

Executive Committee (EC) Responsibilities

- EC may manage the following and will provide reports to the Board.
  - Executive Director (ED) annual review and compensation.
  - Work with ED and Legal Counsel to finalize major contracts.
  - Emergency management.
  - Prepare and educate Board members to work and serve effectively including orientation and ongoing training and mentoring.

Expected Time Commitment per Director

Approximately 150 hours per year

- Prepares for and participates in monthly conference calls with 1 hour of preparation and 1.5 hours of participation per call.
- Meets in January each year for 2 days of in-person meetings with 2 hours of preparation time plus travel time. (Extra time for strategic planning.)
- Meets in June each year for 2 days of in-person meetings with 2 hours of preparation time plus travel time.
- Meets at and attends the Annual Meeting in September for 4 days of meetings with 2 hours of preparation time plus travel time.
- Frequent opportunities to attend AVMA meetings, NBVME Board meetings, or special assignments which take approximately 2 days each.
- Additional time is required if assigned as a liaison to a committee; the amount of additional time is dependent on the specific committee.
- Additional time is required of the Officers of the Board of Directors.

Finance Committee

Composition per the AAVSB Bylaws
There shall be five members on the Finance Committee. The President-Elect and Treasurer shall be members of the Committee, with the Treasurer as Chairperson. The President, upon approval of the Board of Directors, shall appoint the three remaining members of the Committee.

Authority/Purpose per the AAVSB Bylaws
The Finance Committee shall advise the Board of Directors on issues related to the use of the Association's assets to assure prudence and integrity of fiscal management and responsiveness to Member Boards' needs. The Finance Committee shall recommend financial policies which provide guidelines for fiscal management, and shall review and revise financial forecast assumptions.

Responsibilities

- Support the AAVSB's mission and ensure maintenance of accurate and complete financial records.
- Ensure that financial statements are prepared and presented to the Board of Directors.
- Annually review investment policies and guidelines for reserve funds, oversee investment performance, and recommend changes to the investment strategy to the Board of Directors, as appropriate.
- Annually review the Association's financial policies.
- Review, modify as needed, and forward to the Board of Directors annual operating and capital budgets which are prepared by staff.
- Safeguard the Association's assets and ensure the proper risk-management provisions are in place.
- Review bids and recommend selection of external auditor and investment advisor.

Committee Chair Responsibilities *(See Treasurer Responsibilities under the Board of Directors Responsibilities)*

Expected Time Commitment per Member

Approximately 61 hours per year

- Reviews monthly financial reports with 1 hour of review time each month.
- Participates in quarterly conference calls to review quarterly financial reports and investment performance with 1 hour preparation and 1.5 hours for participation per call.
- Participates in separate 1 hour conference call for budget review and recommendation with 1.5 hours for participation.
- Meets in June for 1.5 days of meetings plus travel time.
- Meets in September at Annual Meeting for 2 hour meeting plus travel time.
- Additional time is required of the Committee Chair.

Composition per the AAVSB Bylaws
There shall be three members on the Nominating Committee. Two members shall be elected at the Annual Delegate Assembly of the Association. The President shall appoint the third member of the Committee.

Qualifications per the AAVSB Bylaws
A candidate for the Nominating Committee must be a Delegate or Alternate Delegate, a member of a Member Board, a current Associate Member, or the chairperson of an Association committee at the time of nomination and election. The elected members shall have attended at least one Delegate Assembly meeting prior to nomination.

Authority/Purpose per the AAVSB Bylaws
The Nominating Committee shall review the qualifications of the applicants, verify sponsors and references on all applications submitted, and shall submit to the Member Boards at least thirty (30) days before the Annual Delegate Assembly, a ballot containing candidates for each position on the Board of Directors, the Nominating Committee and the National Board of Veterinary Medical Examiners to be filled. The ballot shall contain the names of all candidates who have been found to be eligible and their applications verified as accurate by the Nominating Committee. In determining the slate of candidates for the Board of Directors, the Nominating Committee shall make every effort to ensure at least a majority of Members at Large are currently members of Member Boards. Persons serving on the Nominating Committee shall be ineligible to be on the ballot or elected to any position within the Association within their elected term. The Committee shall submit nominations for representatives to the National Board of Veterinary Medical Examiners (NBVME).

Responsibilities
- Prepare a call for nominations for the Member Boards which includes a nomination form and information on the open positions within 90 days following the previous Annual Delegate Assembly.
- Receive nominations from Member Boards for open positions 120 days prior to the upcoming Annual Delegate Assembly.
- Review nominations received for eligibility and accuracy.
- Develop ballot of candidates for mailing to Member Boards 30 days prior to Annual Delegate Assembly.

Committee Chair Responsibilities
- Facilitate all Committee meetings and functions. Guide, mediate and stimulate Committee discussion. Make sure matters are dealt with in an orderly, efficient matter to include keeping discussions on track and seeking consensus.
- Work with staff as assigned by the Executive Director to develop meeting agendas, work plans, and orientation/training for Committee members as appropriate.
- Correspond to the AAVSB Board of Directors on Nominating Committee recommendations and provide reports as requested.

Expected Time Commitment per Member

Approximately 12 hours per year

- Participates in 4 conference calls with 1 hour for preparation time and 1 hour for participation per call.
- Additional time is required of the Committee Chair.

Bylaws and Resolution Committee

Composition per the AAVSB Bylaws
There shall be at least five members on the Bylaws and Resolution Committee, appointed by the President and approved by the Board of Directors.

Authority/Purpose per the AAVSB Bylaws
The Bylaws and Resolution Committee shall propose amendments to the Bylaws when it determines such amendment is necessary, and shall receive and consider proposed amendments to the Bylaws submitted in accordance with the Bylaws. The Committee shall receive and consider all resolutions submitted in accordance with Association policies.

Responsibilities
- Propose Bylaws amendments (when appropriate).
- Consider all proposed Bylaws amendments from other eligible parties in accordance with the current Bylaws.
- Work with Executive Director or assigned staff to prepare the request for resolutions to be sent to all Member Boards in accordance with the Board of Director's Resolution Policy.
- May propose resolutions and receive resolutions from Member Boards in accordance with the Board of Director's Resolution Policy.
- Review and provide recommendations to the Board of Directors and the Member Boards on all proposed Bylaws amendments.
- Assist the Executive Director in forwarding proposed Bylaws amendments to all Member Boards in accordance with the Bylaws.
- Review and provide recommendations on proposed resolutions.
- Participate in outreach activities with Member Boards as decided by the Committee or requested by the AAVSB Board of Directors.
- Assist staff in forwarding proposed resolutions to all Member Boards in accordance with the Resolutions Policy.

Committee Chair Responsibilities
- Facilitate all Committee meetings and functions. Guide, mediate and stimulate Committee discussion. Make sure matters are dealt with in an orderly, efficient matter to include keeping discussions on track and seeking consensus.
- Work with staff as assigned by the Executive Director to develop meeting agendas, work plans, and orientation/training for Committee members as appropriate.
- Correspond to the AAVSB Board of Directors on Bylaws and Resolution Committee recommendations and provide reports as requested.

Expected Time Commitment per Member

Approximately 24 hours per year

- Participates in 3-4 conference calls each year with 1 hour of preparation and 1.5 hours of participation, per call.
- Meets in September at the Annual Meeting for a 1-2 hour meeting plus travel time; could include additional time if presenting the Committee report during the Delegate Assembly.
- Time dependent on number of proposed Bylaws amendments and proposed resolutions received.
- Attend Annual Meeting & Conference for 3 days.
- Additional time is required of the Committee Chair.

Conference Committee

Composition per the AAVSB Bylaws
There shall be at least six members of the Conference Committee all appointed by the Board of Directors.

Purpose/Duties per the AAVSB Bylaws
With the assistance of the Association staff, the Conference Committee shall prepare a conference budget, site recommendation, a selection of conference speakers, conference agenda including program and social events, and conference evaluation for Board of Directors approval. The Committee may meet in person or by designated electronic means.

Responsibilities
- Responsible for working with staff as assigned by the Executive Director on planning certain components of the Annual Meeting.
- Participate and attend Committee meetings and functions as scheduled during the term.
- Make recommendations on rotation and geographic locations for the Annual Meeting.
- As previously approved by the Delegate Assembly, the Annual Meetings are held on the second weekend after Labor Day; recommend alternate dates if circumstances warrant change.
- Make recommendations on topics, speakers, and schedule for the Annual Meeting.
- Review information provided by staff, who with assistance from a meeting location finder, conducts research and provides a summary regarding hotel options. Make final recommendation for the Annual Meeting hotel. Executive Director provides final contract to the AAVSB Board of Directors.
- Assist staff with marketing and/or securing sponsors when appropriate.
- Attend Annual Meeting and fulfill on-site assignments.

Committee Chair Responsibilities
- Facilitate all Committee meetings and functions. Guide, mediate and stimulate Committee discussion. Make sure matters are dealt with in an orderly, efficient matter to include keeping discussions on track and seeking consensus.
- Work with staff as assigned by the Executive Director to develop meeting agendas, work plans, and orientation/training for Committee members as appropriate.
- Correspond to the AAVSB Board of Directors on Conference Committee recommendations and provide reports as requested.
- Perform miscellaneous duties as requested by the AAVSB Board of Directors and the Executive Director.

Expected Time Commitment per Member

Approximately 30 hours per year

- Participates in 6-8 conference calls each year with 0.5 hours of preparation and 1 hour of participation, per call.
- Meets at the Annual Meeting in September for 1 hour with 0.5 hours of preparation plus travel time.
- Fulfills on-site assignments at Annual Meeting for approximately 2-4 hours.
- Additional time is required of the Committee Chair.

Program for the Assessment of Veterinary Education Equivalence (PAVE®) Committee

Composition per the AAVSB Bylaws
There shall be at least seven members of the PAVE Committee including five at-large members and two members recommended by designated allied organizations. The Board of Directors shall appoint all members of the Committee.

Authority/Purpose per the AAVSB Bylaws
The PAVE Committee shall oversee the development and implementation of the PAVE program, which is intended to assess the educational equivalence of graduates of veterinary schools located outside the United States and not otherwise accredited by an accrediting organization.

Responsibilities

- Responsible for development and oversight of the PAVE program and the Qualifying Science Exam (QSE).
- Review the QSE including content and exam development protocols in collaboration with staff and under the guidance of the AAVSB's exam vendor, and provide input on such to the AAVSB Board of Directors.
- Participate in annual item writing/review and exam construction/ development workshops.
- Review the PAVE Standards and Policies at least annually to ensure that they are contemporary, reflective of veterinary education standards of American Veterinary Medical Association (AVMA) Council on Education (COE) accredited schools/colleges of veterinary medicine and meeting the needs of the licensing boards.
- Serve as an advocate of PAVE with all veterinary licensing boards, regulatory agencies, professional associations and the general public.
- Participate in outreach activities with licensing boards and allied groups as requested by the AAVSB Board of Directors to ensure that PAVE remains a recognized program for determining equivalence of veterinary education in preparation for licensure.
- Assess PAVE candidates for compliance with the approved criteria for PAVE certification and make recommendations to the Board of Directors.
- Review candidate requests regarding PAVE Standards, complaints, or other issues related to application or completion of the PAVE program.
- Provide recommendations/guidance to the Board of Directors as required or directed on issues related to the program operation including the program's viability.
- Participate and attend all Committee meetings and functions as scheduled during the term including conference calls and the AAVSB Annual Meeting in September.

PAVE® Committee

Committee Chair Responsibilities

- Facilitate all Committee meetings and functions. Guide, mediate and stimulate Committee discussion. Make sure matters are dealt with in an orderly, efficient matter to include keeping discussions on track and seeking consensus.
- Work with staff as assigned by the Executive Director to develop meeting agendas, work plans, and orientation/training for Committee members as appropriate.
- Review QSE final exam forms prior to administration and any issues with QSE questions post-administration.
- Review Item Writer applications for approval.
- Create PAVE presentations in collaboration with assigned AAVSB staff.
- Deliver PAVE program presentation at the AAVSB Annual Meeting and participate in other PAVE outreach initiatives as requested.
- Review and assist the AAVSB staff in providing responses to non-standard candidate questions and when appropriate, provide a response to the AAVSB Board of Directors.
- Correspond to the AAVSB Board of Directors on PAVE Committee recommendations and provide reports as requested.
- Perform miscellaneous duties as requested by the AAVSB Board of Directors and the Executive Director.
- Mentor Committee Chair-elect in final year of Committee Chair's term.

Expected Time Commitment per Member

Approximately 90 hours per year

- Participates in at least 1 conference call with 2 hours of preparation and 2 hours of participation.
- Meets in September at the Annual Meeting for a 4 hour Committee meeting with 2 hours of preparation time plus travel time.
- Participates in an Exam Development Workshop at the Annual Meeting location for 3 days.
- Participates as an Item Writer or Reviewer during the year (outside of the workshop) creating and editing items for approximately 10 hours.
- Participates in at least 2 in-person Standard Setting and Item Writer/Reviewer Workshops for 3 days each plus travel time.
- Participates in at least 2 in-person Test Construction Workshops for 2 days each plus travel time.
- Occasionally asked to present PAVE information to licensing boards.
- Additional time is required of the Committee Chair.

Registry of Approved Continuing Education (RACE®) Committee

Composition per the AAVSB Bylaws

There shall be at least five members of the RACE Committee. The Board of Directors shall appoint all members of the Committee.

Authority/Purpose per the AAVSB Bylaws

The RACE Committee shall oversee the development and implementation of the RACE program, which is intended to evaluate and approve providers and programs of continuing education in veterinary medicine.

Responsibilities

- Oversee the review of Program applications in adherence to the RACE Standards.
- Continuous review of the RACE Standards to ensure the program appropriately serves the Member Boards and maintains a high quality.
- Make recommendations to the Board of Directors regarding RACE Standards and RACE approvals and denials.
- Participate in outreach activities with Member Boards as requested by the AAVSB Board of Directors.
- Utilize technology as offered by the AAVSB to facilitate review of Program applications.

Committee Chair Responsibilities

- Facilitate all Committee meetings and functions. Guide, mediate and stimulate Committee discussion. Make sure matters are dealt with in an orderly, efficient matter to include keeping discussions on track and seeking consensus.
- Work with staff as assigned by the Executive Director to develop agendas, work plans, and orientation/training for Committee members (and paid consultants) when appropriate.
- Ensure the biannual review of RACE Standards and work closely with staff, consultants, and Committee members throughout the review process.

RACE® Committee

Committee Chair Responsibilities (cont'd)

- Create RACE presentations in collaboration with assigned staff. Deliver RACE Program presentation at the AAVSB Annual Meeting and participate in other RACE outreach initiatives as requested.
- Review concerns brought forward by RACE Providers, and when requested, provide a response to the Board of Directors.
- Serve as an advocate for the AAVSB's RACE Program with all veterinary regulatory agencies, allied professionals, and the general public.
- Provide subject matter expertise and maintain an increased awareness of changes and developments within the veterinary profession.
- Correspond to the AAVSB Board of Directors on RACE Committee recommendations and provide reports as requested.
- Perform miscellaneous duties as requested by the AAVSB Board of Directors and the Executive Director.

Expected Time Commitment per Member

Approximately 105 hours per year

- Participates in monthly conference calls with 1.5 hours of preparation and 1 hour of participation, per call.
- Meets in-person during the year for one 2 day meeting with 2 hours of preparation plus travel time.
- Meets in September at the Annual Meeting for an 8 hour Committee meeting with 2 hours of preparation plus travel time.
- Each month, reviews approximately 19 continuing education applications which equates to approximately 7 hours.
- Additional time is required of the Committee Chair.

Veterinary Technician National Examination (VTNE®) Committee

Composition per the AAVSB Bylaws
There shall be at least twelve members on the VTNE Committee including four at large members and eight members recommended by designated allied organizations. The Board of Directors shall appoint and determine the tenure of all members of the Committee.

Authority/Purpose per the AAVSB Bylaws
The VTNE Committee shall be responsible for the development and administration of the Veterinary Technician National Examination and other related tasks as assigned by the Board of Directors.

Responsibilities

- Serve as an advocate of the VTNE with all veterinary licensing boards, regulatory agencies, veterinary technician associations, veterinary technician schools, and the general public.
- Oversee development and administration of the VTNE.
- Adhere to the VTNE Participant Agreement regarding confidentiality of the VTNE and all other applicable association policies to include the AAVSB's technology protocols.
- Review current outreach and marketing aspects of the VTNE program and make recommendations for continued advancement of the VTNE.
- Provide subject matter expertise while maintaining current standards of the veterinary technician profession in the continued development of the exam.
- Review the VTNE and provide input to the AAVSB about the content of the exam.
- Review item writing protocols and participate in the annual Item Writer/Reviewer and Test Construction Workshops.
- Review and make recommendations on score reporting forms distributed to Member Boards and agencies administering the VTNE.
- Review the language and format of the VTNE candidate application and website materials.
- Participate and attend all Committee meetings and functions as scheduled during the term including conference calls and the AAVSB Annual Meeting in September.

Committee Chair Responsibilities

- Facilitate all Committee meetings and functions and guide, mediate and stimulate Committee discussion. Make sure matters are dealt with in an orderly, efficient matter to include keeping discussions on track and seeking consensus.
- Work with staff as assigned by the Executive Director to develop meeting agendas, work plans, and orientation/training for Committee members when appropriate.
- Create VTNE presentations in collaboration with assigned staff. Deliver VTNE program presentation for the AAVSB Annual Meeting, the AVTE Biennial Symposium, and participate in other VTNE outreach initiatives as requested.
- Review VTNE final exam forms prior to administration.
- Review issues with VTNE questions post-administration.
- Review and work with staff to correspond with candidates who have challenged their exam results.
- Provide subject matter expertise throughout the exam process and maintain an increased awareness of changes and developments with the veterinary technology profession.
- Review Item Writer applications with staff for approval.
- Review item writing protocols and participate in the annual Item Writer/Reviewer and Test Form Construction/Development Workshops.
- Act as a liaison to the AVTE and work with staff to respond to AVTE membership forum questions.
- Correspond to the AAVSB Board of Directors on VTNE Committee recommendations and the Annual Report.
- Mentor Committee Chair-elect in final year of Committee Chair's term.

Expected Time Commitment per Member

Approximately 70 hours per year

- Participates in 1 conference call with 2 hours of preparation and 2 hours of participation.
- Meets in September at the Annual Meeting for a 4 hour Committee meeting with 2 hours of preparation time plus travel time.
- Participates in the Test Construction Workshop at the Annual Meeting location for 3 days.
- Participates as an Item Writer or Reviewer during the year (outside of workshop) creating and editing items for approximately 8 hours.
- Participates in an in-person Item Writer/Reviewer Workshop for 3 days plus travel time.
- Additional time is required of the Committee Chair.

Representatives to the National Board of Veterinary Medical Examiners (NBVME)

Composition per the AAVSB Bylaws
There shall be a minimum of four AAVSB Representatives to the NBVME elected at the AAVSB Annual Meeting of the Delegate Assembly.

Qualifications per the AAVSB Bylaws
Three representatives must, when nominated and elected, be Licensed Veterinarians currently practicing in public or private practice and be either (i) a member of a Member Board, or (ii) have been a member of the AAVSB Board of Directors within the previous year, (iii) have been a member of the NBVME within the previous year, or (iv) a current Associate Member.
One representative must, when nominated and elected, be a Public Member and be either (i) a member of a Member Board, or (ii) have been a member of the AAVSB Board of Directors the previous year, (iii) have been a member of the NBVME within the previous year, or (iv) a current Associate Member.

Duties per the AAVSB Bylaws
The Representatives shall attend all meetings of the NBVME and shall report to the Board of Directors following each NBVME or subcommittee meeting. The Representatives shall present the consensus opinions of the Association at such meetings and shall not vote in conflict with these Bylaws.

Responsibilities
- Attend all the NBVME Meetings.
- Support the AAVSB's mission and purpose.
- As requested by the AAVSB, provide timely and relevant information, in-person or written, to the AAVSB Board of Directors after each NBVME meeting regarding the NBVME's operations and programs upon which the AAVSB membership relies.

Expected Time Commitment per Representative
- Participate in two in-person NBVME meetings annually.
- Participates in NBVME conference call meetings when scheduled.
- Attends the AAVSB Annual Meeting.
- Attends the AAVSB Board of Director meetings, as requested.
- Additional time is required if the representative is an officer of the NBVME.

For additional information on the NBVME, please visit the NBVME website at www.nbvme.org.

AAVSB Mission

To support and advance the regulatory process for veterinary medicine

AAVSB Vision

The AAVSB is the primary source for comprehensive information that strategically strengthens the veterinary regulatory community

AAVSB Values

Protection of the public
Reliable & accurate
Ethics & integrity
Service excellent
Active participation & collaboration
Stewardship of resources

AAVSB
AMERICAN ASSOCIATION OF VETERINARY STATE BOARDS

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Kansas City, MO 64108
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www.aavsb.org

Connect with the AAVSB

Strengthening the veterinary regulatory community

AAVSB Strategy Map

Created January 2016

Vision

The AAVSB is the primary source for comprehensive information that strategically strengthens the veterinary regulatory community.

Mission

To support and advance the regulatory process for veterinary medicine.

Values

Protection of the public

Reliable & accurate

Ethics & integrity

Service excellence

Active participation & collaboration

Stewardship of resources

Goals / Objectives

Outreach
The AAVSB is known by strategic audiences as the leader in the veterinary regulatory process.

In the best interest of the AAVSB's mission:
- Increase the Member Boards' understanding of the Association
- Enhance influence with allied groups
- Increase exposure to and communication with veterinary and veterinary technology students
- Explore opportunities for global outreach

Member Support
The AAVSB houses a comprehensive databank for regulating veterinary medicine.

- Increase collaboration with relevant allied groups to obtain data
- Increase capabilities to process information in the databank
- Promote an efficient pathway to licensure for veterinary professionals
- Enhance communication and sharing of information in the databank
- Increase ability of veterinary and veterinary technology programs to assess aptitude of applicants

Policy Leadership
The AAVSB will lead in shaping the regulation of telemedicine for the Member Boards.

- Increase Member Board involvement in defining telemedicine
- Increase collaboration with allied groups
- Improve and increase the utilization of the Practice Act Model to set the standard for telemedicine
- Enhance the AAVSB's leadership role by using telemedicine as a model for future regulatory issues

American Association of Veterinary State Boards 380 West 22nd Street, Suite 101, Kansas City, Missouri 64108 1.877.698.8482 www.aavsb.org

July 2016

American Association of Veterinary State Boards®

Veterinary Regulation News

Volume 22, Issue 1

The AAVSB® Announces New Strategy Map

by James T. Penrod, CAE, FASLA, Executive Director

In January of this year, the AAVSB Board of Directors engaged in a strategic thinking process to help prepare for the future. The process started by looking at the environment around us and determining what factors are impacting our organization and discussing what we needed to focus on to ensure our relevance into the future. What the Board concluded is that there are a number of forces or pressures that are impacting the members of the AAVSB -- you, the regulators of veterinary medicine.

Vision	Mission	Values	Goals	Objectives
The AAVSB is the primary source for comprehensive information that strategically strengthens the veterinary regulatory community.	To support and advance the regulatory process for veterinary medicine.	Protection of the public Reliable & accurate Ethics & integrity Service excellence Active participation & collaboration Stewardship of resources	**Outreach** The AAVSB is known by strategic audiences as the leader in the veterinary regulatory process.	In the best interest of the AAVSB's mission: • Increase the Member Boards' understanding of the Association • Enhance influence with allied groups • Increase exposure to and communication with veterinary and veterinary technology students • Explore opportunities for global outreach
			Member Support The AAVSB houses a comprehensive databank for regulating veterinary medicine.	• Increase collaboration with relevant allied groups to obtain data • Increase capabilities to process information in the databank • Promote an efficient pathway to licensure for veterinary professionals • Enhance communication and sharing of information in the databank • Increase ability of veterinary and veterinary technology programs to assess aptitude of applicants
			Policy Leadership The AAVSB will lead in shaping the regulation of telemedicine for the Member Boards.	• Increase Member Board involvement in defining telemedicine • Increase collaboration with allied groups • Improve and increase the utilization of the Practice Act Model to set the standard for telemedicine • Enhance the AAVSB's leadership role by using telemedicine as a model for future regulatory issues

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Some of these "pressures" are being brought directly on the regulatory community such as the Supreme Court ruling against the North Carolina Dental Board questioning how boards look at anti-competitive behavior.

Continued on page 6

The Legal Corner with Dale Atkinson, JD, AAVSB Legal Counsel

Sit...Stay!!!

The overlap and interaction among the professions, scopes of practice, and the boards that regulate them can present interesting challenges. Since veterinarians stock and dispense regulated drugs including controlled substances, questions will arise as to whether the board of veterinary medical examiners, the board of pharmacy, or perhaps both, have the authority to regulate activities that fall within these overlapping scopes of practice. In addition to this regulatory authority, added legal scrutiny over immunity and antitrust issues have surfaced in the wake of the United States Supreme Court decision of February 2015 captioned as The North Carolina State Board of Dental Examiners v. Federal Trade Commission.

In that case, the Supreme Court determined that a state board whose membership was comprised of licensees (referred to as active market participants) was not "sovereign" with regard to applying the state action immunity defense to allegations of antitrust violations. In order to be afforded the state action defense, such a non-sovereign board must be working under a clearly articulated state policy AND under active state supervision. The Supreme Court ruling has caused political and legal reactions and overreactions, including the filing of numerous cases against state boards. Consider the following.

Strategic Pharmaceutical Solutions, Inc. d/b/a VetSource Home Delivery (VetSource or Plaintiff) is an out of state pharmacy registered with the Nevada State Board of Pharmacy (Board or Defendant). VetSource ships pet medications directly to pet owners at the direction and prescription of licensed veterinarians. The Board initiated an administrative complaint against VetSource arguing that the dispensing process violated Nevada's anti-kickback statutes.

In response to the administrative proceedings, VetSource initiated litigation in United States District Court alleging that the "Board's unlawful and unreasonable exclusion of [Plaintiff] as a competitor in the state has injured competition in the Relevant Market and, by seeking to wrongfully exclude a major competitor and exclude innovative, pro-consumer, competitive Direct Shopping practices, has caused and will cause antitrust injury to [Plaintiff]." VetSource also alleged that the Board is "nominally a state agency" but is "controlled by private individual members who as licensed pharmacists actively participate and compete in the market for the sale and distribution of Pet Medications in Nevada." In 2008, the Plaintiff began a business whereby veterinary customers are offered the option to receive duly prescribed pet medications through direct shipping. First, the veterinary customer visits a licensed veterinarian who is able to lawfully prescribe medications. If medication(s) are prescribed, the veterinary customer is able to request or agree that the medication can be filled and delivered to the home via direct delivery. If so, the veterinarian, who also contracts with the Plaintiff submits the prescription to VetSource Wholesale (a division of Plaintiff). VetSource Wholesale sells at wholesale the pet medication to the veterinarian.

"The Supreme Court ruling has caused political and legal reactions and overreactions, including the filing of numerous cases against state boards. "

The wholesale division of Plaintiff is a wholesaler licensed by the Board.

Next, the veterinarian sells the medication to the pet owner at a retail price set by the veterinarian. The pet medication is consigned by the veterinarian to VetSource Home Delivery Pharmacy for processing. VetSource Home Delivery Pharmacy is a pharmacy licensed by the Board. Then, the VetSource Home Delivery Pharmacy, at the direction of the veterinarian, mails the prescribed and consigned medication directly to the owner. VetSource collects all monies related to the transaction and deposits such funds into the veterinarian's e-merchant account.

The Legal Corner (continued from page 2)

The veterinarian pays VetSource an agreed market price for the product and services via charges filed to the e-merchant account. The charges include the wholesale costs of the medication plus delivery charges. What remains in the e-merchant account belongs to the veterinarian and is intended to cover the relevant retail taxes and remaining profit margin. In short, VetSource acts as an outsourced pharmacy service provider. Veterinarians are not required to use VetSource and, in the absence of an agreement, remain eligible to use VetSource at fair market pricing.

Nevada regulations prohibit certain activities that involve revenue sharing and are often referred to as anti-kickback laws. According to the complaint, the Board sent multiple notices to VetSource that the activities of outsourcing pharmacy services must be discontinued. The parties exchanged various communications and the Board eventually issued a notice of proceedings to the VetSource alleging that the business model engaged in violated the anti-kickback regulations. Thereafter, the Board apparently issued another notice alleging additional violations of veterinary regulations.

In January 2016 and before the Board could hold an administrative hearing, VetSource initiated this litigation in United States District Court. The Plaintiff seeks declaratory relief, treble damages for violations of the Sherman Act (antitrust statutes), damages for violations of Unfair Trade Practices under Nevada law and injunctive relief seeking to have the relevant laws deemed unenforceable.

In March 2016, the Board initiated litigation in state court alleging violations of the anti-kickback statutes. The Board through a motion now moves to "stay" or hold in abeyance the federal court case while the state court case proceeds. On May 24, 2016, the federal court denied the motion filed by the Board, thus allowing the federal case to proceed concurrently with the state court case.

In its ruling, the federal court addressed an abstention doctrine that, under certain circumstances, permits a federal court to hold in abeyance ruling on a matter that is pending in a state court. If a court has "full confidence" that a state court proceeding will end all aspects of the dispute, the federal court has a right to abstain from hearing the matter. In the current case, the federal court noted its "substantial doubt" that the state court proceedings would resolve the dispute, primarily due to the fact that federal antitrust issues have been alleged. Importantly, even after the state court proceeding is resolved, the federal court still holds exclusive jurisdiction to rule on federal antitrust claims.

The federal court also noted that even if the abstention doctrine were to be applied, a stay of the federal proceedings would still not be awarded. It referenced the 8 part test to allow for a stay of a federal court proceeding in deference to an ongoing state court proceeding. In applying the 8 part test, the court found that at least 6 of the parts weigh in favor of the federal court continuing to adjudicate the matter. In short, the court held that concurrent litigation will not lead to duplicative efforts and the potential for inconsistent rulings. Further, the court noted that the federal rights of VetSource cannot be adequately protected by the state court rulings. Finally, the court held that VetSource did not engage in forum shopping in an attempt to seek redress from a particular court because the federal court has exclusive jurisdiction to rule on the antitrust matters.

This matter remains pending and there have been no rulings on the merits of the case. Stay tuned for future newsletter articles on this case.

Strategic Pharmaceutical Solutions, Inc. v. Nevada State Board of Pharmacy, 2016 U.S. Dist. LEXIS 68029

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2016 AAVSB Annual Meeting & Conference

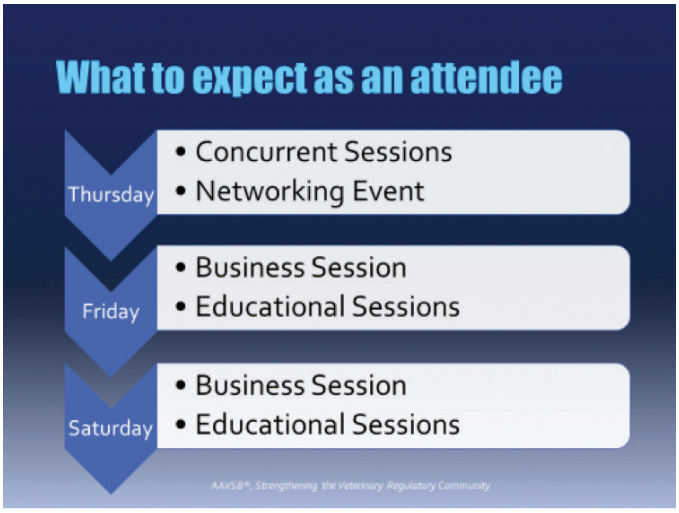
The **2016 AAVSB Annual Meeting & Conference** will be held in Scottsdale, Arizona at the FireSky Resort & Spa **September 22 - 24, 2016**. Take advantage of the AAVSB's Funded Delegate program to help with expenses. This program now allows member boards to send two Delegates to the Annual Meeting—one voting and one alternate. The expansion allows for a Board Member and the Executive Director to attend at virtually no cost. The registration fees and reasonable travel expenses for these Delegates are funded by the Association. The Board of Directors is committed to having full member board attendance at the meeting.

Thursday, September 22 will feature separate tracks based on the attendee's role -- Executive Director's Training or Leadership Training for Board Members. The Executive Director's Training will feature a review of the AAVSB's programs and services including two new services, as well as an interactive discussion of "What Keeps You Up At Night?" The Member Board members will have specialized training in regulatory board leadership allowing them to share experiences and learn from each other.

Join us for a fun evening of networking at El Chorro Restaurant with its stunning view of Camelback Mountain. El Chorro seasonal cuisine features the highest quality in sustainable, locally grown, all natural ingredients, including herbs and produce from El Chorro's own garden. The AAVSB's Networking Events have always attracted a crowd because of the relaxing setting. The 2015 AAVSB Annual Meeting and Conference broke the record for the number of attendees at 161.

Make plans now to join us for this yearly event!

Join us in Scottsdale!



Delegate Funding Program Expanded
In 2011, the AAVSB established the Funded Delegate Program with the goal of full participation by the Member Boards in the Delegate Assembly. Since that time 171 attendees have utilized this popular program which provides funding for one eligible Voting Delegate from each Member Board. In 2016, the program was expanded to fund **two** delegates – one voting and one alternate.

For more information on the program visit:
www.aavsb.org/AnnualMeeting

Mark your calendars for upcoming Annual Meetings!

September 14 – 16, 2017
Omni La Mansion Hotel
San Antonio, Texas

September 13-15, 2018
The Mayflower Hotel
Washington, DC

AAVSB Strategy Map continued from cover

In July 2015, the White House put out a set of best practices for state policymakers to enact reforms to reduce the prevalence of unnecessary and overly broad occupational licenses that are hurting workers and consumers. This lead to an announcement by the Department of Labor this June, to assist organizations like the AAVSB to work with groups of states to design and implement approaches that enhance the portability of licenses across states and reduce overly burdensome licensing restrictions in general.

Veterinary medicine is also under pressure due to the consumers desire to search out their own diagnosis before seeking expert advice – "Dr. Google". In addition, telemedicine is growing in popularity in human healthcare and multiple veterinary companies are popping up promising similar conveniences through televeterinary advice.

With all of these pressures on regulation, it reminds me of a quote by H. Jackson Brown – "When you can't change the direction of the wind – adjust your sails." The AAVSB has adjusted its sails by developing a nimble strategic thinking process that will be reviewed and adjusted annually to ensure that we are providing the tools for veterinary regulatory boards to remain relevant into the future. We have identified strategies, outlined ahead, that will ensure that we are proactive in mitigating these pressures rather than having to react to them when the pressure becomes too high.

As part of the Board's strategic thinking process, three specific goals were established in the areas of Outreach, Member Support, and Policy Leadership. These goals line up with the overall organization's mission, vision, and values.

The AAVSB Board, the staff, and myself commit to you, our members, to provide the support and resources that your regulatory board needs to successfully accomplish your mission of public protection. I ask for your commitment in the following ways:

- Participate in the next *VetBoard Connect* webinar August 11th at 1 pm Central Daylight Time on opening your practice act to determine how you can proactively prepare for future challenges;
- Send your board's Executive Director to the AAVSB Annual Meeting & Conference to help design our newest tool for you – VAULT, The Veterinary Application for Uniform Licensure Transfer. A service to reduce your administrative workload and address federal pressures on regulation;
- Send a delegate to the AAVSB Annual Meeting & Conference to participate in defining televeterinary medicine and how your board will address this regulatory pressure; and
- Become more engaged with the AAVSB so that we can all benefit from the collective voice of the veterinary regulatory community.

I hope that I will see you at the 2016 AAVSB Annual Meeting & Conference on September 22-24 in Scottsdale, Arizona so that together, we can support and advance the regulatory process for veterinary medicine.

James T. Penrod, CAE, FASLA
AAVSB Executive Director

Let us make your life easier!

Have a board meeting coming up?

Would your board like to learn more about the services that the AAVSB provides for its member licensing boards? We can present at your next meeting. Contact Lainie Franklin today at efranklin@aavsb.org to book an AAVSB representative. Our goals are:

AAVSB Member Outreach Goals

- Increase awareness and improve access to services at the member level.
- Deepen member engagement to increase value received by AAVSB members.

Building the AAVSB Community

- Research to better connect with members.
- Identify pain points where the AAVSB can assist.
- Increase efficiency of the licensure process.
- Provide timely information on regulatory issues.

SPA
STATE & PROVINCIAL ASSESSMENTS
AMERICAN ASSOCIATION OF VETERINARY STATE BOARDS

Feeling the tension created by administering state and provincial assessments?

You could be free of that administrative burden by answering just a few questions. The newest Member Board service, **State & Provincial Assessments (SPA)**, launched in March 2016.

Nancy Grittman, AAVSB Director of Examinations states, "The AAVSB can provide the assessment through internet-based testing and explore customizing the assessment. The AAVSB accepts the applicant's exam fee payment on behalf of the Member Board and can include service fees as applicable. The official score reports are made available to the Member Board and the examinee receives an official score on-line."

Contact Lainie Franklin at efranklin@aavsb.org for more information.

Changes at AAVSB Headquarters in Kansas City

VTNE & PAVE Program Manager Promoted to Director of Examinations

Nancy Grittman joined the AAVSB in January 2011 as the VTNE Program Manager. In May 2016, she was promoted to the Director of Examinations. Ms. Grittman has a Masters of Business Administration from MidAmerica Nazarene University in Olathe, Kansas and a B.A. in Elementary Education from Bluffton University in Bluffton, Ohio. As Director of Examinations, Ms. Grittman will oversee the VTNE, PAVE, and SPA programs.

Director of Operations & Strategic Initiatives Retires

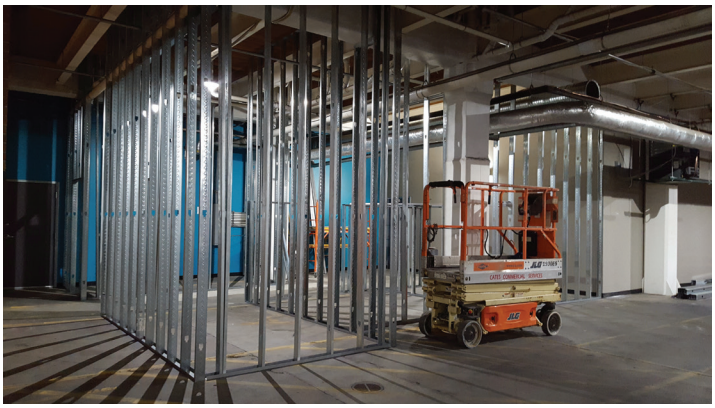
Vic Cook served as the Director of Operations and Strategic Initiatives for the past three years. On June 30, he flew off into the sunset to begin his retirement with his wife Bev, their children and grandchildren. "Working is a big part of every adult's life. We spend half of it working for organizations where we find priceless friends. Each of us in the AAVSB family has been touched by Vic's knowledge, team work, diligence, and friendliness. Watching someone leave is never easy, but knowing that they are going on to a special time in their life makes it more enjoyable. Congratulations on your hard earned retirement!" – Jim Penrod, AAVSB Executive Director.

New Director of Technology & Program Operations Hired

John Davis joined the AAVSB team in June 2016 as the Director of Technology and Program Operations. Mr. Davis brings with him an extensive background in finance, budgeting, operations management, organizational development, and IT integration. He earned his Bachelor of Arts degree from Southwest Baptist University in Bolivar, Missouri. Mr. Davis comes to the AAVSB from the Mid-America Regional Council here in Kansas City where he served as the Resource Coordinator for Emergency Services and Homeland Security. He will be responsible for leading and managing a comprehensive array of programs to include the operational success and financial sustainability of all program activity for the AAVSB. He will also be responsible for directing the organization's technology initiatives. Mr. Davis is a life-long resident of the Kansas City area and currently lives in Raytown, Missouri with his family.

More Changes

Office Expansion



If you have called the AAVSB headquarters in the recent weeks, you have no doubt heard the sounds of construction in the background. As the AAVSB expands its services to its Member Boards the need arose to expand the office space. Expansion began in May and is expected to be concluded in July, adding an additional seven work spaces to the office quarters. We anticipate no interruption in services to the Member Boards during this construction.

In the News

At the request of the Georgia State Board of Veterinary Medicine, the AAVSB developed a video for their website to assist applicants through the licensee process. If your Board would like to have a generic video to assist applicants, please contact efranklin@aavsb.org.

The Practice Act Model (PAM) Task Force has been renamed to the Regulatory Policy Task Force (RPTF). This change in name accurately reflects the expanded mission of the task force which will continue to consider updates to the Practice Act Model (PAM) especially in regard to telemedicine. The RPTF will be meeting at the Annual Meeting & Conference. If you have questions or potential topics, please e-mail those to memberservices@aavsb.org. You are also welcome to attend the RPTF meeting.

In February, AAVSB President Dr. John Lawrence established the Executive Directors Advisory Committee (EDAC). This committee was created to be a think tank for existing and proposed programs and services that the AAVSB could improve or develop to assist all member boards to be more efficient and effective.

AAVSB Programs & Services

Examination Services

The Veterinary Technician National Examination (VTNE®) is owned and administered by the AAVSB and is one of the AAVSB's key programs for its membership as it is relied on to evaluate entry-level veterinary technicians' competency to practice.

The Program for the Assessment of Veterinary Education Equivalance (PAVE®) is designed to evaluate the education equivalence of international veterinary graduates (graduates of non-accredited veterinary programs outside of the United States and Canada) on behalf of the AAVSB Member Boards.

The State & Provincial Assessments (SPA) service includes administration of online state and provincial specific jurisprudence examinations for Member Boards. While these exams ensure veterinary licensure applicants understand local statutes, rules, and regulations, they can be an administrative burden for the licensing board. Let the AAVSB lessen that burden.

Veterinary Exam Eligibility Review
The AAVSB can evaluate the qualifications of candidates who apply to take the NAVLE.
Contact ngrittman@aavsb.org for more information.

Data Services

Score Transfer Service. The Veterinary Information Verifying Agency (VIVA) score transfer service is utilized by a veterinarian or veterinary technician usually to fulfill a license requirement by a Member Board. The score transfer service produces a score report which contains national exam score(s) and any credential and/or disciplinary information for the requesting veterinarian or veterinary technician.

Credential Service. The AAVSB's Credential Service offers veterinarians a time-saving service whereby the AAVSB collects license verifications and veterinary school transcripts (or PAVE certificate or ECFVG certificate) required by jurisdictions for veterinary licensure, and transfers this information along with a score report to the veterinary licensing board selected.

License & Discipline Updates
Member Boards report license and discipline updates to the AAVSB database. The goal of this comprehensive databank is to have 100% participation in reporting final disciplinary actions to serve as a valuable resource for all member boards.

Veterinary Continuing Education Tracking (VCET)
VCET is where licensees record all their continuing education course work in the centralized database. Member Boards then utilize this service to validate CE compliance for licensure renewal.

AAVSB Programs & Services Continued

Member Services

New Board Member & Executives Training
On May 21 – 22, the AAVSB welcomed eight participants to its inaugural training session. The training was facilitated by the AAVSB's Legal Counsel, Dale Atkinson.

"The NBMT training was invaluable! I would hope that all new board members attend -- the information is critical to being an effective board member, and the contacts made with other board members from around North America are beneficial, not to mention fun." -- Nancy O'Connor, DVM, Ohio Veterinary Licensing Board

VetBoard Connect
Join us for the next VetBoard Connect webinar - ***Opening Your Practice Act – It is not Pandora's Box*** being held on **Thursday, August 11 at 1 pm Central Daylight Time**. The AAVSB's Legal Counsel, Dale Atkinson will facilitate this 30 minute presentation, allowing 30 minutes for questions and answers. Watch your inbox for an invite.

Presentations to Member Boards
At the request of a Member Board, the AAVSB can attend one of your Board meetings to make a presentation on the services of the AAVSB. So far eight Boards have utilized this service. Here is what Dr. Sonnya Dennis of the New Hampshire Board of Veterinary Medicine had to say about the visit: "The AAVSB offers a wonderful member service in which their leadership will come to individual state board meetings and discuss how the AAVSB can help that state board accomplish their mission. Past President Anne Duffy and Executive Director Jim Penrod were incredibly helpful. I recommend that every state's board of veterinary medicine takes advantage of this offer."

Contact efranklin@aavsb.org to schedule a visit!

Member Board Profile Survey
The AAVSB conducts this survey every year to provide Member Boards a comparison of board functions as reported by individual jurisdictions. In addition, we ask questions about issues that have been brought to our attention. This will allow you to see how your peers at other Boards are addressing them and help identify areas where additional AAVSB programming, resources, or services may be needed. The survey is currently underway. The results will be shared with the membership after all responses have been received.

Upcoming Deadlines
Member Board Profile Survey – July 8
Annual Meeting Early Bird deadline – July 31
Annual Meeting Final Conference Registration deadline – August 12
Annual Meeting Hotel Reservation deadline – August 30

Veterinary Regulation News
Newsletter of the AAVSB
380 W 22nd St, Suite 101
Kansas City, MO 64108
www.aavsb.org

AAVSB MISSION

To support and advance the regulatory process for veterinary medicine.

AAVSB VISION

The AAVSB is the primary source for comprehensive information that strategically strengthens the veterinary regulatory community.

AAVSB VALUES

Protection of the public
Reliable & accurate
Ethics & integrity
Service excellence
Active participation & collaboration
Stewardship of resources

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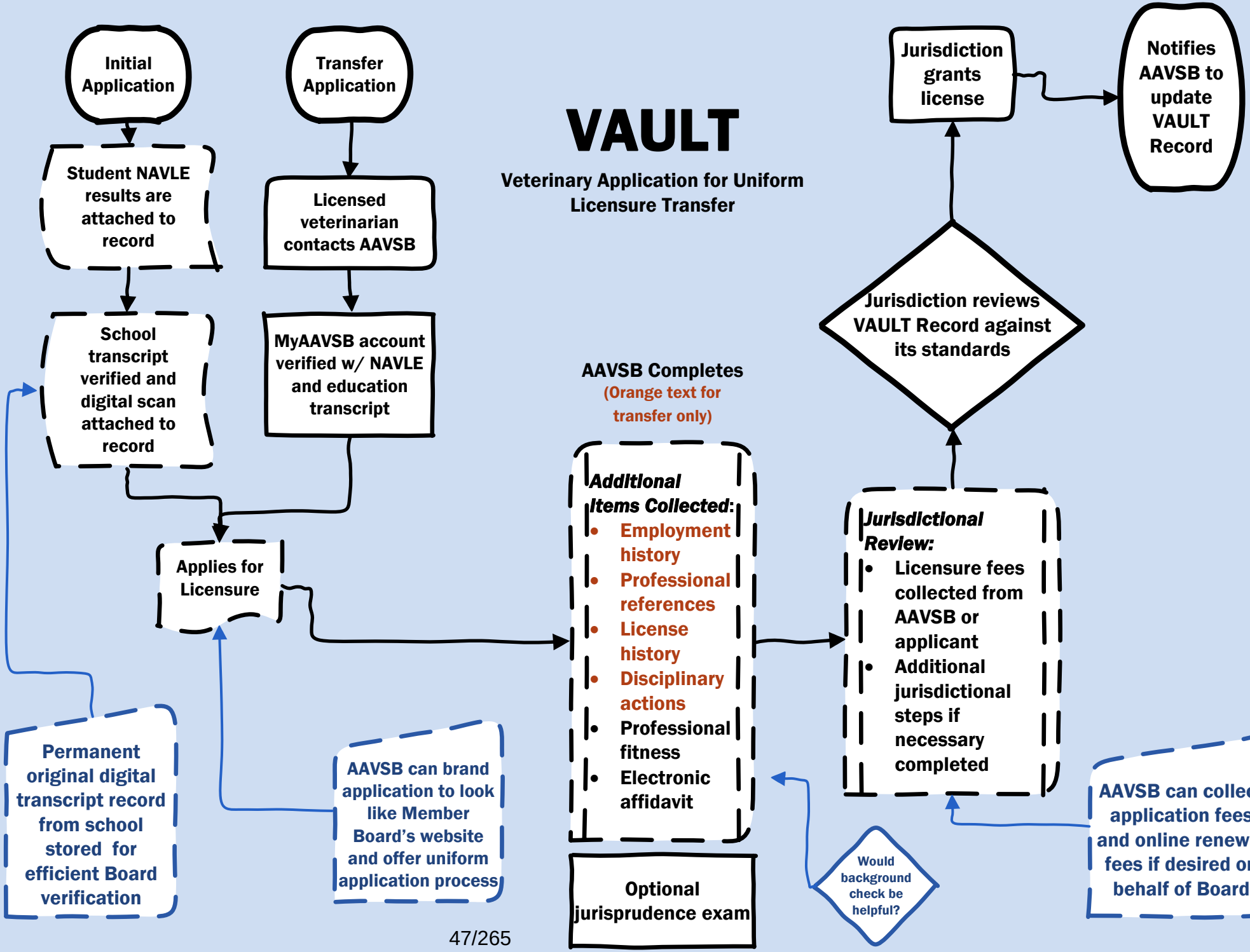
AAVSB Veterinary Regulation News is a publication of the American Association of Veterinary State Boards, 380 West 22nd Street, Suite 101, Kansas City, MO 64108. The opinions and views expressed in this publication do not necessarily reflect the official views, opinions, or policies of the AAVSB or any Member Board unless expressly so stated. Copyright by the American Association of Veterinary State Boards. All rights reserved.

VAULT

Veterinary Application for Uniform Licensure Transfer



AAVSB Annual Meeting, September 22-24, 2016, Scottsdale, AZ

State of Wisconsin
Department of Agriculture, Trade and Consumer Protection

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request:	2) Date When Request Submitted:
Matt Tompach	October 11, 2016 Items will be considered late if submitted after 12:00 p.m. on the deadline date.

3) Name of Board, Committee, Council, Sections:

VEB

4) Meeting Date:	5) Attachments:	6) How should the item be titled on the agenda page?
Oct. 26, 2016	☒ Yes ☐ No	1. AAVSB Annual Meeting, September 22-24, 2016, Scottsdale, AZ a) Telemedicine b) Other Issues

7) Place Item in:	8) Is an appearance before the Board being scheduled?	9) Name of Case Advisor(s), if required:
☒ Open Session ☐ Closed Session	☐ Yes (Fill out Board Appearance Request) ☒ No	

10) Describe the issue and action that should be addressed:

Review of issues discussed at the 2016 AAVSB Meeting September 22-24 in Scottsdale, AZ.

11) Authorization

Matt Tompach **Oct. 11, 2016**

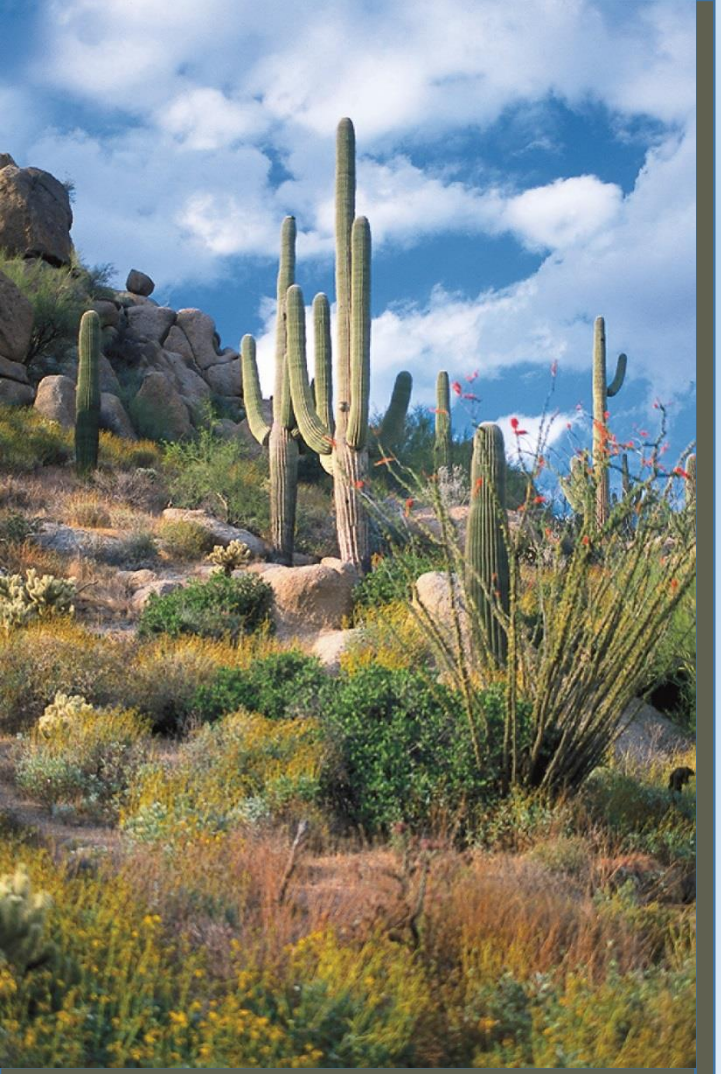
Signature of person making this request Date

Supervisor (if required) Date

Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date

Directions for including supporting documents:
1. This form should be attached to any documents submitted to the agenda.
2. Post Agenda Deadline items must be authorized by a Supervisor and the Executive Director.
3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.

Revised 11/2015



NAVC's Veterinary Innovation Council Telemedicine Pilot Study

AAVSB
AMERICAN ASSOCIATION OF VETERINARY STATE BOARDS

Why Did NAVC Create VIC?

Push envelope on reforms and innovations across trade group borders:

- VIC is designed to be impatient: results in a year.
- Focus on economic impact and pet owner access

Board chose Telemedicine as first initiative:

- We organized a pilot project to provide profession and regulators with data and experience about telemedicine tools.
- Can the lessons from human medicine about tele-health be applied to veterinary medicine? What's needed to implement?

How Does VIC's Telemedicine Pilot Work?

1. Working with practices and pet owners in two states.

2. Veterinary school partnership: Texas A&M.

3. Practice partners: Banfield, VCA, independent Texas practices. In touch with state boards in each state.

How Does VIC's Telemedicine Pilot Work?

4. For speed and ease, partners chose a flexible platform (Skype and texting).

5. Banfield is conducting micro-tests this Fall with **new** pet owners who have **not** chosen to seek veterinary care. VCA and independent practices in Texas will conduct pilot with **existing** clients in early 2017

6. Texas A&M is conducting follow-up data, information and surveys, and will produce research monographs.

What About Regulatory Issues?

- VIC's Board anticipates and understands concerns, especially re VCPR.
- No regulatory issues with telemedicine tools for **existing** clients, challenge is with **new** clients not planning to visit clinics.
- How far can telemedicine go where a traditional "hands-on" VCPR has not been created.
- Pilot is not challenging existing regulations but trying to gather experience and data for veterinary profession and regulatory boards to discuss and evaluate.

When and Where Will Industry and the Profession Learn Results of Pilot?

- We will share what we can at next year's NAVC conference in Orlando.
- Texas A&M and NAVC will host a Veterinary Innovation Forum, April 28-29, in College Station.
  - Will cover much more than telemedicine.
  - Will present full results of VIC's Telemedicine Pilot, plus robust panels including partners, faculty, regulators, students & practitioners.
  - Will include peer-reviewed research by Texas A&M Faculty.

AVMA Practice Advisory Panel Work on Telemedicine

Dr. Lori Teller
District VIII AVMA Board of Directors Representative
September 23, 2016
AAVSB Annual Meeting & Conference

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Practice Advisory Panel

Telemedicine

- Topic assigned by the Board of Directors
- Practice AP established from within its membership a Telemedicine Subcommittee
- Based on work of the Subcommittee, the Practice AP established 5 virtual working groups
  - Open call for experts
  - More than 50 volunteers
  - Work in strategic phases
- Provided opportunity for topic-focused, short-term volunteerism

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Practice Advisory Panel

Telemedicine review in strategic phases

1
- March – May 2016
- 3 Working groups (regulations, technology, and use)

2
- May – August 2016
- Telemedicine Guidelines WG

3
- September 2016
- Panel's interim report to the Board of Directors

4
- August – November 2016
- Education & Outreach WG

5
- December 2016
- Panel's final report to the Board of Directors

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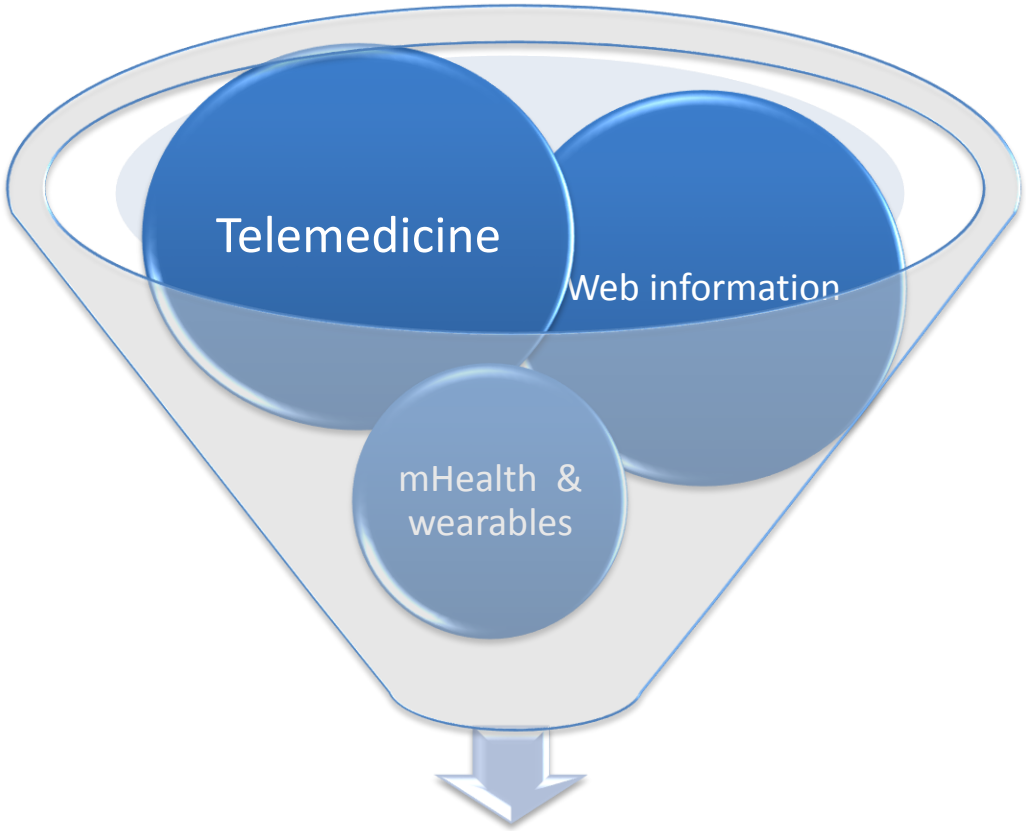
Practice Advisory Panel

Interim themes among working groups



Telehealth

Telehealth is an overarching term that includes subcategories, such as telemedicine and mHealth.

Advice givers should have accountability.

Any advice given outside an established VCPR should be given in general terms, not specific to an individual animal, diagnosis, or treatment.

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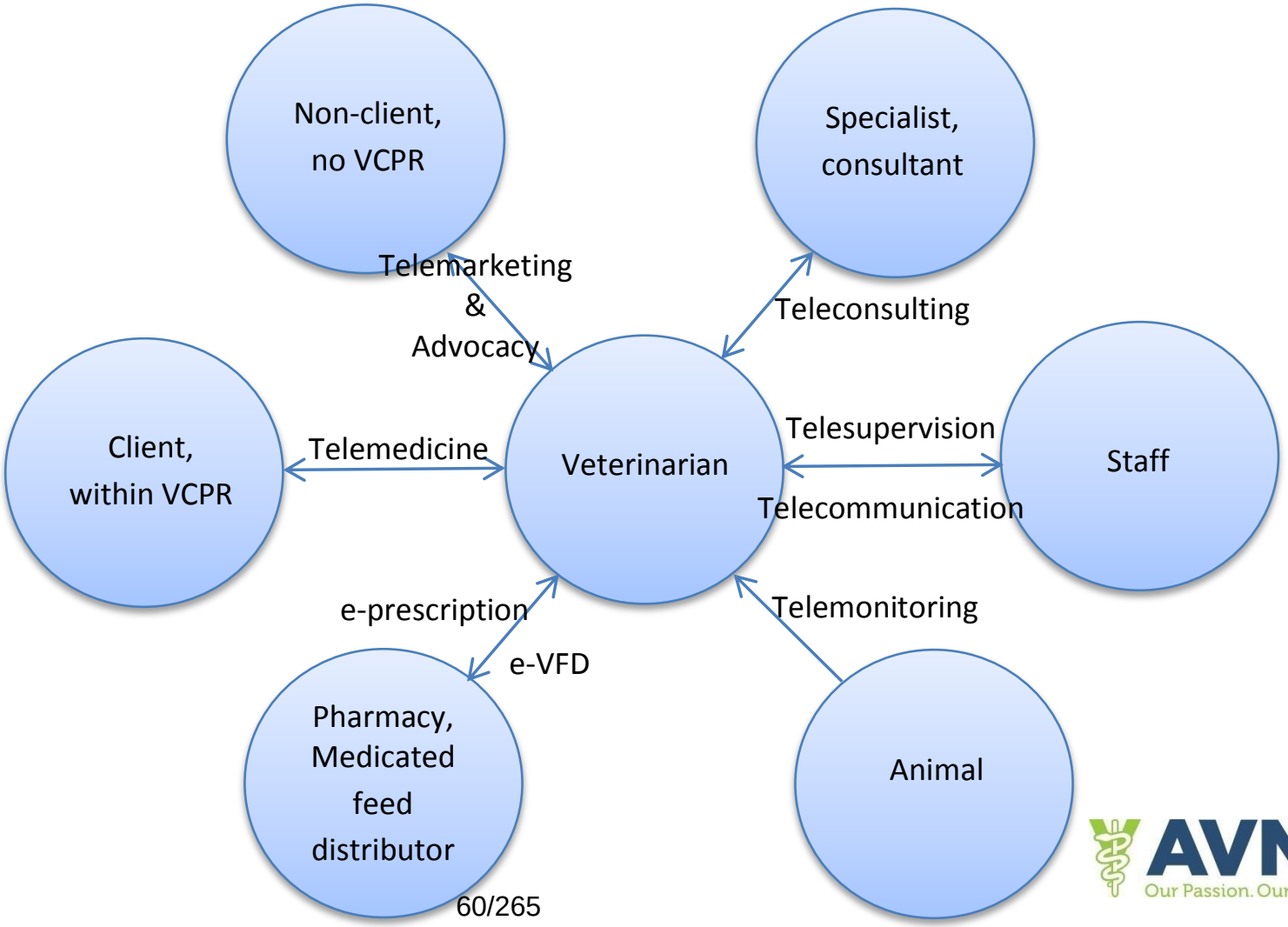
Practice Advisory Panel

Interim themes among working groups



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Practice Advisory Panel

Interim themes among working groups

Telemedicine:

- Is a ***tool*** of practice, not a new practice discipline
- Has multiple definitions (104 peer-reviewed definitions of telemedicine identified in a 2007 study)
- Should only be used within an established VCPR or between veterinarians, but not to establish a VCPR
- Should have accountability
- Should be secure and maintain client confidentiality

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Practice Advisory Panel

Interim themes among working groups

Possible benefits of telemedicine include

- Enhanced animal care
  - Timely receipt of information through consultation and/or remote monitoring
  - Greater efficiency in diagnosis and treatment
  - Opportunity to support client compliance
- Mitigating challenges of distance, scheduling, and workforce
  - Improved access to care in underserved areas
  - Enhanced efficiency and effectiveness in managing disease outbreaks (food production, labs, shelters)

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Practice Advisory Panel

Interim themes among working groups

- Cost effectiveness and improved productivity, including better utilization of members of the veterinary healthcare team
- Greater access to specialty services
- Supports communication
- Veterinarian – Client and potential clients
- Veterinarian – Consultant
- Veterinarian – Pharmacy / Feed mill
- Expanded market for veterinary professional services

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Practice Advisory Panel

Interim themes among working groups

Some precautions of telemedicine

- Some applications and wearables are designed for consumers and have minimal to no veterinary input.
- Concerns regarding satisfying VCPRs, challenges of practicing veterinary medicine without hands-on examinations, and liability
- Record security, maintenance, and confidentiality
- Credentials of all advice givers, as well as disclaimers on all resources, should be prominently displayed so not to be misleading

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Practice Advisory Panel

Interim themes among working groups

- Technology limitations (e.g., image quality, lack of direct veterinarian-patient interaction) that may be exacerbated by reduced options for electronic transmission in remote areas
- Possible delays in seeking treatment
- Care continuity, in the case of multiple or alternating providers
- Licensure across jurisdictions (where does the act of practicing veterinary medicine take place?)
- Limited models for appropriate reimbursement

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AVMA currently does not have policy on telemedicine specifically

- The Board of Directors is awaiting the final report of the Advisory Panel
- Open to considering new information such as data from pilot program

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Top Legal Cases

Dale J. Atkinson, Esq.

Saturday, September 24, 2016

2:30pm to 4:00 pm

AAVSB
AMERICAN ASSOCIATION OF VETERINARY STATE BOARDS

Dale J. Atkinson, Esq.

General Counsel, AAVSB

Atkinson & Atkinson, LLC

1466 Techny Road

Northbrook, IL 60062

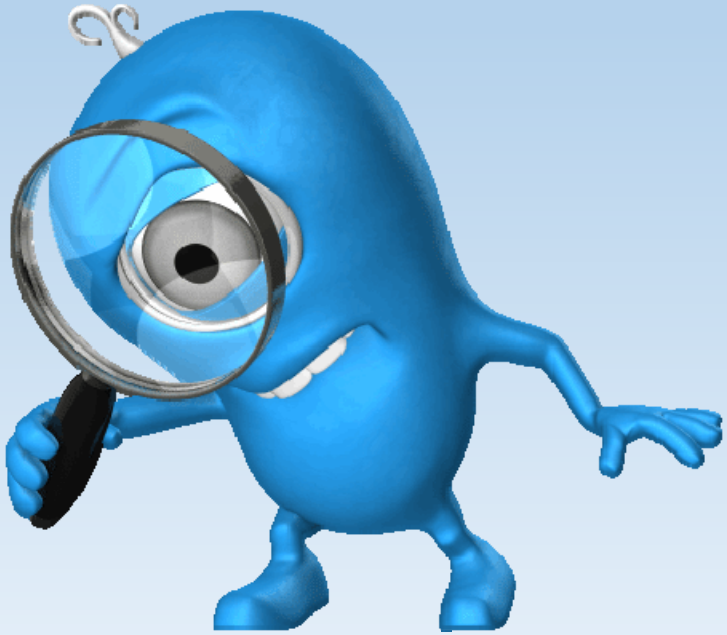
847-714-0070

dale@atkinsonfirm.com

What's Going on in Your Jurisdictions?

Open discussion…..

Speak up…



Antitrust Issues & Abstention

- Applicability of antitrust laws
- When can a court hear a matter
- Consequences of court's ruling
- Standing
- Ripeness
- Jurisdiction

Update: Remember this one from last year?

- ***Robb v. Connecticut Board of Veterinary Medicine*** **United States District Court for the District of Connecticut**
  - Robb/veterinarian filed lawsuit vs. board alleging violations of antitrust laws, citing ***NCSBDE v. FTC*** case.
  - Filed in June 2015
  - Respondent in an administrative disciplinary proceeding
  - Alleging 3 of 5 board members are veterinarians and in direct competition
  - Motion for TRO denied

Update: Robb case

- Court granted the Board's motion to dismiss – Jan. 2016
  - While at least some of the administrative proceedings had occurred, the veterinarian sued in federal court alleging a conspiracy between the Board and the drug manufacturers.
  - Court ruled the veterinarian had standing to sue, the legal claims were ripe for review, there was injury-in-fact, a causal connection, redressability, and yet claims of antitrust were differentiated from ***North Carolina State Board of Dental Examiners v. FTC*** and thus deficient.
  - **Therefore, the veterinarian's deficient antitrust claims warranted dismissal of the federal lawsuit, allowing the administrative disciplinary action to proceed.**

Antitrust & Abstention -

Strategic Pharmaceutical Solutions, Inc. v. Nevada State Board of Pharmacy -2016

- **The U.S. District Court in Nevada denied the Nevada State Board of Pharmacy's (Board) motion to stay the plaintiff veterinary pharmacy company's antitrust action against the Board.**
- The Board filed an administrative disciplinary proceeding against the vet pharmacy company alleging its business model violates the anti-kickback statute. Before the Board held an administrative hearing, the pharmacy company filed an antitrust action claiming the Board is a monopoly. The Board sought to stay the antitrust action. The court analyzed whether abstention under the U.S. Supreme Court's Colorado River case should be applied. That doctrine holds that a ***district court can stay a federal court proceeding if the court has full confidence that the parallel state court case will end the litigation***. If there is substantial doubt that the state court case will resolve all issues, then a stay may not be entered. The court held that even if the administrative proceeding finds that the pharmacy company violated the anti-kickback laws, ***the antitrust questions will still need to be addressed by the federal court, as the federal courts have exclusive jurisdiction over federal antitrust claims. Thus, abstention is not warranted***. The court further held that even if "exceptional circumstances" warranted application of Colorado River abstention, the eight factors required to determine those "exceptional circumstances" were not satisfied and therefore a stay was not proper and the antitrust action could proceed.

So, when can a court NOT hear a case? Abstention…

Texas State Bd. of Veterinary Med. Examiners v. Jefferson - 2016

- Vet provided services (incl. vaccinations & sterilizations) to animals who had been unclaimed from a local shelter then moved to a rescue shelter the veterinarian owned and operated. A complaint was filed and investigated on standard of care, and formal administrative charges issued.
- While the administrative charges were pending, the vet filed suit, defended under the "owner exemption" of the practice act: the owner of any animal may provide services or treatment to the owner's animal and such is exempted from the "practice of veterinary medicine" under state law.
- The lower court held: vet must exhaust administrative remedies, but threw out two of the administrative rules being in excess of statutory authority. The administrative action proceeded where a hearing officer dismissed the administrative action because the veterinarian was the owner and operator of the rescue shelter, thus her care was exempted.
- Lower court then dismissed the vet's claims as moot since the disciplinary action and administrative hearing were resolved in favor of the veterinarian. **The lower and appellate courts ruled that since the Board subsequently promulgated an amended administrative rule to cure the invalidity, only the remaining administrative rule that was declared invalid was ripe for review where the rule defined a designated caretaker to be held accountable even as an owner of an animal under the act where the statute exempted any and all owners**.

Abstention –

Farmacy, LLC v. Kirkpatrick - 2015

The U.S. District Court for the Western District of Oklahoma ordered veterinarian/plaintiff and veterinary board/defendant to file respective briefs on the issue of ***whether the federal court, which has jurisdiction, should decline to hear plaintiff's claims for declaratory relief pending the disposition of the appeal filed by the board.***

- The court assessed the issues related to parallel state and federal jurisdiction over the validity of the board rules and adjudicative actions against the plaintiff. Noting that the well-settled rule is that the federal court has discretion to decline to hear a declaratory judgment action, regardless of the existence of subject matter jurisdiction, the court requested briefs from the parties on the issue.
- The court noted the relevant factors to consider as whether the declaratory action: (1) would settle the matter; (2) serve a useful purpose in clarifying the legal relationships; (3) address strategic issues regarding res judicata; (4) increase friction between state and federal courts; and (4) whether there is an alternative remedy. NOTE: ***Subsequently, the federal court declined to exercise jurisdiction***. See: Order of January 14, 2016, in Farmacy, LLC v. Kirkpatrick, et al, CIV-15-1318-D (W.D. Okla.).

Abstention –

Paylan v. Fla Bd. of Med. - 2016

- A U.S. District Court in Florida declined to decide a case filed by a physician whose license was suspended by the state Medical Board after she was convicted of controlled substance violations. Based upon the conviction, the Board issued a "non-disciplinary emergency suspension" and later sought the revocation of the license. The Board ultimately adopted the ALJ's recommendation and ordered that the license be suspended for two years and the licensee filed a notice of administrative appeal.
- While such appeal was pending in another court, the licensee filed the instant suit pro se, claiming that the Board and its members violated her civil rights by disciplining her license while knowing that she did "nothing wrong". She also claimed that the defendants conspired with law enforcement regarding her criminal conviction, such conviction also being currently appealed. **The court held that there was significant substantive overlap between the case before it and the licensee's appeal in the criminal court. Therefore, the court stayed and administratively closed the case pending the final outcome of the criminal appeal.**

Estoppel…Fees…Criminal……Convictions…Expungement

- Criminal; Civil; Administrative…similarities/differences
- Board ***"may" "shall" "must"*** discipline?
- Automatic discipline?
  - Does it depend on the crime (e.g. felony v. misdemeanor)?
- What about expungement or overturned conviction?
- Prevailing party….fees/attorney's fees/costs
- Consequences of final action by another court: estoppel

Criminal Conviction Overturned …Fees

Besola v. Department of Health - 2016

- **A Washington Court of Appeals affirmed the lower court and dismissed a veterinarian's claim for attorneys' fees related to the administrative proceedings of a disciplinary action.**
- The Board suspended his license after he was convicted of charges related to possession of sexually explicit content involving minors. He appealed to the superior court and, pending such appeal***, the Board reinstated his license after the criminal conviction was overturned***. The licensee then sought attorneys' fees as a prevailing party but the court dismissed such claims. ***The reinstatement rendered the court case as moot and, thus, he never prevailed on the merits. Even if he had prevailed, the court would not award fees if the Board's actions were reasonable which, in this case, they were - based on the criminal convictions.***

Criminal Conviction –Rehabilitation-Expungement

Doe v. United States - 2016

- **A federal district court ruled it lacked federal jurisdiction to expunge its own federal criminal conviction of a nurse who had been convicted of fraud thirteen years before, even on equitable grounds**. The criminal conviction had impaired the nurse's license and employment opportunities because of the public nature of the conviction.
- With no intention of continuing an "unending hardship she has endured in the job market," the same federal judge who originally sentenced the nurse did ***issue a federal certificate of rehabilitation based on the undisputed rehabilitation of the nurse and twelve-year history of no further legal issues since the conviction***.

Criminal Conviction –Rehabilitation-Expungement

Doe v. United States - 2016

- The fraud conviction involved the vulnerable defendant, a nurse at the time, being recruited by a corrupt boyfriend to fake injury in a staged car accident, a crime not uncommon at the time due to "corrupt health care professionals, lawyers, and others" who "exploited this no-fault scheme by staging car accidents and receiving payments for injuries never suffered and services never rendered." A jury convicted the defendant and a harsher prison sentence was reduced upon remand by a federal appeals court pursuant to the then-recent U.S. Supreme Court case on federal sentencing mandates.
- While an expungement would allow the nurse and society "to forget" the conviction, ***a certificate of rehabilitation recognized the conviction, but "uses a certificate of rehabilitation or a pardon to symbolize society's forgiveness of the underlying offense conduct."*** A certificate of rehabilitation is authorized by state law.

Estoppel…

Garrity v. Maryland State Board of Plumbing 2016

- **Upon a writ of certiorari, the Court of Appeal of Maryland affirmed the lower court and Court of Special Appeals and upheld the Maryland State Board of Plumbing's (Board) order revoking a plumber's license and imposing a civil penalty of $75,000.** The plumber had initially been administratively charged before the state Consumer Protection Division (CPD) for deceptive trade practices after employing unlicensed plumbers an failing to obtain permits. After a hearing, the CPD found the plumber committed over 7,000 violations, ordered the plumber to cease and desist, pay $250,000 in restitution, $707,900 in civil penalties, and over $65,000 in costs. The plumber did not appeal this decision. The Board then opened a complaint against the plumber, incorporating by reference the CPD Final Order. At the hearing before the Board, Board counsel moved to admit the Final Order as evidence and counsel for the plumber objected, arguing the Board must conduct its own evidentiary hearing and independently prove the violations. **Board counsel asserted that the plumber was collaterally estopped from relitigating the same facts as were litigated in the CPD proceeding.**

Estoppel

- The Board admitted the CPD Order into evidence but did not specifically state the Final Order would be given preclusive effect. The Board subsequently issued its Final Order, and by application of the doctrine of collateral estoppel, adopted the findings of fact made by the CPD, found the plumber violated the practice act, revoked his license and imposed a $75,000 civil penalty. The plumber sought judicial review, which was affirmed and then petitioned for certiorari challenging **whether the doctrine of offensive non-mutual collateral estoppel was correctly invoked and whether double jeopardy protections were violated when the Board and CPD both fined him for the same conduct. The court held that collateral estoppel was properly invoked and the civil penalty did not violate the double jeopardy protections**

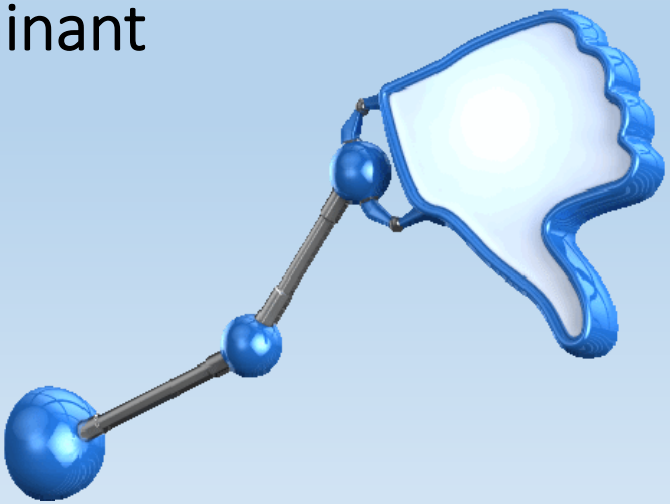
Estoppel

- The court analyzed the doctrines of offensive and defensive, mutual and non-mutual collateral estoppel, reviewing jurisprudence and the four factors that must be satisfied: **(1) was the issue decided in the prior adjudication identical; (2) was there a final judgment on the merits; (3) was the party the same or in privity to the same party in the prior proceeding; and (4) was the party given a fair opportunity to be heard. The court found all four factors were satisfied and therefore offensive, non-mutual collateral estoppel was appropriate**

Estoppel

- **The court also found that the civil penalty did not violate the double jeopardy clause as the penalties were not criminal, nor so punitive to render them criminal.** The court noted that penalties imposed on licensed individuals for violating provisions attendant to that license are **outside the reach of the Double Jeopardy Clause because those penalties are directed toward protecting the public and are therefore remedial rather than punitive.** And merely because he could have been prosecuted criminally instead of by the CPD does not render the civil penalty a criminal punishment. Notably, a concurring opinion questioned whether the civil penalty imposed by the Board is a duplicate punishment that might invoke a claim under the excessive fines clause, but the plumber did not assert that claim.

Unlicensed Practice…Refusal to cooperate in investigation…failure to comply with board order…identity of complainant



- Grounds for discipline
  - What are grounds?
  - Where do you find them?
  - Refusal to cooperate constitute grounds for discipline?
- Failure to comply with board order
- Confidentiality
  - Identity of complainant
- Does your board have authority over unlicensed practice?
  - How do you know?
  - Where do you find it?
  - AAVSB PAM?
  - Is such authority limited?
    - Consequences of administrative findings of unlicensed practice

Unlicensed Practice

Hammad v. Bureau of Prof'l & Occupational Affairs - 2015

- **The Commonwealth Court of Pennsylvania affirmed in part and reversed in part a State Board of Veterinary Medicine (Board) order suspending a veterinarian's license and imposing a $20,000 civil penalty.**
- Vet violated a Board order imposing a $5,000 civil penalty and suspending his license for 2 years, with 6 months of active suspension; remainder stayed with probation and conditioned on the veterinarian paying the civil penalty. Failed to pay…
- **Investigator dispatched; discovered that the veterinarian was still practicing.** Veterinarian ***stated he had appealed the order, filed a discrimination complaint with the state human rights commission, and refused to turn over his licensure documents, records, or appointment book.***

Unlicensed Practice

Hammad v. Bureau of Prof'l & Occupational Affairs - 2015

- Investigator contacted vet to discuss separate investigation; **vet refused to cooperate until he received a copy of the complaint and the identity of the complaining veterinarian.**
- **Veterinarian requested a hearing before the full Board, rather than the hearing examiner, which was denied**; **Vet did not appear**. Board order: no evidence the vet appealed or obtained a stay from the previous Board order; license remains suspended, vet was given notice and the opportunity to appear at the hearing but failed to do so. ***Board revoked the license*** ***and imposed a $20,000 civil penalty***. Vet appealed: was entitled to a hearing before the full Board (the same argument made before); Board exceeded its authority, and the penalty was excessive.
- The court rejected the first two arguments but with respect to the penalty, the **court found that it was comprised of $10,000 for violation of the previous Board order, $5,000 for failure to permit inspection of records, and $5,000 for failure to permit inspection of business premises.** ***The court found there was no evidence in the record regarding the failure to permit inspection of the business premises and therefore reduced the civil penalty to $15,000.***

What is “unlicensed”? Reliance on Other Boards….

- “lapsed”
- “expired”
- “not in good standing”
- “surrendered”
- “retired”
- Revoked
- Suspended
- Other…..

Retired License

Wyttenbach v. Board of Tennessee Medical Examiners - 2016

- **The Court of Appeals of Tennessee affirmed the Tennessee Board of Medical Examiners' revocation of a physician's retired medical license for failure to adequately supervise advanced practical nurses and their prescribing of controlled substances.**
- Physician was the medical director of an unlicensed pain clinic in Knoxville, but apparently resided in Florida. After receiving a letter advising him of a complaint filed against his Tennessee license, he ***executed an affidavit of retirement, which the Board acknowledged, but indicated retirement of the license would not dispose of the charges***, which were **mailed to him by regular and certified mail**.

Retired License

Wyttenbach v. Board of Tennessee Medical Examiners - 2016

- Physician objected to the charges due to lack of subject matter jurisdiction, personal jurisdiction, insufficiency of the notice, and insufficiency of the service of process. The **physician did not appear at the hearing**, a default was entered and the hearing proceeded as uncontested. The Board **revoked the license and placed conditions upon any new license**. The physician appealed. The court rejected all of the physician's arguments, reviewing the statutory authority on service of process by mail, noting that the notice was sent to the address listed in the physician's last renewal application and did not find that lack of a return receipt created a defect in service**. The court stated that due process does not require actual notice, but only that reasonably calculated to provide notice.** ***Finally, the court stated that retirement of a license does not amount to relinquishment or surrender but places it in a status in which renewal is no longer required, but reactivation is still a possibility.***

Lapsed/expired - Berken v. Mullen - 2014

- **The Superior Court of Connecticut dismissed physician's petition for mandamus seeking reinstatement of his medical license.** Physician and CT Medical Board had entered an Interim Consent Order: physician agreed to refrain from practice until the petition was resolved. During the process to determine the conditions under which the physician would be permitted to return to practice, the ***physician's license expired***.
- Board reinstated the physician's license subject to certain restrictions and placing him on probation. **The physician then sought to renew his license, at which time he learned that *his license had lapsed and expired***. The Department of Public Health then sought reconsideration of the Board's order reinstating his license, ***citing the lapsed status of his medical license as a barrier to the reinstatement of the license***. The Board denied the Department's request. Physician sought reinstatement of his license with the Dept, but was **advised by the Dept that he could not apply for reinstatement until a pending matter before the NY medical board was resolved.** The **physician's license in NY was then revoked, after which the physician applied for reinstatement in Connecticut.**

Lapsed/expired - Berken v. Mullen - 2014

- Dept denied the application for reinstatement. Physician petitioned for a writ of mandamus to compel the Dept to either renew the license in accordance with the Board's decisions or direct the Dept to review his application for reinstatement of a lapsed license. **The court held that the law clearly required physician to renew the license yearly; he failed to do so and did not provide evidence that the Board or Dept found the renewal statute to be inapplicable in his case or prior cases.** Court also held that mandamus was not appropriate because the **statute does not permit the Department to reinstate a license if the physician has a complaint in another state until that complaint is "resolved in favor of the candidate."** Because the physician's New York license was revoked, the Department in Connecticut could not process the physician's reinstatement application.

Failure to Renew/Lapse - Hunsicker v. Bd. of Educ. of the High Point Regional High School - 2016

- **A New Jersey appeals court held that a school board acted properly when it terminated the employment of an athletic trainer (licensee) because he did not maintain both credentials required for the position.** To be eligible for appointment as an athletic trainer in a public school, a person must hold both an athletic trainer's license from the state Board of Medical Examiners, as well as an educational services certificate issued by the state Board of Education Examiners (Board). The licensee had both credentials when he began employment with the school but subsequently ***failed to renew his athletic trainer's license and such expired.***

Failure to Renew/Lapse - Hunsicker v. Bd. of Educ. of the High Point Regional High School - 2016

- Several years later, the Board discovered as much and notified the school which then terminated the licensee's employment. In both his administrative and judicial appeals, the licensee argued that unfortunate personal circumstances attributed to his failure to timely renew the license, but both the Board and court noted that such circumstances post-dated the renewal deadline. ***He also claimed that the fact that his employment position was tenured somehow exempted him from maintaining the license, but no such exception existed.*** ***Instead, when his athletic trainer license expired, the Board was required by law to ensure that his employment was terminated.*** **The Board's decision was affirmed**.

New Legislation - Access to Information

- August, 2015: PA Bureau of Professional and Occupations Affairs now makes it easier to obtain disciplinary data.
  - 29 professions under umbrella
  - Bureau's website previously omitted details re: disciplinary history; now can see orders, documents
  - Since April, info re: 18,000 cases posted dating back to 2008; will be more

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New Legislation: Automatic suspension

- July, 2015: Montana SB 76 effective, allowing Dept. of Labor & Industry or a board to administratively suspend a license.
  - CE deficiency, initial licensure questions, failure to respond to audit, or failure to pay fee
  - 60 days to cure
  - No cure = no hearing, no additional notice

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New Legislation: Modified Scope of Practice

- May, 2015: Indiana HB 508 passed, excluding equine massage therapy from the definition of the practice of vet medicine.
  - Now a separate definition; does not include drug prescribing, surgery, chiropractic, or diagnosing medical condition
  - Exemptions from prescription requirements (e.g. valid vet-client-patient relationship, livestock, etc.)

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In the

IN THE DOGHOUSE: 85 face discipline over cheating at Ohio State vet school

- http://www.foxnews.com/us/2016/06/07/in-doghouse-85-face-discipline-over-cheating-at-ohio-state-vet-school.html

In the News

- Court overrules Licensing Board's Disciplinary Action
- http://www.michigancapitolconfidential.com/22588?print=yes

In the News

- Vet's license suspended…again…
- http://minnesota.cbslocal.com/2016/07/05/dr-jon-woodman/

Thank You!!!

FTC Staff Guidance on Active Supervision of State Regulatory Boards Controlled by Market Participants*

I. Introduction

States craft regulatory policy through a variety of actors, including state legislatures, courts, agencies, and regulatory boards. While most regulatory actions taken by state actors will not implicate antitrust concerns, some will. Notably, states have created a large number of regulatory boards with the authority to determine who may engage in an occupation (*e.g.*, by issuing or withholding a license), and also to set the rules and regulations governing that occupation. Licensing, once limited to a few learned professions such as doctors and lawyers, is now required for over 800 occupations including (in some states) locksmiths, beekeepers, auctioneers, interior designers, fortune tellers, tour guides, and shampooers.[1]

In general, a state may avoid all conflict with the federal antitrust laws by creating regulatory boards that serve only in an advisory capacity, or by staffing a regulatory board exclusively with persons who have no financial interest in the occupation that is being regulated. However, across the United States, "licensing boards are largely dominated by active members of their respective industries . . ."[2] That is, doctors commonly regulate doctors, beekeepers commonly regulate beekeepers, and tour guides commonly regulate tour guides.

Earlier this year, the U.S. Supreme Court upheld the Federal Trade Commission's determination that the North Carolina State Board of Dental Examiners ("NC Board") violated the federal antitrust laws by preventing non-dentists from providing teeth whitening services in competition with the state's licensed dentists. *N.C. State Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101 (2015). NC Board is a state agency established under North Carolina law and charged with administering and enforcing a licensing system for dentists. A majority of the members of this state agency are themselves practicing dentists, and thus they have a private incentive to limit

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* This document sets out the views of the Staff of the Bureau of Competition. The Federal Trade Commission is not bound by this Staff guidance and reserves the right to rescind it at a later date. In addition, FTC Staff reserves the right to reconsider the views expressed herein, and to modify, rescind, or revoke this Staff guidance if such action would be in the public interest.

[1] Aaron Edlin & Rebecca Haw, *Cartels By Another Name: Should Licensed Occupations Face Antitrust Scrutiny*, 162 U. PA. L. REV. 1093, 1096 (2014).

[2] *Id.* at 1095.

competition from non-dentist providers of teeth whitening services. NC Board argued that, because it is a state agency, it is exempt from liability under the federal antitrust laws. That is, the NC Board sought to invoke what is commonly referred to as the "state action exemption" or the "state action defense." The Supreme Court rejected this contention and affirmed the FTC's finding of antitrust liability.

In this decision, the Supreme Court clarified the applicability of the antitrust state action defense to state regulatory boards controlled by market participants:

> "The Court holds today that a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal's* [*Cal. Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980)] active supervision requirement in order to invoke state-action antitrust immunity." *N.C. Dental*, 135 S. Ct. at 1114.

In the wake of this Supreme Court decision, state officials have requested advice from the Federal Trade Commission regarding antitrust compliance for state boards responsible for regulating occupations. This outline provides FTC Staff guidance on two questions. *First*, when does a state regulatory board require active supervision in order to invoke the state action defense? *Second*, what factors are relevant to determining whether the active supervision requirement is satisfied?

Our answers to these questions come with the following caveats.

- Vigorous competition among sellers in an open marketplace generally provides consumers with important benefits, including lower prices, higher quality services, greater access to services, and increased innovation. For this reason, a state legislature should empower a regulatory board to restrict competition only when necessary to protect against a credible risk of harm, such as health and safety risks to consumers. The Federal Trade Commission and its staff have frequently advocated that states avoid unneeded and burdensome regulation of service providers.[3]

- Federal antitrust law does <u>not</u> require that a state legislature provide for active supervision of any state regulatory board. A state legislature may, and generally should, prefer that a regulatory board be subject to the requirements of the federal antitrust

[3] *See, e.g.*, Fed. Trade Comm'n Staff Policy Paper, *Policy Perspectives: Competition and the Regulation of Advanced Practice Registered Nurses* (Mar. 2014), https://www.ftc.gov/system/files/documents/reports/policy-perspectives-competition-regulation-advanced-practice-nurses/140307aprnpolicypaper.pdf; Fed. Trade Comm'n & U.S. Dept. of Justice, Comment before the South Carolina Supreme Court Concerning Proposed Guidelines for Residential and Commercial Real Estate Closings (Apr. 2008), https://www.ftc.gov/news-events/press-releases/2008/04/ftcdoj-submit-letter-supreme-court-south-carolina-proposed.

laws. If the state legislature determines that a regulatory board should be subject to antitrust oversight, then the state legislature need not provide for active supervision.

- Antitrust analysis – including the applicability of the state action defense – is fact-specific and context-dependent. The purpose of this document is to identify certain overarching legal principles governing when and how a state may provide active supervision for a regulatory board. We are not suggesting a mandatory or one-size-fits-all approach to active supervision. Instead, we urge each state regulatory board to consult with the Office of the Attorney General for its state for customized advice on how best to comply with the antitrust laws.

- This FTC Staff guidance addresses only the active supervision prong of the state action defense. In order successfully to invoke the state action defense, a state regulatory board controlled by market participants must also satisfy the clear articulation prong, as described briefly in Section II. below.

- This document contains guidance developed by the staff of the Federal Trade Commission. Deviation from this guidance does not necessarily mean that the state action defense is inapplicable, or that a violation of the antitrust laws has occurred.

II. Overview of the Antitrust State Action Defense

"Federal antitrust law is a central safeguard for the Nation's free market structures . . . . The antitrust laws declare a considered and decisive prohibition by the Federal Government of cartels, price fixing, and other combinations or practices that undermine the free market." *N.C. Dental*, 135 S. Ct. at 1109.

Under principles of federalism, "the States possess a significant measure of sovereignty." *N.C. Dental*, 135 S. Ct. at 1110 (*quoting Community Communications Co. v. Boulder*, 455 U.S. 40, 53 (1982)). In enacting the antitrust laws, Congress did not intend to prevent the States from limiting competition in order to promote other goals that are valued by their citizens. Thus, the Supreme Court has concluded that the federal antitrust laws do not reach anticompetitive conduct engaged in by a State that is acting in its sovereign capacity. *Parker v. Brown*, 317 U.S. 341, 351-52 (1943). For example, a state legislature may "impose restrictions on occupations, confer exclusive or shared rights to dominate a market, or otherwise limit competition to achieve public objectives." *N.C. Dental*, 135 S. Ct. at 1109.

Are the actions of a state regulatory board, like the actions of a state legislature, exempt from the application of the federal antitrust laws? In *North Carolina State Board of Dental Examiners*, the Supreme Court reaffirmed that a state regulatory board is not the sovereign. Accordingly, a state regulatory board is not necessarily exempt from federal antitrust liability.

More specifically, the Court determined that "a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates" may invoke the state action defense only when two requirements are satisfied: first, the challenged restraint must be clearly articulated and affirmatively expressed as state policy; and second, the policy must be actively supervised by a state official (or state agency) that is not a participant in the market that is being regulated. *N.C. Dental*, 135 S. Ct. at 1114.

- The Supreme Court addressed the clear articulation requirement most recently in *FTC v. Phoebe Putney Health Sys., Inc.*, 133 S. Ct. 1003 (2013). The clear articulation requirement is satisfied "where the displacement of competition [is] the inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature. In that scenario, the State must have foreseen and implicitly endorsed the anticompetitive effects as consistent with its policy goals." *Id*. at 1013.

- The State's clear articulation of the intent to displace competition is not alone sufficient to trigger the state action exemption. The state legislature's clearly-articulated delegation of authority to a state regulatory board to displace competition may be "defined at so high a level of generality as to leave open critical questions about how

and to what extent the market should be regulated." There is then a danger that this delegated discretion will be used by active market participants to pursue private interests in restraining trade, in lieu of implementing the State's policy goals. *N.C. Dental*, 135 S. Ct. at 1112.

- The active supervision requirement "seeks to avoid this harm by requiring the State to review and approve interstitial policies made by the entity claiming [antitrust] immunity." *Id.*

Where the state action defense does not apply, the actions of a state regulatory board controlled by active market participants may be subject to antitrust scrutiny. Antitrust issues may arise where an unsupervised board takes actions that restrict market entry or restrain rivalry. The following are some scenarios that have raised antitrust concerns:

- A regulatory board controlled by dentists excludes non-dentists from competing with dentists in the provision of teeth whitening services. *Cf. N.C. Dental,* 135 S. Ct. 1101.

- A regulatory board controlled by accountants determines that only a small and fixed number of new licenses to practice the profession shall be issued by the state each year. *Cf. Hoover v. Ronwin*, 466 U.S. 558 (1984).

- A regulatory board controlled by attorneys adopts a regulation (or a code of ethics) that prohibits attorney advertising, or that deters attorneys from engaging in price competition. *Cf. Bates v. State Bar of Ariz.*, 433 U.S. 350 (1977); *Goldfarb v. Va. State Bar*, 421 U.S. 773 (1975).

III. Scope of FTC Staff Guidance

A. This Staff guidance addresses the applicability of the state action defense under the federal antitrust laws. Concluding that the state action defense is inapplicable does not mean that the conduct of the regulatory board necessarily violates the federal antitrust laws. A regulatory board may assert defenses ordinarily available to an antitrust defendant.

1. **Reasonable restraints on competition do not violate the antitrust laws, even where the economic interests of a competitor have been injured.**

Example 1: A regulatory board may prohibit members of the occupation from engaging in fraudulent business practices without raising antitrust concerns. A regulatory board also may prohibit members of the occupation from engaging in untruthful or deceptive advertising. *Cf. Cal. Dental Ass'n v. FTC*, 526 U.S. 756 (1999).

Example 2: Suppose a market with several hundred licensed electricians. If a regulatory board suspends the license of one electrician for substandard work, such action likely does not unreasonably harm competition. *Cf. Oksanen v. Page Mem'l Hosp.*, 945 F.2d 696 (4th Cir. 1991) (en banc).

2. **The ministerial (non-discretionary) acts of a regulatory board engaged in good faith implementation of an anticompetitive statutory regime do not give rise to antitrust liability. See 324 Liquor Corp. v. Duffy, 479 U.S. 335, 344 n. 6 (1987).**

Example 3: A state statute requires that an applicant for a chauffeur's license submit to the regulatory board, among other things, a copy of the applicant's diploma and a certified check for $500. An applicant fails to submit the required materials. If for this reason the regulatory board declines to issue a chauffeur's license to the applicant, such action would not be considered an unreasonable restraint. In the circumstances described, the denial of a license is a ministerial or non-discretionary act of the regulatory board.

3. **In general, the initiation and prosecution of a lawsuit by a regulatory board does not give rise to antitrust liability unless it falls within the "sham exception." Professional Real Estate Investors v. Columbia Pictures Industries, 508 U.S. 49 (1993); California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972).**

Example 4: A state statute authorizes the state's dental board to maintain an action in state court to enjoin an unlicensed person from practicing dentistry. The members of the dental board have a basis to believe that a particular individual is practicing dentistry but does not hold a valid license. If the dental board files a lawsuit against that individual, such action would not constitute a violation of the federal antitrust laws.

B. Below, FTC Staff describes when active supervision of a state regulatory board is required in order successfully to invoke the state action defense, and what factors are relevant to determining whether the active supervision requirement has been satisfied.

1. When is active state supervision of a state regulatory board required in order to invoke the state action defense?

General Standard: "[A] state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*'s active supervision requirement in order to invoke state-action antitrust immunity." *N.C. Dental*, 135 S. Ct. at 1114.

Active Market Participants: A member of a state regulatory board will be considered to be an active market participant in the occupation the board regulates if such person (i) is licensed by the board or (ii) provides any service that is subject to the regulatory authority of the board.

- If a board member participates in any professional or occupational sub-specialty that is regulated by the board, then that board member is an active market participant for purposes of evaluating the active supervision requirement.

- It is no defense to antitrust scrutiny, therefore, that the board members themselves are not directly or personally affected by the challenged restraint. For example, even if the members of the NC Dental Board were orthodontists who do not perform teeth whitening services (as a matter of law or fact or tradition), their control of the dental board would nevertheless trigger the requirement for active state supervision. This is because these orthodontists are licensed by, and their services regulated by, the NC Dental Board.

- A person who temporarily suspends her active participation in an occupation for the purpose of serving on a state board that regulates her former (and intended future) occupation will be considered to be an active market participant.

Method of Selection: The method by which a person is selected to serve on a state regulatory board is not determinative of whether that person is an active market participant in the occupation that the board regulates. For example, a licensed dentist is deemed to be an active market participant regardless of whether the dentist (i) is appointed to the state dental board by the governor or (ii) is elected to the state dental board by the state's licensed dentists.

***A Controlling Number, Not Necessarily a Majority, of Actual Decisionmakers*:**

- Active market participants need not constitute a numerical majority of the members of a state regulatory board in order to trigger the requirement of active supervision. A decision that is controlled, either as a matter of law, procedure, or fact, by active participants in the regulated market (*e.g.*, through veto power, tradition, or practice) must be actively supervised to be eligible for the state action defense.

- Whether a particular restraint has been imposed by a "controlling number of decisionmakers [who] are active market participants" is a fact-bound inquiry that must be made on a case-by-case basis. FTC Staff will evaluate a number of factors, including:

  - ✓ The structure of the regulatory board (including the number of board members who are/are not active market participants) and the rules governing the exercise of the board's authority.

  - ✓ Whether the board members who are active market participants have veto power over the board's regulatory decisions.

Example 5: The state board of electricians consists of four non-electrician members and three practicing electricians. Under state law, new regulations require the approval of five board members. Thus, no regulation may become effective without the assent of at least one electrician member of the board. In this scenario, the active market participants effectively have veto power over the board's regulatory authority. The active supervision requirement is therefore applicable.

  - ✓ The level of participation, engagement, and authority of the non-market participant members in the business of the board – generally and with regard to the particular restraint at issue.

  - ✓ Whether the participation, engagement, and authority of the non-market participant board members in the business of the board differs from that of board members who are active market participants – generally and with regard to the particular restraint at issue.

  - ✓ Whether the active market participants have in fact exercised, controlled, or usurped the decisionmaking power of the board.

Example 6: The state board of electricians consists of four non-electrician members and three practicing electricians. Under state law, new regulations require the approval of a majority of board members. When voting on proposed regulations, the non-electrician members routinely defer to the preferences of the electrician members. Minutes of

board meetings show that the non-electrician members generally are not informed or knowledgeable concerning board business – and that they were not well informed concerning the particular restraint at issue. In this scenario, FTC Staff may determine that the active market participants have exercised the decisionmaking power of the board, and that the active supervision requirement is applicable.

Example 7: The state board of electricians consists of four non-electrician members and three practicing electricians. Documents show that the electrician members frequently meet and discuss board business separately from the non-electrician members. On one such occasion, the electrician members arranged for the issuance by the board of written orders to six construction contractors, directing such individuals to cease and desist from providing certain services. The non-electrician members of the board were not aware of the issuance of these orders and did not approve the issuance of these orders. In this scenario, FTC Staff may determine that the active market participants have exercised the decisionmaking power of the board, and that the active supervision requirement is applicable.

2. What constitutes active supervision?

FTC Staff will be guided by the following principles:

- "[T]he purpose of the active supervision inquiry . . . is to determine whether the State has exercised sufficient independent judgment and control" such that the details of the regulatory scheme "have been established as a product of deliberate state intervention" and not simply by agreement among the members of the state board. "Much as in causation inquiries, the analysis asks whether the State has played a substantial role in determining the specifics of the economic policy." The State is not obliged to "[meet] some normative standard, such as efficiency, in its regulatory practices." *Ticor*, 504 U.S. at 634-35. "The question is not how well state regulation works but whether the anticompetitive scheme is the State's own." *Id*. at 635.

- It is necessary "to ensure the States accept political accountability for anticompetitive conduct they permit and control." *N.C. Dental*, 135 S. Ct. at 1111. *See also Ticor*, 504 U.S. at 636.

- "The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy; and the 'mere potential for state supervision is not an adequate substitute for a decision by the State.' Further, the state supervisor may not itself be an active market participant." *N.C. Dental*, 135 S. Ct. at 1116–17 (citations omitted).

- The active supervision must precede implementation of the allegedly anticompetitive restraint.

- "[T]he inquiry regarding active supervision is flexible and context-dependent." "[T]he adequacy of supervision . . . will depend on all the circumstances of a case." *N.C. Dental*, 135 S. Ct. at 1116–17. Accordingly, FTC Staff will evaluate each case in light of its own facts, and will apply the applicable case law and the principles embodied in this guidance reasonably and flexibly.

3. What factors are relevant to determining whether the active supervision requirement has been satisfied?

FTC Staff will consider the presence or absence of the following factors in determining whether the active supervision prong of the state action defense is satisfied.

- The supervisor has obtained the information necessary for a proper evaluation of the action recommended by the regulatory board. As applicable, the supervisor has ascertained relevant facts, collected data, conducted public hearings, invited and received public comments, investigated market conditions, conducted studies, and reviewed documentary evidence.

  - ✓ The information-gathering obligations of the supervisor depend in part upon the scope of inquiry previously conducted by the regulatory board. For example, if the regulatory board has conducted a suitable public hearing and collected the relevant information and data, then it may be unnecessary for the supervisor to repeat these tasks. Instead, the supervisor may utilize the materials assembled by the regulatory board.

- The supervisor has evaluated the substantive merits of the recommended action and assessed whether the recommended action comports with the standards established by the state legislature.

- The supervisor has issued a written decision approving, modifying, or disapproving the recommended action, and explaining the reasons and rationale for such decision.

  - ✓ A written decision serves an evidentiary function, demonstrating that the supervisor has undertaken the required meaningful review of the merits of the state board's action.

  - ✓ A written decision is also a means by which the State accepts political accountability for the restraint being authorized.

Scenario 1: Example of satisfactory active supervision of a state board regulation designating teeth whitening as a service that may be provided only by a licensed dentist, where state policy is to protect the health and welfare of citizens and to promote competition.

- The state legislature designated an executive agency to review regulations recommended by the state regulatory board. Recommended regulations become effective only following the approval of the agency.

- The agency provided notice of (i) the recommended regulation and (ii) an opportunity to be heard, to dentists, to non-dentist providers of teeth whitening, to the public (in a newspaper of general circulation in the affected areas), and to other interested and affected persons, including persons that have previously identified themselves to the agency as interested in, or affected by, dentist scope of practice issues.

- The agency took the steps necessary for a proper evaluation of the recommended regulation. The agency:

  - ✓ Obtained the recommendation of the state regulatory board and supporting materials, including the identity of any interested parties and the full evidentiary record compiled by the regulatory board.

  - ✓ Solicited and accepted written submissions from sources other than the regulatory board.

  - ✓ Obtained published studies addressing (i) the health and safety risks relating to teeth whitening and (ii) the training, skill, knowledge, and equipment reasonably required in order to safely and responsibly provide teeth whitening services (if not contained in submission from the regulatory board).

  - ✓ Obtained information concerning the historic and current cost, price, and availability of teeth whitening services from dentists and non-dentists (if not contained in submission from the regulatory board). Such information was verified (or audited) by the Agency as appropriate.

  - ✓ Held public hearing(s) that included testimony from interested persons (including dentists and non-dentists). The public hearing provided the agency with an opportunity (i) to hear from and to question providers, affected customers, and experts and (ii) to supplement the evidentiary record compiled by the state board. (As noted above, if the state regulatory board has previously conducted a suitable public hearing, then it may be unnecessary for the supervising agency to repeat this procedure.)

- The agency assessed all of the information to determine whether the recommended regulation comports with the State's goal to protect the health and

welfare of citizens and to promote competition.

- The agency issued a written decision accepting, rejecting, or modifying the scope of practice regulation recommended by the state regulatory board, and explaining the rationale for the agency's action.

Scenario 2: Example of satisfactory active supervision of a state regulatory board administering a disciplinary process.

A common function of state regulatory boards is to administer a disciplinary process for members of a regulated occupation. For example, the state regulatory board may adjudicate whether a licensee has violated standards of ethics, competency, conduct, or performance established by the state legislature.

Suppose that, acting in its adjudicatory capacity, a regulatory board controlled by active market participants determines that a licensee has violated a lawful and valid standard of ethics, competency, conduct, or performance, and for this reason, the regulatory board proposes that the licensee's license to practice in the state be revoked or suspended. In order to invoke the state action defense, the regulatory board would need to show both clear articulation and active supervision.

- In this context, active supervision may be provided by the administrator who oversees the regulatory board (*e.g.*, the secretary of health), the state attorney general, or another state official who is not an active market participant. The active supervision requirement of the state action defense will be satisfied if the supervisor: (i) reviews the evidentiary record created by the regulatory board; (ii) supplements this evidentiary record if and as appropriate; (iii) undertakes a de novo review of the substantive merits of the proposed disciplinary action, assessing whether the proposed disciplinary action comports with the policies and standards established by the state legislature; and (iv) issues a written decision that approves, modifies, or disapproves the disciplinary action proposed by the regulatory board.

Note that a disciplinary action taken by a regulatory board affecting a single licensee will typically have only a de minimis effect on competition. A pattern or program of disciplinary actions by a regulatory board affecting multiple licensees may have a substantial effect on competition.

The following do <u>not</u> constitute active supervision of a state regulatory board that is controlled by active market participants:

- The entity responsible for supervising the regulatory board is itself controlled by active market participants in the occupation that the board regulates. *See N.C. Dental*, 135 S. Ct. at 1113-14.

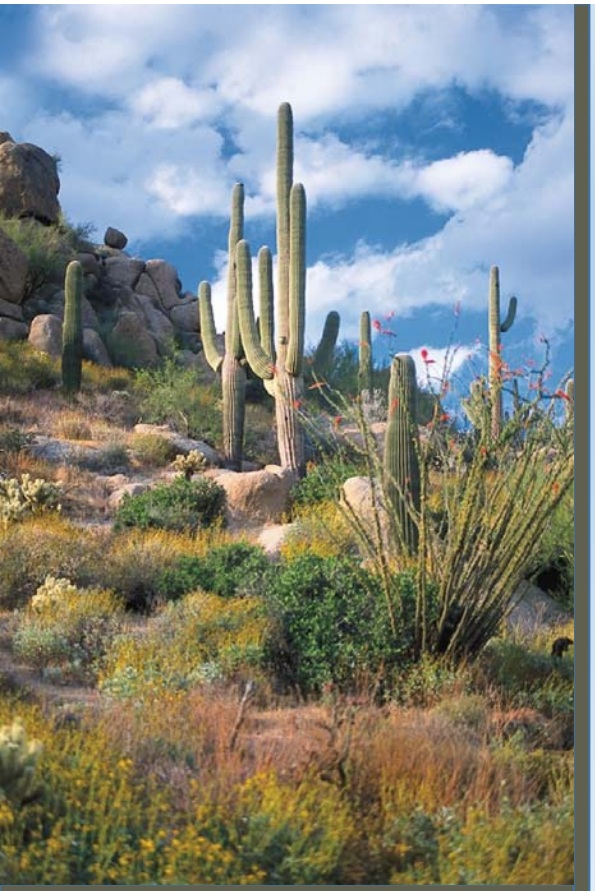
- A state official monitors the actions of the regulatory board and participates in deliberations, but lacks the authority to disapprove anticompetitive acts that fail to accord with state policy. *See Patrick v. Burget*, 486 U.S. 94, 101 (1988).

- A state official (*e.g.*, the secretary of health) serves ex officio as a member of the regulatory board with full voting rights. However, this state official is one of several members of the regulatory board and lacks the authority to disapprove anticompetitive acts that fail to accord with state policy.

- The state attorney general or another state official provides advice to the regulatory board on an ongoing basis.

- An independent state agency is staffed, funded, and empowered by law to evaluate, and then to veto or modify, particular recommendations of the regulatory board. However, in practice such recommendations are subject to only cursory review by the independent state agency. The independent state agency perfunctorily approves the recommendations of the regulatory board. *See Ticor*, 504 U.S. at 638.

- An independent state agency reviews the actions of the regulatory board and approves all actions that comply with the procedural requirements of the state administrative procedure act, without undertaking a substantive review of the actions of the regulatory board. *See Patrick*, 486 U.S. at 104-05.



Licensee Wellness

presented by:
Dr. Jerome Williams, DVM,
Dr. David Goldberg, DO and
Dr. Tim Kolb, DVM

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2016 AAVSB Annual Meeting & Conference

OBJECTIVES OF THIS PANEL

- Licensing Boards: Part of the Problem? Or Part of the Solution?
- Benefits of effective working relationships between licensing boards, wellness programs and state vma's
- "One Bite" Concept

AVMA ROUNDTABLE ON WELLNESS

- **REQUIRING** CE ON WELLNESS/WELLBEING
- BARRIERS TO SEEKING HELP
  - FEARS OF DISCIPLINE AND/OR REVOCATION
- REDUCING THE STIGMA

Resources

- JAVMAnews articles, May 01, 2016
  - Studies confirm poor well-being in veterinary professionals, students https://www.avma.org/news/javmanews/pages/160501c.aspx?utm_source=javma-news&utm_medium=email&utm_campaign=gen
  - Reversing the downward spiral (https://www.avma.org/news/javmanews/pages/160501a.aspx?utm_source=javma-news&utm_medium=email&utm_campaign=gen)
- TRENDS, March 2016 "The Landscape of Suicide"
- http://www.kevinmd.com/blog/2016/03/why-doctors-kill-themselves.html (TEDMED)

JAVMA News – May 1, 2016

Veterinary wellness roundtable advances conversation

- **Steering committee to define strategy, create action plan, form coalition**

In all, 35 participants at the veterinary profession wellness roundtable convened by the AVMA March 14-15 in Schaumburg, Illinois, talked about major causes of wellness issues among veterinarians, strategies to promote wellness among veterinary professionals, barriers to implementing wellness programs, and solutions to overcome these barriers. The participants were representatives of the AVMA and other veterinary organizations, universities, large private employers of veterinarians, the AVMA Future Leaders Program, and private industry, along with experts in psychological wellness.

- The main consensus from the roundtable was that the profession needs to improve awareness of mental illness, mental health treatment, and suicide prevention resources; decrease the stigma associated with mental illness within veterinary colleges, veterinary medical associations, and veterinary licensing boards; and enhance the educational experience, both in veterinary colleges and in continuing education, through training in coping skills. Participants highlighted the following specific priorities to explore:
- Seek continuing education credits for wellness.
- Explore creation of a national hotline for veterinarians.
- Consider an expanded wellness website with links to coalition organizations to make existing resources easier to find and access.
- Explore creation of more support communities for veterinarians.
- Identify mental health strategies and build resilience among students.
- Study successful wellness strategies specific to the lesbian, gay, bisexual, and transgender community

Veterinary Students

- **Videos**
- The Student AVMA Wellness Task Force has released a series of videos on YouTube to combat the stigma surrounding mental health in the veterinary profession. These “It’s OK” videos feature veterinary students, faculty members, clinicians, veterinary technicians, and school counselors discussing their struggles with mental health and wellness.

Objectives – Dr. Goldberg

- Review of Ohio Physicians Health Program
- Review the Ohio Veterinary Medical Licensing Board impairment/ disciplinary rules and its importance to licensees and relationship with OPHP
- Discuss benefits of working with a PHP

OPHP mission

To facilitate the health and wellness of healthcare professionals in order to enhance patient care and safety

OPHP Program services

Confidential Resource

Monitoring & advocacy program

Educational outreach programs

Who we serve:

- physicians
- residents
- podiatrists
- physician assistants
- anesthesiology assistants
- medical students
- dentists
- dental hygienists
- dental students
- optometrists
- optometry students
- **veterinarians**
- **veterinary technicians**
- **veterinary students**
- others

Ohio Veterinarians

- Just over 3,400 vets licensed in Ohio
- OPHP is currently monitoring 9
- Half are confidential from the Vet Board

Ohio Vet. Medical Licensing Board

Under Ohio Revised Code Section 4741.221**, the Ohio Veterinary Medical Licensing Board honors treatment in lieu of disciplinary action so long as they are referred to OPHP.**

(A) The board may, prior to or after a hearing conducted under section 4741.22 of the Revised Code, and in lieu of taking or in addition to any action it may take under that section, refer any licensee:

- *(1) Who suffers from alcohol or substance abuse, to the OVMA special assistance committee, the Ohio physicians health program, or an advocacy group approved by the board, for support and assistance in the coordination of the treatment of that veterinarian or technician;*
- *(2) Who has violated any provision of this chapter for any offense for which the board normally would not seek the revocation or suspension of the person's license or registration, to the Ohio veterinary medical association special committee on peer review.*

Case Study 1

- Female Vet got involved with DEA for investigation of medication diversion
- Employer encouraged her to contact OPHP
- Called OPHP and admitted opiate addiction

Case Study 1

Recommendation:

- Complete evaluation at treatment provider
- Follow treatment recommendation
- Sign agreement with OPHP

Outcome:

- Completed Outpatient Treatment
- Because of her legal involvement she got a consent agreement from Vet Board
- Per Vet Board, required to follow agreement with OPHP
- Since she completed treatment she was not convicted regarding her medication diversion

Case Study 2

- Male Vet with history of opiate addiction
- Attempted to get help on his own using outpatient services near his home
- Failed to maintain sobriety so followed provider's recommendation for residential treatment
- During his stay in residential treatment, the facility connected him to OPHP for ongoing monitoring post-treatment

Case Study 2

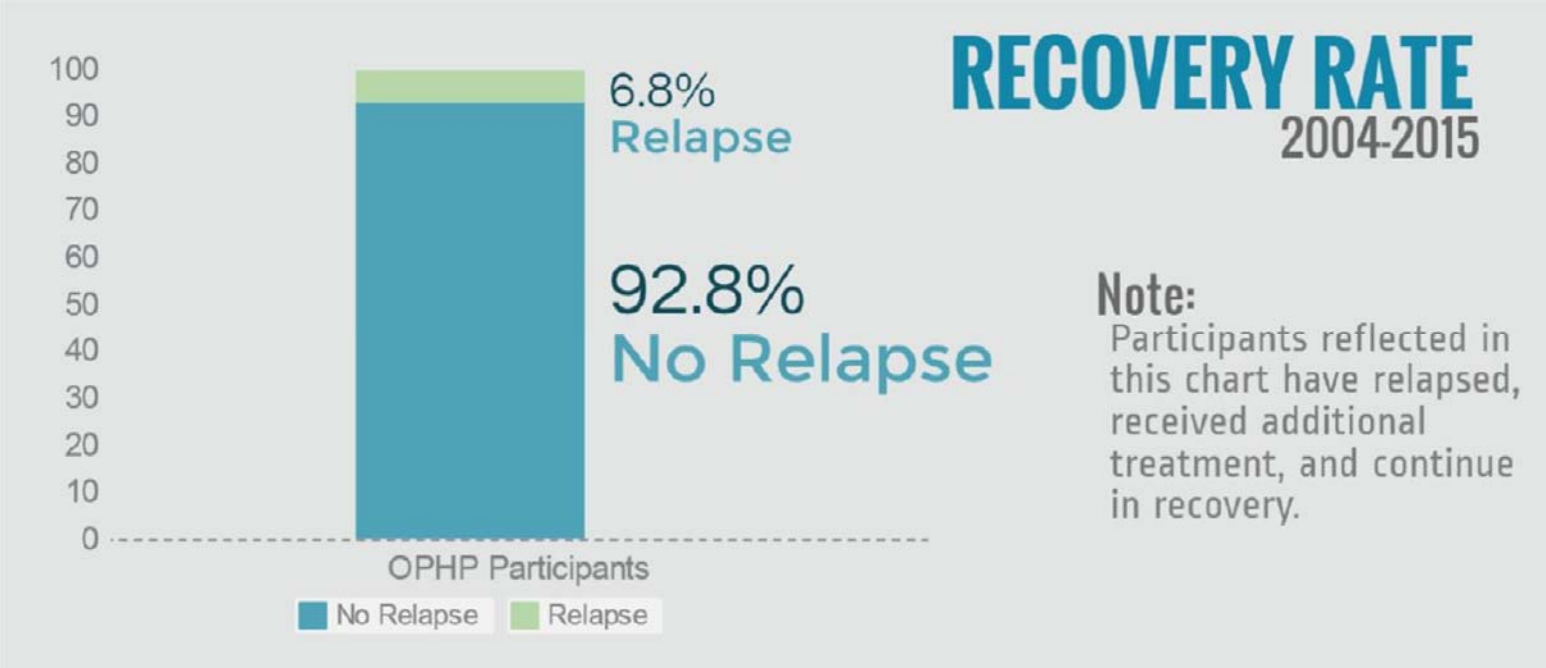
Recommendation:

- Sign agreement with OPHP for monitoring and recovery support

Outcome:

- Continued recovery under monitoring and advocacy agreement
- Returned to place of employment
- He is anonymous from the Vet Board

OPHP Participant Recovery



Benefits of working with a PHP

- Confidentiality for professional
- Understand laws and rules
- Good relationship with board and association
- Well trained and credentialed clinical staff highly involved with each participant
- Experience with professional impairment cases

Additional Resources

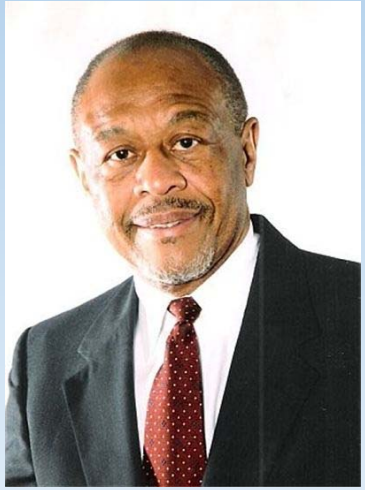
- http://www.ama-assn.org/ama/ama-wire/post/double-edged-sword-doctors-great-also-drives-burnout?&utm_source=BHClistID&utm_medium=BulletinHealthCare&utm_term=062216&utm_content=MorningRounds&utm_campaign=BHCMessageID
- http://www.ama-assn.org/ama/ama-wire/post/physicians-reset-room-battle-burnout?utm_source=BulletinHealthCare&utm_medium=email&utm_term=061116&utm_content=physicians&utm_campaign=article_alert-morning_rounds_weekend
- https://www.linkedin.com/pulse/five-things-you-didnt-know-mental-health-marie-holowaychuk?utm_content=bufferad053&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer
- http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6405a6.htm?s_cid=mm6405a6_e
- http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6405a6.htm?s_cid=mm6405a6_e
- http://www.peertechz.com/Depression-Anxiety/pdf/ADA-2-110.pdf

Stay engaged with OPHP:

www.ophp.org

@OhioPHP

Veterinary Wellness in the united states



Dr. Jerome B. Williams

Alabama Veterinary Wellness Professionals Program - Director

American Veterinary Medical Association

- The American Veterinary Medical Association's (AVMA) position is that it recognizes and supports the importance of wellness in the veterinary community and defines wellness as an active process of becoming aware of and making choices toward a successful existence.

- The AVMA also supports and encourages state Veterinary Medical Associations to develop and maintain wellness programs to protect the health and function of the veterinary community.

State Veterinary Medical Associations

- State VMAs are encouraged to incorporate certain guiding principles in establishing and structuring wellness programs, however, it is not mandatory that they do so and no incentive is offered. The bottom line is that there is not an organized national wellness program in the United States.
- According to the guidelines of the AVMA, each state has the option of determining if it is to have a wellness program or not.
- The AVMA's website offers information on individuals or organizations for contact on wellness related issues in many of the state. Unfortunately, a number of states do not have a wellness program and consequently, do not offer any kind of assistance.

Journal of Veterinary Medical Education (Spring Volume 2012)

- The Alabama Veterinary Professionals Wellness Program (AVPWP) completed a survey of the Association of Veterinary Medical Executive Directors (AVMED) in 2009-2010.
- The results of this survey were published in the Journal of Veterinary Medical Education (Spring volume 2012) showing that only 54% of the responding states acknowledged the existence of a wellness program.
- The AVMA has established suggested guidelines regarding the way state wellness programs should be set up and run. The harsh reality remains that each program varies from state to state and some states have absolutely no wellness program at all. This should not be!

Alabama Veterinary Professionals Wellness Program

- In 2000, AVPWP was established by the Alabama State Board of Veterinary Medical Examiners (ASBVME), as called for by the Alabama Veterinary Practice Act.
- This program is now widely recognized as a premier Wellness Program for veterinarians and other animal health care workers in Alabama. We also provide consultations nationally with a proven history of experience in working with health care professionals and a willingness to work with others as needed.

Alabama's Wellness Guidelines

- Alabama (my state) has a program mandated by state law.
- The AVPWP is under the indirect supervision of the ASBVME through a committee nominated by the ALVMA and confirmed by the ASVBME.
- The AVPWP is run by a nonprofit foundation that is funded by part of the fees paid annually during the renewal of veterinary licenses.
- Dr. Williams serves as a director of that foundation with 2 part time staff employees.
- Several professional wellness consultants are used as needed, primarily for interventions and evaluations.

Wellness resources Available

- Some states, such as South Carolina and Texas use a professional recovery network that provides services for medical professionals that include physicians, dentists, nurses, veterinarians and other.

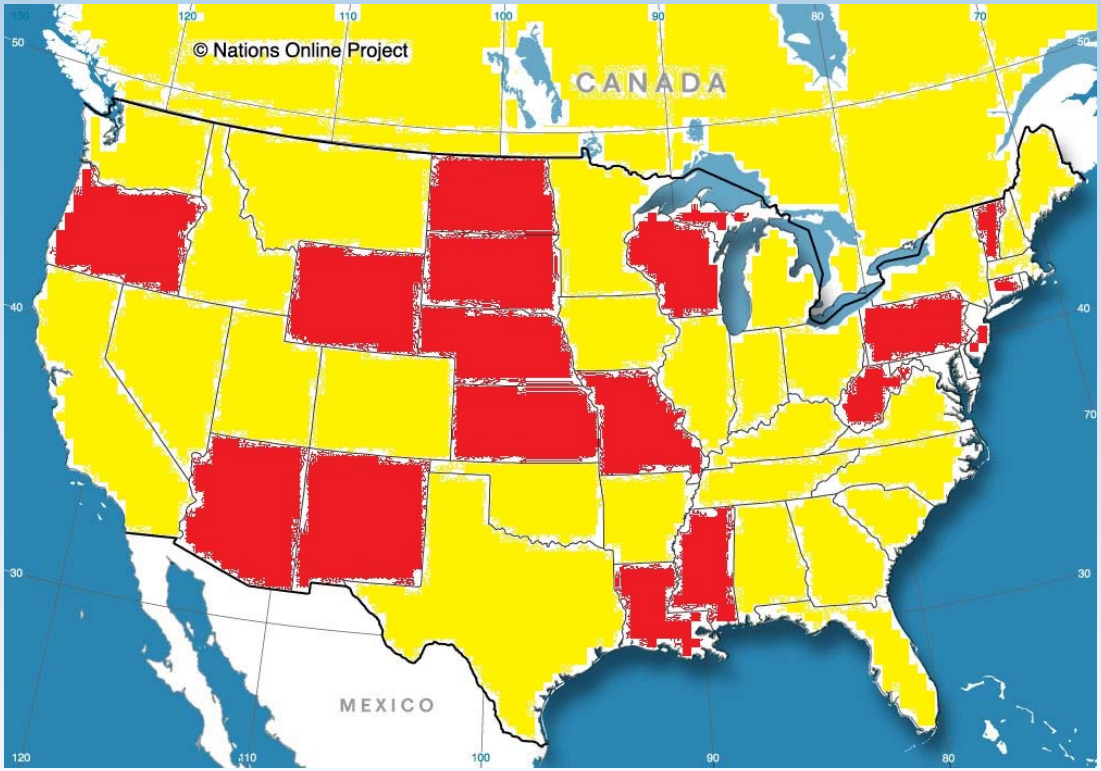
- Other state programs such as Georgia and Maine have a contact person that is a volunteer. These individuals have almost no authority and very little support in addressing substance abuse problems.

- Alabama's Wellness Program has provided professional wellness consultations to individuals in both of these states.

Overview of States

- Still other states use recovered individuals as points of contact for the VMAs or State Boards
- Others use a Physician's Professional Wellness Program much like Alabama did for many years.
- Some states seemingly provide no resources and appear to address wellness issues punitively without an opportunity for help for professionals.

Wellness programs by state



Wellness Program

No Wellness Program

No Information Found on AVMA Website for Wellness Programs:

- Oregon
- Arizona
- New Mexico
- Wyoming
- North Dakota
- South Dakota
- Nebraska
- Kansas
- Missouri
- Louisiana
- Mississippi
- Michigan
- West Virginia
- Washington D.C.
- Maryland
- Delaware
- New Jersey
- Vermont
- Rhode Island
- Connecticut

State Variances – Dr. Williams

- Michigan: wellness task force, not funded
- Idaho: Run outside of the regulatory board; not funded/volunteer
- Illinois: Provide an 800 number in regards to referrals for the veterinarian
- Massachusetts: www.massvet.org for more info
- Tennessee: e-tmg.org for information
- Utah: Not an organized program. Use UVMA funds
- New York: was not aware of a program
- Washington: Washington physician health program (wphp.org)

A wellness program in action

With over 1700 Veterinarians and 300 Veterinary Technicians in the state of Alabama, we inform the membership of services available to them by posting highly visible links regarding wellness information on the ALVMA, the ASBVME, the Alabama Veterinary Technician's Association (AVTA) and other associations' websites in this state.

Support and Assistance

Strictly Confidential

Evaluation and Treatment

Making the Information Available

- The AVPWP's website (www.alvetwellness.com) provides information and resources to professionals in Alabama.
- Additionally, our members are informed of our services through the use of flyers and announcements at regular meetings.
- The AVPWP also addresses wellness, suicide and other related issues in a quarterly digital email that is distributed to every veterinarian and technician throughout the state. A copy of the digital newsletter can be found on the AVPWP's website.

Alabama veterinary professionals wellness program

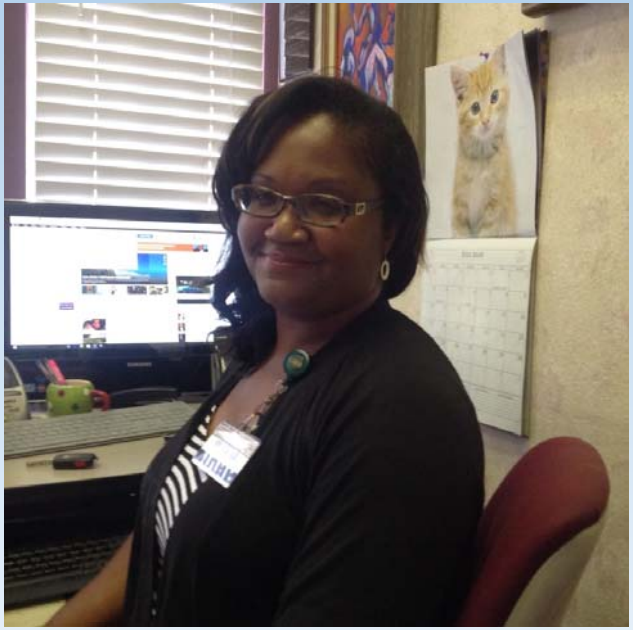
How it works

Lindsey Earley
AVPWP Case Manager

- AVPWP currently is monitoring or have in treatment 18 veterinarians and 1 Veterinary student.

- 4 have psychological contracts or are being monitored for behavior related challenges.

How it works



Corteza J. Townsend, MPA
Communications/ Administration

- The remaining 15 participants in the wellness program are being treated or monitored for drugs and/or alcohol.

- Each of these individuals were referred to the wellness program from various sources including other veterinarians, family members, the ASVBME, physicians and occasionally through self-referral.

A successful wellness program facilitates early detection and appropriate treatment for troubled veterinarians, veterinary technicians, support staff and families without risk of disciplinary action or blemish to their careers.

Where

Healing

Begins

The guidelines established for the states by the AVMA are that a wellness program should offer the following:

- That appropriate mechanisms are in place to protect the confidentiality of those who seek and provide help through authorized programs.
- That measures are sought to provide those who serve in veterinary peer assistance programs immunity from civil liability, except for willful or wanton acts.
- That strong working relationships are maintained between state, local, and national programs.
- That periodic review of the wellness committee and peer assistance program be conducted to ensure they are meeting the needs of the veterinary community.

Conclusion

Much more must be done

to provide opportunities for **all** of our colleagues to receive assistance **without** the fear of reprisal or punitive action by licensing authorities.

Additional Resources

- From The New York Times:

  The Unlikely Comeback of the ‘Pill-Popping Dermatologist’

  How Cheryl Karcher, a prominent New York doctor arrested on charges of forging patient prescriptions to support her drug habit, got her life back.

  http://www.nytimes.com/2016/07/24/fashion/cheryl-karcher-comeback-pill-popping-dermatologist.html?mwrsm=Email

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Thank you and best wishes for a healthy conference

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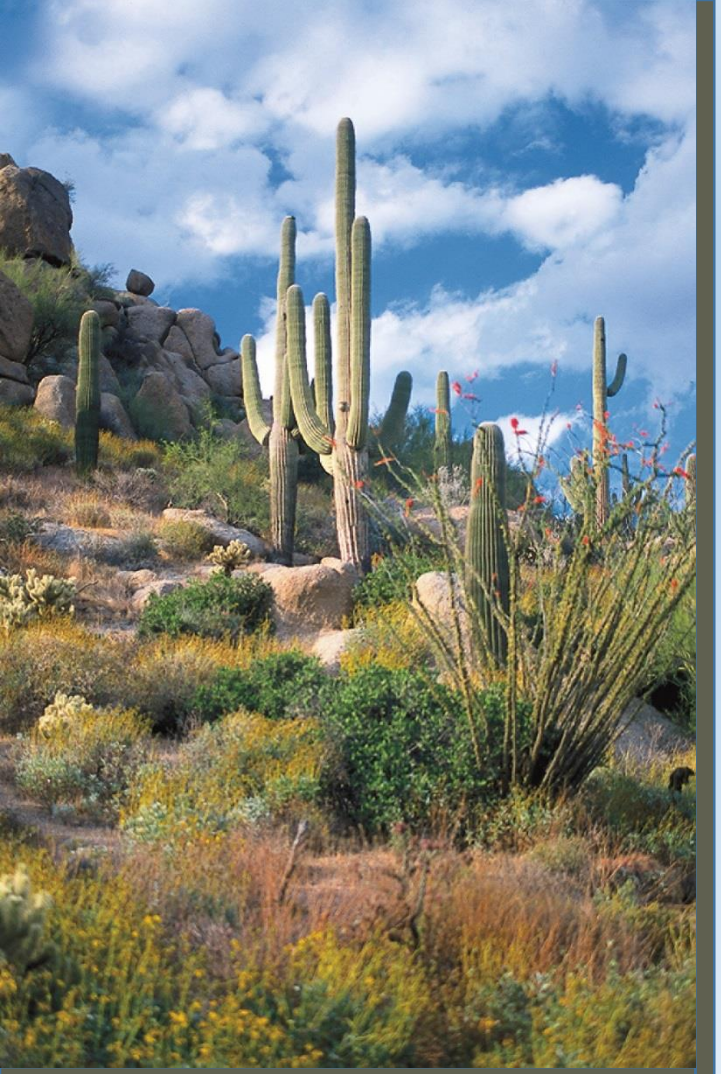

FTC v. North Carolina State Board of Dental Examiners

Where are we one year later?

Jennifer Ancona Semko, Esq.

Baker & McKenzie LLP

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Overview

- How did we get here?
  - Recap of the facts
  - Summary of the U.S. Supreme Court ruling
- Where are we now?
  - FTC guidance
  - Litigation updates
  - State responses (legislation, Executive Orders, AG opinions)

What's this case about again?

February 2015 Supreme Court Ruling

"If a State wants to rely on active market participants as regulators, it must provide active supervision if state-action immunity . . . Is to be invoked."

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State Action Immunity to Antitrust Liability

Originally established by the Supreme Court in 1943 and elaborated upon in subsequent cases

- Actions by a State are not subject to the federal antitrust laws at all
- Substate government entities also immune, so long as acting pursuant to a "clearly articulated policy to displace competition"
- Private entities may be protected if, in addition, they are "actively supervised" by the state

Background Facts

- NC Board reviewed practice act
  - Concluded act permitted only dentists to whiten teeth
  - sent cease-and-desist letters to non-dentists and others
- FTC opened investigation in 2008
- June 2010: Concluded board's actions were anticompetitive and brought administrative complaint

FTC Allegations

- FTC lawsuit alleged that NC Board violated antitrust laws that prohibit "unfair competition"
- NC Board defense: exempt from federal antitrust laws because authorized by the state and protected by **state-action immunity**
- FTC argued NC Board is a **private actor** and must therefore meet highest standard (clear articulation *and* active supervision)
- Primary reason: it is **"a regulatory body that is controlled by participants in the very industry it purports to regulate"**

Overview of Supreme Court Ruling

- 6 to 3 decision (Alito, Scalia and Thomas dissenting)
- **Majority's Conclusion:** Because a "controlling number" of the Board's decision makers are "active market participants in the occupation the Board regulates," the Board is treated as a private actor and must show active supervision by the State
  - The "active supervision" requirement was not met here
- **Dissent:** The majority seriously misunderstands the doctrine of state-action immunity. Board is a state entity. Period.

How Much State Supervision is Required?

- Test is “flexible and context-dependent”
- Don’t need day-to-day involvement in operations or micromanagement of every decision
- Review mechanism must provide “realistic assurance” that conduct “promotes state policy, rather than merely the party’s individual interests”
- **Four requirements:** (1) supervisor must review substance, not merely procedures; (2) must have power to veto/modify; (3) mere potential for supervision not enough; and (4) supervisor can’t be active market participant

Dissent's Concerns

- The NC Board is a state agency "and that is the end of the matter"
- ". . . until today . . . immunity was never conditioned on the proper use of state regulatory authority."
- Majority decision "will spawn confusion" and be difficult to apply
- States may now have to change composition of boards, "but it is **not clear what sort of changes are needed to satisfy the test** that the Court now adopts."

Dissent: Unanswered Questions

- What is a “controlling number”? Majority? Voting bloc? Obstructionist minority? Powerful agency chair?
- Who is an “active market participant”?
- What is the scope of the market? Must market be relevant to the particular challenged conduct? Would result be different if Board members did not provide teeth whitening?
- How much participation makes person “active” in the market?
- Why stop at structure of the board when evaluating “board capture”?

What does this mean for you?

"You're just going to feel a little pinch, then a horrific burning pain, your eyes will roll back into your head, you will drool uncontrollably..."

Implications/Considerations

- Broader issue of “state action” is relevant to all regulatory boards
- Many boards include practitioner members
- Amount of interface with the state may vary
- Second recent Supreme Court ruling narrowing state-action defense; FTC strongly disfavors state action defense and seeks a high bar for “active supervision”

But to be clear . . .

- Ruling does *not* mean that all board action is unprotected by state action immunity
  - Even if a board is not a state entity, state action immunity might apply—there are just two tests instead of one
- Ruling does *not* mean that all board action is now in violation of antitrust laws
  - Ruling says nothing about what practices are lawful
- State action immunity is one of several defenses to an antitrust claim

Potential Responses to Ruling

- Change board membership so not controlled by active market participants (*e.g.,* more public members; remove practitioner majority)
- Combine boards to dilute market participants (*e.g.*, umbrella boards)
- New oversight over existing board (e.g., "State Supervision Czar," legislative committee, state court, other disinterested state officials)
- Seek state endorsement of decisions with significant effects on competition
- Abandon boards for certain professions
- Make no changes

Other Considerations

- What are you authorized to do by statute or rule?
  - Cease-and-desist letter? Or "notice" of potential violation?
- Evaluate (establish?) state program for defense and indemnification of board members
- Some activities may be more likely to draw scrutiny than others (*e.g.*, individual disciplinary action vs. broader scope-of-practice question)
- Prepare for increase in private antitrust claims
- FTC may be emboldened
- Method of board member selection appears irrelevant

FTC Guidance

October 2015 guidance provides FTC staff's views on two questions:

(1) When does a state regulatory board require active supervision to invoke state action immunity? (i.e., when is decision made by "controlling number" of "active market participants")

(2) What factors are relevant to determining whether there has been enough "active supervision"?

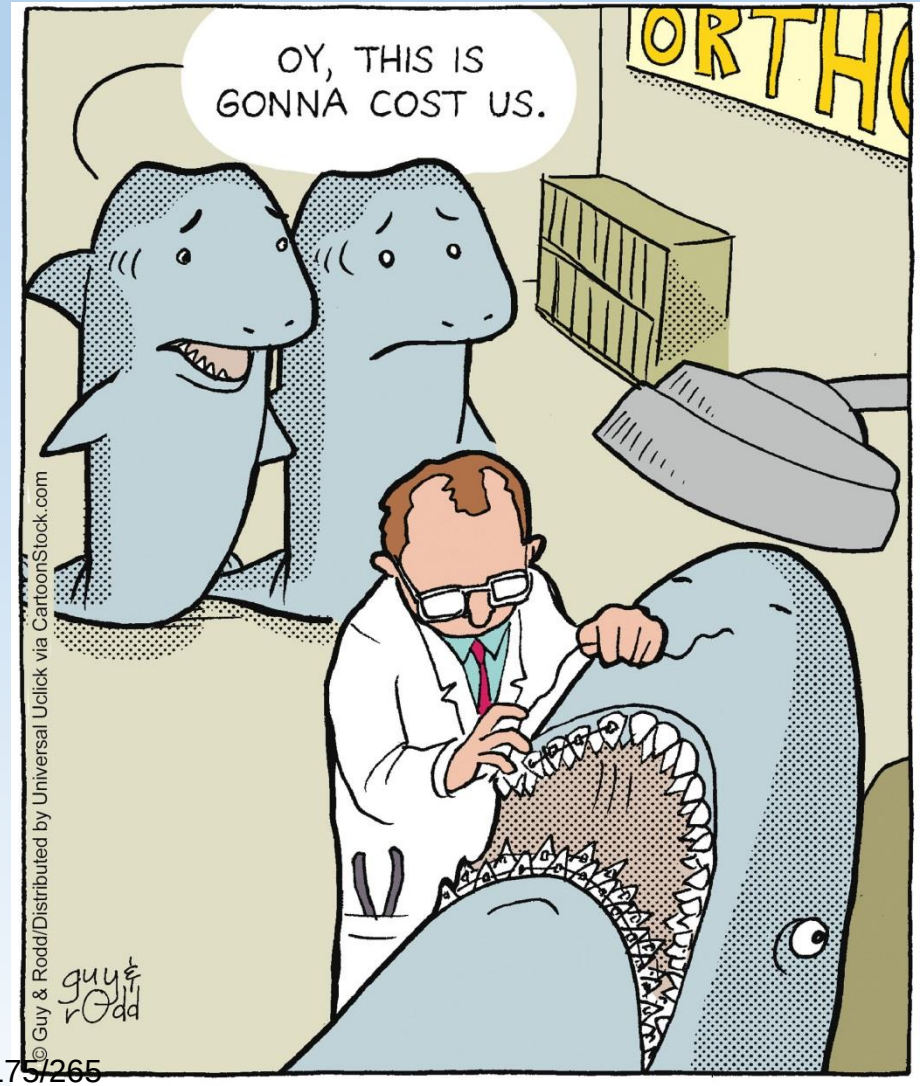
First, the FTC staff's "caveats"

- State legislature should empower a regulatory board to restrict competition only when necessary to protect against a credible risk of harm, like health/safety risks
- Active state supervision not required—legislature should actually prefer that boards be subject to antitrust laws
- Antitrust analysis is fact-specific and context-dependent
- Deviation from FTC guidance doesn't necessarily mean there is no immunity, or an antitrust violation

Now, the "good" parts

- Reasonable restraints on competition are ok, even where a competitor is harmed
  - Ex: electrician suspended for sub-standard work
- Ministerial (non-discretionary) acts do not give rise to antitrust liability
  - Ex: license denied for failure to submit diploma and fee
- Litigation brought by board does not create antitrust liability, unless it is a "sham"
- Disciplinary action affecting a single licensee will have a *de minimis* effect on competition (but watch out for patterns)

And now . . . brace yourselves for the rest



Interpretation of "Active Market Participant"

- Active market participant if:

  (1) licensed by the board, OR

  (2) provide any service that is subject to board's authority
- Does not matter that board member is not directly/personally affected by board's action
  - Ex: If Dental Board members were orthodontists? Still need active supervision because licensed/regulated
- Does not matter that board member has temporarily suspended practice in the profession (then why did Supreme Court say "active"?)

Broad Interpretation of “Controlling Number”

- “Controlling number” doesn’t necessarily mean a majority
- Controlled as matter of “law, procedure or fact”
  - Ex: veto power, tradition or practice
- Fact-specific inquiry and case-by-case
- Three examples: Board comprised of 4 non-electricians and 3 practicing electricians
  - Examples tell us that even having a majority of non-licensees may not be good enough for immunity

Three Examples

- **Example One: New regs require approval of 5 members**
  - Electricians have veto power; need active supervision
- **Example Two: New regs require majority approval**
  - But non-electricians routinely defer; minutes show non-electricians are not informed/knowledgeable
  - FTC *may* determine supervision required
- **Example Three: Segregation/exclusion**
  - Electrician members frequently meet separately; issued C&D orders to 6 contractors without awareness of others—FTC *may* determine supervision required

Active Supervision Factors FTC Considers

- "Supervisor" informed and collects information (hearings, public comments, studies)
  - But may not need to repeat Board's own investigation
- Supervisor evaluated merits and whether comports with standards established by legislature
- Supervisor issued written decision with rationale
  - Provides proof meaningful review and creates political accountability

Satisfactory Teeth Whitening Supervision

What Dental Board did . . .

- Reviewed/interpreted existing regulation
- Issued C&D letters

What FTC staff wants . . .

- Legislature designates executive agency to review new reg recommended by Board
- Public notice and comment period
- Investigation and information gathering
- Solicit written submissions
- Obtain public studies
- Info re: historic/current cost, price and availability
- Public hearing
- Written decision

Satisfactory Disciplinary Supervision

- Board controlled by active market participants wants to revoke/suspend license
- To show active state supervision:
  - Supervisor is not active market participant (Sec of Health, AG, etc.)
  - Reviews evidentiary record
  - Supplements record, if appropriate
  - *De novo* review of merits
  - Written decision approving, modifying or disapproving
- *De minimis* effect on competition; unless pattern

Examples of INSUFFICIENT Supervision

- Supervisor is itself controlled by active market participants
- State official monitors but lacks veto authority
- State official is on board with full voting rights, but only one of many members and lacks veto
- Ongoing advice from AG or state official
- Supervisor is staffed and funded but, in practice, is a rubber stamp
- Supervisor reviews only procedure followed, not substantive review of actions

Commissioner Ohlhausen Testimony

- February 2016, Senate Judiciary Committee (Subcommittee on Antitrust, Competition Policy and Consumer Rights)
- In a nutshell: occupational licensing can be good . . . but also bad

Litigation Consequences

- Ruling (and guidance?) have emboldened some private litigants to assert antitrust claims, even when merits not strong
- Does not mean boards will lose; but have potentially lost straightforward grounds for early dismissal
- Suits continue . . . victories

and losses

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Teladoc, Inc. v. Texas Medical Board

- National telemedicine provider sues Texas Board in April 2015
- Seeking to stop rule requiring doctors to meet in person with new patients before writing prescriptions
- Alleges Board adopted rule only when Teladoc began to be a competitive threat to traditional practices

Teladoc, Inc. v. Texas Medical Board

- Board includes 12 practicing physicians (voted 13/1 for new rule)
- 203 of 206 public comments opposed the new rule
  - Two favoring statements came from the Texas Medical Association
- Board argues new rule clarifies and expands opportunities for telemedicine . . . Only scenario prohibited is treating unknown patient without objective diagnostic data or ability to follow up with patient

Teladoc, Inc. v. Texas Medical Board

- May 2015 injunction (state action immunity not asserted)
- Board's motion to dismiss denied December 2015
- Ruling: Board failed to prove entitlement to state action immunity . . . failed to show active state supervision
  - Judicial review of decisions by courts/SOAH insufficient
  - Legislature's "sunset review" insufficient
  - Requirement to notify legislature of rules changes insufficient
- On appeal . . . or is it?

Robb v. CT Board of Veterinary Medicine

- June 2015 Complaint against CT Board and its members
- DVM brings antitrust claims to block disciplinary action stemming from his refusal to follow vaccination protocols
- January 2016: court dismisses complaint . . . because Robb failed to allege adequate antitrust claim, immunity issue not addressed

Other victories for state boards

- *Petrie v. Virginia Board of Medicine*
- *Henry v. NC Acupuncture Licensing Board*
- *Rosenberg v. State of Florida*
- *Rodgers v. Louisiana State Board of Nursing*

Examples of Proposed Legislation

- ***Arizona – House Bill 2613***
  - Pending legislation to deregulate certain professions (athletic trainers, geologists, landscape architects)
- ***Connecticut – Senate Bill 15***
  - Adds another level of review for boards; decision are proposed and shall be submitted to commissioner of Consumer Protection for approval, modification, rejection or further review
- ***Georgia – House Bill 952***
  - Provides executive oversight of licensing boards to ensure antitrust immunity. Governor has authority to approve/veto any proposed rule; can review/approve any rule challenged by appeal to the governor; approve, remand, modify, reverse any board action challenged via appeal to the Governor

Examples of Executive Orders

- **Alabama – Executive Order #7**
  - Established Alabama office for Regulatory Oversight of Boards and Commissions; voluntary program for boards to comply with existing law that requires active state supervision as a condition of state action immunity.
  - http://governor.alabama.gov/newsroom/2015/06/executive-order-number-7-2/
- **Oklahoma – Executive Order 2015-33**
  - All disciplinary actions (not rulemaking) must first be reviewed by AG's office before formal hearing will occur
  - https://www.sos.ok.gov/documents/executive/993.pdf

Examples of Attorney General Opinions

- **California - Opinion No. 15-402**
  - *North Carolina State Dental Board* has brought attention to active state supervision, but standard is flexible and fact-specific . . . Thus, state has many options in deciding how to respond
  - https://oag.ca.gov/system/files/opinions/pdfs/15-402_0.pdf
- **Idaho – Opinion 16-1**
  - Increase public membership on boards. *This alternative must strike an appropriate balance between need for subject matter expertise and board controlling market access.*
  - Assign an independent state official the authority to approve, reject or modify market participant-controlled board decisions.
  - Evaluate necessity of boards and commissions.
  - http://www.ag.idaho.gov/publications/op-guide-cert/2016/Opinion16-1.pdf

Questions?

jennifer.semko@bakermckenzie.com

(202) 835-4250

AAVSB
AMERICAN ASSOCIATION OF VETERINARY STATE BOARDS

The Trusted Interface Between Consumers and The Veterinary Industry

AAVSB Overview Presentation
September 23, 2016
Cal Lai, CEO

Vet24seven, Inc. 2016—Company Confidential

WHAT PET OWNERS THINK…

82%

pet owners view vets as the most trusted source for animal information

81%

pet owners say interactions with their veterinarian are NOT meeting their expectations – interactions seen as transactional

85%

pet owners say the connection to their vet via telehealth-phone/email/ text-is appealing

2016 Banfield-CSU Communication Preference & Telehealth Scenario Assessment, 2011 Bayer Veterinary Care Usage Study

WHAT VETERINARIANS THINK…

40% 40% of vet clinics do not answer client questions via phone

70% believe that communication technologies can strengthen the vet-client relationship

70% 70% of vets say they are unlikely to offer any telehealth service in the near future

2016 Banfield-CSU Communication Preference & Telehealth Scenario Assessment, 2011 Bayer Veterinary Care Usage Study

THE MARKET OPPORTUNITY

We live in the on-demand, mobile world of instant gratification and ultra-convenience, where consumers demand immediate advice, answers, products and services to meet important needs and concerns.

We thought the solution to the on-demand needs of clients was video conferencing, where clients could remotely consult with their veterinarians via video.

We were wrong…

VET24SEVEN – THE BEGINNING

Objective

- Lower the barriers for animals to get the care they need
- Engage clients earlier and more frequently
- Facilitate better care for animals and improved satisfaction for pet owners
- Provide a veterinarian-directed alternative to the internet

VCPR

- Vet24seven was a communication platform
- Only the Veterinarian knows if a VCPR exists
- Veterinarian integrity crucial to compliance and proper decision-making

VET24SEVEN – VIDEO CONSULTATIONS

Usage

- Designed for pet owners to connect with their veterinarian through a video consultation
- Veterinarians were to promote it to their clients
- Clients without a veterinarian could connect with a veterinarian and be directed to an appropriate veterinarian near them

Results

- Thousands of pet owners, mostly female, downloaded the app
- More than 90% completed detailed pet owner and pet profiles
- 4 months later, only a handful of consults conducted

VET24SEVEN – WHAT WE LEARNED

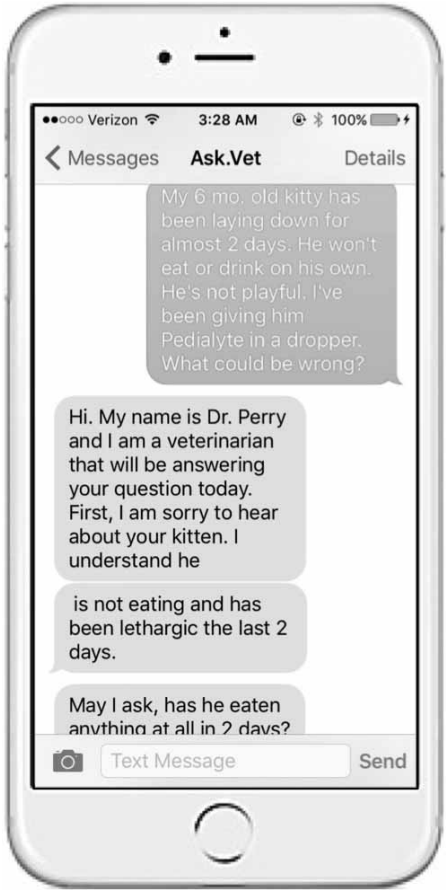
Pet Owner Feedback

- We talked with several hundred that downloaded the app
- We didn't lower the barriers enough
- Nobody wants to be seen on video
- Demand for service advising pet owners and assuring them they're making the right decisions

Pivot to Ask.Vet

- Lowered barrier even more to connect pet owners with veterinarians
- Texting is one of the highest frequency activities performed on mobile devices
- Simple, initially free, texting interface to connect pet owners with veterinarians in their time of need

THE ASK.VET SOLUTION



TEXT "Vet" to 67076

Text an animal question, photos and/or videos to Ask.Vet

Fill out Intake Form

Answer a few simple questions about your pet and any issues

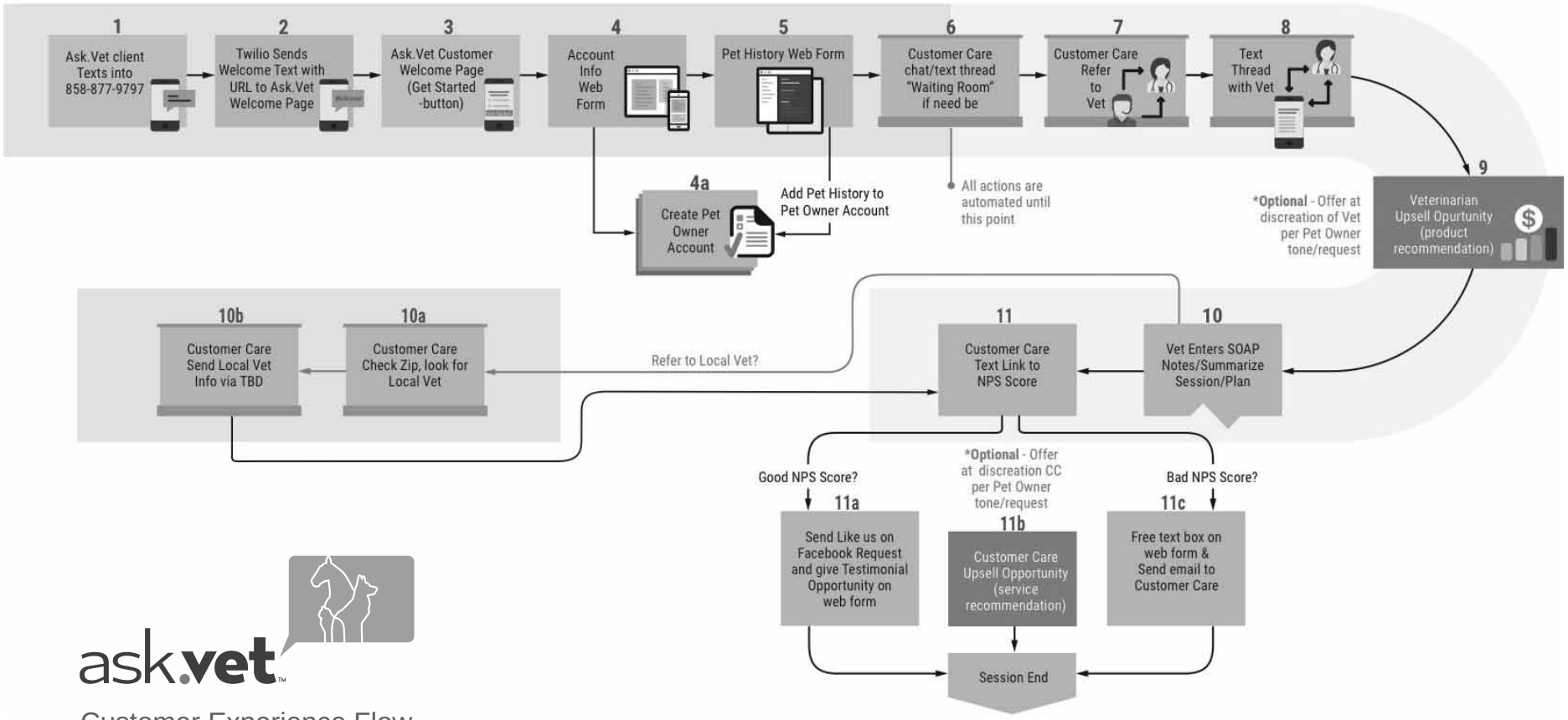
Connect with a Vet

Connect with a licensed US veterinarian within minutes for a live text chat—our average session lasts 10-12 minutes

Get referred

About 70% of our text chats end in a referral to a clinic or emergency hospital

HOW ASK.VET WORKS



ask.vet™

Customer Experience Flow

ASK.VET STATS (Since launch: 12/15/15)

10,000+ user accounts

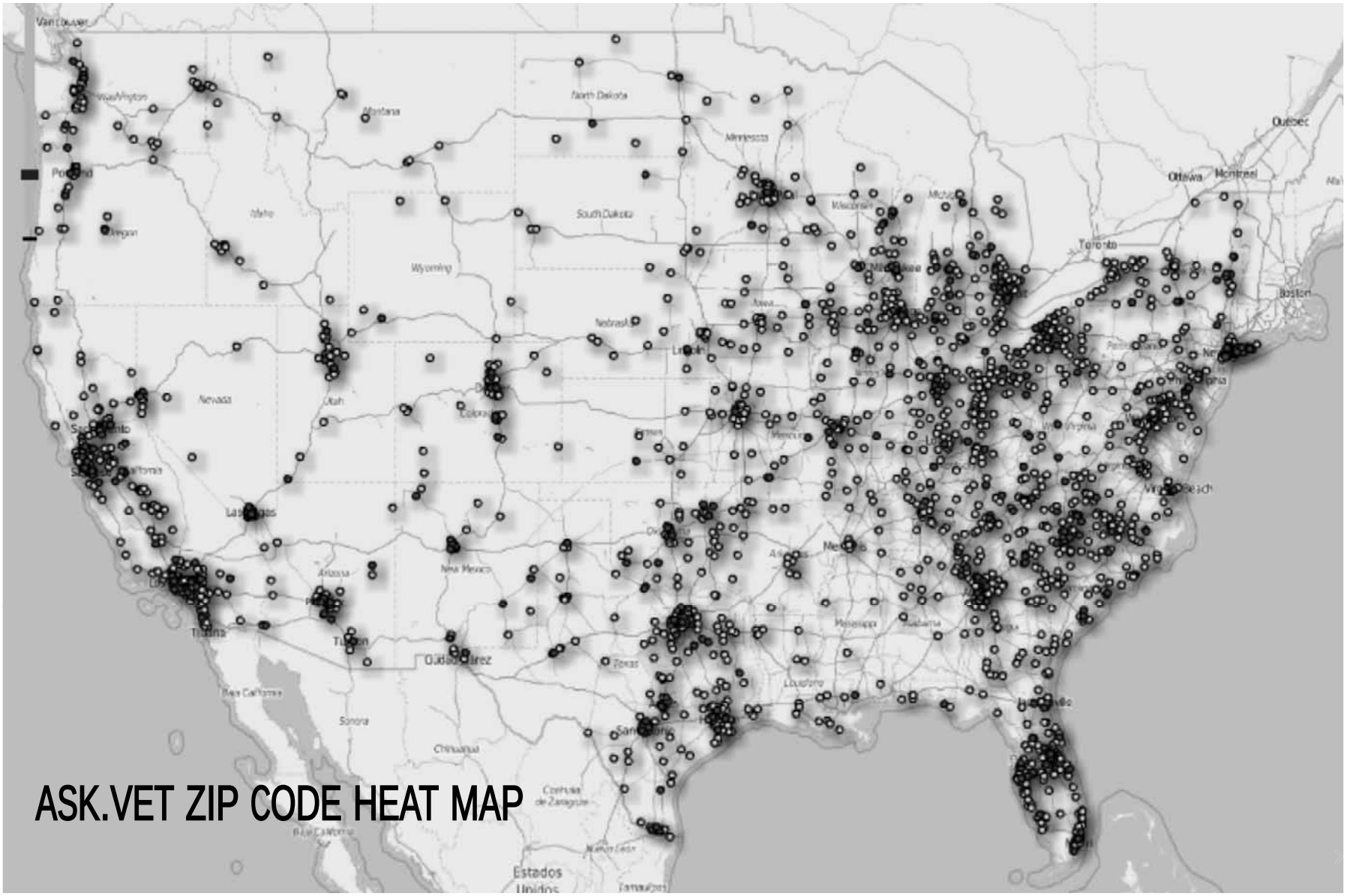
1,000-1,200 texts/month
Approx. $1,000/month marketing spend

4.8/5.0 star reviews

800 monthly referrals to clinics & hospitals

70% of texts result in a referral

15% regular users


ASK.VET ZIP CODE HEAT MAP
Montana
North Dakota
Minnesota
South Dakota
Wyoming
Nebraska
Nevada
Utah
Colorado
Kansas
Missouri
Arkansas
Texas
Louisiana
Mississippi
Alabama
Georgia
Florida
Tennessee
Kentucky
Virginia
New Mexico
Arizona
Sonora
Chihuahua
Coahuila de Zaragoza
Nuevo León
Tamaulipas
Baja California
Baja California Sur
Estados Unidos
Quebec
Ottawa
Montreal
Toronto
Boston
Portland
Las Vegas
Tijuana
Tucson
Ciudad Juárez
Lincoln
Virginia Beach

WHY ASK.VET IS THE TRUSTED INTERFACE

THE VOICE OF THE VET

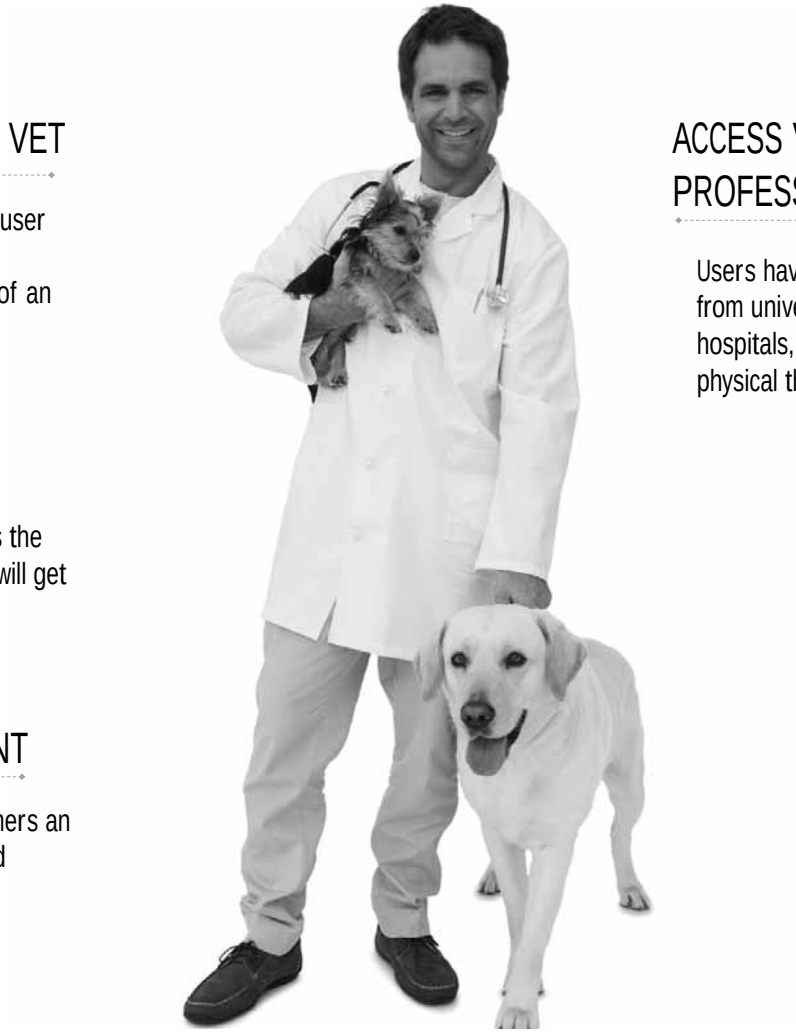
Our brand is built on trust. Trust with the user is created by a caring, compassionate veterinarian willing to help at the moment of an animal's need.

AVAILABILITY

Anytime, anywhere availability gives the consumer peace of mind that they will get help when they need it.

EASY ENGAGEMENT

The Ask.Vet texting service gives consumers an easy way to access veterinary advice and information.



ACCESS VETS, SPECIALISTS, OTHER PROFESSIONALS

Users have instant and direct access to vets, specialists from university veterinary hospitals and top private hospitals, as well as experts in behavior, nutrition, physical therapy and animal psychology.

ADVICE, EDUCATION, PEACE OF MIND

Ask.Vet helps pet owners make the best possible decisions for the care, health and wellness of their animals. We make referrals to veterinarians and hospitals that provide the highest levels of care and customer service.

VETERINARIAN PROFILES, HIRING & TRAINING

OUR VETERINARIANS

Caring, Experienced Clinicians

- Average of 15+ years in practice
- Practice owners, former practice owners, associates
- Expertise includes behavior, rehabilitation, allergies, nutrition, hospice
- University-supported programs developing

ANIMAL EXPERTISE

Expertise with more than 26 species

- Large Animals
- Companion Animals
- Pocket Pets
- Exotics - Birds, Reptiles, Fish

VETERINARY RECRUITING, TRAINING & HIRING

Rigorous Screening for Experience, Fit and Customer Service Attitude

- Contract position
- Veterinary employment sources, job sites, personal referrals
- Email screening - Confirmation of US license in good standing, proof of insurance
- Phone interview with Director of Customer Success
- Training on proprietary dashboard
- 30-day monitoring of text sessions for all new veterinarians
- Ongoing feedback by Director of Customer Success
- Rating by Pet Owners
- Monthly newsletter of information and updates

ASK.VET SERVICES FOR VETERINARY PRACTICES

AnytimeVetConnect™

- Your client texts a unique, custom code to 67076
- Ask.Vet system instantly recognizes your client
- Your client is connected via text to an Ask.Vet Veterinarian
- Ask.Vet Veterinarian may refer client back to your clinic or offer emergency clinic referral, depending on the issue
- Client asked to rate their experience
- Ask.Vet generates a text summary for each session that is emailed to corporate or individual clinics
- Ask.Vet tracks and reports your clients usage of service
- Hospitals pay a monthly fee for this service

New Client Referral Service

- Referral of new client based on match of location, species, and issue
- Client provided with your contact information
- Ask.Vet generates a text summary that includes client info, pet info and issue, and Veterinarian notes
- Ask.Vet sends text summary to clinic for follow-up and scheduling of appointment
- Ask.Vet tracks and reports all referrals made to your clinic
- Hospitals pay Ask.Vet a referral fee for leads and for completed office visits

ASK.VET

What We've Learned

- About 50% of pet owners texting in do not have a regular veterinarian
- Pet owners are seeking a trusted resource who will listen and guide them to the appropriate care
- Similar to human healthcare, people don't understand what to do, but they want to do the right thing

Why Clients Contact Ask.Vet

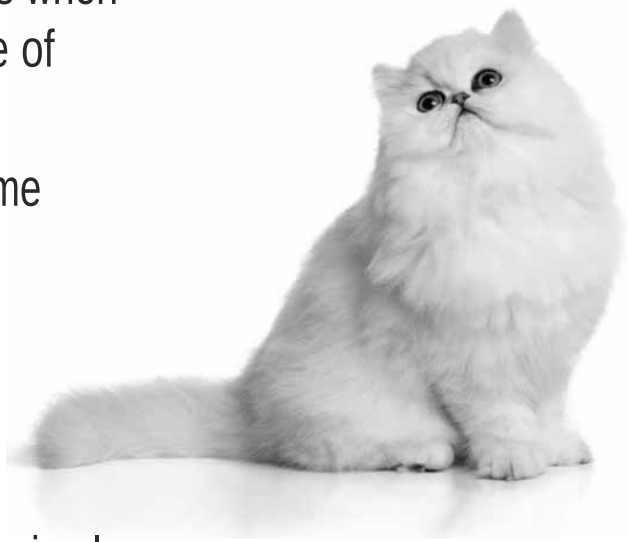
- Available in their time of need
- We're accessible, we listen, we recommend resources
- Gain insight into their concern, how serious it might be, and when/if they need to see a veterinarian
- Be better informed about what to expect at their veterinary visit
- Get further clarification on/understand what happened at their veterinary visit

USE CASES FOR DIGITAL HEALTH

- Improve communication between veterinarian and client (creating a better “in clinic” experience)
  - Explain what happened at a recent office visit
  - Explain what the client can expect/questions to ask at an upcoming visit (a more knowledgeable customer)
- Provide convenient, low barrier access to expertise when it’s needed
  - Chronic care follow up
  - Hospice care
  - Pain management
  - Surgical follow up
  - Triage – how serious is it?

USE CASES FOR DIGITAL HEALTH (continued)

- Easier initial access to a veterinarian will result in more clinic visits when it's appropriate and fewer unnecessary visits (a significant source of client dissatisfaction)
- Feline patients that are difficult to get to the hospital/clinic (in some studies nearly half of cats don't visit a vet regularly)
- Serve clients with impaired mobility
- Serve patients with impaired mobility (aged, arthritic, end of life)
- General care and wellness questions
  - I have a new rabbit. What do I feed it? How do I know if my animal is in heat? How do I care for its teeth?



WHAT THE STATE BOARD CAN DO TO IMPROVE DIGITAL HEALTH

- Assume the veterinarian will do the right thing
  - Current laws will protect clients and the profession
- Require a digital medical record for all remote consultations (trust but verify)

- When a client has a regular veterinarian, permit the assignment of the VCPR from hospital/clinic/attending veterinarian to a designated third-party provider like Ask.Vet where the hospital and provider have 1) a formal relationship and 2) where the client's medical records can be delivered remotely from the hospital/ clinic to the third-party provider
- Allow the veterinarian to recommend a defined set of solutions when appropriate, even in the absence of a VCPR
  - Recommendations for OTC medications (ex. skin disorders, abrasions, etc.)
  - It's better than the consumer making the choice by using Dr. Google
  - Are there some prescription medications used for non-life threatening situations that could fit in this category?

WHAT THE STATE BOARD CAN DO TO IMPROVE DIGITAL HEALTH (continued)

- Allow use so the profession can determine standards of care for digital health similar to how standards of care are determined for all new modalities (e.g., ultrasound and MRIs were not prohibited because we didn't know everything up front)

- Allow issuing prescription for some topical treatments (e.g., medicated shampoos, flea prevention)
- Allow veterinarian to recommend course of action based on data from remote medical device (e.g., thermometer, glucometer, EKG machine)
- Allow registered veterinary technicians to advise under supervision of a veterinarian
- Consider establishing a Client Certification Program that would enable clients, under the direction of a veterinarian, to administer a limited scope of tests, medications and procedures on their own animals. This could be a key component to the adoption of wellness programs, and a new source of revenues for both clinics/hospitals and veterinary state boards.

CONTACT

Mailing Address

809B Cuesta Drive #2132
Mountain View, CA
94040-3667

Call Cal

(650) 868-4083 (mobile)
(650) 933-5665 ext. 701
(650) 641-2180 (fax)

Text a Question

Text “Vet” to 67076

Email / Website

cal.lai@ask.vet
www.ask.vet

VE 1 – Approval of Draft for Hearing

State of Wisconsin
Department of Agriculture, Trade and Consumer Protection

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Matt Tompach	2) Date When Request Submitted: October 11, 2016 Items will be considered late if submitted after 12:00 p.m. on the deadline date.

3) Name of Board, Committee, Council, Sections:

VEB

4) Meeting Date:	5) Attachments:	6) How should the item be titled on the agenda page?
Oct. 26, 2016	☒ Yes ☐ No	Legislative/Administrative Rule Matters 1. Rulemaking Update a) VE 1 – Approval of Hearing Draft

7) Place Item in:	8) Is an appearance before the Board being scheduled?	9) Name of Case Advisor(s), if required:
☒ Open Session ☐ Closed Session	☐ Yes (Fill out Board Appearance Request) ☒ No	

10) Describe the issue and action that should be addressed:

Approval of VE 1 Hearing Draft

11) Authorization

Matt Tompach **Oct. 11, 2016**

Signature of person making this request Date

Supervisor (if required) Date

Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date

Directions for including supporting documents:
1. This form should be attached to any documents submitted to the agenda.
2. Post Agenda Deadline items must be authorized by a Supervisor and the Executive Director.
3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.

Revised 11/2015

DATE: October 14, 2016

TO: Veterinary Examining Board (VEB)

FROM: Cheryl Furstace Daniels, VEB Legal Counsel

SUBJECT: VE 1 – Definition of veterinary medical surgery**;** Hearing Draft Rule

PRESENTED BY: Cheryl Furstace Daniels

REQUESTED ACTION:

At the October 26, 2016, VEB meeting, the VEB will consider whether to authorize public hearings on a proposed rule to modify ch. VE 1 (Authority and Definitions). The proposed rule broadens the definition of surgery by removing the limitation in s. VEB 1.02 (9), Wis. Adm. Code, to procedures that are only for therapeutic purposes, but also specifying additional procedures exempted from the definition.

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.

Currently, in s. VE 1.02 (9), Wis. Adm. Code, the definition of surgery, for veterinary medical practice, is limited to procedures that are for therapeutic purposes. This leaves uncertainty for the profession and the Board, as to whether surgeries for other purposes, including reproduction and cosmetic changes, are included. A change to the definition is important to clarify that surgical procedures are broader than for therapeutic purposes, only, but also specifying additional procedures not considered surgery. This will ensure all persons, who are subject to these rules, are on notice as to practice conduct falling within the Board's jurisdiction.

Rule Content

The proposed rule specifies any veterinary medical procedure, in which the skin or tissue of the patient is penetrated or severed, is considered veterinary surgery. The proposed rule also makes clear that certain procedures, including activities identified in s. 89.05(2), Stats., simple dental extractions that require minor manipulation and minimal elevation, giving injections, and subcutaneous insertion of a microchip intended to be used to identify an animal, are not included in the definition of surgery.

Comparison with Rules in Adjacent States

None of the surrounding states of Illinois, Indiana, Iowa, Michigan or Minnesota, have their own definition of surgery for the purpose of practicing veterinary medicine. Illinois does include animal reproductive services in the definition of the practice of veterinary medicine. Iowa does include cosmetic surgery in the practice of the veterinary medicine definition.

Next Steps

If the VEB authorizes public hearings on this rule, VEB staff will refer a copy of the rule to the Legislative Council Rules Clearinghouse and publish a hearing notice in the Wisconsin Administrative Register. VEB staff will schedule hearings for December, 2016.

Following the public hearings, VEB staff will evaluate all comments received from the Clearinghouse and at the hearings and prepare a final draft rule for the VEB's consideration. If the VEB approves a final draft rule, the VEB staff will transmit the final draft rule for the Governor's approval. After the Governor's approval, the final draft will be submitted for legislative committee review. If the Legislature has no objections to the rule, the VEB will sign the final rulemaking order and transmit it for publication. The rule will take effect upon publication in the Wisconsin Administrative Register unless the final draft rule specifies a later effective date.

Wisconsin Veterinary Examining Board

Regulatory Flexibility Analysis

Rule Subject: **Authority and Definitions**
Adm. Code Reference: **VE 1**
Rules Clearinghouse #: **Not assigned**
DATCP Docket #: **16-VER-1**

Rule Summary

The Wisconsin Veterinary Examining Board (VEB) proposes a rule revision for ch. VEB 1, Wis. Adm. Code, to broaden the definition of surgery removing the limitation in s. VEB 1.02 (9), Wis. Adm. Code, to procedures that are for therapeutic purposes, and also specifying additional procedures exempted from the definition.

Currently, in s. VE 1.02 (9), Wis. Adm. Code, the definition of surgery, for veterinary medical practice, is limited to procedures that are for therapeutic purposes. This leaves uncertainty for the profession and the VEB, as to whether surgeries for other purposes, including reproduction and cosmetic changes, are included. A change to the definition is important to clarify that surgical procedures are broader than for therapeutic purposes, only, but also specifying additional procedures not considered surgery. This will ensure all persons, who are subject to these rules, are on notice as to practice conduct falling within the VEB's jurisdiction.

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. To the extent that the proposed rule will clarify what is included in the practice of veterinary medicine, this may have a positive impact in giving certainty to veterinarians concerning the regulation of surgery for reproductive, cosmetic and other purposes that do not fall clearly within the notion of "therapeutic".

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 will be positive in giving more certainty to veterinarians as to clarifying what is considered veterinary surgery. Therefore, no accommodation is required.

Conclusion

The provisions in this proposed rule will benefit those affected clarify that veterinary surgical procedures are broader than just for therapeutic purposes, but also specifying additional procedures not considered surgery. This will ensure all persons, who are subject to these rules, are on notice as to practice conduct falling within the VEB's jurisdiction.

This rule will not have a significant adverse effect on "small business" and is not subject to the delayed "small business" effective date provided in s. 227.22(2)(e), Stats.

Dated this _____ day of _____, 2016.

STATE OF WISCONSIN
VETERINARY EXAMINING BOARD

By _____
Member of the Board

VEB Docket No. 16-VER-1 **Hearing Draft**
Rules Clearinghouse No. TBD October 14, 2016

PROPOSED ORDER
OF THE WISCONSIN VETERINARY EXAMINING BOARD
ADOPTING RULES

The Wisconsin veterinary examining board hereby proposes the following rule ***to amend*** VE 1.02 (9); ***relating to*** the definition of veterinary medical surgery, and affecting small business.

Analysis Prepared by the Veterinary Examining Board

The Wisconsin Veterinary Examining Board (VEB) proposes a rule revision for ch. VEB 1, Wis. Adm. Code, to broaden the definition of surgery removing the limitation in s. VEB 1.02 (9), Wis. Adm. Code, to procedures that are for therapeutic purposes, and also specifying additional procedures exempted from the definition.

Statutes Interpreted

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

Statutory Authority

Statutory Authority: s. 89.03 (1), 227.10 and 227.11, 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

Currently, in s. VE 1.02 (9), Wis. Adm. Code, the definition of surgery, for veterinary medical practice, is limited to procedures that are for therapeutic purposes. This leaves uncertainty for the profession and the VEB, as to whether surgeries for other purposes, including reproduction and cosmetic changes, are included. A change to the definition is important to clarify that surgical procedures are broader than for therapeutic purposes, only, but also specifying additional procedures not considered surgery. This will ensure all persons, who are subject to these rules, are on notice as to practice conduct falling within the VEB's jurisdiction.

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

None of the surrounding states of Illinois, Indiana, Iowa, Michigan or Minnesota, have their own definition of surgery for the purpose of practicing veterinary medicine. Illinois does include animal reproductive services in the definition of the practice of veterinary medicine. Iowa does include cosmetic surgery in the practice of the veterinary medicine definition.

Summary of Factual Data and Analytical Methodologies

This rule was developed after consultation with veterinary medical groups and looking at other state rules related to veterinary surgery.

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. To the extent that the proposed rule will clarify what is included in the practice of veterinary medicine, this may have a positive impact in giving certainty to veterinarians concerning the regulation of surgery for reproductive, cosmetic and other purposes that do not fall clearly within the notion of "therapeutic".

VEB Contact

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

Where and When Comments May Be Submitted

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

Kelly Monaghan, Office Management Specialist
Office of the Secretary
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone: (608) 224-5023
E-Mail: Kelly.Monaghan@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 is approved by the Veterinary Examining Board.

SECTION 1. VE 1.02(9) is amended to read:

(9) "Surgery" means any procedure in which the skin or tissue of the patient is penetrated or severed ~~for therapeutic purposes~~, except for the following activities ~~identified in s. 89.05 (2). Surgery does not include giving injections or simple dental extractions that require minor manipulation and minimal elevation.~~:

(a) Activities identified in s. 89.05(2), Stats.

(b) Simple dental extractions that require minor manipulation and minimal elevation,

(c) Giving injections.

(d) Subcutaneous insertion of a microchip intended to be used to identify an animal.

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

Dated this _____day of _____, 2017.

VETERINARY EXAMINING BOARD

By _____
Member of the Board

b) Oct. 14, 2016 Wisconsin Veterinary Medical Association Convention Listening

State of Wisconsin
Department of Agriculture, Trade and Consumer Protection

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Matt Tompach	2) Date When Request Submitted: October 11, 2016 Items will be considered late if submitted after 12:00 p.m. on the deadline date.

3) Name of Board, Committee, Council, Sections:

VEB

4) Meeting Date:	5) Attachments:	6) How should the item be titled on the agenda page?
Oct. 26, 2016	☒ Yes ☐ No	Legislative/Administrative Rule Matters 1. Rulemaking Update b) Oct. 14, 2016 Wisconsin Veterinary Medical Association Convention Listening Session on amending Wisconsin Administrative Code Chs. VE 1-10

7) Place Item in:	8) Is an appearance before the Board being scheduled?	9) Name of Case Advisor(s), if required:
☒ Open Session ☐ Closed Session	☐ Yes (Fill out Board Appearance Request) ☒ No	

10) Describe the issue and action that should be addressed:

Update on Oct. 14 Listening Session at WVMA concerning amending Wisconsin Administrative Code Chs. VE 1-10.

11) Authorization

Matt Tompach **Oct. 11, 2016**

Signature of person making this request Date

Supervisor (if required) Date

Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date

Directions for including supporting documents:
1. This form should be attached to any documents submitted to the agenda.
2. Post Agenda Deadline items must be authorized by a Supervisor and the Executive Director.
3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.

Revised 11/2015

VEB Rules Advisory Committee.

State of Wisconsin
Department of Agriculture, Trade and Consumer Protection

AGENDA REQUEST FORM

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3) Name of Board, Committee, Council, Sections:

VEB

4) Meeting Date:	5) Attachments:	6) How should the item be titled on the agenda page?
Oct. 26, 2016	☒ Yes ☐ No	Legislative/Administrative Rule Matters 1. Rulemaking Update c) VEB Rules Advisory Committee

7) Place Item in:	8) Is an appearance before the Board being scheduled?	9) Name of Case Advisor(s), if required:
☒ Open Session ☐ Closed Session	☐ Yes (Fill out Board Appearance Request) ☒ No	

10) Describe the issue and action that should be addressed:

Consideration of issues concerning VEB Rules Advisory Committee.

11) Authorization

Matt Tompach **Oct. 11, 2016**

Signature of person making this request Date

Supervisor (if required) Date

Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date

Directions for including supporting documents:
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Revised 11/2015

DATE: October 14, 2016

TO: Veterinary Examining Board

FROM: Cheryl Furstace Daniels, VEB Legal Counsel

SUBJECT: Forming a VEB Rules Advisory Committee

Pursuant to Wis. Stat. § 227.13, the VEB may use informal conferences and consultations to obtain the viewpoint and advice of interested persons with respect to contemplated rule making. The VEB may appoint a committee of experts, interested persons, or representatives of the public to advise it with respect to any contemplated rule making. The committee shall have advisory powers only. In addition under Paragraph 1 of Section III in Executive Order 50, if an agency intends to establish an advisory committee under Wis. Stat. § 227.13, it shall provide a list of members to the Governor's Office of Regulatory Compliance via AdministrativeRules@Wisconsin.gov prior to establishing the advisory committee.

At its July 20, 2016, meeting, the VEB expressed interest in forming a VEB Rules Advisory Committee (RAC). In order to facilitate the formation, VEB staff propose the following procedures:

1. At the October meeting, the VEB could decide on the composition of the RAC including
    a. The size of the committee.
    b. Interest areas to be represented (for ex. companion animal vets, livestock animal vets, institutional vets, vet tech certified by degree, vet tech certified by OJT, veterinary service consumers, professionals interested in alternative/ complementary/integrative, etc.
    c. Geographic areas to be represented.

2. At the October meeting, the VEB could appoint a couple of members to review the applications and make recommendations for committee appointments.

3. Staff has begun to solicit applications from persons interested in being appointed to the RAC, by requesting the person sends a letter of interest and qualifications/resume. It will need to be made clear to VEB RAC members that the committee, and its members, are subject to the Open Meetings and Public Records statutes.

4. At the January meeting, the VEB could appoint the VEB RAC Members, sending the list to the Governor's Office of Regulatory Compliance when the meeting materials are distributed.

5. At the January Board meeting, the Board could approve an expanded Scope Statement to encompass the possibility of changes to VE 1-10, not only to deal with complementary, alternative, or integrative therapies, but also a range of issues to streamline and clarify the rules to better assist those who are affected by them.

6. The VEB RAC could begin work on rules, meeting as issues are considered and rules are drafted, making recommended changes to the Board. Board staff can use technology to facilitate RAC members in attending meetings and completing committee work.

UW Faculty Licensee Continuing Education Update – Memo/Certification Statement

State of Wisconsin
Department of Agriculture, Trade and Consumer Protection

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Matt Tompach	2) Date When Request Submitted: October 11, 2016 Items will be considered late if submitted after 12:00 p.m. on the deadline date.

3) Name of Board, Committee, Council, Sections:

VEB

4) Meeting Date:	5) Attachments:	6) How should the item be titled on the agenda page?
Oct. 26, 2016	☒ Yes ☐ No	Legislative/Administrative Rule Matters 1. Rulemaking Update d) UW Faculty Licensee Continuing Education Update

7) Place Item in:	8) Is an appearance before the Board being scheduled?	9) Name of Case Advisor(s), if required:
☒ Open Session ☐ Closed Session	☐ Yes (Fill out Board Appearance Request) ☒ No	

10) Describe the issue and action that should be addressed:

Update on faculty licensee continuing education.

11) Authorization

Matt Tompach **Oct. 11, 2016**

Signature of person making this request Date

Supervisor (if required) Date

Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date

Directions for including supporting documents:
1. This form should be attached to any documents submitted to the agenda.
2. Post Agenda Deadline items must be authorized by a Supervisor and the Executive Director.
3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.

Revised 11/2015

State of Wisconsin Governor Scott Walker

Veterinary Examining Board Dr. Philip C. Johnson, DVM, Chair

DATE: August 22, 2016

TO: All Holders of a Wisconsin Faculty Veterinarian License

FROM: Matt Tompach, Executive Director

SUBJECT: **NOTICE OF CONTINUING EDUCATION REQUIREMENTS**

At its July 20, 2016, meeting, the Wisconsin Veterinary Examining Board ("VEB") reaffirmed that the requirements in Wis. Admin. Code ch. VE 10, Continuing Veterinary Education for Veterinarians and Veterinarian Technicians, applies to holders of a Wisconsin faculty veterinarian license. The Board directed VEB staff to communicate with all holders of a Wisconsin faculty veterinarian license as to their obligation to complete at least 30 hours of continuing education ("CE") pertinent to veterinary medicine in each biennial period, currently **January 1, 2016 through December 31, 2017**.

Pursuant to Wis. Admin. Code § VE 10.02(1) (a), the 30 hours of continuing education shall be 50 minutes of contact time, include at least 25 hours of related to scientific topics pertinent to veterinary medicine, and shall be documented, with at least 25 hours documented by an approved continuing education provider, which may be the University of Wisconsin School of Veterinary Medicine or another accredited veterinary medical school. Pursuant to Wis. Admin. Code § VE 10.02 (8), the documentation of CE hour completion shall include one of the following:

(a) A certificate of attendance from an approved course provider.
(b) Complete references from journal articles read.
(c) A grade report or transcript from an accredited college or university.
(d) A copy of a published work authored or co−authored by the licensee or certificate holder.
(e) A copy of a meeting syllabus, announcement, abstract or proceeding for a presentation.
(f) A signed document from an internship or residency institution certifying enrollment in a program.

Also pursuant to Wis. Admin. Code § VE 10.02(8), beginning with the notice you will file in December, 2017, you shall maintain records of CE hour documentation for at least five (5) years from the date the certification statement is signed. A copy of Wis. Admin. Code ch. VE 10 is enclosed for your information.

In recognition of the fact that a veterinarian holding a faculty license in Wisconsin does not renew that license, triggering the requirement of certification by the veterinarian that they completed the required CE during the biennial period, the VEB has developed a "**CONTINUING EDUCATION FULFILLMENT FOR FACULTY LICENSURE"** form for you to make your biennial certification. That form will be sent to you in mid-October of each odd-numbered year for you to fill out, sign, and return by December 31st of that year. A copy of the form is enclosed for your information.

If you have any questions, please contact the Veterinary Examining Board.
Address: DATCP, PO Box 8911, Madison, WI 53708-8911
Telephone: (608) 224-4353
E-mail: datcpVEB@wi.gov

Wisconsin Department of Agriculture, Trade and Consumer Protection
Veterinary Examining Board
2811 Agriculture Drive, PO Box 8911, Madison, WI 53708-8911
Phone: (608) 224-4353

CONTINUING EDUCATION FULFILLMENT FOR FACULTY LICENSURE

PLEASE TYPE OR PRINT IN INK

LAST NAME	FIRST NAME	MI	FORMER / MAIDEN NAME(S)		
ADDRESS STREET	CITY			STATE	ZIP
MAILING ADDRESS STREET (If different)	CITY			STATE	ZIP
EMAIL			DAYTIME PHONE ( ) -		YEAR OF BIRTH
CREDENTIAL NUMBER					

MAIL THIS FORM TO THE BOARD AT THE ADDRESS LISTED ABOVE.

FORM IS DUE BY DECEMBER 31 OF EACH ODD NUMBERED YEAR.

CONTINUING EDUCATION

Failure to complete biennial continuing education requirements may result in your license expiring and additional fees will be assessed. For auditing purposes, every veterinarian shall maintain records of continuing education hours for at least 5 years from the date the certification statement signed. The board may audit for compliance by requiring a veterinarian to submit evidence of compliance to the board for the biennium immediately preceding the biennium in which the audit is performed. Veterinarian education requirements are found in Wis. Admin. Code Chapter VE 10.

VETERINARIANS HOLDING FACULTY LICENSE

☐ I completed 30 hours of continuing education during this biennium, as required under Wis. Admin. Code. VE 10.02(1).

AFFIDAVIT OF LICENSE HOLDER

I declare that I am the person referred to on this form and that my attestation is true in every respect. I understand that failure to provide requested information, making any materially false statement and/or giving any materially false information in connection with this form may result in a revocation, suspension or limitation of my license; or any combination thereof; or such other penalties as may be provided by law.

By signing below, I am signifying that I have read the above statements and understand the obligation I have as a license holder to report any change, to the information I have provided, to the Veterinary Examining Board.

Signature: _____ Date: _____

Professional Assistance Program (PAP) Update

State of Wisconsin
Department of Agriculture, Trade and Consumer Protection

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Matt Tompach	2) Date When Request Submitted: October 11, 2016 Items will be considered late if submitted after 12:00 p.m. on the deadline date.

3) Name of Board, Committee, Council, Sections:

VEB

4) Meeting Date:	5) Attachments:	6) How should the item be titled on the agenda page?
Oct. 26, 2016	☐ Yes ☐ No	Legislative/Administrative Rule Matters 2. Professional Assistance Program (PAP) Update.

7) Place Item in:	8) Is an appearance before the Board being scheduled?	9) Name of Case Advisor(s), if required:
☒ Open Session ☐ Closed Session	☐ Yes (Fill out Board Appearance Request) ☒ No	

10) Describe the issue and action that should be addressed:

Update on efforts to establish a Professional Assistance Program (PAP).

11) Authorization

Matt Tompach **Oct. 11, 2016**

Signature of person making this request Date

Supervisor (if required) Date

Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date

Directions for including supporting documents:
1. This form should be attached to any documents submitted to the agenda.
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Revised 11/2015

Danielle Smith

State of Wisconsin
Department of Agriculture, Trade and Consumer Protection

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request:	2) Date When Request Submitted:
Matt Tompach	October 11, 2016 Items will be considered late if submitted after 12:00 p.m. on the deadline date.

3) Name of Board, Committee, Council, Sections:

VEB

4) Meeting Date:	5) Attachments:	6) How should the item be titled on the agenda page?
Oct. 26, 2016	☒ Yes ☐ No	H. Licensing/Exam Inquiries 1. Accreditation of Educational Programs by Board a) Danielle Smith

7) Place Item in:	8) Is an appearance before the Board being scheduled?	9) Name of Case Advisor(s), if required:
☒ Open Session ☐ Closed Session	☐ Yes (Fill out Board Appearance Request) ☒ No	

10) Describe the issue and action that should be addressed:

Consider the educational background of Danielle Smith to take the VTNE; going forward, consider the suitability of an animal science degree for the VTNE in general.

11) Authorization

Matt Tompach	Oct. 11, 2016
Signature of person making this request	Date
Supervisor (if required)	Date
Executive Director signature (indicates approval to add post agenda deadline item to agenda)	Date

Directions for including supporting documents:
1. This form should be attached to any documents submitted to the agenda.
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3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.

Revised 11/2015

Tompach, Matthew C - DATCP

From: Danielle Smith <[redacted]@gmail.com>
Sent: Monday, September 26, 2016 9:52 PM
To: Tompach, Matthew C - DATCP
Subject: Regarding the Veterinary Technician License Exam
Attachments: Danielle Smith Resume September 2016.docx; Transcript page 1.png; Transcript page 2.png

Dear Mr. Tompach,
Thank you for the opportunity to present me to the board. My hope is that after reviewing my credentials they will allow me to take the veterinary technician test. If the board finds I need additional education, please notify me of what courses I am required to take.

As you review my resume, you can see that I have devoted my entire life and education to animals. I have been advised by various educational institutions that I need to go back to school for an additional two years to earn a Veterinary Technician Degree. I have already earned a Bachelor of Science degree in Animal Science with a Minor in Agricultural Business at North Carolina State University and I believe that this degree has adequately prepared me to take the exam and receive my license.

Attached are my transcripts and resume for your consideration.

Sincerely,
Danielle Smith

DANIELLE SMITH

[redacted]@gmail.com
[redacted] Black Earth, WI 53515
[redacted]

OBJECTIVE:

A position as a Veterinary Technician that utilizes my Animal Science education and related skill sets, including Student Teaching, Alltech Ambassadorship and Animal care specialist.

EDUCATION:

North Carolina State University, Raleigh, NC **2010-2014**

B.S. Animal Science, Minor in Agricultural Business

PROFESSIONAL EXPERIENCE:

Equine Boarding Farm Manager **July 2015-Present**

Eligius Equestrian, LLC, Cross Plains, WI

- Responsible for the care of 15 performance horses by feeding, blanketing, caring for their health and cleaning up after them.
- Manage and coach employees to effectively care for the horses on the weekend and week days.
- Communicate with boarders about their horses and farm events.
- Responsible for ordering feed and setting up farrier visits, vet visits, clinics and saddle fitters.

Companion Animal Department Manager **September 2014-July 2015**

PETCO, Bethel Park, PA

- Responsible for the health, handling, veterinary protocol and welfare of all animals.
- Manage and coach sales associates in providing great customer service and in performing their assigned tasks.
- Effectively organize, price merchandise and plan for ad planner location changes to maximize sales.

Farm Manager

Still Water Farm, Greensboro, NC **May-September 2014**

- Manage a boarding facility of 40 horses.
- Taught over 130 children to catch, groom and ride horses during 4 weeks of SW horse camp.

Alltech Student Ambassador **October 2013-May 2014**

North Carolina State University, Raleigh, NC

- Named Ambassador of the Year for 2013-2014.
- Selected to be the keynote speaker in front of over 250 attendees at the Student Dinner at the Alltech Symposium.
- Provided students with information on events and opportunities by presenting to classes, clubs and organizations.
- Generated over 200 student registrations for the Alltech Young Scientist program at NC State.
- Achieved a knowledge of Alltech products by attending and helping with events and seminars.

Teaching Assistant **January-May 2014**

Livestock Merchandising Class, North Carolina State University, Raleigh, NC

- Taught and assisted students in a classroom on how to enhance 8 yearling horses.
- Trained students to sell horses, cattle and sheep in a class facilitated sale.
- Evaluated students based on each individual's effort and test scores.

Breeding Intern **February-May 2013**

North Carolina State University Equine Educational Unit, Raleigh, NC

- Taught and performed demonstrations for classes of up to 50 students in reproduction and nutrition classes.
- Maintained the farm facility and examined horses daily, treated any wounds as they occurred.
- Performed collection on stallions and conducted successful insemination on mares without supervision of the manager.

Assistant Store Manager **May-August 2013**

Dirty Dogs Self Service Dog Wash, Greensboro, NC

- Managed the front desk of a fast - paced shop in the absence of the owners.
- Independently marketed and sold the shop's merchandise and services.

Teaching Assistant **August-December 2012**

Animal Reproduction Lab, North Carolina State University, Raleigh, NC

- Assisted in set up and cleanup for labs and planned class room instruction as well as demonstration.
- Independently instructed the class of 40 on artificial insemination, semen handling and the process of collection.

Kennel Assistant **Summer/Holidays, 2011-2012**

Cardinal Animal Hospital, Greensboro, NC

- Operated the kennel for up to 60 dogs and cats in the boarding section of a veterinary facility.
- Consulted with animal owners by answering questions and recommending products.

SKILLS:

- Vocal performance and theater
- Horseback riding and competing for 14 years

- - - - - - - - - - Degrees Awarded - - - - - - - - - -

Degree: Bachelor of Science
Confer Date: 2014-05-10
Plan: Animal Science
SubPlan: Industry Concentration
Plan: Minor in Agricultural Business Management

- - - - - - - - - - Transfer Credits - - - - - - - - - -

Transfer Credit From: Univ North Carolina Greensboro

	Attempted	Earned	Points
Transfer Totals:	3.000	3.000	0.000

- - - - - - - - - - Test Credits - - - - - - - - - -

2011 Fall Term

Course	Description	Attempted	Earned	Grade	Points
PSY 200	Intro to Psych	3.000	3.000	CR	0.000
Test Transfer GPA: 0.000 **Transfer Totals:**		3.000	3.000		0.000

- - - - - - - - - - Beginning of Undergraduate Record - - - - - - - - - -

2010 Fall Term

Plan: Animal Science, Bachelor of Science
Session: Regular Academic Session

Course	Description	Attempted	Earned	Grade	Points
ALS 103	Intro Topics ALS	1.000	1.000	A+	4.333
ANS 110	Intro Equine Sci	3.000	3.000	A	12.000
ANS 152	Intro Animal Sci	3.000	3.000	B	9.000
ANS 151	Intro to Animal Science Lab	1.000	1.000	A	4.000
BIO 181	Intro Bio Ecol/Div	4.000	4.000	C+	9.332
MA 701	Intermed Algebra	4.000	4.000	A	16.000
	Term GPA: 3.417 **Term Totals:**	16.000	16.000	14.000	53.665

Semester Dean's List

2011 Spring Term

Plan: Animal Science, Bachelor of Science
Session: Regular Academic Session

Course	Description	Attempted	Earned	Grade	Points
ANS 495	Spec Topics in ANS	1.000	1.000	B	3.000
BIO 183	Intro Bio Cell/Mol	4.000	4.000	C	8.000
CH 101	Gen Chem Lab	1.000	1.000	A+	4.333
ENG 101	Acad Writing Rech	4.000	4.000	A+	16.668
MA 107	Pre-Calculus I	3.000	3.000	A+	13.001
PE 103	Water Aerobics	1.000	1.000	B	3.000
	Term GPA: 3.167 **Term Totals:**	13.000	13.000	12.000	38.002

2011 Fall Term

Plan: Animal Science, Bachelor of Science
Session: Regular Academic Session

Course	Description	Attempted	Earned	Grade	Points
ANS 205	Phys Domestic Anim	3.000	3.000	B	9.000
ANS 206	Anat Domest An Lab	1.000	1.000	B	3.000
ANS 215	Basic AG Genetics	3.000	3.000	D+	3.999
ARE 201	Intro AG Res Econ	3.000	3.000	C	6.000
COM 112	Interpersonal Comm	3.000	3.000	B+	9.999
MA 121	Elements of Calc	3.000	3.000	C	6.000
PE 299	Self Defense	1.000	1.000	S	0.000
	Term GPA: 2.375 **Term Totals:**	17.000	17.000	14.000	37.998

2012 Spring Term

Plan: Animal Science, Bachelor of Science
Session: Regular Academic Session

Course	Description	Attempted	Earned	Grade	Points
ANS 220	Repro Last Dom Anl	3.000	3.000	B+	9.001
ANS 221	Repro Last Domest Ana Lab	1.000	1.000	A-	3.667
ANT 252	Cultural Anthropol	3.000	3.000	B+	9.999
CH 101	Gen Chem I	3.000	3.000	D+	3.999
CH 102	Gen CH I Lab	1.000	1.000	B+	3.333
ST 311	Intro to Statistic	3.000	3.000	C+	6.999
	Course Topic: Online Self Study 2 hrs/week				
	Term GPA: 2.571 **Term Totals:**	14.000	14.000	14.000	35.998

2012 Fall Term

Plan: Animal Science, Bachelor of Science
Session: Regular Academic Session

Course	Description	Attempted	Earned	Grade	Points
ANS 230	Nutr Dom Anim	3.000	3.000	B-	8.001
ANS 231	Nutr Dom Anim Lab	1.000	1.000	A	4.000
ANS 493	SP Problems in ANS	3.000	3.000	S	0.000
ARE 304	Agribusiness Mgmt	3.000	3.000	B+	9.999
HI 204	Europe 1300-1815	3.000	3.000	C+	6.999
PY 131	Conceptual Physics	4.000	4.000	B-	10.668
	Term GPA: 2.833 **Term Totals:**	17.000	17.000	14.000	39.667

2013 Spring Term

Plan: Animal Science, Bachelor of Science
Session: Regular Academic Session

Course	Description	Attempted	Earned	Grade	Points
ANS 101	Equin, Animal Care	1.000	1.000	A	4.000
ANS 240	Livestock Merchandising	2.000	2.000	A-	8.666
ANS 493	SP Problems in ANS	3.000	3.000	S	0.000
ARE 303	Farm Business Mgmt	3.000	3.000	C+	6.999
PE 143	Bowling	1.000	1.000	S	0.000
PSE 327	Paper and Society	1.000	1.000	A	4.000
REL 317	Christianity	3.000	3.000	C	6.000
	Term GPA: 3.139 **Term Totals:**	14.000	14.000	12.000	37.665

University Registrar

DANIELLE SMITH
[redacted]
BLACK EARTH, WI 53515

Print Date: [redacted]

- - - - - - - - - Undergraduate Record (Continued) - - - - - - - - -

2013 Fall Term

Plan: Animal Science, Bachelor of Science
Session: Regular Academic Session

Course		Description	Attempted	Earned	Grade	Points
ANS	404	Dairy Cattle Management Lec	2.000	2.000	C+	4.666
ANS	411	Mgt Grow/Perf Hors	3.000	3.000	B-	8.001
ANS	464	Dairy Cattle Management Lab	1.000	1.000	B	3.000
ARE	336	Resource Envi Econ	3.000	3.000	C+	6.999
BIO	140	Survey Animal Div	3.000	3.000	C	6.000
BIO	410	Intro Animal Behav	3.000	3.000	B	9.000
		Term GPA: 2.511 **Term Totals:**	15.000	15.000	15.000	37.666

2014 Spring Term

Plan: Animal Science, Bachelor of Science
Plan: Minor in Agricultural Business Management
Session: Regular Academic Session

Course		Description	Attempted	Earned	Grade	Points
ANS	303	Prin Equine Eval	2.000	2.000	A	8.000
ANS	410	Equine Breed Farm Management	3.000	3.000	B	9.000
ANS	415	Comparative Nutrit	3.000	3.000	B	9.000
ARE	321	AG Financial Mgt	3.000	3.000	B-	8.001
ENG	448	African-Amer Lit	3.000	3.000	B	9.000
		Term GPA: 3.072 **Term Totals:**	14.000	14.000	14.000	43.001

Undergraduate Career Totals

Cum GPA: 2.873 **Cum Totals:**	128.000	128.000	113.000	324.662

**********[End of Official Transcript]**********

University Registrar

Print Date: 2016-09-01

strengthening the veterinary regulatory community

New RACE Providers,
please click here

VTNE
Veterinary Technician National Exam

- Graduation/Alternate Path
- Retake the Exam
- Application Process
- Locations for Taking Exam
- Candidate Handbook
- Candidate Agreement
- Study Resources
- The VTNE Score Report
- FAQ's
- VTNE Contact Information

Graduation / Alternate Path

Graduation from Accredited Program

Most states and all provinces require that VTNE candidates must be graduates of a veterinary technology program accredited by the American or Canadian Veterinary Medical Association. AAVSB does not endorse or recommend any veterinary technology program or school.

For a list of accredited veterinary technology programs in the U.S., click here.
For a list of accredited veterinary technology programs in Canada, click here.

Transcript Requirements

In those states and provinces for which the AAVSB reviews eligibility, the AAVSB requires an official transcript showing a graduation date from an accredited veterinary technology program. **Transcripts must be postmarked by the application deadline date.**

Click here for transcript requirements.

On-the-Job Training or Alternative Pathway

Some states allow On the Job Training (OJT) or alternate pathways to being eligible for the VTNE. **Before applying to take the VTNE with on the job training, confirm that you meet the stringent OJT regulations for any of these three states.** Currently, these states include Alaska, California, and Wisconsin. Alaska's new OJT regulations are effective May 30, 2015 and OJT candidates should contact the Alaska Board for more information. Contact information can be found by using the Board and Agency Directory.

You also need to confirm that the state where you plan to work will credential veterinary technicians without a degree from an accredited vet tech program. There are select times when an official governmental regulatory board is able to make a special exception for the approval of a candidate for eligibility. AAVSB will always defer to the wishes of the regulatory State and Provincial Boards.

Other Education

Some states allow candidates with a veterinary education, with a Bachelor of Science in a related field, or from a program approved by the state to take the VTNE and become credentialed Veterinary Technicians. Some states allow foreign educated veterinarians or veterinary technicians to take the VTNE and become credentialed as Veterinary Technicians. Use the Board and Agency Directory to find contact information for states or provinces to ask about your states requirements.

Felonies or Convictions

A candidate's eligibility to take the exam will not be affected by a felony. However, you should check with your state or province regarding requirements for being credentialed and/or working in that state or province.

Vaccine Administration

State of Wisconsin
Department of Agriculture, Trade and Consumer Protection

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Matt Tompach	2) Date When Request Submitted: October 11, 2016 Items will be considered late if submitted after 12:00 p.m. on the deadline date.

3) Name of Board, Committee, Council, Sections:

VEB

4) Meeting Date:	5) Attachments:	6) How should the item be titled on the agenda page?
Oct. 26, 2016	☒ Yes ☐ No	H. Scope of Practice 2. Vaccine Administration

7) Place Item in:	8) Is an appearance before the Board being scheduled?	9) Name of Case Advisor(s), if required:
☒ Open Session ☐ Closed Session	☐ Yes (Fill out Board Appearance Request) ☒ No	

10) Describe the issue and action that should be addressed:

Consider question emailed by Dr. Keven Schepp concerning the administration of vaccines (such as distemper, parvo, bordatella) given by a boarding / Day camp facility.

11) Authorization

Matt Tompach	**Oct. 11, 2016**
Signature of person making this request	Date
Supervisor (if required)	Date
Executive Director signature (indicates approval to add post agenda deadline item to agenda)	Date

Directions for including supporting documents:
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Revised 11/2015

Tompach, Matthew C - DATCP

From: Tompach, Matthew C - DATCP
Sent: Thursday, October 06, 2016 1:39 PM
To: Tompach, Matthew C - DATCP
Subject: FW: Vaccine administration boarding / day camp facility

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From: DATCP VEB
Sent: Friday, April 29, 2016 10:24 AM
To: Tompach, Matthew C - DATCP <Matthew.Tompach@wisconsin.gov>
Subject: FW: Vaccine adminstration boarding / day camp facility

Sally A.S. Ballweg
License/Permit Program Associate
Wisconsin Department of Agriculture Trade and
Consumer Protection
ATTN: Veterinary Examining Board
2811 Agriculture Dr
PO Box 8911
Madison WI 53708-8911

From: Keven Schepp [mailto:Keven.Schepp@vca.com]
Sent: Tuesday, April 26, 2016 4:29 PM
To: DATCP VEB <datcpveb@wisconsin.gov>
Subject: Vaccine adminstration boarding / day camp facility

To whom it may concern,
I have come across a couple records from clients in which vaccines (distemper, parvo, bordatella) have been given by a boarding / Day camp facility.

Could you clarify the legality of this for me?

Dr Keven Schepp
VCA Pahle West Allis WI

Wisconsin Department of Agriculture, Trade and Consumer Protection
Veterinary Examining Board
2811 Agriculture Drive, PO Box 8911, Madison, WI 53708-8911
Phone: (608) 224-4353

COMPLAINT FORM

Mail this form to the address above or send to datcpVEB@wi.gov
If you have any questions about completing this form, contact the VEB staff at 608-224-4353.
Under Wisconsin's Open Records Law, this complaint and the information you provide will be available for public review upon request.

Complaint filed by (First, Middle, Last):	
Address:	
City, State, Zip:	
County: Fond du Lac	Phone # with area code:
Email address:	
Is the animal deceased? ☒ No ☐ Yes Date of Death _____	

People and/or Entities the complaint is against: Head to Tail Pet Supplies and Dog Wash, Heather Rogers owner	
Address: 154 Satterlee Street	
City, State, Zip Fond du Lac, WI 54937	
County: Fond du Lac	Phone # with area code: (920) 933-5111
Email address:	

RECEIVED
JUL 05 2016
FOOD SAFETY
By

6. Describe the incident. Include as much specific information as possible. Attach additional pages if needed. Attach copies of any relevant documents or evidence such as contracts, photographs, medical records, billing statements, personal notes, pill bottles, etc. It is very important that you do not dispose of any information or evidence even after you have filed a complaint.

Following is an exact copy of the Facebook advertisement which was posted on June 2nd and June 21st:

Head to Tail
June 2 at 11:13pm
Typical every Spring, there are a lot of FREE barn or porch kittens everywhere you look these days! If you are picking up a new family member, don't forget that kittens need to be dewormed and vaccinated! If you're strapped for cash (who isnt?) and can't afford a regular vet bill, we're offering kitten deworming at Head to Tail for $10 and Kitten Distemper Vaccinations for $20, or $25 for both! Kitten shots are typically administered at 6 weeks and 8 weeks, though better late than never!
We also offer cat Spays and Neuters for $75 which includes a FREE Rabies vaccine!
154 Satterlee Street, FdL (920)933-5111
Www.facebook.com/headtotail

I contend that Heather Rogers, a non veterinarian, is practicing veterinary medicine without a license. Although dewormers and certain immunizations are readily available for purchase (via farm and pet stores, online pharmacies, mail order catalogs), they are intended to be used by animal owners on their own animals. If a third party non-owner administers vaccines and medications in exchange for compensation this constitutes the practice of veterinary medicine. It is my understanding the spays and neuters also mentioned in the advertisement are done at the Spay Me! Clinic in Madison, Wisconsin.

Enclosed if a screen print of the Facebook advertisement.

_____ 6/29/16

Signature Date

Heather Rogers shared Head to Tail's photo.
17 mins

Head to Tail
June 2 at 11:13pm

Typical every Spring, there are a lot of FREE barn or porch kittens everywhere you look these days! If you are picking up a new family member, don't forget that kittens need to be dewormed and vaccinated! If you're strapped for cash (who isnt?) and can't afford a regular vet bill, we're offering kitten deworming at Head to Tail for $10 and Kitten Distemper Vaccinations for $20, or $25 for both! Kitten shots are typically administered at 6 weeks and 8 weeks, though better late than never!
We also offer cat Spays and Neuters for $75 which includes a FREE Rabies vaccine!
154 Satterlee Street, FdL (920)933-5111
Www.facebook.com/headtotail

Like Comment

Write a comment...

Dr. Marty Greer

State of Wisconsin
Department of Agriculture, Trade and Consumer Protection

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Matt Tompach	2) Date When Request Submitted: October 11, 2016 Items will be considered late if submitted after 12:00 p.m. on the deadline date.

3) Name of Board, Committee, Council, Sections:

VEB

4) Meeting Date:	5) Attachments:	6) How should the item be titled on the agenda page?
Oct. 26, 2016	☒ Yes ☐ No	H. Scope of Practice 3. Veterinary Supervision a) Dr. Marty Greer

7) Place Item in:	8) Is an appearance before the Board being scheduled?	9) Name of Case Advisor(s), if required:
☒ Open Session ☐ Closed Session	☐ Yes (Fill out Board Appearance Request) ☒ No	

10) Describe the issue and action that should be addressed:

Consider question emailed by Dr. Marty Greer concerning the performance of transcervical inseminations and cystocentesis by CVT's.

11) Authorization

Matt Tompach	**Oct. 11, 2016**
Signature of person making this request	Date
Supervisor (if required)	Date
Executive Director signature (indicates approval to add post agenda deadline item to agenda)	Date

Directions for including supporting documents:
1. This form should be attached to any documents submitted to the agenda.
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3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.

Revised 11/2015

Tompach, Matthew C - DATCP

From: Philip Johnson <pjohnson6@charter.net>
Sent: Tuesday, September 27, 2016 3:16 PM
To: Tompach, Matthew C - DATCP
Subject: Fwd: Examining board question

This is the e-mail I mentioned. We can ask this of the Board to review.

Phil

Sent from my iPhone

Begin forwarded message:

> **From:** Dr Marty Greer [redacted]>
> **Date:** August 28, 2016 at 8:36:14 PM CDT
> **To:** pjohnson6@charter.net
> **Subject: Examining board question**
>
> hi Phil - as I understand it you are still on the VEB of DATCP.
>
> I have a practice question - we do a number of transcervical inseminations in our practice. This is done without anesthesia, with the bitch standing on a table. It is a non-surgical procedure.
>
> Is this a procedure that our CVTs can perform? With supervision? How closely supervised?
>
> Also are CVTs allowed to perform cystocentesis on patients?
>
> thanks - hope to see you in Ames next week.
> Marty Greer

Dr. Mike McQueen

State of Wisconsin
Department of Agriculture, Trade and Consumer Protection

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Oct. 26, 2016	☒ Yes ☐ No	H. Scope of Practice 3. Veterinary Supervision b) Dr. Mike McQueen c) Dr. Maya Meinhold

7) Place Item in:	8) Is an appearance before the Board being scheduled?	9) Name of Case Advisor(s), if required:
☒ Open Session ☐ Closed Session	☐ Yes (Fill out Board Appearance Request) ☒ No	

10) Describe the issue and action that should be addressed:

Consider questions emailed by Drs. McQueen and Meinhold concerning the performance of animal chiropractic and veterinary supervision.

11) Authorization

Matt Tompach **Oct. 11, 2016**

Signature of person making this request Date

Supervisor (if required) Date

Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date

Directions for including supporting documents:
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Revised 11/2015

Tompach, Matthew C - DATCP

From: Tompach, Matthew C - DATCP
Sent: Tuesday, August 30, 2016 10:38 AM
To: 'Mike McQueen'
Subject: RE: FW: What are the laws regarding animal chiropractic?

I will put this topic on the agenda for the Oct. 26 Board meeting.

From: Mike McQueen [mailto:drmikemcqueen@gmail.com]
Sent: Tuesday, August 30, 2016 10:37 AM
To: Tompach, Matthew C - DATCP <Matthew.Tompach@wisconsin.gov>
Subject: Re: FW: What are the laws regarding animal chiropractic?

Thanks!

Can I get this forwarded to a board member or get the contact information of a member that would be able to provide insight to this? What I am seeing on other animal chiropractors websites in Wisconsin is a Vet referral form is all that is necessary.

A paralleling comment, I grew up in the Madison area I went to Healing Oasis in Sturtevant WI for my animal chiropractic certification. I am looking to move back closer to family but if the overall "tone" of the VEB is to change the laws to restrict certified animal chiropractors that are licensed chiropractors than that would be a good thing to know before committing to going back home.

Any and all information is welcome!
Thanks again,
Mike

On Tue, Aug 30, 2016 at 10:21 AM, Tompach, Matthew C - DATCP <Matthew.Tompach@wisconsin.gov> wrote:

> That issue isn't addressed in the rules, either. We would need to go to the Board for guidance.
>
> **From:** Mike McQueen [mailto:drmikemcqueen@gmail.com]
> **Sent:** Tuesday, August 30, 2016 10:12 AM
> **To:** Tompach, Matthew C - DATCP <Matthew.Tompach@wisconsin.gov>
> **Subject:** Re: FW: What are the laws regarding animal chiropractic?
>
> Thanks for the quick reply!
>
> When you stated "these type of practices are required to be performed under some level of supervision of a veterinarian."

Would indirect supervision in the form of a written and signed referral form by a vet be considered "some level of supervision of a veterinarian" ?

Thanks,

Mike

On Tue, Aug 30, 2016 at 10:01 AM, Tompach, Matthew C - DATCP <Matthew.Tompach@wisconsin.gov> wrote:

Dr. McQueen,

Your email about laws in the State of Wisconsin for animal chiropractic was forwarded to me.

At the April 27, 2016 Veterinary Examining Board ("VEB") meeting, the VEB considered several questions similar to yours.

At this meeting, the VEB approved a Statement of Scope for Wis. Admin. Code chs. VE 1 (Authority and Definitions) and VE 7 (Standards of Practice and Unprofessional Conduct for Veterinarians) allowing the VEB to consider changes to the rule. The Statement of Scope included the following:

> "This proposed rule may modify the definition of complimentary, alternative and integrative therapy to align it with the definition of veterinary practice ins. 89.02 (6), Stats., and to add additional therapies. (s. VE 1.02 (3m).) Finally this proposed rule will explore possible changes to the delegation of medical acts. (s. VE 7.02.)"

The approval of the Statement of Scope gives the Board authority to propose rule changes for final adoption. The process for amending a rule is a fairly lengthy one, but will include opportunities for any interested persons to bring forward issues and concerns for the VEB to consider. The VEB will place your e-mail on file with other materials to be considered as it begins work on developing rule changes. The VEB may hold listening sessions prior to developing any rule draft and is required to hold public hearings on any rule draft it develops before adoption. The VEB will work to ensure that interested persons, such as you, will have ample opportunity to make comments prior to adopting any rule amendments.

Until any amendments are adopted, however, these type of practices are required to be performed under some level of supervision of a veterinarian. Otherwise, the person performing these practices could be considered violating Wis. Stat. § 89.079(1), involving unauthorized practice of veterinary medicine.

Matt Tompach

Executive Director

Wisconsin Veterinary Examining Board

608/224-5024

From: Mike McQueen [mailto:drmikemcqueen@gmail.com]
Sent: Monday, August 29, 2016 4:48 PM
To: DATCP VEB <datcpveb@wisconsin.gov>
Subject: What are the laws regarding animal chiropractic?

Good afternoon,

I am inquiring as to what the laws are for animal chiropractic and how they would apply to a chiropractor certified in animal chiropractic?

Thanks!

Dr. Mike McQueen

Tompach, Matthew C - DATCP

From: Maya Meinhold <drmaya@animalcic.com>
Sent: Monday, October 10, 2016 10:34 AM
To: Tompach, Matthew C - DATCP
Subject: Re: FW: Animal Chiropractic Inquiry

Yes please feel free to use my email and contact information for the sake of the Open Session. I am also interested in submitting an additional comment as I will be unable to attend the proposed session on the 14th.

Thank you very much for your speedy reply.

On Mon, Oct 10, 2016 at 10:10 AM, Tompach, Matthew C - DATCP <Matthew.Tompach@wisconsin.gov> wrote:

May I use your email for VEB members to consider during the Open Session portion of the Oct. 26 Board meeting?

From: DATCP VEB
Sent: Monday, October 10, 2016 9:40 AM
To: Tompach, Matthew C - DATCP <Matthew.Tompach@wisconsin.gov>
Subject: FW: Animal Chiropractic Inquiry

Please reply to below email.

Thank you,

Sally A.S. Ballweg

License/Permit Program Associate

Veterinary Examining Board

Wisconsin Department of Agriculture Trade and

Consumer Protection

2811 Agriculture Dr

Madison WI 53718

www.datcp.wi.gov /Licenses /Veterinary Examining Board

From: Maya Meinhold [mailto:drmaya@animalcic.com]
Sent: Monday, October 10, 2016 9:08 AM
To: DATCP VEB <datcpveb@wisconsin.gov>
Subject: Animal Chiropractic Inquiry

To Whom it may concern,

My name is Maya Meinhold, DC and I am currently licensed in the states of Minnesota (#6086) and Wisconsin (#5099-12) to practice chiropractic. I am also certified by the International Veterinary Chiropractic Association and registered with the Minnesota Board of Chiropractic Examiners to practice as an Animal Chiropractor. I received my training in animal chiropractic at Options for Animals School of Animal Chiropractic in Wellsville, Kansas. I currently work on only animals in the state of Minnesota and am now looking to offer services in the state of Wisconsin. I have read both the Chiropractic and Veterinary statutes for Wisconsin, and have not come across information regarding animal chiropractic. I see that there are other DCs that are providing animal chiropractic care in the state of Wisconsin and it is my understanding that as long as I have the proper training that I am able to treat animals. I am writing to confirm that I am correct in this assumption but please reply with proper measures to be taken to offer animal chiropractic services legally in the state of Wisconsin if this is not the case. Please advise me on this topic, or direct me to the proper channels to gain further information.

Please feel free to contact me at any of the forms listed below. Thank you for your time!

Sincerely,

Maya Meinhold

--

Maya Meinhold, DC

Animal Connections Integrative Care, PA

Certified Animal Chiropractor by the IVCA

www.animalcic.com

drmaya@animalcic.com

(952) 406-2780

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--

Maya Meinhold, DC

Animal Connections Integrative Care, PA
Certified Animal Chiropractor by the IVCA
www.animalcic.com
drmaya@animalcic.com
(952) 406-2780

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Jennie Roadt

State of Wisconsin
Department of Agriculture, Trade and Consumer Protection

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VEB

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Oct. 26, 2016	☒ Yes ☐ No	H. Scope of Practice 3. Veterinary Supervision d) Jennie Roadt

7) Place Item in:	8) Is an appearance before the Board being scheduled?	9) Name of Case Advisor(s), if required:
☒ Open Session ☐ Closed Session	☐ Yes (Fill out Board Appearance Request) ☒ No	

10) Describe the issue and action that should be addressed:

Consider question emailed by Jennie Roadt concerning equine and canine massage therapies and veterinary supervision.

11) Authorization

Matt Tompach — **Oct. 11, 2016**

Signature of person making this request — Date

Supervisor (if required) — Date

Executive Director signature (indicates approval to add post agenda deadline item to agenda) — Date

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Revised 11/2015

Tompach, Matthew C - DATCP

From: Jen R. [redacted]@gmail.com>
Sent: Tuesday, September 20, 2016 9:52 AM
To: Tompach, Matthew C - DATCP
Subject: RE: Wisconsin laws and regulations regarding Equine and Canine massage

Thank you for your response. So is the proposed rule change to say that massage would be considered a medical act to be performed only by a veterinarian?
Until any rule changes would go into effect, are there any specific requirements as to the level of veterinary supervision, or that there just needs to be some type of supervision from a veterinarian?

Thank you for your time, this is very hard to figure out.

Tompach, Matthew C - DATCP

From: Tompach, Matthew C - DATCP
Sent: Monday, August 29, 2016 9:27 AM
To: [redacted]t@gmail.com'
Subject: RE: Wisconsin laws and regulations regarding Equine and Canine massage

Jennie,

The issue of the Scope of Veterinary Practice regarding canine massage therapy came before the Veterinary Examining Board ("VEB") at its meeting April 27, 2016.

At this meeting, the VEB approved a Statement of Scope for Wis. Admin. Code chs. VE 1 and 7 allowing the VEB to consider changes to the rule. The Statement of Scope included the following:

> "This proposed rule may modify the definition of complimentary, alternative and integrative therapy to align it with the definition of veterinary practice ins. 89.02 (6), Stats., and to add additional therapies. (s. VE 1.02 (3m).) Finally this proposed rule will explore possible changes to the delegation of medical acts. (s. VE 7.02.)"

The approval of the Statement of Scope gives the Board authority to propose rule changes for final adoption. The process for amending a rule is a fairly lengthy one, but will include opportunities for any interested persons to bring forward issues and concerns for the VEB to consider. The VEB will place your letter on file with other materials to be considered as it begins work on developing rule changes. The VEB may hold listening sessions prior to developing any rule draft and is required to hold public hearings on any rule draft it develops before adoption. The VEB will work to ensure that interested persons, such as you, will have ample opportunity to make comments prior to adopting any rule amendments.

Until any amendments are adopted, however, these type of practices are required to be performed under some level of supervision of a veterinarian. Otherwise, the person performing these practices could be considered violating Wis. Stat. § 89.079(1), involving unauthorized practice of veterinary medicine

Matt Tompach
Executive Director
Wisconsin Veterinary Examining Board
608/224-5024

From: Jen R. [[redacted]@gmail.com]
Sent: Friday, August 26, 2016 3:32 PM
To: DATCP VEB <datcpveb@wisconsin.gov>
Subject: Wisconsin laws and regulations regarding Equine and Canine massage

Hello,

I am sending this email trying to find information regarding laws for equine and canine massage in Wisconsin. I am extremely interested in becoming certified in equine and canine massage, but am having trouble finding out what Wisconsin law is in regards to such. I know some state laws indicate that it can only be provided by a veterinarian or under veterinarian supervision, but can't find what Wisconsin's is regarding providing animal massage.

Could you please tell me where I can find out what Wisconsin law is? I am not a veterinarian, so I would like to know what the regulations are prior to spending the time and money on certification.

Please let me know if there is any other information you need from me to assist in this.

Thank you for your time,
Jennie Roadt