

Open Meeting Notice

Meeting: Veterinary Examining Board
Date & Time: Monday, November 13, 2017 9:00 A.M.
Location: DATCP; 2811 Agriculture Drive, Room 456; Madison WI 53718

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

AGENDA

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

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

Administrative Rule Matters

[VE 11 – Emergency Rule draft to create Wis. Admin. Code § VE 11, relating to a Veterinary Professional Assistance Program - Board Approval for publication](#)

Adjourn Board Meeting

Credentialing Committee Meeting will immediately follow adjournment.

ADJOURNMENT

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

DATCP - OFFICE OF THE SECRETARY

Matthew Tompach

PO Box 8911

Madison, WI 53708

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

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

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

Administrative Rule Matters



VETERINARY EXAMINING BOARD

MEETING MINUTES

Thursday, November 2, 2017

PRESENT: Robert Forbes, D.V.M., Philip Johnson, D.V.M., Kevin Kreier, D.V.M., Dana Reimer C.V.T., Sheldon Schall, Lisa Weisensel Nesson, D.V.M., Diane Dommer, D.V.M. (Absent: Bruce Berth)

STAFF: Department of Agriculture, Trade, and Consumer Protection (DATCP): Cheryl Daniels, DATCP Attorneys; Matt Tompach, Administrative Policy Advisory; Kelly Markor, Executive Staff Assistant.

CALL TO ORDER

Philip Johnson, Chair, called the meeting to order at 9:30 am. A quorum of seven (7) members was confirmed

LEGISLATIVE/ ADMINISTRATIVE RULE MATTERS

VE 11 – Emergency and Permanent Scope Statements to create Wis. Admin Code VE 11,

MOTION: Lisa Weisensel Nesson moved, seconded by Kevin Kreier, to approve the emergency and permanent scope statements to create Wis. Admin Code VE 11. Motion carried unanimously.

Tentative Date for VE 11 Emergency Rule approval

The Board discussed meeting via conference call on November 13th at 9:00 to approve the emergency rule

Tentative Date for VE 11 Permanent Rule Hearing Draft approval

review the hearing draft. The Board also discussed meeting on November 30 at 9:30 to....

ADJOURNMENT

MOTION: Robert Forbes moved, seconded by Dana Reimer, to adjourn. Motion carried unanimously.

The meeting adjourned at 9:42 pm.

**VE 11 – Emergency Rule draft to create Wis. Admin.
Code § VE 11, relating to a Veterinary Professional
Assistance Program - Board Approval for publication**

WISCONSIN VETERINARY EXAMINING BOARD

EMERGENCY RULE

1 The Wisconsin veterinary examining board hereby proposes the following emergency
2 rule *to create* ch. VE 11, *relating to* a veterinary professional assistance program and affecting
3 small business.

Analysis Prepared by the Veterinary Examining Board

The statement of scope for this rule, SS 115-17, was approved by the Governor on October 17, 2017, published in Register 742A4, on October 23, 2017, and approved by the VEB on _____ (date). This emergency rule was approved by the Governor on _____ (date).

This emergency rule creates ch. VE 11, “Veterinary Professional Assistance Program”, to implement s. 89.03(3), Stats., created by the Legislature in 2017 Wisconsin Act 59, the Budget Bill (1) The new statutory s. 89.03 (3), Stats., states that the veterinary examining board (“VEB”) shall promulgate rules specifying a procedure for addressing allegations that a person licensed or certified by the VEB under this chapter has practiced as a veterinarian or veterinary technician while impaired by alcohol or other drugs or that his or her ability to practice is impaired by alcohol or other drugs, and for assisting a person licensed by the VEB under this chapter who requests to participate in the procedure or who requests assistance in obtaining mental health services. In promulgating rules under this subsection, the VEB shall seek to facilitate early identification of chemically dependent veterinarians or veterinary technicians and encourage their rehabilitation. The rules promulgated under this subsection may be used in conjunction with the formal disciplinary process under this chapter. The VEB may contract with another entity to administer the procedure specified under the rules promulgated under this subsection.

Pursuant to section 9102 of the non-statutory language in 2017 Wisconsin Act 59, the VEB may use the procedure under s. 227.24, Stats., to promulgate rules under s. 89.03 (3), Stats., for the period before the effective date of the permanent rule promulgated under s. 89.03 (3), Stats. If the VEB uses this procedure to promulgate these rules, the VEB shall promulgate the rules no later than the 60th day after the effective date of the Budget Bill, which was September 22, 2017. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the VEB is not required to provide evidence that promulgating a rule under this subsection, as an emergency rule, is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

The VEB is proposing a permanent rule, which will be posted for economic impact analysis, be approved by the VEB for hearing, and have several hearings for comments in conjunction with this emergency rule.

Statutes Interpreted

Statutes Interpreted: 89.03, Stats., “Rules.”

Statutory Authority

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

Explanation of Statutory Authority

The VEB has been given specific authority, pursuant to 89.03 (3) to adopt rules specifying a procedure for addressing allegations that a person licensed or certified by the VEB under this chapter has practiced as a veterinarian or veterinary technician while impaired by alcohol or other drugs or that his or her ability to practice is impaired by alcohol or other drugs, and for assisting a person licensed by the VEB under this chapter who requests to participate in the procedure or who requests assistance in obtaining mental health services. In promulgating rules under this subsection, the VEB shall seek to facilitate early identification of chemically dependent veterinarians or veterinary technicians and encourage their rehabilitation. The rules promulgated under this subsection may be used in conjunction with the formal disciplinary process under this chapter.

Related Statutes and Rules

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

Plain Language Analysis

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

To correct this, 2017 Wisconsin Act 59 included an amendment to the statute, relating to the authority of the VEB to write rules, to require the VEB to write rules for a procedure for addressing allegations that a person licensed or certified by the VEB under this chapter has practiced as a veterinarian or veterinary technician while impaired by alcohol or other drugs or that his or her ability to practice is impaired by alcohol or other drugs, and for assisting a person licensed by the VEB under this chapter who requests to participate in the procedure or who requests assistance in obtaining mental health services. In promulgating rules under this subsection, the VEB shall seek to facilitate early identification of chemically dependent veterinarians or veterinary technicians and encourage their rehabilitation. The rules promulgated under this subsection may be used in conjunction with the formal disciplinary process under this chapter. The VEB may contract with another entity to administer the procedure specified under the rules promulgated under this subsection.

Federal and Surrounding State Programs

Federal Programs

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

Surrounding State Programs

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

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

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

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

Data and Analytical Methodologies

The VEB looked at the rules already in place at DSPS and also at other states that have professional assistance programs.

Effect on Small Business

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

19 under this chapter has practiced as a veterinarian or veterinary technician while impaired by
20 alcohol or other drugs or that his or her ability to practice is impaired by alcohol or other drugs,
21 and for assisting a person licensed by the board under this chapter who requests to participate in
22 the procedure or who requests assistance in obtaining mental health services. In promulgating
23 rules under this subsection, the board shall seek to facilitate early identification of chemically
24 dependent veterinarians or veterinary technicians and encourage their rehabilitation. The rules
25 promulgated under this subsection may be used in conjunction with the formal disciplinary
26 process under this chapter.

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

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

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

33 **(3)** "Disciplinary VPAP" means the veterinary professional assistance program that may be
34 utilized, as part of a stipulation by a credential holder and the board, for settling unprofessional
35 conduct by the credential holder.

36 **(4)** "Impaired" means the inability of a veterinary professional to practice veterinary medicine
37 or veterinary technology with reasonable skill and safety to patients by reason of illness,
38 inebriation, excessive use of drugs, narcotics, alcohol, chemicals or other substances, or as a result
39 of any physical or mental condition.

40 **(5)** “Impaired veterinary professional” means a credential holder, a veterinarian student studying
41 or working in Wisconsin, or an unlicensed veterinary assistant working in Wisconsin, who
42 voluntarily seeks assistance because of a self-identified alcohol, other drug, or mental health
43 impairment.

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

48 **(7)** “Service”, as used in this chapter, means any VPAP-approved provider of assessment,
49 testing, treatment, rehabilitation, monitoring, and support for alcohol, other chemical, and/or
50 mental health impairments. The term includes any person supervising the credential holder while
51 working as a veterinary professional.

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

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

57 (a) Contracting with assessment, testing, treatment, rehabilitation, monitoring, or support
58 services, in accordance with the requirements in VE 11.10 and VE 11.12.

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

60 (c) Intervening in cases of verified impairment.

61 (d) Referring services to impaired veterinary professionals, outside the disciplinary process.

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

64 (f) Providing post-treatment monitoring and support to rehabilitated impaired veterinary
65 professionals, and credential holders in the disciplinary VPAP.

66 (h) Reporting statistical information regarding impaired veterinary professionals program
67 activity to the board.

68 (i) Reporting all required information in the disciplinary VPAP, under contract to the board, so
69 the board may carry out its disciplinary authority under s. VE 7.07, Wis. Adm. Code.

70 **(2)** The VPAP may accept any impaired veterinary professional who voluntarily requests referral
71 to services, if not a credential holder with an outstanding complaint against the holder in the
72 board's disciplinary process.

73 **(3)** Except for information produced for the board under sub. (1) (h), all information, interviews,
74 records, reports, statements, memoranda, or other documents furnished to, or produced by the
75 program, pursuant to sub. (2), are confidential.

76 **VE 11.06 Referral to and eligibility for disciplinary VPAP. (1)** The board and VPAP, as
77 part of the contract, shall agree to eligibility criteria for credential holders to be accepted into the
78 disciplinary VPAP, to fulfill the requirements in s. 89.03(3), Stats.

79 **(2)** The board may stipulate with a credential holder, in the disciplinary process, to refer the
80 credential holder to the VPAP as part of a settlement for uncontested unprofessional conduct on

81 the part of the credential holder. The stipulation shall include language that a referral does not
82 guarantee acceptance of the credential holder by the VPAP and the potential consequences if the
83 credential holder is not accepted in the VPAP or does not complete the terms of acceptance. The
84 stipulation may include other discipline to be completed by the credential holder, separate from
85 the disciplinary VPAP.

86 **(3)** The VPAP shall supply a credential holder, who has been referred by the board, an
87 application for participation. As part of the application, the credential holder agrees that all relevant
88 materials from the board's disciplinary proceedings may be released to the VPAP to make its
89 determination as to the applicant's acceptance.

90 **(4)** The VPAP shall determine the credential holder's acceptance, based upon the criteria in the
91 contract, by reviewing all relevant materials, including investigative results and the credential
92 holder's application for participation.

93 **(5)** The VPAP shall inform the credential holder and board if the holder is ineligible for
94 acceptance. A credential holder determined to be ineligible for the disciplinary VPAP may, within
95 10 days of notice of the determination, request the board to review the adverse determination.

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

98 (a) Sign a participation agreement with the VPAP, a copy of which shall be provided to the
99 board.

100 (b) Obtain a comprehensive assessment for alcohol, chemical, and/or mental health impairments
101 from an approved service, including submitting to any required testing. The credential holder shall

102 arrange for the service to file a copy of its assessment with the VPAP. The VPAP may agree to
103 waive this requirement.

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

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

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

110 (f) Submit any required random monitored physiological specimens for the purpose of screening
111 for alcohol or controlled substances, provided by a drug testing service.

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

114 (h) Have the credential holder's service and work supervisors file quarterly reports with the
115 VPAP.

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

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

119 **(2)** If the VPAP determines, based on consultation with any service authorized to provide
120 testing, treatment, or monitoring of the credential holder, that a credential holder participating in
121 its program has failed to meet any of the requirements set under sub. (1), the VPAP shall make a

122 written determination if it will continue to allow the credential holder to use its program and obtain
123 a new participation agreement with any additional requirements, determined by the VPAP. The
124 VPAP shall notify the board of the failure and the VPAP's determination of program continuation.

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

128 **VE 11.10 Disciplinary VPAP participation agreement. (1)** The credential holder's
129 participation agreement in the VPAP shall at a minimum include:

130 (a) A statement describing the credential holder's conduct, relating to participation in the VPAP.

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

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

134 (d) An agreement to submit to random monitored drug screens at the credential holder's expense,
135 provided by a drug testing service approved by the VPAP under s. VE 11.12 , if deemed necessary
136 by the VPAP.

137 (e) An agreement to submit to practice restrictions at any time during the treatment regimen, as
138 deemed necessary by the VPAP.

139 (f) An agreement to furnish the VPAP with signed consents for release of information, from
140 treatment providers and employers authorizing the release of information to the VPAP and board,
141 for the purpose of monitoring the credential holder's participation in the VPAP.

142 (g) An agreement to authorize the VPAP to release information described in pars. (a), (c) and
143 (e), the fact that a credential holder has been dismissed from the VPAP pursuant to VE 11.06(2),
144 or violated terms of the agreement in s. VE 11.06 (1) (b) to (e) and (h) concerning the credential
145 holder's participation in the VPAP to the employer or any service identified by the credential
146 holder, and an agreement to authorize the VPAP to release the results of random monitored drug
147 screens, under par. (d), to any service identified by the credential holder.

148 (h) An agreement to participate in the VPAP for a period of time, as established by the stipulation
149 between the credential holder and board.

150 **(2)** The VPAP may include additional requirements for an individual credential holder, if the
151 credential holder's condition warrant additional safeguards.

152 **(3)** The board or board liaison may include a promise of confidentiality that all or certain records
153 shall remain closed and not available for public inspection and copying. Any promise is subject to
154 s. SPS 7.08 and ends upon a referral to the division. Information and records may be made available
155 to staff within the department on an as-needed basis, to be determined by the coordinator.

156 **VE 11.12 Approval of service providers. (1)** The VPAP shall approve a service provider
157 designated by a credential holder for the purpose of participation in the VPAP if:

158 (a) It is a facility where all of the following applies:

159 1. The facility is certified by appropriate national or state certification agencies.

160 2. The treatment program focus at the facility is on the individual with an impairment of the
161 same type as has been identified in the credential holder.

162 3. Facility treatment plans and protocols are available to the VPAP.

163 4. The facility, through the credential holder's supervising therapist, agrees to file reports as
164 required, including quarterly progress reports and immediate reports if a credential holder
165 withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

166 (b) It is an individual therapist who:

167 1. Has credentials and experience determined by the VPAP to be in the credential holder's
168 area of need.

169 2. Agrees to perform an appropriate assessment of the credential holder's therapeutic needs
170 and to establish and implement a comprehensive treatment regimen for the credential holder.

171 3. Forwards copies of the therapist's treatment regimen and office protocols to the VPAP.

172 4. Agrees to file reports as required to the VPAP, including quarterly progress reports and
173 immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in
174 an unsafe condition to practice.

175 **(2)** If the VPAP does not approve a treatment facility or therapist, as requested by the credential
176 holder, the credential holder may, within 10 days of notice of the determination, request the board
177 to review the VPAP's adverse determination.

178 **VE 11.14 Approval of drug testing services. (1)** The VPAP shall approve drug testing
179 services for use by credential holders who participate in drug and alcohol monitoring programs,
180 pursuant to stipulations between the board and credential holders, or pursuant to disciplinary
181 orders.

182 **(2) APPROVAL STANDARDS.** To be approved as a drug testing service, the service shall
183 satisfactorily meet all of the following requirements for administration, collection site, laboratory,
184 and reporting. (a) *Administration.*

185 1. The service shall enroll participants by setting up an account, establishing a method of
186 payment and supplying preprinted chain-of-custody forms.

187 2. The service shall provide the participant with the address and phone number of the nearest
188 collection sites and shall assist in locating a qualified collection site when traveling outside the
189 local area.

190 3. The service shall begin random selection of days, when participants shall provide
191 specimens, upon enrollment and the service shall notify the VPAP that selection has begun.

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

195 5. The service shall maintain and make available to the VPAP and treatment services, through
196 an internet website, data that are updated on a daily basis verifying the date and time each randomly
197 selected participant was notified to provide a specimen, the date, time and location each specimen
198 was collected, the results of drug screen, and whether or not the participant complied as directed.

199 6. The service shall maintain internal and external quality of test results and other services.

200 7. The service shall maintain the confidentiality of participants, in accordance with s. 146.82,
201 Stats.

202 8. The service shall inform participants of the total cost for each drug screen including the
203 cost for program administration, collection, transportation, analysis, reporting and confirmation.
204 Total cost shall not include the services of a medical review officer.

205 9. The service shall immediately report to the VPAP if the program, laboratory or any
206 collection site fails to comply with this section. The VPAP may remove a service from the
207 approved list if the service fails to comply with this section.

208 10. The service shall make available, to the VPAP, experts to support a test result for 5 years
209 after the test results are released to the VPAP.

210 11. The service shall not sell or otherwise transfer or transmit names and other personal
211 identification information of the participants to other persons or entities without permission from
212 the VPAP and board. The service shall not solicit from participants presently or formerly in the
213 monitoring program or otherwise contact participants, except for purposes consistent with
214 administering the program and only with permission from the VPAP and board.

215 12. The service and laboratory shall not disclose to the participant or the public the specific
216 drugs tested.

217 (b) *Collection site.*

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

220 2. The service shall require delivery of specimens to the laboratory within 24 hours of
221 collection.

222 (c) *Laboratory.*

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

227 2. The service shall utilize a laboratory capable of analyzing specimens for drugs specified
228 by the VPAP.

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

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

232 5. The laboratory shall allow the VPAP personnel to tour facilities where participant
233 specimens are tested.

234 (d) *Report results.*

235 1. The service shall provide results of each specimen to designated VPAP personnel within
236 24 hours of processing.

237 2. The service shall inform designated VPAP personnel of confirmed positive test results on
238 the same day the test results are confirmed or by the next business day if the results are confirmed
239 after hours, on the weekend or on a state or federal holiday.

240 3. The service shall fax, e-mail or electronically transmit laboratory copies of drug test results
241 at the request of the VPAP.

242 4. The service shall provide a medical review officer upon request and at the expense of the
243 participant, to review disputed positive test results.

244 5. The service shall provide chain-of-custody transfer of disputed specimens to an approved
245 independent laboratory for retesting at the request of the participant, the VPAP or board.

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

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

255 **(3) TREATMENT RECORDS.** Treatment records concerning individuals who are receiving or who
256 at any time have received services for mental illness, developmental disabilities, alcoholism, or
257 drug dependence which are maintained by the board, by county departments under s. 51.42 or
258 51.437, Stats., and their staffs, and by treatment facilities are confidential under s. 51.30, Stats.,
259 and shall not be made available for public inspection.

260 **(4) PATIENT HEALTH CARE RECORDS.** Patient health care records are confidential under s.
261 146.82, Stats., and shall not be made available to the public without the informed consent of the
262 patient or of a person authorized by the patient or as provided under s. 146.82 (2), Stats.

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

265 **SECTION 2. EFFECTIVE DATE:** This emergency rule takes effect upon publication, on
266 November 22, 2017, and remains in effect for 150 days. The board may seek to extend this
267 emergency rule, as provided in section 9102 of the non-statutory language in 2017 Wisconsin
268 Act 59.

Dated this _____ day of _____, 2017.

WISCONSIN VETERINARY EXAMINING BOARD

By _____
Member of the Board

11-08-17 VE 11 Emergency Rule Fiscal Estimate and EIA

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

VE 11, Veterinary Professional Assistance Program

3. Subject

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

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

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

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

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

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

Yes No

9. Policy Problem Addressed by the Rule

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

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

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

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

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

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

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

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

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

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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

14. Long Range Implications of Implementing the Rule

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

15. Compare With Approaches Being Used by Federal Government

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

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

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

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

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

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

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

This is an emergency rule so there was no posting for comments. However, the VEB is proposing a permanent rule, which will be the same as the emergency rule. This rule will be posted for economic impact analysis, be approved by the VEB for hearing, and have several hearings, for obtaining comments, held in conjunction with this emergency rule hearing.

17. Contact Name

Cheryl Daniels, VEB Legal Counsel

18. Contact Phone Number

(608) 224-5026

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

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

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

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

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

This rule was developed using models from current DSPTS rules on the same subject and also looking at other programs from states with robust veterinary professional assistance programs

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

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

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

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

5. Describe the Rule's Enforcement Provisions

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

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

- Yes No
-

11-08-17 VE 11 Emergency Rule Reg Flex Analysis

Wisconsin Veterinary Examining Board
Regulatory Flexibility Analysis

Rule Subject: **Veterinary Professional Assistance Program**
Adm. Code Reference: **VE 11**
Rules Clearinghouse #: **Not assigned – EMERGENCY RULE**
DATCP Docket #: **17-VER-01**

Rule Summary

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

This emergency rule creates ch. VE 11, “Veterinary Professional Assistance Program”, to implement s. 89.03(3), Stats., created by the Legislature in 2017 Wisconsin Act 59, the Budget Bill (1) The new statutory s. 89.03 (3), Stats., states that the veterinary examining board (“VEB”) shall promulgate rules specifying a procedure for addressing allegations that a person licensed or certified by the VEB under this chapter has practiced as a veterinarian or veterinary technician while impaired by alcohol or other drugs or that his or her ability to practice is impaired by alcohol or other drugs, and for assisting a person licensed by the VEB under this chapter who requests to participate in the procedure or who requests assistance in obtaining mental health services. In promulgating rules under this subsection, the VEB shall seek to facilitate early identification of chemically dependent veterinarians or veterinary technicians and encourage their rehabilitation. The rules promulgated under this subsection may be used in conjunction with the formal disciplinary process under this chapter. The VEB may contract with another entity to administer the procedure specified under the rules promulgated under this subsection.

Pursuant to section 9102 of the non-statutory language in 2017 Wisconsin Act 59, the VEB may use the procedure under s. 227.24, Stats., to promulgate rules under s. 89.03 (3), Stats., for the period before the effective date of the permanent rule promulgated under s. 89.03 (3), Stats. If the VEB uses this procedure to promulgate these rules, the VEB shall promulgate the rules no later than the 60th day after the effective date of the Budget Bill, which was September 22, 2017. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the VEB is not required to provide evidence that promulgating a rule under this subsection, as an emergency rule, is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

This is an emergency rule so there was no posting for comments. However, the VEB is proposing a permanent rule, which will be the same as the emergency rule. This rule will be posted for economic impact analysis, be approved by the VEB for hearing, and have several hearings, for obtaining comments, held in conjunction with this emergency rule hearing.

Small Businesses Affected

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

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

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

Conclusion

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

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

Dated this _____ day of _____, 2017.

STATE OF WISCONSIN
VETERINARY EXAMINING BOARD

By _____
Cheryl Furstace Daniels
Board Counsel