

Clearinghouse Rule 07-051

STATE OF WISCONSIN
VETERINARY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : VETERINARY EXAMINING BOARD
VETERINARY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 07-)

PROPOSED ORDER

An order of the Veterinary Examining Board to renumber VE 1.02 (1); and to create VE 1.02 (1), 7.01 (5), 7.025, 7.03 (2) (q) and (3) (k), 7.06 (23) and 10.03 (4) (g), relating to continuing education, informed consent and recordkeeping.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statute interpreted:

Sections 453.062 and 453.07, Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) and 453.03, Stats.

Explanation of agency authority:

The Veterinary Examining Board is authorized under s. 453.03 (1), Stats., to promulgate rules establishing the scope of practice permitted for veterinarians and rules relating to continuing education and unprofessional conduct.

Related statute or rule:

There are no other related statutes or rules other than those listed above.

Plain language analysis:

SECTION 1. Section VE 1.02 is renumbered VE 1.02 (1e).

SECTION 2. Section VE 1.02 (1) is created to define “accredited college or university.” The proposed rule clarifies that only coursework completed at educational institutions that are accredited by a regional or national accrediting agency recognized by the U.S. Department of Education will be acceptable for continuing education hours.

SECTION 3. Section VE 7.01 (5) is created to define “viable veterinary diagnostic procedures and modes of treatment.” The proposed rule clarifies that viable veterinary diagnostic procedures and modes of treatment are those that are generally considered by the veterinary profession to be within the scope of current, acceptable standards of care.

SECTION 4. Section VE 7.025 is created to require, with some exceptions, veterinarians to disclose all viable veterinary diagnostic procedures and modes of treatment to clients.

SECTION 5. Section VE 7.03 (2) (q) is created to state that veterinarians are required to document in patient records communications of information provided to clients relating to all viable veterinary diagnostic procedures and modes of treatment.

SECTION 6. Section VE 7.03 (3) (k) is created to state that veterinarians are required to document in patient records communications of information provided to clients relating to all viable veterinary diagnostic procedures and modes of treatment.

SECTION 7. Section VE 7.06 (23) is created to state that it shall be unprofessional conduct for a veterinarian to fail to inform a client about the availability of all viable veterinary diagnostic procedures and modes of treatment and about the benefits and risks of each, as required under s. VE 7.025.

SECTION 8. Section VE 10.03 (4) (g) is created to clarify that a foreign veterinary medical or veterinary technician association, an accredited college or university, or a governmental agency that is, as determined by the board, comparable to a program provider listed under s. VE 10.03 (4) (a) to (f), may be approved as a continuing education course provider.

Summary of, and comparison with, existing or proposed federal regulation:

There is no existing or proposed federal regulation.

Comparison with rules in adjacent states:

Minnesota:

A rule on record keeping includes a list of what must be recorded. A rule on informed consent requires a client to be informed of treatment choices and alternatives, including an estimated cost of alternatives, prior to treatment. There is also language about the veterinarian assuming responsibility for clinical judgments and caretakers agreeing to follow the veterinarian’s instructions.

Illinois:

The statute includes language about the veterinarian assuming responsibility for clinical judgments and caretakers agreeing to follow the veterinarian's instructions. This provision is similar to Minnesota's law. A rule on recordkeeping includes a list of 10 items that must be included. Informed consent is one of them.

Iowa:

Does not have provisions relating to informed consent/disclosure of certain information to clients regarding treatment options.

Michigan:

Does not have provisions relating to informed consent/disclosure of certain information to clients regarding treatment options.

Summary of factual data and analytical methodologies:

The Veterinary Examining Board reviewed the proposed rule change during open session at its meetings in 2006 and 2007. Professional expertise and opinions of board members were offered and discussed at the meetings. The chair of the board invited comment from a representative of the Wisconsin Veterinary Medical Association (WVMA), and the board consulted the Department of Regulation and Licensing's Division of Enforcement regarding the impact of the current rule on its ability to prosecute unprofessional practice cases relating to informed consent and recordkeeping. The division attorney explained how the current rule does not adequately ensure that clients receive communication from veterinarians regarding viable treatment alternatives, their risks and benefits, and that explicit language would aid in prosecutions and increase protection of the public.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

The requirement has no impact on the bookkeeping operations of veterinary clinics, most of which are small businesses. The proposed rule would not disproportionately impact small business veterinarians. The patient recordkeeping requirements for all veterinarians apply irrespective of practice size.

Section 227.137, Stats., requires an "agency" to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an "agency" in this section.

Fiscal estimate:

The department estimates that the proposed rule will have no significant fiscal impact.

Anticipated costs incurred by private sector:

The department finds that this rule has no significant fiscal effect on the private sector.

Effect on small business:

These proposed rules were reviewed by the department's Small Business Review Advisory Committee to determine whether the rules will have any significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Committee determined that the fiscal impact on small businesses would be minimal and is justified by the practice improvements required by the rule. The Department's Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling (608) 266-8608.

Agency contact person:

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935. Telephone: (608) 266-0495. Email: pamela.haack@drl.state.wi.us.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before August 10, 2007 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. VE 1.02 (1) is renumbered VE 1.02 (1e).

SECTION 2. VE 1.02 (1) is created to read:

VE 1.02 (1) "Accredited college or university" means an educational institution that is accredited by a regional or national accrediting agency recognized by the U.S. Department of Education.

SECTION 3. VE 7.01 (5) is created to read:

VE 7.01 (5) "Viable veterinary diagnostic procedures and modes of treatment" means diagnostic procedures and modes of treatment generally considered by the veterinary profession to be within the scope of current, acceptable standards of care.

SECTION 4. VE 7.025 is created to read:

VE 7.025 Disclosure of all viable veterinary diagnostic procedures and modes of treatment. (1) Except as provided in sub. (2), a veterinarian shall inform a client about the availability of all viable veterinary diagnostic procedures and modes of treatment, including the benefits and risks of each, in a manner sufficient to allow the client to make a prudent decision.

(2) A veterinarian is not required to inform a client about the availability of all viable veterinary diagnostic procedures and modes of treatment, or about the benefits and risks of each, in any of the following instances:

(a) When the communication would involve providing detailed technical information relating to procedures that are inherent to a particular diagnostic procedure or mode of treatment.

(b) When the communication would involve providing information relating to diagnostic procedures or modes of treatment which are not viable or which are experimental.

(c) When a veterinarian refers a patient to another veterinarian, the referring veterinarian is not required to inform the client of all viable veterinary diagnostic procedures or modes of treatment that may be provided by the veterinarian to whom the patient is being referred.

(d) When the communication would involve providing information relating to diagnostic procedures or modes of treatment which involve extremely remote possibilities that might falsely or detrimentally alarm the client.

(e) When the communication would involve providing information beyond what a reasonably well-qualified veterinarian treating the same condition would know.

(f) When the client cannot be located.

(g) When the client informs the veterinarian that he or she is not interested in receiving information regarding all viable veterinary diagnostic procedures and modes of treatment.

(h) In emergencies, when failure to provide treatment, including any necessary diagnostic tests relating to that treatment, to stabilize the patient would be detrimental to the patient's health.

SECTION 5. VE 7.03 (2) (q) is created to read:

VE 7.03 (2) (q) Communications of information provided to clients relating to all viable veterinary diagnostic procedures and modes of treatment.

SECTION 6. VE 7.03 (3) (k) is created to read:

VE 7.03 (3) (k) Communications of information provided to clients relating to all viable veterinary diagnostic procedures and modes of treatment.

SECTION 7. VE 7.06 (23) is created to read:

VE 7.06 (23) Failure to inform a client about the availability of all viable veterinary diagnostic procedures and modes of treatment, or about the benefits and risks of each, as required under s. VE 7.025.

SECTION 8. VE 10.03 (4) (g) is created to read:

VE 10.03 (4) (g) A foreign veterinary medical or veterinary technician association, an accredited college or university, or a governmental agency that is, as determined by the board, comparable to a program provider listed under pars. (a) to (f).

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____

Agency _____

Chairperson
Veterinary Examining Board