

**STATE OF WISCONSIN
VETERINARY EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 07-051
VETERINARY EXAMINING BOARD : (s. 227.19 (3), Stats.)**

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

The Department of Regulation and Licensing estimates that the proposed rule will have no significant fiscal impact. The department finds that this rule has no significant fiscal effect on the private sector.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

Currently, there is no specific statutory or administrative rule provision which requires a veterinarian to provide informed consent to clients. The rule will require veterinarians to inform clients prior to treatment of the diagnostic and treatment options consistent with the veterinary profession's standard of care and the associated benefits and risks of those options. The purpose of the requirement is to allow clients to make informed decisions regarding recommended diagnostic procedures and modes of treatment.

V. NOTICE OF PUBLIC HEARING AND SUMMARY OF PUBLIC COMMENTS:

A public hearing was held on August 8, 2007.

The following individuals appeared and spoke in opposition to the proposed rules concerning informed consent:

Rachel C. Rothschild, Assistant Dean, UW-Madison School of Veterinary Medicine, Madison, WI

The UW-Madison School of Veterinary Medicine is concerned that the proposed rule changes do not clarify veterinarians' obligations to communicate about options, but rather will change the debate when a problem arises from whether options were explained to

what the words “all,” “generally,” and “viable” mean. The School supports the goal of raising the quality of information veterinarians provide their clients in the interest of clients giving better-informed consent, and support the general move toward improved medical recordkeeping.

Jerry Quilling, DVM, Plymouth, WI

Dr. Quilling takes exception to the proposed rule on informed consent. He is concerned that the economic effect of the rule has been underestimated; the ability of veterinarians to comply is questionable at best, and the legal ramifications go far beyond the actions of the board.

Tom Gilligan, DVM, President, Wisconsin Veterinary Medical Association (WVMA), Madison, WI

The WVMA had specific questions. What is viable? The proposed rule requires a veterinarian to inform a client about “all viable veterinary diagnostic procedures and modes of treatment.” What does “all” mean? To the veterinarian and the public “all” means everything. He indicated that the board disciplines veterinarians who do not meet minimum standards. However, the proposed rule does not require minimum standards; it requires the very highest standards. Who determines what is viable? Among veterinary professionals there are often differing options of what is generally considered to be current, acceptable standards of care. It is the WVMA’s belief that the public will expect the veterinary profession to adhere to the literal meaning of this rule, which is unreasonable as a minimum standard.

Pamela Stach, Attorney, Department of Regulation and Licensing, Division of Enforcement, Madison, WI

Ms. Stach spoke in favor of the rule.

VI. MODIFICATIONS MADE AS A RESULT OF PUBLIC HEARING TESTIMONY:

Based upon the comments received at the public hearing, the board made the following changes to the text of the rule:

1. Sections 3, 4, 5 and 6 were removed from the text of the rule that was considered at the public hearing. Those sections included a definition of “viable veterinary diagnostic procedures and modes of treatment,” and disclosure and recordkeeping requirements relating to all viable veterinary diagnostic procedures and modes of treatment.
2. Section 7 was revised to read: Failure to inform a client prior to treatment of the diagnostic and treatment options consistent with the veterinary profession’s standard of care and the associated benefits and risks of those options.

3. A definition of “standard of care” was created to mean “diagnostic procedures and modes of treatment considered by the veterinary profession to be within the scope of current, acceptable veterinary medical practice.”

Also, changes were made to the plain language analysis reflecting the changes made above and the change made as recommended in the Clearinghouse Report.

VII. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 5. In s. VE 7.025 (2) (b), it seems unnecessary and redundant to state that a veterinarian is not required to inform a client about procedures or modes of treatment that are not viable.

Response: The board deleted s. VE 7.025 (2) (b) from the proposed rules, as well as s. VE 7.03 (2) (q) and (3) (k).

VIII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats.