



# Wisconsin Legislative Council

## RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 21-062

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]**

#### 2. Form, Style and Placement in Administrative Code

a. In consolidating the current provisions into chs. VE 1 to 3 as proposed, the rule should be revised to repeal and recreate chs. VE 1 to 3 and then repeal chs. VE 4 to 10, rather than repealing chs. VE 1 to 10 and then creating chs. VE 1 to 3. However, the board could alternatively review and consider the approach that is used in structuring the proposed rule. In particular, renumbering or reusing designations to eliminate a gap in numbering is generally unnecessary and can lead to confusion. Accordingly, the board could consider repealing chs. VE 1 to 10 and creating new chs. VE 12 to 14 or some other later sequence of numbers. (Compare, for example, the Department of Justice’s administrative rules, which are numbered as [chs. Jus 9 to 12 and 16 to 19.](#))

b. The proposed tables of contents for each of the four new chapters should be removed. The Legislative Reference Bureau will generate the tables of contents when the chapters are published. [s. 1.04 (1), Manual.] Note, also, that in SECTION 2 of the proposed rule, in the table of contents for ch. VE 1 on page 16, line 40, “VE 1.54” is listed as “VE 1.53” and does not match the numbering in the body of ch. VE 1 on page 48, line 744.

c. In SECTION 2 of the proposed rule, in s. VE 1.01 on page 17, line 45, and in SECTION 3 of the proposed rule, in s. VE 2.01 on page 53, line 852, the citations “89.03 (1), 89.03 (2),” should be revised to “89.03 (1) and (2),”.

d. The board should review provisions of the proposed rule containing definitions, as follows:

- (1) Generally, the board should consider whether every definition is necessary. For instance, a definition of “veterinary consulting permit” appears in s. VE 1.02 (33) on page 22, line 158. This term is used only in s. VE 1.36 beginning on page 35, line 465. Section VE 1.36 contains all of the information found in the definition, but with additional detail and clarity.
- (2) Generally, the board should review for consistency the use of cross-references to statutory definitions. For example, the term “patient” in s. VE 1.02 (21) on page

20, line 111, is not defined by cross-reference to the identical definition in s. 89.02 (4s), Stats., but the term “veterinary prescription drug” in s. VE 1.02 (34) on page 22, line 162, is defined by cross-reference to the identical definition in s. 89.02 (11), Stats.

- (3) The definitions in SECTIONS 2 and 3 of the proposed rule should specify to which chapter or chapters the respective definitions apply. Compare the treatment in SECTION 4 of the proposed rule in s. VE 3.02 (intro.) on page 66, line 1163. [s. 1.07 (2) (b) 1., Manual.]
- (4) In s. VE 1.02 (1) on page 17, line 50, and in s. VE 2.02 (1) on page 53, line 857, “Department of Education” should not be capitalized because it is part of the name of a federal agency. [s. 1.06 (2), Manual.]
- (5) In s. VE 1.02 (5) on page 17, line 58, and in s. VE 2.02 (3) on page 53, line 861, capitalize “veterinary medical association” because it is part of a proper name. [s. 1.06 (2), Manual.]
- (6) In s. VE 1.02 (8) on page 18, line 64:
  - (a) The board should consider changing “includes” to “means” in sub. (8) (intro.). A definition is generally drafted using the term “means”. [s. 1.07 (3) (a), Manual.]
  - (b) The use of the Latin “i.e.”, in sub. (8) (c) should be avoided. [s. 1.08 (1) (L), Manual.]
- (7) In s. VE 1.02 (12) on page 18, line 82, and in s. VE 1.02 (13) on page 19, line 92, each definition should be modified to clarify whether the defined term means “any of the following” or “all of the following”.
- (8) In s. VE 1.02 (12) on page 18, lines 82, the definition of “deception” includes “claiming” to have done something, and using a different treatment “than stated”. Will it be understood by the regulated community to whom the claim was made, and to whom the treatment was stated? For example, if it means the claim made, or the treatment stated, to the client, the definition could be modified to make that clear.
- (9) In s. VE 1.02 (18) on page 19, line 103, the term “informed consent” is defined. In the definition, the client or the client’s authorized representative is given certain information, but only the client consents to the treatment. Should the definition on line 105 say that the client’s authorized representative also may consent to the treatment?
- (10) In s. VE 1.02 (18) on page 19, line 104, the phrase “client or representative,” should be changed to “client or the client’s authorized representative,” for consistency.
- (11) In s. VE 1.02 (19) on page 19, line 108, the citations “89.06 (1), 89.06 (2m) (a), or 89.072” should be written as “89.06 (1) or (2m) (a) or 89.072”.

- (12) In s. VE 1.02 (20) on page 20, line 110, each word in “north American veterinary licensing examination” should be capitalized if it is a proper name. [s. 1.06 (2), Manual.]
- (13) In s. VE 1.02 (27) on page 21, line 141, the board should review how the definition of “telehealth” works within the body of the rule. The definition limits “telehealth” to only the technology tools by which health services are delivered. The body of the rule, however, does not appear to use the word “telehealth” by itself. Instead, it uses both “telehealth technologies” and “telehealth records”. See page 41, line 596, and page 42, lines 672, 676, 679, and 680. With regard to “telehealth technologies”, the word “technologies” appears to be redundant, given the definition of “telehealth”. With regard to “telehealth records”, it is not clear how technology tools can constitute records.
- (14) In s. VE 1.02 (29) on page 21, line 147, the acronym “CPR” should be written out in full. The acronym “CPR” is not defined in the proposed rule and is only used in this one instance. [s. 1.08 (2), Manual.]
- (15) In s. VE 2.02 beginning on page 53, line 855, when defining a term that is also defined in s. VE 1.02, the rule sometimes cross-references the earlier definition and sometimes repeats the earlier definition verbatim. Compare, for example, the method of defining “gross negligence” in s. VE 2.02 (9) on page 54, line 875, versus the method of defining “patient” in s. VE 2.02 (1) on page 54, line 876. The board should consider adopting a uniform approach to cross-referencing definitions. If the board chooses to cross-reference consistently, a few definitions in SECTION 4 of the proposed rule, in s. VE 3.02 beginning on page 56, line 1163, also could be changed.
  - e. In SECTION 2 of the proposed rule, in s. VE 1.02 (2) on page 17, line 51, in SECTION 3 of the proposed rule, in s. VE 2.02 (2) on page 53, line 858, and in SECTION 4 of the proposed rule, in s. VE 3.08 (intro.) on page 69, line 1222, avoid using the phrases “including but not limited to” or “include, but are not limited to”. They each have the same meaning as “including” or “include”. [s. 1.07 (3) (b) 2., Manual.]
  - f. In SECTION 2 of the proposed rule, in s. VE 1.02 (9) and (10) on page 18, lines 73 and 76, and in s. VE 1.14 (7) (b) on page 42, line 619, the phrase “animal patient” probably should be changed to “patient” to avoid confusion. “Patient” is a defined term; “animal patient” is not.
  - g. In SECTION 2 of the proposed rule, in s. VE 1.30 (6) on page 31, line 373, the word “certificate” probably should be changed to “license”. Chapter VE 1 relates to the **license** for a veterinarian; not the **certificate** for a veterinary technician.
  - h. In SECTION 2 of the proposed rule, in s. VE 1.36 (3) on page 36, line 470, change the cross-reference from “s. VE 1.36” to “this section”.
  - i. In SECTION 2 of the proposed rule, in s. VE 1.38 (2) on page 38, line 513, make the following changes:
    - (1) In sub. (2) (intro.), change “for the following reasons:” to “for any of the following reasons:”.
    - (2) In sub. (2) (a), change “; or” to a period.

j. In SECTION 2 of the proposed rule, in s. VE 1.40 (3) on page 39, line 539, make the following changes:

- (1) In sub. (3) (intro.), change “for the following reasons:” to “for any of the following reasons:”.
- (2) In sub. (3) (a), change “; or” to a period.

k. In SECTION 2 of the proposed rule, s. VE 1.46 (2) on page 43, line 646, and s. VE 1.50 (3) on page 45, line 673, each refer to “relief veterinarians”. Should that term be defined?

l. In SECTION 2 of the proposed rule, s. VE 1.58 (13) on page 49, line 781, refers to “companion animals”. Should that term be defined?

m. In SECTION 3 of the proposed rule, in s. VE 2.10 (1) and (2) on pages 56 and 57, lines 940 and 942, the references to “license” and “licensure” probably should be changed to “certificate” and “certification”, respectively. Chapter VE 2 relates to the **certificate** for a veterinary technician; not the **license** for a veterinarian.

n. In SECTION 3 of the proposed rule, in s. VE 2.14 (1) on page 58, line 965, par. (a) contains only one subdivision. The paragraph should be revised so that it either contains no subdivisions or more than one subdivision. When any unit is divided into smaller subunits, at least two subunits must be created. [s. 1.10 (1) (a), Manual.]

o. In SECTION 4 of the proposed rule, in s. VE 3.08 (3) on page 69, line 1228, make the following changes:

- (1) In sub. (3) (intro.), change “is either:” to “is any of the following:”.
- (2) In sub. (3) (a), change “;” to a period.
- (3) In sub. (3) (b), change “; or” to a period.

p. In SECTION 4 of the proposed rule, in s. VE 3.36 beginning on page 74, line 1337:

- (1) Two subsections share the designation number (2). See page 74, line 1340, and page 75, line 1367.
- (2) Each subsection title should be in small capital letters. [s. 1.10 (2) (b) 3., Manual.] See page 75, lines 1367 and 1369.

q. In SECTION 4 of the proposed rule, in s. VE 3.82 beginning on page 85, line 1595:

- (1) Two subsections share the designation number (2). See page 86, line 1598, and page 87, line 1626.
- (2) Each subsection title should be in small capital letters. [s. 1.10 (2) (b) 3., Manual.] See page 87, lines 1626 and 1628.

r. In SECTION 5 of the proposed rule, on page 90, line 1694, ch. VE 11 is renumbered to ch. VE 4. The board should consider removing SECTION 5 of the proposed rule, as renumbering to replace a repealed provision can lead to confusion, as noted below in a comment relating to cross-references, and is unnecessary. It is generally best to avoid renumbering a unit to eliminate a gap in numbering or to otherwise reuse a previously existing number that is eliminated by repeal. [s. 1.10 (3) (a), Manual.]

s. In the board's analysis for the proposed rule, consider providing information on how a reader could find the hearing dates from which the deadline to submit comments is determined.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In the board's analysis for the proposed rule, in the recitation of related statutes, should ss. 89.02 (6) and (8) (c), 89.05 (1), 89.068 (1) (c), 89.07 (1), 89.075, and 95.21 (2) (a), Stats., be listed? Each of those provisions appears in various places in the proposed rule.

b. In SECTION 2 of the proposed rule, s. VE 1.16 (2) on page 26, line 257, contains a cross-reference to "sub (4)". However, s. VE 1.16 does not have a sub. (4). If this is meant to refer to the fourth subsection of another section, that should be identified. Also, a period should be inserted after "sub".

c. In SECTION 2 of the proposed rule, s. VE 1.18 (1) on page 26, line 266, the cross-reference to "examinations required under s. VE 1.14 (1)" should be modified. Section VE 1.14 (1) does not address examinations.

d. In SECTION 2 of the proposed rule, s. VE 1.18 (3) on page 27, line 270, states that an applicant must have satisfied the "qualifications for licensure, in s. VE 1.14 (1)". The board should review whether this cross-reference is accurate. Although s. VE 1.14 as a whole contains qualifications for licensure, sub. (1) requires only the submission of an application form. Should the cross-reference in s. VE 1.18 (3) be changed to "s. VE 1.14"?

e. In SECTION 2 of the proposed rule, s. VE 1.18 (4) on page 27, line 272, contains a cross-reference to "subsections (2) – (4)". If this is meant to refer to subsections of s. VE 1.18, it should not include sub. (4). If this is meant to refer to subsections of another section, that should be specified. Also, the cross-reference should be styled as "subs. (2) to (4)". [s. 1.08 (1) (h), Manual.]

f. In SECTION 2 of the proposed rule, s. VE 1.18 (5) on page 27, line 278, contains a cross-reference to "subsections (2) – (4)". The board should review whether the cross-reference to sub. (4) should be removed. Subsection (4) contains requirements for an applicant who **is** a graduate of certain schools. Subsection (5), on the other hand, contains requirements for an applicant who is **not** a graduate of those schools. This suggests that the requirements of sub. (4) should not be incorporated into sub. (5). In any event, the cross-reference should be styled as either "subs. (2) to (4)" or "subs. (2) and (3)".

g. In SECTION 2 of the proposed rule, s. VE 1.22 on page 29, line 313, establishes the fees for a person applying for a reciprocal credential under s. 89.073, Stats. (regarding service members, former service members, and spouses). However, in other locations, the proposed rule should be revised to account for this alternative method of credentialing. For example, provisions establishing a fee for an application, such as s. VE 1.16 (3) on page 26, line 263, should be qualified with a statement such as "except as provided in s. VE 1.22". Also, provisions establishing requirements for licensure that differ from the reciprocal credentialing statute should include a similar qualifier like "except for an applicant applying for a reciprocal credential under s. 89.073, Stats.". The board should review whether similar changes should be made to SECTION 3 of the proposed rule regarding certificates for veterinary technicians.

h. In SECTION 2 of the proposed rule, s. VE 1.24 (2) (c) on page 29, line 328, contains a cross-reference to s. VE 1.18. Should the cross-reference instead be to s. VE 1.20?

i. In SECTION 2 of the proposed rule, in s. VE 1.28 on page 30, line 339, sub. (2) contains a cross-reference to “the examination specified under s. VE 1.12 (2)”. This cross-reference appears to be erroneous because there is no examination specified in s. VE 1.12 (2).

j. In SECTION 4 of the proposed rule, s. VE 3.16 (1) on page 70, line 1258, refers to a “notice of appeal rights under s. VE 3.16”. This appears to be an erroneous cross-reference, both because it is within s. VE 3.16 itself, and because there is nothing about appeal rights in that section.

k. The board should correct cross-references within ch. VE 11 that will be broken by the renumbering of the other chapters, and, if renumbering of ch. VE 11 to VE 4 is maintained, by the renumbering of that chapter. [ss. 1.10 (3) (e) and 1.15 (1) (e), Manual.] See, for example, the cross-references in s. VE 11.04 (1) (a) and (i) of the current administrative code.

## **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In the board’s analysis for the proposed rule, in the fourth bullet from the top of page 3, the word “allows” appears to be a typographical error and should be deleted. A corresponding change should be made in the regulatory flexibility analysis and the fiscal estimate.

b. In SECTION 2 of the proposed rule in s. VE 1.02 (30) on page 21, line 151, and in s. VE 1.34 on page 34, line 435, there may be a conflict regarding one of the qualifications for obtaining a “temporary veterinary permit”. The definition of that term in s. VE 1.02 (30) mentions only the NAVLE. The authority to grant the permit in s. VE 1.34, however, mentions both the NAVLE and the examination on state laws and rules related to the practice of veterinary medicine. If an applicant must also take the examination on state laws and rules related to the practice of veterinary medicine, or be scheduled to take it, the definition in s. VE 1.02 (3) should be modified accordingly.

c. In SECTION 2 of the proposed rule, the board should review subchs. II and III of ch. VE 1 regarding which examination is required to obtain a veterinary license. For example, under s. VE 1.04 (2) on page 22, line 169, the board accepts either the “national board examination and the clinical competency test” or the examination known as “NAVLE”, depending on when the application for licensure is submitted. However, under s. VE 1.14 (2) on page 25, line 234, an applicant for a veterinary license must successfully complete an “examination on state laws and rules related to the practice of veterinary medicine”. Is that examination different from the examinations listed in s. VE 1.04 (2)?

d. In SECTION 2 of the proposed rule, the board should review s. VE 1.10 on page 24, line 201. This provision establishes the procedure to raise a claim of examination error, but it is not clear whether it applies only to a claim of examination error for veterinary licensure, or also to a claim of examination error for veterinary technician certification. Under s. VE 1.10 (1) (b), a claim of examination error must identify the “type of license” for which the applicant applied. This suggests that the claim procedure in s. VE 1.10 may not be used with regard to an examination for veterinary technician certification. If that is the intent, s. VE 1.10 (1) (intro.) could be clarified by changing “An applicant wishing to claim examination error” to something like “An applicant for veterinary licensure wishing to claim examination error”. If that is not the intent, s. VE 1.10 (1) (b) could be modified by changing “type of license” to “type of license or certificate”.

e. In SECTION 2 of the proposed rule, s. VE 1.18 (1) on page 26, line 266, the meaning of the phrase “has not previously failed, and then not subsequently passed” is not clear. Is there a difference between “failing” and “not passing” an examination?

f. In SECTION 2 of the proposed rule, the board should consider revising s. VE 1.20 (intro.) on page 28, line 293. It currently reads “The board shall review the application and determine eligibility for licensure if any of the following apply:”. First, this directive to review applications is duplicative of s. VE 1.24 (1) on page 29, line 318, which reads in part: “The board shall review its records to determine eligibility of the applicant for licensure”. Second, the focus of s. VE 1.20 seems to be on reasons why an application might be rejected. Would it be clearer if s. VE 1.20 (intro.) read something like the following: “The board may determine that an applicant is **not** eligible for licensure if any of the following apply:”?

g. In SECTION 2 of the proposed rule, in s. VE 1.26 (2) on page 29, line 331, and in SECTION 3 of the proposed rule, in s. VE 2.10 (2) on page 57, line 942, the board should clarify whether the \$10 fee is imposed for each state to which verification is requested; or, instead whether a single \$10 fee allows verification to be provided to multiple states. If the former, the board could change “other states” to “another state”.

h. In SECTION 2 of the proposed rule, in s. VE 1.28 on page 30, line 333, the board should review subs. (1) and (2), as follows:

- (1) These subsections require a licensee to pay “the renewal fee” when applying to renew an expired license. Presumably, “the renewal fee” is the \$160 renewal fee established under sub. (3). However, under sub. (4), that licensee would also have to pay a \$25 late fee to reinstate an expired license. The board should review whether the references to “the renewal fee” in subs. (1) and (2) should be modified to account for the existence of the late fee. A similar comment applies to SECTION 3 of the proposed rule, in s. VE 2.12 on page 57, line 944.
- (2) These subsections establish a continuing education requirement on a person applying to renew an expired license. It is not clear how this requirement will apply in practice. Does it require a person to first fulfill 30 hours of continuing education before obtaining a renewal? Or does it merely require the person to fulfill the normal 30 hours of continuing education after the person’s license has been renewed? A similar comment applies to SECTION 3 of the proposed rule, in s. VE 2.12 (1) on page 57, line 947.

i. In SECTION 2 of the proposed rule, in s. VE 1.30 (7) (intro.) on page 31, line 375, insert a period after “sub”.

j. In SECTION 2 of the proposed rule, in s. VE 1.36 (1) on page 35, line 465, change “provided the license” to “provided the licensee”.

k. In SECTION 2 of the proposed rule, in s. VE 1.46 (2) on page 43, line 646, change “Subs. (1)” to “Subsection (1)”.

l. In SECTION 2 of the proposed rule, in s. VE 1.48 (2) (a) on page 44, line 661, insert a period after “sub”.

m. In SECTION 2 of the proposed rule, the board should review whether s. VE 1.52 (1) on page 45, line 682, accurately addresses record retention requirements. It contains a requirement

for the records of a patient other than a food and fiber patient and other than an equine patient, but it appears to lack a requirement for the records of a food and fiber patient and an equine patient. Is that the intent? Similarly, it contains a requirement for the records of the client for a food and fiber patient and an equine patient, but it appears to lack a requirement for the records of the client for a patient other than a food and fiber patient and other than an equine patient. Is that the intent?

n. In SECTION 2 of the proposed rule, s. VE 1.58 (7) on page 49, line 762, describes unprofessional conduct for a veterinarian as including “having been subject to any other discipline or restriction”. The board may wish to review whether this prohibition is overly broad. Perhaps the word “related” should be inserted after the word “other” so that the discipline or restriction must be related to a veterinary license or accreditation?

o. In SECTION 2 of the proposed rule, in s. VE 1.58 (12) on page 49, line 779, insert a space between “89.068” and “(1)”.

p. In SECTION 3 of the proposed rule, in s. VE 2.04 (3) (intro.) on page 55, line 910, correct the typographical error “The board the board”.

q. In SECTION 3 of the proposed rule, s. VE 2.04 (3) (c) and (d) on page 55, line 918, and page 56, line 919, list prior or pending “discipline or litigation” as circumstances under which an applicant for a veterinary technician certificate may have conditions imposed on the certificate. The board may wish to review whether this is overly broad. Should the discipline or litigation be confined to discipline or litigation relating to practice as a veterinary technician?

r. In SECTION 3 of the proposed rule, in s. VE 2.14 (7) (intro.) on page 59, line 988, insert a period after “sub”.

s. In SECTION 4 of the proposed rule, in ch. VE 3 beginning on page 64, line 1105, the board should review the use of “credential” and “licensing” terminology throughout the chapter to be sure each provision applies to the class of individuals intended. Consider the following examples:

- (1) The chapter often refers to proceedings involving “a credential holder or unlicensed person”. These terms are not mutually exclusive. A person holding a veterinary technician certificate, for example, is both a “credential holder” and “unlicensed”.
- (2) Section VE 3.04 on page 69, line 1217, indicates that subch. II of ch. VE 3 governs proceedings against both a credential holder and an unlicensed entity. However, s. VE 3.20 on page 71, line 1270, contains administrative warning review procedures applicable only with regard to a credential holder. Should there also be administrative review procedures applicable to a person who does not hold a credential?
- (3) Section VE 3.24 on page 72, line 1291, indicates that subch. III of ch. VE 3 governs proceedings against credential holders. Under the definition of “credential holder”, this would include a person holding a license, certificate, or permit. However, s. VE 3.30 (1) on page 72, line 1301, requires that a complaint must include the name and address of the “licensee”. Should this provision also apply to a person holding a certificate or permit?



(4) In s. VE 3.60 (1) on page 80, line 1475, should “respondent’s license” be changed to “respondent’s credential”? See ss. VE 3.56 (1) and VE 3.62 (3).

t. In SECTION 4 of the proposed rule, in s. VE 3.40 (7) (b) on page 77, line 1407, correct the typographical error “The provision the provisions”.

u. In SECTION 4 of the proposed rule, in s. VE 3.60 (2) on page 80, line 1481, remove the comma after “sub. (1)”.

v. In SECTION 4 of the proposed rule, in s. VE 3.68 (2) on page 83, line 1530, change “subs.” to “sub.”.

w. In SECTION 4 of the proposed rule, s. VE 3.70 (1) on page 83, line 1532, lacks clarity. It states that a certain complaint shall be issued “no later than 20 days following the issuance of the summary suspension or limitation order or the suspension or limitation shall lapse at the end of the tenth day”. From what event is the tenth day measured?

x. In SECTION 4 of the proposed rule, in s. VE 3.72 on page 83, line 1545:

(1) The board should review the grammar of this sentence. Should “and issue” be changed to “and whether to issue”?

(2) Add a period at the end of the sentence.