

WISCONSIN VETERINARY EXAMINING BOARD

EMERGENCY RULE

The Wisconsin veterinary examining board hereby proposes the following emergency rule *to create* ch. VE 11, *relating to* a veterinary professional assistance program and affecting 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 November 13, 2017. The Governor approved this emergency rule on November 20, 2017.

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. 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.

VEB Contact

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

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EMERGENCY RULE

SECTION 1. Chapter VE 11 is created to read:

Chapter VE 11

VETERINARY PROFESSIONAL ASSISTANCE PROGRAM

- VE 11.01 Authority and purpose.
- VE 11.02 Definitions.
- VE 11.04 Contract for VPAP.
- VE 11.06 Referral to and eligibility for disciplinary VPAP.
- VE 11.08 Requirements for disciplinary VPAP participation.
- VE 11.10 Disciplinary VPAP participation agreement.
- VE 11.12 Approval of service providers.
- VE 11.14 Approval of drug testing services.
- VE 11.16 Records.
- VE 11.18 Reports to board.

VE 11.01 Authority and purpose. Pursuant to 89.03 (3), the board adopts these rules specifying a procedure for addressing allegations that a person licensed or certified by the board 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 board 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 board 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.

VE 11.02 Definitions. As used this chapter:

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

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

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

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

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

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

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

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

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

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

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

(c) Intervening in cases of verified impairment.

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

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

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

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

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

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

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

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

(2) The board may stipulate with a credential holder, in the disciplinary process, to refer the credential holder to the VPAP as part of a settlement for uncontested unprofessional conduct on the part of the credential holder. The stipulation shall include language that a referral does not guarantee acceptance of the credential holder by the VPAP and the potential consequences if the credential holder is not accepted in the VPAP or does not complete the terms of acceptance. The stipulation may include other discipline to be completed by the credential holder, separate from the disciplinary VPAP.

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

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

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

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

- (a) Sign a participation agreement with the VPAP, a copy of which shall be provided to the board.
- (b) Obtain a comprehensive assessment for alcohol, chemical, and/or mental health impairments from an approved service, including submitting to any required testing. The credential holder shall arrange for the service to file a copy of its assessment with the VPAP. The VPAP may agree to waive this requirement.
- (c) Remain free of alcohol, if diagnosed as an impairment, controlled substances, and prescription drugs unless prescribed for a valid medical purpose.
- (d) Timely enroll and participate in any approved service, as required by the assessment or agreed to by the credential holder and VPAP, if the assessment is waived pursuant to par. (b).
- (e) Comply with any treatment recommendations, work restrictions, or conditions deemed necessary by a testing, assessment, or treatment service.
- (f) Submit any required random monitored physiological specimens for the purpose of screening for alcohol or controlled substances, provided by a drug testing service.
- (g) Execute releases, valid under state and federal law, to allow the VPAP access to the credential holder's counseling, treatment, and monitoring records.

- (h) Have the credential holder's service and work supervisors file quarterly reports with the VPAP.
- (i) Notify the VPAP of any changes in the credential holder's employer within 5 days.
- (j) File quarterly reports documenting the credential holder's attendance at meetings of self-help support groups.

(2) If the VPAP determines, based on consultation with any service authorized to provide testing, treatment, or monitoring of the credential holder, that a credential holder participating in its program has failed to meet any of the requirements set under sub. (1), the VPAP shall make a written determination if it will continue to allow the credential holder to use its program and obtain a new participation agreement with any additional requirements, determined by the VPAP. The VPAP shall notify the board of the failure and the VPAP's determination of program continuation.

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

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

- (a) A statement describing the credential holder's conduct, relating to participation in the VPAP.
- (b) An acknowledgement by the credential holder of the impairment needing treatment.
- (c) An agreement to participate, at the credential holder's expense if necessary, in an approved treatment regimen.
- (d) An agreement to submit to random monitored drug screens at the credential holder's expense, provided by a drug testing service approved by the VPAP under s. VE 11.12 , if deemed necessary by the VPAP.
- (e) An agreement to submit to practice restrictions at any time during the treatment regimen, as deemed necessary by the VPAP.
- (f) An agreement to furnish the VPAP with signed consents for release of information, from treatment providers and employers authorizing the release of information to the VPAP and board, for the purpose of monitoring the credential holder's participation in the VPAP.
- (g) An agreement to authorize the VPAP to release information described in pars. (a), (c) and (e), the fact that a credential holder has been dismissed from the VPAP pursuant to VE 11.06(2), or violated terms of the agreement in s. VE 11.06 (1) (b) to (e) and (h) concerning the credential holder's participation in the VPAP to the employer or any service identified by the credential holder, and an agreement to authorize the VPAP to release the results of random monitored drug screens, under par. (d), to any service identified by the credential holder.
- (h) An agreement to participate in the VPAP for a period of time, as established by the stipulation between the credential holder and board.

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

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

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

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

1. The facility is certified by appropriate national or state certification agencies.
2. The treatment program focus at the facility is on the individual with an impairment of the same type as has been identified in the credential holder.
3. Facility treatment plans and protocols are available to the VPAP.
4. The facility, through the credential holder's supervising therapist, agrees to file reports as required, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

(b) It is an individual therapist who:

1. Has credentials and experience determined by the VPAP to be in the credential holder's area of need.
2. Agrees to perform an appropriate assessment of the credential holder's therapeutic needs and to establish and implement a comprehensive treatment regimen for the credential holder.
3. Forwards copies of the therapist's treatment regimen and office protocols to the VPAP.
4. Agrees to file reports as required to the VPAP, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

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

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

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

1. The service shall enroll participants by setting up an account, establishing a method of payment and supplying preprinted chain-of-custody forms.
2. The service shall provide the participant with the address and phone number of the nearest collection sites and shall assist in locating a qualified collection site when traveling outside the local area.

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

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

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

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

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

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

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

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

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

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

(b) Collection site.

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

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

(c) Laboratory.

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

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

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

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

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

(d) *Report results.*

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

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

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

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

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

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

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

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

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

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

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