

**ORDER
OF THE WISCONSIN VETERINARY EXAMINING BOARD
ADOPTING RULES**

The Wisconsin veterinary examining board hereby adopts the following permanent rule *to amend* s. VE 1.02 (intro.) and *to create* ch. VE 11, *relating to* a veterinary professional assistance program and affecting small business.

Analysis Prepared by the Veterinary Examining Board

This permanent rule, in conjunction with a proposed 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. 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.

Statutes Interpreted

Statutes Interpreted: s. 89.03, Stats. (title) “Rules.”

Statutory Authority

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

Explanation of Statutory Authority

The VEB has been given specific authority, pursuant to s. 89.03 (3), Stats., 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 ch. 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.

The newly created ch. VE 11, Veterinary Professional Assistance Program, specifies the authority and purpose of the rules; definitions used in the chapter; contracting requirements for a third-party program administrator; use of the confidential voluntary program component by impaired veterinary professionals; referral to and eligibility for credential holders to use the disciplinary program, including participation requirements and agreement terms; approval of service providers, including those providing alcohol, drug or other chemical testing services; record requirements, including confidentiality provisions; and reports to the VEB.

The rule ensures early identification of impaired veterinary professionals, as required in statute, by providing that the program has a confidential, voluntary component for those persons, so long as the professional is not a credential holder with an outstanding complaint before the board's disciplinary process. The rules promulgated under this subsection may be used in conjunction with the formal disciplinary process under this chapter and this rule does so with a disciplinary component in the program that may be utilized through either a stipulation, between a credential holder and board or disciplinary counsel, or a board order. The rule specifies the contracting requirements for another entity to administer the program.

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.

Analysis and Supporting Documents Used to Determine Effect on Small Business

The VEB looked at the current rules in effect under ch. SPS 7, Wis. Adm. Code, with regard to professional assistance programs that apply to other professions, 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 is 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. There were no comments related to any adverse effect on small business, after posting the rule for a two-week period, before the rule was sent to hearing, or during and after having four rule hearings in Eau Claire, Green Bay, Waukesha and Madison.

VEB Contact

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

Cheryl Daniels, Board Counsel
Veterinary Examining Board
C/o Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone: (608) 224-5026 E-Mail: Cheryl.Daniels@Wisconsin.gov

SECTION 1. Section VE 1.02 (intro.) is amended to read:

VE 1.02 Definitions. As used in chs. VE 1 to ~~40~~11:

SECTION 2. 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 program.
- VE 11.06 Referral to and eligibility for disciplinary program.
- VE 11.08 Requirements for disciplinary program participation.
- VE 11.10 Disciplinary program participation agreement.
- VE 11.12 Approval of service providers.
- VE 11.14 Approval of service providers for alcohol, drug or other chemical testing.
- VE 11.16 Records.
- VE 11.18 Reports to board.

VE 11.01 Authority and purpose. Pursuant to s. 89.03 (3), Stats., 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 s. 89.03 (3), Stats., the board shall seek to facilitate early identification of chemically dependent veterinarians or veterinary technicians and encourage their rehabilitation. The rules promulgated under s. 89.03 (3), Stats., may be used in conjunction with the formal disciplinary process under ch. 89, Stats.

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 counsel" means the attorney bringing complaints against credential holders before the board.

(4) "Disciplinary program" means the component of 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.

(5) "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.

(6) "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, drug or other chemical, or mental health impairment.

(7) "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.

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

(9) "Screening panel" means the board committee that reviews complaints to see if investigation by disciplinary counsel is warranted and reviews possible settlements and orders against credential holders.

(10) "Service provider" means any program-approved provider of assessment, testing, treatment, rehabilitation, monitoring, and support for any specified impairments by the use of alcohol, other drugs or chemicals, or of mental health. The term includes any person supervising the credential holder while working as a veterinary professional.

(11) "Voluntary program" means the component of the veterinary professional assistance program that an impaired veterinary professional, as defined in subs. (5), may utilize for assistance with a self-identified alcohol, drug or other chemical, or mental health impairment, through a participation agreement with the program.

VE 11.04 Contract for program. (1) The board may enter into a contract with a nonprofit corporation or veterinary 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 service providers, in accordance with the requirements in VE 11.12 and VE 11.14. The program shall inform all service providers, and update changes in this information as soon as possible, of the employees in the program designated to receive required information from the service provider.

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

(c) Intervening in cases of verified impairment.

(d) Signing a confidential participation agreement with impaired veterinary professionals for making referrals to them to utilize services, from service providers contracted with under par. (a), 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 impaired veterinary professionals in the voluntary program and credential holders in the disciplinary program.

(h) Reporting program statistical information to the board.

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

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

(3) The board and the program, as part of the contract, shall agree to eligibility criteria for impaired veterinary professionals to be accepted into the voluntary program, to fulfill the requirements in s. 89.03 (3), Stats. The program may not accept a credential holder to the voluntary program, if the board's disciplinary process has an outstanding complaint against that credential holder.

(4) Except for information produced for the board under pars. (1) (h) and (i), all information, interviews, records, reports, statements, memoranda, or other documents furnished to or produced by the program, are confidential.

VE 11.06 Referral to and eligibility for disciplinary program. (1) The board, or disciplinary counsel upon direction by the screening panel, may stipulate with a credential holder in the disciplinary process, to refer the credential holder to the disciplinary program 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 disciplinary program and the potential consequences if the credential holder is not accepted in the disciplinary program or does not complete the terms of acceptance. The stipulation, or a separate stipulation or order, may include other discipline to be completed by the credential holder, separate from the disciplinary program.

(2) The program shall supply a referred credential holder 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 program to make its determination as to the applicant's eligibility.

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

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

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

(a) Sign a participation agreement with the program and provide a copy to the board.

(b) Obtain a comprehensive assessment for alcohol, drug or other chemical, or mental health impairments from an approved service provider, including submitting to any required testing, and arrange for the service to file a copy of its assessment with the program. The program may agree to waive this requirement.

(c) Remain free of alcohol, if diagnosed as an impairment, or 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 program, 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 provider.

(f) Submit any required random monitored physiological specimens to a service provider for the purpose of screening for alcohol, drug or other chemical substances.

(g) Execute releases, valid under state and federal law, to allow the program 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 program.

(i) Notify the program 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 program determines, based on consultation with any service provider 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 program 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 program. The program shall notify the board of any determinations under this subsection.

(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 program participation agreement. (1) The credential holder's participation agreement in the disciplinary program shall at a minimum include:

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

(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 alcohol, drug or other chemical screens at the credential holder's expense, by a service provider for alcohol, drug or other chemical testing approved by the program under s. VE 11.14, if deemed necessary by the program.

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

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

(g) An agreement authorizing the program to release, to the employer or any service provider identified by the credential holder, all of the following:

1. The information described in pars. (a), (c), and (e).
2. If the credential holder violates the terms of the disciplinary program under VE 11.08 (1)
3. If the credential holder is dismissed from the disciplinary program, pursuant to VE 11.08 (2).

(h) An agreement authorizing the program to release the results of random monitored alcohol, drug or other chemical screens under par. (d), to any service provider identified by the credential holder.

(i) An agreement to participate in the program for a period of time, as established by the stipulation between the credential holder and board or disciplinary counsel.

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

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

(a) The service provider 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 program.
4. The facility, through the facility's supervising therapist for the credential holder, 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) The service provider is an individual therapist who:

1. Has credentials and experience determined by the program 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 program.
4. Agrees to file reports as required to the program, 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 program does not approve any service provider, as requested by the credential holder, the credential holder may, within 10 days of notice of the determination, request the board to review the program's adverse determination.

VE 11.14 Approval of service providers for alcohol, drug or other chemical testing. (1)
The program shall approve service providers for use by credential holders, who participate in alcohol, drug

or other chemical monitoring programs pursuant to stipulations between the board and credential holders or pursuant to disciplinary orders.

(2) To be approved as a service provider for alcohol, drug or other chemical testing, the service provider shall satisfactorily meet all of the following requirements for administration, collection site, laboratory, and reporting: (a) *Administration*.

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

2. The service provider shall provide the credential holder 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 provider shall begin random selection of days, when credential holders shall provide specimens, upon enrollment and the service shall notify the program that selection has begun.

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

5. The service provider shall maintain and make available to the program and service providers for treatment, through an internet website, data that are updated on a daily basis verifying the date and time each randomly selected credential holder was notified to provide a specimen, the date, time and location each specimen was collected, the results of screening, and whether or not the credential holder complied as directed.

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

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

8. The service provider shall inform credential holders of the total cost for each alcohol, drug or other chemical 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 provider shall immediately report to the program, if the service provider, laboratory or any collection site fails to comply with this section. The program may remove a service provider from the approved list if the service provider fails to comply with this section.

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

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

12. The service provider and laboratory shall not disclose to the credential holder or the public the specific alcohol, drugs or other chemicals tested.

(b) *Collection site*.

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

(c) *Laboratory.*

1. The service provider 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 program shall evaluate the laboratory's compliance on a case by case basis.

2. The service provider shall utilize a laboratory capable of analyzing specimens for alcohol, drugs or other chemicals specified by the program.

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

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

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

(d) *Report results.*

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

2. The service provider shall inform designated program 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 provider shall fax, e-mail or electronically transmit laboratory copies of test results at the request of the program.

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

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

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

(2) PUBLIC RECORDS REQUESTS. Requests to inspect program 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 program 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 program shall report to the board at least once a year and at other times, if requested to do so by the board.

SECTION 3. EFFECTIVE DATE AND INITIAL APPLICABILITY. This rule takes effect on the first day of the month following publication in the Wisconsin administrative register, as provided under s. 227.22 (2) (intro.).

Dated this 22nd day of June, 2018.