

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

- 1 The Wisconsin veterinary examining board hereby proposes the following rule *to create* VE 7.02 (3) (d)
- 2 and VE 7.025; *relating to* the provision of complementary, alternative, and integrative therapies, and
- 3 affecting small business.

Analysis Prepared by the Veterinary Examining Board

The Wisconsin Veterinary Examining Board (VEB) proposes a rule revision in ch. VEB 7, Wis. Adm. Code, to clarify the circumstances under which a veterinarian may make a referral of a veterinary client to another licensed professional, or supervise a certified veterinary technician, for the provision of complementary, alternative, or integrative therapies (CAITs), as defined in s. VEB 1.02 (3m), Wis. Adm. Code, on the client's animal.

Statutes Interpreted

Statute Interpreted: ss. 89.01 (6) and 89.05 (1), Stats.

Statutory Authority

Statutory Authority: s. 89.03 (1), Stats.

Explanation of Statutory Authority

VEB has specific authority, under the provisions cited above, to adopt rules establishing the scope of practice permitted for veterinarians.

Related Statutes and Rules

VEB administers ch. 89, Stats., as well as the administrative rules in VE 1-10, Wis. Adm. Code, and in the administration of these statute and rules, VEB may issue administrative orders imposing discipline for unprofessional conduct related to the practice of veterinary medicine, including issuing an administrative warning to, or reprimanding, any person holding a veterinary medical license, or denying, revoking, suspending, limiting, the person's license, as specified by statute.

Plain Language Analysis

There is a current definition, in s. VE 1.02 (3m), Wis. Adm. Code, of veterinary complementary, alternative, and integrative therapies. However, that definition does not specify how these CAITs are to be treated within the practice of veterinary medicine. There have been numerous requests made to the VEB, from veterinarians, certified veterinary technicians, and members of other licensed professions, to clarify the referral relationship that a veterinarian may have with these other professionals for the veterinarian's clients, and the delegation to certified veterinary technicians for the provision of CAITs upon a veterinarian's animal patients.

The VEB proposes to create a rule, s. VE 7.025, Wis. Adm. Code, specifying that a veterinarian may make a referral to another Wisconsin-licensed professional, so long as the other professional gives evidence to the veterinarian of his or her license in good standing with the Wisconsin Department of Safety and Professional Services, to perform the type of CAITs for which the referral is made, and his or her education, training, and experience in performing that type of CAIT on an animal. The proposed rule includes a provision that the veterinarian-client-patient relationship ("VCPR"), as defined in s. 89.02 (8), Stats., does not extend to the CAITs provided by the other professional, where the veterinarian demonstrates meeting the requirements in making the referral or the client obtains a therapy provider for the client's animal without a referral.

In addition, the VEB proposes to create an additional provision, within s. VE 7.02, Wis. Adm. Code delegation of veterinary medical acts, for the veterinarian to delegate to a certified veterinary technician the performance of CAITs on an animal patient, where the certified veterinary technician is not a licensed professional performing CAITs. By including this provision in the section on delegation of veterinary medical acts, the VEB makes clear that the technician's CAIT performance is under the direct supervision of the veterinarian, who will continue to have all of the supervisory responsibilities specified in this section, and within the VCPR.

Summary of, and Comparison with Existing or Proposed Federal Statutes and Regulations

There are no federal regulations governing the practice of veterinary complementary, alternative, and integrative therapies.

Comparison with Rules in Adjacent States

Illinois' veterinary medicine and surgery practice act defines CAITs very similarly to the current definition in s. VE 1.02 (9), Wis. Adm. Code. The act specifically allows a member in good standing of another licensed or regulated profession within any state or an Illinois-approved member of an organization or group to provide hands-on active participation in the treatment and care of a patient, within a veterinarian-client-patient relationship and with informed consent from the client, so long as the member works under the supervision of the veterinarian. The veterinarian maintains the veterinarian-client-patient relationship, but is immune from civil and criminal liability for the member's assistance, except for willful and wanton conduct. The other professional may not state or imply in any way that they are licensed or engaging in the practice of veterinary medicine.

Iowa's and Michigan's veterinary statutes and rules do not address this issue.

Within Minnesota's practice of veterinary medicine act, there is a provision that specifically states that the act does not prohibit a licensed chiropractor from registering with its chiropractor board and performing animal chiropractic on animals that have been referred to the chiropractor by a veterinarian.

Analysis and Supporting Documents Used to Determine Effect on Small Business

This rule was developed with the assistance of a VEB-appointed rules advisory committee that included five Wisconsin-licensed veterinarians, two Wisconsin-certified veterinary technicians, two Wisconsin-licensed members of other professions who provide complimentary, alternative, or integrative therapies on animals, two public members, and a VEB member as a liaison to the Board. The committee looked at practices in other states, consulted with veterinary medical groups, and brought expertise on the use of these CAITs in assisting animals for their health and well-being. Written comments were collected after posting the rule for a 30-day period, oral comments were made during the four rule hearings in Eau Claire, Green Bay, Waukesha and Madison, and additional written comments during the remainder of the public comment period, which ended on January 31, 2018.

Effect on Small Business

This rule change is anticipated to have an effect on small business, as many veterinary practices that will be subject to this definition change, are small businesses. However, it is not expected to have any adverse economic impact on these veterinary small businesses.

Instead, the proposed rule is anticipated to have a positive impact for veterinarians, certified veterinary technicians, and other Wisconsin-licensed professionals, as it clarifies the steps a veterinarian shall use to make a referral to another professional for CAITs and the delegation for these CAITs to certified veterinary technicians under the veterinarian's supervision. The VEB has received many requests for just this type of guidance from veterinarians, other professions practicing these therapies, and certified veterinary technicians in Wisconsin. Comments from licensed professionals, at hearings and in writing, were very supportive of the clarification, believing it will be very beneficial for the development of these businesses, but more importantly, for the health of these animal patients.

There were comments, in the initial posting for economic impact, at the four hearings, and in written comments after the hearing, specifically about animal massage therapy. The rule clarifies that a veterinarian, in order to transfer the client-patient for the therapy to the other professional, must make the referral to a professional licensed for that therapy in Wisconsin. Some persons who perform animal massage therapy have been trained or have experience in this modality, but are not licensed massage therapists, although others animal massage therapists are Wisconsin-licensed massage therapists.

The rule only limits the veterinarian, in making a direct referral, to make it to a person who is licensed in Wisconsin to perform this therapy, and some of the commenters felt this was an unfair limitation. These commenters, including non-licensed animal massage therapists and some animal owners, requested that animal massage therapy be exempted as a therapy under this rule. However, by the statutory definition "to practice veterinary medicine" in s. 89.02 (6), Stats., and the administrative rule definition of "complementary, alternative and integrative therapies" in s. VE 1.02 (3m), Wis. Adm. Code, animal massage therapy is within the statutory definition of the practice of veterinary medicine, and the advisory committee came to the conclusion that the VEB is not statutorily authorized to make the exemption in the rule. In addition, while at least one commenter made reference to Illinois, veterinary CAITs are under specific statutory provisions. And while Colorado and Indiana exempt animal massage therapy and equine massage therapy, respectively, from the practice of veterinary medicine, each state does so by statute.

In addition, some of the comments seem to indicate that they thought the rule also limited an animal owner's choice in this regard. Although the initial draft tried to clarify that the rule does not affect that choice, the final rule's provision has additional language to clarify that the rule does not interfere with the relationship between any animal owner and a person the animal owner chooses to perform a CAIT on the owner's animal.

Given the statutory and administrative rule definitions that animal massage therapy, and all other CAITs are within the practice of veterinary medicine, the rule also clarifies that a veterinarian using this referral process to another licensed professional transfers the patient-client relationship for the therapy provision, from the veterinarian to the other licensed professional, who will have their own professional client-patient relationship with the animal owner and patient. Only where a certified veterinary technician is delegated by the veterinarian to perform a CAIT, will the performance of the CAIT be under the direct supervision of the veterinarian and within the VCPR. This is a very specific assurance that veterinarians and other licensed professionals believe is important to make clear the professional who has the responsibilities in this regard.

This rule is not expected to have a substantial adverse economic effect on “small business” so it is not subject to the delayed “small business” effective date provided in s. 227.22(2) (e), Stats.

***VEB Contact
Where and When Comments May Be Submitted***

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

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Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this rule hearing draft is approved by the Veterinary Examining Board.

4 **SECTION 1.** VE 7.02 (3) (d) is created to read:

5 **7.02 (3)** (f) Except to certified veterinary technicians who are also licensed professionals governed
6 by the provisions in s. VE 7.025, the provision of any complementary, alternative, or integrative therapy,
7 as defined in s. VE 1.02 (3m).

8 **SECTION 2.** VE 7.025 is created to read:

9 **7.025 Veterinary referral to a license holder in another profession. (1)** A veterinarian may
10 make a referral to a client, for treatment of a patient by a license holder in another profession, using
11 complementary, alternative, or integrative therapies, as defined in s. VE 1.02 (3m), if the license holder, to

12 whom the client and patient are referred, provides all of the following evidence to the veterinarian for
13 performing the type of therapy for which the referral is being made:

14 (a) The license holder's current licensing in good standing, with the applicable board through the
15 department of safety and professional services.

16 (b) The license holder's education, training, and experience in performing the therapy on an animal.

17 (2) The veterinarian-client-patient relationship, as defined in s. 89.02 (8), Stats., does not extend to
18 the provision of any complementary, alternative, or integrative therapy performed on a veterinarian's
19 patient, under either of the following circumstances:

20 (a) The therapy is performed by a license holder in another profession, where the veterinarian
21 demonstrates meeting the requirements, in sub. (1), for making the referral to the license holder.

22 (b) The veterinarian's client obtains any complementary, alternative, or integrative therapy services
23 for a veterinarian's patient without a referral by the veterinarian.

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