

Open Meeting Notice

Meeting: Veterinary Examining Board
Date & Time: Thursday, November 2, 2017 9:30 A.M.
Location: DATCP; 2811 Agriculture Drive, Room 456; Madison WI 53718

The following agenda describes the issues that the Board plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a record of the actions of the Board.

AGENDA

9:00 A.M. OPEN SESSION – CALL TO ORDER – ROLL CALL

APPEARANCE – Department of Agriculture, Trade, and Consumer Protection (DATCP) Office of the Secretary: Cheryl Daniels, DATCP Attorney and VEB Board Counsel; Matt Tompach, Administrative Policy Advisor; Kelly Markor, Executive Staff Assistant;

Administrative Rule Matters

VE 11 – Emergency and Permanent Scope Statements to create Wis. Admin. Code § VE 11, relating to a Professional Assistance Procedure –

- A. Board Approval**
- B. Tentative Date for VE 11 Emergency Rule approval**
- C. Tentative Date for VE 11 Permanent Rule Hearing Draft approval**

ADJOURNMENT

To find out more about the meetings or to request documents to be used in connection with the meetings, write to:

DATCP - OFFICE OF THE SECRETARY

Matthew Tompach

PO Box 8911

Madison, WI 53708

608/224-5024 or by TDD line 608/224-5058

For the hearing or visually impaired, non-English speaking, or for those with other personal circumstances which might make communication at the meeting/hearing difficult, this agency will, to the maximum extent possible, provide aids including an interpreter, or a non-English, large print or taped version of hearing documents. Please contact the address or phone number listed above as soon as possible.

This agency, to the maximum extent possible, holds all meetings in facilities that are physically accessible to persons with disabilities. For questions about accessibility, contact the meeting's sponsoring division.



DATE: October 26, 2017

TO: Veterinary Examining Board

FROM: Cheryl Furstace Daniels, VEB Counsel

SUBJECT: **Regulation of Veterinary Professional Assistance Program and affecting small business; Rulemaking Emergency and Permanent Scope Statements – APPROVAL NEEDED**

PRESENTED BY: Cheryl Furstace Daniels

REQUESTED ACTION:

At the November 2, 2017, Veterinary Examining Board (“VEB”) meeting, the VEB will be asked to approve an “emergency scope statement” and a “permanent scope statement” (copies attached) for a proposed new rule, VE 11, related to creating rules for a professional assistance program assisting veterinary professionals with alcohol, other drug, and mental health impairments affecting their job responsibilities.

2017 Wisconsin Act 59, the Budget Bill, created s. 89.03(3), Stats., a provision requiring the VEB to promulgate rules specifying procedures for addressing alcohol or other drug, or mental health impairments of veterinarians or certified veterinary technicians, both prior to and within the disciplinary process. In addition, a non-statutory provision in this Act specified the VEB may use the emergency rule procedure to create this rule, but a Finding of Emergency is not necessary for promulgating this emergency rule. The scope statements before the VEB are to promulgate both an emergency rule and a permanent rule, so that the VEB may contract with another entity to administer the procedure specified under the rules promulgated under this subsection.

A scope statement spells out the general purpose and scope of a proposed rule. The VEB may not begin drafting a proposed rule (including a proposal to amend or repeal an existing rule) until the Governor approves a scope statement for that rule as required under s. 227.135(2), Stats. These scope statements were approved by the Governor on October 17, 2017 (copies attached).

Wisconsin statutes also require the VEB to approve a scope statement before staff may begin any work to draft a proposed rule. However, after the Governor’s approval, the VEB is required to publish a draft scope statement in the Wisconsin Administrative Register, and file a copy with the Department of Administration (DOA), at least 10 days before the Board approves the scope statement. VEB staff filed the attached scope statements with the Legislative Reference Bureau for publication in the October 23, 2017 issue of the Wisconsin Administrative Register and filed a copy with DOA as required. The ten-day period for publication has expired and now the VEB may approve the scope statements.

In addition, however, non-statutory language in 2017 Wisconsin Act 59 requires that, if the VEB uses the emergency rule process to create this new rule, the VEB shall promulgate the rule no later than the 60th day after the effective date of the Act, which was September 22, 2017. This means that, as soon as staff is able to draft the emergency rule, a special meeting will need to be noticed, as soon as possible, so the VEB can approve the emergency rule before sending it to the Governor for final approval and publication by November 22, 2017, the latest legal publication date. Publication of the emergency rule does mean that the VEB will be able move

forward with the same language for the permanent rule. At this November 2, 2017, meeting, the VEB will be asked for a time, likely on November 13, 2017, to schedule a meeting, via telephone, to approve the emergency rule

However, before the VEB may approve a draft of the permanent rule for hearing, the permanent hearing draft rule shall be posted on the Department of Agriculture, Trade and Consumer Protection's website for a minimum of 14 days, in order to gauge its possible adverse economic impact, before VEB staff drafts an initial economic impact analysis and fiscal estimate that must accompany the hearing draft rule. Once the VEB approves the emergency rule, VEB staff will post the same language for the permanent rule for 14 days, as required, before drafting the initial economic impact statement and fiscal estimate, which accompanies the hearing draft of the permanent rule. At this November 2, 2017, meeting, the VEB will be asked for a date to schedule a meeting, via telephone, to approve the permanent rule to go to hearing, likely the week of November 27, 2017.

Once the permanent VE 11 hearing draft is approved, the draft shall be referred to the Legislative Council's Rules Clearinghouse ("Clearinghouse") for review. The Clearinghouse must be given 20 working days for its review before rule hearings may be conducted by the VEB. Given the legal holidays in December, rule hearings will then be able to be conducted only after January 2, 2018.

The hearing process is usually held open a couple of weeks after hearings have been completed to give additional time to stakeholders to submit written comments. It is very possible the VEB will need to notice a special meeting via telephone, for a vote on the VE 11 final draft permanent rule during early February, 2018. The final draft permanent rule is then transmitted to the Governor for final approval, which can take up to a month, before being transmitted to the Legislature.

The VE 11 permanent rule is on a fast track for promulgation because non-statutory language in 2017 Wisconsin Act 59 only allows the emergency rule to be in place for 210 days, which is June 19, 2018, assuming the emergency rule is published on November 22, 2017. However, the Legislature's last floor period ends on March 22, 2018, so this permanent rule, needing to be enacted in 2018, is required to be referred to the Legislature by that date. Even with this accelerated timeline, VEB staff will work hard to ensure that all stakeholders will have robust opportunities for comment at all stages of the rulemaking process.

STATEMENT OF SCOPE

Wisconsin Veterinary Examining Board (VEB)

Rule No: Ch. VE 11 Wis. Adm. Code (New)

Relating to: Professional Assistance Program for Veterinary Professionals

Rule Type: Emergency

1. Finding/nature of emergency (Emergency Rule only):

The Wisconsin Veterinary Examining Board (“VEB”) was attached, for limited purposes, to the Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”), pursuant to 2015 Wisconsin Act 55. However, while the VEB continued to oversee chs VE 1-10, Wis. Adm. Code, the Professional Assistance Procedure in ch. SPS 7, Wis. Adm. Code, did not transfer. That procedure is overseen by the Wisconsin Department of Safety and Professional Services (“DSPS”), the agency to which the VEB was previously attached.

2017 Wisconsin Act 59, the Budget Bill, created s. 89.03(3), Stats., a provision requiring the VEB to promulgate rules specifying procedures for addressing alcohol or other drug, or mental health impairments of veterinarians or certified veterinary technicians, both prior to and within the disciplinary process. In addition, a non-statutory provision in this Act specified the VEB may use the emergency rule procedure to create this rule, but a Finding of Emergency is not necessary for promulgating this emergency rule, as follows:

SECTION 9102. Nonstatutory provisions; Agriculture, Trade and Consumer Protection.

(2) PROFESSIONAL ASSISTANCE PROCEDURES; EMERGENCY RULES. The veterinary examining board may use the procedure under section 227.24 of the statutes to promulgate rules under section 89.03 (3) of the statutes for the period before the effective date of the permanent rule promulgated under section 89.03 (3) of the statutes but not to exceed the period authorized under section 227.24 (1) (c) of the statutes, subject to one extension of 60 days under section 227.24 (2) of the statutes. If the board uses this procedure to promulgate these rules, the board shall promulgate the rules no later than the 60th day after the effective date of this subsection. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the board 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.

2. Detailed description of the objective of the proposed rule:

This emergency rule will specify a procedure for addressing allegations that a person licensed or certified by the veterinary examining board, pursuant to ch. 89, Stats., 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. It will also specify a procedure for assisting a person, licensed by the veterinary examining board under that chapter, who requests to participate in the procedure or who

requests assistance in obtaining mental health services or in obtaining assistance with impairment caused by alcohol or other drugs. This emergency rule shall be written to facilitate early identification of chemically dependent veterinarians or veterinary technicians and encourage their rehabilitation. The emergency rule, promulgated under this subsection, may be used in conjunction with the formal disciplinary process under this chapter. The emergency rule will also specify that the VEB may contract with another entity to administer the procedure specified under the rules promulgated under s. 89.03(3), Stats.

The VEB expects to promulgate a permanent rule in conjunction with the proposed emergency rule

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

DSPS already has a rule for a Professional Assistance Procedure to be used in conjunction with discipline imposed by professional boards attached to that agency. In this instance, the VEB shall develop the rule described above, as required in s. 89.03(3), Stats.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The VEB has specific authority to adopt these rules s. 89.03(3), Stats. Additionally, the VEB has specific authority to promulgate an emergency rule, related to a veterinary professional assistance program in Section 9102 of 2017 Wisconsin Act 59.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

This emergency rule, in conjunction with the permanent rule also being developed, will take approximately 20 hours of staff time to develop.

6. List with description of all entities that may be affected by the proposed rule:

The rule will affect any Wisconsin-licensed veterinarian or Wisconsin-certified veterinary technician, who may seek assistance or be identified as needing assistance in the disciplinary process, for alcohol or other drug or mental health impairments.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

There are no federal regulations for veterinary professional assistance programs.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The Department expects the proposed emergency rule to have no negative economic impact on Wisconsin's licensed veterinarians or certified veterinary technicians. Instead, this rule will benefit Wisconsin veterinary professionals, allowing them to seek early assistance for alcohol or other drug or mental health impairments.

Contact Person: Cheryl Daniels, Board Attorney
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Madison, WI 53708-8911
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E-Mail: Cheryl.Daniels@Wisconsin.gov

Department Head or Authorized Signature

Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

October 17, 2017

Philip Johnson
Chairperson
Wisconsin Veterinary Examining Board
PO Box 8911
Madison, WI 53708

RE: Scope Statement for Emergency Rule creating Ch. VE 11 relating to professional assistance for veterinary professionals

Dear Chairperson Johnson,

I hereby approve the statement of scope submitted on October 13, 2017 to SBO, pursuant to Wisconsin Statutes § 227.135, in regards to an emergency rule creating Chapter VE 11 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.24(1)(e)1d.

Sincerely,

Scott Walker
Governor

STATEMENT OF SCOPE

Wisconsin Veterinary Examining Board (VEB)

Rule No: Ch. VE 11 Wis. Adm. Code (New)

Relating to: Professional Assistance Program for Veterinary Professionals

Rule Type: Permanent

1. Detailed description of the objective of the proposed rule:

This new rule will specify a procedure for addressing allegations that a person licensed or certified by the veterinary examining board, under ch. 89, Stats., 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. It will also specify a procedure for assisting a person, licensed by the veterinary examining board under that chapter, who requests to participate in the procedure or who requests assistance in obtaining mental health services or in obtaining assistance with impairment caused by alcohol or other drugs. This emergency rule shall be written to facilitate early identification of chemically dependent veterinarians or veterinary technicians and encourage their rehabilitation. This proposed rule, promulgated under this subsection, may be used in conjunction with the formal disciplinary process under this chapter. The new rule will also specify that the VEB may contract with another entity to administer the procedure specified under the rules, promulgated pursuant to s. 89.03(3), Stats.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule.

The Wisconsin Veterinary Examining Board (“VEB”) was attached, for limited purposes, to the Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”), pursuant to 2015 Wisconsin Act 55. However, while the VEB continued to oversee chs VE 1-10, Wis. Adm. Code, the Professional Assistance Procedure in ch. SPS 7, Wis. Adm. Code, did not transfer. That procedure is overseen by the Wisconsin Department of Safety and Professional Services (“DSPS”), the agency to which the VEB was previously attached.

2017 Wisconsin Act 59, the Budget Bill, created s. 89.03(3), Stats., a provision requiring the VEB to promulgate rules specifying procedures for addressing alcohol or other drug, or mental health impairments of veterinarians or certified veterinary technicians, both prior to and within the disciplinary process. In addition, a non-statutory provision in this Act specified the VEB may use the emergency rule procedure to create this rule, but a Finding of Emergency is not necessary for promulgating this emergency rule. The VEB also created a Scope Statement to promulgate an emergency rule, in a parallel process to the permanent rule procedure for this proposed rule.

3. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The VEB is specifically required to adopt these rules, pursuant to s. 89.03(3), Stats., as follows:

89.03 (3) The examining board shall promulgate rules specifying a procedure for addressing allegations that a person licensed or certified by the veterinary examining 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 veterinary examining 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 examining 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. The examining board may contract with another entity to administer the procedure specified under the rules promulgated under this subsection.

4. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

This rule, in conjunction with the emergency rule also being developed, will take approximately 20 hours of staff time to develop.

5. List with description of all entities that may be affected by the proposed rule:

The rule will affect any Wisconsin-licensed veterinarian or Wisconsin-certified veterinary technician, who may seek assistance or be identified as needing assistance in the disciplinary process, for alcohol or other drug or mental health impairments.

6. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

There are no federal regulations for veterinary professional assistance programs.

7. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The Department expects the proposed rule to have no negative economic impact on Wisconsin's licensed veterinarians or certified veterinary technicians. Instead, this rule will benefit Wisconsin veterinary professionals, allowing them to seek early assistance for alcohol or other drug or mental health impairments.

Contact Person: Cheryl Daniels, Board Attorney
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Madison, WI 53708-8911
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Department Head or Authorized Signature

Date Submitted



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

October 17, 2017

Philip Johnson
Chairperson
Wisconsin Veterinary Examining Board
PO Box 8911
Madison, WI 53708

**RE: Scope Statement for Ch. VE 11 relating to professional assistance for
veterinary professionals**

Dear Chairperson Johnson,

I hereby approve the statement of scope submitted on October 13, 2017 to SBO, pursuant to Wisconsin Statutes § 227.135, in regards to a proposed rule creating Chapter VE 11 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.135(3).

Sincerely,

A handwritten signature in black ink, appearing to be "S. Walker".

Scott Walker
Governor