

Report From Agency

**VEB Docket No. 16-VER-1
Rules Clearinghouse No. 16-068**

**Final Draft
October 22, 2018**

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

1 The Wisconsin veterinary examining board hereby proposes the following rule *to amend* VE 1.02 (9) and
2 *to create* VE 7.02(4); *relating to* the definition of veterinary medical surgery and the delegation of
3 veterinary medical acts, and affecting small business.

Analysis Prepared by the Veterinary Examining Board

The Wisconsin Veterinary Examining Board (VEB) proposes a rule revision in Wis. Admin. Code ch. VE 1 to broaden the definition of surgery, removing the limitation in Wis. Admin. Code § VE 1.02 (9) to procedures that are for therapeutic purposes. This rule revision also specifies additional procedures exempted from the definition. In addition, the VEB proposes a rule revision in Wis. Admin. Code § VE 7.02(4) to include those additional exemptions added to the definition, still defined as the practice of veterinary medicine, but which are services a veterinarian may delegate to a certified veterinary technician (“CVT”) to provide. The veterinarian may do so while the CVT is under the direct supervision of the veterinarian who remains personally present on the premises where the CVT provides those services.

Statutes Interpreted

Statute Interpreted: Wis. Stat. §§ 89.02 (6) and 89.05 (1).

Statutory Authority

Statutory Authority: Wis. Stat. § 89.03 (1).

Explanation of Statutory Authority

The VEB has specific authority, under the provision cited above, to adopt rules establishing the scope of practice permitted for veterinarians and veterinary technicians.

Related Statutes and Rules

The VEB administers Wis. Stat. ch. 89, as well as the administrative rules in Wis. Admin. Code chs. VE 1-11. In the administration of these administrative rules and statute, the 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 the VEB may deny, suspend, limit, or revoke the person's license, as specified by statute and administrative rule.

Plain Language Analysis

Currently, in Wis. Admin. Code § VE 1.02 (9), the definition of "surgery" for veterinary medical practice is limited to procedures that are for therapeutic purposes. This leaves uncertainty for the profession and the VEB as to whether surgeries for other purposes, including reproduction and cosmetic changes, are included. A change to the definition is important to clarify that surgical procedures are broader than for therapeutic purposes, only, but also identifying additional procedures not considered surgery. The rule clarifies that some procedures not considered surgery also do not fall within the definition of the practice of veterinary medicine, under Wis. Admin. Code § VE 1.02(6). Additionally, the rule clarifies that other procedures, not falling within the definition of surgery, remain within the practice of veterinary medicine. Finally, in Wis. Admin. Code § VE 7.02(4), the rule creates additional veterinary medical acts, not considered surgery but still within the practice of veterinary medicine, that a veterinarian may delegate to a certified veterinary technician ("CVT") to provide while under the direct supervision of the veterinarian who remains personally present on the premises where the CVT is providing the services.

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

There are no federal regulations governing the practice of veterinary medical surgeries.

Comparison with Rules in Adjacent States

None of the surrounding states of Illinois, Indiana, Iowa, Michigan, or Minnesota have their own definition of surgery in practicing veterinary medicine. Illinois does include animal reproductive services in the definition of the practice of veterinary medicine. Iowa does include cosmetic surgery in the practice of the veterinary medicine definition.

Summary of Factual Data and Analytical Methodologies

The VEB developed this rule after consultation with veterinary medical groups and review of other state rules related to veterinary surgery. After public hearings, a stakeholder objected to the rule. The stakeholder was concerned about assisted reproductive techniques and the use of certified veterinary technicians, instead of veterinarians, to perform these techniques.

The VEB exercised its jurisdiction, pursuant to Wis. Stat. § 227.18(3), to hear arguments before the entire VEB at a regularly scheduled meeting. The VEB invited presenters, listened to the presentations, and made certain changes to the text of the proposed rule, based upon the presentations. However, after changes were made, many additional stakeholders presented their concerns with the proposed change that would accommodate this particular stakeholder's business model. This feedback was received in writing and at a VEB meeting. The draft received further modifications. The VEB sent this rule draft to the Governor's office for approval, but the VEB then decided to withdraw the rule to invite further consideration. These discussions between the VEB and stakeholder groups resulted in further language modifications that ensures that all stakeholders will be able to practice veterinary medicine in the best way for their own business models, while still ensuring safety in the practice of veterinary medicine.

Analysis and Supporting Documents Used to Determine Effect on Small Business

The VEB held discussions with stakeholder groups regarding the impact of the proposed rule on small business. The VEB also carefully considered comments from attendees at public hearings. The VEB also held an additional hearing, pursuant to Wis. Stat. § 227.18(3), to consider objections to the rule. The VEB directed staff to make changes, based upon the presentations at the hearing. After the VEB responded to the initial version of the rule draft, many small business stakeholders presented their concerns in writing and at VEB meetings, so the VEB took these additional comments into consideration and made further modifications to the rule draft.

Effect on Small Business

The rule change will impact small business, as many veterinary practices that will be subject to this definition change are small businesses. However, the proposed rule will clarify exclusions from the practice of veterinary medicine, as well as inclusions in the practice that a veterinarian may delegate to a CVT. This will provide certainty to veterinarians concerning the regulation of surgery for reproductive, cosmetic, and other purposes that do not fall clearly within the notion of "therapeutic". The rule includes several additional procedures that a veterinarian may delegate to a CVT, while under the direct supervision of the veterinarian who remains personally present on the premises. These improvements will facilitate the best use of the veterinarian's skills and those of his or her staff in a practice. Everyone subject to these rules will receive notice as to practice conduct falling within the VEB's jurisdiction.

This rule will not have a significant adverse economic effect on small business, so it is not subject to the delayed "small business" effective date provided in Wis. Stat. § 227.22(2) (e).

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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4 **SECTION 1.** VE 1.02(9) is amended to read:

5 **(9)** "Surgery" means any procedure in which the skin or tissue of the patient is penetrated or
6 severed ~~for therapeutic purposes, except for~~ but does not include any of the following: activities identified
7 ~~in s. 89.05 (2). Surgery does not include giving injections or simple dental extractions that require minor~~
8 ~~manipulation and minimal elevation.~~

9 (a) Activities not considered the practice of veterinary medicine, as follows.

10 1. Activities identified in s. 89.05(2) (a) and (b), Stats.

11 2. Subcutaneous insertion of a microchip for identifying an animal.

12 3. Ear tag or tattoo placement for identifying an animal.

13 4. Euthanasia by injection.

14 (b) Activities considered the practice of veterinary medicine, but which a veterinarian may
15 delegate to a certified veterinary technician, as specified in s. VE 7.02(4), as follows.

16 1. Simple dental extractions that require minor manipulation and minimal elevation.

17 2. Administration of injections, including local and general anesthesia.

18 3. Sample collection via a cystocentesis procedure.

19 4. Placement of intravenous and arterial catheters.

20 5. Suturing of tubes and catheters.

21 6. Fine needle aspirate of a mass.

22 7. Performing amniocentesis, embryo, collection and transfer, follicular aspiration, and
23 transvaginal oocyte collection and recovery on livestock.

24 **SECTION 2.** VE 7.02(4) (d)-(h) are created to read:

25 (d) Sample collection via a cystocentesis procedure.

26 (e) Placement of intravenous and arterial catheters.

27 (f) Suturing of tubes and catheters.

28 (g) Fine needle aspirate of a mass.

29 (h) Performing amniocentesis, embryo collection and transfer, follicular aspiration, and
30 transvaginal oocyte collection and recovery on livestock.

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

Dated this _____ day of October, 2018.

FOR THE WISCONSIN VETERINARY EXAMINING BOARD

By _____
Melissa Mace, VEB Executive Director