

07hr_CRule_07-051_AC-Ag_pt01



Details:

(FORM UPDATED: 07/12/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Agriculture (AC-Ag)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt**
- Clearinghouse Rules ... **CRule**
- Hearing Records ... bills and resolutions
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Ruby, Erin

From: Rep.Ott
Sent: Wednesday, August 06, 2008 1:33 PM
To: Rep.Garthwaite; Rep.Gronemus; Rep.Jorgensen; Rep.Molepske; Rep.Mursau; Rep.Murtha; Rep.Nerison; Rep.Tauchen; Rep.Vruwink; Rep.WilliamsM
Cc: Arrowood, Craig; Cross, William; Halbach, Nathan; Hochhausen, Natolie; Hoelter, Jon; Junck, Linda; Kraak, Maureen; McKinny, Chris; Nelson, Elise; 'Palese Tony'; Patronsky, Mark; Peterson2, Ilsa; Plata, Christian; Potts, Andrew; Rausch, Scott; Smith-Loomans, Sandra; Sweeney, Rebekah; Wolkomir, Jon; Haack, Pamela - DRL
Subject: RE: Clearinghouse Rules Referred to Assembly Committee on Agriculture
Attachments: 20080806112215409.pdf

The following Clearinghouse Rule from the Department of Regulation and Licensing has been referred to the Assembly Committee on Agriculture for a 30 day review period:

Clearinghouse Rule 07-051: Continuing Education, Informed Consent and Recordkeeping (Attached - 12 pages).



2008080611221540
9.pdf (559 KB)...

Please contact my office if you have any questions, need hard copies of this document, or would like to request a hearing on the rule.

The initial 30 day deadline for committee review is Friday, September 5, 2008.

DATE: August 6, 2008

TO: Erin Ruby

Committee on Agriculture

FROM: Patrick E. Fuller, Assembly Chief Clerk

RE: Clearinghouse Rules Referral

The following Clearinghouse Rule has been referred to your committee.

CLEARINGHOUSE RULE 07-051

AN ORDER to renumber VE 1.02 (1); and to create VE 1.02 (1), 7.01 (5), 7.025, 7.03 (2) (q) and (3) (k), 7.06 (23) and 10.03 (4) (g), relating to continuing education, informed consent and recordkeeping.

Submitted by **Department of Regulation and Licensing.**

Report received from Agency on **July 25, 2008.**

To committee on **Agriculture.**

Referred on **Wednesday, August 6, 2008.**

Last day for action - **Friday, September 5, 2008.**

Under section 227.19 (4) of the Wisconsin Statutes, your committee has 30 days to take action or get an extension. The day **after** the official referral date is day one of your review period. Therefore, the 30th day should fall four weeks and two days after the referral date. For example, for Clearinghouse Rules referred on a Monday, a Wednesday would be your 30th day. For Clearinghouse Rules referred on a Tuesday, a Thursday would be your 30th day. For Clearinghouse Rules referred on a Wednesday, a Friday would be your 30th day. For Clearinghouse Rules referred on a Thursday or Friday, your 30th day would fall on a weekend. Therefore, your time would expire on the next working day (Monday) as provided for in s. 990.001 of the Wisconsin Statutes. Also, if the 30th day falls on a legal holiday, time would expire on the next working day.

Section 227.19 **requires** you to notify each member of your committee that you have received this Clearinghouse Rule. Although some committee chairs choose to do so, you are not required by law or rule to send a copy of the text of the rule to each member at this time. Instead, your notice could state that members should contact you if they wish to receive a hard copy of the rule. Another option would be to email the rule to members. **(Please note that the text of Rules beginning with the prefix "01" is available online in the Clearinghouse Rules infobase in FOLIO.)** Please put a copy of your official notification memo in the rule jacket.

Three copies of the Clearinghouse Rule and its accompanying documents are contained in the jacket. If you wish to have your Legislative Council attorney review the Clearinghouse Rule, send him/her a copy. I only need one copy remaining in the jacket when you report it out of committee at the end of the review period.

The identical process is happening simultaneously in the Senate. Keep track of their action on the rule.

For assistance with the Clearinghouse Rule process, please consult Kay Inabnet (6-5550) or your Legislative Council attorney. If you wish to learn more on this subject, read *Review of Administrative Rules* which is part of the Legislative Council's Wisconsin Legislator Briefing Book series, section 227.19 of the Wisconsin Statutes or part 2 of the *Administrative Rules Procedures Manual* written by the Revisor of Statutes Bureau and the Wisconsin Legislative Council staff.





Al Ott

State Representative • 3rd Assembly District

September 16, 2008

Secretary Celia Jackson
Wisconsin Department of Regulation & Licensing
1400 E. Washington Avenue
Madison, WI 53707

Dear Secretary Jackson,

This letter is to inform you that the following clearinghouse rule has been reported out of the Assembly Committee on Agriculture:

Clearinghouse Rule #07-051

Relating to: Continuing Education, Informed Consent and Recordkeeping (Veterinary Examining Board)

A public hearing was not held, and no committee action was taken on the rule.

Please feel free to contact my office if you have any questions.

Sincerely,

Al Ott
State Representative
Chair, Assembly Committee on Agriculture



**STATE OF WISCONSIN
VETERINARY EXAMINING BOARD**

**IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : VETERINARY EXAMINING BOARD
VETERINARY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 07-051)**

TO: Representative Michael Huebsch
Speaker of the Assembly
Room 211 West, State Capitol
Madison, Wisconsin 53702

PLEASE TAKE NOTICE that the VETERINARY EXAMINING BOARD is submitting in final draft form rules relating to continuing education, informed consent and recordkeeping.

Please stamp or sign a copy of this letter to acknowledge receipt. If you have any questions concerning the final draft form or desire additional information, please contact Pamela Haack at 266-0495.

Thank you.

STATE OF WISCONSIN
VETERINARY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 07-051
VETERINARY EXAMINING BOARD : (s. 227.19 (3), Stats.)

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

No new or revised forms are required by these rules.

III. FISCAL ESTIMATES:

The Department of Regulation and Licensing estimates that the proposed rule will have no significant fiscal impact. The department finds that this rule has no significant fiscal effect on the private sector.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

Currently, there is no specific statutory or administrative rule provision which requires a veterinarian to provide informed consent to clients. The rule will require veterinarians to inform clients prior to treatment of the diagnostic and treatment options consistent with the veterinary profession's standard of care and the associated benefits and risks of those options. The purpose of the requirement is to allow clients to make informed decisions regarding recommended diagnostic procedures and modes of treatment.

V. NOTICE OF PUBLIC HEARING AND SUMMARY OF PUBLIC COMMENTS:

A public hearing was held on August 8, 2007.

The following individuals appeared and spoke in opposition to the proposed rules concerning informed consent:

Rachel C. Rothschild, Assistant Dean, UW-Madison School of Veterinary Medicine,
Madison, WI

The UW-Madison School of Veterinary Medicine is concerned that the proposed rule changes do not clarify veterinarians' obligations to communicate about options, but rather will change the debate when a problem arises from whether options were explained to

what the words “all,” “generally,” and “viable” mean. The School supports the goal of raising the quality of information veterinarians provide their clients in the interest of clients giving better-informed consent, and support the general move toward improved medical recordkeeping.

Jerry Quilling, DVM, Plymouth, WI

Dr. Quilling takes exception to the proposed rule on informed consent. He is concerned that the economic effect of the rule has been underestimated; the ability of veterinarians to comply is questionable at best, and the legal ramifications go far beyond the actions of the board.

Tom Gilligan, DVM, President, Wisconsin Veterinary Medical Association (WVMA), Madison, WI

The WVMA had specific questions. What is viable? The proposed rule requires a veterinarian to inform a client about “all viable veterinary diagnostic procedures and modes of treatment.” What does “all” mean? To the veterinarian and the public “all” means everything. He indicated that the board disciplines veterinarians who do not meet minimum standards. However, the proposed rule does not require minimum standards; it requires the very highest standards. Who determines what is viable? Among veterinary professionals there are often differing options of what is generally considered to be current, acceptable standards of care. It is the WVMA’s belief that the public will expect the veterinary profession to adhere to the literal meaning of this rule, which is unreasonable as a minimum standard.

Pamela Stach, Attorney, Department of Regulation and Licensing, Division of Enforcement, Madison, WI

Ms. Stach spoke in favor of the rule.

VI. MODIFICATIONS MADE AS A RESULT OF PUBLIC HEARING TESTIMONY:

Based upon the comments received at the public hearing, the board made the following changes to the text of the rule:

1. Sections 3, 4, 5 and 6 were removed from the text of the rule that was considered at the public hearing. Those sections included a definition of “viable veterinary diagnostic procedures and modes of treatment,” and disclosure and recordkeeping requirements relating to all viable veterinary diagnostic procedures and modes of treatment.
2. Section 7 was revised to read: Failure to inform a client prior to treatment of the diagnostic and treatment options consistent with the veterinary profession’s standard of care and the associated benefits and risks of those options.

3. A definition of “standard of care” was created to mean “diagnostic procedures and modes of treatment considered by the veterinary profession to be within the scope of current, acceptable veterinary medical practice.”

Also, changes were made to the plain language analysis reflecting the changes made above and the change made as recommended in the Clearinghouse Report.

VII. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 5. In s. VE 7.025 (2) (b), it seems unnecessary and redundant to state that a veterinarian is not required to inform a client about procedures or modes of treatment that are not viable.

Response: The board deleted s. VE 7.025 (2) (b) from the proposed rules, as well as s. VE 7.03 (2) (q) and (3) (k).

VIII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

These rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1), Stats.

STATE OF WISCONSIN
VETERINARY EXAMINING BOARD

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : VETERINARY EXAMINING BOARD
VETERINARY EXAMINING BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 07-051)

PROPOSED ORDER

An order of the Veterinary Examining Board to renumber VE 1.02 (1); and to create VE 1.02 (1), 7.01 (5), 7.06 (23) and 10.03 (4) (g), relating to continuing education, informed consent and recordkeeping.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statute interpreted:

Sections 453.062 and 453.07, Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) and 453.03, Stats.

Explanation of agency authority:

The Veterinary Examining Board is authorized under s. 453.03 (1), Stats., to promulgate rules establishing the scope of practice permitted for veterinarians and rules relating to continuing education and unprofessional conduct.

Related statute or rule:

There are no other related statutes or rules other than those listed above.

Plain language analysis:

SECTION 1. Section VE 1.02 is renumbered VE 1.02 (1e).

SECTION 2. Section VE 1.02 (1) is created to define “accredited college or university” to mean “an educational institution that is accredited by a regional or national accrediting agency recognized by the U.S. Department of Education.”

SECTION 3. Section VE 7.01 (5) is created to define “standard of care” to mean “diagnostic procedures and modes of treatment considered by the veterinary profession to be within the scope of current, acceptable veterinary medical practice.”

SECTION 4. Section VE 7.06 (23) is created to state that it shall be unprofessional conduct for a veterinarian to fail to inform a client prior to treatment of the diagnostic and treatment options consistent with the veterinary profession’s standard of care and the associated benefits and risks of those options.

SECTION 5. Section VE 10.03 (4) (g) is created to state that a foreign veterinary medical or veterinary technician association, an accredited college or university, or a governmental agency that is, as determined by the board, comparable to a program provider listed under s. VE 10.03 (4) (a) to (f), may be approved as a continuing education course provider.

Summary of, and comparison with, existing or proposed federal regulation:

There is no existing or proposed federal regulation.

Comparison with rules in adjacent states:

Minnesota:

A rule on record keeping includes a list of what must be recorded. A rule on informed consent requires a client to be informed of treatment choices and alternatives, including an estimated cost of alternatives, prior to treatment. There is also language about the veterinarian assuming responsibility for clinical judgments and caretakers agreeing to follow the veterinarian’s instructions.

Illinois:

The statute includes language about the veterinarian assuming responsibility for clinical judgments and caretakers agreeing to follow the veterinarian’s instructions. This provision is similar to Minnesota’s law. A rule on recordkeeping includes a list of 10 items that must be included. Informed consent is one of them.

Iowa:

Does not have provisions relating to informed consent/disclosure of certain information to clients regarding treatment options.

Michigan:

Does not have provisions relating to informed consent/disclosure of certain information to clients regarding treatment options.

Summary of factual data and analytical methodologies:

The Veterinary Examining Board reviewed the proposed rule change during open session at its meetings in 2006, 2007 and 2008. Professional expertise and opinions of board members were offered and discussed at the meetings. The chair of the board invited comment from a representative of the Wisconsin Veterinary Medical Association (WVMA), and the board consulted the Department of Regulation and Licensing's Division of Enforcement regarding the impact of the current rule on its ability to prosecute unprofessional practice cases relating to informed consent and recordkeeping. The division attorney explained how the current rule does not adequately ensure that clients receive communication from veterinarians regarding viable treatment alternatives, their risks and benefits, and that explicit language would aid in prosecutions and increase protection of the public.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:

The requirement has no impact on the bookkeeping operations of veterinary clinics, most of which are small businesses. The proposed rule would not disproportionately impact small business veterinarians. The patient recordkeeping requirements for all veterinarians apply irrespective of practice size.

Section 227.137, Stats., requires an "agency" to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an "agency" in this section.

Fiscal estimate:

The department estimates that the proposed rule will have no significant fiscal impact.

Anticipated costs incurred by private sector:

The department finds that this rule has no significant fiscal effect on the private sector.

Effect on small business:

These proposed rules were reviewed by the department's Small Business Review Advisory Committee to determine whether the rules will have any significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Committee determined that the fiscal impact on small businesses would be minimal and is justified by the practice improvements required by the rule. The Department's Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling (608) 266-8608.

Agency contact person:

Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935. Telephone: (608) 266-0495. Email: pamela.haack@drl.state.wi.us.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email at pamela.haack@drl.state.wi.us. Comments must be received on or before August 10, 2007 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. VE 1.02 (1) is renumbered VE 1.02 (1e).

SECTION 2. VE 1.02 (1) is created to read:

VE 1.02 (1) "Accredited college or university" means an educational institution that is accredited by a regional or national accrediting agency recognized by the U.S. Department of Education.

SECTION 3. VE 7.01 (5) is created to read:

VE 7.01 (5) "Standard of care" means diagnostic procedures and modes of treatment considered by the veterinary profession to be within the scope of current, acceptable veterinary medical practice.

SECTION 4. VE 7.06 (23) is created to read:

VE 7.06 (23) Failure to inform a client prior to treatment of the diagnostic and treatment options consistent with the veterinary profession's standard of care and the associated benefits and risks of those options.

SECTION 5. VE 10.03 (4) (g) is created to read:

VE 10.03 (4) (g) A foreign veterinary medical or veterinary technician association, an accredited college or university, or a governmental agency that is, as determined by the board, comparable to a program provider listed under pars. (a) to (f).

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

Dated _____ Agency _____
Chairperson
Veterinary Examining Board

VE 1, 7, 10 CR07-051 (CE, Informed consent, recordkeeping) Draft to Leg 7-24-08



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 07-051

AN ORDER to renumber VE 1.02 (1); and to create VE 1.02 (1), 7.01 (5), 7.025, 7.03 (2) (q) and (3) (k), 7.06 (23) and 10.03 (4) (g), relating to continuing education, informed consent and recordkeeping.

Submitted by **DEPARTMENT OF REGULATION AND LICENSING**

05-17-2007 RECEIVED BY LEGISLATIVE COUNCIL.

06-12-2007 REPORT SENT TO AGENCY.

RS:MM

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 07-051

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

In s. VE 7.025 (2) (b), it seems unnecessary and redundant to state that a veterinarian is not required to inform a client about procedures or modes of treatment that are not viable.