



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 17-083

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

1. Statutory Authority

Section 89.03 (3), Stats., instructs the board to promulgate rules on two topics. First, the board must 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...”. Second, the board must promulgate rules “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”. The proposed rule does not appear to contain a procedure addressing the first topic for which the board must promulgate rules – a “procedure for addressing allegations”. The board may be relying upon the statutory authority in s. 89.03 (3), Stats., which allows the promulgated rules to be used in conjunction with the formal disciplinary process under ch. 89, Stats. However, note that ch. SPS 7, which previously applied to the veterinary examining board, contains a procedure in s. SPS 7.03 (3) that outlined a procedure for handling informal complaints involving allegations of impairment. The board may wish to consider a similar provision in ch. VE 11, so as to more fully comply with the directive of s. 89.03 (3), Stats.

2. Form, Style and Placement in Administrative Code

a. In the rule summary, the board should provide a specific date as the deadline to submit comments on the proposed rule. [s. 1.02 (2) (a) 13., Manual.]

b. The board should consider defining the term “board” in s. VE 11.02 or, alternatively, consider amending s. VE 1.02 (intro.) to apply the definitions of that section to ch. VE 11, as well. [s. 1.01 (7), Manual.]

c. To improve readability, the board could consider using the term “program” instead of “VPAP” throughout the proposed rule. If the board maintains use of the acronym, the definition for VPAP on lines 52 and 53 should clarify that VPAP stands for “veterinary professional assistance program”. [s. 1.01 (8), Manual.]

d. On line 48, the board should delete the clause “as used in this chapter”, because s. VE 11.02 (intro.) already defines the applicability of the defined terms.

e. On line 48, the board could consider using the defined term “service provider” instead of “service”, as the proposed rule uses the term “service provider” in s. VE 11.12 in a manner consistent with the current definition of “service”. Moreover, this change would more clearly distinguish service providers from drug-testing services. Note that the term “service” is repeatedly used in s. VE 11.14 regarding drug-testing services, though currently the proposed definition for “service” does not appear to include drug-testing services. The board could consider using the current definition for “service” as the definition for “service provider” and creating a new definition for “service” to mean a drug-testing service.

f. The board could consider moving the text on lines 70-72 from s. VE 11.04 to s. VE 11.06, as the language generally concerns certain professionals’ eligibility for the program, not the contracts between the board and the entities providing programs.

g. The board could consider moving the text on lines 76-78 from s. VE 11.06 to s. VE 11.04, as the language generally concerns the content that must be in a contract between the board and an entity providing a program.

h. The board should consider clarifying whether an impaired veterinary professional who voluntarily requests a referral from the board to participate in the program is required to enter into a stipulation or sign a participation agreement. While s. VE 11.04 (2) makes clear that a program may accept any impaired veterinary professional, even if the professional is not a credential holder with an outstanding complaint in the board’s disciplinary process, it is unclear how the remainder of ch. VE 11 applies to an impaired veterinary professional to which s. VE 11.04 (2) applies, given that the requirements under ss. VE 11.08 and 11.10 refer to “disciplinary VPAP” and employ the term “credential holder”.

i. To be concise and achieve clarity, the board could consider amending the text on line 124 to simply state: “...shall notify the board of any determinations under this subsection”. As currently drafted, the program must determine whether a credential holder has failed to meet a requirement and it also must determine if it will allow continued program participation.

j. The board should consider revising s. VE 11.10 (3) on lines 152 to 155 to better align with ch. VE 11, as the text for the proposed subsection appears to be directly copied from s. SPS 7.05 (3). Specifically, the board should consider the following issues:

- (1) The terms “board liaison”, “coordinator”, and “department” are neither defined in ch. VE 11 nor used elsewhere in the proposed rule.

- (2) The reference to s. SPS 7.08 should be changed to s. VE 11.16, if that meets the board's intent.

k. The board should consider removing the phrase "it is" from the introductory material on lines 158 and 166, respectively. [s. 1.01 (1), Manual.] Such changes may also prompt a change in s. VE 11.12 (1) (intro.). As suggested in other comments, the board could consider changing the defined term from "service" to "service provider" and further clarify that a "service provider" may include a facility or individual therapist. Such clarity in the definitions may assist in re-drafting the introductory material used in s. VE 11.10 (1) (intro.), (1) (a) (intro.), and (1) (b) (intro.). If the board defines the term "service provider" to include a facility or individual therapist, it could replace "a treatment facility or therapist" with "service provider" on line 175.

l. On line 182, s. VE 11.14 (2) uses a title, but the other subsections of s. VE 11.14 do not. Either titles should be used in all subsections in s. VE 11.14, or the board should remove the title for s. VE 11.14 (2). [s. 1.05 (1), Manual.]

m. In order to properly introduce subsequent material, the board should consider ending s. VE 11.14 (2) (intro.) with a colon.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In the rule summary's section titled "Statutes Interpreted", the board could consider clarifying that the reference to "Rules" is the title of the section.

b. Throughout the rule summary and the proposed rule, the board should ensure that all references to statutes are formatted as follows: "s. 89.03 (3), Stats.". [s. 1.07 (2), Manual.]

c. In the rule summary's section titled "Plain Language Analysis", the board should insert "ch." prior to its reference to "SPS 7".

d. On line 25, the board should replace "this subsection" with "s. 89.03 (3), Stats.". [s. 1.07 (2), Manual.]

e. On line 26, the board should replace "this chapter" with "ch. 89, Stats.". [s. 1.07 (2), Manual.]

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

a. In the rule summary's introductory paragraph, the board should delete the "(1)" after the reference to 2017 Wisconsin Act 59, and also delete the word "statutory", as that term is redundant when it immediately precedes "s. 89.03 (3), Stats.".

b. In the rule summary's section titled "Data and Analytical Methodologies", the board could consider specifying that it examined the current rules in effect under ch. SPS 7, Wis. Adm. Code, with regard to professional assistance programs that apply to other professions.

c. In the rule summary's section titled "Effect on Small Business", the board should amend the second sentence by using either "the rules are" or "the rule is" to achieve subject-verb agreement.

d. In the rule summary's section titled "VEB Contact", the board should delete the repeated use of the word "this".

e. On line 27, the board should insert "in" after the word "used".

f. On line 73, the reference to "sub. (1) (h)" should be "par. (1) (h)". [s. 1.03 (1), Manual.]

g. On line 75, the meaning of the clause "pursuant to sub. (2)" is unclear, as nothing in s. VE 11.04 (2) concerns confidentiality, or furnishing or producing records.

h. On line 90, the board could consider replacing the term "acceptance" with "eligibility". This change is consistent with the use of the term "ineligible" on line 93.

i. On lines 98-99, the board should consider clarifying who must provide a copy of the agreement to the board by employing the active, rather than passive, voice. [s. 1.01 (1), Manual.]

j. On line 100, the board should revise the rule text to avoid use of "and/or".

k. On line 102, the board should replace "to" with "and", assuming that change is consistent with the board's intent.

l. On line 135, the space between s. VE 11.12 and the comma should be removed.

m. In s. VE 11.10 (1) (g), the board could consider using subunits to clarify the types of information authorized for release to the employer or identified service, using introductory material such as "an agreement to authorize the VPAP to release to the employer or any service identified by the credential holder all of the following...". If the board employs this option, it could consider creating a separate paragraph for the required agreement to authorize release of drug test results to any service identified by the credential holder.

n. To achieve subject-verb agreement, the board should replace "warrant" with "warrants" on line 151.

o. For clarity, the board could consider reworking the language on lines 160 to 161. For example, depending on the introductory material used, the board could consider the following: "the credential holder's impairment is a type on which the treatment program focuses", assuming this example meets the board's intent.

p. On line 163, the board could consider replacing "supervising" with "individual" to be consistent with the term "individual therapist" used on line 166.

q. The board could consider clarifying the process for designating the "designated VPAP personnel" to whom the service must provide test results and inform of positive results. As drafted, it is unclear whether the service would be aware of the appropriate designees.

r. The board should review its use of commas throughout the proposed rule and consider removing those that may be unnecessary. For example, on line 79, the commas offsetting the phrase "in the disciplinary process" could be removed.