

Call to Order

Statement from the Chair

In accordance with AS 44.62.310(e) and AS 44.62.175, this teleconference of the Board of Veterinary Examiners was public noticed in the Alaska Online Public Notice System on June 12th as well as in the Anchorage Daily News on June 15th.

MISSION STATEMENT

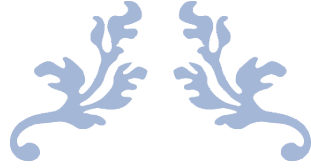
To protect the health, safety, and welfare of Alaskans by ensuring that veterinarian practitioners possess and maintain a level of skill and knowledge necessary to provide safe, competent professional veterinary services to consumers and to protect the public from veterinary practitioners who pose a risk to the public's health, safety, and welfare.

Board Member	Board Seat	License #	Date Appointed	Date Reappointed	Term Expiration
Rachel Bergartt	Chair	VETV503	3/1/2016	3/1/2020	3/1/2024
Hal Geiger	Public Member	NA	3/1/2016	3/1/2020	3/1/2024
Chris Michetti		VETV483	3/1/2018		3/1/2022
Scott Flamme		VETV486	3/1/2019		3/1/2023
Denise Albert		VETV412	3/1/2020		3/1/2024

**DEPARTMENT OF COMMERCE, COMMUNITY, AND
ECONOMIC DEVELOPMENT
DIVISION OF CORPORATIONS, BUSINESS AND
PROFESSIONAL LICENSING
BOARD OF VETERINARY EXAMINERS AGENDA
July 7, 2020**

For meeting access information, contact boardofveterinaryexaminers@alaska.gov before noon
on Monday, July 6th.

<u>TIME</u>	<u>SUBJECT</u>	<u>Lead Person</u>
1. 9:00 a.m.	Call to Order/ Roll Call Review/ Approve Agenda Review/ Approve Minutes Ethics Reporting	Chair/ Staff
2. 9:15 a.m.	Investigations -Investigative Report -Questions from the Board	Francois/ Staff
3. 9:45 a.m.	PDMP -Q&A with Board of Pharmacy Chair and Dept. of Law	Chair/ Staff
4. 11:15 a.m.	Health Mandate 15	Chair/ Staff
5. 12:00 p.m.	Lunch Break	
6. 1:00 p.m.	Regulations -Public Comment Review -Adopt/ Redraft -PDMP Regulations	Chair/ Zinn/ Staff
7. 2:30 p.m.	Public Comment *NOTE: No public comment can be accepted on in-process regulations.	Chair/ Staff
8. 3:00 p.m.	Adjourn	Chair



ALASKA BOARD OF VETERINARY EXAMINERS

Minuets of the meeting held on Tuesday, June 2, 2020



*Included as an appendix is a document created by the Department of Law in conjuncture with the

Division to help provide guidance to veterinarians regarding the Prescription Drug Monitoring Program.

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3 **State of Alaska**
4 **Department of Commerce, Community and Economic Development**
5 **Division of Corporations, Business and Professional Licensing**
6

7 **BOARD OF VETERINARY EXAMINERS**

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9 **MINUTES OF THE MEETING**

10 Tuesday, June 2, 2020

11 *These are DRAFT minutes by the staff of the*
12 *Division of Corporations, Business and Professional Licensing.*
13 *These minutes have not yet been reviewed or approved by the Board.*
14

15 **By authority of AS 08.01.070(2), and in compliance with the provisions of AS 44.61, Article**
16 **6, a scheduled meeting of the Board of Veterinary Examiners (BOVE) was held by**
17 **teleconference.**
18

19
20 **Agenda Item 1a** **Call to Order/ Roll Call** **Time 9:00 a.m.**

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22 The meeting was called to order by Board Chair, Dr. Rachel Bergartt, at 9:00 a.m.
23

24 Board Members present, constituting a quorum:

25 Rachel Bergartt, DVM- Juneau
26 Hal Geiger, PhD- public member- Juneau
27 Chris Michetti, DVM- Anchorage
28 Scott Flamme, DVM- Fairbanks
29 Denise Albert, DVM- Denali Park
30

31 Division Staff and State Employees present:

32 Ilsa Lund, Occupational Licensing Examiner (Hereafter denoted OLE)
33 Lacey Derr, Acting Records and Licensing Supervisor (Hereafter denoted ARLS)
34 Sara Chamber, CBPL Division Director
35 Sher Zinn, Regulations Specialist (Hereafter denoted RS)
36 Laura Carrillo, Executive Administrator for Board of Pharmacy (Hereafter denoted EA)
37 Lisa Sherrell, Prescription Drug Monitoring Program Manager
38 Bob Gerlach, DVM- State Veterinarian
39 Harriet Dinagar-Milks, Department of Law
40 Erika Prieksat, Investigator
41 Amber Whaley, Senior Investigator

42 Greg Francois, Chief Investigator
43 Colleen Kautz, Professional Licensing Program Coordinator
44 Sharon Walsh, CBPL Deputy Director

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46 Members of the Public present:
47 Sarah Coburn, DVM- President of the Alaska Veterinary Medical Association (AKVMA)
48 Pat Anderson, Executive Administrator of the AKVMA
49 Mary Ann Hollick, DVM- Delegate of the AKVMA
50 Scott Young
51 Sean McPeck, DVM- Past President of the AKVMA
52 Ashley Morgan, State Advocacy Division Director of the American Veterinary Medical
53 Association (AVMA)
54 Gail Golab, Chief Veterinary Officer of the AVMA
55 Nelson Priddy, DVM
56 Phil Meyer, DVM

57 Dr. Bergartt began the meeting by reading the mission statement of the Board of Veterinary
58 Examiners:

59 **To protect the health, safety, and welfare of Alaskans by ensuring that veterinarian**
60 **practitioners possess and maintain a level of skill and knowledge necessary to provide safe,**
61 **competent professional veterinary services to consumers and to protect the public from**
62 **veterinary practitioners who pose a risk to the public’s health, safety, and welfare.**

63
64 In accordance with AS 44.62.310(e) and AS 44.62.175, this meeting of the Board of Veterinary
65 Examiners was public noticed in the Alaska Online Public Notice System on May 16th as well as
66 in the Anchorage Daily News on May 20th.

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68 **Agenda Item 1b** Review/ Approve Agenda **Time: 9:02 a.m.**

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70 **On a motion duly made by Chris Michetti, seconded by Hal Geiger, and with unanimous**
71 **approval it was:**

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73 **RESOLVED the APROVE the agenda for the meeting as written.**
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75 **Agenda Item 1c** Review/ Approve Past Meeting Minutes **Time: 9:03 a.m.**

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77 **On a motion duly made by Hal Geiger, seconded by Chris Michetti, and with unanimous**
78 **approval it was:**

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80 **RESOLVED to APROVE the minutes from the April 27, 2020 board meeting with a**
81 **few minor edits submitted by Dr. Geiger.**

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83 **Agenda Item 1d** Ethics **Time: 9:05 a.m.**

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Board members had no ethics concerns or violations to report.

Agenda Item 2

Regulation Oral Comment

Time: 9:15 a.m.

The oral comment portion of this meeting, specifically, was publicly noticed in the Anchorage Daily News, the Online Public Notice system, and on the Board website on Wednesday, May 20th.

Dr. Mary Ann Hollick- I represent Alaska to the House of Delegates. I have some concerns about our telemedicine regulation as it stands. I think telemedicine is an important tool to facilitate patient care when it's used within specific guidelines. We share patient care as our mission, for sure. However, it is clear from the proposed language in this telemedicine that is not consistent with either federal regulations or the national standards of care as outlined in the standards and policies of the AVMA; and moreover, accurate patient care is in jeopardy. The AVMA represents 95,000 members and, just as a brief overall statement, it would be a shame for the Alaska standards for veterinary care to be lower and not provide the necessary -to provide a lesser quality- than what the US nationally recognized standard of care is, or the federal regulations and we are going to have a letter from the AKVMA, which I am part of, that we'll send to the appropriate person to be distributed to the board. This is an issue that has been going on since last fall and, especially, there are certain suggestions that are important. The term "veterinary-" patient relationship is not the term of art for this particular description. It's Veterinarian- client- patient relationship, and words do matter in this and I would hope that our letter, this time, can be used in addition to the previous history, which is probably in your board minutes, to understand that we have the same questions now as we did. Client -patient relationship does not continue with the veterinary, for some reason, and it's a question why that persists, but I guess I don't ask questions right now I just state what I'm thinking. Thank you.

Dr. Gail Golab- Today I am sharing comments on behalf of the AVMA. As Dr. Hollick mentioned, the AVMA represents more than 95,000 veterinarians across the nation and a few internationally. We work in a wide variety of roles and that includes in private and corporate practice, the academia industry, and government services including our uniformed services. I am speaking today to express substantial concern about provisions of the proposed regulation that would allow the blanket establishment of a veterinarian-client-patient relationship, also referred to as the VCPR, without an in-person examination of the patient in the State of Alaska. So, it is important to understand that the AVMA is absolutely committed to improving access to care, including through the appropriate use of telemedicine. The AVMA has actually committed a fair amount of resources, in terms of delivering information to veterinarians, about how to do that appropriately. And we do that because, at the same time, we have to ensure that high quality veterinary medical care continues to be provided for our patients. Right now, there is substantial variability in technological access capability and support, particularly we are finding, in many of the under-served areas that we are attempting to reach, and so, telemedicine is an active topic of conversation about reaching those areas. In addition, almost no research has been conducted in the veterinary space, and compared with health problems resulting from the use of telemedicine

127 and, for very good reasons, other state and federal regulatory requirements directly conflict with
128 the definition that is being proposed. This is why the AVMA believe veterinary telemedicine
129 should only be conducted within an existing VCPR and that establishing that VCPR should
130 require and in-person examination of individual patients or regular premises visits for groups of
131 animals with the exception of advice given in an emergency until that particular patient can be
132 seen by a veterinarian. Now, having said that, we completely recognize that the geography of
133 Alaska presents some really unique challenges for the delivery of veterinary services and we
134 need to find solutions to that; however, the proposed regulation would not apply only to remote
135 or under-served areas, but instead to all regions and practice settings across the entire state. As
136 such, that proposed regulation is overly broad and threatens quality of care by undermining the
137 VCPR even when a veterinarian may be readily available for an in-person examination. As an
138 alternative, we believe appropriately framed emergency exemptions provide a much better way
139 to ensure access to veterinary care for under-served areas and populations. But one important
140 piece is, that veterinarians acting in accord with the language of this proposal, will frequently
141 find themselves in direct conflict with federal law. The regulations that are associated with the
142 federal Food Drugs and Cosmetics Act, specifically its definition of the VCPR, do not allow for
143 the establishment of a VCPR through electronic means. As a matter of fact, AVMA specifically
144 wrote to the FDA several years ago to ask that question about whether or not the VCPR could be
145 established through telemedicine. They responded, and I quote, “such a relationship can exist
146 only when the veterinarian has recently seen and is personally acquainted with the keeping and
147 care of the animals by virtue of examination of the animals and/or by medically appropriate and
148 timely visits to the premises where the animals are kept.” They further went on to clarify that,
149 “for the purposes of the federal definition, a VCPR cannot be established solely through
150 telemedicine.” And the reason is because many medications used to treat animals in both
151 agriculture and aquaculture, require issuing what is called a Veterinary Feed Directive or VFD.
152 Issuing that VFD requires a veterinarian to adhere to, at a minimum, that federal VCPR
153 definition. A similar requirement exists under federal law for extra-label drug use, and extra-
154 label drug use is extremely frequent in companion animal practice and, in fact, is what allows us
155 all to care for many of the conditions in our patients in that practice. So, what this means is that,
156 conflicts between the Board of Veterinary Examiners’ proposed definition of the VCPR and the
157 federal VCPR will be a great source of confusion for veterinarians practicing in Alaska. It can
158 limit their ability to appropriately treat their patients, and if they don’t fully understand the
159 ramifications of how the federal VCPR and state VCPR intertwine, it will place many of them at
160 considerable risk and increased liability. Compounding our concerns about establishing a VCPR
161 electronically is language within the proposal that then extends that electronically established
162 VCPR to another colleague, or even a consultant. What this means is that, potentially, an animal
163 could be treated by multiple individuals –only one of whom may have actually interacted with
164 the client through the use of telehealth –for an indefinite period of time without the animal ever
165 having been evaluated in person. So, the potential negative consequences of that, for the care of
166 the patients are considerable. Furthermore, in consistence with the legal doctrine, a state may
167 impose VCPR requirements, VFD and extra-label drug use that are stricter (10 second warning)
168 than enacted on the federal level, but the state requirement is not going to remove the obligation
169 imposed on the veterinarian to follow more strict federal law when it applies. In general,

170 Alaska's current proposal is going far beyond what has been adopted by any other state, and we
171 think there is good reason other states have not taken such an approach, because doing so
172 increases risk for assessment areas, poor treatment outcomes in patients and in particular,
173 exposes individuals and veterinarians to increased liability. The AVMA looks forward to the
174 board's thoughtful evaluation of this proposal.

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176 **Dr. Sarah Coburn-** I am the President of the AKVMA and I am representing that organization
177 today. Thank you for the opportunity to comment on the proposed VCPR regulation. I am
178 providing comments on behalf of the AKVMA. Our association is comprised of 170 veterinarians
179 that represent the broad spectrum of veterinary medicine, including but not limited to small animal,
180 agriculture animals, exotic, aquatic, and equine practice, as well as those veterinarians working in
181 research, academic, military, and other government capacities. The AKVMA is committed to
182 helping protect the health, safety and welfare of Alaskans, and advocating for veterinarians to
183 provide safe, competent, professional veterinary services to consumers. AKVMA is supportive of
184 including a VCPR regulation for Alaska, as well as facilitating access to veterinary care in under-
185 served areas of our state. Alaska is one of the few states without a defines VCPR and we support
186 the need to include a definition in Alaska regulations, but we are very concerned that the current
187 proposal is much too broad and does not provide appropriate parameters to uphold the standard of
188 veterinary practice and protect the public. We also appreciate the value of telemedicine as a tool
189 to enhancing patient care and communication with owners, but we do not believe that telemedicine
190 on its own can adequately replace and in-person physical exam to establish a VCPR. Requiring a
191 physical exam on an individual patient or a visit of a premises by a veterinarian, in order to be
192 familiar with the care and keeping of the animals, provides necessary information for the
193 veterinarian to assess the overall health of the animal or the overall health and management
194 practices of the group of animals in order to make a diagnosis and to construct an appropriate
195 treatment plan or animal health plan. An in-person physical exam by a veterinarian can detect
196 health issues that may not be readily apparent to the owner, leading to better animal welfare and
197 health outcomes. A visit to a premise for agricultural animals provides valuable information about
198 management practices, storage of medications, environmental factors, and provides contact with
199 the primary managers or animal care employees to help the veterinary understand particular issues
200 for the facility. From that point on, the veterinarian may be able to utilize telemedicine for a time
201 period after that visit to work with the facility for the best animal health outcomes and to protect
202 consumer safety through appropriate antibiotic stewardship and ensuring a safe food supply.
203 Given the range of species veterinarians work on, and their important work on food producing
204 animals, and role in preventing transmission of zoonotic diseases to humans, veterinarians
205 necessarily work within a one-health framework. That means that, in addition to animal health,
206 veterinarians also consider human health and environmental health as it relates to their specific
207 practice. In the case of food producing animals, which includes bees and fish, in addition to more
208 traditional livestock species, veterinarians play a critical role in preventing antimicrobial resistance
209 of antibiotics of medical importance. The one-health approach helps veterinarians understand the
210 disease process, and also the pharmacokinetics and dynamics of medication, and understand how
211 they may be excreted or released into the environment or maintained in a food source and what
212 other grater implications may be. In summary, the primary concern from our organization is there

213 are serious national implications to broadening the VCPR definition, to no longer require
214 establishing it by means of a physical exam. This could lead to decreased quality of care for our
215 patients and has implications for human health and potential impacts to environmental health.
216 Eliminating a physical exam fails to recognize the inherent value of that thorough examination to
217 ensuring the quality of care necessary for animals that cannot communicate their clinical signs to
218 their health care provider like human patients can. The proposed changes leave our colleagues at
219 risk of working in conflict with federal law, and place them at risk for both federal discipline and
220 adverse judgements in civil litigation. Redefining a VPR in our state does not eliminate the federal
221 requirement for a physical exam of a patient prior to extra-label drug use and medically appropriate
222 and timely visits to the premises where animals are kept prior to issuing Veterinary Feed Directive.
223 Appropriate oversight for public health, food safety, and antimicrobial stewardship, all aspects of
224 protecting the public, are not assured under the proposed VCPR definition. The AKVMA board
225 has written a letter with much more detail describing our concerns about the proposed regulation
226 that will be submitted as written public comment. You've heard several of these issues reiterated
227 by other people already (10 second warning). Please take all of our comments into consideration
228 and thank you for your time today.

229
230 **Dr. Sean McPeck-** I am going to keep my comments really short because it seems like everyone,
231 so far, has gone over unintentionally, and everybody prior to me has very eloquently spoke what
232 needs to be said. So, my path- I was a veterinary corps officer in the military and I was a past
233 president of the AKVMA. Currently a small business owner practicing here in the state of Alaska.
234 When I first saw that there was a bill attempting to change the definition of the veterinary-client-
235 patient relationship as it relates to telemedicine, initially, one would think that the board would
236 just go off of the precedent that is already set nationally. We are not the first state to try to create
237 telemedicine. It's already been done. So, why wouldn't the board look at what the definition that
238 has already been established nationally and use that as a map? As a template. When I started
239 reading this, all these red flags started going up and I would initially ask the board, why are you
240 trying to propose a regulation that does not even come close to the regulations that are already –
241 that have precedent nationally? That would be the question that I would pose to the board. And
242 so, when you start looking at it, the language is so overly broad. It doesn't even come close to
243 providing safeguards to the public, which is what I believe the mission statement of the board is.
244 One can only conclude that there is someone on the board who has a vested interest in this
245 vagueness being there, and that's what I would hope the board would try to avoid is that the public
246 is seeing that there is some type of vagueness in a bill being passed for the benefit of someone on
247 the board. Because, this does not safeguard the public. It doesn't improve the care of the patients.
248 And so, you start looking at it –is it the fisheries that are trying to benefit from it? If this vagueness
249 gets into the bill, when that gets passed, is it the fisheries the ones that are going to benefit by not
250 having to have a veterinarian come out, literally on the grounds of the fishery? And then to use the
251 excuse, well, but the veterinarian doesn't do an exam on every single fish. Well, herd health is a
252 core portion of veterinary medicine that is studied by veterinarians. And it needs- it must, without
253 a doubt, this bill must have the wording veterinarian, not veterinary. That is so broad it will be
254 exploited and the public will suffer. And, you know, if it is the fisheries that are trying to benefit,
255 they will eventually suffer too. So, I would caution the board that there is people throughout the

256 state that view there is some shadiness going on and if your mission is to safeguard the public, this
257 bill being passed will fail in that mission. That's all I have to say.

258

259 **Dr. Bob Gerlach-** I am the state veterinarian and I've had experience in both livestock/
260 aquaculture and domestic pet medicine in my previous practice. I think it's really a great thing for
261 the board to go head and take on this issue of trying to get a good definition for the VCPR
262 established in the state, especially with the unique circumstances up here. I think that's probably
263 one of the guidelines is that we want to go ahead and make sure things are appropriate for our
264 location, especially with the remote nature of both communities, livestock farms, as well as
265 aquaculture facilities, and beehive operators across the state. We are seeing, as we look at our
266 animal imports, an increase in animal ownership of all species, especially this year with the
267 COVID issues. We normally see about an 80-90,000 poultry come into the state every year and
268 we are seeing probably about 3-4 times that volume in as far reaching communities as Kotzebue
269 and some of the other northern communities, so we do have this established, especially livestock
270 in other areas in the state. And we are seeing increased reports in morbidity and mortality events
271 so that we are going to need that veterinary presence in these communities to go ahead and help
272 people with the care of their animals and production of safe foods. I think that, in regard to the
273 practice of veterinary medicine, we should be consistent in a lot of our regulations with respect to
274 what has been established with human medicine, and we should have more focus, especially on
275 that now, with veterinary medicine related to zoonotic pathogens and one-health issues especially
276 the antibiotic microbial resistance issue. I think people have mentioned, already, the terminology
277 of "veterinary" that maybe should be replaced with "Veterinarian-Client-Patient, and this would
278 be more consistent with the medical profession, which defines this as physician-patient, so using
279 the noun with respect to the establishment of this relationship. In trying to go ahead and look at
280 what has been established with the VCPR, and we looked to guidance from the national veterinary
281 medical associations and professional organizations as well as the federal government with respect
282 to the FDA and all those entities require a physical exam –in-person contact with that pet. And
283 when you think about the history of veterinary medicine you can envision what the public sees as
284 the standing outside of the Iowa State with the veterinarians holding the animal in their arms,
285 establishing this physical contact with a hands-on examination which provides a greater evaluation
286 with the best evaluation of the condition of the animal and the evaluation of this environment
287 where the animal is raised in. I think it's critical, especially with respect to the VCPR to go ahead
288 and address this in-person and timely visit, has been mentioned previously to conform with the
289 federal regulations with respect to the Veterinary Feed Directive and the extra-label use of drugs.
290 I think it's really critical that the board looks at creating something that's uniform and avoids
291 confusion with the interpretation of the state regulations. The next point is with respect to
292 consistency with the definition of the VCPR and telemedicine. I think we can go ahead and use
293 the Medical Board regulation as a guidance there. I mean, they have adopted the AVMA
294 guidelines with respect to VCPR and telemedicine. These regulations or guidelines are consistent
295 with the state medical board as well. Basically, when you look at that, they establish there in
296 saying the VCPR is really not appropriately established by telemedicine alone and that
297 telemedicine is not appropriate for all patients or all patient conditions. That you need to go ahead
298 and establishing a telemedicine relationship after a VCPR has been established, that you must

299 address the limitations of the telemedicine so that the client and patient is aware of that. Actually,
300 they have very good definitions and guidance on the exemption, as Dr. Golab has mentioned, with
301 respect to consultants and other associates that maybe have to go ahead and care for this patient if
302 primary veterinarian that has established the veterinarian-client-patient relationship with the owner
303 and the pet previously. So, I think the overall, to sum up, addressing these issues is very important
304 for (10 second warning) establishing a strong professional standard in the state of Alaska for the
305 practice of veterinary medicine. Thank you.

306
307 **Dr. Nelson Priddy-** I am a board certified veterinary surgeon, practicing in most parts of populated
308 Alaska. I just want to make certain that everyone understands the obvious –there is absolutely no
309 replacement for a physical examination. We learn that on day one veterinary school. We try to
310 espouse that throughout our careers. I have such confidence in the performance of a physical
311 examination by the veterinarian on my own pets that I will not examine my own pets. I always
312 take them to another veterinarian because that other veterinarian has the capability to be far more
313 objective than I would be. And to expect a pet owner to do their own assessment of their own
314 animal and transmit their thoughts to a veterinarian and then expect that veterinarian to prescribe
315 treatment is not realistic and not appropriate for the animal and certainly not appropriate for the
316 public. Ditto to everything Dr. Gerlach said. I did hear a little bit of what Dr. McPeck said and I
317 support that as well.

318
319 **Dr. Phil Meyer-** I have had some experience going through remote villages and the telemedicine
320 thing is extremely important. If, in fact, you do deal with any of the remote villages, it's going to
321 come up and people are going to call you. And there are times where there is no way to get to the
322 remote places in time to be of any service, even if it was an option. But, the distance of places like
323 Kotzebue, you can't establish in-person contact in many cases; however, with the telemedicine, if
324 you make it as broad as this is written, I don't think it'll work. I'm kind of hesitant to bring
325 problems with no solutions, but I think telemedicine is important to get available, especially to the
326 remote locations in Alaska. I do think that it should have more controls than what this bill has.

327
328 Hearing no others volunteer for public comment, Chair Bergartt said she was pleased to have
329 such a large volume of turn out for the event. She said it's wonderful to have that sort of
330 engagement as this was the most public comment that had ever been received during her time on
331 the board.

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333 The board inquired as to what the next steps are for the regulations process. RS Zinn clarified that
334 the oral comment hearing was public noticed until 10:00, so the hearing needs to remain open for
335 another 10 minutes. Once the public comment period is over at 10:00, then no more oral comments
336 can be accepted by the board on this regulation project. After the public comment period is over
337 and the board reviews all of the written and oral comments at the next meeting, the members can
338 determine whether or not they want to adopt the regulations as proposed or make amendments to
339 them. If there are substantial amendments, the regulations will have to go back out for public
340 comment. If the board substantially changes the proposed regulations by making them more
341 stringent rather than making them less stringent, they will need to be sent out for public comment

342 again. Once public comment closes on June 22nd, the division has to wait for any comments that
343 may have been submitted via mail –usually about 2-3 days after the public comment period ends
344 –before the board can have another public noticed meeting to review the comments and move
345 forward with the regulations. All public comments received will be sent to the licensing examiner
346 to put in the board packet in OnBoard for the board members to review before the next meeting so
347 they will have time to think about them before having a discussion at the next meeting.
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349 Dr. Geiger asked if it would be appropriate to respond to some of the comments.
350

351 RS Zinn explained that regulation oral comment hearings are not the time for dialogue between
352 board members and the public. That wouldn't be appropriate at this venture. The time for that
353 would be at the next board meeting when the public comments are being reviewed; however, if a
354 board member has clarifying questions on the comments just received, that would be different.
355 The appropriate time for a back-and-forth between the board and the public, regarding regulations
356 would have been before the regulations were sent out for public comment –when the regulations
357 are in the process of being drafted. The board can invite input from members of the public during
358 a town hall or a regulation working group, but that time has passed for these particular regulations.
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360 Dr. Geiger said that Dr. McPeck did impugn the motives of the regulations and he wanted to
361 respond. OLE Lund reiterated that now would not be the time for that, but Dr. Geiger could
362 respond on that topic during the next meeting after the public comment period has closed.
363

364 OLE Lund asked, after some of the regulations are redrafted, if the board would be required to
365 hold an additional oral comment hearing? RS Zinn explained that, if substantial changes are made
366 to some of the regulations, the redrafted regulations would be posted as supplemental regulations
367 since the regulations had already gone out for public comment.
368

369 As the clock ticked over to 10:00, OLE Lund announced that oral comment for these regulations
370 is now closed. Board members are prohibited from hearing any further oral comment from the
371 public on these regulations. Anyone who wishes to submit additional written comment on the
372 proposed regulations may do so before the deadline at 4:30 p.m. on June 22, 2020. Written
373 comments can be submitted by mail, fax, or emailed to
374 RegulationsandPublicComment@alaska.gov. More information is available about comment
375 submissions on the board [webpage](#).
376

377 **Agenda Item 3** **PDMP** **Time: 10:00 a.m.**
378

379 Director Sara Chambers expressed her appreciation for the work the board has done over the last
380 year on trying to get to a solution regarding PDMP. The division put together some
381 documentation to come alongside the board and help with what has been a vexing topic for the
382 last few years –the Prescription Drug Monitoring Program and how it applies to veterinarians.
383 The Director and Chair Bergartt met several times during the legislative session to discuss the
384 board's concerns and the practical applications of the PDMP. Director Chambers pointed out

385 that the board and division are not going to see things the same way due to addressing the law
386 from different perspectives and different application. She said that there is a shared goal in
387 working together to try and determine what the right answer is for veterinarian participation in
388 the PDMP. Some of this issue is out of the control of the board or division because the
389 legislature has mandated that veterinarians participate, and participate in very specific ways.
390 With legislative session getting cut short due to COVID, all the legislative interests were set
391 by the wayside and with a new session starting in January, all the legislation that did not pass
392 this year died and will have to be introduced again next year. Seeking legislative exemption is a
393 valid path, but until the law is changed, the board needs to hammer out some solutions for
394 holding veterinarians in compliance with state law.

395

396 Division staff put together a tool kit for the board, pulling together documentation that has been
397 presented to the board in the past. A checklist was presented to board members to assist in
398 getting to the bottom line of what is required by state statute, and identifying problems and a
399 pathway forward. It is evident that the PDMP was primarily designed with a human patient in
400 mind, but until the law changes, the board and division have the awkward task of figuring out
401 how to comply with the law.

402

403 There are three primary things that a veterinarian is required to do.

- 404 • Register with the PDMP if they hold a DEA license to dispense, prescribe, or administer
405 a federally scheduled II-IV controlled substance.
 - 406 ○ Even if a veterinarian holds a DEA license but does not dispense, prescribe or
407 administer controlled substances, they are still required to register.
- 408 • Review patient prescription information prior to prescribing or dispensing a schedule II
409 or III substance.
 - 410 ○ This is one of the areas that has caused some consternation among veterinarians
411 in how to utilize the database in the way that is intended but also practical.
 - 412 ○ Veterinarians are required, by law, to review prescription information in the
413 PDMP database before prescribing or giving out a controlled substance.
 - 414 ○ There has been a lot of discussion on what the term patient means in statute and
415 how a veterinarian might determine who and owner is and what human to query.
 - 416 ○ Based on the legal advice that the board has received, the board needs to define
417 that in regulation. The board is the appropriate legal body to do that and the
418 board is also the only body that is mostly made up of practitioners, so the board
419 will know the best way to proceed.
 - 420 ○ This has been the law since July of 2017 and the board is the body that needs to
421 work through these issues to find a solution; however inelegant that may be.
 - 422 ○ Making a decision through regulation will instruct licensees on how to comply.
- 423 • Report before dispensing a federally scheduled II-IV controlled substance.

424

425

426 Dr. Bergartt inquired about delegate registration. Director Chambers clarified that, in order to
427 become a delegate for a DEA license holding practitioner, the individual must hold a

428 professional license. A delegate for a veterinarian cannot be an unlicensed vet tech or an office
429 manager that does not hold a professional license. No one that is unlicensed can legally gain
430 access to the PDMP database. The licensed, DEA registered practitioner is accountable for the
431 individuals that they approve as delegates for their account. It is important to not put an
432 unlicensed assistive staff person in a position where they may be committing a crime. Lisa
433 Sherrell, the PDMP Manager, further clarified that there is not a registration fee for a delegate,
434 but the individual must fill out the registration in AWARe and include the information of their
435 supervisor(s). The supervisor will then be sent an automated email through AWARe to verify
436 their delegate.

437

438 Dr. Bergartt requested that Department of Law be involved in drafting PDMP regulations from
439 the get-go. She expressed hesitation on getting too far along in the process before clear guidance
440 is received. In the past, the board worked on a regulations project to define a veterinary medical
441 facility only to find out months later that the board did not have jurisdiction over facilities and
442 could therefore not define the term in regulations.

443

444 Director Chambers said that the board is encouraged to invite an attorney, through the
445 Regulations Specialist, to assist in the process of drafting PDMP regulations. It would be up to
446 the board to set the agenda item and request the attorney through staff to ensure that a
447 representative from the Department of Law is available for the next meeting. Prior to the
448 meeting, the board needs to set their expectations and express their needs.

449

450 Dr. Geiger stated that he has wasted a lot of time trying to figure out how the PDMP works. As
451 he is the Public Member of the board and not a DEA license holder, he is not able to access the
452 database. He requested to see a dummy account within the database so he can better understand
453 the issue. He said that he wants to see what the practitioners see, or he feels that he should
454 abstain from the discussion.

455

456 Dr. Bergartt agreed that the board needs to see a dummy program of the database to gain a
457 better understanding. It may be that different practitioners see varying versions of the database
458 and it would be helpful for everyone to be on the same page. She conveyed frustration due to the
459 fact that there was a common misconception that animal prescription information would affect a
460 human's NaRxCare score. This was a talking point that was used repeatedly throughout
461 legislative testimony. This misconception was not dispelled until the last board meeting on April
462 27th. The PDMP staff is needed to walk the board through the database to help board members
463 understand how the system really works.

464

465 Dr. Michetti also conveyed confusion about the PDMP. She said she respects the PDMP and
466 wants to follow the laws, but the solution of the board adopting regulations seems inappropriate.
467 The Board of Pharmacy handed over the PDMP with broad and vague ideas and said that the
468 board should figure it out. She doesn't think it appropriate for the veterinary board to figure out
469 and define what the pharmacy board is talking about. The board does not have enough

470 information. The statutes are too unclear. How can someone be held accountable for something
471 that is not in statute?

472

473 Dr. Bergartt expressed the desire to have a representative from the Board of Pharmacy and
474 PDMP staff available to assist the board at the next meeting to put in a good faith effort in
475 figuring out the mess that is the PDMP. The board will continue to seek legislative change to
476 become exempt from the program.

477

478 Dr. Albert said, since joining the board a few months ago, she has come to realize that the
479 members of the Board of Veterinary Examiners are the most knowledgeable group of individuals
480 on this subject. If the board is confused about the PDMP, then it is no wonder the licensee base
481 has thrown up their hands in utter confusion in how to deal with the database. It was reported at
482 the last meeting that 84% of registered veterinarians are out of compliance with the PDMP laws.
483 Veterinarians, as a population, are generally very well intended people who try to follow the
484 rules and the laws. If such a large percentage are having problems, then it's the program that is
485 the issue. She expressed concern that those non-compliant individuals would be subject to
486 federal charges.

487

488 Dr. Bergartt said that the technical issues licensees are having with the database are not ones
489 that the board can solve. The board members will do their best to provide some guidance,
490 through working with Department of Law, in defining aspects of the PDMP through regulations.
491 The board is not going to be able to solve all the problems but, once the statute came out, the
492 board was tasked with trying to figure it out to the best of their ability.

493

494 Director Chamber closed by saying there is an opportunity to clarify how the pieces fit together
495 for newer board members. The board has been having this same conversation for four years.
496 Veterinarians are confused because there are no regulations to articulate the statute. There may
497 not be a perfect solution, but it is the board's responsibility, legally, to define and instruct
498 veterinarians on how to use the PDMP –of course with the support of the PDMP team who has
499 been providing information for the last four years to the board to help move this along. Until
500 there are regulations saying, "here's how we are defining the patient," or "here's how to do this,"
501 veterinarians are going to be out of compliance, they are going to be breaking the law, they are
502 going to be confused and frustrated. Director Chambers expressed that she wanted to be clear to
503 board members and the stakeholders listening to the meeting that, like it or not, confusing or not,
504 frustrated or not, it's this board's responsibility to define how this works. If the statute hasn't
505 defined it, which it hasn't as statutes often don't define a lot of details, it is up to boards to
506 articulate those with the help of Department of Law and other stakeholders. This board has gone
507 four years, and she can guarantee that this will be a problem when legislative audit reviews the
508 board. This year, the Medical Board experienced an audit where deficiencies were identified.
509 As a result, that board will have another audit in one year. This is a problem for this board,
510 already, and there will be some legal ramifications as a result. She advised the board to work
511 together with the division and for the board to direct how they want to have a conversation, then
512 the division will come alongside the board with whatever resources they require. But the bottom

513 line is the board needs to draft the regulations and go through that process. She encouraged the
514 board to schedule a day for a working group to address this problem. This board has to lead the
515 process because this board is accountable for the problems that veterinarians are experiencing.
516 She thanked the board for allowing her to speak frankly and reminded the board that division is
517 here to help them through this process.

518

519 **Agenda Item 4** **Investigations** **Time: 10:36 a.m.**

520

521 **In a motion duly made by Hal Geiger, seconded by Chris Michetti, and with unanimous**
522 **approval in accordance with the provisions of Alaska Statute 44.62.310(c)(3), moved to**
523 **enter executive session for the purpose of discussing matters which by law, municipal**
524 **charter, or ordinance are required to be confidential, it was:**

525 **RESOLVED to enter into executive session in accordance with AS 44.62.310(c)(3).**

526 Division staff was requested to remain in the teleconference.

527 *Off record for executive session at 10:37 a.m.*

528 *On record at 11:27 a.m.*

529

530 **Agenda Item 5** **Board Business** **Time: 11:28 a.m.**

531

532 **Annual Report**

533 This is a task that boards are tasked with every year. Due to time constraints, the board
534 discussed aspects of the Annual Report, but no motions were made to approve board travel or
535 future meeting dates. As much of the travel discussed and approved for FY20 was postponed or
536 cancelled due to COVID-19, previous decisions made will roll over to FY 21. The final report
537 will be reviewed and approved by board members via OnBoard before submitting the completed
538 document to the division. Final Annual Reports are posted on the division website.

539 <https://www.commerce.alaska.gov/web/cbpl/DivisionReports.aspx>

540

541 It was decided the next meeting will be held on Tuesday, July 7, 2020 to review regulations
542 public comment and discuss PDMP.

543

544 **ICVA- NAVLE Amendment**

545 The ICVA updated the NAVLE testing window to accommodate individuals regarding COVID-
546 19 restrictions. This does not move the deadline to apply, but expands the testing window from
547 starting in November to September. (It later came to OLE Lund's attention that this causes an
548 issue for applicants due to the restrictions mandated in 12 AAC 68.010(b) stating a deadline for
549 document submission as 120 days before the next scheduled exam for applicants seeking exam
550 approval. This regulation was likely drafted when board business was conducted via mail and
551 has not been updated since. Regulation change is recommended. This will be on the agenda for
552 the July meeting.)

553

554
555 **AKCARES Grants Available for Alaska Businesses**
556 Businesses based in Alaska that have 50 or fewer employees are eligible for financial assistance
557 through the AK CARES Act. Chair Bergartt requested that this information be posted on the
558 board webpage. More information is available at
559 <https://www.commerce.alaska.gov/web/ded/AKCARESGrant.aspx>
560

561 **Reaching Out to Licensees**

562 OLE Lund received some criticism from the president of the Interior Veterinary Medical
563 Association that information was not sent out to licensees regarding CE exemption for the
564 upcoming renewal. As was directed by the board, the information was posted on the board
565 webpage. Additionally, in accordance with division Policy and Procedure, as of 2003,
566 newsletters and other publications are not printed and mailed to licensees, but will be posted to
567 the board's internet site only. OLE Lund requested that, if the board deems that information
568 should be sent out to licensees via email, to please specify that so the OLE may take the proper
569 steps in disseminating that information.
570

571 The board requested that OLE Lund send out, via email, information about CE exemption and
572 include a link to the board webpage where licensees can find information about best practices,
573 Health Mandate 15, and other information that has been made available on the board website.
574

575
576
577 There was some further discussion about next steps to resolve PDMP issues.
578

579
580 Chair Bergartt adjourned the meeting at 12:10 p.m.
581

582 **Respectfully Submitted,**

583
584
585 -----

586 **Ilsa Lund, Licensing Examiner**

583
584
585 -----

586 **Date**

587
588
589
590 -----

591 **Rachel Bergartt, DVM**

587
588
589
590 -----

592 **Board Chair, Board of Veterinary Examiners** **Date**

593

PDMP Compliance for Veterinarians

*Compiled for the State of Alaska Board of Veterinary Examiners
by Counsel for the Board, Department of Law
June 2020*

What is the PDMP and How Does It Apply to Veterinarians?

The Prescription Drug Database is created in and regulated by the Board of Pharmacy. Its purpose is to collect and maintain data “regarding every prescription for a schedule II, III, or IV controlled substance under federal law dispensed in the state,” with certain exceptions for healthcare and correctional facilities. The PDMP statute requires all practitioners including physicians, nurses, dentists, optometrists *and veterinarians* who are authorized to prescribe, dispense, or administer these drugs to comply with the requirements of the PDMP.

What are Veterinarians Required to Do, to Comply with the PDMP?

1. **Register** – if you have a DEA license to prescribe, dispense, or administer a Schedule II, III, or IV controlled substance.
2. **Review** patient prescription records in the PDMP prior to prescribing a Schedule II or III controlled substance.
 - “Patient” is not defined. Future board regulation or a statutory provision may clarify this, but for now, “patient” is assumed under the existing law to be a person, presumably the one who is responsible for the animal.
3. **Report** to the PDMP daily if directly dispensing a Schedule II, III, or IV controlled substance.
4. **Correct** errors in submissions within 72 hours.
5. **Use** the [website](#) provided by the Board of Pharmacy for all submissions.

Who is responsible for compliance and what training is available?

Access to the PDMP database is strictly limited to persons who hold a professional license under AS 08. You may not delegate these responsibilities to your office manager or anyone else unless they are a licensee. General training documents are available at

pdmp.alaska.gov, which include PDF instructions on how to register, how to perform a patient request (“prescription history review” or “query”), as well as a comprehensive AWA Rx E user guide developed by the PDMP vendor, Appriss Health, that addresses these interactions and other system functionalities of the database. Direct links to these training materials are also available within the PDMP at alaska.pmpaware.net. Veterinarians can navigate to these resources by clicking on *Menu*, then *PDMP Links*. Additionally, there are built-in FAQs within the database that address topics related to prescription history reviews, including a direct link to a slide deck tutorial on how to conduct reviews.

Training documents specific to veterinarians for how to perform a patient review will be updated in the comprehensive AWA Rx E user guide once the Board of Veterinary Examiners establishes guidelines or regulations addressing how to comply with a patient query. To comply with the review requirement in the interim, the division, in consultation with the Department of Law, recommends licensees review the prescription history of the individual whose name will be listed on the prescription label. To review the individual on the prescription label, veterinarians or their delegates should type that individual’s first name, last name, and date of birth into the AWA Rx E search fields.

Product development at Appriss Health will be creating a video tutorial to demonstrate how a veterinarian can review and report, though the method to do this within the system does not differ from the instructions already available.

What Happens if I Don’t Comply with One of These Requirements?

The Board of Veterinary Examiners may impose disciplinary action against your license, including

- Revocation
- Suspension
- Probation
- Fine
- Remedial education
- Reprimand

What Laws Apply?

Statutes:

AS 17.30.200 creates the Controlled Substance Database within the Board of Pharmacy. Subsection

(b) requires reporting

(d)(4) limits access to persons licensed under AS 08

(e) authorizes the Board of Veterinary Examiners to discipline licensees for compliance violations

(k) requires review of patient history prior to prescribing

(n) requires registration

AS 08.98.050(10) requires licensees who hold DEA numbers to register with the PDMP.

AS 08.98.235(6) authorizes the Board of Veterinary Examiners to impose disciplinary sanctions on licensees who don't comply with the board's statutes or regulations.

AS 08.98.235(10) authorizes the Board of Veterinary Examiners to discipline a licensee who prescribes or dispenses drugs in violation of the law, which includes statutes and regulations governing the PDMP, regardless of whether there has been a criminal action.

Regulations:

12 AAC 52.480(6) requires prescription label to show name of animal's owner

12 AAC 52.855 identifies PDMP registration and access requirements

12 AAC 52.865(b) requires daily submission of information

12 AAC 52.865(e) requires errors to be corrected within 72 hours

12 AAC 52.865(f) requires electronic submission using pharmacy [website](#)

12 AAC 52.865(g) requires review of patient prescription history

12 AAC 52.870 allows practitioners to apply for a waiver of electronic transmission in the event they are unable to report electronically



THE STATE OF ALASKA
MICHAEL J. DUNLEAVY
GOVERNOR

Boards and Commissions
Office of the Governor

550 W 7th Ave. Suite 1700
Anchorage, Alaska 99501
907-269-0006

Ethics Act and Procedures for Boards and Commissions

All board and commission members and staff should be familiar with the Executive Branch Ethics Act procedures outlined below.

Who Is My Designated Ethics Supervisor (DES)?

Every board or commission subject to the Ethics Act¹ has several ethics supervisors designated by statute:

- The chair serves as DES for board or commission members.
- The chair serves as DES for the executive director.
- The executive director serves as DES for the staff.
- The governor is the DES for a chair.²

What Do I Have To Disclose?

The Ethics Act requires members of boards and commissions to disclose:

- Any matter that is a potential conflict of interest with actions that the member may take when serving on the board or commission.
- Any circumstance that may result in a violation of the Ethics Act.
- Any personal or financial interest (or that of an immediate family member) in a state grant, contract, lease or loan that is awarded or administered by the member's board or commission.
- The receipt of certain gifts.

The executive director of the board or commission and its staff, as state employees, must also disclose:

- Compensated outside employment or services.
- Volunteer service, if any compensation, including travel and meals, is paid, there is a potential conflict with state duties.

For more information regarding the types of matters that may result in violations of the Ethics Act, board or commission members should refer to the guide, "Ethics Information for Members of Boards and Commissions." The executive director and staff should refer to the guide, "Ethics Information for Public Employees." Both guides and disclosure forms may be found on the Department of Law's ethics website: <http://www.law.state.ak.us/doclibrary/ethics.html>.

¹ The Act covers a board, commission, authority, or board of directors of a public or quasi-public corporation, established by statute in the executive branch of state government.

² The governor has delegated the DES responsibility to Shawn Henderson, Administrative Director of the Office of the Governor.

How Do I Avoid Violations of the Ethics Act?

- Make timely disclosures!
- Follow required procedures!
- Provide all information necessary for a correct evaluation of the matter!³
- When in doubt, disclose and seek advice!
- Follow the advice of your DES!

What Are The Disclosure Procedures for Board and Commission Members?

The procedural requirements for disclosures by members are set out in AS 39.52.220 and 9 AAC 52.120. One goal of these provisions is to help members avoid violations of the Ethics Act. The procedures provide the opportunity for members to seek review of matters in advance of taking action to ensure that actions taken will be consistent with the Act.

Procedure for declaring actual or potential conflicts.

Members must declare potential conflicts and other matters that may violate the Ethics Act on the public record and in writing to the chair.

Disclosure on the public record. Members must identify actual and potential conflicts orally at the board or commission's public meeting in advance of participating in deliberations or taking any official action on the matter.

- A member must always declare a conflict and may choose to refrain from voting, deliberations or other participation regarding a matter⁴.
- If a member is uncertain whether participation would result in a violation of the Act, the member should disclose the circumstances and seek a determination from the chair.

Disclosure in writing at a public meeting. In addition to an oral disclosure at a board or commission meeting, members' disclosures must be made in writing.

- If the meeting is recorded, a tape or transcript of the meeting is preserved and there is a method for identifying the declaration in the record, an oral disclosure may serve as the written disclosure.
- Alternatively, the member must note the disclosure on the Notice of Potential Violation disclosure form and the chair must record the determination.

Confidential disclosure in advance of public meeting. Potential conflicts may be partially addressed in advance of a board or commission's public meeting based on the published meeting agenda or other board or commission activity.

³ You may supplement the disclosure form with other written explanation as necessary. Your signature on a disclosure certifies that, to the best of your knowledge, the statements made are true, correct and complete. False statements are punishable.

⁴ In most, but not all, situations, refraining from participation ensures that a violation of the Ethics Act does not occur. Abstention does not cure a conflict with

- A member identifying a conflict or potential conflict submits a Notice of Potential Violation to the chair, as DES, in advance of the public meeting.
- This written disclosure is considered confidential.
- The chair may seek advice from the Attorney General.
- The chair makes a written determination, also confidential, whether the disclosed matter represents a conflict that will result in a violation of the Ethics Act if the member participates in official action addressing the matter.⁵
- If so, the chair directs the member to refrain from participating in the matter that is the subject of the disclosure.
- An oral report of the notice of potential violation and the determination that the member must refrain from participating is put on the record at a public meeting.⁶

Determinations at the public meeting. When a potential conflict is declared by a member for the public record, the following procedure must be followed:

- The chair states his or her determination regarding whether the member may participate.
- Any member may then object to the chair's determination.
- If an objection is made, the members present, excluding the member who made the disclosure, vote on the matter.
- Exception: A chair's determination that is made consistent with advice provided by the Attorney General may not be overruled.
- If the chair, or the members by majority vote, determines that a violation will exist if the disclosing member continues to participate, the member must refrain from voting, deliberating or participating in the matter.⁷

If the chair identifies a potential conflict, the same procedures are followed. If possible, the chair should forward a confidential written notice of potential violation to the Office of the Governor for a determination in advance of the board or commission meeting. If the declaration is first made at the public meeting during which the matter will be addressed, the members present, except for the chair, vote on the matter. If a majority determines that a violation of the Ethics Act will occur if the chair continues to participate, the chair shall refrain from voting, deliberating or participating in the matter. A written disclosure or copy of the public record regarding the oral disclosure should be forwarded to the Office of the Governor for review by the chair's DES.

⁵ The chair must give a copy of the written determination to the disclosing member. There is a determination form available on the Department of Law's ethics web page. The ethics supervisor may also write a separate memorandum.

⁶ In this manner, a member's detailed personal and financial information may be protected from public disclosure.

⁷ When a matter of particular sensitivity is raised and the ramifications of continuing without an advisory opinion from the Attorney General may affect the validity of the board or commission's action, the members should consider tabling the matter so that an opinion may be obtained.

Procedures for Other Member Disclosures

A member's interest in a state grant, contract, lease or loan and receipt of gifts are disclosed by filling out the appropriate disclosure form and submitting the form to the chair for approval. The disclosure forms are found on the Department of Law's ethics website:
<http://www.law.state.ak.us/doclibrary/ethics.html>

What Are The Disclosure Procedures for Executive Directors and Staff?

Ethics disclosures of the executive director or staff are made in writing to the appropriate DES (chair for the executive director and the executive director for staff).

- Disclosure forms are found on the ethics website, noted above.

Notices of Potential Violations. Following receipt of a written notice of potential violation, the DES investigates, if necessary, and makes a written determination whether a violation of the Ethics Act could exist or will occur. A DES may seek advice from the Attorney General. If feasible, the DES shall reassign duties to cure a potential violation or direct divestiture or removal by the employee of the personal or financial interests giving rise to the potential violation.

- These disclosures are not required to be made part of the public record.
- A copy of a determination is provided to the employee.
- Both the notice and determination are confidential.

Other Disclosures. The DES also reviews other ethics disclosures and either approves them or determines what action must be taken to avoid a violation of the Act. In addition to the disclosures of certain gifts and potential conflicts of interest, state employees must disclose all outside employment or services for compensation.

- The DES must provide a copy of an approved disclosure or other determination to the employee.
-

How Are Third Party Reports of Potential Violations or Complaints Handled?

Any person may report a potential violation of the Ethics Act by a board or commission member or its staff to the appropriate DES or file a complaint alleging actual violations with the Attorney General.

- Notices of potential violations and complaints must be submitted in writing and under oath.
- Notices of potential violations are investigated by the appropriate DES who makes a written determination whether a violation may exist.⁸
- Complaints are addressed by the Attorney General under separate procedures outlined in the Ethics Act.
- These matters are confidential, unless the subject waives confidentiality or the matter results in a public accusation.

⁸ The DES provides a copy of the notice to the employee who is the subject of the notice and may seek input from the employee, his or her supervisor and others. The DES may seek advice from the Attorney General. A copy of the DES' written determination is provided to the subject employee and the complaining party. The DES submits a copy of both the notice and the determination to the Attorney General for review as part of the DES' quarterly report. If feasible, the DES shall reassign duties to cure a potential violation or direct divestiture or removal by the employee of the personal or financial interests giving rise to the potential violation.

What Are The Procedures for Quarterly Reports?

Designated ethics supervisors must submit copies of notices of potential violations received and the corresponding determinations to the Attorney General for review by the state ethics attorney as part of the quarterly report required by the Ethics Act.

- Reports are due in April, July, October and January for the preceding quarter.
- A sample report may be found on the Department of Law's ethics website
- An executive director may file a quarterly report on behalf of the chair and combine it with his or her own report.
- If a board or commission does not meet during a quarter, and there is no other reportable activity, the DES shall advise Jenn Williams by e-mail at Jennifer.williams1@alaska.gov and no other report is required.

If the state ethics attorney disagrees with a reported determination, the attorney will advise the DES of that finding. If the ethics attorney finds that there was a violation, the member who committed the violation is not liable if he or she fully disclosed all relevant facts reasonably necessary to the ethics supervisor's or commission's determination and acted consistent with the determination.

How Does A DES or Board or Commission Get Ethics Advice?

A DES or board or commission may make a written request to the Attorney General for an opinion regarding the application of the Ethics Act. In practice, the Attorney General, through the state ethics attorney, also provides advice by phone or e-mail to designated ethics supervisors, especially when time constraints prevent the preparation of timely written opinions.

- A request for advice and the advisory opinion are confidential.
- The ethics attorney endeavors to provide prompt assistance, although that may not always be possible.
- The DES must make his or her determination addressing the potential violation based on the opinion provided.

* * * * *

It is the obligation of each board or commission member, as well as the staff, to ensure that the public's business is conducted in a manner that is consistent with the standards set out in the Ethics Act. We hope this summary assists you in ensuring that your obligations are met.

Ethics Disclosure Form

Receipt of Gift

TO: _____, Designated Ethics Supervisor, _____
(Agency, Public Corporation, Board,
Commission or Council)

This disclosure reports receipt of a gift with value in excess of \$150.00 by me or my immediate family member, as required by AS 39.52.130(b) or (f).

1. Is the gift connected to my position as a state officer, employee or member of a state board or commission?

Yes No

2. Can I take or withhold official action that may affect the person or entity that gave me the gift?

Yes No

(If you answer "No" to both questions, you do not need to report this gift. If the answer to either question is "Yes," or if you are not sure, you must complete this form and provide it to your designated ethics supervisor.)

The gift is _____

Identify gift giver by full name, title, and organization or relationship, if any:

Describe event or occasion when gift was received or other circumstance explaining the reason for the gift:

My estimate of its value is \$ _____ The date of receipt was _____

The gift was received by a member of my family. Who? _____

If you checked "Yes" to question 2 above, explain the official action you may take that affects the giver (attach additional page, if necessary):

I certify to the best of my knowledge that my statement is true, correct, and complete. In addition to any other penalty or punishment that may apply, the submission of a false statement is punishable under AS 11.56.200 - AS 11.56.240.

(Signature)

(Date)

(Printed Name)

(Division)

(Position Title)

(Location)

Ethics Supervisor Determination: Approve Disapproved

Designated Ethics Supervisor*

(Date)

**Designated Ethics Supervisor: Provide a copy of the approval or disapproval to the employee. If action is necessary under AS 39.52.210 or AS 39.52.220, attach a determination stating the reasons and send a copy of the determination and disclosure to the attorney general with your quarterly report.*

Ethics Disclosure Form

<p style="text-align: center;">CONFIDENTIAL REQUEST FOR ETHICS DETERMINATION</p>
--

TO: _____, Designated Ethics Supervisor

(Identify Your Department, Agency, Public Corporation, Board, Commission)

I request advice regarding the application of the Executive Branch Ethics Act (AS 39.52.010 - .960) to my situation. The situation involves the following:

I have provided additional information in the attached document(s).

I believe the following provisions of the Ethics Act may apply to my situation:

- AS 39.52.120, Misuse of Official Position
- AS 39.52.130, Improper Gifts
- AS 39.52.140, Improper Use or Disclosure of Information
- AS 39.52.150, Improper Influence in State Grants, Contracts, Leases or Loans
- AS 39.52.160, Improper Representation
- AS 39.52.170, Outside Employment Restricted
- AS 39.52.180, Restrictions on Employment after Leaving State Service
- AS 39.52.190, Aiding a Violation Prohibited

I understand that I should refrain from taking any official action relating to this matter until I receive your advice. If the circumstances I described above may result in a violation of AS 39.52.110 - .190, I intend that this request serve as my disclosure of the matter in accordance with AS 39.52.210 or AS 39.52.220.

I certify to the best of my knowledge that my statement is true, correct, and complete. In addition to any other penalty or punishment that may apply, the submission of a false statement is punishable under AS 11.56.200 - AS 11.56.240.

(Signature)

(Date)

(Printed Name)

(Division, Board, Commission)

(Position Title)

(Location)

Designated Ethics Supervisor: Provide a copy of your written determination to the employee advising whether action is necessary under AS 39.52.210 or AS 39.52.220, and send a copy of the determination and disclosure to the attorney general with your quarterly report.



MEMORANDUM

DATE: June 26, 2020
TO: Board of Veterinary Examiners
THRU: Greg Francois, Chief Investigator Amber L. Whaley
FROM: Erika Prieksat, Investigator Erika Prieksat
RE: Investigative Report for the July 07, 2020 Meeting

The following information was compiled as an investigative report to the Board for the period of April 14, 2020 thru June 26, 2020; this report includes cases, complaints, and intake matters handled since the last report.

Matters opened by the Paralegal in Juneau, regarding continuing education audits and license action resulting from those matters are not covered in this report.

OPEN - 37

<u>Case Number</u>	<u>Violation Type</u>	<u>Case Status</u>	<u>Status Date</u>
VETERINARIAN			
2020-000570	PDMP Violation	Intake	06/23/20
2020-000571	PDMP Violation	Intake	06/24/20
2020-000575	PDMP Violation	Intake	06/24/20
2020-000577	PDMP Violation	Intake	06/24/20
2020-000579	PDMP Violation	Intake	06/24/20
2020-000580	PDMP Violation	Intake	06/24/20
2020-000581	PDMP Violation	Intake	06/24/20
2020-000582	PDMP Violation	Intake	06/24/20
2020-000583	PDMP Violation	Intake	06/24/20
2020-000584	PDMP Violation	Intake	06/25/20
2020-000585	PDMP Violation	Intake	06/25/20
2020-000586	PDMP Violation	Intake	06/25/20
2020-000588	PDMP Violation	Intake	06/25/20

2020-000590	PDMP Violation	Intake	06/25/20
2020-000591	PDMP Violation	Intake	06/25/20
2020-000592	PDMP Violation	Intake	06/25/20
2020-000593	PDMP Violation	Intake	06/25/20
2020-000594	PDMP Violation	Intake	06/25/20
2020-000595	PDMP Violation	Intake	06/25/20
2020-000596	PDMP Violation	Intake	06/25/20
2020-000597	PDMP Violation	Intake	06/25/20
2020-000598	PDMP Violation	Intake	06/26/20
2020-000599	PDMP Violation	Intake	06/26/20
2020-000600	PDMP Violation	Intake	06/26/20
2020-000603	PDMP Violation	Intake	06/26/20
2020-000604	PDMP Violation	Intake	06/26/20
2020-000605	PDMP Violation	Intake	06/26/20
2019-001246	Incompetence	Complaint	11/07/19
2019-001251	Incompetence	Complaint	02/04/20
2019-001340	PDMP Violation	Complaint	04/15/20
2019-001341	PDMP Violation	Complaint	11/26/19
2019-001342	PDMP Violation	Complaint	11/26/19
2020-000537	PDMP Violation	Complaint	06/21/20
2017-001281	Negligence	Investigation	04/04/18
2019-000223	Unprofessional conduct	Investigation	07/16/19
2019-000397	Unprofessional conduct	Investigation	07/16/19

VETERINARY TECHNICIAN

2019-001250	Unlicensed practice or activity	Complaint	01/06/20
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Closed - 3

<u>Case #</u>	<u>Violation Type</u>	<u>Case Status</u>	<u>Closed</u>	<u>Closure</u>
VETERINARIAN				
2020-000470	Unethical conduct	Closed-Intake	06/21/20	Incomplete Complaint
2019-000584	Violating professional ethics	Closed-Complaint	05/04/20	No Action - No Violation
2019-000836	Incompetence	Closed-Complaint	05/04/20	No Action - No Violation

END OF REPORT

EXECUTIVE SESSION MOTION

Sec. 44.62.310. Government meetings public.

(c) The following subject may be considered in an executive session:

- (1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the public entity;
- (2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;
- (3) matters which by law, municipal charter, or ordinance are required to be confidential;
- (4) matters involving consideration of government records that by law are not subject to public disclosure.

MOTION WORDING:

“In accordance with the provisions of Alaska Statute 44.62.310 (c), I move to go into executive session for the purpose of discussing (select the appropriate statutory citation for the situation):

- (1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the public entity; *OR***
- (2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion; *OR***
- (3) matters which by law, municipal charter, or ordinance are required to be confidential; *OR***
- (4) matters involving consideration of government records that by law are not subject to public disclosure.**

**Board staff is requested to remain during the session *OR*
Board only to remain during session.”**

Staff will then state “The board is off the record at _____(time).”

PDMP Regulations – DRAFT

A veterinarian may delegate PDMP responsibilities to another licensee under AS 08.98 within their practice. A veterinarian may not delegate PDMP responsibilities to a person who is not licensed under 08.98.

Commented [HCD1]: This is vague. AS 17.30.200(d)(3) addresses restrictions on access. Is that what is intended here?

A veterinarian's delegate must be registered with a separate account in the PDMP. A veterinarian is not permitted to give their credentials to a delegate. (I need more detail on how this is actually done – separate fees, linking the delegate with the prescriber, etc).

Commented [HCD2]: It is OK to limit this to veterinarians. AS 17.30.200(d)(3) allows any licensee under AS 08, but it is thought that was an unintended overinclusion, as that would allow hairdressers to have access.

Commented [HCD3]: It's my understanding that giving credentials to a delegate is how the delegate is able to access the database. What is the purpose of this proposal?

A veterinarian (or their licensed designee) is NOT required to review (this means query, and additionally the practitioner does not have to report) the client in the PDMP database before dispensing, prescribing, or administering: A) a controlled substance to patient who is receiving treatment (i) in an inpatient setting; (ii) at the scene of an emergency; (iii) in an emergency veterinary hospital*; (iv) immediately before, during, or within the first 48 hours after surgery or a medical procedure**; OR (B) a non-refillable prescription of a controlled substance that is in a quantity intended to last for not more than three days. (AS 17.30.200)

Commented [HCD4]: This is consistent with AS 17.30.200(k)(4)

(NOTE: *My understanding is that the board SHALL have regs that include the above language – however, I am not sure that we have the authority to regulate what is an "emergency veterinary hospital.")

Commented [HCD5]: Yes, you may define this by regulation

**Does this mean that immediately prior to, during, or within the first 48 hours after surgery, if a veterinarian prescribes or dispenses opiates in excess of a three day supply, that veterinarian is NOT required to query or report? The statute is very unclear.)

Commented [HCD6]: I think this statute means within the first 48 hours after surgery, period; a prescription in excess of three days is not part of this exception.

A veterinarian (or their licensed designee) shall QUERY the client ("client" means the person who owns or is responsible for the care of an animal as already defined) prior to prescribing any controlled substance (II-IV). This information must be submitted to the PDMP at least on a daily basis. (HOW DO WE DEAL WITH WEEKENDS, HOLIDAYS WHEN CLINICIS ARE CLOSED or the doctor is away? How do we deal with veterinarians in a bush setting with no internet?)

Commented [HCD7]: Question for Lisa and Laura.

A veterinarian (or their licensed designee) shall QUERY AND REPORT under the client when DISPENSING any controlled substance (II-IV) that does not fall into any of the aforementioned exemptions. This information must be submitted to the PDMP at least on a daily basis. (HOW DO WE DEAL WITH WEEKENDS, HOLIDAYS WHEN CLINICIS ARE CLOSED or the doctor is away?)(HOW DO we deal with veterinarians in a bush setting with no internet?)

Commented [HCD8]: This is not inconsistent with the statute, but what is its purpose? And can it be more clear about what query and report mean?

A veterinarian (or their licensed designee) is under no obligation to assess, interpret, inquire further, or make human health-care recommendations based on the client's PDMP risk assessment score.

Commented [HCD9]: Too vague and subject to varying interpretations. What is the goal here? A veterinarian's scope of practice would seem to eliminate this as a concern. Veterinarians do not make human healthcare recommendations.

A veterinarian (or their licensed designee) will not be held in violation of HIPPA by state authorities. A veterinarian is exempt from understanding or adherence to HIPPA requirements. (WHAT ABOUT FEDERAL AUTHORITY?? ARE VETS AT RISK?)

Commented [HCD10]: See previous comment. The first sentence is overbroad and too absolute; a veterinarian might violate HIPPA in any number of ways. But because the scope of practice is limited to nomhumans (AS 08.98.250(5), the vet regulations can't address licensee's obligations under a federal statute that deals with only humans.

Commented [HCD11]: T

PDMP Compliance for Veterinarians

*Compiled for the State of Alaska Board of Veterinary Examiners
by Counsel for the Board, Department of Law
June 2020*

What is the PDMP and How Does It Apply to Veterinarians?

The Prescription Drug Database is created in and regulated by the Board of Pharmacy. Its purpose is to collect and maintain data “regarding every prescription for a schedule II, III, or IV controlled substance under federal law dispensed in the state,” with certain exceptions for healthcare and correctional facilities. The PDMP statute requires all practitioners including physicians, nurses, dentists, optometrists *and veterinarians* who are authorized to prescribe, dispense, or administer these drugs to comply with the requirements of the PDMP.

What are Veterinarians Required to Do, to Comply with the PDMP?

1. **Register** – if you have a DEA license to prescribe, dispense, or administer a Schedule II, III, or IV controlled substance.
2. **Review** patient prescription records in the PDMP prior to prescribing a Schedule II or III controlled substance.
 - “Patient” is not defined. Future board regulation or a statutory provision may clarify this, but for now, “patient” is assumed under the existing law to be a person, presumably the one who is responsible for the animal.
3. **Report** to the PDMP daily if directly dispensing a Schedule II, III, or IV controlled substance.
4. **Correct** errors in submissions within 72 hours.
5. **Use** the [website](#) provided by the Board of Pharmacy for all submissions.

Who is responsible for compliance and what training is available?

Access to the PDMP database is strictly limited to persons who hold a professional license under AS 08. You may not delegate these responsibilities to your office manager or anyone else unless they are a licensee. General training documents are available at

pdmp.alaska.gov, which include PDF instructions on how to register, how to perform a patient request (“prescription history review” or “query”), as well as a comprehensive AWA Rx E user guide developed by the PDMP vendor, Appriss Health, that addresses these interactions and other system functionalities of the database. Direct links to these training materials are also available within the PDMP at alaska.pmpaware.net. Veterinarians can navigate to these resources by clicking on *Menu*, then *PDMP Links*. Additionally, there are built-in FAQs within the database that address topics related to prescription history reviews, including a direct link to a slide deck tutorial on how to conduct reviews.

Training documents specific to veterinarians for how to perform a patient review will be updated in the comprehensive AWA Rx E user guide once the Board of Veterinary Examiners establishes guidelines or regulations addressing how to comply with a patient query. To comply with the review requirement in the interim, the division, in consultation with the Department of Law, recommends licensees review the prescription history of the individual whose name will be listed on the prescription label. To review the individual on the prescription label, veterinarians or their delegates should type that individual’s first name, last name, and date of birth into the AWA Rx E search fields.

Product development at Appriss Health will be creating a video tutorial to demonstrate how a veterinarian can review and report, though the method to do this within the system does not differ from the instructions already available.

What Happens if I Don’t Comply with One of These Requirements?

The Board of Veterinary Examiners may impose disciplinary action against your license, including

- Revocation
- Suspension
- Probation
- Fine
- Remedial education
- Reprimand

What Laws Apply?

Statutes:

AS 17.30.200 creates the Controlled Substance Database within the Board of Pharmacy. Subsection

(b) requires reporting

(d)(4) limits access to persons licensed under AS 08

(e) authorizes the Board of Veterinary Examiners to discipline licensees for compliance violations

(k) requires review of patient history prior to prescribing

(n) requires registration

AS 08.98.050(10) requires licensees who hold DEA numbers to register with the PDMP.

AS 08.98.235(6) authorizes the Board of Veterinary Examiners to impose disciplinary sanctions on licensees who don't comply with the board's statutes or regulations.

AS 08.98.235(10) authorizes the Board of Veterinary Examiners to discipline a licensee who prescribes or dispenses drugs in violation of the law, which includes statutes and regulations governing the PDMP, regardless of whether there has been a criminal action.

Regulations:

12 AAC 52.480(6) requires prescription label to show name of animal's owner

12 AAC 52.855 identifies PDMP registration and access requirements

12 AAC 52.865(b) requires daily submission of information

12 AAC 52.865(e) requires errors to be corrected within 72 hours

12 AAC 52.865(f) requires electronic submission using pharmacy [website](#)

12 AAC 52.865(g) requires review of patient prescription history

12 AAC 52.870 allows practitioners to apply for a waiver of electronic transmission in the event they are unable to report electronically








Alaska's Prescription Drug Monitoring Program



How to Sign Up:

Delegate Login Instructions for AWARxE

<p>1 Go to: https://alaska.pmpaware.net or by clicking on the PDMP Sign-in button via your licensing board's webpage.</p> <ul style="list-style-type: none"> Only individuals holding a license, registration, or certification under AS 08 my register as a delegate. <div style="text-align: center;">  </div>	<p>7 Click "Submit Your Registration". Recall that your account will not be activated until all items in step 6 is satisfied.</p> <div style="text-align: center;">  </div>
<p>2 Click "Create an Account".</p> <div style="text-align: center;">  </div>	<p>8 You will receive an email from a no-reply PDMP account to verify your email. The link may expire after 15 minutes.</p>
<p>3 You will be brought to the Registration Process screen; enter your Email and password. Click Save and Continue.</p> <ul style="list-style-type: none"> Email = your login ID Password = must be at least 8 characters and must include one uppercase, one lowercase, and one symbol, e.g.: !, @, \$, # 	<p>9 You will receive an email notification from the Alaska PDMP office confirming your registration only after the following:</p> <ul style="list-style-type: none"> All supervisors have approved you as a delegate You have verified your email The PDMP administrator has given final approval <div style="text-align: right;">  </div>
<p>4 Select your User Role as a delegate under the Healthcare Professional User role type. Delegates can only conduct patient requests on behalf of a supervisor who has successfully registered with the PDMP.</p> <ul style="list-style-type: none"> Healthcare Professional → "Prescriber Delegate - Licensed" 	<p>10 Helpful Tips:</p> <ul style="list-style-type: none"> Additional supervisors can be added under the "My Profile" tab Password resets can be done under the "Reset Password" tab Be sure to contact the division if your name or email has changed
<p>5 Enter your Personal and Employer information</p> <ul style="list-style-type: none"> DEA & NPI Number(s) Alaska Professional License # License Type Full Name (exactly as it appears on your license) Date of Birth Last 4 digits of SSN 	<p>11 Sign onto the PDMP AWARxE to report and review. Contact the following if you experience difficulties:</p> <ul style="list-style-type: none"> Appriss Health Support (Alaska's PDMP Vendor) Phone: 1-855-525-4764 Laura Carrillo (PDMP Manager) Phone: 907-269-8404 Email: akpdmp@alaska.gov
<p>6 Identify Supervisor(s) by entering their PDMP email in the space provided. All supervisors identified will have to approve you as a delegate through their AWARxE account before the PDMP manager can grant you access to the database.</p> <div style="border: 1px solid #ccc; padding: 5px; margin-top: 10px;"> <p>I am a delegate for the following people... *</p> <p>Email</p> <input style="width: 100%; height: 20px;" type="text"/> <div style="text-align: right; margin-top: 5px;">  </div> </div>	

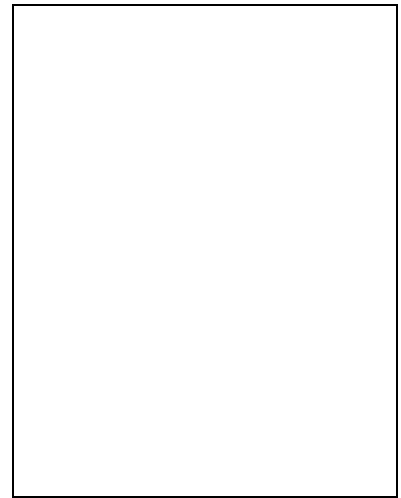


THE STATE of ALASKA

Department of Commerce, Community, and Economic Development
Division of Corporations, Business and Professional Licensing

Alaska Prescription Drug Monitoring Program
Board of Pharmacy

333 Willoughby, 9th Floor
Juneau, AK 99811
Phone: (907) 465-2550
Fax: (907) 465-2974
Email: akpdmp@alaska.gov
Website: http://commerce.alaska.gov/dnn/cbpl/ProfessionalLicensing/BoardofPharmacy/PrescriptionDrugMonitoringProgram.aspx



REQUEST FOR PAPER SUBMISSION OF DATA TO AK PDMP

Instructions:

- Please complete this form in full. Incomplete requests will be returned.
Requests shall be mailed to the Alaska Prescription Drug Monitoring Program (AK PDMP).
Please call 907-269-8404 if you have any questions regarding the AK PDMP.
Requests are granted for one (1) year, at which time pharmacies must reapply.
The decision of the PDMP Manager to grant or deny the request shall constitute a final agency action unless appealed to the board by submitting a written notice of appeal with the board within 30 days of the notice of denial.

12 AAC 52.870 WAIVER OF ELECTRONIC SUBMISSION REQUIREMENT BY DISPENSER.

Name: _____

Title: _____

Pharmacy or Facility Name: _____

Pharmacy License Number: _____ DEA Number: _____

Pharmacy Address: _____

Phone: _____ Email: _____

I request a waiver from the electronic submission requirement of data to the AK PDMP based on the following.

I represent a pharmacy or a facility (check one):

- that is suffering a hardship created by a natural disaster or other emergency beyond the control of the dispenser and prevents the dispenser from satisfying 12 AAC 52.865(b).
that is dispensing in a controlled research project approved by an accredited institution of higher education or under the supervision of a governmental agency. Please attach a description of the research project.
that dispenses less than 10 prescriptions of controlled substances a month.
that is located in an area where there is no access to the telecommunication services needed to comply with 12 AAC 52.865(b).
that will suffer financial hardship if required to acquire the technology necessary to comply with 12 AAC 52.865(b).

Additional Comments:

- **Initial** _____ I certify that I will submit a Pharmacy Universal Claims Form or alternate form approved by the board if the request is granted for the required reporting of controlled substances.
- **Initial** _____ I certify that I will inform the Program Manager within thirty days if the basis for the request from electronic reporting no longer exists.

I certify that the above information is correct.

SIGN HERE



Signature

Date

(NOTARY SEAL)

SUBSCRIBED AND SWORN to before me,
a Notary Public, in and for the State of _____
this _____ day of _____, 20 _____.

NOTARY



My Commission Expires: _____

FOR DEPARTMENT USE ONLY		
Date Received:		<input type="checkbox"/> Approved <input type="checkbox"/> Disapproved By: _____
Date Processed:		

Zinn, Sher K (CED)

From: Regulations and Public Comment (CED sponsored)
Sent: Thursday, June 18, 2020 3:42 PM
To: Sarah Coburn
Subject: RE: Written questions concerning proposed regulations changes 12 AAC 68.075 and 12 AAC 68.990
Attachments: Chair Response to AKVMA Questions.docx

Dr. Coburn,

See attached with answers to your questions. Board Chair Dr. Bergartt answered your questions. If you have any further questions or would like to make additional public comment, please respond to this email.

Thank you,

*Sher Zinn
Regulations Specialist
Division of Corporations, Business
And Professional Licensing
907-465-1049
Sher.zinn@alaska.gov*

From: Sarah Coburn [mailto:tundravet@gmail.com]
Sent: Friday, June 12, 2020 9:32 AM
To: Regulations and Public Comment (CED sponsored) <regulationsandpubliccomment@alaska.gov>
Subject: Written questions concerning proposed regulations changes 12 AAC 68.075 and 12 AAC 68.990

Good morning,

I have attached a list of questions about the proposed changes relating to regulations of the Board of Veterinary Examiners.

Please let me know if the attachment didn't come through, or if you need any other information.

Thank you,
Sarah Coburn

*Sarah Coburn, DVM, MS
Alaska Veterinary Medical Association President 2020
Phone: 907-726-7772
E-mail: tundravet@gmail.com*

In regard to proposed regulation changes “12 AAC 68.075. Veterinary-client-patient relationship and 12 AAC 68.990 Definitions, I have the following questions, on behalf of the Alaska State Veterinary Medical Association.

1. What documents, state, federal, or industry guidelines, or others resources were used to determine what the language and definition of the veterinary-client-patient relationship (VCPR) should be in Alaska?

AAVSB Practice Act Model, AVMA, as well as language from other states. Ultimately, The board made the decision to use Virginia’s language based on its broadness.

2. Does the primary veterinarian establishing the veterinary-client-patient relationship have to be located in Alaska, be affiliated with a veterinary hospital in Alaska, or otherwise have a physical presence in Alaska?

The regulations the BOVE will put forward will impact all veterinarians with an Alaska license. To date, there is widespread discussion throughout the United States about how to deal with this as it relates to telemedicine broadly. The discussion centers primarily around where “the practice” takes place – is that where the patient is located or where the veterinarian is located? There has been no clear legal authority that the BOVE is aware of on this topic. The BOVE only has regulatory authority over Alaska licensed veterinarians.

3. Given that ‘a veterinary under this section may be another veterinarian within the group in which the veterinarian practices,...’ is there any requirement that any of the associated veterinarians have any physical presence in Alaska?

Again, the BOVE can only regulate veterinarians who hold an Alaska license.

4. Why was the more broad adjective ‘veterinary’ chosen, instead of the noun ‘veterinarian’ in the definition ‘veterinary-client-patient relationship’?

I recall a discussion about this topic from several meetings ago, and if I recall correctly, it was decided that neither term was preferable to the other. The AVMA document where the VCPR regulations were taken show both veterinary-client-patient relationship, and veterinarian-client-patient relationship. There are at least 3 other states calling it a veterinary-client-patient relationship, including Oregon. The board can certainly change it to veterinarian without an issue, however, the verbiage of the regulation stating it is between a veterinarian and an owner clearly identifies that it is a veterinarian who has the relationship with the owner and animal. Therefore, it is of no consequence to keep it the way it is or change it.

5. In the definition of “telemedicine services” what is included in interactive audio?

Synchronous services are live services using two-way audio. This allows the veterinarian and the client to communicate as they would in an office setting. Asynchronous services are also referred to as “store and forward.” This type of delivery involves forwarding information such as a prerecorded message. The veterinarian is not interacting with the client in real time.

6. In the definition of “telemedicine services” what is the definition of “electronic technology or media”? This type of delivery involves forwarding information such as a prerecorded video, an X-ray, or a diagnostic test to a provider for review and evaluation.

7. In the definition of “telemedicine services” it states that “telemedicine services does not include an audio-only telephone, electronic mail message, facsimile transmission, or online questionnaire.” Can those forms of communication be used in combination (for example, audio-only phone and emailed photographs or videos)?

The above-listed forms of communication do not in themselves constitute “telemedicine services,” however may be used in combination with telemedicine services.

8. In the FAQs document, it states that ‘The Board felt it was necessary to define the veterinary-client-patient relationship due to current federal regulations...’ Why was the decision made to propose regulations contrary to those current federal regulations?

The BOVE took on this project in response to the FDA VFD. The current proposed language would not be contrary to those regulations, as the language was modeled after Virginia’s VPCR which is accepted as meeting federal VFD requirements. (see <https://www.fda.gov/animal-veterinary/development-approval-process/does-state-or-federal-vcpr-definition-apply-lawful-vfd-my-state>)

9. In the FAQs document, it states that ‘The Board also noted it will provide clarity for veterinarians, clarity for fish hatcheries, and safety for consumers.’ How and in what way do these proposed regulations provide safety for consumers?

Without any regulations defining VPCR, hatcheries were left wondering if they needed to follow the federal regulations or if the state’s regulations met the federal requirements. The state’s regulations did not meet the Fed requirements. The BOVE’s goal is to promulgate regulations that meet the Federal requirements, therefore eliminating the question if Alaska regs apply. The definition of “animal” referenced in AS 08.98.250 includes fish, therefore it is not required to list all types of animals in the regulations. Agricultural animals and bees are listed in the regulations because they are not specified in the referenced definition.

10. In the FAQs document it states that ‘The Board also noted it will provide clarity for veterinarians, clarity for fish hatcheries, and safety for consumers.’ Fish hatcheries are not mentioned anywhere in the proposed regulations, nor in the established veterinary practice statutes and regulations. What specific items in the proposed regulations provide clarity for fish hatcheries?
See above

11. Why are fish hatcheries specified in the FAQs, but not other agriculture, food animal, or exhibition animal facilities that may have similar challenges? Fish hatcheries were addressed simply because they had been discussed as a group facing uncertainty.

12. What is the rationale in passing telemedicine regulations that are not recommended by American Association of Veterinary State Boards, and a VCPR regulation that is not in agreement with the American Veterinary Medical Association VCPR definition? How does this protect the public? First, the regulations aren’t passed. The proposed regulations were a compromise amongst BOVE members in an effort to move the project forward and solicit public comment. The AVMA and the AAVSB both have different definitions for VPCR and telemedicine guidelines

– there is no one right answer to these complicated issues. Protecting the public involves not only protection against “bad actors,” but balancing that protection with access to qualified practitioners.

13. One argument that has been used to support exempting veterinarians from the Prescription Drug Monitoring Program is that a veterinarian is required to physically examine an animal in-person prior to prescribing controlled medications. The physical exam by a veterinarian and associated diagnostics must be used to confirm a diagnosis, and determine an appropriate course of treatment. Has the Board of Veterinary Examiners (BOVE) considered the impact that establishing a VCPR solely through telemedicine, and allowing other veterinarians in the same practice to be able to work under that VCPR, could have on prescriptions of controlled substances? How will BOVE address these concerns as they move forward with PDMP regulations or the legislative process in the next session?

Currently, without a VCPR defined in state regulations, aside from a vague Federal mandate (Ryan Haight Act of 2008), there is no requirement for a physical exam in Alaska. The regulations are currently silent on VPCR and on telehealth services. So, while some people may have been using the “physical exam” requirement in argument, it’s currently not supported in regulation, even though some practitioners may have taken it upon themselves to operate to that higher standard.

Thank you for your time and consideration in answering these questions. I look forward to hearing your responses, and better understanding these proposed regulations.

Sincerely,

Sarah Coburn, DVM, MS
President Alaska State Veterinary Medical Association

Zinn, Sher K (CED)

From: Sarah Coburn <tundravet@gmail.com>
Sent: Monday, June 22, 2020 3:39 PM
To: Regulations and Public Comment (CED sponsored)
Cc: Pat Anderson - AKVMA
Subject: Re: Written questions concerning proposed regulations changes 12 AAC 68.075 and 12 AAC 68.990
Attachments: AKVMA Comment following Chair Response to Questions 6.22.2020 sc.pdf

Good afternoon,

Thank you for responding to our questions. Please see the PDF attachment. I added additional public comments in the body of that document, following each of the responses from the Chair.

Sincerely,
Dr. Sarah Coburn

*Sarah Coburn, DVM, MS
Alaska Veterinary Medical Association President 2020
Phone: 907-726-7772
E-mail: tundravet@gmail.com*

On Thu, Jun 18, 2020 at 3:42 PM Regulations and Public Comment (CED sponsored) <regulationsandpubliccomment@alaska.gov> wrote:

Dr. Coburn,

-

See attached with answers to your questions. Board Chair Dr. Bergartt answered your questions. If you have any further questions or would like to make additional public comment, please respond to this email.

-

Thank you,

-

Sher Zinn

Regulations Specialist

Division of Corporations, Business

And Professional Licensing

907-465-1049

Sher.zinn@alaska.gov

-
-
-
From: Sarah Coburn [mailto:tundravet@gmail.com]

Sent: Friday, June 12, 2020 9:32 AM

To: Regulations and Public Comment (CED sponsored) <regulationsandpubliccomment@alaska.gov>

Subject: Written questions concerning proposed regulations changes 12 AAC 68.075 and 12 AAC 68.990

-
Good morning,

-
I have attached a list of questions about the proposed changes relating to regulations of the Board of Veterinary Examiners.

-
Please let me know if the attachment didn't come through, or if you need any other information.

Thank you,

Sarah Coburn

Sarah Coburn, DVM, MS

Alaska Veterinary Medical Association President 2020

Phone: 907-726-7772

E-mail: tundravet@gmail.com

June 22, 2020.

Thank you for taking the time to respond to the questions that AKVMA asked. I have included additional comments, to be included as public comment, in response to BOVE's response to our questions.

My follow-up comments start with 'SC:' and are in dark blue and underlined.

Sincerely,

Sarah Coburn

In regard to proposed regulation changes "12 AAC 68.075. Veterinary-client-patient relationship and 12 AAC 68.990 Definitions, I have the following questions, on behalf of the Alaska State Veterinary Medical Association.

1. What documents, state, federal, or industry guidelines, or others resources were used to determine what the language and definition of the veterinary-client-patient relationship (VCPR) should be in Alaska?

AAVSB Practice Act Model, AVMA, as well as language from other states. Ultimately, The board made the decision to use Virginia's language based on its broadness.

SC: I have concerns that choosing Virginia's regulatory language, without understanding its context and associated regulations in that state, limit the effectiveness of using that exact language for Alaska. As is described in the earlier public comments submitted by AKVMA, the proposed regulation is contrary to the AVMA Model Veterinary Practice Act, which only allows telemedicine within the context of a valid VCPR. It does not support using telemedicine to establish a VCPR. Also described in our public comment is that even the AAVSB recommendations are not as broad as what BOVE has proposed. AAVSB allows a VCPR to be established electronically, but includes parameters to ensure that there is full disclosure on the part of the veterinarian, in order to protect the public, and describes in more detail how to determine if a particular case is appropriate for utilizing telemedicine.

2. Does the primary veterinarian establishing the veterinary-client-patient relationship have to be located in Alaska, be affiliated with a veterinary hospital in Alaska, or otherwise have a physical presence in Alaska?

The regulations the BOVE will put forward will impact all veterinarians with an Alaska license. To date, there is widespread discussion throughout the United States about how to deal with this as it relates to telemedicine broadly. The discussion centers primarily around where "the practice" takes place – is that where the patient is located or where the veterinarian is located? There has been no clear legal authority that the BOVE is aware of on this topic. The BOVE only has regulatory authority over Alaska licensed veterinarians.

SC: In # 1 it said that the board made the decision to use Virginia's language based on its broadness. My understanding is that Virginia does in fact require the physical presence of the veterinarian in the state or that the veterinarian be associated with a veterinary facility physically located in the state. That regulation is not included in the VCPR definition, because it is included in another portion of their business licensure requirements.

Part of the purpose of the BOVE is to regulate the practice of veterinary medicine in our state, and to protect the public. I think it is a disservice to the public, to allow veterinarians whose primary practice is located in another state, who may be licensed in Alaska, but otherwise have no connection to Alaska, to establish a VCPR with an Alaska client and patient solely through telemedicine. They may not have the appropriate understanding of the disease issues, the geographic area, or public health concerns that veterinarians who live and practice in Alaska, or do relief work in Alaska, are going to have. Even well-intentioned and competent veterinarians, whose primary practice is out-of-state, may not be able to adequately understand some of the unique needs of pets, livestock, fisheries, or beekeepers of Alaska, particularly in those remote areas the regulation is attempting to address.

I worked in small animal practice in Utqiagvik for nearly 6 years. I was based out of Utqiagvik, and travelled 2 to 3 times per year to the other North Slope villages. The care and keeping of dogs in rural Alaska is very different from what a small animal veterinarian from the suburbs of Chicago or Bellingham, WA would be used to. A veterinarian in another state may think that they can provide a certain level of care for those animals through telemedicine, but without seeing the conditions the animals live in, and understanding what the capability of the owner is in caring for the animal, they cannot treat a lot of those animals as they would their typical urban patients.

In addition, the risk to the public of zoonotic diseases may actually increase by allowing the establishment of a VCPR without a physical exam or at least an understanding of the care and keeping of the animal, as understood through a timely visit to the premises.

Living in Utqiagvik, I learned to expect that any dog that came to our clinic, who had not been vaccinated for rabies, should be considered a potential risk of rabies exposure. My first winter there we had a total of five clinically rabid pet dogs on the North Slope. One family had 6 young children in the household, and 5 of them received post-exposure prophylaxis, in addition to several adults. The presenting complaint was that the dog was drooling a little bit. There was no known exposure to rabies, except that the dog had gotten out of the house for 30 minutes 2 weeks earlier. The owner did not bring in the animal because they were concerned about rabies, or because they recognized any neurologic signs.

Addressing public health and safety related to animals in a rural village requires a joint effort between public safety, health aides, and veterinarians. An out-of-state veterinarian, who despite having an Alaska veterinary license, may have never even been to Alaska, let alone to a rural village, will not reasonably be able to understand the public health risks of rabies. Even with a good video feed and 2-way audio, it would be difficult to adequately assess the situation I described through telemedicine as the sole means of establishing the VCPR. The average veterinarian in the lower 48 would not assume that a young puppy who is drooling a little bit is actually a clinically rabid dog. For other illnesses, they likely will not understand the risks to other species if an animal is treated with medications and then dies. (It may be disposed of in a landfill where wildlife species, potentially endangered species like polar bears, could consume it.) Part of the conversation is to understand the disposal options of the animal,

prior to prescribing medication that could end up in the environment. A One Health approach is a necessity to protect public health, especially in Alaska.

Providing a false sense of security for the owner of an animal, because they were able to consult with a veterinarian through telemedicine, is not providing for 'safety of the consumer' as described by BOVE in their reasons for writing these regulations.

3. Given that 'a veterinary under this section may be another veterinarian within the group in which the veterinarian practices,...' is there any requirement that any of the associated veterinarians have any physical presence in Alaska?

Again, the BOVE can only regulate veterinarians who hold an Alaska license.

SC: See comments to #2.

4. Why was the more broad adjective 'veterinary' chosen, instead of the noun 'veterinarian' in the definition 'veterinary-client-patient relationship'?

I recall a discussion about this topic from several meetings ago, and if I recall correctly, it was decided that neither term was preferable to the other. The AVMA document where the VCPR regulations were taken show both veterinary-client-patient relationship, and veterinarian-client-patient relationship. There are at least 3 other states calling it a veterinary-client-patient relationship, including Oregon. The board can certainly change it to veterinarian without an issue, however, the verbiage of the regulation stating it is between a veterinarian and an owner clearly identifies that it is a veterinarian who has the relationship with the owner and animal. Therefore, it is of no consequence to keep it the way it is or change it.

SC: Using "veterinarian-client-patient relationship" in 12 AAC 68.075 instead of "veterinary-client-patient relationship" would improve consistency with the FDA, AVMA, AAVSB, and the human medical community (patient-physician relationship). It would also improve internal consistency, because within 12 AAC 68.330(3) a similar term "veterinarian-client relationship" already appears that incorporates "veterinarian" rather than "veterinary."

5. In the definition of "telemedicine services" what is included in interactive audio?
Synchronous services are live services using two-way audio. This allows the veterinarian and the client to communicate as they would in an office setting. Asynchronous services are also referred to as "store and forward." This type of delivery involves forwarding information such as a prerecorded message. The veterinarian is not interacting with the client in real time.
6. In the definition of "telemedicine services" what is the definition of "electronic technology or media"? This type of delivery involves forwarding information such as a prerecorded video, an X-ray, or a diagnostic test to a provider for review and evaluation.
7. In the definition of "telemedicine services" it states that "telemedicine services does not include an audio-only telephone, electronic mail message, facsimile transmission, or online

questionnaire.” Can those forms of communication be used in combination (for example, audio-only phone and emailed photographs or videos)?

The above-listed forms of communication do not in themselves constitute “telemedicine services,” however may be used in combination with telemedicine services.

SC: The proposed regulations are not very clear about what these types of communication entail, or at least do not describe these in terms that the average member of the public uses. If a client calls from bush Alaska, is a phone call with a veterinarian and an email with videos and photos of the condition allowed?

8. In the FAQs document, it states that ‘The Board felt it was necessary to define the veterinary-client-patient relationship due to current federal regulations...’ Why was the decision made to propose regulations contrary to those current federal regulations?

The BOVE took on this project in response to the FDA VFD. The current proposed language would not be contrary to those regulations, as the language was modeled after Virginia’s VPCR which is accepted as meeting federal VFD requirements. (see <https://www.fda.gov/animal-veterinary/development-approval-process/does-state-or-federal-vcpr-definition-apply-lawful-vfd-my-state>)

SC: The proposed regulations do not meet the requirements of FDA for extralabel drug use or the veterinary feed directive. Both of these regulations will still require a physical exam, or a timely visit to the premises, regardless of what the state regulation is. Given that a significant portion of the medications used in veterinary medicine are used extralabel, the proposed regulation is likely to create more confusion for veterinarians and the public than clarification. The FDA has already issued a legal opinion to the AVMA that indicates that a VCPR cannot be established electronically. This means that veterinarians with VCPRs that have only been established electronically must prescribe medications consistent with medication labels (on label). Veterinarians, especially small animal veterinarians prescribe extralabel frequently. Additionally, VFDs cannot be issued through VCPRs that have been established solely through electronic means.

The referenced chart found at <https://www.fda.gov/animal-veterinary/development-approval-process/does-state-or-federal-vcpr-definition-apply-lawful-vfd-my-state> was accurate as of November 13, 2015. Since Virginia’s VCPR language was changed after November 13, 2015 it is an incorrect assumption to utilize that chart as a means to infer FDA’s interpretation of Virginia’s current VCPR status.

9. In the FAQs document, it states that ‘The Board also noted it will provide clarity for veterinarians, clarity for fish hatcheries, and safety for consumers.’ How and in what way do these proposed regulations provide safety for consumers?

Without any regulations defining VPCR, hatcheries were left wondering if they needed to follow the federal regulations or if the state’s regulations met the federal requirements. The state’s

regulations did not meet the Fed requirements. The BOVE's goal is to promulgate regulations that meet the Federal requirements, therefore eliminating the question if Alaska regs apply. The definition of "animal" referenced in AS 08.98.250 includes fish, therefore it is not required to list all types of animals in the regulations. Agricultural animals and bees are listed in the regulations because they are not specified in the referenced definition.

SC: The proposed regulation will make Alaska's regulations less stringent than the federal VCPR, resulting in the federal VCPR being enforced in place of Alaska's in many situations. We believe the BOVE is mistaken in their assumption that the proposed regulation will result in clarity for any of the mentioned parties. The BOVE's response fails to explain how the proposed regulation protects animal owners.

Please refer to my comments above about the risks of zoonotic disease in Question 2. These regulations do not provide safety for consumers. They are so broad as to decrease safety for consumers by allowing veterinarians to prescribe antibiotics, opioids, or other medications of significant important in human health and public health, without a full understanding of how the medications will be used, stored, disposed of, etc.

10. In the FAQs document it states that "The Board also noted it will provide clarity for veterinarians, clarity for fish hatcheries, and safety for consumers." Fish hatcheries are not mentioned anywhere in the proposed regulations, nor in the established veterinary practice statutes and regulations. What specific items in the proposed regulations provide clarity for fish hatcheries?
See above

SC: Again, the federal Veterinary Feed Directive and regulations about extra-label drug use will apply to any medications used in fish. If Alaska chooses a VCPR that doesn't meet the critical components of the federal VCPR, then veterinarians will still be working under the federal definitions for medications that are to be administered to fish. Meaning, a veterinarian will still need to visit the premises in a timely manner, and be familiar with the care and keeping of the animals. It appears that the proposed regulations actually provide less clarity for fish hatcheries, because they will be under the federal definition for most of the medications that would use at the hatcheries, and a visit by a veterinarian will still be required.

11. Why are fish hatcheries specified in the FAQs, but not other agriculture, food animal, or exhibition animal facilities that may have similar challenges? Fish hatcheries were addressed simply because they had been discussed as a group facing uncertainty.

SC: See comments under #10.

The uncertainty currently would be the same whether it is a fish hatchery, beef ranch, dairy, sheep ranch, swine farm, or poultry facility. It is true that prior to the VFD rule fish biologists and, in some cases, fish pathologists were accustomed to ordering medications for use in aquatic species. Because

the Alaska regulations govern how veterinarians operate, they should be the ones that determine if they are complying with their practice regulations, not farm, ranch, dairy, or hatchery management.

12. What is the rationale in passing telemedicine regulations that are not recommended by American Association of Veterinary State Boards, and a VCPR regulation that is not in agreement with the American Veterinary Medical Association VCPR definition? How does this protect the public? First, the regulations aren't passed. The proposed regulations were a compromise amongst BOVE members in an effort to move the project forward and solicit public comment. The AVMA and the AAVSB both have different definitions for VPCR and telemedicine guidelines – there is no one right answer to these complicated issues. Protecting the public involves not only protection against “bad actors,” but balancing that protection with access to qualified practitioners.

SC: Access to qualified practitioners is important, but not at the expense of an appropriate standard of care for veterinary medicine, and a consideration for animal welfare and environmental health. Nowhere in the FAQs provided by BOVE does it describe that the regulations were written to increase access to qualified practitioners, although this is an important issue in our state. There are other ways to increase access, such as decreasing the cost and complications for veterinarians to become licensed in Alaska, rather than decreasing the standard of care that is expected to be provided.

If the access to care concern has to do with remote areas of Alaska not being able to access a veterinarian except through electronic means, then utilizing the current AVMA VCPR and telemedicine language would allow for emergency exemptions when needed until an in-person VCPR can be established.

If the access to care concern has mainly to do with fish hatcheries in Alaska having access to “qualified” practitioners, then there are other solutions to that problem besides creating confusion for all parties without really accomplishing the ultimate goal, having access to a qualified aquatic veterinarian who can issue VFDs in compliance with federal law. Other industries such as the swine industry and the poultry industry have faced similar issues and worked to provide pathways for veterinarians to obtain the additional knowledge that their fields required and have been very successful in attracting veterinarians into those areas of practice.

13. One argument that has been used to support exempting veterinarians from the Prescription Drug Monitoring Program is that a veterinarian is required to physically examine an animal in-person prior to prescribing controlled medications. The physical exam by a veterinarian and associated diagnostics must be used to confirm a diagnosis, and determine an appropriate course of treatment. Has the Board of Veterinary Examiners (BOVE) considered the impact that establishing a VCPR solely through telemedicine, and allowing other veterinarians in the same practice to be able to work under that VCPR, could have on prescriptions of controlled substances? How will BOVE address these concerns as they move forward with PDMP regulations or the legislative process in the next session?

Currently, without a VCPR defined in state regulations, aside from a vague Federal mandate (Ryan Haight Act of 2008), there is no requirement for a physical exam in Alaska. The regulations are currently silent on VPCR and on telehealth services. So, while some people may have been using the “physical exam” requirement in argument, it’s currently not supported in regulation, even though some practitioners may have taken it upon themselves to operate to that higher standard.

SC: If there is no current state requirement for a physical exam, then all the more reason that this requirement should be included in the VCPR. The human opioid crisis, and scrutiny of veterinarians’ role in this, even if unfounded, is one more reason NOT to pass the VCPR regulation as currently written.

Summary comments: At the interface of wildlife and domestic species, where people rely on subsistence hunting of marine mammals, fish, and birds, and other remote fishery or livestock locations where human health, animal health, and environmental health are so intricately intertwined, is not the place to experiment with implementing the most broad interpretation of the veterinarian-client-patient relationship compared to any other state in the country.

I sincerely hope that you will reconsider the proposed VCPR definition, and add in the requirement for a physical exam or a timely visit to the premises. I hope that you will reconsider allowing telemedicine to be used as the sole mechanism to establish a VCPR. This is too important of an issue to move these regulations forward as currently written. Please consult with the national agencies to better understand the context of antimicrobial resistance or other human and animal health issues, and consider the bigger implications and consequences. The proposed regulations are not in the best interest of the public or of the animals we care for.

Thank you again for your time in responding to these questions, and for considering our comments submitted on June 12, as well as these additional comments.

Sarah Coburn, June 22, 2020

Thank you for your time and consideration in answering these questions. I look forward to hearing your responses, and better understanding these proposed regulations.

Sincerely,

Sarah Coburn, DVM, MS
President Alaska State Veterinary Medical Association

Zinn, Sher K (CED)

From: Alaska Online Public Notices <noreply@state.ak.us>
Sent: Monday, June 22, 2020 4:09 PM
To: Regulations and Public Comment (CED sponsored)
Subject: New Comment on NOTICE OF PROPOSED CHANGES RELATING TO REGULATIONS OF THE BOARD OF VETERINARY EXAMINERS

A new comment has been submitted on the public notice [NOTICE OF PROPOSED CHANGES RELATING TO REGULATIONS OF THE BOARD OF VETERINARY EXAMINERS](#).

Submitted:

6/22/2020 4:08:36 PM

PAMELA A TUOMI, DVM
pamt@alaskasealife.org

Anchorage, AK, US
Anonymous User

Comment:

I wish to express several concerns regarding the definition of a Veterinary-Client Patient Relationship (VCPR) currently proposed as 12 ACC 68.075. While some aspects of consultation, diagnosis and treatment recommendations without an physical examination or previously established relationship are sometimes a necessity in Alaska due to unavailability of veterinary services in many remote areas, these cases should be the exception and only employed after thorough remote discussions with owners and caretakers and when absolutely necessary for the welfare of the animal. Telemedicine should not be employed solely for the convenience of the owner as it creates inherent risk of misdiagnosis and improper treatments.

As a small animal practitioner and a wildlife veterinarian in Alaska for over 50 years, I am constantly presented with patients whose owners or caretakers only have vague or often totally erroneous descriptions of symptoms and physical findings. A physical examination and familiarity with the conditions of care of patients should be considered mandatory in all but extreme situations and a relationship with the owner should include proper instructions and warnings regarding prescribed treatments and a mechanism for follow up monitoring of the animal's progress.

Being "available for follow up care" is only a small part of this equation. There is a real concern for human health if pets and livestock are not properly cared for and if medications are misused or end up as waste stream contaminations.

Subsection (c) separates the veterinarian even further from any ability to provide continuity of care and monitoring of recurrent or chronic cases. There is no definition of "the group" relationship with "another veterinarian". Does this mean an individual clinic, an affiliated emergency clinic, another office under a corporate umbrella (eg: VCA clinics) that may include veterinarians in another state or even an out of state sales business that employs veterinarians to "consult" with it's customers?

AAC 68.990 confuses the issue further by "including interactive audio..." under the definition of telemedicine but then states in the same paragraph that "telemedicine services does not include an audio-only telephone". This needs to be clarified.

The Board needs to thoroughly rework these proposed VCPR amendments to better define the conditions and situations where telemedicine might be appropriate before adopting any changes to the current statutes. I understand the rush to validate some remote methods of patient care in reaction to the COVID-crisis and concerns for public health but we should not rush into adopting changes that will be even more difficult to refine in the future.

Zinn, Sher K (CED)

From: Dr. Ashley Morgan <AMorgan@avma.org>
Sent: Monday, June 22, 2020 4:30 PM
To: Regulations and Public Comment (CED sponsored)
Cc: Dr. Ashley Morgan
Subject: Comments on the proposed regulation changes to the regulations regarding veterinary-client-patient relationships
Attachments: 2020_06_22_AVMA Comments on AK BOVE VCPR Definition with attachment.pdf

Good afternoon,

Please find comments on the proposed regulation changes to the regulations regarding veterinary-client-patient relationships from the American Veterinary Medical Association attached (<https://aws.state.ak.us/OnlinePublicNotices/Notices/View.aspx?id=198260>).

Sincerely,
Ashley

Ashley S. Morgan, DVM, CAE

Director | Division of State Advocacy

American Veterinary Medical Association

1910 Sunderland Place NW, Washington, DC 20036

o: 202.289.3210 | c: 703.517.1196

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June 22, 2020

Alaska State Board of Veterinary Medical Examiners
Department of Commerce, Community and Economic Development
Division of Corporations, Business and Professional Licensing
PO Box 110806
Juneau, AK 99811-0806
Boardofveterinaryexaminers@alaska.gov

Re: Proposed sections 12 AAC 68.075. Veterinary-Client-Patient-Relationship

Dear Board of Veterinary Medical Examiners:

We appreciate the opportunity to provide comments on your proposal to amend 12 AAC 68 and are writing to express the American Veterinary Medical Association's substantive concern about provisions of proposed 12 AAC 68.075. Specifically, we have reservations about proposed 12 AAC 68.075(b)(2), which would allow the blanket establishment of a Veterinarian-Client-Patient relationship (VCPR) without an in-person examination of the patient in the state of Alaska. Under these provisions, in lieu of an in-person examination, telemedicine could be used to create the VCPR. In contrast, the AVMA believes veterinary telemedicine should only be conducted within an existing VCPR, and that establishing that VCPR should require an in-person examination of individual patients, or regular premise visits for groups of animals, with the exception of advice given in an emergency until the patient can be seen by a veterinarian. This emergency exception creates opportunity to address the unique challenges presented by remote and underserved regions of Alaska.

The AVMA is fully committed to improving access to veterinary care, including through the appropriate use of telemedicine. At the same time, it is critical that the medical care we deliver to our patients continues to be of high quality. While it shows promise and we are excited about its opportunities, the adoption and evaluation of telemedicine in veterinary medicine is in its early stages. There currently exists substantive variability in technological access, capability, and support, particularly in many of the underserved areas we are attempting to reach, and almost no research has been conducted in the veterinary space on comparative health outcomes.

For very good reasons, other state and federal regulatory requirements directly conflict with the definition of the VCPR being proposed by Alaska. Veterinarians acting in accord with the language of proposed 12 AAC 68.075 will frequently find themselves in direct conflict with federal law. The Federal Food, Drug and Cosmetic Act requires that veterinarians conduct their practice within the federally defined VCPR for any Extralabel Drug Use (ELDU), or when authorizing a Veterinary Feed Directive (VFD, 21 USC § 360b(a)(4)(A) and 21 USC § 360b(a)(5), (requiring federal VCPR for ELDU); 21 CFR § 558.6(b)(1)(ii), (requiring a federal VCPR as minimum for VFD authorization)). A VCPR is defined in federal regulation at 21 CFR § 530.3(i). The federal regulatory definition of the VCPR, 21 CFR § 530.3(i), does **NOT** allow for the **establishment** of a VCPR through electronic means. In their response to our specific inquiry to them on this point (see attached letter), the U.S. Food and Drug Administration (FDA) told us, after an extensive legal review process that, *"...Such a relationship can exist only when the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of examination of the animal(s), and/or by medically appropriate and timely visits to the premises where the animal(s) are kept."* The FDA further clarified that, *"For the purposes of the federal*

definition, a VCPR cannot be established solely through telemedicine (e.g., photos, videos, or other electronic means that do not involve examination of the animal(s) or timely visits to the premises)."

Many medications used to treat animals in both agriculture and aquaculture (including hatcheries associated with fisheries) require issuing a VFD. Issuing a VFD requires the veterinarian to adhere to, at a minimum, the federal VCPR definition (21 CFR § 558.6(b)(1)(ii)). A similar requirement exists for ELDU, which is very frequent in companion animal practice (21 USC § 360b(a)(4)(A) and 21 USC § 360b(a)(5)). Any use of an FDA-approved drug that is not consistent with the label—meaning any extralabel use—requires adherence to, at a minimum, the federal VCPR definition (*Id*). Ultimately, if the proposed changes to Alaska’s regulations are approved as currently drafted, veterinarians will be limited to using drugs on-label for patients for which a VCPR outside of the federal definition has been established. In addition, veterinarians who prepare biologics for use within their professional practice must do so within the context of a VCPR (9 CFR § 107.1(a)(1)). Veterinarians involved in authorizing the use of USDA-regulated autogenous biologics must operate within the context of the federal VCPR (9 CFR § 113.113). The VCPR definition utilized by the USDA in this instance mirrors the definition used by FDA (9 CFR § 107.1(a)(1)). Conflicts between the Board of Veterinary Medical Examiners’ proposed definition of the VCPR and the federal VCPR will be a source of confusion for veterinarians practicing in Alaska, can limit their ability to appropriately treat their patients, and, if they don’t fully understand the ramifications of how the federal VCPR and state VCPR are intertwined, will place many of them at considerable risk of increased liability.

Compounding our concern about establishing a VCPR electronically is language (12 AAC 68.075 (c)) that then extends that electronically established VCPR to another colleague or even a consultant. Potentially, an animal could be treated by multiple individuals—only one of whom may have actually interacted with the client through the use of telehealth—for an indefinite period of time without the animal ever having been evaluated in-person. The potential negative consequences for the care of the patient are considerable.

In short, appropriate oversight for patient health and welfare, public health, food safety, and antimicrobial stewardship is undermined by this proposal. Furthermore, and consistent with the legal doctrine of pre-emption, a state may not lessen the federal VCPR requirements for VFD, Extra-Label Drug Use, the preparation of biologics for use within a veterinarian’s practice, or the creation and delivery of autogenous biologics than are enacted at the federal level. A less strict state requirement will not remove the obligation imposed upon the veterinarian to follow the more strict federal law when it applies.

We fully recognize the geography of Alaska presents some unique challenges for the delivery of veterinary services. However, the proposed regulation would apply not only to remote or underserved areas, but to all regions and practice settings across the state. The proposed regulation is overly broad and threatens quality of care by undermining the VCPR even where a veterinarian may be available for an in-person examination. As mentioned above, we believe an appropriately framed emergency exemption may provide a much better way to ensure access to veterinary care for those regions of Alaska where access is limited without compromising the value of the VCPR. Such an exemption could be incorporated into a definition of the VCPR as follows.

The veterinarian-client-patient relationship is the basis for veterinary care. To establish such a relationship the following conditions must be satisfied:

- 1. The licensed veterinarian has assumed responsibility for making medical judgments regarding the health of the patient(s) and the need for medical therapy and has instructed the client on a course of therapy appropriate to the circumstance.*
- 2. There is sufficient knowledge of the patient(s) by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition(s) of the patient(s).*

3. *The client has agreed to follow the licensed veterinarian's recommendations.*
4. *The licensed veterinarian is readily available for follow up evaluation or has arranged for:*
 - i. *Emergency or urgent care coverage, or*
 - ii. *Continuing care and treatment has been designated by the veterinarian with the prior relationship to a licensed veterinarian who has access to the patient's medical records and/or who can provide reasonable and appropriate medical care.*
5. *The veterinarian provides oversight of treatment.*
6. *Such a relationship can exist only when the veterinarian has performed a timely physical examination of the patient(s) or is personally acquainted with the keeping and care of the patient(s) by virtue of medically appropriate and timely visits to the operation where the patient(s) is(are) kept, or both.*
7. *Patient records are maintained.*

Both the licensed veterinarian and the client have the right to establish or decline a veterinarian-client-patient relationship within the guidelines set forth in the AVMA Principles of Veterinary Medical Ethics.

A licensed veterinarian who in good faith engages in the practice of veterinary medicine by rendering or attempting to render emergency or urgent care to a patient when a client cannot be identified, and a veterinarian-client-patient relationship is not established, should not be subject to penalty based solely on the veterinarian's inability to establish a veterinarian-client-patient relationship.

In addition, in remote regions of Alaska where access to veterinary care is limited due to a lack of a road system or locally available veterinarian, it may sometimes be logistically impossible for the patient or veterinarian to immediately travel for an in-person consultation. In these cases, an emergency exists if there is no other option to provide care and the patient would otherwise go untreated. When this occurs, an evaluation of the patient or premises may initially be conducted through electronic means, as long as the client agrees to present the animal(s) for an in-person examination or the veterinarian conducts a medically appropriate visit to the premise as soon as reasonably achievable. The veterinarian acting in this manner must be both licensed in the state of Alaska and be regularly practicing in Alaska at the time the electronic evaluation is conducted.

When an evaluation of the patient or premises is initially conducted through electronic means, the licensed veterinarian must inform the client about the veterinarian's identity, location, licensure status, and any privacy and security issues involved in accessing veterinary services through electronic means.

Veterinary state boards across the country are considering how best to regulate telehealth. Alaska's current proposal goes far beyond what has been adopted by any other state or what has been recommended by the American Association of Veterinary State Boards in its Practice Act Model. We believe the reason other jurisdictions have not taken such a broad approach is because doing so increases risk for assessment errors and poor treatment outcomes in patients, and also opens the door to treatment by under- or unqualified practitioners, including—potentially—individuals who are not licensed to practice veterinary medicine.

One additional concern with the proposed addition to 12 AAC is that, while 12 AAC 68.075 defines the VCPR and falls within Article 2 (Standards of Practice), nowhere in regulation or statute does it say that a VCPR is required to deliver veterinary services. A better approach would seem to be to define the term in 12 ACC 68.990 and then, in 12 ACC 68.075, indicate that a VCPR (as defined in 12 AAC 68.990) is

required to deliver veterinary services.

We ask that the Alaska Board of Veterinary Examiners revise their proposed changes to instead incorporate emergency exemption language that would more appropriately permit telemedicine to be used to address the needs of patients in remote and underserved areas of Alaska.

Additionally, we ask that the Board use the term “veterinarian-client-patient relationship” in 12 AAC 68.075 instead of “veterinary-client-patient relationship” for consistency with the FDA, AVMA, AAVSB, and the human medical community (patient-physician relationship). Within 12 AAC 68.330(3) a similar term “veterinarian-client relationship” already appears that incorporates “veterinarian” rather than “veterinary.”

Thank you for consideration of the AVMA’s concerns and please don’t hesitate to reach out to Dr. Ashley Morgan, Director of State Advocacy, at amorgan@avma.org or 202-289-3210 with any questions.

Sincerely,

A handwritten signature in black ink that reads "Janet D. Donlin DVM". The signature is written in a cursive style with a large, looped initial "J".

Janet D. Donlin, DVM, CAE
Executive Vice President and Chief Executive Officer

WH/AM/AH/KM/GCG

RE: AVMA April 6, 2017 VCPR Questions

Janet D. Donlin, DVM, CAE
Executive Vice President and CEO
American Veterinary Medical Association
1931 N Meacham Rd, Ste 100
Schaumburg, IL 60173-4360

Dear Dr. Donlin:

Thank you for your letter of April 6, 2017 regarding the Food and Drug Administration's interpretation of regulations pertaining to veterinarian-client-patient relationships (VCPRs) in two particular situations. We appreciate AVMA's interest in these issues. A response to the first situation follows.

Question # 1

We are keenly interested in the Food and Drug Administration's interpretations of its regulations pertaining to veterinarian-client-patient relationships (VCPRs) in the following situations, which are fairly new to the veterinary profession.

1. *Related to telemedicine and the use of it within the veterinary profession across the nation, we seek the FDA's input on establishment and maintenance of VCPRs.*
 - a. *Within Federally defined VCPR standard [21 CFR 530.3(i)], the VCPR requirements include that "the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of examination of the animal(s), and/or by medically appropriate and timely visits to the premises where the animal(s) are kept." Do the examinations and / or visits need to be in-person, or might they be virtual through telemedicine? If virtual, what criteria from the FDA's perspective are essential?*

The Federally defined VCPR standard published at 21 CFR Sec. 530.3(i) applies (a) when dosage form¹ new animal drugs are used or intended to be used in an extra-label manner,² (b) new animal drugs are used or intended to be used in or on medicated feeds³ for minor species in an extra-label manner,⁴ and (c) when "on-label" veterinary feed directives are written for animals ingesting VFD medicated feed in certain states as listed on CVM's website.⁵

The federal VCPR definition states, in part, that "Such a relationship can exist only when the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of examination of the animals and/or by

1 See generally 21 CFR parts 520, 522, 524, 526, 529

2 See generally 21 CFR part 530 <https://www.ecfr.gov/cgi-bin/text-idx?SID=50be44377a13b1ba42ce2433cc5d10ac&mc=true&node=pt21.6.530&rgn=div5>

3 See 21 CFR part 558

4 See Compliance Policy Guide 615.115 Extralabel Use of Medicated Feeds for Minor Species Guidance for FDA Staff <https://www.fda.gov/downloads/iceci/compliancemanuals/compliancepolicyguidancemanual/ucm529668.pdf>

5 See CVM's website *Does the State or Federal VCPR Definition Apply to a Lawful VFD in my State?* For a list of states. <https://www.fda.gov/AnimalVeterinary/DevelopmentApprovalProcess/ucm460406.htm>

medically appropriate and timely visits to the premises where the animal(s) are kept." Therefore, for the purposes of the federal definition, a VCPR cannot be *established* solely through telemedicine (e.g., photos, videos, or other electronic means that do not involve examination of the animal(s) or timely visits to the premises).

- b. *From the FDA's perspective, can an established VCPR be MAINTAINED by telephonic or electronic means of telemedicine? And if so, what criteria are essential? We understand that individual U.S. states or territories may impose more strict requirements.*

The federal VCPR does not differentiate between establishing and maintaining a VCPR. However, FDA regulations provide that "[s]uch a relationship can exist only when the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of examination of the animal(s), and/or by medically appropriate and timely visits to the premises where the animal(s) are kept."

The regulations do not specifically address the use of telemedicine to maintain an established VCPR. However, based on the language of the VCPR definition provided above, nothing would prohibit the use of telemedicine (e.g., use of photos, videos, or other electronic means that may be considered virtual) to allow the veterinarian to keep informed and able to make medical judgments regarding the health of the animal(s) and the need for medical treatment between periodic examinations of the animal(s) and/or timely visits to the premises where the animal(s) are being kept.


Question # 2

We are keenly interested in the Food and Drug Administration's interpretations of its regulations pertaining to veterinarian-client-patient relationships (VCPRs) in the following situations, which are fairly new to the veterinary profession.

2. *How might the Federally defined VCPR standard [21 CFR 530.3(i)] and VCPR requirement for VFD issuance [21 CFR 558.6(b)(1)(ii)] apply in U.S. waters OUTSIDE of state jurisdiction [e.g., sections of the Great Lakes and exclusive economic zone (EEZ)]? We suspect that regulations do apply; however, we need clear guidance from the FDA on this as we move forward in collaborative efforts with other regulatory stakeholders to resolve veterinary practice issues that have come to light with recent federal regulation enabling introduction of aquaculture production systems in some of these waters.*

CVM appreciates the importance of providing clarity regarding the VCPR requirement for VFD issuance [21 CFR § 558.6(b)(1)(ii)] as it applies in U.S. waters OUTSIDE of state jurisdiction [e.g., sections of the Great Lakes and exclusive economic zone (EEZ)]. We are currently considering the issues raised by this question, however due to their complexity CVM will require additional time to provide our final response to this question.

Sincerely,



Steven M. Solomon, DVM, MPH
Director
Center for Veterinary Medicine
7500 Standish Place, HFV-1
Rockville, MD 20855

cc Dr. Warren Hess

Zinn, Sher K (CED)

From: Alaska Online Public Notices <noreply@state.ak.us>
Sent: Monday, June 22, 2020 12:28 PM
To: Regulations and Public Comment (CED sponsored)
Subject: New Comment on NOTICE OF PROPOSED CHANGES RELATING TO REGULATIONS OF THE BOARD OF VETERINARY EXAMINERS

A new comment has been submitted on the public notice **NOTICE OF PROPOSED CHANGES RELATING TO REGULATIONS OF THE BOARD OF VETERINARY EXAMINERS.**

Submitted:

6/22/2020 12:28:06 PM

Phillip Meyer, DVM
pmeyer.ak@gmail.com

Wasilla, AK, US
Anonymous User

Comment:

TO: AK. Board of Veterinary Examiners
From: Phillip Meyer, DVM

I have held more than a hundred remote clinics from Adak to Point Hope, most were in Kotzebue. I have dealt with many phone calls from remote areas that I have visited. In areas with no available veterinary care, telemedicine is better than nothing. However, without a physical knowledge of the patient, it is not possible to maintain the standards the Alaskan public expect and deserve. These changes to the VCPR would make substandard veterinary medicine the standard for Alaska.

You can review all comments on this notice by [clicking here](#).

[Alaska Online Public Notices](#)

Zinn, Sher K (CED)

From: Ann Meyer <ameyer@matnet.com>
Sent: Monday, June 22, 2020 1:13 PM
To: Regulations and Public Comment (CED sponsored)
Subject: comment on VCRP

TO: AK. Board of Veterinary Examiners
From: Phillip Meyer, DVM
pmeyer.ak@gmail.com

I have held more than a hundred remote clinics from Adak to Point Hope, most were in Kotzebue. I have dealt with many phone calls from remote areas that I have visited. In areas with no available veterinary care, telemedicine is better than nothing. However, without a physical knowledge of the patient, it is not possible to maintain the standards the Alaskan public expect and deserve. These changes to the VCPR would make substandard veterinary medicine the standard for Alaska.

Zinn, Sher K (CED)

From: Carrie Goertz <carrieg@alaskasealife.org>
Sent: Monday, June 22, 2020 1:26 PM
To: Regulations and Public Comment (CED sponsored)
Subject: Proposed changes to VCPR

I do not support the proposed changes to Veterinary-client-patient relationship.

While I welcome the expansion of telemedicine, the proposed regulatory change fails to adequately protect and provide for animals, clients, veterinarians, and the State of Alaska. Additionally, it is in conflict with federal law.

Telemedicine should be allowed only after the creation of a VCPR through an in person evaluation and with a veterinarian with an Alaska license that has a physical presence in Alaska. This protects the animals as it ensures quality care. It protects the clients in allowing options but preserving quality care while ensuring that the veterinarians they consult with are knowledgeable about local, in-state concerns. It protects the veterinarians by ensuring that state and federal rules do not conflict. Additionally, it promotes the use of local resources thereby supporting both businesses which in turn pay taxes to the state.

I see problems with this not only for traditional domestic species but also for wild animals, including fish, mammals, birds, and other species. There are some uniquely Alaskan issues that could be missed if relying on just a phone call with no prior relationship or connection to a facility or the animals involved.

I recommend that the proposed regulations be more consistent with the guidelines and standards of care as recommended by the American Association of Veterinary State Boards of the American Veterinary Medical Association.

-- Carrie

Carrie Goertz, MS, DVM

Director of Animal Health

Alaska SeaLife Center

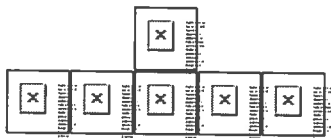
P.O. Box 1329 • 301 Railway Ave • Seward, AK 99664

Direct: 907-224-6326

Mobile: 907-362-2267

Fax: 907-224-6320

www.alaskasealife.org



Zinn, Sher K (CED)

From: Michelle Simpson <jesimpson55@yahoo.com>
Sent: Sunday, June 21, 2020 11:25 AM
To: Regulations and Public Comment (CED sponsored)
Subject: 12 AAC 68.075

I am writing to comment on the proposed regulation changes defining the VCPR. Overall, I have several concerns with the proposed regulations and hope that you will reconsider the adoption of them as written.

I have a small house call practice. I know most of my patients by name and they all have my cell phone number. I understand with COVID we have used telemedicine to social distance and I was quick to get my license for telemedicine; but these are special circumstances and not how I think we should be practicing veterinary medicine in the long term. Because I have a personal relationship with most of my clients, even when I am out of state, I know the patient well enough to recall the chronic issues and can call in for refills. All of these have had an in person physical exam by me. But if there is a new problem, and I am not able to do a physical exam, I do not think I can practice good medicine without an in person exam and in those cases I recommend they take their pet in to be seen. I have experienced first hand what I thought was a very capable person, a pediatrician, make a mistake on evaluating her dog and calling me for advice.

This client's dog was notorious for getting into porcupine quills. The dog somehow tolerated the owners pulling them without sedation. She called me stating she could not get some out of the muzzle. I suggested she take the dog into the ER as I was out of state and informed her that yes, they would need to sedate to pull any remaining quills out. They chose to monitor her. Thankfully the dog did fine. The owner called later to let me know they were trying to pull out the dogs whiskers! It may seem silly but the poor dog! And of all my clients, I would expect that a physician would be able to tell the difference between a whisker and a quill. So in my mind if a medical Dr. cannot identify a quill from a whisker, I learned that no matter how educated and knowledgeable a person is, a physical exam is mandatory. I do not think any type of facetime, video or photos would have been detailed enough to see this or any other issues. I fail to comprehend how telemedicine protects the public and especially how it protects the patient.

Thank you for responding to AKVMA's questions submitted on June 12. Some questions were answered and others were not adequately addressed.

In regards to your answer to the AKVMA question # 8, you referred to the website. I went to that website on the electronic code fo federal regulations. This is what I found:

(i) *A valid veterinarian-client-patient relationship* is one in which:

(1) A veterinarian has assumed the responsibility for making medical judgments regarding the health of (an) animal(s) and the need for medical treatment, and the client (the owner of the animal or animals or other caretaker) has agreed to follow the instructions of the veterinarian;

(2) There is sufficient knowledge of the animal(s) by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s); and

(3) The practicing veterinarian is readily available for followup in case of adverse reactions or failure of the regimen of therapy. Such a relationship can exist only when the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of examination of the animal(s), and/or by medically appropriate and timely visits to the premises where the animal(s) are kept.

These are the federal regulations. How are our state regulations adhering to the federal regulations? It says in Alaska you must heed to the federal regulations. Also there was no correspondence from our state as it indicates there has been from other states.

When you reviewed other states' definitions, why would you go out on a limb and select the state with the broadest definition of a VCPR? Are you trying to be vague? I thought the whole idea was to be more defining.

You indicated you addressed fish hatcheries because they have been discussed as a group facing uncertainty. Is there some bias on hatcheries or private interest? Bees are increasing in popularity but not addressed specifically?

In response to your replies to AKVMA's question's, You stated that you can only regulate veterinarians who hold an Alaska license. Proposing a regulation that allows the establishment of a VCPR without a physical exam is opening the door for an unlicensed veterinarian residing in another state, to utilize telemedicine for patients in Alaska and be never required to perform a physical exam. Of further concern is the ability of that veterinarian, without restriction, to turn over the care of a patient to another colleague in his/her practice. Even if the veterinarian was licensed in Alaska there is the potential for substandard care and harm to the patient. How is this supposed to protect the public? How are you providing safety for consumers in doing this? How is it providing safety for the patients?

Overall I am not in favor of the changes that BOVE has suggested. I recommend you go back to the table and work with the AVMA and AKVMA on changing the regulations so they meet Federal standards, adhere to guidance from AVMA, and promote standards of care that protect the public and the patients that veterinarians care for.

Thank you.

Respectfully,

Michelle Leibold DVM

Sent from [Mail](#) for Windows 10

Zinn, Sher K (CED)

From: ravenwoo@mtaonline.net
Sent: Sunday, June 21, 2020 8:54 PM
To: Regulations and Public Comment (CED sponsored)
Subject: Proposed VCPR changes. Letter for Sher Zinn via BOVE email
Attachments: Sher Zinn.docx

Sher Zinn, Regulations Specialist, Division of Corporations, Business and Professional Licensing,
P.O. Box 110806,

Juneau, AK 99811-0806

June 21st, 2020

I am sending this letter to Ms. Sher Zinn, through the BOVE email.

Ms. Zinn:

Having a been born in Bethel, Alaska and having been a licensed veterinarian in the State of Alaska since 1985 I have a vested interest in my state, my profession and in the people and animals that depend on us. Allowing the proposed changes to the current veterinary client patient relationship that eliminates the hands-on physical exam requirement is not in anyone's best interest. I grew up in a doctor's family in the state since 1959. My father used his own plane to fly to small villages to so he could physically connect with his patients. The fancy new buzz word, "telemedicine" has always been the best second option available. Never, has any professional considered it a replacement for a good exam.

I support the Board of Veterinary Examiners proposal that confirms the importance of the physical exam, while giving a next best option for patients off the roadways. Let me give you three examples of my cases where even the most experience and conscience telemedicine doctor would not have been able to best serve these patients.

"Mike" presented an elderly Golden Retriever that I had been seeing for many years. "Mike" was thrilled how well "Shasta" was doing and her weight was the same! "Mike's" observations, that he would have relayed to me over a phone, was that she had no problems. "Shasta", however, when I did a physical exam with my hands, had lost a tremendous amount of muscle mass under her heavy coat, and ended up being diagnosed with a large mass in her abdomen.

"Ann" brought "Bella" in for her annual exam and was so pleased that her bulldog was so healthy compared to her last dog. On a phone discussion, regardless of how many or what questions I asked, "Ann" would never have noted the golf ball size tumor I found in "Bella's" mouth.

"John" presented "Sam" for a health certificate and was relieved "Sam" was handling the upcoming move so well. "John" would have never been able to communicate the subtle pain and swelling I found on "Sam's" shoulder that ended up being a bone tumor.

Animals cannot talk. Veterinarians are interpreters who work with clients and need all our senses to properly treat and care for our patients. I have been a patient at the Mayo Clinic in Rochester, MN and during my extended treatments I heard the same words from doctors that I heard from my instructors in veterinary school. "More disease processes will be missed for not **looking**, then not knowing". Physical exams are critical to any patient, human or animal. When that option is completely not available, then telemedicine is a next best option. Please do not set up our clients and patients up for so many avoidable medical catastrophes by degrading the importance of the physical exam.

Thank you for your time and efforts on these complicated issues.

Sincerely,

Susan Wagnon DVM,

19041 Hidden Hill Ct, Chugiak, AK 99567.

License #AA220

Sher Zinn, Regulations Specialist, Division of Corporations, Business and Professional Licensing,
P.O. Box 110806,
Juneau, AK 99811-0806

June 21st, 2020

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Thank you for your time and efforts on these complicated issues.

Sincerely,

Susan Wagnon DVM,

19041 Hidden Hill Ct, Chugiak, AK 99567.

License #AA220

Zinn, Sher K (CED)

From: Alaska Online Public Notices <noreply@state.ak.us>
Sent: Wednesday, June 17, 2020 5:15 PM
To: Regulations and Public Comment (CED sponsored)
Subject: New Comment on NOTICE OF PROPOSED CHANGES RELATING TO REGULATIONS OF THE BOARD OF VETERINARY EXAMINERS

A new comment has been submitted on the public notice **NOTICE OF PROPOSED CHANGES RELATING TO REGULATIONS OF THE BOARD OF VETERINARY EXAMINERS.**

Submitted:

6/17/2020 5:14:45 PM

Jamie Merrigan
jamieleemerrigan@gmail.com

Wasilla, AK, US
Anonymous User

Comment:

6-17-2020
To Sher Zinn and the Alaska Board of Veterinary Medical Examiners:

The purpose of this letter is to oppose the current proposed regulations to change the definition of the veterinarian-client-patient relationship. Broadening the definition of what currently constitutes the veterinarian-client-patient relationship to not require a physical exam or onsite inspection of a herd or agricultural facility is dangerous for maintaining acceptable standards of care for animals residing within our state.

Many veterinarians realize that not requiring a physical exam to treat a patient would absolutely help several animals residing in remote areas. However, all animal owners have every opportunity to call any veterinary facility in the state for guidance on how to transport their animal to an appropriate facility for treatment, or to pursue regular care with programs such as Alaska Veterinary Rural Outreach (ARVO) or other traveling veterinarians. Companion animals residing in the "bush" communities do not constitute most animals living within our state.

Eliminating the physical exam requirement for an animal or animal facility lowers the current veterinary standard of care and opens our state to veterinarians not even residing within our state to provide medical care for our companion animals. This completely diminishes the inherent value of the professional and thorough physical examination that veterinarians provide. It also decreases the quality of care for animals that cannot communicate their clinical signs to their healthcare provider, like human patients can. As a practicing veterinarian, on routine physical exams I have found several large abdominal masses in dogs that were acting otherwise normally (one was a 13 pound splenic mass in a dog that was in for routine vaccinations and the owner reported no problems), where subsequent surgery saved those animals' lives.

Veterinary visits to inspect herds/agricultural facilities ensure that those animals are treated humanely, kept out of horrid living conditions, and are provided a certain level of care. Eliminating visits to facilities like this would encourage hoarding situations, result in more cases of animal cruelty (intentionally or unintentionally), and result in lost educational opportunities for clients running those facilities. In these situations, it is just as important to fully inspect where the animals are housed as it is to examine the animals themselves, to maintain an acceptable standard of care.

"Telemedicine services" as they are currently defined in the proposed regulations does not include important guidelines and standards of care as recommended by the American Association of Veterinary State Boards or the American Veterinary Medical Association. Not having clearly defined standards and operations can drastically increase harm to the public and their companion animals (as well as animal facilities) by supporting the delivery of substandard care. Before ANY telemedicine regulations are passed, they should be completely flushed out and defined and not just rammed

through passing because it is convenient.

I truly hope the board reconsiders its current stance on the veterinary-client-patient relationship—both for the sake of the clients and their companion animals, for the sake of continuing high quality veterinary care within our state, and for the sake of upholding the excellent standard of care I have come to know since I started practicing medicine here 14 years ago. As a clinic owner, it would be such a great shame to see our medical care for animals become marginalized, farmed out to other states via telemedicine, and take such a drastic leap backwards. Physical exams are the crux of the veterinary-client-patient relationship, and this should be reflected in any policy moving forward.

Jamie Merrigan, DVM
Owner of Ravenwood Veterinary Clinic
Eagle River, Alaska
jamieleemerrigan@gmail.com

You can review all comments on this notice by [clicking here](#).

[Alaska Online Public Notices](#)

Zinn, Sher K (CED)

From: Jamie Merrigan <jamieleemerrigan@gmail.com>
Sent: Wednesday, June 17, 2020 4:59 PM
To: Regulations and Public Comment (CED sponsored)
Subject: opposition to proposed change of definition of veterinarian-client-patient relationship

6-17-2020

To Sher Zinn and the Alaska Board of Veterinary Medical Examiners:

The purpose of this letter is to oppose the current proposed regulations to change the definition of the veterinarian-client-patient relationship. Broadening the definition of what currently constitutes the veterinarian-client-patient relationship to not require a physical exam or onsite inspection of a herd or agricultural facility is dangerous for maintaining acceptable standards of care for animals residing within our state.

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Veterinary visits to inspect herds/agricultural facilities ensure that those animals are treated humanely, kept out of horrid living conditions, and are provided a certain level of care. Eliminating visits to facilities like this would encourage hoarding situations, result in more cases of animal cruelty (intentionally or unintentionally), and result in lost educational opportunities for clients running those facilities. In these situations, it is just as important to fully inspect where the animals are housed as it is to examine the animals themselves, to maintain an acceptable standard of care.

“Telemedicine services” as they are currently defined in the proposed regulations does not include important guidelines and standards of care as recommended by the American Association of Veterinary State Boards or the American Veterinary Medical Association. Not having clearly defined standards and operations can drastically increase harm to the public and their companion animals (as well as animal facilities) by supporting the delivery of substandard care. Before ANY telemedicine regulations are passed, they should be completely flushed out and defined and not just rammed through passing because it is convenient.

I truly hope the board reconsiders its current stance on the veterinary-client-patient relationship—both for the sake of the clients and their companion animals, for the sake of continuing high quality veterinary care within our state, and for the sake of upholding the excellent standard of care I have come to know since I started practicing medicine here 14 years ago. As a clinic owner, it would be such a great shame to see our medical care for animals become marginalized, farmed out to other states via telemedicine, and take such a drastic leap backwards. Physical exams are the crux of the veterinary-client-patient relationship, and this should be reflected in any policy moving forward.

Jamie Merrigan, DVM

Owner of Ravenwood Veterinary Clinic

Eagle River, Alaska

jamieleemerrigan@gmail.com

Zinn, Sher K (CED)

From: Alaska Online Public Notices <noreply@state.ak.us>
Sent: Wednesday, June 17, 2020 2:54 PM
To: Regulations and Public Comment (CED sponsored)
Subject: New Comment on NOTICE OF PROPOSED CHANGES RELATING TO REGULATIONS OF THE BOARD OF VETERINARY EXAMINERS

A new comment has been submitted on the public notice **NOTICE OF PROPOSED CHANGES RELATING TO REGULATIONS OF THE BOARD OF VETERINARY EXAMINERS.**

Submitted:

6/17/2020 2:53:31 PM

Lorelei Hass
loreleidvm@hotmail.com

Wasilla, AK, US
Anonymous User

Comment:

Dear BOVE,

I understand the spirit of the regulations for VCPR might be to support underserved communities. However, I'm concerned that the current wording is way too broad, applying to all regions of the state. This type of regulation would not be in the best interest of the animals we serve. Having a taste of telemedicine during the current pandemic tells me that it's not nearly as effective as having an actual exam on a patient. I urge the BOVE to step back and get more input from resources like the AVMA in crafting this legislation before opening up the practice act in this manner.

Sincerely,

Dr. Lorelei Hass

You can review all comments on this notice by [clicking here](#).

[Alaska Online Public Notices](#)

Zinn, Sher K (CED)

From: Gerlach, Robert F (DEC)
Sent: Wednesday, June 17, 2020 11:36 AM
To: Regulations and Public Comment (CED sponsored)
Cc: Gerlach, Robert F (DEC); Carpenter, Christina E (DEC)
Subject: PROPOSED CHANGES RELATING TO REGULATIONS OF THE BOARD OF VETERINARY EXAMINERS
Attachments: Comments_AK Vet Regulations 6_17_20 signed.pdf
Importance: High

Dear Ms. Zinn and Board of Veterinary Medical Examiners;

Thanks you for the opportunity to comment on the proposed regulation changes in Title 12, Chapter 68 of the Alaska Administrative Code. My comments in the attached document are restricted to sections 12 AAC 68.075 Veterinary-Client-Patient-Relationship and 12 AAC 68.990 Telemedicine Services.

Thank you for your consideration and your service to the State of Alaska,

Dr. Robert F Gerlach, VMD

*Office of the State Veterinarian
5251 Dr. MLK Jr. Ave.
Anchorage, AK 99507
phone: 907-375-8214
fax: 907-929-7335*

Biosecurity: *Keeping Alaskan Livestock Healthy
and Food Safe*



THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

Department of Environmental Conservation

Division of Environmental Health
Office of the State Veterinarian

5251 Dr. Martin Luther King Jr. Ave
Anchorage, Alaska 99507-1293
Main: 907-375-8215
Fax: 907-929-7335
www.dec.alaska.gov

June 15, 2020

Alaska Board of Veterinary Examiners
PO Box 110806
Juneau, AK 99811-0806

The Board of Veterinary Medical Examiners is promulgating new regulations which define the Veterinarian Client Patient Relationship (VCPR). This proposal by the Board needs to be addressed in relation to the unique challenges of veterinary practice in Alaska where remote communities may be limited by transportation and separated from access to veterinary services. In addition, the definition of VCPR should be consistent with federal regulations, to provide clarity and avoid confusion for the veterinarian and the animal owner. The VCPR is a contract between the owner of the animal and the veterinarian. It establishes that: 1) the owner accepts that the veterinarian will make clinical judgments regarding the health of the animal, will follow the veterinarian's instructions, and will compensate the veterinarian for these services, and 2) the veterinarian is accepting the professional responsibility for making clinical judgments regarding the health of the animal, and will provide medical consultation and treatment for the animal. So the proper terminology should be the Veterinarian Client Patient Relationship (VCPR) not Veterinary as is written in the proposed regulation.

The Board's proposed regulation defining a VCPR does not require a timeframe in which the physical examination or premises inspection should take place and allows a VCPR to be established solely thru telemedicine. This has the potential to undermine the standards of the professional practice of veterinary medicine in Alaska. Can a veterinarian solely rely on a picture sent in an email, a video recording and the owner's evaluation or description of the animal's condition to make a diagnosis and prescribe a medication or treatment? In certain emergency cases this may be acceptable and a follow up examination may be scheduled. But there are many situations that a physical examination and possibly some diagnostic tests would be required to properly establish a diagnosis and prescribe appropriate medication.

The definition of the VCPR established by the Board of Veterinary Examiners should also be consistent with other professional organizations such as the American veterinary Medical Association (AVMA), the American Association of Veterinary State Boards (AAVSB), and even the Alaska State Medical Board. All these agencies require the VCPR or patient-physician relationship, in the case of the Medical Board, must be established with a face to face examination of the patient and not by telemedicine services alone. Once established the VCPR or patient-physician relationship may be maintained thru telemedicine and timely face to face examination of the patient.

The currently proposed definition, which does not prescribe a timeframe for or require a physical examination, is not consistent with the federal regulations of VCPR established in the Code of Federal Regulations which states the “veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of examination of the animal(s), and/or by medically appropriate and timely visits to the premises where the animal(s) are kept.” It is important for the State of Alaska to establish their regulatory definition of the VCPR to incorporate the key elements of the federal definition and define “recent examination and timely visit” instead of relying on a determination that may not be appropriate for the unique challenges that are seen here with remote communities in need of veterinary services. A clear definition in the State's regulations that meets the key elements of the federal definition of VCPR to avoid confusion for licensed practitioners in Alaska, especially when dispensing certain medications and antibiotics to establish federal regulatory compliance and avoid federal regulatory penalty.

It is well understood that in Alaska there may be practical and economic challenges when owners are located in remote areas of the state with limited travel options and access. Some of these owners are raising livestock (hoofed stock and poultry), bees, or managing aquaculture facilities (hatcheries) and a number of medications must be administered within the Federal Food and Drug (FDA) regulations associated with the Veterinary Feed Directive and the Extra-Label Drug Use (ELDU). In order to address the challenges of providing veterinary service to these communities and meeting the key criteria under the federal definition of VCPR, the veterinarian should be provided flexibility for when the “timely” physical examination or premise visits has taken place. It is the recommendation of this office that the Alaska regulations require that the veterinarian has examined the animal or visited the premises where the animals are being raised and cared for at a minimum of within the past year if they are prescribing all medications, including antibiotics.

There is greater focus on VCPR in regard to Veterinary Feed Directive (VFD) and the Extra-Label Drug Use (ELDU), to avoid misuse and overuse of antibiotics for the treatment of livestock and domestic pets, respectively, which may contribute to the development of “antimicrobial resistance”, a very serious public health and food safety and environmental health issue. The veterinary physician must have a good understanding of the animal’s total environment in order to prescribe the most effective medication with a practical administration of the appropriate treatment. The veterinarian must know the physical and structural design of the livestock farm or aquaculture unit in order to understand how antibiotics will be dispensed to the animals, how waste products are handled, and how the treated feed will be disposed after the prescription expires. This is very important in the case of an aquaculture unit, as the water and waste may be released directly into the environment to impact the local ecosystem. When you look at the management plan of most livestock farms and aquaculture units, there are a new group of animals entering the facility generally on an annual basis, so the minimum of an annual (timely) exam or visit is logical. In regard to the limited veterinary pharmaceuticals, particularly antibiotics, labelled for use in animals, especially several livestock species, a veterinarian often may use ELDU for treating animals and so must prescribe and administer under the federal definition of VCPR.

The minimum of an annual examination or visit to the premises to prescribe a medication or antibiotic should not limit or compromise the access to veterinary services here in Alaska. For example, there may be emergency situations where a VCPR could be initially established thru telemedicine and a medical record is started to formally establish the contract. In this case the medical record outlines the animal’s condition, initial short term treatment recommendations and possibly a prescription which would cover the situation until the VCPR is validated or confirmed by a timely physical examination or visit to the premises according to the medical condition being treated. At that time a long-term treatment plan and prescription can be properly established and continue thru telemedicine. In this case, the VCPR (contract between the veterinarian and client) is recorded in the medical record, and if the owner does not follow

through to have the animal examined, as directed by the veterinarian, they have essentially broken the contract agreement. The veterinarian would confirm the dissolution of the VCPR by the owner in the medical record leaving the veterinarian in compliance with the regulations.

In conclusion, it is important for Alaska's definition of VCPR reflect the high standards of practice that have been outlined by the American Veterinary Medical Association and to include the key elements in the Code of Federal Regulations, including requirements for the timely examination of the animal or visits to the premises that the Board of Veterinary Examiners defines in regulation. It is my recommendation that the Board is consistent with other regulatory agencies that the VCPR cannot be established by telemedicine alone and that it be defined to require the minimum of an annual examination or visit to the premises. The veterinarian can then use professional discretion to determine the appropriate timing of the examination or visit, depending on the medical condition and specifics of the case for continued care of the animal and when a prescription is required.

Sincerely,

**Robert
Gerlach**

Dr. Robert F. Gerlach, VMD
Alaska State Veterinarian.

Digitally signed by
Robert Gerlach
Date: 2020.06.17
11:33:26 -08'00'

Sher Zinn, Regulations Specialist,
 Division of Corporations, Business and Professional Licensing,
 P.O. Box 110806,
 Juneau, AK 99811-0806

RECEIVED
 Juneau
 JUN 15 2020
 CBPL

11 JUNE 2020

RE: COMMENTS TO PROPOSED CHANGES TO REGULATIONS OF THE BOARD OF VETERINARY EXAMINERS
 12AAC 68

Dear Sher Zinn:

I have several general grave concerns in regards to the proposed regulations as stated below:

There are serious implications to broadening the Veterinary-Client-Patient Relationship (VCPR) definition to no longer require establishing the VCPR through traditional means (i.e., not requiring a physical examination or onsite inspection of a herd or agricultural facility), which in turn could lead to major changes in the profession/practice of veterinary medicine. "Telemedicine" no matter how convenient should NEVER be used as the sole mechanism to establish a VCPR. More importantly, regulatory changes like these create a legal precedent that eliminates the requirement for physical examinations and inspections of the premises where animals are housed. This could greatly limit the "professional" quality of care for patients. Eliminating a physical examination requirement fails to recognize the inherent value of a "professional" and thorough physical examination to ensuring the provision of quality care for animals that cannot communicate their clinical signs to their healthcare provider like human patients can.

The proposed changes apply to all regions of the state and all practice settings and all veterinary procedures and therefore leave all veterinarians at risk of working in conflict with federal law and place them at risk for both federal discipline and adverse judgments in civil litigation. For example, do you believe it is possible to issue a valid/acceptable international health certificate for travel to another country via telemedicine services?

Redefining a VCPR by regulation in Alaska does not eliminate/override the federal requirement for a physical examination of the patient prior to "extra-label drug use" and medically appropriate and timely visits to the premises where animals are kept prior to issuing Veterinary Feed Directives for livestock, poultry and aquaculture.

The federal definition (FDA) for Veterinarian-Client-Patient Relationship is:

- (i) A *valid veterinarian-client-patient relationship* is one in which:
- (1) A veterinarian has assumed the responsibility for making medical judgments regarding the health of (an) animal(s) and the need for medical treatment, and the client (the owner of the animal or animals or other caretaker) has agreed to follow the instructions of the veterinarian;
 - (2) There is sufficient knowledge of the animal(s) by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal(s); and

(3) The practicing veterinarian is readily available for follow-up in case of adverse reactions or failure of the regimen of therapy. Such a relationship can exist only when the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of examination of the animal(s), and/or by medically appropriate and timely visits to the premises where the animal(s) are kept.

RECEIVED
Juneau

JUN 15 2020

The State can be more restrictive but not less restrictive of federal law.

CBPL

Appropriate oversight for public health, food safety, and antimicrobial stewardship is not assured under the proposed VCPR definition. "Telemedicine services" as currently defined in the proposed regulations do not include important guidelines and "standards of care" as recommended by American Association of Veterinary State Boards or the American Veterinary Medical Association. This potentially increases harm to the public and animals by supporting the potential for delivery of substandard care by veterinarians.

Veterinarian-client- patient relationships should also be consistent with our Alaska State Physician-client-patient relationships and these proposed regulations as currently written do not provide professional consistency.

Many Veterinarians are not trained in the unique nuances of telemedicine.

In the "Notice of Proposed Changes" in the **Fiscal Information Section** it states the changes are not expected to require increased appropriation. I believe this conclusion may be in error since there could be more compliance monitoring and possibly more public complaints regarding animal care and welfare that must be resolved that will need time and funds to investigate and evaluate.

I also have some specific comments regarding the proposed regulations as follows:

12 AAC 68.075 Veterinary-Client-Patient Relationship (VCPR) should be changed to Veterinarian-Client-Patient Relationship. The word "Veterinarian" should be replaced by "Alaska Licensed Veterinarian".

Please clarify what a "Timely Visit" means.

12AAC 68.990 (6)

What is meant by "interactive audio"? How is that different from an "audio-only telephone". Please clarify if you meant "including interactive audio OR video" or "including interactive audio AND video".

Thank you for this opportunity to comment. Please contact me if you have additional questions. **Can you please send an email confirmation that you received this correspondence?**

Best regards,



Rosemarie TG Lombardi, VMD- Retired USDA Veterinary Medical Office- Licensed Veterinarian Alaska.

P.o. Box 671955

Chugiak, AK 99567 PHONE CELL/TEXT: 907-726-3993 EMAIL: bobandrose@gci.net

Zinn, Sher K (CED)

From: Sarah Coburn <tundravet@gmail.com>
Sent: Friday, June 12, 2020 10:38 AM
To: Regulations and Public Comment (CED sponsored)
Cc: Pat Anderson - AKVMA
Subject: ATTN: Sher Zinn; Public Comment Proposed Regulations; Board of Veterinary Examiners
Attachments: AKVMA Public Comment VCPR and Telemedicine 6.10.2020.pdf

Good morning,

I have attached public comments regarding the proposed changes relating to regulations of the Board of Veterinary Examiners, specifically 12 AAC 68.075 and 12 AAC 68.990.

Please let me know if the attachment does not come through.

Sincerely,
Sarah Coburn

*Sarah Coburn, DVM, MS
Alaska Veterinary Medical Association President 2020
Phone: 907-726-7772
E-mail: tundravet@gmail.com*



AKVMA
Office of the Executive Director
Pat Anderson
PO Box 1231
Bismarck, ND 58502-1231
www.akvma.org

June 10, 2020

Alaska State Board of Veterinary Medical Examiners
Sher Zinn, Regulations Specialist
Department of Commerce, Community and Economic Development
Division of Corporations, Business and Professional Licensing
PO Box 110806
Juneau, AK 99811-0806
RegulationsAndPublicComment@alaska.gov

Re: Proposed sections 12 AAC 68.075. Veterinary-Client-Patient-Relationship and 12 AAC 68.990 Telemedicine Services

Dear Ms. Zinn and Board of Veterinary Medical Examiners:

Thank you for the opportunity to comment on the proposed professional regulations in sections 12 AAC 68.075 and 12 AAC 68.990. I am providing comments on behalf of the Alaska State Veterinary Medical Association (AKVMA). AKVMA is comprised of 170 veterinarians that represent the broad spectrum of veterinary medicine, including, but not limited to small animal, agriculture animal, food supply, exotic, aquatic, and equine practice, and those veterinarians working in research, academic and government capacities.

The Alaska State Veterinary Medical Association (AKVMA) is committed to helping protect the health, safety, and welfare of Alaskans and advocating for veterinarians to provide safe, competent professional veterinary services to consumers. AKVMA is supportive of the need to include a VCPR regulation for Alaska, as well as facilitate access to veterinary care in underserved areas. However, AKVMA does have concerns that the proposed regulations are an overly broad solution that violates federal law. Allowing the establishment of a VCPR solely via telemedicine can facilitate the delivery of substandard care, potentially harming the patients served. The proposed regulation would apply not only to remote or underserved areas, but to all regions and practice settings in the state. Requiring a physical examination to establish the VCPR has served the public well in ensuring proper care and treatment. These changes threaten quality of care by undermining the VCPR, even where a veterinarian is available for an in-person examination.

AKVMA has the following comments regarding the proposed professional regulations in Section 12 AAC 68.075 and 12 AAC 68.990:

- 1. We believe that it is important to use the term “veterinarian” in place of “veterinary” in the veterinary-client-patient relationship” in the regulation.**
 - Veterinary means *of or relating to veterinary medicine*, whereas veterinarian designates a person (veterinarian) responsible for making medical judgment and providing treatment.
 - The U.S. Food and Drug Administration (FDA), the American Veterinary Medical Association (AVMA) and the American Association of Veterinary State Boards (AAVSB) all use Veterinarian-Client-Patient Relationship in defining the VCPR.

2. The proposed VCPR regulation to allow for the establishment of a VCPR through telemedicine services, without the requirement for a physical exam or medically appropriate and timely visits to the premises where the animals are kept, is in violation of FDA regulations when issuing veterinary feed directives (VFD), prescribing FDA-approved drugs in an extra-label manner, and creating/delivering autogenous biologics. The AAVSB reminds us of that as well in *The AAVSB Guidelines for the Appropriate Use of Telehealth Technologies in Veterinary Medical Practice*¹, stating, “The Federal definition of the VCPR must be followed when issuing prescriptions in accordance with the Veterinary Feed Directive (VFD) and Animal Medicinal Drug Use Clarification Act (AMDUCA) of 1994.”

- Regulations associated with the Federal Food, Drug, and Cosmetic Act and, specifically, the encompassed definition of the VCPR (see 21 USC § 530.3[i]) do not allow for the establishment of a VCPR through electronic means (telemedicine). That definition states, in part, “...Such a relationship can exist only when the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal(s) by virtue of examination of the animal(s), and/or by medically appropriate and timely visits to the premises where the animal(s) are kept.” The FDA is applying temporary regulatory enforcement discretion to the definition during the COVID-19 pandemic to facilitate veterinarians’ ability to utilize telemedicine, but that is not equivalent to a change in the federal definition. FDA has indicated that it will periodically review its temporary policy of discretion, and revise or withdraw the policy, as necessary.
- Many medications used in both agriculture and aquaculture require a VFD to be issued, and therefore require adherence to, at a minimum, the federal VCPR definition. The same requirement exists for extra-label drug use (ELDU) and the creation/delivery of autogenous biologics. Use of any FDA-approved (for animal or human use) drug that is not consistent with the label (e.g., species, dosage amount, dosage length, stated disease condition, intended use of animal), i.e., extra-label use, requires adherence to, at a minimum, the federal VCPR definition. A state may impose stricter VCPR requirements for VFD, extra-label drug use, and creation/delivery of autogenous biologics, but may not impose requirements that are less strict.
- Potential risks associated with failing to follow the federal VCPR definition when issuing VFDs, using/prescribing FDA-approved drugs in an extra-label manner, or the creation/delivery of autogenous biologics include potential FDA enforcement and civil lawsuits in the event of an adverse event or treatment failure. Our understanding is that the FDA has historically focused on animal safety and human food safety risks when prioritizing their enforcement actions. Authorizing VFDs without following the FDA VCPR and associated VFD Guidance for Industry and Compliance Policy Guides, particularly for antimicrobials, could garner FDA attention. FDA has historically been less interested in policing ELDU in companion animals unless there was a safety issue. However, increasing concerns about antimicrobial resistance and a specific focus on antimicrobial stewardship for companion animals in FDA’s Five-Year Plan (see “[Supporting Antimicrobial Stewardship in Veterinary Settings: Goals for Fiscal Years 2019-2023](#)”) signal that the agency’s approach is shifting. Risk of civil litigation is also very real. In the event of an adverse event or treatment failure, a veterinarian’s failure to follow the federal VCPR when it is required under federal law could be used as evidence that the veterinarian was negligent, and increase the likelihood of a judgement against them. What the veterinary licensing board is currently proposing only protects the veterinarian from regulatory action from the board of veterinary medical examiners. It will not necessarily protect the veterinarian from civil action due to misdiagnosis (the risk of which is higher with the use of telemedicine) and subsequent errors/inadequacy in treatment. It also does not promote a standard of care that is in the best interests of the patient.

3. The proposed “telemedicine services” definition is too broad and does not place any limitations on the diagnosis or treatment of an animal without a physical exam or timely visits to the premises where the animals are kept. The proposed definition is not consistent with comments appearing in *The AAVSB Guidelines for the Appropriate Use of Telehealth Technologies in Veterinary Medical Practice*.¹

According to the AAVSB, “A veterinarian using telemedicine must take appropriate steps to establish the VCPR, obtain informed concern from the client, and conduct all necessary patient evaluations consistent with currently acceptable standards of care. Some patient presentations are appropriate for the utilization of telemedicine as a component of, or in lieu of, hands-on medical care, while others are not.” This potentially increases the risk of improper treatment of animals.

- Practically speaking, we also have a concern about the proposed provision that extends the electronically established VCPR to a colleague or consultant. This means that, potentially, an animal could be treated by multiple individuals, only one of whom may have had the benefit of a telehealth consult, for an indefinite period of time without the animal ever having been seen in-person. We do not believe that any U.S. jurisdiction allows this approach, as it increases the risk of poor outcomes and treatment by unqualified practitioners, even unlicensed individuals.

AKVMA recommends that section 12 AAC 68.075 and Section 12 AAC68.990 be amended to address our concerns. Our specific recommendations include:

A) Change, in Section 12 AAC 68.075, the veterinary-client-patient relationship to veterinarian-client-patient relationship.

B.) Add to Section 12 AAC 68.990 (no. 7 and 7 a., b., c., and d.)

(7) Telemedicine services must be provided within a valid veterinarian-client-patient relationship that requires such a relationship can exist only when the veterinarian has performed a timely physical examination of the patient(s) or is personally acquainted with the keeping and care of the patient(s) by virtue of medically appropriate and timely visits to the operation where the patient(s) is (are) kept, or both.

(a) A licensed veterinarian in Alaska who in good faith engages in the practice of veterinary medicine by rendering or attempting to render emergency or urgent care to a patient when a client cannot be identified, and a veterinarian-client patient relationship is not established, should not be subject to penalty based solely on the veterinarian’s inability to establish a veterinarian-client-patient relationship. When this occurs, an evaluation of the patients or premises may initially be conducted through telemedicine services, as long as the client agrees to present the animal(s) for an in-person examination or the veterinarian conducts a medically appropriate visit to the premise as soon as reasonably achievable.

(b) A veterinarian using telemedicine services must take appropriate steps to obtain informed consent from the client and conduct all necessary patient evaluations consistent with currently acceptable standards of care. Evidence documenting informed consent for the use of telemedicine services must be obtained and maintained in the medical record.¹

(c) The veterinarian must maintain patient medical records.

(d) The veterinarian must ensure the client is aware of the veterinarian’s identity, location and jurisdiction’s license number and licensure status.¹

In summary, the primary concerns with the proposed regulation changes are:

1. There are serious national implications to broadening the VCPR definition to no longer require establishing the VCPR through traditional means (i.e., not requiring a physical examination or onsite inspection of a herd or agricultural facility). This could lead to paramount changes in the profession of veterinary medicine, as Alaska could be perceived as the pilot state for telemedicine as the sole mechanism to establish a VCPR. This could lead to eliminating the requirement for physical examinations and inspections of the premises where animals are housed, greatly limiting the quality of care for our patients.
2. Eliminating a physical examination requirement fails to recognize the inherent value of a professional and thorough physical examination to ensuring the provision of quality care for animals that cannot communicate their clinical signs to their healthcare provider like human patients can.
3. The proposed changes leave our colleagues at risk of working in conflict with federal law, and place them at risk for both federal discipline and adverse judgments in civil litigation.
4. Redefining a VCPR in our state does not eliminate the federal requirement for a physical examination of the patient prior to extra-label drug use, and medically appropriate and timely visits to the premises where animals are kept prior to issuing veterinary feed directives.
5. Appropriate oversight for public health, food safety, and antimicrobial stewardship is not assured under the proposed VCPR definition.
6. "Telemedicine services" as currently defined in the proposed regulations does not include important guidelines and standards of care as recommended by AAVSB. This potentially increases harm to the public by supporting the potential for delivery of substandard care by veterinarians.
7. The proposed changes do not meet key parameters of the VCPR definition adopted by the American Veterinary Medical Association in their model practice act.

Thank you for your time and consideration of our comments on this matter.

Sincerely,



Sarah Coburn, DVM, MS
President AKVMA

"Promoting excellence and professionalism of Alaska Veterinarians in advancing the health and well-being of animals and the public."

¹AAVSB Recommended Guidelines for the Appropriate Use of Telehealth Technologies in the Practice of Veterinary Medicine. September 2018.

Zinn, Sher K (CED)

From: Alaska Online Public Notices <noreply@state.ak.us>
Sent: Thursday, June 11, 2020 10:43 AM
To: Regulations and Public Comment (CED sponsored)
Subject: New Comment on NOTICE OF PROPOSED CHANGES RELATING TO REGULATIONS OF THE BOARD OF VETERINARY EXAMINERS

A new comment has been submitted on the public notice **NOTICE OF PROPOSED CHANGES RELATING TO REGULATIONS OF THE BOARD OF VETERINARY EXAMINERS.**

Submitted:

6/11/2020 10:43:20 AM

Victoria Vosburg
baldeaglevet@gmail.com

Sitka, AK, US
Anonymous User

Comment:

As a veterinarian practicing in Sitka, I support adding telemedicine. I often receive calls from isolated communities without veterinarians. It would be nice for me to be able to consult over Zoom etc and treat WHEN APPROPRIATE without the owner having to fly/ferry their pet to Sitka. I understand that the best medicine is when I can lay my hands on the pet. In Alaska, that just isn't always possible. Please consider keeping the telemedicine amendment even though not everyone supports it.

You can review all comments on this notice by [clicking here](#).

[Alaska Online Public Notices](#)

Zinn, Sher K (CED)

From: Sam Smith, DVM <samsmithdvm@gmail.com>
Sent: Thursday, May 21, 2020 7:55 AM
To: Regulations and Public Comment (CED sponsored); Rachel Bergartt
Subject: Re: Alaska Veterinary Board Regulation Notice

Hi,

My name is Dr. Smith and I'm a veterinarian in Juneau. I've always done a fair bit of telemedicine and consulting with patients in southeast Alaska communities that do not have a veterinarian. I maintain VCPRs with many people across southeast.

I wanted to comment on the proposed regulations, specifically what constitutes telemedicine service, 12 AAC 68.990. I believe that a phone consultation in my office followed up with pictures via electronic mail can constitute telemedicine. The way this is written makes it sound like you must have a live video conference to offer advice or prescribe medication. For example, I think it's perfectly reasonable for someone to describe the clinical signs of an ear infection and send a picture of a dirty ear, and then send them medicated ointment. I do not think that I need to have a FaceTime consultation or Zoom meeting for every single case that may receive advice or medications.

Thank you

On Wed, May 20, 2020 at 2:32 PM Regulations and Public Comment (CED sponsored) <regulationsandpubliccomment@alaska.gov> wrote:

Dear Licensees and Interested Parties,

The Alaska Board of Veterinary Examiners proposes to update regulations regarding examinations, temporary permits and licenses, veterinary-client-patient relationships, and definitions.

The comment deadline is June 22 , 2020, 4:30 p.m. Please open the attached notice for information on how to comment on the proposed regulations.

Respectfully,

Sher Zinn

Regulations Specialist

Division of Corporations, Business

And Professional Licensing

Suggestion for the motions:

CONSENT AGREEMENT:

I _____, motion to adopt the consent agreement for case # _____, for (state the licensees name as written on the consent agreement) _____.

LICENSE SURRENDER:

I _____, motion to accept the license surrender for (state the licensees name as written on the surrender) _____.

NEW LICENSES:

I _____, motion to grant an unrestricted _____ license for (state the licensees name) _____.

REGULATIONS:

(Use this one when the regulations are completely done in the process and ready to go to the Lt. Gov to be signed into law)

I _____, motion to **adopt** the drafted regulation, (state the regulation) _____, as written. And request that staff move the drafted regulation on the process.

(Use this one when the board has drafted regulations and they want to move it onto the regulations specialist and DOL)

I _____, motion to **accept** the drafted regulation, (state the regulation) _____, as written. And request that staff move the drafted regulation on the process.

POSITION STATEMENTS:

I _____, motion to assign the writing of a board position statement regarding _____ to _____ as discussed on the record. Said position statement will be sent to board staff and placed on the agenda for the meeting in _____.

Chapter 68. Board of Veterinary Examiners.

(Words in **boldface and underlined** indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted. Complete new sections are not in boldface or underlined.)

12 AAC 68.015(c) is amended to read:

(c) The state written examination is an open book examination. The examination and study materials will be mailed **or provided electronically** directly to each applicant. Completed examinations must be returned to the department within 30 days after mailing **or provided electronically**, as shown by the postmark **or electronic** dates. The passing score on the state written examination required by (b) of this section is 90 percent or above. (Eff. 9/2/2001, Register 159; am 8/23/2003, Register 167; am 1/14/2007, Register 181; am ____/____/____, Register____)

Authority: AS 08.98.050 AS 08.98.165 AS 08.98.180

12 AAC 68.045(a)(3) is amended to read:

(3) a notarized copy of the applicant's veterinary school diploma **showing graduation from an accredited veterinary school, or official transcripts from an accredited veterinary school, or official records showing completion of the Educational** [EDUCATION] Commission for Foreign Veterinary Graduates **certification process required by AS 08.98.165(a)(1)** [CERTIFICATE]; and (Eff. 10/21/92, Register 124; am 8/13/2000, Register 155; am 5/30/2015, Register 214; am ____/____/____, Register____)

Authority: AS 08.98.050 AS 08.98.080 AS 08.98.180

12 AAC 68.046(a)(3) is amended to read:

(3) a notarized copy of **the applicant's veterinary school** [A] diploma showing graduation from an accredited veterinary school, **or official transcripts from an accredited veterinary school**, or official records showing completion of the Educational Commission for Foreign Veterinary Graduates certification process required by AS 08.98.165(a)(1); **and** (Eff. 1/1/2000, Register 152; am 4/9/2005, Register 174; am ____/____/____, Register ____)

Authority: AS 08.98.050 AS 08.98.186

12 AAC 68 is amended by adding a new section to read:

12 AAC 68.075. Veterinary-client-patient relationship. (a) A veterinary-client-patient relationship means a veterinarian has assumed the responsibility for making medical judgment and providing medical treatment to an animal, and the client, owner, or other caretaker of the animal has consented to treatment and agrees to follow the instructions of the veterinarian; an animal is defined in AS 08.98.250 and includes a group of agricultural animals or bees.

(b) The veterinarian providing medical treatment to an animal must

(1) have sufficient knowledge of the animal to provide a general or preliminary diagnoses of the medical condition;

(2) have examined the animal either physically or by means of telemedicine services, or has become familiar with the care and keeping of the species of animal on the premises of the client, including other premises within the same operation or production system of the client, through medical appropriate and timely visits to the premises where the animal is kept; and

(3) be available to provide follow-up care.

(c) A veterinarian under this section may be another veterinarian within the group in which the veterinarian practices, or a veterinarian with whom the veterinarian has consulted. (Eff. ____/____/____, Register ____)

Authority: AS 08.98.050

12 AAC 68.990 is amended by adding a new subsection to read:

(6) “telemedicine services” means the delivery of veterinary care by the use of electronic technology or media, including interactive audio or video, for the purpose of diagnosing or treating an animal or consulting with other veterinary care providers regarding an animal’s diagnoses or treatment; telemedicine services does not include an audio-only telephone, electronic mail message, facsimile transmission, or online questionnaire. (Eff. 4/10/88, Register 106; am 5/9/98, Register 146; am 1/1/2000, Register 152; am ____/____/____, Register ____)

Authority: AS 08.98.050

12 AAC 68.990 is amended by adding a new subsection to read:(6)
“telemedicine services” means the delivery of veterinary care by the use of electronic technology or media, including interactive audio or video, for the purpose of diagnosing or treating an animal or consulting with other veterinary care providers regarding an animal’s diagnoses or treatment after a valid VCPR has been established; telemedicine services does not include an audio-only telephone, electronic mail message, facsimile transmission, or online questionnaire. (Eff. 4/10/88, Register 106; am 5/9/98, Register 146; am 1/1/2000, Register 152; am ____/____/____, Register ____)
Authority:AS 08.98.050

PDMP Regulations – DRAFT

A veterinarian may delegate PDMP responsibilities to another licensee under AS 08.98 within their practice. A veterinarian may not delegate PDMP responsibilities to a person who is not licensed under 08.98.

Commented [HCD1]: This is vague. AS 17.30.200(d)(3) addresses restrictions on access. Is that what is intended here?

A veterinarian's delegate must be registered with a separate account in the PDMP. A veterinarian is not permitted to give their credentials to a delegate.

Commented [HCD2]: It is OK to limit this to veterinarians. AS 17.30.200(d)(3) allows any licensee under AS 08, but it is thought that was an unintended overinclusion, as that would allow hairdressers to have access.

(I need more detail on how this is actually done – separate fees, linking the delegate with the prescriber, etc).

Commented [HCD3]: It's my understanding that giving credentials to a delegate is how the delegate is able to access the database. What is the purpose of this proposal?

A veterinarian (or their licensed designee) is NOT required to review (this means query, and additionally the practitioner does not have to report) the client in the PDMP database before dispensing, prescribing, or administering: A) a controlled substance to patient who is receiving treatment (i) in an inpatient setting; (ii) at the scene of an emergency; (iii) in an emergency veterinary hospital*; (iv) immediately before, during, or within the first 48 hours after surgery or a medical procedure**; OR (B) a non-refillable prescription of a controlled substance that is in a quantity intended to last for not more than three days. (AS 17.30.200)

Commented [HCD4]: This is consistent with AS 17.30.200(k)(4)

(NOTE: *My understanding is that the board SHALL have regs that include the above language – however, I am not sure that we have the authority to regulate what is an "emergency veterinary hospital.")

Commented [HCD5]: Yes, you may define this by regulation

**Does this mean that immediately prior to, during, or within the first 48 hours after surgery, if a veterinarian prescribes or dispenses opiates in excess of a three day supply, that veterinarian is NOT required to query or report? The statute is very unclear.)

Commented [HCD6]: I think this statute means within the first 48 hours after surgery, period; a prescription in excess of three days is not part of this exception.

A veterinarian (or their licensed designee) shall QUERY the client ("client" means the person who owns or is responsible for the care of an animal as already defined) prior to prescribing any controlled substance (II-IV). This information must be submitted to the PDMP at least on a daily basis. (HOW DO WE DEAL WITH WEEKENDS, HOLIDAYS WHEN CLINICIS ARE CLOSED or the doctor is away? How do we deal with veterinarians in a bush setting with no internet?)

Commented [HCD7]: Question for Lisa and Laura.

A veterinarian (or their licensed designee) shall QUERY AND REPORT under the client when DISPENSING any controlled substance (II-IV) that does not fall into any of the aforementioned exemptions. This information must be submitted to the PDMP at least on a daily basis. (HOW DO WE DEAL WITH WEEKENDS, HOLIDAYS WHEN CLINICIS ARE CLOSED or the doctor is away?)(HOW DO we deal with veterinarians in a bush setting with no internet?)

Commented [HCD8]: This is not inconsistent with the statute, but what is its purpose? And can it be more clear about what query and report mean?

A veterinarian (or their licensed designee) is under no obligation to assess, interpret, inquire further, or make human health-care recommendations based on the client's PDMP risk assessment score.

Commented [HCD9]: Too vague and subject to varying interpretations. What is the goal here? A veterinarian's scope of practice would seem to eliminate this as a concern. Veterinarians do not make human healthcare recommendations.

A veterinarian (or their licensed designee) will not be held in violation of HIPPA by state authorities. A veterinarian is exempt from understanding or adherence to HIPPA requirements. (WHAT ABOUT FEDERAL AUTHORITY?? ARE VETS AT RISK?)

Commented [HCD10]: See previous comment. The first sentence is overbroad and too absolute; a veterinarian might violate HIPPA in any number of ways. But because the scope of practice is limited to nomhumans (AS 08.98.250(5), the vet regulations can't address licensee's obligations under a federal statute that deals with only humans.

Commented [HCD11]: T



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12 AAC 68.010. APPLICATION FOR A LICENSE BY EXAMINATION. (b)An application for licensure by examination and all supporting documents must be received by the department at least 120 days before the next scheduled examination.

(d)The board will approve an applicant to sit for the examination in (a)(3) of this section if the applicant is in the final year of veterinary school and a letter of good standing, approved by the board, is received directly by the division from the dean of the applicant's veterinary school.

The NAVLE is normally held from November 15- December 15. That would put the 120-day deadline at July 18th. With the exam window being expanded due to COVID- 19, the 120-day would have been May 4th. I have only recently started getting inquiries regarding exam approvals.

12 AAC 68.315. VETERINARY TECHNICIAN EXAMINATION (b) An application for examination or reexamination must be received by the department at least 45 days before the date of the next examination.

The VTNE next examination window starts on July 15th and extends through September 15th. That would have put the deadline to apply at May 31st. I am currently working with a handful of applicants for exam approval. The first inquiry didn't come in until after the imposed deadline due to the revised timeframe.

STATE OF ALASKA 2020

HOLIDAY CALENDAR

State Holidays

Date	Holiday
01/01	New Year's Day
01/20	MLK Jr.'s Birthday
02/17	Presidents' Day
03/30	Seward's Day
05/25	Memorial Day
07/04	Independence Day (observed 7/3)
09/07	Labor Day
10/18	Alaska Day (observed 10/19)
11/11	Veterans' Day
11/26	Thanksgiving Day
12/25	Christmas Day

Biweekly employees please refer to appropriate collective bargaining unit agreement for more information regarding holidays.

 Holiday



State calendar maintained by the
Division of Finance,
Department of Administration
<http://doa.alaska.gov/calendars.html>
Revised 10/31/2019

JANUARY

S	M	T	W	T	F	S
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FEBRUARY

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DECEMBER

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