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3 **State of Alaska**
4 **Department of Commerce, Community and Economic Development**
5 **Division of Corporations, Business and Professional Licensing**
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7 **BOARD OF VETERINARY EXAMINERS**

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9 **MINUTES OF THE MEETING**

10 Tuesday, June 2, 2020

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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.**
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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.

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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 Dinegar-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.**

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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.

332
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.
348

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.
359

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

401

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

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

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424

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

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

436
437 Dr. Bergartt requested that Department of Law be involved in drafting PDMP regulations from
438 the get-go. She expressed hesitation on getting too far along in the process before clear guidance
439 is received. In the past, the board worked on a regulations project to define a veterinary medical
440 facility only to find out months later that the board did not have jurisdiction over facilities and
441 could therefore not define the term in regulations.

442
443 Director Chambers said that the board is encouraged to invite an attorney, through the
444 Regulations Specialist, to assist in the process of drafting PDMP regulations. It would be up to
445 the board to set the agenda item and request the attorney through staff to ensure that a
446 representative from the Department of Law is available for the next meeting. Prior to the
447 meeting, the board needs to set their expectations and express their needs.

448
449 Dr. Geiger stated that he has wasted a lot of time trying to figure out how the PDMP works. As
450 he is the Public Member of the board and not a DEA license holder, he is not able to access the
451 database. He requested to see a dummy account within the database so he can better understand
452 the issue. He said that he wants to see what the practitioners see, or he feels that he should
453 abstain from the discussion.

454
455 Dr. Bergartt agreed that the board needs to see a dummy program of the database to gain a
456 better understanding. It may be that different practitioners see varying versions of the database
457 and it would be helpful for everyone to be on the same page. She conveyed frustration due to the
458 fact that there was a common misconception that animal prescription information would affect a
459 human's NaRxCare score. This was a talking point that was used repeatedly throughout
460 legislative testimony. This misconception was not dispelled until the last board meeting on April
461 27th. The PDMP staff is needed to walk the board through the database to help board members
462 understand how the system really works.

463
464 Dr. Michetti also conveyed confusion about the PDMP. She said she respects the PDMP and
465 wants to follow the laws, but the solution of the board adopting regulations seems inappropriate.
466 The Board of Pharmacy handed over the PDMP with broad and vague ideas and said that the
467 board should figure it out. She doesn't think it appropriate for the veterinary board to figure out
468 and define what the pharmacy board is talking about. The board does not have enough

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

471

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

476

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

486

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

492

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

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

517
518 **Agenda Item 4** **Investigations** **Time: 10:36 a.m.**
519

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

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

525 Division staff was requested to remain in the teleconference.

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

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

528
529 **Agenda Item 5** **Board Business** **Time: 11:28 a.m.**
530

531 **Annual Report**

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

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

539
540 It was decided the next meeting will be held on Tuesday, July 7, 2020 to review regulations
541 public comment and discuss PDMP.

542
543 **ICVA- NAVLE Amendment**

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

552

553

554 **AKCARES Grants Available for Alaska Businesses**

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

559

560 **Reaching Out to Licensees**

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

569

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

573

574

575

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

577

578

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

581

582 **Respectfully Submitted,**

583

584

585

Ilsa Lund

586 **Ilsa Lund, Licensing Examiner**

Date

587

588

589

590

Rachel Bergartt, DVM

July 7, 2020

591 **Rachel Bergartt, DVM**

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