



# COMMONWEALTH of VIRGINIA

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## Department of Health Professions

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October 30, 2015

### MEMORANDUM

TO: The Honorable Stephen H. Martin  
Chair, Senate Committee on Education and Health

The Honorable Emmett W. Hanger, Jr.  
Chair, Senate Committee on Agriculture, Conservation and Natural Resources

FROM: Caroline D. Juran, Executive Director   
Virginia Board of Pharmacy

RE: **Report on Possession and Administration of Controlled Substances by Wildlife Rehabilitators**

A study into issues involved in allowing wildlife rehabilitators to possess and administer controlled substances was conducted by a workgroup that included representatives from affected state agencies, the Boards of Pharmacy and Veterinary Medicine, the Virginia Veterinary Medical Association and the Wildlife Center of Virginia.

The workgroup concluded that there were three options but was unable to reach a consensus on any of the three. There was consensus on the steps that would need to be taken should the General Assembly choose an option that would authorize wildlife rehabilitators to possess and administer certain controlled substances.

A copy of the study is provided for your information. Please let me know if any additional information or assistance is needed. You may reach me at [caroline.juran@dhp.virginia.gov](mailto:caroline.juran@dhp.virginia.gov) or by phone at (804) 367-4416.

# 2015 Report of the Virginia Board of Pharmacy

## Possession and Administration of Controlled Substances by Wildlife Rehabilitators

### Preface

In a letter from the Senate Committee on Education and Health and the Senate Committee on Agriculture, Conservation and Natural Resources, the Board of Pharmacy was requested to convene a working group to review current laws and regulations related to the possession and use of certain Schedule VI controlled substances by individuals engaged in the practice of wildlife rehabilitation. The Board was asked to report to the committees on options and recommendations on the issue of whether wildlife rehabilitators should be allowed to possess and administer a stock of controlled substances to care for sick and injured wildlife.

As requested, membership on the workgroup included representatives from the Boards of Pharmacy and Veterinary Medicine, the Department of Game and Inland Fisheries (DGIF), the Virginia Veterinary Medical Association, the Virginia State Police, the Virginia Department of Health, and the Wildlife Center of Virginia.

### Meetings of the Workgroup

At its first meeting, the Workgroup heard the following presentations:

- From Jim Husband with the Department of Game and Inland Fisheries, a review of the permitting and training of wildlife rehabilitators and the changes made to permit conditions in November 2014. To obtain a permit as a wildlife rehabilitator, a person must document an apprenticeship, have an initial inspection of his facility (typically a residence), and document six hours of continuing education. The permits are issued to both individuals and facilities. There is no requirement for training associated with administration of drugs because the assumption is that they are administered under the direction of veterinarian's valid order. There are 347 total wildlife rehabilitators.  
Category I (Apprentice, sponsored by a Category II or III) – 67  
Category IIA – Individuals (May care for all wildlife except threatened or endangered species; work in cooperation with a veterinarian) – 145  
Category IIB – Organizations (same as above) – 13  
Category III (Professionally operated facility with on-site veterinary staff) – 26  
Category IV (Care provider to work with wildlife at facility of permittee) - 96
- From Caroline Juran with the Board of Pharmacy, an overview of the Drug Control Act statutes that relate to this topic and the Board's involvement in the issue. A brief review of the Guidance Document 110-30 that addresses the allowances to purchase, possess and administer drugs within a public or private animal shelter was also given.

- From Leslie Knachel with the Board of Veterinary Medicine, a brief review of Chapter 38 of Title 54.1 on the practice of veterinary medicine. In addition, the Board's Guidance Documents 150-22, titled *Veterinarians and Wildlife Rehabilitators and Prescription Drugs*, and Document 150-13, titled *Controlled Substances (Schedule II-VI) in Veterinary Practice*, were reviewed.

Current law does not authorize a person who holds a wildlife rehabilitator permit to possess a stock of drugs that have not been prescribed to an animal by a veterinarian. Advocates for a change in the law assert that wildlife rehabilitators need immediate access to certain Schedule VI medications to stabilize and provide emergency care for the animal. Drugs specifically mentioned are meloxicam, broad spectrum antibiotics, rehydration fluids, and antiparasitic drugs. It was suggested that the law could be amended to allow such drugs to be possessed as general stock by wildlife rehabilitators and administered to injured wildlife via a written protocol by the supervising veterinarian.

The Workgroup discussed wildlife rehabilitation in other states to determine if there were models for the availability of a stock of drugs. It does not appear that any state allows wildlife rehabilitators to have a general stock of drugs, but Wisconsin does allow a consulting veterinarian to have a protocol for the possession of certain drugs with a rehabilitator.

Concerns about a proposal to allow wildlife rehabilitators to possess a stock of drugs as expressed by members included the following:

- A decision about whether to administer a specific drug and the appropriate dose would appear to require a diagnosis of the animal by a wildlife rehabilitator, an act currently restricted to a licensed veterinarian. Currently, Category I and Category II permitted wildlife rehabilitators are authorized to only provide "basic care" and a decision on which drug and whether to administer a drug is a "prescribing" decision requiring a diagnosis of a disease or condition.
- There appears to be a wide variance in the level of education and training of wildlife rehabilitators. While the permit application requires six hours of continuing education, there is no verification of the hours, content or instruction listed. Indeed, it is possible for permits to be renewed annually without completing that portion of the application. Wildlife rehabilitators have no requirement for formal education and training, and there are no standards for the two years of apprenticeship in Category I. As stated by DGIF, there is no requirement for training associated with the administration of drugs because the assumption is that drugs are administered under the direction of a veterinarian's valid order.
- Some members of the workgroup expressed concern about the oversight of wildlife rehabilitators and their practice locations. All are required to have a working relationship with a veterinarian. Reportedly, some work closely with veterinarians and others are operating virtually independently with little or no oversight for their practice. While applicants have a site inspection performed by DGIF prior to issuance of a permit, DGIF

does not have the resources to routinely inspect the location of each permit holder. DGIF relies on permit fees, which are currently set in Code at \$10, to fund activities associated with wildlife rehabilitators.

- In general, the Board of Pharmacy is authorized in the Drug Control Act to inspect facilities in which a stock of drugs is maintained. Private and public shelters may possess a stock of drugs by obtaining a controlled substance registration from the Board and receiving proper training from the State Veterinarian. Such a permit requires an initial and a regular inspection to ensure drugs are being stored and administered safely. If drugs are stocked in a private residence (the location for most wildlife rehabilitators), it would be problematic for the Department of Health Professions to inspect. If there is no license or permit with the Board of Pharmacy, it may be necessary to obtain a search warrant for an inspection of a private residence. First Sgt. John Welch of the Virginia State Police, while not providing binding legal comment, suggested that this was true.
- Finally, concern about the proliferation of antibiotics and increased risk of antibiotic resistance and creation of “superbugs” was expressed. While controlled substances such as oxygen, lidocaine, sterile saline, and epinephrine are allowed by the Drug Control Act to be in possession of certain persons who are not licensed prescribers outside of licensed or permitted facilities, the persons so named are either licensed health care professionals or have very specific training for administration of those drugs. None have been authorized to possess and administer antibiotics.

## Options and Recommendations

Options discussed by the Workgroup but not recommended were:

- Amend § 54.1-3423 to authorize wildlife rehabilitators to obtain a controlled substance registration (CSR) from the Board of Pharmacy with provisions similar to subsection E for public and private animal shelters. For shelters, the Code provides: “*The list of Schedule VI drugs used for treatment and prevention of communicable diseases within the shelter shall be determined by the supervising veterinarian of the shelter and the drugs shall be administered only pursuant to written protocols established or approved by the supervising veterinarian of the shelter and only by persons who have been trained in accordance with instructions established or approved by the supervising veterinarian. The shelter shall maintain a copy of the approved list of drugs, written protocols for administering, and training records of those persons administering drugs on the premises of the shelter.*” Shelters that apply for and maintain a CSR for possession and administration of drugs are inspected by the Board of Pharmacy. The primary issue relating to the option of allowing wildlife rehabilitators to obtain a CSR was to strengthen the authorization for the Board to inspect private residences where most of the wildlife rehabilitators do their work. If the responsibility for inspection of drug stock was given to DGIF, it would not have the manpower or the expertise to conduct such an inspection.
- Amend the Drug Control Act and § 54.1-3303 to redefine the veterinarian-client-patient relationship to allow the veterinarian to prescribe to a group of animals similar to

allowances for prescribing to a herd. This option would allow a veterinarian to “prescribe” for a group of deer, rabbits, raccoons, etc. The Workgroup agreed that prescribing for a herd was not applicable to the work of wildlife rehabilitators in Virginia because prescriptions for a herd are given when all animals in the herd are being treated for the same problem at the same time with the same medication. Wildlife is treated on an individual or case by case basis.

Following extensive discussion of the options at a meeting of the Workgroup on August 27, 2015, **there is no consensus on a single recommendation.** However, the following options are presented:

**Option 1: Make no changes to the Drug Control Act to authorize wildlife rehabilitators to possess a stock of drugs.** The Drug Control Act allows a veterinarian to prescribe, label and dispense a drug to a wildlife rehabilitator for the treatment of a specific animal after establishing a bona fide practitioner-patient relationship.

**Option 2: Amend the Drug Control Act to authorize wildlife rehabilitators to possess certain Schedule VI drugs, including anti-inflammatories to treat pain, sterile fluids for rehydration, and antiparasitics for deworming, but excluding antibiotics.**

Such authorization would be:

- Pursuant to an oral or written order or standing protocol issued by a veterinarian for use in emergency cases for stabilization of the animal and safety of the humans coming in contact; and
- Granted to a wildlife rehabilitator who has obtained a special permit from DGIF for possession of drugs requiring specified education and training and oversight by the veterinarian writing the order.

**Option 3: Amend the Drug Control Act to authorize wildlife rehabilitators to possess certain Schedule VI drugs, including anti-inflammatories to treat pain, sterile fluids for rehydration, and antiparasitics for deworming, but the order or standing protocol could be inclusive of broad spectrum antibiotics.**

- Support for Option 3 largely came one member of the Workgroup who contended that antibiotics are necessary to treat specific conditions rehabilitators encounter and could be narrowly specified in the protocol.
- Objections to Option 3 included:
  - 1) Prescribing of antibiotics necessitates making a medical diagnosis for which rehabilitators are currently not authorized. Veterinarians agree that wildlife rehabilitators may need access to antibiotics and that veterinary care is available to treat and prescribe. However, it may be somewhat limited based on the availability of veterinarians to care for wildlife.
  - 2) As noted above, concern was expressed by some members about the proliferation of antibiotics and increased risk of antibiotic resistance and creation of “superbugs”.
  - 3) The Drug Control Act does allow possession of controlled substances such as oxygen, lidocaine, sterile saline, and epinephrine by persons who are not licensed prescribers, but those persons so named are either licensed health care professionals or have very

specific training for administration of those drugs. Currently, no other non-health care practitioners have been authorized to possess and administer antibiotics.

**Finally, the Workgroup was in agreement that adoption of Options 2 or 3 would require the following:**

- 1) Specific education and training for wildlife rehabilitators on the proper storage and administration of drugs would have to be a prerequisite for authority to possess any scheduled drug.
- 2) Additional authority for possession and administration of drugs would necessitate a new permit category for wildlife rehabilitators issued by the Department of Game and Inland Fisheries.
- 3) A standing protocol or order for the supervising veterinarian to authorize possession and administration of controlled substances by wildlife rehabilitators would have to be developed in accordance with regulations promulgated by the Department of Game and Inland Fisheries in consultation with the Boards of Pharmacy and Veterinary Medicine.
- 4) The Department of Game and Inland Fisheries would need additional funding and resources to provide adequate training and oversight for wildlife rehabilitators that may be permitted to possess a stock of drugs.



# Commonwealth of Virginia

GENERAL ASSEMBLY  
RICHMOND

February 26, 2015

Ms. Caroline Juran, Executive Director  
Virginia Board of Pharmacy  
Department of Health Professions  
Richmond, VA

Dear Ms. Juran,

On behalf of the Senate Committee on Education and Health which has jurisdiction over matters related to the Department of Health Professions, and the Senate Committee on Agriculture, Conservation and Natural Resources, which has jurisdiction over the Department of Game and Inland Fisheries, we would like to request the Board of Pharmacy to convene a working group to review current laws and regulations related the possession and use of certain Schedule VI Controlled Substances required by individuals and organizations engaged in the practice of wildlife rehabilitation, as authorized and regulated by the Department of Game and Inland Fisheries.

Because wildlife is a public trust resource, individual wild animals are not privately owned. Therefore, when they are sick or injured, unlike pets or livestock, traditional veterinary care is not generally available; a traditional doctor/patient relationship may not be practical. To accommodate the public's interest in providing care for sick and injured wildlife, the Department of Game and Inland Fisheries authorizes certain individuals and organizations who meet regulatory requirements to provide emergency and rehabilitative care, under the supervision of a licensed veterinarian.

Because of the special circumstances surrounding the needs of injured and orphaned wildlife, certain laws and regulations related to more typical veterinary practice simply may not accommodate the special circumstances associated with wildlife rehabilitation. As you may know, in the 2014 session of the General Assembly, legislation was passed exempting wildlife rehabilitators who are hold permits from the Department of Game and Inland Fisheries from the requirement to be licensed by the Board of Veterinary Medicine in order to provide care to native wildlife.

As currently written, the Virginia Drug Control Act does not authorize wildlife rehabilitators to possess controlled substances, which is problematic for their care of sick and injured animals. While we clearly recognize the need restrict and regulate prescription

medications and other controlled substances, there needs to be a practical balance between these competing public interests.

On behalf of the aforementioned Committees of the Senate, we are requesting the Board of Pharmacy to convene a workgroup for the purpose of examining the current language of the Code to recommend options for licensed veterinarians who supervise and work with wildlife rehabilitators to dispense and supervise the use of certain Schedule VI drugs and other controlled items, outside the traditional doctor/patient relationship. We further request that you include in the workgroup the Board of Veterinary Medicine, the Department of Game and Inland Fisheries, the Virginia Veterinary Medical Association, and the Wildlife Center of Virginia.

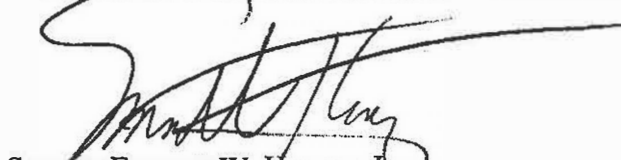
We would like to request that a report to our respective committees be generated by November 1, 2105, and that this report contain options and recommendations to resolve the issues outlined herein. During the course of the deliberations of this workgroup, we would request that input from the regulated community, at large, as well as the public be solicited.

Thank you for your consideration. We look forward to hearing from you.

Sincerely,



Senator Stephen H. Martin  
Chair, Senate Committee on Education and Health



Senator Emmett W. Hanger, Jr.  
Chair, Senate Committee on Agriculture,  
Conservation and Natural Resources

Cc: Department of Health Professions, Board of Veterinary Medicine, Department of Game and Inland Fisheries, Virginia Veterinary Medical Association, Wildlife Center of Virginia