



20TH DISTRICT
STATE CAPITOL
P.O. BOX 30014
LANSING, MI 48909-7514

MICHIGAN HOUSE OF REPRESENTATIVES

MATT KOLESZAR

STATE REPRESENTATIVE

PHONE: (517) 373-3816
FAX: (517) 373-5952
MattKoleszar@house.mi.gov

The Honorable Dana Nessel
Attorney General
State of Michigan
PO Box 30217
Lansing, MI 48909

Dear Attorney General Nessel:

I am writing to respectfully request an opinion from your office to enforce a long-neglected law regarding the use of animals in experimentation. Despite having authority to regulate the use of animals in experiments for more than 40 years, the state has ignored its statutory mandate to oversee animal research facilities.

I. The State's Authority

In 1978, the Legislature amended the Public Health Code to create the “animal research advisory board”¹ (“the board”) and gave the new entity the authority to “regulate and establish standards...controlling the humane use of animals for the diagnosis and treatment of human and animal diseases; the advancement of veterinary, dental, optometrical, medical, and biological sciences; and the testing, diagnosis, improvement, and standardization of laboratory specimens, biologic products, pharmaceuticals, and drugs.”² The board did not establish standards or otherwise regulate animal use, likely because the board was to be primarily composed of representatives of Michigan research facilities—individuals with little incentive to regulate their own industry.³

At the same time, the Legislature mandated that laboratories using animals register with the state and gave additional oversight authority to the board:

*A person shall not keep or use animals for experimental purposes unless registered to do so by the department. The department shall grant registration for the humane use of animals for experimental purposes upon compliance with board standards. The department may suspend or revoke a registration for failure to comply with this part or board standards.*⁴

¹ MCL 333.2672.

² MCL 333.2673.

³ MCL 333.2672.

⁴ MCL 333.2676.

A 1997 executive order transferred the “statutory authority, duties, powers, functions and responsibilities” of the board to the Director of the Department of Community Health,⁵ now the Director of the Michigan Department of Health and Human Services (“DHHS”). However, it appears that DHHS has not promulgated regulations on this matter and does not require the registration of laboratories. While DHHS “may” regulate the humane use of animals, “[a] person *shall* not keep or use animals for experimental purposes unless registered to do so by the department.” The statute mandates a registration process and the state currently fails to fulfill that mandate.

II. Evidence of Inhumane Animal Experiments in Michigan

Some of the cruelest and most long-running animal experiments in the country occur in Michigan at state-funded institutions. I became interested in what the state can do on this issue when I learned of the ongoing use of dogs in invasive, painful experiments at Wayne State University (“WSU”). In preparation for the experiments, which have gone on for thirty years, dogs endure multiple surgeries in which WSU employees cut open the chest cavity, insert devices in and around major blood vessels, stab a catheter into the heart, and “tunnel” several cables and wires under the skin and out between the dog’s shoulder blades.⁶

Analyses by veterinary and medical experts of more than 10,000 pages of public records from WSU reveal that up to 25 percent of dogs die during or after surgery (before the experiments commence) because the procedures are so invasive and dangerous. Those dogs who survive the surgeries are forced to endure even more. A dog’s resting heart rate is normally between 70 and 120 beats per minute, but during the experiment it is rapidly raised as high as 250 beats per minute. This may be repeated for days, weeks, or even months—depending on how long each dog can withstand the experiments. Every dog who survives the initial surgeries will die during the experiments—when their bodies give out or, as has been reported in numerous instances, an implanted device breaks or malfunctions.⁷

While WSU claims that the animals receive anesthesia and pain relief, in handwritten notes the university’s own veterinary staff have repeatedly indicated that the dogs experience pain and distress.⁸ According to the late Henry Melvyn Richardson, DVM, who had more than 40 years of veterinary experience, the nature of the WSU experiments means that unrelieved pain and distress are inevitable for the animals involved. After a thorough review of one of WSU’s internal protocols and veterinary records for the dog Queenie, Dr. Richardson wrote in 2011:

⁵ MCL 333.26324.

⁶ Physicians Committee for Responsible Medicine, *Dog Experiments at Wayne State: Decades of Pain and Futility* (2019), https://www.pcrm.org/sites/default/files/2019-10/REPORT%20-%20Dog%20Experiments%20at%20Wayne%20State%20-%2010.07.19_0.pdf.

⁷ *Id.*

⁸ *Id.*

Thoracic or abdominal surgeries are especially painful, as anyone who has experienced such a procedure can tell you. The pleural space (the lining of the chest cavity) is especially sensitive and lined with pain receptors. Queenie not only suffered through a surgical procedure into her chest and abdomen, she was required to tolerate the constant irritation from tubes, catheters, and probes. If you have given blood you know how the needle feels inside your vessels. Queenie was living for almost seven months with catheters inside her arteries and veins, catheters which initiated the pain cascade with every bump inside the vessel wall.⁹

According to experts, no new therapies for hypertension or heart failure—the diseases WSU purports to investigate—have stemmed from published papers based on these experiments. Likewise, the university has not provided any evidence of progress. Simply put, there is no proof that the experiments have benefited a single patient.

III. Federal Laws Do Not Mandate Humane Research

New scientific and ethical understanding compels a more significant role for Michigan in the oversight of animals in laboratories. Technological advances in nonanimal research methods, a greater awareness of the genetic and physiologic differences between humans and nonhuman animals, and new information about the pain and distress experienced by animals, including dogs, in state-funded institutions, require Michigan to take strong steps to improve animal welfare while advancing human health. Critically, the federal government's weak oversight of animal experiments demonstrates the need for greater effort by our state.

The Animal Welfare Act (“AWA”) is the only federal statute that governs the use of animals in laboratories. But under the AWA no experiments are prohibited, including those that inflict pain. The law's decades-old standards do not provide meaningful protections, and the federal government routinely fails to enforce its provisions. The U.S. Department of Agriculture (“USDA”), which is charged with enforcing the AWA, has repeatedly been cited by its own Office of Inspector General (“OIG”) for serious dereliction of duty. In its most recent audit, the OIG noted that the agency had taken no action in many cases involving animal deaths and serious repeat violations; failed to properly issue financial penalties, reducing fines by an average of 86 percent; and wasted resources by conducting inspections at facilities that did not house animals covered by the AWA.¹⁰

⁹ Henry Melvyn Richardson, *RE: Integrative Cardiovascular Control During Exercise in Hypertension Studies at Wayne State University (WSU) as illustrated by the Medical Records of One Female Dalmatian Mixed Dog. Based on a Review of the 28 Page File WSU “Application to Use Vertebrate Animals for Research or Teaching” and the 115 Page File “Queenie—Full Vet Record”* (Oct. 4, 2011), <https://pcrm.widen.net/s/k6lhscpcwt/mel-richardsons-report-on-queenie>.

¹⁰ USDA Office of Inspector General, Animal and Plant Health Inspection Service Oversight of Research Facilities Audit Report 33601-0001-41 (2014).

Since the last OIG audit, the USDA has only weakened regulation and enforcement. In 2017, the agency unexpectedly removed its online animal welfare database,¹¹ which had allowed public access to inspection reports of laboratories and other regulated entities as well as annual reports from research facilities detailing the number of animals used. The agency removed the database in order to shield animal businesses and experimenters from public scrutiny. Only after congressional action and several lawsuits did USDA restore the database. More than four years later, some information is still missing.

The USDA has also significantly reduced citations for violating the AWA and has taken steps to hide evidence of violations from the public. The agency quietly issued a policy in 2017, later updating it in 2018,¹² that allowed animal facilities to prevent AWA violations—including animal deaths—from appearing in formal and publicly available records. In 2019, *The Washington Post* reported “USDA inspectors documented 60 percent fewer violations at animal facilities in 2018 from the previous year. ... The drop in citations is one illustration of a shift—or what critics call a gutting—in USDA’s oversight of animal industries.”¹³

Most recently, the USDA’s friendly relationship with laboratories has resulted in the agency ceding much of its legal responsibility to a private organization overseen by employees of those very laboratories. In May 2021, *Science* reported “[i]n February 2019, the U.S. Department of Agriculture (USDA) made a significant—and apparently secret—change to how it oversees laboratory animal welfare, *Science* has learned. Instead of fully inspecting all of the nearly 1100 facilities that house monkeys, rabbits, and other creatures used in biomedical research, it mandated partial ‘focused’ inspections for labs accredited by a private organization...”¹⁴ Yet laboratories pay to be members of that private organization, and representatives from some of the world’s largest users of animals in experiments make up its accreditation committee.¹⁵

IV. Request

I respectfully request that you issue an opinion regarding DHHS’s obligations to register laboratories using animals. Further, I seek your opinion on whether only those

¹¹ Meredith Wadman, *USDA Blacks Out Animal Welfare Information* (Feb. 3, 2017),

<https://www.sciencemag.org/news/2017/02/usda-blacks-out-animal-welfare-information>.

¹² USDA Animal and Plant Health Inspection Service, *Incentives for Identifying, Reporting, Correcting, and Preventing Noncompliance with the Animal Welfare Act* (May 2018),

https://www.aphis.usda.gov/publications/animal_welfare/2017/ac-tech-note-incentives-animal-welfare-act-compliance.pdf.

¹³ Karin Brulliard, *The USDA is Issuing Far Fewer Citations to Zoos, Labs and Breeders for Animal Welfare Violations* (Feb. 26, 2019),

<https://www.washingtonpost.com/science/2019/02/26/usda-is-issuing-far-fewer-citations-zoos-labs-breeders-animal-welfare-violations/>.

¹⁴ David Grimm, *USDA Now Only Partially Inspects Some Lab Animal Facilities, Internal Documents Reveal* (May 5, 2021),

<https://www.sciencemag.org/news/2021/05/usda-now-only-partially-inspects-some-lab-animal-facilities-internal-documents-reveal>.

¹⁵ AAALAC International, <https://www.aaalac.org/about/council/> (last visited June 6, 2021).

laboratories doing so in a humane manner be allowed to register. Given the state's authority to regulate the "humane use of animals" in experiments and the requirement of registration "for the humane use of animals for experimental purposes,"¹⁶ rules of statutory construction dictate that the agency must create some standard for what is "humane" as a condition of registration. In simplest terms, inhumane experiments should be prohibited and only those laboratories using animals humanely should be registered.

In 1978, the Legislature clearly intended that animal experiments should be conducted without causing the animals pain or distress, stating "public health and welfare depend on the humane use of animals for the diagnosis and treatment of human and animal diseases..."¹⁷ While the dog experiments at WSU and others conducted across Michigan are considered legal under the AWA, the federal law sets only minimum standards for the use of animals in experiments and allows practices that most people would consider inhumane.

In 2019, a public poll revealed that 70 percent of Michigan voters oppose the "use of dogs in experiments that could cause them pain."¹⁸ Now more than ever the public cares about the treatment of animals, including those in laboratories. As you have said "[f]or many Michiganders, pets are an extension of their family."¹⁹ Dogs used in laboratories are no different from those who share our homes. Like other nonhuman animals, they experience pain and distress. Yet the absence of any standards or oversight by the state on top of feeble federal protections do not reflect the views of the people of Michigan who believe that we should alleviate animal suffering whenever possible.

I believe our state has an opportunity to address a long-neglected duty and a failure of federal oversight.

Thank you for your consideration of this request.

Sincerely,



Matt Koleszar
State Representative

¹⁶ MCL 333.2676

¹⁷ MCL 333.2671.

¹⁸ Physicians Committee for Responsible Medicine, Poll Results: Michigan Voters' Views on Dog Experiments (2019), <https://www.pcrm.org/sites/default/files/2019-10/Infographic-2019-Public-Poll-Results.pdf>.

¹⁹ Michigan Department of Attorney General, *The Humane Society of the United States and Michigan Department of the Attorney General Strategize to Protect Consumers From Puppy Scams* (April 18, 2019), <https://www.michigan.gov/ag/0,4534,7-359--495485--,00.html>.

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