

STATE OF MICHIGAN

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PUBLIC HEALTH CODE: Registration of entities that keep or use animals for experimental purposes.

MCL 333.2676:

ANIMAL WELFARE:

The Department of Health and Human Services is obligated to register entities that keep or use animals for experimental purposes and must restrict registration to only those entities that conduct animal research in a humane manner as reflected in “standards” that the Department of Health and Human Services must establish. Once the Department of Health and Human Services has established a registration process and standards for the humane use of animals in experimentation, unregistered animal research is prohibited by MCL 333.2676.

Opinion No. 7319

Date: May 9, 2022

The Honorable Matt Koleszar
State Representative
The Capitol
P.O. Box 30014
Lansing, MI 48909

You ask whether the Michigan Department of Health and Human Services (DHHS) is obligated to register laboratories that use animals in research experiments, and if so, whether only those laboratories doing so in a humane manner may be allowed to register. Your request and our research indicate that DHHS has not promulgated any regulations in this area and does not currently require the registration of laboratories that use animals in experimentation.

As background, you detail one type of experiment on dogs that has been performed at a university laboratory. In preparation for the experiment – the intent of which was to discover new therapies for hypertension and heart disease – a dog’s chest cavity was opened, devices were inserted in and around blood vessels, a catheter was inserted into the heart, and multiple cables and wires were tunneled under the skin and out between the shoulder blades. Dogs that survived these preparatory surgeries were then subjected to an experiment that raised their heart rate from the normal 70 to 120 beats per minute to as high as 250 beats per minute.¹ According to information provided in your request, dogs were experimented on in such a manner until they died.

The Legislature has recognized that “[t]he public health and welfare depend on the *humane* use of animals for the diagnosis and treatment of human and animal diseases[.]” MCL 333.2671 (emphasis added). In furtherance of this established public policy, the Legislature provided a statutory framework for regulating the use of animals in research. MCL 333.2671—MCL 333.2678. These statutes refer to, and impose duties on, two different entities: a now-abolished “Animal Research Advisory Board” (the board) and DHHS.² Thus, it is helpful to briefly explain the structural changes abolishing the board and consolidating all relevant duties within DHHS.

¹ Elevating a dog’s heart rate in laboratory experiments has been done by running the dog on a treadmill. See <<https://www.pcrm.org/ethical-science/animals-in-medical-research/heart-failure-experiments-in-animals-fail>> (accessed May 6, 2022).

² All references to “the department” in the pertinent provisions of the Public Health Code refer to DHHS. MCL 333.1104(5).

In 1978, the Legislature established a nine-member board within DHHS called the Animal Research Advisory Board.³ MCL 333.2672. Generally speaking, the board was charged with establishing standards to ensure the humane treatment of animals in medical testing and research. See MCL 333.2673; MCL 333.2675. In turn, DHHS was charged with registering those who would “keep or use animals for experimental purposes,” provided that registrants satisfied the humane treatment standards that the board set. MCL 333.2676. In short, the board would set the standards and DHHS would administer them.

Through a series of executive reorganizations, the board’s duties were transferred to DHHS. First, in 1997, pursuant to an executive reorganization order, “[a]ll the statutory authority, duties, powers, functions, and responsibilities of the Animal Research Advisory Board . . . [were] transferred to the Director of the Department of Community Health[.]” MCL 333.26324(II)(5). That order specified that this was a “Type III transfer,” *id.*, pursuant to which the board is “abolished,” and its powers and duties are transferred directly to the specified department. See MCL 16.103(c); OAG, 1965-1966, No. 4479A, pp 262, 263–264 (May 2, 1966). Then, in 2015, another executive reorganization order transferred “[a]ll the authority, powers, duties, functions, responsibilities, [and] rulemaking authority . . . of the Director of the Department of Community Health” to the Director of DHHS. MCL

³ The board’s composition was fixed by statute, comprising five university deans, two representatives from the Michigan federation of humane societies, the secretary of the Michigan association of osteopathic physicians and surgeons, and one representative from a research laboratory within this state. MCL 333.2672.

400.227(III)(D). Accordingly, although the Public Health Code retains references to the board, the board has been abolished, and all its authority and duties now reside in the Director of DHHS. As a result, every statutory reference to the board should be construed as referring to the Director of DHHS.⁴

Turning to the substance of your request, the analysis requires a review of multiple provisions of the Public Health Code. When interpreting statutes, the primary rule is to discern and give effect to the intent of the Legislature. *Murphy v Mich Bell Tel Co*, 447 Mich 93, 98 (1994). That intent is evidenced by the statute’s plain language. *Wickens v Oakwood Healthcare Sys*, 465 Mich 53, 60 (2001). If the statute’s language is unambiguous, it must be presumed that the Legislature intended its clearly expressed meaning. *Id.* (citations omitted). “[F]urther construction is neither required nor permitted.” *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 720 (2005) (citation omitted).

In regard to the obligation to register laboratories that use animals in research, MCL 333.2676 states, in relevant part:

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. [Emphasis added.]

⁴ Any function that the Public Health Code assigns to DHHS “vests in the director,” MCL 333.2205(1), meaning that references to DHHS and its Director are, functionally speaking, one and the same. For purposes of this opinion, statutory references to the board will be replaced with references to DHHS.

First, the statute unambiguously prohibits an entity from keeping or using animals for experimentation unless it is registered by DHHS. A statute’s use of the word “shall” presumptively imposes a mandatory obligation, “unless to do so would clearly frustrate legislative intent as evidenced by other statutory language or by reading the statute as a whole.” *Browder v Int’l Fidelity Ins Co*, 413 Mich 603, 612 (1982), citing *Smith v Sch Dist No 6, Fractional, Amber Twp*, 241 Mich 366, 369 (1928). “Conversely, then, the term ‘shall not’ may be reasonably construed as a prohibition.” *1031 Lapeer LLC v Rice*, 290 Mich App 225, 231 (2010). Thus, by stating that a person “*shall not* keep or use animals for experimental purposes,” MCL 333.2676 establishes a default rule prohibiting such activity. (Emphasis added). That prohibition applies to any person keeping or using animals for research— “*unless* registered to do so by the department.” MCL 333.2676 (emphasis added). Therefore, where the department has a registration process for the humane use of animals in experimentation, under the plain language of the first sentence of MCL 333.2676, unregistered animal research is prohibited.

Second, the statute requires DHHS to register any entity that complies with the department’s standards for animal treatment. The second sentence of MCL 333.2676 uses the word “shall.” In this context, the word “shall” establishes an obligation on the part of DHHS to register any person who is determined to be in compliance with “board standards.” *Id.* This obligation is supported by MCL 333.2675, which authorizes DHHS to “inspect any premises or property on or in which animals are kept for experimental purposes for the purpose of investigation

of compliance with board standards.” Thus, DHHS has a duty to register anyone in compliance with board standards, and it has the authority to determine whether those standards have been met. See also MCL 333.2676 (permitting DHHS to suspend or revoke registration for failure to comply with board standards).

Further, the statute’s structure and context dictates that *only* entities that meet the department’s standards may be registered. The second sentence of MCL 333.2676, read in isolation, might suggest that, while DHHS “shall” register a person who complies with the standards, it also *may* register a person who does *not* comply with the standards. But to “discern the true intent of the Legislature, the statutes must be read together, and no one section should be taken in isolation.” *Aspey v Mem Hosp*, 477 Mich 120, 133 n 8 (2007). And here, reading the second sentence of MCL 333.2676 in the context of other statutory provisions in the Public Health Code rules out such discretion. As mentioned, the Legislature has clearly stated that “[t]he public health and welfare depend on the *humane* use of animals for the diagnosis and treatment of human and animal diseases[.]” MCL 333.2671 (emphasis added). To achieve that public policy goal, the statute establishes compliance with the standards as a proxy to ensure the humane treatment of animals. See, e.g., MCL 333.2675 (“The standards *shall* provide for the humane treatment of animals reasonably necessary for the purposes of this part.”) (emphasis added). If DHHS could register those who do not meet the standards, i.e., those who do not use animals humanely, it would actively frustrate the expressed legislative intent.

Therefore, to be consistent with the clearly stated legislative intent, DHHS must register only those entities that meet the standards. And because the standards must provide for the humane treatment of animals, only those entities that use animals in a humane manner will be allowed to register.⁵

It is my opinion, therefore, that DHHS is obligated to register entities that keep or use animals for experimental purposes and must restrict registration to only those entities that conduct animal research in a humane manner as reflected in “standards” that DHHS must establish.

This conclusion comes with two caveats. First, certain federal laws, regulations and standards also apply to entities that conduct animal research. See, e.g., 7 USC § 2131 *et seq.* (the Animal Welfare Act)⁶; 9 CFR § 1 *et seq.* Under the Supremacy Clause of the United States Constitution, US Const, art VI, cl 2, federal law can overcome (preempt) state law within a given field or topic. See *English v Gen Elec Co*, 496 US 72, 78 (1990). Therefore, DHHS should take care to draft the

⁵ Pursuant to MCL 333.2678, DHHS “*may* promulgate rules to implement this part including . . . standards pertaining to the use of animals for experimental purposes[.]” (Emphasis added.) A statute stating that an agency “*may* promulgate rules” does not mandate that the agency *must* promulgate rules before it can begin exercising its statutory authority. *Michigan State Employees Ass’n v Michigan Liquor Control Comm’n*, 232 Mich App 456, 466–468 (1998).

⁶ A primary purpose of the Animal Welfare Act is “to insure that animals intended for use in research facilities . . . are provided humane care and treatment.” 7 USC § 2131. To that end, the Animal Welfare Act establishes minimum requirements for regulations regarding animals in research facilities. For example, animal experimentation procedures must “ensure that animal pain and distress are minimized, including adequate veterinary care with the appropriate use of anesthetic, analgesic, tranquilizing drugs, or euthanasia.” 7 USC § 2143(a)(3)(A).

Michigan standards in a manner that avoids preemption.⁷ Second, this opinion should not be read to mandate that all currently ongoing animal research in Michigan must cease unless and until the laboratories are registered by DHHS. That result finds no support in the statute as the statutory language does not create the standards and is not otherwise self-executing. Rather, the Legislature predicated the prohibition on unregistered experimentation on the existence of a registration process under MCL 333.2676. Ultimately, the most appropriate manner in which to develop the required standards and implement the required registration is a matter left to DHHS.



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⁷ Of note, the Animal Welfare Act specifically provides that it does not prohibit “any State (or a political subdivision of such State) from promulgating standards in addition to those standards promulgated” at the federal level pursuant to that Act. 7 USC § 2143(a)(8).