



September 14, 2009

Mr. Brian Blanchard  
Dane County District Attorney  
Dane County Courthouse  
215 S. Hamilton Street #3000  
Madison, WI 53703-3297

Re: Complaint Regarding Alleged Violation of sec. 951.025, Wisconsin Statutes

Dear Mr. Blanchard: I am in receipt of your letter dated August 11, 2009, regarding the above-referenced matter. Thank you for providing the University of Wisconsin-Madison with an opportunity to comment on the substance of the complaint. As discussed below, the University does not believe the research studies listed in the complaint violate either the letter or spirit of s. 951.025, Stats.

There is no dispute that in the course of certain research studies conducted at the University several animals have died from symptoms commonly associated with the decompression sickness experienced by deep sea divers and others working in pressurized environments and who rapidly ascend to normal pressure environments. However, upon a close look at the nature and purpose of the research, and at the wording and intent of the statute at issue, it becomes clear that the statute is intended to prohibit the use of decompression as a method of euthanizing animals, which has not occurred in the research studies at issue. Please allow me to elaborate.

Regarding the research, as the scholarly publications attached to the complaint indicate the research studies at issue are a continuation of a long-standing University research program funded by various federal and state entities, including the US Navy, National Oceanic and Atmospheric Administration, and the US Department of Commerce. The overall purpose of the studies is to use an animal model (sheep) to explore methods to decrease various injuries among persons such as submarine escape personnel, deep sea divers, and tunnel workers who must quickly ascend from high-pressure environments. The animals used in the study are subjected to increased atmospheric pressure, and then returned to normal pressure and/or slightly decreased pressure in order to simulate the ascent from a deep sea environment. In no case are the animals subjected to decreased pressure that is less than one would find at 8,000 feet of altitude, which is not in and of itself harmful to sheep. The approved study protocols do not anticipate the death of animals used in the studies other than by euthanasia, and when animals used in the studies are euthanized, they are euthanized using an approved, humane, technique.

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However, like many research studies involving animals, on occasion one of the research subjects will die of unanticipated causes. If animals unexpectedly die in the course of the studies, these deaths are considered adverse events and are reported back to the University's Institutional Animal Care and Use Committee for consideration of whether the experimental design requires modification.

The specific protocols for this research have been approved by the University's Institutional Animal Care and Use Committee to ensure the humane treatment of the animals to the maximum degree consistent with the aims of the study, and the research is conducted under the close oversight of veterinary staff. The University has conducted variations on this research and openly published the research findings for at least three decades in order to advance the cause of science and human health. There certainly has been no intent by the persons conducting or approving the research to evade any laws or regulations, and no reason to believe there was any debate regarding the legitimacy or legality of this research until this particular complaint was lodged. Indeed, as is indicated from a review of the bibliography of the earliest publication contained in the complaint, variations on these research studies were on-going and generating publications at least as far back as 1984, prior to the enactment of s. 951.025 in 1985. The 1988 publication included with the complaint referenced includes a special thanks to an employee of the State of Wisconsin Animal Health Laboratories. If the legislature intended, and the research and veterinary community understood, that s. 951.025 potentially applied to research such as that at issue here, it stands to reason that this issue would have surfaced at the time the legislation was enacted such that the studies would have ceased, and an employee of the State of Wisconsin Animal Health Laboratories would not have participated in the research. Although most persons with any institutional memory from this time period have long since retired, I was able to contact an emeritus faculty member who was a co-author of a 1984 paper from this research program, and he did not recall any discussion from that time period regarding the applicability of the statute to University research.

Turning to s. 951.025, Stats., the intent of the statute is to prohibit the use of decompression chambers to euthanize stray or abandoned animals, and not to prohibit research studies such as the ones at issue here. Although the legislative history for this statute is meager, in the drafting file at the Legislative Reference Bureau is a photocopy of a page from a handbook summarizing various California laws pertaining to the humane treatment of animals (attached), and pertinent to this discussion is a reference to a California statute entitled "Euthanasia by High-Altitude Decompression," which reads: "No person, peace officer, officer of a humane society, or officer of a pound or animal regulation department of a public agency shall kill any dog or cat by the use of any high-altitude decompression chamber." The presence of the copy of this California statute in the drafting file strongly suggests that the Wisconsin statute was intended to apply in similar circumstances.

A review of other states' laws regarding the killing of animals by decompression supports the view that the Wisconsin law is specifically addressed at the use of decompression as a euthanasia technique. Evidently, one of the methods formerly used by pounds, humane

societies, animal control officers and the like to destroy stray or abandoned animals was to place them in a sealed chamber and remove the air. From roughly the mid-1970's to mid-1980's, a series of statutes in states around the country were enacted to outlaw this practice.

The intended reach of the anti-decompression statutes is perhaps best illustrated by a 1985 Delaware law, which required animal shelters to phase out the use of "a high-altitude, low pressure chamber, also known as a decompression chamber" to "dispose of animals." In 1980, Michigan passed a law stating that "an animal control officer or other person killing a dog or other animal pursuant to the laws of this state shall not use a high altitude decompression chamber...for that killing." Also in 1980, Ohio enacted a statute entitled "Painless destruction of domestic animals" which prohibits any person to "destroy any domestic animal by the use of a high altitude decompression chamber or by any method other than a method that immediately and painlessly renders the domestic animal initially unconscious and subsequently dead." During the same general time frame, New Jersey enacted a prohibition on destruction of animals by "hypoxia induced by decompression" or "in any other manner except by a method of euthanasia generally accepted by the veterinary medical profession," and specifically limited the scope of the law to "kennels, pet shops, shelters and pounds...; to pounds and places of confinement owned and operated municipalities, counties or regional government authorities; and to every contractual warden or impounding service... ." In New York, a statute entitled "Humane destruction of or other disposition of animals lost, strayed, homeless, abandoned, or improperly confined or kept," which applies by its terms to humane societies and police officers, was amended in 1980 to prohibit the destruction of animals using decompression chambers or devices. A companion New York statute authorizing the disposal of abandoned animals by humane societies and pounds was amended at the same time to prohibit the use of decompression chambers or devices for purposes of the destruction or disposal of such abandoned animals. Similarly, Virginia law applicable to domestic animals specifies that "no animal shall be euthanized...by means of a high altitude decompression chamber," Massachusetts law prohibits use of decompression chambers "for putting animals to death," and under the laws of Arkansas, Minnesota, New Mexico, Pennsylvania, Rhode Island, and Wyoming, the prohibition on use of decompression chambers is in the context of the "destruction" and/or "disposal" of animals.

An additional indication that these statutes are aimed at prohibiting a disfavored euthanasia technique and not scientific research is provided by the laws of Alaska and Indiana. The prohibition on the use of decompression chambers in Alaska specifically exempts "scientific research governed by accepted standards," and the prohibition on the use of decompression chambers to destroy animals in Indiana exempts both post-secondary educational institutions and research facilities licensed by the U.S. Department of Agriculture. Attached please find copies of the statutes referenced above.

Further context for these statutes is provided by the American Veterinary Medical Association Guidelines on Euthanasia (attached). Appendix 4 describes unacceptable methods of euthanasia, and decompression is specifically listed as an unacceptable

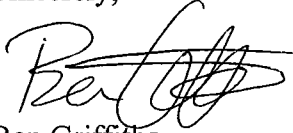
method of euthanasia on page 35. This principle is certainly understood and adhered to by the University, its veterinary staff, and its Animal Care and Use Committees. It is the case that Wisconsin law provides a general exemption from the "Mistreating Animals" statute (s. 951.02, Stats.) for bona fide scientific research, but did not specifically exempt scientific research from the separate and subsequently enacted anti-decompression statute. From this one might argue that the Wisconsin legislature intended s. 951.025 to prohibit research studies in which an animal might die due to differing pressure environments, because otherwise it would have provided a specific exemption for such research as it did for the more general statute. However, in light of the foregoing analysis, I believe a more logical conclusion is that no exemption for scientific research was seen as necessary by the legislature because the law was clearly understood at the time to be addressed at a euthanasia technique which there was (and is) no reason to use in connection with legitimate scientific research.

Finally, as a technical matter, it should be pointed out the term "decompression chambers" as described in many of the above statutes (including the former California statute on which the Wisconsin statute evidently was based) are specific to chambers in which pressure and/or oxygen is decreased. For example, the prohibition in Delaware is specific to the use of "a high altitude, low pressure chamber, also known as the decompression chamber." The Indiana statute prohibits the destruction of animals by "placing the animal in a decompression chamber and lowering the pressure of or the oxygen content in the air surrounding the animal." The New Jersey statute specifically references destroying an animal "by hypoxia [i.e. lack of oxygen] induced by decompression... ." The statutes in Michigan, Ohio, Virginia, New Mexico, Pennsylvania, Rhode Island, and Wyoming all specifically reference "high altitude decompression chambers." These references all support our contention that s. 951.025, like the statutes in the other states, is specifically intended to address the now-repudiated practice of euthanizing stray or abandoned animals by placing them in a sealed chamber and removing the air.

To conclude, the conduct of the research at issue does not violate the letter of s. 951.025 because the research does not involve subjecting animals to a depressurized or low-oxygen environment which is fatal to the animals. Nor has the spirit of s. 951.025 been violated, because a fair reading of the legislative history and the overall national context of similar laws and restrictions shows that s. 951.025 is intended to prohibit the use of decompression as a euthanasia technique, and is not addressed at legitimate research studies. In that regard, the aim and intent of these studies is not to kill the research subjects by decompression, but to explore different methods to enhance their survivability. The University adheres to commonly accepted humane euthanasia techniques in the conduct of this research so as to minimize the suffering of the animals as much as possible. Finally, the research at issue serves an important public policy goal of increasing the ability of those who must work in deep sea environments, such as submariners in the US Navy, to survive rapid ascents.

I hope the foregoing is helpful and will enable you to conclude that no violation of s. 951.025 has occurred during the conduct of this research. I would be pleased to answer any questions or provide any other information you might need.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Griffiths", written in a cursive style.

Ben Griffiths  
Senior University Legal Counsel

BG/sn

Enc.