

Approved January 31, 1992
Date

MINUTES OF THE SENATE COMMITTEE ON AGRICULTURE

The meeting was called to order by Sen. Don Montgomery at
Chairperson

10:00 a.m./~~p.m.~~ on January 29, 1992 in room 423-S of the Capitol.

All members were present except:

Committee staff present:

Raney Gilliland, Legislative Research
Jill Wolters, Revisor of Statutes
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Dr. Richard M. DeBowes, College of Veterinary Medicine at Kansas State University
Dorothy L. Thompson, Associate University Attorney for Kansas State University

SB 415 - Concerning the Kansas State University Veterinary Medical Center; making certain peer review information confidential.

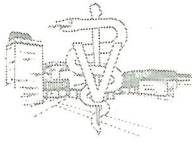
The Chairman noted that SB 415 had been referred to committee too late for hearing last year and called on Dr. Richard M. DeBowes, College of Veterinary Medicine at Kansas State University, to testify in support of the bill. (Attachment 1). The chairman asked if there would be a possibility that the information could be used for liability cases. Dr. DeBowes related the only instance he knows of this being done involved the discovery process regarding the care of a horse. The Chairman further inquired if the bill would prevent a court order from being used to obtain access to the information. Dr. DeBowes was uncertain and referred the question to Dorothy Thompson, the university attorney, who also was scheduled to testify. Sen. McClure asked if Dr. DeBowes knew of other universities who maintained this confidentiality. Dr. DeBowes noted that Washington State University considered the peer review information as part of the college and not for public information.

Dorothy L. Thompson, Associate University Attorney for Kansas State University, followed with further testimony in support of SB 415. (Attachment 2). With this, the hearing on SB 415 was concluded.

Sen. Daniels made a motion to report SB 415 favorable for passage, Sen. McClure seconded, and the motion carried.

The minutes of January 28 were approved.

The meeting was adjourned at 10:30 a.m.



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MEMORANDUM

To: Senate Agriculture Committee

From: Richard M. DeBowes DVM MS,
Associate Head, Department of Clinical Sciences

Re: SB 415: Confidentiality of Peer Review of Medical Records
Kansas State University College of Veterinary Medicine
Veterinary Medical Teaching Hospital

Date: January 28, 1992

The mission of the Kansas State University College of Veterinary Medicine Department of Clinical Sciences is directed primarily towards the education of veterinary, graduate, and postgraduate student trainees in the clinical medical sciences. Furthermore, as part of their developmental and clinical research missions, the faculty and staff of the entire Veterinary College often utilize and review case materials, medical records, and data from the Veterinary Medical Teaching Hospital to evaluate the efficacy and appropriateness of currently practiced medical and surgical therapies.

In order to accomplish these missions, it is essential that the faculty and staff have the freedom to utilize case materials and medical records from the Veterinary Medical Teaching Hospital (VMTH). To maintain an environment which fosters the scholarly growth of both faculty and clinical trainees, it is imperative that our faculty have the opportunity to seek the collegial review of their clinical methods and when appropriate, participate in the clinical review process without fear of subsequent entanglement in civil legal actions. Failure to provide the faculty with such protection will severely limit their ability to instruct our veterinary and graduate students and will drastically limit the faculty's ability to grow professionally through the responsible application of constructive case review processes.

Despite the existence of such protections for the University of Kansas Medical Center, recent experience with a civil legal action suggests that these necessary protections are not automatically extended to the instructional, research, and service activities of the Kansas State University Veterinary Medical Teaching Hospital. We know that you can appreciate the instructional and educational merits of the peer review process. For these reasons, the Department of Clinical Sciences and the College of Veterinary Medicine seek to protect from subpoena or legal discovery, all written documents pertaining to medical case reviews for instructional, scientific or administrative purposes.

Senate Agriculture
1-29-92
Attachment 1

January 29, 1992

TESTIMONY BEFORE THE SENATE AGRICULTURAL
COMMITTEE ON SENATE BILL NO. 415

by Dorothy L. Thompson
Assoc. University Attorney
Kansas State University

Passage of this bill is needed to allow the KSU Veterinary Medical Center to carry out a program of internal monitoring and self-criticism of the quality of its veterinary service without fear that its efforts will be used against it by litigants.

The internal monitoring of which I speak is in the form of peer review by members of the veterinary medical staff. If "privileged," as spelled out in this bill, the results of the work of peer review committees would not be required to be released by the Veterinary Medical Center. Moreover, nothing from the work of these committees would be admissible in evidence in any judicial or administrative proceeding. Nor could any individual who participated in the peer review process testify concerning the results of a peer review.

The need for a very specific statute such as this one became clear in the course of my handling of a lawsuit against Kansas State University and a number of faculty from the College of Veterinary Medicine. In that case, the faculty requested that a peer review committee review two equine cases in which the outcome had not been positive. The review committee did a very thorough job and pointed out every possible problem in the care of the animals involved. As is intended, the review committee raised various questions and stated various opinions concerning the treatment and care of the animals. The purpose of this process was, of course, to identify any areas in which the treatment of future cases could in any way be improved.

Thereafter, the owner of one of the animals whose treatment was reviewed brought a lawsuit and, in the course of discovery, the report of the equine review committee was, as required by the rules of discovery, made known to the plaintiff. The University contended that the report, as a remedial action under K.S.A. 60-451, was inadmissible at trial. The district judge, however, ruled the report itself and the testimony of the members of the review committee were admissible. As a result of this ruling, the University was denied summary judgment. Only after trial could the ruling of the district judge as to the admissibility of the report be appealed. As a result, the University determined that this case should be settled and did so.

This experience demonstrated to the KSU Veterinary Medical Center that a specific statute protecting its peer review reports from discovery and from admissibility was sorely needed. Peer review reports by human health care providers are currently privileged under K.S.A. 65-4915. Senate Bill No. 415 is patterned after that statute. The KSU Veterinary Medical Center clearly needs to carry on an active peer review process to assure that its veterinary service is as good as it can possibly be. To that end, the unhampered and candid advice of peer review panels is an absolute necessity. However, unless the work of these committees is protected against misuse by litigants, the faculty and staff of the Veterinary Medical Center will not feel free to do the kind of critical self-analysis that is needed to assure the highest veterinary service possible. I therefore urge the committee to move forward with the passage of S.B. 415.

Senate Agriculture
1-29-92
Attachment 2