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ATTORNEY GENERAL OPINION NO. 88-161

Earl E. Gatz, Secretary
Board of Veterinary Examiners
R.R. 1
Pratt, Kansas 67124

Re: Livestock and Domestic Animals -- Registration of
Veterinarians -- Practice of Veterinary Medicine;
Pregnancy Diagnosis; Embryo Transfers

Synopsis: Manual pregnancy testing and embryo transfer in
cattle constitute the practice of veterinary
medicine. A person must be a licensed veterinarian
to perform these procedures unless the person is
exempt from licensure pursuant to K.S.A. 47-817.
Cited herein: K.S.A. 47-814; 47-816; 47-817;
47-834.

* * *

Dear Dr. Gatz:

As Secretary for the Board of Veterinary Examiners (Board),
you have requested our opinion whether certain procedures
performed by non-licensed persons violate the Kansas
veterinary practice act, K.S.A. 47-814 et seq.

The practice of veterinary medicine is defined in K.S.A.
47-816(g) as meaning any of the following:

"(1) To diagnose, treat, correct, change,
relieve, or prevent disease, deformity,

defect, injury or other physical or mental condition of any animal.

(2) To prescribe or administer any drug, medicine, biologic, apparatus, application, anesthetic or other therapeutic or diagnostic substance or technique on any animal.

(3) To use any manual or mechanical procedure for testing for pregnancy, for correcting or testing for sterility or infertility or to render advice or recommendation with regard to any of the same on any animal.

(4) To represent, directly or indirectly, publicly or privately, an ability and willingness to do any act described in paragraph (1), (2) or (3) of this subsection.

(5) To use any title, words, abbreviation or letters in a manner or under circumstances which represent or imply that the person using them is qualified and licensed to do any act described in paragraph (1), (2) or (3) of this subsection."

Only persons who are licensed veterinarians or hold a temporary permit issued by the Board may practice veterinary medicine. K.S.A. 47-817; K.S.A. 47-834. The act, however, creates several exemptions from the licensure requirement. For example, the owner of an animal or employee of the owner is exempted from licensure in the care and treatment of the owner's animal. K.S.A. 47-817(f). Persons employed by and under the direct supervision of a veterinarian are also exempt from licensure. K.S.A. 47-817(j). Another exception, K.S.A. 47-817(b), provides that a non-licensed person may in effect practice veterinary medicine if the "person [is] advising with respect to or [is] performing acts which are accepted livestock management practices."

Your first question is whether the practice or art of manually diagnosing pregnancy in cattle constitutes the practice of veterinary medicine or whether it is an accepted livestock management practice. We believe it is clear under K.S.A.

47-816(g)(3) that manual pregnancy testing is the practice of veterinary medicine. It is argued, however, that this activity is an accepted livestock management practice and therefore non-licensed persons may perform such testing.

This same question was presented to us in Attorney General Opinion No. 76-213. We agree with the legal analysis in that opinion and adopt its conclusion:

"We understand that in the generic sense pregnancy diagnosis is in fact a widely 'accepted livestock management practice,' and that it is based upon detection of the physiological changes of the genital organs associated with pregnancy through the employment of either manual or mechanical testing procedures. To contend that this scientific examination of cattle should be considered within the exception granted per K.S.A. 47-817(b) carries the resultant, logical corollary that since the diagnosis and treatment of injuries to cattle is also an accepted livestock management practice, the unlicensed lay person should be permitted to perform this function as well. In other words by using the broad exception under K.S.A. 47-817(b) the provisions of the Kansas Veterinary Practice Act may be circumvented in the name of 'accepted livestock management practices.' Such an interpretation is untenable.

"The term 'livestock management practice' as used in the act encompasses a broad spectrum of activities employed in the control of livestock. However, to go so far as to construe this term to encompass in toto the practice of veterinary medicine would destroy the purpose of the act. In my judgment the legislature has clearly identified what is not to be included in the term 'livestock management' by delineating specifically the activities to be controlled under the act. . . .

"[T]he purpose and intent of the act is clearly identified for the purpose of the instant inquiry by the definition provided in K.S.A. 47-816[g](3): only a licensed veterinarian is permitted in this state to test for and diagnose animal pregnancy.

"Accordingly, it is the opinion of this office that the Kansas Veterinary Practice Act specifically prohibits non-licensed individuals from testing for and diagnosing the state of pregnancy in animals which they do not own."

You also ask whether embryo transfer is part of veterinary medicine. Embryo transfer is the art of removing a fertilized ova or ovum from the reproductive tract of a genetically superior animal (donor) and the transfer of the ovum to the reproductive tract of an animal of the same species and of lesser genetic quality (surrogate) for gestation and birth." At this time embryo transfers are performed primarily on cattle. Embryo transfers may be done surgically or nonsurgically. It is beyond question that the surgical procedure constitutes the practice of veterinary medicine.

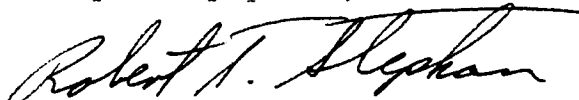
We understand that nonsurgical embryo transfers generally involve the following steps: (1) administering drugs to the donor animal to induce superovulation (production of more than one egg in the ovary at one time); (2) administering hormones to induce oestrus synchronization between the donor and surrogate animals (to ensure the animals are in heat at the appropriate times); (3) artificial or natural insemination of the donor with genetically superior semen; (4) administering an anesthetic to the animals prior to the collection procedure; (5) sterilizing various instruments; (6) using a cervical dilation rod to dilate the cervixes of the donor and surrogate animals; (7) palpation of the donor cow's ovaries (also done at the time of breeding); (8) inserting the collection apparatus through the cervix of the donor into the uterine horn; (9) infusion of a media (liquid solution) to aid in collection; (10) loading the embryo into a straw in the collection apparatus by positioning the apparatus and palpation; (11) evaluating the embryo; (12) transferring the embryo to the surrogate animal; (13) administering antibiotics to the animals.

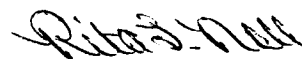
Embryo transfer in bovines may be an accepted practice in livestock production to produce superior offspring. However,

we believe such procedures must be performed by a licensed veterinarian as such procedures are defined by statute as the practice of veterinary medicine. K.S.A. 47-816(g)(2) clearly provides that administering drugs and medicines is the practice of veterinary medicine. Many of the drugs involved in performing an embryo transfer can only be used by licensed veterinarians. In addition, the procedures as summarized above fall under K.S.A. 47-816(g)(1) as the physical condition of the animal is changed. The fact that a procedure, such as embryo transfer or manual pregnancy testing, is an accepted practice in the industry does not negate the licensure requirement for the person performing the procedure if such has been defined as the practice of veterinary medicine.

In summary, manual pregnancy testing and embryo transfer in cattle constitute the practice of veterinary medicine. A person must be a licensed veterinarian to perform these procedures unless the person is exempt from the licensure requirement by K.S.A. 47-817.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Rita L. Noll
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