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State of California

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OPINION	:	No. 08-505
	:	
of	:	December 22, 2011
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Attorney General	:	
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TAYLOR S. CAREY	:	
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THE HONORABLE RICHARD DOYLE, CITY PROSECUTING ATTORNEY  
FOR THE CITY OF SAN JOSE, has requested an opinion on the following question:

Is an animal control officer permitted to possess and administer controlled substances to capture or treat animals in the field without contemporaneously consulting, and receiving direction from, a licensed veterinarian?

CONCLUSION

An animal control officer is not permitted to possess and administer controlled substances to capture or treat animals in the field without contemporaneously consulting, and receiving direction from, a licensed veterinarian.

## ANALYSIS

California law requires that an animal control officer<sup>1</sup> must take possession of an animal that he or she reasonably believes is a stray or has been abandoned by its owner, and must provide care and treatment for the animal until it is in a fit condition to be returned to its owner or placed for adoption.<sup>2</sup> An animal control officer may seize an animal when reasonably necessary to protect the safety of the animal or the public. He or she may also destroy an animal when circumstances require, for example when an animal is too severely injured to move and it would be more humane to destroy it.<sup>3</sup> Although they are not peace officers, animal control officers may, under specified circumstances, exercise powers of arrest, carry and use firearms, and serve warrants.<sup>4</sup>

Animal control officers must often react swiftly to emergency situations in the field, in order to capture injured animals or to protect the public from rabid or otherwise dangerous domesticated or wild animals such as dogs, foxes, and coyotes, as well as from inherently dangerous wild animals such as mountain lions and bears. In many cases it is necessary to use controlled substances (which are stored securely in a city's or county's animal control shelter), to subdue an animal. Prior to any use of drugs, animal control officers must obtain authorization from a designated licensed veterinarian.

In practice, we are told, a licensed veterinarian is not always available for consultation when an animal-control emergency arises. Moreover, the necessity of retrieving controlled substances from a central location, and of waiting for them to be brought into the field, can create delays that may be detrimental to the public's health and safety. We have been asked to determine whether an animal control officer may ever lawfully administer a controlled substance on his or her own authority to subdue wild or dangerous animals without the contemporaneous consultation of a licensed veterinarian.

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<sup>1</sup> Animal control officers are defined by Penal Code section 241(8) as "any person employed by a county or city for purposes of enforcing animal control laws or regulations." Penal Code section 11165.7(31)(A) is virtually identical: "Animal control officer' means any person employed by a city, county, or city and county for the purpose of enforcing animal control laws or regulations."

<sup>2</sup> See Penal Code § 597.1.

<sup>3</sup> *Id.*

<sup>4</sup> Penal Code § 830.9. The firearms identified in this section include "blowguns, carbon dioxide operated rifles and pistols, air guns, handguns, rifles, and shotguns." See also Penal Code § 12583.

We conclude that the applicable statutory scheme does not give animal control officers independent authority to administer controlled substances.

Our task is one of statutory construction. The interpretation of a statute is a question of law. Our role is to ascertain the intent of the Legislature in order to effectuate the law's purpose. We may not, under the guise of construction, attempt to rewrite a statute and, within the framework of the language used, we must interpret it in a manner to make it workable and reasonable.<sup>5</sup>

The California Uniform Controlled Substances Act<sup>6</sup> regulates controlled substances,<sup>7</sup> which are classified according to the degrees of their medical usefulness, and are subject to restrictions on their use and administration. The Act makes possession of a controlled substance a felony “unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state,”<sup>8</sup> and makes no exceptions for unlicensed persons to administer these substances except under the direct or indirect supervision of a licensed practitioner.

“Administer,” under Health and Safety Code section 11002, is defined as “the direct application of a controlled substance . . . to the body of a patient. . . .” This section permits controlled substances to be administered only by “[a] practitioner, or in his presence, by his authorized agent.”<sup>9</sup> At its core, the question before us is a relatively simple one, that is, whether animal control officers fall within the definition of “practitioner” set forth in Health and Safety Code section 11026. In order to isolate the core issue, however, we need to work our way through a thicket of statutes that surrounds it. Therefore, we begin our analysis by looking at four interrelated statutes—Health and

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<sup>5</sup> See *Mt. Vernon Meml. Park v. Bd. of Funeral Dirs. & Embalmers*, 79 Cal. App. 3d 874, 885 (1978).

<sup>6</sup> Health & Safety Code §§ 11000-11651.

<sup>7</sup> Bus. & Prof. Code § 4021 (“controlled substance” means any substance listed in Ch. 2, Div. 10 of Health & Safety Code (commencing with § 11053)).

<sup>8</sup> Health & Safety Code § 11350.

<sup>9</sup> See Health & Safety Code § 11002(a). An “agent” is defined in Health and Safety Code section 11003 as “an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser.” It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman. “Dispenser” is defined in Health and Safety Code section 11011 as “a practitioner who dispenses.”

Safety Code section 11154, and Business and Professions Code sections 4825, 4826, and 4836.1.

The first statute is Health and Safety Code section 11154(a), which is part of the Uniform Controlled Substances Act. Generally speaking, it states that a controlled substance may be prescribed only by a licensed practitioner for a legitimate medical purpose.<sup>10</sup>

The next three statutes are all provisions of the Veterinarian's Practice Act.<sup>11</sup> Business and Professions Code section 4825 requires a veterinarian to hold a license in order to practice.<sup>12</sup> Section 4826(c) defines the practice of veterinary medicine as, among other things, including the administration of a controlled substance "for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of animals"<sup>13</sup> Finally, section 4836.1(a) provides that a veterinary assistant may administer a controlled substance

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<sup>10</sup> Health and Safety Code section 11154(a) states:

Except in the regular practice of his or her profession, no person shall knowingly prescribe, administer, dispense, or furnish a controlled substance to or for any person or animal which is not under his or her treatment for a pathology or condition other than addiction to a controlled substance, except as provided in this division.

<sup>11</sup> Bus. & Prof. Code §§ 4800-4917.

<sup>12</sup> Business and Professions Code section 4825 states:

It is unlawful for any person to practice veterinary medicine or any branch thereof in this State unless at the time of so doing, such person holds a valid, unexpired, and unrevoked license as provided in this chapter.

<sup>13</sup> Business and Professions Code section 4826 states, in relevant part:

A person practices veterinary medicine, surgery, and dentistry, and the various branches thereof, when he or she does any one of the following:

(c) Administers a drug . . . for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of animals, except where the medicine . . . is administered by a registered veterinary technician or an unregistered assistant at the direction of and under the direct supervision of a licensed veterinarian . . . or where the drug, including, but not limited to, a drug that is a controlled substance, is administered by a registered veterinary technician or an unregistered assistant pursuant to Section 4836.1....

under the supervision and control of a veterinarian.<sup>14</sup> Each of these sections, in its way, guides our analysis of what it means to be a “practitioner” within the meaning of Health and Safety Code section 11026.

Section 11026 provides in its entirety:

“Practitioner” means any of the following:

(a) A physician, dentist, veterinarian, podiatrist, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, a registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, a certified nurse-midwife acting within the scope of Section 2746.51 of the Business and Professions Code, a nurse practitioner acting within the scope of Section 2836.1 of the Business and Professions Code, or a physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or Section 3502.1 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code.

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer, a controlled substance in the course of professional practice or research in this state.

(c) A scientific investigator, or other person licensed, registered, *or otherwise permitted*,<sup>15</sup> to distribute, dispense, conduct research with respect to, or administer, a controlled substance in the course of professional practice or research in this state.<sup>16</sup>

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<sup>14</sup> Business and Professions Code section 4836.1(a) states, in relevant part:

Notwithstanding any other provision of law, a registered veterinary technician or an unregistered assistant may administer a drug, including . . . a controlled substance, under the direct or indirect supervision of a licensed veterinarian when done pursuant to the order, control, and full professional responsibility of a licensed veterinarian . . . .

<sup>15</sup> Emphasis added.

<sup>16</sup> We note that federal law is in accord. Title 21 U.S.C. § 802(21) defines the term “practitioner” as: “a physician, dentist, veterinarian, scientific investigator, pharmacy,

In examining statutory provisions, we apply well established rules of construction. “The words of the statute are the starting point” for determining legislative intent.<sup>17</sup> “Words used in a statute ... should be given the meaning they bear in ordinary use.”<sup>18</sup> Statutes relating to the same subject matter must be read together and harmonized if possible.<sup>19</sup> “Where two codes are to be construed, they must be regarded as blending into each other and forming a single statute.”<sup>20</sup>

As noted above, section 11026 specifies those persons authorized to administer controlled substances. Each of the classes of practitioners identified under subdivision (a) of the statute is either a licensed or registered member of a healthcare profession and, as such, each is subject to extensive statutory and regulatory oversight. Controlled substances may be administered by these persons only within the scope of their practice as licensed professionals or, in the case of certified and registered healthcare practitioners, in concert with carefully orchestrated procedures and protocols. Not surprisingly, because they are not members of a healthcare profession, animal control officers are absent from subdivision (a). Also inapplicable to the present inquiry is subdivision (b), which identifies institutional practitioners, such as pharmacies and hospitals, that are authorized to distribute, dispense, or administer controlled substances, or to conduct research with respect to them in the course of professional practice or research. Our primary focus, then, is on subdivision (c) of section 11026 and, more specifically, on whether the phrase “otherwise permitted” may be construed broadly enough to include animal control officers among the identified practitioners. We conclude that it cannot.

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hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.”

<sup>17</sup> *Wilcox v. Birtwhistle*, 21 Cal. 4th 973, 977 (1999).

<sup>18</sup> *Lungren v. Deukmejian*, 45 Cal. 3d 727, 735 (1988).

<sup>19</sup> *Brown v. W. Covina Toyota*, 26 Cal. App. 4th 555, 565-566 (1994).

<sup>20</sup> *Meninga v. Raley’s, Inc.*, 216 Cal. App. 3d 79, 90 (1989); *accord Austin v. Bd. of Ret.*, 209 Cal. App. 3d 1528, 1532 (1989); *see also People v. Ashley*, 17 Cal. App. 3d 1122, 1126 (1971) (“It is a well settled rule of statutory construction that the separation of the various statutes into codes is for convenience only, and the codes are to be read together and regarded as blending into each other thereby forming but a single statute ...”).

We are required to discern the intent of the Legislature from the language it employs. “If the statute’s language is clear and unambiguous, its provisions should be applied according to their terms without further judicial construction so long as their meaning is in accord with the purpose of the statute.”<sup>21</sup> The language of section 11026 is neither vague nor ambiguous. The phrase “otherwise permitted” as used in this section simply provides a useful shorthand method for acknowledging and incorporating into the definition of “practitioner” persons whose authorization to administer controlled substances has already been granted by some other provision of law. It neither establishes a separate classification of authorized persons nor prescribes criteria by which others may become—or may be deemed—authorized, but supplies a convenient means for recognizing existing authority without having to cross-reference every provision in the codes by which that authority may have been acquired. Applied to our case, this subdivision means that unless the authority of animal control officers to administer controlled substances is specifically established somewhere other than in section 11026, animal control officers do not have that authority.

The duties of animal control officers, which consist of protecting animals and the public through the enforcement of local animal control laws, do not fit within the context of subdivision (c). That subdivision is directed to those who are actively engaged in scientific research or who are licensed or registered or in some other manner already authorized to “distribute, dispense, conduct research with respect to, or administer, a controlled substance *in the course of professional practice or research*” in California. While it is entirely possible that animal control officers may assist in activities supportive of research projects, such activities would be ancillary to their normal duties and responsibilities, not inherently characteristic of their occupation.

The practitioners identified in section 11026 are licensed, registered, or certified members of the healthcare professions. Their respective scopes of practice typically are fixed by statute. “Learned professions are characterized by the need of unusual learning, the existence of confidential relations, the adherence to a standard of ethics higher than that of the market place, and in a profession like that of medicine by intimate and delicate personal ministrations.”<sup>22</sup> Such are the inherent qualities of the healthcare professions, but these are not the characteristics of animal control officers, whose responsibilities generally are governed by individual duty statements set by their employers or by local

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<sup>21</sup> *People v. Dillon*, 156 Cal. App. 4th 1037, 1044 (2007).

<sup>22</sup> *Black’s Law Dictionary* 1246 (8th ed. 2004) (quoting *Commonwealth v. Brown*, 20 N.E.2d 478, 481 (Mass. 1939)).

ordinance.<sup>23</sup>

None of which is to suggest that animal control officers do not provide an essential public service, or that they do not apply themselves in a professional manner with courage and devotion to the public's safety. But though we acknowledge the vital role played by animal control officers and recognize the difficult circumstances under which they often function, we can find no statute or case law granting them the authority they need to purchase, secure, prescribe, possess, or administer controlled substances on their own.

That is the heart of our inquiry. We are not asked to determine whether animal control officers may administer controlled substances under *any* circumstances, but only whether they may do so on their own authority without the contemporaneous involvement of a licensed veterinarian. We conclude that they may not.

Finally, it has been suggested that statutory limitations on the practice of veterinary medicine are not applicable to animal control officers because Title 16, California Code of Regulations, section 2032 states that “[e]xcept where the patient is a wild animal or its owner is unknown, it shall constitute unprofessional conduct for a veterinarian to administer or prescribe a drug, medicine . . . or treatment . . . for the prevention, cure, or relief of a wound, fracture or bodily injury or disease of an animal without having first established a veterinarian-client-patient relationship with the animal patient or patients and the client.”

In our view, the quoted language neither excludes wild animals from the scope of the Act—the language expressly refers to these animals as “patient[s]”—nor excuses a veterinarian’s duty to comply with the Act’s provisions in treating wild animals. Instead, it merely prescribes that veterinarians do not violate the Act by proceeding to treat animals for which a conventional veterinarian-*client*-patient relationship has not first been established. Administering controlled substances to wild animals or to animals whose ownership is unknown remains an incident of the practice of veterinary medicine limited to licensed practitioners, or to those acting under the authority of licensed

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<sup>23</sup> Generally speaking, “[a] county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” Cal. Const. art. XI, § 7. The Controlled Substances Act, however, preempts local regulation of controlled substances. *See O’Connell v. City of Stockton*, 41 Cal. 4th 1061 (2007).

practitioners. This language does not open the door for animal control officers to administer controlled substances on their own authority.

For all of the foregoing reasons, we conclude that animal control officers are not practitioners within the meaning of Health and Safety Code section 11026 and therefore may not possess or administer controlled substances in the field without contemporaneously consulting, and receiving direction from, a licensed veterinarian.<sup>24</sup>

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<sup>24</sup> We are informed that it is not unusual for animal control officers in some local jurisdictions to administer controlled substances in the field without contemporaneous consultation with licensed veterinarians. We understand that the reasons why this is done stem directly from the difficulties encountered in trying to manage extreme and dangerous emergencies where time is of the essence and the only other alternative may be to destroy the animal in question. This opinion concludes that this practice does not comport with current law. In view of the asserted need for more humane alternatives, the Legislature may wish to consider examining the circumstances confronting local jurisdictions to determine whether adjustments in the law are in order to ensure that the option of tranquilization will be available as an alternative to destroying animals. Development of such a policy is, however, beyond the scope of this opinion.