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OFFICE OF THE ATTORNEY GENERAL  
State of California

GEORGE DEUKEMJIAN  
Attorney General

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OPINION	:	No. CR 78-27
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of	:	<u>February 9, 1979</u>
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GEORGE DEUKEMJIAN	:	
Attorney General	:	
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Patricia D. Benke	:	
Deputy Attorney General	:	
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SUBJECT: DIRECT DISPENSATION OF CONTROLLED SUBSTANCES—A physician may or may not dispense a controlled substance depending on whether such substance is categorized as a Schedule I, II, III, IV, or V controlled substance under the California Uniform Controlled Substances Act.

The Honorable Dale H. Speck, Director, Division of Law Enforcement for the California Department of Justice has requested the opinion of this office on the following question:

May a physician dispense controlled substances directly to a user?

The conclusion is:

1. A physician may not dispense any Schedule I controlled substance.
2. A physician may not dispense a Schedule II controlled substance directly to an ultimate user although he may administer such a substance directly to his patient or issue a prescription for the same which may only be filled by a pharmacist.

3. A physician may dispense without a prescription any Schedule III, IV, or V controlled substance directly to an ultimate user if the user is his patient in such quantity and for such time as is reasonably necessary to treat a disease, ailment, injury or infirmity attendant upon old age.

## ANALYSIS

The question presented is whether a physician may dispense controlled substances directly to a user. Controlled substances are regulated by the California Uniform Controlled Substances Act included as division 10 (commencing with § 11000 of the Health and Saf. Code). The words used in the question are precisely defined by this act.

“‘Dispense’ means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, furnishing, packaging, labeling, or compounding necessary to prepare the substance for that delivery.” (§ 11010.)<sup>1</sup>

“‘Deliver’ or ‘delivery’ means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.” (§ 11009.)

Section 11007 provides:

“(a) Except for the purposes of Chapter 4 (commencing with Section 11150) of this division, ‘controlled substance’ means a drug, substance, or immediate precursor which are included in Schedules I through V, inclusive, pursuant to Chapter 2 (commencing with Section 11053).

“(b) As used in Chapter 4 (commencing with Section 11150) of this division and any provisions of this division specifying penalties for offenses defined in Chapter 4 (commencing with Section 11150), except for those offenses which are punishable under Section 11371, ‘controlled substance’ means any drug, substance, or immediate precursor which is included in one of the five schedules contained in the Federal Controlled Substances Act (Title II, P.L. 91–513), as such schedules may be revised from time to time to add, delete, or transfer substances from one schedule to another, whether by congressional enactment or by administrative rule of the United States Attorney General adopted pursuant to Section 201 of such act. Whenever reference is made in Chapter 4 (commencing with Section 11150) of this

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<sup>1</sup> Section references are to the California Health and Safety Code unless otherwise noted.

division to a controlled substance classified in a particular schedule, the reference shall be deemed to be to a federal controlled substance classified in the designated federal schedule, as such schedules may be so revised from time to time.”

Section 11026 provides:

“‘Practitioner’ means any of the following:

“(a) A physician, dentist, veterinarian, podiatrist, or pharmacist acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part I of Division 1, or registered nurse acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, or physician’s assistant acting within the scope of a project authorized under Article 18 (commencing with Section 429.70) of Chapter 2 of Part 1 of Division 1, scientific investigator, or other person 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.

“(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.”

Section 11027 provides:

“‘Prescription’ means an oral order for a controlled substance given individually for the person for whom prescribed, directly from the prescriber to the furnisher or indirectly by means of a written order of the prescriber.”

“‘Furnish’ has the same meaning as provided in Section 4048.5 of the Business and Professions Code.” (§ 11016.) Section 4048.5 of the Business and Professions Code provides: “Furnish’ means to supply by any means, by sale or otherwise.”

Section 11002 provides:

“‘Administer’ means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body

of a patient for his immediate needs or to the body of a research subject by any of the following:

“(a) A practitioner or, in his presence, by his authorized agent.

“(b) The patient or research subject at the direction and in the presence of the practitioner.”

“No person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division.” (§ 11171.) Since furnishing means to supply by any means it includes dispensing as that term is defined in section 11010. Thus, the authority of a physician to dispense a controlled substance must be found in the California Uniform Controlled Substances Act or it is unlawful under section 11171.

The basic authority for a physician and other practitioners to utilize controlled substances is set forth in section 11210. The pertinent portions of section 11210 provide:

“A physician, . . . may prescribe for, furnish to, or administer controlled substances to his patient when the patient is suffering from a disease, ailment, injury, or infirmities attendant upon old age, other than addiction to a controlled substance.

“The physician, . . . shall prescribe, furnish, or administer controlled substances only when in good faith he believes the disease, ailment, injury or infirmity, requires such treatment.

“The physician, . . . shall prescribe, furnish, or administer controlled substances only in such quantity and for such length of time as are reasonably necessary.”

By definition, Schedule I controlled substances are those having a high potential for abuse, no currently accepted medical use, and there is a lack of accepted safety for use under medical supervision. (21 U.S.C. § 812.) Thus, section 11210 provides no authority for the utilization of Schedule I controlled substances by physicians.

The medical utilization of non-Schedule I controlled substances is governed generally by chapter 4 of the California Uniform Controlled Substances Act (commencing with § 11150).

Section 11158 provides:

“Except as provided in Section 11159, no controlled substance classified in Schedule II shall be dispensed without a prescription meeting the requirements of this chapter. Except as provided in Section 11159 or when dispensed directly to an ultimate user by a practitioner, other than a pharmacist or pharmacy, no controlled substance classified in Schedule III, IV, or V may be dispensed without a prescription meeting the requirements of this chapter.

“Except as otherwise prohibited or limited by law, a practitioner specified in Section 11150, may administer controlled substances in the regular practice of his profession.”

Section 11159 provides:

“An order for controlled substances for use by a patient in a county or licensed hospital shall be exempt from all requirements of this article, but shall be in writing on the patient’s record, signed by the prescriber, dated, and shall state the name and quantity of the controlled substance ordered and the quantity actually administered. The record of such orders shall be maintained as a hospital record for a minimum of seven years.”

These two sections provide the basic answer to the question presented. Four situations are differentiated, each with different applicable rules.

1. *Hospitals.* When controlled substances are administered to patients in a county or licensed hospital on the order of a physician, no prescription is necessary but a hospital record of each use must be made and kept as provided in section 11159.

2. *Administration by Physician.* A physician may *administer* controlled substances in the regular practice of his profession. This means that a physician may directly apply the controlled substance to the body of his patient either personally or by his authorized agent or the patient in the physician’s presence. (See § 11002.)

3. *Dispensing Schedule III, IV and V Controlled Substances.* Section 11158 requires a prescription for a pharmacist or pharmacy to dispense Schedule III, IV and V controlled substances except to hospitals under section 11159. But physicians and other practitioners may dispense Schedule III, IV and V controlled substances *directly to an ultimate user* without a prescription. “‘Ultimate user means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.’” (§ 11030.)

4. *Dispensing Schedule II Controlled Substances.* With the single hospital exception provided by section 11159, section 11158 provides categorically: “. . . no controlled substance classified in Schedule II shall be *dispensed* without a prescription meeting the requirements of this chapter. . . .” (Emphasis added.)

Section 11207 provides:

“No person other than a registered pharmacist under the laws of this state or an intern pharmacist, as defined in Section 4038.1 of the Business and Professions Code, who is under the personal supervision of a pharmacist, shall compound, prepare, fill or dispense a prescription for a controlled substance.”

We conclude from the foregoing analysis of the applicable statutes:

1. That a physician may not dispense any Schedule I controlled substance.
2. That a physician may not dispense a Schedule II controlled substance directly to an ultimate user although he may administer such a substance directly to his patient or issue a prescription for the same which may only be filled by a pharmacist as provided in section 11207.
3. That a physician may dispense without a prescription any Schedule III, IV or V controlled substance directly to an ultimate user if the user is his patient in such quantity and for such time as is reasonably necessary to treat a disease, ailment, injury or infirmity attendant upon old age.

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