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OPINION	:	No. 79-608
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of	:	<u>March 6, 1980</u>
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SUBJECT: SEIZURE OF CONTRABAND DURING LAWFUL INSPECTION—
Investigators and licensing evaluators of the Department of Social Services may lawfully seize evidence of violations of the Community Care Facilities Act during lawful inspections of licensed community care facilities. Items of contraband observed in sight during a lawful inspection under the Act may also be seized without a warrant or consent.

The Honorable Marion Woods, Director of the Department of Social Services, has requested an opinion on the following question:

During a lawful inspection of a licensed or an unlicensed community care facility pursuant to the Community Care Facilities Act, may department investigators and licensing evaluators seize contraband, items posing a threat to the safety of facility clients or evidence of licensing violations found during the course of the inspection?

CONCLUSION

Investigators and licensing evaluators of the Department of Social Services may lawfully seize evidence of violations of the Community Care Facilities Act during lawful

inspections of licensed community care facilities conducted pursuant to that Act. Items of contraband observed in sight during a lawful inspection under the Act may also be seized without a warrant or consent. An item which poses a threat to the health of facility clients may be seized if it evidences a violation or threatened violation of the Act.

ANALYSIS

Under the Community Care Facilities Act (hereinafter, “the Act,” Health & Saf. Code, § 1500 *et seq.*)¹, all community care facilities must be licensed by the State Department of Social Services. (§§ 1508, 1509.) A community care facility is “any facility place or building which is maintained and operated to provide nonmedical residential care, day care, or homefinding agency services for children, adults, or children and adults, including but not limited to, the physically handicapped, mentally impaired or incompetent persons. (§ 1502.) It includes residential facilities, day care centers and foster family homes. (§ 1502.)”²

¹ Unless otherwise indicated, all section references are to the Health and Safety Code.

² Section 1502 defines these terms as follows:

“(a) ‘Community care facility’ means any facility, place, or building which is maintained and operated to provide nonmedical residential care, day care, or homefinding agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, or incompetent persons, and includes the following:

“(1) ‘Residential facility’ which means any family home, group care facility, or similar facility determined by the director, for 24-hour nonmedical care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual.

“(2) ‘Residential care facility for the elderly’ which means a group housing arrangement chosen voluntarily by residents who are over 62 years of age and who are provided varying levels of supportive services or care, as agreed upon at the time of admission, based upon their varying needs.

“(3) ‘Day care center’ which means any facility which provides nonmedical care to persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis.

“(4) ‘Homefinding agency’ which means any individual or organization engaged in finding homes or other places for placement of persons of any age for temporary or permanent care or adoption.

“(5) ‘Foster family home’ which means any residential facility providing 24-hour care for six or fewer foster children which is owned, leased, or rented and is the residence of the foster parent or parents, including their family, in whose care the foster children have been placed. Such placement may be by a public or private child

Section 1531 authorizes the State Department of Social Services to adopt regulations to carry out the purposes of the Act.³

Section 1531 provides:

“The regulations for a license shall prescribe standards of safety and sanitation for the physical plant and standards for basic personal care, supervision, and services based upon the category of licensure.

“The regulations for a special permit shall prescribe standards for the quality of specialized services, including, but not limited to, staffing with duly qualified personnel which take into account the age, physical and mental

placement agency or by a court order, or by voluntary placement by a parent, parents, or guardian.

Section 1505 provides facilities which are exempt from the Act, including specified health facilities and clinics, some facilities accredited or approved by other agencies, some facilities operated by churches, and certain facilities providing no care or supervision or nor operating for financial profit.

³ The purposes of the Act are specified in section 1501 which provides:

“(a) The Legislature hereby finds and declares that there is an urgent need to establish a coordinated and comprehensive statewide service system of quality community care for mentally ill, developmentally and physically disabled, and children and adults who require care or services by a facility or organization issued a license or special permit pursuant to this chapter.

“(b) Therefore, the Legislature declares it is the intent of the state to develop policies and programs designed to: (1) insure a level of care and services in the community which is equal to or better than that provided by the state hospitals; (2) assure that all people who require them are provided with the appropriate range of social rehabilitative, habilitative and treatment services, including residential and nonresidential programs tailored to their needs; (3) protect the legal and human rights of a person in or receiving services from a community care facility; (4) insure continuity of care between the medical-health elements and the supportive care-rehabilitation elements of California’s health systems; (5) insure that facilities providing community care are adequate, safe and sanitary; (6) assure that rehabilitative and treatment services are provided at a reasonable cost; (7) assure that state payments for community care services are based on a flexible rate schedule varying according to type and cost of care and services provided; (8) encourage the utilization of personnel from state hospitals and the development of training programs to improve the quality of staff in community care facilities; and (9) insure the quality of community care facilities by evaluating the care and services provided and furnishing incentives to upgrade their quality.”

capabilities, and the needs of the persons to be served.

“The state department’s regulations shall allow for the development of new and innovative community programs.”

The Act provides for inspection of community care facilities in Sections 1533 and 1534. Section 1533 provides:

“Any duly authorized officer, employee, or agent of the state department may, upon presentation of proper identification, enter and inspect any place providing personal care, supervision, and services at any time, with or without advance notice, to secure compliance with, or to prevent a violation of, any provision of this chapter.”

Section 1534 provides in part:

“Every licensed community care facility shall be periodically inspected and evaluated for quality of care by a representative or representatives designated by the director. Evaluations shall be conducted at least once per year and as often as necessary to insure the quality of care being provided.”

A violation of the provisions of the Act, or the willful or repeated violation of any rule or regulation promulgated under the Act is a misdemeanor. (§ 1540.) A license may be suspended or revoked for the violation, or aiding and abetting the violation, of the provisions of the Act or the rules or regulations. A suspension or revocation may also result from “conduct in the operation or maintenance, or both the operation and maintenance, of a community care facility which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility or the people of the State of California.” (§ 1550.) An injunction may be sought against an unlicensed facility. (§ 1541.)

We are informed by the Department of Social Services that licensing evaluators conduct inspections to assure compliance with licensing requirements. Department investigators may participate in inspections. Department investigators are peace officers (Pen. Code, § 830.3, subd. (o)), but license evaluators are not. During inspections, evaluators and investigators may observe items which are evidence of licensing violations, contraband or which pose a threat to the health and safety of facility clients. The question is whether the evaluators and investigators may lawfully seize such items during the course of an inspection, conducted pursuant to the Act, without a warrant or consent.

To answer this question, we must first establish what constitutes a lawful inspection under the Act. The Fourth Amendment protections against unreasonable searches and seizures protect the privacy and security of individuals against arbitrary invasions by government officials. (*Camara v. Municipal Court* (1967) 387 U.S. 523, 528; *Mozetti v. Superior Court* (1971) 4 Cal. 3d 699, 705.) Its protections extend to regulatory inspections such as fire, health, and safety inspections of homes and businesses. (*Tyler v. Michigan* (1978) 436 U.S. 499, 504–505; *Marshall v. Barlow’s Inc.* (1978) 436 U.S. 307; *See v. City of Seattle* (1967) 387 U.S. 541, *Camara v. Municipal Court* (1967) 387 U.S. 523, 538–534.)

An inspection of a community care facility pursuant to a valid warrant is lawful. Warrants for such inspections are authorized and governed by section 1822.50 *et seq.* of the Code of Civil Procedure.

As a general rule, except in certain carefully defined classes of cases, an administrative inspection without consent or a warrant is unreasonable and violative of the Fourth Amendment. (*Michigan v. Tyler, supra*, at p. 506; *Camara v. Municipal Court, supra*, at pp. 528–529.)

An exception to the warrant requirement is recognized for inspections involving a “pervasively regulated business” (*U.S. v. Biswell* (1972) 406 U.S. 311, 316; (firearms)) or a “closely regulated industry long subject to close supervision and inspection.” (*Colonnade Catering Corp. v. U.S.* (1970) 397 U.S. 72, 74, 77 (liquor).) Individuals who choose to engage in such federally licensed and regulated businesses do so knowing that acceptance of the license renders them subject to inspections pursuant to the licensing statutes and regulations. (*Marshall v. Barlow’s Inc., supra*, at pp. 311–313; *U.S. v. Biswell, supra*, at p. 316.) Such administrative inspections or searches must nevertheless meet the Fourth Amendment’s requirement of reasonableness and in such cases “there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails.” (*Camara v. Municipal Court, supra*, 387 U.S. 523, 537–537 and *People v. Hyde* (1974) 12 Cal. 3d 158, 166.)

With respect to warrantless administrative inspections of facilities providing care for others, we note the recent case of *People v. Firstenberg* (1979) 92 Cal. App. 3d 570, which interpreted statutes authorizing the inspection of nursing homes in light of the requirements of the Fourth Amendment. After reviewing the United States Supreme Court decisions regarding warrantless administrative inspections, which distinguished between general regulatory schemes applying to all residences, structures or employers and those which regulate specific licensed industries, the court held that unannounced warrantless inspections in the long-term health care industry are reasonable within the meaning of the Fourth Amendment. The court noted, however, that the validity of such inspections

depended not only upon the authority of a valid statute but upon a test of reasonableness which requires that the inspections be “carefully limited in time, place and scope.” (*Cf. United States v. Biswell*, 406 U.S. 311, 314–315.) After reviewing sections 1278 and 1421, subdivision (a)⁴ which authorize inspection of skilled nursing facilities and long-term health facilities, the court held that section 1278 was constitutional and that while an inspection of business records in the dead of night under section 1421, subdivision (a), might prove to be unreasonable, the statute on its face was not, and the inspection in question was not shown to be unreasonable.

The first question is whether community care facilities are “pervasively regulated businesses” or a “closely regulated industry long subject to close supervision and inspection” within the exception to the Fourth Amendment’s warrant requirements spelled out in the *Biswell* and *Colonnade* cases. We conclude they are. Section 1501 declares the purposes of the Act to provide “. . . quality community care for mentally ill developmentally and physically disabled, and children and adults who require care or services by a facility . . .” licensed under the Act. Section 1531 states that the regulations for community care facilities “. . . shall prescribe standards of safety and sanitation for the physical plant and standards for basic personal care, supervision, and services . . .” and shall also “. . . prescribe standards for the quality of specialized services, including, but not limited to, staffing with duly qualified personnel . . .” The nature of community care facilities and the abuses to which they are subject require that inspections, to be effective, be both frequent and unannounced. Such inspections are crucial to the effective supervision of the physical wellbeing of those cared for in such facilities, to assure that they are not neglected or abused. The necessity for unannounced warrantless inspections in community care facilities is just as great as in the firearms industry and the long term health care industry. The Legislature could therefore constitutionally authorize such inspections of community care facilities provided they are “carefully limited in time, place, and scope.”

⁴ Section 1278 provides:

“Any officer, employee, or agent of the state department may, upon presentation of proper identification, enter and inspect any building or premises at any reasonable time to secure compliance with, or to prevent a violation of, any provision of this chapter.”

Section 1421, subdivision (a) provides:

“(a) Any duly authorized officer, employee, or agent of the state department may enter and inspect any long-term health care facility, including, but not limited to, interviewing residents and reviewing records, at any time to enforce any provision of this chapter. Inspections conducted pursuant to complaints filed with the state department shall be conducted in such a manner as to ensure maximum effectiveness. No advance notice shall be given of any inspection conducted pursuant to this chapter unless previously and specifically authorized by the director or required by federal law.”

(*United States v. Biswell* (1972) 406 U.S. 311, 315; *People v. Firstenberg* (1979) 92 Cal. App. 3d 570, 580–581, 582.)

Section 1533 provides that inspections of community care facilities may be made “at any time.” The court in *Firstenberg, supra*, at p. 582, interpreted these words as used in section 1421, subdivision (a), authorizing inspection of long-term health care facilities. The court stated:

“Typically, inspection statutes call for entry during business hours. (*United States v. Biswell, supra*, 406 U.S. 311; 18 U.S.G. § 923(g); *Colonnade Corp. v. United States, supra*, 397 U.S. 72; 26 U.S.G. § 5146 (b).) Long-term health care facilities, by statutory definition (Health & Saf. Code, § 1418), provide 24-hour skilled nursing services. They have no business hours per se. Within this industry, a provision for inspection at any time is not only reasonable, it is essential to successful enforcement of the regulatory provisions.”

Not all community care facilities provide 24-hour care since the statutory definition includes day care, among others, which do not require round the clock services. (Section 1502.) As to those-licensed community care facilities which do involve 24-hour services, day and night warrantless inspections would be reasonable. (*People v. Firstenberg, supra*.) But as to other community care facilities a warrantless inspection at a time other than during regular business hours might well be found unreasonable and therefore unconstitutional. (*People v. Firstenberg, supra*.)

We next consider whether the inspections authorized by sections 1533 and 1534 are carefully limited as to place so as to meet the Fourth Amendment’s reasonableness requirements. Section 1533 provides that authorized personnel of the department may enter and inspect “any place providing personal care, supervision and services” as these services are defined by the Act. Conceivably, such services could be provided in any public or private building, including private dwellings, and if the above quoted language were so construed it would place no meaningful limitation upon the places subject to section 1533 inspections. However, the context makes it unclear whether the Legislature intended to authorize warrantless inspections of any places in which such services could conceivably be provided or only those places licensed under the Act.

In considering the reasonableness of places to be inspected under section 1278 the court in *Firstenberg* (at p. 582) noted that although the statute refers to inspection of “any building or premises” it is clear from the context that the statute is in fact talking about any licensed building or premises. As so construed the places which section 1278 authorized warrantless inspections was held to be sufficiently circumscribed to pass

constitutional muster.

We believe that if section 1533 were construed to authorize warrantless inspections in any conceivable place where community care services might be provided it would not be sufficiently limited as to place to meet the reasonableness requirements of the Fourth Amendment. If the terms of a statute are by fair and reasonable interpretation capable of a meaning consistent with the requirements of the constitution, the statute will be given that meaning, rather than one in conflict with the constitution. (*Braxton v. Municipal Court* (1972) 10 Cal. 3d 138.) Applying this rule of construction we interpret section 1533 to authorize warrantless inspections only of licensed community care facilities. As so construed we conclude that section 1533 sufficiently limits the place of inspections to meet Fourth Amendment requirements.

Section 1533 authorizes inspection of community care facilities “to secure compliance with, or to prevent a violation of this chapter.” The identical language in section 1278 met the *Biswell* reasonableness test as to scope in *Firstenberg* and we conclude that it sufficiently defines the scope of section 1533 inspections to satisfy the Fourth Amendment.

We conclude that section 1533 is constitutional and empowers authorized personnel of the Department of Social Services to make warrantless inspections of licensed community care facilities which are reasonable as to time, place and scope. Conversely we conclude that warrantless inspections of unlicensed facilities, or warrantless inspections, which are unreasonable as to time, place or scope, are unlawful.

We come next to the question of what items may be seized during the course of a lawful inspection of a community care facility pursuant to section 1533. Specifically, we are asked whether items which are (1) contraband, (2) evidence of licensing violations or (3) impose a threat to facility clients, may be seized without consent or a warrant.

We have found no cases which discuss the items which may be seized during a lawful warrantless inspection of a community care facility or similar business. We find some guidance from the cases which discuss the items which may be seized by the police during a warrantless search of a premises in the investigation of a crime. In *People v. Amaya* (1979) 93 Cal. App. 3d 424, the police entered an apartment to which a trail of blood led from a nearby murder victim and seized certain items. The court held that the search came within the emergency circumstances exception to the warrant requirements and had this to say about the items which may be seized during such a warrantless search:

“Given the right to enter a building to search for suspects or victims police may thereafter seize evidence in plain sight during the course of a

search suitably circumscribed by the exigencies which justify its initiation. (*People v. Hill, supra*, 12 Cal. 3d at pp. 755–756; *People v. Smith, supra*, 63 Cal. 2d at pp. 797–798; *People v. Gilbert, supra*, 63 Cal. 2d at p. 707; *People v. Carter* (1972) 26 Cal. App. 3d 862, 872–873 (103 Cal. Rptr. 327).) Matters so subject to seizure include contraband and all other property, tangible or intangible, as to which there is a sufficient nexus with criminal behavior. The controlling test is whether it would be reasonable under the circumstances for the officers “to believe that the evidence . . . will aid in a particular apprehension or conviction.” (*Warden v. Hayden, supra*, 387 U.S. 294, 307 [18 L.Ed. 2d 782, 792]; *Guidi v. Superior Court, supra*, 10 Cal. 3d 1, 11–14 [109 Cal. Rptr. 684, 513 P.2d 908].)’ (*People v. Hill, supra*, 12 Cal. 3d at pp. 755–756; italics added.)”

Applying this test to the items referred to in the question we conclude first that authorized personnel of the department may seize contraband observed in plain sight during the course of a lawful warrantless inspection of a community care facility.

A traditional method of securing compliance with the Act is to take appropriate legal and administrative action for violation of the Act. We therefore conclude that authorized personnel of the department may seize evidence of such violations which they find during the course of a lawful warrantless inspection of a community care facility.

Finally we consider items which pose a threat to the safety of those cared for in community care facilities. The safety of an item depends upon how it is used and the competence of the user among other circumstances. Further, an item used in a particular way by a particular person may be considered safe by one observer and unsafe by another in the absence of some common reference for safety used by both. We believe that the legislative scheme of the Act provides for such a common reference for measuring safety in the form of regulations. Section 1531 of the Act provides that the regulations “shall prescribe standards of safety and sanitation,” etc.

The controlling test for seizure of items is whether it is reasonable to believe that seizure of the item is necessary to secure compliance with or to prevent a violation of the Act. We conclude that authorized personnel of the department may seize an item during the course of a warrantless inspection of a community care facility on the ground that it poses a threat to those cared for in the facility only if it evidences a violation or threatened violation of the Act or some regulation adopted pursuant to the Act.
