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OPINION	:	No. 79-807
of	:	October 31, 1979
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SUBJECT: LIMITED CLINICAL TECHNOLOGIST'S LICENSE—The Department of Health's authority to establish categories for limited clinical technologists' licenses is not limited to the four specialized fields set forth in section 1261.5 of the Business and Professions Code.

The Honorable Robert W. Naylor, Assemblyman, Twentieth District, has requested an opinion on the following question:

Does the Department of Health have the authority pursuant to section 1261 of the Business and Professions Code to establish a limited clinical technologist's license in the field of blood coagulation or other fields, or is its authority to issue such licenses restricted to the four specialized fields set forth in section 1261.5 of that code?

CONCLUSION

The Department of Health's authority to establish categories for limited clinical technologists' licenses is not limited to the four specialized fields set forth in section 1261.5 of the Business and Professions Code. Pursuant to section 1261 of that code the

Department of Health may issue such licenses in any or all sciences applied in a clinical laboratory as it may determine by regulation. Whether clinical blood coagulation or any other field is such a science lies within the sound discretion of the department to decide.

ANALYSIS

Clinical laboratory technologists are licensed by the Department of Health pursuant to the provisions of section 1200 *et seq*. of the Business and Professions Code.[1] Section 1261 contemplates the issuance of both a general technologist's license and limited technologists' licenses.[2] As to the latter, section 1261 provides: that "[t]he department may

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[1] All section references are to the Business and Professions Code unless otherwise indicated.

[2] Section 1261 provides in full:

> *"The department shall issue a clinical laboratory or limited technologist's license to each person who is a lawful holder of a baccalaureate or an equivalent or higher degree, who has applied for such license on forms provided by the department and has met the requirements of this chapter and such reasonable qualifications as are established by regulation of the department.* However, an exception to the degree requirement may be made by the department for the clinical laboratory technologist's license only if the applicant for such license has completed a minimum of two years of experience as a licensed trainee or the equivalent thereof, as determined by the department, doing clinical laboratory work embracing the various fields of clinical laboratory activity in a clinical laboratory approved by the department. In addition, the applicant applying under this section must have 90 semester hours or equivalent quarter hours of university or college work or the equivalent thereof, as may be determined by the department, which shall have included at least 23 semester hours or equivalent quarter hours of science courses as specified by regulations of the department. Additional college or university work which includes courses in the fundamental sciences may be substituted for one of the two years of experience in the ratio of 30 semester hours or equivalent quarter hours for each year of experience. This exception shall not apply to the limited technologist's license. The department shall hold examinations to aid it in judging the qualifications of applicants. *Licenses may be issued in any or all of the sciences applied in a clinical laboratory as determined by regulation established by the department.* The department shall establish by regulation the college courses or majors to be included in the college or university training and the amount and kind of training or experience required. Examinations, training, or experience requirements for limited licenses shall cover only the science concerned. *The department may establish by regulation the various technologist sciences and shall establish the minimum requirements for training and experience and required courses or major for each.*
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> "Experience as a clinical laboratory technologist in any branch of the armed forces of the United States may be considered equivalent to the experience as a trainee, if such experience is approved by the department. Each year of training and experience as a

establish by regulation the various technologist sciences and shall establish the minimum requirements for training and experience and required courses or major for each" and that "[l]icenses may be issued in *any* or *all* of the sciences applied in a clinical laboratory as determined by regulation established by the department." (Emphasis added.)

Despite this apparent plenary authority of the department to determine the "technologist sciences" and the categories of limited technologists' licenses, section 1261.5 arguably limits that authority by purportedly granting to the department the authority to issue limited technologists' licenses in only four specific fields. That section states that "[t]he department may issue clinical laboratory licenses limited to the fields of toxicology, clinical chemistry, clinical microbiology, or immunohematology" and further requires the department to "adopt regulations to conform to" section 1261.5.[3] If only section 1261.5 were contained in the law, the familiar maxim *expressio unius est exclusio alterius* would generally require a conclusion that the department would be limited to issuing limited technologist's licenses to the four enumerated fields.

This apparent anomaly is explainable from an examination of the law prior to 1970 and the 1970 amendments to the clinical technologists' law. Immediately prior to its amendment and redrafting in 1970, section 1261 merely provided that a clinical

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clinical laboratory technologist in such armed forces shall be equivalent to 15 semester hours, which shall be credited to the minimum number of hours required to qualify for licensure as a trainee. The semester hours acquired in this manner shall not consist of the science courses required by the department under this section. The maximum number of hours granted shall not exceed 60 semester hours or its equivalent." (Emphasis added.)

[3] Section 1261.5 provides in full:

"The department may issue clinical laboratory technologist's licenses limited to the fields of toxicology, clinical chemistry, clinical microbiology, or immunohematology.

"To qualify for admission to the examination for a special clinical laboratory technologist's license, an applicant shall have all the following:

"(a) Have graduated from a college or university maintaining standards equivalent, as determined by the department, to those institutions accredited by the Western Association of Schools and Colleges or an essentially equivalent accrediting agency with a baccalaureate or higher degree with a major appropriate so the field for which a license is being sought.

"(b) Have one year of full-time postgraduate training or experience in she various areas of analysis in the field for which a license is being sought in a laboratory which has a permit issued under this chapter or which the department determines is equivalent thereto.

"The department shall adopt regulations to conform to this section."

technologist's license should be issued to each person found to be otherwise qualified and who passed an examination covering the fields of biochemistry, hematology, and microbiology "except that the examination for a special clinical laboratory technologist's license shall be concerned only with the subject or subjects in which the license is to be issued."[4] Section 1261 did not in any manner purport to authorize the department (then "the board") to determine the areas of such special or limited licenses. However, section 1264 then provided such authority. It stated before its redrafting in 1970:

> "Licenses issued under this chapter may cover work in any one basic science, or may cover proficiency in the entire field of clinical laboratory work."

Significantly, in 1970 in an unpublished opinion of the California Attorney General, dated May 7, 1970 (I.L. 70–85), we were presented with the question whether section 1264 permitted the issuance of a limited license in the field of "clinical blood coagulation," the basic question presented herein. We then stated and concluded as follows:

> "At the present time, you have indicated that so-called 'limited licenses' have been authorized by the Department pursuant to section 1264 for the fields of microbiology, chemistry, and immunohematology.[5]
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> "What constitutes a 'basic science' is, of course, primarily a matter for interpretation by the agency charged with implementation of this statute,

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[4] Section 1261, as amended by Statutes of 1968, Chapter 1294, provided:

> "The board shall issue a clinical laboratory technologist's license to each person found by it to be properly qualified and it shall hold written, oral, or practical examinations to aid it in judging the qualifications of applicants. The examinations for license to work in a clinical laboratory as a technologist shall cover the fields of biochemistry, hematology, and microbiology, except that the examination for a special clinkal laboratory technologist's license shall be concerned only with the subject or subjects in which the license is to be issued. The minimum prerequisites for entrance into the examination shall be one of the following. . . ."

The succeeding paragraphs then set forth in detail the educational and experience requirements for potential licensees.

[5] For the text of the regulations providing for a limited technologist's license in these three fields, see Cal. Admin. Register 69, No. 24C setting forth prior Cal. Admin. Code, tit. 17, § 1031. The regulations were amended, effective November 24, 1970, to conform to present section 1261.5, (Cal. Admin. Register 70, No. 48C) which itself became law on November 23, 1970 (Cal. Const., Art. IV, § 8(c), as it then read). Thus, since November 24, 1970 limited technologists' licenses have been provided for in the four fields of clinical chemistry, microbiology, immunohematology, and toxicology.

namely, the Department of Public Health. Within reasonable limits, we believe that a court would uphold a determination by the Department that 'clinical blood coagulation' is a 'basic science' as long as such a determination was not arbitrary. Accordingly, we indicated no legal objection to a proposed regulation of the Department which would authorize a limited license in toxicology. Letter to Hon. Louis Saylor, M.D., Director of Public Health, January 15, 1970. The same conclusions are applicable to the proposal at hand.

"If it is determined, therefore, by the Department that the field in question is a 'basic science' similar to the fields previously made the subject of limited licenses, it appears that such a license may be issued pursuant to further regulations of the Department."

Thus immediately prior to the 1970 amendments to the clinical technologist's licensing law this office was presented with the exact question presented herein, that is, whether a limited technologist's license could properly issue in the field of clinical blood coagulation. Construing the general language of section 1264, which was similar to that now found in section 1261, we concluded that the resolution of the question was one for the department, and depended upon a proper determination of what was a "basic science," or to use the wording found in present section 1261, what would be a "clinical laboratory science." We, however, believed that an affirmative determination by the department relating to "clinical blood coagulation" would be upheld by a court. Thus, but for the 1970 amendments to the law, unpublished opinion I.L. 70–85 would be dispositive herein.

We now reach a discussion of the 1970 amendments. An examination of these amendments discloses that the apparent inconsistency between sections 1261 and 1261.5 resulted from the fact that the redrafting of the former and the addition of the latter were accomplished by different statutes passed at the same session of the Legislature. Section 1261 was redrafted by Chapter 1066 of the Statutes of 1970, whereas section 1261.5 was added by Chapter 1495 of the Statutes of 1970. As legislative changes to the statute relating to clinical technologist licensing, they were in no way interrelated and apparently had different purposes.[6] Nevertheless, both were enacted into law. In such a case, our task is

[6] Chapter 1066 amended and added a number of sections. It amended sections 1204, 1205, 1261, 1262 and 1263, and added sections 1207, 1208, 1269 and 1270. It was also part of a series of related bills by the same author to amend the law relating to clinical laboratories and clinical technologists (Sen. Bill Nos. 702, 703 and 704 (1970 Reg. Sess.) by Senator Lewis Sherman). For example, section 1264, *supra*, the existing general authority of the department to determine by regulation those sciences which would be the subject of limited technologist's licenses was completely recast (and hence, essentially repealed) by Chapter 1065, Statutes of 1970 which had its genesis in Assembly Bill 703. Thus, Chapter 1066 was part of a fairly comprehensive

not to determine which law would have been preferred by the Legislature, or which law is better policy. Our task is explained in much detail in the relatively recent case of *In Re Thierry S* (1977) 19 Cal. 3d 727, wherein the California Supreme Court applied the "highest chapter rule" to a situation even more complicated than that presented herein.[7] As the Court noted (*Id*. at p. 745, fn. 17) "in this state the highest chapter number rule and related analyses, when applicable, constitute the exclusive method designated by the Legislature for interpreting legislative intent and resolving conflicts between statutes enacted at the same session," In *In Re Thierry S* the Court coincidentally was also faced with the task of determining whether a "point one" statute would prevail over the basic numbered statute. The "related analysis" to implement the 'highest chapter rule" was explained as follows:

> "As we have previously noted, the significant difference between the two statutes in question is that section 625.1 imposes an 'in the presence of the arresting officer' requirement for warrantless juvenile misdemeanor arrests, while section 625 contains no similar limitation. In order to resolve the conflict between these differing arrest provisions we turn to the doctrine of implied repeal. When two or more statutes concern the same subject matter and are in irreconcilable conflict the doctrine of implied repeal provides that the most recently enacted statute expresses the will of the Legislature, and thus to the extent of the conflict impliedly repeals the earlier enactment. Repeals by implication, however, are not favored and there is a presumption against operation of the doctrine. *(Cal. Drive-in Restaurant Assn. v. Clark* (1943) 22 Cal. 2d 287, 292 [140 P.2d 657, 147 A.L.R. 1028].) 'They are recognized only when there is no rational basis for harmonizing the two

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amendatory scheme.

By contrast, section 1261.5 was added by the enactment of Assembly Bill No. 1495, by Assemblyman William Campbell, and appears to have been an isolated piece of legislation adding a single section to the then existing law.

[7] Section 9605 of the Government Code provides in its relevant part:

> "In the absence of any express provision to the contrary in the statute which is enacted last, it shall be conclusively presumed that the statute which is enacted last is intended to prevail over statutes which are enacted earlier at the same session and, in the absence of any express provision to the contrary in the statute which has a higher chapter number, it shall be presumed that a statute which has a higher chapter number was intended by the Legislature to prevail over a statute which is enacted at the same session but has a lower chapter number.
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> "For the purposes of this section, every statute of an even-numbered year of a two-year regular session of the Legislature is deemed to bear a higher chapter number than any statute enacted in the odd-numbered year of that session.

> potentially conflicting statutes [citation], and the statutes are "irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation. The courts are bound, if possible, to maintain the integrity of both statutes if the two may stand together."' (*In re White* (1969) 1 Cal. 3d 207, 212 [81 Cal. Rptr. 780, 460 P.2d 980].)" (*Id*. at p. 744.)

Essentially our task is to determine if sections 1261 and 1261.5 "are in irreconcilable conflict" with respect to the issuance of limited licenses so that "the two cannot have concurrent operation," or whether there is a "rational basis for harmonizing" them.

We conclude that there is a rational basis for harmonizing the provisions so that both may be given operative effect. In its material part herein section 1261 is basically a general statute which gives general authority to the department (1) to establish by regulation what are the "technologist sciences," (2) to establish by regulation whether limited technologists' licenses shall be issued in any or all of such sciences, and (3) to establish by regulation the education, training and experience requirements for such licenses. By contrast, section 1261.5 may be said to merely set forth four of such technologist sciences, provide for limited licensing in those four sciences, provide the training and experience requirements therefor, and direct that implementing regulations be established therefor. *The language of the section in no way states that these four areas for limited licensing are exclusive.*[8] Thus, it is our opinion that section 1261.5 should be considered as merely an exception to the general provisions of section 1261 relating to limited licenses, and the designation of the fields for such licensing. The applicable rule of statutory construction then would be that "exceptions to a general provision of a statute are strictly construed and will not be understood as a limitation on general powers except to the extent the limitation fully appears." (*Estate of Banerjee, supra*, 21 Cal. 3d at p. 540.)[9]

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[8] If section 1261.5 were the only relevant enactment, exclusivity could be found from an application of the maxim *expressio unius est exclusio alterius* already alluded to at the outset herein. However, we are not aware that such a rule of construction may be used to completely nullify the provisions of another relevant general statute. *(Cf. Estate of Banerjee* (1978) 21 Cal. 3d 527, 539–540; compare, e.g., *People v. Tanner* (1979) 24 Cal. 3d 515, 521.)

[9] We note again that the Department of Health has by regulation only established the four categories of limited technologist's licenses provided for in section 1261.5. It could be argued that this constitutes an administrative construction by the department that it is limited to those four categories. The department's action however, is just as consistent with the conclusion that it has merely responded to the legislative directive of the final paragraph of section 1261.5, leaving action under the general provisions of section 1261 for a later date.

We also note the argument that sections 1261 and 1261.5 establish different categories of licenses, that is, "limited" and "special" respectively. Assuming this to be the case, then section 1261.5 would not limit the department's discretion to issue "limited" licenses in additional fields such as clinical blood coagulation.

Accordingly, it is concluded that the Department of Health's authority to establish categories for limited clinical technologists' licenses is not limited to the four specialized fields set forth in section 1261.5 of the Business and Professions Code. Therefore, it lies within the sound discretion of the department (1) to determine whether clinical blood coagulation or other clinical sciences are "technologist sciences," and assuming they are, (2) to determine whether a limited technologist's license should issue in the particular field (I.L. 70–85, *supra*).

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In our view, however, such argument draws too fine a distinction, that is, between licenses "limited" to a clinical technologist science, and "special" licenses "limited" to specified fields. We prefer our analysis which teaches the same result.