

OPINION NO. 89-100**Syllabus:**

A person who for hire, fee, compensation, or reward promised, offered, expected, received, or accepted, either directly or indirectly, flushes and recovers an embryo ovum or ova from a donor animal and subsequently implants such embryo ovum or ova in a recipient animal, thereby effecting a nonsurgical embryo transfer, is engaged in the "practice of veterinary medicine," as defined in R.C. 4741.01(F).

To: Harold E. Wilkin, D.V.M., President, Ohio Veterinary Medical Board, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 29, 1989

You have requested my opinion regarding the classification of a particular type of nonsurgical embryo transfer as the practice of veterinary medicine. Specifically, you wish to know whether a nonsurgical embryo transfer that consists of the flushing and recovery of an embryo from a donor animal and the subsequent implantation of such embryo in a recipient animal constitutes the practice of veterinary medicine for purposes of R.C. 4741.19(A). R.C. 4741.19(A) provides that "[n]o person shall *practice veterinary medicine*, or any of its branches, without a license issued by the state veterinary medical board pursuant to sections 4741.11 to 4741.13 of the Revised Code, or a temporary permit issued pursuant to section 4741.14 of the Revised Code." (Emphasis added.) Accordingly, to the extent that the foregoing embryo transfer procedure constitutes the practice of veterinary medicine, a person who performs such a procedure must be licensed to practice veterinary medicine by the Ohio Veterinary Medical Board in accordance with the terms of R.C. 4741.11-13,¹ or possess a temporary permit to practice

¹ R.C. 4741.11 states the following:

Whenever an applicant for a license passes the examination and has graduated from a veterinary college approved by the state veterinary medical board, the board shall issue a certificate of license to that effect, signed by the members and bearing the seal of the board. The certificate shall show that the successful applicant has qualified under the laws of this state and the requirements of the board and that the applicant is duly licensed and qualified to practice veterinary medicine.

Upon request, the board shall furnish to an applicant for a license who fails to pass the examination a written report showing reasons for his failure in said examination.

R.C. 4741.12 further authorizes the Ohio Veterinary Medical Board to issue a license without examination to an applicant who is, *inter alia*, licensed to practice veterinary medicine in a state other than Ohio, and R.C. 4741.13 also authorizes the Board to issue a license without examination to an applicant who successfully completes the examination conducted by the National Board of Veterinary Examiners for a license to practice veterinary medicine in Ohio.

veterinary medicine issued by the Board pursuant to R.C. 4741.14.²

I commence my consideration of your question with R.C. 4741.01, which defines a variety of terms as they are used in R.C. Chapter 4741 (veterinarians). In particular, R.C. 4741.01(F) defines the "practice of veterinary medicine" in the following manner:

The "practice of veterinary medicine" means the practice of any person who:

- (1) For hire, fee, compensation, or reward promised, offered, expected, received, or accepted, either directly or indirectly, diagnoses, prognoses, treats, administers to, prescribes for, operates on, manipulates, or applies any apparatus or appliance for any disease, pain, deformity, defect, injury, wound, or physical condition of any animal, or for the prevention of or to test for the presence of any disease of any animal, or who holds himself out as being able or legally authorized to act in such manner, or who holds himself out as being a veterinarian involved in environmental health, public health, food hygiene, preventive medicine, space medicine, or other special areas;
- (2) Practices dentistry or surgery on any animal;
- (3) Represents himself as engaged in the practice of veterinary medicine as defined in divisions (F)(1) and (2) of this section;
- (4) Uses any words, letters, or titles in such connection and under such circumstances as to induce the belief that the person using them is engaged in the practice of veterinary medicine.

R.C. 4741.01(E) also defines an "[a]nimal" as "any animal other than man and includes fowl, birds, fish, and reptiles, wild or domestic, living or dead." Thus, any person who for hire, fee, compensation, or reward promised, offered, expected, received, or accepted, either directly or indirectly, diagnoses, prognoses, treats, administers to, prescribes for, operates on, manipulates, or applies any apparatus or appliance for any disease, pain, deformity, defect, injury, wound, or physical condition of any animal is engaged in the practice of veterinary medicine, R.C. 4741.01(F)(1), and, accordingly, must be licensed therefor by the Ohio Veterinary Medical Board, R.C. 4741.11; R.C. 4741.19.³

² R.C. 4741.14 reads as follows:

The state veterinary medical board may issue without examination a temporary permit to practice veterinary medicine to an applicant for admission to the examination, provided such applicant meets all conditions and requirements of section 4741.09 of the Revised Code. Such temporary permit shall expire on the day following the announcement of the grades of the first examination given after such temporary permit is issued. No more than two temporary permits may be issued to any one applicant and no applicant shall receive a second temporary permit after he has failed the examination.

R.C. 4741.09, to which R.C. 4741.14 refers, describes the educational, personal, and testing requirements that must be satisfied by a person who wishes to be admitted to the practice of veterinary medicine in Ohio.

³ R.C. 4741.20 sets forth several different exemptions from compliance with the provisions of R.C. 4741.01-.29, including those pertaining to licensure by the Ohio Veterinary Medical Board. See R.C. 4741.20(A)-(F). In particular, R.C. 4741.20(A) states that R.C. 4741.01-.29 do not apply to "[a] person who administers to animals, the title to which is vested in himself, except when said title is so vested for the purpose of circumventing the provisions of [R.C. 4741.01-.29]." See generally 1962 Op. Att'y Gen. No. 3026, p. 390. R.C. 4741.20 also states that R.C. 4741.01-.29 do not apply to "[a] person who advises with respect to or performs acts which the

R.C. 4741.05 authorizes the Ohio Veterinary Medical Board to "make and prescribe all rules necessary for its government and *such rules as are necessary to carry out the provisions of sections 4741.01 to 4741.29 of the Revised Code.*" (Emphasis added.) Such rules as have been adopted by the Board presently appear at 7 Ohio Admin. Code Chapter 4741. Implicit in the emphasized portion of R.C. 4741.05 quoted above is authority on the part of the Ohio Veterinary Medical Board, in the reasonable exercise of its discretion, to enact and promulgate rules or regulations that are addressed to individual or specific aspects of the practice of veterinary medicine, provided, however, that such rules or regulations are compatible and consistent with the provisions of R.C. Chapter 4741 that pertain to that subject. As you note in your letter, the Board has adopted a rule addressed to embryo transfer procedures. Rule 4741-1-12 reads as follows:

(A) "Embryo transfer" is the art of removing the embryo(s) ova or ovum from the reproductive tract and the transfer of the embryo(s) ova or ovum to the reproductive tract of another animal for gestation and birth, either by:

(1) The surgical method of transfer through the body wall and directly into the uterus.

(2) The nonsurgical method of transfer through the cervix and into the uterus. Such methods require the administration of controlled or prescription substances.

(B) The practice of embryo transfer will, at certain stages, require the services of a licensed doctor of veterinary medicine. Those stages may include, but are not limited to:

(1) Any surgical procedure performed for the purpose of embryo transfer; or

(2) The administration of any controlled or prescription substance as defined in division (D)(1) of section 4729.02 of the Revised Code, or as defined in rules 4729-5-11 and 4729-5-15 of the Administrative Code, and is limited to use by a licensed veterinarian.

(C) Any person who engages for a fee or other consideration in the practice listed in paragraph (B) above, or in the generally accepted practice of veterinary medicine without being licensed to practice veterinary medicine, shall be guilty of practicing in violation of division (F)(1) of section 4741.01 and division (A) of section 4741.19 of the Revised Code.

This rule shall not apply to a physician licensed to practice medicine in this state or his supervised assistant, or doctors (PhDs) in related fields of study while engaged in medical research.

Rule 4741-1-12(A) thus classifies an embryo transfer procedure as either surgical, 7 Ohio Admin. Code 4741-1-12(A)(1), or nonsurgical, 7 Ohio Admin. Code 4741-1-12(A)(2). Both of those transfer methods require in conjunction therewith the administration of controlled or prescription substances. *Id.* See generally 1988 Op. Att'y Gen. No. 88-008 at 2-25 (discussing provisions of R.C. Chapters 3719 (controlled substances) and 4729 (pharmacists; dangerous drugs) as applied to practitioners of veterinary medicine). The rule further states that the practice of embryo transfer "will, at certain stages, require the services of a licensed doctor of veterinary medicine," 7 Ohio Admin. Code 4741-1-12(B), and then lists by way of example, not limitation, two instances in which the services of a licensed doctor of veterinary medicine are required in connection with an embryo transfer. The rule thus states that the services of a licensed doctor of veterinary medicine are required in order to carry out "[a]ny surgical procedure performed for the purpose of embryo transfer," 7 Ohio Admin. Code 4741-1-12(B)(1), or to administer "any controlled or

state veterinary medical board by rule has prescribed as accepted management practices in connection with livestock production," R.C. 4741.20(D), or "[a] physician licensed to practice medicine in this state, or his assistant, while engaged in medical research," R.C. 4741.20(F). The exemption set forth in R.C. 4741.20(F) for a licensed physician or his assistant is also reflected in the final paragraph of 7 Ohio Admin. Code 4741-1-12, which addresses embryo transfer procedures, and which is discussed in greater detail in the text that follows.

prescription substance as defined in [R.C. 4729.02(D)(1) or 7 Ohio Admin. Code 4729-5-11 and 4729-5-15]" in connection with an embryo transfer, whether surgical or nonsurgical in nature, 7 Ohio Admin. Code 4741-1-12(B)(2).

A member of your staff has informed me that in this instance your inquiry is to be understood as directed to one particular aspect of the nonsurgical embryo transfer procedure. In that regard you wish to know whether the actual flushing, recovery, and subsequent implantation of an embryo ovum or ova, apart from the administration of any controlled or prescription substance in conjunction therewith, is to be considered the practice of veterinary medicine for purposes of R.C. 4741.19(A). You have indicated that your question is prompted by the fact that the current version of rule 4741-1-12 does not expressly state that the flushing, recovery, and subsequent implantation of an embryo ovum or ova constitute the practice of veterinary medicine.

I am of the opinion that the flushing, recovery, and subsequent implantation of an embryo ovum or ova constitute, in the appropriate circumstances, the practice of veterinary medicine for purposes of R.C. 4741.19(A). On this point I find that the answer to your question is provided by the express language of R.C. 4741.01(F). As I have noted above, R.C. 4741.01(F) defines the "practice of veterinary medicine" as used in R.C. 4741.01-29. As pertains herein, R.C. 4741.01(F)(1) states unambiguously and without qualification that the "practice of veterinary medicine" means the practice of any person who "[f]or hire, fee, compensation, or reward promised, offered, expected, received, or accepted, either directly or indirectly,....*treats, administers to,...*[or] *manipulates...any...physical condition of any animal.*" (Emphasis added.) The terms "treat," "administer to," and "manipulate," as they are used in R.C. 4741.01(F)(1), are not otherwise defined by statute, and thus, in accordance with the rule of construction that appears in R.C. 1.42, they are to be "read in context and construed according to the rules of grammar and common usage." *Webster's New World Dictionary* 18 (2d college ed. 1978) thus states that "administer," the intransitive verb, means, *inter alia*, "to furnish help or be of service [*administer to an invalid's needs*]." (Bracketed material and emphasis in original.) The term "manipulate" is further defined, in pertinent part, as "to work, operate, or treat with or as with the hand or hands; handle or use, esp. with skill." *Id.* at 862. Finally, the entry for the term "treat" includes the following definition: "to give medical or surgical care to (someone) or for (some disorder)." *Id.* at 1514.

Applying the foregoing definitions of these terms within the context in which they appear in R.C. 4741.01(F)(1), it is fairly self-evident that a person who flushes and recovers an embryo ovum or ova from a donor animal and subsequently implants such ovum or ova in a recipient animal, thereby effecting a nonsurgical embryo transfer, is, in so doing, treating, administering to, and manipulating the physical conditions of the animals in question. Accordingly, a person who for hire, fee, compensation, or reward promised, offered, expected, received, or accepted, either directly or indirectly, performs such a service is engaged in the "practice of veterinary medicine," as defined in R.C. 4741.01(F), notwithstanding the fact that such person may not have personally administered a controlled or prescription substance in connection with such procedure. 7 Ohio Admin. Code 4741-1-12(B)(2). It follows, therefore, that a person who performs such a service must be licensed to practice veterinary medicine by the Ohio Veterinary Medical Board in accordance with the terms of R.C. 4741.11-13, or possess a temporary permit to practice veterinary medicine issued by the Board pursuant to R.C. 4741.14.

Accordingly, it is my opinion, and you are advised that a person who for hire, fee, compensation, or reward promised, offered, expected, received, or accepted, either directly or indirectly, flushes and recovers an embryo ovum or ova from a donor animal and subsequently implants such embryo ovum or ova in a recipient animal, thereby effecting a nonsurgical embryo transfer, is engaged in the "practice of veterinary medicine," as defined in R.C. 4741.01(F).