

CLIENT NEWS BRIEF

No. 4

January 2009

**COURT RULES THAT UNLICENSED EMPLOYEE VOLUNTEERS
MAY NOT ADMINISTER INSULIN TO STUDENTS IN
NON-EMERGENCY SITUATIONS**

A superior court has invalidated the California Department of Education's ("CDE") legal advisory permitting voluntary unlicensed school employees to administer insulin to students. Therefore, school districts can no longer use unlicensed district employees to administer insulin to students, except in emergencies.

In 2007, the CDE entered into a settlement agreement in K.C. et al. v. Jack O'Connell et al. ([See 2007 CNB No. 31.](#)) The K.C. litigation was a class-action lawsuit concerning the administration of insulin to students, among other issues. As a part of the K.C. settlement agreement, the CDE agreed to issue a legal advisory to school districts outlining their obligations to provide insulin to diabetic students and expanding the number of individuals who may administer insulin to students.

Prior to the CDE advisory, there were seven categories of people who could administer insulin to students at school: (1) the student; (2) the school nurse or school physician; (3) a licensed school employee who is supervised by the school nurse, school physician, or other appropriate individual; (4) a contracted registered nurse from a private agency or a public health nurse employed by the county health department; (5) a parent/guardian who so elects; (6) an individual designated by the parent/guardian who is not a school employee; or (7) an unlicensed school employee, but only in emergencies. (Cal. Code Regs., tit. 5, § 604.)

The CDE advisory authorized an eighth category to administer insulin to students: a voluntary school employee who is unlicensed but who has been adequately trained to administer insulin pursuant to the student's treating physician's orders as required by a Section 504 plan pursuant to the Federal Rehabilitation Act of 1973 or an individualized education plan ("IEP").

The American Nurses Association, along with several other nursing organizations, filed suit in the Sacramento County Superior Court seeking a finding that the CDE legal advisory was invalid. The plaintiffs claimed that the CDE could not override existing state law that, according to the plaintiffs, limited the administration of insulin to the seven categories described above.

The court agreed and held the CDE's legal advisory was invalid to the extent that it authorized an eighth category of persons to administer insulin to students.

While it is likely that the court's decision will be appealed, voluntary unlicensed school employees are presently prohibited from administering insulin to students, except in emergencies. Therefore, California school districts must ensure that only persons in the first seven categories administer insulin to students at school.

If you have questions about this ruling or the administration of insulin to students, please contact one of our seven offices statewide.

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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