



CLIENT NEWS BRIEF

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UNLICENSED SCHOOL PERSONNEL CANNOT LEGALLY ADMINISTER INSULIN TO DIABETIC STUDENTS

On June 8, 2010, the California Court of Appeal ruled that school district employees who are not licensed nurses may not administer insulin to students with diabetes. (American Nurses Association v. Jack O'Connell, et. al, Cal.App.4th, 2010 WL 2280555.) The decision resulted from litigation between the American Nurses Association and the California Department of Education ("CDE") regarding the administration of insulin to diabetic students at school or school activities. The litigation was initiated in 2007 after the CDE published a legal advisory which indicated that unlicensed school personnel may administer insulin during the school day to any student whose Section 504 plan or individual education plan ("IEP") required such administration.

The Court of Appeal did not address whether California law *should* allow unlicensed personnel to administer insulin; rather, it addressed whether the law *does* authorize this practice. Interpreting the Nursing Practice Act, the court found that the administration of medication (absent limited exceptions not applicable here) is a nursing function which may only be performed by a licensed nurse or an unlicensed person with specific statutory authorization.

The court then looked at Education Code section 49423, which allows a pupil who must take medication during the school day to "be assisted by the school nurse or other designated school personnel." The court found that rendering "assistance" was not the same thing as "administering" medication. In addition, California regulations clarified that "other school personnel" rendering medication assistance must not only consent to administer the medication, but must be legally able to do so. Since the Nursing Practice Act only authorizes licensed nurses to administer medication, Education Code section 49423 was insufficient to authorize administration of insulin by unlicensed school personnel.

The court sounded sympathetic with the fiscal challenges currently faced by schools and the resulting shortages in funding for and availability of school nurses. In a concurring opinion, Justice Scotland admitted that the result of this case "makes little sense" but that he "must defer to the Legislature's policy judgment . . . regardless of

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whether they were the product of legitimate concern for the safety of diabetic public school students or the result of a labor organization protecting its turf and flexing its political muscle.” Ultimately, however, the court found that there was no evidence that funding shortages would prevent schools from ensuring that licensed nurses were available to administer insulin in compliance with students’ Section 504 plans and IEPs.

If you have questions regarding this decision or its impact on your school district, please contact one of our [seven offices](#) located statewide or consult our [website](#).

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