

**AN IMPORTANT MESSAGE FROM
THE AMERICAN NURSES ASSOCIATION AND CALIFORNIA SCHOOL NURSES ORGANIZATION**

To: School Administrators, School Nurses, School Personnel and Parents of Children with Diabetes
Re: Update on Medication Administration Litigation
Date: August 14, 2009

The American Nurses Association (ANA) and the California School Nurses Organization (CSNO) continue to fight to ensure that students with diabetes receive safe, quality healthcare services from licensed professionals during the school day and at school sponsored functions. As the new school year begins, it is important that you know your rights and responsibilities so that students receive the diabetes care to which they are entitled under federal and California law.

In August 2007, the California Department of Education (CDE) issued a Legal Advisory to all California K-12 public schools advising that unlicensed school personnel could administer insulin. The CDE's advice is contrary to California law, which requires medication to be administered by licensed personnel, except in emergencies or other limited circumstances that do not apply in the school setting. In order to protect the rights, health and safety of students with diabetes who require diabetes care at school, ANA, CSNO and other nursing organizations filed a lawsuit against CDE to invalidate the Legal Advisory because it ignores and disobeys California law. The American Diabetes Association (ADA) was also a party in the case. On December 26, 2008, the trial court agreed and declared the Legal Advisory invalid. Specifically, the trial court's ruling states that the Legal Advisory "is invalid and has no force or effect to the extent that it authorizes the administration of insulin to students by school personnel who are not licensed to administer insulin...." The trial court's ruling says that CDE "lack[s] legal authority under state and federal laws" to change California law by permitting unlicensed school personnel to administer insulin. The trial court also issued an order (peremptory writ of mandate) instructing CDE to remove from the Legal Advisory all language that sanctions or advises the administration of insulin to students by school personnel who are not authorized to administer insulin under California statutes.

In February 2009, ADA and CDE appealed the court's ruling. Under California law, while the appeal is pending, the trial court's ruling is "stayed." This means that the trial court's ruling cannot be enforced until the appeal has been decided. Specifically, the stay order states that "[e]nforcement of the judgment and peremptory writ of mandate, filed...on December 26, 2008, is stayed by operation of law during the pendency of [the] appeal." The stay does not:

- x change California law;
- x permit unlicensed school employees to administer insulin;
- x strip the right of students with diabetes to receive the care they need during the school day from licensed personnel;
- x require unlicensed school personnel to administer insulin;
- x require nurses to train and/or supervise unlicensed personnel to administer insulin;
- x give school officials or others the right to take adverse action against school employees who are not licensed to administer medication if they refuse to violate California law by doing so;
- x give school officials or others the right to take adverse action against nurses who refuse to train and/or supervise the administration of insulin by unlicensed school personnel;
- x excuse schools from their legal responsibilities under federal disability laws to provide students with a free, appropriate public education.

Although California law still prohibits unlicensed school personnel from administering insulin, the stay does allow CDE to continue publishing its legal advisory. However, the Legal Advisory is not mandatory and does not require any school employee to administer insulin. It also does not require that schools demand, appoint or ask unlicensed personnel to administer insulin. Rather, the Legal Advisory is nothing more than a program guideline.¹ Under California law, the guidelines contained in the Legal Advisory "shall not be prescriptive."² "The California Department of Education, with the approval of the State Board of Education, may issue and periodically update an advisory providing non-binding guidance on the administration of medication to pupils and otherwise assisting pupils in the administration of medication. The advisory shall be a program guideline under Education Code section 33308.5."³ On the other hand, California law is mandatory and, as the trial court correctly recognized, it prohibits unlicensed personnel from administering insulin.

Under California law, the only people who may lawfully administer insulin to students in California's K-12 public schools are: (1) the student, with authorization of the student's licensed healthcare provider and parent/guardian; (2) a licensed school nurse or school physician employed by the LEA; (3) an appropriate licensed school employee (i.e., a registered nurse or a licensed vocational nurse) supervised by a school physician, school nurse or other appropriate individual; (4) a contracted registered nurse or licensed vocational nurse from a private agency or registry, or by contract with a public health nurse employed by the local county health department; (5) a parent/guardian who so elects; (6) the parent's/guardian's designee, if the parent/guardian so elects, so long as the designee is a volunteer who is not an employee of the local education agency; and (7) an unlicensed voluntary school employee with appropriate training, only in emergencies (defined in California law as epidemics or public disasters). Emergencies do not include personnel shortages, fiscal constraints or lack of available licensed personnel.

ANA and CSNO are deeply committed to the safety of all students and want to ensure that students with diabetes in California's schools receive the healthcare services they need. Schools must comply with both federal anti-discrimination laws and California law. They can do so by making arrangements for properly licensed healthcare personnel to administer insulin to students who require it during the school day or at school sponsored functions.

If you are a parent of a student with diabetes who requires insulin during the school day or at school related activities, take action now to protect your child's rights, health and safety by:

1. Obtaining updated medical orders from your child's health care provider for the upcoming school year;
2. Sending a letter requesting a meeting with school administrators and the school nurse to discuss how the school will provide the healthcare services that your child needs, insisting that the school provide an appropriately licensed and trained healthcare professional to administer insulin in accordance with your child's diabetes management plan and emphasizing that this is critical to your child's health and safety;
3. Reviewing the school's policies, guidelines and procedures regarding medication administration; and
3. Obtaining a 504 Plan or IEP and making sure that your child's school follows it throughout the school year.

If you are a parent of a student with diabetes or an unlicensed school employee and have been asked or required to administer insulin in your school or district, please send an email containing the following information to: csnoexec@aol.com.

- Your name and telephone number
- Child's name and date of birth, if applicable
- Child's method of insulin administration, if applicable
- School district, name and city
- Description of problem
- Title of person who is administering insulin at school
- Whether child has a 504 Plan, IEP or other arrangement and description of requirements under the plan, if applicable
- Whether you have been subjected to adverse action and a description of such action, if applicable

¹ Education Code section 33308.5.

² Education Code section 33308.5.

³ Cal. Code Reg., tit. 5, § 611.

