

LEGAL NEWS AND HIGHLIGHTS

By Maureen C. Whelan, Lead Staff Attorney

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THE INSULIN CASE IS DECIDED BY THE COURT OF APPEAL

ONLY LICENSED SCHOOL EMPLOYEES (Registered Nurses or Licensed Vocational Nurses) MAY GIVE INSULIN INJECTIONS TO DIABETIC STUDENTS

- Unlicensed Classified Employees **May Not** “Volunteer” To Give Insulin Injections
- Unlicensed Classified Employees **May** Perform Certain Other Health Procedures

In *American Nurses Association v. Jack O’Connell*, (*American Diabetes Association Intervenor*) (June 8, 2010), the California Court of Appeal in Sacramento decided that California law requires employees who give insulin injections to students during the school day to be licensed, i.e. to be either Registered Nurses or Licensed Vocational Nurses (“RNs” or “LVNs”). (See Arnie Braafladt’s e-mail dated 6/10/2010 which has a copy of the decision.)

The Court decided that unlicensed classified school employees, teachers, or administrators cannot legally “volunteer” to give students insulin injections. Unless the California Supreme Court decides to hear the case, this decision should be final within 60 days.

The American Diabetes Association has also been working to persuade the Legislature to pass a statute allowing unlicensed school employees (those without an RN or an LVN) to give insulin injections to diabetic students. So far, these bills have not passed.

Two years ago, State Superintendent of Public Instruction Jack O’Connell sent an advisory to all school districts stating that any school employee, including classified school employees could “volunteer” to give insulin shots to diabetic children. O’Connell issued this advisory as part of the settlement of a lawsuit. The American Diabetes Association sued O’Connell claiming that California school districts do not have enough nurses and therefore that children were being deprived of their rights under the disability statutes. The American Diabetes Association claimed that school districts must be required to allow unlicensed employees to “volunteer” to give insulin injections.

In this lawsuit, the American Nurses Association sued O’Connell seeking to reverse the settlement. The American Nurses Association won in Sacramento Superior Court (Highlights December 2008, No. 1). This Court of Appeal decision upholds the Superior Court’s decision.

The Court of Appeal said that under California law, giving injections is a nursing function (Nursing Practice Act, Business and Professions Code §2727). Therefore, unlicensed school employees cannot give insulin injections to students, except in an emergency. “Emergency” is defined as an event similar to an epidemic or a public disaster, and it does not include the long-

term, chronic condition presented by the shortage of nurses. The Court found that the Legislature's requirement that only licensed RN or LVN employees administer insulin injections does not violate the federal disability laws that guarantee disabled children an education.

What Does this Case Mean for Classified Employees?

- **Unless the law is changed, or the California Supreme Court takes up the case, classified employees (who are not LVNs or RNs) may not give insulin injections.**
- This decision may be final within 60 days.

What Medical Procedures Can Unlicensed Classified Employees Provide for Students?

- Classified employees may give glucagon to diabetic pupils, provided that these employees have received adequate training, volunteer, and other requirements are followed (Ed. Code §49414.5).
- Classified employees may assist students with asthma inhalers (Ed. Code §49423.1).
- Classified employees may assist students with bee-sting kits (also called epinephrine or epi-pens) to prevent anaphylactic reactions (Ed. Code §49414).
- Classified employees may be trained in cardio-pulmonary resuscitation (CPR), (Ed. Code §49413).
- Classified employees may assist students with medically prescribed pills, provided that they are trained and follow other rules, a copy of the prescription is provided, the parents agree, the protocol is detailed, the school does not have liability, the school can consult with the doctor or health care provider regarding questions etc. (Ed. Code §49423, §49423.5, §49423.6).
- Classified employees may also provide physical health care services such as catheterization, gastric tube feeding, suctioning or other services if they are trained to do so, and the procedure is routine for the student, poses little potential harm for the pupil, does not require a nursing assessment, and other requirements are followed (Ed. Code §49423.5).