

1) Please type the answer to PT-A below. (Essay)

===== Start of Answer #1 (1570 words) =====

To: James Wood

From: Applicant

Date: February 21, 2017

RE: Columbia Nurses Association Demand Letter Response

Dear Mr. Wood,

Please find attached to this note my draft of a letter responding to the Columbia Nurses Association on your behalf.

Best,
Applicant

February 21, 2017

Marilyn Cones, Esq.
Associate General Counsel
Columbia Nurses Association
2000 Franklin Street
Mapleton, Columbia

Re: Legal Advisory

Dear Ms. Cones:

I am writing in response to Columbia Nursing Association's ("CNA's") demand letter, dated February 16, 2017, regarding the Columbia Department of Education's (the "Department's") Legal Advisory notifying the superintendents of Columbia's school districts that unlicensed school personnel are authorized under the School Medication Act to administer insulin to students with diabetes, and are not prohibited from doing so by the Nursing Practice Act. The Department is declining to withdraw the Legal Advisory for the reasons discussed below.

The first argument in your letter is that the School Medication Act does not authorize unlicensed school personnel to administer insulin to students with diabetes, but rather authorizes unlicensed school personnel to assist with the administration of medication by helping students administer insulin to themselves. This position seems to be at odds with the direction of Section 1(b) of the School Medication Act, which declares that the statute should be construed broadly to give effect to the intent of the Legislature. When discussing statute interpretation, Davis v. Francisco Howell School District, a case you cite towards the end of your letter, explains that when construing a statute, courts begin with the language of the statute and give the statute's words their usual and ordinary meaning. The plain language of the School Medication Act provides "...any student who is required to take medication prescribed for him or her by a physician may be assisted by a school nurse or by other school personnel, whether or not such personnel are licensed as health care professionals..." According to the Third Edition of the 21st Century American Dictionary, the definition of "assist" is "to give support or aid to another by doing something for the other or by helping the other do something him- or herself." While the definition of "assist" includes helping others do something for themselves, the definition also includes giving support or aid to another by doing something for another, such as administering insulin to a diabetic student.

The court in Davis further suggests that if a statute is ambiguous, the court looks

to extrinsic materials including legislative history and background facts. Your letter also mentions that any ambiguity regarding this point can be resolved by looking at the School Medicine Act's legislative history, specifically noting that in 2002, the Governor vetoed an amendment to the School Medicine Act that would have authorized unlicensed school personnel to administer insulin to students with diabetes. However, the Governor's veto does not prove that the legislative history reveals an intent to prevent unlicensed school personnel from administering insulin to diabetic students, and, in fact, the opposite is true. Section 3 of the Historical and Statutory Notes of the School Medicine Act discusses the 2002 amendment in which the Legislature passed a bill to amend the School Medicine Act to include that unlicensed school personnel "shall administer assistance to students with disabilities, including 'administering insulin' to them." The note continues that, "In the veto message, the Governor stated that 'Section 3 already provides that any student who is required to take...medication...may be assisted by unlicensed school personnel, and hence already authorizes such personnel to administer insulin to students with diabetes.'" The Governor vetoed the amendment because he believed it was duplicative of the statute's plain language, not because he disagreed with the Legislature. Accordingly, there is a clear legislative intent that unlicensed school personnel should be allowed to administer insulin to students with diabetes.

Your second argument is that the Nursing Practice Act prohibits unlicensed school personnel from administering insulin to diabetic students and the administration of insulin is not covered under the exception provided in Section 4 (e) of the Nursing Practice Act because "the practice of nursing includes the administration of medication." The fact that one of the functions of nursing listed under Section 3(a)(2) of the Nursing Practice Act is the administration of medication does not preclude others, including unlicensed school personnel, from administering medicine. Under CNA's interpretation of this statute, because the administration of medicine is listed in the statute, the only people allowed to administer medicine ordered by a physician, dentist, podiatrist, or clinical

psychologist are licensed nurses. This interpretation is unreasonable and would prevent parents without medical licenses from administering prescription medicine to their children, such as antibiotics for a bacterial infection or prescription cream for a rash. The plain language of Section 4(e) of the Nursing Practice Act provides that the statute does not prohibit, "the performance by any person of such duties as required in the physical care of a patient in accordance with orders issued by a physician, as long as such a person does not hold him- or herself out as a nurse." Your suggestion that Section 4(e) includes "as long as such a person does not engage in the practice of nursing" is misleading and contrary to the plain language of the statute. The statute simply limits non-nurses from "holding themselves out" or presenting themselves as nurses.

Your third argument begins with the statement that the Individuals with Disabilities Education Act ("IDEA") does not displace state statutes. The Department agrees that IDEA does not displace state statutes, but instead works in conjunction with State and local laws. Our interpretation of the School Medication Act is supported by legislative intent and provides that unlicensed school personnel are authorized to administer insulin to diabetic students. Your letter cited the U.S. Department of Health and Human Services' publication *Helping the Student With Diabetes Succeed: A Guide for School Personnel* for support, but this publication provides ample support for why unlicensed school personnel need to be able to administer insulin to diabetic students. The publication mentions that insulin must be administered at unpredictable as well as predictable times throughout the school day, including on field trips and during extracurricular activities. The publication even references unlicensed school personnel when it advises, "As a result, coordination and collaboration among members of the school health team--including the school nurse, if any, other school personnel, and the student--...are essential for helping students manage their diabetes in the school setting." It is impractical and unrealistic to expect that school nurses will be available to administer insulin to students at all times during the school day when Columbia is currently experiencing a severe nursing

shortage.

According to a publication issued by the Columbia Board of Nursing on January 15, 2017, entitled *The Nursing Shortage in Columbia: Policy Advisory*, there are 14,000 diabetic children in Columbia's public schools, yet only 2,800 school nurses. The advisory elaborates that 26 percent of schools have no school nurses, the current nursing shortage is "a public health crisis," and the shortage of nurses is "likely to become even more severe in the foreseeable future." Unlicensed school personnel need to be able to administer insulin to diabetic students because there are not nearly enough school nurses available to cover all diabetic students at all times during the school day. Further, it is not enough for unlicensed school personnel to be able to assist students administer insulin to themselves because many diabetic children are too young or are otherwise unable to administer insulin to themselves. Applying the CNA's interpretation that only school nurses may administer insulin would force diabetic students to drop out of public school when the school does not have a regular school nurse, which is clearly contrary to Congress's statement that one of IDEA's purposes includes "ensuring that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related health care and other services designed to meet their unique needs and prepare them for further education, employment, and independent living."

Your letter also cites Davis as providing support for the assertion that IDEA does not grant students with disabilities any right to medicine except as needed. The holding of Davis is not relevant to the issue of whether or not unlicensed school personnel should be able to administer insulin to diabetic students, but rather holds that IDEA does not grant any student with any disability the right to receive needed medication in a potentially dangerous dosage. The Department agrees with the holding of Davis and believes that unlicensed school personnel should only be able to administer insulin to diabetic children "as needed."

Your letter ends with the assertion that because insulin has been identified as a "high-alert" medication by the United States Department of Health and Human Services, it is presumptively too dangerous for unlicensed school professionals to administer. However, insulin's presence on the list of high-alert medications does not indicate that the listed medicines are "too dangerous" for an unlicensed school personnel to administer because the list also includes sterile water. Many medications are dangerous when used improperly or taken in an improper dosage. An unlicensed school personnel following orders issued by a physician when administering insulin to diabetic students does not present any of the dangers suggested by insulin's placement on the "high-alert" medication list.

For the reasons stated above, the Department of Education declines to withdraw its Legal Advisory.

Sincerely,

James Wood
General Counsel

Question #1 Final Word Count = 1570

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END OF EXAM