



## **Advisory Re: Administration of Medication by Non-licensed School Employees**

### **Do non-licensed school employees have the legal authority to administer medication?<sup>1</sup>**

In 1978, the Pennsylvania Attorney General's office issued a legal opinion stating there is nothing in the law which requires a teacher to dispense medication to students. Therefore, it is PSEA's position that a School District is not authorized to adopt a local regulation requiring its teachers to dispense medication. This reasoning also applies to nonprofessional employees.

Any school employee who administers medication, other than a certified school nurse or health aide who has a registered nurse or practical nurse license may be acting in violation of Pennsylvania's Professional Nursing Law (63 P.S. § 211 et seq.) and the rules and regulations of the State Board of Nursing (49 Pa. Code § 21.1 et seq.).

The Professional Nursing Law defines the practice of professional nursing as: "Diagnosing and treating human responses to actual or potential health problems... and executing medical regimens as prescribed by a licensed physician or dentist." 63 P.S. § 212(1). The Regulations promulgated pursuant to the above law provide that:

Administering to a patient a drug ordered for that patient by a licensed physician of the healing arts in the dosage prescribed is a procedure regulated by this section. A licensed registered nurse, responsible for administering a drug, may supervise a graduate nurse or a nursing student in an approved nursing education program in the administration of the drug. ... 49 Pa. Code § 21.14(a).

The regulations applicable to Licensed Practical Nurses (LPN) provide that the LPN may also administer medication provided that the physician's prescription or orders are written. 49 Pa. Code § 21.145. LPNs may administer emergency medication pursuant to an oral order in an emergency situation.

In addition to potentially violating these laws and regulations, a non-licensed school employee who dispenses medication may be at great risk for liability to the extent that the above-noted provisions are interpreted by a court to prohibit administration of medication by non-nurses. In this regard, the Political Subdivision Tort Claims Act, 42 Pa.C.S.A. § 8541 et seq., which insulates school employees from liability for injuries caused by negligence as long as the employees' actions are within the scope of employment, will not insulate the employee against illegal or criminal actions.

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<sup>1</sup> This alert does not cover administration of Epinephrine-Automatic Injectors which under state statute may be administered by non-licensed school employees under a number of conditions. 24 P.S. § 14-1414.2, effective December 30, 2014.

The bottom line is that a non-licensed school employee who administers medication may be liable for civil damages or criminal sanctions or both.

**What is the Association's advice regarding steps you should take when your employer directs non-licensed employees to administer medication?**

Non-licensed school employees who administer medication may be at risk for liability for any injuries that result from their performance of this duty. Unfortunately, employees who refuse a directive may be disciplined or discharged for insubordination. Therefore, it is critically important that non-licensed school employees request assistance from the Association if they are directed to administer medication. Specifically, you should:

1. Contact the local to request assistance in communicating with the employer about the directive. In appropriate cases, the UniServ Representative, with the assistance of the Region Attorney when deemed necessary, may assist the local in communicating with the employer explaining that *non-licensed employees cannot administer medication unless the employer takes a series of steps to protect employees from liability (e.g., a hold harmless agreement; verification of insurance coverage; physician approval and instructions; parental consent)*.
2. Contact the local to discuss whether the Association can address the matter in the future through bargaining language that prohibits the employer from directing non-licensed persons to administer medication.