



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

August 9, 2005

Suzy Harris
Legal Specialist
Office of Student Learning and Partnerships
Oregon Department of Education
255 Capitol Street NE
Salem, OR 97310

Re: Administration of insulin injections to students
DOJ File No. 581020-GE0111-05

Dear Ms. Harris:

In your letter to me of March 16, 2005, you state that there has been a marked increase in children and youth who require insulin injections during the school day. As a result, school staff may be called upon to administer insulin injections to students. In this connection, you asked the following questions:

1. Can a school staff person who is not licensed as a nurse or physician give insulin injections to a student during school hours?

Short answer: Yes.

2. If "yes", who must train/supervise and monitor this non-licensed school staff person?

Short answer: A registered nurse may delegate the administration of insulin injections to a non-licensed person. The registered nurse bears responsibility for supervision and training.

3. Can a parent (in lieu of the school nurse) provide the training that enables the non-licensed school staff person to administer insulin during school hours?

Short answer: No.

4. Can a physician (in lieu of the school nurse) provide the training that enables the non-licensed school staff person to administer insulin during school hours?

Short answer: It appears that physicians have not been authorized to delegate this function to a non-licensed person. Physicians may delegate medical tasks, including the administration of injectable drugs, to certified physician assistants.

Discussion

A. Authority of School Districts to Administer Injectable Medications.

I did not find any school laws that specifically address the authority of a school district to administer injectable medications; nor did I find any laws that prescribe how injectable medications must be administered in a school setting.

However, the legislature has addressed the administration of non-injectable medication by school personnel. ORS 339.869 directs the State Board of Education to adopt rules that prescribe how trained school staff may administer prescription and non-prescription medication to students. The statute prohibits a school district from requiring a staff member to administer medication unless the staff member has received appropriate training. In conformance with the statute, the State Board has adopted a rule that requires school districts to adopt policies and procedures for designating which school personnel may administer medications to students and how these persons must be trained and supervised.¹ School personnel who administer non-injectable medication under these procedures are shielded from civil or criminal liability for their good faith acts.²

The fact that the legislature has directed the State Board to regulate the means and manner by which school districts may administer non-injectable medications does not mean that school districts lack the authority to administer injectable medications. Other statutes authorize schools to provide health services to students. Local school boards are generally "responsible for educating students within the district"³ and for performing such duties "as the wants of the district may from time to time demand."⁴ School districts have statutory authority to provide auxiliary services to students, including medical and dental services.⁵ For purposes of state funding to schools, the legislature has recognized that a district's net operating expenditures may include the cost of health services.⁶ The Teacher Standards and Practices Commission may license persons as school nurses who are qualified to conduct and coordinate health services programs in schools.⁷ Moreover, state and federal laws require school districts to provide individualized special education to children with disabilities. Special education responsibilities may include an array of related services, including medical services for diagnostic and evaluation purposes, if these services are necessary to assist a child to benefit from special education.⁸ Since a child with a disability may require insulin injections or other health services in order to

¹ OAR 581-021-0037.

² ORS 339.870. The statute does not provide immunity for acts and omissions amounting to gross negligence or willful and wanton misconduct.

³ ORS 332.072.

⁴ ORS 332.105(1)(b).

⁵ ORS 332.111.

⁶ ORS 327.006(6).

⁷ ORS 342.455.

⁸ ORS 343.035(15).

benefit from education, it follows that school districts have the authority to provide health services to students and may be required to provide these services in order to comply with the Individuals with Disabilities Education Act.⁹ Health services would clearly include injecting medication to a patient through an intravenous or subcutaneous route.

B. Persons who May Administer Injectable Medications.

Although a school district has the authority to direct its staff to administer injectable medications, the staff person must be qualified to do so. Persons licensed as nurses are authorized to provide direct care and to supervise others in providing care to patients.¹⁰ Registered nurses may delegate nursing tasks to unlicensed persons under protocols established by the Board of Nursing.¹¹ The Board of Nursing has adopted a rule stating that a registered nurse “may delegate tasks of nursing care, including the administration of subcutaneous injectable medications.”¹² Under the rule, the responsibility, accountability and authority for teaching and delegating the nursing task lie solely with the registered nurse based on his or her professional judgment, including an assessment of the complexity of the task and whether the unlicensed person can safely perform the task without direct supervision.¹³ Based on the above, I conclude that a registered nurse may delegate the nursing task of administering injections to an unlicensed school staff person in conformance with the procedures established by the Board of Nursing.

C. Liability.

As discussed above, ORS 339.870 has a provision that shields a school employee from civil or criminal liability when administering non-injectable medication. This provision applies only to non-injectable medications and is not applicable to a school employee who administers injections under the supervision of a registered nurse. Consequently, school officials performing this task are covered by the general laws concerning the standard of care required of a government official and the liability of a public body for acts of its employees. The registered nurse has responsibility for the assessment of the needs of the individual child, the type of intervention that is necessary, and the training and supervision of the school staff person to whom the task is delegated. The school staff person would bear responsibility for carrying out the task in accordance with the direction and written instruction of the registered nurse. Under the Oregon Tort Claims Act, a school district, as a public body, must defend, save harmless and

⁹ These services may also be required under Section 504 of the Rehabilitation Act of 1973, 29 USC § 794.

¹⁰ The practice of nursing includes “diagnosing and treating human responses to actual or potential health problems.” ORS 678.010(8).

¹¹ ORS 678.010(10) states:

“Practice of registered nursing” means the application of knowledge drawn from broad in-depth education in the social and physical sciences in assessing, planning ordering, giving, *delegating*, teaching, and supervising care which promotes the person’s optimum health and independence. (emphasis supplied)

¹² OAR 851-047-0030. Unlike registered nurses, licensed practical nurses have less authority to delegate nursing tasks under ORS 678.010(9), and the Board of Nursing has not adopted a rule that permits licensed practical nurses to supervise others in the administration of injections.

¹³ The delegation is must be client-specific and is not transferable; the registered nurse must also develop written instructions for the nursing task and must document the nurse’s ongoing supervision of the unlicensed person. OAR 851-047-0030(2) and (3).

indemnify its employees against claims that the employee caused damages to third parties, unless the employee's actions constituted willful or wanton misconduct.¹⁴

D. Administration and Supervision by Parents or Family Members.

The administration of injectable medications constitutes the practice of nursing and may only be carried out by a licensed nurse.¹⁵ An exception applies if the procedure is performed by a member of the patient's immediate family. However, the family member is not authorized to delegate this task to another person outside the patient's immediate family.¹⁶

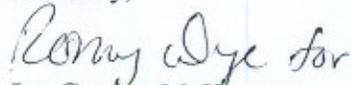
E. Physicians.

You also asked whether a physician could provide training for school personnel to administer insulin injections. The Board of Medical Examiners regulates the activities and the scope of practice of medical doctors. The Board has not adopted rules that expressly authorize a doctor to delegate the provision of medical services to lay persons. Physician assistants are licensed medical providers who may provide medical services under the supervision of a physician,¹⁷ and a physician assistant could administer injectable medications to students in a school setting. However, physician assistants do not have authority to delegate this task to unlicensed persons, such as school staff members.

Physicians may also give medical orders to nurses to administer injectable medications, although registered nurses already have inherent authority to perform this medical service and to delegate the task to unlicensed persons.

Please feel free to contact me if you have additional questions or concerns.

Sincerely,



Joe Gordon McKeever
Senior Assistant Attorney General
Education Section

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¹⁴ ORS 30.285.

¹⁵ ORS 678.021.

¹⁶ For discussion of this issue, see 42 Op Atty Gen 307 (1982).

¹⁷ ORS 677.515.