

1977 S.C. Op. Atty. Gen. 265 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-332, 1977 WL 24671

Office of the Attorney General

State of South Carolina

Opinion No. 77-332

October 26, 1977

*1 Acting under the directions of a physician, and with the written consent of the parents, a principal, teacher, or school aide, under certain limited circumstances, may administer to a student a pre-measured injection of a hormone from an 'insect sting kit' as a first aid measure in the event of an emergency.

TO: W. C. Hawkins
District Superintendent
Lexington County School District No. 5

QUESTION PRESENTED:

Can a principal, teacher, or school aide, administer a pre-measured injection of a hormone from an insect sting kit where the school has been requested to take such action under the written directions of a physician and is provided with the written consent of the parents?

STATUTES, CASES, ETC.

S.C. Code Ann. §§ 40-33-10, et.seq. (1976);

S.C. Code Ann. §§ 40-33-20; 40-33-50;

S.C. Code Ann. §§ 40-47-60 (1976);

S.C. Code Ann. §§ 44-53-110, et.seq. (1976);

S.C. Code Ann. § 15-1-310 (1976);

Hammond v. Scott, ___ S.C. ___, 232 S.E.2d 336 (1977);

Graham v. Charleston Cty. School Bd., 262 S.C. 314, 204 S.E.2d 384 (1974);

Gordon v. Gordon, 133 Ga.App. 520, 211 S.E.2d 374 (1974);

Aitchison v. United States, 98 A.2d 791, 793 (D.C.Mun.Ct. 1953);

Guerrieri v. Tyson, 147 Pa.Super. 239, 24 A.2d 468 (1942);

Jarrett v. Goodall, 113 W.Va. 478, 168 S.E.2d 763 (1933);

Reutter & Hamilton, The Law of Public Education, pp. 370-72 (1970).

DISCUSSION OF ISSUES:

Certain individuals are extremely allergic to insect stings. When stung, these individuals may have an allergic reaction of such severity that their life is endangered unless immediate medical attention is provided. The immediate injection of a hormone, such as epinephrine, may provide necessary relief until the individual can be taken to a hospital for further medical treatment.

In this instance, a student attending Irmo Elementary School in Lexington School District No. 5 is allergic to insect stings. The student's physician has provided written instructions that 'a responsible adult' should administer an injection of epinephrine 'immediately' if the student is stung by a bee, hornet, or wasp. An 'insect sting kit', containing a hypodermic filled with a pre-measured dose of the hormone, has been provided, together with instructions from the physician to keep the kit on hand and to 'instruct several faculty how to use it.' The parents of the student have provided a written consent for 'anyone' to administer the shot if the student is stung by a bee. The question is raised whether school personnel, such as the principal, teachers, or school aides can administer such an injection under these circumstances.

School officials have limited authority with regard to the provision of medical treatment to students. Although the teacher, and other appropriate school officials, stand 'in loco parentis' in the place of the parent for the administration of discipline, there is no implied delegation of authority to exercise lay judgment, as a parent may, in the matter of the treatment of injury or disease suffered by a pupil. See [Guerrieri v. Tyson](#), 147 Pa.Super. 239, 24 A.2d 468, 469 (1942) (holding that public school teachers who immersed pupil's hand with infected finger in scalding water against his will, causing intense pain and permanent disfigurement of hand, were liable for damages resulting, where treatment was not immediately necessary and teachers were not acting in emergency).

*2 With regard to medical services for students, schools have implied authority to assume responsibility for first-aid services rendered to a pupil who is injured or becomes ill while engaged in school activities. Otherwise, there may be serious delay before a student receives the attention which he should have, with possible serious consequences. Generally speaking, the school's authority extends no further. See [Jarrett v. Goodall](#), 113 W.Va. 478, 168 S.E.2d 763 (1933) (holding that the Board of Education of a school district was without authority to pay for medical services rendered injured pupil, except for first aid in emergency).

In most circumstances, school personnel, like other laymen, are prohibited from administering any medication or treatment, because this constitutes the unlawful practice of nursing or medicine. See [S.C. Code Ann.](#) §§ 40-33-20; 40-47-60 (1976). However, there are exceptions. Under those statutory provisions relating to nurses, it is stated that nothing therein is intended to prohibit 'nursing assistance in case of an emergency'. [S.C. Code Ann.](#) § 40-33-50 (1976). Similarly, with regard to those statutory sections relating to physicians, it is stated that no restrictions regarding the practice of medicine shall be construed 'to prohibit service in cases of emergency.' [S.C. Code Ann.](#) § 40-47-60 (1976). Thus, in those cases where a bona fide emergency exists, a school employee, such as the principal, teacher, and school aides, who are responsible adults, under a physician's written orders, could administer medication through an injection without violating those provisions of law which restrict the practice of nursing and medicine to persons who are licensed.²

The question remains, however, as to what situations constitute an 'emergency' under the terms of the exceptions to the general provisions that the administration of medication by laymen constitutes the unlawful practice of medicine or nursing.³

There are no cases in South Carolina which construe the term 'emergency' as used in the statutes. There is very little case law in other jurisdictions. See [Aitchison v. United States](#), 98 A.2d 791, 793 (D.C.Mun.Ct. 1953) (holding that neither the treatment of a person suffering from advanced cancer several times a week for two months, nor the treatment of a person several hours after he had complained of chest pains, constituted 'emergency' cases which would exonerate a person from the charge of unlawful practice of medicine.) An emergency is generally defined as a sudden or unforeseen occurrence or combination of circumstances which call for immediate action or remedy. Whether or not an emergency exists under a given set of circumstances is a question of fact. See [Gordon v. Gordon](#), 133 Ga.App. 520, 211 S.E.2d 374 (1974).

Because of the numerous variables involved, before school lay personnel undertake the responsibility to administer medication in an emergency, it is advised that the school official request the parents of the student in question to obtain from their physician a written statement detailing the symptoms which are manifested when an allergic reaction from an insect sting occurs. Additionally, the physician should state in writing for the school officials that the allergic reaction to the insect sting will be of such severity that this patient's life will be endangered unless he receives immediate medical attention; that if symptoms of an allergic reaction manifest themselves, it will constitute a medical emergency for this patient; and that, in cases of such an emergency, school personnel who have been instructed in the administration of the drugs involved should immediately administer the prescribed injection. This written statement by the physician will alert the school personnel about the symptoms which they can expect to see if the student is stung by an insect, and will provide them written notice of the nature of the emergency and the need for immediate action.

*3 In this same light, teachers, or other school employees, who are not licensed to practice medicine or nursing, cannot be required by the school to undertake the responsibility of administering medication to students.⁴

However, such school personnel may voluntarily assume the responsibility of administering this medication in the course of an emergency. In any such instance, however, the individual school employee should be instructed in the use of the hypodermic, preferably by the student's physician himself, or by a licensed nurse who has consulted with the physician as to the appropriate instructions. Additionally, an expanded consent form prepared by the school should be executed by the parents showing that the parents have been informed by their physician of the potential dangers involved when an injection of this nature is administered by a layman in an emergency, and have knowingly consented thereto. If the minor has reached the age of 16 years or older, his written consent should be also obtained. See S.C. Code Ann. § 44-45-10 (1976).

CONCLUSION:

School districts have authority to assume responsibility for first-aid services rendered to a pupil who is injured or becomes ill while engaged in school activities. In cases where a bona fide emergency exists, and a doctor or nurse is not available, school personnel, such as the principal, teachers, or school aides, who are responsible adults, may administer certain medication through an injection, if acting under a doctor's written orders and where prior written consent of the parents has been obtained.

Nathan Kaminski, Jr.
Assistant Attorney General

Footnotes

Note

1. Any person licensed to practice nursing, or practical nursing, under the provisions of S.C. Code Ann. § 40-33-10, et seq. (1976), may administer medication as authorized and prescribed by a licensed physician. Under the circumstances described in this opinion, it is clear that a school nurse, licensed to practice, could administer an injection to a student if required to do so. If available, the school nurse obviously should be called upon to administer any injection in an emergency. This opinion deals only with those school personnel, not licensed to practice nursing or medicine, who might be required to administer an injection as a first aid measure during the course of an emergency when the school nurse is absent or otherwise unavailable.

2. Epinephrine, the drug to be administered in this case, does not appear to be a 'controlled substance' within the meaning of the provisions of the Narcotics and Controlled Substances Act (S.C. Code Ann. §§ 44-53-110, et seq. [1976]), and is not subject to the restrictions contained in the law relating to 'controlled substances.'

3. If a medication is administered during the course of an emergency, there is no violation of the criminal provisions relating to the unlawful practice of medicine or nursing. However, this does not preclude the possibility that a school employee might be held civily liable for negligent conduct while administering the medication. See Hammond v. Scott, ___ S.C. ___, 232 S.E.2d 336 (1977) (holding forth the general principle that a teacher may be liable for injury to students under their supervision if an injury is caused by the teacher's negligence or failure to exercise reasonable care to protect the students). However, a school employee may not be liable for ordinary acts of negligence when rendering emergency care because of the provisions of the 'Good Samaritan' statute, S.C. Code Ann. § 15-1-310 (1976), which states:

Any person, who in good faith, gratuitously renders emergency care at the scene of an accident or emergency to the victim thereof, shall not be liable for any civil damages for any personal injury as a result of any act or omission by such person in rendering the emergency care or as a result of any act or failure to act to provide or arrange for further medical treatment or care for the injured person, except acts or omissions amounting to gross negligence or willful or wanton misconduct. (emphasis added)

As in the case of determining exceptions to the statutory prohibitions against the unlawful practice of nursing or medicine, what constitutes an 'emergency' under the 'Good Samaritan' statute is a question of fact.

4 Although a teacher may have an implied obligation to perform certain duties not enumerated in the contract, the administration of medication should not be considered such an implied obligation. See Reutter and Hamilton, The Law of Public Education, pp. 370–72 (1970). This is so because the teacher may be held individually liable for negligent conduct while administering medication. See Note 3, infra. On the other hand, the school district itself is not liable for negligent conduct of its employees under South Carolina law. See Graham v. Charleston County School Board; 262 S.C. 314, 204 S.E.2d 384 (1974) 1977 S.C. Op. Atty. Gen. 265 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-332, 1977 WL 24671

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