

1979 S.C. Op. Atty. Gen. 222 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-139, 1979 WL 29141

Office of the Attorney General

State of South Carolina

Opinion No. 79-139

December 27, 1979

***1 SUBJECT: Education, Students**

Under most circumstances, school personnel unlicensed in medicine or nursing may not treat sick or injured students. While they may administer care in emergencies, they may be held liable for any negligence on their part unless they and their acts come within the protection of the Good Samaritan statute.

To: Dr. W. B. Royster
Superintendent
Anderson County School District #5

QUESTION:

What services may be provided sick or injured students by school employees or volunteers in a health room who are not licensed to practice medicine or nursing?

Statutes and Cases Cited:

[§§ 15-1-310, 40-33-10, 40-33-20, 40-33-50, 40-47-40 and 40-47-60 of the Code of Laws of South Carolina \(1976\);](#) [Hammond v. Scott](#), 268 S.C. 137, 232 S.E. 2d 336 (1977); [Guerrieri v. Tyson](#), 147 Pa. Super. 239, 24 A.2d 468, 469 (1942); [Dahl v. Turner](#), 80 N.M. 564, 458 P.2d 816 (1969); [Lee v. State](#), 490 P. 2d 1206, (Alaska 1971); [Mogabgab v. Orleans Parish School Board](#), 239 So. 2d 456 (La. 1979).

DISCUSSION:

Although the teacher, and other appropriate school officials, stand 'in loco parentis' 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);¹ however, despite this restriction on the authority to treat a child, teachers and school officials, of course, should not ignore emergencies involving illnesses of or injuries to students and should make sure that appropriate medical assistance is made available if needed. In [Mogabgab v. Orleans Parish School Board](#), 239 So.2d 456 (La. 1979), two coaches were found negligent in 'actively' denying medical assistance to a student for about two hours after symptoms of a heat stroke appeared. At one point, a coach had refused an offer to take the student to a doctor. In addition, the coaches were found negligent in ' . . . plying an ill-chosen first aid.'

In South Carolina, unlicensed school personnel, like other laymen, are prohibited from administering any medication or treatment in most circumstances because doing so constitutes the unlawful practice of nursing or medicine. See [§ 40-33-20](#) and [§ 40-47-60 of the Code of Laws of South Carolina \(1976\)](#). The statutes which define these practices are very broad in scope. See [§ 40-33-10\(f\) and \(g\) and § 40-47-40 of the Code](#);² however, these provisions would not prevent school personnel from giving treatment to a student during an emergency. See [§ 40-33-50\(3\) and § 40-47-60\(1\)](#).

Even when school personnel administer treatment under circumstances when they are legally permitted to do so, they might be held civilly liable for negligence in their actions. See [Hammond v. Scott](#), 268 S.C. 137 232 S.E. 2d 336 (1977);³ however, school personnel could be afforded protection by South Carolina's Good Samaritan statute, § 15–1–310, if they and their acts fall within its terms. The statute provides as follows:

*2 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 injuries 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 wilful or wanton misconduct. § 15–1–310.

Webster's Third New International Dictionary defines 'gratuitous,' in part, as meaning 'given freely or without recompense: granted without pay . . .'. Thus, school personnel who are paid to work in a health room or paid to give medical assistance under other circumstances would not be entitled to the protection of the Good Samaritan statute. In addition, whether a volunteer who regularly works in a health room would be able to claim protection under this statute is questionable. An Alaska Good Samaritan statute which protected persons who rendered emergency care without expecting compensation was construed as excluding those persons who have a duty to rescue. [Lee v. State](#), 490 P.2d 1206 (Alaska 1971), overruled on other grounds, 545 P.2d 165. The Court in that case found that policemen have a duty to rescue and did not extend the protection of the statute to the officer in that case. Here, even though a volunteer may serve without compensation, a Court might hold that he or she had assumed a duty of giving emergency care that would not entitle that person to the protection of the statute. Finally, if a person would otherwise come within the terms of the Good Samaritan statute, that person's assistance must be given 'at the scene', which would appear to exclude persons transporting the sick or injured. Although [Dahl v. Turner](#), 80 N.M. 564, 458 P.2d 816 (1969), noted the issue of whether transporting the injured could be 'care' under a New Mexico statute protecting persons administering emergency care at or near the scene of an emergency, the Court did not decide its merits. Until this issue is decided by a South Carolina Court, school personnel should not rely on the protection of the Good Samaritan statute when transporting accident victims.

CONCLUSION:

The opinion of this Office is that under most circumstances school personnel, including volunteers in a health room, would be prohibited from administering any treatment to a sick or injured child. Although personnel may administer treatment in an emergency without violating restrictions on the practice of nursing or medicine, they could be held liable for any negligence on their part unless they and their actions come within the protection of the Good Samaritan statute.

J. Emory Smith, Jr.
State Attorney

Footnotes

- 1 In [Guerrieri](#), teachers were held liable for injuries to a student which resulted from their holding his hand in scalding water because his finger was infected and then opening the resulting blisters with a needle. The Court found that the treatment was not necessary and that the defendants were not acting in an emergency.
- 2 § 40–33–10(f) The term 'practice of professional nursing' means the performance for compensation of any acts in the health care process involving the process of assessment, intervention and evaluation. This process includes observation, care and counsel of the ill, injured, infirm; the promotion and maintenance of health; the administration of medications and treatments as authorized and prescribed by a licensed physician or a licensed dentist. The application of the nursing process requires substantial specialized independent judgment and skill and is based on knowledge and application of the principles of biophysical and social sciences.

§ 40 –33–10(g) The term ‘practice of practical nursing’ means the performance for compensation, under the direction of a registered nurse, licensed physician or licensed dentist, of acts in health care maintenance, care of the ill, injured and infirm, and in administering treatments and medications as authorized and prescribed by a licensed physician or licensed dentist, which acts require knowledge, judgment and skill as prerequisites to licensure under this chapter, and which shall not include acts of diagnosis or prescription of therapeutic or corrective measures.

§ 40 –47–60 Any person shall be regarded as practicing medicine within the meaning of this article who (a) shall as a business treat, operate on or prescribe for any physical ailment of another, (b) shall engage in any branch or specialty of the healing art or (c) shall diagnose, cure, relieve in any degree or profess or attempt to diagnose, cure or relieve any human disease, ailment, defect, abnormality or complaint, whether of physical or mental origin, by attendance or advice, by prescribing, using or furnishing any drug, appliance, manipulation, adjustment or method or by any therapeutic agent whatsoever.

3 This case recognized that a teacher may be liable for an injury to students under his or her supervision if the injury is caused by the teacher's negligence or failure to exercise reasonable care to protect the student.

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