



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 8, 1996

The Honorable James L. Mann Cromer, Jr.
Member, House of Representatives
13 Woodwind Court
Columbia, South Carolina 29209

RE: Informal Opinion

Dear Representative Cromer:

By your letter of May 21, 1996, to Attorney General Condon, you have sought an opinion on the following question:

May school personnel, who are not licensed as physicians or nurses, assist students with taking Ritalin, which is prescribed for their attention deficit disorder by a licensed physician?

You have advised that the medication would be consumed in a school setting, where a licensed nurse is unable and unnecessary to be present on a regularly scheduled basis. The assistance to be provided by school personnel would consist of such acts as reminding the student of the time to take the medication, opening the vial for the student for whom the medication is labeled by a pharmacist, and assisting the student, if necessary, by placing the medication in his or her mouth.

As this Office has explained in previously rendered opinions, 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, see S.C. Code Ann. §15-78-10 et seq. (1995 Cum. Supp.), unless they and their acts come within the protection of the Good Samaritan statute, see S.C. Code Ann. §15-1-310.

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In an opinion of this Office dated November 30, 1983 (copy enclosed), we stated that "only properly licensed and supervised personnel should perform those health care functions regulated by the nursing and medical practice acts." We also suggested that the nursing and medical authorities be contacted in order to determine whether a particular health care function is regulated by any acts governing their practice. The health care function presently at issue is the administration of the prescribed medication Ritalin by school officials (not licensed nurses).

Using the 1983 opinion as a point of departure and researching the issue from several different perspectives, we learned that the South Carolina Board of Nursing has published a position on the assistance of individuals with medication in light of the South Carolina Nurse Practice Act, §40-33-10 et seq., particularly §40-33-10 (f), which subsection defines the practice of nursing. In its position statement the Board recognizes that there are settings and circumstances where clients may need assistance in taking medication and the regular presence of a nurse is not required. In these setting the policy allows a defined care giver to assist the client with the taking of medication. The position statement defines the assistance as including the acts that you included in your inquiry, such as reminding the student of the time to take the medication; opening the container that is properly labeled; or by placing the medicine in the student's mouth or properly applying the medication. A copy of the policy statement is enclosed.

In addition, the South Carolina School Boards Association has issued model guidelines on the procedure suggested to be followed before requests for administration of medication are accepted. The Association has also prepared a model policy for the actual administration of medication to the students. The procedures outlined in the Association's suggested policies appear to follow closely guidelines issued by the South Carolina Department of Health and Environmental Control for the administration and security of controlled substances in school settings. Copies of the model policies and DHEC's guidelines are also enclosed.

For the above reasons, the 1983 opinion appears to be applicable to your inquiry. Only properly licensed and supervised personnel should perform health care functions regulated by the nursing and medical practice acts. In light of the South Carolina Nurse Practice Act, the South Carolina Board of Nursing found the administration of medication to be a health care function regulated by the practice of nursing. However, as stated in the policy, a defined care giver (surrogate family member) would be allowed to perform such an act. As a result, DHEC and the School Boards Association have issued guidelines that a school district could follow to administer a medication such as Ritalin.

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As you are well aware, drug abuse is an ever-increasing problem. The possibility of negligence in administration of medications by non-medical personnel must also be considered in developing a policy allowing non-medical personnel to administer medications. While it appears that school personnel may be permitted to administer medications under certain, tightly-controlled circumstances, a school district must be cautious about undertaking such functions. If a question still remains after examining the enclosures, a school board may wish to consult with its legal counsel to arrive at a policy which will accommodate the needs of students to take medications properly and under supervision on a regular schedule, as prescribed by a physician. Concerned parents may wish to bring their concerns to the attention of their local school board, as well.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General

Enclosures