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February 14, 2000

Mr. Ralph Christofferson, Superintendent
Lake of the Woods ISD #390
P. O. Box 310 - Highway 11 West
Baudette, MN 56623

Re: Authority of School Nurses to Provide Non-Prescription Medications

Dear Mr. Christofferson:

This opinion is issued under Minn. Stat. § 8.07 (1998) in response to your question regarding the authority of school nurses to provide non-prescription medications to students upon a parent's request.

The duties and authority of nurses are set forth in the Minnesota Nurse Practice Act ("MNPA"). The MNPA defines the practice of professional nursing to include both "independent nursing functions" as well as "delegated medical functions." Minn. Stat. § 148.171(3) (1998). The MNPA makes no reference to any required procedures for nurses to follow regarding non-prescription medications. Nor does the MNPA address the dispensing of medications to students by school nurses.

A separate Minnesota statute, Minn. Stat. § 121A.22 (1998), sets the procedures that school personnel must follow in dispensing *prescription* medications to students. This statute states that school personnel must first receive a request from a student's parent to administer prescription medications. The statute further provides that the medication must be in a container with a label prepared by a pharmacist, must be administered in a manner consistent with instructions on the label, and must be administered by a school nurse, a public or private health related organization, or any other party where an agreement has been approved by the Commissioner of Children, Families and Learning. The above statute specifically exempts the administration of medication if it is purchased without a prescription, if it is for a student who is 18 years of age or older, if it is administered off school grounds, if it is used in connection with athletics or extra-curricular activities, or if it is administered by a public health agency. It is therefore clear that section 121A.22 provides no restrictions on school personnel administering non-prescription drugs.

The Minnesota Board of Nursing, however, has taken the position that a school nurse cannot administer over-the-counter medicine to a student at the parent's request, unless authorized by a doctor's order. In so doing, the Nursing Board states that under the Medical Practice Act

("MPA") a person is "practicing medicine" and needs to be licensed as such if the person "administer[s] any drug or medicine for the use of another." Minn. Stat. § 147.081, subd. 2 (1998). The Nursing Board notes that the term "drug or medicine" is not defined in the MPA and therefore presumes that it includes both prescription and non-prescription medications. Accordingly, the Nursing Board concludes that providing non-prescription medications to another person is a "medical function" that must be delegated to a nurse by a physician. This office disagrees with the Nursing Board's legal analysis, at least as it applies to situations such as the one raised by your question.

The Board's position would lead to the conclusion that any parent who gives a child a Tylenol tablet, an antibiotic ointment, or even cough medicine, would be engaged in the unauthorized practice of medicine and therefore would be guilty of a gross misdemeanor. Minn. Stat. § 147.081, subd. 2 (1998). Similarly, under the Nursing Board's interpretation, any caregiver or person responsible for the well-being of a child, elderly parent, or anybody else would need a physician's order before providing any over-the-counter medications to that person. This interpretation would mean that millions of Minnesotans have engaged in an unauthorized practice of medicine if they have entered a drug store and bought over-the-counter medicines for use by a family member.

It is well settled under Minnesota law that statutes are to be construed to avoid a result that is "absurd, impossible of execution, or unreasonable." Minn. Stat. § 645.17(1). Indeed, our laws must be construed in a "sensible" fashion. See *Thoresen v. Schmahl*, 24 N.W.2d 273, 277 (Minn. 1946). As indicated above, the conclusion that, for example, a parent cannot administer a non-prescription medication to his or her child, absent a physician's order, leads to an absurd and nonsensical result. Construing the MPA to require a physician's order for the administration of non-prescription medications in that and similar situations clearly produces the type of result that must be avoided in interpreting state laws.

Equally absurd and nonsensical is the proposition that a parent cannot request other persons temporarily responsible for the care of their children to provide the requested non-prescription medications. Examples of people that parents may entrust with the care of their children include other family members, daycare providers, babysitters, and school personnel. It would be unreasonable to suggest that a parent must obtain a physician's order each time a parent requests that any of these individuals provide non-prescription medications to a child. Moreover, in many cases it would be impractical or even logistically impossible for parents to obtain a physician's order before asking another person taking temporary care of a child to provide a non-prescription medication to the child. Accordingly, this interpretation of Minnesota law surely does not reflect legislative intent.

It should also be noted that the Nursing Board's interpretation relies on the definitions of "drug" and "medicine" in a separate statute that regulates pharmacists. The Pharmacy Act, set forth as Chapter 151 of Minnesota statutes, specifically states that the definitions utilized in that chapter apply "for the purposes of this chapter." Minn. Stat. § 151.01, subd. 1 (1998). The definitions in chapter 151 therefore do not apply to or control the use of the term "drugs" or "medicines" in other provisions of the Minnesota statutes. Further, other provisions of the Minnesota statutes contain specific regulations for "prescription" drugs, which establishes that

prescription drugs are subject to more stringent regulation and control than non-prescription drugs. For instance, if non-prescription drugs were to be treated in the same manner as prescription drugs, there would be no need to have an exclusion for non-prescription drugs in the statute that sets forth procedures for school nurses to follow in dispensing prescription medications. Minn. Stat. § 121A.22 (1998). In other words, if non-prescription and prescription drugs both required a physician's order before a school nurse could dispense them, then it is difficult to understand why the Legislature excluded non-prescription drugs from the statute.

For the above reasons, this office concludes that school nurses do have the authority to provide over-the-counter medications to students upon a parent's request, even without a physician's order. It is important to note, however, that the school nurse has the ultimate authority and responsibility to reject a parent's request and to decline to administer an over-the-counter medication if the nurse believes that such medication is unnecessary, inappropriate, or could lead to patient harm. Further, school districts retain independent authority to implement policies that govern the administration of non-prescription drugs by school nurses. A school district, or an individual nurse, could choose to adopt a policy that requires a physician's order before a school nurse administers a non-prescription medication to a student.

I thank you for seeking our opinion regarding this issue.

Very truly yours,

A handwritten signature in cursive script that reads "Alan D. Gilbert". The signature is written in dark ink and is positioned above the typed name and title.

Alan Gilbert
Chief Deputy and Solicitor General