

## California Healthcare Law Alert

### California Supreme Court Rules That School Personnel May Administer Insulin to Diabetic Students

By: David H. Waters

August 2013

Burnham Brown periodically informs its clients of cases pending in the California Supreme Court that may be of interest to them.

One of the cases we have been following has now been decided. American Nurses Association v. Torlekson (2013) \_\_\_ Cal.4th \_\_\_, No. S184583, concerned public school students with diabetes who cannot self-administer insulin. Federal law requires insulin be administered to them during the school day. The dispute involved who was properly permitted to administer that insulin under state law.

The background was that California has suffered a long-standing shortage of school nurses. A federal court class action suit was brought over California's failure to ensure diabetic students actually received legally required healthcare services. As part of a settlement, the State Department of Education advised local education agencies that trained school personnel, who were not licensed healthcare providers, may administer insulin when no nurse is available, pursuant to medical orders from the student's treating physician.

The American Nurses Association and other trade organizations representing registered and school nurses challenged the Department of Education's advice as condoning the unauthorized practice of nursing.

The California Supreme Court upheld the Department of Education's legal advisory, finding that California law expressly exempts persons who carry out a physician's medical orders from laws prohibiting the unauthorized practice of nursing. In effect, the decision of whether insulin may safely and appropriately be administered by unlicensed school personnel is delegated to the student's physician, with parental consent, and reflects the practical reality that most insulin administered outside of hospital and other clinical settings is in fact administered by lay persons.

Burnham Brown will continue to alert you as California Supreme Court decisions of interest are handed down.



David H. Waters  
510.835.6725  
dwaters@burnhambrown.com

*David H. Waters advises owners, general contractors, and subcontractors and represents them in construction litigation. Mr. Waters further specializes in advising insurers on their rights and obligations under insurance policies for all types of lawsuits.*

