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Honorable Bob Huff
Room 305, State Capitol

**REGISTERED NURSES: TRAINING AND SUPERVISING SCHOOL EMPLOYEE
VOLUNTEERS TO ADMINISTER EMERGENCY ANTISEIZURE
MEDICATION - #1209012**

Dear Senator Huff:

You have asked whether a registered nurse, school nurse, or certificated public health nurse would violate the Nursing Practice Act if he or she trains or supervises a school employee volunteer to administer emergency antiseizure medication pursuant to Section 49414.7 of the Education Code.

The Nursing Practice Act (Ch. 6 (commencing with Sec. 2700), Div. 2, B.& P.C.; hereafter the act) provides for the licensure and regulation of registered nurses by the Board of Registered Nursing within the Department of Consumer Affairs (Secs. 101, 2701, and 2732, B.& P.C.; hereafter the board). Under the act, no person may engage in the practice of nursing without holding a license that is in active status (Sec. 2732, B.& P.C.).

The practice of nursing means, among other things, those functions, including basic health care, that help people cope with difficulties in daily living that are associated with their actual or potential health or illness problems or the treatment thereof, and that require a substantial amount of scientific knowledge or technical skill, including, among other things, direct and indirect patient care services, including, but not limited to, the administration of medications and therapeutic agents, necessary to implement a treatment ordered by and within the scope of licensure of, among others, a physician and surgeon (subd. (b), Sec. 2725, B.& P.C.).

A school nurse is a registered nurse licensed by the board who has completed specified additional educational requirements for, and possesses a current credential in, school nursing (Secs. 44877 and 49426, Ed. C.). School nurses strengthen and facilitate the educational process by improving and protecting the health status of children and by identification and assistance in the removal or modification of health-related barriers to learning in individual children (Sec. 49426, Ed. C.). The major focus of school health services is the prevention of illness and disability, and the early detection and correction of health

problems (Ibid.). The school nurse is especially prepared and uniquely qualified in preventive health, health assessment, and referral procedures (Ibid.).

A public health nurse is also a registered nurse who has satisfied specified education and clinical experience requirements and has been issued a certificate by the board to hold himself or herself out as a public health nurse (subd. (c), Sec. 2818, B.& P.C.; 16 Cal. Code Regs. 1490 and 1491). A public health nurse provides services that include, but are not limited to, control and prevention of communicable disease; promotion of maternal, child, and adolescent health; prevention of abuse and neglect of children, elders, and spouses; and outreach screening, case management, resource coordination and assessment, and delivery and evaluation of care for individuals, families, and communities (subd. (a), Sec. 2818, B.& P.C.).

Thus, both school nurses and public health nurses are registered nurses with additional qualifications in order to hold their respective titles and are subject to the act.

With respect to whether a registered nurse, school nurse, or certificated public health nurse would violate the act if he or she trains or supervises a school employee volunteer (hereafter volunteer) to administer emergency antiseizure medication, we turn to Section 49414.7 of the Education Code (hereafter Section 49414.7) and the regulations adopted pursuant to that section.

Section 49414.7 provides, in pertinent part, as follows:

“49414.7. (a) It is the intent of the Legislature that, whenever possible, an emergency antiseizure medication should be administered by a school nurse or licensed vocational nurse who has been trained in its administration.

“(b) Notwithstanding Sections 2052 and 2732 of the Business and Professions Code, in the absence of a credentialed school nurse or other licensed nurse onsite at the school or charter school, a school district, county office of education, or charter school may elect to participate in a program, pursuant to this section, to allow nonmedical employees to volunteer to provide medical assistance to pupils with epilepsy suffering from seizures, upon request by a parent or guardian pursuant to subdivision (c). If the school district, county office of education, or charter school elects to participate in a program pursuant to this section, the school district, county office of education, or charter school shall provide school employees who volunteer pursuant to this section with voluntary emergency medical training, that is consistent with the training guidelines established pursuant to subdivision (m), to provide emergency medical assistance to pupils with epilepsy suffering from seizures. A school employee with voluntary emergency medical training shall provide this emergency medical assistance using guidelines approved on the department’s Internet Web site pursuant to subdivision (m), and the performance instructions set forth by the licensed health care provider of the pupil. A school employee who does not volunteer or who has not been trained

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pursuant to subdivision (m) shall not be required to provide emergency medical assistance pursuant to this section.

“(c) If a pupil with epilepsy has been prescribed an emergency antiseizure medication by his or her health care provider, the pupil's parent or guardian may request the pupil's school to have one or more of its employees receive training pursuant to this section in the administration of an emergency antiseizure medication in the event that the pupil suffers a seizure when a nurse is not available.

* * *

“(g) In training employees pursuant to this section, the school district, county office of education, or charter school shall ensure the following:

“(1) A volunteer receives training from a licensed health care professional regarding the administration of an emergency antiseizure medication. A staff member who has completed training shall, if he or she has not administered an emergency antiseizure medication within the prior two years and there is a pupil enrolled in the school who may need the administration of an antiseizure medication, attend a new training program to retain the ability to administer an emergency antiseizure medication.

* * *

“(m) (1) The department, in consultation with the State Department of Public Health, shall develop guidelines for the training and supervision of school and charter school employees in providing emergency medical assistance to pupils with epilepsy suffering from seizures and shall post this information on the department's Internet Web site by July 1, 2012. The guidelines may be developed in cooperation with interested organizations. Upon development of the guidelines, the department shall approve the guidelines for distribution and shall make those guidelines available upon request.

“(2) The department shall include, on its Internet Web site, a clearinghouse for best practices in training nonmedical personnel to administer an emergency antiseizure medication to pupils.

“(3) Training established pursuant to this subdivision shall include, but not be limited to, all of the following:

“(A) Recognition and treatment of different types of seizures.

“(B) Administration of an emergency antiseizure medication.

“(C) Basic emergency followup procedures, including, but not limited to, a requirement for the school or charter school administrator or, if the administrator is not available, another school staff member to call the emergency 911 telephone number and to contact the pupil's parent or guardian. The requirement for the school or charter school administrator or

other school staff member to call the emergency 911 telephone number shall not require a pupil to be transported to an emergency room.

“(D) Techniques and procedures to ensure pupil privacy.

“(4) Any written materials used in the training shall be retained by the school or charter school.

“(5) Training established pursuant to this subdivision shall be conducted by one or more of the following:

“(A) A physician and surgeon.

“(B) A physician assistant.

“(C) A credentialed school nurse.

“(D) A registered nurse.

“(E) A certificated public health nurse.

“(6) Training provided in accordance with the manufacturer’s instructions, the pupil’s health care provider’s instructions, and guidelines established pursuant to this section shall be deemed adequate training for purposes of this section.

* * *

“(p) For purposes of this section, the following definitions apply:

“(1) An ‘emergency antiseizure medication’ means diazepam rectal gel and emergency medications approved by the federal Food and Drug Administration for patients with epilepsy for the management of seizures by persons without the medical credentials listed in paragraph (5) of subdivision (m).

“(2) ‘Emergency medical assistance’ means the administration of an emergency antiseizure medication to a pupil suffering from an epileptic seizure.

“(q) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.” (Emphasis added.)

Thus, the Legislature, until January 1, 2017, has authorized school districts, county offices of education, and charter schools to participate in a program that authorizes employees to volunteer to provide emergency medical assistance to pupils with epilepsy suffering from seizures, upon request by a parent or guardian (subds. (b) and (q), Sec. 49414.7, Ed. C.). The State Department of Education, in consultation with the State Department of Public Health, is required to develop guidelines for the training and supervision of school and charter school employees in providing this emergency medical assistance to pupils by July 1, 2012 (Sec. 89, Ed. C.; subd. (m), Sec. 49414.7, Ed. C.). School districts, county offices of education, or charter schools that participate in the program are required to provide emergency medical training to the school employees who volunteer that is consistent with the training guidelines established by the department (subds. (b) and (m), Sec. 49414.7, Ed. C.). A school employee with voluntary emergency medical training is

required to provide this emergency medical assistance using the guidelines approved by the department (subd. (b), Sec. 49414.7, Ed. C.).

With respect to the training and supervision guidelines, the State Board of Education¹ adopted the guidelines required by Section 49414.7 as emergency regulations pursuant to the rulemaking procedures under the Administrative Procedure Act (Ch. 3.5 (commencing with Sec. 11340), Pt. 1, Div. 3, Title 2, Gov. C.) and these emergency regulations were approved by the Office of Administrative Law on March 26, 2012 (see the Notice of Approval of Emergency Regulatory Action, available online at http://www.oal.ca.gov/res/docs/recent_actions_emergencies/2012-0316-03E.pdf (as of April 6, 2012); see also 5 Cal. Code Regs. 620).²

Section 49414.7 requires training to be conducted by one or more of the following licensed health care professionals: (1) a physician and surgeon, (2) a physician assistant, (3) a credentialed school nurse, (4) a registered nurse, or (5) a certificated public health nurse (subd. (m), Sec. 49414.7, Ed. C.; see also 5 Cal. Code Regs. 622). The training provided by a licensed health care professional is required to include, among other things, recognition and treatment of different types of seizures, administration of an emergency antiseizure medication, basic emergency followup procedures, techniques and procedures to ensure pupil privacy, and informing the volunteer of certain information (5 Cal. Code Regs. 623).

Unlike the training provisions, Section 49414.7 is ambiguous with regard to specifying who will be responsible for the supervision of school and charter school employees in providing emergency medical assistance to pupils with epilepsy suffering from seizures (subd. (m), Sec. 49414.7, Ed. C.). However, courts defer to the agency's interpretation when it fills gaps or resolves ambiguities in the statute the agency administers (*Adams House Health Care v. Bowen* (9th Cir. (Cal.) 1988) 862 F.2d 1371, 1374). Here, the guidelines adopted by the State Board of Education provide that both the training and supervision are required to be conducted by one or more of the following licensed health care professionals: (1) a physician and surgeon, (2) a physician assistant, (3) a credentialed school nurse, (4) a registered nurse, or (5) a certificated public health nurse (5 Cal. Code Regs. 622).

In this context, "supervision" means review, observation, or instruction of a designated school employee's performance, but does not necessarily require the immediate

¹ The State Board of Education is the policymaking body of the State Department of Education (Sec. 33301, Ed. C.).

² Subdivision (e) of Section 11346.1 of the Government Code prohibits a regulation initially adopted as an emergency regulatory action from remaining in effect more than 180 days unless the adopting agency has complied with Sections 11346.2 to 11347.3, inclusive, of the Government Code within a specified period. It appears the State Board of Education commenced efforts to comply with these requirements by issuing a Notice of Proposed Rulemaking and Comment Period on March 23, 2012 (see <http://www.cde.ca.gov/re/lr/rr/adminofepilepsymed.asp> (as of May 8, 2012)).

presence of the supervisor at all times (5 Cal. Code Regs. 621). If a school district, county office of education, or charter school elects to participate in the program authorizing volunteers to provide emergency medical assistance to pupils with epilepsy suffering from seizures, the licensed health care professional supervising a volunteer is required to ensure that the volunteer has completed the required training, the volunteer does not administer an emergency antiseizure medication until he or she has completed the required training and the completion of such training is documented, the volunteer has access to specified pupil records related to the administration of emergency antiseizure medication, and the volunteer documents and retains records relating to the actual administration of emergency antiseizure medication (5 Cal. Code Regs. 627).

Thus, the question to be addressed is whether a registered nurse, school nurse, or certified public health nurse would violate the act if he or she trains or supervises a volunteer to administer emergency antiseizure medication pursuant to Section 49414.7.

The primary task of statutory construction is to ascertain the intent of the Legislature so as to effectuate the purpose of the law (*Alexander v. Superior Court* (1993) 5 Cal.4th 1218, 1226). The guiding star of statutory construction is the intention of the Legislature and the statute is to be read in the light of its historical background and evident objective (*State Compensation Ins. Fund v. Workers' Comp. Appeals Bd.* (1979) 88 Cal.App.3d 43, 52). In determining the legislative intent, the court first examines the words of the statute. If there is no ambiguity in the language of the statute, then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs (*People v. Coronado* (1995) 12 Cal.4th 145, 151).

As an initial matter, a registered nurse, school nurse, or certificated public health nurse who trains or supervises a volunteer to administer emergency antiseizure medication would be acting pursuant to Section 49414.7, not the act. Section 49414.7, and the regulations adopted pursuant to that section, expressly authorize these registered nurses, among other licensed health care professionals, to provide such training and supervision to a volunteer.

As described above, the act provides for the licensure and regulation of registered nurses by the board and describes the practice of nursing. It does not expressly confer authority for a nurse to train or supervise a volunteer to administer emergency antiseizure medication. Nevertheless, we think that Section 49414.7 represents the Legislature's intent to expand the scope of practice of a registered nurse, which already includes the administration of medicine (subd. (b), Sec. 2725, B.& P.C.), to also include the training and supervision of a volunteer to administer emergency antiseizure medication.

Furthermore, a statute should be construed so as to harmonize, if possible, with other laws relating to the same subject (*Isobe v. Unemployment Ins. Appeals Bd.* (1974) 12 Cal.3d 584, 590-591). When two statutes touch upon a common subject, they are to be construed in reference to each other, so as to "harmonize the two in such a way that no part of either becomes surplusage" (*Ross v. California Coastal Com.* (2011) 199 Cal.App.4th 900, 928). To the extent a specific statute is inconsistent with a general statute potentially covering the same subject matter, the specific statute must be read as an exception to the more general statute

(*Salazar v. Eastin* (1995) 9 Cal.4th 836, 857). A specific provision relating to a particular subject will govern a general provision even though the general provision standing alone would be broad enough to include the subject to which the specific provision relates (*Carlton Santee Corp. v. Padre Dam Mun. Water Dist.* (1981) 120 Cal.App.3d 14, 29).

Applying these rules of statutory construction, we think the provisions of Section 49414.7 may be harmonized with the act and that the specific training and supervision requirements of the section, discussed above, represent an exception to the act.

In addition, the act provides that no state agency other than the board may define or interpret the practice of nursing for those licensed pursuant to the act, or develop standardized procedures or protocols pursuant to the act, “unless so authorized by [the act], or specifically required under state or federal statute” (subd. (e), Sec. 2725, B.& P.C.; emphasis added). Therefore, the act itself contemplates a statute beyond the ambit of the act and the board’s jurisdiction to define the practice of nursing, such as in the case of Section 49414.7 which establishes an exception to the act to authorize the training and supervision of a volunteer to administer emergency antiseizure medication.

Examples of other similar exceptions to the act are Sections 49414 and 49414.5 of the Education Code. Section 49414 of the Education Code authorizes a school district or county office of education to provide emergency epinephrine autoinjectors to trained personnel, and trained personnel may utilize those epinephrine autoinjectors to provide emergency medical aid to persons suffering from an anaphylactic reaction (subd. (a), Sec. 49414, Ed. C.). Section 49414.5 of the Education Code provides that, in the absence of a credentialed school nurse or other licensed nurse onsite at the school, each school district is authorized to provide school personnel with voluntary emergency medical training to provide emergency medical assistance to pupils with diabetes suffering from severe hypoglycemia subject to specified standards (subd. (a), Sec. 49414.5, Ed. C.). Training by a physician and surgeon, credentialed school nurse, registered nurse, or certificated public health nurse according to specified standards is deemed adequate training for purposes of Section 49414.5 of the Education Code (subd. (b), Sec. 49414.5, Ed. C.).

Finally, even though we think that Section 49414.7 represents an exception to the act, one might argue that a registered nurse, school nurse, or certificated public health nurse, by providing training and supervision to a volunteer to administer emergency antiseizure medication, may be subject to disciplinary action by the board if he or she assists or abets a volunteer in the practice of nursing without a license as required by Section 2732 of the Business and Professions Code (subd. (d), Sec. 2761, B.& P.C.). However, we do not think this argument would be valid because Section 49414.7 expressly excepts such volunteers from

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the licensure requirements in Section 2732 of the Business and Professions Code (subd. (b), Sec. 49414.7, Ed. C.).

Therefore, it is our opinion that a registered nurse, school nurse, or certificated public health nurse would not violate the Nursing Practice Act if he or she trains or supervises a school employee volunteer to administer emergency antiseizure medication pursuant to Section 49414.7 of the Education Code.

Very truly yours,

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