1) Please type the answer to PT-A below. *(Essay)*

======== Start of Answer #1 (1725 words) ========

February 21, 2017

Marilyn Cones
Associate General Counsel
Colombia Nurses Association
2000 Franklin Street
Mapleton, Colombia

RE: Colombia Nurses Association (CNA) Demand Letter of February 16, 2017

Dear Ms. Cones,

This letters serves to respond to your letter of February 16th, in which you demanded immediate withdraw of the Department's Legal Advisory dated February 10th. After throough review of applicable law, analysis of the facts presented, and in light of your arguments, the Department respectfully declines your demand to withdraw, as the Department's legal position is sound and on firm legal footing, while CNA's is not.

APPLICABLE LAW

As previously stated in Department's memo, the Colombia School Medication Act (henceforth "SMA") clearly and unambiguously authorizes school personnel who are not nurses (i.e., unlicensed school personnel) to administer insulin to students with diabetes, including by injection, and the Colombia Nursing Practice Act (henceforth "NPA") not only does not prohibit unlicensed personnel from doing so, but it expressly allows them to do so under §4(e). In addition to the clearly unambiguous language in both statutes, applicable jurisprudence in Davis and related cases clearly sets forth that even if language is ambiguous,

reasonable results should be sought and unreasonable results that obstruct legislative objectives should be avoided. Your reading of both the SMA and NPA is an incorrect interpretation of unambiguous language and legislative intent, and even if the language is ambiguous, your interpretation of the language would produce unreasonable results contrary to legislative intent.

Finally, you correctly identify the Individuals with Disabilities Act (IDEA) is correctly identified as what gives school personnel statutory authority to adminster needed medication, as it consistent in the Department's Legal Advisory. However, your argument that IDEA does not "displace state statutes" is contrary to principles of Constitutional preemption and applicable jurisprudence (see Davis), which you have incorrectly and narrowly interpreted in a manner that is not consistent with the authority you cite.

Applicable Rules for Statutory Interpretation

The rules with regard to statutory contruction in Colombia are clearly spelled out in *Davis.* First, citing *Smith, Davis* says that in construing a statute, a court undertakes "a single fundemental task, which is to effectuate the intent of the legislative body." Furthermore, this inquiry begins "with the language of the statute," and takes the statute's words as it finds them, giving them their "usual and ordinary" meaning, and the inquiry stops these if these words are *unambiguous* (citing *Cummins*). If the statute's words are *ambiguous (emphasis added),* the inquiry considers extrinsic materials to include legislative history and background facts. *Smith, supra*. In order to resolve the ambiguity, the court adopts a statutory reading that yeilds "reasonable results" and rejects the unreasonable ones. *Id.* Moreover, the court will avoid reading a statute in such a way as to set up an obstacle to Congress' objectives. (*Davis* citing *Santa Clara*).

SMA

Usual and Ordinary Meaning

As an intial matter, legislative intent is to be found through the ordinary and usual meaning of the langauge of the statute. *Smith*. If that statute's words are "unambiguous," the inquiry stops there. Looking at the meanings of the words "administer" and "assist" in the 21st Century American Dictionary provides the usual and ordinary meaning of the actual statutory text used in both the SMA and the NPA, and reading those statutes on their face makes their meaning clear.

Under §3 of the SMA, "other school personnel" are clearly permitted to "assist" a student required to take prescribed medication from their physcian, "whether or not" they are licensed healthcare professionals, provided there is a doctor's order and parental consent. The words of §3(a) are unambigious on their face, and they are consistent with the definition of assist in that they can "support or aid" either "by doing something for the other," OR by "helping the other do something him-or-herself."

Your characterization of the language of §3 evinces flies in the face of the plain definition of the meaning of the word "assist," as it narrowly reads it as only helping students administer medication to themselves. Thus, you have interpreted the language too narrowly, and not according to the usual and ordinary meaning of the word "assist."

Ambiguous Language

Even if, in the alternative, a court were to find the language of the SMA ambiguous, both the facts at hand and the legislative history would be brought in as extrinsic evidence. This evidence would be used to resolve an interpretation that seeks reasonable results and rejects unreasonable ones. *Smith*.

Here, even if the wording of the statute is contrued to be ambiguous, the SMA's legislative history (Historial and Statutory Notes) dispels any notion that the Governor's veto meant that the authorization of unlicensed school personnel to

administer insulin was precluded. In fact, the notes explicitly state the Governor's rationale for vetoing the amendment precisely because he said that §3 already explicitly authorizes such personnel to administer insulin to students with diabetes. Hence, this is an incomplete analysis of the facts of the legislative history, and thus resolves the ambiguity in favor of the idea that the SMA specifically authorized the activity.

Accordingly, the SMA must be construed to specifically authorize the unlicesed school personnel to administer insulin to students.

NPA

Usual and Ordinary Meaning

Under section 4 of the NPA, the language of exception 4(e) clearly and unambiguously states that the performance of "any person" (in accordance with applicable procedures) is "*not* prohibited," provided they do not "hold themselves out as a nurse." This language could not be clearer on it's face. While you correctly point out that the exception does not explicity allow unlicensed personnel to administer insulin, this is at odds with the plain meaning of the language of the exception. This exception (and all others in §4) are more broadly construed categories of providers who might not be prohibited from acting as a nurse might, and do not encompass specific and narrowly tailored hypotheticals that your reading of the statute would seek to impose. Moreover, nothing in the facts indicates that any of the personnel administering or assisting students with insulin is holding themselves out as a nurse. Thus, the meaning of the exception is clear, and the exception in §4(e) does comes more than "close enough," it would in fact explicitly not prohibit such activity by its usual and ordinary, unambiguous meaning.

Additionally, the legislative intent is unambiguous in the words of the statutes in §35, which clearly states that the statute should be construed "broadly in order to

give effect to the intent of the legislature," which it points out is to promote health and safety to people in the state. The state is clearly in a crisis given the nursing shortage, and it seems that construing the statute broadly would include looking for a manner in which health and public safety can be promoted through not limiting activities that are not otherwise prohibited.

As you point out, while the NPA does give examples of potentially prohibited conduct in §§ 2 & 3(a)(2), but §3 simply provides examples that the "practive of nursing" may include, not definitive prohibitions. Section 2 is the original limiting language of the statute, but it is modified and expanded by §4 exceptions mentioned above, which you fail to point out.

Ambiguous Language

Even if, in the alternative, a court were to find the language of the NPA ambiguous, both the facts at hand and the legislative history would be brought in as extrinsic evidence. This evidence would be used to resolve an interpretation that seeks reasonable results and rejects unreasonable ones. *Smith*.

Here, your claim that unlicensed school personnel administering insulin would "necessarily be engaging in the practice of nursing" is absurd on it's face, and would reach an unreasonable result that must be rejected. In addition to flying in the face of §4(e)'s explicit exception, the legislative intent in §35 would broadly construe the language effectuate the legislature's intent to promote health and safety to people in the state. Again, given nursing shortage, and it seems that construing the statute so narrowly would fly in the face of the facts within the language of the statute as well as unreasonable results as to the legislature's intent.

Accordingly, the NPA must be construed NOT to prohibit unlicesed school personnel to administer insulin to students.

IDEA

Your contention that IDEA does not displace state statutes must fail, as it would be preempted as it was in *Davis*, and if not, it would surely be distinguished from the facts in *Davis*.

Distinguishing Davis

In the Davis case, the court cited the rule from Santa Clara stating that a court will avoid reading a statute in such a way as to set up an obstacle to Congress' objectives. In that case, the plaintiff's argued that IDEA gave their son a right to recieve medication "as needed," despite the fact that a state law refused to allow the nurse to administer the medication because it exceeded the recommended maximum dosage (also under the FDA's guidelines) for safety. Accordingly, she refused to administer the medication but the school allowed the parents to do so. The school denied the child had a right to the excessive medication under IDEA, and the threshold issue was whether the statutes were construed properly. Ultimately, the court found that Congress' intent under IDEA was to allow medication as needed, there was nothing in it to find that the child had a right to have a "potentially dangerous dosage." Thery further stated that IDEA actually precluded such an interpretation, because Congress' clear aim was to furether the welfare of children, not undermine it. Moreover, no extrinsic evidence supported an ambiguous interpretation by the parents that this right existed.

Here, you cite that IDEA does not displace the state statute citing the *Diabetes Guide*, but the guide itself clearly and expressly contemplates a health team that includes "other personnel" who are essential (as well as school nurses) to help kids who may not it with insulin. Moreover, it does not eplicitly address any state or local laws.

Your reading of the IDEA statute also flies in the face of the Davis opinion, as that opinion clearly does grant the right to medication as needed, and you narrowly exclude the right to recieved medication from other personnel.

Finally, the hight alert list indicated that insulin is presumptively too dangerous, but gives no citation for why.

Question #1 Final Word Count = 1725

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END OF EXAM