Case No. S184583

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

AMERICAN NURSES ASSOCIATION, et al.,

Plaintiffs and Respondents,

v.

JACK O'CONNELL, as Superintendent of Public Instruction, etc., et al.,

Defendants and Appellants.

Court of Appeal of the State of California
Third Appellate District
Appeal No. C061150
Superior Court of the State of California
County of Sacramento
The Honorable Lloyd G. Connelly, Judge Presiding
Civil Case No. 07AS04631

BRIEF OF AMICI CURIAE AMERICAN ASSOCIATION OF DIABETES EDUCATORS, THE AMERICAN ACADEMY OF PEDIATRICS SECTION ON ENDOCRINOLOGY, CALIFORNIA DISTRICT OF THE AMERICAN ACADEMY OF PEDIATRICS, THE ENDOCRINE SOCIETY, AND THE PEDIATRIC ENDOCRINE SOCIETY IN SUPPORT OF INTERVENOR AND APPELLANT AMERICAN DIABETES ASSOCIATION

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APPLICATION TO FILE AMICI CURIAE BRIEF AND STATEMENT OF INTEREST OF AMICI CURIAE

Pursuant to California Rule of Court 8.200(c), the American Association of Clinical Endocrinologists, the American Association of Diabetes Educators, the American Academy of Pediatrics Section on Endocrinology, the California District of the American Academy of Pediatrics, The Endocrine Society, and the Pediatric Endocrine Society (collectively, the "amici curiae") request leave of this Court to file an amici curiae brief in support of Appellant, the American Diabetes Association.

The American Association of Clinical Endocrinologists ("AACE") is an association of physicians with special education, training, and interest in the practice of clinical endocrinology. All AACE members are M.D.s or D.O.s, and most are certified by Boards recognized by the American Board of Medical Specialties. The AACE is a leading publisher, educator, and research advocate in the field of clinical endocrinology.

The American Association of Diabetes Educators ("AADE") is a multidisciplinary association of healthcare professionals dedicated to the optimal health and wellness of all people with diabetes and related chronic conditions. It is recognized for its expertise in the care and

management of diabetes and in the development of clinical practice recommendations guiding its day-to-day treatment.

The American Academy of Pediatrics Section on Endocrinology ("AAP-SoEn") is a section within the American Academy of Pediatrics that is committed to improving the care of infants, children, and adolescents with endocrinological disorders, including diabetes. The AAP-SoEn is a leading educator, consultant, and research advocate in the field of pediatric endocrinology.

The American Academy of Pediatrics-California ("AAP-CA") is an organized group of over 5,000 board-certified pediatrician members of all four California regional Chapters. The mission of the AAP-CA is to attain optimal physical, mental, and social health and well-being for all infants, children, adolescents, and young adults living in California.

The Endocrine Society is an international body with 14,000 members from over 100 countries. The Endocrine Society represents the full range of disciplines associated with the field of endocrinology. These professionals are dedicated to the research and treatment of endocrine disorders, including diabetes. The Endocrine Society is a world-renowned publisher, educator, and advocate in the field of endocrinology.

The Pediatric Endocrine Society ("PES") has over 1200 members representing the multiple disciplines of pediatric endocrinology. The

members are dedicated to research and treatment of children with endocrine disorders, including diabetes. The PES is a leading educator and research benefactor in support of pediatric endocrinology.

The amici curiae have an interest in this litigation because of their concern for the short and long-term health of students with diabetes in California, many of whom are patients of their members.

The proposed amici curiae brief will assist the Court by providing important information about the safety of insulin administration by trained non-medical school personnel. The consensus opinion of medical professionals is that laypersons can administer insulin when properly trained, including as to the risks associated with the administration. Indeed, they commonly do so. Moreover, medical organizations devoted to diabetes care endorse insulin administration by properly trained non-medical school personnel because students with diabetes need prompt and flexible care that is unavailable from school nurses, who are in short supply. The Court should consider these consensus opinions, proffered and supported by the nation's leading diabetes care organizations.

Dated: May 12, 2011

Respectfully submitted,
COOLEY LLP

By: _____
Brandon J. Kimura

Attorneys for Amici Curiae American Association of Diabetes Educators, the American Academy of Pediatrics Section on Endocrinology, California District of the American Academy of Pediatrics, The Endocrine Society, and the Pediatric Endocrine Society in Support of Intervenor and Appellant American Diabetes Association

BRIEF OF AMICI CURIAE

I. INTRODUCTION

Insulin administration by non-medical school personnel who volunteer and are specifically trained to perform this task is both safe and necessary to protect the health of students with diabetes. A decision preventing trained school personnel from administering insulin to students with diabetes who are unable to treat themselves will have significant negative repercussions on the ability of children with diabetes to safely attend and fully participate in school.

Diabetes is a serious disease that afflicts millions nationwide. The number of people, particularly children, diagnosed with diabetes is growing rapidly. There is no cure for diabetes. Failing to treat it can cause severe medical complications and death. With careful monitoring and treatment, however, diabetes can be safely controlled.

Many people with diabetes, including most young students with diabetes, need multiple daily doses of insulin to control their blood sugar. Some people with diabetes can perform this routine care themselves. But others, especially young children, require assistance, particularly with insulin administration. This responsibility typically falls to non-medical personnel. Indeed, nearly all of the insulin required by children with diabetes in the United States is administered by laypersons—

parents, siblings, relatives, babysitters, and other caregivers—a practice that has long been approved by the medical community.

When students need insulin while at school and a school nurse is not available to administer it, the solution recognized by diabetes experts and most of the rest of the medical community is to train non-medical school personnel to fill this gap. Training non-medical school personnel to administer insulin is necessary because licensed personnel, usually nurses, are often not available. The United States is currently experiencing a nursing shortage that is only predicted to worsen in the coming years. California is no exception. With its booming population and severe budget issues, California suffers from a nursing shortage that is particularly severe in public schools.

Respondents ask this Court to hold that only licensed personnel, most often school nurses, be allowed to administer insulin to students with diabetes. Such a rule disregards the reality that administration of insulin by trained laypersons is medically safe and specifically endorsed by every major diabetes care organization and many leading medical organizations. Worse, restricting this important diabetes care function to licensed personnel jeopardizes the health and safety of thousands of students with diabetes who attend California schools. Respondents' request also ignores the practical implications of the severe nursing shortage in California's public schools and the flexible care required at

different and unpredictable times during the day by students with diabetes.

The medical organizations who join this brief as amici curiae endorse using trained non-medical school personnel to administer insulin to California students with diabetes as a safe and necessary practice.

II. ARGUMENT

A. Administration of Insulin by Properly Trained Laypersons Is Medically Recommended and Safe.

1. The Medical Profession Strongly Endorses the Practice of Trained Laypersons Administering Insulin.

Medical professionals, including those devoted to diabetes care and the undersigned amici curiae, have formed a resounding chorus in favor of training laypersons to administer insulin in school. The endorsements of these experts should come as no surprise, given that every day laypersons administer the vast majority of insulin injections. 3AA/721-22. Parents, siblings, relatives, babysitters, other caregivers, and sufficiently mature children are routinely trained to administer insulin. 3AA/720-21; 6AA/1647. These are the people—not licensed medical professionals—who administer nearly all the insulin injections required by the nearly 200,000 children with diabetes in the United States. 3AA/721-22; American Diabetes Association, *Diabetes Care in the School and Day Care Setting*, 34 Diabetes Care (Supp. 1) S70

(2011), *available at* http://www.diabetes.org/assets/pdfs/schools/ps-diabetes-care-in-the-school-and-daycare-setting.pdf (*last visited* May 10, 2011); National Diabetes Education Program, *Helping the Student with Diabetes Succeed, A Guide for School Personnel* [hereinafter *NDEP Guide for School Personnel*] at 1 (2010), *available at* http://ndep.nih.gov/media/youth_ndepschoolguide.pdf (*last visited* May 10, 2011).

The American Diabetes Association ("ADA"), a group dedicated to the study, cure, and treatment of diabetes and Appellant in this Court, is a leading educator on this issue with its position statement titled *Diabetes Care in the School and Day Care Setting*. *See* 34 Diabetes Care (Supp. 1) at S70. Recognizing that "[a]ppropriate diabetes care in the school . . . setting is necessary for [a] child's immediate safety, long-term well-being, and optimal academic performance," the position statement endorses a tiered system of training for school personnel. *Id.* "[S]chool administrators, school nurses, coaches, health aides, bus drivers, secretaries," and perhaps most importantly, teachers, should all receive basic training about diabetes. *Id.* The ADA also recommends training a small group in "student specific routine and emergency care tasks such as blood glucose monitoring, insulin administration, and glucagon administration when a school nurse is not available to perform these tasks." *Id.* at S71.

Other leading diabetes care organizations join the ADA in supporting the administration of insulin in schools by trained laypersons. In February 2008, the board of the American Association of Diabetes Educators ("AADE"), a multidisciplinary association of healthcare professionals including registered nurses, and dedicated to the health and wellness for all people with diabetes, approved a position statement titled *Management of Children With Diabetes in the School Setting*. The AADE states:

> Not all schools employ licensed nurses, despite the recommended school nurse:student ratio of 1:750. Even in schools which do employ a school nurse, there will be times when the nurse will be unavailable to personally provide care for the student with diabetes. Thus, a small group of school staff members must receive student-specific training from a qualified health care professional in routine and emergency diabetes care tasks, including checking blood glucose, administering insulin/medications, and giving glucagon for severe hypoglycemia.

American Association of Diabetes Educators, *AADE Position Statement: Management of Children with Diabetes in the School Setting* [hereinafter *AADE Position Statement*], 34 The Diabetes Educator 439, 440 (2008) (citations omitted), *available at* http://www.diabeteseducator.org/export/sites/aade/_resources/pdf/PositionStatement_xChildren.Diabetesx_2008.pdf (*last visited* May 10, 2011).

The federal government in partnership with a broad range of prominent medical organizations has weighed in on this issue through the

National Diabetes Education Program ("NDEP").[1] In its publication—*Helping the Student with Diabetes Succeed, A Guide for School Personnel* (updated and reissued in 2010)—the NDEP recognizes "that nonmedical personnel . . . can be trained and supervised . . . to safely provide and assist with diabetes care tasks in the school setting . . . , include[ing] . . . insulin and glucagon administration." *NDEP Guide for School Personnel* at 66. The *NDEP Guide for School Personnel* is an authoritative position statement on this issue, incorporating the views of an expert panel of representatives from 200 key diabetes, pediatric medicine, and educational organizations, and as such, should be given deference on the issue of safety.

The International Diabetes Federation ("IDF"), an umbrella organization of over 200 national diabetes associations in over 160 countries, has also expressed its concerns about "the situation of children with diabetes, especially in their school environment." *See* International Diabetes Federation, *Position Statement – Rights of Child with Diabetes in the School* [hereinafter *IDF Position Statement*] (March 2005), *available at* http://www.idf.org/node/1240?unode=B881A461-965F-422A-B324-8D41365CFDE2 (*last visited* May 10, 2011). The IDF

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[1] NDEP is a program of the United States Department of Health and Human Services, through the National Institutes of Health and the Centers for Disease Control and Prevention.

holds schools "responsible for training an adequate number of personnel" to execute diabetes care tasks. *Id.*

The American Medical Association ("AMA"), an organization composed of physicians dedicated to promoting the art and science of medicine and the betterment of public health, has also joined in the call for training school personnel in diabetes care. In a 2008 report of the Council on Science and Public Health, the AMA stated:

> The ideal situation is for a school nurse to provide diabetes care-related health services. However, even if a full-time nurse is present (and many schools lack sufficient nursing staff), additional personnel must be trained to provide routine and emergency diabetes care, including checking blood glucose levels and administering glucagon or insulin, if needed, during the school day and during extracurricular activities and field trips when a nurse is unavailable.

American Medical Association, *Report of the Council on Science and Public Health: Ensuring the Best In-School Care for Children with Diabetes*, Report 4-A-08 at 3, *available at* http://www.ama-assn.org/ama1/pub/upload/mm/443/csaph4a08.pdf (*last visited* May 10, 2011). The AMA also specifically recognizes, as does the National Diabetes Education Program and the American Diabetes Association, that "diabetes care tasks may be safely and appropriately delegated to

nonmedical and non-nursing personnel in the school setting."[2] *Id.* at 3, n.10-11.

Finally, the National Parent Teacher Association ("PTA"), a national advocacy group whose goals include promoting the welfare of the children and youth in school, has also recognized the need for laypersons to administer insulin in schools. Noting that "[m]any schools do not have a full-time nurse . . . and nursing duties are oftentimes performed by other schools personnel," the PTA urges that "at least two staff members per school obtain specific training on diabetes care." National Parent Teacher Association, *PTA Resolution on Care of School-Age Children with Diabetes*, *available at* http://www.pta.org/2018.htm (*last visited* May 10, 2011).

All amici curiae joining this brief, including the American Association of Clinical Endocrinologists, the American Association of Diabetes Educators, the American Academy of Pediatrics Section on Endocrinology, California District of the American Academy of Pediatrics, The Endocrine Society, and the Pediatric Endocrine Society, endorse insulin administration by trained laypersons.

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[2] The administration of insulin in the school setting is fundamentally distinguishable from the administration of insulin in the hospital setting, where the patients are sick and multiple nurses attend to patients, heightening the risk of duplicate or poorly timed administrations of insulin.

In the end, the informed judgment of almost every medical association that has considered the issue is the same: training non-medical school personnel to administer insulin is necessary to safeguard the health of students with diabetes.

2. Insulin Administration Is a Relatively Simple Procedure.

Administration of insulin itself is a relatively simple procedure. There are only two steps involved in the proper administration of insulin: (1) identifying the proper dose, and (2) administering the dose. 3AA/721; 6AA/1647. Both steps are straightforward, and no difficult judgments are necessary. 3/AA/721-22. Identifying the proper dose requires following the directions of the student's physician. *NDEP Guide for School Personnel* at 21, 44; 3AA/720-21. These instructions clearly explain the amount of insulin to be given based on either food intake or blood sugar level. *Id.* Only simple mathematics is required, and daily adjustments to the dose beyond those contained in the physician's orders do not need to be made. 3AA/720-21; 6AA/1647-48.

Insulin administration is similarly straightforward. The three most common methods of administering insulin are by syringe, insulin pen, and insulin pump. Diabetes Teaching Center at the University of California, San Francisco, *Insulin Administration,* Diabetes Education Online, http://www.deo.ucsf.edu/type2/diabetes-treatment/medications-

and-therapies/type-2-insulin-rx/insulin-administration.html (*last visited* May 10, 2011). To administer insulin via syringe, a trained layperson need only withdraw the necessary amount, pinch the skin around the injection site, insert the needle at a ninety-degree angle, depress the plunger, wait five seconds, and remove the needle. *See* American Diabetes Association, *Insulin Administration*, 27 Diabetes Care (Supp. 1) S106, S108 (2004), *available at* http://care.diabetesjournals.org/content/27/suppl_1/s106.full (*last visited* May 10, 2011). Insulin administration with an insulin pen is the same as a syringe, except withdrawing the proper dose is not necessary because an insulin pen is preloaded with insulin and has a dial for selecting the proper dose. Emily K. McKoy & Bradley M. Wright, *A Review of Insulin Pen Devices,* 122 Postgraduate Medicine 81, 84-85 (May 2010), *available at* http://www.postgradmed.org/doi/10.3810/pgm.2010.05.2145 (*last visited* May 10, 2011). Finally, insulin administration with an insulin pump only requires the trained layperson to press buttons—either on the pump itself or on a remote control—to administer the dose. 6AA/1649.

Although an improper dose is unlikely given the straightforward nature of administering insulin (6AA/1647),[3] non-medical school

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[3] *See also* Children's Diabetes Services, *Caring for Diabetes in Children and Adolescents* [hereinafter *Caring for Diabetes in Children*], 35 (Geoffrey Ambler & Fergus Cameron eds., 3rd ed. 2010), *available at*

personnel must be trained to deal with the risks associated with an improper dosage. With proper training, non-medical personnel can quickly recognize and correct the improper dose, for example, by administering glucagon.[4] *Caring for Diabetes in Children* at 35; 3AA/720-21; 6AA/1647.

Because administration of insulin is not without risks, including the risk of administering too much insulin, non-medical personnel who are responsible for insulin administration must be provided with appropriate diabetes treatment plans and training. Treating professionals routinely provide diabetes treatment plans to schools that describe how to provide necessary care, including insulin administration. 3AA/719-20. Many treating professionals include supporting team members such as endocrinology nurses who take primary responsibility to provide

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http://video.wch.org.au/diabetes/Diabetes_Book_Third_Edition.pdf (*last visited* May 10, 2011).

[4] Depending on the circumstances, an improper dose of insulin can cause either high or low blood sugar. Low blood sugar or "hypoglycemia," can cause tremors, sweating, light-headedness, irritability, confusion, difficulty concentrating or learning, drowsiness, poor coordination, and slurred speech. *NDEP Guide for School Personnel* at 36; 3AA/716-17. High blood sugar or "hyperglycemia" causes a variety of recognizable symptoms including nausea, vomiting, blurry vision, fatigue, stomach pain, and an inability to concentrate. 3AA/717-19; *NDEP Guide for School Personnel* at 41. When properly trained, these symptoms can be easily recognized by non-medical school personnel. Indeed, the *NDEP Guide for School Personnel* recommends that all non-medical school personnel be trained to recognize the symptoms of both of these conditions and the steps to treat them. *NDEP Guide for School Personnel* at 37-43.

training to the family and school personnel to implement the treatment plan, receive feedback, and respond to questions. Other professionals, such as diabetes educators, are also engaged with families and schools to provide training and facilitate proper diabetes management. 6AA/1645. All of the undersigned medical associations agree that diabetes treatment plans can be appropriately carried out by laypersons in school settings with proper training.

B. School Personnel Should Be Trained To Care for the Needs of Their Students.

A prohibition on administration of insulin by trained but non-medical school personnel to students who need insulin and are unable to treat themselves runs counter to the broad mandate school personnel already have to safeguard the health and safety of their students.

Children spend a significant amount of time at school, under the care and control of school personnel. Students are required to attend school from the ages of six through eighteen. Cal. Educ. Code § 48200. Most students will spend 175 days in school each year. *Id.* §§ 37620, 46112-13. During these periods, school personnel have a mandate to safeguard their students' health and safety. *Id.* § 49400. Beyond instruction, school personnel have undertaken a variety of initiatives, including providing nutritional meals, preventing bullying, and generally seeking to provide a safe learning environment. *Id.* § 49550; Cal. Dep't

of Educ., *Bullying and Hate-Motivated Behavior Prevention, available at* http://www.cde.ca.gov/ls/ss/se/bullyingprev.asp (*last visited* May 10, 2011); Cal. Dep't of Educ., *Classroom Management, available at* http://www.cde.ca.gov/ls/ss/se/classroommgmt.asp (last visited May 10, 2011); Cal. Dep't of Educ., *Zero Tolerance, available at* http://www.cde.ca.gov/ls/ss/se/zerotolerance.asp (*last visited* May 10, 2011).

As discussed above, the administration of insulin is a straightforward procedure that laypersons, including children, are regularly trained to perform. By comparison, the administration of insulin is far simpler than many of the responsibilities school officials already fulfill. *See id.*; *NDEP Guide for School Personnel* at 2 ("[T]he training approach for school-based diabetes management explained in this guide build[s] on what schools already are doing to support children with chronic diseases."). Thus, non-medical school personnel, when properly trained, should be permitted to administer insulin.

Most importantly, though, because of the significant time students spend in school, proper diabetes management by school personnel, including insulin administration, is critical to safeguard the health of students with diabetes. *Id.* at 2. Some diabetic issues are unavoidable, and children, because of their inexperience and immaturity, will sometimes fail to recognize or prevent their occurrence. *Id.* at 34, 36-37;

Caring for Diabetes in Children and Adolescents at 90, 146-147, 149. If school personnel are trained to recognize the symptoms of hyperglycemia and hypoglycemia, they can take action to prevent or treat these conditions before they become serious, significantly and positively affecting the health of their students and their ability to be engaged in learning. *NDEP Guide for School Personnel* at 34, 36-37.

C. Non-Medical Personnel Must Be Permitted to Administer Insulin Because Licensed Personnel Cannot Meet All the Needs of Students with Diabetes.

1. The Shortage of Registered Nurses Is Particularly Severe in Public Schools.

California—like the United States in general—suffers from a nursing shortage crisis which is particularly severe in public schools. Press Release, Cal. Dep't of Educ., State Schools Chief Jack O'Connell Honors School Nurses; Notes Budget Crisis Impact on Nurses in California Schools (May 11, 2010), *available at* http://www.cde.ca.gov/nr/ne/yr10/yr10rel49.asp (*last visited* May 10, 2011). In California public schools, the ratio of school nurses to students is 1:2155. Press Release, *supra*. Only about five percent of schools have a full-time school nurse; about 69 percent have a part-time nurse; and about 26 percent have no school nurse at all. 6AA/1399. Indeed, nearly half of California's school districts do not have a full-time nurse on staff at all. Press Release, *supra*.

The shortage of nurses means that if insulin administration is limited to licensed personnel, the health of students with diabetes will continue to suffer.

2. The Routine and Irregular Needs of Students with Diabetes Require a Flexible Solution.

Diabetes management requires constant and careful monitoring, and timely administration of insulin. *NDEP Guide for School Personnel* at 15. The timing of insulin administration is important because even a few minutes, early or late, can seriously affect the efficacy of the treatment. *Caring for Diabetes in Children* at 33-34; 3AA/719.

Most treatments occur during routine times, usually around meals. *NDEP Guide for School Personnel* at 44-45, 51-52. Unfortunately, when licensed personnel are unavailable, delays may occur and have dangerous results unless non-medical staff members are trained and provide treatment. 3AA/723; 6AA/1652. For example, if a student postponed eating to determine the need for and receive his or her insulin, it could result in hypoglycemia during the delay. *NDEP Guide for School Personnel* at 36. Alternatively, a delayed insulin dose can, depending on the circumstances, cause too little insulin in the system, leading to hyperglycemia. *Id.* at 36, 41; 3AA/719. Another risk is that a student with diabetes could receive his or her insulin too early, which can cause an excess of insulin in his or her system, again resulting in

hypoglycemia. *NDEP Guide for School Personnel* at 36; 3AA/719. When school personnel are not trained to recognize and respond to these diabetic complications, they will often go unnoticed and untreated.

Some insulin doses, however, do not occur at predictable times. For example, "correction doses" are sometimes needed to treat abnormally high blood sugar levels. *NDEP Guide for School Personnel* at 44, 52; 3AA/715. The need for these doses can occur at any time. *Caring for Diabetes in Children* at 87-90, 186. Irregular events such as parties or field trips can also affect blood sugar levels and require insulin administration. *NDEP Guide for School Personnel* at 57. Forgoing participation in these events is not a solution because it excludes students with diabetes from full enjoyment of school activities and socially isolates them from their peers. *Id.* at 58-59.

The historical role played by school nurses in caring for children and adolescents with diabetes in public schools is well recognized and greatly appreciated. Unfortunately, because of the constant and changing needs of students with diabetes, involvement of licensed medical personnel in all diabetes care actions in public schools is not practical. The reality, therefore, is that relying solely on licensed healthcare professionals to administer insulin will cause the needs of students with diabetes will go unmet. Fortunately, properly trained and supervised non-medical personnel can safely perform these diabetes care

actions. Thus, the main role of school nurses should not be the impossible task of directly administering every diabetes care action, but instead should be training, certifying, and supervising non-medical personnel to perform these tasks.

III. CONCLUSION

With proper training, insulin administration is generally a simple and straightforward process. It can be, and is regularly, safely and effectively performed by laypersons. Indeed, non-medical individuals carry out the vast majority of insulin administrations. School personnel can be trained to safely administer insulin, and, according to the general medical community, there is no reason they should not be. Almost all of the medical groups that have expressed an opinion on the subject have endorsed this practice as a safe, practical, and necessary method of safeguarding the health of a student with diabetes.

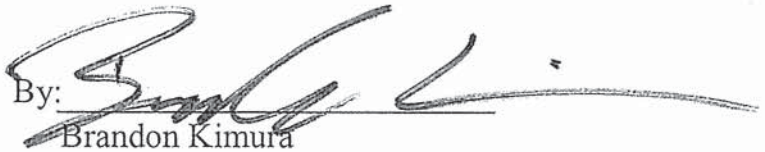
Allowing school personnel to administer insulin also makes sense because it coincides with their overall duty to safeguard the health and safety of their students. School personnel are entrusted with the care of our children for a significant portion of their time and routinely carry out other important initiatives related to the health and safety of students. Insulin administration falls squarely within the mandate that schools protect students' health and safety.

Finally, for most California public school students, a school nurse is simply unavailable. This has a significant impact on the time-sensitive medical needs of students with diabetes. Non-medical, but trained, school personnel are best suited to fill these gaps in care.

Based on the recommendation of most of the medical community, including the uniform recommendation of diabetes experts, and the practical need to safeguard the health of children with diabetes, this Court should hold that non-medical school personnel can administer insulin to students with diabetes who require assistance, when licensed personnel are not readily available.

Dated: May 12, 2011

Respectfully submitted,
COOLEY LLP

By: 
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CERTIFICATE OF WORD COUNT
(Cal. Rule of Court 8.520(c)(1))

I hereby certify that the text of this brief consists of 3,616 words as counted by the Microsoft Word 2007 word-processing program used to generate the brief.

Dated: May 12, 2011

Brandon Kimura

PROOF OF SERVICE

American Nurses Association et. a. v. O'Connell, et al.
Calilfornia Supreme Court No. S184583
(Cal.App 3 No. C061150; Sacto, Super. Ct. 07AS04631

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. I am employed in the office of a member of the bar of this court at whose direction the service was made. My business address is Cooley LLP, 3175 Hanover Street Palo Alto, CA 94304-1130. On May 12, 2011, I served the following document by the method indicated below:

BRIEF OF AMICI CURIAE IN SUPPORT OF INTERVENOR AND APPELLANT AMERICAN DIABETES ASSOCIATION

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed this 12th day of May, 2011 at Palo Alto, California.

Trudy Carney

1198290 v3/PA