



COMMONWEALTH OF VIRGINIA

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October 23, 2009

The Honorable H. Morgan Griffith
Member, House of Delegates
P.O. Box 1250
Salem, Virginia 24153

Dear Delegate Griffith:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether Virginia law permits emergency medical services (“EMS”) providers¹ to administer the H1N1 and seasonal flu vaccinations under the guidance of their respective operational medical directors.

Response

It is my opinion that emergency medical service providers may only administer vaccinations for the H1N1 flu or the seasonal flu when designated and authorized by the State Health Commissioner in accordance with §§ 32.1-42.1 and 54.1-3408(P).

Applicable Law and Discussion

The issues you raise are questions requiring the interpretation of Virginia statutes. It is well settled that “the primary objective of statutory construction is to ascertain and give effect to legislative intent.”² “The plain, obvious, and rational meaning of a statute is to be preferred over any curious, narrow, or strained construction.”³ When the language of a statute is plain and unambiguous, a court is bound by the plain meaning of that language.⁴ It is presumed “that the General Assembly acted with full knowledge of the law in the area in which it dealt.”⁵ The courts “assume that the legislature chose, with care, the words it used when it enacted the relevant statute.”⁶

¹For purposes of this opinion, an EMS provider is “a person who holds a valid certification issued by the Office of EMS.” 12 VA. ADMIN. CODE § 5-31-10 (2008).

²Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

³Commonwealth v. Zamani, 256 Va. 391, 395, 507 S.E.2d 608, 609 (1998).

⁴Cummings v. Fulghum, 261 Va. 73, 77, 540 S.E.2d 494, 496 (2001); Earley v. Landside, 257 Va. 365, 370, 514 S.E.2d 153, 155 (1999); Ragan v. Woodcroft Vill. Apartments, 255 Va. 322, 326, 497 S.E.2d 740, 742 (1998).

⁵Philip Morris USA, Inc. v. Chesapeake Bay Found., Inc., 273 Va. 564, 576, 643 S.E.2d 219, 225 (2007).

⁶Barr v. Town & Country Props., Inc., 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990); *see also* Jackson v. Fid. & Deposit Co., 269 Va. 303, 313, 608 S.E.2d 901, 906 (2005) (noting assumption that legislature chooses, with care, words that it uses).

The Drug Control Act⁷ governs the administration of certain drugs and vaccinations. The only provision of the Act that addresses EMS providers is § 54.1-3408(B), which provides, in part, that

a prescriber^[8] may cause drugs and devices to be administered to patients by emergency medical services personnel who have been certified and authorized to administer such drugs and devices pursuant to Board of Health regulations governing emergency medical services and who are acting within the scope of such certification.

The regulations promulgated by the Board of Health define “emergency medical services” or “EMS” to mean:

the services used in responding to an individual’s perceived needs for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury including all of the services that could be described as first response, basic life support, advanced life support, neonatal life support, communications, training and medical control.^[9]

Article 2.1, Chapter 4 of Title 32.1, §§ 32.1-111.1 through 32.1-111.15 (codified in scattered sections), contains Virginia’s laws governing statewide emergency medical services. Section 32.1-111.1 of Article 2.1 defines “emergency medical services personnel” to mean “persons responsible for the direct provision of emergency medical services in a given medical emergency.” Consequently, EMS providers may only provide emergency medical services in an emergency situation and may only administer drugs when responding to an individual’s need for “immediate medical care.”¹⁰ While EMS providers, such as certified paramedics and advanced life support providers, administer drugs, and start intravenous fluids, they do so in the provision of “immediate medical care” to “prevent loss of life or aggravation of physiological or psychological illness or injury.”¹¹ It strains the definition to assert that the administration of the H1N1 and seasonal flu vaccination may be construed as a requirement for an individual’s “immediate medical care.”

The General Assembly clearly intends that the Drug Control Act limit the persons who are authorized to administer vaccinations. Section 54.1-3408 of the Act specifically authorizes the administration of vaccinations by certain individuals:

I. A prescriber may authorize, pursuant to a protocol approved by the Board of Nursing, the administration of vaccines to adults for immunization, when a practitioner with prescriptive authority is not physically present, (i) by licensed pharmacists, (ii) by registered nurses, or (iii) licensed practical nurses under the immediate and direct supervision of a registered nurse. A prescriber acting on behalf of and in accordance with established protocols of the Department of Health may authorize the administration of

⁷ VA. CODE ANN. §§ 54.1-3400 to 54.1-3472 (2009) (codified in scattered sections).

⁸ A “prescriber” is “a practitioner who is authorized pursuant to §§54.1-3303 and 54.1-3408 to issue a prescription.” Section 54.1-3401.

⁹ 12 VA. ADMIN. CODE § 5-31-10 (emphasis added).

¹⁰ *Id.*

¹¹ *Id.*

vaccines to any person by a pharmacist or nurse when the prescriber is not physically present.

....

P. In addition, this section shall not prevent the administration or dispensing of drugs^[12] ... by persons if they are authorized by the State Health Commissioner in accordance with protocols established by the State Health Commissioner pursuant to § 32.1-42.1 (i) *when the Governor has declared a disaster or a state of emergency or the United States Secretary of Health and Human Services has issued a declaration of an ... actual or potential public health emergency; (ii) it is necessary to permit the provision of needed drugs or devices; and (iii) such persons have received the training necessary to safely administer or dispense the needed drugs or devices. Such persons shall administer or dispense all drugs or devices under the direction, control and supervision of the State Health Commissioner.*

....

T. *Persons who are otherwise authorized to administer controlled substances in hospitals shall be authorized to administer influenza or pneumococcal vaccines pursuant to § 32.1-126.4.*

....

W. *A prescriber, acting in accordance with guidelines developed pursuant to § 32.1-46.02, may authorize the administration of influenza vaccine to minors by a licensed pharmacist, registered nurse, or licensed practical nurse under the direction and immediate supervision of a registered nurse, when the prescriber is not physically present.* [Emphasis added.]

The General Assembly did not specifically authorize EMS providers to administer vaccinations through the Drug Control Act. The Supreme Court of Virginia has held that “[w]hen a legislative enactment limits the manner in which something may be done, the enactment also evinces the intent that it shall not be done another way.”¹³ The General Assembly expressly states the persons authorized to administer vaccinations and the circumstances under which EMS providers may administer drugs. Thus, EMS providers generally are not authorized to administer vaccinations such as the seasonal flu vaccine.

Although the Drug Control Act does not authorize EMS providers to administer H1N1 and seasonal flu vaccinations under normal conditions, there are circumstances which may permit EMS providers to administer such vaccinations. Section 32.1-42.1 permits the State Health Commissioner (the “Commissioner”) to authorize persons, which would include EMS providers, to administer vaccinations in accordance with established protocols:

when (i) the Governor has declared a disaster or a state of emergency or the United States Secretary of Health and Human Services has issued a declaration of an actual or

¹²“‘Drug’ means ... articles or substances intended for use in the diagnosis, cure, *mitigation*, treatment or prevention of disease[.]” Section 54.1-3401 (emphasis added). It is my opinion that in the context of mitigation and prevention of disease, a vaccination for influenza would meet the definition of a drug.

¹³Commonwealth v Brown, 259 Va. 697, 705, 529 S.E.2d 96, 100 (2000) (quoting Grigg v. Commonwealth, 224 Va. 356, 364, 297 S.E.2d 799, 803 (1982) (explaining *maxim expressio unius est exclusio alterius*)).

potential bioterrorism incident or other actual or potential public health emergency; (ii) it is necessary to permit the provision of needed drugs or devices; and (iii) such persons have received the training necessary to safely administer or dispense the needed drugs or devices. Such persons shall administer or dispense all drugs or devices under the direction, control and supervision of the Commissioner. For purposes of this section, “administer,” “device,” “dispense,” and “drug”^[14] shall have the same meaning as provided in § 54.1-3401. The Commissioner shall develop protocols, in consultation with the Department of Health Professions, that address the required training of such persons and procedures for such persons to use in administering or dispensing drugs or devices.^[15] [Emphasis added.]

Thus, the Commissioner may authorize EMS providers to dispense and administer vaccinations when: (1) it is in response to a declared state of emergency or declared public health emergency;¹⁶ (2) it is necessary to permit the provision of the vaccinations; and (3) EMS providers have received the necessary training to administer the drugs. Should the Commissioner authorize EMS providers to administer such vaccinations, they would be under the “direction, control and supervision of the”¹⁷ Commissioner, not that of their respective EMS agency’s operational medical directors.

Conclusion

Accordingly, it is my opinion that emergency medical service providers may only administer vaccinations for the H1N1 flu or the seasonal flu when designated and authorized by the State Health Commissioner in accordance with §§ 32.1-42.1 and 54.1-3408(P).

Thank you for letting me be of service to you.

Sincerely,



William C. Mims

6:990; 1:941/09-076

¹⁴ See *supra* note 12.

¹⁵ I note that the language in § 32.1-42.1 mirrors that of § 54.1-3408(P) regarding public health emergencies.

¹⁶ I note that the United States Secretary of Health and Human Services has issued a declaration determining “that 2009 H1N1 influenza constitutes a public health emergency.” 74 Fed. Reg. 51153, 51156 (Oct. 5, 2009), available at <http://frwebgate3.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=06216920089+0+2+0&WAIAction=retrieve>.

¹⁷ Sections 32.1-42.1, 54.1-3408(P).