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THE CAMP NEWSLETTER OF  SOBEL AFFILIATES
A BROWN & BROWN COMPANY

SEPTEMBER 2017

595 Stewart Avenue, Garden City, NY 11530-4735 | Ph: 516.745.1111 | Fax: 516.745.5733 | www.sobelins.com

Epi-Pens at Camp A Necessity and Potential Liability Nightmare

BY: LEE J. SACKET,

Partner at the Law Firm of L'Abbate Balkan Colavita and Contini



FARE (the Food Allergy Research and Education) reports that up to 15 million Americans have food allergies, including 5.9 million children under age 18. About 30 percent of children with food allergies are allergic to more than one food and more than 170 foods have been reported to cause allergic reactions.

The Centers for Disease Control & Prevention reports that the prevalence of a peanut or tree nut allergy appears to have more than tripled in children in the United States. Once a serious reaction starts, the drug epinephrine, though the auto-injectable device of an Epi-Pen, is considered the only effective treatment and must be injected within minutes of the onset of symptoms.

These are scary facts which are at the forefront of the many concerns shared by those in the camping community.

To adequately address these concerns, Camps must not only rely on experienced medical professionals in the care and protection of the campers, but stay well-informed of the ever changing legal landscape in the allergy arena to protect themselves as well.

While each state has slightly different rules and regulations, the general policy is that a Camp is required to employ a health professional that is trained in the use, administration and storage of Epi-Pens. With the allergy epidemic at the forefront of discussion amongst Camp professionals, concerned parents and now, legislators, an increasing number of states (New York, Massachusetts, and Maine for example), now allow non-medical professionals to administer Epi-Pens upon completion of a certification course provided by either that State's Department of Health or by certain approved national organi-

zations that regularly train lay persons. Any course provided to non-medical professionals for this purpose must be approved by the State in advance.

Similarly, an increasing number of states (of which New York is one) now also allow camps to stock Epi-Pens with non-patient-specific prescriptions for use on a camper or staff member when medically necessary. In Pennsylvania, legislation allowing camps to stock non-patient-specific medications is still pending in the legislature. It appears that the laws covering summer camps are evolving to mirror, at least to some extent, the more advanced allergy requirements and protections available to children with allergies in the public schools. Please keep in mind that these laws are in addition to the laws which require that a Camp provide reasonable accommodations for a camper with special needs or a disability,

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Epi-Pens...(continued)

which include children with allergies who need to possess their own Epi-Pen(s). Federal law prohibits a Camp from discriminating against a camper with a disability. Camps are required to make reasonable accommodations for such campers. Traditionally, that meant storing and safe-keeping of an Epi-Pen brought to Camp by campers with prescriptions for a specific allergy. However, as the number of campers with allergies steadily rises, a Camp must do more now under the law to ensure that a camper with a disability (including an allergy) is able to enjoy a safe summer and to protect the Camp from potential liability.

With the above summary of the current law in mind, prudent practice calls for a Camp to establish and advise its parents of protocols as to the acquisition, possession, storage, and use of Epi-Pens at the Camp. While campers may (and often will) come to camp with Epi-Pens that require storage in the infirmary, the authority of a Camp to obtain non-patient-specific prescriptions for Epi-Pens for use as necessary, store Epi-Pens and to permit non-medical personnel (who complete a government-provided or government-sanctioned comprehensive training course in the identification of an allergic reaction and the usage of an Epi-pen to apply the injection when necessary) to administer epinephrine dictates that a Camp update its approach to medical care for campers with allergies. The New York State Department of Health, for example, suggests the following types of policies:

- Written policies and procedures for the acquisition, storage, accounting, and proper disposal of Epi-pens;
- Written policies and procedures for the training of authorized users;
- Written practice protocols for the use of Epi-pens;
- A method of making notification of the use of Epi-pens;
- A method for documentation of the use of Epi-pens; and
- A process for quality assurance. (<https://www.health.ny.gov/professionals/ems/policy/17-02.htm>).

Please keep in mind that all Camp policies must also be in line with Federal Laws prohibiting discrimination against campers with disabilities, and Camps may not obligate campers to self-inject Epi-Pens. In creating a policy, the Camp should be mindful of specific challenges to that Camp (size of camp, location of the Health Center, number of authorized staff to administer an Epi-Pen, etc.). Additionally, an Epi-Pen should be stored in a safe, yet accessible location and/or travel with the camper. All staff should be aware of which campers have specific allergies and trained to identify symptoms of a possible allergic reaction to prevent any dangerous situations, or at least mitigate the possibility of a fatal incident. With respect to the location of an EpiPen and the practice of having the EpiPen accompany the camper at all activities, the Camp must be cognizant of the outside temperature requirements and limitations for an Epi-Pen and be aware of the location and number of personnel authorized

to administer the Epi-Pen. These are issues to consider for a well-written allergy policy but the list is far from all-encompassing or exhaustive.

There are useful resources available online for commonly asked questions. However, any questions or concerns regarding the appropriate use, administration or storage of epinephrine or Epi-Pens should be directed to a licensed medical professional. This article is not intended to provide legal advice, but a general discussion as to the legal landscape of this issue. Legal requirements vary from state to state and specific questions or concerns regarding a Camp's obligations or responsibilities under Federal Law and/or the state law applicable to that Camp should be directed to counsel.

ABOUT THE AUTHOR:

Lee J. Sacket is a Partner at the law firm of L'Abbate Balkan Colavita and Contini, with offices in New York and New Jersey. In addition to representing camps, he practices in the areas of commercial litigation, professional liability litigation, general liability and insurance defense litigation. He counsels his clients regularly on risk management and presents seminars tailored to their specific practices.

