

**Outdoor Law: The Legal Structure of Teaching and Administration  
of Epinephrine in Wilderness Emergency Situations**

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The use of epinephrine auto-injectors (“epi-pens”) for treatment of severe allergic reactions or anaphylaxis is now mainstream first aid. The American Red Cross Advisory Council on First Aid and Safety concludes that the epi-pen is designed for use by the lay public and is relatively easy to administer. Because of the efficacy of epinephrine in saving lives, the Advisory Council advocates for training lay rescuers in the symptoms of allergic reaction/anaphylaxis and to assist an individual with administration of an injection. See [www.instructorcorner.org/ViewDocument.aspx?DocumentId=2275](http://www.instructorcorner.org/ViewDocument.aspx?DocumentId=2275). The American Medical Association and the American Academy of Allergy and Immunology have long held such a position. See, “Position Statement, the Use of Epinephrine in the Treatment of Anaphylaxis, *J. of Allergy Clin. Immunol.*, October 1994 at 666-68. Red Cross chapters now include a module in training for the use of auto-injectors, along with CPR and use of automated external defibrillators (“AEDs”). Wilderness Medical Associates trains and certifies students in recognition of anaphylaxis and the administration of epinephrine in its basic courses, consistent with the Practice Guidelines For Wilderness Emergency Training of the Wilderness Medical Society. See, W. Forger, *Practice Guidelines* (5<sup>th</sup> ed.) at 95.

Nevertheless, the question continues to be asked, probably because in the United States epinephrine is a prescription drug and its administration is accomplished through injection, whether it legal for an unlicensed person to administer the drug. A subsidiary

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<sup>1</sup> The views expressed in this article are personal to the author and are not necessarily those of Wilderness Medical Associates for whom the author provides legal services.

issue is whether a volunteer wilderness lay rescuer is protected by the Good Samaritan laws if the drug is administered in an emergency. Although the response to these questions vary from state to state, as a general proposition the answer to both questions is in the affirmative.

Unlike the users of AEDs, which is the subject of national legislation assuring Good Samaritan protection, *see* the Cardiac Arrest Survival Act, HR 2498, 106<sup>th</sup> Cong. 2d Sess. (2000), Sec. 4 (Good Samaritan Protection Regarding Emergency Use of Automated External Defibrillators), those who administer epinephrine in a wilderness medical emergency must look only to state law for how they are regulated or protected.<sup>2</sup> For a general survey on this issue, reference is made the Red Cross article, “State Regulation of Epinephrine and Asthma Training Assistance with Administration, Application of Good Samaritan Law and Chapter Guidance as of June 2006,” available on the internet at [https://instructors.palmettocross.org/inst\\_docs/epi\\_pen\\_inhale\\_state.pdf](https://instructors.palmettocross.org/inst_docs/epi_pen_inhale_state.pdf), which is generally accurate.

It is instructive to examine some of the different models of state regulation. I have grouped the states into six different categories for discussion purposes.

First, most states regulate the administration of epinephrine by EMTs and provide for use of epinephrine during school hours by students with a prescription, either with the assistance of trained school employees or by self-administration, but otherwise do not address administration of epinephrine by lay rescuers or in Good Samaritan laws.

Second, a smaller group of States, including Connecticut (Title 52, Ch. 925, §52-557b(h) ), Georgia (by regulation), New Hampshire (Title L, Ch. 485-A:25-b), New York

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<sup>2</sup> *But see* , the Volunteer Protection Act of 1997, PL 105-19, 105<sup>th</sup> Cong. 1<sup>st</sup> Sess. (1997) giving some Good Samaritan protection to volunteers of a non-profit organizations in certain circumstances..

(Art. 340, §3000-C), North Dakota (Art. 33-37-01-01) and Pennsylvania (by regulation), provide for administration of epinephrine in camps, day care and/or residential child and adult facilities.

Third, a group of seven states -- Arkansas (Insect Sting Emergency Treatment Act, ACA §20-13-401, et seq.) Florida (Insect Sting Emergency Treatment Act, F.S. 2006, §381.88, et seq.), Maryland (Insect Sting Emergency Treatment Program, Ch. 16, §13-701, et seq.), Missouri (Epinephrine auto-injector, possession and use limitations, Ch. 190, §190.246), North Carolina, (G.S. 143-508(d)(11) and Medical Care Commission Regulation .2911), North Dakota (Title 23, Ch. 23-01, §23.01-05.2 and Ch. 33-37-01, et seq.), and South Carolina (Insect Sting Emergency Treatment Act, Ch. 99, § 44-99-10, et seq.) have certificate programs for lay rescuers. These laws, which appear to represent a trend in state legislation,<sup>3</sup> typically provide for the training and certification of persons who reasonably expect to have responsibility for others as a result of occupational or volunteer status, such as camp counselors, forest rangers, and tour guides. Certified persons are authorized to obtain prescriptions of epinephrine and to administer it and are granted Good Samaritan protection from liability. In Missouri, the statute states explicitly that use of epinephrine in accordance with the statute “shall be considered first aid or emergency treatment for purposes of any law relating to liability” and the purchase, possession and use of an epinephrine auto-injector shall not be considered the “unlawful practice of medicine.” In Arkansas, Florida, North Carolina, and North Dakota, the training must be done by a physician licensed in these respective states; in the other states, the training must be state approved.

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<sup>3</sup> This legislation is based on a “model bill” endorsed by the American Medical Association. See, “Position Statement”, *supra*, at 667.

Fourth, Connecticut (Title 52, Ch. 925, §52-557b(h)) provides that a person who has received authorized training in the administration of epinephrine is entitled to Good Samaritan protection when providing emergency treatment. New York law, Art. 30, §3000-C, provides that “eligible persons,” including EMTs and overnight camps and others approved by the State, may enter into a collaborative agreement with a health care provider containing protocols for the emergency use of epinephrine and for such persons the emergency administration of epinephrine shall be considered first aid with Good Samaritan protection. Oregon (RS §433.800, et seq.) has a statute similar to Connecticut.

Fifth, Arizona (Title 36, Ch. 21.1, Article 1, §36-2226), Rhode Island (Title 9, §9-1-27.1) and Virginia (§8.01-225.A.3) simply state that the administration of epinephrine by a volunteer rescuer in an emergency is entitled to Good Samaritan protection.

Sixth, very few states, I have found only two, New York and Missouri, although there may be more that are not readily apparent, explicitly prohibit the use of epinephrine except as expressly authorized. Missouri states in Ch. 190, §190.246.2(1) that “no person [other than a licensed health care professional or a person with a lawful prescription] shall use an epinephrine auto-injector device unless such person has successfully completed a training course” as specified in the statute. New York law, Article 30, §3000-C(6) states the same thing. Neither state, however, prohibits the training of lay rescuers in the administration of epinephrine.

In Canada, epinephrine can be purchased at a pharmacy without a prescription and, perhaps for this reason, I could not find provincial statutes or regulations on the subject of the training and administration of epinephrine, with one exception. In Ontario, “Sabrina’s Law” (S.O. 2005, Ch. 7) requires schools to adopt an anaphylactic policy,

including storage and use of epinephrine auto-injectors. The Provinces of Alberta (Emergency Medical Aid Act, Ch. E-7), British Columbia (Good Samaritan Act, RSBC 1996, Ch. 172), Nova Scotia (Volunteer Service Act, RS 1989, Ch. 497) and Ontario (Good Samaritan Act, 2001, S.O. 2001, Ch.2) have Good Samaritan laws, but they do not specifically address the administration of epinephrine. It is likely that the administration of epinephrine in emergency situations would be regarded as “first aid” within the meaning of the Good Samaritan laws of these Provinces.

What lessons come from this survey?

The most obvious is that in the United States regulatory policy on the administration of epinephrine remains fractured and inconsistent, suggesting the need for national legislation of the kind enacted for use of AEDs.

Next, it seems more and more evident that the use of epinephrine, as true for CPR and AED, is being recognized by regulators as mainstream first aid as stated initially in this article. Therefore, with the possible exceptions of New York and Missouri and other states that may (unwisely) provide by statute or regulation that the administration of epinephrine, except as authorized, is expressly prohibited, the administration or the assistance in the administration of epinephrine lawfully possessed in an emergency situation by a properly trained person should not be considered an unlawful practice of medicine and should receive the protection afforded to those voluntarily rendering emergency “first aid” under Good Samaritan laws that do not specifically address the use of epinephrine. It is easier to defend this conclusion for some of the six categories surveyed above (e.g., for the first where there is an absence of regulation and the fifth where the point is embedded in state law or in Canada) than others (such as the third

category where a certification system is in place where the lay rescuer has not obtained certification) and the fourth (where states provide for Good Samaritan protection for those who have received approved training but the lay rescuer has not received training specifically authorized by the state). My view is that, even in the latter jurisdictions, unless the statute or regulation specifically conditions Good Samaritan protection to lay rescuers who are certified or who have received state approved training, the policy of Good Samaritan laws is so strong and the benefits from the use of epinephrine, weighed against the small risks in using the drug, are so compelling, and the administration of epinephrine has become so well recognized as first aid, that the protections of Good Samaritan laws should extend to lay rescuers even if the rescuer has not complied with more specific statutes that provide protection for certified or approved persons. Or to put the matter differently, if you are in a certification state or an approved training state and receive a certificate or are taught by an approved entity, then you are in a safe harbor for the use of epinephrine. But, even if you are in one of these states and for one reason or another do not seek certification or you do not received state sanctioned training, you should still qualify for protection under the general terms of the Good Samaritan law if you are in fact properly trained and you act gratuitously in an emergency situation.

Finally, it makes sense for those entities that provide wilderness training on the administration of epinephrine to be sensitive to the state laws where instruction is being given with the goal of qualifying students for approved training or certification where such systems are in place, or at least to inform students about the regulatory environment that they will be working in after receiving training if they expect to use their skills in employment or a volunteer position.

