

239.90 FELONIOUS UNAUTHORIZED ADMINISTRATION OF MEDICATION TO  
A CHILD. FELONY; MISDEMEANOR.

*NOTE WELL: Use this instruction for offenses occurring on or  
after December 1, 2003.*

The defendant has been charged with felonious unauthorized  
administration of medication to a child. For the defendant to be found guilty  
of this offense, the State must prove four things beyond a reasonable doubt:

First, that the defendant administered [prescription] [over the counter]  
medication to a child attending a child care facility.<sup>1</sup>

Second, that at the time the defendant administered the medication he  
was an [employee] [owner] [household member] [volunteer] [operator] of  
the [licensed] [unlicensed] child care facility that the child was attending.

Third, that the defendant acted willfully and without written  
authorization<sup>2</sup> in administering the medication.

And Fourth, that serious injury resulted to the child.

*NOTE WELL: Subsection (b) of the statute states that in the  
event of an emergency medical condition and the child's parent  
or guardian is unavailable, it shall not be unlawful to administer  
medication to a child attending the child care facility without  
written authorization as required under subsection (a) of this  
section if the medication is administered with the authorization  
and in accordance with instructions from a bona fide medical  
care provider. For purposes of this subsection, the following  
definitions apply:*

- 1) A bona fide medical care provider means an individual who  
is licensed, certified, or otherwise authorized to prescribe  
the medication.*
- 2) An emergency medical condition means circumstances  
where a prudent layperson acting reasonably would have  
believed that an emergency medical condition existed.*

If you find from the evidence beyond a reasonable doubt that on or

about the alleged date the defendant willfully and without written authorization administered [prescription] [over the counter] medication to a child attending a child care facility, that at the time the defendant administered the medication he was an [employee] [owner] [household member] [volunteer] [operator] of the [licensed] [unlicensed] child care facility that the child was attending, and that serious injury resulted to the child, then it would be your duty to return a verdict of guilty of felonious unauthorized administration of medication to a child. If you do not so find, or have a reasonable doubt as to one or more of these things, you will not return a verdict of guilty of this offense<sup>3</sup> but will consider whether the defendant is guilty of misdemeanor unauthorized administration of medication to a child.

Misdemeanor administration of medication to a child differs from the felony in that the unauthorized administration of medication need not result in serious injury to the child.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date the defendant willfully and without written authorization administered [prescription] [over the counter] medication to a child attending a child care facility and that at the time the defendant administered the medication he was an [employee] [owner] [household member] [volunteer] [operator] of the [licensed] [unlicensed] child care facility that the child was attending, it would be your duty to return a verdict of guilty of misdemeanor unauthorized administration of medication to a child. If you do not so find, or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

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1. A child care facility is defined in G.S. 110-86 as a child care center, family child care home, or any other child care arrangement not excluded by G.S. 110-86(2), that

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provides child care, regardless of the time of day, wherever operated, and whether or not operated for profit. A child care facility, as used in this section, includes child care facilities operated by public schools and nonpublic schools as defined in G.S. 110-86. However, for purposes of this section, a child care facility operated by a public school does not include kindergarten through twelfth grade classes.

2. For the purposes of this section, written authorization shall include the child's name, date or dates for which the authorization is applicable, dosage instructions, and signature of the child's parent or guardian.

3. If there is no instruction on a lesser included offense, the last phrase should be: "it would be your duty to return a verdict of not guilty."