

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 1166 (Bains)
Version: March 23, 2023
Hearing Date: June 20, 2023
Fiscal: No
Urgency: No
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SUBJECT

Liability for opioid antagonist administration

DIGEST

This bill provides qualified immunity to those administering or providing, in good faith, emergency opioid antagonists, as defined, at the scene of an overdose, or suspected overdose.

EXECUTIVE SUMMARY

According to the Johns Hopkins Bloomberg School of Public Health, “[o]ver 500,000 people have died from opioid overdoses since 1999 [and] an estimated 93,000 people died from opioid overdoses in 2020, more than in any other year.” Opioid overdoses are characterized by central nervous system and respiratory depression, leading to coma and death. While there are various opioid antagonists, the most popular appears to be naloxone, which has the ability to counteract depression of the central nervous and respiratory system caused by an opioid overdose. Naloxone is administered by either injection into vein or muscle or via a nasal atomizer. Once administered, naloxone takes effect after around a minute, potentially saving the person’s life.

There are a host of bills making their way through the Legislature this year that attempt to address the troubling spike in opioid use and overdose. This bill seeks to address the concern that liability fears are preventing the use of opioid antagonists to prevent overdose and save lives. The bill provides a qualified immunity to those administering in good faith such drugs at the scene of an overdose, or suspected overdose, as well as to any person furnishing in good faith such drugs to the person administering them. Such immunity from civil liability for resulting damages does not attach where the relevant act or omission constituted gross negligence or willful or wanton misconduct.

The bill is author-sponsored. It is supported by several groups and localities, including the California Academy of Family Physicians. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that every person is responsible, not only for the result of their willful acts, but also for an injury occasioned to another by the person's want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civ. Code § 1714(a).)
- 2) Provides that no person who, in good faith, and not for compensation, renders emergency medical or nonmedical care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission. The scene of an emergency shall not include emergency departments and other places where medical care is usually offered. This applies only to medical, law enforcement, and emergency personnel, as specified. (Health & Saf. Code § 1799.102(a).)
- 3) Extends to all other persons not covered by the above who are rendering medical or nonmedical care or other assistance in such situations immunity from civil damages resulting from any act or omission other than acts or omissions constituting gross negligence or willful or wanton misconduct. (Health & Saf. Code § 1799.102(b).)
- 4) Provides that, in order to encourage local agencies and other organizations to train people in emergency medical services, no local agency, entity of state or local government, private business, or nonprofit organization included on the statewide registry that voluntarily and without expectation and receipt of compensation donates services, goods, labor, equipment, resources, or dispensaries or other facilities, in compliance with Section 8588.2 of the Government Code, or other public or private organization which sponsors, authorizes, supports, finances, or supervises the training of people, or certifies those people, excluding physicians and surgeons, registered nurses, and licensed vocational nurses, as defined, in emergency medical services, shall be liable for any civil damages alleged to result from those training programs. (Health & Saf. Code § 1799.100.)
- 5) Provides that notwithstanding any other law, a person who possesses or distributes an opioid antagonist pursuant to a prescription or standing order shall not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for this possession or distribution. Further provides that a person not otherwise licensed to administer an opioid antagonist, but trained as required and who acts with reasonable care in administering an opioid antagonist, in good faith and not for compensation, to a person who is experiencing or is suspected of experiencing an overdose shall not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for this administration. (Civ. Code § 1714.22 (f).)

- 6) Requires the State Department of Public Health, upon appropriation, to award funding to local health departments, local government agencies, or on a competitive basis to community-based organizations, regional opioid prevention coalitions, or both, to support or establish programs that provide FDA-approved opioid antagonists for the treatment of an opioid overdose, to first responders and to at-risk opioid users through programs that serve at-risk drug users, including, but not limited to, syringe exchange and disposal programs, homeless programs, and substance use disorder treatment providers. (Health & Saf. Code § 1179.80 (a).)
- 7) Provides that notwithstanding any other law, school personnel who volunteer to be trained to administer naloxone hydrochloride (naloxone) or another opioid antagonist, in good faith and not for compensation, to a person who appears to be experiencing an opioid overdose shall not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for their acts or omissions in administering the opioid antagonist. (Educ. Code § 49414.3(j)(1).)

This bill:

- 1) Immunizes a person who, in good faith and not for compensation, renders emergency treatment at the scene of an opioid overdose or suspected opioid overdose by administering an opioid antagonist from civil liability for damages resulting from an act or omission related to the rendering of the emergency treatment.
- 2) Immunizes a person who, in good faith and not for compensation, furnishes an opioid antagonist to a person for use at the scene of an opioid overdose or suspected opioid overdose from civil liability for damages resulting from an act or omission related to the furnishing of the opioid antagonist.
- 3) Provides that the above immunities do not apply to acts or omissions constituting gross negligence or willful or wanton misconduct.
- 4) Defines "opioid antagonist" as naloxone hydrochloride or any other opioid antagonist that is approved by the United States Food and Drug Administration (FDA) for the treatment of an opioid overdose.
- 5) Clarifies that a person who renders emergency treatment by means of an opioid antagonist, or who furnishes an opioid antagonist at the scene of an opioid overdose or suspected opioid overdose, and who is not compensated for doing so, but receives compensation for other actions as a result of their unrelated employment, is not "rendering emergency medical care or furnishing an opioid antagonist for compensation."

COMMENTS

1. The opioid epidemic

As stated, it is not only this state, but the entire country, that is being ravaged by opioid overdose deaths. Examples of opioids include heroin, oxycodone (OxyContin®), hydrocodone (Vicodin®), codeine, and morphine. One major cause of the dramatic rise in overdose numbers is the increasing use of one particularly dangerous iteration, fentanyl:

The death toll has spiked in recent years, largely as a result of the growing ubiquity of the powerful opioid fentanyl.

The legally prescribed painkiller has become a popular illicit street drug over the last decade. It has also killed thousands of people who unknowingly consumed other drugs such as cocaine or heroin that were surreptitiously laced with fentanyl.

The U.S. Centers for Disease Control and Prevention has described fentanyl as up to 50 times as potent as heroin and 100 times as potent as morphine.

More than 71,000 people died in the U.S. of overdoses caused by synthetic opioids — primarily fentanyl — in 2021, an increase of more than 23% from the previous year. In 2012, the CDC recorded just 1,615 overdose deaths involving fentanyl in the U.S.

In the face of such distressing failure to reduce deaths from opioids, methods for addressing the crisis that many once considered too risky or even unthinkable are now being debated by state and local officials and rolled out in communities devastated by overdoses.¹

One critical tool in the fight against opioid overdoses is an opioid antagonist, which is a drug that attaches to opioid receptors and reverses and blocks the effects of other opioids.² Naloxone is a popular form of this medicine that can rapidly reverse an opioid overdose. Naloxone can quickly restore normal breathing to a person if their breathing has slowed or stopped because of an overdose. Crucially, naloxone has little to no effect on someone who does not have opioids in their system.

¹ Connor Sheets, As fentanyl overdose deaths keep rising, efforts to reverse trend meet liability fears (December 27, 2022) Los Angeles Times, <https://www.latimes.com/california/story/2022-12-27/as-overdose-deaths-keep-rising-bold-efforts-to-reverse-the-trend-emerge>. All internet citations are current as of June 13, 2023.

² Naloxone DrugFacts (January 2022) National Institute on Drug Abuse, <https://nida.nih.gov/publications/drugfacts/naloxone>.

Opioid antagonists should be given to any person who shows signs of an opioid overdose or when an overdose is suspected. Naloxone can be given as a nasal spray or it can be injected into the muscle, under the skin, or into the veins.

This bill responds to reports that suggest that service providers are concerned with potential legal liability for damages and want legal cover to distribute naloxone to people who may in turn share it with others who have not been trained to administer it.

2. Civil liability and immunity

As a general rule, California law provides that persons are responsible, not only for the result of their willful acts, but also for an injury occasioned to another by their want of ordinary care or skill in the management of their property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon themselves. (Civ. Code § 1714(a).) Liability has the primary effect of ensuring that some measure of recourse exists for those persons injured by the negligent or willful acts of others; the risk of that liability has the primary effect of ensuring parties act reasonably to avoid harm to those to whom they owe a duty.

Conversely, immunity from liability disincentivizes careful planning and acting on the part of individuals and entities. When one enjoys immunity from civil liability, they are relieved of the responsibility to act with due regard and an appropriate level of care in the conduct of their activities. Immunity provisions are also disfavored because they, by their nature, preclude parties from recovering when they are injured, and force injured parties to absorb losses for which they are not responsible. Liability acts not only to allow a victim to be made whole, but to encourage appropriate compliance with legal requirements.

Although immunity provisions are rarely preferable, the Legislature has, in limited scenarios, approved measured immunity from liability (as opposed to blanket immunities) to promote other policy goals that could benefit the public. Immunities are generally afforded when needed to ensure the willingness of individuals to continue taking on certain roles that may involve some risk and to incentivize certain conduct, such as the provision of life-saving or other critical services. Examples include protections for use of CPR (Civ. Code § 1714.2); use of an automated external defibrillator (Civ. Code § 1714.21); use of opiate overdose treatment (Civ. Code § 1714.22); providing emergency care at the scene of an emergency (Health & Saf. Code §§ 1799.102, 1799.106); and performing emergency rescue services (Health & Saf. Code § 1799.107). However, as indicated above, rarely is immunity absolute, and these immunities generally do not cover grossly negligent conduct or intentional misconduct.

3. Incentivizing the administration of opioid antagonists

In order to maximize the life-saving capabilities of opioid antagonists, this bill provides qualified immunity to a person who, in good faith, and not for compensation, renders

emergency treatment at the scene of an opioid overdose or suspected opioid overdose by administering an opioid antagonist.³ The person is immune from civil liability for damages resulting from an act or omission related to the rendering of the emergency treatment. The immunity also covers a person who, in good faith, and not for compensation, furnishes the opioid antagonist for use in such situations. The above immunities do not apply to acts or omissions constituting gross negligence or willful or wanton misconduct.

These provisions mimic, and supplement, similar existing laws. For instance, Education Code section 49414.3 authorizes local educational agencies (LEA) to designate volunteers to train on emergency use of naloxone hydrochloride or another opioid antagonist. A school nurse or trained volunteer is authorized to administer naloxone hydrochloride or another opioid antagonist to a person exhibiting potentially life-threatening symptoms of an opioid overdose at school or a school activity. The LEA is required to ensure that each employee who volunteers will be provided defense and indemnification for any and all civil liability. A person trained to administer an opioid antagonist that, in good faith and not for compensation, provides it to a person who appears to be experiencing an opioid overdose is shielded from professional review, liability in a civil action, and criminal prosecution for their acts or omissions in administering the opioid antagonist. As here, the immunity does not apply in a case of gross negligence or willful and wanton misconduct of the person.

It also tracks with the immunity provisions of Section 1799.102 of the Health and Safety Code, often referred to as the “Good Samaritan Law.” That statute provides immunity for those rendering emergency medical or nonmedical care at the scene of an emergency, as specified. In fact, a person who, in good faith and not for compensation, renders emergency treatment by the use of an opioid antagonist at the scene of an emergency is likely already covered by the existing Good Samaritan Law. However, this provision will likely incentivize more individuals to take action when needed.

According to the author:

Hesitation at the scene of an opioid overdose can literally be the difference between life and death. California has taken several steps over the years to make naloxone more accessible and federal regulators are currently moving forward with efforts to make this prescription medication available over the counter. The Naloxone Distribution Project at DHCS supplies naloxone to numerous entities for use and distribution including EMS, harm reduction organizations, organizations that serve the unhoused populations, substance use recovery facilities, and emergency departments. The state has also repeatedly expanded the protections

³ “Opioid antagonist” includes naloxone hydrochloride or any other opioid antagonist that is approved by the FDA for the treatment of an opioid overdose.

afforded under the Good Samaritan Law to encourage, but not require, the administration of naloxone at the scene of an opioid overdose. Unfortunately, this has resulted in a patchwork of statutes with numerous prerequisites, which must be met in order to be eligible for existing liability protections. This runs counter to the intended purpose of extending these liability protections which is to ensure no one who is able and willing to administer naloxone or opioid antagonists at the scene of an opioid overdose hesitates or withholds care for fear of wrongful prosecution. In addition, given the state's numerous efforts to make naloxone readily available to persons at risk of overdose as well as persons who live or work in and around persons at risk of overdose, statute should be made clear that no one acting in good faith can be held liable for furnishing naloxone or other opioid antagonists to another person via secondary distribution.

Writing in support, the City of Alameda states:

In California, opioid-related fatalities have skyrocketed by 137% since 2000, and the number of opioid overdose deaths in the state has more than doubled since 2010. According to the National Safety Council, more than 70,000 drug overdose deaths occurred in the United States in 2019, with opioids responsible for 70% of those deaths.

AB 1166 seeks to encourage increased access to opioid antagonists, including to laypersons in the community, by clarifying that a person who in good faith and not for compensation, either renders emergency care by means of administering an opioid antagonist, or furnishes an opioid antagonist, is generally not liable for civil damages resulting from an act or omission related to such actions.

The City of Alameda supports legislation to reduce opioid overdose deaths and efforts that protect the health, safety, and welfare of residents.

SUPPORT

California Academy of Family Physicians
California Academy of Preventive Medicine
California State Association of Psychiatrists
California State Sheriffs' Association
City of Alameda
City of Long Beach
Civil Justice Association of California
County Behavioral Health Directors Association of California
Faculty Association of California Community Colleges
Govern for California

Los Angeles Unified School District
Peace Officers Research Association of California

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 234 (Portantino, 2023) requires public schools, institutions of higher education, stadiums, concert venues, and amusement parks to maintain unexpired doses of naloxone hydrochloride or another opioid antagonist on its premises and provides qualified immunity to those administering such opioid antagonists and to medical professionals for prescribing it. SB 234 is currently in the Assembly Education Committee.

SB 472 (Hurtado, 2023) requires each public school to maintain at least two doses of naloxone on its campus, and to report to the California Department of Health Care Services on why they are not exercising their authority, if applicable, to distribute naloxone and how they came to that determination. SB 472 was held in the Senate Appropriations Committee.

SB 868 (Wilk, 2023) requires local educational agencies to equip each classroom with a trauma kit and to offer training to employees on the use of such kits. Employees who render emergency care with such kits are granted qualified immunity from civil damages, as provided. AB 868 is currently in the Assembly Education Committee.

Prior Legislation:

AB 1810 (Levine, Ch. 906, Stats. 2022) authorized schools to designate and train persons to provide anti-seizure medication in an emergency involving a pupil diagnosed with a seizure disorder. The persons must be provided defense and indemnification and are granted qualified immunity, as specified.

AB 2260 (Rodriguez, Ch. 586, Stats. 2022) required certain public and private buildings to maintain a trauma kit on the building's premises. It provided specified immunity to persons supplying trauma kits, training others on their use, and using them in emergency situations.

AB 1766 (Maienschein, Ch. 270, Stats. 2018) provided that every public swimming pool that is required to provide lifeguard services and that charges a direct fee shall provide on its premises an AED that must be readily available during pool operations and applied conditional liability protections to those acquiring or using these AEDs.

AB 635 (Ammiano, Ch. 707, Stats. 2013) afforded qualified immunity from civil liability, criminal prosecution, or professional review to licensed health care providers who issue prescriptions or standing orders, as specified; and immunity from civil action or criminal prosecution, or professional review, to any persons who possess or distribute naloxone pursuant to a prescription or standing order, or acting with reasonable care in administering naloxone, as specified.

PRIOR VOTES:

Assembly Floor (Ayes 65, Noes 0)

Assembly Judiciary Committee (Ayes 9, Noes 0)
