

LEGAL SERVICES

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MEMORANDUM

January 28, 2016

SUBJECT: "Regulatory immunity"
(CSSB 23(JUD); Work Order No. 29-LS0058\E)

TO: Representative Paul Seaton
Attn: Taneeka Hansen

FROM: Megan A. Wallace 
Legislative Counsel

You have asked whether "regulatory immunity" should be added to the above-referenced bill. The bill is currently drafted to provide immunity from civil damages to any person in an action relating to an act or omission in prescribing or providing an opioid overdose drug, except if the act or omission was the result of gross negligence or reckless or intentional misconduct. As such, the bill provides immunity from civil damages to health care providers, but the bill does not address whether regulatory action may be taken.

I am unaware of any "regulatory liability" that could be imposed against a health care provider, or any other person, as the result of an act or omission in prescribing or providing an opioid overdose drug. Do you mean disciplinary action against a professional licensee? It is certainly possible that a person could file a complaint with the regulatory board or commission overseeing a health care provider relating to an incident involving an act or omission in prescribing or providing an opioid overdose drug. That complaint would be handled in the ordinary course with that board or commission. Other than an administrative action that could be imposed by a board or commission, such as disciplinary action or license suspension or revocation, I am unaware of any "regulatory liability" that could be imposed against the health care provider. Accordingly, it is my opinion that "regulatory liability" does not need to be added to the bill.

Nevertheless, if you wish to make health care providers, or other persons, immune from regulatory discipline relating to an act or omission in prescribing or providing an opioid overdose drug, it is possible to add that to the bill, but this language would likely need to be added to the statutes governing the various boards and commissions, not to AS 09.65.340.

Please let me know if you have any questions or if I can be of further assistance.

MAW:dla
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