

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 5, 2018

SUBJECT: Statutory interpretation
(CSSSHB 268(); Work Order No. 30-LS1081\U)

TO: Representative Les Gara
Attn: Representative Gara

FROM: Claire Radford
Legislative Counsel 

The term "outpatient supply" is not currently defined in statute or regulation and has not arisen in litigation. Generally, the most reliable guide to the meaning of a statute is the words of the statute construed in accordance with their common usage. However, even where the statutory language considered alone seems to reasonably leave room for only one meaning, the legislative history and the rules of statutory construction may be consulted, as sometimes language that seems clear in the abstract takes on a different meaning when viewed in context. In such cases, the legislative history and rules of construction must present a compelling case that the literal meaning of the language of the statute is not what the legislature intended.¹

"Outpatient supply" could be defined by the respective boards under these statutes. A court would then look to a board's definition when interpreting the meaning and give deference to the board's definition, as long as the term falls within the board's specialized subject area. It's possible that each of the relevant boards may, however, define the supply amounts differently.

"Outpatient supply" was used in the Governor's opioid bill, HB 159 (enrolled as Chapter 2 SSSLA 17) and was not defined in that statute. This phrase would therefore be construed in accordance with its common usage. Each of the two words used have commonly understood meanings and since this phrase was not defined in HB 159, I do not believe that it is necessary to define the phrase in this bill. Construing this phrase as it appears in CSSSHB 268 in accordance with its common usage is sufficient.

If I may be of further assistance, please advise.

CER:dls
18-037.dls

Attachment

¹ *Homer Elec. Ass'n v. Towsley*, 841 P.2d 1042, 1043 - 1044 (Alaska 1992) (internal citations omitted).

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MEMORANDUM

February 21, 2018

SUBJECT: Statutory interpretation (CSSSHB 268());
Work Order No. 30-LS1081\R)

TO: Representative Les Gara
Attn: Claire Gross

FROM: Claire E. Radford
Legislative Counsel 

You asked about the meaning of "habitually and without good cause" and what the meaning of this phrase would be since it is not otherwise defined in this bill. The phrase "habitually and without good cause" is not currently defined in statute or regulation. The terms "habitually" and "without good cause" are also not defined in statute or regulation but are used several times in statute.¹

As previously advised, generally the most reliable guide to the meaning of a statute is the words of the statute construed in accordance with their common usage. If the word is clear and unmistakable without definition, it is superfluous and confusing to define it. A word that is not defined in a statute will probably be given its common law meaning by a court construing the statute.² A statute is interpreted according to reason, practicality, and common sense, considering the meaning of its language, its legislative history, and its purpose. Alaska courts may also consider how courts have interpreted the words in other cases or statutes, or how administrative agencies have used the words.³

"Habitually and without good cause" could be defined by the respective boards under these statutes. A court would then look to a board's definition when interpreting the meaning and give deference to the board's definition, as long as the term falls within the board's specialized subject area.

¹ See, e.g. AS 22.30.011, AS 28.15.221, and AS 47.10.011 (uses of "habitually"); AS 08.87.200, AS 12.50.010, AS 18.07.081 (uses of "without good cause").

² *Manual of Legislative Drafting* (2017), p. 51. (See *Hugo v. City of Fairbanks*, 658 P.2d 155 (Alaska App. 1983)).

³ *Wilson v. State, Dept. of Corrections*, 127 P.3d 826 (Alaska 2006).

If this phrase was not defined, this phrase would be construed in accordance with its common usage. The words have commonly understood meanings and I do not believe it is necessary to define these words or this phrase in this bill. On occasion, the Supreme Court of Alaska does reference the dictionary meanings when the meaning of a word is essential in litigation. I do not think this would be necessary for "habitual" or "without good cause" since these terms are commonly used and understood and they will be applied to a set of facts. However, for your reference, Black's Law Dictionary defines "habitual" as customary; usual, and as recidivist⁴ and "good cause" is defined as a "legally sufficient reason."⁵

The legislature can also make a record of their intent in using a particular word or phrase that the court will refer to when interpreting a statute. This legislative history can have an important role in statutory interpretation since the plain meaning of a statute does not always control its interpretation, as the Alaska Supreme Court has recognized that legislative history can sometimes alter a statute's literal terms. However, under Alaska's sliding-scale approach to statutory interpretation, "the plainer the language of the statute, the more convincing contrary legislative history must be."⁶ In such cases the legislative history and rules of construction must present a compelling case that the literal meaning of the language of the statute is not what the legislature intended.

If I may be of further assistance, please advise.

CER:dls
18-075.dls

⁴ Black's Law Dictionary (10th ed. 2014), habitual.

⁵ Black's Law Dictionary (10th ed. 2014), cause, 2. good cause.

⁶ *Alaskans For Efficient Gov't Inc. v. Knowles*, 91 P.3d 273, 275 (Alaska 2004) (quoting *Ganz v. Alaska Airlines, Inc.*, 963 P.2d 1015, 1019 (Alaska 1998)).