

Law Enforcement Immunity from Civil Liability When Administering Naloxone

Summary

Indiana law protects law enforcement officers from personal civil liability when administering naloxone according to their training in all cases except where the officer acts in an egregious manner.

Rule

Indiana provides its public employees immunity from certain civil actions under the Indiana Tort Claims Act (ITCA)¹. The act states in part:

A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from the following: ...

(8) The adoption and enforcement of or failure to adopt or enforce:

(A) a law (including rules and regulations)...

unless the act of enforcement constitutes false arrest or false imprisonment.²

Where other statutes conflict with ITCA immunity, the Indiana Supreme Court has held law enforcement officers liable under the duties of the conflicting statute. In *Patrick*³, the Court held that a statute defining the procedures for one driving an authorized emergency vehicle were superior to the ITCA when an officer allegedly drove negligently, causing the death of a third-party during a police pursuit.

When authorizing law enforcement officers to administer naloxone, the Indiana General Assembly provided specific civil immunity for acts or omissions when administering the drug. IC 16-31-6-2.5(a) states:

Except for an act of gross negligence or willful misconduct, an advanced emergency medical technician, an emergency medical responder, an emergency medical technician, a firefighter or volunteer firefighter, a law enforcement officer, or a paramedic who administers an overdose intervention drug according to standards established by:

(1) the department or agency that oversees the individual's employment in providing emergency medical services; or

(2) the commission under IC 16-31-2-9;

to an individual suffering from an overdose is immune from civil liability for acts or omissions when administering the drug.⁴

¹ IC 34-13-3

² IC 34-13-3-3(8)

³ *Patrick v. Miresso*, 848 N.E.2d 1083 (Ind. 2006).

⁴ IC 16-31-6-2.5(a)

Analysis

Naloxone is an opioid antagonist which acts by causing a person's opioid receptors not to fire; the default state for a person without opioids acting in their system. Naloxone reverses opioid overdose by replacing and blocking agonists, such as OxyContin and heroin, from attaching to the brain's opioid receptors. Naloxone has a stronger affinity or bond to the opioid receptors than do agonists.⁵ When administered to a person with opioids in their system, naloxone neutralizes the opioids' effect allowing the body to return to normal functioning. When administered to a person without opioids in their system, the effect is negligible except in the rare case they are allergic to naloxone.

Because of naloxone's safety, a survey of cases failed to find any suit based on the administration of naloxone leading to injury. Most cases involved medical malpractice alleging a failure by medical personnel to administer naloxone properly in a hospital setting. No cases have found an Indiana law enforcement officer liable given the protection of IC 16-31-6-2.5(a).

Because injury from the administration of naloxone is rare, the civil immunity protection provided to law enforcement officers seems superfluous. However, it provides officers reassurance that performance of their duties by administering naloxone will not result in liability.

Liability may be sustained if an officer's act rises to gross negligence or willful misconduct. Gross negligence has been defined by the Indiana Supreme Court as a "conscious, voluntary act or omission in reckless disregard of the consequences" to the injured party⁶. Examples of gross negligence include: giving a patient a drug that their chart says they are allergic to, amputating the wrong limb, or leaving a surgical instrument inside a body cavity. The Court has found that intoxication accompanied by excessive speed or weaving from one side of the highway to the other constitutes wanton and willful misconduct⁷.

Conclusion

It's highly unlikely that an Indiana law enforcement officer could cause injury when administering naloxone to reverse a potentially lethal opioid dose. In the rare instance that may occur, Indiana law will prevent that officer from being civilly liable.

⁵ Harm Reduction Coalition. "Understanding Naloxone." Web. <<http://harmreduction.org/issues/overdoseprevention/overview/overdose-basics/what-is-an-overdose/>>. Accessed 18 Dec. 2013.

⁶ *NIPSCO v. Sharp*, 790 N.E.2d 462 (Ind. 2003).

⁷ *Martin v. Roberts*, 464 N.E. 2d 896 (Ind. 1984).