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SAVING LIVES: SHOULD BUSINESSES, SCHOOLS, AND LIBRARIES USE NARCAN TO COMBAT OPIOID OVERDOSES?

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Drug overdose is the leading cause of death by injury in the United States. Naloxone, known by the brand name Narcan, can reverse an opioid overdose and save lives. The likelihood of death increases with the length of time that a person suffers opioid-induced respiratory depression. Therefore, there is public pressure to make naloxone more readily available so that it is immediately accessible at the scene of an overdose. Libraries and schools are now stocking it and training their employees and volunteers to use it. What are the implications for private businesses? If naloxone is readily available and easily administered, should a business or public facility keep it on hand? What are the risks and liabilities of the use, misuse, or nonuse of Narcan?

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I. Introduction

Drug overdose is the leading cause of death by injury in the United States.¹ New York City averages one fatal drug overdose death every three hours.² In a discussion about fentanyl, DEA Special Agent Frank Tarentino referred to it as “poison” and “a parent’s worst nightmare.”³ The DEA’s “One Pill Can Kill” campaign has taken an estimated thirty-six million doses of fentanyl off the streets, but it is not enough.⁴ The United States Council of Economic Advisers once estimated that the cost of the opioid epidemic was more than five hundred million dollars in a given year.⁵

Naloxone, known by the brand name Narcan, can reverse an opioid overdose and save lives.⁶ Naloxone reverses the effects of opioid overdose and restores normal breathing by “displac[ing] opioids from receptors in

1. *Naloxone (Narcan) Saves Lives, But Legal Barriers Prevent Its Use*, RECOVERY RSCH. INST., <https://www.recoveryanswers.org/research-post/naloxone-narcan-saves-lives-but-legal-barriers-prevent-its-use/> (last visited Dec. 12, 2023) (noting that naloxone was approved by the Food and Drug Administration in 1971); *see also* Tessie Castillo, *Who Invented Naloxone?*, HUFFPOST.COM (Nov. 30, 2015), https://www.huffpost.com/entry/meet-jack-fishman-the-man_b_6329512 (stating that naloxone was invented by Jack Fishman, who was born in Poland in 1930 and emigrated to the United States before the Nazi invasion. While trying to find a way to treat constipation caused by chronic opioid use, he invented naloxone, which he and his partner patented in 1961. When his patent expired, Emergent created Narcan. Ironically, his stepson died of an opioid overdose in 2004, in Florida, where naloxone was not readily available. His wife, Joy Stampler, said, “Back then we didn’t think of naloxone as a household item. Doctors weren’t writing take-home prescriptions for it. It was hard for Jack to get naloxone even though he invented it!”).

2. Sharon Otterman, *Inside the Medical Examiner’s Office, Where Opioids Fuel Surge in Deaths*, NYTIMES.COM (Feb. 28, 2023), <https://www.nytimes.com/2023/02/20/nyregion/sudden-deaths-overdoses-fentanyl-nyc.html>; Larry Celona & Jorge Fitz-Gibbon, *Legos used to hide ‘rainbow fentanyl’ in Manhattan: DEA*, NYPOST.COM (Oct. 4, 2022, 1:08 PM), <https://nypost.com/2022/10/04/legos-used-to-smuggle-rainbow-fentanyl-in-manhattan/> (stating that the statistic is even worse nationally, with overdoses occurring every five minutes, or up to 295 per day).

3. Celona, *supra* note 2.

4. *Id.*

5. Margaret Talbot, *The Purdue Case is One in a Wave of Opioid Lawsuits. What Should Their Outcome Be?*, NEWYORKER.COM (Apr. 11, 2019), <https://www.newyorker.com/news/daily-comment/the-purdue-case-is-one-in-a-wave-of-opioid-lawsuits-what-should-their-outcome-be> (“funeral homes, county coroners, and state indigent-burial funds that have struggled to keep up with the dead.”).

6. *Id.*

the brain.”⁷ Naloxone has “no potential for misuse, is cost-effective, and its availability does not lead to risky behavior such as opioid users increasing their opioid use.”⁸ Since naloxone is a pharmaceutical drug, it “is not taken recreationally and abuse is not a concern.”⁹

The FDA approved naloxone in 1971.¹⁰ Since then, clinical settings have used it to reverse opioid overdoses.¹¹ Now there is public pressure to make the drug immediately accessible at the scene of an overdose because the likelihood of death increases with the length of time that a person suffers an opioid-induced respiratory depression.¹² Laws are changing so that naloxone is increasingly available to public spaces and loved ones of those who use drugs.¹³ For instance,

[a]s of 2018, all US states and Washington DC have enacted some form of naloxone access laws (NAL) to encourage providers to prescribe and dispense naloxone, to remove the requirement that the person at risk of overdose has an in-person consultation with a prescriber, and, in some cases, to permit the medication to be provided in non-medical settings.¹⁴

7. *Naloxone (Narcan) Saves Lives, But Legal Barriers Prevent Its Use*, *supra* note 1; *see source 1 infra* note 23 (emphasizing one of the effects of fentanyl is respiratory depression).

8. *Naloxone (Narcan) Saves Lives, But Legal Barriers Prevent Its Use*, *supra* note 1.

9. *Do Good Samaritan Laws Protect Me if I am Trained to Give Narcan?*, *FAM. FIRST INTERVENTION* (Feb. 20, 2019), <https://family-intervention.com/blog/do-good-samaritan-laws-protect-me-if-i-am-trained-to-give-narcan/>.

10. *Id.*

11. Jing Xu et al., *State naloxone access laws are associated with an increase in the number of naloxone prescriptions dispensed in retail pharmacies*, 189 *DRUG AND ALCOHOL DEPENDENCE* 37 (2018), <https://www.sciencedirect.com/science/article/abs/pii/S0376871618302837?via%3Dihub>.

12. *Id.*

13. Rosanna Smart et al., *Systematic review of the emerging literature on the effectiveness of naloxone access laws in the United States*, 116 *SOC’Y FOR THE STUDY OF ADDICTION* 6 (July 8, 2020).

14. *Id.*; *see also* Daniel I. Rees et al., *With a Little Help from My Friends: The Effects of Good Samaritan and Naloxone Access Laws on Opioid-Related Deaths*, 62 *J. L. & ECON.* 1, 2 (2019) (noting that NAL encompass immunity for administrators including prescriber immunity, dispenser immunity, and laypeople immunity. Further, New Mexico was the first to pass a NAL in 2001. And all 50 states and the District of Columbia now protect naloxone administrators from legal repercussions. Additionally, NAL have bipartisan support and from groups such as the American Medical Association, the US Conference of Mayors, and the American Public Health Association).

In some states it requires a prescription, but in others, it can be purchased over the counter or obtained from the health department.¹⁵ Lawmakers are comfortable with making these changes because “[l]aypersons with little or no training can successfully administer naloxone.”¹⁶ There is “no evidence that trained rescuers [have] acted differently than rescuers who obtained naloxone through social networks, nor ... [is there] evidence that trained rescuers had a higher success rate than their untrained counterparts.”¹⁷ Training is also readily available online for anyone who wishes to learn more about responding to an overdose with naloxone.¹⁸

Death by opioid overdose does not occur suddenly.¹⁹ This means that bystanders, family members, and loved ones have time to seek emergency medical assistance; but the “fear of being arrested or harassed by police often discourages drug users from calling 911.”²⁰ As part of harm reduction policies, forty states and the District of Columbia have laws that protect the individual reporting the overdose from charges related to possession of controlled substances or drug paraphernalia.²¹ These Good Samaritan laws allow bystanders to call 911 for help without fear.²²

II. Fentanyl

There cannot be discussion about the opioid crisis in America without mentioning fentanyl. This synthetic opioid is a Schedule II narcotic under the Controlled Substances Act of 1970 and it is approximately one hundred times stronger than morphine.²³ It is important to understand that “there

15. *Do Good Samaritan Laws Protect Me if I am Trained to Give Narcan?*, *supra* note 9.

16. Rees, *supra* note 14, at 3; *See also How to Administer Naloxone*, AMA-ASSN, <https://www.ama-assn.org/delivering-care/overdose-epidemic/how-administer-naloxone> (last visited Dec. 12, 2023).

17. Rees, *supra* note 14, at 4.

18. *How to respond to an overdose emergency*, GETNALOXONENOW.ORG, <https://www.getnaloxonenow.org/#home> (last visited Dec. 12, 2023).

19. Rees, *supra* note 14, at 7.

20. *Id.*

21. *Legal Interventions to Reduce Overdose Mortality: Overdose Good Samaritan Laws*, NETWORK FOR PUB. HEALTH L. (May 1, 2023), <https://www.networkforphl.org/wp-content/uploads/2023/07/Legal-Interventions-to-Reduce-Overdose-Mortality-Overdose-Good-Samaritan-Laws-2.pdf>.

22. *See id.*

23. *Fentanyl*, UNITED STATES DRUG ENF'T ADMIN., <https://www.dea.gov/factsheets/fentanyl> (last visited Dec. 12, 2023); *see also DEA Alphabetical Order List of Controlled Substances*, DEA DIVERSION,

are two types of fentanyl: pharmaceutical fentanyl and illegally made fentanyl.”²⁴ Pharmaceutical fentanyl is used for pain management of cancer and post-operation patients.²⁵ However, fentanyl can be abused due to its opioid properties.²⁶ It is often added to other drugs due to its extreme potency and “heroin-like effect.”²⁷ According to New York City’s Chief Medical Examiner, “[v]ictims can be found with needles still in their arms, a once-rare phenomenon that is a sign of how quickly fentanyl can kill[.]”²⁸

A fentanyl overdose can appear as “changes in pupil size, clammy skin, cyanosis, coma, and respiratory failure leading to death.”²⁹ According to the Center for Disease Control and Prevention, fentanyl was one of the drugs most frequently involved in overdose-related deaths in America and surpassed oxycodone in 2016.³⁰ Overall, overdoses leading to death “increased 28.5% between April 2020 and April 2021, . . . with three of four overdose deaths involving synthetic opioids like [f]entanyl.”³¹ More recent data indicates that synthetic opioids are to blame for over two-thirds of the overdose-related deaths in our country today.³²

It is not just the poverty-stricken and homeless suffering the effects of this crisis. The news is filled with stories of celebrities killed by fentanyl.

https://www.deadiversion.usdoj.gov/schedules/orangebook/c_cs_alpha.pdf (last visited Dec. 12, 2023); see also *Overview of Controlled Substances and Precursor Chemicals*, USC ENV’T HEALTH & SAFETY, <https://ehs.usc.edu/research/cspc/chemicals/> (last visited Dec. 12, 2023) (stating that Schedule II drugs have an accepted medical use, but also a high potential for abuse which may lead to “severe psychological or physical dependence.”).

24. *Stop Overdose – Fentanyl Facts*, CTR. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/stopoverdose/fentanyl/index.html> (last visited Dec. 12, 2023).

25. *Id.*

26. *Fentanyl*, *supra* note 23.

27. *Stop Overdose – Fentanyl Facts*, *supra* note 24.

28. Otterman, *supra* note 2.

29. *Fentanyl*, *supra* note 23.

30. Holly Hedegaard et al., *Drugs Most Frequently Involved in Drug Overdose Deaths: United States, 2011-2016*, 67 NAT’L VITAL STAT. REP., Dec. 12, 2018 at 1.

31. *Fentanyl is top cause of overdose deaths in U.S.*, COLLINCOUNTYTX.GOV, <https://www.collincountytx.gov/Services/Health-Care-Services/Lists/DepartmentNews/NewsDisp.aspx?ID=8&Source=https%3A%2F%2Fwww%2Ecollincountytx%2Egov%2Fservices%2Fhealth%2Dcare%2Dservices%2Fsubstance%2Dabuse%2Dprogram&ContentTypeId=0x010014B81341F131154D8F418A978CE79538> (last visited Dec. 12, 2023).

32. Mbabazi Kariisa et al., *Illicitly Manufactured Fentanyl-Involved Overdose Deaths with Detected Xylazine – United States, January 2019-June 2022*, CTR. FOR DISEASE CONTROL AND PREVENTION (June 30, 2023), [https://www.cdc.gov/mmwr/volumes/72/wr/mm7226a4.htm#:~:text=In%202022%2C%20provisional%20data%20indicated,\(IMFs\)%20\(1\).](https://www.cdc.gov/mmwr/volumes/72/wr/mm7226a4.htm#:~:text=In%202022%2C%20provisional%20data%20indicated,(IMFs)%20(1).)

Fentanyl-laced heroin killed actor-producer Michael K. Williams in September 2021.³³ Ruby Auster, the ten-month-old granddaughter of novelist Paul Auster, died from the same deadly combination.³⁴ Fentanyl was ruled the cause of death of Adam Rich, known for his work on “Eight is Enough.”³⁵ Leandro De Niro-Rodriguez, grandson of actor Robert De Niro, died after taking pills laced with fentanyl.³⁶

In 2022, there was concern around Halloween that colorful illicit fentanyl pills would be distributed to children under the guise of candy.³⁷ This fear stemmed from drug busts that revealed colorful fentanyl pills in child-appealing packaging.³⁸ Also, a drug bust in Connecticut found lethal doses of fentanyl in Skittles and Nerds candy packaging.³⁹ However, parents can breathe a sigh of relief because the packaging is used to nefariously hide drugs from authorities—not to attract children.⁴⁰

Families Against Fentanyl recently petitioned to have illegal fentanyl

33. Otterman, *supra* note 2.

34. Karen Zraick & Andy Newman, *Son of Author Paul Auster Charged in Fatal Overdose of Baby Daughter*, NYTIMES.COM (Apr. 16, 2022, 5:25 PM), <https://www.nytimes.com/2022/04/16/nyregion/daniel-auster-fentanyl-arrest.html>.

35. *Cause of death for Adam Rich, former “Eight is Enough” child star, ruled as fentanyl*, CBSNEWS.COM (June 24, 2023, 11:32 AM), <https://www.cbsnews.com/news/adam-rich-fentanyl-cause-of-death-former-eight-is-enough-child-star/>.

36. Emily Mae Czachor, *Pills laced with fentanyl killed Leandro De Niro-Rodriguez, Robert De Niro’s grandson, mother says*, CBSNEWS.COM (July 6, 2023, 11:45 AM), <https://www.cbsnews.com/news/leandro-de-niro-rodriguez-robert-de-niro-grandson-death-fentanyl-laced-pills-mother-says/>.

37. Jordan Mendoza, *Rainbow fentanyl passed out on Halloween? Why experts say that’s ‘absolutely ludicrous,’* USA TODAY (Oct. 31, 2022), <https://www.yahoo.com/lifestyle/rainbow-fentanyl-passed-halloween-why-100027029.html>.

38. Jordan Mendoza, *15,000 ‘rainbow fentanyl’ pills found inside Lego container in New York, authorities say*, USA TODAY (Oct. 5, 2022, 2:54PM), <https://www.usatoday.com/story/news/nation/2022/10/05/rainbow-fentanyl-lego-new-york-city/8186809001/> (stating that officials stopped a New Jersey woman and found a Lego container in the back seat filled with rainbow fentanyl pills marked “M” and “30” to resemble oxycodone).

39. Amy Nelson, *Fentanyl Found Disguised in Candy Packaging*, PACKAGINGSTRATEGIES (Sept. 28, 2022), <https://www.packagingstrategies.com/articles/97148-fentanyl-found-disguised-in-candy-packaging>; SIB Staff, *Fentanyl Packaged in Candy*, L.A. CNTY. SHERIFF’S DEP’T (Oct. 19, 2022), <https://lasd.org/fentanyl-packaged-in-candy/> (explaining a similar tactic was used in Los Angeles, California when a suspect tried to go through security at Los Angeles International Airport with 12,000 fentanyl pills in his bags packaged in Sweetarts, Skittles, and Whoppers wrappers).

40. Mendoza, *supra* note 38.

declared a weapon of mass destruction.⁴¹ Such a declaration “would enable the Department of Justice, Department of Homeland Security, Department of Defense, and other relevant federal agencies to better coordinate their efforts and immediately publish the necessary administrative directives to eliminate the threat posed by these deadly substances.”⁴² A weapon of mass destruction is “any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxin or poisonous chemicals, or their precursors.”⁴³ Consider that “[i]llegally imported fentanyl seizures by U.S. Customs and Border Patrol in 2021 totaled more than 11,000 lbs., which is more than 2.5 billion lethal doses and enough to kill seven times the population of the United States.”⁴⁴ Through that lens, maybe viewing illicit fentanyl as a weapon of mass destruction in order to combat the threat it poses to Americans is not all that extreme.

III. Duty to Rescue

A. The Legal History of the Duty to Rescue

Given the statistics about overdoses in America, it might seem that our society would be eager find a way to provide rescue. However, people are not always eager to rescue, and the law does not require it under all circumstances.⁴⁵ Consider the infamous case of Kitty Genovese, a woman who was stabbed in public, yelling: “Please help me! Please help me!”⁴⁶ Her case is infamous due to the non-response and non-intervention of witnesses.⁴⁷ Many people heard her scream, and one neighbor even yelled down to the attacker.⁴⁸ However, no one came to her aid or called the

41. James Raugh, *Declare Illegal Fentanyl a Weapon of Mass Destruction*, CHANGE.ORG (June 29, 2020), <https://www.change.org/p/u-s-government-declare-illegal-fentanyl-a-weapon-of-mass-destruction>.

42. *Id.*

43. 50 U.S.C. § 2332a(c)(2)(B).

44. Raugh, *supra* note 41.

45. Sharon Yamen et al., *Am I My Brother's Keeper? How Technology Necessitates Reform of the Lack of Duty to Rescue or Duty to Report Laws in the United States*, 28 BOS. UNIV. PUB. INT. L. J. 117, 126 (2019).

46. Jim Rasenberger, *Kitty, 40 Years Later*, NY TIMES (Feb. 8, 2004), <https://www.nytimes.com/2004/02/08/nyregion/kitty-40-years-later.html>; *see also* Nicholas Lemann, *A Call for Help*, NEW YORKER (Mar. 2, 2014), <https://www.newyorker.com/magazine/2014/03/10/a-call-for-help>.

47. *See* Rasenberger, *supra* note 46.

48. *See* Lemann, *supra* note 46.

police during the thirty-minute attack until she was mortally wounded and dying of her injuries.⁴⁹ More than half of a century later, not much has changed. Tort law can create consequences for actions, but there can also be consequences for omissions or inaction.⁵⁰ However, the common law requires no general duty to come to the rescue of another.⁵¹ Typically, a person cannot be held liable for not acting while another person is in peril.⁵² Similarly, if a person suffers an overdose outside of a library, the library staff has no duty to come to that person's rescue.

The evolution of the absence of a duty to rescue in the United States dates as far back as the 1897 case, *Buch v. Amory Manufacturing*.⁵³ Buch, an eight-year-old boy, accompanied his thirteen-year-old brother to the mill owned and operated by Armory Manufacturing Company.⁵⁴ Buch's older brother tried to teach him how to use a machine at the mill.⁵⁵ A supervisor saw this, knowing the dangers accompanying the use of such machinery, and immediately told Buch to leave the mill.⁵⁶ Since the boy did not understand English, he stayed.⁵⁷ Buch thereafter crushed his hand in the equipment.⁵⁸ Buch sued the mill for negligence in failing to forcibly

49. See A.M. ROSENTHAL, THIRTY-EIGHT WITNESSES: THE KITTY GENOVESE CASE, 29-33 (1964).

50. See Damien Schiff, *Samaritans: Good, Bad, and Ugly: A Comparative Law Analysis*, 11 ROGER WILLIAMS U. L. REV. 77, 121 (2005); see also Ernest J. Weinrib, *The Case for a Duty to Rescue*, 90 YALE L. J. 247, 249-51, 258-68 (1980); see also Jay Logan Rogers, *Testing the Waters for an Arizona Duty-to-Rescue Law*, 56 ARIZ. L. REV. 897, 903-10 (2014); see also McCall C. Carter, *Morality, Law and the Duty to Act: Creating a Common Law Duty to Act Modeled After the Responsibility to Protect Doctrine*, 2 WASH. U. JURIS. REV. 138, 149 (2010); see also Philip W. Romohr, *A Right/Duty Perspective on the Legal and Philosophical Foundations of the No-Duty-to-Rescue Rule*, 55 DUKE L.J. 1025, 1032 (2006) (describing special relationships as including, but not limited to, common carriers, innkeepers/business owners to guests/customers, legal custodians to charges, teachers to students, or when a defendant controls a third person's conduct. Common carriers have a duty to rescue their patrons); see also Vincent R. Johnson & Claire G. Hargrove, *The Tort Duty of Parents to Protect Minor Children*, 51 VILL. L. REV. 311, 322 (2006) (noting for example, parents have a duty to rescue their minor children, and this duty also applies to those acting *in loco parentis*, such as schools).

51. See Francis H. Bohlen, *The Moral Duty to Aid Others as a Basis of Tort Liability*, 56 U. PA. L. REV. 217, 219 (1908) (describing the act versus omission distinction as "deeply rooted in the common law.").

52. *Id.*

53. *Buch v. Amory Mfg. Co.*, 44 A. 809 (N.H. 1897).

54. See *id.* at 809-10.

55. See *id.*

56. See *id.*

57. See *id.*

58. See *id.*

ject the eight-year-old boy.⁵⁹ The court ruled in favor of the mill, holding that since the boy was trespassing, the mill's only duty was to refrain from personal violence—which it did by leaving Buch alone.⁶⁰ Negligence only becomes actionable if a legal duty is neglected; moral duties are never considered.⁶¹

Following the decision in *Buch* came *Union Pacific Railway Co. v. Cappier*.⁶² In that case, the court decided that railroad workers were not required to aid individuals that were struck by freight cars.⁶³ Though the railroad in *Cappier* operated its train with due care, it struck and killed Cappier's trespassing son.⁶⁴ The train operator did not stop the train to give immediate medical attention to Cappier's son, but instead summoned an ambulance that arrived thirty minutes later.⁶⁵ Cappier's son subsequently died from his injuries.⁶⁶

The court found that when the injuries result from one's own negligence, as in this case, a third party owes no duty to protect or to aid the negligent individual.⁶⁷ Although these acts might be morally required, they are not recognized as legal duties.⁶⁸ The agents of Union Pacific did not cause the injuries of Cappier's son, and thus a claim of negligence could not be supported.⁶⁹ Because the court found that no duty existed in this case, it could not find negligence.⁷⁰ There is no duty to act in order to help or to aid an individual who has been injured solely by their own actions.⁷¹ A party cannot be found negligent for failing to prevent harm if they have not contributed to the risk of that harm.⁷²

59. See *Buch*, 44 A. at 809-10.

60. *Id.* at 810 ("The defendants are not liable unless they owed to the plaintiff a legal duty which they neglected to perform.").

61. See Patrick J. Kelley, *Restating Duty, Breach, and Proximate Cause in Negligence Law: Descriptive Theory and the Rule of Law*, 54 VAND. L. REV. 1039, 1050 (2001) (noting that the elements for negligence include duty, breach of duty, cause in fact, proximate cause, and damage); See also *Union Pac. Ry. v. Cappier*, 72 P. 281, 282 (Kan. 1903) ("With the humane side of the question courts are not concerned.").

62. *Union Pac. Ry. v. Cappier*, 72 P. 281 (Kan. 1903).

63. See *id.* at 283.

64. See *id.* at 281-82.

65. See *id.* at 281-82 ("The engine was stopped. After the injured man was clear of the track, the yardmaster signaled the engineer to move ahead, fearing, as he testified, that a passenger-train then about due would come upon them.").

66. *Id.* at 281.

67. See *id.* at 282-83.

68. See *Union Pac. Ry.*, 72 P. at 282-83.

69. See *id.*

70. *Id.* at 283.

71. See *id.* at 282-83.

72. See *id.*

In the case of an overdose, one might argue that it is the drug user who was injured by their own actions and that the business on whose premises the overdose occurred did not contribute to the risk of harm. However, if we are aware that drug overdose is a leading cause of death, and naloxone is readily available, should the business be liable for not stocking and using naloxone when needed? United States Supreme Court Justice Anthony Kennedy once remarked that no general duty exists requiring one to render aid to someone in distress.⁷³ Specifically, “you don’t have the duty to rescue someone if that person is in danger. The blind man is walking in front of a car, and you do not have a duty to stop him absent some relation between you.”⁷⁴

Good Samaritan laws typically offer immunity from civil liability if a person, with no expectation of compensation, chooses to assist someone who is injured or exposed to harm.⁷⁵ However, a person who chooses to act by coming to a victim’s aid may be found liable if matters are made worse through an act or omission of the rescuer constituting grossly negligent, willful, or wanton misconduct.⁷⁶ Regardless, courts are slow to recognize liability for nonfeasance. There is an important distinction in misfeasance, which is “an act wrongfully or negligently performed (for which one can undoubtedly be liable),” and nonfeasance, which is “an omission to act (for which one cannot be liable without a specific relationship creating a duty to act)[.]”⁷⁷

Nevertheless, to state that no person ever has a duty to rescue others

73. *Supreme Court: The Health Care Law And The Individual Mandate*, NATIONAL PUBLIC RADIO (March 27, 2012), <https://www.npr.org/2012/03/27/149465820/transcript-supreme-court-the-health-care-law-and-the-individual-mandate>.

74. *Supreme Court: The Health Care Law And The Individual Mandate*, NATIONAL PUBLIC RADIO (March 27, 2012), <https://www.npr.org/2012/03/27/149465820/transcript-supreme-court-the-health-care-law-and-the-individual-mandate>.

75. See generally Eugene Volokh, *Duties to Rescue and the Anticooperative Effects of Law*, 88 GEO. L.J. 105 (1999) (analyzing the different “types” of Samaritans, who act or fail to act, their motivations, and the effectiveness of affirmative duties to rescue and report).

76. See, e.g., CAL. HEALTH & SAFETY CODE § 1799.102 (Deering 2009); MASS. GEN. LAWS ch. 112, § 12V (2016).

77. Francois Jaeck et al., *The Good Samaritan Law: Across Europe*, DIVERS ALERT NETWORK, http://www.daneurope.org/c/document_library/get_file?uuid=c09228f3-a745-480b-9549-d9fc8bbbd535&groupId=10103; See also Romohr, *supra* note 50 (“There is no distinction more deeply rooted in the common law and more fundamental than that between misfeasance and non-feasance, between active misconduct working positive injury to others and passive inaction, a failure to take positive steps to benefit others, or to protect them from harm not created by any wrongful act of the defendant. This distinction is founded on that attitude of extreme individualism so typical of Anglo-Saxon legal thought.”).

would be wholly inaccurate.⁷⁸ The categories in which a legal duty is imposed to rescue others include statutory duties,⁷⁹ duties based upon legal or special relationships,⁸⁰ duties of a professional rescuer,⁸¹ duties associated with a voluntary undertaking to rescue a victim,⁸² and the duty not to prevent the giving of aid.⁸³ Six states have codified a duty to rescue in “easy rescue” situations.⁸⁴ In other words, one should rescue another in danger if there is no risk to himself.⁸⁵ However, where a duty to rescue arises, the rescuer must generally act with reasonable care and can be held liable for injuries caused by a reckless rescue attempt.⁸⁶ Given the ease of stocking naloxone as well as administering it via nasal spray, it would likely be deemed an easy rescue.

Absent a special relationship, a party cannot be found negligent for failing to prevent harm if they have not contributed to the risk of that harm.⁸⁷ Concededly, it is the individual’s own actions that result in their overdose. This is so even when the overdose occurs at a place of business, assuming that the business does not contribute to the risk of harm. However, consider the following hypothetical. If legislation was passed that called for naloxone to be stocked akin to a fire extinguisher or defibrillator, could that impose a statutory duty to rescue? Thus, could a business potentially be liable for not stocking naloxone and subsequently not making a rescue attempt?

78. Jennifer L. Groninger, *No Duty to Rescue: Can Americans Really Leave a Victim Lying in the Street? What Is Left of the American Rule, and Will It Survive Unabated?* 26 PEPP. L. REV. 353, 356-57 (1999).

79. Vincent R. Johnson & Claire G. Hargrove, *The Tort Duty of Parents to Protect Minor Children*, 51 VILL. L. REV. 311, 322 (2006).

80. See Romohr, *supra* note 50; e.g., Johnson & Hargrove, *supra* note 50 (stating parents have a duty to rescue their minor children, and this duty also applies to those acting *in loco parentis*, such as schools).

81. Jay Silver, *The Duty to Rescue: A reexamination and Proposal*, 26 WM. & MARY L. REV. 423, 426 (1985) (listing those who have a duty to rescue by contract, including “[f]iremen, police, nurses, baby-sitters[.]”).

82. See Romohr, *supra* note 50, at 1032–33 (describing that an individual who volunteers to rescue, but has no duty to rescue, must exercise reasonable care or be subject to liability for harm caused by negligent action).

83. *Id.* at 1034 (stating that an individual cannot interfere with another’s rescue attempt, which is rooted in the idea that a “victim should have the opportunity to receive aid.”).

84. Groninger, *supra* note 78, at 368.

85. *Id.* (“An easy rescue is one where a victim is in danger and a potential rescuer is in a position to alleviate the harm without any significant cost to himself.”).

86. See e.g., *Zelenko v. Gimbel Bros.*, 287 N.Y.S. 134, 135 (1935).

87. *Id.*

B. Risks for Public Facilities and Private Businesses

In considering the case of the opioid epidemic, what actions should businesses and public facilities take to prevent overdose deaths? Should private businesses and public-serving entities keep naloxone on hand, just as first aid kits are? If they do, what are the implications for employees?

Consider a hypothetical coffee shop. The coffee shop would have a duty to protect its customers from a foreseeable risk of harm under a basic negligence analysis. Is it foreseeable, given the current overdose statistics and fentanyl risks, that a customer could overdose at the shop? Some may argue that the shop has no duty to protect its patrons from the risk of overdose because drug activity is beyond the scope of its services. However, what if the shop keeps Narcan on hand just in case? If there is no duty to rescue until a rescue is attempted, does keeping Narcan on hand open that door?

These concerns are being addressed not only by businesses, but also by schools and libraries. In 2022, fifteen-year-old Melanie Ramos was found dead from a fentanyl overdose in a restroom at Helen Bernstein High School in Hollywood, California.⁸⁸ This prompted her mother to sue the Los Angeles Unified School District.⁸⁹ Her family argued that the school district knew that drugs were prevalent within the school—especially considering the six potential overdoses that they had received calls about throughout the year.⁹⁰ California Senate Bill 10 (also known as “SB10” or “Melanie’s Law”) has made its way through the California legislature in response.⁹¹ Melanie’s Law contains measures that combat the opioid epidemic in schools, including a requirement to provide

88. KCAL-News Staff, *Mother files lawsuit against LAUSD over student’s fatal fentanyl overdose*, CBS LOS ANGELES (Dec. 14, 2022, 12:22 PM), <https://www.cbsnews.com/losangeles/news/mother-files-lawsuit-against-laUSD-over-students-fatal-fentanyl-overdose/>; KCAL-News Staff, *Board of Supervisors unanimously votes to provide Narcan at all county libraries*, CBS LOS ANGELES (Oct. 18, 2022, 6:06 AM), <https://www.cbsnews.com/losangeles/news/los-angeles-libraries-could-offer-narcan-to-prevent-overdoses/#> (stating that shortly after Melanie’s death, the Los Angeles Board of Supervisors voted to place Narcan in county libraries).

89. *Id.*

90. *Id.*

91. S. 10, 2023-24 Leg., Regular Sess. (Cal. 2023), <https://legiscan.com/CA/text/SB10/id/2841754/California-2023-SB10-Enrolled.html>; see also Sid Garcia, *‘Melanie’s Law’ aims to prevent fentanyl overdoses among youth at California schools*, ABC 7 EYEWITNESS NEWS (Apr. 11, 2023), <https://abc7.com/hollywood-bernstein-high-school-overdose-teen-overdoses-students/13114842/>.

“informational materials containing awareness and safety advice, for school staff, pupils, and parents or guardians of pupils, on how to prevent an opioid overdose.”⁹²

Thirteen-year-old Adilene Carrasco’s family recovered over fifteen million dollars from the Yucaipa-Calimesa Joint Unified School District after she died from an asthma attack while at school.⁹³ While on the athletic field, Adilene asked to return to the classroom to retrieve her inhaler.⁹⁴ The teacher had not read Adilene’s student profile and was unaware of her history of asthma attacks.⁹⁵ After the long walk to the classroom and back up a hill, the asthma attack progressed to a heart attack.⁹⁶ Ultimately, this prompted the school district to implement policies requiring the staff to review student profiles.⁹⁷ Could Melanie’s family make a similar argument?

Schools battling the drug epidemic are saddened by deaths that could have been prevented. Former DEA Special Operations Director, Derek Maltz, warned parents that “an unprecedented amount of kids [are] dying as young as 13 years old.”⁹⁸ He suggested that schools need to do more to combat the fentanyl crisis, and added “[w]e’re losing a future generation.”⁹⁹ Schools also have a special relationship with their students that imposes a duty to rescue.¹⁰⁰ This explains why schools have nurses, guidance counselors, and first aid staff to rescue students.¹⁰¹

Public libraries do not necessarily have the same special relationship that schools do with their students, but “[l]ibraries have long served as hubs for community services—providing public health resources, coworking space, social services, financial literacy information, food, and

92. S. 10, 2023-24 Leg., Regular Sess. (Cal. 2023), <https://legiscan.com/CA/text/SB10/id/2841754/California-2023-SB10-Enrolled.html>.

93. Inside Edition Staff, A California School District to Pay \$15.75 Million Over a Student’s Fatal Asthma Attack: Family’s Lawyer, InsideEdition.com, (Nov. 22, 2022, 6:05 AM), <https://www.insideedition.com/a-california-school-district-to-pay-1575-million-over-a-students-fatal-asthma-attack-familys-lawyer>.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. Nelson, *supra* note 39.

99. *Id.*

100. Johnson & Hargrove, *supra* note 50.

101. See School Nurses Help Keep Students Healthy, CDC.gov, https://www.cdc.gov/healthyschools/features/school_nurse.htm#:~:text=School%20nurses%20help%20students%20and,to%20their%20child%20at%20school (last visited Dec. 12, 2023).

other services that go beyond books for their surrounding communities.”¹⁰² In 2018, the manufacturer of Narcan offered two free doses to every public library and YMCA in the United States.¹⁰³ Thom Duddy, a company representative, said that they were inspired to do so after learning about overdoses occurring in front of a Philadelphia library.¹⁰⁴ Mr. Duddy was specifically referencing “the Free Library of Philadelphia’s McPherson Square branch, whose experience administering naloxone to multiple overdose victims was widely reported by national media in 2017.”¹⁰⁵

Free Narcan is now available in some public libraries, including all twenty-two libraries in Kern County, California.¹⁰⁶ The Drug Free Kern Coalition documents hundreds of successful overdose reversals after distributing naloxone kits in the community.¹⁰⁷ The Director of Libraries for Kern County commented that “[m]any of our libraries are located in areas most impacted by opioid overdose[,] and this partnership allows our organization to provide a life-saving tool to residents experiencing an opioid overdose.”¹⁰⁸

Other communities around the country are responding in a similar fashion. The Indianapolis Public Library supplied all twenty-four locations with two doses of naloxone and two doses for every floor in their central library.¹⁰⁹ In Denver, “[s]taff members at all [Denver Public Library] locations have been trained to detect the possible symptoms of

102. *Public Libraries are Key Players Fighting the Opioid Crisis. Here’s What Other Organizations Can Learn From Them.*, SYRACUSE UNIV., <https://onlinegrad.syracuse.edu/blog/libraries-fight-opioid-crisis/> (last visited Dec. 12, 2023).

103. Anne Ford, *Narcan or No? Several years into the opioid crisis, public librarians reflect on whether to stock free naloxone*, AM. LIBRS. MAG. (June 1, 2020), <https://americanlibrariesmagazine.org/2020/06/01/narcan-or-no-libraries-naloxone/>; see *Public Libraries are Key Players Fighting the Opioid Crisis. Here’s What Other Organizations Can Learn From Them*, *supra* note 102 (stating that Emergent offers high schools four Narcan doses and qualifying colleges and universities up to eight free doses).

104. Ford, *supra* note 103 (explaining acceptance of the offer was lighter than expected, with only 357, 2.2% of the 16,568 libraries accepting).

105. *Id.*

106. *Free Narcan Distribution at your local Kern County Library*, DESERTNEWS.COM (Oct. 17, 2022), http://www.desertnews.com/news/article_43bbf7ea-4e4a-11ed-85c1-cf98ad52c9b3.html.

107. *Id.*; see *Public Libraries are Key Players Fighting the Opioid Crisis. Here’s What Other Organizations Can Learn From Them*, *supra* note 103 (stating New York and Michigan also allow libraries to possess and use naloxone and further, staff are protected from liability when treating overdoses).

108. *Free Narcan Distribution at your local Kern County Library*, *supra* note 106.

109. Ford, *supra* note 103.

opioid overdose and appropriate actions to deploy Narcan if necessary.”¹¹⁰ This response has been a success there considering Narcan was administered fourteen times in 2017 alone.¹¹¹ The Middletown Thrall Library in New York is only minutes away from both the police station and fire department, but the library staff received training to use Narcan anyway.¹¹² Three weeks later, a member of the staff used Narcan to resuscitate a woman who overdosed outside of the library.¹¹³ Slowly but surely, Narcan is becoming as prevalent and as needed as fire extinguishers.¹¹⁴

IV. What if a Mistake is Made?

Louis Cione woke up after he heard his wife Tammy collapse.¹¹⁵ Upon arrival, the police asked what drugs she had taken, and Tammy’s son said none.¹¹⁶ However, the officer still assumed that she had overdosed, so he administered two doses of Narcan before giving her CPR.¹¹⁷ The hospital eventually determined Tammy had an asthma attack, which led to cardiac arrest and brain damage.¹¹⁸ The family argued that if she had been given CPR immediately instead of Narcan, Tammy would have suffered less brain damage.¹¹⁹ Stories like Tammy’s make people worry about what could happen if Narcan is wrongfully administered to someone who is unconscious but not overdosing. On the other hand, family members have reported that “they didn’t know to intervene, because they mistook the labored breathing of an overdose for snoring.”¹²⁰

110. Bob Khowles, *Naloxone (Narcan) Use Procedures*, DENV. PUB. LIBR. (Feb. 7, 2018), <https://publiclibrariesonline.org/wp-content/uploads/2019/04/DPL-Narcan-Use-Procedures-4-12-18.pdf>.

111. Timothy Inklebarger, *Company to Supply Free Narcan to Libraries*, AM. LIBRS. MAG. (Oct. 24, 2018), <https://americanlibrariesmagazine.org/blogs/the-scoop/narcan-company-supply-free-narcan-to-libraries/>.

112. *Public Libraries are Key Players Fighting the Opioid Crisis. Here’s What Other Organizations Can Learn From Them*, *supra* note 102.

113. *Id.*

114. *Free Narcan Distribution at your local Kern County Library*, *supra* note 106.

115. Amber Jayanth, *Family: Woman given Narcan treated for brain injury from asthma attack*, FOX19 (Nov. 2, 2018, 1:36 PM), <https://www.cincinnati.com/story/news/2018/11/01/woman-given-narcan-asthma-attack-now-being-treated-brain-injury/1843054002/>.

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. Otterman, *supra* note 2.

It is important to remember that naloxone itself has no negative side effects if given to someone not actually overdosing.¹²¹ In the event that one makes an error administering naloxone, Good Samaritan laws provide protection. As mentioned in Part I, these laws help shield the rescuer from potential civil or criminal liability.¹²² This immunity also applies to law enforcement officers and other professional responders who administer naloxone in good faith.¹²³ Nevertheless, Good Samaritan laws are not necessarily a panacea, as some public places are still hesitant to keep naloxone on hand in fear of not being protected.¹²⁴ As Thom Duddy commented “[t]hat’s the biggest hurdle that we’re seeing for public placement of naloxone. Good Samaritan laws . . . protect the individual, but they may not protect the corporate entity.”¹²⁵

Each jurisdiction sets out its own laws regarding who is protected from liability, and under what circumstances they are protected when rendering aid to another.¹²⁶ Every state protects properly trained medical personnel in prescribing and administering naloxone.¹²⁷ In addition to Good Samaritan laws, many states have tort claims acts that could protect public schools and libraries.¹²⁸ In order to give corporate entities the comfort to stock Narcan, laws should be adjusted to protect them too.

Some may suggest that training could prevent mistakes. However, one of the benefits of naloxone is the fact that it does not require training for administration. The nasal spray is particularly simple to use. Some entities may still want to offer training to their employees to give them confidence in administering naloxone in emergency situations.

However, entities may want to be cautious about forcing training on employees or volunteers who do not want it. Many libraries offering Narcan do not require staff to be trained but rather train them on a

121. See *Frequently Asked Questions*, NARCAN, <https://narcan.com/frequently-asked-questions> (last visited Dec. 12, 2023).

122. *Legal Interventions to Reduce Overdose Mortality: Overdose Good Samaritan Laws*, *supra* note 21.

123. *Do Good Samaritan Laws Protect Me if I am Trained to Give Narcan?*, *supra* note 9.

124. *Public Libraries are Key Players Fighting the Opioid Crisis. Here’s What Other Organizations Can Learn From Them*, *supra* note 102.

125. *Id.*

126. *Legal Interventions to Reduce Overdose Mortality: Overdose Good Samaritan Laws*, *supra* note 21.

127. *Do Good Samaritan Laws Protect Me if I am Trained to Give Narcan?*, *supra* note 9.

128. *Id.*

voluntary basis.¹²⁹ Further, responding to an overdose situation can be extremely intense and stressful. As one library director put it, “[y]ou have somebody in distress in front of you . . . [and] [y]ou don’t know if they’re going to live or die.”¹³⁰ Employers also may want to consider offering support to staff who administer Narcan. This could look like counseling services or taking the day off after a rescue event.

V. A Different Point of View

Liability from the administration of naloxone is only one concern. There are many other points of view regarding how to address the opioid epidemic. These include concerns about employees, enabling arguments, pharmaceutical liability, and vaccines.

A. Concern for Employees

The Chief Administrative Officer of the Metropolitan Library in Columbus, Ohio, explained the decision not to keep Narcan readily available out of concern for the library staff.¹³¹ He noted, “[o]ne of the things we’ve been aware of is the tendency for people who are revived using Narcan to be in an agitated or belligerent state.”¹³² The library prefers to rely on trained professionals, as they have experienced “a relatively quick response from EMTs.”¹³³

B. Enabling

Some may argue that the focus should be on overdose prevention, rather than reversal efforts. A restaurant owner in Huntington, West Virginia (a community particularly devastated by opioids), does not keep Narcan stocked.¹³⁴ He feels that Narcan is just a money maker, and “if

129. *Public Libraries are Key Players Fighting the Opioid Crisis. Here’s What Other Organizations Can Learn From Them*, *supra* note 102.

130. *Id.*

131. Ford, *supra* note 103.

132. *Id.* (“Emergent BioSolutions says that Narcan can cause sudden opioid withdrawal symptoms including nervousness, restlessness, and irritability.”).

133. *Id.*

134. Dave Benton, *A look at Narcan, a tool used in the opioid battle that remains controversial*, EYEWITNESS NEWS (Nov. 20, 2019, 4:05 PM), <https://wchstv.com/news/local/a-look-at-narcan-a-tool-used-in-the-opioid-battle-that-remains-controversial>; *see also* Rees, *supra* note 14, at 2 (informing that Maine’s

people know they're going to get Narcan, it enables them to go out and get more drugs in their system."¹³⁵

The enabling argument opposes harm reduction initiatives, stemming from a belief that these measures simply allow people to continue down a destructive path, damaging society at large.¹³⁶ Everyone is entitled to have an opinion, including "a lot of people [who] think drug use is bad and that people who use drugs are moral failures."¹³⁷ Further, a study conducted by the University of Virginia and the University of Wisconsin found "that naloxone may inadvertently promote opioid use in two ways . . . [by] saving the lives of active drug users who survive to continue abusing opioids, and . . . reducing risk of death per use, thereby making riskier opioid use more appealing."¹³⁸

Lawrence H. Greenblatt, M.D., rebutted that the argument was "unethical" by "suggesting that if these drug users just got out of the way by dying of an overdose, we'd have less of a problem."¹³⁹ Taking into account basic medical knowledge of addiction, another doctor commented that "when people are addicted, they're going to use regardless of whether or not there is an antidote or a reversal agent . . . because their brains have really been hijacked and the addiction has taken over."¹⁴⁰

C. Vaccines

Rather than shift the burden to potential rescuers, a vaccine could be developed to prevent overdoses. One such vaccine is being developed by a research team at the University of Houston that could help stifle opioid addiction by blocking opioids from crossing into the brain.¹⁴¹ This would

Governor, Paul LePage, is a critic of naloxone access who argues that it would "encourage drug use and hamper the efforts of law enforcement." Other critics "worry that increase access to naloxone could discourage overdose victim from calling 911 by giving them an easy, low-cost alternative to utilizing traditional emergency medical services.").

135. Benton, *supra* note 134.

136. Jennifer Byrne, *Increased Narcan Availability evokes ethical debate*, HEALIO (April 2, 2018), <https://www.healio.com/news/primary-care/20180402/increased-narcan-availability-evokes-ethical-debate>.

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. Kayla Bailey, *Potential fentanyl vax, test kits a 'great breakthrough' to combat opioid deaths*, NYPOST.COM (Feb. 5, 2023, 2:56 PM), <https://nypost.com/2023/02/05/potential-fentanyl-vax-test-kits-could-combat-opioid-deaths/>; Rebecca Corey, *Fentanyl vaccine developed by researchers could eliminate drug's*

mean that the user would not get high, and therefore would no longer be driven to use fentanyl.¹⁴² Most importantly, the vaccine antibodies would block fentanyl's ability to suppress the respiratory center.¹⁴³ The research team noted that “[d]epending on the success of the study in humans, perhaps anyone doing a drug should take the fentanyl vaccine.”¹⁴⁴

D. Pharmaceutical Liability

Another course of action is to go after the manufacturers of opioids, holding them liable for the opioid epidemic. To date,

[over] fifteen hundred cases instigated by states, counties, cities, tribes, hospitals, and other entities have been bundled together into what is known as a multi-district litigation The defendants include pharmaceutical companies, such as Purdue Pharma, the maker of OxyContin . . . [and] drugstore chains, such as [CVS].¹⁴⁵

The Colorado Attorney General's Office led a crusade against these large companies, and “[i]n August 2021, after announcing several historic settlements with major drug manufacturers and distributors, the office announced a groundbreaking framework for distributing nearly \$400 million in opioid settlement dollars throughout the state for addiction treatment, recovery, and prevention.”¹⁴⁶ The State of Colorado received “\$300 million from Johnson & Johnson and three major drug distributors,

'high', YAHOO!NEWS (Nov. 16, 2022), <https://www.yahoo.com/news/fentanyl-vaccine-opioid-epidemic-drug-high-182554305.html> (stating the vaccine “is able to generate anti-fentanyl antibodies that bind to the consumed fentanyl and prevent it from entering the brain, allowing it to be eliminated out of the body via the kidneys.”).

142. Bailey, *supra* note 141.

143. *Id.*

144. *Id.*

145. Talbot, *supra* note 5. (“Among the arguments that the plaintiffs’ lawyers are advancing is that the companies, by continuing to promote opioids and downplay their potential for abuse, even in the face of evidence that they are powerfully addictive, created a ‘public nuisance’—a danger to the health and safety of communities.” “A case brought by Oklahoma’s [A]ttorney [G]eneral, Mike Hunter, reached a two-hundred-and-seventy-million-dollar settlement with Purdue—the first settlement in this wave of opioid litigation.”)

146. *With critical mass of local government support reached, Colorado set to receive \$385 million from opioid settlements with Johnson & Johnson and major drug distributors*, COLO. ATT’Y GEN. (Jan. 4, 2022), coag.gov/press-release/1-4-22/.

at least \$50 million from Purdue Pharma and the Sacklers, \$25 million from Mallinckrodt, and \$10 million from McKinsey & Company.”¹⁴⁷

States are trying to combat the overdose problem by passing legislation increasing naloxone’s availability, but pharmaceutical companies distributing naloxone are in control of the price of it. For example, the cost of naloxone rose from \$0.92 per dose when first introduced to upwards of \$60 today.¹⁴⁸ While Emergent offers discounts or low-cost programs to schools, perhaps more should be required.¹⁴⁹ Further, legislation could be passed to reign in potential profiteering and price gouging on Narcan. This is because in many ways pharmaceutical companies helped kickstart this opioid epidemic; therefore, we should depend on them to fix the problem with naloxone. Perhaps large companies that originally produced opioids can shift over to manufacturing naloxone to clean up the mess they made, but without the ability to price gouge.

VI. Conclusion

Whether it be driving in a car, flying on a plane, or even walking across the street—everyone faces the risk of death every day. In some cases, we can reduce the risk of death or serious bodily injury to ourselves and others. We can wear seatbelts in the car, resist the urge to look at a phone behind the wheel, and look both ways before crossing the street. We can try to maintain our good health and get routine checkups. The moral debate about drugs and those who use them will most likely forever rage, but it is undisputed that we have a serious issue here in the United States. Since Narcan is readily available and easy to administer, businesses and other public facilities should strongly consider keeping it on hand to potentially save a life.

147. *Id.*

148. Rees, *supra* note 14 at 20.

149. *Law Enforcement Naloxone Tool Kit: What are the typical costs of a law enforcement overdose response program?*, BUREAU OF JUST. ASSISTANCE, <https://bjatta.bja.ojp.gov/naloxone/what-are-typical-costs-law-enforcement-overdose-response-program#:~:text=Cost%20of%20naloxone%3A%20Depending%20on,%2D%2460%20for%20intranasal%20kits> (last visited Dec. 12, 2023).