

- 1  Post-Injury Liability
- 2  LASSEIGNE v. AMERICAN LEGION NICHOLSON POST #38  
Louisiana Appellate 1990

Reasonable Volunteer Coaches

- 3  P hit by wet baseball practice supervised by coaches
- 4  D immediately examined P, no sign of injury, P alert,  
D ordered P to sit & rest.
- 5  P returned to practice acted normal  
D told P to inform parents.

Parents did not notice any injury or anything unusual

- 6  24 hrs. later P head surgery.

P: D did render reasonable aid,

negligent failure to notify parents.

- 7  Trial S.J to Ds everything done was reasonable.

Reasonableness clear in light of social utility of conduct  
i.e. value of volunteer services in youth sports to community.

- 8  Wattenbarger  
v.

Cincinnati Reds, Inc.  
Cal.App. 1994)

### Restrict Participation to Avoid Aggravation of Injury

9  6/90, P, 17, injured arm in "tryout" for D's pro team

10  Orientation, instructions, asked if any injuries

pitchers asked when last threw  
no full participation for injured players

11  Last drill, simulated game, P pitched to several batters

12  before, P threw warmup pitches to get arm ready

3d pitch  
P heard arm "pop,"  
but experienced no pain

13  stepped off mound, informed D, received no response

14  P threw another pitch, experienced severe pain  
tendons pulled from bone

15  P: D negligent in allowing him to continue to pitch

when knew, or ought to know, would cause irreparable harm

- 16  D: P's injury is type inherent in baseball  
ergo, no duty of care
- 17  ISSUE: Whether D owed legal duty of care  
to protect P against the type of injury which occurred
- 18  No duty of care owed if risk is inherent to game  
  
participants assume inherent risk when voluntarily participating in sport
- 19  Arm injury suffered by P risk inherent in sport of baseball  
  
injury direct result of natural strain caused by pitching arm in motion
- 20  D may be liable for instructing P, either expressly or as implied by their  
silence, to throw another pitch  
  
after being informed by P of "pop" in arm
- 21  D has duty not to increase risks to participant over & above those  
inherent in sport
- 22  Whether duty to restrict participation of injured player  
to avoid aggravation of injury
- 23  Here, not unforeseeable participant will attempt to push body beyond  
its capabilities

- 24  D owed duty of care to protect participants from aggravating injury during tryout
- 25  Halper v. Vayo  
Illinois Appellate 1991  
  
Beyond Routine First-Aid?
- 26  P knee injury school wrestling practice;  
  
D Coach manipulated knee,  
had P wrestle collegiate champion.
- 27  P: D violated written policies,  
making medical judgment
- 28  Failing to contact parents  
  
Failing to contact rescue squad  
  
Failing to report injury to school nurse.
- 29  D: statute of limitations one yr for claim against public entity
- 30  Ct: statute applied: under 18yrs may bring suit within 2 yrs. of attaining 18

- 31  State law teachers in loco parentis status,  
  
Not liable for negligence  
only willful/wanton misconduct.
- 32  Every athletic and physical education department has supplies and  
equipment  
  
Necessary for administering first aid.
- 33  Every coach and physical education teacher  
is called upon to treat minor injuries and ailments.
- 34  Because of unavailability of doctors at scene of many school athletic  
injuries
- 35  school coaches and trainers  
expected to provide initial first aid  
  
for both minor and serious injuries.
- 36  This might include wrapping a sprained ankle in an ace bandage  
  
Or splinting and applying ice to a fracture.
- 37  Due to the frequency of athletic injuries  
  
providing initial treatment

for such injuries

- 38  Is an inherent part of  
a school athletic or physical education program,

And it is one that must often be performed by coaches.

- 39  Knee injuries are often among the most serious

And debilitating injuries suffered in athletics.

- 40  It is readily apparent that great caution should be shown in treating  
such injuries.

- 41  Because of substantial risks involved  
it can be reckless for an individual with no medical training

- 42  To pull on the leg of a person with a knee injury and attempt to  
manipulate  
the knee

- 43  Assuming no exigency exists which necessitates such treatment.

These actions go well beyond the provision of routine first aid  
within the realm of an experienced coach's expertise.

- 44  P alleges D directed P to wrestle against  
a far more skilled and experienced wrestler  
who was a collegiate champion

45  Exposing him to a risk of further injury.

After, P did suffer additional injury

D still failed to secure proper medical treatment for him

46  reckless course of conduct

If needlessly exposed Halper to the risk of further injury.

47  Mogabgab

v.

Orleans Parish School Board

Louisiana Appellate 1970

Access to Treatment Delayed

48  P's son died football workout

2nd day of practice; "wind sprints"

49  displayed fatigue fell down, nauseous

vomited entering bus and enroute to School.

50  Placed on cafeteria floor on blanket

appearance pale, tired and exhausted.

51  Robert placed in shower, 5:50 p.m.,

placed on blanket,

with blanket over him  
given ammonia capsule

52  Coach; very clammy, pale, breathing heavy, arms massaged

unsuccessful attempt made to give salt water.

53  First aid book brought into cafeteria

both coaches discussed what was wrong and  
what should be done.

54  7:15 p.m. family physician: unconscious, cool, clammy,  
actively sweating

no pulse,

pupils widely dilated, fixed,  
not responsive to light

55  diagnosed condition profound heat exhaustion with shock  
advanced degree

not necessarily irreversible; hospital diagnosis heat stroke.

56  P: death resulted from negligence defendants in failing to provide  
prompt treatment

57  appeals court found:  
more likely than not,  
Robert would have survived



with reasonably prompt  
medical attention.

58  Heat exhaustion, heat stroke: when person unable to walk condition  
"pretty severe"  
medical advice should be sought,

59  medical treatment instituted before patient's condition reaches  
irreversible state.

60  Every effort immediately stop accumulation of heat

putting a blanket over a person with heat exhaustion or heat stroke  
wrong thing to do

61  Extremely important patient brought to physician and hospital

quicker treatment to reverse  
heat stress  
time is of the essence.

62  Prompt medical attention  
would have significantly increased likelihood of survival.

63  Appeals court held: negligence of Coaches  
actively denied Robert access to treatment for some two hours after  
symptoms appeared"  
constituted legal cause of Robert's death.

64  Gehling v.

St. George's University School of Medicine

(E.D. N.Y. 1989)

What Medical Provisions During Road Race?

- 65  P's son died following 2.5 mile race in hot, humid weather
- 66  Son collapsed after race, moved to shade, ice & wet towels applied
- 67  by med students in attempt to cool him down  
hose & cups of water available at nearby snack bar
- 68  G moved to shade, moved to nearby air conditioned office
- 69  efforts to cool G continued  
blue ice packs placed under arms & in groin  
blood pressure taken,  
attempted to give oxygen
- 70  Someone called ambulance  
G's level of consciousness continued to wane & fade  
then became unconscious
- 71  After 15-20 min.  
G transferred by ambulance to hospital  
ride took 15 min., hospital continued ice packs  
to lower temp
- 72  G comatose shortly after collapse 5:30 until death 12:45 a.m.

73  Some type of assistance should be provided for runners at end of race

74  In short race in tropical conditions  
Students provided assistance  
ice, water, oxygen at finish line

75  med students with some emergency training  
stationed at finish line

76  Sufficient to satisfy duty of care

not necessary to have doctor & special emergency provisions  
such as intravenous capability  
in view of short distance of race

77  TRAINER FAILS TO REPORT HEAD INJURY SYMPTOMS TO  
PHYSICIAN

Pinson v. State, (Tenn. App. 1995)

78  sufficient evidence Lyon breached his duty when, contrary to  
instructions of Dr. Smith, Lyon failed to report Pinson's headaches to  
physician before allowing Pinson to return to practice.

79  extremely foreseeable that withholding requested information from a  
team physician could result in permanent injury to a football player,  
who had collapsed unconscious the previous week

80  Applebaum

v.

Nemon

Tex.App.1984

Whether lifesaving aid & emergency instruction duty

81  No statute or regulation imposed duty

such as first aid & emergency instruction  
on day care centers at time of incident

82  Common law: no duty to render aid  
to one whose initial injury D is not liable

absent legal relationship

83  Relationship Day Care Center to Child

implied agreement to render reasonable assistance  
to imperiled child in Center's custody

84  Restatement 314: landowner first aid to ill or injured invitees

85  care for them until they can be cared for by others

86  Knows ,or reason to know, ill or injured  
duty seldom more than taking reasonable steps

to turn sick person over to physician,

or those who look after him until medical assistance obtained

87  Day Care Centers, TX. give first aid when needed

call physician for critical injury or illness

take child to nearest emergency room when necessary

88  Negligence liability for providing aid which is detrimental

beyond what individual reasonably can

and knows how to do

89  Take reasonable steps to place injured person  
in hands of competent physician

90  Duty to render reasonable assistance,

but no duty to provide CPR

i.e., lifesaving aid

which requires special training

91  State law did not require such medical training or expertise of day care

92  if wise & valuable, requirement should be imposed by Legislature,  
not court decree

93  No duty to assign responsibilities in event of emergency

or to conduct emergency drills to practice responsibilities

- 94  Only duty to act reasonably under all circumstances in rendering aid to imperiled child in center's custody
- 95  § 8.01-225. Persons rendering emergency care, obstetrical services exempt from liability

Virginia "Good Samaritan Statute"

- 96  good faith, renders emergency care or assistance, without compensation

not be liable for any civil damages for acts or omissions resulting from the rendering of such care or assistance.

- 97  Operates an automated external defibrillator at the scene of an emergency, trains individuals to be operators of automated external defibrillators, or orders automated external defibrillators,
- 98  shall be immune from civil liability for any personal injury that results from any act or omission in the use of an automated external defibrillator in an emergency
- 99  where the person performing the defibrillation acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances,
- 100  unless such personal injury results from gross negligence or willful or wanton misconduct of the person rendering such emergency care.
- 101  Rotolo v. San Jose Sports and Entertainment, Cal. App. 5/24/2007

102  parents of teenager who died as a result of sudden cardiac arrest while participating in ice hockey game sued operators of ice hockey facility.

103  Rotolo claimed SJSE had a legal duty to inform league officials and coaches regarding on-site defibrillators

104  Immunity statutes were not intended to “impose any duty on building owners and managers to acquire AEDs in the first place.”

105  no one’s response to emergency unreasonably delayed or adversely influenced by presuming existence of AED on premises

which, in reality, was not readily available or operational.

106  mere acquisition of an AED did not justify imposing a legal duty “on a proprietor to take anticipatory action prior to any ongoing or imminent harm to a plaintiff,

107  giving notice to specific persons that AEDs are on the premises in the event such harm occurs.”

108  SJSE’s general legal duty to maintain a reasonably safe facility

limited to “a duty to respond when athletes such as Nicholas Rotolo suffer from cardiac arrest.

109  sole duty, special relationship of the premises owner towards invitees to provide assistance in the face of a medical emergency,

was to summon  
emergency services

110  PROMPT 911 CALL SATISFIED DUTY TO HEART ATTACK VICTIM

L.A. FITNESS INTERNATIONAL v. MAYER  
Fla.App. April 2008

111  Expert testified L.A. Fitness violated  
industry's standards of care by failing to have a written emergency  
plan and to employ  
qualified personnel for handling emergencies

112  standards promulgated by the  
industry's authorities, including the International Health and Racquet  
Sports Club Association

113  IHRSCA and American College of Sports Medicine directed at  
responding to  
cardiopulmonary emergencies

114  AEDs were not required by law in 2003 and

L.A. Fitness employees were not required by  
law to perform CPR or to have a written emergency plan.

115  Restatement of Torts (Second) § 314A duty of care to render aid to  
invitee



after proprietor knows or has  
reason to know the invitee is ill or injured.

- 116  defendant is not required to take any action until he knows or has  
reason to  
know that the plaintiff is endangered, or is ill or injured.
- 117  not required to take  
any action beyond that which is reasonable under the circumstances.
- 118  In the case of  
an ill or injured person, he will seldom be required to do more than give  
such first  
aid as he reasonably can,
- 119  and take reasonable steps to turn sick man over to physician,  
  
or to those who will look after him and see that medical assistance is  
obtained.
- 120  Although the custom and practice of an industry can help  
define a standard of care a party must exercise  
  
after it has undertaken a duty,
- 121  industry standards  
do not give rise to an independent legal duty.
- 122  business owner satisfies its legal duty to come to the aid of a  
patron experiencing a medical emergency

by summoning medical assistance within a reasonable time.

- 123  Restatement's obligation to provide "first aid" to business invitees, obligation does not encompass the duty to perform skilled treatment, such as CPR.
- 124  Cardiopulmonary resuscitation (CPR), which requires training, is more than mere "first aid."
- 125  No common law or statutory duty that a business have an AED on its premises.
- 126  L.A. Fitness, fulfilled its duty of reasonable care in rendering aid to the deceased  
  
by  
summoning paramedics within a reasonable time.
- 127  L.A. Fitness did not have a legal duty to have CPR-qualified employees on site at all times,
- 128  and their employees were under no legal duty to administer CPR to the deceased.
- 129  L.A. Fitness had no legal duty to have a defibrillator on the premises for emergency use on the deceased
- 130  PROMPT 911 CALL FOR HEATH CLUB CARDIAC VICTIM

BROWN v. ATLAS-KONA KAI, INC.

Cal.App. March 2009

131  Kona Kai's duty as operator of the health club was simply to call for help...

132  We therefore decline to expand Kona Kai's duty beyond that of promptly summoning emergency services.

133