

AED "HEART SHOCK BOX" WHEREABOUTS UNKNOWN

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Generally, in the event of an emergency, facility supervisors and operators owe their patrons or invitees a rather limited duty of reasonable care to promptly summon competent medical attention (e.g., calling 911) when it becomes apparent that an injury or condition is serious or life threatening. Accordingly, as illustrated by the *Rotolo* opinion described herein, absent an applicable statute specifically requiring greater precautions (which is unlikely), there is generally no legal duty to furnish medical devices, such as an automatic external defibrillator (AED), and/or provide notice of their availability in the event of a medical emergency.

An AED is a lightweight medical device used to administer an electric shock to the heart through the chest wall after someone suffers cardiac arrest, in an attempt to restart normal heart rhythm. Microcomputers built into the device assess the person's heart rhythm and signal whether or not to administer the shock. AEDs have visual and verbal prompts that guide the user through the rescue effort.

FACTS OF THE CASE

In the case of *Rotolo v. San Jose Sports and Entertainment, LLC*, H029936 (Cal. App. 5/24/2007), the parents of a teenager who died as a result of sudden cardiac arrest while participating in an ice hockey game sued the operators of the ice hockey facility.

On February 5, 2004, 17-year-old Nicholas Rotolo was participating in a hockey tournament game on the south rink at Logitech Ice. During the game, he experienced sudden cardiac arrest and collapsed on the ice. Two mothers of other participants in the event left the stands and responded to the medical emergency. Nancy DePalma held a nursing degree and was licensed in California. Linda Albrecht had completed a "First Responder" course and a "Nurse's Aid" course. Albrecht assisted DePalma in administering CPR to Nicholas Rotolo.

Someone named "'Amy' from Logitech Ice" called 911 to report the incident to the appropriate emergency responders. In addition, Kevin Wardlow, a visiting coach for one of the hockey teams, called 911 on his cellular telephone. Both of these calls were made at approximately the same time, shortly after Nicholas Rotolo collapsed. Albrecht and DePalma performed CPR until the arrival of emergency medical personnel; despite these efforts, Nicholas Rotolo did not survive.

At some time prior to this incident, one or more AEDs had been acquired and installed at the Logitech Ice facility. Defendant San Jose Sports and Entertainment (SJSE) had placed one AED on the wall in the area near the penalty box of the south rink where Rotolo collapsed.

SJSE had not informed the tournament participants, the coaches, the officials, or the spectators of the existence and location of the AEDs. No one was aware that an AED was installed and

available for use in close proximity to the south rink. Neither one of the referees officiating the game was aware of the AED. Both Albrecht and DePalma had been trained and certified in the use of AEDs. Kevin Wardlow, who placed one of the 911 calls, was asked by the dispatcher whether there was "one of those `heart shock boxes'" on the premises. Unaware that there was one nearby, Wardlow responded that there was no such device available.

#### TRIAL COURT

Plaintiffs (Rotolo) alleged that defendant San Jose Sports and Entertainment, LLC (SJSE) had a duty to notify users of the facility of the existence and location of an automatic external defibrillator (AED) at the facility. Rotolo claimed that the timely use of such a device would have greatly increased the teenager's chances of survival.

The trial court noted that the state legislature had set forth a detailed statutory scheme concerning the acquisition and use of AEDs, which "did not include any requirement to notify business invitees of the existence or location of AEDs on a premises." Further, in this particular instance, the trial court found no common law duty beyond the "duty to timely summon emergency services" noted above. Under the circumstances of this case, the trial court determined that SJSE had fulfilled this legal duty. As a result, the trial court entered judgment for SJSE. Rotolo appealed.

#### ON APPEAL

On appeal, Rotolo claimed SJSE had a legal duty to inform league officials and coaches regarding on-site defibrillators. In so doing, Rotolo maintained that the imposition of such a legal duty was "consistent with the statutes governing the acquisition and use of AEDs" and was a "minimal burden... considering the weighty consequence that lives could be saved."

In the opinion of the appeals court, Rotolo's argument was "a particularly compelling one in the circumstances of this case, where the life-saving device was installed nearby throughout the attempted resuscitation of the victim, but no one was aware that it was there and available for use." However, based upon a review of applicable legal principles, the appeals court found that the legal duty of notice that Rotolo would have the court impose on SJSE was "not supported either by the statutes or by the principles developed in California common law."

#### IMMUNITY STATUTES

As noted by the appeals court, California had enacted two statutes in 1999 which provided limited immunity to "any person who "in good faith rendered emergency care by the use of an AED at the scene of an emergency... so long as the person had completed a certified basic CPR and AED use course." (Civil Code section 1714.21 and Health and Safety Code section 1797.196) However, in response to public concerns, the state legislature amended both immunity statutes in 2002, eliminating the requirement that "expected AED users" had to complete a training course. In so doing, the state legislature found the training requirement in the original immunity statutes actually discouraged the acquisition and use of AEDs.

Accordingly, to "encourage greater availability of these apparently 'fail safe' life-saving devices in public and private buildings across the state," the amended statutes granted immunity "regardless of prior training, to all 'Good Samaritans' who voluntarily use AED's at the scene of an emergency... to try to save someone's life."

Any person who, in good faith and not for compensation, renders emergency care or treatment by the use of an AED at the scene of an emergency is not liable for any civil damages resulting from any acts or omissions in rendering the emergency care. (Civ. Code, § 1714.21, subd. (b).)

In providing such limited immunity, however, the appeals court noted that the state legislature had expressly stated that these amended statutes were not intended to "impose any duty on building owners and managers to acquire AEDs in the first place." Moreover, in the opinion of the appeals court, requiring the owner or operator of a facility to notify invitees of the existence or location of AEDs on the premises would further "tend to discourage, rather than to encourage, the voluntary acquisition of AEDs." Contrary to Rotolo's position, the appeals court, therefore, concluded that reading an implied notice of availability requirement into the amended immunity statutes would "defeat the underlying legislative purpose of promoting the widespread use of these devices."

#### LIMITED DUTY

On appeal, Rotolo had also contended that "operators of sports facilities in particular should be duty bound to take affirmative steps to avoid foreseeable injury to participants using the facilities." The appeals court, however, noted that "those who choose to participate in the sport assume the primary risk of injury inherent in the sport." Furthermore, within the context of sport facilities, the court found owners and managers of the facility have "a limited duty to use due care not to increase the risks to a participant over and above those inherent in the sport." In this particular instance, the court concluded SJSE had done "nothing to increase the risk of an injury that is inherent in the sport."

Having "voluntarily acquired an AED, Rotolo, however, argued SJSE had a legal duty to "make the device available for use in an emergency by invitees using the property." The court rejected this argument. According to the court, SJSE had not increased the risk of harm to Nicholas Rotolo or any other participant using the facility by voluntarily acquiring and installing AEDs in its facility.

Since no one participating in or watching the hockey game actually knew about the existence of AEDs on the premises, the appeals court found no one could have "reasonably relied" on SJSE's conduct to their detriment. In other words, no one's response to the emergency had been unreasonably delayed or adversely influenced by presuming the existence of an AED on the premises which, in reality, was not readily available or operational. On the contrary, in this particular instance, no time was spent or lost searching for an available AED. In response to the emergency, bystanders promptly called 911 and administered CPR until the EMTs arrived.

While the appeals court agreed that it was perhaps “advisable and helpful for operators of sports facilities” to notify “users of the facility of the availability of life-saving devices on the premises,” the court found “it would be a significant departure from settled law to create a legal duty that is nowhere defined in the statutes or in common law.” Accordingly, the appeals court refused to “impose such a duty on countless owners and managers of sports facilities throughout this state.”

#### FORESEEABLE RISK

On appeal, Rotolo further contended that operators of the Logitech Ice facility owed a duty to sports participants playing hockey at the facility to “undertake affirmative and relatively simple measures” to prevent foreseeable harm, namely the death of a participating athlete from cardiac arrest.” Since it was “common knowledge” that cardiac arrest is the leading cause of death among athletes who participate in strenuous sports activities and SJSE had acquired AED’s, Rotolo claimed SJSE knew or should have known that it was “reasonably foreseeable that an athlete using the Logitech Ice hockey facility could succumb to such a fatal injury” without effective use of an available AED. In light of the foreseeable risk of serious injury, Rotolo claimed the court should impose a “minimal burden” of reasonable care on SJSE to “ensure that those using the Logitech Ice facility were made aware of the existence and location of the AEDs, so that participating athletes suffering cardiac arrest could receive timely and effective treatment.” The appeals court rejected this argument.

According to the court, the 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, by giving notice to specific persons that AEDs are on the premises in the event such harm occurs.” Rather, the appeals court found SJSE’s general legal duty to maintain a reasonably safe facility was limited to “a duty to respond when athletes such as Nicholas Rotolo suffer from cardiac arrest.” Moreover, in this particular instance, the appeals court noted that SJSE had taken reasonable “steps to respond to the emergency.”

The sole duty, based on the special relationship of the premises owner towards invitees to provide assistance in the face of a medical emergency, was to summon emergency services. The record here indicates that a number of people, including “Amy from Logitech Ice,” called 911 to summon emergency services shortly after Nicholas Rotolo collapsed on the ice. The law does not extend the duty of a business owner any further than this. Courts have not required more from the proprietor of a business where a patron becomes ill or has a medical emergency on the premises.

#### FACILITY DUTY

As noted by the appeals court, operators of a sports facility may be liable for designing or maintaining a facility which unreasonably increases the risk inherent in a sport. However, under the circumstances of this case, the court found “no allegation that SJSE maintained their facility in an unsafe manner or unreasonably increased the risk that the athletes using it would succumb to cardiac arrest, as Nicholas Rotolo did.” Assuming SJSE “possessed a general knowledge that

athletes may succumb to sudden cardiac arrest during strenuous activities,” the court found SJSE “could not have prevented such an occurrence, which is a risk assumed by those playing the sport.”

The fact that statistically the chances of surviving an incident of cardiac arrest are increased by the timely use of a defibrillator, even if this knowledge is imputed to SJSE, does not give rise to a duty on SJSE’S part to take affirmative steps to ensure that the device will be used in appropriate circumstances, particularly considering that the Legislature expressly has found no duty to acquire or install an AED in the first place.

Furthermore, Rotolo's foreseeability argument neglects to take into account either the limitations on the duty imposed on the operator of a sports facility "to use due care not to increase the risks to a participant over and above those inherent in the sport," or the limitations on the duty of a proprietor of a business to provide assistance to a patron experiencing a medical emergency.

While acknowledging “the death of Nicholas Rotolo was a tragic loss, particularly since it appears that an AED was readily available but was not employed,” the appeals court found decisions as to what losses are compensable... are best left to the Legislature, which in this case has established detailed standards for the use and regulation of AEDs.”

The Legislature has seen fit to not impose any duties of notice on building owners who acquire AEDs, other than those specifically delineated in the statute. Although the duty Rotolo seek to impose may appear, in retrospect, to be minimally burdensome, it is not our role to second guess the Legislature on matters of policy by expanding the express limitations set forth in the statute.

The appeals court, therefore, affirmed the judgment of the trial court in favor of defendant SJSE.