LEGAL RELATIONSHIP SHAPES AED USE REQUIREMENT

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Assuming a relationship which imposes a legal duty (e.g., coach/athlete, instructor/participant, landowner/invitee), in the event of any injury, one must act like the reasonable person under the circumstances to avoid negligence liability. In response to changes in available technology, the applicable legal standard of reasonable care may slowly become more demanding over time. As yesterday’s exotic safety precautions become more commonplace and expected, all reasonable persons must conform to a generally accepted higher standard of reasonable care to avoid potential negligence liability in the event of an injury.

The AED (automated external defibrillator) is an example of available technology which may arguably be evolving from an option to an expectation in determining the legal standard of reasonable care under certain limited circumstances. The AED is a portable electronic device which uses a brief electroshock to restore normal function in someone experiencing cardiac arrest. The AED is designed to be used by an ordinary layperson responding to a cardiac emergency. Training in AED use has become commonplace in many first aid and CPR (cardiopulmonary resuscitation) classes for individuals and agencies.

Clearly, in response to a cardiac event, utilization of a readily available AED may save a life. Moreover, advances in technology have made the AED easy to acquire and use. The question, however, is whether the failure to acquire or utilize available AED technology will necessarily provide a basis for negligence liability.

Despite the ready availability of such life saving technology, at this point in time, the failure to utilize an available AED would not necessarily provide a legal basis for negligence liability. On the contrary, under the traditional common law, in the absence of a legal relationship, there is no duty to rescue an imperiled stranger. Moreover, given the existence of legal relationship, in the event of a serious or life-threatening event, reasonable care would usually require nothing more than prompt summoning of competent medical attention.

In practical terms, in the event of a cardiac emergency, the generally applicable legal duty would be satisfied in most emergency situations by simply calling 911. Once the 911 call is made summoning the EMTs, the common law would not require anything further action or treatment, including CPR or AED use for a cardiac emergency. To avoid negligence liability, once help has been summoned, one must simply avoid any conduct or “treatment” which would aggravate an injury during a cardiac emergency.


In the case described herein, this traditional common law principle was superseded by a state law which required public schools participating in interscholastic sports to acquire and provide AED training. Generally, courts will narrowly construe and limit the scope and applicability of any statute which alters traditional common law principles. In other words, a statute which required
AED acquisition and training for public schools would not be more broadly construed by a court to include similar situations or public entities like public parks and recreation. On the contrary, courts will generally assume that the legislature would have specified and included additional entities in the expressed language of the statute if the legislative intent was indeed to require AED acquisition and training beyond public schools involved in interscholastic sports.

Accordingly, in the absence of expressed statutory language to the contrary, one would expect the traditional common law principle would remain in effect in the event of a cardiac emergency, i.e., no duty beyond prompt summoning of competent medical attention (calling 911). Similarly, in the absence of expressed statutory language to the contrary, it is unlikely that reasonable care under the circumstances would necessarily require AED use and availability in public parks and recreation programs to avoid negligence liability in the event of a cardiac emergency.

In addition, the availability of various forms of limited governmental immunity for public park and recreation agencies in many jurisdictions further limits negligence liability exposure in the event of a cardiac emergency. Further, to encourage AED use without fear of liability, many jurisdictions also provide limited immunity statutes for individuals who attempt to utilize this life saving technology.

At some point in time, perhaps in the not too distant future, AED use may become so ubiquitous that an AED would be used by any reasonable person under the circumstances. If so, failure to do so might provide a basis for negligence liability under such circumstances. However, in light of limited governmental immunity laws and AED immunity laws available in many jurisdictions, liability will remain an unlikely exception under most circumstances. Similarly, any future legislation would more likely increase immunity, rather than increase AED liability exposure.

AVAILABLE AED NOT USED

In the case of Limones v. School District of Lee County, 161 So. 3d 384; 2015 Fla. LEXIS 625 (4/2/2015), fifteen-year-old Abel Limones, Jr., suddenly collapsed during a high school soccer game. As described below, the state supreme court determined that a jury should consider what might be considered reasonable care under the circumstances during this particular cardiac emergency, including use of an AED required by law.

The incident occurred at approximately 7:40 p.m. on November 13, 2008. There was no evidence to suggest that Abel collapsed due to a collision with another player. The event involved a soccer game between East Lee County High School, Abel's school, and Riverdale High School, the host school. Both schools belong to the School District of Lee County.

When Abel was unable to rise, Thomas Busatta, the coach for East Lee County High School, immediately ran onto the field to check his player. Abel tried to speak to Busatta, but within three minutes of the collapse, he appeared to stop breathing and lost consciousness. Busatta was unable to detect a pulse. An administrator from Riverdale High School who called 911, and two parents in the stands, who were nurses, joined Busatta on the field. Busatta and one nurse began to perform cardiopulmonary resuscitation (CPR) on Abel. Busatta, who was certified in the use of an automated external defibrillator (AED), testified that he yelled for an AED. The AED in the possession of Riverdale High School was actually at the game facility located at the end of the soccer field, but it was never brought on the field to Busatta to assist in reviving Abel.
Emergency responders from the fire department arrived at approximately 7:50 p.m. and applied their semi-automatic AED to revive Abel, but that was unsuccessful. Next, responders from the Emergency Medical Service (EMS) arrived and utilized a fully automatic AED on Abel and also administered several drugs in an attempt to restore his heartbeat. After application of shocks and drugs, emergency responders revived Abel, but not until approximately 8:06 p.m., which was twenty-six minutes after his initial collapse. Although Abel survived, he suffered a severe brain injury due to a lack of oxygen over the time delay involved. As a result, he now remains in a nearly persistent vegetative state that will require full-time care for the remainder of his life.

NEGLIGENCE COMPLAINT

In the complaint, plaintiff alleged the School Board of Lee County “breached both a common law duty and a statutory duty as imposed by section 1006.165, Florida Statutes (2008) when it failed to apply an AED on Abel after his collapse.” At the time, Section 1006.165, Florida Statutes required “all public schools that participate in the Florida High School Athletic Association to acquire an AED, train personnel in its use, and register its location with the local EMS.”

In the opinion of plaintiff’s medical expert, Abel “would not have suffered the brain injury that left him in the current permanent vegetative state… if shocks from an AED had been administered earlier, oxygen would have been restored to Abel's brain sooner.”

The School Board moved for summary judgment, which the trial court granted and entered final judgment in favor of the School Board. Limones appealed.

The appeals court recognized that the School Board “owed a duty to supervise its students, which in the context of student athletes included a duty to prevent aggravation of an injury.” In so doing, the appeals court considered and evaluated whether post-injury efforts in connection with satisfying the duty to Abel should have included making available, diagnosing the need for, or using an AED. In the opinion of the appeals court, “reasonably prudent post-injury efforts did not require [the School Board]… to provide, diagnose the need for, or use an AED.” The state supreme court granted Limones petition to review this decision.

NEGLIGENCE LEGAL DUTY

As noted by the state supreme court, “a plaintiff must establish the four elements of duty, breach, proximate causation, and damages” in order “to succeed on a claim of negligence.”

While the court would determine “the existence of a duty,” the state supreme court acknowledged the jury would apply this legal standard to determine whether or not the conduct of a particular defendant constituted negligence. Moreover, the court noted that the judicial “inquiry necessary to establish a duty is limited.”

The court must simply determine whether a statute, regulation, or the common law imposes a duty of care upon the defendant. The judicial determination of the existence of a duty is a minimal threshold that merely opens the courthouse doors… Once a court has concluded that a duty exists, Florida law neither
requires nor allows the court to further expand its consideration into how a reasonably prudent person would or should act under the circumstances as a matter of law.

According to the state supreme court, "it is peculiarly a jury function to determine what precautions are reasonably required in the exercise of a particular duty of due care."

As noted by the state supreme court, in this particular instance, the lower courts had recognized a clearly established common law duty that “school employees must reasonably supervise students during activities that are subject to the control of the school.” Specifically, the lower courts had found “the duty of supervision owed by a school to its students included a duty to prevent aggravation of an injury.”

That being said, the state supreme court found the appeals court had “incorrectly expanded Florida law and invaded the province of the jury when it further considered whether post-injury efforts required Respondent [School Board] to make available, diagnose the need for, or use the AED on Abel.”

COMMON LAW DUTY

Citing a generally applicable legal principle, the state supreme court noted “a party does not have a duty to take affirmative action to protect or aid another unless a special relationship exists which creates such a duty.” See Restatement (Second) of Torts § 314 cmt. a (1965). However, when a special legal relationship exists, the state supreme court acknowledged, “the law requires the party to act with reasonable care toward the person in need of protection or aid.”

In particular, the state supreme court found “Florida courts have recognized a special relationship between schools and their students based upon the fact that a school functions at least partially in the place of parents during the school day and school-sponsored activities.” Further, the court found the “special relationship requires a school to reasonably supervise its students during all activities that are subject to the control of the school.” Once a court finds this special relationship exists under the circumstances of a particular case, the jury, not the court, would “determine whether, under the relevant circumstances, the school employee has acted unreasonably and, therefore, breached the duty owed.”

In particular, the state supreme court found Florida courts have “recognized that the duty of supervision creates the following specific duties owed to student athletes: (1) schools must adequately instruct student athletes; (2) schools must provide proper equipment; (3) schools must reasonably match participants; (4) schools must adequately supervise athletic events; and (5) schools must take appropriate measures after a student is injured to prevent aggravation of the injury.” In so doing, the state supreme court noted further that other jurisdictions “have acknowledged similar duties owed to student athletes.”

Accordingly, since “Abel was a student who was injured while he participated in a school-sponsored soccer game under the supervision of school officials,” the state supreme court concluded the School Board “owed Abel a duty of supervision and to act with reasonable care under the circumstances.” Specifically, the state supreme court found the School Board owed Abel a legal duty to “take appropriate post-injury efforts to avoid or mitigate further aggravation
of his injury.”

REASONABLE CARE JURY ISSUE

The state supreme court noted further that “[r]easonable care under the circumstances” is a legal standard that “may fluctuate with time, the student's age and activity, the extent of the injury, the available responder(s), and other facts.” In particular, the court found reasonable care will fluctuate over time in response to “advancements with technology and equipment available today.” Within the context of this case, the state supreme court noted that equipment like a “portable AED to treat an injury were most probably unavailable twenty years ago, and may be obsolete twenty years from now.”

As a result, the state supreme court would “leave it to the jury to determine, under the evidence presented, whether the particular actions of Respondent's [i.e. School Board] employees satisfied or breached the duty of reasonable care owed.” In so doing, the state supreme court rejected the decision of the appeals court to “narrowly frame the issue” as to whether the School Board had “a specified duty to diagnose the need for or use an AED on Abel.” In the opinion of the state supreme court, “reasonable care under the circumstances is not and should not be a fixed concept,” but a “factual matter for the jury” to consider.

We reject the attempt below [by the appeals court] to specifically define each element in the scope of the duty as a matter of law, as this case attempted to remove all factual elements from the law and digitalize every aspect of human conduct.

In the opinion of the state supreme court, “the flexible nature of reasonable care delineated here can be evaluated on a case by case basis.” Otherwise, the state supreme court noted a defined legal duty “could require every high school to provide an AED at every athletic practice and contest, the result could be great expense.” While the applicable legal duty to use “reasonable care to supervise and assist students” remained unchanged, the state supreme court found “the methods and means of fulfilling that duty will depend on the circumstances.”

DIFFERENT LEGAL RELATIONSHIPS

As cited by the lower courts, an earlier decision had “determined that the duty owed by a commercial health club to an adult customer only required employees of the club to reasonably summon emergency responders for a patron in cardiac distress.” Similarly, the state supreme court noted “some courts in other jurisdictions have determined that fitness clubs and other commercial entities do not owe a legal duty to provide AEDs to adult customers.” However, in the opinion of the state supreme court, a “critical distinction” existed between “the commercial context and legal relationship” of an adult customer in a health club and “a student involved in school activities with school board officials.”

Despite the fact the business proprietor-customer and school district-student relationships are both recognized as relationships, these relationships are markedly different. We initially note that the proprietor-customer relationship most frequently involves two adult parties, whereas the school-student relationship usually involves a minor. Furthermore, the business invitee freely
enters into a commercial relationship with the proprietor.

As characterized by the state supreme court, compulsory education involves a unique legal relationship which creates “a specific duty of supervision owed to students and a duty to aid students that is not otherwise owed to the business customer.” Moreover, the court noted, “the Florida Legislature has specifically mandated that high schools that participate in interscholastic athletics acquire an AED and train appropriate personnel in its use. § 1006.165(1)-(2), Fla. Stat.” In so doing, the state supreme court underscored the fact that “the Legislature has not so regulated health clubs or other commercial facilities, even though the foreseeability for the need to use an AED may be similar in both contexts.”

Accordingly, the state supreme court concluded the legal “relationship between a commercial entity and its patron quite simply cannot be compared to that between a school and its students.” As a result, the state supreme court found earlier decisions which had found no legal duty to provide AED’s to adults in a commercial context were “not comparable” to the facts in a case involving a cardiac event during an interscholastic sporting event.

AED USE IMMUNITY?

Having found the School Board “owed a common law duty to Abel,” the state supreme court then considered whether statutory immunity would apply under state law. As cited by the court, “Section 1006.165 requires all public schools that are members of the Florida High School Athletic Association to have an operational AED on school property and to train all employees or volunteers who are reasonably expected to use the device in its application.” § 1006.165(1)-(2), Fla. Stat. Moreover, the court noted that the use of AEDs by employees and volunteers was also covered by immunity provisions in the Florida Cardiac Arrest Survival Act. Specifically, in pertinent part, this state law provided as follows:

[An]y person who uses or attempts to use an [AED] on a victim of a perceived medical emergency, without objection of the victim of the perceived medical emergency, is immune from civil liability for any harm resulting from the use or attempted use of such device… any person who acquired the device and makes it available for use, including, but not limited to, a community organization is immune from such liability. § 768.1325(3), Fla. Stat.

Under this law, there is no immunity for criminal misuse, gross negligence, or similarly egregious misuse of an AED. § 768.1325(4)(a).

Under a “plain reading of the statute,” the state supreme court found “this subsection creates two classes of parties that may be immune from liability arising from the misuse of AEDs: users (actual or attempted), and acquirers.” Further, as characterized by the court, “Users” were clearly “immune from civil liability for any harm resulting from the use or attempted use” of an AED, § 768.1325(3), Fla. Stat. Additionally, the state supreme court found “acquirers are immune from ‘such liability,’ meaning the ‘liability for any harm resulting from the use or attempted use’ referenced in the prior sentence. (Emphasis of court).

As a result, in the opinion of the state supreme court, “acquirers are not immune due to the mere fact that they have purchased and made available an AED which has not been used.” Rather, the
state supreme court found an AED acquirer is only “entitled to immunity from the harm that may result only when an AED is actually used or attempted to be used.” (Emphasis of court) In this particular instance, the court noted, “no actual or attempted use of an AED occurred in this case until emergency responders arrived.” Accordingly, the state supreme court held the School Board was “not entitled to immunity” under the Florida Cardiac Arrest Survival Act. As described by the court, “this straightforward reading of the statute” was consistent with the “legislative intent” of the Cardiac Arrest Survival Act:

The passage of section 1006.165 [requiring AEDs for public school athletics] demonstrates that the Legislature was clearly concerned about the risk of cardiac arrest among high school athletes. The Legislature also explicitly linked this statute to the Cardiac Arrest Survival Act, which grants immunity for the use—actual or attempted—of an AED. The emphasis on the use or attempted use of an AED in the statute underscores the intent of the Legislature to encourage bystanders to use a potentially life-saving AED when appropriate.

According to the state supreme court, extending “the shield of immunity to those who make no attempt to use an AED would defeat the intended purpose of the statute and discourage the use of AEDs in emergency situations.” As a result, the court concluded, “immunity is with regard to harm caused by the use of an AED, not a failure to otherwise use reasonable care.”

CONCLUSION

Having found the School Board “owed a common law duty to supervise Abel,” once he was stricken, the state supreme court concluded the School Board “owed a duty to take reasonable measures and come to his aid to prevent aggravation of his injury.” As a result, a jury would determine whether the alleged failure to utilize an available AED had violated the legal duty of reasonable care and aggravated the injury sustained by Abel under the circumstances of this particular case. The state supreme court, therefore, voided the “no legal duty” decision of the appeals court and remanded (i.e. sent back) this case to the trial court for further proceedings before a jury.

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