BE PREPARED, BE READY

Illinois high court rules fitness facilities have duty to use AED during cardiac event

By BOB CLIFFORD

A 69-year-old woman was exercising in an open area at a fitness facility in Oswego when she "collapsed, stopped breathing and lost her pulse and circulation," according to the complaint. Fellow fitness members tried to resuscitate her and employees at the facility were made aware that she needed medical assistance as fellow patrons shouted to employees to help her. Eight minutes passed before an automated external defibrillator (AED) was administered to the woman.

Two Illinois statutes — Physical Fitness Facility Medical Emergency Preparedness Act and the Automated External Defibrillator Act — require fitness facilities to have AED equipment and at least one person trained to use it.

As a result of the failure of defendant's employees to act, Dollett Smith Dawkins, a patron of the defendant's fitness facility, suffered permanent and irreparable brain damage and became disabled. In *Dawkins v. Fitness International, LLC*, 2022 IL 127561 (Il. Sup. Ct., decided May 10, 2022), the state's highest court said it was relying on the plain language of the statutes and that the fitness facility had a duty to act, and the "non-use of the AED would amount to willful and wanton misconduct. … and hold[s] that the statutory scheme does impose such a duty."

Initially, the circuit judge held that under the statutes, the company was not at fault because the language of the statutes says that employees must have acted willfully and wantonly. The 3rd District appellate court reversed, and the Illinois Supreme Court agreed, stating the fitness company must face claims for not using an AED on a patron because when the two statutes are read together, it gives rise to a duty.

The Facility Preparedness Act provides, in part, "… A right of action does not exist in connection with the use or non-use of an automated external defibrillator at a facility governed by this Act, except for willful or wanton misconduct, …." Plaintiffs relied upon a similar case out of New York that stated, "…why statutorily mandate a health club facility to provide the device if there is no concomitant requirement to use it?" *Miglino v. Bally Total Fitness of Greater New York, Inc.,* 92 A.D.3d 148, 157 (2011).

Justice Michael J. Burke, writing for the unanimous court (6-0, Justice Robert Carter took no part in the decision), stated, "The plain and unambiguous meaning of this phrase [stated above] is that civil liability may attach to willful and wanton failures to use an AED. In other words, a right of action does exist for willful and wanton misconduct in connection with the non-use of an AED." Echoing the decision of the 3rd District Appellate Court, the Supreme Court held, "And the court determined that Fitness's reading would negate the expressed purpose of the statutes — to protect patrons of fitness facilities and to save their lives by encouraging the proper use of an AED — and would render the statutes absurd and ineffectual."

Burke continued: "[A]ny facility desiring maximum protection of its interests would instruct its staff to never use an AED. Clearly, the construction offered by Fitness would lead to an absurd result and would be just the opposite of the legislative intent in our view."

At an early stage of litigation on a motion to dismiss, the Illinois Supreme Court held that a right of action exists for willful and wanton misconduct in connection with the non-use of an AED. But in this case, it should be left to the trier of fact to determine whether defendant's conduct amounted to willful and wanton conduct that breached a duty to the plaintiff.

The appellate court in this case also held that the Facility Preparedness Act created a private right of action for the willful and wanton use or non-use of an AED. The Illinois Supreme Court said it agreed, but found it was unnecessary to rule on this issue because defendant already conceded that point in its reply brief when it stated that "[t]he [Facility Preparedness] Act contains explicit language permitting a private right of action for willful and wanton misconduct."

The case was reversed and remanded for further proceedings.

The Illinois Supreme Court's decision reflects upholding the rule of law but also demonstrates a lot of common sense. A read of the statutes, individually and together, explains why if an employee had followed the law, the plaintiff would not have been irreparably harmed. That type of action, or inaction, cannot be ignored under the law.

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