

July 1, 2014

Retailers NOT Required to Maintain AEDs

On June 23, 2014, the California Supreme Court announced that retailers are not obligated to maintain automated external defibrillators (AEDs) in anticipation of medical emergencies. In *Verdugo v. Target Corporation*, the state's highest court held that the burden retailers would face in acquiring and maintaining AEDs outweighed the foreseeability of harm.

The underlying case involved a 49-year-old developmentally disabled shopper who died after experiencing sudden cardiac arrest while at a California Target store. The store did not have an AED nor an employee trained to use one.

As explained by the court:

... when the precautionary medical safety measures that a plaintiff contends a business should have provided are costly or burdensome rather than minimal, the common law does not impose a duty on a business to provide such safety measures in the absence of a showing of a heightened or high degree of foreseeability of the medical risk in question.

The holding is consistent with other courts that have addressed the common law duty to maintain such devices but does leave open the possibility that such a duty may exist when there is a "heightened degree of foreseeability." The court noted that Target has a common law duty to provide at least some assistance to a patron who suffers a sudden cardiac arrest while shopping at a Target store, but found no evidence that someone was more likely to experience a sudden cardiac arrest in a Target store than at some other location. Factors to consider in analyzing whether there is a duty to have an AED present would include the vulnerability of the population served by the retailer and/or any risk associated with patronizing its business.

The court reviewed California's statutes and regulations pertaining to AEDs—which provide immunity against civil liability for those who provide and use AEDs—and strongly suggested the area is one better left to the legislature rather than the common law. Currently, health studios¹ are the only nonmedical businesses for which California regulations require an AED.

¹ "health studio" means a facility permitting the use of its facilities and equipment or access to its facilities and equipment, to individuals or groups for physical exercise, body building, reducing, figure development, fitness training, or any other similar purpose, on a membership basis. "Health studio" does not include a hotel or similar business that offers fitness facilities to its registered guests for a fee or as part of the hotel charges.

This document is intended to provide you with general information regarding retailers and AEDs. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

Edward A. Stumpp
Shareholder
estumpp@bhfs.com
T 310.564.8681

Mitchell J. Langberg
Shareholder
mlangberg@bhfs.com
T 310.500.4631