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Christian's practice areas consist of Appellate advocacy, retail and hospitality liability defense, complex litigation, premises liability, food adulteration claims, white-collar criminal defense, motions work, and state healthcare regulatory issues.

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## Hospitality Liability Report: Whether Businesses in the Hospitality Industry Have a Duty to Maintain Automated External Defibrillators on their Premises

Anyone who travels these days has noticed that more and more automated external defibrillators have begun popping up in public places. Whether it be at the airport, hotels, conference centers, golf courses, or restaurants, defibrillators have become increasingly accessible to patrons in the hospitality setting. With their presence in public places becoming more known by patrons – and perhaps even expected – the question arguably exists: Does a business in the hospitality industry have the legal duty to own and maintain defibrillators for use by its patrons? Review of the rather limited case law in this area of liability reveals

the current answer is likely “no.”

In *Salte v. YMCA of Metropolitan Chicago Foundation*, 814 N.E.2d 610 (Ill. App. Ct.-2d Dist. 2004), the Appellate Court of Illinois addressed the issue of whether a business incurred liability due to it not having a defibrillator on its premises. Specifically, in *Salte*, a member of a health club was exercising on one of the club's treadmills. While using the treadmill, the member suffered a cardiac arrest. The member remained in cardiac arrest for eight minutes until the county paramedics arrived.

The member later sued the health club, alleging

# Legal Tips

his cardiac arrest was a predictable and reasonably foreseeable event due to the type of activities occurring at the club. The member further alleged the eight minute delay in receiving treatment resulted in brain injury, which in turn led to physical and emotional damages.

Citing a myriad of authorities, including Restatement (Second) of Torts § 314A, comment f, the Salte Court held the health club had the duty to render whatever first aid that, under the circumstances, it was reasonably capable of providing to the member. However, the Salte Court ruled the duty to provide first aid did not require the club to provide, or to be prepared to provide, all medical care that it could reasonably foresee might be needed by a patron. The court believed a defibrillator fell outside the parameters of what constituted reasonable first aid. Accordingly, the court determined the health club did not have a duty to have a defibrillator on its premises.

Other courts have held hospitality-related entities do not possess the duty to have defibrillators on their premises. See *Atcovitz v. Gulph Mills Tennis Club*, 812 A.2d 1218 (Pa. Sup. Ct. 2002)

(holding the overall public interest was the dispositive factor against a finding that the defendant tennis club owed a duty of care to its members to acquire and maintain a defibrillator on its premises for emergency use by unqualified and untrained individuals).

The appellate courts in South Carolina have not rendered an opinion regarding a business' duty to provide a defibrillator for use by its patrons. Moreover, our courts have not expressly adopted Restatement (Second) of Torts Restatement (Second) of Torts § 314A, a provision that deals with duties of care businesses open to the public owe their patrons. However, our courts have applied the Restatement (Second) of Torts in a dispositive manner in numerous cases. Moreover, our courts have historically recognized the important duties of care that flow from business owners to their patrons. Accordingly, it is not unfathomable to believe our Court of Appeals or Supreme Court would adopt § 314A if presented with the opportunity. Comment f of this section states:

The defendant is not required to take any action until he knows or has reason



# Legal Tips

to know that the plaintiff is endangered, or is ill or injured. He is not required to take any action beyond that which is reasonable under the circumstances. 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, and take reasonable steps to turn the sick man over to a physician, or to those who will look after him and see that medical assistance is obtained.

Accordingly, assuming our appellate courts would adopt and apply the principles enunciated within comment f of § 314A in a manner consistent with *Salte*, it is likely the issue of whether a South Carolina hospitality entity is liable for not having a defibrillator on its premises would be decided in the hospitality entity's favor. With that said, our partners in the hospitality and retail industry should be mindful of several things.

First, as time goes on, and as defibrillator technology becomes both cheaper to obtain and easier to use, the courts could determine that what constitutes "reasonable" first aid includes patron access to defibrillators. The possibility of this conclusion is heightened by the fact that

federal regulations are already in place, which require commercial airlines to equip their craft with defibrillators. It is not inconceivable such regulations could be extended by our federal and state lawmakers to businesses that cater to the public on a large scale, such as those in the hospitality industry.

Second, should your business make defibrillators available on your premises, it is highly advisable to ensure the apparatus remains in good working order and that employees — should they be called upon to assist — receive periodic training regarding its proper use. Liability can arguably attach to a business that injures a patron due to defective or broken equipment or a lack of proper training.

