

MEDICAL EMERGENCIES AT YOUR HOTEL, RESTAURANT OR BUSINESS

**AN ANALYSIS OF DUTY, RISK AND
LIABILITY**

Presenters

- Click to add photo
- **Carlos Chardon**, Attorney at Miami office of Hamilton Miller & Birthisel, LLP
- Represents hotels and major cruise lines and regularly advises and represents Latin American entities
- Has managed numerous matters in state and federal court
- Recently recognized by the national publication of Law & Politics as a Super Lawyer Rising Star

INTRODUCTION

- Proliferation of lawsuits premised on allegedly inadequate responses to medical emergencies
- Filed against hotels, resorts, restaurants, spas, gyms, sports clubs, etc.
- High exposure
 - Involve death or serious disability
 - Very high potential medical and economic damages
 - Strong emotional component
 - Jury sympathy

INTRODUCTION (cont)

- Lawsuits very costly to defend
 - Numerous fact, medical, and expert witnesses
 - Can span many years
- Complicated medical issues
 - Causation and damages

INTRODUCTION (cont)

- Effective Preparation and Risk Management is Key
 - To ensure reasonable responses to emergencies
 - Prevent claims
 - Prevent claims from becoming lawsuits
 - Increase likelihood of summary adjudication in event of lawsuit

INTRODUCTION (cont)

- Jurisprudence is instructive.
- Restatement (Second) of Torts and Court decisions provide insight
 - How to prepare for medical emergencies
 - How to respond
 - How much is too much
 - What to document
 - Preservation of evidence

Duty of Care

- **General rule:** a bystander has no duty or obligation to provide assistance.
- **Exception: When there is a Special relationship.**
 - includes common carriers, innkeepers, and possessors of land who hold it open to the public.

See Restatement (Second) of Torts, Sections 314 & 314A

Duty of Care to Guests & Patrons

- To provide first aid and to care for them until they can be cared by others
- Not required to take any action until owner knows or has reason to know that plaintiff is endangered, or is ill or injured.

See Restatement (Second) of Torts, Sec 314 A, Comment (f)

Duty of Care to Guests & Patrons (cont)

- Owner will seldom be required to do more than give such first aid as he reasonably can, and
- Take reasonable steps to turn the sick person over to a physician, or to those who will look after him and see that medical assistance is obtained.

See Restatement (Second) of Torts, Sec 314 A,
Comment (f)

Duty of Care when Intervening

- If owner intervenes, he is subject to liability to the guest for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if
 - (a) his failure to exercise such care increases the risk of such harm, or
 - (b) the harm is suffered because of the other's reliance upon the undertaking.

See Restatement (Second) of Torts, Sec 323

Duty When Taking Charge Of The Helpless

- When taking charge to assist helpless persons, an actor becomes subject to liability by:
 - failing to exercise reasonable care, or
 - discontinuing his aid or protection, if by so doing he leaves the other in a worse position.

See Restatement (Second) of Torts, Sec 324

Lundy v. Carlino, **34 F.3d 1173 (3d Cir. 1994)**

- Leading case applying the Restatement of Torts analysis.
- 66-year-old man suffered cardiac arrest while gambling at a casino in New Jersey. Filed suit claiming delay in treatment led to permanent injuries.
- Court of appeals affirmed entry of summary judgment in favor of casino, finding that while casino owed duty to provide aid, that duty did not extend to all the medical care that could be reasonably foreseeable as necessary.

Pertinent Facts

- Plaintiff received immediate CPR from other guests.
- Casino personnel immediately sounded alarm which prompted swift arrival of security staff and then casino nurse (casino documented times and events)
- Nurse, hired by independent contractor physician, brought medical equipment, but did not bring intubation kit.
- Per casino records, ambulance summoned within 3 minutes of the collapse and arrived 3 minutes thereafter.

Plaintiff's Theories Of Liability

- Casino owed duty to provide medical care pursuant to Sec. 314A
- Casino breached duty by failing to have on-site equipment and personnel to perform an intubation.
- Casino voluntarily assumed a duty and breached it because nurse failed to bring necessary medical equipment to intubate Plaintiff (per Section 324).

Court's Holding and Analysis

- Noted it was a matter of first impression.
- Casino owed no duty to provide medical services to its patrons.
- However, Casino owed duty to helpless patron to secure medical care
- Casino met duty by promptly summoning medical care.

Court's Holding and Analysis (cont)

- Maintaining on a full-time basis the capability of performing and intubation goes far beyond any “first aid” contemplated by Sec. 314A
- Casino did not voluntarily assume a duty under Sec. 324 by hiring the physician that, in turn, hired the nurse.
- Notwithstanding, New Jersey's Good Samaritan Act shielded casino.

L.A. Fitness International, LLC v. Mayer, **980 So. 2d 550 (Fla. 4th DCA 2008)**

- Gym patron died following a heart attack sustained while exercising on a step machine.
- Daughter filed a wrongful death action and the jury returned a substantial verdict on her behalf.
- State Court of Appeals reversed and remanded with instructions that judgment be entered in favor of gym

Pertinent Facts

- Gym employee immediately ordered a 911 call.
- Gym employee assessed for pulse, but not for breathing and did not perform CPR
- Witnesses testified that employees merely sat and stared at the deceased
- Witnesses testified paramedics took 10 to 12 minutes to arrive
- Paramedics were unable to revive.

Plaintiff's Theories Of Liability

- Gym breached its duty of reasonable care, in part as follows:
 - Failed to administer CPR
 - Failed to have AED defibrillator and premises
 - Failed to properly train employees to handle metal emergencies
- Assuming no duty to provide CPR, gym voluntarily undertook it but performed negligently

Court's Holding and Analysis

- Issue of duty owed by health club owner to injured patron was matter of first impression.
- Gym fulfilled duty of reasonable care by summoning paramedics within a reasonable time
- No duty to maintain CPR qualified employees or to perform CPR
- No legal duty to maintain defibrillator in premises

Court's Holding and Analysis (cont)

- CPR
 - Skilled treatment beyond the scope of “first aid” required under Section 314A
 - Although relatively simple, requires training and re-certification
 - Nonmedical employees certified in CPR should have discretion in deciding when to utilize procedure.
 - Industry standards concerning CPR did not give rise to an independent legal duty

Court's Holding and Analysis (cont)

- AED Defibrillators
 - Florida statute did not require AEDs to be placed in buildings, or that an acquirer of an AED have persons trained in its use
 - No common law duty to have AED on premises

Court's Holding and Analysis (cont)

- Negligent Undertaking
 - Gym employee's assessment of the deceased, including taking his pulse, did not commit him to perform CPR
 - Plaintiff did not allege that employee's actions worsened deceased's condition or caused him an affirmative injury
 - Plaintiff did not allege that employee's actions caused others to refrain from rendering aid.

Good Samaritan Statutes

- Business owner should be familiar with Good Samaritan statutes in their jurisdiction.
- Protection may be illusory.

Gingeleleskie v. Westin Hotel Co.

- Ill guest requested assistance from hotel's front desk employee.
- Instead of following hotel policy and contacting hotel security, employee called another employee and asked him to call a taxi.
- The taxi drove the guest to the hospital where he subsequently died.
- District court granted summary judgment for the hotel and 9th Circuit Court of Appeals reversed.

Pertinent facts

- Hotel had policy that employees were to call security.
- None of the three employees that interacted with the guest followed policy.
- Hotel management expert for plaintiff testified that the hotel failed to adhere to accepted standards.
 - Hotel should have called an ambulance immediately

Court's Holding and Analysis

- Found that section 314 A applied.
- Found that jury could reasonably conclude hotel had reason to know guest was ill and yet fail to take reasonable steps in response.
- Reversed summary judgment finding issue of material fact.
 - Cited employees failure to comply with policy and plaintiff's expert's opinion.

Baker v. Fenneman & Brown Properties, LLC, 793 N.E.2d 1203 (Ind. 2003)

- Taco Bell patron unexpectedly collapsed twice suffering significant injuries. After second collapsed, he left the store with a friend
- The parties disagreed on whether Taco Bell's employees rendered assistance
 - Baker alleged that no one from Taco Bell offered to help him
 - Taco Bell's employees maintained that Baker rebuffed their offers to assist.
- No evidence that incident was memorialized by Taco Bell (i.e. no incident report, witness interviews, etc).

Baker cont'd

- Procedural history
 - Taco Bell filed a motion for summary judgment claiming it owed Baker no duties
 - The trial court granted Taco Bell's motion, and Baker appealed

Arguments of the Parties

- The plaintiff argued
 - Taco Bell owed him a legal duty to come to his aid because he was a business invitee
- The defendant argued
 - Taco Bell argued they had no duty to assist Baker as they were not the agent responsible for his perilous state
 - That imposing a duty on Taco Bell and other restaurants would be unreasonable because “a business would be required to hire employees who were trained to diagnose and provide medical services”

Court's Holding and Analysis

- Rejected Taco Bell's arguments, and relying on comment *f* of section 314A of the Restatement, the court held that Taco Bell had a duty to provide reasonable care in the situation
- Social policy supports imposing duty to assist.

Court's Holding and Analysis

- A restaurant whose employees are on reasonable notice that a customer is in distress and in need of medical attention has a legal duty to go to the aid of that customer
- This duty does not include the training of employees in medical emergency techniques, or the administering of emergency medical services to a customer who becomes ill by no act of commission or omission of the restaurant or its employees
- Instead, the restaurant meets its legal obligation to a customer in distress by summoning medical assistance within a reasonable time

Practical Lessons

- Preparation is key
- Establish Policies and Procedures
 - Assign roles to employees
 - Alarms, accessible phones with instructions
 - Record keeping
 - Emergency drills
- Employee Training

Practical Lessons

- Familiarize with applicable statutes & Regulations
 - AED defibrillators
 - CPR
 - Good Samaritan Statutes

Session Evaluation



Scan or Visit TheHLC.co