

Outdoor law: Is there a duty to provide wilderness first aid?

by Rufus E. Brown

MAINE, WITH ITS ABUNDANCE OF NATURAL RESOURCES, IS HOME TO AN EXTENSIVE offering of outdoor recreation programs, including wilderness expeditions to places where there is no medical treatment that can be accessed on an emergency basis. Good risk management dictates that providers of wilderness expeditions plan for what to do in emergencies should they occur. But what should the plan be? Should trip leaders be trained in wilderness first aid? Is there liability to the outdoor program if trip leaders are not adequately trained in wilderness first aid?

This article will review the state of the law. The author concludes that, under prevailing case law, there is no duty to make advance preparations to provide wilderness first aid. However, emerging trends in the law and first aid suggest that responsible providers of wilderness expeditions should consider doing more than the law currently requires by training trip leaders in basic wilderness first aid in order to respond to foreseeable injuries.

The General Rule: There is No Duty to Render Emergency Assistance

In the United States and in other “common law countries,” in the absence of a “special relationship,” a bystander has no duty or obligation to render assistance to an injured party, regardless of

how dire the circumstances or the bystander’s capacity to render assistance.¹ The origins of this rule come from the distinction between misfeasance and non-feasance. Liability for non-feasance was slow to receive recognition.² There may be a moral duty to lend assistance, but there is no legal duty to do so.

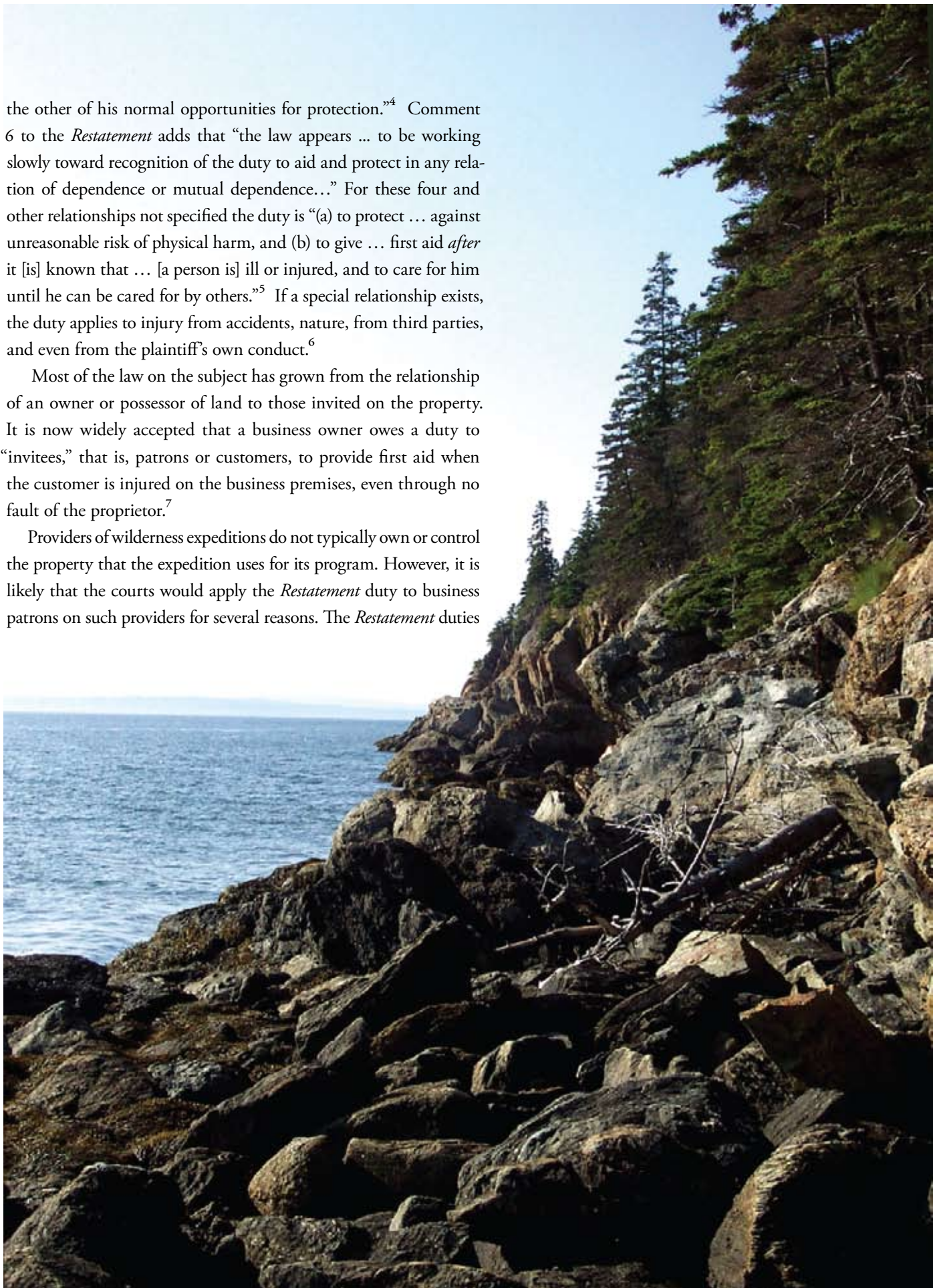
An Exception: There is a Duty to Provide First Aid to Business Patrons

An exception to the general rule exists where a special relationship gives rise to a duty to aid or protect.³ The *Restatement* provides a non-exclusive list of four such relationships: a common carrier, an innkeeper, a possessor of land who holds it open to the public, and “one who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive

the other of his normal opportunities for protection.”⁴ Comment 6 to the *Restatement* adds that “the law appears ... to be working slowly toward recognition of the duty to aid and protect in any relation of dependence or mutual dependence...” For these four and other relationships not specified the duty is “(a) to protect ... against unreasonable risk of physical harm, and (b) to give ... first aid *after* it [is] known that ... [a person is] ill or injured, and to care for him until he can be cared for by others.”⁵ If a special relationship exists, the duty applies to injury from accidents, nature, from third parties, and even from the plaintiff’s own conduct.⁶

Most of the law on the subject has grown from the relationship of an owner or possessor of land to those invited on the property. It is now widely accepted that a business owner owes a duty to “invitees,” that is, patrons or customers, to provide first aid when the customer is injured on the business premises, even through no fault of the proprietor.⁷

Providers of wilderness expeditions do not typically own or control the property that the expedition uses for its program. However, it is likely that the courts would apply the *Restatement* duty to business patrons on such providers for several reasons. The *Restatement* duties



are not limited to injuries arising from the condition of premises. The duty to provide aid to business patrons is broader and therefore should not be conditioned on ownership or control of property. Second, the outdoor expedition provider takes its patrons to locations that are remote from emergency care facilities. Third, providers of wilderness programs solicit customers to engage in activities where there is a known risk of injury to varying degrees, depending on the nature of the activity. For these reasons, it seems clear that a court, if faced with the issue, would conclude that providers of wilderness programs owe their patrons some kind of a duty to provide first aid to those injured in the course of the program activities.

Extent of the Duty to Provide First Aid When the Exception Applies

A determination that a duty is owed to a business patron to give first aid is only the first step in the analysis. The more significant and difficult issue is the extent of that duty. When such a matter reaches the court, it is the trial judge's function to define the extent of the duty, not the jury's.⁸ The jury renders judgment based on the facts after the judge has defined the scope of the duty. The reported decisions reveal two different approaches to the analysis of the scope of the duty to provide first aid. One approach I will refer to as the "Classic Analysis" and the other the "Restatement Analysis."

A. The Classic Analysis

The classic analysis defining the extent of the duty of giving first aid is represented by the case of *Kleinknecht v. Gettysburg College*.⁹ In this case, a scholarship lacrosse athlete, recruited by Gettysburg College, suffered a cardiac arrest and died during a practice session. The estate of the deceased student sued the college, claiming it had a duty to provide prompt and adequate emergency medical assistance to the athlete, which it had failed to do, resulting in the death of the student. The court had little hesitation in holding that the college had a duty of care (that is, a duty to provide first aid) to the athlete arising out of a special relationship because the injury occurred during an athletic event involving an intercollegiate team for which the college had actively recruited the student.¹⁰

The analysis of the extent of that duty, however, involved several steps:

First, according to the court, it must be determined whether it was foreseeable that the athlete could sustain serious, life-threatening injuries as a result of participation in the sport.¹¹

According to the court, the risk reasonably to be perceived defines the duty to be obeyed.¹² The foreseeability referred to does not require that a specific event be foreseeable; it requires only that the general type of harm be foreseeable.¹³

Second, a duty is defined by the extent to which the foreseeable risk of harm is deemed unreasonable.¹⁴ This phase of the analysis requires a classic risk-utility analysis: as the gravity of the possible harm increases, the apparent likelihood of its occurrence needs to be correspondingly less to generate a duty of precaution.¹⁵ The risk-utility analysis also takes into account a balancing of the expedience of measures that would address the perceived risk.¹⁶ For example, is it reasonable to require an ambulance or CPR-certified trainer to be present at every scholastic athletic practice?

Third, when defining the extent of a specific duty of care, a court will consider public policy and in doing so will draw on ideas of morals and justice as well as practicality.¹⁷

Working through each phase of this three-part analysis, the court in *Kleinknecht* determined that it was reasonably foreseeable that a college athlete could sustain serious injury during participation in a sport; that the magnitude of the foreseeable risk was substantial, including death; that in view of the magnitude of the risk, reasonable measures were required to provide immediate and adequate medical services; and that the imposition of such a duty was supported by public policy.¹⁸ The court stated that it was up to the jury to determine whether the college in this case had acted reasonably in its preparedness to give prompt and adequate medical care.¹⁹

Another case applying the Classic Analysis to the duty to provide first aid, *Atcovitz v. Gulph Mills Tennis Club*,²⁰ involved a tennis player who suffered serious injuries from a cardiac arrest at a club that did not have an automated external defibrillator ("AED") available. The injured player sued the club, alleging that his injuries would have been less if an AED were available at the club and had been used. The court acknowledged the Classic Analysis, stating that in determining whether a duty exists, courts balance the following factors: "(1) the relationship between the parties; (2) the social utility of the actor's conduct; (3) the nature of the risk imposed and foreseeability of the harm incurred; (4) the consequences of imposing a duty upon the actor; and (5) the overall public interest in the proposed solution."²¹

Oddly enough, however, the court then limited its analysis to only the fifth factor, public policy. It noted that the use of AEDs is highly regulated in Pennsylvania by the EMS Act and regulations.²² It then stated that "the implication of the Legislature's

exclusion of untrained laypersons from the EMS Act and its regulations preclude unqualified and untrained individuals from administering emergency medical services using an AED.”²³ The court noted that Pennsylvania had enacted an AED Good Samaritan Act providing civil immunity to untrained individuals who use an AED in good faith, in emergency situations where the use of an AED could not be postponed until emergency medical services personnel arrive to give assistance.²⁴ The court concluded, however, that this provision did not authorize use of an AED, much less impose a duty on a business establishment to acquire, maintain, and use such devices.²⁵

The *Atcovitz* case is flawed in failing to consider all the factors in the Classic Analysis, especially the obvious foreseeability of cardiac arrest at an athletic club, the seriousness of the risk, and the lack of burden in imposing a duty on the club to acquire an AED and train personnel to use it. The *Atcovitz* court’s analysis of public policy in Pennsylvania is also highly suspect, at least according to present-day attitudes. The state’s regulation of the use of AEDs by EMS licensees does not speak to the duty of a club to acquire and be in a position to use an AED. And—contrary to what the court said about Pennsylvania law—by 2001 that State’s AED Good Samaritan Law²⁶ could fairly be interpreted to authorize the use of an AED in emergency situations by a person trained by the American Red Cross, the American Heart Association, or the state.

The development of the law in Pennsylvania authorizing the use of AEDs by laypersons in emergency situations, and laws in every one of the other states on the use of AEDs, reflects the advocacy by the American Red Cross and the American Heart Association as well as others for more widespread use of AEDs by laypersons.²⁷

Under the Classic Analysis, a court could rule it is reasonably foreseeable to the providers of outdoor recreation programs that someone could be seriously injured in the course of a program—say rock climbing or whitewater rafting—needing immediate medical treatment. Under these circumstances it would be reasonable, cost-efficient, and in accord with public policy to require training for outdoor program trip leaders in providing first aid in accordance with recognized wilderness medical protocols. It is highly unlikely that a court would require every trip to be accompanied by a physician or an EMT, because

any such requirement would be impractical and cost-prohibitive, and would lead to the closure of most outdoor recreation programs. However, it would not be unreasonable to require a trip leader, for example, to be trained in basic wilderness first aid.

Expansion in recent years of the concept of “first aid,” as suggested by the JAMA article referred to above at N. 27, should logically increase the likelihood that a court will some day rule that a provider of wilderness expeditions has a duty to prepare for emergencies by training its trip leaders in wilderness first aid. The Red Cross, for example, does not limit its training to CPR and other basic first aid skills. It now typically includes training in the use of AEDs, which have become less expensive and easier to use, and the administration of epinephrine for anaphylaxis. Wilderness Medical Associates, a Maine based company, offers several levels of certification for wilderness protocols, including CPR, treatment of simple dislocations, treatment of hypothermia, the administration of epinephrine for anaphylaxis, and treatment of other conditions.²⁸

The greater the access of laypersons to training in lifesaving techniques, the more reasonable it is in the balancing required by the Classical Analysis to impose a duty on wilderness expeditions to possess those skills. This logic should lead courts to hold that the level of first aid training (certification) for wilderness programs should correspond to the extent of the risk of a particular outdoor program (e.g. a nature walk may require no first aid training, whereas a technical mountain climbing expedition may require a high level of first aid training), as well as the remoteness of the outdoor activities from traditional medical facilities.

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The *Kleinknecht* case applying the Classic Analysis stands virtually alone, however, in the case law dealing with the duty to provide first aid to business patrons. The type of analysis undertaken in *Kleinknecht* is referred to as “classic” because the court’s reasoning follows classical principles of tort law, not because of the extent to which the analysis has been applied

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to the duty to give first aid. As explained below, the overwhelming majority of cases have instead defined the duty to provide first aid according to the Restatement Analysis.

B. The Restatement Analysis

Commentary to the *Restatement of the Law of Torts (Second)*, Sec. 314A, addresses the extent of the duty to provide first aid where there is a special relationship. *Comment e* states that “[t]he duty in each case is only one to exercise reasonable care under the circumstances.” This general statement is so broad and obvious that it does not provide meaningful guidance.

Comment f of the *Restatement*, however, gets into more detail. It begins with the statement that the “defendant is not required to take any action until he knows or has reason to know that the plaintiff is endangered, or is ill or injured.” If taken literally, this means that a business owner has no duty prior to the occurrence of an injury of a patron... Thus, the owner would have no pre-existing duty to prepare for an emergency before it occurs, no duty to train employees to give first aid or to purchase equipment such as AEDs in order to be in a position to give prompt an adequate first aid. This is what *Comment f* seems to mean.

Sec. 314A of the *Restatement* 1(a) speaks generally of the duty to “protect” against the “unreasonable risk of physical harm”—a duty that must be addressed prior to injury—but speaks specifically of a duty to give “first aid” in 1(b) only “after it knows or has reason to know” of an injury. *Comment f* also states that once an injury has occurred, the defendant’s duties are minimal: “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 the physician, or to those who will look after him and see that medical assistance is obtained.”

The *Restatement* has had a significant influence on the courts in defining the existence of a duty to provide first aid to those in special relationships, as it has had in other areas of the law. Therefore, it is not surprising that the same *Restatement* should be influential in defining the extent of the duty once it has been found to exist.

And indeed, *Comment f* to the *Restatement* Sec. 314A has been influential on the courts. The *Restatement* is the foundation for the majority rule that the duty of business owners to their patrons is “minimal,” “limited” to summoning aid and in the interim taking reasonable first aid measures that business proprietors or their employees happen to possess. Generally,

the courts, relying on the *Restatement* as a shorthand statement of law and policy on the subject, do not require business proprietors to take precautionary steps by arranging for special equipment or training for employees so that prompt and adequate medical services are available for an injury, however foreseeable the risk of injury and however substantial the potential injury may be.

The leading case adopting the Restatement Analysis is *Lundy v. Adamar of New Jersey, Inc.*²⁹—oddly, the same Circuit that authored the *Kleinknecht* decision one year earlier. Lundy had suffered a heart attack at a casino operated by the defendant. The casino had contracted for first aid to be provided to patrons by a registered nurse on the premises, who was on scene within a minute or two of the time that Lundy, a casino patron, suffered a heart attack. The nurse immediately gave instructions for an ambulance to be called and gave what first aid she was qualified to give. Two other patrons also responded, one a pulmonary specialist. This doctor asked the nurse if she had an intubation kit that he could use to give critical aid to the stricken Lundy. The casino had such a kit, but the nurse was not qualified to use it, she did not bring it with her, and made no arrangements for it to be retrieved. Later, an EMT arrived in response to the emergency call with an intubation kit that was used to help Lundy to recover, but with permanent disabilities because of the delay in treatment. Lundy claimed that the casino had a duty to provide him medical care as a patron and that the duty was breached because the casino did not have on-site equipment or the skilled personnel to perform intubations.

The Third Circuit rejected Lundy’s duty argument, relying on Sec. 314A of the *Restatement*. Specifically citing *Comment f*, the court stated, “[c]learly, the duty recognized by §314A does not extend to providing all medical care that the [business owner] could reasonably foresee might be needed by a patron.”³⁰ Explaining further, the court stated: “Certainly, maintaining on a full-time basis the capacity of performing an intubation goes far beyond any ‘first aid’ contemplated by §314A.”³¹

On this point, the *Lundy* decision makes sense because it decided the case based on the kind of “first aid” that reasonably could be expected from a casino to its patrons. The heart attack was unrelated to the activities of the casino. The holding did not state there was no duty at all to anticipate emergencies by employing personnel qualified to give first aid. To say that the skills to perform intubations exceed ordinary first aid for a casino business seems reasonable.

Other cases adopting the *Restatement* Analysis, however, have gone further to negate any duty to provide employees skilled in first aid, focusing solely on the duty of a business to act only after an injury has occurred to a patron.

Following the lead of *Lundy*—after citing *Lundy* and Sec. 314A of the *Restatement*, *Comment f*—an appellate court in Illinois held that a health club had no duty to keep a defibrillator on its premises or to train its staff in its use.³² According to the court, the “use of a defibrillator requires specific training and we believe that its use is far beyond the type of ‘first aid’ contemplated by the *Restatement* section 314A.”³³ See also, for a racquetball tournament, *Rutnik v. Colonie Center Court Club*;³⁴ for a seminar at a resort, *LaBrie v. Sugarloaf Mountain Corp.*³⁵

In *Baker v. Fenneman & Brown Properties, LLC*,³⁶ an appellate court stated that a Taco Bell store had no duty other than to summon emergency assistance for a customer who fell on the floor unconscious. Citing the *Restatement*, the court commented that “a restaurant does not have a duty to provide medical training to its service personnel or medical rescue services to its customers who become ill or injured through no act or omission of the restaurant or its employees.”³⁷

In *Applebaum v. Daviud Nemon*,³⁸ a court held that a child-care center had no duty to have the capacity to perform CPR on its patrons. According to the court, this would require special training that is not required by the law. “The duty to render aid as it has developed by the common law does not arise until after the emergency has occurred.”³⁹ In *Drew v. Le Ya’s Sportsmen’s Café*,⁴⁰ the Supreme Court of Wyoming, citing Sec. 314A, ruled that a restaurant had no duty to train its employees in the Heimlich maneuver to aid choking customers. “We are concerned that a specific requirement of first aid, rather than aid in the form of a timely call for professional medical assistance, would place undue burdens on food servers and other business-invitors.”⁴¹ See also *Lee v. GNLV Corp*⁴²; and see *Parra v. Tarasco*,⁴³ for the requirements under Choke-Saving Methods acts enacted in several states.

None of these cases involved emergencies in a wilderness context; in all of them traditional emergency medical services were accessible. Nevertheless, based on the broadly stated reasoning of these cases, it appears to be the consensus that in all circumstances, including wilderness expeditions, business patrons have no duty to train their employees aid or to furnish them with equipment, such as AEDs or EpiPens (pen-like self-administered epinephrine devices), which would facilitate emergency medical responses to foreseeable injuries. Relying on the *Restatement*, Sec. 314A and

Comment f, the prevailing view is that the duty to provide first aid is minimal and arises only after an emergency occurs.

However, the law is emerging in this area and may change to require more of outdoor recreation providers. The most recent view of the American Law Institute, in the Proposed Draft No.1, *Restatement (Third), Torts, Liability for Physical Harm*, §40, states that: “an actor in a special relationship with another owes the other a duty of reasonable care with regard to risks within the scope of the relationship.” *Comment d* explains that the proposed new section adopts “a more general duty of reasonable care” than Section 314A, which was “limited to providing first aid and temporary care until appropriate medical care could be obtained.” *Comment d* adds that the reformulated duty “recognizes both the variety of situations in which the duty may arise and advancements in medical technology that may enable an actor to provide more than mere first aid.” [Emphasis added.]

If adopted, the new *Restatement* position should cause courts to migrate over time to the Classic Analysis in analyzing the parameters of reasonable care. At the same time that the legal standard is changing, the trend towards expansion of mainstream “first aid” continues, providing greater access for laypersons to lifesaving techniques that were once available only to professional medical personnel. Under the balancing contemplated by the Classic Analysis, it is predictable that courts may require providers of outdoor recreation to train their staffs in accordance with standard wilderness medical protocols to be able to respond to emergencies. This is especially so when providers solicit patrons to engage in activities where the need for such services are obvious, the benefit of the services is so compelling, and the burden of being prepared to provide them is so minimal.

The Consequences of Providing First Aid Beyond The Duty to Do So

Given the state of the law, it may be questioned whether a provider of wilderness programs should expose itself to liability by providing more wilderness first aid than the law requires. There are different ways to respond to this issue.

One is a purely ethical response. If someone is in the business of soliciting customers to engage in outdoor recreation where serious, life-threatening injuries without immediate access to urban medical centers are predictable, is it ethical to make a business decision to withhold training for trip leaders in state-of-the-art wilderness medical first aid on the rationale that by doing so the business will limit its legal exposure? The question presup-

poses that providing more than the law requires will increase risk exposure, which is an issue that will be addressed next. However, apart from whether it does or not, quality programs will not expose customers to increased risks from permanent or life-threatening injuries by deliberately withholding first aid training to its employees when that training is available without undue burden.

Putting aside ethical considerations, the *Restatement* provides a structure for the analysis of the consequences of voluntarily undertaking to give first aid beyond what is minimally required by the special relationship. This analysis is independent of the duty of care arising out of a special relationship.⁴⁴ The *Restatement (Second) of the Law of Torts*, Sec. 323, provides that “[o]ne who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other’s person or things, is subject to liability to the other 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.”

Section 324 of the *Restatement* imposes a similar duty when a person voluntarily assists a helpless victim. It provides that “[o]ne who, being under no duty to do so, takes charge of another who is helpless adequately to aid or protect himself is subject to liability to the other for any bodily harm caused to him by (a) the failure of the actor to exercise reasonable care to secure the safety of another while within the actor’s charge, or (b) the actor’s discontinuing his aid or protection, if by doing so he leaves the other in a worse position than when the actor took charge of him.” Both *Restatement* sections imposing a duty to exercise reasonable care (referred to as the “voluntary undertaking rules”) come into play when the person giving aid is not under a duty to do so under the “special relationship” rules discussed above.

So, pausing at the analysis so far, it would appear that a provider of wilderness expeditions that trains its employees in first aid beyond what is currently required by the law of special relationships potentially increases its exposure to the extent that the employee renders a patron worse off by reason of negligent emergency first aid. However, the analysis has one more step. It has been held that the voluntary undertaking rules of the *Restatement* are subject to the Good Samaritan Laws developed by the common law and codified into statutes in most states.⁴⁵ While there are variations in different states, the Maine Good Samaritan law is typical in providing that “any person who voluntarily, without the expectation of monetary compensation

from the person aided or treated, renders first aid [or] emergency treatment ... to a person ... in need ... shall not be liable in for damages for injuries alleged to have been sustained ... by reason of ... such first aid [or] emergency treatment... unless it is established that such injuries ... were caused willfully, wantonly or recklessly or by gross negligence ...”⁴⁶

In Maine (and other states with similar statutes), the Good Samaritan Law should protect a provider of wilderness expeditions whose trip leaders administer emergency wilderness first aid to a patron who later sues for negligence. As just explained, the Good Samaritan law only applies if emergency aid is given “voluntarily.” Those who have a duty to act, like a doctor in a hospital, do not get the benefit of the immunity provided by the law, because the immunity is designed to encourage those to act who have no duty. Under the *Restatement Analysis*, a provider of wilderness expeditions has a special relationship and therefore a duty to its patrons to summon first aid, but not the duty to be prepared to give and administer first aid when there is no one who can be summoned. Therefore, in a state like Maine, when the provider goes beyond the duty as limited by the *Restatement Analysis*, *a fortiori*, it is acting “voluntarily” and should get the benefit of the Good Samaritan Law.⁴⁷

Conclusion

Based on the foregoing analysis, it is fair to conclude that, under the current state of the law, a provider of wilderness programs is under no legal duty to train its trip leaders according to established protocols for wilderness first aid. Under prevailing law, the duty to provide first aid arising out of the relationship arises only after the emergency exists, and thus the provider is only required to give what aid is available at that time under the circumstances, which probably will be limited to a call for help and an evacuation.

If a provider decides to limit its capacity to provide first aid to what the law requires, good risk management principles would counsel the company to clearly inform its patrons, before they commit themselves to an expedition, that there will be no person on the trip with special first-responder skills. Such a disclosure will give the patron a choice about participating in the expedition—informed not only about the natural risks of injury, which should also be disclosed, but the limited ability of the provider to offer medical assistance to a victim of these risks.

Those providers who choose to do more, putting the well-being of their patrons ahead of concerns about exposure from the conduct of their business by training trip leaders in basic

wilderness medical protocols, should be comforted that their actions may become the standard in the industry as the law and first aid training evolve. They should also look to the rationale of the Good Samaritan laws to protect them should a patron bring suit for a bad result from first aid given in remote circumstances. Δ ¹⁴

1. *Restatement of the Law of Tort (Second)*, Sec. 314; *Prosser & Keeton on the Law of Torts*, §56 at 373–76 (5th ed. 1984); *Lundy v. Carlino*, 34 F.3d 1173, 1178 (3d Cir. 1994).
2. *Restatement*, Sec. 314, Comment c.
3. *Restatement of the Law of Torts (Second)*, Sec. 314A.
4. See also *Prosser & Keeton*, *supra*, §56 at 373–76; *Rodrique v. United States*, 788 F.Supp. 49, 51 (D. MA 1991).
5. *Restatement*, Sec. 314A(i). [Emphasis added.]
6. *Restatement*, Sec. 314A, Comment d.
7. *Lundy v. Carlino*, *supra*, 34 F.3d at 1179; *Salte v. YMCA of Metropolitan Chicago Foundation*, 814 N.E.2d 610,613 (Ill. App. 2004); *Baker v. Fenneman & Brown Properties*, 793 N.E.2d 1203, 1207 (Ind. App. 2003).
8. *Restatement of the Law of Torts (Second)*, Sec. 328.B.
9. 989 F.2d 1360 (3d Cir. 1993).
10. *Id.* at 1368.
11. *Id.* at 1369.
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.* at 1370, quoting from *Prosser & Keeton on the Law of Torts*, *supra*, § 173.
16. *Id.* at 1369–70.
17. *Id.* at 1371–2.
18. *Id.* at 1370–71.
19. *Id.* at 1372–73.
20. 812 A.2d 1218 (Pa. 2002).
21. 812 A.2d at 1223.
22. *Id.*
23. *Id.*
24. *Id.* at 1224.
25. *Id.*
26. 22 M.R.S. 2150-C.
27. See the Red Cross's "Saving a Life as Easy as A-E-D" (www.red-cross.org/services) (stating that the American Red Cross has a vision of one person in every household being trained in first aid and CPR lifesaving skills and all Americans being within four minutes of an AED with someone trained to use it in the event of sudden cardiac arrest. Also see National Conference of State Legislators, "State Laws on Heart Attacks, Cardiac Arrest & Defibrillators, Encouraging or Requiring Community Access and Use (www.ncsl.org/programs); Smith and Hamburg, "Automated External Defibrillators, 1998 *Circulation* 1321–24; and "Automated External Defibrillator, Clinical Benefits and Legal Liability," 2006 *JAMA* 687, suggesting that a legal duty to deploy AEDs is evolving: Several factors combine to create a legal duty, including legislation judicial decisions and evolving industry and professional standards. With the passage of time, these factors have been evolving towards broader acceptance of public access defibrillation and the creation of a legal duty in certain settings. The use of defibrillators is widely viewed as no longer the special province of health care professionals.
28. See "Wilderness Medicine Field Protocols," found at www.wildmed.com.
29. 34 F.3d 1173 (3d Cir. 1994).
30. 34 F.3d at 1179.
31. *Id.* The dissent in *Lundy* argued, persuasively, that the issue of the reasonableness of the casino's conduct under the special relationship rules should have gone to the jury for determination. *Lundy*, *supra*, 34 F.3d at 1202-4. The dissent in *Lundy* was not convinced that the nurse

acted reasonably in refusing to fetch the intubation kit located close by when the doctor asked for it. The dissenting judge explained that he thought the issue should go to the jury "because a jury could view getting the intubation kit from the office and handing it to [the doctor] to be a reasonable step (and hence one which would fall within the 'pre-existing duty') as it does not encompass rendering first aid beyond the preexisting ability of anyone present in the normal course of things to perform." *Id.* To the dissent, fetching the intubation kit under the circumstances would be as reasonable and free of burden as fetching an ambulance, which the casino clearly had a duty to do.

32. *Salte v. YMCA*, 814 N.E.2d 610 (Ill. App. 2004).
33. *Id.*
34. 672 N.Y.S.2d 451 (N.Y.Sup. Ct. 1998).
35. 1995 Me. Super. LEXIS 224 (1995).
36. 793 N.E.2d 1203 (Ind. App. 2003).
37. 793 N.E.2d at 1210.
38. 678 SW.W.2d 533 (Tex. App. 1984).
39. 678 S.W.2d at 537. *Accord*, *Gingeliskie v. Weston Hotel*, 961 F.Supp. 1310 (D. Az. 1997).
40. 806 P.2d 301 (Wy. 1991).
41. 806 P.2d at 305.
42. 22 P.3d 209 (Nev. 2001).
43. 595 N.E.2d 1186 (Ill. App. 1992).
44. *Davidson v. University of North Carolina*, 543 S.E.2d 920, 929 (N.C.Ct. App. 2001).
45. *Lundy*, *supra*, 34 F.3d at 1180; *accord*, *Salte*, *supra*, 814 N.E.2d at 615-16; *McDowell v. Gillie*, 626 N.W.2d 666, 669–70 (N.D. 2001).
46. 14 M.R.S.A. §164.
47. See *Lundy*, 34 F.3d at 1180; *accord*, *Salte*, *supra*, 814 N.E.2d at 615-16.

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