Emergency Response: Calling 911 – Delay or Failure Can Result in Needless Suit

written by David Herbert | February 1, 2017

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From a professional perspective, it seems rather clear that personal fitness trainers and other service providers in the fitness industry need to summon emergency aid when necessary to respond to client needs. However, a delay in doing so or even an outright failure to call 911 or summon some other form of emergency response through, for example in-house responders, can result in an aggravation of a client injury, further client injury or even client death.

In a recent decision from a California court,[1] a 51-year old health club client visited a cardiologist for an elevated heart rate he experienced while exercising on a treadmill. The client was advised to cease further exercise until a cardiac stress test could be performed. Despite the advice, the client went to his health club and began to exercise. Sometime around 5:00 p.m. that day, another gym patron found the client in apparent distress and notified a personal trainer at the facility. The personal trainer at the club then encountered the distressed client and learned that he could not "seem to get . . . [his] heart rate down." Allegedly, however, no complaints were then made by the client to the trainer about any chest pain, shortness of breath or numbness.

In assessing the client's condition, the personal trainer thought the client was experiencing heat exhaustion. As a consequence, he had the client sit on a bench and then had him moved to the coolest place in the gym, the break room. Although the personal trainer thought the client was confused and even asked another personal trainer at the facility to call 911, emergency response was not called despite the fact that the first personal trainer thought the client should be "checked out."

When two other facility employees escorted the client to the break room, it was then reported that the client said he was "feeling a little dizzy and that his heart rate had become elevated while [he was] doing interval training on a treadmill in which he would run as fast as he could for five minutes, slow down until he recovered [and] then run for another five minutes as fast as he could." While the client reportedly spoke in a clear voice, sat upright in a chair without assistance, was breathing without difficulty and did not have trouble saying words or expressing his thoughts, one of the employees thought he was overheated. That employee gave the client an ice pack for the back of his neck and a glass of water. This later employee decided that the client's heart rate was slowing down and that the client was feeling better. The employee also noted that the client never asked for 911 to be called.

Ultimately, through a series of cell phone text messages with his wife, the client summoned his wife to pick him up because he was "feeling sick." The wife arrived at the facility around 5:15 p.m. At that

time the personal trainer who first encountered the client advised the wife to call 911. She did so and then found her husband in the break room "sitting slumped in a chair with his head hanging down and an ice pack on the back of his neck."

While the paramedics were en route, the client was "hyperventilating [and] had difficulty breathing." His heart rate had been elevated at that point for an hour and 15 minutes. While with his wife in the break room, the client passed out and went into convulsions. Another gym patron who was a physician came to the client's aid but the client soon thereafter stopped breathing. CPR was performed. The paramedics arrived very shortly thereafter. Even though CPR was continued and the client's heart was defibrillated which restored a pulse, the client died five days later at the hospital where he had been transported.

Suit was thereafter filed against the facility by the client's wife and children based upon their claims which included allegations of gross negligence. Apparently, since the client had signed a release of liability and an assumption of risk clause as part of his gym membership agreement, claims based upon mere negligence could not be successful. The court however determined that there was "no evidence here that would allow a reasonable trier of fact to find gross negligence." As a consequence, due to the executed release and the state of the evidence, summary judgment was deemed to be appropriately granted to the defendants.

Notwithstanding the court's determination in this case, the alleged delay in calling 911 led to the suit being filed and the time and effort devoted by the facility and its personnel to defending that lawsuit. While the executed membership documents barred successful suit, the filing might have been avoided entirely had 911 been called when the events first began to unravel. When there is any doubt in this kind of case, 911 should be promptly called and summoned to a facility. A failure to summon aid or a delay in doing so can result in needless client damage or death and resultant claim and suit.

[1] 24 Hour Fitness USA, Inc., et al. v. The Superior Court of San Mateo County; A148875, California Court of Appeals First District, Third Division, September 21, 2016.