

# If You Have an AED, Do You Have to Use It?

written by David Herbert | November 1, 2017

## **Avoiding Liability Bulletin - November 2017**

Perhaps the better question presented by this title should be the question of whether an AED should be used rather than if it has to be used in health and fitness facilities by health and fitness professionals? However, that question presents a whole host of other legal and moral issues, all of which can't be answered in this short column and most of which need to be addressed through individualized legal analysis and advice. But the issue of the legally required response to emergencies occurring within various exercise programs carried on by fitness professionals is of significant concern to the industry and needs to be reviewed.

As a starting point, the deployment of automated external defibrillators (AEDs) to be used in response to various emergency situations, including those arising in health and fitness programs, has been proven to save lives. Their ability to be effective depends upon a whole host of matters, including the following:

- Are AEDs in place in health and fitness facilities as required by state law/regulation and/or as part of the standard of care owed to clients?
- **Are health and fitness personnel trained in AED use in accordance with the requirements of state law/regulation and/or as part of the standard of care?**
- Are AEDs readily and timely available in the event of need?
- Are AEDs maintained in accordance with manufacturer requirements and ready for use?

In some states, laws have been adopted requiring the placement of AEDs in health and fitness facilities. Regulations are also often adopted in conjunction with such state laws which expand upon the issue of what might be done with such devices in health and fitness and/or other settings. These laws and regulations typically deal with the placement of such devices and the training of personnel in the use of them.

Not all states have adopted laws or regulations dealing with AEDs in health and fitness facilities. In these states which have adopted these laws and regulations, the question has arisen as to whether health and fitness professionals must use AEDs when use appears to be necessary or beneficial depending upon the facts and circumstances presented in particular situations. Courts in the states of New York and Maryland\* have looked at this issue based upon the state laws and regulations in place in those states. In both states, the courts which have examined the issue have concluded that even though AEDs were required to be in place in health and fitness facilities in those states, fitness personnel were not required by statute or regulation in those states to use them.[\[1\]](#) In the majority of the other states which have AED laws/regulations requiring the presence of these devices in health and

fitness facilities, courts in those states have not yet ruled on the issue.

Due to the foregoing, individual legal counsel in states other than New York and Maryland\* needs to advise health and fitness facilities as to what may be required by specific state laws and/or regulations on the matter. Once such individualized legal assistance is secured then appropriate action may be directed to address the potential ramifications of such laws either like that decided in New York and Maryland\* or otherwise.

Aside from the foregoing issue moreover, individualized legal counsel also needs to address the issue of whether or not the so-called standard of care – aside from the language of any state statute or regulation – requires the presence and use of AEDs in health and fitness facilities, even in those states where no statutory or regulatory requirements deal with this AED issue. Once such advice is obtained facilities in conjunction with their legal counsel may set the parameters of what facilities and fitness professionals need to do with AEDs in their emergency response efforts.

---

This publication is written and published to provide accurate and authoritative information relevant to the subject matter presented. It is published with the understanding that the author and publisher are not engaged in rendering legal, medical or other professional services by reason of the authorship or publication of this work. If legal, medical or other expert assistance is required, the services of such competent professional persons should be sought. Moreover, in the field of personal fitness training, the services of such competent professionals must be obtained.

*Adapted from a Declaration of Principles of the American Bar Association and Committee of Publishers and Associations*

---

[\[1\]](#) Trim v YMCA of Central Maryland, Inc., 165 A.3d 534 (Md.App. 2017), Miglino v. Bally Total Fitness of Greater New York, Inc., 20 NY 3d 342 (2013).

**\*Please note, CPH & Associates' Wellness & Fitness Professional Liability Policy is not available the state of Maryland.**