

**Potential Liability for Willful and Wanton
Failure to Use an Automated External Defibrillator**

To: ICRMT Members
From: Jane May, O'Halloran Kosoff Geitner & Cook, LLC
Re: *Dawkins v. Fitness Int'l, LLC*, 2022 IL 127561
Date: May 24, 2022

The Illinois Supreme Court issued an important ruling on May 19, 2022 interpreting liability provisions of two Illinois statutes addressing the use of automated external defibrillators (AEDs). The Court held that the [Physical Fitness Facility Medical Emergency Preparedness Act](#) (Facility Preparedness Act) (210 ILCS 74/1) and the [Automated External Defibrillator Act](#) (AED Act) (410 ILCS 4/1) allow a private right of action for the willful and wanton failure to use an AED.

In [Dawkins v. Fitness Int'l, LLC](#), the plaintiff filed suit after his wife suffered a cardiac arrest while exercising at the defendant's fitness facility. The complaint alleged that the facility employees willfully and wantonly failed to use the AED despite knowing that the plaintiff's wife was experiencing a medical emergency. The court explained that the Facility Preparedness Act imposes a duty to avoid willful and wanton conduct in the use or non-use of the AED. Further elaborating, the court held that "[t]he duty imposed...is to assess the patron that is having an apparent cardiac emergency and determine whether the use of the AED would be appropriate and ultimately to refrain from willful and wanton non-use."

The Facility Preparedness Act applies to certain indoor and outdoor facilities operated by municipalities, townships, and other units of local government, including pools, athletic fields, stadiums, and similar facilities, but does not include a facility serving less than 100 individuals. The Act also does not apply to facilities located in hospitals or those owned by a park district organized under the Park District Code. The Act requires facilities to implement a written plan to respond to medical emergencies, have an AED on site, and ensure that there is a trained AED user on staff during business hours. The Act imposes monetary penalties for violations, and (as determined by the Illinois Supreme Court in *Dawkins*) allows a private cause of action for willful and wanton use or non-use of an AED.

The Automated External Defibrillator Act (AED Act) was also addressed by the Court in *Dawkins*. The AED Act requires that persons who acquire an AED take reasonable measures to maintain and test the device and ensure that anticipated users are trained. The Act also states that persons and units of local government operating a site where an AED is located shall not be liable "for civil damages as a result of any act or omission involving the use of an automated external defibrillator, except for willful and wanton

conduct” so long as the conditions of the AED Act are met. The court in *Dawkins* also interpreted this provision to mean that liability could attach for the willful and wanton failure to use an AED.

In light of the Illinois Supreme Court’s ruling in *Dawkins*, public bodies with AEDs on their premises should be aware that they can be held liable for willful and wanton conduct associated with using or failing to use an AED. To avoid liability, entities should ensure that (1) their physical fitness facilities (which are covered by the Facility Preparedness Act) have a written plan to respond to medical emergencies; (2) staff members are properly trained on how and when to use an AED; and, (3) there is a trained AED user on staff during business hours. Public entities should also ensure that they are in compliance with the requirements of all applicable laws and administrative regulations that pertain to AEDs.