

Summer 2014

LeadingAge California  
**engage**<sup>TM</sup>

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**Building the  
Foundation  
for Active  
Aging**



Founded in 1961, LeadingAge California is the state's leading advocate for quality, not-for-profit senior living and care. The association's advocacy, educational programs and public relations help its members best serve the needs of more than 100,000 of the state's older adults. LeadingAge California represents more than 640 nonprofit providers of senior living and care – including affordable housing, continuing care retirement communities, assisted living, skilled-nursing, and home and community-based care.

**Mission**

It is the mission of LeadingAge California to advance housing and services for older adults and to support and inspire its members through advocacy, education, research and services enabling them to meet changing needs of their clients and communities.

**Vision**

LeadingAge California is a catalyst for members to advocate, enrich and advance aging services.

**Shared Values**

The values shared by LeadingAge California members include:

- Long term commitment to the security of older adults
- Mission driven
- Mutual support and assistance among members
- Respect of all peoples
- Commitment to socioeconomic and multicultural diversity
- Advocate for not-for-profit status
- Consumer focused
- Dignity and quality of life for older adults
- Community-based

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**Art Director:** Darren Lindsey

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**Editorial Staff**



**Robin Douglas**  
[rdouglas@aging.org](mailto:rdouglas@aging.org)



**Stephanie Doute**  
[sdoute@aging.org](mailto:sdoute@aging.org)



**Jan Guiliano**  
[jguilian@aging.org](mailto:jguilian@aging.org)



**Jedd Hampton**  
[jhampton@aging.org](mailto:jhampton@aging.org)



**Joanne Handy**  
[jhandy@aging.org](mailto:jhandy@aging.org)



**Brenda Klütz**  
[bklutz@aging.org](mailto:bklutz@aging.org)



**Meghan Masera**  
[mmasera@aging.org](mailto:mmasera@aging.org)

# A Note From The Editor

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## Our New Look

I hope you enjoy our first issue of *Engage Magazine*, LeadingAge California's premier publication that features the work and contributions of the nonprofit community of providers. After extensive research and feedback from the LeadingAge California membership, this completely reimagined magazine reflects your desire to hear more from outside perspectives while still keeping up on the latest association activities. Our new name capitalizes on the magazine's focus on engagement – with each other, with the community, and on the issues. The magazine also reflects your wish for more graphically engaging articles that feature concise writing with information you can immediately put to use.

This issue focuses on the notion of active aging with a feature from Colin Milner, CEO of the International Council on Active Aging (ICAA). In his article, he presents nine concepts for nonprofit providers to consider to fully advance active aging. Also, don't miss our interview with Todd Murch on page 16, LeadingAge California's board chair and CEO of Eskaton, as he begins his term. This article features a full video interview embedded right in the article. This is our response to your request for more interactive features that take advantage of the capabilities of this electronic publication.

Our upcoming Fall issue will focus on cultivating talent in the senior living and care field. We will explore approaches to courting talented young professionals into the field as well as ways to recognize and promote the best already working among us. This Winter, we will be featuring an issue devoted to exploring community and culture and ways to address the unique needs of the varying populations nonprofits serve. Our Spring issue will focus on innovation. We will examine models of service delivery and care that reach new populations and the new technological advances that make doing so efficient and effective.

I invite you to dive into *Engage Magazine* and let us know what you think. We hope to count you as one of our loyal readers who can benefit from the time you spend reading. Content ideas as well as your feedback or comments are encouraged. Please send them directly to me at [edowdy@aging.org](mailto:edowdy@aging.org).

**Eric Dowdy**  
Editor-in-Chief  
[edowdy@aging.org](mailto:edowdy@aging.org)



## Feature



### Building the Foundation for Active Aging

Guest author Colin Milner, founder and CEO of the International Council on Active Aging (ICAA), presents ICAA's Nine Principles of Active Aging. Learn how following this guided approach will help agencies and organizations respond to the global impact of population aging, and find out what you can do to encourage engaged, active living for people of all ages.



**Have You Heard** Members in their Community; Members in the News; Anniversaries & Milestones



**Keeping Up** New Hires; Milestones; Moves and Promotions; Staff Highlights



**Dear Brenda** Advice column with questions on compliance or care issues from the expert

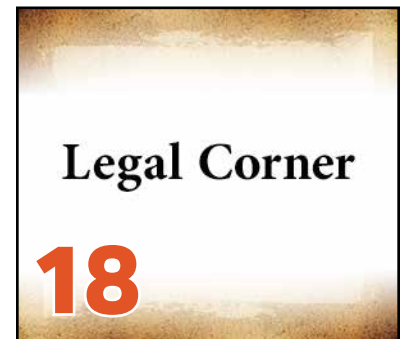
## Sections



**People in Focus**  
**Todd Murch:** Video interview discussing the field of aging services and his role as LeadingAge California Board Chair



**Recommended Reading**  
Six titles that explore contemporary issues in aging – workforce, dementia and quality care



**Legal Corner** with Hanson Bridgett: California Supreme Court Limits Business Proprietor's Duty to Provide an AED, but Leaves Open the Possibility of such a Duty in High Risk Settings



LeadingAge™ CA

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## Policy & Leadership Summit

Sheraton Grand Hotel  
Sacramento, CA

**February 9-11, 2015**



**Navigating New Landscapes**

## A Financial Plan for Long-Term Services and Supports: Keeping the Dream Alive

Despite health care reform's impact on lowering the number of uninsured citizens and efforts in California to improve care for dual eligibles through the Coordinated Care project, we have

yet to tackle the growing crisis of how to finance long-term services and supports for the majority of Americans. When we reach age 65, we have a 70 percent chance of needing long-term care support at some point in our lives. This constitutes a high risk and a staggering price tag.

We thought that the now defunct CLASS Act (Community Living Assistance Services and

Supports), initially a part of health care reform, might be a start. CLASS was repealed when analysts suggested that it was not financially viable as a voluntary contribution program. The federal Commission on Long-Term Care, appointed in the aftermath of the repeal of CLASS, suggested a number of financing options but failed to reach consensus on a path forward. And so millions of middle-class Americans are left with spend down to Medicaid as their only default option, a strategy that exhausts their lifetime resources and ultimately bankrupts state Medicaid budgets.

The dream that Americans should be protected from catastrophic long-term care costs needs to be kept alive as a national priority. To that end, LeadingAge has developed the "[Pathways](#)" [Report](#), laying out a full range of options that

span private market, public, and mixed solutions to financing long-term services and supports. The Report does not advocate a particular pathway; rather, it suggests various solutions as the basis for continued dialogue and analysis.

At the July 8, 2014 hearing of California's new Senate Select Committee on Aging and Long-term Care, Cheryl Phillips M.D., senior vice president for LeadingAge, testified that it is imperative that California focus on this crisis due to the impact it has on state Medicaid spending if it is not addressed. It is conceivable that the states, not the federal government, will keep the drums beating for long-term care financing solutions.

LeadingAge California plans to keep this issue visible in our state, advocating for community engagement and conversations toward a viable plan for financing long-term services and supports for all Californians.

*Joanne Handy,  
President & CEO*



*"The dream that Americans should be protected from catastrophic long-term care costs needs to be kept alive as a national priority."*





# Have you Heard?

**Kay Kallander**, senior vice President of Strategic Planning for American Baptist Homes of the West (ABHOW), will receive the [Award of Honor](#) at the 2014 LeadingAge Annual Meeting in Dallas, October 19-22. In recognition for her contributions to cultivating future leadership in the field of aging services at the national, state and organizational level, this award is the highest honor given in our field.

**The transition** of the Motion Picture Television Fund [outpatient health care system](#) into the UCLA Health System was finalized in June.

**Actress and activist [Rita Moreno](#)** will be the keynote speaker at the Christian Church Homes (CCH) Annual Fundraising Celebration in Oakland on September 13.

**In recognition** of her exemplary grassroots advocacy on behalf of older adults, PEP Housing [Executive Director Mary Stompe](#) will be honored with the LeadingAge Outstanding Advocacy Award at the 2014 Annual Meeting in October.



## Keeping Up

**The Samarkand in Santa Barbara** recently appointed John Campbell facilities management director and William Henderson dining services director.

**Randy Stoll**, President & CEO of Mt. San Antonio Gardens since 1995 retired in June.

**Live Well at Home** by Eskaton has collaborated with The Lincoln Hills Foundation, Right at Home Senior Care and Sutter Medical on [Resource Connectors](#), a new pilot project offering residents free 24/7 information support with immediate connections to community resources and screened service providers, free home safety assessments and more.

**Covenant Village of Turlock** recently appointed Blanche Le Flore health care sales and outreach coordinator and Barbara Arrington sales representative.

# SCENE

## Delta Region Meeting



Teri Conklin, [Seniority, Inc.](#), with Andrew Lee, Executive Director, [Bethany Home](#), at the first Delta Region Meeting of 2014, held at the [Asian Community Center - Greenhaven Terrace](#) in Sacramento.

## Golden Gate Region Meeting



Marie Howard (left), Administrator for Allen Temple Arms I with Kendra Roberts, Golden Gate Region Representative and Regional Property Supervisor, [ABHOW](#) at the February 13 Golden Gate Region Meeting held at [Allen Temple Arms I](#) in Oakland.



Moreen Lane (above), Senior Policy Specialist, [California Workforce Investment Board](#) was a featured speaker at the February 13 Golden Gate Region Meeting.





## Policy & Leadership Summit – March 4-6

A group poses after their meeting with **Senator Mark DeSaulnier's office (D-Concord)**. Pictured L-R: Frank Rockwood, Babak Amali, Mark Stivers, Meghan Masera Rose, Angela Frudakis, Jamie Windgassen.

[Click to view photos](#)

## Annual Conference & Exposition – May 5-7



Participants for the **5K Fun Run** gather early in the morning on Day 2 of the 2014 Annual Conference in Palm Springs. [Click to view photos](#)



## Advocacy Day – June 4

**Geoffrey Morgan (left)**, Vice President of Real Estate Development for Christian Church Homes, helps carry the Affordable Housing banner to the podium at the June 4 Affordable Senior Housing Resident Advocacy Day.

[Click to view photos](#)



**The entire group** poses for one final photo near the west steps of the Capitol at the June 4 Affordable Senior Housing Resident Advocacy Day.



# Building the Foundation for Active Aging

by Colin Milner



Population aging is changing societies on a global level. Our current models have fallen short in addressing both challenges and opportunities presented by this demographic shift. Governments and organizations need new implementable models to address the accompanying wave of change.

Globally, active aging is recognized as part of the solution.

To help guide governments, product and service providers, employers, and the healthcare industry in how they respond to population aging, the [International Council on Active Aging](#)<sup>®</sup> (ICAA) has created Nine Principles of Active Aging. By implementing and operating by these guiding principles, organizations and agencies will be able to build a foundation for their efforts and encourage active, engaged living for people of all ages.

It is also essential, when implementing the nine principles, to incorporate the seven dimensions of wellness: emotional, environmental, intellectual/cognitive, physical, professional/vocational, social and spiritual, into each principle. This integration is the “spine,” or support structure, of the ICAA Model.





## ICAA's Nine Principles of Active Aging

### 1. Populations: The diverse population of older adults requires diverse solutions

A lifetime of diverse experiences, and the behaviors they have created, makes the 65-and-over age group an extremely unique segment of the population. These experiences and behaviors impact everything, from where and how people live, to their health status and quality of life. Meeting this group's expectations and needs requires you to understand who they are – including their physical and cognitive abilities; health; age; work or marital status; sex; sexual orientation; race and culture, whether they have children or grandchildren, access to transportation, and disposable income. This is why one-size-fits-all solutions fail miserably with these individuals.

### 2. Perceptions: Ageism and negative stereotypes of aging impede an inclusive society

Today, with 30-plus years added to the life span, a new view of aging has emerged – one filled with anticipation and accomplishment. Standing in the way of optimal aging, however, is that familiar foe: ageism. Whether the older adult is viewed as a burden to family and society or as a “superhero,” unrealistic perceptions of aging can, and do, have a negative impact on the mental and physical health of this population.

By addressing the real challenges that older adults face and fulfilling the opportunities they desire for lifelong experiences, you and your organization can significantly impact the self-perception of these consumers and their quality of life, as well as the way others perceive them.

### 3. People: Trained and committed individuals are needed to meet the needs of older adults

With fewer people entering the labor force, and the field of aging in particular, where will your future staff come from? And, how can you ensure they have the expertise needed to meet your consumers' expectations? The place to start is with a review of the competency levels of your staff. Keep in mind that people are one of the significant ongoing costs for most organizations.

Once you have established your staff's current level of expertise, set out to enhance it with additional training and knowledge gathering. Yes, this will cost you money. But incompetent staff will cost you much more over time in terms of lost business, a poor reputation and a disappointing return on investment.

### 4. Potential: Population aging is creating new economies

Do you know what an “aged economy” is? According to the United Nations, an aged economy is one in which consumption by older people surpasses that of youth. Thirty years ago, there were no such economies in the world. In 2010, there were 23, and by 2040, there will be 89.

How can you and your organization benefit from population aging's surge? It comes back to focusing on providing a product or service that interests older adults.

### 5. Products: Products and services are needed that tailor to older-adult needs

The older-adult population is diverse, as are the opportunities to provide needed solutions and offerings. Virtually every area of business can improve the way they design and deliver products for this market – from more functional furniture to cosmetics and supplements, to wellness (the fifth fastest-growing global segment in the packaged consumer goods industry) and products to improve quality of life.

Population aging is causing us to rethink the way we design and deliver products and services. How will you adjust your products or services to better meet the market's expectations?

### 6. Promotions: Older adults are a key market to attract

Despite the immense purchasing power of adults ages 65-plus, most marketers have yet to take advantage of the opportunity afforded by population aging. To gain the business of this group requires first the correct product, then a market

effort that can effectively engage it.

Effective promotions and marketing must be rooted in the realities of life for older adults. Messages about anti-aging, the “super senior,” or the frail, ill family matriarch fail to reflect the reality of today’s older population. As a result, older consumers are turned off by marketers’ messages that target them, and they tune them out completely.

It all starts with your story and those of your customers, so think about how you can tap into this extensive reservoir of life experience to tell it. Real people, real images and a real story, told in appropriate language, equal real results.

### **7. Places: Environments must be constructed to enable multiple functional abilities**

The environment(s) that we build or live in are vital to enhancing our quality of life and our experiences. Environments can encourage, or discourage, people of all ages to lead an active, engaged life. When it comes to creating compelling environments for your older consumer, think about how to design and build them so they are inclusive of all people and their abilities.

### **8. Policies: The human rights of older adults should be protected**

In late 2001 and 2002 the United Nations, the World Health Organization and ICAA defined the concept of active aging. Since then, there has been a solid stream of research, conferences, and initiatives that have driven policy change around the world pertaining to active aging. A recent example is the 65th World Health Assembly in Geneva, Switzerland, where a key resolution was passed. This resolution highlighted “strengthening” noncommunicable disease policies to promote active aging in the effort to ensure optimal health and well-being for older adults worldwide.

In Europe, the European Commission and the United Nations Economic Commission for Europe (UNECE) launched the [Active Ageing Index](#). This new statistical tool is designed to assist European Union member governments

with assessing how their active-aging policies are working compared to other nations. By establishing this benchmark, countries can address where they fall short in meeting the needs of their older citizens. This Index is an example of how active aging is impacting all levels of government.

Bringing this principle back to you, what policies do you have in your organization to ensure inclusivity and respect for the rights of older adults? This includes policies for staff.

### **9. Programs: The seven dimensions of wellness anchor the principles**

Programming possibilities for older adults are limited only by our creativity and our biases – what we believe older adults can (or should) do or not do. The essential elements in programming include the following:

- all of the seven dimensions of wellness
- adaptation for this group’s diverse abilities and health issues, using functional levels
- engagement that helps customers find and fulfill their purpose in life

By implementing these three programming elements, you’ll keep your customers coming back for more.

Would it take you further than you are today if you addressed the diverse abilities of your older consumers, physical and cognitive, through an engagement strategy for the wellness experience? If so, what are you waiting for?

The comprehensive, integrated approach described here will help you build a solid foundation for your active-aging efforts, whether it’s a first foray into this arena or a longtime pursuit. The first step is always the hardest. But ICAA’s Nine Principles of Active Aging are there to guide you along the way.

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*Colin Milner, founder and CEO of the International Council on Active Aging® (ICAA), is a leading authority on the health and well-being of the older adult. For the past six years, the [World Economic Forum](#) has invited Milner to serve on its Network of Global Agenda Councils, recognizing him as one of “the most innovative and influential minds” in the world on aging-related topics.*

**To read the full article, visit our [blog](#).**



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# Dear BRENDA

**Dear Brenda:** *We are a multi-level community with the central kitchen located outside the skilled nursing facility. I've heard that we have to have a "stand-by" kitchen built to be in compliance with state licensing requirements (Title 22). Is that true?*

**Answer:** *Not Necessarily!*

*Title 22, §72335(a)(6): When food is provided by an outside resource, the facility shall ensure that all federal, state and local requirements are met. The facility shall maintain a written plan, adequate space, equipment and food supplies to provide patients' food service in emergencies.*

CDPH/L&C has advised us of the following:

If the central kitchen is located outside the skilled nursing facility, that kitchen is considered to be an "outside resource." Any existing facility meeting the requirements below could submit a program flexibility for review.

The following information is to be provided when requesting a program flex:

- The SNF and facility with a kitchen are located on the same premise/ campus and owned by the same entity.
- The facility with the kitchen must have the capacity to service the additional licensed SNF bed count.
- The SNF must enter into contract with an outside food service for the delivery of resident meals, snacks, etc. in the event that the facility with the kitchen is not able to provide meals due to a disruption of food service capabilities such a fire, pipe breakage, staff strike, etc.
- In the event of a Change of Ownership which separates the ownership of the SNF from the facility with the kitchen, each health facilities must be compliant with the licensing requirement of dietary services.
- Facilities who request Program Flexibility for Title 22 72335(a) (6) must submit for approval to the Department:
  - A copy of the contract with an outside food service vendors in the event of a disruption in food service, and
  - A written plan of safe food service operation, meal and snack provision, dining plan, and interruption of meal service and any dining culture change they may be currently doing.

If the skilled nursing facility cannot provide the information above, then the facility will need to demonstrate that the SNF has "... adequate space, equipment..." for the provision of food; which could necessitate renovating SNF space to meet the regulatory requirement and require OSHPD approvals.

*More detailed information about this important issue will be distributed to members within the next few weeks.*

*If you have any questions about this, or any other regulatory issue, please contact Brenda Klütz at: [bklutz@aging.org](mailto:bklutz@aging.org) or (916) 469-3377.*





# Keeping Seniors Active

*"Walking is the favorite activity of centenarians."*

*United Health Group*

## The Situation

Only **22%** of seniors report regular physical activity.



The average senior spends **17 minutes** per day engaging in physical activity...



and over 4 hours per day watching TV.

## Seniors' Favorite Activities

Religious Activities	Television	Tai Chi
	Walking	Yoga
Bicycling		Swimming
Gardening	Senior Centers	Reading
Talking on telephone		

## Reasons to Stay Active

- Maintain or lose weight
- Enhance mobility & flexibility
- Better sleep
- Improve health by reducing impact of chronic disease
- Boost mood and confidence



**Make exercise a lifelong habit...  
It's never too late to start!**



**Make it a priority**



**Make it easy**



**Make it safe**



**Make it social**

# People In Focus



**Todd Murch**  
President & CEO, Eskaton

We caught up with Eskaton's President and CEO Todd Murch recently to talk about his new role as LeadingAge California Board Chair, where Eskaton and the field of aging services is headed in the future, and enjoying life as a new grandfather. *Click above to watch the full interview.*

### **You have 33 years in aging services behind you. What sparked your interest in this field to begin with?**

I was a graduate in 1981 from CSUS with a business degree with concentrations in finance and management information services. I had no clear idea at that time that I wanted to go into aging services, so I explored opportunities in finance and MIS. My father, who was a hospital administrator

all of his career, knew the fella that ran the Acute Care Services for Eskaton – there happened to be an opening, so I came in as a corporate accountant back in August of 1981.

After 33 years, I feel very devoted both to the field of older adult services and I have a strong bias towards the nonprofit sector. I'm at the point now in my life where I can't see myself doing anything else.

### **What are some of your objectives or goals are this year as Board Chair?**

To be supportive of whatever the goals and objectives of the Association in its larger form are. I think advocacy has always been the most important thing that an association in the nonprofit sector can provide to its members, so I'm particularly pleased with all the hard work that's been put in to accomplish creating a 501(c)(6), where we can maybe direct more resources and efforts into being successful in advocacy and influencing legislation. I think that's terrific!

### **Can you tell us about any additional goals you've been working towards this year?**

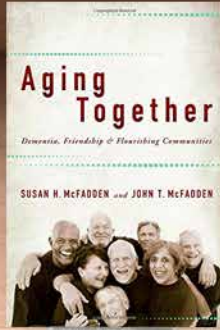
I think the Pathway[s] into the future is very much tied with an organization's ability to reach out and collaborate and partner, vs. being more of a stand-alone entity. The mission of Eskaton is to enhance the quality of lives of seniors, so I view that very broadly in a whole bunch of ways. We're going to spend a lot of time branching out to community-based services, trying to create a scalable, sustainable, replicable program to do that, and I don't know of one, per our definition, that really exists yet.

### **Congratulations on recently becoming a grandfather. Another new role for you! How has it been so far?**

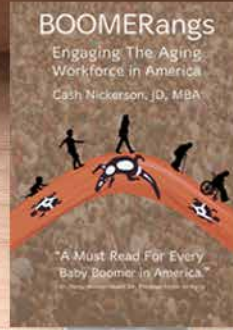
He's 14 weeks old as we talk today. My wife and I live two miles from my daughter and her husband, so we get to see Landon quite literally every day. I'm a big believer in a healthy personal life/healthy work life balance and I can't even begin to describe the joy that Landon's brought to us. I'm just a happier, more whole person.



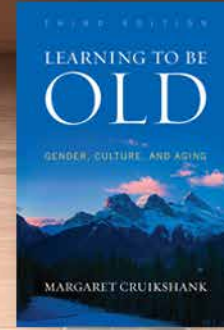
# RECOMMENDED READING



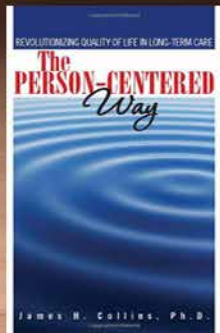
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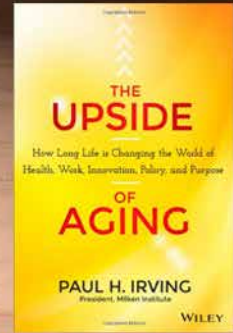
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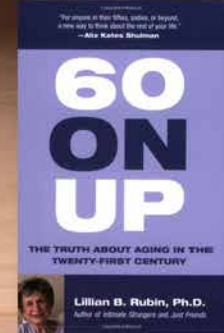
1C



2A



2B



2C

**1A – Aging Together: Dementia, Friendship and Flourishing Communities**

by Susan H. McFadden and John T. McFadden  
Release Date: April 2014

**1B – BOOMERangs: Engaging the Aging Workforce in America**

by Cash Nickerson  
Release Date: April 2014

**1C – Learning to be Old: Gender, Culture and Aging (Third Edition)**

by Margaret Cruikshank  
Release Date: February 2013

**2A – The Person-Centered Way: Revolutionizing Quality of Life in Long-Term Care**

by James H. Collins, Ph.D.  
Release Date: January 2010

**2B – The Upside of Aging: How Long Life is Changing the World of Health, Work, Innovation, Policy and Purpose**

by Paul Irving  
Release Date: April 2014

**2C – 60 On Up: The Truth About Aging in the Twenty-First Century**

by Lillian Rubin  
Release Date: September 2008

## Don't Miss Upcoming Issues of Engage Magazine!

**Fall 2014**  
November

Cultivating Talent

**Winter 2014**  
February

Community and Culture

**Spring 2015**  
May

Innovation



# Legal Corner *with*



HansonBridgett

## California Supreme Court Limits Business Proprietor's Duty to Provide an AED, but Leaves Open the Possibility of such a Duty in High Risk Settings

By Paul Gordon and Ravdeep S. Grewal

**Summary** On June 23, 2014, the California Supreme Court ruled that a retail store operator serving the general public does not have a common law duty to have an AED (“automated external defibrillator”) in place for use when a customer experiences cardiac arrest. The Court’s analysis, however, leaves open the possibility that such a duty exists in businesses where there is a “heightened foreseeability of sudden cardiac arrest” such as in a health/fitness club. Although there is no statutory duty in California for senior communities to have AEDs, there may be a common law duty if it is determined that a heightened foreseeability of sudden cardiac arrest exists among residents of a senior living community.

**Facts** The case, *Verdugo v. Target Corp.*, was brought in federal court by Mary Ann Verdugo’s family after she suffered a fatal heart attack while shopping at a Target department store. The plaintiffs argued Target should have reasonably foreseen that a patron might suffer such an attack and provided an AED due to the high number of unanticipated cardiac arrests each year and the large number of customers that shop in its department stores. The case was dismissed at the trial court level, but the federal Ninth Circuit Court of Appeals referred the matter to the California Supreme Court to determine if Target has such a duty under California law.

**No Legislative Preemption on the Subject of AEDs** The Court first concluded that California’s extensive statutory framework governing the acquisition and use of AEDs (including Health and Safety Code §1797.196 and Civil Code §1714.21) was not intended, and may not be construed by California courts, to require a building owner or manager to acquire and install an AED in any building. However, it also concluded that the Legislature’s enactments were not so pervasive as to fully occupy the subject matter so as to preempt the courts from determining that a duty to acquire and make available an AED may be included within the general common law duty of care owed by a business establishment to its patrons or customers.

**Common Law Duty of Business to Aid Patrons** The Court noted that, because of the “special relationship” between a business and its patrons, the business must “take reasonable action to protect or aid patrons who sustain an injury or suffer an illness while on the business’s premises” and examined whether that duty requires doing anything “beyond summoning emergency medical assistance” or providing “simple first aid measures.”

**Precautionary Measures: Burden and Heightened Foreseeability** The ruling makes a distinction between the duty to take action *after* a patron suffers an injury or illness on the business premises, and a duty to take precautionary steps *prior* to such an event. It also noted that the nature of some business activities (such as a fitness club) may contribute to the danger that a patron will suffer a cardiac arrest or other injury on the premises.

In determining whether Target had a common law duty to take the precautionary step of acquiring and making available an AED in advance of a medical emergency, the Court looked at (1) the degree of foreseeability that the danger will arise on the business’s premises, and (2) the relative burden that providing a particular precautionary measure will place upon the business. If the relative burden of providing a particular precautionary safety or security measure is onerous rather than minimal, absent a showing of a “heightened” or “high degree” of foreseeability of the danger in question, it is not appropriate for courts to recognize or impose a common law duty to provide the measure. In the absence of such heightened foreseeability, the determination whether a business should be required to provide a burdensome precautionary safety measure should more appropriately be made by the Legislature rather than by a jury applying a general reasonableness standard in a particular case.

The Court held that when the precautionary medical safety measures a plaintiff contends a business should have provided are costly or burdensome rather than minimal, the common law does not impose a duty on a business to



provide such safety measures, absent a showing of a heightened or high degree of foreseeability of the medical risk in question.

**AED Burdens** The Court considered that apart from the initial cost of the AEDs themselves, significant obligations with regard to the number, the placement, and the ongoing maintenance of such devices, combined with the need to regularly train personnel to properly utilize and service the AEDs and to administer CPR, as well as to have trained personnel reasonably available on the business premises, illustrated the magnitude of the burden. The Court ruled that compliance with these numerous obligations clearly implicates more than a minor burden.

**No Heightened Foreseeability at Target** With respect to the question of foreseeability, the Court concluded the plaintiffs' complaint did not point to any aspect of Target's operations, or the activities that Target's patrons engage in on its premises, which indicate a high degree or heightened foreseeability that its patrons will suffer sudden cardiac arrest on its premises. The Court recognized that the risk of such an occurrence is no greater at Target than at any other location open to the public. The court rejected plaintiff's argument that death is especially likely to result from sudden cardiac arrest that occurs in a big-box store "because it is impossible for emergency crews to reach a stricken invitee in time" in a large, heavily trafficked building.

**Legislative versus Court Action** The Court's opinion notes that numerous factors, such as the nature of a business's activities, the relationship of those activities to the risk that a patron may suffer sudden cardiac arrest, the proximity of the business to other emergency medical services, and other potentially relevant factors that logically bear on the question whether, as a matter of public policy, an obligation to acquire and make available an AED should be imposed upon a particular type of business provide further support for the conclusion that that

determination should be made by the Legislature rather than by a jury on a case-by-case basis. Factors such as the relative size of a retail business's premises, the number of patrons the business serves, or the amount of its owner's resources, however, according to the Court, did not lend themselves to the formulation of a workable common law rule that would provide adequate guidance to businesses.

The Court noted that courts in other states (Illinois, Massachusetts and Connecticut) had allowed cases to go to trial on allegations of a common law duty to provide an AED to customers, but that all those decisions had involved fitness studios, where there was a heightened degree of foreseeability of cardiac arrest.

In conclusion, the Court determined that in light of the extent of the burden that would be imposed by a requirement to acquire and make available an AED, and the absence of any showing of heightened foreseeability of sudden cardiac arrest or of an increased risk of death, Target owed no common law duty to its customers to acquire and make available an AED.

### **Implications for Seniors Housing Operators**

To encourage the voluntary acquisition of AEDs, most states have passed legislation affording immunity from potential civil liability, under specified circumstances, for businesses that acquire AEDs and make them available to their patrons. In California, the Legislature has encouraged and facilitated the provision of AEDs in many state-owned and state-leased buildings. Although California requires all health/fitness studios to make an AED available on their premises, no such requirement has been imposed on assisted living residences or other types of seniors housing properties.

Unlike fitness studios, the nature of the senior living community business does not necessarily contribute to any heightened foreseeability of cardiac arrest. Some senior communities do

contain fitness facilities, however, and the operation of those programs may create a common law duty to provide an AED. Moreover, the nature of the senior community population, with customers who often are medically compromised, may create a heightened foreseeability of cardiac arrest that does not exist in a retail store. Certainly, a licensed care facility is more susceptible to such a claim than an unlicensed independent living property.

Even if state legislatures have not required senior communities to provide an AED, courts may find a common law duty to do so. The *Verdugo* decision declined to find such a duty in a retail store where no heightened risk was present, and indicated that legislatures, rather than courts, can better determine what kinds of businesses have a duty to provide an AED. Nevertheless, the *Verdugo* ruling leaves open the possibility that future court decisions will find that a senior living operator has a common law duty to provide an AED when there is a heightened foreseeability of cardiac arrest among its patrons. It is doubtful that we have seen the end of litigation in this area and may expect an increase now that the common law liability landscape has been mapped by the *Verdugo* case.

As with CPR, the effectiveness of AEDs in saving lives, particularly in the case of older persons, is highly debated. AEDs are now commonplace, however, and considered by many to be a part of basic first aid. Given the prevalence of AEDs in public general assembly areas, the liability immunity statutes encouraging AED use, and a growing expectation or demand on the part of senior community residents for AEDs to be made available to them, senior living providers should seriously consider whether to make AEDs available on their premises.



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