

Legal Considerations for Outdoor Educators when administering First Aid

by Danny Parkin

Outdoor educators are sometimes afraid that in the stress and strain of a real emergency they may make mistakes, fail to save, or even cause harm to others. Particularly in relation to strangers, they have a further concern that mistakes may lead to legal problems or that they will be sued if they do the wrong thing.

It is reassuring to learn that outdoor educators while administering first aid are not expected to be perfect; nor is it expected that every incident will turn out perfectly. However, what is required, is that the outdoor educator act reasonably and prudent and, of course, always in good faith when administering first aid. When administering first aid outdoor educators must keep the best interests of the casualty in mind.

Consent

Australian law is based on the premise that a person has control over their body. A person can bring a charge of assault/battery if they are touched or in fear of being touched without consent. In an emergency where a person is unconscious or bleeding seriously and unable to communicate, the law will imply the consent of the injured person. However, the consent will only apply to conditions that imperil the life or the future of that person.

An outdoor educator's reasonable action in an emergency situation, even though they do not have formal consent, will be viewed as being acceptable in the ordinary conduct of life. In the case of a minor, because a minor cannot give consent, the consent of a parent should be obtained if possible. However, this may not be possible if the child is injured during a programme in a remote location.

Duty of Care

Australian law does not impose a duty on any person to render assistance unless that person already owes a 'duty of care' to the person injured. An outdoor educator may owe a duty of care if they are responsible for the injured person. That is, the person was a participant on a programme conducted by the outdoor educator.

Or, a duty of care may be assumed by the outdoor educator who renders assistance in an emergency.

Upon rendering such assistance, an outdoor educator assumes a duty of care to do everything reasonable under the circumstances. However, an outdoor educator's duty of care cannot then be evaded by abandoning assistance halfway through. Of course, if a medical practitioner or other person with better qualifications than the outdoor educator arrives, it may be sensible to allow them to take over.

If an outdoor educator follows the rules of first aid and does so with ordinary skill, then they will have met the duty of care required.

Negligence

Negligence would be established if:

1. the outdoor educator owed a 'duty of care' to the injured person;
2. the standard of care required by that duty was breached;
3. damage was sustained; and
4. there was some cause-and-effect relationship between the breach and the injuries sustained.

(Note: All of the above factors must be proven to establish negligence.)

A outdoor educator with basic first aid training could be expected to:

- use reasonable care in assessing the priorities of the situation in accordance with their training and take steps to call for medical assistance;
- keep the victim stabilised until professional help is available;
- follow the guidelines established for first aiders; and
- not misrepresent themselves or take undue risks.

In the unlikely event that an outdoor educator was sued, a court would determine what was 'reasonable' in any given situation. The concept of reasonableness is so basic in the system of law that it is difficult to define it precisely. However, it must certainly relate to the reasons for the decisions made and for the actions an outdoor educator takes (or fails to take).

The evidence of professionals would probably be considered, and appropriate First Aid Manuals reviewed to identify the rules that should have been followed.

Some of the following questions may be asked:

- What was known at the time about the problem that occurred?
- What should have been discovered by asking questions and by having a thorough look?
- What were the important questions to ask and signs to observe?
- What were the rules in the current First Aid Manual for managing the problem that was assessed?

If we take as an example the outdoor educator who performs CPR in an emergency, the following would apply. It would be expected that a reasonable and prudent outdoor educator would check the victim's airway, breathing and circulation before commencing CPR. A reasonable and prudent outdoor educator would not commence CPR on a person who had merely fainted. A reasonable and prudent outdoor educator is not expected to perform miracles - commonsense and a reasonable degree of skill are all that the law would require under such emergency circumstances.

A person who needs CPR is pulseless and non-breathing. It's hard to be any worse off than that! If the victim does not receive appropriate emergency medical care (including CPR), he/she will die. IF CPR fails to restore life to the victim, he/she will be no worse off than before. If the victim survives, he/she will have nothing to complain about - even if the CPR causes some physical injury such as broken ribs. The alternative was death!

Of course, in circumstances where a procedure which carries its own risk of injury (such as CPR) is involved, an outdoor educator should be sure he or she has the necessary level of skill and training to perform that procedure.

With 'reasonableness' as the main standard for judging actions, I am not aware of any documented case in America, Canada or Australia where any outdoor educator has been successfully sued after giving emergency first aid.

Recording

In the event of any dispute, it will be helpful to the outdoor educator to have a record made at the time of the incident that describes what was known about the problem and what was done about it. Even when rendering assistance in an emergency, the outdoor educator would be advised to make at least a diary note regarding any first aid assistance that they gave.

An outdoor educator must take care with recording because a first aid record could be required one day as a legal document in a case in court. Generally, records should be clear, but should be kept as concise as possible; they should be accurate and factual and reflect the outdoor educators observations only and not any medical conclusions.

The following guidelines may be of assistance in the preparation of a first aid report:

1. Write in ink only.
2. Sign and date any alterations.
3. Do not use correction fluid - an entry may be crossed out if incorrect, but the entry should still be legible and the correction initialed.
4. Keep the contents strictly confidential.

The above information is intended as a guide only, and to answer commonly asked questions. It is also hoped that it will assist in resolving doubts or suspicions as to the possibility of legal action that may suppress an outdoor educator's natural desire to render assistance.

The outdoor educator has nothing to fear as long as he or she acts reasonably, with caution, and follows the teaching and protocols of first aid training.

Reference

adapted from "Legal Considerations for First Aiders", *Advanced Outdoor First Aid course notes* Red Cross, 1993.

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