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February 1, 2007

Honorable Anthony Adams
Room 4015, State Capitol

**AUTOMATIC EXTERNAL DEFIBRILLATORS: COMMON INTEREST
DEVELOPMENT FITNESS FACILITIES - #0701250**

Dear Mr. Adams:

QUESTION

Does Section 104113 of the Health and Safety Code, which requires a health studio to acquire and maintain an automatic external defibrillator, apply to a fitness facility operated or maintained by a common interest development association?

OPINION

Section 104113 of the Health and Safety Code, which requires a health studio to acquire and maintain an automatic external defibrillator, does not apply to a fitness facility operated or maintained by a common interest development association.

ANALYSIS

By way of background, the Davis-Stirling Common Interest Development Act (Title 6 (commencing with Sec. 1350), Pt. 4, Div. 2, Civ. C.; hereafter the act) provides a comprehensive body of law for the regulation of common interest developments. A common interest development is defined to include community apartment projects, condominium projects, planned developments, and stock cooperatives (subd. (c), Sec. 1351, Civ. C.). The act applies, and a common interest development is created, when a separate interest, coupled with an interest in the common area or membership in an association is or has been conveyed and certain documents are recorded (subds. (a), (b), and (l), Sec. 1351 and Sec. 1352, Civ. C.). The act requires a common interest development to be managed by an association (subd. (a), Sec. 1363 Civ. C.), and imposes various duties on the association, such as preparing a budget (subd. (b), Sec. 1363, Civ. C.), holding open meetings of association members according to specified procedures (subd. (d),

Sec. 1363.03, Civ. C.), and repairing and maintaining common areas within the development (Sec. 1364, Civ. C.). These common areas include the entirety of the common interest development, excluding separate interests in individual apartments, condominiums, or parcels or portions of real property (Sec. 1351, Civ. C.). For example, a tennis court, swimming pool, or other fitness facility within a common interest development that is available for the use of residents of the development would be considered a common area.

Section 104113 of the Health and Safety Code¹ was added by the enactment of Assembly Bill No. 1507 of the 2005-06 Regular Session (Ch. 431, Stats. 2005; hereafter A.B. 1507) to be included among provisions, governing chronic disease such as cardiovascular disease (see Ch. 1 (commencing with Sec. 104100), Pt. 1, Div. 103), that are administered by the State Department of Health Services. Section 104113 provides, in relevant part, as follows:

"104113. (a) (1) Commencing July 1, 2007, every health studio, as defined in subdivision (g) shall acquire an automatic external defibrillator. The requirement to acquire an automatic external defibrillator pursuant to this subdivision shall terminate on July 1, 2012.

"(2) Commencing July 1, 2007, and until July 1, 2012, every health studio, as defined in subdivision (g), shall maintain, and train personnel in the use of, any automatic external defibrillator acquired pursuant to paragraph (1).

"(g) For purposes of this section, 'health studio' means any facility permitting the use of its facilities and equipment or access to its facilities and equipment, to individuals or groups for physical exercise, body building, reducing, figure development, fitness training, or any other similar purpose, on a membership basis. 'Health studio' does not include any hotel or similar business that offers fitness facilities to its registered guests for a fee or as part of the hotel charges."

As can be seen, subdivision (a) of Section 104113 requires a "health studio," for a five-year period commencing July 1, 2007, to acquire and maintain an automatic external defibrillator. The question asked is whether this requirement applies to a fitness facility operated or maintained by a common interest development association. Subdivision (g) of Section 104113 defines a "health studio" for purposes of the section as a facility that provides designated services to members of that facility, and expressly excludes hotel fitness facilities. Fitness facilities operated or maintained by common interest development associations are not, however, specifically addressed in the section. The question at issue, therefore, is whether a fitness facility operated or maintained by a common interest development association is encompassed within the definition of a "health studio" contained in subdivision (g) of Section 104113.

¹ All further section references are to the Health and Safety Code.

When interpreting a statute, courts first begin with the language in which the statute is framed (*People v. Overstreet* (1986) 42 Cal.3d 891, 895; *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 698). Principles of statutory construction further provide that statutory terms should be construed in accordance with the usual, ordinary import of the language employed, in harmony with the overall legislative scheme (*IT Corp. v. Solano County Bd. of Supervisors* (1991) 1 Cal.4th 81, 98).

In light of these principles, we consider whether the phrase "on a membership basis," as used in subdivision (g) of Section 104113, applies to membership in a common interest development association that maintains fitness facilities to which association members have access. It can be argued that, because a fitness facility operated by a common interest development association provides fitness services to its members as a peripheral benefit of association membership, such a facility would be providing fitness services "on a membership basis" under a literal reading of subdivision (g) of Section 104113.

However, we think that the reference to a "membership basis" is more reasonably interpreted in its usual and ordinary sense to apply only to membership in those entities that, unlike common interest development fitness facilities, have the primary purpose of providing the services described in subdivision (g) of Section 104113 to individuals or groups who have joined specifically to avail themselves of those services. In this connection, the term "health studio" and the definition of that term set forth in subdivision (g) of Section 104113 suggest, in our view, a "membership" for which fitness activities are a primary focus, rather than a peripheral benefit. Consistent with this construction, Section 104113 would require a "health studio" to retain employees who are trained in defibrillator use and are available to respond to emergencies that may occur "during normal operating hours" (subpara. (D), para.(2), subd. (e), Sec. 104113). In particular, while one might expect that a health or fitness club would have a schedule of normal operating hours and would be staffed during those hours by trained employees, one would not similarly expect that fitness facilities provided as a peripheral benefit by a common interest development association would be similarly scheduled or staffed. Moreover, our construction is consistent with the express exclusion in subdivision (g) of Section 104113 of a hotel that offers fitness facilities as a peripheral service.

In addition, we point out that our construction is consistent with the legislative history of A.B. 1507, the measure in which Section 104113 was enacted. Statements in legislative committee reports concerning the statutory objects and purposes that are in accord with a reasonable interpretation of the statute are legitimate aids in determining legislative intent (*National R.V., Inc. v. Foreman* (1995) 34 Cal.App.4th 1072, 1083). In this connection, the Senate Judiciary Committee analysis of A.B. 1507, as amended on July 11, 2005, indicates an intent to narrow the "health studio" definition, to reflect the author's intent to apply the bill to "fitness centers and health studios that provide fitness services and facilities to its membership cliental [sic]" (see Senate Judiciary Analysis (7/14/05) at p. 10).²

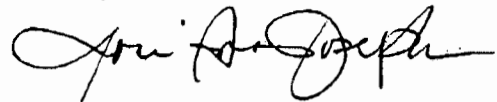
² We have contacted the State Department of Health Services, and have been informed that the department has not yet made an administrative construction of Section 104113.

Thus, interpreting Section 104113 in its usual and ordinary sense, and in light of the legislative history of that statute, it is our view that a fitness facility operated or maintained by a common interest development association would not be a "health studio" for purposes of the requirements of Section 104113.

Accordingly, it is our opinion that Section 104113 of the Health and Safety Code, which requires a health studio to acquire and maintain an automatic external defibrillator, does not apply to a fitness facility operated or maintained by a common interest development association.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

A handwritten signature in cursive script, appearing to read "Lori Ann Joseph".

By
Lori Ann Joseph
Deputy Legislative Counsel

LAJ:kav