# SHOULD AED'S BE INSTALLED IN ASSOCIATION FACILITIES?

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An automated external defibrillator (AED) is a portable medical instrument that delivers an electrical impulse to the heart to disrupt and correct an otherwise fatal irregular heartbeat (arrhythmia) and allows a normal rhythm to resume. AEDs have been credited with saving countless lives by making it possible for non-medical individuals to respond to a medical emergency, leading the question whether AED's should be installed in community association facilities.

It is not uncommon to see AED's installed in community association facilities. Pursuant to Florida law, AEDs are required to be installed in certain facilities including public schools, dental offices, and assisted living facilities. There is no requirement that community associations in Florida install AED devices on association property and/or association facilities. Although not legally required, there is a growing trend of community associations installing AED's on association property to better protect their residents. The acquisition and use of an AED by an association, however, may not be completely without potential liability.

In order to encourage the purchase and installation of AED's, the Florida Legislature adopted the Cardiac Arrest Survival Act, §768.1325 of the Florida Statutes. The Act applies to situations in which an AED is used to resuscitate an individual and provides immunity from civil liability for "any person who uses or attempts to use an automated external defibrillator device on a victim of a perceived medical emergency, without objection of the victim of the perceived medical emergency." The immunity extends to harm resulting from the use or attempted use of the AED including physical, non-physical, economic, non-economic, actual, compensatory, consequential, incidental, and punitive damages or losses. The Act shields the AED's owner and its operator who used it in an effort to render aide from liability in the event of a perceived medical emergency. A perceived medical emergency occurs when a reasonable person believes that an individual is experiencing a life-threatening medical condition involving the heart that requires an immediate medical response. Pursuant to the Act, the user of an AED is immune from liability for any resulting harm from the use or attempted use on the victim if (1) there is a perceived medical emergency, and (2) no objection is made by the victim against the use of the device on their person.

In addition to the immunity provided to the person using the AED, the Act specifically extends immunity to condominium and homeowners' associations that acquire AED's and make them available for use, and Florida law prohibits exclusion from coverage under a general liability policy issued to the community association for damages resulting from the use of an AED. However, such immunity is not without limitations. Immunity for association's does not apply if harm caused to a person was due to the failure of the association to properly maintain and test the AED. For example, if an AED has a dead battery or malfunctions in some other way that relates to its maintenance, there may be no immunity. Additionally, immunity will not be granted to the association if the harm was due to the association's failure to provide appropriate training to the employee or agent of the association when the employee or agent was the person who actually used the device on the victim. Thus, an association must ensure that the AED is properly maintained and tested, and must provide appropriate training. However, training by the association is not required if (1) the AED device is equipped with audible, visual, or written instructions on its use, including any such visual or written instructions posted on or adjacent to the device, (2) the employee or agent was not an employee or agent who would have been

reasonably expected to use the device, or (3) the period of time elapsing between the engagement of the person as an employee or agent and the occurrence of the harm, or between the acquisition of the device and the occurrence of the harm in any case in which the device was acquired after engagement of the employee or agent, was not a reasonably sufficient period in which to provide the training. Even though training may not be required for one of the reasons set forth above, it is suggested that key personnel, such as the staff in charge of athletic activities and the manager, should be trained in the use of the AED device.

In addition to the exceptions to immunity described above, there is no immunity from civil liability to the person using the AED if such person acted with "willful or criminal misconduct, gross negligence, reckless disregard or misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed." Specifically, with respect to immunity extended to "the person," the Act provides that the user will not be immune from liability if (1) the harm was caused by the user's willful or criminal misconduct, gross negligence, reckless disregard or misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed, or (2) the person who used the AED on the victim is a licensed or certified health professional who used the AED device while acting within the scope of the license or certification of the professional and within the scope of the employment or agency of the professional, or (3) the person is a hospital, clinic, or other entity whose primary purpose is providing health care directly to patients, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent, or (4) the person is an acquirer of the device who leased the device to a health care entity, or who otherwise provided the device to such entity for compensation without selling the device to the entity, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent, or (5) the person is the manufacturer of the device.

Any association that provides athletic activities for its members should consider installing an AED device to avoid a claim that such a device should have been installed and could have saved a life. A claim could be based on an owner asserting that the association has a special duty to its members with respect to safety, and, therefore should have installed an AED in locations where members engage in physical activities. Case law in Florida generally suggests that there is no liability associated with a property owner's decision not to purchase and maintain a defibrillator, and the Act specifically "does not require that an automated external defibrillator device be placed at any building or other location or require an acquirer to make available on its premises one or more employees or agents trained in the use of the device."

If an association does install an AED device on association property, then the board should adopt rules and regulations in the association's governing documents which address the following: (1) the location of the AED device (with respect to where an AED should be installed, the Act does not provide guidance, but it is recommended that the AED be installed in a visible area in a location that allows a response time of no more than a few minutes; an AED cabinet must comply and be installed in compliance with the Americans with Disabilities Act), (2) notification procedure should the AED be removed from its designated location to a secondary location on a temporary basis, (3) maintenance and testing of the AED, (4) authorized users, (5) training for the authorized users, (6) written instructions posted next to the device that provide a "how to" in case a trained user is not available, and (7) regular notice to the owners as to the AED device's availability, location, and identification of trained staff and owners.

In addition to the immunity set forth in the Act, Florida law prohibits exclusion from coverage under a general liability policy issued to the community association for damages resulting from the use of an AED.

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