

## **AED Program: Worth the Risk?**

It's 7 PM, most of your staff has gone home for the day leaving just 5-10 employees, many of which have not been trained to use your automatic external defibrillator (AED). Then it happens, someone in the office collapses in sudden cardiac arrest. Your staff calls 9-1-1, six minutes later the ambulance arrives. The employee does not survive; the family files a lawsuit seeking damages as a result of your staff's inability to provide reasonable emergency care (responding with your AED). Is this a realistic scenario in the modern world? Yes.

Have you purchased an automatic external defibrillator (AED)? If you have, make sure your program meets acceptable standards to maintain your state's civil liability immunity protection laws. If your company has not established an AED program, you need to start thinking about when you will implement one. The duty to provide care is becoming more engrained in our society due to mandates, laws and recommendations by federal and state agencies. Benefits are clear and risks controllable when the proper steps are taken to implement an emergency response plan.

### **At Risk or Not**

It's not surprising that owners and their staff are concerned about the legal implications of an AED program at their facility. Companies understandably fear negligence liability suits. In reality, the actual liability risk associated with AED programs is very small and very controllable. But concerns are real and even recognized by the American Heart Association as a possible deterrent to the purchase and/or use of AEDs by companies. Documentation provided by legal research has not yet provided me evidence of any lawsuits or claims paid by a company due to the improper use of an AED on their premises.

I have become a strong advocate for AED programs as the evidence supporting these programs is powerful and convincing. Over 350,000 deaths from cardiac arrest occur each year in the US; it is THE leading killer in the US (more than AIDS, Breast Cancer, Lung Cancer, Accidents and Stroke). Survival rates for cardiac arrests that occur outside a hospital have historically only been 3-5%. With an AED program in place, survival rates have reached 50-60% or EVEN MORE in some settings. A study evaluating the AED program at O'Hare International Airport showed a 55% survival rate for cardiac arrest victims in the terminal. In Vegas, survival rates in casinos are surpassing 70%. The University of Massachusetts in 2006 revealed a 75% SCA survival rate for their PAD program. It is well documented in the medical literature and elsewhere, that early defibrillation saves lives using AED technology. Clearly the benefits associated with a well prepared AED program will outweigh the risk of liability and as AEDs are becoming more affordable and available it will be hard for any juror to justify that a business is not liable for the lack of having an AED on premises.

### **What is your Duty?**

When a company establishes an AED program and purchases the necessary equipment to provide care to its customers and employees, are they then responsible to ensure that the care is available, sufficient and not negligent? To assess the risk associated with having an AED program, you also need to weigh the risk of not having an AED program.

It is very important to recognize that negligence law does impose a duty upon airlines and other transportation providers, hotel and innkeepers, and other business entities to provide reasonable emergency assistance to passengers, guests, and other members of the public who utilize their premises or facilities. And this may include the provision of AEDs for sudden cardiac arrest, especially as early defibrillation becomes more of an accepted standard care and adopted by private business. The courts define what is "reasonable" based upon current standards or industry trends established in similar settings. Thus, businesses that fail to purchase AEDs and implement early defibrillation programs are likely to be at greatest risk. Add to this, an ever increasing public expectation that AEDs are everywhere. Interestingly, OSHA has recently published a technical information bulletin stating: "Employers should consider use of AEDs at their worksites to reduce the time to defibrillation with the goal of improving survival." Not a compliance standard, yet it provides further support for what could be considered reasonable care for an employee in cardiac arrest. In 2008 the US Supreme Court reinforced the duty of care on a large fitness club and rejected their appeal based upon the argument that it was not a required standard of practice (since all states do not mandate AEDs in these businesses). Insurers for health clubs are beginning to not renew GL insurance until an AED program is put in place based upon this court decision.

### **Risk Assessment**

When considering an AED program for your company, it's important to consult your insurance carrier to determine what is best for your business. Most, if not all, can advise you on the risk associated with an AED program. However, an assessment of establishing an AED program must consider:

If sudden cardiac arrest is untreated, the victim will die. An AED can only help.

AEDs are safe and easy to use, even without any formal training.

Approved training programs are available from nationally accredited organizations (AHA, ARC, NSC).

Good Samaritan laws have become AED specific providing immunity for individuals and businesses.

### **Legislative Protections**

Nearly all states have Good Samaritan legislation that specifically protects those individuals and entities that use an AED. These statutes have been adopted to encourage the use of AEDs and to specifically allay the liability fears of those who assist these victims. In addition, the Federal Cardiac Arrest Survival Act of 2000 provides Good Samaritan limited liability coverage in those states without a Good Samaritan law.

States also have AED Acquirer or purchaser laws in place that provide immunity from civil liability when buying and having an AED available at their facility. Abiding by these laws provides a layer of protection from legal liability lawsuits only if your program complies with your state's laws. It is important to know your state's AED owner laws or codes. Only a few resources are available nationally that can easily and readily provide every state's requirements. Make sure your AED purchase is made with a provider that can provide you with a listing of your state requirements and a compliance checklist that you can conform with.

### **Minimizing the Legal Risk**

You cannot eliminate the risk, but you can control it and therefore minimize the potential for a lawsuit. Attention to the following 5 essential elements is critical to maintaining your Good Samaritan protection and minimizing risk. Avoid cutting corners in any of these areas.

The 6 essentials are:

1. Medical Director – Identify a physician to authorize AED purchase, oversee your program and take an interest in your emergency response plans. Some States require a Medical Directive (prescription) in order to purchase an AED. Laws vary from State to State, if in doubt, call us to find out if your State requires a medical directive.
2. Approved Training – American Heart, Red Cross, National Safety Council provide nationally accredited CPR/AED programs. Do not use “home brewed” programs. The course will be 3-4 hours in length, anything less is not appropriate.
3. Integrate with Local EMS – Establish a working relationship with your local EMS, advise them of AED placements at your facility.
4. Quality Improvement – A process to review cases, documentation, sharing info with your medical director and possibly local EMS system. Provide feedback to staff on how they did, which builds confidence and improves performance.
5. Maintain Equipment – Simply follow manufacturer's recommendations for maintaining AEDs and supplies. Use a checklist, assign an AED administrator to check regularly.
6. Refresh - Give responders quarterly or monthly opportunities to refresh on skills by scenario training or online training refresher.

### **Summary**

The liability associated with the implementation of an AED program is minimal. Legal fears should not deter you from considering the benefits of having an AED at your company as long as the 6 essentials for compliance are in place. In fact, companies that carefully adopt and implement a safety program that includes AEDs may well be at lowest risk of liability.

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#### Note:

Information provided in this article is not intended as legal advice. While every effort is made to ensure accuracy of information, legal questions surrounding AED use can vary from state to state. If your company needs specific advice, we suggest you contact your insurance carrier or attorney.