

Liability No Barrier

AED programs can reduce legal risk

Perceptions and fear of legal liability continue to serve unnecessarily as barriers to large-scale adoption of public access defibrillation (PAD) programs in out-of-hospital settings. I've written elsewhere about general legal standards applicable to early defibrillation. ^{1 2 3 4 5} Following are some of the few early defibrillation lawsuits that have arisen in recent years. One clear lesson emerges from a review of these cases: **Businesses that adopt early defibrillation programs using automated external defibrillators (AEDs) appear to reduce their risk of legal liability resulting from sudden cardiac death when compared to businesses that do not.**

One important point deserves mention at the outset. In the year 2000, nearly 40,000 AEDs were sold, and the market for them appears to double about every 18 months. ⁶ **Notwithstanding the widespread distribution of AEDs, there are no reported instances of lay users or their employers being sued for the use of an AED. Rather, all PAD cases revolve around the failure to have or use an AED.** Here are some examples.

Airlines/Theme Parks/Health Clubs

The airlines faced AED related lawsuits before any other industry. In one case, United Airlines got sued by the widow of a man who suffered sudden cardiac death on a 1995 domestic flight. The widow alleged that United was liable "because it failed to equip its aircraft with certain medical equipment, *including an automatic external defibrillator*, and because her husband would have survived if the in-flight emergency medical kit had contained such equipments." (Our italics.) The case recently settled after United unsuccessfully attempted to have the case dismissed on technical grounds.

In another case, Northwest Airlines got sued by a woman alleging her husband had died from sudden cardiac arrest because the airline failed to have a defibrillator onboard a 1995 flight. The case got dismissed because the woman had failed to produce an expert who would testify that the airline had a duty to carry a defibrillator at the time of the incident, an outcome not likely to occur again.

In another early case, a Florida jury found the Busch Gardens theme park company liable for the death of 13-year-old girl who had collapsed and suffered sudden cardiac death after a roller coaster ride. ⁷ **The jury awarded \$500,000 in damages, in large part because the park failed to have an AED.**

A recent target of AED litigation: the health and fitness club industry. In one case, a tennis club got sued for failing to have an AED on-site to treat a victim of sudden cardiac arrest. ⁸ Interestingly, the court held that Pennsylvania's emergency medical services laws contain "no prohibition or limitation on first-aid efforts performed by lay persons" and sent the case back to a lower court for trial. Most importantly, the court noted that the state's AED Good Samaritan immunity law makes clear "the legislature anticipated the use of AEDs by lay persons and accorded these persons immunity." Good Samaritan immunity will likely play a role if the case goes to trial.

In another recent case, Florida's "The Q Sports Club" **got sued for damages resulting from failure to have an AED on-site to treat the victim of sudden cardiac arrest.** The 42-year-old engineer plaintiff in the case remains in a coma with virtually no brain function. The case settled for \$2.25 million. ⁹

All of these cases support my long-held view that certain types of businesses can reduce their negligence liability exposure by adopting AED programs. The notion held by many companies that buying and deploying AEDs increases risk is not borne out in the courts. Moreover, liability risks impacting businesses that implement AED programs can be further reduced by Good Samaritan immunity laws, insurance and indemnification contracts with AED manufacturers. To sum up, early defibrillation programs are the right thing to do for many businesses and may offer lower legal risk than going without.

References

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