

AED Program Implementation: At Risk or Not

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It is not surprising that many golf course managers are concerned about the legal implications of developing and implementing a medical response plan. If one establishes medical response systems and purchases the necessary equipment to provide care to players and guests at their facilities, are they responsible to ensure that the care is appropriate, sufficient, and not negligent? These concerns are most prevalent when considering the implementation of a program for sudden cardiac arrest using automatic external defibrillators (AEDs).

Golf courses and any other business entity considering the purchase and use of AEDs understandably fears negligence liability suits. Indeed, even the American Heart Association (AHA) notes that this concern may act as a potential disincentive to the purchase and/or use of AEDs. In reality, the actual liability risk associated with early defibrillation programs is very small and very controllable. Indeed, the benefits associated with early defibrillation far outweigh any potential liability risks.

Principles of Liability Claims

In order for the purchaser or user of an AED to be *successfully* sued for negligence based on the use of an AED, the plaintiff must prove: 1) that the individual or entity sued had a duty to treat the victim, 2) that there was a breach of this duty, 3) that there was proximate cause between the actions of the defendant and the outcome of the victim, and 4) that there were clear damages as a result of the actions of the defendant. If any of these elements is not present, a negligence suit will not be successful.

Duty

The concept of legal duty implies that the individual or entity being sued had an obligation to the plaintiff. If there is no obligation, there is no liability. In the case of an AED, a bystander on a golf course or elsewhere who attempts to assist a victim suffering cardiac arrest has no legal obligation to provide assistance to the victim. This is true even if the bystander has the ability to assist. A cardiologist, emergency physician, or other highly trained specialist, in the vicinity, e.g. one of the victim's foursome, may assist the victim and not be liable for the outcome since they have no duty to treat.

Duty, in negligence law, is defined as an obligation of one person to meet a certain well-established standard of conduct or standard of care. If a legal duty is found to exist, it is possible for liability to be imposed. In the absence of a legal duty, no liability can be imposed. The courts have repeatedly refused to impose a legal obligation on a bystander to help a victim, despite the possible moral and human obligation that might otherwise appear obvious.

On the other hand, there are providers who are in the position to aid a victim have a legal duty to respond to and treat victims of medical emergencies. For example, an EMT or

paramedic who is *on duty* has such a responsibility. The definition of these responsibilities can vary from state to state and are determined by court cases, statutes and regulations. However, it is clear that a passerby or bystander has no such duty, even if that individual is highly-trained to provide care, as long as they are *off duty* and there is no established or expected provider relationship.

However, it is very important to recognize that the law *does* impose a duty upon airlines and other transportation providers (cruise ships, buses, trains, taxis, etc.), hotel and innkeepers, and other business entities to provide *reasonable* emergency medical assistance to passengers, guests, and other members of the public who utilize their premises or facilities. Indeed, this includes golf courses. And this may include the provision of AEDs for sudden cardiac arrest, especially as early access to defibrillation becomes more of an accepted standard of public health care.

In the past, the courts, in looking at the concept of reasonableness have been resistant to requiring "common carriers", innkeepers and other business entities to do more than call an ambulance. However, there may be a trend toward higher standards, requiring the provision of substantially more care for ill or injured guests or customers.

Importantly, recent developments in AED technology, including lower costs and the demonstrated success of these devices in saving lives, will likely allow the courts to hold businesses that fail to adopt AED programs responsible for poor outcomes from sudden cardiac arrest. Golf courses and other businesses that adopt AED programs may have less legal liability than those that do not implement an AED program.

Proximate Cause

A successful negligence claim, in addition to duty, also requires proof that any potential misconduct caused specific damages, such as death or injury. Specifically related to AEDs, causation could be related to 1) the failure to have AEDs available when needed; 2) the failure to use an AED when available; or 3) the failure to use an available AED properly. In any of these cases, the plaintiff would need to demonstrate that the alleged "failure" was directly responsible, at least in part, for the death or disability of the victim. In the setting of sudden cardiac arrest, it is extremely difficult to demonstrate that such a failure led to the outcome. Most importantly, however, as one considers the purchase of an AED, it is more likely that a plaintiff could successfully claim proximate cause if an AED is not available for attempted early defibrillation than if the use of an AED is improperly applied.

It is well documented in the medical literature that early defibrillation saves lives. Thus, businesses that fail to purchase AEDs and implement early defibrillation programs are likely at greatest risk. Even in this case, liability is low since the expected outcome of sudden cardiac arrest is so poor. The liability exposure from the improper use of an AED is even lower given the current generation of AEDs are very simple to use and have numerous safeguards to help avoid misuse.

Good Samaritan Legislation for AEDs

In the past year, the U.S. Congress and many states have passed legislation that specifically protects those individuals who apply early defibrillation. These statutes have been adopted to encourage the use of AEDs for victims for sudden cardiac arrest and to specifically allay the liability fears of those who assist these victims. The so-called Good Samaritan – AED bill passed by Congress in 2000 ensures that:

- AED users, AED trainers, and AED program medical directors, as well as business entities providing AEDs, will be protected by Good Samaritan limited liability coverage if they follow these guidelines:
 1. The purchasing entity must have a training program and quality assurance program in place under the supervision of a medical director with sufficient training or expertise.
 2. The purchasing entity must report the type and placement of the purchased AEDs to the local EMS provider.
 3. The expected users of the AED must be trained in a nationally recognized AED training program, e.g. American Red Cross.

Summary

Overall, the liability associated with the implementation of an AED is minimal. In fact, in the next few years, the liability for *not* providing an AED program will far outweigh any perceived risk of misuse. Certainly, it will be extremely difficult to prove misuse given the poor prognosis for sudden cardiac arrest. Given the likelihood that 1) the duty for the provision of AED programs will be easier to establish, 2) that proximate cause related to misuse is difficult to establish, and 3) legislation provides substantial risk protections, golf courses and other businesses that implement well-designed and carefully monitored AED programs may well be at lowest risk of liability.

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