

Florida JOURNAL COMMUNITY ASSOCIATION JOURNAL

NEWS | INFORMATION | LIFESTYLES



Community Association Medical Liability

by Helio De La Torre and Howard J. Perl
Siegfried, Rivera, Lerner, De La Torre, & Sobel, P.A.

This article will address recent changes in the law concerning a community association's medical liability for the use of automated external defibrillators, which are owned and installed by a community association organized under Chapter 617, Chapter 718, Chapter 719, Chapter 720, Chapter 721, or Chapter 723, Florida Statutes. The information in this article is general in nature, and should not be relied upon as legal or insurance advice. Please contact your association's attorney or insurance professional for specific advice for your community.

In 2002, over 865,000 cases of new and recurrent cardiac arrests were reported in the United States.¹ The average age of a person having a first heart attack is approximately 66 years old for men and approximately 70 years old for women.² The 2000 United States census reported that 17.6% of Floridians are 65 years old and over, compared to the national average of persons 65 years and over of 12.4%.³

The above statistics indicate that more than one out of six Floridians are of the age where a first cardiac arrest can occur. It is estimated that approximately 95 percent of sudden cardiac arrest victims die before reaching the hospital.⁴ In many instances, sudden cardiac arrest can be reversed if the victim is treated with an electric shock to the heart within the first few minutes.⁵ This process, called defibrillation, is done using a defibrillator.⁶ Laypersons can be trained to operate portable, automated external defibrillators (AEDs).⁷ The automated external defibrillators are safe for trained rescuers to use because the device automatically analyzes a victim's heart rhythm and only allows an electric shock to be delivered when necessary.⁸

In recognition of the susceptibility of many of their residents to cardiac arrests, community associations began considering the installation of automated external defibrillators ("AEDs") that became available on the market for commercial use in the late 1990's. Such AEDs have become more prevalent recently in airports, hotels, and government buildings. However, many insurance carriers required that community associations carry medical liability insurance to insure against possible claims for the use of defibrillators. There was a debate as to whether the association's general liability policy would cover a defibrillator claim.

Section 768.13(4), Florida Statutes, (the "Good Samaritan Act"), does provide some degree of protection against legal claims arising out of the use of an association owned

automated external defibrillator. Fortunately for Florida community associations, the 2001 Florida legislature passed the Cardiac Arrest Survival Act (Section 768.1325, Florida Statutes). The Cardiac Arrest Survival Act (the "Act") significantly expanded the liability protection afforded associations beyond the provisions of the Good Samaritan Act. The legislature amended the Act in the 2004 session to provide even greater protection to community associations from liability associated with the maintenance and use of an automated external defibrillator in the community.

Section 768.1325(3) of the Act provides that any person who uses or attempts to use an AED device on a victim of a perceived medical emergency, without objection of the victim of the perceived medical emergency, is immune from civil liability for any harm resulting from the use or attempted use of such device. The section goes on to state that any person who acquired the device, including, but not limited to, a community association organized under Chapter 617, Chapter 718, Chapter 719, Chapter 720, Chapter 721, or Chapter 723, Florida Statutes, is immune from such liability, if the harm was not due to the failure of such acquirer of the device to properly maintain and test the device, provide appropriate training to employees on the use of the device, and notify the local emergency medical services director of the placement of the device within the community.

Furthermore, the Act provides that an insurer may not require an acquirer of an AED which is a community association to purchase medical malpractice liability coverage as a condition of issuing any other coverage carried by the association, and an insurer may not exclude damages resulting from the use of an AED from coverage under a general liability policy issued to a community association. In other words, the Act prevents insurers from requiring that associations purchase medical malpractice coverage to be insured against claims arising from a community association's ownership and use of an automated external defibrillation device, and provides that an association's general liability policy will cover claims arising for the use of an association owned defibrillator.

The placement and use of automated external defibrillators in community associations will save many lives in Florida. Previously, the board of directors of a community association encountered a difficult choice—whether to install the defibrillator and probably save the life of a resident or visitor to the community, or due to insurance and liability concerns, not to install the device and risk the loss of a friend, neighbor, or loved one. Thanks to the Florida legislators, community associations' boards will no longer have to wrestle with such a difficult decision.

Helio De La Torre is a partner with Siegfried, Rivera, Lerner, De La Torre & Sobel.

Howard Perl is a law clerk with Siegfried, Rivera, Lerner, De La Torre & Sobel. ■

¹ Heart Disease and Strokes—2005 Update, American Heart Association.

² Id.

³ U. S. Census Bureau, Florida Quick Facts at <http://quickfacts.census.gov/qfd/states/12000.html> (last visited March 22, 2005).

⁴ American Heart Association Sudden Death from Cardiac Arrests—Statistics. <http://www.americanheart.org/downloadable/heart/1103835297279FS27SDCA5.pdf> (Last visited March 22, 2005).

⁵ Id.

⁶ Id.

⁷ Id.

⁸ Id.