

## **Lawsuits Involving Early Defibrillation: Adopting an AED Program Reduces Legal Risk**

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Perceptions and fear of legal liability continue to serve as barriers to large-scale adoption of public access defibrillation (PAD) programs in out-of-hospital settings. I have written elsewhere about general legal standards applicable in the early defibrillation context and do not revisit those issues here.<sup>1 2 3 4 5</sup> Instead, this article highlights 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) 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 appears to be doubling about every eighteen months.<sup>6</sup> Notwithstanding the widespread distribution of AEDs, *there are no known 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**

The airline industry was the first to face AED related lawsuits. In one case, United Airlines was 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.” The case was recently settled after United unsuccessfully attempted to have the case dismissed on technical grounds.

In another case, Northwest Airlines was sued by a woman alleging her husband died from sudden cardiac arrest because the airline *failed to have a defibrillator on board* a 1995 flight. The case was dismissed because the woman 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 the future.

### **Theme Parks**

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

### **Health Clubs**

A recent target of AED litigation is the health and fitness club industry. In one case, a tennis club was sued for *failing to have an AED* on-site to treat the victim of sudden cardiac arrest.<sup>8</sup> 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 was sued for damages resulting from the failure to have an AED on-site to treat the victim of sudden cardiac arrest. The 42-year-old engineer plaintiff in the case is in a coma with virtually no brain function. The case settled for \$2.25 million.<sup>9</sup>

All of these cases support my long held view that certain types of businesses actually 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 are or can be further reduced by Good Samaritan immunity laws, insurance and indemnification contracts with AED manufacturers. In sum, early defibrillation programs are the right thing for business and the lower risk option.

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<sup>1</sup> Lazar RA. Understanding Legal Issues (section): National Center for Early Defibrillation website: [http://www.early-defib.org/03\\_06\\_02.html](http://www.early-defib.org/03_06_02.html).

<sup>2</sup> Lazar RA. Understanding AED Laws, Regulations and Liability Issue (chapter contribution). Challenging Sudden Death: A Community Guide to Help Save Lives, Catalyst Research & Communications, Inc., Carmel, IN (1998).

<sup>3</sup> Lazar RA. Defibrillators Enter the Business Marketplace. Occupational Safety and Health Magazine (August 1997).

<sup>4</sup> Lazar RA. Are you prepared for a medical emergency? Business and Health Magazine (August 1997).

<sup>5</sup> Lazar RA. Legal, regulatory issues impact AED deployment. Journal of Emergency Medical Services – Special Supplement (January 1997).

<sup>6</sup> 17 Journal of Contemporary Health Law and Policy 275, 282 (2000).

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<sup>7</sup> Herbert DL. Lack of an AED results in large verdict. *Fitness Management* (April 1999).

<sup>8</sup> *Atcovitz v. Mills Tennis Club*, 2001 Pa. Super. 16, 2001 Pa. LEXIS 16 (2001).

<sup>9</sup> 2001 *Lawyers Weekly USA* 119 (February 5, 2001).