

## Automatic External Defibrillators: January 2010 Q&A on the Current Status of Related Laws

Periodically, we are asked about the liability risks of school districts that install automatic external defibrillators (AEDs.) Following are the most common questions we have encountered, and their corresponding answers, regarding the current laws related to AEDs.

**Q1: What is an AED?**

A1: An AED is a portable medical device that automatically treats cardiac arrest through the application of an electrical shock through the patient's chest wall. In recent years AEDs have been installed in airports, railway stations, certain workplaces, shopping centers, hotels and other areas where large numbers of people gather. While AEDs are designed to be used by non-medical personnel, it is generally recommended that, in an office or business setting, only persons who have received training be authorized to use them.

**Q2: Do AED users have legal protections for their actions?**

A2: In 1999, California enacted Civil Code §1714.21, which created limited immunity from civil liability for trained persons who used AEDs in good faith and without compensation at the scene of an emergency. The immunity is limited—it does not apply in the case of personal injury or wrongful death that results from the gross negligence or willful misconduct of the person who renders emergency care or treatment by the use of an AED.

This so-called “Good Samaritan” provision was expanded in 2002 by AB 2041, which amended § 1714.21 to repeal the training requirement for purposes of the limited immunity.

**Q3: What are the statutory requirements for facilities that install an AED?**

A3: California Health and Safety Code §1797.196(b) requires that an entity that acquires an AED must do all of the following:

1. Comply with all regulations governing the placement of an AED;
2. Ensure that the AED is maintained and regularly tested according to the operation and maintenance guidelines set forth by the manufacturer, the American Heart Association, and the American Red Cross, and according to any applicable rules and regulations set forth by the governmental authority under the federal Food and Drug Administration and any other applicable state and federal authority;

3. Ensure that the AED is checked for readiness after each use and at least once every 30 days if the AED has not been used in the preceding 30 days. Records of these checks must be maintained;
4. Ensure that any person who renders emergency care or treatment on a person in cardiac arrest by using an AED, activates the emergency medical services (EMS) system as soon as possible and reports any use of the AED to the licensed physician as well as to the local EMS agency;
5. Ensure that for every AED unit acquired (up to five units), no less than one employee per AED unit shall complete a training course in cardiopulmonary resuscitation and AED use that complies with the regulations adopted by the emergency medical service authority and the standards of the American Heart Association or the American Red Cross. When the number of acquired AED units exceeds five, the entity is required to have one additional employee trained for each additional group of five AED units, beginning with the first unit in excess of the initial five. Entities acquiring AED units shall have trained employees who should be available to respond to an emergency that may involve the use of an AED unit during normal operating hours; and,
6. Ensure that there is a written plan that describes the procedures to be followed in the event of an emergency that may involve the use of an AED, to ensure compliance with the requirements of this section. The written plan shall include, but not be limited to, immediate notification of 911 and trained office personnel at the start of AED procedures.

Additionally, California regulations provide that an agency, business, organization or individual who purchases an AED have a physician medical director, who ensures that the AED training meets regulatory requirements, reviews each incident where emergency care was rendered to a person in cardiac arrest, helps to develop an internal emergency response plan and to ensure compliance for training, notification and maintenance. These requirements are noted in 22 California Code of Regulations §§ 100036 and 100040.

**Q4: Do the owners or managers of facilities have legal protections if they install an AED?**

A4: Civil Code § 1714.21 provides that a person or entity that acquires an AED for emergency use is not liable for any civil damages resulting from any acts or omissions in the rendering of the emergency care by use of an AED, if the person or entity has complied with subdivision (b) of § 1797.196 of the Health and Safety Code. (See Q&A #3, above, for a description of the requirements of § 1797.196(b).)

**Q5: Are there special rules that deal with the placement of AEDs in schools?**

A5: California Health and Safety Code § 1797.196(b)(5) provides that when an AED is placed in a K-12 school, the principal shall do all of the following:

1. Ensure that the school administrators and staff annually receive a brochure, approved as to contents and style by the American Heart Association or the American Red Cross, that describes the proper use of an AED;
2. Ensure that similar information is posted next to every AED;

3. At least annually notify school employees as to the location of all AED units on the campus; and
4. Designate the trained employees who shall be available to respond to an emergency that may involve the use of an AED during normal operating hours.

**Q6: Are there other laws regarding AEDs that schools, community colleges, and municipalities should be aware of?**

A6: In 2005, the legislature enacted Health and Safety Code § 104113, which required health studios to acquire, maintain and train personnel in the use of AEDs. That law defines “health studio” as “any facility permitting the use of its facilities and equipment or access to its facilities and equipment, to individuals or groups for physical exercise, body building, reducing, figure development, fitness training, or any other similar purpose, on a membership basis.” The statute does not clarify whether this definition applies to exercise facilities found at schools and community colleges, but those facilities generally do not offer access to their facilities “on a membership basis.” Schools and community colleges that are concerned about whether their athletic use arrangements would fall under the definition of “health studio” in the statute should follow up with their own legal counsel.

The law related to health studios is set to expire on July 1, 2012, and a bill that was introduced in the legislature last year, AB 1312, would have extended the health studio requirement to July 1, 2014. Additionally, AB 1312 would have expanded the current AED requirement for health studios to apply to golf courses and amusement parks. As the term “golf course” is not defined, this law would appear to apply equally to public and private golf courses. AB 1312 was passed by the legislature last year, but vetoed by the Governor, who thought that the extension to additional types of businesses was unwarranted. We expect to see another attempt to extend the health studio law in 2010.

Keep in mind that this is a general review of AED statutory law. This Bulletin does not detail all of the additional regulations governing the training and use of AEDs. Furthermore, this Bulletin is meant for general education purposes only. It is not intended as, nor should it be used as a substitute for consultation and advice from your own legal counsel.