

DiVITO & HIGHAM, P.A.

4514 Central Avenue
St. Petersburg, FL 33701
727-321-1201
727-321-5181 - fax

TO: Rick Osorio
FROM: Frederick A. Higham, Jr. *FAH*
DATE: March 4, 2009
RE: Automated External Defibrillators

Florida Statute 768.1325 (attached) was Amended in 2008 to resolve a conflict between it and the prior Florida Statute 401.2915. The statutes are now in conformity with each other and provide that any person who uses or attempts to use an Automated External Defibrillator 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. This provides blanket civil immunity for the person who is using the device. The blanket immunity does not apply if harm is caused by the persons willful or criminal misconduct, gross negligence, reckless disregard or misconduct, or a conscience flavoring indifference to the rights or safety of the victim who was harmed. Likewise, the immunity does not extent to health care professionals, hospitals or clinics.

The statute also provides immunity for individuals and organizations who acquire the device and make it available for use, provided that any harm was not due to failure to a) properly maintain and test the devise, or b) provide appropriate training in the use of the device to an employee or agent of the acquirer when the employee or agent was the person who used the device on the victim, unless the device is equipped with audible, visual or written instructions on its use, including any such visual or written instructions posted on or adjacent to the device.

Therefore, in order to take advantage of the civil immunity the diocese or entity of the diocese acquiring the device and making it available for use must properly maintain and test the device and provide training in the use of the device or in the alternative insure that the device is equipped with audible, visual or written instructions on its use.

I suggest that any policy adopted by the Diocese of Venice be designed to take maximum use of the civil immunity statute. The policy should require that any entity maintain and test the device as required in the manufactures manual including providing any training required by the manufacture of the device to its potential operators. Keep in

mind that assuming the device is equipped with "audible, visual or written instructions on its use including any such visual or written instructions posted on or adjacent to the device" would exempt the acquirer from training individual operators.

I would be glad to review any proposed policy before its implementation.

FAHjr/ajj

Select Year: 2008

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The 2008 Florida Statutes

[Title XLV
TORTS](#)[Chapter 768
NEGLIGENCE](#)[View Entire Chapter](#)

768.1325 Cardiac Arrest Survival Act; immunity from civil liability.--

(1) This section may be cited as the "Cardiac Arrest Survival Act."

(2) As used in this section:

(a) "Perceived medical emergency" means circumstances in which the behavior of an individual leads a reasonable person to believe that the individual is experiencing a life-threatening medical condition that requires an immediate medical response regarding the heart or other cardiopulmonary functioning of the individual.

(b) "Automated external defibrillator device" means a lifesaving defibrillator device that:

1. Is commercially distributed in accordance with the Federal Food, Drug, and Cosmetic Act.
2. Is capable of recognizing the presence or absence of ventricular fibrillation, and is capable of determining without intervention by the user of the device whether defibrillation should be performed.
3. Upon determining that defibrillation should be performed, is able to deliver an electrical shock to an individual.

(c) "Harm" means damage or loss of any and all types, including, but not limited to, physical, nonphysical, economic, noneconomic, actual, compensatory, consequential, incidental, and punitive damages or losses.

(3) Notwithstanding any other provision of law to the contrary, and except as provided in subsection (4), any person who uses or attempts to use an automated external defibrillator 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. In addition, notwithstanding any other provision of law to the contrary, and except as provided in subsection (4), any person who acquired the device and makes it available for use, including, but not limited to, a community association organized under chapter 617, chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723, is immune from such liability, if the harm was not due to the failure of such person to:

(a) Properly maintain and test the device; or

(b) Provide appropriate training in the use of the device to an employee or agent of the acquirer when the employee or agent was the person who used the device on the victim, except that such requirement of training does not apply if:

1. The device is equipped with audible, visual, or written instructions on its use, including any such visual or written instructions posted on or adjacent to the device;
2. The employee or agent was not an employee or agent who would have been reasonably expected to use the device; or

3. The period of time elapsing between the engagement of the person as an employee or agent and the occurrence of the harm, or between the acquisition of the device and the occurrence of the harm in any case in which the device was acquired after engagement of the employee or agent, was not a reasonably sufficient period in which to provide the training.

(4) Immunity under subsection (3) does not apply to a person if:

(a) The harm involved was caused by that person's willful or criminal misconduct, gross negligence, reckless disregard or misconduct, or a conscious, flagrant indifference to the rights or safety of the victim who was harmed;

(b) The person is a licensed or certified health professional who used the automated external defibrillator device while acting within the scope of the license or certification of the professional and within the scope of the employment or agency of the professional;

(c) The person is a hospital, clinic, or other entity whose primary purpose is providing health care directly to patients, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent;

(d) The person is an acquirer of the device who leased the device to a health care entity, or who otherwise provided the device to such entity for compensation without selling the device to the entity, and the harm was caused by an employee or agent of the entity who used the device while acting within the scope of the employment or agency of the employee or agent; or

(e) The person is the manufacturer of the device.

(5) This section does not establish any cause of action. This section does not require that an automated external defibrillator device be placed at any building or other location or require an acquirer to make available on its premises one or more employees or agents trained in the use of the device.

(6) An insurer may not require an acquirer of an automated external defibrillator device which is a community association organized under chapter 617, chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723 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 automated external defibrillator device from coverage under a general liability policy issued to an association.

History.--s. 1, ch. 2001-76; s. 3, ch. 2004-345; s. 3, ch. 2004-353; s. 3, ch. 2006-206; s. 2, ch. 2008-101.

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