



Updated Member Advisory

Automated External Defibrillators (AEDs)

Governor Brown recently signed new legislation (SB 1436/H&S Code Section 1797.196) regarding Automated External Defibrillators (AEDs). This advisory replaces and supplements SIA's prior Member Advisories (2005/2007) and the previously recommended Board Policy addressing AEDs.

I. CONTINUING LACK OF OBLIGATION TO PURCHASE/ACCEPT AEDs.

While the California Assembly adopted a non-binding resolution in 2005 encouraging school districts to implement AED programs, California law does not require school districts to purchase or accept donations of AEDs.¹ See, e.g. *Health and Safety Code Section 1797.196(f)* negating such an obligation by property owners and *Rotolo v. San Jose Sports and Ent. LLC*, 151 Cal.App.4th 307 (2007) [the Legislature has preempted this area of law, with no affirmative obligation imposed on property owners other than health clubs to purchase AEDs]. In fact, no court or other authority has suggested or concluded that a school district would be negligent in caring for its students, employees, or guests if it did not have one or more AEDs on campus and the new law specifically states that it imposes no obligation to buy or obtain an AED on property owners or managers. *Section 1797.196(f)*. The CDE has not addressed this subject.

II. INDIVIDUAL EMPLOYEE/VOLUNTEER LIABILITY

California Health and Safety Code Section 1714.21(b) (one of the Good Samaritan statutes) states that an individual who is not compensated as a medical professional (i.e., a nurse, doctor, EMT) is immune from civil liability for using an AED (1) to provide emergency care (2) at the emergency site, **unless** the individual causes harm through the use of the AED in a grossly negligent manner or in a manner constituting willful or wanton misconduct. While potential AED users should receive training regarding the use of such equipment, California does not require an individual to successfully complete a CPR/AED training class before using such a device. Consequently, an individual who has no training, and who commits injury through the "grossly negligent" use of an AED, could face potential personal liability.

AED manufacturers and distributors are addressing such liability concerns in two ways. First, AEDs sold in the United States have become more sophisticated over the last few years. They now include verbal prompts regarding proper use of the device. The AED's "automatic" or semi-automatic electrical impulses can also be administered only when the device, properly attached to the individual, determines there to be a need for actual defibrillation. Current marketing literature states that in most instances the user cannot override the AED's determination, making the machines safer and more user friendly. If the literature is accurate, claims for "gross negligence" or "willful misconduct" should largely be eliminated due to these built in safety precautions. If the AED's controls or directions are disregarded without proper medical authorization or direction, however, the individual could still face personal liability.

Second, promotional materials for AEDs suggest that certain manufacturers and/or distributors are offering indemnity and/or "additional insured" protections to purchasers and users of their devices. Such protections, if they exist in a written contract or agreement, and if they provide primary liability protection, would be important in lessening liability concerns arising from the ownership or use of such devices. Owners and users of AEDs must understand, however, that if they willfully or intentionally disregard the AED's directions, protective warnings, or training instructions, their indemnity/coverage rights will likely be lost due to their failure to use the device in a proper and intended manner.

¹ New York, Nevada, and Ohio require certain schools on a statewide basis to implement AED programs. Other states, such as Illinois, New Hampshire, and Pennsylvania, encourage or provide funding for schools to develop AED programs.

III. SCHOOL DISTRICT LIABILITY

If a school district employee acts in a grossly negligent or willful or wanton manner, the school district will lose its statutory immunities. *Section 1797.196(e)*. Even in the absence of such employee misconduct, the school district may lose its statutory immunity if it fails to comply with all of the obligations of Section 1797.196. As to the school district, Section 1797.196 mandates (a) regular maintenance and testing of the AED, (b) development, implementation, and compliance with specified emergency protocols and disclosures, and (c) employee training in compliance with regulatory standards. Individual school sites must also comply with the following additional burdens:

When an AED is placed in a public or private K-12 school, the principal shall 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. The principal shall also ensure that similar information is posted next to every AED. The principal shall, at least annually, notify school employees as to the location of all AED units on the campus. The principal shall 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. As used in this paragraph, "normal operating hours" means during the hours of classroom instruction and any school-sponsored activity occurring on school grounds.

School site obligations, budgetary constraints, and/or turnover of employees responsible for these statutory requirements can result in a failure to meet all of these obligations on a daily/yearly basis. If the school district's statutory immunity is lost due to noncompliance with these obligations (even if the involved employee(s) is immune because he/she acted reasonably under the circumstances), the school district may face liability unless such risks are transferred to the AED's distributor/manufacturer in keeping with the indemnity and/or "additional insured" coverage issues discussed above. The school district must still recognize, however, that the protections afforded under the manufacturer's or distributor's indemnity or insurance agreements will likely be lost if it is shown that a failure of maintenance or compliance with other AED instructions/requirements led to the resulting claim of injury.

IV. CONCLUSION

Since the issuance of SIA's prior Member Alerts, AED technology has advanced, with distributors and manufacturers now reportedly willing to extend at least indemnity and/or "additional insured" protections to purchasers and users of their devices.

While there remains no legal obligation to install such units in schools, school districts may choose to purchase or accept donations of AEDs as long as they: (a) evaluate and implement appropriate procedures complying with placement, training and maintenance obligations, (b) implement risk transfer possibilities through negotiated indemnity and/or "additional insured" programs whenever possible, and (c) continue to implement and train employees with respect to alternative emergency care programs (traditional CPR, etc.) that should be undertaken in cases in which an AED fails to function or when an AED indicates that it will provide no benefit to a particular individual, ensuring that the school district still provides a reasonable and appropriate level of emergency care and treatment. Under such circumstances, SIA is willing to move from a position of recommending against the purchase or acceptance of donated AEDs to a position of cautious neutrality. However, Members purchasing or accepting donations of AEDs should adopt an appropriate Board Policy regarding their ownership, maintenance and use of these devices. CASB has issued suggested language for such a Policy as part of its school safety series. SIA's suggested language for such a Board Policy is attached to this Member Advisory. SIA's draft policy, partially based on the CASB standard, can be adopted separately or as part of an existing safety policy.

DRAFT BOARD POLICY

AUTOMATED EXTERNAL DEFIBRILLATORS

Automated External Defibrillators

The Board authorizes the placement of automated external defibrillators (AEDs) at designated school sites for use by employees or volunteers who have been trained in the proper use of the type of AED(s) located at the site.

The Superintendent or designee shall develop and adopt administrative regulations ensuring the district's compliance with California law and regulations applicable to the placement, maintenance, and use of AEDs within California schools. Such administrative regulations may also allow for the use of portable AEDs by district personnel when participating in off-campus district-sponsored events.

The Board's authorization of the voluntary placement of AEDs at district sites does not create a guarantee or obligation that an AED will be used in the case of an emergency or that an employee or volunteer trained in the use of an AED will be available and willing to use the AED in an emergency situation. This authorization also does not create a guarantee that the AED will properly operate or that it will correct any particular health or medical condition.