

Municipalities, automated external defibrillators

Number: INFORMAL

Date: September 22, 2004

The Honorable Roger B. Wishner
Representative, District 98
400 Northwest 73rd Avenue
Plantation, Florida 33317-1609

Dear Representative Wishner:

You state that a municipality within your district is considering an ordinance that would require specified buildings to have automated external defibrillators on site for lifesaving purposes. You have expressed your concern about liability.

Section 401.2915, Florida Statutes, provides that it is the intent of the Legislature that an automated external defibrillator may be used by any person for the purpose of saving the life of another person in cardiac arrest. The statute provides that "[a]ll persons who use an automated external defibrillator must obtain appropriate training, to include completion of a course in cardiopulmonary resuscitation or successful completion of a basic first aid course that includes cardiopulmonary resuscitation training, and demonstrated proficiency in the use of an automated external defibrillator[.]" A person using an automated external defibrillator is required to activate the emergency medical services system as soon as possible upon use of the automated external defibrillator. In addition, persons or entities in possession of an automated external defibrillator are encouraged to register with the local emergency medical services medical director the existence and location of the automated external defibrillator.

During the 2004 legislative session, legislation was introduced but failed to pass, which would have revised the statement of legislative intent in section 401.2915, Florida Statutes, and defined the term "automated external defibrillator."

Section 768.1325, Florida Statutes, the Cardiac Arrest Survival Act, however, provides for immunity from civil liability for persons using automated external defibrillators. Subsection (3) of the statute provides:

"(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, 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, is immune from such liability, if the harm was not due to the failure of such acquirer of the device to:

(a) Notify the local emergency medical services medical director of the most recent placement of the device within a reasonable period of time after the device was placed;

- (b) Properly maintain and test the device; or
- (c) 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 employee or agent was not an employee or agent who would have been reasonably expected to use the device; or
 2. 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." (e.s.)

Subsection (4) of section 768.1325, Florida Statutes, provides that the immunity afforded 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."

An "[a]utomated external defibrillator device" is statutorily defined in section 768.1325(2)(b), Florida Statutes, to mean a 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."

I note that the proposed municipal ordinance uses the same definition. The statute also defines "perceived medical emergency" and "harm" for purposes of the act.[1] I would further note that section 4 of Chapter 01-76, Laws of Florida, required the Secretary of the Department of Health no later than January 1, 2003, to establish guidelines on the appropriate placement of automated external defibrillator devices in buildings or portions of buildings owned or leased by the state.[2]

Thus, the provisions of section 768.1325, Florida Statutes, would appear to govern the issues of liability regarding the possession or use of automated external defibrillators.

I trust that the above informal comments may be of assistance. Thank you for contacting the Office of Attorney General Charlie Crist.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tfl

[1] Section 768.1325(2)(a) and (c), Fla. Stat., respectively defines "perceived medical emergency" and "harm" as:

"(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.

* * *

(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."

[2] See 64E-2.039, Fla. Admin. C., setting forth guidelines for automated external defibrillators in state owned or leased buildings.