



To: Regency at Providence Homeowners Association
From: Robert Shulman
Date: February 24, 2023
Re: Opinion re Installation of Automated External Defibrillators (“AED”) and Liability under the AED Good Samaritan Act

CLIENT QUESTIONS:

1. Has the recently-enacted Pennsylvania AED Good Samaritan Act been tested in the Pennsylvania courts yet, and if so, is there any case law regarding liability or regulations adopted interpreting that statute? Who are “expected users” under the statute?

2. Analyze the law as it may apply to either a trained or untrained individual attempting to provide assistance versus how it would apply to a business/organization who purchases and owns the AED. (The Association understands that owning the device entails proper maintenance, training, documentation, etc. The plan is to subcontract this to a firm that offers this as a service to minimize risk.)

3. Are 55+ communities required to have an AED installed, and if so, what is the recommended practice? Even if an AED is not required, which is a less risky choice for the Association - to maintain AEDs and comply with all guidelines, or not have AEDs available? Has there been any litigation against 55+ communities regarding having or not having an AED? Is there a trend towards having AEDs at recreational facilities, and if so, please list the reasons why.

DISCUSSION AND OPINION:

1. Statute and Case Law

A. Statute - 42 Pa. C.S.A. § 8331.2 (“AED Good Samaritan Act”)

Pennsylvania’s Good Samaritan Law grants civil immunity to anyone who uses an AED in good faith in an emergency. The portion of the Good Samaritan Law that relates to AEDs is as follows:

[a]ny person who in good faith¹ acquires and maintains an AED or uses an AED in an emergency² shall not be liable for any civil damages as a result of any acts or omissions by an individual using the AED, except if acts or omissions intentionally designed to harm or any grossly negligent acts or omissions result in harm to the individual receiving the AED treatment.

Further, any person who acquires and maintains an AED for use in accordance with this section is required to:

- (1) Ensure that expected AED users receive training pursuant to subsection (c).
- (2) Maintain and test the AED according to the manufacturer’s operational guidelines.
- (3) Provide instruction requiring the user of the AED to utilize available means to immediately contact and activate the emergency medical services system.
- (4) Assure that any appropriate data or information is made available to emergency medical services personnel or other health care providers as requested.³

¹ 42 Pa. C.S.A. § 8331.2(f) (defining “[e]mergency” as “[a] situation where an individual is believed to be in cardiac arrest or is in need of immediate medical attention to prevent death or serious injury.”).

² 42 Pa. C.S.A. § 8331.2(f) (defining “[g]ood faith” as “[i]ncludes a reasonable opinion that the immediacy of the situation is such that the use of an AED should not be postponed until emergency medical services personnel arrive or the person is hospitalized.”).

³ 42 Pa. C.S.A. § 8331.2(b).

In addition, “expected AED users” are defined as “people who are most likely to perform external defibrillation on a sudden cardiac arrest victim.”⁴ In an organization, these are often employees who are present during normal operating hours and express an interest in being trained.⁵ Moreover, under subsection (c) of the statute, expected AED users must “complete training in the use of an AED consistent with American Red Cross, American Heart Association or other national standards as identified and approved by the Department of Health in consultation with the Pennsylvania Emergency Health Services Council.”⁶ Thus, under the AED Good Samaritan Act, individuals such as the rescuer, purchaser of the AED, property owner, physician, and trainer are given immunity from civil damages if the provisions of the statute are met.⁷

B. Case Law

While there are only a few cases that reference the AED Good Samaritan Act, *Atcovitz v. Gulph Mills Tennis Club, Inc.* provides an analysis into how courts interpret the statute and whether a business has a duty to acquire, maintain, and use an AED on its premises.

In *Atcovitz*, the plaintiff suffered a stroke while playing tennis at defendant’s facility.⁸ Plaintiff received cardiopulmonary resuscitation and emergency medical technicians arrived and administered a series of defibrillation shocks with an AED and transported plaintiff to a hospital.⁹ Although plaintiff survived, he sustained severe and permanent injuries and required assistance in virtually every aspect of his life.¹⁰ Consequently, plaintiff sued defendant for negligence on the

⁴ <https://www.aedleader.com/aed-training-requirements/>.

⁵ *Id.*

⁶ 42 Pa. C.S.A. § 8331.2(c).

⁷ <https://www.aedbrands.com/resources/aed-state-laws/pennsylvania/>.

⁸ *Atcovitz v. Gulph Mills Tennis Club, Inc.*, 571 Pa. 580, 583 (Pa. 2002).

⁹ *Id.*

¹⁰ *Id.*

ground that if defendant possessed an AED and used it promptly, his injuries would have been significantly less severe.¹¹

The court began its analysis by setting forth the elements necessary to plead an action in negligence: (1) the existence of a duty or obligation recognized by law, requiring the actor to conform to a certain standard of conduct; (2) a failure on the part of the defendant to conform to that duty, or a breach thereof; (3) a causal connection between the defendant's breach and the resulting injury; and (4) actual loss of damage suffered by the complainant.¹² The court then focused its attention on the threshold element of duty, stating "[o]nly therein may we resolve the fundamental question of whether the plaintiff's interests are entitled to legal protection against the defendant's conduct."¹³ Further, the court enunciated several discrete factors that our courts are to balance in determining whether a common law duty of care exists: (1) the relationship between the parties; (2) the social utility of the actor's conduct; (3) the nature of the risk imposed and foreseeability of the harm incurred; (4) the consequences of imposing a duty upon the actor; and (5) the overall public interest in the proposed solution.¹⁴ In this case, the court's analysis turned upon the fifth factor, the overall public interest in the proposed solution.¹⁵ The court further stated that "[t]he Legislature's enactments and the ensuing regulations reveal that acquisition, maintenance, and use of an AED, along with AED training requirements are highly regulated. Where our lawmakers have so thoroughly considered the statewide application and implications

¹¹ *Id.* at 584.

¹² *Id.* at 586.

¹³ *Id.* (The court further stated "[a] duty, in negligence cases, may be defined as an obligation, to which the law will give recognition and effect, to conform to a particular standard of conduct toward another.").

¹⁴ *Id.* at 587 (citing *Althaus ex rel Althaus v. Cohen*, 756 A.2d 1166, 1169 (Pa. 2000)).

¹⁵ *Id.*

of a subject, this Court must refrain from imposing additional requirements upon that legislation.”¹⁶

The court then turned its attention to the AED Good Samaritan Act.¹⁷ It acknowledged that the statute provides civil immunity to untrained individuals who, in good faith, use an AED in an emergency as an ordinary, reasonably prudent individual would do under the same or similar circumstances.¹⁸ Further, the court expressed that the AED Good Samaritan Act defines “good faith” as including “a reasonable opinion that the immediacy of the situation is such that the use of an AED should not be postponed until emergency medical services personnel arrive or the person is hospitalized.”¹⁹ Thus, the statute merely creates an exception for imposing liability on an untrained individual who uses an AED in limited emergency situations; it does not authorize its use by any such individual.²⁰ Further, the court stated that “the existence of a civil immunity provision for Good Samaritans who use an AED in an emergency situation cannot impose a duty on a business establishment to acquire, maintain, and use such a device on its premises.”²¹ Therefore, the court held that the AED Good Samaritan Act did not impose a duty on defendant to acquire, maintain, and use an AED, and defendant was not liable for plaintiff’s injuries sustained on its premises.²²

2. Application to Trained and Untrained Individuals versus a Business/Organization Who Purchases and Owns an AED

Under the AED Good Samaritan Act, “expected users” are trained individuals who “completed training in the use of an AED consistent with American Red Cross, American Heart

¹⁶ *Id.* at 588.

¹⁷ *Id.* at 589.

¹⁸ *Id.*

¹⁹ *Id.* at 590.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

Association, or other national standards as identified and approved by the Department of Health in consultation with the Pennsylvania Emergency Health Services Council.”²³ While a facility that acquires an AED must have at least one trained individual in the use of an AED, untrained individuals are not precluded from using an AED when an emergency arises.²⁴ The AED Good Samaritan Act defines an “emergency” as “[a] situation where an individual is believed to be in cardiac arrest or is in need of immediate medical attention to prevent death or serious injury.”²⁵ Therefore, in the case of an emergency, the AED user is afforded immunity from civil damages as long as the acts or omissions of the individual are not intentionally designed to harm the recipient, regardless of whether the individual is trained or not.

With regard to a business or organization that purchases and owns an AED, the purchaser and property owner are included in the individuals that are granted immunity from civil damages.²⁶ Therefore, assuming the business or organization adheres to the maintenance and training requirements, as well as the other requirements mentioned above, the purchaser and property owner of the business are granted the same protections as the AED user.

3. Application to 55+ Communities

A. Pennsylvania State Law Requirements for Maintenance and Use of AEDs and Other Applicable Requirements

Under current Pennsylvania law, only a few facilities and organizations are required to have AEDs on site in case of an emergency.²⁷ The facilities that are required to acquire, maintain,

²³ 42 Pa. C.S.A. § 8331.2(c).

²⁴ 42 Pa. C.S.A. § 8331.2(c).

²⁵ 42 Pa. C.S.A. § 8331.2(f).

²⁶ <https://www.aedbrands.com/resources/aed-state-laws/pennsylvania/>.

²⁷ [https://avive.life/aed-](https://avive.life/aed-laws/pennsylvania/#:~:text=Requires%20that%20health%20clubs%20with,phone%2C%20and%20personal%20security%20device.&text=Outlines%20AED%20requirements%20for%20assisted%20living%20facilities.)

[laws/pennsylvania/#:~:text=Requires%20that%20health%20clubs%20with,phone%2C%20and%20personal%20security%20device.&text=Outlines%20AED%20requirements%20for%20assisted%20living%20facilities.](https://avive.life/aed-laws/pennsylvania/#:~:text=Requires%20that%20health%20clubs%20with,phone%2C%20and%20personal%20security%20device.&text=Outlines%20AED%20requirements%20for%20assisted%20living%20facilities.)

and use AEDs are schools,²⁸ health clubs,²⁹ hotels,³⁰ and assisted living facilities.³¹ Therefore, under the current Pennsylvania law, 55+ communities are not required to acquire and maintain an AED. However, this does not mean that organizations such as 55+ communities are prohibited from acquiring AEDs and installing them in their facilities. If the 55+ community chooses to acquire an AED, it must be aware of and follow the requirements set forth below for properly maintaining an AED in Pennsylvania.

First, when a person or entity purchases an AED, they must first receive physician approval in order to obtain it.³² Further, the State EMS Office recommends the use of a physician medical director to receive such approval.³³ Second, expected AED users must complete training in the use of an AED provided by the American National Red Cross, the American Heart Association, or through an equivalent course of instruction approved by the Department of Health in consultation with a technical committee of the Pennsylvania Emergency Health Services Council.³⁴ Third, the State EMS Office recommends notifying the regional EMS council and local EMS providers and/or local 911 centers of the implementation of an AED.³⁵ Fourth, when an AED is purchased, it must be maintained and tested according to the manufacturer's operational guidelines.³⁶ This process typically includes monthly AED checks and having someone within the

²⁸ HB 974 (setting forth guidelines for AED programs in schools); *see also* 24 P.S. § 14-1423 (setting guidelines for AED programs in schools, including the fund receiving policies for schools with the intent on acquiring and maintaining an AED).

²⁹ 73 P.S. § 2174 (setting guidelines for AED programs in health clubs); *see also* HB 1525 (requiring health clubs with services offered during nonstaffed hours be equipped with an AED, panic button, emergency phone, and personal security device).

³⁰ HB 2778 (requiring hotels to provide and maintain AEDs).

³¹ 55 PA. Code § 2800.96 (outlining AED requirements for assisted living facilities).

³² <https://www.aedbrands.com/resources/aed-state-laws/pennsylvania/>.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*; *see also* SB 351 (extending Good Samaritan law and requiring entities acquiring AEDs to properly maintain them).

facility AED- and CPR-trained.³⁷ Fifth, a user of an AED must utilize available means to immediately contact and activate the emergency medical services system.³⁸ Further, any appropriate data or information that is vital to the help of the patient must be made available to emergency medical services personnel or other health care providers as requested.³⁹

B. Litigation Against 55+ Communities, Growing Trend Toward Having AEDs at Facilities, and Risk of Liability

We were unable to find any evidence of AED-related litigation against 55+ communities or other senior living facilities in Pennsylvania. While senior living facilities are not legally required to install AEDs in their facilities, there is a growing trend of community associations installing AEDs on association property to better protect their residents.⁴⁰ In addition, there is also a growing trend to make AEDs more accessible and available in society overall. In fact, since the injury to Buffalo Bills player Damar Hamlin that occurred on January 2, 2023, there have been more than forty-five bills submitted to Congress that could potentially bring new mandates for facilities to require these devices.⁴¹

As mentioned above, under Pennsylvania's AED Good Samaritan Act, the purchaser and property owner that acquire an AED, among other individuals, are afforded immunity from civil damages.⁴² However, such immunity is not without limitations. Immunity will not apply if harm caused to a person was due to the failure of the community to properly maintain and test the AED.⁴³ The community must also provide appropriate training for expected users. If the Association

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ <https://www.bergersingerman.com/news-insights/should-aeds-be-installed-in-association-facilities>.

⁴¹ E-mail correspondence with American AED account representative, Gray Barnes.

⁴² <https://www.aedbrands.com/resources/aed-state-laws/pennsylvania/>.

⁴³ 42 Pa. C.S.A. § 8331.2(b).

decides to install an AED, the Association's plan to hire a firm to consult and provide AED services should ensure the Association complies with all legal requirements.

It is our opinion that a 55+ community that provides recreational activities for its members should consider installing an AED device as this is in line with the growing trend for states to require such devices. If the Association does decide to install an AED on common property, it is also suggested the Board adopt rules and regulations addressing: (1) the location of the AED device (with respect to where an AED should be installed, the AED Good Samaritan Act does not provide guidance, but it is recommended that the AED be installed in a visible area in a location that allows a response time of no more than a few minutes; and an AED cabinet must comply and be installed in compliance with the Americans with Disabilities Act), (2) a notification procedure should the AED be removed from its designated location to a secondary location on a temporary basis, (3) maintenance and testing of the AED, (4) authorized users, (5) training for the authorized users, (6) written instructions posted next to the device that provide a "how to" in case a trained user is not available, and (7) regular notice to the unit owners as to the AED device's availability, location, and identification of trained staff and owners.⁴⁴

⁴⁴ <https://www.bergersingerman.com/news-insights/should-aeds-be-installed-in-association-facilities>.