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HENRY McMASTER
ATTORNEY GENERAL

January 19, 2006

The Honorable W. Greg Ryberg
Senator, District No. 24
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Ryberg:

In a letter to this office you questioned the liability for trainers in the use of an automated external defibrillator ("AED").

S.C. Code Ann. §§ 44-76-10 et seq. sets forth the "South Carolina Automated External Defibrillator Act". An AED is defined by Section 44-76-20(1) as

...an automated external defibrillator which is a medical device heart monitor and defibrillator that:

- (a) has received approval of its pre-market notification filed pursuant to the United States Code, Title 21, Section 360(k), from the United States Food and Drug Administration;
- (b) is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and is capable of determining, without intervention by an operator, whether defibrillation should be performed; and
- (c) upon determining that defibrillation should be performed, automatically charges and requests delivery of an electrical impulse to an individual's heart.

Section 44-76-20 provides for the training, maintenance, testing, and use and reporting requirements for AEDs. Such statute states that

- (A) A person or entity that acquires an AED shall:
 - (1) require its designated AED users to have current training in CPR and AED use by the American Heart Association, American Red Cross, or National Safety Council;
 - (2) maintain and test the AED according to the manufacturer's operational guidelines and keep written records of maintenance and testing;

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- (3) employ or obtain a health care professional to serve as its AED liaison;
- (4) have in place an AED program approved by its AED liaison which includes CPR and AED training, AED protocol or guidelines, AED deployment strategies, and an AED equipment maintenance plan;
- (5) include in its AED protocol or guidelines that a person who renders emergency care or treatment to a person in cardiac arrest caused by ventricular fibrillation/tachycardia by using an AED must activate the emergency medical services system or 911 as soon as possible;
- (6) report any clinical use of the AED to the AED liaison.

As to immunity from civil liability, Section 44-76-40 states that

- (1) Any person or entity acting in good faith and gratuitously shall be immune from civil liability for the application of an AED unless the person was grossly negligent in the application.
- (2) Any designated AED users meeting the requirements of Section 44-76-30(1) and acting according to the required training shall be immune from civil liability for the application of an AED unless the application was grossly negligent.
- (3) A person or entity acquiring an AED and meeting the requirements of Section 44-76-30 or an AED liaison meeting the requirements of Section 44-76-30 shall be immune from civil liability for the application of an AED by any person or entity described in items (1) or (2) of this section.
- (4) A prescribing physician shall be immune from civil liability for authorizing the purchase of an AED, unless the authorization was grossly negligent.

You indicated that the referenced legislation purposefully omitted a list of those individuals immune from liability so as not to force liability upon any individual by their absence from the list.

When interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

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As set forth by Section 44-76-40, specific individuals are granted statutory immunity from civil liability. Reference is made to immunity for an individual or entity "for the application of an AED unless the person was grossly negligent in the application." I construe such provision as providing immunity only to the individual who applies the AED. Immunity for such individuals is also provided by subsection (2) where immunity is granted to "(a)ny designated AED users...for the application of an AED unless the application was grossly negligent." While it is unclear as to why there is redundant immunity, it does not appear that such provisions may be interpreted so as to provide immunity for trainers. Pursuant to subsection (3), immunity is granted to "(a) person or entity acquiring an AED...or an AED liaison...for the application of an AED by any person or entity described in items (1) or (2) of this section.." As to what is meant by the term "AED liaison", reference may be made to Section 44-76-30(3), (4) and (6) which refers to requirements of a "health care professional" serving as a liaison, to having an AED program "approved by its AED liaison which includes CPR and AED training" and to the requirement that clinical use of an AED be reported to the AED liaison. By subsection (4), a prescribing physician is immune for authorizing the purchase of an AED unless grossly negligent in authorizing such. Based upon my review, I do not interpret any of the provisions as establishing immunity for an AED trainer unless that trainer is included in one of the other categories of individuals or entities specifically granted immunity.

South Carolina's "Good Samaritan" statute, S.C. Code Ann. § 15-1-310 states that

Any person, who in good faith gratuitously renders emergency care at the scene of an accident or emergency to the victim thereof, shall not be liable for any civil damages for any personal injury as a result of an act or omission by such person in rendering the emergency care or as a result of any act or failure to act to provide or arrange for further medical treatment or care for the injured person, except acts or omissions amounting to gross negligence or wilful or wanton misconduct.

Inasmuch as such statute provides immunity for any person who "renders emergency care", I do not interpret such statute as providing immunity for a trainer of an AED.

In researching your question, I found that at least one other state, Arkansas, specifically included "trainers" among those individuals granted immunity in association with the use of a defibrillator. See: Arkansas Code Section 17-95-605(b)(2) which grants immunity to "(t)he person or entity who provides the CPR and automated external defibrillator training."

As set forth, there is immunity from civil liability for certain specified individuals or entities. In my opinion, immunity is limited to the situations specified in such provisions. There is no specific or implied immunity for trainers. I can only suggest that consideration be given to specifically providing for such immunity by legislative amendment if such is desired.

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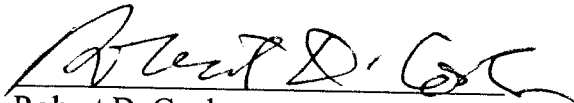
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General