

## **No EMTALA Violation Without Transfer**

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The surviving family of an end state renal disease patient who died in a Puerto Rico hospital after a transfer order was issued and before any transfer took place failed to establish a valid claim under the Emergency Medical Treatment and Active Labor Act (EMTALA).

On September 4, 2009, the U.S. Court of Appeals for the First Circuit issued its decision affirming the dismissal by a U.S. District Judge of an EMTALA claim and all state law claims filed by the surviving family of Adalberto Martinez Lopez (Martinez) against Ryder Memorial Hospital, Inc. (Ryder), located in Humacao, Puerto Rico. The Court of Appeals emphasized that the duty to stabilize a patient under EMTALA attaches when, and not before, a transfer occurs.

On January 16, 2001, at 6:45 p.m., Martinez, who was 57, was admitted to Ryder's emergency room bleeding from a femoral dialysis catheter site. An emergency room physician examined him, noted the bleeding and ordered a variety of tests. Martinez was admitted as a patient and examined by a nephrologist at Ryder before arriving at his room on Ryder's Medicine Floor at 9:30 p.m.

When Martinez arrived at his room, he was described as alert, pale, feverish and complaining of chest pains. His catheter site continued to bleed through the night and his bandages were changed several times. The following morning, a Ryder surgeon evaluated Martinez and determined surgery was required but that he could not perform it. At about 7:00 a.m., an order was issued for Martinez to be transferred to Auxilio Mutuo Hospital for surgery as soon as possible. However, Martinez died in his room at Ryder where he was admitted prior to the transfer occurring.

In general, EMTALA requires hospitals that participate in Medicare and Medicaid to provide appropriate medical screening to determine whether an emergency condition exists whenever an individual comes to a dedicated emergency department or seeks emergency care elsewhere at a hospital with an emergency department. If the individual is determined to have an emergency medical condition, EMTALA prohibits the

hospital from discharging or transferring the individual unless they have stabilized the emergency medical condition.

EMTALA defines “stabilize” as providing “such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility.” 42 U.S.C. § 1395dd(e)(3)(A).

In dismissing this action, the Court of Appeals noted that EMTALA was created with a limited purpose as an “anti-dumping” statute and not as a federal malpractice statute. The Court of Appeals rejected the argument that the stabilization duty under EMTALA should attach when a transfer order is issued, emphasizing that that a hospital cannot violate EMTALA’s duty to stabilize unless it transfers a patient.

No transfer took place in this case. However, the Centers for Medicare & Medicaid Services have promulgated specific rules which must be followed if a hospital determines that a transfer is necessary and the emergency condition has not been stabilized. It is important that hospitals ensure their staff know and comply with those rules.

*Alvarez-Torres v. Ryder Memorial Hospital, Inc.*, No. 08-2351, 2009 U.S. App. LEXIS 19998 (1st Cir. Sept. 4, 2009)

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