

Release Without Stabilizing May Violate Federal Law

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Medicare participating hospitals with an emergency department may violate the federal Emergency Medical Treatment and Active Labor Act (EMTALA) if they release a patient with an emergency medical condition before stabilizing the patient. Further, the hospital may face liability from any individual (not just the patient) who suffers personal harm as a result.

In April, the U.S. Court of Appeals for the Sixth Circuit held that EMTALA imposes an obligation to provide care until a patient's emergency medical condition is stabilized and that failure to do so results in potential liability to any individual who suffers personal harm as a direct result. On July 17, 2009, the Court of Appeals rejected a petition from Providence Hospital and Medical Centers, Inc., asking that the April ruling be set aside. Prior to this appeal, Providence had succeeded in getting the case dismissed by a Michigan federal district court.

Providence's potential liability arose following the December 13, 2002 admission of Christopher Howard, by his wife Marie Moses-Iron. Moses-Iron admitted her husband to Providence's emergency room in Southfield, Michigan reporting that he suffered severe headaches, vomiting, slurred speech, hallucinations and delusions. She also expressed fear for her safety stating Howard exhibited threatening behavior and told her he had bought two caskets.

Prior to Howard's release on December 19, he was examined by three physicians - a neurologist, a psychiatrist, and an internist. Two days prior to Howard's release, the examining psychiatrist determined Howard was not medically stable and should be transferred to the hospital's psychiatric unit. The following day an entry in Howard's clinical progress report, signed by the internist, indicated Howard no longer had any physical symptoms, wanted to go home, and denied suicide ideation. Another report, signed by the internist dated December 19 (the date of Howard's discharge) stated Howard "cannot stay as he is medically stable." Ten days after his discharge, Howard murdered his wife.

This decision allows the estate of Moses-Iron to proceed with its case before a jury as to whether Providence violated EMTALA by Howard's discharge. The Court of Appeals also affirmed that while an individual can bring an EMTALA action against a hospital, the Act does not provide for such action against a physician.

The Court of Appeals specifically rejected arguments that the EMTALA requirements are satisfied when the patient is admitted and that EMTALA did not apply given a medical report of December 19 that Howard was "medically stable." The Court held "EMTALA requires hospitals to do more for patients with emergency medical conditions than just admit them" and emphasized that "*emergency care must be given until the patient's emergency medical condition is stabilized.*" Since an issue remained for the jury to determine as to whether Howard had an emergency medical condition when he was discharged, the case has been returned to the Michigan district court for further proceedings.

In his dissenting opinion, Judge Richard Allen Griffin concluded the Sixth Circuit decision deviates from previous decisions and conflicts with other federal district and circuit court decisions which did not extend EMTALA liability as broadly. He also expressed reservation about the decision making EMTALA "a general federal medical malpractice statute, rather than an act limited to emergency room screening and stabilization."

All hospitals covered by EMTALA should be aware of this ruling, particularly those within the Sixth Circuit (Kentucky, Michigan, Ohio, and Tennessee). This decision requires hospitals covered by EMTALA to provide, for any individual who comes to their emergency department, a medical screening examination to determine if an emergency medical condition exists. If so, the hospital must either provide further examination and treatment as required to stabilize the medical condition, or transfer the individual to another facility.

"Emergency medical condition" is defined under EMTALA to include acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could be reasonably expected to result in placing the health of the individual in serious jeopardy. EMTALA defines "stabilize" as "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.”

Given this decision, hospitals should implement measures for review of patient records prior to discharge to ensure every patient’s stabilization is well documented. Such documentation should include a detailed report of the patient’s improvement and all medical facts and observations confirming stabilization. It is also preferable to have this documentation supporting stabilization be made or confirmed by the diagnosing physician.

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