

Transfer of High Risk Pregnancy Did Not Trigger EMTALA

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A Philadelphia area perinatal testing center was determined not to have violated the Emergency Medical Treatment and Active Labor Act (EMTALA) when, during a routine scheduled monitoring visit, it referred a diabetic outpatient with a high risk pregnancy to another hospital for prolonged monitoring. Shortly after arriving at the hospital, the patient's condition worsened leading to a caesarean delivery of a baby with traumatic brain injuries.

On September 2, 2009, the U.S. Court of Appeals for the Third Circuit issued its decision affirming the dismissal of an EMTALA action, finding the Act did not apply to an outpatient who during a scheduled visit did not request emergency care and when the hospital's physicians did not have actual knowledge of the existence of any emergency medical condition.

Christopher and Honey Torretti, the parents of the baby, allege that when Mrs. Torretti came to Paoli Hospital Testing Center for her scheduled monitoring appointment on May 23, 2005, she had a potential emergency medical condition due to her diabetes and high risk pregnancy. They contend that Paoli violated EMTALA when it failed to stabilize Mrs. Torretti and inappropriately transferred her to another hospital.

Mrs. Torretti was in her 34th week of her second pregnancy when she came for her May 23rd scheduled visit at Paoli's test center, located in a medical building adjacent to Paoli Hospital. Her first pregnancy resulted in a healthy delivery. During her May 23rd scheduled visit for her second pregnancy, she began experiencing contractions after a non-stress test was administered. Although the test did not show expected results (which doctors said could be explained by a normal variant), there was not sufficient evidence that Paoli's staff or physicians were aware that a medical emergency existed. Mrs. Torretti testified that nothing in the statements or demeanor of Paoli hospital staff indicated her condition was emergent. She also stated she did not feel her condition posed an emergency during her visit.

Dr. Andrew Gerson, a perinatologist at Paoli who reviewed the non-stress test results, terminated testing and told Mrs. Torretti to go for prolonged monitoring at

Lankenau Hospital, where Mrs. Torretti's primary obstetrician was based. After the Torrettis drove to Lankenau and Mrs. Torretti was assigned a room and placed on a monitor, her condition worsened leading the doctors at Lankenau to immediately perform the caesarean section.

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. In addition to emergency rooms, a dedicated emergency department also includes labor and delivery units and psychiatric units where emergency medical services are provided or which are held out to the public as places providing medical services on an urgent non-appointment basis.

If an emergency medical condition is found to exist after the screening is conducted, the hospital must either provide necessary stabilizing treatment or an appropriate transfer. Once a hospital has incurred an EMTALA obligation, it may not transfer the patient unless certain conditions are met. However, under the regulations issued by the Centers for Medicare and Medicaid Services (CMS), if a hospital who has conducted the appropriate screening as required finds the individual to have an emergency medical condition and admits that individual as an inpatient in good faith in order to stabilize them, it has satisfied its obligation under EMTALA. Further, CMS has stated that EMTALA does not apply to patients who prior to presenting themselves for examination or treatment for an emergency medical condition, have begun to receive outpatient services as part of an encounter.

EMTALA was enacted by Congress in 1986 to prevent patient dumping and address its concern that the indigent and uninsured receive emergency care. However, the Act applies regardless of whether the individual is a Medicare or Medicaid beneficiary or their status as an indigent or ability to pay. Under EMTALA, any individual who suffers personal harm as a result of a hospital's violation of EMTALA may bring a civil action against the hospital for damages. Courts have consistently held that the Act does not create a federal cause of action for malpractice and that there

must be evidence that the hospital staff actually knew an emergency medical condition exists.

In this case, the Court of Appeals found that EMTALA was not triggered because they found that on May 23rd when Mrs. Torretti came to Paoli she did not present herself as an emergency patient, but instead came for a scheduled bi-weekly appointment. Further, the fact that she had a high risk pregnancy was insufficient to trigger EMTALA. The Court noted that it was not until after she began monitoring at Lankenau that her condition changed. The record did not establish that Dr. Gerson or any of the staff at Paoli actually knew Mrs. Torretti's condition was an emergency before she was sent to Lankenau for further monitoring.

It is important that hospital staff and physicians know their obligations under EMTALA and that protocols are established to address those obligations with respect to individuals who present emergency medical conditions. Although CMS has taken the position that EMTALA does not apply to inpatients admitted for elective (non-emergency) monitoring and treatment, participating providers remain obligated to provide inpatients with care under existing conditions of participation.

Torretti v. Main Line Hospitals, Inc., No. 08-1525, 2009 U.S. App. LEXIS 19766 (3d Cir. Sept. 2, 2009)

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