

LEGAL EAGLE EYE NEWSLETTER

February 2003

For the Nursing Profession

Volume 11 Number 2

EMTALA: Nurse And Physician Properly Screened, Stabilized Patient, Court Rules.

The US District Court for the District of Wyoming acknowledged there may be grounds for a medical malpractice lawsuit against the hospital for a hospital employee physician sending a pediatric patient home from the emergency department with a significantly elevated respiratory rate.

No EMTALA Violation

However, according to the court, there was no violation of the US Emergency Medical Treatment and Active Labor Act (EMTALA) by the emergency room nurse, or the physician, for that matter, for how the nurse and physician screened the patient when her parents presented her in the emergency department.

The EMTALA segment of the parents' wrongful death lawsuit against the hospital was dismissed.

Nurse Did Not Violate EMTALA

Nursing Assessment Was Adequate

After three days of cold-like or flu-like symptoms the three year-old girl's father took her to the hospital. The girl was first seen at the hospital by a registered nurse on duty in the emergency room.

The nurse conducted an initial assessment and delegated the task of taking and recording full vital signs to a certified nursing assistant.



The E.R. nurse and the physician she summoned followed the hospital's policies for screening an E.R. patient to determine if an emergency medical condition existed, and sent the patient home in apparently stable condition.

There was no violation of the US Emergency Medical Treatment and Active Labor Act.

UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING
December 18, 2002

In her initial assessment the nurse timed the child's respirations at fifty-six per minute, well above twenty per minute that is considered average for a healthy child her age. The heart rate was 146. The nurse also noted she had a fever, coughing, nasal flaring and a decreased O₂ saturation level.

The nurse phoned the on-call physician and convinced him to come to the hospital to examine the patient.

While he was en route the nurse carried out his phone order for an albuterol nebulizer treatment. The nurse found this increased the O₂ saturation level from 87% to 94%. In hindsight, the court saw this as reason to question how thoroughly the physician actually ruled out plausible differential diagnoses of the child's underlying situation in the emergency room before sending her home with an antibiotic, Tylenol and more albuterol.

Physician Did Not Violate EMTALA

The next morning when he awoke the father found that his daughter had died in her sleep.

However, the physician did an extensive physical examination of the child before discharging her home with her father with instructions to bring her back if her condition deteriorated.

(Continued on page 7)

Inside this month's issue ...

February 2003

New Subscriptions Page 3

Emergency Medical Treatment And Active Labor Act/Assessment
Verbal Abuse - Nursing Home Residents' Bill Of Rights
Abuse/Unintentional - Confidentiality/Offhand Remarks
Psychiatric Hold/Civil Lawsuit/Legal Immunity
Family And Medical Leave Act/Nurse On Leave/Position Eliminated
Needlestick/HIV/Worker's Comp - Arbitration/Employment Disputes
Sexual Assault/Nursing Home - Smallpox Vaccine - School Nurses
Sexual Relations With Patient/Nursing License Revoked

EMTALA: Nurse And Physician Properly Screened, Stabilized Patient, Court Rules.

(Continued from page 1)

EMTALA Cases Are Different From Medical Malpractice

The Emergency Medical Treatment and Active Labor Act allows civil suits in Federal or state court against hospitals and physicians.

Hospital emergency-room nurses are often to some extent involved in the scenarios that lead to patients filing EMTALA cases, but nurses themselves cannot be personally sued under EMTALA.

Nurses, of course, can be personally sued for common-law malpractice along with their employers and physician co-workers and EMTALA does nothing to change that.

Congress imposed on hospitals and physicians the specter of lawsuits for violations of EMTALA's medical screening and stabilization requirements to do away with the problem of hospitals "dumping" indigent and/or uninsured patients.

The Medical Screening Requirement

When an individual comes to the emergency department of a hospital that has an emergency department, and the individual or someone on the individual's behalf requests examination or treatment for a medical condition, the hospital must provide an appropriate medical screening examination within the capability of the hospital's emergency department to determine whether or not an emergency medical condition exists.

Court cases have turned on the meaning of almost every word in the EMTALA. Persons have phoned but not actually come to the E.R., have come to the hospital's information desk but not the E.R., have come to the E.R. but sat down and not said anything, have had conditions that could not be adequately evaluated by the non-specialist medical staff and diagnostic equipment on hand, where no legal liability was imposed.

In deciding EMTALA cases the courts give a high level of deference to hospitals to assess their own capabilities and to establish their own screening procedures.

The Emergency Medical Treatment and Active Labor Act (EMTALA) was originally intended to cure the evil of hospitals "dumping" patients on other hospitals who had no insurance or could not pay for services.

However, the Federal courts have ruled that the rights guaranteed by the EMTALA apply to all individuals whether or not they are insured. The Tenth Circuit Court of Appeals ruled expressly in 1996 that the EMTALA applies to those who have health insurance.

The patient's ability or inability to pay or the hospital's true or false assumptions or perception of the patient's ability to pay are now irrelevant issues.

A hospital's obligation under EMTALA is to treat every emergency room patient perceived to have the same condition the same as every other emergency room patient perceived to have the same condition.

Malpractice and EMTALA violations are different. Faulty screening is malpractice; differential screening violates the EMTALA.

UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING
December 18, 2002

The court in this case acknowledged that the nurse's charting of the assessment data in the emergency room was less than complete. For example, the nurse noted there was a fever, but the temperature was not noted, and follow-up vital signs were taken but not charted.

These departures from the hospital's emergency screening protocols gave the child's parents room to argue for an EMTALA violation by the nurse. However, the court ruled these omissions by the nurse were not significant enough to impose liability on the hospital.

The courts do pay attention to the language of the EMTALA stating that the purpose of the required screening examination is to determine whether an emergency medical condition exists, which is not necessarily the same as reaching a medically correct diagnosis.

In this case the court seems to have thought the child should have been admitted for further testing, but that did not necessarily mean the child had an emergency medical condition at the moment she was discharged. That was a medical malpractice issue, not an EMTALA issue, the court ruled.

The Stabilization Requirement

The court agreed the child had an emergency medical condition when she was brought to the emergency department.

The court also agreed the child was still quite ill when she was discharged home with her father. However, that did not necessarily mean the hospital or the physician violated the EMTALA.

Although there may well have been malpractice by the physician in sending the child home, the court believed the emergency condition with which the child came in was stabilized at the moment she was sent home. The physician did not try to hide the child's condition and charted possible diagnoses to be ruled out from the child's response to the antibiotics. ***Kilroy v. Star Valley Medical Center***, __ F. Supp. 2d __, 2002 WL 31845956 (D. Wyo., December 18, 2002).