

## EMTALA: Court Rules Hospital Not Liable For Later Stroke.

The seventy year-old patient died from a second stroke eight months after receiving emergency treatment in the hospital for his first stroke.

The patient's first stroke happened while he was at the hospital waiting for his wife to finish an outpatient procedure.

He went to the emergency room when he became dizzy and unsteady on his feet, something he had experienced off and on for a few days before.

In the emergency room he was slurring his speech and showed a left facial droop. The triage nurses and ER physicians did stroke assessments, an EKG and a CT. Their assessments showed his pupils were equal and reactive to light, his gait was normal and he had equal grip strength. The CT showed no acute intracranial hemorrhage, mass or shift of inline structures. Based on the available data the patient was diagnosed with Bell's palsy.

Emergency room personnel continued to monitor him closely. He started slurring his speech worse and his left-side weakness increased. It was felt tPA was not appropriate. The plan was to transfer him to another hospital better able to care for him. In the meantime another CT showed occlusion of the right internal carotid and right middle cerebral arteries.

Paperwork was completed for transfer to the other hospital, where he was examined and sent home.

### No EMTALA Violation

The US Court of Appeals for the Sixth Circuit (Tennessee) did not find any deficiency in the patient's emergency screening, stabilization or transfer.

However, the Court's legal grounds for dismissing the family's Emergency Medical Treatment and Active Labor Act (EMTALA) case was insufficiency of the evidence as to any link between the patient's emergency care and his later death.

The family's medical expert testified that aspirin should have been given and a neurological consult ordered. However, absent from the expert's testimony was any indication that that would have made any difference in the progression of his condition toward his death eight months later. **Scott v. Memorial**, \_\_\_ Fed. App., \_\_\_, 2016 WL 4434530 (6th Cir., August 22, 2016).

***The family of the deceased patient's has no evidence that any violation of the US Emergency Medical Treatment and Active Labor Act (EMTALA) was responsible for the progression of the patient's condition after the onset of his stroke while he was a patient in the hospital's emergency department.***

***The EMTALA requires an appropriate medical screening examination within the capability of the hospital's emergency department for any individual who requests examination or treatment in the hospital's emergency department.***

***If the hospital determines that the individual indeed is suffering from an emergency medical condition, the hospital must either provide treatment necessary to stabilize the emergency medical condition or arrange an appropriate transfer to another facility.***

***The family's lawsuit alleged several violations of the EMTALA, including technicalities in the transfer paperwork and failure to forward the medical records to the second hospital.***

***However, there is no proof of any link to the patient's second stroke.***

UNITED STATES COURT OF APPEALS  
SIXTH CIRCUIT  
August 22, 2016

## Peer Review Privilege: Court Distinguishes Process vs. Committee.

The family of a nursing home resident sued the facility alleging that negligence led to the development of a pressure ulcer which became infected and caused the resident's death.

The issue at this early stage in the litigation is whether the nursing home must turn over to the family's lawyers four separate quality assurance reports believed to contain information supporting the family's case.

***The testimony of the nursing home's representative reveals that the nursing home had a process for quality assurance, but no committee.***

***Without having an actual committee the nursing home cannot invoke the peer review privilege.***

COURT OF APPEALS OF OHIO  
September 13, 2016

The Court of Appeals of Ohio ruled against the nursing home.

The peer review privilege exempts documents from discovery in civil cases only if the documents were prepared for use by a utilization review committee, quality assessment committee, performance improvement committee, credentialing committee or other committee that conducts review as to quality of care or professional competence.

The nursing home used the documents in its quality assurance process. However, according to the Court, documents used for quality review are not confidential peer review documents unless they are used by an actual committee with designated members constituted by the facility's bylaws or other policies and procedures which actually meets as a committee to conduct quality review. **Fravel v. Columbus**, 2016 WL 4769062 (Ohio App., September 13, 2016).