

# LEGAL EAGLE EYE NEWSLETTER

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## EMTALA Violation: Hospital's Procedures Not Followed, Patient Discouraged From Staying.

Two hours after a minor motor vehicle accident a woman thirty-eight weeks pregnant was advised by phone by her ob/gyn's partner to go to the nearest E.R. because her contractions were increasing in frequency.

Her husband drove her to the nearest hospital. E.R. personnel told her, since her ob/gyn did not practice there, that hospital personnel had to phone the on-call ob/gyn to see if he would come in and see her. Rather than wait, she and her husband drove forty miles to another hospital where she was seen and released. A week later she had a normal delivery of a healthy baby.

### EMTALA Violation

The patient sued the first hospital for violation of the US Emergency Medical Treatment and Active Labor Act (EMTALA) for compensation for the emotional distress she experienced during the forty-mile drive while her labor apparently was starting.

The US District Court for the Middle District of Alabama noted the EMTALA does let the patient sue for emotional distress even if there is no bodily harm or medical complications.

### Standard Medical Screening Exam

The fundamental requirement of the EMTALA is that every person who comes to the E.R. must get the same medical screening examination and



***A hospital meets its duty under the EMTALA to screen emergency patients by defining in advance the screening process for specific complaints and then applying the screening process uniformly.***

***Necessary stabilizing treatment for emergent conditions found during screening must also be provided uniformly.***

UNITED STATES DISTRICT COURT  
ALABAMA  
August 14, 2006

necessary stabilizing treatment as everyone else who presents at the hospital with the same emergent history, signs and symptoms.

This hospital's written policy was that any patient twenty or more weeks pregnant who had been in a motor vehicle accident was to be seen immediately by the E.R. physician and the E.R. physician was to phone the on-call ob/gyn for orders how to treat the patient on the spot.

The hospital's standing policy was clearly ignored, a basic violation of the EMTALA, the court ruled.

### Patient Was Unduly Discouraged From Remaining for Treatment

Reasonable delay is permitted for E.R. patient registration. It was not an issue in this case, but screening and treatment cannot be held up while insurance coverage is verified during the registration process.

The EMTALA prohibits any delay which would tend to discourage the patient from staying for treatment. Some courts have gone so far as to require E.R. personnel actually to encourage patients to stay. This court said the business about having to contact the on-call the ob/gyn before they could say the patient could be seen was a violation of the EMTALA's original purpose to prevent hospital E.R.'s from "dumping" patients on other hospitals. **Henderson v. Medical Center Enterprise, 2006 WL 2355467 (M.D. Ala., August 14, 2006).**

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