LEGAL EAGLE EYE NEWSLETTER

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Emergency Department: Nurses Did Not Take Vital Signs, Court Sees EMTALA Violation.

A pregnant woman came to the hospital's emergency department at thirty-seven weeks with vaginal bleeding and pelvic pain.

Months earlier her gynecologist had admitted her to the hospital but the patient soon had to be transferred to a facility better able to care for her complex blood coagulation disorder.

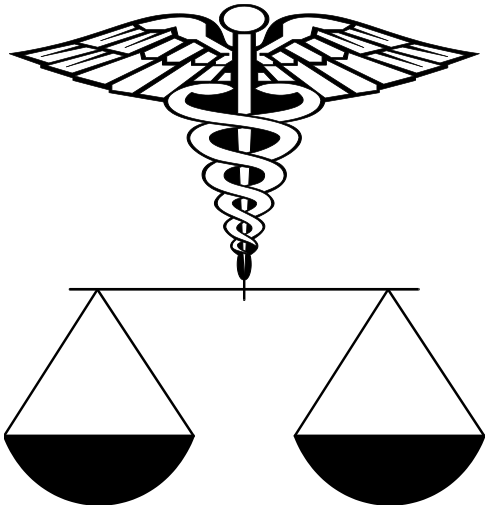
This time she spent only ninety minutes in the first hospital's emergency department before being transferred again to the other hospital. The first hospital has an ob/gyn department and delivery rooms, but no blood bank.

For her brief stay the patient sued the first hospital alleging violations of the US Emergency Medical Treatment and Active Labor Act (EMTALA).

The patient claimed the hospital's emergency department nurses did not follow the hospital's standard emergency medical screening protocols, in that the nurses did not take her vital signs every time they performed an intervention for her.

The patient's lawsuit also claimed she was inappropriately transferred to the second facility.

The US District Court for the District of Puerto Rico ruled the hospital's nurses did violate the EMTALA by failing to take vital signs, but her transfer was appropriate and legal.



The US Emergency Medical Treatment and Active Labor Act (EMTALA) requires the hospital's standard emergency screening procedures be followed with every patient in the emergency department.

The law does not set the standard of care. It requires that every emergency patient get the same care as others.

UNITED STATES DISTRICT COURT
PUERTO RICO
September 13, 2016

The Court pointed to nursing progress notes for 2:15, 2:30 and 2:57 a.m. which documented interactions between the nurses and the patient, but no vital signs were taken as required by the hospital's emergency screening protocols.

The physician saw the patient at 2:30 a.m. and did not take vital signs.

It also came to light in the court case that only fifty minutes of fetal monitor tracings could be located. That tended to show that the patient was not on continuous fetal monitoring as required by the hospital's emergency screening protocol for every pregnant emergency patient past twenty weeks.

The EMTALA does not require vital signs to be taken or define any particular standard of care for screening or stabilizing cases seen in a hospital's emergency department.

The EMTALA does require that every emergency patient be given the same emergency medical screening, as the hospital has defined it, for the same presenting signs and symptoms.

Originally the EMTALA was enacted to outlaw disparate emergency treatment of the indigent and uninsured. Now the EMALA applies to all emergency department patients without regard to their financial status. **Morales-Ramos v. Hospital, 2016 WL 4766235 (D. Puerto Rico, September 13, 2016).**

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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).**

Nurse Anesthetist: Court Sees No Negligence.

The patient was discharged from the hospital at 12:50 p.m. after a therapeutic right shoulder manipulation and steroid injection by an orthopedic surgeon under general anesthesia provided by a certified registered nurse anesthetist.

At 4:30 p.m. the patient's wife found him unresponsive at home and called paramedics. At 4:59 p.m. he was pronounced dead after being rushed to the hospital.

The cause of death was ruled severe coronary artery disease.

There is no evidence of any breach of the standard of care by the patient's nurse anesthetist.

The facts do not support the allegation that the nurse anesthetist failed to monitor the patient for heart failure or missed signs of ventricular tachycardia.

COURT OF APPEALS OF TEXAS
August 24, 2016

The Court of Appeals of Texas dismissed the patient's certified registered nurse anesthetist from the case.

The Court found no evidence in the medical chart to support any allegation that the nurse anesthetist's care departed from the legal standard of care.

At 9:05 a.m. when anesthesia started the pulse was 84 and BP 128/91. When the patient went to the recovery room only thirty-seven minutes later the pulse was 82, respirations 18 and BP 163/91.

There were no indications for heart failure such as dizziness beyond that expected right after anesthesia, tachycardia or significant change in blood pressure.

According to the Court there was no reason for the nurse anesthetist, before he handed off his patient to the recovery room nurses and attending physician, to have reported findings suggesting the need for defibrillation, intubation or mechanical ventilation. **Protzman v. Gurrola, __ S.W.3d __, 2016 WL 4446618 (Tex. App., August 24, 2016).**

Miscarriage In ER: Court Allows Damages For Mental Anguish.

As a general rule there is no compensation awarded for mental anguish and emotional distress in civil cases unless the mental anguish and emotional distress is related to a physical injury suffered by the victim.

In this case the patient signed a formal agreement that she suffered no bodily injury at the hands of her caregivers in the hospital and has no residual bodily complications.

However, there is evidence that the patient's ordeal in the hospital has left her with certain physical manifestations of mental anguish and emotional distress, including insomnia.

Her insomnia is enough to qualify this patient for an award of monetary damages from the hospital for the way she was treated in the hospital, over and above the mental distress she would naturally have suffered over her miscarriage itself.

There is a cap on non-economic damages under state law in Oklahoma, that is, damages for pain and suffering, mental anguish and emotional distress, but this award is below that threshold.

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT
August 30, 2016

Seventeen weeks pregnant, the patient went to the hospital's emergency department when she began having sharp abdominal pain.

Urinary tract infection was the diagnosis and she was sent home with antibiotics.

At home her pain increased, she started feeling nauseous and she began bleeding. Her mother took her back to the hospital's emergency department.

After the patient had waited more than an hour a physician did a pelvic exam and ultrasound and told the patient her fetus was normal.

Then her water broke. She told a nurse but the nurse said she had just urinated. The patient asked for a test strip for amniotic fluid. The nurse said she had no obstetric experience and the patient would have to wait for the doctor. When the patient stood up she saw several blood clots fall to the floor. The nurse who was standing in the doorway did nothing.

As she waited for the physician the patient felt greater pain and pressure. Her mother saw the fetus's head appear. While the mother tried to get a nurse the patient gave birth alone in the exam room.

She remained on the stretcher with the fetus between her legs. When a physician finally came in he told her he was not going to cut the cord right away and ordered medication to help her pass the placenta. More than one and one-half hours later the cord was cut and the fetus was removed.

No bereavement box was offered until the mother requested one. No handprints or footprints were offered. Hospital staff made no effort to help the patient clean up before going home.

Court Approves Award of Damages

The US Court of Appeals for the Tenth Circuit (Oklahoma) approved an award of $55,000.00 from the hospital for the patient for her mental anguish from the way hospital personnel treated her.

The patient was awarded damages even though she expressly agreed during the trial that she herself suffered no physical injury in the hospital. Nor was there any allegation raised in the lawsuit that the hospital could have prevented the miscarriage. **Lois v. Mercy, __ Fed. Appx. __, 2016 WL 4539615 (10th Cir., August 30, 2016).**