

E.R.: Suspected Domestic Violence Reported, Lawsuit Dismissed.

The husband dropped his wife off at the E.R. for treatment of a scalp laceration and then left the hospital.

Hospital personnel suspected the wife was a victim of domestic violence. They called the local police who came to the hospital and arrested the husband when he returned to pick her up. Charges of domestic battery were filed against the husband but were later dropped by the prosecutor.

The husband sued the hospital for defamation and invasion of privacy.

Hospital personnel have no choice. Physicians and nurses are required by law to report all suspected domestic violence and child abuse to law enforcement authorities.

The flip side is that such reports are privileged and cannot be the basis of a civil lawsuit against the reporting healthcare provider.

COURT OF APPEALS OF OHIO
June 3, 2013

The Court of Appeals of Ohio dismissed the case. The Court did not accept the testimony of a hospital nurse who testified for the husband that the wife did not appear to be fearful of him and that he did not fit the profile of an abuser.

The Court ruled instead that the nature of all the injuries and their inconsistency with the couple's story gave hospital staff reason to suspect domestic violence.

The scalp laceration was on the top of her head, which tended to negate the couple's story that she had fallen, and she had old bruises on her shoulders.

The husband's apathetic attitude shown by simply dropping her off and leaving also was a reason to suspect domestic abuse. **Morgan v. Community Health**, 2013 WL 2407123 (Ohio App., June 3, 2013).

E.R.: Court Sees Grounds For Parents' EMTALA Lawsuit.

To prove a violation of the US Emergency Medical Treatment and Active Labor Act (EMTALA) the patient must show that the patient arrived at a hospital which has an emergency department and sought treatment and the hospital did not provide the patient with an appropriate screening to determine if an emergency condition existed or released the patient without first stabilizing the patient's emergency medical condition.

The baseline requirement is that the hospital provide the same level of screening uniformly to all patients who present with substantially similar complaints.

Whether the hospital's existing screening protocol was followed in a circumstance where triggering symptoms were identified by hospital emergency room personnel is the touchstone in gauging uniform treatment.

It is up to the hospital itself to determine what its screening procedures will be and, having done so, it must apply its screening procedures alike to all similarly situated patients, based on the history, signs and symptoms.

UNITED STATES COURT OF APPEALS
FIRST CIRCUIT
May 29, 2013

The US Court of Appeals for the First Circuit has upheld the District Court's ruling we reported in September, 2011.

See *EMTALA: Hospital Did Not Follow Standard Screening For Pregnant Patient, Grounds Seen For Lawsuit*. Legal Eagle Eye Newsletter for the Nursing Profession (19)9, Sept. '11 p.7.

Facts of the Lawsuit

The mother, in the third trimester of her first pregnancy, came to the E.R. for vaginal discharge and blood spotting. She denied pelvic pain or dysuria and reported fetal movement occurring in the E.R.

She was seen by the E.R. physician at 10:55 p.m. His exam showed no cervical dilation. He phoned the patient's ob/gyn who advised him to give her terbutaline and Vistaril and discharge her when she was stable with instructions to come to his office first thing in the morning. She was discharged at 12:15 a.m.

At 8:15 a.m. the ob/gyn did a pelvic exam in his office. Blood had pooled in the vagina and the cervix was dilated 7 cm. The fetus was in breech position.

The ob/gyn had her admitted to another hospital where the baby was delivered by c-section at 12:12 p.m. The baby died two days later.

Hospital's Standing Protocol Was Not Followed in the E.R.

The hospital had in effect a "Gravid with 3rd Trimester Bleeding" protocol for every E.R. patient with third trimester bleeding which included a vaginal speculum exam, an extensive list of labs, vital signs for the mother and Doppler detection of fetal heart tones.

Not fully performing the hospital's own standard screening protocol violated the US Emergency Medical Screening and Active Labor Act (EMTALA).

Patient's Ob/Gyn's Recommendation Did Not Diminish Hospital's Liability

According to the Court, the fact that the patient's own obstetrician's recommendation led to her discharge from the E.R. without the hospital's standard procedures being followed did not diminish the hospital's liability to this patient for violation of the EMTALA. **Cruz-Vasquez v. Mennonite Gen. Hosp.**, ___ F. 3d ___, 2013 WL 2322016 (1st Cir., May 29, 2013).