

## EMTALA: Court Reconsiders It's Prior Ruling, Dismisses Patient's Family's Case.

The US District Court for the Northern District of California has reconsidered and affirmed the decision we reported in November, 2012: *Emergency Room: Hospital Admitted The Patient For Care: EMTALA No Longer Applies*, Legal Eagle Eye Newsletter for the Nursing Profession, (20)11, Nov., 2012 p. 7.

The mother went to the hospital's labor and delivery department about to deliver her child. A few minutes before delivery she was diagnosed with HELLP syndrome. After giving birth the physicians ordered her admitted to the ICU but a bed was not available in the ICU and she was sent to post-partum where she soon died.

The Court found no violation of the US Emergency Medical Treatment and Active Labor Act (EMTALA) due to the fact that Federal regulations now state that events occurring after admission to the hospital in good faith for treatment cannot be the subject of an EMTALA suit.

The patient's family's argument this time was that, although the mother was admitted, she was not admitted in good faith for treatment as required for the EMTALA not to apply to what happened.

The Court agreed in principle that admitting a patient with no intention to treat the patient, so-called "patient keeping," is just as illegal as the practice of "patient dumping" that the EMTALA was intended to outlaw.

However, in this case the patient was not admitted in bad faith. Per the pertinent Federal regulations she was admitted to bed occupancy with the expectation she would remain overnight to receive hospital inpatient services such as bed and board, nursing services and medical or surgical services, albeit in the post-partum unit rather than the ICU where she really belonged.

### Malpractice Claim Is Not Affected

This time around the Court pointed out that final dismissal of the Federal EMTALA claim does not necessarily clear the hospital from potential allegations of malpractice for her life-threatening condition not being managed effectively on the post-partum unit.

The Federal Court was only editorializing because malpractice is a question of state law which can still be pursued with a case filed in state court now that the Federal EMTALA case is over. [Lopez v. Contra Costa Reg. Med. Ctr.](#), 2013 WL 120166 (N.D. Cal., January 8, 2013).

## Gynecological Exam: Female Chaperone Is Required In The Room If The Patient Requests.

The female patient was escorted to the exam room by a female nurse. The nurse updated her history, took her BP and then left the room.

The male gynecologist entered the room and during his exam handled the patient roughly and asked her questions that seemed sexually suggestive and not part of a legitimate examination.

The patient's lawsuit against the clinic was dismissed by the US District Court for the Northern District of Illinois, but without prejudice as to the patient's right to re-file her case.

### AMA Standard

#### Female Chaperone On Request

The Court ruled that the patient's lawsuit was subject to dismissal for alleging that a female chaperone must always be present during a gynecological examination by a male physician.

***The patient's lawsuit alleged that a health clinic owes a duty always to have a female chaperone present during a gynecological exam by a male physician.***

***That is not a correct statement of the AMA's policy on this issue.***

***The patient's lawsuit also alleged that the clinic negligently supervised the gynecologist and is responsible for his misconduct.***

UNITED STATES DISTRICT COURT  
ILLINOIS  
January 17, 2013

The correct standard, the Court said, is the American Medical Association's policy that a female chaperone must be provided if the female patient requests a chaperone.

The patient reportedly did testify in a sworn pre-trial deposition that she did, in fact, request a female chaperone to be present in the room and her request was not honored. Her lawsuit nevertheless does not allege the correct legal standard for liability on this issue, the Court said, but she can make the appropriate allegations when she re-files her lawsuit.

The patient also has to show that the clinic had prior knowledge of a tendency toward inappropriate conduct on the part of the physician to go forward with her claim of negligent supervision. [Hasbun v. US](#), 2013 WL 183780 (N.D. Ill., January 17, 2013).