

## EMTALA: Court Interprets US Regulations Re Timing Of Triage, Insurance-Status Inquiries.

The patient's wife brought him to the hospital's emergency department.

Once he was seated in the waiting area she approached the registration clerk's desk and told the clerk her husband was vomiting blood, having difficulty breathing, having lower stomach pain and was possibly having a heart attack.

It took twenty minutes for the registration clerk to finish with the people who had arrived just ahead of them. During this time the patient himself got up and walked in and out of the hospital twice.

When it was his turn he walked up and sat in the chair in front of the registration desk. Before he could say anything he collapsed. A code was called, but after two hours of medical intervention he died.

The widow sued the hospital for violation of the US Emergency Medical Treatment and Active Labor Act (EMTALA) and for common-law negligence.

### EMTALA Regulations Re Inquiry Into Insurance Status

The EMTALA was passed by Congress to prevent private hospitals from "dumping" uninsured and/or indigent patients who present themselves in the emergency department.

The broad scope of the EMTALA is to require hospitals to attend to every patient the same who presents in the emergency department with the same history, signs and symptoms.

Further, hospitals are required to create in advance standard emergency-department procedures for handling particular histories, signs and symptoms based on the hospital's available abilities and resources. Having done that, the hospital must follow its own procedures.

The essence of an EMTALA violation, the court pointed out, is a hospital's failure to follow its own standard procedures for uniform care in the emergency department. This hospital's set procedure was for a triage nurse to determine the patient's level of need prior to any inquiry regarding the individual's method of payment or insurance status.

***It is said as a general rule that triage must be offered to an emergency-room patient before inquiry is made about the patient's insurance status, if the hospital is to comply with the Emergency Medical Treatment and Active Labor Act.***

***That is an oversimplification.***

***A hospital may adhere to its patient-registration procedures as long as they do not conflict with the goals of the EMTALA, the "Patient Anti-Dumping Statute."***

***The point is that the hospital's registration processes, including insurance inquiries, for persons presenting in the emergency room, are all right as long as they do not discourage individuals from remaining for evaluation or delay triage, initial screening or necessary stabilizing medical treatment.***

***Even if there is no EMTALA violation hospital personnel can still be found negligent under state common-law standards.***

***Hospital staff must appreciate the gravity of a patient's signs and symptoms and the need for immediate medical attention.***

UNITED STATES DISTRICT COURT  
KANSAS

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The court pointed out that it was the patient himself who approached the registration desk to provide his information rather than being asked to do so by hospital personnel.

Federal EMTALA regulations were expressly reformulated to address this situation. The regulations now say:

(4) Delay in examination or treatment.

(i) A ... hospital may not delay providing an appropriate medical screening examination ... in order to inquire about the individual's method of payment or insurance status ... [However,]

(iv) Hospitals may follow reasonable registration processes for individuals for whom examination or treatment is required by [the EMTALA], including asking whether an individual is insured, and, if so, what that insurance is, as long as the inquiry does not delay screening or treatment. Reasonable registration processes may not unduly discourage individuals from remaining for further evaluation.

Although there was critical delay in providing initial triage, the delay was not attributable to the hospital requiring financial verification before offering treatment.

### Negligence Allegations Remain Alive

Having thrown out the widow's allegations under the EMTALA, the court expressly ruled the widow could still pursue a wrongful death malpractice suit under state, as opposed to Federal, common-law principles of negligence. That is, it was questionable at best why this patient was not seen immediately, ahead of the apparently non-emergent patients who were next in line to see the registration clerk.

The EMTALA was not intended to create Federal malpractice standards for US hospital emergency departments. Even when there has been no disparate treatment that can be traced to insurance status or lack thereof, a patient still has the right to sue for malpractice if the facts of the case point to malpractice. ***Parker v. Salina Regional Health Center, Inc.***, \_\_\_ F. Supp. 2d \_\_\_, 2006 WL 3488785 (D. Kan., December 1, 2006).