

EMTALA Does Not Protect Against Misdiagnosis

by Kathleen Ream, Director of Government Affairs

On October 27, 2006, the U.S. Court of Appeals for the Eleventh Circuit summarily affirmed the prior federal district trial court decision rejecting an inadequate screening claim brought by Vickie Bryant against John D. Archbold Memorial Hospital and Michael Arthur Crowley, M.D. (*Bryant v. John D. Archbold Memorial Hospital*, 11th Cir., No. 06-13168, 10/27/06).

Bryant initially sued defendants for violation of the federal Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395 dd. This complaint also alleged that the hospital and Crowley, the ED physician who attended to her, were liable to her under Georgia law for medical malpractice. The district trial court granted summary judgment for the defendants on the EMTALA claim and declined to exercise supplemental jurisdiction over the state law malpractice claim. Bryant appealed the grant of summary judgment on the EMTALA claim.

Although the appeals court decision is unpublished, this case appears to begin with plaintiff Bryant presenting at the John D. Archbold Memorial Hospital ED following a September 2004 motor vehicle accident. Notwithstanding the substantive attention Bryant received from ED staff, her ruptured spleen was not detected. Bryant alleged that the ED physician who treated her failed to examine her abdomen. Although the court was mindful that plaintiff and defendants disagreed as to whether the doctor “physically touched” Bryant’s abdomen during the screening, the district court determined that this particular factual dispute was not relevant and significant.

The court wrote that the “specific steps undertaken by a physician during the medical screening are not the focus of the EMTALA’s safeguards . . . EMTALA does not require hospitals to provide an examination whereby every conceivably relevant examination or test is completed.” Rather, EMTALA requires hospitals to provide a medical screening similar to the one which the hospital would provide any other patient. Thus, under EMTALA the plaintiff is obliged to furnish evidence proving how the screening received deviated from the standard screening provided at the respective hospital ED.

The trial court iterated that “EMTALA protects against inadequate screening, not misdiagnosis” such as in the failure to detect an injury. Absent the necessary facts to meet the legal requirements to file a legitimate lawsuit, the trial court found that Bryant failed to allege an actionable complaint under EMTALA. The trial court also ruled that once the claim was dismissed, it was within the court’s discretion to decline to exercise supplemental jurisdiction over the state medical malpractice law claim pursuant to 28 U.S.C. § 1367(c)(3).

The federal appeals court determined that the trial court, the U.S. District Court for the Middle District of

Georgia, “appropriately analyzed the EMTALA statute and the record evidence and properly determined that no dispute existed as to an issue of material fact.”

District Court Rules Claims Are Medical Malpractice Not EMTALA

On October 2, 2006, the U.S. District Court for the District of Puerto Rico dismissed a lawsuit claiming that a hospital violated EMTALA (*Alvarez v. Vera*, D.P.R., No. 3:04-cv-01579-HL, 10/02/06). The plaintiff was Emily Martínez Alvarez (“Martínez”) and her husband Erasmo Quiñones González. The defendants were Dr. Ariel Bermúdez Vera, Dr. Miguel Meneses, Hospital Hermanos Meléndez, JDG Medical Corporation, P.S.C., Sindicato de Aseguradores para la Suscripción Conjunta de Seguros de Responsabilidad Profesional Médico-Hospitalaria (SIMED), and the American International Insurance Company of Puerto Rico (AIICO).

FACTS

On August 13, 2003, the plaintiff Martínez was diagnosed with a cholelithiasis condition. Co-defendant Dr. Ariel Bermúdez issued admission orders for Martínez to undergo a laparoscopic cholecystectomy which was performed by Bermúdez on August 18. During the procedure, it was found that Martínez had a dilated common bile duct and cholelithiasis. Subsequently, Martínez developed a high fever on August 20, and was kept at the hospital under observation until August 21, 2003. Prior to discharge Bermúdez entered a report that Martínez was stable and afebrile and scheduled a follow-up appointment with Martínez for the following week. On a discharge summary dated August 21, Bermúdez reported that Martínez had recovered from the surgery.

Martínez alleged that during the surgery, Bermúdez transected her common bile duct and did not realize the damage caused. She also claimed that Bermúdez did not perform any tests to determine the reason for her fever and that she had symptoms of peritonitis, severe pain and a fever when she was discharged. Martínez suffered abdominal pain from August 22 through August 25, 2003.

On August 26, Martínez went to the Hospital Hermanos Meléndez ED because she was suffering severe abdominal pain. She signed an authorization for treatment and was admitted. Dr. Miguel Meneses evaluated Martínez and ordered multiple laboratory tests and medications. Meneses did not consult with Bermúdez until after the laboratory and x-ray examinations were ordered and the results were received. Martínez subsequently was admitted to the Hospital Hermanos Meléndez by Bermúdez.

The next day, on August 27, 2003, Bermúdez performed tests to rule out his initial impression of an injury to Martínez’s common bile duct. The results of the hepatobiliary (HIDA) scan were received on August 28

continued on page 16

and revealed findings compatible with choledocholithiasis, suggesting an abdominal CT correlation and finding that Martínez could be suffering from reflux of the stomach or a biliary leak.

On the following day, August 28, Martínez was again examined by Bermúdez who reported that Martínez's problem was a bile leak and recommended that she be transferred to Hospital San Pablo for an Endoscopic Retrograde Cholangiopancreatography (ERCP) exam. Martínez claimed that this examination was unnecessary since Bermúdez had already asserted a positive diagnosis of injury to the common bile. Nonetheless, Martínez signed a Department of Emergency Room consent for transfer and on August 29 Martínez was transferred to Hospital San Pablo and submitted to an ERCP exam.

Martínez was thereafter admitted at Hospital San Pablo under the care of Bermúdez who performed the surgery to repair Martínez's bile duct injury on September 4. After the surgery, Martínez was transferred to the intensive care unit of the hospital where she stayed for four days. On September 19, 2003, Martínez was discharged with altered liver enzymes, elevated bilirubin levels and suffering from pain. Martínez claimed that she experienced constant pain and discomfort since the laparoscopic surgery was performed.

Plaintiff alleged that Hospital Hermanos Meléndez violated EMTALA in three instances: first, when they discharged Martínez on August 21, 2003, with an unstable medical emergency and without providing her further medical treatment and examination available at the hospital; second, when they failed to conduct an appropriate medical screening examination when Martínez arrived at the Hospital Hermanos Meléndez ED on August 26, 2003, and third, when they transferred Martínez on August 29, 2003, to another hospital in an unstable state and without informing her of the risks involved.

Defendants moved for summary judgment on the grounds that 1) the hospital, through its physicians and staff, screened and stabilized Martínez in accordance with EMTALA requirements and provided necessary and adequate medical treatment and 2) the claim was a medical malpractice claim brought improperly under EMTALA, therefore failing to establish a legitimate federal cause of action.

I. Discharge on August 21, 2003

The court noted that Martínez was admitted to the hospital following a previously scheduled elective laparoscopic cholecystectomy on August 18, where she remained for treatment of complications from this operation until August 21. The court determined that although plaintiff received medical treatment during that time, it is the quality of said treatment that was being challenged in the suit before the court. Under EMTALA protections, wrote the court, "a hospital's negligent or malfeasant care of a patient is not covered . . . EMTALA is an 'anti-dumping' statute, not a federal medical malpractice statute."

Plaintiff's first claim failed because EMTALA only applies if the hospital knew an emergency condition existed. The discharge on August 21, 2003, did not qualify as an EMTALA violation even if it were a misdiagnosis, in which case the court suggested would be better remedied under commonwealth medical malpractice law.

II. Emergency Room Screening on August 26, 2003

Plaintiff objected to the hospital's failure to perform abdominal x-rays or to provide immediate antibiotic treatment when Martinez presented with a fever, severe pain, elevated white blood cell count, and symptoms suggestive of peritonitis. Though the statute calls for an "appropriate medical screening examination," the court stated, "it is silent as to what qualifies as 'appropriate'." A hospital fulfills its statutory duty to screen patients in its ED if it provides for a screening examination reasonably calculated to identify critical medical systems that may be affecting symptomatic patients. "The very fact Plaintiff was admitted to the hospital and received continuous treatment is prima facie evidence that screening was effectuated," the court determined.

The district court also noted that EMTALA requires that the hospital must act "consistently with its customer screening procedure, even if said procedure would be inadequate under state malpractice law." To prove that the screening was not evenly handled, plaintiff has the burden of providing evidence to prove that Martínez received materially different screening than that provided to others in the same condition. "There is no indication that the hospital did not follow its own protocol in this case," the court found. It reinforced that an allegation that a hospital "emergency room staff are negligent is insufficient to state a claim for violation of EMTALA."

III. Transfer on August 29, 2003

If an emergency condition is detected during screening, then the hospital must either provide further medical treatment required to stabilize the patient or transfer the patient to another hospital in accordance with subsection (c). 42 U.S.C. 1395dd(b)(1). Martínez presented with an emergency condition and the hospital knew of this condition; therefore, leaving only the question as to whether Martínez was stable at the time of her transfer.

EMTALA defines "stabilized" as meaning "that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility." To prove a transfer violation under the statute, the plaintiff must "show not only that the patient was not stabilized and was not accepted by the receiving hospital, but also that the doctor knew or should have known that risks of transfer outweighed the benefits."

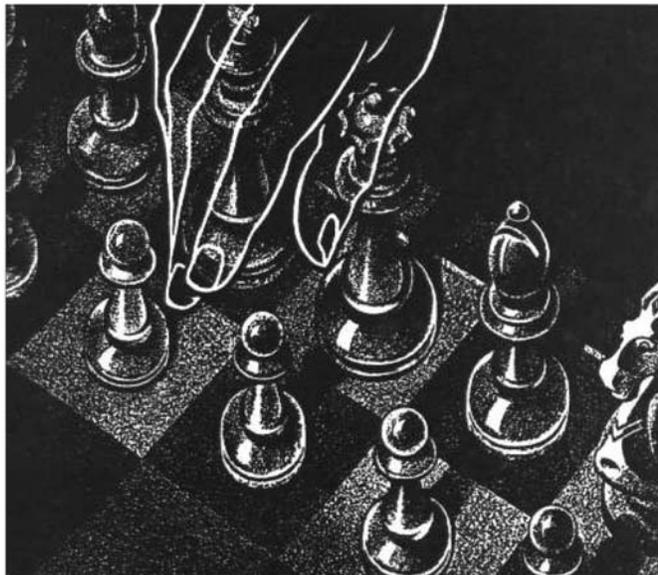
Although the hospital argued that Martínez was stable at the time of her transfer, it held that even if Martínez was not stable, she was properly transferred pursuant to the EMTALA requirements. "A hospital may transfer an unstable patient with an emergency condition if the patient or a legal representative gives informed consent

continued on page 17

Your largest IPA has started downcoding your claims. You feel like a pawn in the hands of managed care. Your malpractice insurance is through the roof. Your operating expenses are up, and your cash collections are down.

It's your move.

What are you going to do?



Call Marina!
Ask for Marsha or Mike.

Marina Medical Billing Service, Inc.
specialists in emergency medicine since 1981

18000 Studebaker Road, Fourth Floor
Cerritos, CA 90703
562.809.3500
www.MarinaBilling.com

Serving the West...and the entire country

Washington Watch - continued from page 16

or if a physician certifies that the anticipated benefits outweigh the risks of transfer.”

The court found that Martínez was transferred to a hospital less than five minutes away in order to undergo an ERCP test, which was not available at Hospital Hermanos Melendez. The court also thought it significant to note that plaintiff was transferred under the care of the same doctor, Bermúdez, who treated her at Hospital Hermanos Melendez. “Bermúdez also assumed primary physician duties at the receiving hospital and eventually performed the surgery on Martínez at that hospital,” the court wrote.

“It appears from the record that Martínez was indeed stable at the time of transfer,” the court determined. “She had been admitted to the transferring hospital for 3 days prior to the transfer, and remained at the receiving hospital for 6 days after transfer but prior to her surgery. There is no indication that her condition worsened in any way during this time.” The court stated

that the statutory definition of a “stabilized” condition was met and the transfer did not violate EMTALA safeguards.

An interesting court rationale also was included regarding the issue of the benefits and risks of the transfer. The court proffered that even if it accepted that Martínez’s condition was not stable at the time of transfer, the evidence showed that Bermúdez believed the benefits of transfer (namely the availability of an ERCP diagnostic test) outweighed the risks. “On the transfer form,” stated the court, “Bermúdez indicated as a benefit that ‘[p]atient can be evaluated with ERCP’. He left blank the space for indicating risks. The Court finds this sufficient to show the doctor had considered the totality of circumstances and found the benefits as indicated outweighed the risks, if any . . . Hence the conditions necessary to effectuate a proper transfer of an unstable patient were also met. Plaintiffs’ final EMTALA claims is without merit.”

The full text of the decision is available at <http://op.bna.com/hl.nsf/r?Open=psts-6uamgr>