



# Client Alert



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## EMTALA Case Update

Provided below is an overview of three recent federal court decisions regarding the Emergency Medical Treatment and Labor Act (EMTALA). The cases are from the U.S. District Court for the District of Vermont, the U.S. District Court for the Northern District of California, and the U.S. District Court for the District of Puerto Rico.

### ***Hale v. Northeastern Vt. Reg'l Hosp., Inc.,*** **No. 1:08-cv-00082-jgm, (D. Vt. Sept. 30, 2011)**

On July 13, 2011, the U.S. District Court for the District of Vermont allowed a patient's negligence and EMTALA screening claims to proceed against the Northeastern Vermont Regional Hospital (NVRH) and the treating physician, but granted summary judgment in favor of NVRH on an EMTALA stabilization claim.

On May 18, 2006, the patient presented to the NVRH's emergency department complaining of pain in the neck and radiating into her temples and back. The physician diagnosed her with torticollis (a stiff neck associated with muscle spasm), prescribed her with pain medication and a muscle relaxant, and discharged her after 30 minutes with instructions to see her personal physician or return to the emergency department if there was no improvement. Three days later, the patient returned complaining of a worse headache and pain. She was seen by the same physician, who ordered a lumbar puncture and CT scan which detected suspicions of an intracranial bleed. The patient was transferred to Dartmouth Hitchcock Medical Center (DHMC) for additional tests, which ultimately diagnosed her with a brain aneurysm. On May 23, 2006, during surgery performed by DHMC physicians, the patient's aneurysm ruptured, which resulted in significant neurological injuries.

The plaintiff, guardian of the patient, sued NVRH and the treating physician for negligence and an EMTALA violation (but failed to specify the exact provisions violated), alleging that the misdiagnosis on May 18 delayed the treatment and caused irreversible brain damage. NVRH and the treating physician, however, claimed that the rupture is a known risk associated with the surgery performed and it could have occurred whether the aneurysm was diagnosed on May 18 or three days later. NVRH and the treating physician moved for summary judgment on the negligence claim, and NVRH moved for partial summary judgment on the EMTALA claims.

The District Court denied summary judgment on the negligence claim and then addressed EMTALA stabilization and the standard it was going to apply—i.e., requiring actual knowledge or diagnosis of the emergency medical condition. The District Court found that the plaintiff had “not pointed to any evidence that torticollis is an emergency medical condition or that NVRH actually knew [the patient] had any emergency medical condition prior to discharge on May 18.” Thus, without a material issue of fact as to actual knowledge, summary judgment was granted in favor of NVRH for the stabilization claim.

The District Court then discussed whether there was an appropriate EMTALA screening. It acknowledged that courts have held the screening requirement as not imposing a general federal law against medical malpractice or negligent diagnosis, but establishing a duty to provide “uniform screening examinations consistent with a hospital’s own policies and based on its capabilities and the medical circumstances and symptoms presented.” Based on the existing record, including prior medical records of the patient when she was insured showing additional tests being done (specifically, a lumbar puncture when presenting with head pain), the District Court found a material issue of fact regarding the screening examination. NVRH subsequently filed a motion for reconsideration on the EMTALA screening claim, asserting that the plaintiff was not prolific in the EMTALA defense. The District Court denied the motion stating that the EMTALA claims, although not specific, are stated in the complaint, and relying upon the summary judgment standard of viewing evidence in light most favorable to the non-moving party.

### ***Pauly v. Stanford Hosp. and Clinics, No. 5:10-CV-05582-JF (PSG) (N.D. Cal. Sept. 21, 2011)***

This September 21, 2011, decision is a follow-up to a May 11, 2011, decision. In the May 11 decision, the U.S. District Court for the Northern District of California granted a motion to dismiss rejecting a mother’s standing to bring her own cause of action under EMTALA for her minor daughter who was allegedly improperly discharged from Stanford Hospital. The District Court dismissed the complaint with leave to amend explaining that “[e]xtending a private right of action to a third party when the individual patient is still living would result in a significant expansion of liability for hospitals subject to EMTALA’s provisions.”

The mother filed a first amended complaint omitting the prior EMTALA claims on her own behalf, but subsequently filed a second amended complaint, again asserting EMTALA claims on behalf of her daughter, along with a motion for reconsideration of the District Court’s May 11 order, a motion to vacate that order and a motion for summary judgment. The District Court affirmed its earlier holdings in the case, but allowed the mother to amend the complaint on one narrow issue.

On the motion to reconsider the determination that third-party relatives of living patients lack standing under EMTALA, the District Court declined to reconsider its earlier decision after reviewing various cases cited by the mother, all of which did not address the standing issue explicitly (nor appear to litigate such issue). As to the motion to vacate, the mother asserted based on state law and hospital policy that she was a “co-patient” along with her daughter, and thus, had standing under EMTALA. While the District Court acknowledged “some facial appeal” of the argument, it ultimately rejected the mother’s position given the lack

of supporting legislative history and case law. The District Court also found consideration of the motion for summary judgment to be premature as fact discovery had not yet been conducted.

Finally, the District Court found that it must dismiss the daughter's claims unless she is represented by counsel. The District Court allowed the mother to amend the complaint solely on the issue of counsel so as to allow the daughter's claims to proceed and was given until October 21, 2011, to find counsel to represent her daughter and file the amended complaint. On October 24, 2011, Stanford Hospital filed a motion to dismiss asserting that the mother failed to file an amended complaint. The mother opposed the motion based on her inability to locate an attorney in spite of due diligence. On November 30, 2011, the District Court issued an order denying Stanford Hospital's motion and provided the mother until January 13, 2012, to file the amended complaint.

***Cruz-Vasquez v. Mennonite Gen. Hosp. Inc., Civil No. 08-1236(JP) (D.P.R. Aug. 15, 2011);***  
***Cruz-Vasquez v. Mennonite Gen. Hosp. Inc., Civil No. 08-1236(JAF/JP) (D.P.R. Sept. 20, 2011)***

On August 15, 2011, the U.S. District Court for the District of Puerto Rico denied a motion for summary judgment filed by Mennonite General Hospital (the Hospital) and other defendants in an action brought by plaintiffs who alleged that the defendants' medical malpractice and EMTALA violation caused the patient at issue to give birth to a premature baby that died from complications two days after birth. On September 20, 2011, the District Court subsequently vacated and remanded its August 15 opinion and granted the defendants' motion to dismiss for lack of jurisdiction.

The patient was 27 weeks pregnant and presented to the Hospital's emergency department on January 4, 2007, complaining of vaginal discharge and blood spotting. Upon arrival at the Hospital, the patient was evaluated by a physician who performed a pelvic exam and found that her cervix was not dilated. The physician consulted the patient's private physician who advised the physician to administer certain medication so that the patient could be discharged and advised the patient to follow up with her private physician the next morning. The patient was sent home two hours after her arrival at the emergency room. The next morning, the patient was examined by her private physician at his office and he found a blood collection pool in the patient's vagina and found that she was dilated seven centimeters with bulging membranes. The patient was then transferred to San Juan City Hospital where a cesarean section was performed. The baby died two days later as a result of complications from premature birth.

The defendants argued in their motion for summary judgment that the plaintiffs did not provide evidence to support a finding that the Hospital failed to provide an appropriate medical screening in violation of EMTALA, and the patient did not have an emergency medical condition upon arriving in the emergency room and that she was discharged in stable condition. The District Court denied the Hospital's motion for summary judgment, concluding that the Hospital had a standard screening procedure, its "Gravid with 3rd Trimester Bleeding" protocol, which required certain tests to be performed, which the Hospital did not provide to the patient, and thus, a reasonable jury could conclude that failing to apply this protocol violated EMTALA. The District Court also denied the Hospital's motion to dismiss the plaintiffs' state medical malpractice claims, over which the District Court had supplemental jurisdiction.

Following the August 15 decision, the District Court considered the defendants' motion to dismiss for lack of jurisdiction. The District Court ordered the parties to file supplemental briefs on the issue of jurisdiction, and upon reconsideration of its previous opinion, the District Court granted defendants' motion for lack of jurisdiction and vacated its opinion of August 15.

The District Court noted that "[a]lthough EMTALA does not define what an appropriate medical screening entails, the case law has defined this duty as providing an examination 'reasonably calculated to identify critical medical conditions that may be afflicting symptomatic patients and provides that level of screening uniformly to all those who may present substantially similar complaints.'" The District Court noted that "a faulty screening, in a particular case, as opposed to a disparate screening or refusing to screen at all, does not contravene the statute."

The plaintiffs argued that the patient was not provided with an appropriate medical screening because the Hospital should have followed the established "Gravid with 3rd Trimester Bleeding" protocol, and the patient was given disparate treatment in violation of EMTALA. The District Court found that the Hospital's physician made a medical judgment not to perform additional tests after performing a pelvic exam and consulting with the patient's private physician, which is not the same as a denial of screening or an egregious delay in screening. The District Court also stated that although the Hospital physician's diagnosis may have been incorrect, it is not actionable under EMTALA and further stated that "even if [the Hospital] erroneously determined that further tests were unnecessary, [the] error amounts only to a faulty screening, which is appropriately dealt with under Puerto Rico's medical malpractice laws."

It was also noted in the District Court's opinion that plaintiffs in medical malpractice suits in Puerto Rico consistently try to plead EMTALA violations to circumvent the unavailability of jury trials in civil cases.

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