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Third Circuit Holds that EMTALA Does Not Cover Transfers of Outpatients

The Third Circuit has determined that a pregnant woman who was admitted to a perinatal facility for a routine outpatient fetal monitoring appointment and then transferred to another hospital for additional treatment could not maintain an action against the hospitals and doctors under the Emergency Medical and Active Labor Act ("EMTALA").

The patient, Honey Torretti, was referred by her primary obstetrician, a member of an obstetrics practice group based out of Lankenau Hospital ("Lankenau") to Paoli Hospital Perinatal Testing Center ("Paoli") for monitoring because of her diabetic condition (which can present complications during pregnancy). Lankenau and Paoli are about twenty miles apart.

Late in her pregnancy, Mrs. Torretti had a routine monitoring appointment at Paoli. During this appointment, she told a perinatologist that she was having a great deal of discomfort mainly due to her large size and had noticed a decrease in fetal movement. The perinatologist performed a non-stress test. Based on the preliminary test results and Mrs. Torretti's diabetic condition, the perinatologist terminated the non-stress test and transferred Mrs. Torretti to Lankenau for longer-term monitoring. When Mrs. Torretti first arrived at Lankenau, her condition appeared to be the same as it had been at Paoli. However, her condition quickly worsened, and she was rushed into surgery, and she gave birth by caesarean section. The baby was born with severe brain damage.

Mrs. Torretti alleged, among other things, a violation of EMTALA based on her transfer from Paoli to Lankenau. The District Court granted summary judgment to the hospitals and doctors on the EMTALA claims, finding that Mrs. Torretti did not offer sufficient evidence to raise a reasonable inference that the defendants knew that Mrs. Torretti presented a medical emergency.

The Third Circuit agreed with the district court's determination, but offered an additional basis for summary judgment. Relying on regulations promulgated by CMS to clarify EMTALA, the Third Circuit determined that EMTALA does not cover the transfer of outpatients. Specifically, the Court noted that "CMS has concluded that EMTALA does not apply to patients (and outpatients), which interpretation precludes the Torrettis' EMTALA claim in the first instance because Mrs. Torretti was an outpatient who came to Paoli for a scheduled appointment."

The Third Circuit noted that "EMTALA requires hospitals to give certain types of medical care to individual presented or emergency treatment: (a) appropriate medical screening, (b) stabilization of known emergency medical conditions and

labor, and (c) restrictions on transfer of unstabilized individuals to outside hospital facilities.” The Court noted that EMTALA sought to protect against a refusal to treat certain emergency room patients or transferral to other institutions, a practice known as “patient dumping.” The Court noted that EMTALA “does not create a federal cause of action for malpractice.” Turning to the regulations, the Court noted:

EMTALA’s requirements are triggered when an “individual comes to the emergency department.” 42 C.F.R. § 489.24(a)(1). To parse out this clause, an “individual” only “comes to the emergency department” if that person is not already a “patient.” See id. § 489.24(b). . . . The Regulation defines “patient” for our purposes as “[a]n individual who has begun to receive outpatient services as part of an encounter, as defined in § 410.2 of this chapter, other than an encounter that the hospital is obligated by this section to provide.” 42 C.F.R. § 489.24(b).

CMS explains that EMTALA does not apply to outpatients, even if during an outpatient encounter “they are later found to have an emergency medical condition . . . [and] are transported to the hospital’s dedicated emergency department.” 68 F.R. at 53,240 . . . ; see also id. at 53,243, 53,247. . . . “These individuals are considered patients of the hospital and are protected by [Medicare’s Conditions of Participation] and relevant State law,” as well as “under general rules of ethics governing the medical profession.” Id. at 53,238-40.

The Court rejected the Torrettis’ argument that “Mrs. Torretti came to Paoli for ‘what was, from the inception, a potential “emergency medical condition.”” The Court noted that “Mrs. Torretti came to Paoli for her scheduled bi-weekly appointment involving routine monitoring of her high-risk pregnancy and did not present as an emergency to the Paoli medical staff.” In response to the Torrettis’ argument that each scheduled visit qualified as a presentment of an emergency condition to trigger EMTALA coverage based on her high-risk pregnancy, the Court stated that “[t]his is an unreasonable interpretation of the Act that broadens its scope beyond Congress’s intent.”

The case is *Torretti v. Main Line Hospitals, Inc.*, No. 08-1525 (3d Cir. Sept. 2, 2009).

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