

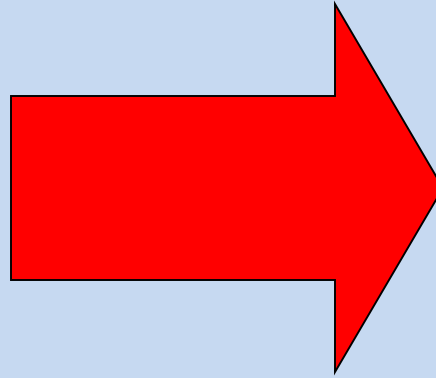
# Health Law: Quality & Liability

Prof. Thaddeus Pope

EMTALA: Stabilization  
Duty



Arrives on  
hospital  
property &  
requests  
treatment



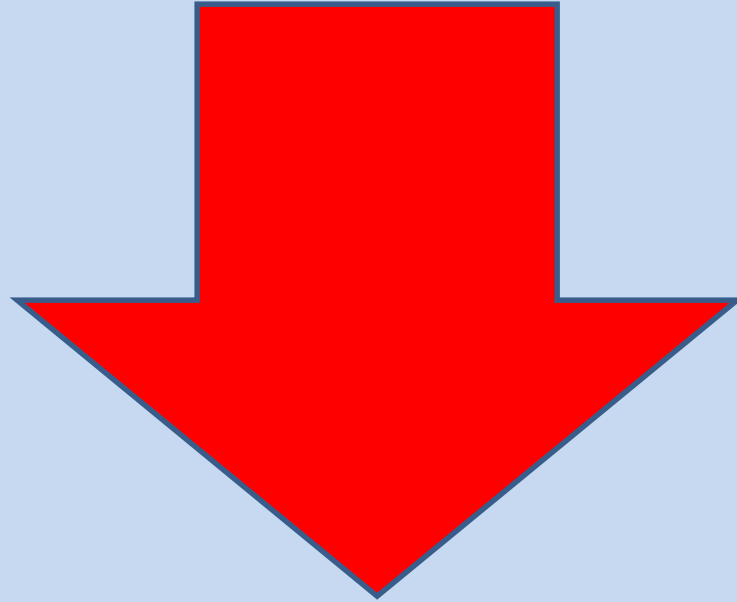
Screen  
for  
EMC



Screening = exam  
**comparable** to an  
exam offered to  
other patients  
presenting similar  
symptoms



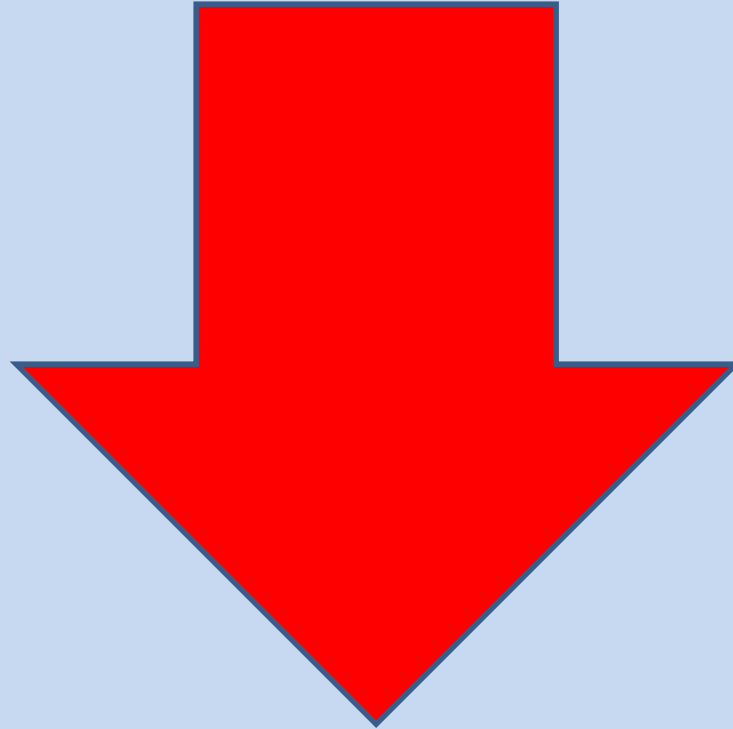
Screening identifies  
(correctly or not) **no** EMC



No more EMTALA duties



Screening **does** identify  
EMC



More EMTALA duties



# What to do with EMC



1. Stabilize (then transfer)
2. Pre-stabilization transfer on patient request
3. Pre-stabilization transfer meeting 5+ rules
4. Admit to stabilize



**1.**

**Stabilize**





Get patient to state  
where there would be  
no material  
deterioration from  
transfer/discharge



Once EMC **stabilized**

→ no more EMTALA

duty (even if more

treatment required)



Stabilize = not cure, just  
**mitigate the severity** of  
acute episode so when Pt  
leaves hospital, condition  
no longer meets  
definition of EMC



EMTALA does **not**  
**require** complete  
treatment of  
medical condition



**Treat**

**Stabilize**



Stabilize = not cure, just  
**mitigate the severity** of  
acute episode so when Pt  
leaves hospital, condition  
no longer meets  
definition of EMC





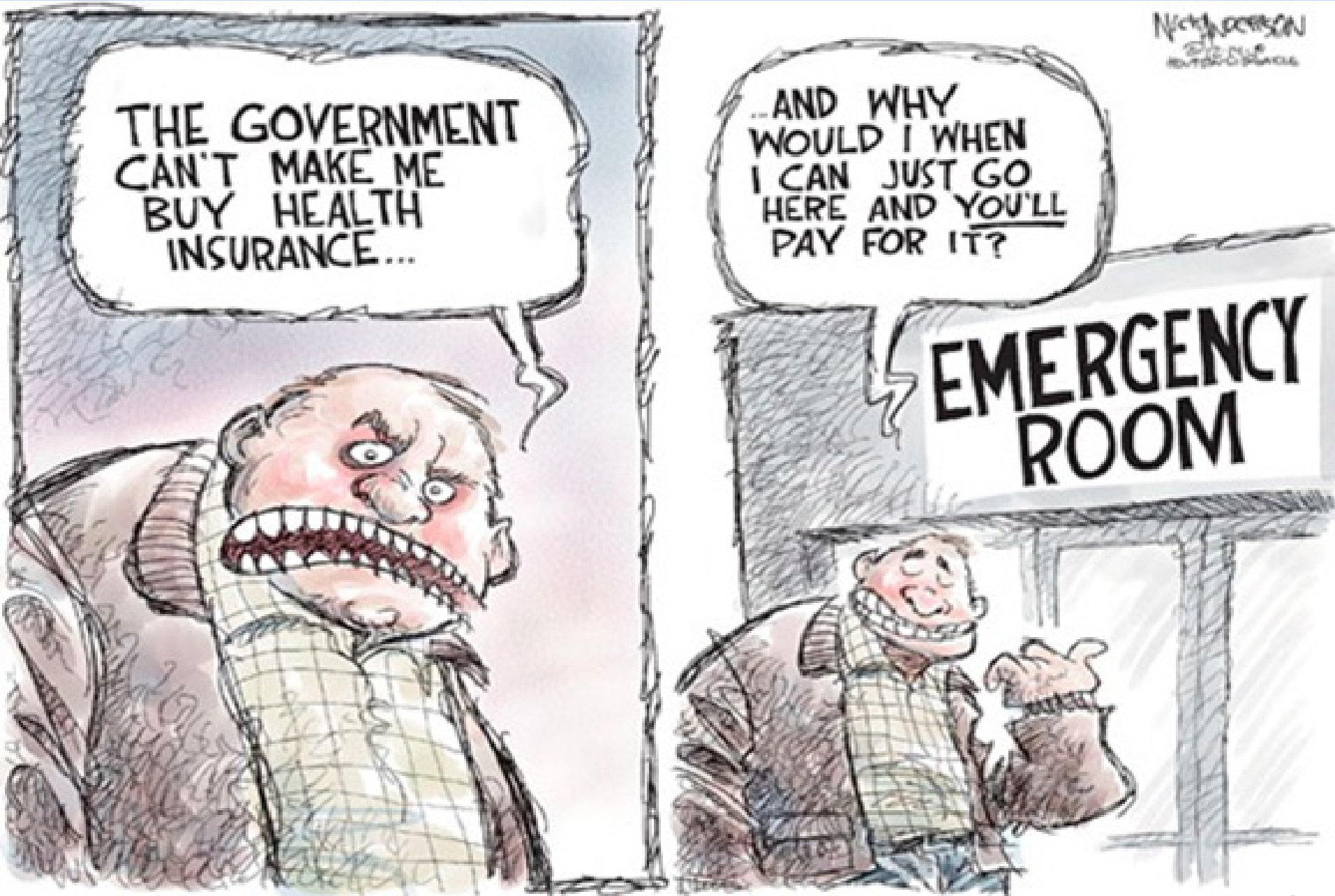
# M\*A\*S\*H



THE GOVERNMENT  
CAN'T MAKE ME  
BUY HEALTH  
INSURANCE...

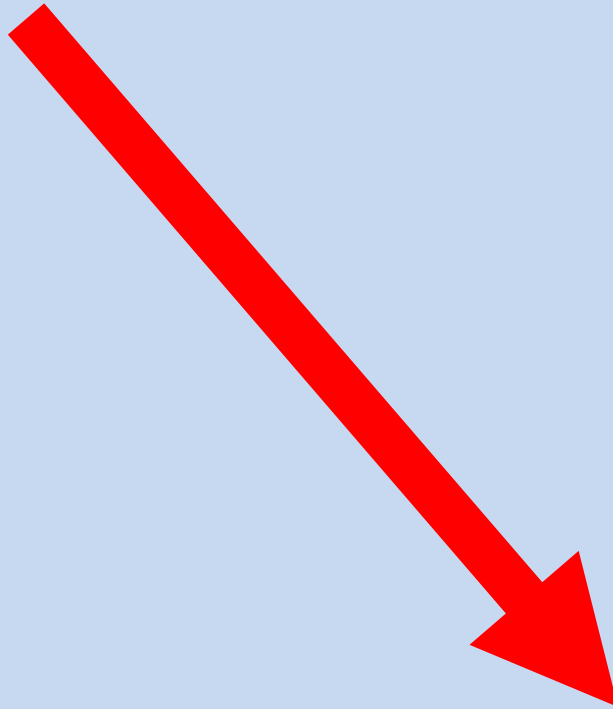
...AND WHY  
WOULD I WHEN  
I CAN JUST GO  
HERE AND YOU'LL  
PAY FOR IT?

EMERGENCY  
ROOM





**Stabilize**



**EMTALA  
imposes no  
further  
obligation**



# 2. Transfer on patient request



EMTALA is for  
patient  
protection

She can refuse it



# WAIVER OF RIGHTS

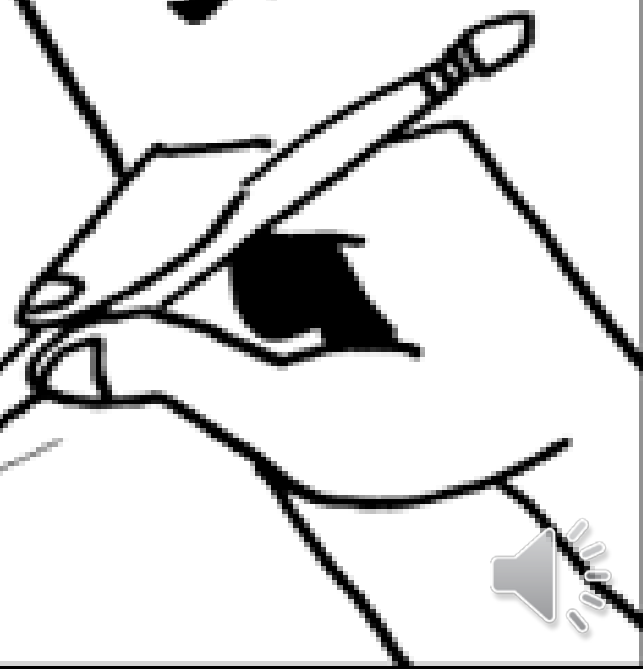
1. I have the right to remain silent.
2. Anything I say can be used against me in a court of law.
3. I have the right to an attorney.
4. If I cannot afford an attorney, one will be appointed for me by the court.

I have read and understood the above rights and I hereby waive those rights.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**SKRTCH  
SKRTCH**



# 3. Admit patient



EMTALA does not  
apply to inpatients



**Smith**

**v.**

**Albert Einstein**

**Med. Ctr.**



Arrive at hospital	“individual”
Screened	“patient”
Admit to ward (not the ED) intended at least overnight	“inpatient”





Inpatient rule  
rejected here

6th Circuit



But admission must be in  
“good faith” – for purpose  
of stabilization

Okay that not ultimately  
stabilize



Not at hospital  
no EMTALA, no med mal

Inpatient/outpatient  
state law med mal;  
COPs; not EMTALA

Arrive at ED → EMTALA



**4. Transfer w/  
certification  
that benefits  
outweigh risks**





**DANGER!**



“Looks” like  
dumping -  
transfer w/o  
stabilization



Document

Document

Document



# Transferring hospital

1. Make certification
2. Minimize risk with own capacity
3. Make transfer w/ qualified personnel & equipment





# Receiving hospital

4. Capable of providing care

5. Agree to accept



Major centers with  
specialized capabilities  
(e.g. burn, NICU) **may not**  
refuse, if capacity

**3<sup>rd</sup> duty** & type of violation  
(beyond screen, stabilize)



This is a **separate**  
EMTALA duty on  
special capability  
hospitals

Even if no ED

