

# Health Law I

Professor Pope

Class 2: August 25, 2011

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# Duty to Treat

## Statutory Duty to Accept Patients

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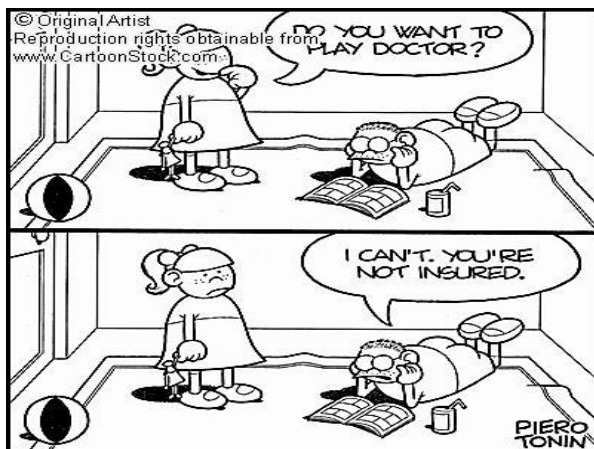
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Providers can generally refuse to enter a treatment relationship because of **inability to pay**

Contrast refusals because of disability, race, gender

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**Statutory exceptions to common law:**

Hill-Burton Act (1946)

IRS 501(c)(3) Rev. Rul. (1969)

State laws (1960s & 1970s)

EMTALA / COBRA (1986)

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**Tenn. Code Ann. § 68-140-301**

“Every hospital . . . shall furnish such hospital emergency services to any applicant . . . in case of injury or acute medical condition where the same is liable to cause death or severe injury or illness.”

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# EMTALA

## Overview

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**Who** does it protect

Upon **whom** does it impose obligations

How is it **enforced**

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	Enforcement against hospital	Enforcement against physician
By CMS		
By patient		

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“EMTALA is a **major compliance issue** for hospitals and an area of increased government scrutiny.”

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With the scope of EMTALA expanding, interpretive guidance from CMS accumulating, and court decisions inconsistent in their interpretations of the statute . . . hospital administrators are understandably **confused as to their specific obligations** under EMTALA. . . . Experienced counsel in this area of law is an essential resource . . .

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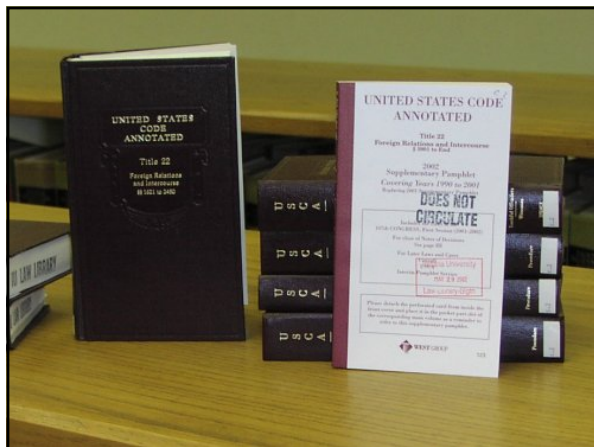
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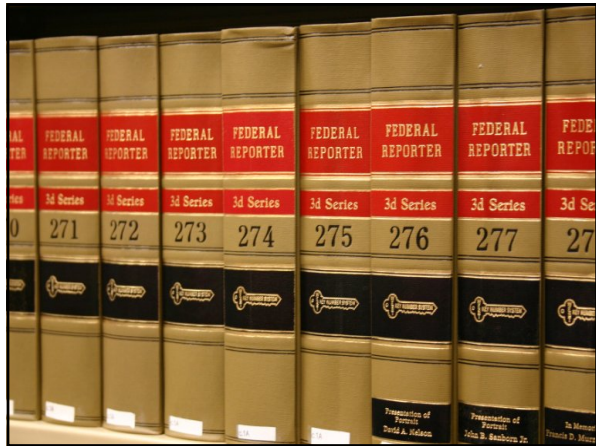
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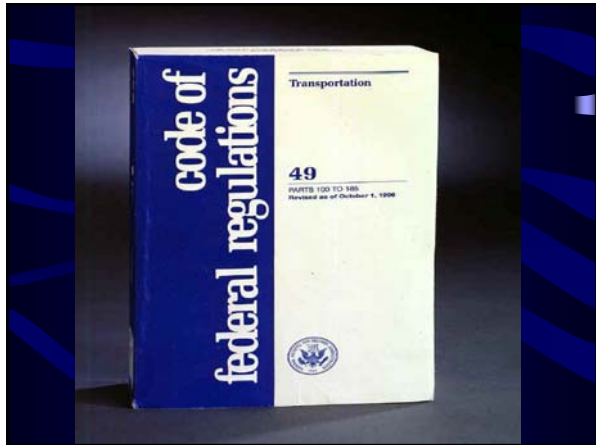
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DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop 52-12-25  
Baltimore, Maryland 21244-1850

**CMS**  
CENTERS for MEDICARE & MEDICAID SERVICES

Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-04-10

DATE: November 7, 2003

TO: State Survey Agency Directors

FROM: Director  
Survey and Certification Group

SUBJECT: Emergency Medical Treatment and Labor Act (EMTALA) Interim Guidance

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# EMTALA

## Requirements

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1. Screening
2. Stabilization

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# Screening

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### When

Triggered when patient is on hospital property

Provide to every patient who requests (or obviously needs) treatment

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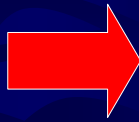
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Arrives on hospital property & requests treatment



Screen for EMC

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### What

Exam comparable to an exam offered to other patients presenting similar symptoms

The test is **uniformity** (intra-institutionally) **not** standard of care

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EMTALA is **not**  
a federal  
malpractice  
statute

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Misdiagnosis is NOT an  
EMTALA violation

EMTALA assures the **same**  
level of treatment, not  
necessarily good treatment

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**Emergency  
medical  
condition  
(EMC)**

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Presence of acute symptoms of such severity that without immediate attention could reasonably be expected to result in:

- Placing health in serious jeopardy
- Serious impairment to bodily functions

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Re pregnant woman:

- Where inadequate time for transfer before delivery
- Where transfer may pose threat to woman or child

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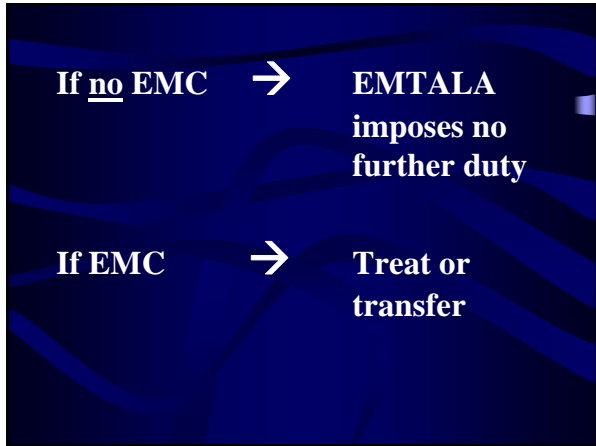
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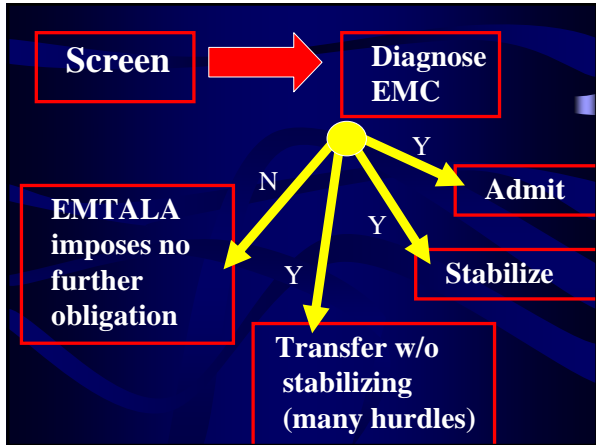
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# Stabilization

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

UNLESS patient requests

UNLESS benefits transfer outweigh risks

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Stabilize



EMTALA imposes no further obligation

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**Transfer  
without  
stabilizing**

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**When**

Patient requests transfer

or

Certification that benefits outweigh risks

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**How**

**Transferring hospital**

Make certification

Minimizes risk with own capacity

Make transfer w/ qualified personnel & equipment

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**Receiving hospital**

Capable of providing care

Agrees to accept

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

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# EMTALA

## Cases

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# Kaufman

v.

# Franz

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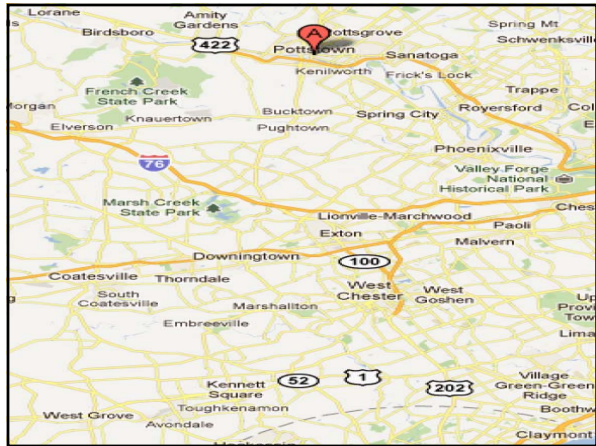
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Procedural posture  
DEF wants summary judgment  
Denied  
Material question of fact in dispute

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February 2011						
Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5
6	7	8	9	10	11	12 <i>Argentine Plan</i>
13	14 <b>Jury trial</b>	15 <b>Jury trial</b>	16 <b>Jury trial</b>	17 <b>Jury trial</b>	18 <b>Jury trial</b>	19
20	21	22	23	24	25	26
27	28					

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GROSS MCGINLEY, LLP  
SUSAN ELLIS WILD, ESQUIRE  
I.D. 51971  
GRAIG M. SCHULTZ, ESQUIRE  
I.D. 207123  
33 SOUTH 7<sup>TH</sup> STREET, P.O. BOX 4060  
ALLENTOWN, PA 18105-4060  
610-820-5450

ATTORNEYS FOR DEFENDANT, POTTSTOWN  
MEMORIAL MEDICAL CENTER, POTTSTOWN  
HOSPITAL COMPANY, LLC, d/b/a and/or a/k/a  
POTTSTOWN MEMORIAL MEDICAL CENTER

AARON KAUFFMAN, Administrator of the Estate of  
JOHN H. KAUFFMAN, III, deceased

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA

Plaintiff

NO. 07-5043

v

CIVIL ACTION - LAW

PAMELA FRANZ, M.D., STEPHEN SPENCER, M.D.,  
POTTSTOWN MEMORIAL MEDICAL CENTER,  
POTTSTOWN HOSPITAL COMPANY LLC, d/b/a  
and/or a/k/a POTTSTOWN MEMORIAL MEDICAL  
CENTER

TRIAL BY A JURY OF TWELVE MEMBERS AND  
TWO ALTERNATES DEMANDED

ASSIGNED TO THE HONORABLE  
EDUARDO C. ROBRENO

Defendants

MOTION OF DEFENDANTS, POTTSTOWN MEMORIAL MEDICAL CENTER,  
POTTSTOWN HOSPITAL COMPANY, LLC, d/b/a and/or a/k/a POTTSTOWN  
MEMORIAL MEDICAL CENTER, FOR JUDGMENT AS A MATTER OF LAW  
PURSUANT TO FRCP 56, AS TO COUNT XI, FIRST CAUSE OF ACTION EMTALA  
VIOLATION.

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# Health Law I

Professor Pope

Class 3: August 30, 2011

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# Burditt

v.

# DHHS

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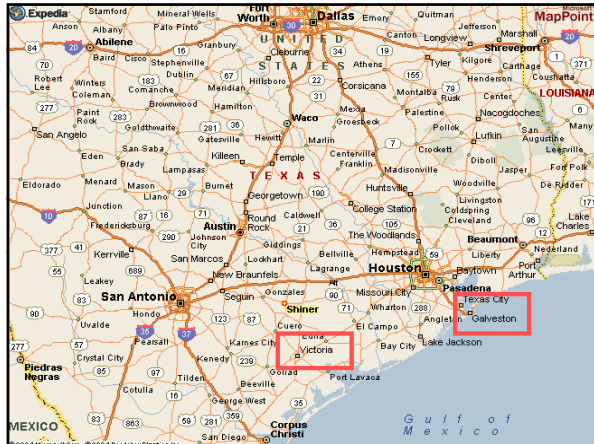
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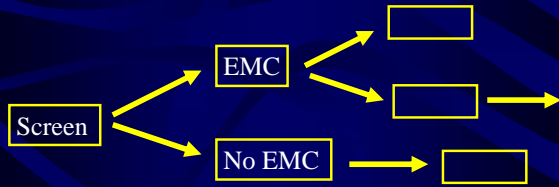
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What were the EMTALA violations here



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# Torretti v. Main Line Hosp.

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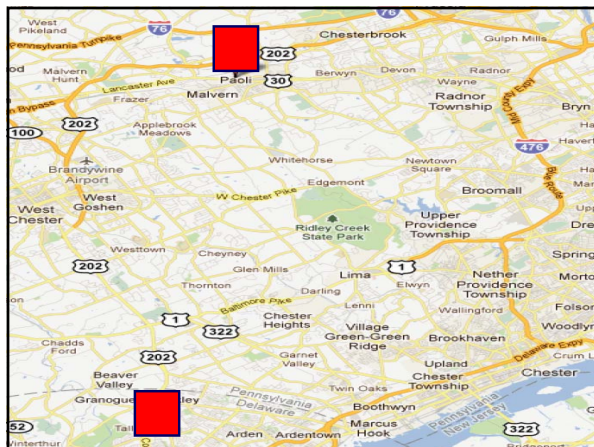
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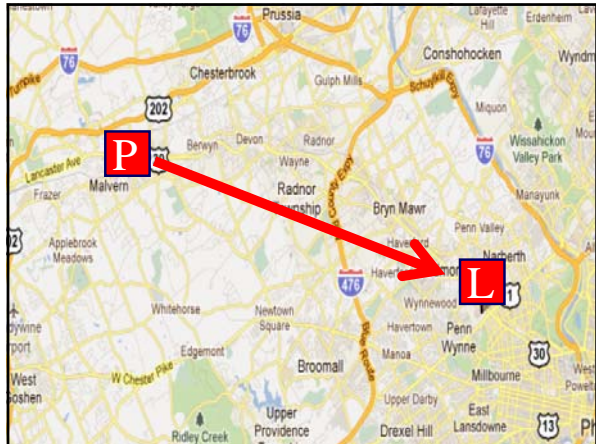
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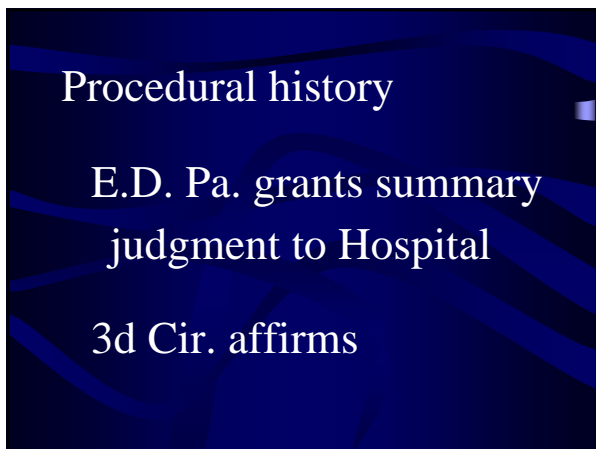
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Patient arrive at hospital (not already inpatient, outpatient)?	
Screen for EMC?	
Screened in standard way for presented symptoms?	
EMC identified?	
EMC stabilized?	
Transferred per certification?	

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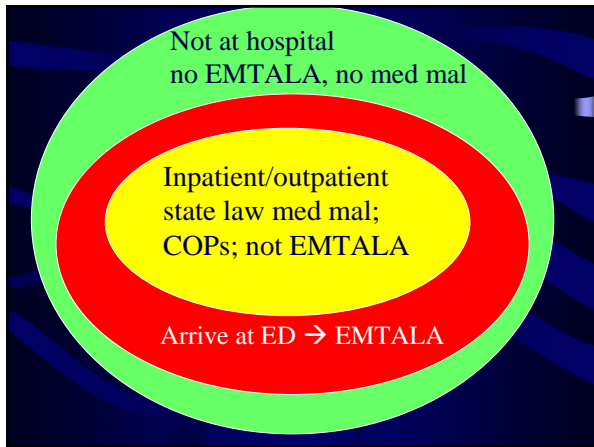
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<b>Duty to screen</b>	<b>Duty to stabilize</b>
Only based on those symptoms <b>actually aware</b> of <i>-- Franz</i>	Only those EMC that <b>actually</b> <b>aware of</b> <i>-- Toretti</i>
<div style="border: 1px solid black; padding: 2px; display: inline-block;">Stay stupid, stay safe</div>	

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# Smith v. Albert Einstein Med. Ctr.

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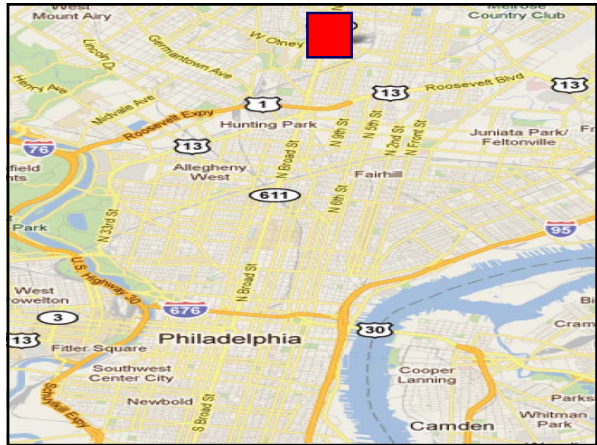
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### Terminology

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

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# In re Baby K

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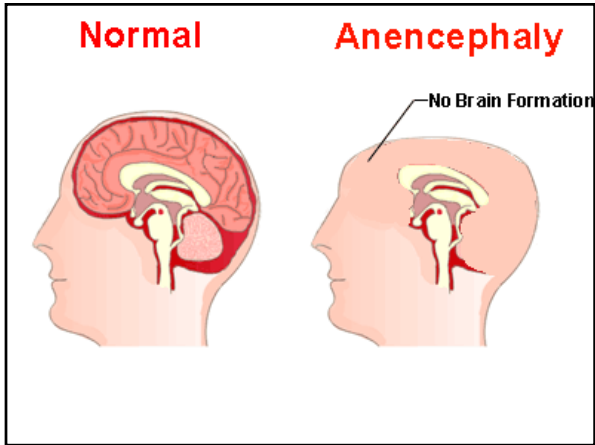
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What if hospital admits patient and **then** refuses requested treatment

Why didn't Fairfax hospital just admit Baby K, and **then** refuse to treat

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EMTALA requires provider to enter into treatment relationship

Existence of treatment relationship gives rise to tort duties

But refusing to treat Baby K would not be a tort under Virginia law

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# Johnson v. Beebe Med. Ctr.

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Grant DEF summary judgment on stabilization

Deny DEF summary judgment on screening

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JUDITH JOHNSON and LOUIS JOHNSON, )  
husband and wife, )  
 )  
Plaintiffs, )  
 )  
v. ) Civ. No. 08-593-JJF  
 )  
ROBERT A. PORTZ, M.D. and ) TRIAL BY JURY DEMANDED

**Trial: May 7, 2010**

Question 1:

Did Defendant Beebe Medical Center violate the Emergency Medical Treatment and Active Labor Act (EMTALA)?

\_\_\_\_\_ YES \_\_\_\_\_ NO

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Question 3:

Was the EMTALA violation and/or medical negligence of any defendant for which you answered YES in response to Question 1 and/or Question 2 a proximate cause of injury to Plaintiff Judith Johnson? (Answer only as to any defendant that you found to be in violation of EMTALA in Question 1 and/or medically negligent in Question 2).

A. Robert Portz, M.D. \_\_\_\_\_ YES \_\_\_\_\_ NO

B. Thomas Cathcart, P.A. \_\_\_\_\_ YES \_\_\_\_\_ NO

C. Ali Delbakhsh, M.D. \_\_\_\_\_ YES \_\_\_\_\_ NO

D. Beebe Medical Center

1. based upon its EMTALA violation  
(Do not answer if answer to Question 1 was "No") \_\_\_\_\_ YES \_\_\_\_\_ NO

2. based upon medical negligence \_\_\_\_\_ YES \_\_\_\_\_ NO

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You are ER doc

30-year old female comes to ER for suture removal

You evaluate patient

Wound healing normally, no infection

Not suffering from emergency condition

You refer patient to primary care physician for the suture removal

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You are ER physician at U-Penn.

You get a call from Scranton Cty. Hosp.  
They want to transport 55 year-old male with chest pain.

Scranton did EKG and blood work

But does not have cardiologist on staff

You deny, suggesting patient be admitted to Scranton for observation.

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# Health Law I

Professor Pope

Class 4: Sept. 1, 2011

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Please submit  
**Quiz 1** by 4:00p  
Tuesday, Sept. 6

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When **must**  
HCP treat a  
patient?

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**Never**, if not already in treatment  
relationship (Hurley)

Some common law duties for  
**hospitals**, in emergencies  
(Manlove)

EMTALA duties for hospitals,  
starting in 1986

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Physicians generally have **no duty** to treat patients with whom they have no treatment relationship (*Hurley*)

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Can refuse for no reason

Can refuse because unable to pay

But cannot refuse for invidious discriminatory reasons

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Federal statutes prohibit discrimination on the basis of **race, national origin, gender**

Hill Burton Act (1946)

Title VI of CRA (1964)

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Federal statutes prohibit  
**disability** discrimination

Rehabilitation Act (1973)

ADA (1990)

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Can make claim **even if**  
no p/p formation

*E.g.* if very reason for no  
formation is  
discriminatory

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**ADA**

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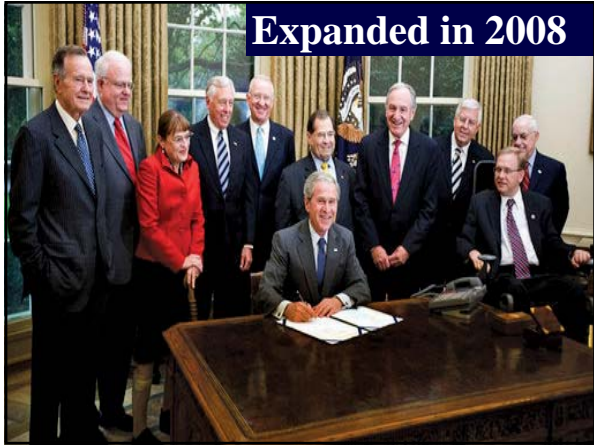
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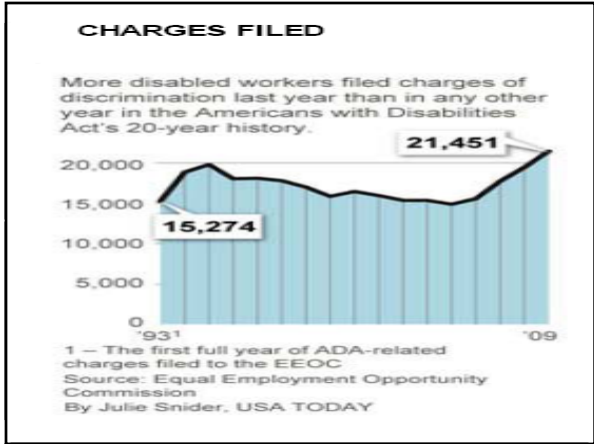
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# Purpose of the ADA

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Protect persons with disabilities

**Against** discrimination on basis of disability

When the person is **qualified** for the service

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## (3) Prima facie elements

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(1) PTF must show that she has a **disability**

A physical or mental impairment that substantially limits one or more major life activities

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(2) PTF must show that she was denied treatment **because of** her disability

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PTF must show that she is **“otherwise qualified”** for the denied treatment

That she has the capacity to benefit from it

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# Physician defenses

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PTF does not have disability  
or  
Even if (1), treatment not denied because of disability  
or  
Even if (1) and (2), PTF was not “otherwise qualified”  
or

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Patient posed a “direct threat”  
A significant risk to the health or safety of others  
and

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The “direct threat” could not be eliminated by “reasonable accommodations” (i.e. modification of policies, practices).

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**PTF**

Disability  
Denied treatment because disability  
Otherwise qualified

**DEF**

Direct threat - even with reasonable accommodation

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**Bragdon**  
**v.**  
**Abbott**

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Legal element	Facts establishing
Disability	
Denied HC because of disability	
Otherwise qualified	

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# Glanz v. Vernick

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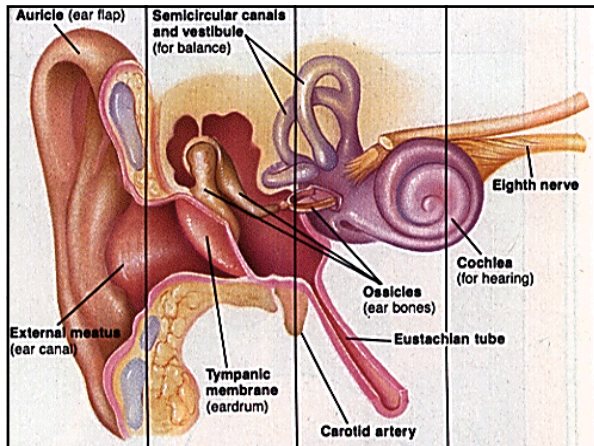
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Legal element	Facts establishing
Disability	
Denied HC because of disability	
Otherwise qualified	

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# McElroy v. Patient Selection Comm.

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Transplant Trends	
Waiting list candidates as of today 2:45pm	112,125
<b>Active</b> waiting list candidates as of today 2:45pm	72,521
Transplants January - May 2011	11,485
Donors January - May 2011	5,669



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Legal element	Facts establishing
Disability	
Denied HC because of disability	
Otherwise qualified	

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Okay to deny health service if not “otherwise qualified”

Courts prepared to “qualification” decision made on medical basis

Concern is making decision on stereotype basis

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**Current  
ADA  
Enforcement**

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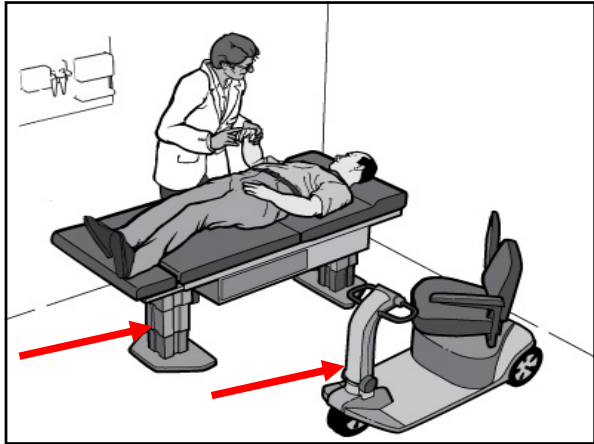
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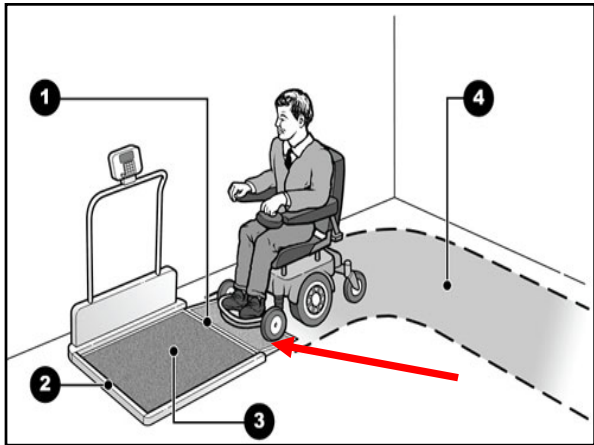
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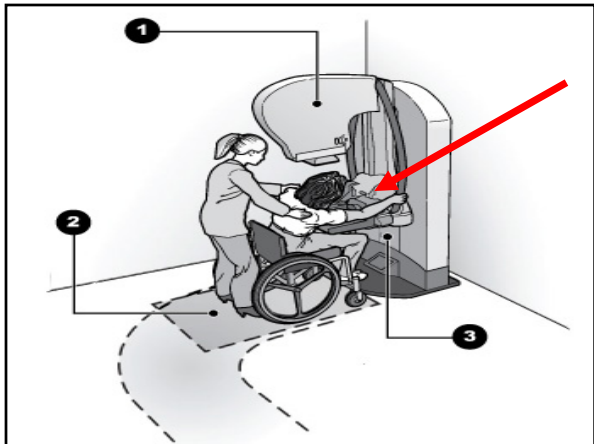
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# Walker v. Pierce

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Eugenic sterilization  
disfavored since WWII

But this physician **can**  
**enforce** his personal  
eugenics policy

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