

MEMORANDUM

To: Justice Polly Esther
U.S. Supreme Court Justice

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Date: August 31, 2010

Re: In re Estate of Frank Forever v. Last Stop General Hospital and Ray Sunshine, M.D., jointly and severally

Questions Presented

Under the federal statute Emergency Medical Treatment and Active Labor Act (“EMTALA”), does a Hospital have a duty to stabilize a patient after he was admitted to the hospital? How will this decision impact the importance of the EMTALA to the uninsured and underinsured?

Short Answer

Yes. A hospital’s duty to stabilize an individual’s known emergency medical condition extends to individuals who are admitted to the hospital. This approach is consistent with a plain language reading of the EMTALA, which has been adopted by this Court and the Sixth Circuit. This decision is also best for the uninsured and underinsured because this reading of the federal statute imposes an affirmative duty on a hospital to stabilize an emergency medical condition, regardless of the individual’s insurance status.

Facts

On March 29, 2005, Mr. Frank Forever was driving with his youngest daughter when they were hit on the driver’s side at 35 mph by another driver running a red light. Paramedics quickly arrived and transported Mr. Forever and his daughter to the Emergency Room (“ER”) at

Last Stop General Hospital ("Hospital"). Mr. Forever was given a medical exam and it was decided he be admitted under the care of Dr. Sunshine. Mr. Forever continued to receive care from March 30 through April 2. A neurologist was consulted and a CT Scan revealed no cerebral hemorrhage. An MRI was also recommended as a more accurate test. On April 3, Dr. Sunshine wrote that Mr. Forever still had headaches and also noted that Mr. Forever's insurance was contacted regarding approval for an MRI. An MRI was never administered. On April 4, Dr. Sunshine wrote that Mr. Forever was prepped for discharge as his headaches had improved. Mr. Forever was discharged to his family. At dinner on April 4, Mr. Forever fell unconscious, was rushed to the ER, suffered a severe cerebral hemorrhage and died shortly after arrival to the hospital.

Analysis

The federal law Emergency Medical Treatment and Active Labor Act ("EMTALA") governs the duty of a hospital's emergency department to stabilize a patient in an emergency medical condition. Under the statute, when an individual who goes to a hospital's emergency department and requests, or a request is made on the individual's behalf, for treatment of a medical condition, "the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition (within the meaning of subsection (e)(1) of this section) exists." 42 U.S.C. § 1395dd(a) (2003). The statute further provides:

[i]f any individual (whether or not eligible for benefits under this subchapter) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either-- (A) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or (B) for transfer of the individual to another medical facility in accordance with subsection (c) of this section.

42 U.S.C. § 1395dd(b). In addition, 42 U.S.C. § 1395dd(c) generally restricts transfers of unstabilized patients and § 1395dd(d) authorizes both civil fines and a private cause of action for violations of the statute.

A circuit court split exists to whether a hospital's duties under EMTALA remain after a patient has been admitted. The Sixth Circuit has relied on the plain language of the EMTALA, to hold that the EMTALA's stabilizing requirement extends even when a patient is admitted. By contrast, the Ninth and Fourth Circuit have adopted a narrow reading of the statute and have held that the duty to stabilize a patient under EMTALA does not apply once a patient is admitted. The Eleventh Circuit further narrowed the reading of EMTALA and only requires stabilization if the patient is to be transferred. As is shown below, the Sixth Circuit's approach is most consistent with both the plain language of the statute and this Court's decision in *Roberts v. Galen of Va.*, 525 U.S. 249 (U.S. 1999) (per curiam).

A. Interpretation of 42 U.S.C. § 1395dd or Emergency Medical Treatment and Active Labor Act ("EMTALA")

1. The Language of the Statute

"In the absence of an indication to the contrary, words in a statute are assumed to bear their 'ordinary, contemporary, common meaning.'" *Moses v. Providence Hosp. and Med. Ctr., Inc.*, 561 F.3d 573, 580 (6th Cir. 2009), citing *Walters v. Metro. Educ. Enters., Inc.*, 519 U.S. 202, 207 (1997) (quoting *Pioneer Inv. Servs. Co. v. Brunswick Ass'ns Ltd. P'ship*, 507 U.S. 380, 388 (1993)). Congress wrote EMTALA to contain broad language. Section 1395dd(b) provides "the hospital must provide either-- (A) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or (B) for transfer." The Sixth Circuit found that this language imposed a duty under

the federal statute to stabilize a patient and that the language “such treatment as may be required to stabilize” the patient does not end if the individual is admitted. *Moses*, 561 F.3d at 583.

Moreover, the Sixth Circuit concluded that this reading of the statutory language was justified because a contrary rule would allow a hospital to bypass stabilizing treatment obligations simply by admitting a patient. *See Thornton v. S.W. Det. Hosp.*, 895 F.2d 1131, 1135 (6th Cir. 1990); *see also Lima-Rivera v. UHS of P.R., Inc.*, 476 F. Supp. 2d 92, 97 (D.P.R. 2007) (deciding a hospital is still responsible under EMTALA even when patient is admitted).¹

The Sixth Circuit’s focus on the plain language of the statute is entirely consistent with the Supreme Court’s approach to interpreting the EMTALA. In *Roberts*, 525 U.S. 249, the Supreme Court adopted a plain language reading of EMTALA. In that case, the Court of Appeals held that § 1395dd(a) required proof of an improper motive to allow for recovery. This Court rejected the lower court’s approach and refused to read the additional term of “appropriate” into the statutory language of § 1395dd(b), because the text of the statute in § 1395(b) did not impose such a requirement.

The Fourth Circuit, however, in *Bryan v. Rectors and Visitors of the U. of Va.*, 95 F.3d 349, 351 (4th Cir. 1996), read the EMTALA as requiring only the start of patient treatment in the emergency department. The court in *Bryan* concluded that once patient care begins, EMTALA rights cease and a patient has recourse solely under state law. *Id.* According to the Fourth Circuit, “[t]he stabilization requirement is thus defined entirely in connection with a possible transfer and without any reference to the patient’s long-term care within the system.” *Id.* at 352.

¹ Under EMTALA, in order to satisfy the stabilization requirement, the patient’s condition must not deteriorate upon release. *See* 42 U.S.C. 1395dd(e)(3)(A); *see also Moses*, 561 F.3d at 582. In this case, Mr. Forever’s condition did deteriorate when he suffered a cerebral hemorrhage the day he was released from the hospital. It appears that had the hospital performed the MRI, the cerebral hemorrhage would have been discovered, and thus, Mr. Forever was not stabilized before he was released. However, whether the EMTALA actually required the performance of an MRI is beyond the scope of this memo.

The Ninth Circuit has agreed with the Fourth Circuit's approach. *Bryant v. Adventist Health Sys./W.*, 289 F.3d 1162, 1167 (9th Cir. 2002).² This reading of EMTALA ignores the fact that the duty to stabilize is imposed in § 1395dd(b)(1)(A), which governs what must occur "within the staff and facilities available at the hospital . . .," rather than § 1398dd(b)(1)(B) which discusses transfers.

2. The Legislative History

All of the courts acknowledge that the purpose of the EMTALA is to prevent patient dumping. *Bryan*, 95 F.3d at 351, citing *Vickers v. Nash Gen. Hosp., Inc.*, 78 F.3d 139, 142-43 (4th Cir. 1996) (citing numerous cases). The courts disagree, however, about the guidance provided by the legislative history of this statute. The Eleventh Circuit used a Senate Report to show Congress provided a guarantee for entry to the medical system by mandating a medical screen and stabilization prior to transfer, with the intent to prevent inappropriate transfers. *Harry v. Marchant*, 291 F.3d 767, 773 (11th Cir. 2002). The court further concluded that EMTALA is not intended to preempt malpractice state law and "[b]y mandating treatment only in the context of a patient transfer, the stabilization requirement addresses Congress's concern regarding rejection of patients without converting EMTALA into a federal malpractice statute." *Harry*, 291 F.3d at 773-74.

By contrast, the Sixth Circuit also examined the legislative history and concluded that "[t]he only clear guidance from the legislative history is that Congress intended to prevent hospitals from dumping patients who suffered from an emergency medical condition because they lacked insurance to pay the medical bills." *Moses*, 561 F.3d at 581, citing *Thornton*, 895 F.2d at 1134. The Sixth Circuit acknowledged that some of the legislative history could be read

² The court in *Bryant* preferred the Fourth Circuit's narrow reading of EMTALA, rather than the Sixth Circuit's approach because it was concerned with how long a stabilizing requirement could last.

in a narrow interpretation. *Moses*, 561 F.3d at 581. For example, the House Judiciary Committee states that the language in the enforcement section that “the only individual who can sue is the ‘individual patient who suffers harm as a direct result of hospital’s failure to appropriately screen, stabilize, or properly transfer that patient.’” *Moses*, 561 F.3d at 581, citing H.R.Rep. No. 99-241, pt. 3 at 6, *reprinted in* 1986 U.S.C.C.A.N. 726, 728. The court, however, refused to rely on this language because that reading was contrary to from the actual statutory language; thus, “this [c]ourt should not rely on that committee’s statement as the exclusive explanation for the meaning of the statute.” *Moses*, 561 F.3d at 581, *see Exxon Mobile Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005).

3. The Impact of the Interpretive Ruling

The Centers for Medicare and Medicaid Services (“CMS”) has provided an interpretive ruling on the extent of a hospital’s duties under EMTALA. According to this ruling,

[i]f a hospital has screened an individual under paragraph (a) of this section and found the individual to have an emergency medical condition, and admits that individual as an inpatient in good faith in order to stabilize the emergency medical condition, the hospital has satisfied its special responsibilities under this section with respect to that individual.

42 C.F.R. § 489.24(d)(2)(i) (“CFR”). This language presents a strong argument for restricting a hospital’s duty under EMTALA. However, because this reading is contrary to the plain language of the statute, this Court should reject it.

It is well-established that although “[a]n agency’s construction of a statutory scheme that is entrusted to administer is entitled to a degree of deference . . . we must . . . ‘reject administrative constructions which are contrary to clear congressional intent.’” *Moses*, 561 F.3d at 583, citing *Gallagher v. Croghan Colonial Bank*, 89 F.3d 275, 277-78 (6th Cir. 1996) (quoting *Chevron, U.S.A., Inc., v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984)). The Sixth Circuit concluded 42 C.F.R. § 489.24(d)(2)(i) “appears contrary to EMTALA’s plain language

which requires a hospital to ‘provide . . . for such further medical examination *and such treatment* as may be required to stabilize the medical condition[.]’” *Moses*, 561 F.3d at 583, citing § 1395dd(b)(1)(A) (emphasis added). Thus, the CMS ruling is not binding because it is inconsistent with the language of the statute. *See Lima-Rivera v. UHS of P.R., Inc.*, 476 F.Supp.2d 92, 98 (D.P.R. 2007).

Although both sides of the circuit court split have valid arguments the Sixth Circuit’s approach is supported by a plain language analysis of EMTALA, the Supreme Court’s approach in *Roberts*, and a basic canon of statutory construction. A plain language reading of EMTALA requires for a patient arriving at a hospital’s emergency department with an emergency condition to be stabilized, regardless of whether the patient is admitted as a patient. Moreover, as is shown below, this reading of the statute is consistent with the concerns that motivated Congress to enact the EMTALA.

B. Public policy concerns relating to the decision

Congress enacted EMTALA to prevent hospitals from refusing to treat patients who arrive in an emergency medical condition because the patients lack medical insurance. *Thornton*, 895 F.2d at 1134. A decision to extend EMTALA’s stabilization requirement beyond an individual being admitted to a hospital safeguards congressional intent. In addition, this rule ensures hospitals treat all patients the same. Finally, such an approach does not improperly interfere with state tort law as Congress explicitly separated a hospital’s liability under the EMTALA from the liability under state tort law.

Congress’ intent when enacting EMTALA was to ensure all patients in an emergency medical condition would be able to enter the medical system and receive sufficient treatment to be stabilized. *Moses*, 561 F.3d at 581-82. Congress wanted to ensure hospitals would not turn

away a patient with an emergency condition, even if the individual could not provide proof of medical insurance or proof of payment. *See Harry* 291 F.3d at 772-773. In reaching the conclusion that the EMTALA did not cover admitted patients, the Ninth Circuit assumed that a hospital would not admit a patient just to get out of the EMTALA. *Bryant*, 289 F.3d at 1169. Although the court's reluctance to assume that hospitals would engage in such behavior is understandable, this reluctance ignores the motivation to enact EMTALA in the first place: hospitals were in fact engaging in patient dumping. The Sixth Circuit's solution of requiring a hospital to stabilize a known medical condition, notwithstanding a patient's admission status, removes the possibility of hospitals avoiding the duties imposed by EMTALA simply by changing the status of the patient. *See Moses*, 561 F.3d at 573. A hospital should be required to give a good faith effort to stabilize a patient under EMTALA and not just get out of the statute by admitting a patient. *Morgan v. N. Miss. Med. Ctr., Inc.*, 403 F. Supp. 2d 1115, 1130 (S.D. Ala. 2005).

Another objective of EMTALA was to provide a rule that all patients in an emergency medical condition are treated the same until their condition is stabilized. *Morgan*, 403 F. Supp. 2d at 1125-26. The statute specifically provides that "[a] participating hospital may not delay provision of an appropriate medical screening examination required under subsection (a) of this section or further medical examination and treatment required under subsection (b) of this section in order to inquire about the individual's method of payment or insurance status." 42 U.S.C. § 1395dd(h). Thus, while the statute does not dictate the type care performed on patients, it does require that the appropriate screening be done, regardless of the insurance status of the patient. *Morgan*, 403 F. Supp. 2d at 1126 (quoting *Holcomb v. Monahan*, 30 F.3d 116, 117 n. 2 (11th Cir. 1994) "[a]s long as a hospital applies the same screening procedures to indigent

patients which it applies to paying patients, the hospital does not violate' the screening section of EMTALA.”³

A rule that provides EMTALA stabilization to continue after a patient is admitted and that all patients be treated the same can be accomplished by keeping separate federal and state laws. The courts that have adopted a more narrow view of the statute have expressed their reluctance to have the federal statute replace state tort law. However, this concern is misplaced. The EMTALA was not enacted as a federal medical malpractice or standard of care action. *Bryant v. Adventist Health Sys./W.*, 289 F.3d 1162, 1166-67 (9th Cir. 2002). When writing EMTALA, Congress included civil enforcement guidelines that show that Congress intended a clear separation of federal and state rights. Section 1395dd(d)(1)(A), which provides for civil penalties, states, “[a] participating hospital that negligently violates a requirement of this section is subject to a civil money penalty of not more than \$50,000 . . . for each such violation.” In comparison, § 1395dd(d)(2)(A) on personal harm, reads “[a]ny individual who suffers personal harm as a direct result of a participating hospital’s violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for personal injury under the law of the State in which the hospital is located, and such equitable relief as is appropriate.” Thus, Congress recognized federal and state law would work separately to protect patients. There is independence of claims under EMTALA and state malpractice law, where federal claims, as in this case, are limited to the statutory guidelines of § 1395dd(d)(1)(A), and the only way to recover for personal injury is through § 1395dd(d)(1)(A), by bringing a law suit under state malpractice or standard of care law. *Moses*, 561 F.3d at 582.

³ Regardless of whether the MRI was appropriate, Hospital's consultation with the insurance company before performing the MRI would appear to violate this subsection of the EMTALA.

Conclusion

The EMTALA should be read to provide that a hospital is required to provide the necessary care to stabilize patients, even if they are admitted to the hospital. *Moses*, 561 F.3d at 584. This understanding of the statute is supported by this Court's plain language interpretation of the statute *Roberts*. It is also consistent with the policy concerns underlying the statute. Thus, this Court should adopt the approach taken by the Sixth Circuit and reject the attempt to limit the reach of the EMTALA based on the hospital's decision to admit the patient.