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HEALTH LAW

Equal Treatment for Emergency Room Patients

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Ms Darcy Jones was 17 years old and pregnant with her first child. She had received prenatal care funded by a state program for indigent and adolescent expectant mothers. In July 2000, Ms Jones's records were turned over to her and her parents, and the Jones family was advised that Ms Jones could go to any hospital in the county to deliver her child.

On the afternoon of August 3, 2000, Ms Jones began to experience labor pains. At approximately 3:00 PM she went to the emergency room at County Memorial Hospital in her home county. Ms Jones provided copies of her medical records and, after initial processing by an ER nurse, she was taken to labor and delivery where Dr. David Duncan, a private obstetrician under contract with the hospital to perform obstetrical services in the ER, was to examine her.

Dr. Duncan scanned her medical records and realized she was an uninsured, indigent patient. Then, rather than perform a physical examination of Ms Jones, Dr. Duncan relied upon the notes of the nurse who had completed the preliminary exam. He concluded that her water had not broken and her membranes were intact. He did not verify these medical conclusions by performing an acidity test. He diagnosed Ms Jones as being in early latent labor. Dr. Duncan then instructed Ms Jones to drive to State University Medical Hospital, a facility 200 miles and 4 hours driving time away in another county to deliver her baby. He told her not to speed while driving there.

Dr. Duncan did not call the University Medical Hospital to alert them that Ms Jones was on her way. He did not write a transfer memo, listing in writing his reasons for deciding that the transfer's benefits outweighed the risks. He did not provide any medical treatment or perform any procedures to minimize the risks to Ms Jones and her baby, except for his instruction about not speeding.

At 4:00 PM, after hearing Dr. Duncan's instructions, Ms Jones was in a state of confusion, shock, and fear. She sat in the hospital ER hallway until 4:30 PM, when a nurse approached her and told her she should be on her way to the State University Medical Hospital. Ms Jones called her mother, who was outraged, and went to Eastern Legal Services to file a restraining order against Dr. Duncan. No legal action could be taken since the courthouse was closed, so Ms Jones called her boyfriend, who came to the hospital and picked her up. Borrowing a 24-year-old car

that was in bad condition, Ms Jones and her boyfriend departed for the State University Medical Hospital in the middle of the night. They arrived early on the morning of August 4. Ms Jones was not dilated to 3 cm, so the hospital sent her home to her own county hospital to deliver later that day. By this time, the federal court had issued a temporary restraining order, requiring Dr. Duncan to deliver Ms Jones's baby.

On August 5, Ms Jones's water broke and she returned to County Memorial Hospital where she was admitted. During delivery, Dr. Duncan administered oxytocin to speed her contractions, and engaged in a verbally abusive conversation with Ms Jones, denouncing her for involving lawyers and the courts and issuing a temporary restraining order against him. Ms Jones's baby was born with its umbilical cord wrapped around his neck, and it is likely the umbilical cord had been wrapped around the child for the entire period of these events.

Ms Jones brought a private EMTALA action against County Memorial Hospital for personal injury, emotional distress, and equitable relief. In addition, the Department of Health and Human Services (HHS) sought civil damages in the amount of $50,000 against Dr. Duncan, and $50,000 against County Memorial Hospital.

Discussion

EMTALA (Emergency Medical Treatment and Active Labor Act), 42 USC § 1395d (1986) aims to prevent instances of patient dumping and refusals to treat based on ability to pay. The law applies to all hospitals with emergency departments that have voluntarily chosen to participate in the Medicare program.

EMTALA requires all hospitals to provide a medical screening examination to anyone who presents at the emergency room, regardless of that person's ability to pay. The medical screening examination must be sufficient to determine whether an emergency medical condition exists. An emergency medical condition is one that includes acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to place the health of the individual (or, in the case of a pregnant woman with contractions, the life of the woman and her child) in serious jeopardy.

If it is determined that an emergency medical condition exists, then the emergency room MUST either:

- treat the patient until stabilized or,
- transfer the patient to another medical facility.

Repercussions for EMTALA violations include:

- patient lawsuit against the hospital under existing negligence standards,
- Department of Health and Human Services monetary penalties against the hospital and/or physician up to $50,000, and/or

- suspension or exclusion of the physician from the federal Medicare program.

Questions for Discussion

1. According to EMTALA requirements, what was Dr. Duncan's violation?
2. What actions could Dr. Duncan have taken to avoid violating EMTALA in this case? As a general rule, what action should *all* physicians who treat patients in the emergency room take to comply with EMTALA?
3. Because of the unique relationship between the emergency room patient and physician (ie, the acute nature of interaction and attenuated patient-physician relationship), it is often difficult for patients who have been injured or harmed in the ER to satisfy the necessary doctor-patient relationship upon which medical malpractice (negligence) cases are based. In the absence of this relationship, what standards should motivate physicians to treat all patients with equal care? That is to say, are the existing legal sanctions against physicians for malpractice (albeit limited for patients) enough to enforce ethical conduct in treating emergency room patients?

Subsequent Legal History

The aforementioned facts are taken from an actual case, *Owens v Nacogdoches County Hospital*. This 1990 case is one of the earliest to apply the "Patient Anti-Dumping" federal statute known as EMTALA. The facts in *Owens* depict a scenario that EMTALA was designed to prevent: a national scandal involving the "rejection of indigent patients in life threatening situations for economic reasons alone." As the court noted in *Owens*, "hospitals with emergency facilities cannot deny those facilities to the poor. They cannot shrug their shoulders and send children in rickety cars on 24-hour drives simply because they do not make the same money treating such children as they do for paying customers" (741 F Supp at 1281).

Additional facts are taken from *Burditt v HHS*. Federal courts have consistently reaffirmed the statutory authority of HHS to impose and enforce civil monetary fines of $50,000 *per violation* against *both* hospitals and physicians.

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