**Torretti v. Paoli Memorial Hospital:** The Third Circuit Adopts the “Actual Knowledge” Standard for EMTALA Liability

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A United States District Court for the Eastern District of Pennsylvania recently dismissed an Emergency Medical Treatment and Active Labor Act (EMTALA) suit against a hospital holding that the plaintiffs failed to show the hospital, or its staff, had “actual knowledge” of an emergency medical condition.¹

Honey Torretti was 34 weeks pregnant with her second child when she arrived at a testing center located in Paoli Memorial Hospital for a scheduled appointment on a Monday. She had telephoned her obstetrician, Dr. Gerson, the previous Friday to express concern about decreased fetal movement. While at Paoli, decreased fetal movement coupled with results of the non-stress test suggestive of fetal brain injury led Dr. Gerson and/or a Paoli staff member to instruct Mrs. Torretti to go directly to Lankenau Hospital – the facility where obstetricians performed deliveries. Additionally, Dr. Gerson testified that he wanted Mrs. Torretti’s blood sugar monitored due to it being at a low level. Dr. Gerson felt she should not stay in the testing unit very long and she needed to be monitored longer at an appropriate facility. After 28 minutes of monitoring, Dr. Gerson stopped the non-stress test and sent Torretti to Lankenau.

Mrs. Torretti’s husband, Chris, wanted to make sure it was not an emergency requiring an ambulance and telephoned Dr. Gerson who replied that an ambulance was not necessary; Dr. Gerson believed that Mrs. Torretti “was not an acute emergency.”² The Torrettis did not go directly to Lankenau and instead made several stops totaling about 45 minutes before arriving at the hospital. Subsequently, Mrs. Torretti gave birth to a child with permanent mental and physical damage.

The Torrettis brought suit against Paoli Memorial Hospital and others asserting several state law claims and a federal law EMTALA claim. The district court noted that EMTALA places three burdens on a hospital: appropriate medical screening, stabilizing treatment of a known emergency condition, and restricting transfer until a patient is stabilized.³ Further, the court stated that the Torrettis must pass a three-prong test and prove that Mrs. Torretti had (1) “an emergency medical condition, (2) the hospital actually knew of that condition, [and] (3) the patient was not stabilized before being transferred.”⁴

In its opinion, the court began its analysis with definitions of pertinent statutory terms. Pursuant to the EMTALA statute, the court defined an “emergency medical condition” as “a medical condition manifesting itself by acute symptoms of sufficient severity…such that the absence of immediate medical attention could reasonably be expected to result in (i) placing the health of

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² *Id.* at *2*.
³ *Id.* at *3*, citing 42 U.S.C. § 1395dd.
⁴ *Id.* at *4*, citing *Baber v. Hosp. Corp. of Am.*, 977 F.2d 872, 883 (4th Cir. 1992), and further noting that “[t]he Third Circuit has not addressed the extent of EMTALA liability.”
the individual...in serious jeopardy, (ii) serious impairment to bodily functions, or (iii) serious
dysfunction of any bodily organ or part...”

The term “to stabilize” was defined to “provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility...” Finally, the Court defined “active labor” as labor at a time when there is inadequate time to effect safe transfer to another hospital prior to delivery, or a transfer may pose a threat to the health and safety of the patient or unborn child.

While the Court opined that Mrs. Torretti did not present herself as a patient with an emergency medical condition – and thus did not meet the first prong of the test – it focused more intently on the second prong: what the hospital knew at the time Mrs. Torretti was at Paoli.

The court placed considerable emphasis and analysis on the number of opinions by circuit courts throughout the country holding that a hospital cannot be held liable under EMTALA for conditions it does not detect. It noted that EMTALA liability “does not hinge on the result of the plaintiff’s condition after the release or transfer, but rather on whether the hospital would have considered another patient in the same condition as unstable that would not warrant his or her release or transfer.” It further noted that a “hospital that does not determine that there is an emergency medical condition has no duty under EMTALA to perform a further examination and stabilize the medical condition.”

The court not only emphasized the plaintiff’s requirement of showing the hospital had “actual knowledge” of an emergency medical condition, but it discounted any argument by plaintiffs that the hospital “should have known” of Mrs. Torretti’s condition. It held that a reasonableness standard should not apply citing a case, Bryant v. Adventist Health System/West, which distinguished between EMTALA actions and medical malpractice suits. In that case, the Ninth Circuit opined that the two actions are invariably different. It stated that the hospital only needs to “stabilize conditions that they actually detect...The Act does not hold hospitals accountable for failing to stabilize conditions...of which they should have been aware.” Otherwise, the Court noted, EMTALA claims would co-exist with malpractice claims for negligent treatment. Thus, the court concluded that a higher burden of knowledge should be placed on the plaintiffs in order to prevail in an EMTALA action, a burden more favorable to a hospital.

7 Id., citing 42 U.S.C. § 1395dd(e)(2)(B)-(C), as amended.
8 Id. at *5, citing Hunt ex rel. Hunt v. Lincoln County Mem. Hosp., 317 F.3d 891, 893 (8th Cir. 2003); Vickers v. Nash Gen. Hosp., Inc., 78 F.3d 139, 141 (4th Cir. 1996); Eberhardt v. City of Los Angeles, 62 F.3d 1253, 1258 (9th Cir. 1995); Holcomb v. Monahan, 30 F.3d 116, 117 (11th Cir. 1994) (holding plaintiff had failed “to provide evidence either that [the patient] was in an emergency medical condition when discharged or that [the hospital] knew of the emergency condition”).
11 289 F.3d 1162, 1166 (9th Cir. 2002).
Any individual reading the Torretti opinion could decipher what the ultimate ruling would be. The sheer enormity of cases in various circuit courts holding that a hospital must have “actual knowledge” of an emergency medical condition is quite daunting and creates a large potential loophole in EMTALA cases.

In other words, hospitals will likely be saved from EMTALA liability if they are able to show that its staff members did not have any actual knowledge of a patient in an emergency medical condition at the time of treatment. This standard is a much higher burden to meet than a traditional state law medical negligence action where a plaintiff has to show that a provider of health care performed an act or omission which deviated from accepted standards of practice in the medical community in which the patient lived. Should a plaintiff prove his or her case under medical negligence, the financial award can be impressive.

However, plaintiffs required to show that a hospital had “actual knowledge” of an emergency medical condition under EMTALA are met with a significant task in most cases in order to financially prevail in such an action.

Section 1395dd(d) of the act authorizes both civil fines and a private cause of action for violations of the statute. Possible monetary fines attributable to a hospital include a maximum of $50,000 per occurrence and/or the “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, the courts do not appear willing to assess monetary damages to a hospital without significant evidence that the hospital and/or staff had “actual knowledge” of an emergency medical condition and failed to stabilize it.

The Torretti court held that “EMTALA cases are fact specific: what did the hospital – through its staff – know and when did it know it.” In holding that the facts surrounding Mrs. Torretti’s condition did not rise to a sufficient level to survive summary judgment, the Court distinguished the facts from other cases where liability attached to hospitals under EMTALA. The court noted, in those cases, that there were clear cases of symptomatic patients in distress. The court even cited a Tenth Circuit case with facts similar to those of Mrs. Torretti to support its ultimate holding.

In Urban By and Through Urban v. King, the patient was in a high-risk pregnancy with twins when she went to an obstetrics department for a stress test that ultimately resulted in no fetal movement; the fetal heart tones and the patient’s vital signs were normal. The patient was discharged and told to return the following day for another stress test. The next day a Caesarian section was performed resulting in a stillborn child and one with brain damage. The Tenth

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16 Urban By and Through Urban v. King, 43 F.3d 523, 524-25 (10th Cir. 1994).
Circuit held that “the plaintiff must prove the hospital had actual knowledge of the individual’s unstabilized emergency medical condition to succeed with a claim…”¹⁷

The resulting Torretti decision and applicable legal standard of “actual knowledge” of an emergency medical condition appears to be the standard utilized in the Third Circuit and in other circuits. The standard places the burden on the plaintiffs to show evidence of “actual knowledge” by the hospital, and/or its staff members, of an emergency medical condition – a burden that many lawyers are finding difficult to achieve.


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¹⁷ *Id.* at 526.