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Appeals Court Issues EMS-Related EMTALA Decision

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The First Circuit Court of Appeals has become the second court to hold that a hospital not on formal diversion may violate EMTALA (the Emergency Medical Treatment and Active Labor Act) if it diverts a nonhospital-owned ambulance en route to the facility to another hospital. The Ninth Circuit issued a similar ruling in 2001. Now that two appeals courts have reached similar conclusions regarding the status of nonhospital-owned ambulances under EMTALA, hospitals exercising medical control may be less likely to send ambulances to other hospitals unless a patient so requests or if the hospital is on formal bypass due to lack of personnel or facilities.

### **Background**

EMTALA requires a hospital and its emergency physicians to provide a medical screening examination to determine whether a patient who comes to the emergency department has an emergency medical condition and to perform any necessary treatment within their capacity required to stabilize that condition. In its decision in *Carolina Morales v. Sociedad Espanola de Auxilio Mutuo y Beneficencia*, handed down April 18, the First Circuit held that "an individual can 'come to' the emergency department for EMTALA purposes without physically arriving on the hospital's grounds, as long as the individual is en route to the hospital and the emergency department has been notified of her imminent arrival."

Although the plain meaning of EMTALA regulations indicates that EMTALA applies to hospital-owned ambulances off hospital property under certain circumstances, the case is noteworthy because it's only the second decision to apply this rule to a nonhospital-owned ambulance.

### **Facts of the Case**

The Morales case involved a patient in Puerto Rico who was experiencing severe abdominal pain and vomiting two days after being diagnosed with a nonviable ectopic pregnancy. Her co-workers called an ambulance, which began to transport her to the hospital where her obstetrician regularly practiced. While en route, the paramedics called the ED and notified the medical director of the patient's condition, their intended arrival and need for treatment. In a subsequent conversation with the ambulance crew, the medical director asked whether the patient had medical coverage and, upon receiving no assurance that this was the case, abruptly terminated the call. The paramedics interpreted this as a refusal to treat the patient and transported her to another hospital.

The patient ultimately sued the hospital, alleging, among other things, that the medical director's diversion violated EMTALA. The hospital moved for summary judgment, claiming that EMTALA does not apply to a patient in a nonhospital-owned ambulance that has not yet arrived on the hospital premises. The district court in Puerto Rico agreed and granted summary judgment.

## The New Decision

The First Circuit reversed the lower court's decision. It found the statutory and regulatory language of EMTALA to be ambiguous, which opened the door to the use of legislative intent and history as an aid in its interpretation. The critical language, found in EMTALA regulation 42 CFR § 489.24(b)(4), specifically states, "An individual in a nonhospital-owned ambulance off hospital property is not considered to have come to the hospital's emergency department, even if a member of the ambulance staff contacts the hospital by telephone or telemetry and informs the hospital that they want to transport the individual to the hospital for examination and treatment." The next sentence states, "The hospital may direct the ambulance to another facility if it is in 'diversionary status,' that is, it does not have the staff or facilities to accept any additional emergency patients."

The court found that these two sentences created an ambiguity because although the first sentence suggests that a hospital has no EMTALA obligations with respect to a nonhospital-owned ambulance en route, the second sentence can be read as indicating that a hospital that is not on formal diversionary status violates EMTALA if it diverts even a nonhospital-owned ambulance to another facility.

The court resolved the ambiguity by noting that Congress' intent in enacting EMTALA was to preclude hospitals from turning away individuals based on lack of insurance or similar factors. The court observed, "If a hospital were allowed to turn away an individual while she was en route to the hospital under these facts, an uninsured or financially strapped person could be bounced around like a ping pong ball in search of a willing provider. That result would be [antithetical] to the core policy on which EMTALA is based." To effectuate this perceived Congressional intent, the court interpreted the phrase "comes to the emergency department" as including a situation where a patient is moving toward a hospital.

### Implications of this Ruling

EMTALA imposes obligations and potential sanctions on hospitals and physicians who provide emergency care. Although this law does not apply to nonhospital-owned ambulances, EMTALA affects how hospitals and their physicians deal with such ambulances. The Morales decision follows a precedent set in 2001 by the Ninth Circuit Court of Appeals in another case, *Arrington v. Wong*, 237 F.3d 1066 (9th Cir. 2001). The two decisions indicate that hospitals that divert patients when they're not on formal diversionary status due to lack of personnel or facilities have potential legal exposure if the patient is injured and later sues.

Many EMTALA experts think that the *Arrington* decision was wrongly decided in 2001 and that the First Circuit has now compounded the error. However, regardless of whether they're correct, the Morales decision is binding on the trial courts in the First Circuit (Maine, Massachusetts, Rhode Island, New Hampshire and Puerto Rico), and the *Arrington* case remains binding on courts in the Ninth Circuit (Hawaii, California, Washington, Oregon, Montana, Idaho, Arizona, Nevada, Alaska, Guam and the Northern Mariana Islands). Trial courts elsewhere may consider these decisions, but are not obligated to follow them.

In addition to liability for injured patients, an EMTALA violation is grounds for administrative exclusion of hospitals and physicians from Medicare by the Centers for Medicare and Medicaid Services and fines of up to \$50,000 per violation by the Office of Inspector

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neither hospital-owned and operated nor on hospital property.”

It seems unlikely CMS will change its interpretation following Morales, since it declined to do so after Arrington. Therefore, administrative enforcement arising from diversion of nonhospital-owned ambulances seems unlikely. Nevertheless, the possibility of civil liability to patients under EMTALA will likely cause hospitals to be extra careful in ensuring they don't divert patients when they're not on formal diversionary status due to lack of personnel or facilities.

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