

LAW WATCH

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A Legal Newsletter from Foley & Lardner

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In a recent United States Supreme Court ruling, *Jane M. Roberts v. Galen of Virginia, Inc. ("Roberts")*, the Court reversed the Sixth Circuit Court of Appeal's ruling that a plaintiff bringing an action under the Emergency Medical Treatment and Labor Act (EMTALA) must prove that a hospital acted with improper motive in failing to stabilize the patient prior to transfer. EMTALA requires Medicare-certified hospitals to provide a medical screening and, as necessary, medical treatment to stabilize the medical condition of any individual who comes to the hospital. EMTALA generally prohibits a hospital from transferring an unstabilized patient. One section of EMTALA, Section 1395dd(a), requires a hospital to provide an "appropriate medical screening examination" to an individual presenting to the hospital emergency department. Another section, Section 1395dd(b), provides that when a patient is screened and found to have an emergency medical condition, the hospital must provide further treatment to stabilize the patient's condition. In previous decisions, the Sixth Circuit had held that a showing of an "improper motive" was a prerequisite for a finding of an EMTALA violation under the Section 1395dd(a) screening requirements. In the *Roberts* case, the Sixth Circuit extended the "improper motive" requirement to Section 1395dd(b), the stabilization requirements.

Background

Wanda Johnson was run over by a truck in May, 1992 and taken to **Humana Hospital - University of Louisville in Kentucky ("Humana")**, a facility now operated as Galen of Virginia, Inc. Johnson had

FIRST SUPREME COURT DECISION ON PATIENT DUMPING LAW

Executive Summary

Action: In its first ruling relating to the Emergency Medical Treatment and Labor Act ("EMTALA"), the United States Supreme Court ruled that a hospital's motives are irrelevant when the hospital fails to stabilize a patient before transfer in violation of EMTALA. The Court did not opine as to whether EMTALA applied where, as in this case, the patient had been an inpatient for an extended period before she was transferred.

Impact: The decision ratifies the majority view on the "improper motive" issue, and so may make it easier for plaintiffs to prevail in an EMTALA action against a hospital in those few jurisdictions that have until now required proof of improper motive. The Court's silence on EMTALA's applicability to hospital inpatients leaves unsettled the contention by some that EMTALA's reach extends far beyond the emergency department.

Effective Date: January 13, 1999.

severe injuries and after a six week stay at **Humana**, her condition remained in a "volatile state." **Humana** arranged

for her transfer to a skilled nursing facility, and upon arrival, her condition deteriorated significantly. She was subsequently transferred to Midwest Medical Center where she remained for many months and incurred substantial medical expenses as a result of her deterioration. Johnson's guardian, Jane Roberts, filed suit against **Humana** for violation of EMTALA, alleging a violation of EMTALA's Section 1395dd(b) stabilization requirements. Under EMTALA, a plaintiff may sue a hospital for "personal injury" damages incurred as the result of the hospital's violation of the statute.

A federal district court granted summary judgment to **Humana** because Roberts failed to show that the medical opinion that Johnson was stable, or the decision to authorize her transfer to the skilled nursing facility, was caused by an improper motive. The Court of Appeal for the Sixth Circuit affirmed, ruling that a plaintiff must show that "the hospital's inappropriate stabilization resulted from an improper motive such as one involving the indigency, race, or sex of the patient." Roberts petitioned the United States Supreme Court for review. In granting the petition, the Court agreed for the first time to review a substantive EMTALA issue. The Court heard oral argument on December 1, 1998 and issued its decision on January 13, 1999.

Supreme Court Decision

The Supreme Court held that EMTALA does not require a plaintiff to prove that the hospital's motives were improper when transferring a patient. Rather, Section 1395dd(b), the statutory provision in question, re-

quires “such further medical examination and such treatment as may be required to stabilize the medical condition.” According to the Court, the Sixth Circuit erroneously interpreted the provision as containing a requirement of improper motive.

The Court declined to opine as to whether the “improper motive” requirement could be read into EMTALA’s *patient screening* requirement, which was not an issue in the case. The Court may have revealed some skepticism of the Sixth Circuit’s view of that issue, however, commenting in a footnote that the Sixth Circuit’s “interpretation [in another case] of subsection (a) of EMTALA is in conflict with the law of other circuits which do not read subsection (a) as imposing an improper motive requirement.”

The Court did not address the issue of whether the plaintiff’s EMTALA claim was invalid because she had already been an inpatient for a significant amount of time and, in any case, had actually been stabilized after her initial emergency room visit. Many providers have long hoped for Supreme Court guidance on that issue. Up through the Sixth Circuit’s decision, the case had been focused on the “improper motive” issue, and that narrow issue was the basis for the Court’s decision to review the case. The Court therefore declined to address other arguments in the case.

The Decision’s Impact

The Supreme Court decision in *Roberts* has no immediate impact on hospitals, in large part because the point of the Court’s narrow ruling has already been the law in most jurisdictions. Unfortunately for hospitals, however, the Court avoided the opportunity to establish a “cut off” point at which EMTALA no longer applies to patient transfers, particularly those that occur after a patient is admitted to the hospital and remains an inpatient for an extended period of time.

The Department of Health and

Human Services has expressed its intention to clarify some of EMTALA’s ambiguity through the promulgation of rules, but so far those rules have not directly addressed this issue. Absent such clarification, EMTALA may increasingly become the equivalent of a federal malpractice statute, a result that virtually all courts which have ruled on EMTALA have expressed a desire to avoid. Without a limitation on EMTALA’s application to the transfer of hospital inpatients, hospitals face the prospect that plaintiffs will increasingly turn to federal EMTALA actions as an “end run” around the state malpractice law limitations that exist in many states.

If you have questions or would like a copy of the *Roberts* case, please contact **Karen Weinstein** or **Lowell Brown** in our Los Angeles office, **Fred Entin** or **Ed Green** in our Chicago office, **Robyn Meinhardt** in our Denver office, **Michael Biehl** in our Milwaukee office, **Jennifer Brown** in our Orlando office, **Bill Abalona** in our Sacramento office, **Carol Isackson** in our San Diego office, **Shirley Paine** or **Inge Penner** in our San Francisco office, **Dan Burton** or **Gary Koch** in our Tampa office, or the member of the firm who normally handles your legal matters.

Law Watch is a review of recent legal developments prepared by the law offices of *Foley & Lardner*.

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