

## **EMTALA: Delayed Medical Screening May Amount To No Screening At All, Court Says.**

The patient awoke with a severe headache and vision problems. She phoned for an appointment with her primary care physician.

When she arrived late for her appointment with her primary care physician the office staff said they could not see her and told her to go to an urgent care center.

At the urgent care center the nurse practitioner quickly recognized the gravity of the situation and called an ambulance to take the patient to the emergency room.

The ambulance arrived at the hospital at 12:50 p.m. and the patient was admitted to the emergency department at 1:00 p.m.

No contact with hospital personnel occurred until 4:42 p.m. when a nurse took her history and vital signs. The history was that she had a headache and had vomited that morning. Her BP was 171/88.

Within a few minutes the patient got a head CT scan that revealed a large right parietal hemorrhage.

The emergency physician designated the situation as a [neurological emergency](#) and had the patient airlifted by helicopter to a university medical center where she remained for six days.

Now the patient has lost the vision in her left eye and is still undergoing occupational and physical therapy for balance and coordination issues.

### **Court Accepts EMTALA Lawsuit**

The patient sued the hospital for violating her rights under the US Emergency Medical Treatment and Active Labor Act (EMTALA). The US District Court for the Eastern District of Pennsylvania ruled the patient's lawsuit can go forward to trial.

The Court has not ruled definitively that the hospital was in the wrong.

However, the Court has accepted the premise of the lawsuit that inappropriate delay of the appropriate medical screening examination required by the EMTALA can amount to a violation of the patient's right to a appropriate medical screening examination even if the patient at some point gets a CT scan that reveals the existence of an emergency medical condition.

**McClure v. Parvis**, \_\_\_ F. Supp. 3d \_\_\_, 2018 WL 723281 (E.D. Penna., February 6, 2018).

***The [US Emergency Medical Treatment and Active Labor Act \(EMTALA\)](#) requires every hospital that has an emergency department to provide an appropriate medical screening within the hospital's capabilities for every individual who comes to the emergency department and requests or for whom a request is made for examination or treatment.***

***The issue here is not whether there was a screening. After almost four hours the patient got a head CT scan, the accepted diagnostic tool to detect or rule out intracranial abnormalities.***

***The question is whether a delay in medical screening amounts in effect to an outright denial that can lead to an EMTALA lawsuit.***

***The issues in this case can only be resolved by setting the case for trial and giving the patient and the hospital their day in court.***

***The hospital can explain its standard emergency screening protocols. The patient can present expert testimony that the hospital's protocols were not followed with her or were inadequate in her case.***

UNITED STATES DISTRICT COURT  
PENNSYLVANIA  
February 6, 2018

## **HIPAA: Patient Who Has Sued A Provider Cannot Claim Medical Confidentiality.**

A former resident sued a nursing home alleging the nursing home's negligence caused her to suffer decubitus ulcers, dehydration, kidney failure, sepsis and a urinary tract infection.

The nursing home defended the suit by pointing out that, according to dated entries in the resident's medical chart, the alleged substandard care occurred long enough ago that the statute of limitations had expired before the resident's lawsuit was filed.

The nursing home also asked the court to seal the case record insofar as the legal papers the nursing home filed to prove the statute of limitations defense contained the patient's confidential medical information.

***A person who places his or her medical condition in issue in a lawsuit for personal injuries cannot block access to his or her medical records by referring to the [US Health Insurance Portability and Accountability Act \(HIPAA\)](#).***

***The public has the right to access the evidentiary information upon which the courts render their case decisions.***

UNITED STATES DISTRICT COURT  
KENTUCKY  
January 30, 2018

The US District Court for the Western District of Kentucky ruled the patient gave up her right to medical confidentiality for any medical records relevant to her lawsuit against her healthcare provider.

The excerpts quoted from her medical chart in the nursing home's court papers to prove the statute of limitations defense will remain part of the open public record of the case. **Tyson v. Nursing**, 2018 WL 632063 (W.D. Ky., January 30, 2018).