

EMTALA: Nurse Who Urged Employer To Self-Report An Incident Is Not A Whistleblower.

The US Emergency Medical Treatment and Active Labor Act (EMTALA) says that a hospital with an emergency department cannot discharge an emergency patient or send the patient to another facility until the patient has been appropriately screened and medically stabilized.

The EMTALA also says that no hospital may penalize an employee who reports a violation of a requirement of the EMTALA to an outside authority.

In this case there was no report of a violation of the EMTALA to a governmental authority.

There was only an expression of disagreement with the hospital committee's decision not to self-report the incident in the emergency department.

Some whistleblower laws protect employees from employer retaliation who complain or voice opposition to what they believe in good faith is illegal conduct by their employer.

However, the EMTALA provides such protection only to an employee who makes an actual report to an outside authority.

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
June 12, 2018

A pregnant patient came to a hospital's emergency room with pain and vaginal bleeding.

The hospital did not have a gynecologist on staff. Emergency room personnel told her to go to another hospital that had a gynecologist on staff.

The patient left the first hospital on her own. Emergency room personnel at the first hospital did not arrange transportation for her and did not check to see that she actually arrived at the other hospital.

The next day the hospital chief executive officer arranged a conference call to discuss whether the emergency department's handling of the patient's case was a violation of the Emergency Medical Treatment and Active Labor Act (EMTALA).

The day after that the parties to the conference call held a face-to-face meeting at the hospital.

The general consensus was that the handling of the patient in question's case was not an EMTALA violation.

However, the Quality Project Coordinator disagreed with the majority view that no EMTALA violation had occurred. She voiced her own opinion that the hospital should report itself to the state Department of Health. No such report was ever made.

After another vocal disagreement with the hospital's handling of another patient-care incident, the Quality Project Coordinator was terminated.

Terminated Employee

Not an EMTALA Whistleblower

The US Court of Appeals for the Third Circuit (Pennsylvania) made note that the EMTALA provides whistleblower protection to a hospital employee who reports an actual or suspected EMTALA violation to a governmental authority.

The problem with this case was that the terminated employee only urged others to report what she believed was a violation of the EMTALA, but she never made any such report herself.

Merely voicing an opinion that the hospital should self-report is not enough to invoke EMTALA whistleblower protection. Gillisple v. Hospital, 2018 WL 2926014 (3rd Cir., June 12, 2018).

“Buddy System:” Nurse Was Not Watching Other Nurse’s Patients.

The ICU nurses had their own informal “buddy system” where one nurse could ask another to watch his or her patients while he or she went off the unit.

One nurse asked another to watch her two ICU rooms while she went off the unit for an unauthorized smoke break. The other nurse, a fifty-eight year-old Filipino man, agreed.

When she returned she found one of her patients unresponsive hanging off the side of the bed.

The Filipino male nurse was terminated over the incident.

In a written statement the older Filipino male nurse took full responsibility for the incident with one of the other nurse’s ICU patients he had agreed to monitor.

That suffices to show a legitimate nondiscriminatory reason for his termination.

CALIFORNIA COURT OF APPEAL
June 12, 2018

The California Court of Appeal ruled that discrimination was not a factor.

The nurse himself admitted he was responsible for the incident with a patient he had agreed to monitor. An investigation disclosed that other staff had seen him that night at times sleeping on duty and at other times talking on his personal cellphone.

It was not relevant to the question of discrimination that three younger female nurses (two of whom are Filipino) were not fired who also did not hear or respond to the alarm and did not check on the patient who was found unresponsive.

They were not responsible for the patient. Their inattention and inaction while the patient became unresponsive was not culpable compared to the inattention and inaction of the nurse who had agreed to monitor the patient. Dungo v. Med. Ctr., 2018 WL 2930512 (Cal. App., June 12, 2018).