EMTALA: Court Refuses To Fault Specialty Hospital For "Reverse Dumping."

The US District Court for the District of Maryland has revised the ruling we reported in March 2017.

See *EMTALA: Court Finds "Reverse Dumping" By Specialty Hospital,* Legal Eagle Eye Newsletter for the Nursing Profession (25)3 Mar. '17 p. 6.

That time the Court ruled that an emergency trauma patient can sue a hospital with specialized capability for reconstructive hand surgery if it refuses to accept him as a transfer from the hospital where he went first. This patient had to stay at the first hospital for surgery with a non-hand-specialist orthopedist and claimed complications as a result.

The US Emergency Medical Treatment and Active Labor Act (EMTALA) says a hospital emergency department cannot "dump" a patient on another hospital by transferring the patient there inappropriately.

A hospital with specialized capability cannot "reverse dump" a patient, that is, refuse an appropriate transfer of an emergency patient another hospital cannot treat.

UNITED STATES DISTRICT COURT
MARYLAND
October 12, 2018

This time the Court had an affidavit from a physician at the specialty hospital stating that all its hand specialists were working on a higher priority complex trauma case that day and this patient would have had to wait until the next day.

Notwithstanding the specialty hospital's superior facilities, talent reservoir and reputation, it had no actual special capability at that moment as to this patient's care. **Mullins v. Hospital, 2018 WL 4952604 (D. Maryland, October 12, 2018).**

Delayed Medicaid Application: Nursing Home Can Sue Conservator.

When it appeared to the nursing home that the resident's daughter was not managing his financial affairs competently, the nursing home petitioned the local probate court to appoint a conservator.

That is, after the resident's residence was sold the daughter balked at the process of spending down the proceeds and then certifying that his assets had dropped below the threshold for Medicaid eligibility.

The court-appointed conservator did see to it the proceeds of the sale went to the nursing home as partial payment of the bill that was more than $120,000 in arrears, but then did basically nothing about Medicaid for nine months while the bills piled up again. The resident was approved for Medicaid one month before he passed.

The court-appointed conservator for the resident's affairs owed the nursing home a duty of reasonable care in performing his duties, which included submitting the resident's Medicaid application in a timely fashion to obtain payment for reasonable and necessary expenses for his care.

APPELLATE COURT OF CONNECTICUT
October 9, 2018

The Appellate Court of Connecticut ruled that the nursing home has the right to sue the court-appointed conservator for failing to carry out the duties of his office.

The conservator owed a legal duty to the nursing home to apply on time for Medicaid benefits. The Court pointed out the nursing home had legal and ethical duties to continue housing and treating the resident while his unpaid bill added up and could not discriminate on the basis that he was a Medicaid beneficiary, one ironically who was not getting his benefits. **Health Care v. Doyon, __ A. 3d __, 2018 WL 4842374 (Conn. App., October 9, 2018).**

Racial Bias: Court Says Other Candidate Was More Qualified.

A minority nurse had a history of eighteen administrative complaints of race discrimination filed during almost thirty years service at the hospital.

Her background with the hospital included a twelve-year stint as an infection control nurse up until seventeen years before the events in question.

Even though she was not working in infection control, she did keep current her certification for infection control.

When the incumbent infection control nurse announced she was retiring, the nurse applied for her position. She was interviewed but was rejected in favor of a non-minority candidate.

The nurse sued claiming discrimination and retaliation by the hospital for her earlier complaints.

A minority candidate with acceptable credentials who is rejected in favor of a non-minority has a prima facie case of discrimination.

A minority having a prima facie case means the employer must be prepared to come forward with a legitimate non-discriminatory justification.

UNITED STATES COURT OF APPEALS
THIRD CIRCUIT
October 9, 2018

The US Court of Appeals for the Third Circuit turned down her case.

It had been some time since her last human-rights complaint and there was no evidence those complaints had anything to do with the employer's decision this time.

The non-minority candidate had current experience in infection control and had experience supervising other nurses. Those qualities made her a legitimate better choice, the Court ruled. **Finizie v. Department, __ Fed. Appx. __, 2018 WL 4896388 (3rd Cir., October 9, 2018).**