

# Premature Infant: Court Says Hospital Violated EMTALA Screening Requirement.

The mother was admitted to the hospital's birthing center at twenty-three weeks because she had been losing amniotic fluid. Ten hours later she gave birth to a son who weighed only 700 grams. The hospital's staff made no effort to prolong the baby's life and he expired two and one half hours after birth.

## **EMTALA Imposes Duty to Screen For Emergency Medical Condition**

Aside from assigning a nominal Apgar score of 1, the hospital's personnel made no effort to evaluate or treat the newborn.

The Supreme Court of Wisconsin faulted the hospital for failing to provide an appropriate medical screening examination as defined by the US Emergency Medical Treatment and Active Labor Act.

Although the parents' allegations of medical negligence and lack of informed consent were dismissed as unproven, the parents, in the Court's judgment, still had the right to sue the hospital for violation of the EMTALA.

## **Birth in Birthing Center Baby Comes To The Emergency Department**

Under the court's interpretation of the EMTALA, when a baby is born in a hospital's birthing center, that event activates the EMTALA. The baby is entitled to an appropriate medical screening examination, as defined by the EMTALA, and necessary stabilizing medical treatment within the hospital's existing capabilities.

The mother does not necessarily have to come to the emergency department in active labor, nor does the baby have to be brought in from home or taken from the birthing center to the emergency room, for the EMTALA to apply.

The rationale of the courts in looking at these cases after the fact is to apply the EMTALA as broadly as reasonably possible to vindicate patients' rights, the court pointed out. **Preston v. Meriter Hosp., Inc.**, \_\_\_ N.W. 2d \_\_\_, 2005 WL 1630852 (Wis., July 13, 2005).

***The US Emergency Medical Treatment and Active Labor Act (EMTALA) has been updated since 1986 by regulations issued by the US Secretary of Health and Human Services.***

***An individual "comes to the emergency department" when the individual is anywhere on hospital property and a request is made by the individual or on the individual's behalf for examination or treatment.***

***It is no longer a correct interpretation of the EMTALA that no duty arises on the part of the hospital's staff unless the individual presents at the locale designated by the hospital as the emergency department, assuming the hospital in fact has an emergency department and participates in Medicare.***

***This mother was unemployed and uninsured and on state medical assistance. That is also now irrelevant to whether the EMTALA applies. The law applies to all patients who present with possibly emergent medical conditions, even if they are employed, insured and able to pay.***

SUPREME COURT OF WISCONSIN  
July 13, 2005