This Emperor Has Clothes

In 1996 the Emergency Medical Treatment And Labor Act (EMTALA) became reality. This "anti-dumping" law was designed to protect patients, but became the emperor of all unfunded mandates: it requires emergency departments to provide the appearance of having shown that a medical emergency does not exist prior to transferring a patient from an emergency department to another medical facility. EMTALA, by its wording, does not require proper diagnosis or care. To cut severely to the practice implications, it requires clear documentation of no "emergent medical condition" prior to transfer.

This month, we present the work by **Terp et al**, accompanied by commentary by **Robert Bitterman, MD, JD,** which collectively highlight the vulnerability of both providers of emergency care and the mentally impaired patient to this law.

I worded that statement carefully, mindful that the law was designed to protect patients.

Consider a case. A 28-year old male patient with schizoaffective disorder who lives in a group home was taken to a local emergency department (ED) for recurrent abdominal pain. He stated "I need Pepcid, that makes me better." The emergency physician on duty documented a standard abdominal pain-focused, and negative, physical examination, and ordered several laboratory examinations of the blood, a 12-lead electrocardiogram (EKG), and administered 20 mg of intravenous famotidine. Two hours later, the physician documented symptom relief, normal blood studies and a normal EKG. The patient is discharged as ambulatory. Two days later, he returned to the same ED by ambulance transfer, called by caretakers from his group home because he was "not getting out of bed for two days." Emergency medical service providers documented that members of the group home believed the patient had fallen down the stairs sometime after the ED visit.

On the second visit to the same ED, physicians document that the patient manifested "disoriented thinking, incoherent words, and rambling on about the light sockets." They also find a closed left femur fracture.

Two weeks later, an attorney representing the patient files a lawsuit, in both District and Federal courts, with multiple allegations of negligence. Among them a breach of EMTALA, because the group home receives federal Department of Health and Human Services Funding, and the suit alleges that it be to a medical facility covered under EMTALA. Specific to EMTALA, the allegation states that the patient did not receive an appropriate medical screening examination, because the physician's examination never specifically stated the absence of a medical emergency. The allegation further states that the patient was not stabilized for "psychotic, delusional thought disorder" at the first visit, and did not have clearance for discharge, and that the delusions caused the fall and the femur fracture. The plaintiff's lawyer also reported the incident to the Center for Medicare and Medicaid Services (subsequently shortened to CMS). As a result, the hospital was placed on a status known as "immediate

jeopardy," or "IJ" status, which means if the problem is not fixed, the hospital loses all Medicare funding in a specified amount of time…which means death to the hospital. The resolution required thousands of hours of uncompensated professional salary time, but ultimately was that emergency physicians, going forward, had to click two additional "checkboxes" upon discharge of all patients that attested that the patient had "No medical emergent condition," and had "Capacity to understand discharge instructions." Of relevance, the same hospital discontinued these mandatory checkboxes about five years later.

I try to my greatest ability to keep POTMs pithy, and I apologize for bloviating. But I felt the best way to generate interest in this important paper was to present one case. I suspect that the 230 cases that Terp and colleagues reviewed were equally incendiary.

Because this is a daily concern, and because medical malpractice insurance does not cover damages awarded against a physician in cases of EMTALA violation, I submit that you should read this paper by Terp et al in this month's *Academic Emergency Medicine*.