Physicians who serve as being “on call” for a hospital—and physicians who refer patients to them—should understand their obligations when they are consulted about an emergency department (ED) patient or referred a patient for outpatient follow-up.

What's Required Under EMTALA?

On-call physicians may have an EMTALA obligation when they are contacted about emergency patients.

EMTALA is the Emergency Medical Treatment and Labor Act. It was enacted to prevent hospitals from “dumping” patients, or refusing to treat or transferring patients who could not pay for their care. EMTALA requires Medicare-participating hospitals with an ED to provide a screening exam to determine whether or not a patient has an emergency medical condition.

“Emergency Medical conditions”

An “emergency medical condition” is a condition that requires immediate medical attention to prevent 1) serious jeopardy to the patient’s health or that of an unborn child; 2) serious impairment to bodily functions; or 3) serious dysfunction of any bodily organ or part. For a pregnant woman having contractions, it means there is inadequate time to transfer her safely to another hospital before...
delivery, or a transfer would pose a threat to the health or safety of the woman or unborn child.

Hospitals must maintain a list of on-call physicians who can provide the treatment needed to stabilize an emergency medical condition. If permitted by hospital policy, an on-call physician may send a licensed non-physician practitioner to assess and help stabilize the patient. The on-call physician is ultimately responsible for providing the needed care for the patient, regardless of who comes in. Under EMTALA, the on-call physician must appear in person to help stabilize a patient if the ED physician requests.

If an on-call physician fails to come in when requested or directs that the patient be transferred instead, both the hospital and physician may be in violation of EMTALA and subject to a fine of up to $50,000.

When is EMTALA Satisfied?

There is no further EMTALA obligation once a patient is admitted, stabilized, or transferred to another hospital where a physician has certified that the benefits of transfer outweigh the risks to the patient or unborn child. A patient is “stabilized” when it’s unlikely that his or her condition will deteriorate significantly as a result of or during a transfer (including a discharge) from the facility. A pregnant woman having contractions is considered “stable” when she has delivered the child and the placenta. A physician must use medical judgment when deciding whether or not a patient is stable. A patient may be stable from an EMTALA standpoint but still require care of the underlying medical condition, either as an outpatient or later as an inpatient. A hospital has no obligation to arrange for ongoing medical care. Hospitals are expected, however, to provide discharged patients with the information they need to obtain follow-up care to prevent a relapse or worsening of their medical condition.

What Are My On-Call Requirements Beyond EMTALA?

Even though the EMTALA requirements may be met, an on-call physician may still have an obligation to an emergency patient. Before a patient can claim medical malpractice or abandonment by an on-call physician, he or she must show that the physician had some duty to provide care for the patient.

Merely being on-call does not automatically create a physician-patient relationship and does not impose any duty on the on-call physician. A physician-patient relationship may be implied if a patient, or someone on the patient’s behalf, seeks care and the on-call physician provides treatment or other services to the patient.

There may be a contractual obligation if the physician is paid to take call and is consulted regarding an emergency patient’s care. A physician may also waive the right to refuse to see a patient when he or she has agreed to be on-call as a condition of being on the medical staff. In some cases, a physician-patient relationship is created even when the on-call physician does not personally examine or treat the patient. The on-call physician may be “treating” a patient jointly with the ED physician when:

- The physician interprets patient data such as labs, EKGs, or radiographic images
- The physician participates in diagnosing a patient and prescribing a course of treatment
- The ED physician must rely on the on-call physician’s expertise rather than exercising his or her own judgment in treating a patient

A patient-physician relationship will probably not be found where:

- The on-call physician merely advises the treating physician as to general patient care
- The on-call physician is consulted only for a possible referral of a patient
- The treating physician exercises independent judgment in determining whether to accept or reject a consulting physician’s advice
Because this is such a gray area, the treating physician should communicate clearly what he or she needs or expects from the on-call physician. Unless it is otherwise clear from the circumstances, the on-call physician should presume that the ED physician is relying on his or her opinion. The on-call physician should advise the treating physician as thoughtfully as if the ED patient was his or her own.

When the on-call physician interprets data, makes a diagnosis, advises a specific course of treatment, and agrees to see the patient in follow-up as part of the treatment plan, he or she should document the conversation and any medical decision-making. If the ED physician has questions of a general nature, the sample language for curbside consultations can be used. (See our article, “How to Appropriately Ask For and Respond to ‘Curbside’ Consultations”.)

Outpatient Referrals

When a patient schedules an appointment with a physician, a physician-patient relationship is generally not created until the physician begins to evaluate and treat the patient. If an ED patient is given the name of an on-call physician for an outpatient referral, there is generally no obligation for the on-call physician to see the patient unless the physician agrees to the referral or is required to see this type of referred patient under the hospital bylaws.

The physician’s duty to the patient can be limited if the bylaws require only one follow-up visit rather than ongoing care. The patient should understand this when given the referral. In that situation, both the physician and patient would need to mutually agree to continue a treatment relationship. If the patient chooses not to follow up, the on-call physician is not obligated to contact the patient or review studies that were ordered in the ED unless otherwise obligated to do so under a contract or the hospital bylaws. The ED physician has the responsibility to follow-up on any abnormal test results discovered after the patient has been discharged from the ED.

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