

10th Circuit

CASE	Y	RLT	?	?	FACTS	HOLDING	REASONING
<i>Phillips v. Hillcrest Medical Ctr.</i> , 244 F.3d 790, 10th Cir.(Okla.)	2001	?s prevail.	Next of kin by and through her legal guardian and next friend, and parent of male decedent.	Medical center, physician, and corp.	Pt went to medical center b/c of chest pain and pneumonia-like symptoms. He didn't have an insurance card, and so chart listed him as not insured. He was triaged by a nurse, examined by a physician, given 2 prescriptions and discharged. Condition rapidly deteriorated, went to a different hospital where diagnosed w/ bacterial endocarditis, died that day.	? has failed to demonstrate that the medical center, either through nurse and/or doctor, did not in fact make a determination as to Phillips' condition with respect to each and every allegation of failure to abide by existing policy requirements. Because the medical center performed a medical screening exam, consistent with its policies and in an effort to discern whether ? was suffering from an emergency medical condition, EMTALA was satisfied.	Because the medical center technically complied with its pre-existing standards, the claim that the practical effect was an inadequate exam was not meant to be covered by EMTALA b/c EMTALA's guaranty for an "appropriate medical screening" does not include a remedy for an inadequate diagnosis. Also testimony a/b a hospital's knowledge of a patient's lack of insurance coverage does not alone establish violation of EMTALA's requirement of uniform treatment
<i>Helen Ingram v. Muskogee Reg'l Med. Ctr.</i> , 235 F.3d 550, 10th Cir.(Okla.)	2000	?s prevail.	Special administrator of estate	Medical center and physicians	Decedent was shot and taken to ER, was determined that she need cardiovascular surgery and had to be transferred to other facility, she died after transfer.	Grant of summary judgment to medical ctr was proper b/c plaintiff did not show that decedent was inappropriately transferred for surgery due to a failure to first stabilize her and minimize the risk of transfer by inserting chest tubes. inappropriately transferred decedent for surgery because defendants failed to first stabilize her condition and minimize the risk of transfer by inserting chest tubes	Medical ctr's capacity to provide medical treatment to minimize the risks of transfer should be measured by its standard practice; and plaintiff failed to produce evidence that physician violated an existing hospital procedure or requirement.
<i>Bloomer v. Norman Reg'l Hosp.</i> , 221 F.3d 1351, 10th Cir.(Okla.)	2000	?s prevail.	Female patient.	Hospital and physicians	Over period of 2 weeks, pt went to hospital 6 times complaining of neck/back pain, blurred vision, examined and discharged each time; at end of this period, diagnosed she was with pseudotumor cerebri, and is now totally blind.	Because pt did not raise a genuine issue as to whether the hospital failed to follow its own screening procedures, or had notice she was suffering from an emergency medical condition, the district court should have granted summary judgment in favor of the Hospital.	Pt did not either submit a hospital policy nor suggest what procedures were omitted. The fact that pt received different treatment each time she sought medical attention does not, in itself, create an inference that the Hospital diverged from its ordinary screening procedures.
<i>Scott v. Hutchinson Hosp, et al.</i> , 959 F.Supp. 1351, D.Kan.	1997	?s prevail.	Heir at law, next of kin, and surviving spouse of female decedent.	Hospital and physicians	Pt brought to ER, assessed and triaged as nonemergent, examined and diagnosed as having myocardial infarction, condition worsened, transferred, condition noted as unstable, died. Medical testimony that certain tests should have been performed	In absence of evidence that hospital failed to follow its standard screening procedure, ? entitled to summary judgment on improper screening and treatment claims; ? entitled to summary judgment on inappropriate transfer claim because it treated and stabilized symptoms of which it was aware. Once hospital assumed	Hospital satisfies screening and treatment requirement if applies its standard screening procedure uniformly to all pts. Duty to provide appropriate treatment arises once hospital determines emc exists. Hospital not required to minimize risks associated with emc until it aware condition exists. Uses 4 th Circuit's reasoning in <i>Bryan</i> that once pt admitted, hospital governed by state tort law

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					but hospital unable to provide such care to pts presenting with decedent's problems	responsibility for treating pt, liability under state tort law attaches and EMTALA no longer applies.	because the duty to stabilize or transfer must be cut off at some point or a hospital could be required to provide stabilizing treatment indefinitely.
<i>Cunningham v. Fredonia Regional Hosp.</i> , 98 F.3d 1349 10th Cir.(Kan.)	1996	?s prevail.	Heir at law, special administrator of estate, and surviving spouse of female decedent.	Hospital and physician.	Pt called physician, complaining of chest pain; he phoned hospital and instructed pain shot; pt presented to ER, examined, nurse concluded pt not suffering from emc, gave shot and sent pt home, pt died of heart attack that night.	? has failed to state a claim under EMTALA because evidence indicates hospital followed its standard screening procedure and determined patient did not suffer from emc.	Nurse determined chest pains not life-threatening so examination by physician unnecessary under hospital's emergency illness policy. This policy rather than chest pain policy which requires physician exam applicable because physician had already checked pt and determined condition not life threatening. Inquiry into whether procedure followed uniformly not whether adequate.
<i>Tank v. Chronister</i> 1996 WL 432369 D.Kan.	1996	?s prevail.	Executor, administrator of estate, and surviving spouse of female decedent.	Physician and Board of Trustees of hospital.	Pt taken to ER, admitted, examined, diagnosed with tracheobronchitis and discharged; pt found dead next morning of massive lobar pneumonia.	? has failed to demonstrate any compelling reasons supporting continued exercise of supplemental jurisdiction over state claim.	EMTALA claim dismissed in previous case No independent basis for retaining jurisdiction over state claim; no diversity of citizenship, no reason why state claim should not be presented to state court for resolution
<i>Tank v. Chronister</i> 941 F.Supp. 969, D.Kan.	1996	?s' motions granted in part and denied in part.	Executor, administrator of estate, and surviving spouse of female decedent.	Physician and Board of Trustees of hospital.	Pt taken to ER, admitted, examined, diagnosed with tracheobronchitis and discharged; pt found dead next morning of massive lobar pneumonia.	? failed to allege that physician and hospital failed to comply with their emergency patient screening procedures, as required to maintain action under EMTALA.	Actual knowledge of emc required. Minimal variation from standard procedure does not amount to violation of hospital policy or would be formalistically imposing liability when policy effectively followed
<i>Green v. Reddy</i> 918 F.Supp. 329, D.Kan.	1996	? prevails.	Male patient.	Hospital and physicians	Pt presented to ER, treated, admitted to ICU, transferred. ? alleges ?s failed to timely test, diagnose, and treat resulting in loss of left kidney.	Where hospital received pt in ER and transferred to ICU based on determination that emc existed, could not be held liable under EMTALA for improper screening based on alleged failure to diagnose collapsed lung and torn renal artery; stabilization and transfer provisions of EMTALA did not apply absent any evidence that hospital had specific knowledge of collapsed lung or torn renal artery.	Hospital placed ? in ICU and treated him so must have screened appropriately; no evidence that hospital had specific knowledge of condition before transfer so n duty to stabilize. Failure to timely diagnose injury is negligence governed by tort law.
<i>Cunningham v. Fredonia Regional Hosp.</i> 1995 WL 580055 D.Kan.	1995	? prevails.	Heir at law, special administrator of estate, and surviving spouse of	Hospital and physician.	Pt called physician, complaining of chest pain; he phoned hospital and instructed pain shot; pt presented to ER, examined, nurse concluded pt not suffering from emc, gave	The federal claim under EMTALA fails because there is no evidence that the hospital violated its standard screening procedure.	EMTALA does not authorize action against hospital for misdiagnosis but requires proof that hospital violated its own standard procedures. Evidence fails to reflect even minor deviations from hospital policy.

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			female decedent.		shot and sent pt home, pt died of heart attack that night.		
<i>Estate of Enck by Enck v. Beggs</i> 1995 WL 519148 D.Kan.	1995	? prevails on EMTALA claim.	Enck, individually and as administratrix of estate of male decedent.	Several defendants including physicians and hospitals.	Pt taken to ER with chest pain. Examined, admitted to ICU, transferred to another hospital where he died.	EMTALA claim is time barred.	Suit filed after EMTALA's 2 yr SOL. State saving statute cannot be used to extend time because directly conflict with EMTALA's express limitation and are preempted.
<i>Gossling v. Hays Medical Center, Inc.</i>	1995	?s prevail on EMTALA claims.	Gossling and Lamb as individuals and Gossling as administrator of estate of male decedent (17 yo at time of suicide)	Hospitals and mental health center.	Pt presented to ER with suicidal thoughts, assessed by psychologist employed by mental health center, admitted to psychiatric ward, pt in therapy, discharged with finding pt no longer suicidal and arrangements for follow-up, pt committed suicide.	?s timely filed their EMTALA claim; mental health center not a participating hospital as defined by EMTALA so ?s cannot state EMTALA claims against it. ?s' allegations against hospital do not fall within purview of EMTALA.	Allowing state statute to equitably toll date for filing claim not obstacle to congressional objective of establishing reasonable time frame. No evidence that mental health center a participating hospital. ?s challenge professional judgment exercised in diagnosis and treatment of pt which is negligence governed by tort law and not EMTALA.
<i>Urban By and Through Urban v. King</i> 43 F.3d 523, 10th Cir.(Kan.)	1994	? prevails.	Minor male child by and through his natural father and mother and next friends and father individually.	Physicians and hospital.	Mother pregnant with twins in high-risk pregnancy. Went to OB dept for stress test. Nurse consulted with physician and instructed mother to return for repeat test the next day. During repeat test, problem determined. C-section performed. One baby stillborn, other born with brain damage.	Patient could not recover absent showing that hospital had actual knowledge of patient's emc.	Plain reading of EMTALA reveals actual knowledge of unstabilized emc as requirement to establish liability. EMTALA not a malpractice or negligence statute. No dispute as to hospital's lack of knowledge in this case.
<i>Repp v. Anadarko Mun. Hosp.</i> 43 F.3d 519, 10th Cir.(Okla.)	1994	? prevails.	Repp individually and as administrator of estate of male decedent and 3 children of decedent	Hospital, physician, medical clinic, nurse.	Pt visited ? physician, diagnosed and given medication; pt presented to ER, examined by nurses who telephoned physician who instructed injections; pt went home after injections and died that night.	Hospital violates EMTALA's "appropriate medical screening" requirement when it does not follow its own screening procedures and de minimis variations from hospital's standard ER procedures did not amount to violation of hospital policy.	Hospital satisfies screening requirement by complying with standard screening procedures; minimal variations from policy are not violations of standard screening procedures.
<i>Urban By and Through Urban v. King</i> 1994 WL 617521 10th Cir.(Kan.)	1994	? prevails.	Minor male child by and through his natural father and mother and next friends and	Physicians and hospital.	Mother pregnant with twins in high-risk pregnancy. Went to OB dept for stress test. Nurse consulted with physician and instructed mother to return for repeat test the next day. During repeat test, problem	? must prove as a condition to recover under EMTALA that the hospital had actual knowledge of pt's emc.	Plain reading of EMTALA reveals actual knowledge of unstabilized emc as requirement to establish liability. EMTALA not a malpractice or negligence statute. No dispute as to hospital's lack of knowledge in this case.

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			mother and father individually.		determined. C-section performed. One baby stillborn, other born with brain damage.		
<i>Brewer By & Thr Brewer v. Miami Co Hosp.</i> 862 F.Supp. 305D.Kan.	1994	? prevails.	Minor male child by and through his father and next friend.	Hosp, phys, med clinic (prof corp)	? born with disabilities; alleges statutory violation and negligent OB care caused disabling condition.	EMTALA's 2 year limitations period is not tolled by reason of ?'s minority.	Legislative history and plain language of EMTALA do not support finding that equitable tolling should be applied to EMTALA's SOL. SOL runs against minors in absence of express statutory provision tolling limitations period.

<i>Griffith v. Mt. Carmel Med Ctr</i> 842 F.Supp. 1359, D.Kan.	1994	? prevails on ?'s motion for new trial but court ordered remittitur of jury verdict	Surviving spouse of male decedent individually and on behalf of 3 children, minors and heirs at law of decedent (self-pay pt-no insurance-employed as truck driver).	Hospital, physician, physician recruiting corporation, nurse.	Pt taken to ER, admitted, x-ray taken (admitted to be poor diagnostic tool), EKG not given but physician admitted should have been given, pt diagnosed and medication prescribed, discharged, next am pt seized, taken to ER, tests done, again no EKG run, EEG scheduled on outpt basis because pt had no insurance, discharged, personnel indicated pt not admitted because not insured., pt died that night.	Kansas comparative fault law did not apply to hospital's liability under EMTALA, even though the only damages available to ? under EMTALA were those available under state law; under Kansas law, damages awarded for loss of nurturing, loss of moral training and guidance, and loss of value of complete family were pecuniary in nature; jury's damage award in total amount of \$1,350,000 for loss of financial support was not supported by evidence and thus court would order remittitur so as to reduce award to \$800,000; damage award of \$100,000 to each of decedent's children for loss of value of complete family was not supported by evidence and thus remittitur would be ordered to reasonable amount of \$20,000 per child.	Comparative fault does not apply because hospital's liability under EMTALA is not grounded upon tort concepts. Kansas law governs available damages and provides both pecuniary and nonpecuniary damages so both types of damages available to ?s.
<i>Urban v. King</i> 834 F.Supp. 1328, D.Kan.	1993	? prevails.	Male infant and parents.	Physicians and medical center.	Mother pregnant with twins in high-risk pregnancy. Went to OB dept for stress test. Nurse consulted with physician and instructed mother to return for repeat test the next day. During repeat test, problem determined. C-section performed. One baby stillborn, other born with brain damage.	Medical center did not violate EMTALA when it transferred pt to another hospital before pt gave birth as pt failed to establish that hospital had actual knowledge of pt's emc; DC would not exercise supplemental jurisdiction over pendent state law claims.	No evidence that ? had determined emc existed when ? released pt or that ? failed to follow required procedures when it transferred pt. No genuine issues of material fact to be determined at trial.

<i>Repp v. Anadarko Municipal Hosp.</i> 1993 WL 763151 W.D.Okla.	1993	?s prevail.	Repp individually and as administrator of estate of male	Hospital, physician, medical clinic, nurse.	Pt visited ? physician, diagnosed and given medication; pt presented to ER, examined by nurses who telephoned physician who instructed injections; pt went	?s can assert no federal claim under EMTALA against physician. ?s cannot establish that the Hospital violated EMTALA. No evidence that hospital failed to follow its standard ER procedures	Plain language of EMTALA indicates individuals can bring civil actions only against participating hospitals. EMTALA requires hospital to apply its standard screening exam uniformly but does not guarantee correct diagnosis as a result of
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			decedent and 3 children of decedent		home after injections and died that night.	or that it actually determined that pt suffered from an emc.	screening. Transfer requirements only apply when hospital actually determines that pt suffers from an emc.
<i>Ruiz v. Kepler</i> 832 F.Supp. 1444 D.N.M.	1993	Summary judgment motions by both parties denied.	Guardian and conservator or male patient.	Physician and hospital.	Pt presented to ER, examined by nurse, treated by physician, x-rays taken, discharged, pt had sustained skull fracture which went untreated for 5 days.	Pt satisfied pleading requirements of EMTALA and issues of fact existed, precluding summary judgment, as to whether hospital's screening procedure for head trauma pts was within capability of its emergency department.	EMTALA screening provision creates subjective test- did ? hospital treat pt according to its own standards and capabilities. Court may accept evidence of accepted medical practice from which subjective standards can be inferred. ? put forth such evidence.
<i>Griffith v. Mt. Carmel Medical Center</i> 831 F.Supp. 1532, D.Kan.	1993	? prevails.	Surviving spouse of male decedent individually and on behalf of 3 children, minors and heirs at law of decedent (self-pay pt- no insurance- employed as truck driver).	Hospital, physician, physician recruiting corporation, nurse.	Pt taken to ER, admitted, x-ray taken (admitted to be poor diagnostic tool), EKG not given but physician admitted should have been given, pt diagnosed and medication prescribed, discharged, next am pt seized, taken to ER, tests done, again no EKG run, EEG scheduled on outpt basis because pt had no insurance, discharged, personnel indicated pt not admitted because not insured., pt died that night.	Genuine issue of material fact existed as to whether medical screening provided to pt by hospital's ER was "appropriate" within meaning of EMTALA, precluding summary judgment; genuine issues of material fact existed as to whether hospital determined that ER pt had emc and whether hospital failed to stabilize pt before his discharge, precluding summary judgment.	? presented evidence raising a number of factual issues to support the two types of EMTALA claims. Sufficient evidence from which jury could infer that pt was not given the same medical screening afforded to other pts in similar medical circumstances and that hospital, after determining that pt had an emc did not stabilize pt before he was discharged. ? specifically alleged disparate treatment motivated by fact pt was uninsured. Allegations supported by specific facts.
<i>Urban v. King</i> 1993 WL 256757 D.Kan.	1993	? s prevail.	Male infant and parents.	Physicians and medical center.	See above.	? s seek damages from physicians for common law med mal; ? physician's summary judgment motion overruled.	N/A
<i>Brooks v. Ransom Memorial Hosp.</i> 1993 WL 339914 D.Kan.	1993	?s prevail.	Male ? (probably the pt.)	Hospital and physician.	None specified.	The court declines to exercise supplemental jurisdiction over ? 's state law claims.	Because the court is dismissing the claim over which it has primary jurisdiction (EMTALA), the court has discretion whether to exercise supp juris over pendent claims; interests of comity, federalism, and judicial process best served by dismissal of claims.
<i>Delaney v. Cade</i> 986 F.2d 387, 10th Cir.(Kan.)	1993	? prevails on EMTALA claim against ? hospital but not against ? physician.	Female patient.	Hospitals and physician.	Pt taken to ER after car accident, complained of chest pain, lacerations sutured but physician did not perform physical exam or order x-rays, pt transferred; during transfer, lost feeling in legs, treated and transferred again, aortagram performed, pt now paralyzed,	Genuine issue of material fact existed as to whether hospital violated EMTALA by its transferring of pt, allegedly before condition stabilized; but EMTALA, which prohib its transfer or release of ER pt before medical condition has stabilized, creates a private cause of action only against hospitals, not against physicians.	Evidence concerning loss of feeling in pt's legs puts into question whether at transfer no material deterioration of condition was likely, within reasonable medical probability. Plain language of EMTALA indicates individuals can bring civil actions against hospitals.

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<i>Griffith v. Mt. Carmel Medical Center</i> 826 F.Supp. 382, D.Kan.	1 9 9 3	?s prevail.	Surviving spouse of male decedent individually and on behalf of 3 children, minors and heirs at law of decedent (self-pay pt-no insurance-employed as truck driver).	Hospital, physician, physician recruiting corporation, nurse.	Pt taken to ER, admitted, x-ray taken (admitted to be poor diagnostic tool), EKG not given but physician admitted should have been given, pt diagnosed and medication prescribed, discharged, next am pt seized, taken to ER, tests done, again no EKG run, EEG scheduled on outpt basis because pt had no insurance, discharged, personnel indicated pt not admitted because not insured., pt died that night.	EMTALA did not authorize award of punitive damages for wrongful death claim.	EMTALA provides only that an individual may recover state law personal injury damages available for personal harm ? has suffered. Here, ? has suffered wrongful death of husband. Punitive damages not available for wrongful death under Kansas law but may recover in survival actions where death not instantaneous.
<i>Griffith v. Mt Carmel Med Ctr</i> 809 F.Supp. 839 D.Kan.	1 9 9 2	? prevails.	See above.	See above.	See above.	Corporation that recruited emergency physician to hospital was not liable under doctrine of respondeat superior for physician's alleged negligence.	Relationship between corporation and physician was that of independent contractor/contractee rather than that of respondeat superior.
<i>Nash v. Wilkinson</i> 1992 WL 163666 D.Kan.	1 9 9 2	?s prevail.	Male patient.	Physicians and hospital.	? presented to ER, treated and tentatively diagnosed, released with "good" condition reported, EKG report misinterpreted, ? contacted with results.	No expert testimony that ? deviated from applicable standard of care required by hospital emergency departments or caused ?'s injuries.	EMTALA does not guarantee a correct diagnosis. ? was provided extensive examination and testing and no emc was discovered prior to discharge.
<i>Teufel v. U.S.</i> 1992 WL 160908 D.Kan.	1 9 9 2	? prevails.	Surviving son as heir and next friend of male decedent.	United States.	Pt hospitalized several times for mental disorder, committed suicide.	EMTALA does not apply to long-term, nonemergency treatment of pts of mental institutions or to transfer decisions which are not financially motivated.	? never alleged or mentioned EMTALA claim. EMTALA's stabilization requirement is designed to prevent transfer of unstabilized persons and material deterioration of emcs.
<i>Collins v. DePaul Hosp.</i> 963 F.2d 303, 10th Cir.(Wyo.)	1 9 9 2	? prevails.	Male pt and his wife.	Hospital.	Pt presented to ER with injuries, hospital failed to x-ray when pt was unconscious but discharged, injury later discovered when pt complained about hip.	Fact hospital did not x-ray pt's hip when brought to hospital unconscious did not give rise to civil enforcement action under EMTALA for failure to provide appropriate screening to determine whether or not emc existed.	Hospital screened pt and found emc existed, did not discharge but treated pt for 26 days. EMTALA does not insure correct diagnosis but uniform treatment of all pts in similar medical circumstances; pt need not be indigent to assert claim.
<i>Urban v. King</i> 783 F.Supp. 560 D.Kan.	1 9 9 2	? prevails.	Minor male child by and through his natural father and mother and next friends and mother and	Physicians and hospital.	Mother pregnant with twins in high-risk pregnancy. Went to OB dept for stress test. Nurse consulted with physician and instructed mother to return for repeat test. During repeat test, problem determined. C-section performed. One baby stillborn,	EMTALA extends protection to "any individual" who seeks assistance, and does not apply only to those who are indigent or uninsured; EMTALA does not provide a ? with a private cause of action against an individual physician	Plain language unambiguously covers all individuals and majority of courts agree. EMTALA's remedy section clearly fails to provide individual civil remedy against physician.

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			father individually.		other born with brain damage.		
<i>Abercrombie v. Osteopathic Hosp. Founders Ass'n 950 F2d 676 (Okla.)</i>	1991	?s prevail.	Ten surviving children individually and as next of kin of female decedent (68 yo at time of event).	Osteopathic Hospital, osteopathic physicians.	Pt taken to hospital for chest pain, examined, EKG given, diagnosed, sent home with directions to contact family physician, examined by family physician, EKG given, diagnosed differently, again taken to hospital, died in hospital.	?s properly preserved objections to jury instructions; ?s were not required to show violation of both EMTALA's requirements before they could prevail; strict liability standard, rather than negligence standard applied under EMTALA; erroneous jury instructions were harmless.	Jury instructed that ?s must show violation of both EMTALA requirements to prevail but ? need only violate either requirement for ? to prevail but erroneous instructions harmless because error subsequently cured by special interrogations and jury's answers to interrogations which indicated ? did not violate at all.

<i>Coleman v. McCurtain Memorial Medical Management, Inc.</i> 771 F.Supp. 343, E.D.Okla.	1991	? 's motion for summary judgment granted in part and denied in part.	Surviving spouse individually and as husband and next of kin to female decedent.	Hospital.	Pt presented to ER, examined and tested and diagnosed, medication prescribed, given option of hospitalization but physician did not consider warranted, discharged with instructions for cardiac consult; returned to ER, admitted to ICU, transferred for treatment, died.	ER physician's assessment that pt suffered from viral disease and that cardiac consultation was warranted and overdue, as opposed to further testing and emergency medical care, was diagnosis that did not expose hospital to liability under EMTALA when pt suffered heart failure upon her release from ER; under OK law, ostensible agency doctrine precluded hospital from claiming exemption of liability for acts of ER physician who was independent contractor at time he treated pt.	Hospital did not discover emc so not responsible for stabilizing emc. "Misdiagnosis" and inadequate treatment are med mal claims. Delay in examination or treatment provision in EMTALA not in effect at time of events of case.
<i>Stevison by Collins v. Enid Health Systems, Inc.</i> 920 F.2d 710, 10th Cir.(Okla.)	1990	? prevails.	Indigent female minor by her guardian ad litem (? 13 yo at time of event).	Hospital.	Pt presented to ER with stomach pain, appendix ruptured next day, asserts error in jury instruction which improperly shifted burden of proof, disputed whether request withdrawn but ? left hospital without treatment.	Hospital with emergency dept has burden of proof to show by preponderance of evidence that request to emergency dept for medical exam or treatment was withdrawn under EMTALA; erroneous allocation of burden of proof could not be harmless in suit brought under EMTALA.	EMTALA imposes strict liability standard, ? satisfied initial burden, ? now has burden, error not harmless because showing request was or was not withdrawn is key element of EMTALA action.
<i>Stewart v. Myrick</i> 731 F.Supp. 433 D.Kan.	1990	?s prevail.	Surviving spouse individually, as heir, and on behalf of all heirs of male decedent, and as administrator of estate of male decedent.	Physician and Hospital.	Pt presented to ER, instructed to return for tests next day, tests inconclusive, pt left, died a week later.	Claim for improper ER diagnosis and treatment was traditional medical malpractice claim that was not cognizable under EMTALA, where it was uncontroverted that pt was never denied treatment or discharged from medical center due to lack of insurance.	Misdiagnosis is a medical malpractice claim. This is not a case of patient dumping which is the purpose of EMTALA so EMTALA does not apply. EMTALA not intended to make hospital the guarantor of ER diagnosis and treatment.