



WE LIKE TO HEAR FROM YOU!

Readers are always encouraged to “Tell us what you think!” We want to know your feedback regarding current articles, topics you’d like to see covered in future issues, and what challenges you face in daily practice.

Here’s a letter from an avid reader about emergency department on-call obligations, and a response from our legal expert.

What’s your opinion? Email us at obg@frontlinemedcom.com. Please include your name and the city and state in which you practice.

Who will be found at fault?

I am always interested in the Medical Verdicts section (it’s like watching a car accident—you can’t look away). I recently was involved in an argument in a physician-only online forum where a participant presented a case of a failed homebirth brought into a hospital with an obstetrics (OB) service. A call was allegedly placed to one of the ObGyns who refused to come to the hospital and attend the patient, claiming that since the hospital had negotiated no contract with the ObGyns for unassigned coverage, he was not obligated to do so. The baby died. A lawsuit was filed.

I argued that, per the Emergency Medical Treatment and Active Labor Act (EMTALA), the hospital is required to have an unassigned call roster for OB. Usually it is an obligation of privileges and is outlined in the medical staff bylaws; sometimes payment is offered by the hospital, sometimes not.

A spirited discussion ensued. A bunch of emergency department (ED) physicians said that they practice in hospitals where no one can be “forced to take a call for unassigned patients for free against their will” and that this scenario is quite common. They felt there is nothing in EMTALA that requires a hospital to have on-call physicians available. They said it is common to be unable

to find specialists, surgeons, or ObGyns willing to come in and take these patients.

I still don’t know what our legal obligation is under EMTALA, but I had never heard of an OB service without a provision for unassigned patients.

If this story is true, and not just an apocryphal tale, who will be found at fault? (Probably everyone.)

Deborah Owen, MD
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>> Shirley Pruitt, RN, JD, responds

The obligation to maintain a call schedule is imposed on hospitals by a section of the Medicare statute that refers back to the EMTALA obligations.¹ Generally, if a hospital provides specialized services to the public, it is required to provide these services through ED on-call coverage. Each hospital has the discretion to maintain the on-call list in a manner to best meet the needs of its patients. The medical staff bylaws or policies must define 1) the responsibility of on-call physicians to respond, examine, and treat patients with emergency medical conditions, and 2) the procedures to be followed when a particular specialty is not available or the on-call physician cannot respond because of situations beyond his or her control. The Centers for Medicare and Medicaid Services

(CMS) may impose a penalty on a physician who fails to respond to an emergency situation when he or she is assigned as the on-call physician.

There is no Federal law through CMS/EMTALA requiring a specialist to participate in the on-call list. However, a specialist who refuses to participate in the on-call list may not take “selective call” and agree to see patients with whom the specialist has a prior existing relationship while refusing to see other patients with whom there is no such relationship.

Disclaimer

This information should not be construed as business, risk management, or legal advice or legal opinion.

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Reference

1. The Public Health and Welfare, 42 USC §1395dd et seq (2011).

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