

2013 WL 1499290 (N.D.Cal.) (Trial Motion, Memorandum and Affidavit)  
United States District Court, N.D. California.

Michael Gene TORRES (decedent) Michael G. Torres, Jr. Robert Sexton, Individually and as personal representative of the estate of Michael Gene Torres, Zenaida Stilley, Diane Torres, Plaintiffs,

v.

SANTA ROSA MEMORIAL HOSPITAL, St. Joseph Health System, Glenn T. Meade, M.D., Doe Er Doctor, Doe Er Nursing Supervisor and Does 1-100, Defendants.

No. C 12-06364 PJH.  
April 11, 2013.

**Plaintiffs' Opposition to Defendants Santa Rosa Memorial Hospital  
and St. Joseph Health System's Motion to Dismiss Plaintiffs' Complaint**

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Date: May 15, 2013

Time: 11:00 a.m.

Dept.: TBA

Plaintiffs MICHAEL GENE TORRES (decedent) MICHAEL G. TORRES, JR. ROBERT SEXTON, Individually and as personal representative of the estate of MICHAEL GENE TORRES, ZENAIDA STILLEY, DIANE TORRES submit the following Opposition to Defendants SANTA ROSA MEMORIAL HOSPITAL and ST. JOSEPH HEALTH SYSTEM'S Motion to Dismiss Plaintiffs' Complaint.

**I.**

**PLAINTIFFS HAVE APPROPRIATELY PLEADED "FAILURE TO SCREEN" PURSUANT TO EMTALA**

Defendants twice failed to appropriately screen MICHAEL GENE TORRES. First in their emergency room and second in their parking lot.

In their emergency room an insufficient examination was performed. The autopsy stated that MR. TORRES had [pneumonia](#) for "days." This meant he also was in the middle of his progressive [pneumonia](#) when he first presented to the emergency room. Had even the most basic lung examination occurred, such as listening to the lungs with a stethoscope, the [pneumonia](#) would have been readily diagnosed.

The purpose of EMTALA is to prevent "dumping." The Defendants are subject to liability for providing only a cursory screening. See *Romar v. Fresno Community Hospital and Medical Center* (2008) 583 F. Supp. 1179 Footnote 3.

Cursory examination and testing violates the spirit and purpose of EMTALA.

The hospital must provide an appropriate medical screening examination within the capability of the hospital's emergency department to determine whether or not an emergency medical condition within the meaning of (e)(1) exists. [42 USC section 1395 dd \(a\)](#).

As stated in *Jackson v. East Bay Hospital* 246 F. 3d 1248, 1256.

...the hospital satisfies EMTALA'S appropriate medical screening requirement if it provides a patient with an examination comparable to the one offered to other patients presenting similar symptoms, *unless the examination is so cursory that it is not designed to identify acute and severe symptoms that alert the physician of the need for immediate medical attention to prevent serious bodily injury*. [Emphasis added.]

Defendants' second failure to screen occurred when Plaintiff MICHAEL GENE TORRES remained on their premises and was obviously in dire straits in their parking lot. The definition of a "request" for a medical screening exam includes ... if the appearance or behavior would cause a "prudent layperson observer" to believe that examination or treatment for a medical condition is needed. [68 Fed. Reg. 53,222, 53,234. \(2003\)](#). Lying in agony on Defendants' premises did cause, as alleged, multiple medical personnel to urge their own employer, Defendant SANTA ROSA MEMORIAL HOSPITAL, to respond to this obvious ongoing medical emergency, which Defendant callously refused.

The Hospital must show the refusal of care was not due to delay of care caused by discriminatory reasons such as economic/insurance status, race, color, nationality and so on. OIG/HCFR Special advisory bulletin on the patient antidumping statutes, [64 Fed Reg 61, 353 \(1999\)](#).

Triage entails the clinical assessment of the individual's presenting signs and symptoms at the time of arrival at the hospital, in order to prioritize when the individual will be seen by a physician or other qualified medical personnel (QMP).<sup>82</sup>

If a hospital has an EMTALA obligation, it must screen individuals to determine if an emergency medical condition exists. It is not appropriate to merely "log-in" an individual and not provide a Medical Screening Examination. An MSE is the process required to reach, with reasonable clinical confidence, the point at which it can be determined whether the individual has a EMC or not. An MSE is not an isolated event. It is an ongoing process that begins, but typically does not end, with triage.<sup>83</sup>

## II.

### ***PLAINTIFFS HAVE ADEQUATELY PLEADED FAILURE TO STABILIZE***

Defendant also failed to stabilize Plaintiff MICHAEL GENE TORRES both in their emergency department and in their parking lot.

MR. TORRES had [pneumonia](#) that had been present for "days." Defendants did nothing to stabilize that condition. They allowed it to progress and cause and contribute to his death the next morning.

They also failed to stabilize his withdrawal from alcohol, which also caused and contributed to his death early the next morning.

MR. TORRES was dismissed from the emergency department without basic testing and without any follow-up nursing nor physician examination immediately prior to discharge.

Progressive [pneumonia](#) and alcohol withdrawal are both conditions likely to lead to serious injury or death if they are not appropriately treated and stabilized.

The hospital cannot avoid EMTALA liability by intentionally failing to diagnose an emergency medical condition in order to avoid the stabilization requirement. *Bryant v. Adventist Health System/West* (2002) 280 F. 3d 1162, 1166.

A hospital may be found liable for violating EMTALA's appropriate medical screening requirements if the examination is so cursory that it is not designed to identify acute and severe symptoms that alert the physician of the need for immediate medical attention to prevent serious bodily injury. *Bryant, supra*, at p. 1166.

The screening examination must be reasonably calculated to identify critical medical conditions that may be afflicting symptomatic patients. *Correa v. Hospital San Francisco* 69 F.3d 1184, 1192 (1995).

The question of EMTALA Stabilization is a question of fact even precluding summary judgment, much less subject to this early motion based on the pleadings alone. *Battle v. Memorial Hospital at Gulfport* 228 F3d 544 (Fifth Circuit 2000). *Heimlicher v. Steele an Dickson County Hospital* (2007) 615 F Supp. 2d 884, 915-916. *Barris v. County of Los Angeles* (1999) 20 Cal. 4th 101.

Additionally, once discovery commences Plaintiffs anticipate showing that there was disparate treatment, as well.

### III.

#### **PLAINTIFFS HAVE ADEQUATELY PLEADED DEPENDENT ADULT ABUSE UNDER THE WELFARE & INSTITUTIONS CODE OF THE STATE OF CALIFORNIA.**

Plaintiffs have adequately pleaded both physical disability and mental impairment upon Plaintiff MICHAEL GENE TORRES' presentation to Defendants. MR. TORRES was suffering from acute pneumonia and acute alcohol withdrawal. Defendant has no authority to support their claim that a conservatorship or guardian ad litem is required to make someone a dependent adult under the statute.

As stated in the Rutter Treatise on "Elder Abuse," the purported "dependent adult" requirements claims by Defendants are not well taken.

EALIT Ch. 9 [Rutter] by Russel Belisok, Esq.:

5. [9:5] Statutory Bases for Elder Abuse Actions are Separate From Act's Reporting Requirements: *Welf. & Inst.C. § 15657*, providing for civil actions, refers only to five of the terms defined at *Welf. & Inst.C. § 15610*. Other defined terms at *Welf. & Inst.C. § 15610* are primarily relevant to reporting requirements at *Welf. & Inst.C. § 15630* and were added by the Legislature in 1994 following the 1991 enactment of civil remedies for elder abuse. Except for "elder," "dependent adult," "neglect" and "physical abuse" in the 1991 amendment adding civil remedies (and except for the later provision in 1997 for "abduction" at *Welf. & Inst.C. § 15657.05*), the definitions at *Welf. & Inst.C. § 15610* are not relevant to and do not describe the scope of the provisions at *Welf. & Inst.C. § 15657*'s provisions for civil remedies.

a. [9:6] Appellate court confusion regarding "abuse of an elder or dependent adult": The scope of the Act's provisions for civil actions on behalf of elders or dependent adults is set forth at *Welf. & Inst.C. § 15657*. That section does not directly or indirectly refer to "abuse of an elder or a dependent adult" defined at *Welf. & Inst.C. § 15610.07*, or to "care custodian" at *Welf. & Inst.C. § 15610.17*. Those terms are employed in the Act's reporting requirements. [*Covenant Care, Inc. v. Sup.Ct.* (2004) 32 C4th 771, 779. 11 CR3d 222, 226 (1994 enactment established reporting requirements for "abuse of an elder or a dependent adult" under *Welf. & Inst.C. § 15610.07*)]

Nonetheless, several published and unpublished court of appeal opinions have erroneously explained or linked application of the civil remedies under the Act by reference to the defined phrase "abuse of an elder or dependent adult" (*Welf. & Inst.C. § 15610.07*). [See *Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 CA4th 396, 129 CR3d 895; *Berkley v. Dowds* (2007) 152 CA4th 518, 529, 61 CR3d 304, 313; *Country Villa Claremont Healthcare Center, Inc. v. Sup.Ct.*(2004) 120 CA4th

426, 432, 15 CR3d 315, 319; *Marron v. Sup.Ct.* (2003) 108 CA4th 1049, 1058, 134 CR2d 358, 363; *Mack v. Soung* (2000) 80 CA4th 966, 973, 95 CR2d 830, 834-835]

Plaintiff MICHAEL GENE TORRES presented to Defendant and remained on Defendants' premises until he died the next morning. He remained under Defendants' constructive care custody and control despite their continuing reckless and intentional neglect.

**IV.**

**PLAINTIFFS CAN PROVIDE ADDITIONAL FACTS FOR A MORE DEFINITE STATEMENT AND, IN THE EVENT ANY PART OF DEFENDANTS' MOTION IS GRANTED, PLAINTIFFS REQUEST LEAVE TO AMEND.**

The wrongful death case is prosecuted by Plaintiff MICHAEL GENE TORRES' son and his mother. The dependent adult **abuse** claims are brought by decedent via the personal representative of his estate. The balance of the claims are brought by his entire family as named pursuant to EMTALA.

ST. JOSEPH HEALTH SYSTEM is the parent company and alter ego of SANTA ROSA MEMORIAL HOSPITAL. It is subject to the doctrine of ostensible agency as well as actual agency.

Dated: April 11, 2013

LAW OFFICE OF DOUGLAS C. FLADSETH

<<signature>>

DOUGLAS C. FLADSETH

Attorney for Plaintiffs

Footnotes

**82** - U.S. Dep't HHS, CMS, State Operations Manual, App. V. Emergency Medical Treatment and Labor Act (EMTALA) Interpretive Guidelines, Part II, Tag A-2406/C-2406 (revised 7/16/2010).

**83** - U.S. Dep't HHS, CMS, State Operations Manual, App. V. Interpretive Guidelines for Responsibilities of Medicare Participating Hospitals in Emergency Cases, Part II, Tag A407 (revised 5/29/2009).