

MORNING CMO REPORT

06.14.2017

FROM THE DESK OF:
Anthony P. Weiss, MD, Chief Medical Officer,
Associate Dean for Clinical Affairs,
Upstate University Hospital

UPSTATE
UNIVERSITY HOSPITAL

EMTALA Questions and Answers

[Applies to All Physicians](#)

While the acute energy related to our response to an EMTALA citation has subsided, our ongoing obligations to the regulations endure. A number of good questions have been raised related to EMTALA. I am grateful to Dr. Jeremy Joslin who has provided local expertise on this topic and created this FAQ. Hope you find this helpful.

EMTALA
Informational

1.) What should I do if it sounds like a transfer is unsafe to occur until further stabilization/treatment at the referring facility or by using a different mode of transportation?

EMTALA places transportation decisions and risk/benefit considerations on the referring facility ^[1]. To put a finer point on this, the mode and timing of transportation are not the purview of the accepting provider. While it may be appropriate and reasonable to recommend some treatment be started enroute, failure to accept until some clinical circumstance is achieved is not acceptable. For example, when accepting a patient with hemorrhagic shock it may be prudent to ask if blood will be given before or during transport; but it is not appropriate to refuse to accept until blood is given.

2.) What if we cannot provide a higher level of care than the referring facility is already providing?

Recall that EMTALA-governed transfers include those patients who are at a referring facility, but have not yet been admitted. It does not include inpatient to inpatient transfers. For EMTALA-governed transfers, the provision of a *higher level of care* is not an applicable standard that needs to be met. The applicable standard to be met is whether the referring facility has the capacity and capability to provide the needed services to stabilize an emergency medical condition ^[2]. Said more simply, if the referring facility doesn't have a service or bed the patient needs, and we do, then we need to accept the transfer.

3.) If a referring hospital seeks to transfer a patient for a stated lack of capability, when I know they have the capability, can't I refuse to accept because the entire rationale is flawed?

While it may be true that the referring provider may not have exhausted all possible care plans to avoid a transfer, or that the referring facility indeed has a service already available, the bottom line

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is that the request must be taken at face value at the time of the request. A failure to adhere to EMTALA regulations does not justify a failure for us to adhere to regulations. More simply stated: two wrongs don't make a right. The appropriate response is to clarify the perceived lack of capacity or capability, and then accept the patient if we are able. Following the transfer, the case may be reviewed and followed-up. For example, "Sounds like you're stating that you do not have the orthopedic coverage that this patient requires at this time. We can accept the patient now, and then take a closer look at this after we take care of the patient."

4.) What if the patient doesn't need a transfer after a brief consultation over the phone resolves the perceived emergency medical condition (EMC)?

Because the determination of an emergency medical condition can only be made by the qualified medical provider at the referring institution, we cannot use our judgement to supersede and override the perceived need for transfer. Sometimes, after a collegial discussion of the patient's condition, a collaborative decision may be made to not transfer. These collaborative decisions must be an overt agreement and not simply passive influence and assent. A good script to use on the recorded line is "may I tell you what I usually do for patients with this condition, and then you can decide if the patient still needs to be transferred to our hospital." Affirmative confirmation that the referring provider does not still wish to transfer the patient must be verbalized, and should also be documented by the transfer center nurse.

5.) What is the review process at Upstate Medical University for transferred patients?

All transfer center conversations are recorded, and notations are made by transfer center nurses into the patient's medical record during the transfer arrangements. Reviews are conducted by the CMO, CNO, CQO, Risk Management director, or a delegate with the explicit goal of 100% compliance with state and federal regulation as well as hospital policy. The following types of calls are reviewed:

- Requests where there is an intent to transfer, but the patient is not actually transferred
- Requests where a patient is not transferred due to cited lack of capacity or capabilities of facilities or providers
- Requests that require more than one provider consultation (failure to accept)
- Requests where any staff are concerned about a violation of hospital policy (e.g. A-16 or Medical Staff Bylaws) or EMTALA

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1. 42 CFR 489.24(e)(2)(B)(iv) ↩
2. State Operations Manual. Appendix V – Interpretive Guidelines – Responsibilities of Medicare Participating Hospitals in Emergency Cases. Pg 65. Tag A–2411/C–2411(Rev. 46, Issued: 05–29–09, Effective/Implementation: 05–29–09). Recipient Hospital Responsibilities §489.24(f). Found at https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/som107ap_v_emerg.pdf ↩

Outstanding Physician Comments

[Applies to All Physicians](#)

Each week we receive written comments from our patients regarding the care we provide within the Hospital. Below are this week's comments from grateful patients receiving care on the units and clinics at Upstate:

Comments
Informational

Inpatient @ Community Campus – Dr. Robert Beach is knowledgeable and always took time to explain.

11E – Dr. Matt Sullivan is amazing. He saved my daughters arm and for that I will be ever so grateful.

7A- Dr. R. Tallarico - treatment, care, concern, and compassion were all outstanding. I am so fortunate to have him as my doctor.

UHCC Neurology - Dr. Vertino always gives us as much time as we want to discuss all of our questions and concerns. We love him.

I am amazed at how well **Dr. Duleep** seems to know me, and my history I love her and feel supported and validated with every visit and conversation.

Unbelievable care and the attention given to me by **Dr. Mejico**.

This our first visit to **Dr. Mihaila** and we were very impressed and felt that he was genuinely concerned with our medical needs.

Dr Sanders always impresses me. She full of knowledge & compassion. She does not rush me, she gives all the time in the world.

Dr. Zhang is very friendly and is easy to talk to. He listens to my questions and makes sure that I understand what is going on.

Dental - Dr. Smith is the BEST.

Surgery Harrison Center - Dr. Bem was great.

Dr. Dolinak, she was very helpful and patient with my daughter.

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University Internists - Dr. Frechette always make you feel like he has all the time I need. He never rushes us.

Dr. Frechette is an honest caring man and an outstanding internist.

Dr. Frechette is always impressive and on top of things. He always has checked EPIC and is up on everything and has the ability to remember what was said and done at our last visit.

Have been **Dr. Krenzer's** patient for over 35 years. I value her care and concern about me!

Dr. Krenzer is a superb physician and is possessed of a wonderful combination of equanimity of temperament and gentility.

I love to see **Dr. Lappin** - she has helped me a lot.

Transplant Center - Dr. John Leggat is the best so lucky that I have him as my MD.

Family Medicine – Dr. Greenwald has always been awesome!! He has the best bedside manner. For the last 25 years as my doctor I always had the best care.

Dr. Greenwald talks to me like a friend & has never made me feel concerned or uneasy.

Dr. Finn!! Professional, intelligent, personable, friendly, efficient, sensible, reliable.

Joslin - Dr. Dhaliwal, has been very pleasant, smiles and answers my questions very well.

Dr. Penree pays great attention to detail and stays current on new technology in the treatment of Diabetes. He is extremely knowledgeable about the disease and always has great insight into my numbers.

Medicine Subspecialties - Dr. Yu is awesome. She listens, she's always knows what's going on between last visit and current.

Dr. Neupane always has been a great doctor. He stayed after hours with me to look at possible problems I was having. He has even called me at home to make sure I was okay.

I love **Dr. Neupane** and have confidence in him.

Dr. Kato is VERY thorough and informative. If waiting time is long, it is because he takes the needed time with each patient, as with each part of the visit.

Vision Care - Dr Swan and his staff are amazing. **Dr Swan** is so patient and helpful

I love **Dr. Swan**. His knowledge, compassion & care is superb! He has helped me w/situations no one else could.

University Cardiology – Dr Michiel takes his time, he is thorough, efficient, and concerned **Dr. Mookherjee** is a wonderful doctor.

Dr. Carhart he is a very caring doctor and he listens; I am so happy to have him as my heart doctor.

Urology at Community - Dr. Paonessa - - At all times she kept me calm and well informed.

University Geriatricians - Dr. Berg really made me feel that I was worthy of her attention

Dr. Berg "worked her way" into my heart & confidence.

Dr. Berg was confidence-inspiring and fully attentive to my concerns.

Dr. Heagle-Bahn listens carefully and responds clearly.

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Dr. Brangman - We felt like we were her ONLY concern. Very, very professional & extremely caring.

Breast Imaging - Dr Lisa Lai was very kind and compassionate.

Center for Children's Surgery – Dr Ahmed is always thorough, focused, respectful, and careful. He does a tremendous job!

Vascular Surgery Clinic - Dr Shaw is great, very helpful.

Dr Surowiec - Generally seemed to care about me as an individual and patient.

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