



## Burditt v. U.S. Department of Health and Human Services

Burditt v. U.S. Department of Health and Human Services 934 F.2d 1362 (5th Cir. 1991)

**Country:** United States

**Region:** Americas

**Year:** 1991

**Court:** United States Court of Appeals, Fifth Circuit

**Health Topics:** Health care and health services, Hospitals, Medical malpractice, Poverty, Sexual and reproductive health

**Human Rights:** Right to health

### Facts

Petitioner, physician Michael Burditt, appealed a \$20,000 civil penalty determination made by respondent, the Executive Appeals Board of Department of Health and Human Services, for the petitioner's violation of the Emergency Medical Treatment and Active Labor Act (EMTALA).

On December 5, 1986 at 4:00pm, Ms. Rosa Rivera arrived at the emergency room of DeTar Hospital in Victoria, Texas. She was at term with her sixth child and experiencing one-minute, moderate contractions every three minutes and her membranes had ruptured. Two obstetrical nurses, Tammy Kotsur and Donna Keining, examined her and found indicia of labor and dangerously high blood pressure. Ms. Rivera had not received prenatal care, did not have a regular doctor and did not have means of payment. Kotsur called Burditt who was the physician on-call for such "unassigned" obstetrics patients. Upon hearing Ms. Rivera's history, he told the nurse that he "didn't" want to take care of this lady and asked the nurse to prepare her transfer to John Sealy, a hospital 170 miles away.

The obstetrics nurses told their supervisor of Burditt's request and their belief that it would be unsafe to do so. Keining informed Burditt that according to hospital regulation and federal law, Burditt would have to examine Rivera and arrange for John Sealy to receive her prior to transfer. Keining asked Burditt for permission to start intravenous medication as a precaution against convulsive seizures. Burditt told her only to do so if Rivera could be transported by ambulance. He stated that otherwise, Keining was not to administer the IV treatment because Rivera would have to go to John Sealy by private car.

Burditt arrived at 4:50pm and measured Rivera's blood pressure at 210/130, the highest it had ever been. As the experienced head of DeTar's obstetrics and gynecology department, Burditt knew there was a strong possibility that Rivera's hypertension could kill both her and her child or put the child at risk for intrauterine growth retardation. He arranged for Rivera to be transferred to John Sealy by ambulance and per the receiving physician's request, instructed Keining to administer the IV treatment.

At 5:00pm, a nurse supervisor aware of the situation attempted to show Burditt DeTar's guidelines regarding EMTALA, but he refused to read them. He signed a hospital form entitled "Physician's Certificate Authorizing Transfer" that stated that the medical benefits of transfer outweighed the increased risks to the patient from the transfer but refused to provide a basis for that conclusion. He told the nurse supervisor, "until DeTar Hospital pays my malpractice insurance, I will pick and choose those patients that I want to treat."

Burditt never examined Rivera again or inquired about her condition. Approximately 40 miles into the trip to John Sealy, Rivera delivered her baby. A nurse who accompanied Rivera called Burditt, who informed her to

continue to John Sealy despite the birth. The nurse did not follow this instruction and returned Rivera to DeTar, per Rivera's wishes. Burditt refused to see Rivera and ordered her to be discharged if she was stable. Rivera remained at DeTar for 3 days under the care of another physician and left in good health.

## Decision and Reasoning

The Court noted its jurisdiction to review the Departmental Appeals Board's (DAB) decision under 42 U.S.C.A. Section 1320a-7a(e) which states that the Court will uphold its fact findings if they are supported by substantial evidence on the record considered as a whole. The Court goes on to make three determinations: (1) whether the DAB's finding regarding Burditt's EMTALA violations was supported, (2) whether the DAB's decision to fine Burditt was supported, and (3) whether EMTALA amounted to a public taking from Burditt in contravention of the U.S. Constitution's 5th Amendment.

**EMTALA VIOLATION** The Court began its analysis by evaluating whether the DAB's finding that Burditt violated EMTALA was supported by substantial evidence. The Court affirmed that it was and held that Burditt's conduct in failing to weigh medical risks and benefits before ordering transfer of a severely hypertensive woman in active labor violated the Act.

DeTar had executed a Medicare provider agreement with the federal government pursuant to 42 U.S.C. Section 1395cc and was obligated to create Rivera in accordance with EMTALA. EMTALA required DeTar to "provide for an appropriate medical screening examination" to determine whether or not an emergency medical condition exists or to determine if the individual is in active labor. The Court found that DeTar appropriately met this obligation when they diagnosed Rivera with severe hypertension.

Patients with an emergency medical condition or in active labor must either be treated or transferred in accordance with EMTALA. Here, the Court held that the DAB could properly conclude that Burditt provided no such treatment and did not stabilize Rivera's emergency medical condition. The Court reached this conclusion on the basis of extensive expert testimony that Rivera's hypertension put her at high risk of serious complications even as she was being transferred.

The Court also affirmed the DAB's finding that Rivera had begun active labor as defined under EMTALA by the time Burditt authorized her transfer. The Court reached this conclusion on the basis of expert testimony based on Burditt's own examination results.

Upon discovery of active labor or an emergency medical condition, EMTALA usually requires hospitals to treat the discovered condition. EMTALA allows for transfer under certain circumstances. Transfer is permitted if the patient requests it or the physician has certified in writing that the medical benefits of a transfer outweigh the increased risk to the patient. The receiving hospital must have agreed to take the patient and the transfer must be done with appropriate personnel and life support measures. Here, the Court affirmed the DAB's finding Burditt had not satisfied the requirements for a transfer since Burditt did not reasonably conclude the benefits of the transfer outweighed the risks and did not provide for appropriate transportation.

**CIVIL MONEY PENALTY** Next, the Court evaluated whether the DAB's decision to fine Burditt \$20,000 under 42 U.S.C. Section 1395dd(d)(2), which provides that participating hospitals and physicians responsible for EMTALA violations are subject to civil money penalties, was supported by substantial evidence on the record. The Court found held that it was and affirmed the DAB's decision. The Court found that Burditt knowingly violated EMTALA requirements because he actually knew all facts necessary to establish the violation. The Court also agreed with the DAB's determination of penalty amount since Burditt's actions demonstrated a flagrant disregard for the anti-dumping principles Congress enshrined in EMTALA.

**EMTALA'S CONSTITUTIONALITY** The Court examined whether EMTALA effects a public taking of Burditt's services without just compensation in contravention of the Constitution's 5th Amendment. The Court held that it does not. The Court reasoned that two levels of voluntariness undermined Burditt's assertion: (1) only hospitals that voluntarily participate in the federal government's Medicare program must comply with EMTALA and (2) Burditt is free to negotiate with DeTar regarding his responsibility to facilitate a hospital's compliance with EMTALA. Affirmed and Enforced.

## Decision Excerpts

"Under the statutory language, a woman in labor is entitled to EMTALA's treatment and transfer protections upon a showing of possible threat; it does not require proof of a reasonable medical probability that any threat will come to fruition." Burditt v. U.S. Dept. of Health and Human Services, 934 F.2d 1362, 1370 (5th Cir. 1991)

"Every reasonable adult, let alone physician, understands that labor evolves to delivery, that high blood pressure is dangerous, and that the desirability of transferring a patient with these conditions could well change over a two-hour period. Burditt's indifference to Rivera's condition for the two hours after he conducted his single examination demonstrates not that he unreasonably weighed the medical risks and benefits of transfer, but that he never made such a judgment." Burditt v. U.S. Dept. of Health and Human Services, 934 F.2d 1362, 1372 (5th Cir. 1991)