Cops and docs: The challenges for ED physicians balancing the police, state laws, and EMTALA

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State laws are awash with discord concerning whether a police officer's request or court order necessarily obligates physicians to perform a body fluid analysis of an arrested, conscious, nonconsenting suspect. Police typically bring arrestees directly to the emergency department (ED), and federal courts have begun to wrestle with the implications of the Emergency Medical Treatment and Labor Act (EMTALA), which requires that *anyone* presenting to the ED be screened for treatment. Some state laws require health care providers to comply with any police request for lab analysis, while other states offer more leeway to physicians. Recent trends in federal case law interpreting EMTALA suggest that a medical screening exam is not required for patients brought by police specifically for a blood or urine sample *unless* either the arrestee requests medical care or a prudent observer would believe medical care was indicated. This article answers two questions: What happens when a police officer presents to the ED requesting service on behalf of an arrestee? What does EMTLA require of physicians in response? We survey current state statutes, review recent state and federal case law, describe example policies from various hospitals, and conclude with recommendations for hospital risk managers.

CASE EXAMPLE

Shortly after midnight, an active-duty police officer presented to an ED hauling a drunken man he had arrested for driving under the influence. The officer stormed into the ED, drunken man in tow, with a search warrant for a urine sample of the man, the arrestee. Chaos ensued. The arrestee refused to cooperate with the requested urinalysis; he opposed the ED physicians' requests to take any kind of body substance sample: "over my dead body!" The police officer bristled, became belligerent, and threatened to arrest the ED physicians for refusing to perform the substance draw on this nonconsenting patient: "I've arrested doctors for less than this!"

Published online in Wiley Online Library (wileyonlinelibrary.com) • DOI: 10.1002/jhrm.21280

Later that night, the arrestee stopped breathing, went into cardiac arrest, and died the following morning. His estate sued the hospital under both EMTALA and 42 U.S.C. §1983, a federal statute that allows individuals to sue certain state government officials for violations of federal constitutional rights, arguing, first, that the hospital had violated EMTALA by failing to perform the EMTALA-required medical screening exam; second, that the hospital was "deliberately indifferent" to the man's serious medical needs; and, third, that had the hospital performed the EMTALA-required medical screening exam, the arrestee might have lived.

This case raises two issues. First, what are physicians required to do in response to an order from an active-duty police officer (with or without a search warrant) requesting that they perform a body fluid analysis on a patient for nonmedical (ie, legal) purposes? Second, how does a police officer's request for services on behalf of another (ie, an arrestee) implicate federal mandates for ED physicians under EMTALA?

BACKGROUND

Law enforcement officers and physicians hold privileged positions in society, and the intersection of these two professions occurs with surprising frequency in the hospital ED, where police may bring a suspect for a medical screening exam (MSE) or blood alcohol analysis. At that point, the power dynamics between the two professions can reach a breaking point. The moment at which a law enforcement officer asks, or even tries to compel, a physician to subject a nonconsenting suspect/patient to testing presents myriad dangers for hospitals and ED physicians, nurses, and staff. The problem is complex, and it implicates both state and federal law: state law governs the reach of a police officer's authority to procure a sample and compel physician assistance in both obtaining the sample and analyzing it; federal law governs the conduct of physicians where a patient presents to the ED and some form of medical treatment is requested on the patient's behalf.

While state law differs across the country, two particular cases highlight the interaction between state and federal law. In August 1993, a police officer in Pennsylvania arrested a man for driving erratically, and took him to the local ED for a blood alcohol test.[1] The arrestee presented as lethargic, and was having difficulty sitting up straight. He signed a "Consent to Hospital Care" form, and the physicians performed the requested blood draw. Afterwards, the man was escorted to the jail. He was found dead in his jail cell by police the following morning. The man's estate then sued the hospital, claiming that it had failed to provide the patient with an adequate medical screening exam as required by EMTALA. The hospital, in turn, argued that the man did not *request* medical services and that the police had brought him in only for a blood alcohol test.

In April 2003, a man in California crashed his car into a snowbank, and local police arrested him for driving under the influence (DUI).[2] The police transported the man to a hospital for a blood test, as he appeared to be having hallucinations. Medical personnel described him as the most physically resistive person that they had ever seen: he was wild and thrashing about. While at the hospital, he eventually stopped breathing and went into cardiac arrest. He died the following day; and his estate sued the hospital and the police under 42 U.S.C. § 1983, arguing that the hospital was "deliberately indifferent" to the man's serious medical needs. Additionally, the plaintiffs contended that the hospital failed to perform the EMTALA-required medical screening before performing the police-requested blood draw.

These two cases reveal the danger posed to hospitals and physicians when they are compelled by police to act in a narrow role of lab analysis while restraining their role in medical screening. Beyond technical matters of law, ethical questions have been raised concerning whether a physician violates the doctor-patient relationship when handing over incriminating evidence to police.[3]

Survey of statutes and case law

Table 1 summarizes the relevant and applicable statutes for select states. The table is meant to illustrate the divergence across the country with respect to how various states have chosen to address this issue. Accordingly, there is great variety with respect to what exactly is required of physicians and health care providers in each state. The states enumerated in Table 1 were chosen specifically to highlight the wide-ranging differences in approach.

Reflecting the other side of the coin, **Table 2** highlights case law developmental trends in federal courts across the United States, which have wrestled with federal causes of action brought either directly under the EMTALA statute or under 42 U.S.C. § 1983: They are illustrative of instances where plaintiffs have sought monetary compensation from hospitals acting at the request of law enforcement.

ANALYSIS

State law component

As referenced briefly above, some states affirmatively obligate their physicians and health care providers to comply with these types of requests. For instance, Pennsylvania's statute strictly governs the conduct of ED physicians and affords them little leeway on the issue: where police have probable cause to believe that a person involved in a motor vehicle accident has committed DUI, ED providers *must* take a blood sample, conduct analysis, and provide the results to the Pennsylvania Department of Health.[4] The statute's language contemplates a statutory scheme under which an operator of a motor vehicle has

 DOI: 10.1002/jhrm

Table 1: Summary of Statutes for Various States

State	Statute	Summary
AL	Ala. Code. §§ 32-5A-194(a)(2) and (d); 32-5-192	Any person who operates a motor vehicle is deemed to have given consent to a chemical test of his blood, breath, or urine for the purposes of determining the alcoholic content if lawfully arrested for a DUI or related offense. When a person submits to a blood test at the direction of law enforcement, only a physician or registered nurse (or other qualified individual) may withdraw blood (though this provision does not apply to urine samples). No physician, registered nurse, lab technician, or medical facility shall incur any civil or criminal liability as a result of the administration of a blood test when requested by a law enforcement officer.
CA	Cal. Veh. Code § 23612	Any driver of a vehicle is deemed to have consented to chemical testing of his or her blood or breath; only if those two methods are unavailable and the person is lawfully arrested, then the police may pursue a urine analysis. The statute itself is silent on whether police can compel physicians to take the sample.
FL	Fla. Stat. § 316.1932	Any operator of a motor vehicle has consented to submitting to a chemical analysis of blood, breath, or urine if lawfully arrested for a DUI-related offense. Only a physician, certified paramedic, registered nurse, licensed practical nurse, or other authorized medical personnel may draw blood for the purpose of determining its alcoholic content. A hospital, laboratory, physician, paramedic, registered nurse, licensed practical nurse, or other authorized medical personnel does not incur any civil or criminal liability as a result of the withdrawal or analysis of blood or urine regardless of whether the subject resisted administration of the test.
GA	O.C.G.A. § 40-5-67.1(d.1)	Grants police officers the authority to obtain blood or urine samples if obtained by voluntary consent *or* a valid search warrant, but is silent on the issue of whether police can compel physicians to take the sample. Does not provide civil or criminal liability or immunity for physicians or medical professionals for suits stemming from medical services provided at the request of law enforcement.
NY	N.Y. Veh. & Traf. Law § 1194	Any operator of a motor vehicle shall be deemed to have given consent to a chemical test of blood, breath, urine, or saliva for the purposes of determining the alcohol/drug content. Physicians, physicians' assistants, and certified nurse practitioners *may* withdraw blood at the request of police officers. No medical personnel acting at the request of law enforcement shall be sued or held liable for any act done or committed in the course of withdrawing blood.
OH	Ohio Rev. Code Ann. § 4511.19	Only a physician, registered nurse, qualified technician, chemist, or phlebotomist shall withdraw a blood sample for the purpose of determining the alcoholic content, but this limitation does not apply to breath or urine samples. A physician, registered nurse, qualified technician, chemist, or phlebotomist *may refuse* to withdraw blood if, in that person's opinion, the physical welfare of the person would be endangered by withdrawing blood. Any of the medical personnel and hospitals/facilities described above who withdraw blood at the request of police are immune from criminal and civil liability based on claims of assault, battery, or other claim except for medical malpractice or related claims.
PA	75 Pa. Cons. Stat. Ann. §§ 3755(a)-(b); 1547(a)	No physician, nurse, technician, or hospital employee may refuse to perform police-requested tests except under "unusual circumstances." If an intoxicated person is involved in a motor vehicle accident and presents to an ED for treatment, the ED physician *must* take blood samples and transmit those samples to the Department of Health (or other designated facility), the results of which *must* also be released to government officials upon request. No physician, nurse, technician, or hospital employee can be held civilly or criminally liable for withdrawing blood or obtaining a urine sample at the request of police. Any person who operates a vehicle is deemed to have given consent to one or more chemical tests for the purpose of determining the alcoholic content of his blood.

Table 2: Federal (Section 1983) and EMTALA Case Law Trends Over Time

Year	Case	Issues	Outcome
1995	***Evans v. Montgomery Hosp. Med. Ctr.***, No. CIV. A. 95–5039, 1996 WL 221526 (E.D. Penn. 1996).	Whether an arrestee brought to a hospital ED by a police officer was "requesting" medical treatment such as a medical screening exam (MSE) as required under EMTALA.	The defendant hospital's motion to dismiss was denied. The court held that, based on the pleadings, it was *possible* for plaintiffs to prove that the hospital was deliberately indifferent to the decedent's serious medical needs.
2005	***Kraft v. Laney***, No. CIV S-04-0129-GGH, 2005 WL 2042310, (E.D. Ca. 2005).	Whether a hospital was liable under EMTALA and/or Section 1983 after police brought a man to the hospital ED who had just crashed his car into a snowbank and was having hallucinations. The hospital's usual course was *not* to do MSEs for patients brought in by police for blood or urine samples. There was no hospital policy with respect to screening individuals brought in by police who were in need of medical care despite the fact that they were brought for blood draws.	The court held that EMTALA was not ultimately implicated because there was no request for treatment made at any point; the hospital staff asked the police whether they should screen the patient, and the police told them that they were only there for a blood draw. The court did find, however, that the hospital was properly considered a "state actor" because it was acting at the request of the police; and under Section 1983, the court denied the hospital's motion for summary judgment, finding that there was sufficient evidence to support the plaintiffs' argument that if the hospital staff had screened the patient and properly treated him, he may not have suffered cardiac arrest and died.
2006	***Davis v. Township of Paulsboro***, 424 F.Supp.2d 773 (D. N.J. 2006).	Whether a hospital was liable under EMTALA for insufficient medical screening after police brought in a patient who had been involved in a nightclub brawl. The patient's estate alleged that the patient, who ultimately died, might have lived if the ED staff had only provided certain ancillary services as a part of the MSE and detected the patient's brain hemorrhage.	The court granted summary judgment in favor of the hospital and held that the hospital's MSE was sufficient because the plaintiffs were unable to put forth any competent evidence to show that the patient was treated or screened any differently than any other patient in the ED; the hospital's policy ensured uniformity of treatment, and the EMTALA requirements were satisfied. EMTALA is not a substitution for a regular state law medical malpractice claim; rather, EMTALA screening exams are not judged by their proficiency in accurately diagnosing patients' illnesses, but in whether they are performed equitably across patients presenting with similar symptoms.
2014	***Booker v. LaPaglia***, No. 3:11-CV-126-PLR-CCS, 2014 WL 4259474 (E.D. Tenn. Aug. 28, 2014), vacated by ***Booker v. LaPaglia***, 617 Fed.Appx. 520 (6th Cir. 2015).	Whether an ED physician who forcibly intubated, sedated, and anally probed a patient that had hidden a rock of cocaine in his rectum, at the request of the police acting without a search warrant, was liable under Section 1983 for the patient's rights to be free from unconstitutional searches and seizures under the Fourth Amendment.	The court found that the ED physician was acting at the behest of law enforcement, so his actions were properly classified as "state actions." The case was remanded for trial, and the ED physician was subsequently dismissed from the case by stipulation of the parties.

Continued

 DOI: 10.1002/jhrm

Table 2: Continued

Year	Case	Issues	Outcome
2016	***Ferguson v. United States of America***, 178 F.Supp.3d 282 (E.D. Pa. 2016).	Whether hospital employees who admitted a patient brought to their hospital by customs and border protection officials, and who then, at the request of the officials, conducted forcible sedation and body cavity exams, could be liable under a *Bivens* action (a federal cause of action similar to a Section 1983 claim, but which is brought against federal actors) even though the hospital employees were privately employed individuals whose hospital employment was unaffiliated with the federal government.	The hospital employee's motion to dismiss the claim was denied. If the plaintiff's allegations were proved true, it would demonstrate that the hospital employee defendants detained, admitted, examined, and involuntarily committed plaintiff to the hospital, and performed invasive medical tests on her body without medical justification or warrant, and that they could be held liable for monetary damages.
2016	***Cooper v. City of New York***, No. 14-CV-3698(ENV)(PK), 2016 WL 4491719 (E.D. N.Y. Aug. 25, 2016)	Whether a hospital was liable under EMTALA after police brought to the ED a man they had recently arrested, and after the hospital, soon thereafter, decided to admit the patient for inpatient care at the hospital. He was ultimately discharged and transferred to prison, where he "relapsed into a medical emergency."	The hospital argued that EMTALA did not apply because the patient was treated, stabilized, and admitted to the hospital for inpatient care and that EMTALA coverage ends upon inpatient admission. The court held that the patient could not use EMTALA as a federal malpractice statute and that the patient's claims sounded properly in state malpractice law. The patient's additional claims for hospital liability under Section 1983 were dismissed.

impliedly consented to chemical or blood tests and also where hospital personnel are affirmatively obligated to withdraw blood and release the results of the tests at the request of a police officer who has probable cause to believe that the patient was operating a vehicle while under the influence of alcohol.[5] The Pennsylvania statute does indicate, however, that ED physicians are shielded from criminal and civil liability, which should, in theory, encompass any EMTALA-related liability.[6]

Other states, like Georgia, have statutes that are much vaguer. The language in those statutes affords hospitals much more latitude to craft policies that can be tailored to give physicians and medical providers more discretion in their compliance with law enforcement requests. States like Ohio go so far as to actually codify that a physician or other medical professional may refuse law enforcement request to take and analyze the sample if the physician or medical professional believes that doing otherwise would not be in the best medical interests of the patient. While not yet ubiquitous, several states have statutory schemes that contemplate immunity from civil or criminal liability for physicians and health care providers acting at the request of law enforcement.

Hospital risk managers should determine what state statutory language applies to their hospitals, and work with their in-house counsel, general counsel, or outside counsel to ensure that their policy affords them the maximum amount of protection within the limits of their state statute.

Federal law component

EMTALA is not a medical malpractice statute.[7] The plain language of EMTALA does not authorize an action against a hospital for general malpractice or misdiagnosis; instead, EMTALA was intended to create an entirely new cause of action, separate and distinct from the traditional state-law-based medical malpractice claims that hospitals typically encounter.[8] EMTALA creates a private right of action against only hospitals and not individual physicians.[9] EMTALA obligates hospitals to craft standard ED screening procedures based on the hospital's particular needs and circumstances.[10] The statute imposes strict liability on a hospital for failing to apply the essential elements of their procedures. EMTALA also requires that EDs provide "appropriate medical screening examination[s]" to determine whether emergency medical conditions are present.[11] If the ED personnel discover that

an emergency medical condition is present in a patient, they must either stabilize the patient at their facility or transfer the patient to an appropriate facility.[12]

The recent trends in EMTALA case law on this issue should caution hospitals that the situations described above can have wide-ranging complications. Moreover, 42 U.S.C. § 1983 ("Section 1983") grants plaintiffs the ability to sue government officials (as well as those acting under the direction of government officers) for violations of constitutional rights; some of the situations presented in Table 2 open the door to Section 1983 suits based on a hospital's putative "deliberate indifference to serious medical needs." Section 1983 suits also have the potential for large monetary awards including attorneys' fees.

Federal case law illustrates that hospitals have been penalized for instances where ED physicians and medical personnel have substituted the requests of law enforcement officers in place of their own professional medical judgment and experience. The holdings in *Evans v. Montgomery* and *Kraft v. Lainey* (see Table 2) demonstrate that if an officer brings a patient to the ED and requests only a blood or urine analysis, the ED staff should still bear in mind the requirements of EMTALA, and if a lay observer would think that medical care is indicated, the ED staff should not forego their medical judgment and should still proceed to screen the patient. The focus of EMTALA, and on federal case law interpreting EMTALA, is on uniform treatment, including screening, to all patients presenting to the ED, regardless of *how* they presented.

The American College of Emergency Physicians (ACEP) suggests that all potentially intoxicated patients are at risk for potential harm if not provided a screening exam, and that lab testing should also be done as a matter of routine along with a screening exam.[13] Further, under EMTALA, a request for examination or treatment can be made by anyone on behalf of the patient, so the arresting officer's request may be sufficient to trigger testing.[13]

NOTABLE EXAMPLES IN PRACTICE

Pennsylvania law leaves physicians and ED staff little choice in the matter: They are obligated to comply with a police request for such services, but the Pennsylvania statute suggests that they are shielded from any subsequent civil liability. Georgia law, by contrast, speaks to a police officer's ability to compel a person arrested for DUI to produce a body substance for analysis, but it is silent on the police officer's ability to compel a physician or medical professional to take the sample or conduct analysis on the sample. Numerous metro Atlanta hospitals, therefore, have instituted policies indicating that the physicians will perform such tests and analysis only on conscious consenting patients *or* unconscious patients; if a patient is conscious and nonconsenting, the hospitals will not perform such tests, as hospital personnel are trained to care for consenting patients only.

Table 3: Summary of recommended necessary hospital policy components

- Instructions for ED physicians with respect to conscious and nonconsenting patients.
- Instructions for ED physicians with respect to unconscious patients—only in some states are these patients deemed to have "impliedly consented" to treatment.
- Hospitals should collaborate with local law enforcement to make all parties aware of hospital policy on this issue and prevent frustrating and potentially dangerous encounters.

CONCLUSIONS AND RECOMMENDATIONS

The moment that a police officer walks into a hospital and requests services on behalf of an arrestee presents a very real potential danger for ED physicians and hospitals. Risk managers should verify and ensure that they have policies in place delineating exactly what protocol ED physicians, nurses, and staff should follow in such circumstances. **Table 3** summarizes recommended necessary policy components. Risk managers should also work with their in-house attorneys, general counsel, or outside counsel to review applicable state statutes and ensure that their hospital policies are up to date and consistent with governing state law and that local police are aware of the hospital policies. Finally, risk managers should consider implementing policies that would require that ED staff conduct an EMTALA screening exam for patients brought to the ED by police officers where either the patient requests medical care or a prudent observer would conclude that medical care was indicated. Part of the problem that the hospital encountered in *Kraft v. Laney* (see Table 2) was that there was no hospital policy or consensus on what ED staff should do in the event that a police officer presented to the ED with an arrestee and requested a blood draw, but stated that he was not "requesting medical treatment" for purposes of an MSE under EMTALA.

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 DOI: 10.1002/jhrm

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