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EMTALA’s Stabilization Requirement Does Not Require Proof of Improper Motive: Roberts v. Galen of Virginia

Health Care Law — Emergency Medical Treatment and Active Labor Act ("EMTALA") — Recovery of Damages Under EMTALA’s Stabilization Requirement — The Supreme Court of the United States held that a plaintiff does not have to prove that a hospital acted with an improper motive when seeking recovery for alleged violations of EMTALA’s stabilization requirement because the language of the statute does not support such a test.


A truck hit Wanda Johnson in May 1992 and severely injured her. Johnson was taken to the Humana Hospital-University of Louisville ("Humana") in Louisville, Kentucky. After six weeks in that hospital, Humana transferred Johnson to Crestview Healthcare Facility across the Ohio River in Indiana. A Humana social worker arranged Johnson’s transfer and told a Crestview representative that she had been pressured by Humana administrators to find placement for Johnson due to her inability to pay her hospital bills. On the day Johnson arrived at Crestview, her condition deteriorated and she had to be re-hospitalized in Indiana. Johnson stayed in the Indiana hospital several months, running up a sizeable bill that she could not pay. Her application for financial assistance from Medicaid was rejected because she failed to meet the

3. Id.
5. Roberts, 119 S. Ct. at 686. At the time Johnson was transferred, she was receiving medication for a recently discovered urinary tract infection. Roberts, 111 F.3d at 410. The doctors overseeing Johnson’s care at Humana did not evaluate the effectiveness of this course of treatment before transferring Johnson to Crestview. Id. Complications related to this infection caused her subsequent hospitalization in Indiana. Id.
residency requirements of the Indiana Medicaid program.7

Jane Roberts, Wanda Johnson's guardian,8 sued Humana in federal district court alleging that Johnson had been sent to the nursing home in an unstable condition in violation of the Emergency Medical Treatment and Active Labor Act ("EMTALA").9 EMTALA imposes on hospitals with emergency rooms both a screening duty10 and a stabilization duty11 when individuals seek treatment at the emergency room for emergency medical conditions12 or active labor and creates a private cause of action in cases where either of these requirements is violated.13

8. Id. Jane Roberts was Johnson's aunt. Roberts, 111 F.3d at 406. Wanda Johnson's husband was only minimally involved in her care because he had abandoned Johnson and their five-year-old son and was living with another woman. Brief of Petitioner at 4, Roberts v. Galen of Va. Inc., 119 S. Ct. 685 (1999) (No. 97-53). Johnson's elderly mother was too infirm to take on the responsibility of her health care. Id.
10. Roberts, 119 S. Ct. at 685. EMTALA's screening requirement is as follows:

In the case of a hospital that has a hospital emergency department, if any individual . . . comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether an emergency medical condition . . . exists.

11. Roberts, 119 S. Ct. at 685. EMTALA's stabilization requirement is as follows:

If any individual . . . comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either - within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or for transfer of the individual to another medical facility in accordance with subsection (e) of this section.

12. An "emergency medical condition" under EMTALA is a medical condition that places a patient at imminent risk of serious disability or death. Thornton v. Southwest Detroit Hosp., 895 F.2d 1131 (6th Cir. 1990). The statute defines the term in the following manner:

The term "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: (i) placing the health of the individual in serious jeopardy; (ii) serious impairment to bodily functions, or (iii) serious dysfunction of a bodily organ or part.

13. Roberts, 119 S. Ct. at 686. A private cause of action in EMTALA cases was created by 42 U.S.C. § 1395dd(d)(2)(a) (1994) (stating that "any individual who suffers personal harm as a direct result of a participating hospital's violation of a requirement in this section may, in a civil action against the participating hospital obtain . . . damages").
The United States District Court for the Western District of Kentucky granted Humana's motion for summary judgment on the basis that neither Humana's opinion that Johnson was stable nor Humana's decision to transfer her to Crestview was due to an improper motive.

The United States Court of Appeals for the Sixth Circuit affirmed the ruling of the district court, holding that recovery of damages under EMTALA for a hospital's failure to stabilize an individual's condition required proof of an improper motive, such as a showing that the individual was treated differently because of gender, race, or poverty. In reaching this conclusion, the Sixth Circuit extended an earlier precedent that held that plaintiffs seeking recovery under EMTALA for a hospital's failure to screen an individual for an emergency medical condition must prove an improper motive.

14. Roberts, 119 S. Ct. at 686. "Summary judgment" is a "procedural device available for a prompt and expeditious disposition of a controversy without trial when there is no dispute as to either material fact or inferences to be drawn from undisputed fact, or if only a question of law is involved." BLACK'S LAW DICTIONARY 1435 (6th ed. 1990).

15. Roberts, 119 S. Ct. at 686. Under EMTALA the term "stabilized" means that "no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility ...." 42 U.S.C. § 1395dd(e)(3)(b) (1994).

16. Roberts, 119 S. Ct. at 686. EMTALA permits the transfer of unstabilized patients experiencing emergency medical conditions if the requirements for an "appropriate transfer" are met. 42 U.S.C. § 1395dd(c)(2) (1994). The hospital must document the fact that it sent all medical records with the patient to a facility that was able to treat the patient, and that it provided appropriate treatment during transfer. Id. Humana contended that it had stabilized Johnson's condition, so this provision was not at issue in Roberts. Roberts, 111 F.3d at 410.

17. Roberts, 119 S. Ct. at 686. The district court initially refused to grant summary judgment, ruling that there were genuine issues of material fact concerning whether Johnson's condition was stable when she was transferred from Humana to the nursing home and whether Humana acted with an improper motive. Roberts, 111 F.3d at 407. On reconsideration, the district court granted Humana's request for summary judgment because, despite the existence of some genuine issues of material fact, Johnson had failed to prove that either the opinion that she was stable or the decision to allow her to be transferred was caused by an improper motive. Id. The district court also granted summary judgment on a state law negligence claim on the grounds that the medical residents involved in Johnson's care were not ostensible agents of the hospital. Id.

18. Roberts, 111 F.3d at 409. In its opinion, the circuit court of appeals noted a number of factors that could lead to a patient receiving substandard treatment, including ethnicity, race, gender, personal dislike, dislike of the patient's occupation, as well as political and cultural factors. Id. (citing Cleland v. Bronson Health Care Group, Inc. 917 F.2d 266 (6th Cir. 1990)). A Humana social worker knew of Johnson's poverty and told a Crestview representative that she had been pressured by Humana administrators to place Johnson elsewhere. Roberts, 111 F.3d at 411. However, the three physicians involved in Johnson's care stated in affidavits that they were unaware of her indigence and that it did not play a role in their medical opinion that she was stable or in their subsequent decision to transfer her. Id.

19. Roberts, 119 S. Ct. at 686. The Sixth Circuit established this rule with regard to 42 U.S.C. § 1395dd(a) in Cleland v. Bronson Health Care Group, Inc., 917 F.2d 266 (6th Cir.
court was concerned that a more expansive interpretation of the statute could federalize state malpractice law or at the most extreme be viewed as guaranteeing successful medical results to patients.  

The United States Supreme Court granted certiorari to consider the narrow issue of whether a plaintiff must prove an improper motive on the part of a hospital to recover for the hospital's failure to stabilize an individual's emergency medical condition under EMTALA's stabilization requirement. In a per curiam opinion, the Court reversed the Sixth Circuit's holding and remanded the case for further proceedings. The Supreme Court found no basis in the text of the statute for an improper motive test in cases brought under EMTALA's stabilization requirement. The Court noted that unlike the EMTALA duty to provide "appropriate screening" the statute did not use the word "appropriate" in connection with the stabilization requirement. Without an express appropriateness requirement, the Court found there was no statutory basis for requiring an EMTALA plaintiff to prove an improper motive with regard to the hospital's failure to perform its duty to stabilize a patient's condition before discharge or transfer.

The Court quoted from a section in Humana's brief in which Humana admitted that the traditional rules of statutory construction did not support the Sixth Circuit's approach of reading a motive test into EMTALA's stabilization requirement. While this concession was not dispositive of the legal issue, the Court viewed

1990).

21. Roberts v. Galen of Va., 118 S. Ct. 2295 (1998). Certiorari is [a] writ of common law origin issued by a superior to an inferior court requiring the latter to produce a certified record of a particular case tried therein. . . . [T]he term is [m]ost commonly used to refer to the Supreme Court of the United States, which uses the writ of certiorari as a discretionary device to choose the cases it wishes to hear. BLACK'S LAW DICTIONARY 228 (6th ed. 1990).
22. Roberts, 119 S. Ct. at 686. The Court did not consider the state law negligence claim. Id.
23. "Per curiam" is defined as "a phrase used to distinguish an opinion of the whole court from an opinion written by any one judge." BLACK'S LAW DICTIONARY 1136 (6th ed. 1990).
24. Roberts, 119 S. Ct. at 687. To be determined on remand are the issues of whether the hospital's duty under EMTALA ended when it allegedly properly screened Johnson, whether it had in fact properly screened her, whether the hospital had actual knowledge of Johnson's condition, and whether these issues would be legally dispositive. Id.
25. Id.
26. Id.
27. Id.
28. Id.
it as further support for its own conclusion. The Court did not rule on the correctness of the Sixth Circuit's requirement of proof of an improper motive in relation to EMTALA's screening requirement, but it did note that in interpreting EMTALA to mandate such a test the Sixth Circuit is in conflict with several other circuits that do not interpret EMTALA to require an improper motive in cases involving appropriate screening.

The Emergency Medical Treatment and Active Labor Act was enacted to provide a remedy not traditionally available under state tort law. While the common law imposes a duty of care on hospitals and physicians with respect to patients already under their care, it does not give individuals a cause of action for a hospital's failure to accept and treat them in the first place. Under the common law, hospitals are free to refuse to treat individuals seeking emergency medical treatment. At the time EMTALA was debated in Congress, only twenty-two states had laws mandating emergency health care, and these laws varied greatly in scope. At the federal level, the Hill-Burton Act requires that hospitals receiving funds under the Act provide emergency services to individuals living in the hospitals' service areas, even if those individuals are unable to pay for the services. Congress apparently believed the Hill-Burton Act and attempts to enforce it were insufficient to deal with the problem of "patient dumping" that EMTALA was enacted to address.

33. Gatewood, 933 F.2d at 1041. Under the common law, no one has a duty to render assistance to an individual unless a relationship exists between the two which gives rise to a duty to act, so "a physician is under no duty to answer the call of one who is dying and might be saved, nor is anyone required to ... bind up the wounds of a stranger." W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 56 at 375 (5th ed. 1984).
36. Id.
At the time EMTALA became law in 1986, Congress was concerned that an increasing number of hospitals were refusing to treat patients who came to the emergency room without insurance. To curtail this practice, Congress imposed new duties on nearly all hospitals in the United States, requiring all hospitals receiving payments through the Medicare program to comply with EMTALA.

Despite its legislative history indicating a focus on the narrow concern of ensuring emergency room treatment for the poor and uninsured, the actual language used by Congress extended EMTALA's protections to "all persons" without regard to indigence or lack of insurance. The law mandates both an appropriate medical screening for "any individual" who comes to the emergency room of a covered hospital as well as stabilization of the condition of any such individual who is discovered to have an emergency medical condition. Courts faced with EMTALA cases have grappled with the disparity between the plain meaning of the statutory language and Congress' intent to end the dumping of poor patients. Courts found guidance in the principle that the statute was not written to federalize state malpractice law or to guarantee positive results for patients.

In early EMTALA cases, some district courts reached the conclusion that EMTALA only protected poor or uninsured patients. For example, in 1989 the district court in Evitt v. University Heights Hospital relied on the legislative history rather than the statute's plain meaning, emphasizing the congressional intent to prevent the dumping or turning away of the poor and uninsured. The court limited recovery under EMTALA to dumping is the practice of discharging or transferring to other facilities patients who are not able to pay for treatment. Gatewood, 933 F.3d at 1039.

38. Correa v. Hospital of San Francisco, 69 F.3d at 1189 (1st Cir. 1995).
39. Id. at 1189-90. The First Circuit stated that "ninety-nine percent of all American hospitals" were covered by EMTALA. Id. at 1191.
40. Id. at 1189-90.
42. 42 U.S.C. § 1395dd(b) (1994).
43. Cleland, 917 F.2d 270.
44. Id.
47. Evitt, 727 F. Supp. at 497. The plaintiff was a patient who had experienced chest pains and was misdiagnosed in an examination which did not include an electrocardiogram. Id. at 496. After she returned to the hospital she was properly diagnosed as having suffered...
cases where plaintiffs could prove that the hospital acted with an economic motive. The court reasoned that allowing plaintiffs to recover without such proof would lead to the preemption of state medical malpractice law, a result not intended by Congress. In the court's view, legal issues relating to treatment and diagnosis belonged to state medical malpractice law, not EMTALA.

The belief that EMTALA was limited to protecting the poor and uninsured was rejected by a district court in DeBerry v. Sherman. The judge gave two reasons for departing from the analysis in Evitt and following the plain meaning of the text of EMTALA rather than the more limited construction suggested by its legislative history. First, the DeBerry court noted that the Evitt court had not even referred to an analysis of the actual words of the statute in reaching its narrow construction. The DeBerry court conceded that the legislative history showed Congress' primary intent in passing the act was to protect the indigent, but went on to point out that the language of the law went far beyond that limited goal, never mentioning the patient's ability to pay or the hospital's motive. Second, the court did not agree that the statute had to be narrowly interpreted because of its potential for preemption of state law. The DeBerry court noted that EMTALA might prohibit conduct also prohibited by state law but would not preempt the state law unless a direct conflict existed between EMTALA and the state law. Under this analysis, EMTALA causes only a limited conflict preemption rather than the more expansive field preemption that the Evitt court assumed would result from a broader interpretation.

a heart attack. *Id.*

48. *Id.*
49. *Id.*
50. *Id.* at 498.
51. DeBerry v. Sherman Hosp. Ass'n, 741 F. Supp. 1302 (N.D. Ill. 1990). The plaintiff took her daughter to the hospital's emergency room with symptoms that included a fever, rash, stiff neck, and lethargy. *Id.* at 1030. The patient was discharged two days later with an undetected case of spinal meningitis and became deaf as a result. *Id.*
53. *Id.*
54. *Id.* at 1306.
55. *Id.* at 1307.
56. *Id.* at 1307. The court also noted that plaintiffs were not prevented from bringing both types of claims. *Id.*
57. *DeBerry*, 741 F. Supp. at 1307. The court referred to the following language from 42 U.S.C. § 1395dd(f) of EMTALA: "The provisions of this section do not preempt any state or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section." *Id.*
The Sixth Circuit was the first federal circuit court of appeals to wrestle with EMTALA. In *Thornton v. Southwest Detroit Hospital*\(^5\) the Sixth Circuit expressed the view in dicta that EMTALA only applied to poor or uninsured patients.\(^6\) After stating that EMTALA required hospitals to treat indigent patients with emergency medical conditions or in active labor, the court referred to the goals of Congress in passing the Act.\(^6\) Circuit Judge Boyce F. Martin, Jr. distinguished EMTALA from state medical malpractice law, noting that while EMTALA imposed liability for refusal to treat a potential patient, state malpractice law usually did not.\(^6\) Though the Sixth Circuit upheld the lower court's grant of summary judgment to the hospital, it rejected the defendant's argument that EMTALA coverage stopped once the patient left the emergency room.\(^6\) The *Thornton* court took a broad view of the statute and held that it protected patients with known emergency medical conditions from discharge or inappropriate transfer until stabilization, regardless of whether they remained in the emergency room.\(^6\)

Shortly after its decision in *Thornton*, the Sixth Circuit returned to the EMTALA arena in *Cleland v. Bronson Health Care Group*.\(^6\) Though it ultimately upheld the district court's grant of summary judgment on other grounds, the circuit court rejected the lower court's ruling that EMTALA applied only to poor patients and held that the act applied to all patients.\(^6\) The court relied on the

\(^5\) 895 F.2d 1131 (6th Cir. 1990).

\(^6\)  *Thornton*, 895 F.2d at 1132. The plaintiff suffered a stroke and was discharged from the hospital to her sister's home after a rehabilitation facility refused to accept her due to insurance reasons. *Id.* Her condition deteriorated until she was finally admitted to the rehabilitation facility nearly three months later. *Id.*

\(^6\)  *Id.* at 1133.

\(^6\)  *Id.* at 1135.

\(^6\)  *Id.* Summary judgment for the hospital was upheld on the basis that the plaintiff's initial emergency medical condition had been stabilized at the time of her release. *Id.*

\(^6\)  917 F.2d 266 (6th Cir. 1990). *Cleland* was the precedent the circuit would build upon in *Roberts v. Galen of Virginia*. *Roberts*, 119 S. Ct. at 686. The plaintiffs' teenage son died of cardiac arrest that resulted from a severe intestinal problem, intussusception. *Cleland*, 917 F.2d at 268. The hospital had improperly diagnosed his severe cramps and vomiting as symptoms of influenza and discharged him. *Id.*

\(^6\)  *Cleland*, 917 F.2d at 270.
statute's plain meaning to reach its result.\textsuperscript{66}

The \textit{Cleland} court limited EMTALA recovery in two ways: (1) limiting a hospital's liability under the stabilization requirement to emergency medical conditions within the actual knowledge of the treating physician,\textsuperscript{67} and (2) establishing the improper motive test for recovery under the statute.\textsuperscript{68} This test arose after Circuit Judge Boggs found the word "appropriate" as used in the appropriate medical screening requirement to be ambiguous and interpreted the word to mean uniform, reading it as a reference to the motives of the hospital.\textsuperscript{69} Under this approach, each patient must receive the same type of screening that any other patient would receive without discrimination.\textsuperscript{70} Both the medical screening and the stabilization treatment in that case were "appropriate" under that definition because the patient had received the same type of treatment any other patient would have received regardless of personal characteristics.\textsuperscript{71}

The plaintiffs' argument was characterized as interpreting "appropriate" to incorporate standards of care from state medical malpractice law, or even to guarantee a successful result.\textsuperscript{72} Referring to statutory language mandating screening within the capabilities of the hospital, the court concluded that the EMTALA standard of care was not a malpractice standard.\textsuperscript{73} The key question under the medical screening requirement, the court explained, is not whether medically appropriate steps were taken, but rather whether the patient was treated less favorably than other similarly situated patients would have been treated.\textsuperscript{74} The court went on to list possible improper motives that could cause a hospital to be liable under the screening requirement of EMTALA, including discrimination based on gender, race, political affiliation, occupation, personal dislike, lack of sobriety, and other

\begin{itemize}
\item \textsuperscript{66} Id.
\item \textsuperscript{67} Id. at 268-69. The court cited dicta from \textit{Thornton} in support of this conclusion. \textit{Id.} at 271 (citing \textit{Thornton}, 895 F.2d at 1134).
\item \textsuperscript{68} \textit{Cleland}, 917 F.2d at 271.
\item \textsuperscript{69} Id. The judge stated, "Appropriate is one of the most wonderful weasel words in the dictionary and a great aid to the resolution of disputed issues in drafting legislation. Who, after all, can be found to stand up for 'inappropriate' treatment or actions of any sort?"
\item \textsuperscript{70} \textit{Id.} at 271-72.
\item \textsuperscript{71} \textit{Id.} at 271.
\item \textsuperscript{72} Id.
\item \textsuperscript{73} \textit{Cleland}, 917 F.2d at 272.
\item \textsuperscript{74} \textit{Id.}
\end{itemize}
non-medical factors.\textsuperscript{75}

Although five other circuit courts would later join the Sixth Circuit in interpreting EMTALA to apply to all patients (as opposed to only poor or uninsured patients), these five circuits unanimously rejected an interpretation of the word "appropriate" that required patients to prove an improper motive in order to recover under EMTALA's screening requirement.

In \textit{Gatewood v. Washington Healthcare Corp.},\textsuperscript{76} the United States Court of Appeals for the District of Columbia decided whether recovery for violation of EMTALA's screening requirement required a plaintiff to prove an improper motive.\textsuperscript{77} The court cited \textit{Cleland} in reaching the conclusion that EMTALA is not limited to protecting only uninsured patients.\textsuperscript{78} Circuit Judge Harry Edwards also rejected the plaintiff's argument that an EMTALA violation occurs any time a covered hospital misdiagnoses a patient, holding that EMTALA was not meant to create a federal cause of action for malpractice or guarantee an accurate diagnosis, but rather to guarantee that patients in similar circumstances are treated the same.\textsuperscript{79} A circuit split arose when the District of Columbia Circuit departed from the Sixth Circuit's limitation of liability under EMTALA to cases where it could be proved that the hospital acted with an improper motive.\textsuperscript{80}

According to \textit{Gatewood}, a hospital breaches its duty under EMTALA to perform appropriate medical screening when it fails to provide the standard screening procedures it customarily gives to patients in the same condition; the motive for this failure, if any, is unimportant.\textsuperscript{81} The fact that a hospital's standard screening could

\textsuperscript{75} \textit{Id.} The court's list included "without limitation, race, sex, politics, occupation, education, personal prejudice, drunkenness, spite, etc." \textit{Id.}

\textsuperscript{76} 933 F.2d 1037 (D.C. Cir. 1991).

\textsuperscript{77} \textit{Gatewood}, 933 F.2d at 1037, 1041. This was the second EMTALA case to be decided by a federal circuit court of appeals and was brought by Alice Gatewood, widow of William Gatewood. \textit{Id.} Mr. Gatewood died of a heart attack the day after he was misdiagnosed at an emergency room as having non-serious musculoskeletal pain and discharged with instructions to take a pain reliever and use a heating pad. \textit{Id.} at 1038-39.

\textsuperscript{78} \textit{Id.} at 1040. The D.C. Circuit disagreed with the reasoning of the district court, which had granted summary judgment to the hospital on the grounds that Mr. Gatewood was not covered by EMTALA because he had medical insurance, but affirmed the result on other grounds. \textit{Id.} at 1038, 1041.

\textsuperscript{79} \textit{Id.} at 1039-41.

\textsuperscript{80} \textit{Id.} at 1041.

\textsuperscript{81} \textit{Id.} Despite this favorable ruling for the plaintiff, the court upheld the district court's grant of summary judgment to the defendant on the grounds that William Gatewood had received the same type of screening ordinarily given by the hospital to patients in the same condition. \textit{Id.}
be so inadequate as to constitute malpractice under state law was noted; however, the court declined to incorporate malpractice standards into EMTALA. The court reasoned that EMTALA was not intended to duplicate protections under state law but to provide a new remedy, leaving most issues related to the medical adequacy of treatment to local negligence law. The Gatewood Court did not address the plaintiff's claims under EMTALA's stabilization requirement because the patient was never diagnosed with an emergency condition.

The Fourth Circuit sided with the District of Columbia Circuit in Power v. Arlington Hospital Ass'n by ruling that recovery under EMTALA's screening requirement does not require proof of an improper motive, citing three reasons for this conclusion. First, its examination of the statute failed to find any statutory reference to a consideration of the hospital's motive for failing to screen a patient. Second, the Fourth Circuit suggested that the wide range of motives discussed in Cleland was so broad that the motive test was not an objective test but rather an invitation for an EMTALA plaintiff to invent some imaginable motive for substandard treatment on which to base a claim. Finally, despite the expected ease of finding some plausible improper motive on which to advance an EMTALA case, winning the case would be almost impossible if plaintiffs had to prove the existence of the alleged motive in the minds of the hospital's agents. Recovery on an EMTALA claim for failure to screen under Power, as under Gatewood, requires patients to prove they were treated differently

82. Gatewood, 933 F.2d at 1041.
83. Id.
84. Id.
85. 42 F.3d 851 (4th Cir. 1994).
86. Power, 42 F.3d at 857-58.
87. Id. at 857.
88. Id. at 857-58. The court stated, "The expanse of motives suggested by the Sixth Circuit is so broad to be no limit at all, and as a practical matter amounts to not having a motive requirement. Anyone . . . can simply find a motive that fits whether it is sex, nationality, income or occupation and . . . allege it." Id. at 857.
89. Id. at 858. In addition to being the second case from a federal circuit court of appeals rejecting the Cleland motive requirement, Power is also notable for its ruling that a state law cap on malpractice damages limited a plaintiff's recovery under EMTALA. Id. at 864. The case also outlines a burden shifting procedure for EMTALA cases, first requiring plaintiffs to make a "threshold showing of differential treatment." Id. at 858. The hospital may then rebut the prima facie case or present evidence that the disparity occurred because of a decision based on the medical judgment of the treating physicians. Id. Finally, the plaintiff may challenge the defendant's evidence and use expert testimony to challenge the medical judgment of the treating physicians. Id.
than other similarly situated patients without having to prove any motive for the disparity.\textsuperscript{90}

Both the Tenth Circuit and the First Circuit cited \textit{Gatewood} when refusing to read the motive test into EMTALA's appropriate screening requirement in \textit{Repp v. Anadarko}\textsuperscript{91} and \textit{Correa v. Hospital San Francisco}.\textsuperscript{92} In \textit{Repp}, the Tenth Circuit also declined to adopt an approach advocated by the plaintiff who believed the court should have given a substantive content to the medical screening requirement.\textsuperscript{93} The \textit{Repp} court ruled that EMTALA's screening requirement was violated when a hospital failed to uniformly perform its own standard procedures, not by misdiagnosis, and that an "appropriate" screening could vary from emergency room to emergency room.\textsuperscript{94} In a footnote, the Tenth Circuit noted the different approach employed by the Sixth Circuit in interpreting "appropriate" to refer to motives.\textsuperscript{95} The First Circuit in \textit{Correa} also criticized the Sixth Circuit's improper motive requirement in a footnote, echoing the reasoning in \textit{Power}.\textsuperscript{96}

In \textit{Summers v. Baptist Medical Center},\textsuperscript{97} the Eighth Circuit, sitting en banc,\textsuperscript{98} considered the issue of the proper construction of EMTALA's screening requirement, and continued the trend of following \textit{Gatewood} by rejecting the motive test outlined by the Sixth Circuit in \textit{Cleland}.\textsuperscript{99} Writing for the court, Chief Judge

\textsuperscript{90} \textit{Id.} at 857.

\textsuperscript{91} 43 F.3d 519 (10th Cir. 1994).

\textsuperscript{92} 69 F.3d 1184 (1st Cir. 1994). The plaintiffs in \textit{Correa} were relatives of Carmen Gonzales, a 65 year old woman who died of a heart attack after waiting for treatment in an emergency room for over two hours before leaving to seek treatment elsewhere. \textit{Id.} at 1188-89. The delay was determined to be the equivalent of a denial of a screening examination, a type of "constructive dumping." \textit{Id.} at 1193. The plaintiffs won at trial and the First Circuit affirmed. \textit{Id.} at 1198.

\textsuperscript{93} \textit{Repp}, 43 F.3d at 522. At trial this case involved alleged violations of both the medical screening and stabilization requirements of EMTALA. \textit{Id.} After summary judgment, the plaintiff appealed only the screening issue. \textit{Id.} The plaintiff's husband died of cardiac arrest a few hours after his misdiagnosis and discharge from an emergency room. \textit{Id.} at 521.

\textsuperscript{94} \textit{Id.} at 522. Summary judgment was upheld because any variations from standard screening procedures in the case were deemed by the court to be minimal. \textit{Id.} at 523.

\textsuperscript{95} \textit{Id.} at 522-23 n.6.

\textsuperscript{96} \textit{Correa}, 69 F.3d at 1194 n.9.

\textsuperscript{97} 91 F.3d 1132 (8th Cir. 1996).

\textsuperscript{98} "En banc" means "[i]n the bench" or "[f]ull bench" and "[r]efers to a session where the entire membership of the court will participate in the decision rather than the regular quorum." BLACK'S LAW DICTIONARY 526 (6th ed. 1990).

\textsuperscript{99} Summers v. Baptist Med. Ctr. Arkadelphia, 91 F.3d at 1138 (8th Cir. 1996). The plaintiff fell out of a tree while he was hunting deer. \textit{Id.} at 1135. A physician examined the plaintiff and took x-rays of his spine but did not x-ray his chest, thereby missing a broken rib and sternum, as well as a fractured vertebrae. \textit{Id.} The patient asked to be admitted to the
Richard S. Arnold considered possible meanings of the "appropriate" screening mandated by EMTALA. Judge Arnold followed previous cases, including Cleland, in ruling that an appropriate screening was one free of any disparities, such as those caused by prejudice against the patient for the reasons outlined in Cleland. The court held, however, that the plaintiff did not have to prove an improper motive underlying the difference, just the absence of uniform treatment without a medical justification.

The Summers court rejected what it described as possibly the most natural interpretation of EMTALA's appropriate screening requirement, viewing the word "appropriate" to mean that the screening was properly performed in a non-negligent manner. In rejecting this interpretation, the court noted that no other court had read EMTALA in such an "expansive fashion" and relied heavily on the legislative history and text of the statute, which did not evidence a congressional intent to cause a large scale preemption of state medical malpractice law. The chief judge believed this conservative approach to EMTALA taken by previous courts was based on concerns related to the principles of federalism. While Congress may preempt state law in areas in which it has constitutional authority, courts will not construe a statute to do so unless Congress clearly expresses this intent. Although EMTALA imposes limited duties on hospitals receiving individuals in emergency rooms, it is not a federal malpractice statute. In the view of the Eighth Circuit, a motive test was not necessary to maintain the proper limits on the reach of EMTALA nor was it justified in the text of the statute.

Like Cleland and Gatewood, cases such as Repp, Correa and hospital but was discharged and had to drive himself, in great pain, to his home five hours away. Id.

100. Id. at 1136.
101. Id. at 1138.
102. Id.
103. Id. at 1136.
104. Summers, 91 F.3d at 1136.
105. Id.
106. Id. at 1137. Federalism is defined as a "[t]erm which includes interrelationships among the states and relationship between the states and the federal government." BLACK'S LAW DICTIONARY 612 (6th ed. 1990).
107. Summers, 91 F.3d at 1137.
108. Id. The court stated, "EMTALA is not intended to duplicate preexisting legal protections, but rather to create a new cause of action, generally unavailable under state tort law, for what amounts to failure to treat." Id. at 1137 (quoting Gatewood, 933 F.2d at 1041).
109. Summers, 91 F.3d at 1138.
Summers dealt with the question of whether EMTALA's appropriate screening requirement contains an improper motive test. In Roberts v. Galen, the Sixth Circuit extended its motive test from the screening requirement to another part of EMTALA, the stabilization requirement. In Burditt v. U.S. Department of Health and Human Service, the Fifth Circuit also considered the issue of whether an improper motive must be proved as a prerequisite for recovery of damages under the EMTALA stabilization requirement. The court interpreted EMTALA as it was written and ignored the legislative history. Like the other circuits that considered the issue of an improper motive test in EMTALA's screening requirement after the Sixth Circuit, the court rejected the improper motive test for recovery under EMTALA, finding no such requirement in the statute.

Two district court decisions illustrate the difficulty of recovery under EMTALA in cases where courts use the improper motive test the Sixth Circuit established in Cleland. In Hines v. Adair County Public Hospital District, the court allowed six months solely for discovery of evidence of an improper motive in a case involving an alleged violation of both the screening and stabilization requirements of EMTALA. The plaintiff, whose leg was amputated because of complications resulting from a misdiagnosis, was unable to present sufficient evidence to overcome the hospital's motion for summary judgment despite the court's assumption that the patient was discharged with a known emergency medical condition in a manner that would violate EMTALA if an improper motive could be proved. Summary judgment was granted even though the court

110. Roberts, 119 S. Ct. at 687.
111. Id.
112. 934 F.2d 1362 (5th Cir. 1991). In this case a woman experiencing active labor and extreme hypertension was sent to another hospital nearly two hundred miles away in violation of the stabilization and transfer requirements of EMTALA. Id. at 1366-67. The plaintiff prevailed before an executive appeals board of the Department of Health and Human Services and the circuit court affirmed. Id. at 1366.
113. Id. Burditt involved alleged violations of the Act's stabilization and transfer requirements. Id. at 1368, 1370.
114. Id. at 1373.
116. Burditt, 934 F.2d at 1373. Though the court referred specifically to the alleged violation of EMTALA's transfer requirement in its discussion of the motive test, it allowed the plaintiff to recover on both the transfer and stabilization claims without proof of an improper motive. Id. at 1376.
119. Id. at 433.
took a broad view of the motive requirement, stating that even arbitrary reasons, such as the decision not to screen or stabilize a patient because it was the end of a shift, could serve as an improper motive sufficient to advance a successful EMTALA claim.

Likewise, in *Adams v. Grace Hospital*, the district court relied on *Cleland* in awarding summary judgment to a hospital when the plaintiff failed to present evidence of an improper motive for an alleged violation of EMTALA's medical screening requirement. In *Adams*, the hospital sent a patient without insurance home in a taxi without treatment, allegedly with a note pinned to his shirt stating "if lost, send him home." Mr. Adams had to crawl into his house due to his weakened condition. He returned to the emergency room the next day where he was properly diagnosed as having an acute case of urosepsis and admitted. Adams died two weeks later. The court acknowledged that Adams' discharge may have been premature, but did not believe that the doctor's failure to perform tests that would have detected his emergency medical condition resulted from an improper motive (such as concern about Adams' lack of insurance).

The Supreme Court decided *Roberts* on the narrow issue of whether EMTALA's stabilization requirement should be interpreted to include an improper motive test and properly declined to rule on the two alternative grounds for relief cited in Humana's brief. Humana's first alternative argument was that it was not liable

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120. Id. at 432.
122. Adams, 962 F. Supp. at 103. In addition to relying on *Cleland*, this case cited the Sixth Circuit's decision in *Roberts* before it was overturned by the United States Supreme Court. Id. The plaintiff, Romaine Evans, was living with Adams at the time of his death and sued as personal representative of his estate. Id. Adams arrived at the hospital experiencing abdominal pain but was discharged after a doctor determined his condition had improved. Id.
123. Id. at 101.
124. Id.
125. Id.
126. Id.
127. Adams, 962 F. Supp. at 103. The plaintiff did not assert that an improper motive at the hearing for summary judgment, but rather presented evidence that Adams was discharged prematurely and argued that EMTALA's appropriate medical screening requirement should be given its plain meaning. Id. The court concluded that because the plaintiff "has not even suggested an improper motive, much less presented any evidence in support of an improper motive... summary judgment must be granted." Id.
under EMTALA because the physicians were unaware of Johnson's emergency medical condition. In addition to establishing the motive test, Cleland can be read to relieve a hospital of liability for failure to stabilize a medical condition of which it was unaware, as can a number of cases from other circuit courts. These cases, however, deal with patients whose conditions were not discovered during the initial screening, unlike Johnson who arrived at the hospital with readily apparent massive injuries, a known emergency medical condition that the hospital had detected and was treating. The Supreme Court properly remanded this case for the lower court to resolve the issue because the truth about the hospital's awareness of Johnson's condition at the time of her discharge was a matter of contention between the parties.

Humana's second alternative argument was that EMTALA duties cease after the initial screening and stabilization of an emergency medical condition. This argument has some support from cases in the Fourth and Tenth Circuits. In Bryan v. Rectors and Visitors of the University of Virginia, the Fourth Circuit interpreted EMTALA as requiring a hospital to stabilize the initial emergency medical condition but not to provide long-term care. After a patient has been stabilized, further care is covered by state malpractice law rather than EMTALA. The Tenth Circuit in Collins v. DePaul Hospital agreed and held that a hospital that had treated a patient for twenty-six days had met its EMTALA obligations. A more typical approach is that followed in Thornton, which held that although EMTALA does not require long-term care, hospitals have a duty to provide care until the patient is stabilized, and not just when the patient is in the

129. Id.
133. Id. at 9.
135. 95 F.3d 349 (4th Cir. 1996).
136. Bryan, 95 F.3d at 352.
137. Id.
138. 963 F.2d 303 (10th Cir. 1992).
139. Collins, 963 F.2d at 307-08. The court emphasized the length of the treatment. Id.
emergency room. This issue was properly left for determination on remand because it had not been thoroughly litigated or briefed before the lower courts involved in Roberts.

The Supreme Court reached the proper decision in Roberts v. Galen of Virginia. Although remarks made by individual congressmen at the time Congress debated EMTALA do indicate a concern about the dumping of indigent patients, the language of the statute offers protection to a much broader population. There is no basis in the text of EMTALA for denying coverage to patients who are neither poor nor uninsured. While legislative history is useful in interpreting ambiguous terms, it should not be used to curtail the scope of a federal law that clearly and plainly goes beyond the more limited goals discussed by Congress. EMTALA will still effectively protect the poor and uninsured even though its coverage is not limited to individuals in those categories. The fact that Congress has not amended EMTALA to limit its protections to the poor or uninsured suggests it really did intend the law to cover "any individual."

Courts have correctly viewed EMTALA as a new cause of action not available under state law, rather than a federalization of state malpractice law. This approach is supported by the nature of our federal system and the statement made by Congress in the statute itself, that the act only preempts state law to the extent that the two directly conflict. The two issues of precisely what standard of care is required by EMTALA (one of mere uniformity or one adopted from local medical malpractice law) and the determination of when EMTALA coverage ceases remain open questions, but there should be no fear that EMTALA will co-opt the role of the states in regulating the provision of medical care.

Roberts was the first case involving EMTALA the Supreme Court has agreed to hear. With its decision to reject a motive test for EMTALA's stabilization requirement, the Court has laid to rest a circuit split. The Court did not rule on the motive test the Sixth Circuit read into EMTALA's appropriate medical screening

140. Thornton, 895 F.2d 1131, 1135 (6th Cir. 1990).

141. Reply Brief of Petitioner at 2, Roberts v. Galen of Va., Inc., 119 S. Ct. 685 (1999) (No. 97-53). The petitioner characterized both alternative arguments as threshold issues that would determine whether EMTALA applied in the first place, rather than a standard of proof, like the motive test, employed after the trial court already determined the law did apply. Id.

142. EMTALA states that "the provisions of this section do not preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section." 42 U.S.C. § 1395dd(f) (1994).
requirement in *Cleland*. However, the Court did note that five circuits have rejected that approach, an indication that it may likewise reject an improper motive test for EMTALA's appropriate medical screening requirement. Some circuits have not yet considered the issue of whether either provision of EMTALA contains a motive test. By overruling the Sixth Circuit's decision in *Roberts*, the Court has eliminated the option of finding a motive test in the stabilization requirement, and made it much less likely that any district or circuit court will follow the Sixth Circuit's precedent in *Cleland* in finding an improper motive test in EMTALA's appropriate medical screening requirement. This decision has strengthened the role of EMTALA in ensuring emergency medical treatment to all individuals by pushing aside a barrier to recovery under EMTALA that had no basis in the text of the statute.

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