



**State of Vermont**  
**Department of Mental Health**  
Office of the Commissioner  
108 Cherry Street, PO Box 70  
Burlington, VT 05402-0070  
healthvermont.gov/mh

[phone] 802-951-1258  
[fax] 802-951-1275  
[tty] 800-253-0191

*Agency of Human Services*

November 2, 2007

Mr. Ed Paquin  
Executive Director  
Vermont Protection and Advocacy, Inc.  
141 Main St., Suite 7  
Montpelier, VT 05602

Dear Mr. Paquin:

I am writing in response to your October 18, 2007, letter about the Vermont Protection and Advocacy (VPA) report on the appropriateness of a hospital transfer of a child in the fall of 2006.

I want to first assure you that the new Department of Mental Health (DMH) continues to work toward a system of mental health care that provides the utmost of respect and concern for those persons it serves. This is true of children and adults. Our most recent data regarding the transportation of children for involuntary care indicates that from December 1, 2006 through September 30, 2007, there were 38 transfers of this type. In that time period, 24 of these (63%) were accomplished without using the Sheriffs transport system. It is important to clarify that a significant majority of these transfers were done by ambulance or the local Designated Agencies; an effort DMH has and continues to support.

You assert in the VPA letter that the use of law enforcement personnel and restraints to transport the child from the Rutland Regional Medical Center (RRMC) to the Brattleboro Retreat is a violation of EMTALA. In our initial review, DMH disagrees with this assessment for two reasons. First, the attending physician at RRMC's emergency department characterized the child's condition as "stable" at the time of his transfer. Therefore, this transfer was not within the scope of EMTALA. Second, even if the child's condition had not been stabilized at the time of his transfer, the transfer complied with the requirements of EMTALA.

Our understanding of EMTALA requires that any patient who "comes to the emergency department" requesting "examination or treatment for a medical condition" must be provided with "an appropriate medical screening examination" to determine if he or she is suffering from an "emergency medical condition." If so, then the hospital is obligated to either provide the patient with treatment until he or she is stable, or to transfer the patient to another hospital in conformance with the statute's directives. 42 USC §1395.

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The statute defines "stable" as, no material deterioration of the patient's condition is likely to result from the transfer or is likely to occur during the transfer. The attending physician certified that the child was indeed stable. He states, "I certify that the patient suffered from a medical condition but was stabilized at the time of transfer." The statute's restrictions apply only to transfers before a patient has become stable, either on his or her own, or as a result of medical treatment. Therefore, this transfer was permitted and not restricted by EMTALA in any way.

However, even if the child was not stable at the time of transfer, EMTALA was not violated as it allows for transfers before a patient becomes stable, so long as it meets the requirements for an "appropriate transfer" under the statute. An "appropriate transfer" is one in which all of the following occur:

- The patient has been treated at the transferring hospital, and stabilized as far as possible within the limits of its capabilities.
- The patient needs treatment at the receiving facility and the medical risks of transferring him are outweighed by the medical benefits of the transfer.
- The weighing process as described above is certified in writing by a physician;
- The receiving hospital has been contacted and agrees to accept the transfer, and has the facilities to provide the necessary treatment.
- The patient is accompanied by copies of his medical records from the transferring hospital.
- The transfer is effected with the use of qualified personnel and transportation equipment, as required by the circumstances, including the use of necessary and medically appropriate life support measures.

The transport of this child met all of these requirements. Indeed, the VPA report description of the events preceding the transfer confirms this. The only requirement that VPA contests is the final one regarding the use of qualified personnel. The assertion that EMTALA prohibits the use of restraints by law enforcement personnel is not supported by the plain language of the statute or any case law.

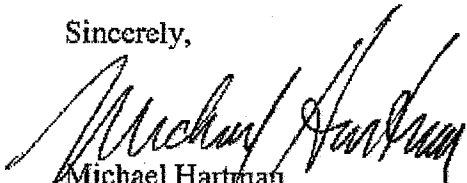
VPA offers that transfer must be effected by "appropriate and qualified medical personnel and not by law enforcement officers using restraints." While I agree that transfers should only be performed by qualified individuals, I strongly disagree with your assertion that only "medical" personnel are deemed qualified under EMTALA. This is not supported by the language of the law, which provides for transfer by "qualified personnel," not "qualified medical personnel," and includes the language "as required by the circumstances." Limiting "qualified personnel" to only medical personnel fails to consider circumstances, such as this one, where the condition initially requiring emergency treatment has been stabilized, but legitimate safety and security concerns remain. This is not the intent of EMTALA.

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You also claim that this child's transfer violated 18 V.S.A. § 7704. As you note, the statute does not prohibit the use of mechanical restraints during transport. The provision requires that, prior to the use of mechanical restraints for transport, a determination be made that restraints are required, and this assessment must be included in the patient's clinical record. While I recognize that transporting children by sheriff is not ideal and DMH continues to work with providers to decrease this practice, there is sufficient documentation in the Transport Information Checklist to support the use of restraints in this instance. Therefore, Vermont law was not violated.

I look forward to addressing these issues with your organization, DMH staff, Designated Agencies, hospitals and advocates to continue to move toward the most humane, safe, and least traumatic transfer of any person, adult or child, in need of care.

Sincerely,



Michael Hartman  
Commissioner