

Health Law: Quality & Liability

Prof. Thaddeus Pope

EMTALA: Background &
History



Transition from common law



Physicians & Hospitals



Physicians



Physicians
generally have
no duty to
treat



Unless
already in a
treatment
relationship



May not refuse
for invidious
discriminatory
reason



Hospitals



Now we see
some **erosion**
of “no duty
rule”



Some duties
under
common law



Duty to treat in
obvious
emergencies



Hospital

pre-EMTALA



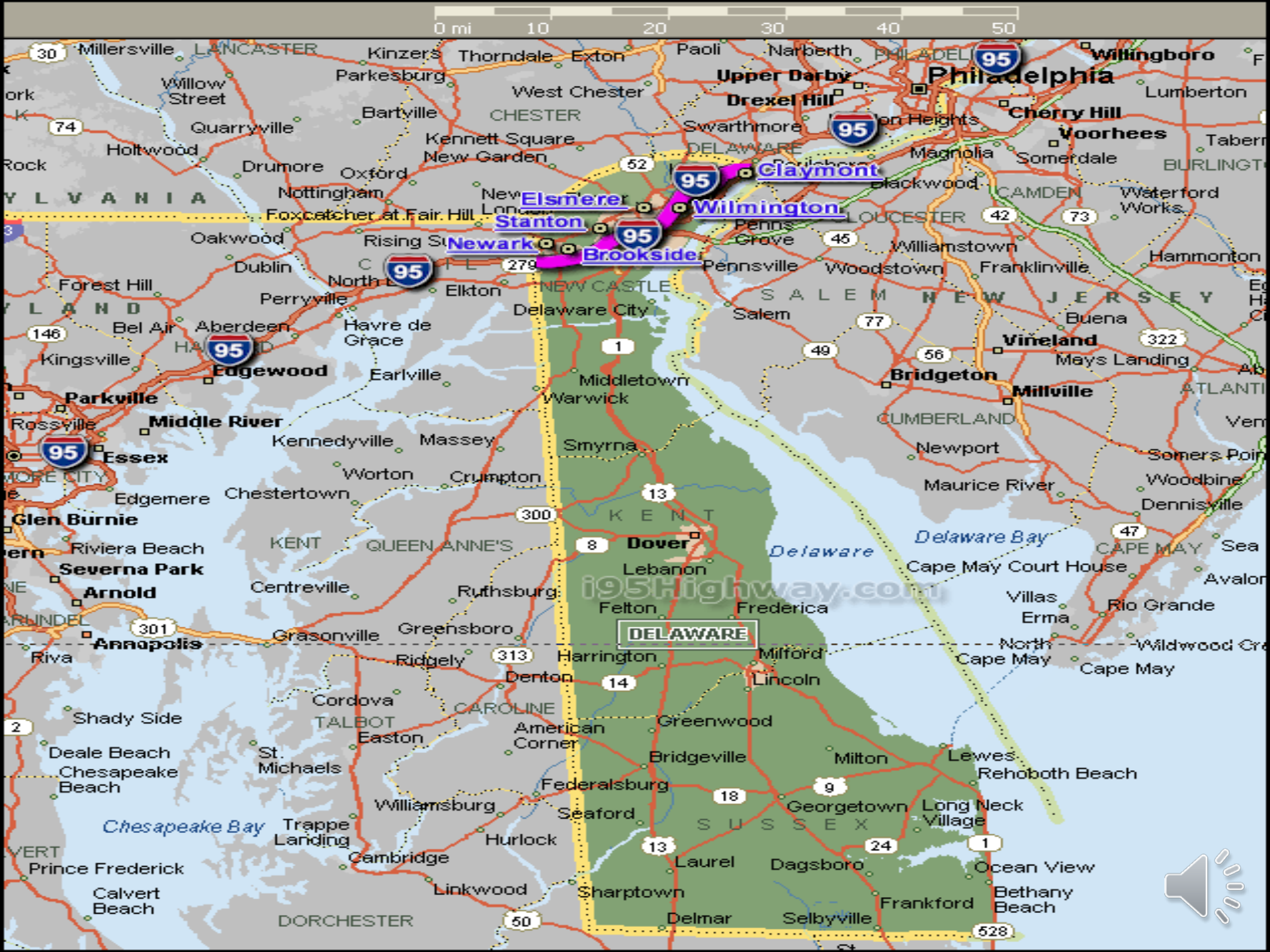
Wilmington

Gen. Hosp.

v.

Manlove





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CHRISTIANA CARE

HEALTH SYSTEM





Let's play "hospital"

Why refuse to
treat a patient
seeking your
services



Why did

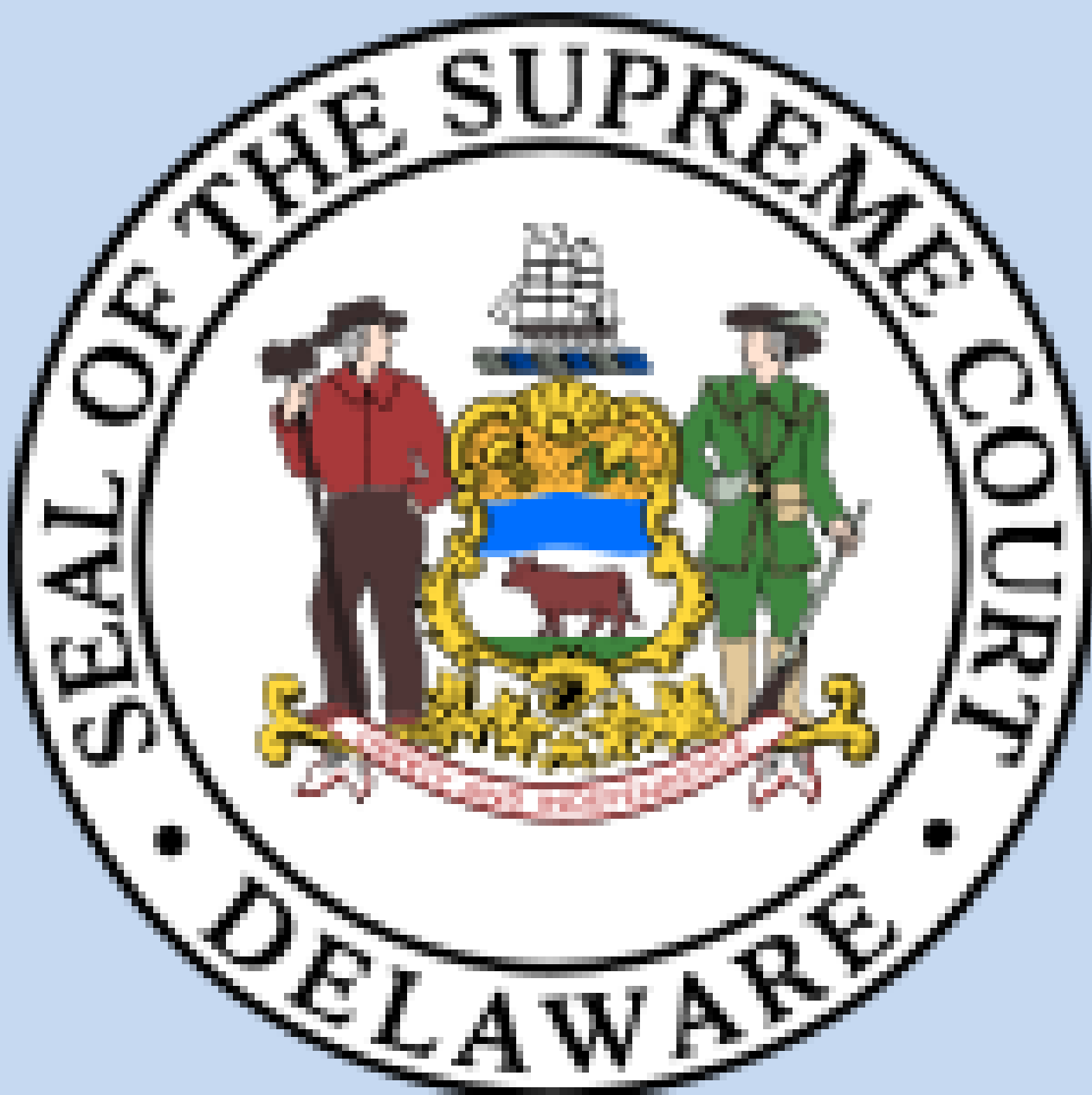
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refuse



Was refusal
malpractice





Duty **without**
agreement,
consent



Why a duty
to treat in
case of
emergency



EMERGENCY







Detrimental
reliance



	Emergency
Hospital	
Physician	



Why impose
emergency
exception on
hospitals but
not docs



Walling

v.

**Flint Osteopathic
Hospital**



Note the **date** of the
underlying events
(versus the litigation)

No common law duty
to **screen** for EMC







GENESIS
GENERAL DENTISTRY SERVICES

GENESIS
WEST FLINT CAMPUS

WEST FLINT CAMPUS



Statutory Duties to Treat



Move from
common law
duties, to **statutory**
duties to treat



Typically duties
of **hospitals**, not
individual
clinicians



Statutory exceptions to common law:

Hill-Burton Act (1946)

IRS 501(c)(3) Rev. Rul. (1969)

State laws (1960s & 1970s)

EMTALA / COBRA (1986)



EMTALA

background



“Patient dumping”

economically
motivated transfer of
a patient from a
hospital capable of
providing care



1



State statutes

1960s

1970s



By 1985, “at least 22 states[had] enacted statutes or issued regulations requiring the provision of limited medical services whenever an emergency situation exists.”

H.R. Rep. No. 99-241(III) (1985), at 5.



“A general hospital **may not deny** emergency services because a person cannot establish the person’s ability to pay for the services.”

Tex. Health & Safety Code Ann. § 311.022(a)



“Every hospital . . . shall furnish
such hospital emergency services
to any applicant . . . in case of
injury or acute medical condition
where the same is liable to cause
death or severe injury or illness.”

Tenn. Code Ann. § 68-140-301



2



EMTALA (1986)



3



“EMTALA is a **major compliance issue** for hospitals and an area of increased government scrutiny.”



With the scope of EMTALA expanding, interpretive guidance from CMS accumulating, and court decisions inconsistent in their interpretations of the statute . . . hospital administrators are understandably **confused as to their specific obligations** under EMTALA. . . .



Litigated civil & admin. actions

Developed hospital policies and procedures

Modified hospital medical staff bylaws to ensure EMTALA compliance

Assisted hospitals in conducting and designing staff training programs



EMTALA

Sources of law





Know 42 U.S.C.
1395ddd (a) – (e)

All 4 pages



The precise scope and meaning of the statute determined by at least **six (6)** other sources of law



1



**code of
federal regulations**

Transportation

49

PARTS 100 TO 185
Revised as of October 1, 1996



Know

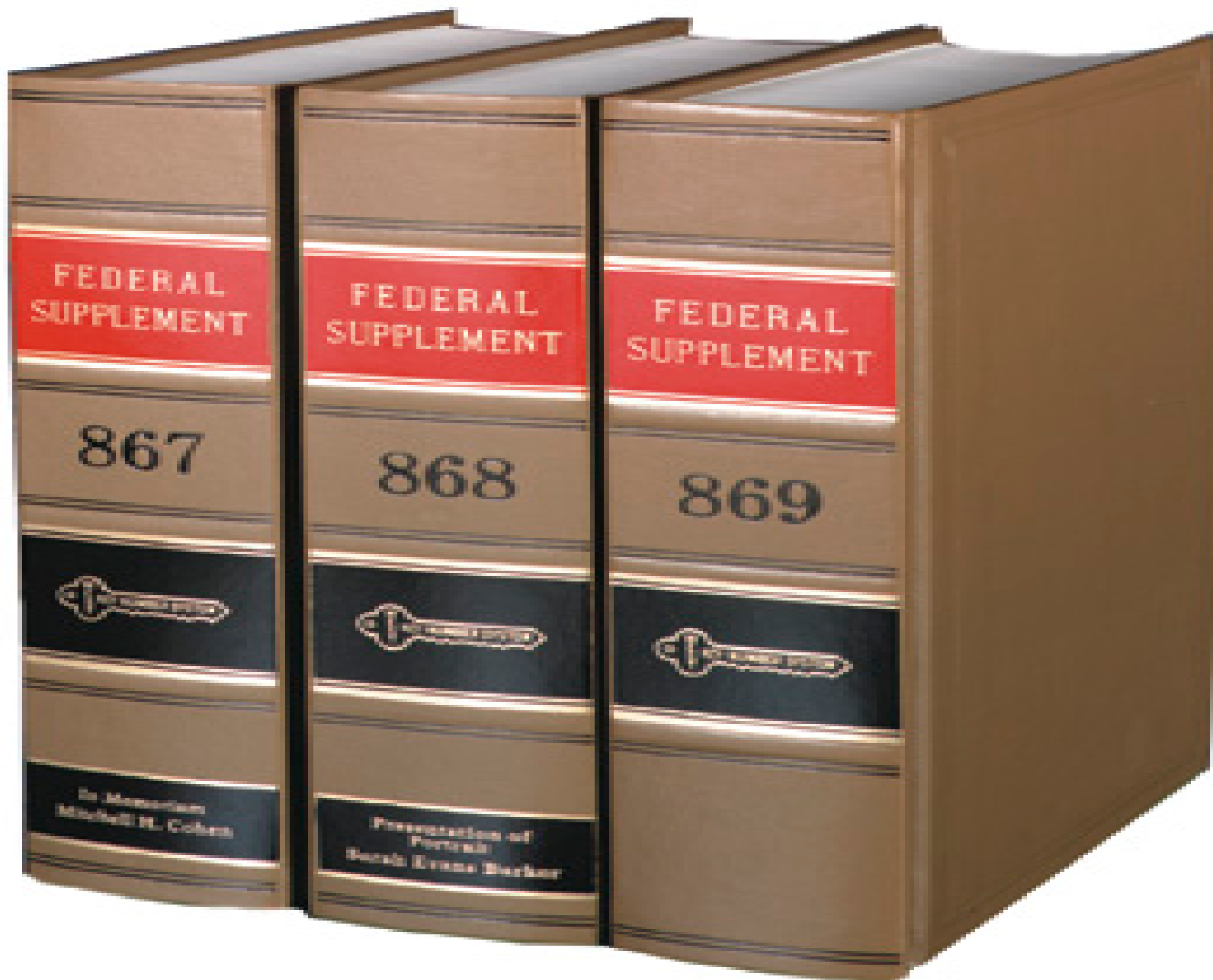
except skim only

42 C.F.R. 489.24 (a)(2), (h),
(i), and (j)



2





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KEY NUMBER SYSTEM



Presentation of
Portrait
David A. Nelson

Presentation of
Portrait
John B. Sanborn Jr.



Francis D. Murnigh

4



DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-12-25
Baltimore, Maryland 21244-1850



Center for Medicaid and State Operations/Survey and Certification Group

Ref: S&C-04-10

DATE: November 7, 2003
TO: State Survey Agency Directors
FROM: Director
Survey and Certification Group
SUBJECT: Emergency Medical Treatment and Labor Act (EMTALA) Interim Guidance



5





6





Departmental Appeals Board

