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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

WALESKA LEON, et al.,

Plaintiffs,

v.

HOSPITAL METROPOLITANO, et al.,

Defendants.

CIVIL NO. 05-1887 (RLA)

ORDER IN THE MATTER OF OUTSTANDING MOTIONS

This action was instituted by the relatives of Migdalia Heyward Leon claiming that defendants are liable for her death pursuant to the provisions of the Emergency Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd, as well as for malpractice under art. 1802 of the Puerto Rico Civil Code, P.R. Laws Ann. tit. 31, § 5141 (1990).

Named defendants are: Metrohealth, Inc. d/b/a Hospital Metropolitano, Dr. Luis Correa Ponce, the P.R. Health Department, Dr. Jose Rossello, Dr. Julio Rivera d/b/a PESI, and Sindicato de Aseguradores para la Suscripcion Conjunta de Seguro de Responsabilidad Medico Hospitalaria ("SIMED").

Defendants have filed various motions seeking to dismiss the outstanding claims asserted against them which plaintiffs have opposed. The court having reviewed the arguments submitted by the parties as well as the documents in the record hereby disposes of the motions as follows.

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3 **RULE 12(b)(6)**

4 In disposing of motions to dismiss pursuant to Rule 12(b)(6)
5 Fed. R. Civ. P. the court will accept all factual allegations as true
6 and will make all reasonable inferences in plaintiff's favor.
7 Frazier v. Fairhaven School Com., 276 F.3d 52, 56 (1st Cir. 2002);
8 Alternative Energy, Inc. v. St. Paul Fire and Marine Ins. Co., 267
9 F.3d 30, 33 (1st Cir. 2001); Berezin v. Regency Sav. Bank, 234 F.3d
10 68, 70 (1st Cir. 2000); Tompkins v. United Healthcare of New England,
11 Inc., 203 F.3d 90, 92 (1st Cir. 2000).

12 Our scope of review under this provision is a narrow one.
13 Dismissal will only be granted if after having taken all well-pleaded
14 allegations in the complaint as true, the Court finds that plaintiff
15 is not entitled to relief under any theory. Brown v. Hot, Sexy and
16 Safer Prods., Inc., 68 F.3d 525, 530 (1st Cir. 1995) cert. den. 116
17 S.Ct. 1044 (1996); Vartanian v. Monsanto Co., 14 F.3d 697, 700 (1st
18 Cir. 1994). Further, our role is to examine the complaint to
19 determine whether plaintiff has adduced sufficient facts to state a
20 cognizable cause of action. Alternative Energy, 267 F.3d at 36. The
21 complaint will be dismissed if the court finds that under the facts
22 as pleaded plaintiff may not prevail on any possible theory.
23 Berezin, 234 F.3d at 70; Tompkins, 203 F.3d at 93.

24 **FACTUAL BACKGROUND**

25 According to the Third Amended Complaint (docket No. 80), on
26 August 15, 2004, at approximately 8:30 a.m. fourteen-year old

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3 Migdalia Heyward Leon was taken by her mother to the Hospital
4 Metropolitano's Emergency Room complaining of difficulty breathing,
5 severe pain in the lower abdominal region, nausea and fever.¹

6 At approximately 7:00 p.m. that same day decedent was
7 transferred to Hospital Ruiz Arnau, owned and operated by the
8 Commonwealth of Puerto Rico.²

9 **P. R. HEALTH DEPARTMENT**

10 At the Initial Scheduling Conference plaintiff "clarified for
11 the record that [the] complaint did not assert any claims under
12 EMTALA against the RUIZ ARNAU HOSPITAL."³ Thus, only the tort claim
13 remains outstanding in these proceedings for any liability arising
14 from decedent's treatment at that facility.

15 According to the complaint, the Hospital Ruiz Arnau is owned by
16 the Commonwealth of Puerto Rico and operated by the Puerto Rico
17 Health Department.⁴

18 The Eleventh Amendment to the United States Constitution bars
19 the commencement and prosecution in federal court of suits claiming
20 damages brought against any state, including Puerto Rico, without its
21 consent. Toledo v. Sanchez, 454 F.3d 24 (1st Cir. 2006); Fresenius

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23 ¹ Third Amended Complaint (docket No. 80) ¶¶ 11-12.

24 ² *Id.* ¶ 17.

25 ³ Minutes and Order of Initial Scheduling Conference held on
November 13, 2006 (docket No. 100).

26 ⁴ Third Amended Complaint (docket No. 80) ¶ 6.

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3 Med. Care Cardiovascular Res., Inc. v. Puerto Rico and Caribbean
4 Cardiovascular Ctr. Corp., 322 F.3d 56, 61 (1st Cir. 2003); Futura
5 Dev. v. Estado Libre Asociado, 144 F.3d 7, 12-13 (1st Cir. 1998); In
6 re San Juan Dupont Plaza Hotel Fire Lit., 888 F.2d 940, 942 (1st Cir.
7 1989); Ramírez v. P.R. Fire Serv., 715 F.2d 694, 697 (1st Cir. 1983).

8 Eleventh Amendment immunity applies even though the state has
9 not been named in the suit. Its protection is extended to
10 governmental entities which are deemed an arm or alter ego of the
11 state. Royal Caribbean Corp. v. Puerto Rico Ports Auth., 973 F.2d 8,
12 9-10 (1st Cir. 1992); In re San Juan Dupont Plaza Hotel Fire Lit., 888
13 F.2d at 943-44. In this regard, the Puerto Rico Health Department has
14 been found to be entitled to Eleventh Amendment immunity. See,
15 Arecibo Cmty. Health Care, Inc. v. Commonwealth of P.R., 270 F.3d 17
16 (1st Cir. 2001).

17 Based on the foregoing, we find that the negligence claims
18 asserted against the Puerto Rico Health Department based on the acts
19 or omissions of the Hospital Ruiz Arnau personnel are entitled to
20 Eleventh Amendment immunity and cannot be tried in this forum.⁵

21 **EMTALA - INDIVIDUAL PHYSICIANS AND PESI**

22 According to the complaint, decedent was treated by codefendant
23 Dr. Luis Correa Ponce during her stay at the Emergency Room of the

24
25 ⁵ Given our ruling, plaintiffs' Motion to Amend Complaint
26 (docket No. 106) is **DENIED AS MOOT** inasmuch as the new allegations
pertain to "an epidemic that developed while deceased minor... was
hospitalized at the Ruiz Arnau Hospital."

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3 Hospital Metropolitano. Plaintiffs further allege that at all
4 relevant times Drs. Rossello and Rivera, d/b/a PESI, had a contract
5 with Hospital Metropolitano to provide Emergency Room services.⁶

6 EMTALA was enacted in 1986 in response to an increasing practice
7 of hospital emergency rooms of rejecting patients with emergency
8 conditions because they had no medical insurance. "[I]t is clear that
9 Congress manifested an intent that all patients be treated fairly
10 when they arrive in the emergency department of a participating
11 hospital and that all patients who need some treatment will get a
12 first response at minimum and will not simply be turned away."
13 Reynolds, 218 F.3d 78, 83 (1st Cir. 2000). See also, Roubert-Colon
14 v. Hosp. Dr. Pila, 330 F.Supp.2d 38, 42 (D.P.R. 2004). It is
15 axiomatic that EMTALA was enacted specifically to avoid "dumping" of
16 patients lacking medical insurance and that it should not be regarded
17 as a federal medical malpractice statute. Reynolds, 218 F.3d at 83.
18 See also, Guadalupe v. Negron Agosto, 299 F.3d 15, 21 (1st Cir. 2002)
19 (statute does not create a medical malpractice claim).

20 EMTALA imposes upon a hospital's emergency services the duty to
21 initially screen patients to ascertain whether an emergency medical
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23 ⁶ Codefendants Drs. Rossello and Rivera disclaim that they
24 provided services to the Hospital as a d/b/a but rather that "PESI is
25 a medical corporation dedicated to the administration and management
26 of pediatric emergency rooms". Motion to Dismiss (docket No. 66)
¶ 20. However, inasmuch as no extrinsic evidence has been submitted
in support thereof we are constrained to the allegations of the
complaint pursuant to the provisions of Rule 12(b)(6).

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3 condition exists⁷ and if so, to provide the necessary medical
4 examination and treatment as well as to stabilize the patient prior
5 to his discharge or transfer.⁸ Lopez-Soto v. Hawayek, 175 F.3d 170,
6 175 (1st Cir. 1999); Correa v. Hosp. San Francisco, 69 F.3d 1184, 1190
7 (1st Cir. 1995). No improper motive is required to be proved by
8 plaintiff in order to prevail. Roberts v. Galen of Va., Inc., 525
9 U.S. 249, 119 S.Ct. 685, 142 L.Ed.2d 648 (1999).

10 It has been consistently held that EMTALA does not provide a
11 viable claim against individual physicians. Millan v. Hosp. San
12 Pablo, 389 F.Supp.2d 224, 235 (D.P.R. 2005); Alvarez Torres v. Ryder
13 Mem'l Hosp., Inc., 308 F.Supp.2d 38, 40 (D.P.R. 2003). See also,
14 Lebron v. Ashford Presbyterian Cmty. Hosp., 995 F.Supp. 241 (D.P.R.
15 1998) (summarizing cases). Hence, the EMTALA claim against Dr.
16 Correa is **DISMISSED**.

17 We further find that, even taking plaintiffs' allegations as
18 correct, no EMTALA cause of action lies against Drs. Rossello and
19 Rivera d/b/a as PESI.

20 EMTALA imposes the duty to screen, stabilize and transfer
21 requirements upon hospitals.⁹ Additionally, its enforcement provision
22 applies to "participating hospital[s]"¹⁰ which the statute defines as

23 ⁷ 42 U.S.C. § 1395dd(a).

24 ⁸ 42 U.S.C. § 1395dd(b).

25 ⁹ 42 U.S.C. § 1395dd(a) and (b).

26 ¹⁰ 42 U.S.C. § 1395dd(d).

2 "a hospital that has entered into a [Medicare] provider agreement."¹¹
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4 As pointed out by the Court of Appeals in Rodriguez v. Am. Int'l Ins.
5 Co. of P.R., 402 F.3d 45 (1st Cir. 2005), "[i]t is clear that EMTALA
6 does not apply to all health care facilities; it applies only to
7 participating **hospitals with emergency departments.**" 402 F.3d at 48
8 (emphasis ours). See also, Feliciano Rivera v. Med. & Geriatric
9 Admin. Serv., Inc., 254 F.Supp. 237 ("Not being a hospital, the CDT
10 cannot have 'a hospital emergency department' as required and
11 described in § 1395dd(a).")

12 Accordingly, the EMTALA claims asserted against Drs. Rossello
13 and Rivera d/b/a as PESI are **DISMISSED.**¹²

14 **HOSPITAL METROPOLITANO**

15 Hospital Metropolitano joined the request for dismissal of Drs.
16 Rossello and Rivera essentially arguing that the treatment afforded
17 decedent did not violate the EMTALA provisions.

18 Even though defendant labeled its petition as a motion to
19 dismiss, the inclusion of documents outside the pleadings by both
20 parties¹³ converted it into a summary judgment vehicle pursuant to the

21 ¹¹ 42 U.S.C. § 1395dd(e).

22 ¹² Even though the EMTALA claims have been dismissed against
23 these parties, the damages claims asserted against them under art.
24 1802 subsist under our supplemental jurisdiction. See, Millan, 389
F.Supp.2d at 237; Alvarez Torres, 308 F.Supp.2d at 42.

25 ¹³ Defendants attached a Certificate of the working relationship
26 between the Hospital Metropolitano and PESI as well as copy of
decedent's medical record with said institution. Plaintiffs filed a
copy of the report of Dr. Norma Villanueva, their expert witness, as

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3 provisions of Rule 12(b) Fed. R. Civ. P. Santiago v. Canon U.S.A.,
4 Inc., 138 F.3d 1, 4-5 (1st Cir. 1998); Rodriguez v. Fullerton Tires
5 Corp., 115 F.3d 81, 83 (1st Cir. 1997); Vega-Rodriguez v. Puerto Rico
6 Telephone Co., 110 F.3d 174, 177-78 (1st Cir. 1997).

7 Rule 56(c) Fed. R. Civ. P., which sets forth the standard for
8 ruling on summary judgment motions, in pertinent part provides that
9 they shall be granted "if the pleadings, depositions, answers to
10 interrogatories, and admissions on file, together with the
11 affidavits, if any, show that there is no genuine issue as to any
12 material fact and that the moving party is entitled to a judgment as
13 a matter of law." Sands v. Ridefilm Corp., 212 F.3d 657, 660-61 (1st
14 Cir. 2000); Barreto-Rivera v. Medina-Vargas, 168 F.3d 42, 45 (1st Cir.
15 1999). The party seeking summary judgment must first demonstrate the
16 absence of a genuine issue of material fact in the record.
17 DeNovellis v. Shalala, 124 F.3d 298, 306 (1st Cir. 1997). A genuine
18 issue exists if there is sufficient evidence supporting the claimed
19 factual disputes to require a trial. Morris v. Gov't Dev. Bank of
20 Puerto Rico, 27 F.3d 746, 748 (1st Cir. 1994); LeBlanc v. Great Am.
21 Ins. Co., 6 F.3d 836, 841 (1st Cir. 1993), *cert. denied*, 511 U.S.
22 1018, 114 S.Ct. 1398, 128 L.Ed.2d 72 (1994). A fact is material if
23 it might affect the outcome of a lawsuit under the governing law.

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26 well as the autopsy report. See, Motion to File Medical Reports
(docket No. 93).

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3 Morrissey v. Boston Five Cents Sav. Bank, 54 F. 3d 27, 31 (1st Cir.
4 1995).

5 In cases where the non-movant party bears the ultimate burden of
6 proof, he must present definite and competent evidence to rebut a
7 motion for summary judgment, Anderson v. Liberty Lobby, Inc., 477
8 U.S. 242, 256-257, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Navarro v.
9 Pfizer Corp., 261 F.3d 90, 94 (1st Cir. 2000); Grant's Dairy v. Comm'r
10 of Maine Dep't of Agric., 232 F.3d 8, 14 (1st Cir. 2000), and cannot
11 rely upon "conclusory allegations, improbable inferences, and
12 unsupported speculation". Lopez v. Rubianes, 230 F.3d 409, 412 (1st
13 Cir. 2000); Maldonado-Denis v. Castillo-Rodríguez, 23 F.3d 576, 581
14 (1st Cir. 1994); Medina-Muñoz v. R.J. Reynolds Tobacco Co., 896 F.2d
15 5, 8 (1st Cir. 1990).

16 The court having reviewed the evidence on file, particularly the
17 opinion of Dr. Villanueva, finds that issues of material fact
18 preclude summary judgment at this time regarding the breach of
19 EMTALA's duties at the Hospital's Emergency Room. Plaintiffs' expert
20 witness specifically challenged the Hospital's position on this
21 matter. Hence, summary judgment is not available on this particular
22 controversy.

23 DIVERSITY JURISDICTION

24 Federal courts are courts of limited jurisdiction and hence,
25 have the duty to examine their own authority to preside over the
26 cases assigned. "It is black-letter law that a federal court has an

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2 obligation to inquire sua sponte into its own subject matter
3 jurisdiction." McCulloch v. Velez, 364 F.3d 1, 5 (1st Cir. 2004). See
4 also, Bonas v. Town of North Smithfield, 265 F.3d 69, 73 (1st Cir.
5 2001) ("Federal courts, being courts of limited jurisdiction, have an
6 affirmative obligation to examine jurisdictional concerns on their
7 own initiative.")

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9 Further, subject matter jurisdiction is not waivable or
10 forfeited. Rather, because it involves a court's power to hear a
11 case, it may be raised at any time. Kontrick v. Ryan, 540 U.S. 443,
12 124 S.Ct. 906, 157 L.Ed.2d 867 (2004); United States v. Cotton, 535
13 U.S. 625, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002). "The objection that
14 a federal court lacks subject-matter jurisdiction... may be raised by
15 a party, or by a court on its own initiative, at any stage in the
16 litigation, even after trial and the entry of judgment." Arbaugh v.
17 Y&H Corp., ___ U.S. ___, 126 S.Ct. 1235, 1240, 163 L.Ed.2d 1097
18 (2006).

19 Pursuant to 28 U.S.C. § 1332(a)(1), federal courts have
20 jurisdiction over claims between "citizens of different states" so
21 long as the amount in dispute exceeds \$75,000.00. The statute
22 requires complete diversity between the plaintiffs and the
23 defendants. *Id.* at 139. In other words, the plaintiffs and the
24 defendants must be citizens of different states. "[D]iversity
25 jurisdiction does not exist unless *each* defendant is a citizen of a
26 different State from *each* plaintiff... diversity jurisdiction is not

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3 to be available when any plaintiff is a citizen of the same State as
4 any defendant." Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365,
5 373-74, 98 S.Ct. 2396, 57 L.Ed.2d 274 (1978) (italics in original).

6 The complaint asserts § 1332 as alternative jurisdictional
7 grounds. Specifically, it is alleged that Iris Pacheco, decedent's
8 grandmother, resides in New York.¹⁴ Plaintiffs having failed to
9 identify the domicile of the remaining plaintiffs, the court must
10 assume that they are Puerto Rico residents. It appearing that
11 defendants are also citizens of Puerto Rico for purposes of the
12 statute, diversity is destroyed.

13 Accordingly, plaintiff Iris Pacheco may not assert diversity
14 jurisdiction in this case.

15 **CONCLUSION**

16 The Motion to Dismiss Second and Third Amended Complaints filed
17 by the P.R. Health Department (docket No. **75**)¹⁵ is **GRANTED** and the
18 claims asserted against it in these proceedings are hereby **DISMISSED**
19 **WITHOUT PREJUDICE.**

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24 ¹⁴ Third Amended Complaint (docket No. 80) ¶ 5.

25 ¹⁵ See, Plaintiffs' Opposition (docket No. **77**). See also, Motion
26 to Dismiss (docket No. **29**); Plaintiffs' Opposition (docket No. **30**)
and Reply (docket No. **37**).

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3 The Motion to Dismiss filed by Dr. Jose Rossello and Dr. Julio
4 Rivera (docket No. **66**)¹⁶ is **GRANTED** but limited to the dismissal of
5 the EMTALA claims asserted against them and PESI.

6 The Motion to Join (docket No. **103**) filed by Dr. Luis Correa
7 Ponce is **GRANTED** and the EMTALA claims asserted against him are
8 **DISMISSED**.

9 Judgment shall be entered accordingly.

10 The Hospital Metropolitano's Motion to Dismiss (docket No. **96**)¹⁷
11 is **DENIED**.

12 IT IS SO ORDERED.

13 San Juan, Puerto Rico, this 6th day of February, 2007.

14
15 S/Raymond L. Acosta
16 RAYMOND L. ACOSTA
17 United States District JUDGE

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25 ¹⁶ See, Plaintiffs' Opposition (docket No. **69**).

26 ¹⁷ See, Plaintiffs' Opposition (docket No. **98**).