IP 03-0252-C M/L Valencia v St Francis Hospital
Judge Larry J. McKinney Signed on 3/1/04

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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| CHARIS VALENCIA,<br>CARLOS VALENCIA,<br><br>Plaintiffs,<br>vs.<br><br>ST. FRANCIS HOSPITAL AND HEALTH CENTERS,<br><br>Defendant. | ) | NO. 1:03-cv-00252-LJM-WTL |

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UNITED STATES DISTRICT COURT
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| CHARIS VALENCIA and CARLOS VALENCIA, | ) | |
| Plaintiffs, | ) | |
| vs. | ) | 1:03-cv-0252-LJM-WTL |
| ST. FRANCIS HOSPITAL AND HEALTH CENTER, | ) | |
| Defendant. | ) | |

**ORDER ON PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

This matter comes before the Court on the motion of plaintiffs, Charis Valencia and Carlos Valencia (the "Valencias"), for partial summary judgment that their claim under the Emergency Medical Treatment and Labor Act ("EMTALA"), 42 U.S.C. § 1395dd, is not subject to the limit on damages under Indiana's Medical Malpractice Act, Ind. Code § 34-18-1-1 et. seq. Defendant, St. Francis Hospital and Health Center ("St. Francis"), contends that the damage limitations, as a matter of law, limit recovery in this case. On this limited point, the Court finds there are no genuine issues of material fact. For the following reasons, the Valencias' motion is **DENIED** and the court finds, as St. Francis requested, that the cap on damages applies to the Valencias' EMTALA claim.

## I. BACKGROUND

The Valencias are the parents of a two-year-old girl, Lorena Valencia Garcia, who died on July

2, 2002, after being brought to St. Francis' emergency room. The facts relevant to the issues before the Court, and upon which the parties agree, follow.

About 26 months after her birth, Lorena underwent surgery at Riley Hospital for Children where physicians attempted to repair a heart defect. Compl. ¶¶ 3, 8. Two weeks later, she became ill with nausea and vomiting. Compl. ¶ 9. Her mother took her to the St. Francis Hospital Emergency Department where Lorena was examined and tests were performed. Compl. ¶ 10. At some point, a decision was made to transfer Lorena to Riley. Compl. ¶ 14. However, before she could be taken there, her condition worsened. Compl. ¶ 16. A Riley cardiologist arrived at St. Francis and treated her. Compl. ¶¶ 19, 20. Lorena died about an hour later. Compl. ¶ 21.

Charis and Carlos Valencia subsequently filed a proposed medical malpractice claim with the Indiana Department of Insurance against St. Francis and three additional defendants, all physicians. Def.'s Response, Ex. C. At the same time, the Valencias filed a complaint in this Court alleging that St. Francis had violated the EMTALA requirements for the examination and treatment of emergency medical conditions and conditions for transfer to another hospital.

## II. STANDARD

Summary judgment is "an integral part of the federal rules" that promotes the efficient and just determination of actions. *Celotex Corp. v. Catrettt*, 477 U.S. 317, 327 (1986). A party may request summary judgement when seeking a declaratory judgment "upon all or any part thereof." Fed. R. Civ. P. 56(a). Judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material

fact and that the moving party is entitled to judgment as a matter of law." *Celotex*, 477 U.S. at 322. In evaluating a motion for summary judgment, the Court draws all reasonable inferences from undisputed facts in favor of the nonmoving party. *Estate of Cole v. Fromm*, 94 F.3d 254, 257 (7th Cir. 1996).

## III. DISCUSSION

Based on the motions presented by the parties, the Court must address two issues. Does EMTALA prohibit the Indiana Medical Malpractice Act's limitations on damages from applying to recoveries under the federal act for personal injury claims against an Indiana hospital? Do the limitations on awards imposed by the state malpractice act apply to the Valencias' EMTALA claims?

The first question is not a new one. This court, Judge Sarah Evans Barker presiding, found in a case involving similar facts, that an EMTALA claim was governed by the state's limits on damages "recoverable for personal injury from a health care provider." *Reid v. Indianapolis Osteopathic Med. Hosp.*, 709 F. Supp.853, 856 (S.D. Ind. 1989) (Barker, J.). The Valencias, however, have asked the Court to reconsider that holding. They argue that, based on the plain wording of the federal statute, the distinction between EMTALA actions and medical malpractice actions, and the remedial nature of EMTALA, Congress did not intend for malpractice limits to apply.[1]

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[1]The Valencias also argue the malpractice award limits should not apply because the EMTALA and malpractice claims are distinct causes of action. *See Brooks v. Md. Gen. Hosp.*, 996 F.2d 708, 711 (4th Cir. 1993) (holding that EMTALA only guarantees equality of treatment and is not a malpractice statute guaranteeing the adequacy of care); *Magruder v. Jasper County Hosp.*, 243 F. Supp. 2d 886, 891 (N.D. Ind. 2003) (holding that EMTALA does not create a national standard of care). However, the issue before the Court is not which theory of liability will govern the case but the type and extent of damages available to an individual who is harmed by a violation of the statute. *See Power v. Arlington Hosp. Ass'n*, 42 F.3d 851, 864 (4th Cir. 1994) (holding that damages for an

The second question arises because St. Francis has asked the Court to find, as a matter of law, that the state's medical malpractice caps apply to the Valencias' specific EMTALA claim. This is a separate issue because even if the Court determines that a state's malpractice limits *may apply* to an EMTALA recovery, it does not follow that the limits *shall apply* in all instances. Indiana courts have not applied the state's medical malpractice act to all claims of personal injury involving patients and health care providers. Therefore, the Court must consider how Indiana courts would apply the malpractice limits to an action involving the sort of misconduct that the Valencias allege.

Enacted in 1986 as part of the Comprehensive Omnibus Budget Reconciliation Act (COBRA), EMTALA imposed on hospital emergency rooms basic obligations to attend to any person seeking emergency treatment. *See Deberry v. Sherman Hosp. Ass'n.*, 741 F. Supp. 1302, 1305 (N.D. Ill. 1990). Its two key provisions are the basis of the Valencias' claims. First is a screening requirement. When a person arrives at a hospital emergency room and requests aid, the hospital "must provide for an appropriate medical screening examination within the capability of the hospital's emergency department .

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EMTALA claim may still be subject to a state's malpractice limits even though EMTALA and malpractice actions are separate and distinct.).

Similarly, the Valencias' assertion, without any supporting citations, that Indiana law "sharply distinguishes" personal injury from medical malpractice actions does not stand scrutiny. In Indiana, personal injury law and malpractice law are not exclusive but overlapping. As the Valencias acknowledge, "personal injury" encompasses any harm caused to a person. Pl.s' Br. in Support, at 7 (citing Black's Law Dictionary 790 (17 ed. 1999)). Malpractice, as defined by the Indiana General Assembly, "means a tort or breach of contract based on health care or professional services that were provided, or that should have been provided, by a health care provider, to a patient." Ind. Code § 34-18-2-18. This definition is broader than personal injury law because it encompasses not just tort claims but also breach of contract claims. It is narrower because it limits malpractice actions to those involving health care providers and patients. However, EMTALA actions are even more narrowly limited to actions against hospitals. 42 U.S.C. § 1395dd(d)(2)(A).

. . . " 42 U.S.C. § 1395dd(a). Second is the stabilization/transfer requirement, which imposes a duty to stabilize the patient before discharge or transfer to another hospital. 42 U.S.C. § 1395dd(b). The act also imposes certain requirements before transfer, including the need to obtain the consent of the patient or legally responsible party, or a physician's written certification that the benefit of transfer outweighs the risk. 42 U.S.C. § 1395dd(c). Finally, EMTALA permits an individual who suffers harm as a result of a hospital's violation to file a civil action to "obtain those damages available for personal injury under the law of the State in which the hospital is located, and such equitable relief as is appropriate." 42 U.S.C. § 1395dd(d)(2)(A).

**A. PLAINTIFFS' MOTION**

The first issue before the Court is whether EMTALA prohibits the Indiana Medical Malpractice Act's limitations on damages from applying to recoveries under the federal act involving personal injury claims against an Indiana hospital. The Valencias argue that the plain meaning of the federal act's text shows that Congress did not intend for state malpractice laws to limit EMTALA damages. They contend that the phrase "those damages available for personal injury under the law of the State" in § 1395dd(d)(2)(A) refers only to the elements of damage for which recovery is permitted in a personal injury action. However, as the Fourth Circuit noted in an EMTALA case involving an alleged failure to provide an appropriate screening, "we see nothing in the language of the section indicating that 'damages available' does not also mean the amount of damages for which recovery is permitted under state law." *Power v. Arlington Hosp. Ass'n*, 42 F.3d 851, 862 (4th Cir. 1994). Most courts have held, after reviewing EMTALA's brief legislative history and its text, that the plain meaning is not so restrictive and that a state's limits on damages

should apply. *See Feighery v. York Hosp.*, 38 F. Supp. 2d 142, 158 (D. Me. 1999); *Lee v. Alleghany Regional Hosp. Corp.*, 778 F. Supp. 900, 903-904 (W.D. Va. 1991); *Reid*, 709 F. Supp. at 855-563; *Barris v. County of Los Angeles*, 972 P.2d 966, 976 (Cal. 1999); *Godwin v. Mem'l Med. Ctr.*, 25 P.3d 273, 283 (N.M. Ct. App. 2001).

The legislative history regarding EMTALA's civil action enforcement provisions is sparse. However, as the Fourth Circuit noted, the language limiting damages to those available under state law was added in conference committee after the House Committee on the Judiciary expressed concern about "the potential impact of these enforcement provision on the current medical malpractice crisis." *Power*, 42 F.3d 851 at 862 (quoting H.R. Rep. 99-241, pt.3, at 6 (1985)). This Court noted in *Reid* that Congress was well aware of the worries in some states that excessive damage awards "were fueling a medical malpractice crisis." *Reid*, 709 F. Supp. at 855.

The Valencias argue also that EMTALA, in its purpose, theory of liability and remedy, is so distinct from Indiana's Medical Malpractice Act that Congress could not have intended the state's malpractice cap to apply. "Such damages restrictions do not comport with the broad remedial purpose and character of EMTALA." Pl.s.' Br. in Support, at 14. The goals of EMTALA and medical malpractice statutes such as Indiana's are not so dissimilar as the Valencias would have it.

At a fundamental level, both statutes seek to ensure access to medical care. *See Jackson v. East Bay Hosp.*, 980 F. Supp. 1341, 1347 (N.D. Cal. 1997). As numerous courts have noted, EMTALA was passed amid concerns over "patient dumping," the practice in which patients without money or adequate insurance were turned away from hospital emergency rooms or transferred too quickly to other facilities. *Reid*, 709 F. Supp. at 853. While Congress did not limit EMTALA's protections only to the poor, its

concern about patient dumping is reflected in the obligation it imposed on hospitals to treat patients uniformly, whether in the initial screening examinations or in decisions to transfer or discharge. EMTALA was Congress' guarantee that all Americans in need of emergency services could obtain help at any hospital emergency room. *See, e.g., Summers v. Baptist Med. Ctr. Arkadelphia*, 91 F.3d 1132, 1138 (8th Cir. 1996); *Baber v. Hosp. Corp. of Am.*, 977 F.2d 872, 880 (4th Cir. 1992); *Magruder v. Jasper County Hosp.*, 243 F. Supp. 2d 886, 890-91 (N.D. Ind. 2003) .

The Indiana General Assembly had a similar purpose in enacting the Medical Malpractice Act of 1975. As the Indiana Supreme Court later noted, concerns about the high cost of insurance and the potential size of malpractice awards were driving physicians out of business and shutting down hospital emergency rooms, particularly in rural areas. *Johnson v. St. Vincent Hosp.*, 404 N.E.2d 585, 590-91 (Ind. 1980). The act's provisions, including its damages restrictions were, like EMTALA, aimed at ensuring that all the state's citizens had access to medical care. "Its goal is to protect the health of the citizens of this State by preventing a reduction of health care services." *Id*. at 597.

Congress also demonstrated its intent to incorporate a state's specific restrictions on personal injury awards by including a preemption clause in EMTALA. Section 1395dd(f) states that the act's provisions do not preempt any state or local law unless it "directly conflicts with a requirement of this section." Given Congress' awareness of state malpractice award restrictions, this instruction plainly points to their applicability except when such restrictions conflict directly with an EMTALA provision. The Valencias make an all or nothing argument. They would have the Court reject the applicability of every provision of the state's medical malpractice act if only one provision is in conflict with any one EMTALA provision.

They point out, for example, that EMTALA allows equitable relief while the state act does not.[2] Such differences do not determine the applicability of the state's monetary restrictions on damages, however. Most federal courts have not applied the conflict preemption clause so broadly. *See Reid*, 709 F. Supp. at 853 (finding the state requirement that malpractice claims first be screened by a medical review panel did not apply to an EMTALA claim because the screening was in direct conflict or at least irrelevant, but that the state's damage restrictions did apply); *but see, Cooper v. Gulf Breeze Hosp, Inc.*, 839 F. Supp. 1538, 1543 (N.D. Fla. 1993) (holding that Florida's malpractice limits did not apply because they were inextricably tied to pre-trial procedures not supported by EMTALA).

The Valencias have not shown how Indiana's damages limits directly conflict with any of EMTALA's requirements or its purpose. As the Fourth Circuit noted in *Power v. Arlington Hosp. Ass'n*, 42 F.3d 851, 863-64 (4th Cir. 1994) (*Power II*) , such conflicts must be real, not theoretical. The district court in *Power* had reasoned that Congress could not have intended malpractice caps to apply because a state could impose limits so low they would defeat Congress' goal of deterring "patient dumping." *Power v. Arlington Hosp.*, 800 F. Supp. 1384, 1391 (E.D. Va. 1992) (*Power I*). The *Power I* court had hypothesized caps as lows as $10,000 or even $1,000. *Id.* at 1390.

As the Fourth Circuit noted on appeal, however, the hypothesis was irrelevant. "The appropriate inquiry for purposes of determining whether EMTALA preempted Virginia's statute under Section

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[2] The Valencias make this point as part of a statutory interpretation argument and deny they are arguing for federal preemption. However, the argument rises and falls on Congress' intent to include or exclude medical malpractice damage restrictions, which is in part a preemption argument. The very wording of § 1395dd(f) manifests Congress' awareness of the differences between conflict and field preemption.

1395dd(f) would be whether the actual cap of $1 million 'directly conflicts' with the goals of EMTALA. We find it difficult to say that it would." *Power II*, 42 F.3d at 863-64.

Similarly, the Valencias have not shown how Indiana's malpractice caps conflict with EMTALA's remedial character. In Indiana, damages against a health care provider are limited to $1.25 million for acts of malpractice occurring afer June 30, 1999. Ind. Code § 34-18-14-3(a)(3). Such limits hardly defeat the goal of deterrence when Congress itself capped civil fines against hospitals for EMTALA violations at $50,000. 42 U.S.C. § 1395dd(d)(1)(A).

EMTALA's text, its legislative history and its preemption clause all support a finding that Congress intended damage claims to be governed by a state's specific restrictions on the personal damage awards except when those restrictions were in direct conflict. Indiana's cap on the amount of personal injury awards against health care providers does not conflict with any of EMTALA's provisions. On a fundamental level, EMTALA and the Indiana Medical Malpractice Act both aim to ensure that health care is accessible to all. EMTALA does not prohibit the state act's limitations on damages from applying to recoveries under the federal act for personal injury claims against an Indiana hospital.

**B. DEFENDANT'S REQUEST**

The second issue before this Court is whether the limitations on awards imposed by the Indiana Medical Malpractice Act apply to the Valencias' EMTALA claims.[3] To determine whether a malpractice

[3]The Valencias characterize St. Francis' argument as a statutory construction discussion involving the doctrine of *in pari materia*. Pl.s' Reply Br. at 5-6. This misconstrues St. Francis' argument and the question before the Court, which concerns the application of EMTALA's damages remedy under Indiana law.

damages cap applies to an EMTALA claim in a particular state, federal and state courts have looked at the state's definition of malpractice and how the state's courts have applied that definition. *See Power II*, 42 F.3d at 860; *Jackson*, 980 F. Supp. at 1348, 49; *Barris*, 972 P.2d at 974.

In Indiana, malpractice means "a tort or breach of contract based on health care or professional services that were provided, or that should have been provided, by a health care provider, to a patient." Ind. Code § 34-18-2-18. Tort is further defined as a "legal wrong, breach of duty, or negligent or unlawful act or omission proximately causing injury or damage to another." Id. § 34-18-2-28. Health care is any "act or treatment performed or furnished, or that should have been performed or furnished, by a health care provider for, to, or on behalf of a patient during the patient's medical care, treatment or confinement." Id. § 34-18-2-13. Taken together, these definitions encompass a wide range of conduct. Yet Indiana's malpractice act does not govern all claims involving patients and health care providers.

Indiana courts have looked to the substance of a claim, not its caption or theory of liability, to determine if the state's malpractice act applies. Generally, Indiana courts applied the act when the claim involved conduct that is "curative or salutary in nature." *Van Sice v. Sentany*, 595 N.E.2d 264, 266 (Ind. Ct. App. 1992). They generally refrained from applying the act when the conduct is "unrelated to the promotion of a patient's health or the provider's exercise of professional expertise, skill or judgment." *Collins v. Thakkar*, 552 N.E.2d 507, 510 (Ind. Ct. App. 1990).

These guidelines have demarcated the boundaries of the Indiana Medical Malpractice Act. The Indiana Court of Appeals has held, for example, that being struck by a falling surgical lamp, contracting

an illness while a patient or being sexually assaulted by a hospital counselor need not involve medical malpractice. *See Pluard v. Patients Compensation Fund,* 705 N.E.2d 1035, 741-42 (Ind. Ct. App. 1999) (holding that the improper installation of a surgical lamp was not a health care issue involving the exercise of professional skill or judgment); *Methodist Hosp. of Ind., Inc. v. Ray*, 551 N.E.2d 463, 466 (Ind. Ct. App. 1990) (determining that an infestation of Legionnaire's Pneumonia virus, resulting in a patient's illness, was not a situation unique to hospitals); *Doe v. Madison Ctr. Hosp.*, 652 N.E.2d 101, 104-5 (Ind. Ct. App. 1995) (finding that an alleged sexual assault by a counselor was unrelated to the patient's health and that the claim "cannot be recast to speak in the language of medical malpractice").

Conversely, Indiana courts have upheld the applicability of the act when the challenged conduct or injury is strongly connected to the health care setting. The failure to obtain informed consent, a doctor's alleged fraudulent representations about an operation's risks, and a hospital's failure to provide adequate security of a patient have all been deemed conduct subject to the malpractice act. *See Van Sice*, 595 N.E.2d at 267 (holding that a battery claim based on a physician's alleged failure to obtain informed consent involved the rendition of professional services); *Keuster v. Inman*, 758 N.E.2d 96, 102 (Ind. Ct. App. 2001) (finding that proof of fraudulent statements by physician would be the quintessence of a medical malpractice case); *Ogle v. St. John's Hickey Mem'l Hosp.*, 473 N.E.2d 1055, 1059 (Ind. Ct. App. 1985) (holding that the malpractice act governed an alleged failure to protect a psychiatric patient from sexual assault because her confinement was integral to the diagnosis and treatment of her condition). As the Indiana Court of Appeals has noted, "[T]he question of whether a particular claim falls within the Act is extremely fact sensitive . . . ." *Winona Mem'l Found. of Indianapolis v. Lomax*, 465 N.E.2d 731, 740 n.1 (Ind. Ct. App. 1984).

In this case, the Valencias have alleged EMTALA violations that are intricately tied to the provision of health care or lack thereof. They maintain that St. Francis "failed to have in place standard medical screening procedures, protocols and policies" or that it failed to apply those procedures, protocols and policies in its treatment of Lorena. Compl. ¶¶ 23, 24. These complaints, that St. Francis did not provide an appropriate medical screening, cannot be divorced from the health care setting. The Valencias have not alleged, for example, that St. Francis had a business policy or practice of turning away indigent patients, a form of discriminatory conduct that could be characterized as neither salutary nor curative, nor unique to hospitals. As the Valencias have acknowledged in their pleading, Lorena was seen by the staff of St. Francis' emergency department. A physician noted that her "heart was beating over the precordium;" laboratory tests and x-ray tests were performed. Compl. ¶¶11, 12. In an EMTALA screening claim, the issue is whether the hospital uniformly provides "a screening examination reasonably calculated to identify critical medical conditions." *Magruder*, 243 F. Supp. 2d at 890. At the least, the Valencias must show that Lorena did not receive such care. Such proof falls squarely within Indiana's definition of malpractice: an injury stemming from health care that should have been provided.

The Valencias' other complaints allege that St. Francis failed to stabilize Lorena before attempting to transfer her and that it failed to follow EMTALA's procedural requirements attending that transfer attempt. Compl. ¶¶ 25-34. Stabilization also relates directly to the provision of health care. It is the treatment needed to prevent "the threatening and severe consequences" of the patient's emergency medical condition. *Barris*, 972 P.2d at 972 (quoting *Burditt v. U.S. Dep't of Health & Human Servs.*, 834 F.2d 1362, 1369 (5th Cir. 1991). Standing alone, St. Francis' failure to follow transfer protocols would not necessarily involve the provision of health care. However, it is difficult to see how such omission would lead

to injury absent some act involving the provision of health care. *See Winona Mem'l Hosp. v. Keuster*, 737 N.E.2d 824, 828 (Ind. Ct. App. 2000) (holding that a hospital's negligence in credentialing fell within the malpractice act because injury from that negligence would not have occurred absent some act of malpractice). Thus, these allegations also depend in substance on the health care that St. Francis provided or should have provided to Lorena. In sum, the Valencias' federal claims allege the sort of conduct that Indiana courts have consistently found to be subject to the Indiana Medical Malpractice Act. The act's limitations on damages apply to their EMTALA claims.

## IV. CONCLUSION

EMTALA does not prohibit the application of the Indiana Medical Malpractice Act's limits on recovery for a personal injury claim under EMTALA against a health care provider. Moreover, the state act's limitations on damages apply to the EMTALA claims that the Valencias have alleged. For the foregoing reasons, the Court **DENIES** the Valencias' motion for partial summary judgment and holds that the Indiana Medical Malpractice cap on damages applies.

IT IS SO ORDERED this 1st day of March, 2004.

LARRY J. MCKINNEY, CHIEF JUDGE
United States District Court
Southern District of Indiana

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