

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

YARITZA I. COLON-RAMOS, et al,

Plaintiffs,

v.

CLINICA SANTA ROSA, INC., et al.,

Defendants.

Civil No. 12-1222 (JAF)

**OPINION AND ORDER**

We must decide whether a covered medical provider violates the Emergency Medical Treatment and Active Labor Act (“EMTALA”) when its medical personnel fail to diagnose a patient’s potential emergency condition, but treats the symptoms identified and concludes that the patient has been stabilized.

**I.**

**Factual and Procedural History**

On June 23, 2010, Awilda Ramos-Ortiz visited the emergency room at Lafayette Hospital in Arroyo, Puerto Rico, complaining of body pain and fever. Lafayette performed several lab tests and eventually discharged Ramos-Ortiz. On June 25, 2010, Ramos-Ortiz returned to the Lafayette emergency room. After several hours, Ramos-Ortiz was again discharged—this time with a diagnosis of dengue-like symptoms.

On June 27, 2010, Ramos-Ortiz went to the emergency room at Santa Rosa Hospital in Guayama, Puerto Rico. Dr. Wilbert R. del-Valle-Rivera, a Santa Rosa emergency room doctor, examined Ramos-Ortiz and ordered several tests. Dr. del Valle noted that Ramos-Ortiz was reporting abdominal pain, headache, and general weakness. Dr. del Valle then diagnosed

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1 Ramos-Ortiz as having dengue-like symptoms, including fever and mild dehydration; neither  
2 he, nor any other Santa Rosa physician or employee, diagnosed Ramos-Ortiz as suffering from  
3 an emergency medical condition. Dr. del Valle administered several medications and saline, to  
4 replenish Ramos-Ortiz's fluids. A second doctor, Dr. Luis Rivera-Pomales, approved Ramos-  
5 Ortiz for discharge.

6 Two days later, Ramos-Ortiz visited the emergency room at Hospital Episcopal San  
7 Lucas, where doctors diagnosed her with acute coronary syndrome, but failed to note her  
8 dengue-like symptoms. Ramos-Ortiz's condition deteriorated rapidly, and she died under the  
9 care of Hospital Episcopal San Lucas.

10 On March 28, 2012, Plaintiffs, Ramos-Ortiz's daughters, filed a complaint against  
11 defendants Hospital Santa Rosa; Drs. del Valle-Rivera and Rivera-Pomales, and their conjugal  
12 partnerships; SIMED Insurance; Médicos Hospitalistas Sur Este, CSP (MHSE); Medicare y  
13 Mucho Más Healthcare, Inc. (MMM), and Medical Management Services Organization, Inc.  
14 (MMO), alleging that defendants violated the provisions of EMTALA, 42 U.S.C. § 1395dd, and  
15 various Commonwealth laws. (Docket No. 1.) On May 25, 2012, Defendants MMO and  
16 MMM filed a motion to dismiss the complaint. (Docket No. 27.) Plaintiffs replied. (Docket  
17 No. 33.) On June 1, 2012, Hospital Santa Rosa filed a cross-claim against all defendants.  
18 (Docket No. 29.) On October 17, 2012, Plaintiffs filed an amended complaint. (Docket No.  
19 69.) On November 28, 2012, MMM/MMO filed a motion to dismiss the amended complaint.  
20 (Docket No. 80.) We grant the motion to dismiss.

## 21 II.

### 22 Legal Standard

23  
24  
25 A plaintiff's complaint will survive a motion to dismiss if it alleges sufficient facts to  
26 establish a plausible claim for relief. See Fed.R.Civ.P. 12(b)(6); Ashcroft v. Iqbal, 556 U.S.

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1 662, 678 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). In assessing a  
2 claim's plausibility, the court must construe the complaint in the plaintiff's favor, accept all  
3 non-conclusory allegations as true, and draw any reasonable inferences in favor of plaintiff.  
4 San Geronimo Caribe Project, Inc. v. Acevedo-Vila, 687 F.3d 465, 471 (1st Cir. 2012) (citation  
5 omitted).

### 6 III.

#### 7 Discussion

##### 8 A. EMTALA Claims

11 Congress enacted EMTALA, commonly known as the "Patient Anti-Dumping Act," in  
12 response to the growing concern about the provision of adequate medical services to  
13 individuals, particularly the indigent and the uninsured, who seek care from hospital emergency  
14 rooms. Congress was concerned that hospitals were dumping patients who were unable to pay  
15 for care, either by refusing to provide emergency treatment to these patients, or by transferring  
16 the patients to other hospitals before the patients' conditions stabilized. See H.R.Rep. No. 241,  
17 99th Cong., 1st Sess., Part I, at 27 (1985), reprinted in 1986 U.S.Code Cong. & Admin. News  
18 579, 605 ("The Committee is greatly concerned about the increasing number of reports that  
19 hospital emergency rooms are refusing to treat patients with emergency conditions if the patient  
20 does not have medical insurance.").

21 "EMTALA does not apply to all healthcare facilities; it applies only to participating  
22 hospitals with emergency departments." Rodríguez v. American International Insurance Co.,  
23 402 F3d 45, 48 (1st Cir. 2005). Under EMTALA, "hospital" means an institution which:

24 (1) is primarily engaged in providing, by or under the supervision  
25 of physicians, to inpatients (A) diagnostic services and therapeutic  
26 services for medical diagnosis, treatment, and care of injured,

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1 disabled, or sick persons, or (B) rehabilitation services for the  
 2 rehabilitation of injured, disabled, or sick persons;  
 3 (7) [and,] in the case of an institution in any State in which State  
 4 or applicable local law provides for the licensing of hospitals, (A)  
 5 is licensed pursuant to such law or (B) is approved, by the agency  
 6 of such State or locality responsible for licensing hospitals, as  
 7 meeting the standards for such licensing . . . .  
 8

9 42 U.S.C. §1395x(e)(1) and (2).

10 EMTALA does not create a cause of action for medical malpractice. Correa v. Hosp.  
 11 San Francisco, 69 F.3d 1184, 1192 (1st Cir. 1995). “Congress deliberately left the  
 12 establishment of malpractice liability to state law....” Id.; see also Loaisiga Cruz v. Hosp. San  
 13 Juan Bautista, 681 F.Supp.2d 130, 135 n.2 (D.P.R. 2010) (“The Court notes that, even if  
 14 Plaintiff were to allege that the diagnosis of a fractured vertebrae was incorrect, such a mis-  
 15 diagnosis would not create a cause of action under EMTALA, but rather, would create a cause  
 16 of action under the applicable state malpractice law.”).

17 Instead, EMTALA is designed to assure that any person visiting a covered hospital’s  
 18 emergency room is screened for an emergency medical condition and is stabilized if such a  
 19 medical condition exists. del Carmen Guadalupe v. Negron Agosto, 299 F.3d 15, 19 (1st Cir.  
 20 2002). EMTALA, then, is “merely an entitlement to receive the same treatment that is  
 21 accorded to others similarly situated.” Kenyon v. Hosp. San Antonio, 2013 WL 210273  
 22 (D.P.R. January 17, 2013) (quoting Jones v. Wake County Hosp. Sys., Inc., 786 F.Supp. 538,  
 23 544 (E.D.N.C. 1991). “[I]nadequate screening or screening that leads to an incorrect  
 24 diagnosis” Kenyon, 2013 WL 210273 \*5 (citation omitted) forms the basis of malpractice  
 25 claims—not EMTALA claims. As such, while “a refusal to follow regular screening  
 26 procedures in a particular instance contravenes the statute, ... faulty screening, in a particular  
 27 case, as opposed to disparate screening or refusing to screen at all, does not contravene the

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1 statute.” Correa, 69 F.3d at 1192-93. “The essence of [the duty to screen]” under EMTALA is  
2 not that screening be administered perfectly, but “that there be some screening procedure, and  
3 that it be administered even-handedly.” Id.

4 The Plaintiffs concede that Ramos-Ortiz received an “adequate medical  
5 screening.” (Docket No. 69 at 11.) But Plaintiffs allege that Ramos-Ortiz’s stable condition at  
6 discharge was merely “a doctor’s note in her medical chart” and “not a true and accurate  
7 medical finding.” (Id. at 9.) This, however, does not constitute a claim under EMTALA. The  
8 duty to stabilize under EMTALA attaches after a hospital “determines that the individual has an  
9 emergency medical condition.” 42 U.S.C. § 1395dd(b)(1). “Thus, the plain language of the  
10 statute dictates a standard requiring actual knowledge of the emergency medical condition by  
11 the hospital staff.” Baber v. Hosp. Corp. of Am., 977 F.2d 872, 883 (4th Cir.  
12 1992); see also Eberhardt v. City of Los Angeles, 62 F.3d 1253, 1259 (9th Cir. 1995) (“As the  
13 text of the statute clearly states, the hospital’s duty to stabilize the patient does not arise until the  
14 hospital first detects an emergency medical condition.”); Brooks v. Maryland Gen. Hosp., Inc.,  
15 996 F.2d 708, 711 (4th Cir. 1993) (“EMTALA’s role [is] imposing on a hospital’s emergency  
16 room the duty to screen all patients as any paying patient would be screened and to stabilize any  
17 emergency condition *discovered*.” (emphasis added)); Alvarez v. Vera, 2006 WL 2847376 at \*6  
18 (D.P.R. Oct. 2, 2006) (“A hospital must have had actual knowledge of the individual’s  
19 unstabilized emergency condition if an EMTALA claim is to succeed.”). In other  
20 words, EMTALA “does not hold hospitals accountable for failing to stabilize conditions of  
21 which they are not aware, or even conditions of which they *should have been aware*.” Vickers  
22 v. Nash Gen. Hosp., Inc., 78 F.3d 139, 145 (4th Cir. 1996) (emphasis added).

23 Plaintiffs acknowledge in their amended complaint that Ramos-Ortiz was admitted,  
24 examined, and released on two separate visits to a different hospital facility only days before.

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1 (Docket No. 69 at 5.) Both hospitals treated her for dengue-like symptoms and released her,  
2 without determining that Ramos-Ortiz had any emergency condition. At the very least, these  
3 facts indicate that Hospital Santa Rosa did not know at the outset that Ramos-Ortiz had an  
4 ongoing or potential emergency condition. The fact that Clínica Santa Rosa also treated and  
5 released Ramos-Ortiz without uncovering any underlying emergency condition does not make  
6 an EMTALA claim; the clinic may have committed malpractice by failing to uncover an  
7 emergency condition, but such a failure to *diagnose* does not violate EMTALA. The clinic  
8 performed adequate screening, by Plaintiffs' own admission, and released Ramos-Ortiz in a  
9 stable condition, and that is all EMTALA requires. Plaintiffs have not alleged that the clinic  
10 failed to stabilize an emergency condition because the clinic did not find any emergency  
11 condition at all.

12 Plaintiffs argue that Ramos-Ortiz's discharge "without appropriate stabilization and no  
13 definitive care for her potentially lethal medical condition" (*Id.* at 11) violated EMTALA. But  
14 even if that allegation is true, there would only be an EMTALA violation if the clinic had  
15 discovered that Ramos-Ortiz suffered from an emergency medical condition. Here, Plaintiffs  
16 admit that the clinic screened and treated Ramos-Ortiz for the illness they diagnosed her to  
17 have. Therefore, with respect to Ramos-Ortiz's visit to Clínica Santa Rosa on June 27, 2010,  
18 Plaintiffs have failed to allege facts sufficient to establish a claim under EMTALA.

19 **B. Claims Against SIMED, MHSE, MMO, and MSO**

20 Plaintiffs concede in their complaint that neither SIMED, MMM nor MSO are hospitals  
21 under the language of EMTALA. (Docket No. 69 at 4.) There is no authority for the Plaintiffs'  
22 position that § 1395dd applies to insurance companies, HMO's, or similar health care plan  
23 providers. Based on legislative intent and the plain wording of § 1395dd, we conclude that no  
24 cause of action exists against SIMED, MMO, and MSO for violations of § 1395dd. The lack of

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1 this predicate is fatal and no federal jurisdiction ensues. The claims against SIMED, MHSE,  
 2 MMM, and MSO are **DISMISSED WITH PREJUDICE**.

3 **C. Claims Against Drs. Rivera-Pomales and del-Valle-Rivera, and their Conjugal**  
 4 **Partnerships**

5  
 6 Plaintiffs seek a private right of action against Drs. Rivera-Pomales and Wilbert del-  
 7 Valle-Rivera (and their conjugal partnerships) under EMTALA. It is generally accepted that  
 8 doctors are not liable under EMTALA. *See del Carmen Guadalupe*, 299 F.3d at 19 (1st Cir.  
 9 2002) (“While we have not decided the issue whether EMTALA provides a cause of action  
 10 against individual physicians, all circuits that have done so have found that it does not.”).  
 11 Because EMTALA does not allow private suits against physicians or other individual third  
 12 parties, Plaintiffs’ claims against the individually-named defendants are dismissed. *Lebron v.*  
 13 *Ashford Presbyterian Cmty. Hosp.*, 995 F.Supp. 241, 244 (D.P.R. 1998) (citing *Eberhardt*, 62  
 14 F.3d 1253 (9th Cir.1995); *Loaisiga v. Hospital San Juan Bautista*, 681 F.Supp.2d 130 (D.P.R.  
 15 2010); *King v. Ahrens*, 16 F.3d 265 (8th Cir.1994); *Delaney v. Cade*, 986 F.2d 387 (10th  
 16 Cir.1993); *Baber v. Hosp. Corp. of America*, 977 F.2d 872 (4<sup>th</sup> Cir.1992); *Gatewood v.*  
 17 *Washington Healthcare Corp.*, 933 F.2d 1037 (D.C.Cir.1991). Accordingly, we **DISMISS**  
 18 **WITH PREJUDICE** Plaintiffs’ federal claims against these individual Defendants, but  
 19 **DISMISS WITHOUT PREJUDICE** any Commonwealth law claims, such as medical  
 20 malpractice, which might be potentially implied.

21 **D. Puerto Rico Law Claims**

22 Federal courts may decline to exercise supplemental jurisdiction over a plaintiff’s state  
 23 law claims when the federal claims that gave it original jurisdiction are dismissed. *See* 28 USC  
 24 §1367 (c)(3); *Camelio v. Am. Fed’n*, 137 F3d 666, 672 (1st Cir. 1998). If all federal claims are  
 25 dismissed prior to trial, then the state law claims should be dismissed as well. *Rodriguez v.*

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1 Doral Mortg. Corp., 57 F3d 1168, 177 (1st Cir. 1990). Accordingly, we dismiss Plaintiffs'  
2 additional Commonwealth claims under Articles 1802 and 1803 of the Puerto Rico Civil Code.

3 **IV.**

4 **Conclusion**

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7 For the foregoing reasons, we hereby **GRANT** Defendants' motion to dismiss. (Docket  
8 No. 80.) As such, the cross-claim filed by Hospital Santa Rosa is **moot**. Plaintiffs' EMTALA  
9 claims against Hospital Santa Rosa, SIMED, MHSE, MMO, and MSO, Drs. Wilbert R. del-  
10 Valle-Rivera and Luis Rivera-Pomales, and their conjugal partnerships, are **DISMISSED**  
11 **WITH PREJUDICE**, while the claims under Puerto Rico law are **DISMISSED WITHOUT**  
12 **PREJUDICE**.

13 **IT IS SO ORDERED.**

14 San Juan, Puerto Rico, this 10<sup>th</sup> day of April, 2013.

15 s/José Antonio Fusté  
16 JOSE ANTONIO FUSTE  
17 Chief U.S. District Judge