

2009-2010

NATIONAL HEALTH LAW
MOOT COURT COMPETITION

Transcript of Record
Docket No. 09-312

SUPREME COURT OF THE UNITED STATES

October Term, 2009

Salvatore Bonno, as Guardian of the person of Cher Sarkis,

Petitioner

v.

New Auburn University Medical Center, *et. al*,

Respondents

SPONSORS:

Southern Illinois University School of Law

Southern Illinois University School of Medicine, Department of Medical Humanities

American College of Legal Medicine

American College of Legal Medicine Foundation

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NEW AUBURN**

Salvatore Bonno, as Guardian of the person of)	
Cher Sarkis,)	
Plaintiff,)	
)	Civ. No. 08-1356
v.)	
)	
New Auburn University Medical Center, and)	
Dr. Tara Hensley, personally and in her)	
capacity as Administrator of the New Auburn)	
University Medical Center,)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

HUGH JACKSON, District Judge.

Plaintiff Salvatore Bonno, legally appointed guardian of Cher Sarkis, filed a complaint in Burns County District Court, New Auburn, on October 1, 2008, against New Auburn University Medical Center (“Medical Center”) and Dr. Tara Hensley in conjunction with Defendants’ treatment of Ms. Sarkis at the Medical Center. The state complaint alleged in count I that both the Medical Center and Dr. Hensley failed to meet the requisite standard of care imposed upon them by state law, and requested monetary damages and equitable relief as provided under the New Auburn Tort Claims Act, N.A. Stat. § 1302-5(d) (2008). The complaint further alleged in count II that Dr. Hensley, in her individual capacity as Administrator of the Medical Center, was liable under 42 U.S.C. § 1983 for violating Ms. Sarkis’ rights under the Fourteenth Amendment to the United States Constitution and sought monetary damages for this violation.

At Dr. Hensley’s request, based on her intention to assert qualified immunity to the section 1983 claim, the Medical Center agreed to remove the complaint to this Court on October 9, 2008. On October 10, 2008, Plaintiff amended his complaint as a matter of course under Fed. R. Civ. P. 15(a) to eliminate the Fourteenth Amendment claim against Dr. Hensley in her individual capacity and substitute a new count against both the Medical Center and Dr. Hensley in her official capacity as Administrator, alleging violation of Emergency Medical Treatment and Active Labor Act (“EMTALA”), 42 U.S.C. § 1395dd. This new count II sought prospective relief preventing the Medical Center from discharging Sarkis. On October 20, 2008, Defendants Hensley and the Medical Center moved to dismiss the EMTALA claim on the grounds that the Medical Center, as an instrumentality of the State of New Auburn, is immune from suit in federal court on this claim under the Eleventh Amendment to the United States Constitution. Defendants further moved for summary judgment under Fed. R. Civ. P. 56, asserting they are entitled to dismissal of count II as a matter of law.

For the reasons set forth below, Defendants’ motion to dismiss based on Eleventh Amendment immunity is denied, but the motion for partial summary judgment is granted.

I. FACTS

The following facts have been stipulated by the parties. Cher Sarkis is currently a patient at the Medical Center, where she has been since August 30, 2008. Sarkis came to this country from the country of Erminia on a visitor visa in 2003. She was brought over by a man named Gerald Sahn, who held her out as his wife. Sarkis was known to her friends and neighbors as “Sherry Sahn”. Sarkis and Sahn never legally married, and Sarkis did not legally extend her visa when it expired.

On the evening of August 29, 2008, Sarkis was driving back to her home in a golf cart which she used when visiting close neighbors. A man named Paul Herman, who was driving drunk at a high rate of speed, crashed into her, critically injuring her. She was immediately transported to the Medical Center emergency room, where she received treatment. The next day, she was admitted as an inpatient.

Sarkis suffered severe brain injuries from the accident and was unable to communicate. After her inpatient admission, the Medical Center determined that “Sherry Sahn” was indeed not the legal wife of Gerald Sahn. Through Plaintiff, Salvatore Bonno, a distant cousin of Ms. Sarkis who is a United States citizen, the Medical Center was able to determine that her real name was Cher Sarkis, and that she was from Erminia. She had one child, Furtz, who lived with her mother in West Anterin, Erminia.

Because of the severity of the injuries and the escalating costs, Mr. Sahn deserted Ms. Sarkis, and her cousin, Plaintiff Bonno, was appointed her legal guardian. The Medical Center amassed a bill of nearly \$250,000 caring for Ms. Sarkis during the three weeks subsequent to her inpatient admission. Concerned about the financial burden of this uninsured patient, and believing that Medicaid would not reimburse it for non-emergency room expenses,¹ Dr. Hensley located a private company called Foreign Air, which transports immigrants back to their home country without the cooperation or assistance of the United States immigration authorities. Foreign Air agreed to “repatriate” Ms. Sarkis back to Ermenia for \$25,000. Believing that the transfer was in the best interest of the Hospital and Ms. Sarkis, Dr. Hensley arranged for the Medical Center to cover the charge. She then located a facility, Anterin Hospital in West Anterin, that agreed to accept Ms. Sarkis as a patient. Dr. Arthur Porter, the neurosurgeon who had been caring for Ms. Sarkis, gave his approval for her to be transferred back to Erminia. Plaintiff, however, objected to the transfer, concerned that she would not receive adequate care in Erminia.

¹ See 42 U.S.C. § 1396(b). The courts are actually in conflict as to the extent of care available to illegal immigrants under the Medicaid program. See *generally* Sean Elliott, *Staying within the Lines: The Question of Post-Stabilization Treatment for Illegal Immigrants under Emergency Medicaid*, 24 J. Contemp. Health L. & Pol’y 149 (2007).

Erminia, a developing country in Eastern Europe, has been characterized by the World Health Organization (“WHO”) as having less than adequate basic health care. Primary health care, says WHO, is often unavailable and rehabilitative care is reserved only for the wealthiest residents of Erminia who can pay for their care. While sanitary, Anterin Hospital operates on a “shoestring” budget and does not have state-of-the-art facilities to support brain injuries such as the one Ms. Sarkis suffered.

Dr. Hensley dismissed the guardian’s concerns, indicating she believed the facility it had located was appropriate. She further indicated the Medical Center had no obligation to continue to provide treatment to Ms. Sarkis and intended to proceed with the discharge plan.

Plaintiff then filed a two count complaint against the Medical Center and the Medical Center’s Administrator, Dr. Tara Hensley, alleging that (1) Dr. Hensley and the Medical Center had failed and were failing to meet the requisite professional standard of care they owed patient Sarkis under New Auburn law, and (2) Dr. Hensley’s actions violated Sarkis’ liberty and due process rights under the Fourteenth Amendment to the United States Constitution. On both counts, Plaintiff sought monetary and equitable relief. After Defendants removed the case to this Court, Plaintiff amended the complaint as of right to substitute as count II a claim alleging the Medical Center and Dr. Hensley had not fulfilled the Medical Center’s obligation to stabilize Sarkis under EMTALA. Count II now seeks declaratory relief as to Defendants’ on-going obligations under that statute.

Defendants filed a motion to dismiss the EMTALA claim for lack of jurisdiction in this Court. Defendants asserted that Congress had not abrogated states’ immunity from suit under the Eleventh Amendment to the United States Constitution, and the Medical Center did not consent to having this claim against it heard in federal court.² Concurrently, Defendants moved for summary judgment on count II, asserting that as a matter of law, they fulfilled their EMTALA obligations when Ms. Sarkis was admitted to the Medical Center as an inpatient.³

Finding that the Medical Center’s joining in the removal of the original complaint to federal court amounted to a waiver-by-removal of any Eleventh Amendment immunity from suit, this Court DENIES the motion to dismiss count II. Finding that EMTALA’s stabilization requirement applies only to care received in the emergency room, and that Defendants had no further obligation under EMTALA when they admitted Ms. Sarkis as an inpatient, this Court GRANTS the motion for partial summary judgment and dismisses count II on this ground.

² The parties have stipulated that the Medical Center is an arm of the State of New Auburn and, therefore, may assert the State’s Eleventh Amendment immunity.

³ The merits of the pending state law claim have not been raised in either motion and are not affected by this decision.

II. ANALYSIS

In 1986, Congress enacted EMTALA to prevent hospitals from “dumping” patients unable to pay “by either refusing to provide emergency medical treatment or transferring patients before their conditions were stabilized.” *Eberhardt v. City of Los Angeles*, 62 F.3d 1253, 1255 (9th Cir. 1995). EMTALA is a federal statute that is designed to ensure that any person who comes to a hospital which receives federal funds is: (1) screened for an emergency medical condition, and (2) stabilized if such a condition exists. *del Carmen Guadalupe v. Negron-Agosto*, 299 F.3d 15, 19 (1st Cir. 2002). EMTALA expressly provides that “[a]ny individual who suffers personal harm as a direct result of a participating hospital’s violation of a requirement of this section may, in a civil action against the participating hospital, obtain . . . such equitable relief as appropriate. 42 U.S.C. 1395dd(d)(2)(A) (2006). EMTALA does not guarantee that all patients are properly diagnosed or ensure that they receive adequate care. Rather, it provides “an ‘adequate first response to a medical crisis’ for all patients” regardless of wealth or status. *Baber v. Hospital Corp. of America*, 977 F.2d 872, 880 (4th Cir. 1992) (quoting 131 Cong. Rec. S13904 (Oct. 23, 1985) (statement of Sen. Durenberger)).

The Eleventh Amendment explicitly bars federal suits against the individual states. U.S. Const. amend XI. Congress can abrogate a state’s immunity in certain circumstances, or a state can consent to being sued in federal court. *College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 670 (1999). All courts to consider the issue have held that Congress did not expressly abrogate states’ Eleventh Amendment immunity when it passed EMTALA. *See, e.g., Crisp v. Univ. of Texas Med. Branch*, 2006 WL 1492378, at *2 (noting “every court to [have ruled]” found no abrogation). The question that arises in this case is whether the Medical Center consented to the EMTALA claim being heard in a federal forum when it removed the original complaint to this Court. I find that it did.

The Supreme Court recently endorsed the “waiver-by-removal” rule in *Lapides v. Bd. of Regents of the Univ. Sys. of Georgia*, 535 U.S. 613 (2002). In that case, the Court held that a state university waived its Eleventh Amendment immunity from suit regarding a state law claim brought against it when it removed the complaint containing that claim to federal court. *Id.* at 624. The state had waived its sovereign immunity from suit in state court, and the Supreme Court held that the state’s voluntary act of removing the case to federal court was sufficient consent to having the claim heard in that forum.⁴ *See id.* at 616, 624. Although this case offers the additional wrinkle that the federal statutory claim was not added to the complaint until after the removal, I find the reasoning of the Ninth Circuit in *Embury v. King*, 361 F.3d 562 (9th Cir. 2004), persuasive on this issue. It makes no sense that the state consented to having a state law claim considered in federal court, over which the court would have no jurisdiction but for the state’s act of invoking this forum, but now objects to having this court consider a federal law

⁴ As in *Lapides*, the state in this case has statutorily waived its sovereign immunity from tort liability.

claim. This is especially true given that the original complaint included a federal constitutional claim, namely count II seeking declaratory relief against Dr. Hensley in her official capacity.

For this reason, I deny Defendants' motion to dismiss on the grounds of immunity from suit.

The merits of the EMTALA claim are a different matter, however. Plaintiff alleges that the Medical Center failed to stabilize Ms. Sarkis before seeking to discharge her. Consideration of this issue requires close examination of the EMTALA statute.

EMTALA defines an "emergency medical condition" in relevant part as

(A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in--

- (i)** placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,
- (ii)** serious impairment to bodily functions, or
- (iii)** serious dysfunction of any bodily organ or part[.]

42 U.S.C. § 1395dd(e)(1) (2006). Federal regulations further define an "emergency medical condition" as not only a physical condition of severe pain, but also a psychiatric disturbance. 42 C.F.R. §489.24(b)(1). A patient presenting with psychiatric symptoms is deemed to be stable when he is no longer thought to be a threat to himself or to anyone else. *Thomas v. Christ Hosp. and Med. Ctr.*, 328 F.3d 890, 895 (7th Cir. 2003).

EMTALA requires a hospital to screen any individual for an emergency medical condition when the person is admitted to its emergency room seeking treatment. 42 U.S.C. § 1395dd(a). The hospital must apply the same screening procedures to indigent patients as it applies to paying patients. *Holcomb v. Monahan*, 30 F.3d 116, 117 (11th Cir. 1994). The screening must be an appropriate medical screening within the capability of that emergency department. *Jackson v. E. Bay Hosp.*, 246 F.3d 1248, 1254 (9th Cir. 2001).

In addition to the screening requirement, EMTALA requires hospitals to stabilize patients suffering from an emergency medical condition before discharge or transfer to another facility. *Torres Otero v. Hosp. Gen. Menonita*, 115 F. Supp. 2d 253, 259 (D.P.R. 2000). EMTALA defines "stabilize" as "such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility." 42 U.S.C. § 1395dd(e)(3)(A). In determining whether the patient has been stabilized, "the fact-finder must

consider whether the medical treatment and subsequent release were reasonable in view of the circumstances that existed at the time the hospital discharged or transferred the individual.” *Torres Otero*, 115 F. Supp. 2d. at 259. The focus is not “on the result of the plaintiff’s condition after the release, but rather on whether the hospital would have considered another patient in the same condition as too unstable to warrant his or her release or transfer.” *Id.* at 259-60. Pursuant to EMTALA, a violation arises when a hospital either (1) fails to properly screen a patient, or (2) releases or transfers a patient without first stabilizing his or her emergency medical condition. *See Harry v. Marchant*, 291 F.3d 767, 770 (11th Cir. 2002) (*en banc*).

Defendants argue that their obligations under EMTALA ended when they admitted Ms. Sarkis to the hospital as an inpatient on August 30, 2008. Further, Defendants argue that plaintiff is stable enough for transfer, and that even if she were not stable, she can be properly transferred under the EMTALA safeguards. Plaintiff counters that Ms. Sarkis is being “dumped” due to her inability to pay for her care and that defendant has failed and continues to fail to comply with the EMTALA requirements.

Under EMTALA, the duty to stabilize is the duty “to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility. . . .” *Torres Otero*, 115 F. Supp. 2d at 259. Plaintiff alleges that Ms. Sarkis’s medical condition has actually deteriorated during this dispute about her transfer. During the days just prior to this suit being filed, she suffered a series of seizures that after two or three days were brought under control by medication. Plaintiff alleges that any changes in her treatment situation may trigger similar episodes. This would present a question of fact otherwise sufficient to preclude summary judgment, if the Medical Center has a continuing EMTALA obligation.

However, that factual issue need not be addressed because Defendants’ EMTALA obligations ended upon Ms. Sarkis’s admission to the Hospital as an inpatient. This holding is consistent with other circuits. *See e.g., Bryan v. Rectors and Visitors of the Univ. of Virginia*, 95 F.3d 349, 352 (4th Cir. 1996) (finding the EMTALA stabilization obligation satisfied by inpatient admission). Additionally, the agency responsible for implementing EMTALA, the Centers for Medicare and Medicaid Services (“CMS”), promulgated a rule which supports a finding in favor of defendant. According to the CMS regulation, “[i]f a hospital has screened an individual under paragraph (a) of this section and found the individual to have an emergency medical condition, and admits that individual as an inpatient in good faith in order to stabilize the emergency medical condition, the hospital has satisfied its special responsibilities under this section with respect to that individual.” 42 C.F.R. § 489.24(d)(2)(i).

At the time the Medical Center sought to transfer her, Ms. Sarkis had been a patient at the Medical Center for three weeks amassing a bill of almost \$250,000.⁵ Without question, this was not patient dumping and the Medical Center admitted her in good faith to stabilize her medical condition – and that was all that was required under EMTALA. While I note plaintiff’s reliance upon dicta in *Thornton v. Sw. Detroit Hosp.*, 895 F.2d 1131 (6th Cir. 1990), I am not persuaded by that court’s rationale in light of decisions such as *Bryan* from the Fourth Circuit. Thus, plaintiff’s allegations regarding Ms. Sarkis’s stability or the appropriateness of the transfer are issues that this Court need not decide.

III. CONCLUSION

Defendants’ motion for dismissal of count II on Eleventh Amendment grounds is **DENIED** but its motion for partial summary judgment is **GRANTED**. The only remaining claims in the amended complaint raise issues of state law. Because of the early stage of litigation, I find no reason for this Court to retain jurisdiction over the supplemental state claims, and I also dismiss count I without prejudice.

SO ORDERED

Date: November 2, 2008

 /s/ Hugh Jackson
District Judge

⁵ Sarkis remains in the Medical Center pending resolution of this matter, presumably incurring additional expense for which the Medical Center will not be compensated.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT**

No. 00-1231

**Salvatore Bonno, as Guardian
of the person of Cher Sarkis,**

Plaintiff-Appellant/Cross-Appellee

v.

**New Auburn University
Medical Center, et. al**

Defendant-Appellees/Cross-Appellants

Appeal from the United States District Court for the Middle District of New Auburn
And No. 07-1356 – Herbert Jackson, District Judge

Argued February 20, 2009 – Filed April 5, 2009

Before HATCHETT, CHIEF JUDGE, DUNCAN, BROUSSARD, Circuit Judges.

BROUSSARD, Circuit Judge. This action comes before the court on cross-appeals of the district court's denial of Appellees/Cross-Appellants New Auburn University Medical Center and Dr. Tara Hensley's motion to dismiss because of Eleventh Amendment immunity from suit and grant of partial summary judgment dismissing count II of Appellant/Cross-Appellee Salvatore Bonno's complaint. Because the District Court also dismissed the supplemental state law claims, there are no further matters pending before that court and this matter is properly before us as a final judgment.

In October 2008, Salvatore Bonno, legal guardian of Cher Sarkis, an incapacitated individual, filed a lawsuit against New Auburn Medical Center ("Medical Center") and Dr. Tara Hensley, Administrator of the Medical Center, in New Auburn state court, alleging state law and federal constitutional claims. Defendants removed the case to the United States District Court for the Middle District of New Auburn, at which time Bonno filed an amended complaint, substituting a claim for injunctive relief under the Emergency Medical Treatment and Active Labor Act ("EMTALA"), 42 U.S.C. § 1395dd against the Medical Center and Dr. Hensley for what had been a Fourteenth Amendment claim against Dr. Hensley only in her individual

capacity. The Medical Center and Dr. Hensley moved to have the EMTALA claim dismissed, first on the grounds that the Medical Center was immune from suit in federal court under the Eleventh Amendment, and second on the grounds there was no EMTALA liability as a matter of law. The District Court denied the Eleventh Amendment motion but granted the motion for partial summary judgment on the EMTALA claim.

I. Background

On August 29, 2008, a drunk driver hit and critically injured Cher Sarkis, at the time known as Sherry Sahn. Ms. Sarkis was transported to the Medical Center's emergency room. She suffered severe brain injuries from the accident and was not able to communicate. The Medical Center admitted her as an inpatient on August 30th, at which time it determined that she was an illegal immigrant. Because she was abandoned by the man with whom she lived (and presented herself as his wife), a distant cousin who is a United States citizen, Salvatore Bonno, was located and appointed her legal guardian.

After caring for Ms. Sarkis for nearly three weeks and amassing costly expenses for which it would not be compensated, the Medical Center arranged to have her transported back to her home country of Erminia upon the approval of the physician who had been in charge of her care at the Hospital. Bonno, as her legal guardian, objected to this arrangement but the Medical Center sought to proceed with it anyway. While the two parties disputed over whether she should be discharged and transported to Erminia, Ms. Sarkis experienced a series of seizures that were subsequently brought under control with medication. Bonno then initiated these legal proceedings and now seeks to enjoin the Medical Center and Dr. Hensley from carrying out its plans to discharge her.¹

II. Discussion

The District Court found that the Medical Center had waived its Eleventh Amendment immunity from suit on the EMTALA claim when it joined in removing the original complaint from state to federal court. The District Court, however, granted summary judgment on the EMTALA claim, finding that the Medical Center's obligations under that statute ceased when it in good faith admitted Ms. Sarkis as an inpatient. We uphold dismissal of count II of the Appellant/Cross-Appellee's complaint, but on other grounds, namely that the Medical Center did not waive its Eleventh Amendment immunity from suit. Because we find for the Appellants/Cross-Appellees on the Eleventh Amendment issue, we do not have to address the merits of the District Court's interpretation of EMTALA.

States have Eleventh Amendment immunity from suit in federal courts as a general rule. This immunity can be abrogated by Congress in certain circumstances, but Congress has not

¹ Bonno also sought monetary damages on the state law claim, which is not at issue on this appeal.

chosen to take this route with EMTALA. Abrogation can be found in this case only if the State somehow consented to having the federal statutory claim litigated in federal court.

The United States Supreme Court recently found that a state had waived its Eleventh Amendment immunity when it removed a state law claim (for which it had waived its sovereign immunity in state courts) to federal court. *Lapides v. Bd. of Regents of the Univ. Sys. of Georgia*, 535 U.S. 613 (2002). The Court in *Lapides*, however, explicitly stated that it was not deciding whether removal of a federal claim (or a state law claim where there had been no waiver of sovereign immunity) resulted in a similar conclusion. *Id.* at 617-18. The District Court found persuasive the Ninth Circuit's broad interpretation of *Lapides*. See *Embury v. King*, 361 F.3d 562, 564-65 (9th Cir. 2004) (finding that nothing in *Lapides* supports limiting it to state law claims or to claims asserted prior to amendment of a complaint). We disagree with the Ninth Circuit. The Supreme Court's main concern in *Lapides* was that a state was seeking to regain an immunity that it had already given up by waiving immunity in state court. See *Lapides*, 535 U.S. at 619. The same is not true in this case, where there is no indication the State had waived its immunity from suit in EMTALA claims prior to removal of the claim.

Further, the facts in *Embury* are different, with a procedural history in which it appears the state was engaging in "gamesmanship" after litigating the case for several months. *Embury*, 361 F.3d at 563-64. We find no similar concerns in this case; just the opposite. The Medical Center did not have prior notice of the EMTALA claim and sought to have it dismissed at its first opportunity.

III. Conclusion

Based on the foregoing, we affirm the District Court's dismissal of count II of Appellant/Cross-Respondent Bonno's complaint.

AFFIRMED.

HATCHETT, Chief Judge, dissenting in part.

I write to express my dissent with respect to the Court's ruling on the motion to dismiss on Eleventh Amendment grounds. I would find that the Medical Center waived its Eleventh Amendment immunity from suit as to the entire claim when it removed the case to federal court. I believe the District Court properly interpreted *Lapides* as broadly establishing a waiver-by-removal rule as to any and all claims that might be brought in a federal forum.

Finding no Eleventh Amendment immunity, I would then address the substance of the motion for partial summary judgment. On this issue, I believe the District Court was incorrect. EMTALA obligations do not end because a patient is admitted to the hospital as an inpatient. Hospitals would simply admit indigent patients for one day then dump them if this were so,

thereby completely circumventing the purpose of EMTALA. There is sound support for my position. *Thorton v. Sw. Detroit Hosp.*, 895 F.2d 1131 (6th Cir. 1990).

Thorton based its reasoning on the legislative history of EMTALA – to prevent hospitals from “dumping” patients with emergency medical conditions. *See id.* at 1134. Our country’s hospitals used to provide emergency aid as a tradition, but this has long been abandoned due to the rising costs of health care and a growing immigrant population. Nevertheless, emergency medical aid to indigents is still needed. I am not willing to overlook the avowed purpose of this important legislation – to restore our tradition of aiding the poor in medical emergencies. Nor am I willing to give more deference to the Centers for Medicare and Medicaid Services’ (“CMS”) regulation upon which defendant relied. The disputed statutory language is not ambiguous, and I do not believe *Chevron* deference requires us to accept the implausible and unintended construction advanced by CMS. *See Chevron U.S.A. Inc. v. Natural Resources Def. Council, Inc.*, 467 U.S. 837 (1984). For the foregoing reasons, I respectfully dissent.

No. 09-312

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2009

Salvatore Bonno, as Guardian of the person of Cher Sarkis,

Petitioner

V.

New Auburn University Medical Center, *et. al*

Respondents

ORDER GRANTING CERTIORARI

Upon consideration of the Petition for Certiorari, the Court hereby GRANTS the petition as to the following issues:

1. Whether Respondent New Auburn University Medical Center waived its Eleventh Amendment immunity from suit for claims arising under 42 U.S.C. § 1395dd when it removed this matter to federal court.
2. Whether Respondents' obligations under 42 U.S.C. § 1395dd ended upon the patient's admission to the hospital as an inpatient.

IT IS SO ORDERED.

Date: June 26, 2009