

**2001-2002**

**NATIONAL HEALTH LAW  
MOOT COURT COMPETITION**

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Transcript of Record  
Docket No. 01-258

SUPREME COURT OF THE UNITED STATES

October Term, 2001

**JANICE OWENS,**

**Petitioner and Cross Respondent,**

**v.**

**CADUCEUS HEALTHCARE CORP.,**

**Respondent and Cross Petitioner.**

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*SPONSORS:*

*Southern Illinois University School of Law*

*Southern Illinois University School of Medicine,  
Department of Medical Humanities*

*American College of Legal Medicine*

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE SOUTHERN DISTRICT OF PACIFICA**

<b>JANICE OWENS, individually</b>	)	
<b>and as Administrator of the</b>	)	
<b>Estate of Kristen Owens, a</b>	)	
<b>minor, deceased,</b>	)	<b>Civil No. 99-C-1135</b>
	)	
<b>Plaintiff,</b>	)	
<b>v.</b>	)	
	)	
<b>CADUCEUS HEALTHCARE</b>	)	
<b>CORP., a not for profit corporation,</b>	)	
	)	
<b>Defendant.</b>		

**MEMORANDUM OPINION AND ORDER**

**SARAH JENNINGS, District Judge.**

This case is before the court on the motion of the defendant, Caduceus Healthcare Corporation (Caduceus), for summary judgment under Fed. Rules Civ. Pro. Rule 56. For the reasons set forth below, the motion is granted.

**I. FACTS**

The following facts are derived from affidavits, depositions, and interrogatories filed in connection with the motion for summary judgment. They are not in dispute.

On February 10, 1998, at 10:00 a.m. plaintiff Janice Owens (Owens) was driving to the grocery store in the City of Glendale, Pacifica. At the time she was 30 weeks pregnant. As she drove along, another driver failed to properly stop at an intersection resulting in a collision with Owens' car. Officer Ron Jackson of the Glendale Police Department was called to the scene. When he arrived he assessed the physical condition of the drivers, who appeared uninjured and then began to interview both concerning the accident as part of the standard police reporting process.

As Officer Jackson was interviewing Ms. Owens, she said she felt "faint." She did not lose consciousness, but she was, according to Officer Jackson, "very pale and clammy." Owens also told Jackson that "she didn't feel well" and that she wanted to "see a doctor right away."

Jackson immediately placed Ms. Owens in his squad car and proceeded towards Glendale Medical Center (Medical Center), a general, acute care hospital owned and operated by the defendant, Caduceus Healthcare Corporation, approximately three miles away. While en route,

Jackson radioed the emergency room at the Medical Center to alert it to the situation. Dr. Lawrence Sawyer was the physician on duty in the Medical Center's emergency room at the time. Jackson spoke directly by radio with Dr. Sawyer and provided the following information: that Owens was 30 weeks pregnant, had been in a minor auto accident, felt faint and was pale, and wanted to promptly see a physician. Dr. Sawyer asked Jackson to check with Owens as to who her regular physician was and where she was planning to deliver her baby. Owens told Jackson her physician was Dr. John McGrath and that she had intended to deliver the baby at St. Benedict's Hospital.<sup>1</sup> St. Benedict's Hospital is also located in Glendale about 10 miles from the location of the squad car at the time and near Owens' home. Dr. Sawyer told Jackson that "things are pretty busy here right now" and that he thought, "it would be okay to take her [Owens] to St. Benedict's where she can be seen by Dr. McGrath." Jackson relayed this information to Owens, who did not respond. Officer Jackson then proceeded without delay to St. Benedict's Hospital.

When Owens and Jackson arrived at St. Benedict's Hospital, Owens was seen in the emergency room. There, she reported generalized dull abdominal pain and feeling faint. According to the St. Benedict's medical records, her mental status at this time was "not clear." On examination, Owens was found to have significant red-tinged spotting. In response, an ultrasound was planned to assist in determining the etiology and extent of potential bleeding. As Owens was being prepared for ultrasound, she went into acute distress, began to bleed profusely, and then went into shock. She was immediately taken to surgery. Although the surgeons saved Owens, her child Kristen, who had been delivered at surgery through Cesarean section, died within an hour of delivery.

In her deposition, Dr. Elizabeth Murphy, the director of the emergency room at the Medical Center stated that "whenever and however a pregnant woman comes to our ER with a problem—whether by car, ambulance, bicycle or whatever—we always see them and provide the necessary care." She went on to say "The circumstances of this case were unusual to say the least—even unique. Dr. Sawyer just thought this was the right way to go, that everything would be alright."

On behalf of herself and as administrator of her daughter's estate, Owens timely filed suit against the Caduceus in this court alleging a violation of the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. §1395dd. In Count I of her complaint Owens alleges a violation of §1395dd(a) for failure to provide "an appropriate medical screening examination" to determine whether she was experiencing "an emergency medical condition" as defined in §1395dd(e)(1). Count II of the complaint alleges that Caduceus violated §1395dd(b)(1); that Owens came to the Medical Center with an "emergency medical condition" and was not provided care and treatment to "stabilize the medical condition" as defined in §1395dd(e)(3)(A), but rather was transferred to St. Benedict's in violation of §1395dd(c). Owens seeks general and special damages, together with fees and costs. This matter is now before the court on Caduceus' motion for summary judgment.

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<sup>1</sup> It appears that Dr. McGrath, a family physician, has staff privileges at St. Benedict's but not at the Glendale Medical Center.

Initially, Caduceus contends that summary judgment is appropriate because the uncontradicted facts demonstrate that the plaintiff did not “come to” the Medical Center or its emergency room as required under §1395dd(a) and (b) in order to state a claim. Further, Caduceus argues that plaintiff’s claim under §1395(a) must fail because there is no evidence to show that there was any “improper motive” in the way Owens was treated, even if she was treated differently than others. Absent evidence of an “improper motive,” Caduceus argues there can be no claim under this statutory section.

Additionally, Caduceus asserts that summary judgment must be granted due to plaintiff’s failure to comply with 17 Pac. Rev. Stat. §1015. Section 1015 provides in relevant part as follows:

- (A) No action, whether in tort, contract, or otherwise, in which a person seeks damages for personal injuries or death resulting from the provision of medical services by a physician, hospital, or other health care provider, may be filed unless, (1) a written notice setting forth the nature of the person’s claim shall have been served upon the health care provider within 180 days of the date of the injury that is the subject of the claim, and (2) at least 120 days shall have elapsed since the service of such notice prior to the filing of such action.
- (B) For good cause shown, a court may extend the 180 day notice of claim period within its sound discretion, provided however that lack of awareness of the notice of claim requirement hereunder shall not be deemed to be good cause.
- (C) In the event of an extension of the notice of claim period as provided for in (B) the applicable statute of limitations shall be tolled during the 120 day period required under (A) if necessary.

Caduceus contends that compliance with the requirements of §1015 is a prerequisite to a suit for damages against a hospital and therefore is part of state law to be applied under §1395dd(d)(2)(A).

Plaintiff, in opposition, contends that summary judgment should be denied. Owens argues that she did “come to” the Medical Center and its emergency room within the meaning of §1395dd(a) and (b) given that she was being transported in a police vehicle to the Medical Center, that Officer Jackson was in radio contact with the emergency room, and that a request for treatment had been made to the Medical Center.

Further, Owens asserts that under EMTALA §1395dd(a) there is no requirement that she show an “improper motive” for the Medical Center’s failure to provide her with an “appropriate medical screening examination” and that there is a genuine issue of material fact as to whether she was treated disparately under these circumstances.

Finally, Owens contends that the Pacifica Notice of Claim statute does not apply to EMTALA claims. In written interrogatories, Owens conceded that she served no notice on Caduceus and did not ask for an extension of the Notice of Claim period. In her deposition Owens

explains that she was unaware of the Notice of Claims requirement and did not consult an attorney until nearly a year after the incident involved here. However, Owens argues that §1015 establishes a procedural requirement applicable only to medical malpractice claims under state law and not to federal statutory claims such as EMTALA. Additionally, she asserts that application of the Pacifica Notice of Claim statute directly conflicts with EMTALA and is thus preempted under §1395dd(f).

## II. ANALYSIS

Congress enacted EMTALA as part of the Consolidated Omnibus Budget Reconciliation Act of 1986. It was passed in response to the growing problem of so called “patient dumping” by hospitals; that is, hospitals either refusing emergency treatment or transferring emergency patients inappropriately due to their lack of insurance or other means to pay for care. *Eberhardt v. City of Los Angeles*, 62 F.2d 1253, 1255 (9<sup>th</sup> Cir. 1995). However, EMTALA protects all patients seeking emergency treatment, regardless of their ability to pay or insurance status. Further, it applies to all hospitals participating in the Medicare program including the Medical Center.

EMTALA places two fundamental obligations on hospitals. First, hospitals must provide “an appropriate medical screening examination” for any patient who “comes to” the hospital’s emergency room “to determine whether or not an emergency medical condition” exists. 42 U.S.C. §1395dd(a). Second, hospitals must provide, to any patient who “comes to” the hospital with an emergency medical condition, the care needed to “stabilize the medical condition” before transferring or discharging the patient. *Id.* §1395dd(b)(1)(A).

Personal harm resulting from a violation of these fundamental obligations is remediable through a court action against the hospital for “those damages available for personal harm under the law of the state in which the hospital is located . . . .” *Id.* §1395dd(d)(2)(A). Such civil actions involve a federal question and therefore federal courts have jurisdiction. *Thornton v. Southwest Detroit Hosp.*, 895 F.2d 1131, 1133 (6<sup>th</sup> Cir. 1990).

EMTALA, however, is not a substitute for state medical malpractice law. As stated in *Power v. Arlington Hosp. Ass’n.*, 42 F.3d 851, 856 (4<sup>th</sup> Cir. 1994), EMTALA “was not intended to guarantee proper diagnosis or to provide a federal remedy for misdiagnosis or medical negligence.” Rather, it was designed to fill a gap in state law by ensuring that all persons needing hospital emergency care will receive such care on an equal basis.

### a. *EMTALA Requirements.*

A hospital’s duties to provide a medical screening examination and, if necessary, to stabilize a patient, under EMTALA only arise when the patient “comes to” the hospital. While the statute does not explain what this means, it seems clear that the patient’s physical presence at the hospital is required. *See, e.g., Johnson v. University of Chicago Hospitals*, 982 F.2d 230 (7<sup>th</sup> Cir. 1992). *See also* 42 C.F.R. §489.24(b)(1999). Here, the uncontradicted facts establish that Owens was never physically present at the Medical Center emergency room or on its property. Therefore, she did not “come to” the Medical Center. Under these circumstances, no claim can be made under EMTALA and summary judgment must be granted for Caduceus.

Further, EMTALA requires that a hospital provide patients who come to its emergency room with an “appropriate medical screening examination.” However, the term “appropriate” is undefined in the statute. Most courts faced with this question have held that the appropriateness of a medical screening examination under EMTALA is not judged by whether it satisfies the professional medical standard of care, but rather by whether the examination is the same as that provided to other patients with similar conditions and symptoms. *See e.g. Eberhardt v. City of Los Angeles*, 62 F.2d 1253, 1257 (9<sup>th</sup> Cir. 1995).

For purposes of its motion, Caduceus concedes that there is evidence in the record to show that Owens was subject to disparate treatment. Beyond showing disparate treatment however, Caduceus argues that in order to bring an EMTALA claim under §1395dd(a) a plaintiff must present some evidence of an “improper motive” for the hospital’s failure to provide an “appropriate medical screening examination.”<sup>2</sup>

In this regard, Caduceus relies on the decision of the Sixth Circuit in *Cleland v. Bronson Health Care Group, Inc.*, 917 F.2d 266 (6<sup>th</sup> Cir. 1990). The court in *Cleland* suggested that an “improper motive” could include without limitation “race, sex, politics, occupation, education, personal prejudice, drunkenness [or] spite.” *Id.* at 272. Caduceus claims that there is no evidence here that Owens treatment was influenced by an “improper motive.” On this point, however, Caduceus’ argument must fail. Other courts which have considered the “improper motive” element for an EMTALA claim have rejected it. *See Power*, 42 F.3d at 857. Therefore, this court cannot grant the summary judgment motion on this basis.

b. *Section 1015 Notice of Claim Requirements.*

Caduceus has also moved for summary judgment on the basis that Owens failed to meet the requirements of the Pacifica Notice of Claim statute, 17 Pac. Rev. Stat. §1015. By its terms, the statute applies to any action in which a plaintiff “seeks damages for personal injuries or death resulting from the provision of medical services by a . . . hospital . . . .” This language, read literally, covers Owens’ EMTALA claim.

Section 1015 was enacted by Pacifica during the “medical malpractice crisis” of the 1980s for the evident purpose of enabling health care providers to promptly investigate medical injury claims and to enable providers to settle such claims so as to avoid the high costs of litigation. There is nothing inconsistent between these purposes and the purposes of EMTALA. Certainly, it was not the goal of Congress, by enacting EMTALA, to undermine state efforts to address the “crisis” of medical liability litigation through statutory reforms. In fact, the language of §1395dd(d)(2)(A) that a plaintiff may “obtain those damages available for personal injury under the law of the State in which the hospital is located . . . .” reflects Congress’ design to not displace state law. The Notice of Claim requirements of §1015 are a part of the state law to be applied here.

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<sup>2</sup> Caduceus admits that an improper motive is not a relevant consideration with respect to 42 U.S.C. §1395dd(b). *See Roberts v. Galen of Virginia*, 119 S.Ct. 685 (1999.)

Further, there is no basis to find that the Notice of Claim requirements of §1015 “directly conflict” with EMTALA so as to be preempted under §1395dd(f). Therefore, the summary judgment motion is also granted on this basis.

### **III. CONCLUSION**

The motion of Caduceus for summary judgment is granted. The Clerk of the Court is directed to enter judgment for Caduceus and that plaintiff takes nothing.

SO ORDERED

Date: November 10, 1999

/s/ Sarah Jennings  
DISTRICT JUDGE

Entered: November 10, 1999.

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

**No. 00-8748**

**JANICE OWENS, individually  
and for the Estate of  
Kristen Owens**

**Plaintiff-Appellant.  
Cross Appellee**

**v.**

**CADUCEUS HEALTHCARE  
CORPORATION, a not  
for profit corporation**

**Defendant-Appellee  
Cross Appellant**

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Appeal from the United States District Court for the Southern District of Pacifica  
And No. 99-C-1135 – Sara Jennings, District Judge

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Argued September 19, 2000 – Filed December 11, 2000

Before SAUER, Chief Judge, PALMER and SILVERMAN, Circuit Judges.

SAUER, Chief Judge. This action comes before the court on the parties' cross appeals of the district court's summary judgment in favor of defendant, Caduceus Healthcare Corp. The district court's judgment is affirmed for the reasons stated herein.

**Facts**

Judge Jennings in her opinion below fully sets forth the facts of this case. In 1999 the plaintiff, Janice Owens, filed suit in federal court against the defendant, Caduceus Healthcare Corporation, for injuries sustained as a result of an alleged violation of the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. §1395dd, by the Glendale Medical Center, a hospital owned and operated by Caduceus. Specifically, while Owens, who was 30 weeks pregnant, was being transported in a police squad car to the Medical Center following a traffic accident, she was directed to see her regular physician at another hospital

by Dr. Sawyer, who was the physician on duty in the Medical Center's emergency room at the time. After going to the other hospital, plaintiff delivered her daughter Kristen, who died shortly after birth due to complications. In her suit Owens alleged that the actions of the Medical Center and Dr. Sawyer violated EMTALA in that she was not given an "appropriate medical screening examination" as required by 42 U.S.C. §1395dd(a) and was transferred to the other hospital without being stabilized in violation of §1395dd(b)(1) and (c).

Following discovery, Caduceus submitted a motion for summary judgment. The basis for this motion was that Owens had not "come to" the Medical Center's emergency room as required under §1395dd(a) and (b) and had no evidence to suggest that there was any "improper motive" in connection with her failure to receive treatment as allegedly required by §1395dd(a). Additionally, Caduceus sought summary judgment on the grounds that Owens had failed to meet the Notice of Claim and related requirements provided for under Pacifica state law, 17 Pac. Rev. Stat. §1015. This statute specifies that in any action against a health care provider for injuries "resulting from the provision of medical services," a written Notice of Claim must be served upon the health care provider within 180 days of the injury and that 120 days must elapse following the notice before any suit is filed.

Agreeing with Caduceus' argument regarding Owens' failure to "come to" the Medical Center and her failure to satisfy §1015, the district court granted summary judgment. The court however rejected Caduceus "improper motive" argument. Both parties appealed those rulings adverse to them.

## **Analysis**

We agree with the district judge that Caduceus is entitled to summary judgment. Our reasoning in this regard, however, differs from that of the district court in some important ways.

The requirements imposed upon hospitals under EMTALA apply where a patient has "come to" the hospital seeking emergency care. While this may not require that the patient actually enter the doors of the hospital emergency room, it does require the physical presence of the patient on hospital property, even if only in a hospital ambulance. See *Johnson v. University of Chicago Hospitals*, 982 F.2d 230 (7<sup>th</sup> Cir. 1992); 42 C.F.R. §489.24(b). In a case very similar to the present one, the federal district court in Hawaii rejected the plaintiff's EMTALA claims on this very basis. *Arrington v. Wong*, 19 F.Supp.2d 1151 (D.Ha. 1998).

Further, the district court correctly ruled that a hospital's motive, whether improper or not, is irrelevant, in the context of a claim under 42 U.S.C. §1395dd(a). The majority of courts have ruled that a violation is established by simply showing that the plaintiff received different treatment from other similarly

situated patients, a point that Caduceus conceded, at least for purposes of its motion. No improper motive need be shown. See *Power v. Arlington Hosp. Ass'n*, 42 F.3d 851 (4<sup>th</sup> Cir. 1994).

In contrast, we find ourselves in disagreement with the trial judge's conclusion regarding the need to meet the requirements of 17 Pac. Rev. Stat. §1015. As the lower court correctly observed, Pacifica enacted its Notice of Claim statute in response to the perceived problem of medical malpractice litigation. It is clearly designed to facilitate the timely investigation of malpractice claims and their settlement. However, the case presented here involves a federal statutory cause of action that has nothing to do with medical malpractice. Indeed, plaintiff has not joined with her EMTALA claims any claim for medical malpractice under state laws. Applying the Pacifica statute here would not serve Pacifica's purpose in enacting the statute and would frustrate the purposes behind EMTALA. *Brooks v. Maryland General Hosp., Inc.*, 996 F.2d 708 (4<sup>th</sup> Cir. 1993). In any event, in our view the statute "directly conflicts" with EMTALA and is preempted under §1395dd(f). *Power*, 42 F.3d at 865-66. Therefore, granting summary judgment on this basis was not proper.

### **Conclusion**

Based on the foregoing, we affirm the district court's summary judgment for defendant.

No. 01-258

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2001

JANICE OWENS,

PETITIONER AND CROSS RESPONDENT,

v.

CADUCEUS HEALTHCARE CORPORATION,

RESPONDENT AND CROSS PETITIONER.

**ORDER GRANTING CERTIORARI**

Upon consideration of the Cross Petitions for Certiorari, the Court hereby **GRANTS** the petitions as to the following issues:

1. Whether, within the meaning of 42 U.S.C. §1395dd(a) and (b), Petitioner did “come” to the emergency room of Respondent.
2. Whether, in order to state a claim under 42 U.S.C. §1395dd(a), Petitioner must show an improper motive in connection with treatment on the part of Respondent.
3. Whether the provisions of 17 Pac. Rev. Stat. §1015 apply to a claim under 42 U.S.C. §1395dd(a) and (b).

**IT IS SO ORDERED.**

**Date: June 26, 2001**