

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

CLARK A. MORRES

v.

DEER’S HEAD HOSPITAL CENTER, et al.

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Civil No. CCB-08-2

MEMORANDUM

Plaintiff Clark A. Morres (“Dr. Morres”) has sued Deer’s Head Hospital Center (“Deer’s Head”) and Sandra Smith (“Ms. Smith”) for violations of the Emergency Medical Treatment and Active Labor Act (“EMTALA”), 42 U.S.C. §1395dd *et seq.*, and constitutional violations. The defendants have filed a motion to dismiss. The issue has been fully briefed and no hearing is necessary. *See* Local Rule 105.6. For the reasons articulated below, the defendants’ motion will be granted.

BACKGROUND

From July 2005 to February 2006, Dr. Morres served as the Medical Director of Deer’s Head Hospital Center, a hospital and nursing center owned and operated by the State of Maryland. Dr. Morres claims that shortly into his tenure at Deer’s Head, he “discovered facts which led him reasonably to conclude that patients at Peninsula Regional Medical Center . . . were being transferred to Deer’s Head when their insurance benefits would no longer pay for their continued stay at P[eninsula], but prior to the patients being fully stabilized.” (First

Amended Compl. ¶ 7.) Dr. Morres alleges that Ms. Smith, the Director of Deer's Head, instructed the staff to accept these patients even though they had not yet been stabilized. Dr. Morres complained about these transfers to Ms. Smith, and charges that in return he was fired. He alleges that Ms. Smith retaliated against him "via a series of untimely, pretextual performance evaluations." (*Id.* at ¶ 11.)

Dr. Morres is suing Deer's Head and Ms. Smith for violations of EMTALA which "caused Dr. Morres to suffer personal harm as a direct result thereof," and for depriving him of a liberty interest in his employment, resulting in damage to his reputation, character and standing in the community. Deer's Head and Ms. Smith have filed a motion to dismiss claiming, among other things, that the Eleventh Amendment bars the claims against Deer's Head and against Ms. Smith in her official capacity, that EMTALA does not establish a cause of action against hospital administrators, and that Dr. Morres's complaint does not state a claim against Ms. Smith for violation of due process.

ANALYSIS

"The purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint; importantly, a Rule 12(b)(6) motion does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999) (internal quotation marks and alterations omitted). When ruling on such a motion, the court must "accept the well-pled allegations of the complaint as true," and "construe the facts and reasonable inferences derived therefrom in the light most favorable to the plaintiff." *Ibarra v. United States*, 120 F.3d 472, 474 (4th Cir. 1997). To survive a motion to dismiss, a complaint

must “in light of the nature of the action . . . sufficiently allege[] each element of the cause of action so as to inform the opposing party of the claim and its general basis.” *Chao v. Rivendell Woods, Inc.*, 415 F.3d 342, 348 (4th Cir. 2005). Following the Supreme Court’s ruling in *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (2007), “[f]actual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” “Once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint.” *Id.* at 1969 (quoted in *Goodman v. Praxair*, 494 F.3d 458, 466 (4th Cir. 2007)). Moreover, the “plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Id.* at 1964-65.

EMTALA requires hospitals to provide certain types of care to any individual who presents himself to the hospital with an emergency medical condition. 42 U.S.C. § 1395dd(b)(1). Hospitals with emergency departments are required to screen arriving patients to determine whether such an emergency condition exists. *Id.* § 1395dd(a). Depending on the hospital’s capabilities, the facility must either provide “such further medical examination and such treatment as may be required to stabilize the medical condition,” or arrange for transfer to another medical facility. *Id.* § 1395dd(b). Absent certain exceptions, a hospital may not transfer an individual with an emergency condition until that patient has been stabilized. *Id.* § 1395dd(c).

The Act provides for civil penalties against a “participating hospital” that violates the statute and against “any physician who is responsible for the examination, treatment, or transfer of an individual in a participating hospital.” *Id.* § 1395dd(d)(1)(B). “Any individual who suffers

personal harm as a direct result of a participating hospital's violation of a requirement of this section” may initiate a civil action against a participating hospital. *Id.* § 1395dd(d)(2)(A). The statute also provides protection for whistleblowers, stating that a participating hospital “may not penalize or take adverse action against a qualified medical person described in subsection (c)(1)(A)(iii) or a physician because the person or physician refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized or against any hospital employee because the employee reports a violation of a requirement of this section.” *Id.* § 1395dd(e)(i).

Deer’s Head and Ms. Smith first argue that the Eleventh Amendment bars the EMTALA claims against Deer’s Head and against Ms. Smith in her official capacity. The Eleventh Amendment establishes that states may not be sued by private individuals in federal court except in two situations: after consent by the state, or under an abrogation of state sovereign immunity by Congress acting pursuant to a valid exercise of its power. *College Savings Bank v. Florida Prepaid*, 527 U.S. 666, 670 (1999). Additionally, “[s]uits against state officials in their official capacity [] should be treated as suits against the State.” *Hafer v. Melo*, 502 U.S. 21, 25 (1991) (citing *Kentucky v. Graham*, 473 U.S. 159, 166 (1985)). Deer’s Head, which is owned and run by the Maryland Department of Health and Mental Hygiene, is an agency of state government, and Ms. Smith is a state official. There is no indication here, nor does Dr. Morres argue in his reply, that Maryland has issued an express and unequivocal waiver of its state sovereign immunity, as would be required under *Florida Prepaid*, 527 U.S. at 680-81.

Instead, Dr. Morres claims that EMTALA’s retaliation provision constitutes a valid abrogation of state sovereign immunity. (Pl’s Resp. Mot. Dismiss 3.) This does not appear to

be the case. To be valid, the congressional intent to abrogate state sovereign immunity must be clearly expressed in the language of the statute, *Seminole Tribe*, 517 U.S. at 55, and Congress must have acted pursuant to the enforcement authority granted it by section 5 of the Fourteenth Amendment, *id.* at 59. Legislation properly enacted under section 5 “must exhibit ‘congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end.’” *Nevada Dep’t of Human Resources v. Hibbs*, 538 U.S. 721, 728 (2003) (quoting *City of Boerne v. Flores*, 521 U.S. 507, 520 (1997)). The court must consider “whether Congress had evidence of a pattern of constitutional violations on the part of the States.” *Id.* at 729.

Here, the language of EMTALA does not support Dr. Morres’s argument that the statute validly abrogates state sovereign immunity; this is true for both the enforcement and whistleblower provisions. A general authorization for suit in federal court is not the type of “unequivocal expression of congressional intent” that is sufficient to abrogate sovereign immunity. *See Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 246 (1985). Under *Atascadero*, the “mere receipt of federal funds cannot establish that a State has consented to suit in federal court;” absent a clear intent to condition funding on a waiver of sovereign immunity, the state’s decision to participate in federal programs does not subject the state to suit in federal court. *Id.* at 246-47. Although Congress undoubtedly intended to create a federal cause of action for EMTALA violations, there is no indication in the statute that it intended to provide specifically for such suits against states. *See Ward v. Presbyterian Healthcare Services*, 72 F. Supp. 2d 1285, 1290 (D.N.M. 1999); *Vazquez Morales v. Estado Libre Asociado*, 967 F. Supp. 42, 45 (D.P.R. 1997).

Even assuming the statute contained such an unequivocal expression, EMTALA was not

enacted pursuant to Congress's section 5 powers. EMTALA forms part of the federal government's Medicare program, which in turn is part of the Social Security Act. The Social Security Act was enacted pursuant to Congress's Article I powers of taxation and regulation of interstate commerce. *Vazquez Morales*, 967 F. Supp at 46. To avoid this problem, the plaintiff appears to contend that the retaliation (though not the enforcement) provision of EMTALA was enacted in order to remedy some sort of constitutional violation.¹ (See Pl's Resp. at 3 n.1.) "The purpose of EMTALA is to assure adequate medical care to all persons regardless of whether they have health insurance, and to prevent 'patient dumping.' Although the rights created by EMTALA are important and are 'proper Article I concerns,' they are not rights which are secured by the Fourteenth Amendment." *Ward*, 72 F. Supp. 2d at 1291 (internal citations omitted). If the rights created under EMTALA are not themselves based in the Fourteenth Amendment, it is unclear how an anti-retaliation provision protecting the exercise of those rights could be enacted pursuant to section 5 authority.

Because EMTALA does not contain an abrogation of state sovereign immunity, and because the state does not appear to have waived its immunity from suit, the claims against Deer's Head and against Ms. Smith in her official capacity will be dismissed.

¹In support of this proposition, Dr. Morres cites *Crumpacker v. Kansas Dep't of Human Resources*, 338 F.3d 1163 (10th Cir. 2003). That case deals with a former employee's Title VII sex discrimination and retaliation claims against her state employer, and holds that Congress properly exercised its section 5 authority in enacting the retaliation provision of Title VII. In coming to that conclusion, however, the Tenth Circuit discussed the then-recently decided *Nevada Dep't of Human Res. v. Hibbs*, 538 U.S. 721 (2003), in which the Supreme Court held that Congress could validly abrogate state sovereign immunity when it acted to correct certain gender-based discrimination, because gender discrimination merited heightened scrutiny. *Crumpacker* is inapposite; EMTALA does not deal with the type of discrimination that warrants a closer judicial review, and the "congruence and proportionality" test is thus not met.

The defendants also argue that the EMTALA claim (Count I) against Ms. Smith in her individual capacity must be dismissed, because EMTALA does not create a cause of action against hospital administrators. Under EMTALA, civil suits must be brought against the “participating hospital,” which is defined as “a hospital that has entered into a provider agreement under section 1395cc of this title.” 42 U.S.C. § 1395dd(e)(2). EMTALA does not permit an individual to bring a civil suit for damages against an individual physician. *See Baber v. Hospital Corp. of America*, 977 F.2d 872, 877 (4th Cir. 1992) (noting that EMTALA’s legislative history made it clear that “Congress intentionally limited patients to suits against hospitals,” and listing other cases in accord). Indeed, the statute allows an action against an individual physician only “by the Department of Health and Human Services to bar his participation in Medicare programs and/or to seek administrative sanctions in the form of civil monetary penalties.” *Id.* The statute does not establish a cause of action against hospital administrators, and Count I against Ms. Smith in her individual capacity must be dismissed.

Finally, the defendants argue that Count II, which is described by Dr. Morres as a “deprivation of liberty interest under the due process clause,” must be dismissed because it fails to allege any defects in the procedural due process afforded to Dr. Morres. In the complaint, Dr. Morres claims that the defendants “gave rise to the appearance and impression Plaintiff had been guilty of misconduct, incompetence, poor performance and/or negligence.” (First Amended Compl. 22.) Dr. Morres cites Ms. Smith’s decision to have him escorted off the premises by security when he was terminated and “unfounded, negative comments placed by Ms. Smith in his evaluations” that Ms. Smith allegedly had disclosed to the public. Even taking Dr. Morres’s allegations as true, there is no due process violation claimed here. In situations where a former

employee is challenging the dissemination of potentially damaging information, “the constitutional harm ‘is not the defamation’ itself; rather it is ‘the denial of a hearing at which the dismissed employee has an opportunity to refute the public charge.’” *Sciolino v. City of Newport News*, 480 F.3d 642, 649 (4th Cir. 2007) (quoting *Cox v. N. Va. Transp. Comm’n*, 551 F.2d 555, 558 (4th Cir.1976). As the defendants point out, Dr. Morres was allowed a hearing, in which he challenged his termination. (*See* Def’s Mot. Dismiss First Amended Compl., Ex. 1.)

For the foregoing reasons, defendants’ Motion to Dismiss will be granted. A separate Order follows.

July 25, 2008
Date

/s/
Catherine C. Blake
United States District Judge