IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

MIKKI RENEE KISER, as parent, natural guardian, and next friend of Jaden Danielle Austen, a minor,	)	
Plaintiff,	)	
VS.	)	No. 01-1259
JACKSON-MADISON COUNTY GENERAL HOSPITAL DISTRICT and PATHWAYS OF TENNESSEE, INC.,	)	
Defendants.	)	

ORDER PARTIALLY GRANTING AND PARTIALLY DENYING
DEFENDANTS' MOTION FOR PARTIAL DISMISSAL
AND/OR FOR PARTIAL SUMMARY JUDGMENT

Plaintiff Mikki Renee Kiser has brought this action on behalf of Jaden Danielle Austin, a minor, against Jackson-Madison County General Hospital District and Pathways of Tennessee, Inc., pursuant to the Emergency Medical Treatment and Active Labor Act ("EMTALA"), 42 U.S.C. § 1395dd.[1] Plaintiff alleges that Defendants released Daniel Austin from their care without stabilizing his condition which resulted in Austin's suicide. Defendants have filed a motion for partial dismissal and/or for summary judgment. Plaintiff has responded to the motion. For the reasons set forth below, Defendants' motion is

[1] The court dismissed Plaintiff's state law claims in an order entered December 5, 2001.

PARTIALLY GRANTED and PARTIALLY DENIED.

In their motion, Defendants contend that the Tennessee Governmental Tort Liability Act, T.C.A. § 29-20-302, *et seq.* ("TGTLA"), is applicable to Plaintiff's EMTALA claims, thus limiting her right to certain damages and to a jury. Plaintiff does not dispute that Defendants are governmental entities and subject to the benefits of the TGTLA for a claim brought in state court. However, Plaintiff contends that these benefits are not available in an EMTALA action brought in federal court.

Congressional concern that hospitals were refusing to treat patients with emergency medical conditions because they lacked insurance or other means to pay their medical bills was the impetus for enacting EMTALA as part of the Consolidated Omnibus Budget Reconciliation Act ("COBRA"). H.R. Rep. No. 241(I), 99th Cong., 1st Sess. 28 (1986); Cleland v. Bronson Health Care Group, Inc., 917 F.2d 266, 268 (6th Cir. 1990). See also Draper v. Chiapuzio, 9 F.3d 1391, 1393 (9th Cir.1993) (The goal of EMTALA is to prevent hospitals from refusing to treat patients who do not have health insurance or are otherwise unable to pay for services.); Delaney v. Cade, 986 F.2d 387, 391 n. 5 (10th Cir.1993) (same). EMTALA requires participating hospitals that have emergency rooms to provide screening examinations for all patients and treatment to those patients with emergency conditions, regardless of financial condition. Cleland, 917 F.2d at 268. A hospital can violate § 1395dd by (1) failing to detect the nature of the emergency condition due to "inappropriate" screening procedures; (2) failing to stabilize a detected emergency condition before releasing

the patient; (3) failing to appropriately transfer a patient when the individual so requests or when his physician believes that he will benefit from a transfer to another facility; (4) refusing to accept a transferred patient; and (5) delaying the screening, stabilization, or transfer of a patient in order to inquire about his ability to pay. The present action involves the alleged failure to stabilize a mental patient before discharge in violation of § 1395dd(b).[2]

The legislative history of EMTALA reveals that Congress did not intend to displace state malpractice and tort law.[3] Brooks v. Maryland General Hospital, Inc., 996 F.2d 708, 714 (4th Cir. 1993). Rather, it filled a gap in state law by creating "a new, federal cause of action," Thornton v. Southwest Detroit Hosp., 895 F.2d 1131, 1133 (6th Cir. 1990), that imposes a limited duty on hospitals with emergency rooms to provide emergency care to all individuals who come there. Brooks, 996 F.2d at 715.

Section 1395dd(d)(2)(A) grants a personal right of action to "[a]ny individual who suffers personal harm as a result of a participating hospital's violation of a requirement of this section."[4] However, an injured individual's damages are limited to those "available for

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[2] EMTALA defines the term "stabilize" as meaning "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 the facility...." 42 U.S.C. § 1395dd(e)(3)(A).)

[3] "EMTALA is not a federal malpractice statute and it does not set a national emergency health care standard; claims of misdiagnosis or inadequate treatment are left to the state malpractice arena." Summers v. Baptist Med. Ctr. Arkadelphia, 91 F.3d 1132, 1137 (8th Cir. 1996). The Act "is not intended to duplicate preexisting legal protections, but rather to create a new cause of action, generally unavailable under state tort law, for what amounts to failure to treat." Vickers v. Nash Gen. Hosp., Inc., 78 F.3d 139, 142 (4th Cir. 1996) (quoting Gatewood v. Wash. Healthcare Corp., 933 F.2d 1037, 1041 (D.C. Cir. 1991)).

[4] In addition to a private right of action, the failure to screen or stabilize patients can result in a maximum civil fine of $50,000 for each illegal act. When continuous and flagrant abuses are found, hospitals and physicians may be precluded from participating in government-funded health care programs. 42 U.S.C. § 1395dd(d)(1).

personal injury under the law of the State in which the hospital is located, and such equitable relief as is appropriate."[5] Id. Defendants contend that Plaintiff's damages are limited by the TGTLA pursuant to this section of EMTALA.

The TGTLA codifies the general common law rule that "all governmental entities shall be immune from suit for any injury which may result from the activities of such governmental entities," T.C.A. § 29-20-201(a), subject to certain statutory exceptions. See generally Limbaugh v. Coffee Medical Center, 59 S.W.3d 73 (Tenn. 2001) (describing the purpose of the TGTLA). A general waiver of immunity from suit for personal injury claims is provided for in § 29-20-205 "for injury proximately caused by a negligent act or omission of any employee within the scope of his employment," unless the injury arises out of one of several enumerated exceptions to this section, such as the intentional tort exception. This exception bars claims for injuries arising out of "false imprisonment pursuant to a mittimus from a court, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of right of privacy, or civil rights." T.C.A. § 29-20-205(2).

The TGTLA also provides that:

> No judgment or award rendered against a governmental entity may exceed the minimum amounts of insurance coverage for death, bodily injury and property

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[5] Any 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 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).

> damage liability specified in § 29-20-403, unless such governmental entity has secured insurance coverage in excess of said minimum requirements, in which event the judgment or award may not exceed the applicable limits provided in the insurance policy.

T.C.A. § 29-20-311. The current limits set out in T.C.A. § 29-20-403 are $130,000 for bodily injury.

Defendants have moved to reduce Plaintiff's damage claim to $130,000 pursuant to the TGTLA. According to Defendants, because EMTALA limits Plaintiff's damages to those available for personal injury under Tennessee law, the limitation of damages provision of the TGTLA is applicable to her claim. Defendants rely on Power v. Arlington Hospital Association, 42 F.3d 851 (4th Cir. 1994), in support of their argument.

In Power, the Fourth Circuit Court of Appeals held that Virginia's malpractice damages cap applied to the plaintiff's EMTALA claim. The plaintiff alleged that the defendant hospital violated EMTALA by failing to provide her with an appropriate medical screening once she arrived at the emergency room and transferring her to another hospital while she was still in an unstable condition. Id. at 853-54. After a jury verdict awarding damages to the plaintiff, the defendant hospital appealed the decision based, in part, on the district court's finding that Virginia's liability limit for tax exempt hospitals did not apply to EMTALA claims. Id. The statute at issue limited the liability "of certain charitable and tax-exempt hospitals for 'negligence or other tort' up to the limits of the hospital's insurance." Id. (citing Va. Code Ann Sec. 8.01-38).

In response to the plaintiff's argument that a claim brought under EMTALA was not

based in tort for the purposes of limiting liability, the court stated that the "fact that the duty giving rise to tort liability in this case arises from the federal statutory requirements in EMTALA, rather than common law, does not mean that Power's suit does not sound in tort." Id. at 865. Noting EMTALA's express adoption of state imposed limitations on damages for personal injury, the court found that Virginia's limit on liability for charitable organizations applied to claims brought under EMTALA, as well as, those claims based in common law tort or negligence. "It appears clear that § 1395dd(d)(2)(A) is an attempt on the part of Congress to balance the deterrence and compensatory goals of EMTALA with deference to the ability of states to determine what damages are appropriate in personal injury actions against hospitals. We are bound to effectuate this balance." Id. at 863-64.

This court cited Power with approval in Johnson v. Jackson-Madison County Hospital, No. 96-1005 (W.D. Tenn. 9/10/96), in determining that the TGTLA limited a plaintiff's damages against a governmental entity in an EMTALA action to $130,000. The court also relied on Baucom v. DePaul Health Center, 918 F. Supp. 288, 290 (E.D. Mo. 1996). In Baucom, the court denied the defendant's motion to dismiss the plaintiff's claim for lost chance of recovery or survival and held that, because Missouri courts recognized a cause of action for lost chance of recovery or survival, those damages were recoverable under EMTALA. Id. at 291. Accord Delaney v. Cade, 26 F.3d 991, 991 (10th Cir. 1994) (Court had jurisdiction over an EMTALA claim seeking damages for lost chance of recovery in Kansas after Kansas Supreme Court recognized the existence of such a cause of action).

Plaintiff urges the court to reject the reasoning of the Power court. Plaintiff's Response at p. 3. According to Plaintiff, because governmental immunity from suit in Tennessee is waived only as to injuries "proximately caused by the negligent act or omission of any employee within the scope of his or her employment," id. at p. 4 (quoting T.C.A. § 29-20-205), she would not have a claim under "for personal injury under the law of the State where the Hospital is located" since EMTALA imposes strict liability. Thus, according to Plaintiff, the TGTLA does not apply to her claim. Id. at pp. 4-5. Plaintiff also argues that EMTALA preempts TGTLA's limitation of damages.

EMTALA sets forth a strict liability standard to the extent that § 1395dd(a) contains mandatory language whereby a hospital "must" provide for medical screening if a request is made. See Abercrombie v. Osteopathic Hosp. Founders Ass'n, 950 F.2d 676, 681 (10th Cir. 1991); Stevison v. Enid Health Systems, Inc., 920 F.2d 710, 713 (10th Cir. 1990) ("We construe this statute as imposing a strict liability standard subject to those defenses available in the act.") Liability is strict in the sense that the hospital need not have an evil motive or knowledge that the patient has an emergency medical condition to be held liable for failing to screen the patient. The stabilization provision, however, requires stabilization when "the hospital determines that the individual has an emergency medical condition. . . ." 42 U.S.C. § 1395dd(b)(1). Accordingly, the duty to stabilize does not arise unless the hospital first knows that the patient is suffering from an emergency medical condition. Camp v. Harris Methodist Fort Worth Hosp., 983 S.W.2d 876, 880 (Tex. App. 1998). Consequently, because

of the actual knowledge limitation, the stabilization provision, unlike the screening provision, does not impose strict liability. See Barris v. County of Los Angeles, 972 P.2d 966, 972 (Cal. 1999). See also Summers v. Baptist Med. Ctr. of Arkadelphia, 91 F.3d 1132, 1140 (8th Cir. 1996) (no obligation to stabilize without knowledge of emergency medical condition).

The stabilization provision is also unlike the screening provision in that stabilization requires more than just uniform treatment of all patients; instead, a hospital must prevent the material deterioration of each patient's condition according to the capabilities of the particular hospital. See Burditt v. U.S. Dept. of Health and Human Services, 934 F.2d 1362, 1369 (5th Cir. 1991) (EMTALA requires "treatment that medical experts agree would prevent the threatening and severe consequences of" the patient's condition while she was in transit); Deberry v. Sherman Hosp. Ass'n, 741 F. Supp. 1302, 1305 (N. D. Ill. 1990) ("the definition of 'to stabilize' asks whether the medical treatment...was reasonable under the circumstances. This is obviously a factual inquiry ..."). As explained in Barris,

> In stabilizing a patient, a hospital must, within the staff and facilities available to it, meet requirements that relate to the prevailing standard of professional care: it must give the treatment medically necessary to stabilize a patient and it may not discharge or transfer the patient unless it provides "treatment that medical experts agree would prevent the threatening and severe consequences of [the patient's emergency medical condition] while [he or] she was in transit."
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> ...
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> A claim under EMTALA for failure to stabilize is thus necessarily "based on professional negligence" within the meaning of MICRA -- it involves "a negligent ... omission to act by a health care provider in the rendering of professional services" ---although it requires more. Proof of professional negligence does not suffice as proof of a violation of EMTALA. EMTALA

> differs from a traditional state medical malpractice claim principally because it also requires *actual knowledge* by the hospital that the patient is suffering from an emergency medical condition and because it mandates only stabilizing treatment, and only such treatment as can be provided *within the staff and facilities available at the hospital.* EMTALA thus imposes liability for failure to stabilize a patient only if an emergency medical condition is actually discovered, rather than for negligent failure to discover and treat such a condition. In addition, EMTALA imposes only a limited duty of medical treatment: a hospital need provide only sufficient care, within its capability, to stabilize the patient, not necessarily to improve or cure his or her condition. Once the medical condition is stabilized, the hospital may discharge or transfer the patient without limitation.

Barris, 972 P.2d at 972 (some citations omitted; emphases in original). Thus, although a claim for a violation of the stabilization provision does not require proof of negligence, it requires more than proof of the mere failure to stabilize and does not, therefore, impose strict liability. In bringing an EMTALA claim for failure to stabilize,

> [a] plaintiff must prove that the hospital did not, within its available staff and facilities, provide a patient known to be suffering from an emergency medical condition with medical treatment necessary to assure, within reasonable medical probability, that no deterioration of the condition would likely occur. The standard of "reasonable medical probability" is an objective one, inextricably interwoven with the professional standard for rendering medical treatment.

Id. at 973. Therefore, an EMTALA claim is akin to a claim for "professional negligence," see id., and is within the purview of the TGTLA.[6] See Barris, 972 P.2d at 975 ("Strict

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[6] The Barris court further explained that:

> To be sure, every claim for professional negligence does not also constitute an EMTALA claim for failure to stabilize. A claim under EMTALA also requires proof that the hospital actually determined that the patient was suffering from an emergency medical condition, and a hospital must provide required treatment only to stabilize a patient, i.e., to assure, within its capability, "no material deterioration of the condition" upon transfer or discharge. But an EMTALA claim based on failure to provide medically reasonable treatment to stabilize a patient would, if brought under

liability, by contrast, would automatically impose responsibility for an injury to the patient, regardless of the treatment given.")[7]

Next, Plaintiff argues that the TGTLA's damages limitation is preempted by EMTALA. Congress expressly provided that EMTALA does not "preempt any State or local law requirement, except to the extent that the requirement **directly conflicts** with a requirement of this section." 42 U.S.C. § 1395dd(f) (emphasis added). See also Freightliner Corp. v. Myrick, 514 U.S. 280 (1995) (Federal law preempts state law when the state law conflicts with the federal law.) In determining whether federal law preempts a state statute, a court's "sole task is to ascertain the intent of Congress." California Fed. Sav. & Loan Ass'n v. Guerra, 479 U.S. 272, 280 (1987). When Congress expressly delineates a statute's preemptive reach and the delineation provides "a reliable indicium" of congressional intent as to what authority should be left to the state, there is a "reasonable inference" that Congress

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> state law, constitute a claim of "professional negligence" as defined by Civil Code section 3333.2. The EMTALA claim for failure to stabilize has additional, but no inconsistent, elements. Thus, the medical causation proof required to establish an EMTALA claim that a hospital failed to provide medical treatment to assure, within reasonable medical probability, that the patient's condition would not materially deteriorate is the same as that which would be required to prove "a negligent act or omission to act by a health care provider ... which ... is the proximate cause of personal injury or wrongful death." (Civ.Code, § 3333.2, subd. (c)(2).) The trier of fact must, under EMTALA as in a medical negligence claim, consider the prevailing medical standards and relevant expert medical testimony to determine whether material deterioration of the patient's condition was reasonably likely to occur.

972 P.2d at 974-75.

[7] See generally Alicia K. Dowdy, Gail N. Friend, & Jennifer L. Rangel, *The Anatomy of EMTALA: A Litigator's Guide*, 27 St. Mary's L.J. 463, 489 (1996).("Although courts sometimes refer to EMTALA as a strict liability statute, this reference is incorrect. Strict liability automatically imposes responsibility for an activity regardless of the care utilized in the act, whereas EMTALA requires hospitals to adhere to a certain level of care." (footnotes omitted)).

did not intend to preempt matters beyond that reach. Freightliner Corp., 514 U.S. at 288 (citing Cipollone v. Liggett Group, Inc., 505 U.S. 504, 517 (1992)). "EMTALA is quite clear that it is not intended to preempt state tort law except where absolutely necessary." Bryan v. Rectors and Visitors of Virginia Hospital, 95 F.3d 349, 352 (4th Cir. 1996). Accordingly, the court must determine whether the TGTLA's limitation of damages provision "directly conflicts" with the requirements of EMTALA.

A state statute directly conflicts with federal law when: (1) compliance with both federal and state regulations is a physical impossibility, Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-43 (1963); or (2) the state law "stands as an obstacle" to the "execution of the full purposes and objectives of Congress." Hines v. Davidowitz, 312 U.S. 52, 67 (1941).

Courts have held that state laws which grant complete immunity to hospitals are preempted by EMTALA. See, e.g., Root v. New Liberty Hosp. Dist., 209 F.3d 1068 (8th Cir. 2000); Williams v. County of Cook, 1997 WL 428534 (N. D. Ill.). In Root, the Eighth Circuit Court of Appeals held that Missouri's sovereign immunity statute was in direct conflict with the provisions of EMTALA and was, therefore, preempted. 209 F.3d at 1070. The court reasoned that EMTALA's provision stating that a plaintiff may obtain damages available under state law was limited to the context of damages. Id. at 1069-70. A state sovereign immunity statute that prevented a plaintiff from bringing an EMTALA claim was in direct conflict with the EMTALA section permitting an individual to seek damages for

violation of EMTALA. Id.

> The hospital justifies its reading of the statute by pointing out that a party prevented from suing is also necessarily prevented from receiving damages. This argument turns the matter upside down, however, because it fails to recognize that sovereign immunity precludes liability altogether, and not merely the availability of damages after liability is established. We therefore believe that Missouri's sovereign immunity statute is not incorporated into the federal statute.

Id. at 1070.

Likewise, in Williams, the court held that the Illinois Tort Immunity Act was preempted by EMTALA. Under the Illinois Tort Immunity Act, a local public hospital was not liable for an injury resulting from the failure to make a physical or mental examination, the failure to diagnose or treat, or the failure to admit a person to a medical facility. Id. at *5. The court noted that EMTALA requires hospitals to provide all emergency room patients with appropriate medical screening examinations and to stabilize any emergency medical conditions discovered before transfer or discharge. Id. Therefore, the state statute which "purport[ed] to relieve public hospitals from liability for the failure to screen, examine, treat or admit" was in direct conflict with EMTALA. Id.

In the present case, unlike the state statutes at issue in Root and Williams, the TGTLA's limitation of damages provision does not prevent the bringing of an EMTALA claim. It merely limits the amount of damages that a plaintiff can receive. Consequently, compliance with both federal and state regulations is not "a physical impossibility."

Additionally, the limitation of damages provision does not "stand as an obstacle" to

the "execution of the full purposes and objectives of Congress." EMTALA's express provision defining its limited preemptive reach "demonstrates that one of Congress's objectives was that EMTALA would peacefully coexist with applicable state 'requirements.'" Hardy v. New York City Health & Hospital Corp., 164 F.3d 789, 795 (2nd Cir. 1999). As explained in Barris,

> We discern no conflict between the purposes of providing for a private right to damages for violations of EMTALA and state law limits on malpractice damages. "[T]he ends of both the federal and state statutes are to keep medical care accessible." Jackson v. East Bay Hosp., (N.D. Cal.1997) 980 F. Supp. 1341, 1347. Indeed, the apparent intent of Congress was to balance the deterrence and compensatory goals of EMTALA with deference to the ability of states to determine what limits are appropriate in personal injury actions against health care providers. Thus, the legislative history suggests that in drafting EMTALA to incorporate state law limits on personal injury damages, Congress was specifically responding to concern "regarding 'the potential impact of these enforcement provisions on the current medical malpractice crisis.'" Power, 42 F.3d at 862, quoting H.R. Rep. No. 99-241, 1st Sess., pt. 3, at p. 6 (1986), U.S. Code Cong. & Admin.News 1986, p. 728.) "Congress apparently wished to preserve state-enacted ceilings on the amount of damages that could be recovered in EMTALA...." 42 F.3d at 862.

972 P.2d at 973. See also Godwin v. Memorial Medical Center, 25 P.3d 273 (N.M. Ct. App. 2001) ("[T]he more persuasive federal and state authority supports the view that state damages-cap provisions apply to Emergency Act claims.")

Plaintiff argues that, if the limitation of damages provision is not preempted, then a successful plaintiff in Missouri would be entitled to fully recover from a public hospital while a successful plaintiff in Tennessee would be limited to the $130,000 cap. Plaintiff is correct that, because of EMTALA's incorporation of state law, the amount of recovery is

dependent on the jurisdiction where the hospital is located. See, e.g., Taylor v. Dallas County Hosp. Dist ., 976 F. Supp. 437 (N.D. Tex. 1996) (denying punitive damages based on state law). See also Diaz v. CCHC-Golden Glades, Ltd., 696 So. 2d 1346 (Fla. Dist. Ct. App. 1997) (relying on Power in finding that EMTALA "incorporates all the vagaries of the state medical malpractice law in the determination of the damages recoverable in an action under the Act"). However, in allowing state law to govern the availability of damages under EMTALA, "the apparent intent of Congress was to balance the deterrence and compensatory goals of EMTALA with deference to the ability of states to determine what limits are appropriate in personal injury actions against health care providers." Barris, 972 P.2d at 973. Therefore, Plaintiff's argument is without merit.

Accordingly, the court finds that the limitation of damages provision of the TGTLA is applicable to Plaintiff's EMTALA claim, and the damages potentially available against Defendants are limited to $130,000.

Defendants also contend that Plaintiff is not entitled to a jury trial pursuant to the provisions of the TGTLA. Plaintiff responds that a state statute, such as the TGTLA, cannot preclude the right to a jury trial that is created by a federal statute or preserved by the Seventh Amendment to the United States Constitution.[8] The Seventh Amendment provides

[8] There are three sources for the right to a jury trial: (1) state and federal constitutional provisions that preserve the common law right; (2) statutorily created causes of action that expressly or impliedly provide for a jury trial; and (3) the discretion of a court to empanel an advisory jury in equity proceedings. 9 Wright & Miller, *Federal Practice & Procedure Civil 2d*

that:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

The Seventh Amendment applies to actions enforcing statutory rights and requires a jury trial upon demand, if the statute creates legal rights and remedies enforceable in an action for damages in ordinary courts of law. See Curtis v. Loether, 415 U.S. 189, 194 (1974).

If a statute does not expressly provide for a trial by jury, a court may find that Congress implicitly provided for the right. See, e.g., Frizzell v. Southwest Motor Freight, 154 F.3d 641 (6th Cir. 1998) (finding an implied right to a jury trial under the Family and Medical Leave Act, 29 U.S.C. §§ 2601 *et seq.*). Here, the legislative history of EMTALA contemplates trial by jury. See H.R. Rep. No. 241(III), 99th Cong., 1st Sess. 28 (1986) ("How Section 124's definition will be applied in practice is unclear. It may turn out to be the case that **juries will simply continue to award damages** . . ." (emphasis added). Moreover, all the cases involving an EMTALA claim surveyed by this court have granted the right to a jury trial. See, e.g., Power v. Arlington Hospital Association, 42 F.3d 851 (4th Cir. 1994) (jury verdict for hospital on transfer claim and for patient on screening claim); Romo v. Union Memorial Hosp., Inc., 878 F. Supp. 837 (W.D.N.C.1995) (EMTALA claim presented

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a jury question as to whether risk/benefit analysis was properly made by physician).

Defendants argue that, because EMTALA does not expressly provide for the right to a jury trial, the TGTLA's non-jury provision is not in direct conflict with the federal statute such that it is preempted.

T.C.A. § 29-20-307 provides in relevant part as follows:

> The circuit courts shall have exclusive original jurisdiction over any action brought under this chapter and shall hear and decide such suits without the intervention of a jury . . . .

It is a "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." Davis v. Michigan Dept. of Treasury, 489 U.S. 803, 809 (1989).

> We are not at liberty to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word. As early as in Bacon's Abridgment, sect. 2, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.' This rule has been repeated innumerable times."

Washington Market Co. v. Hoffman, 101 U.S. 112, 115-116 (1879). A court should not adopt a reading of a statute that renders any part of the statute mere surplusage. Bailey v. United States, 516 U.S. 137, 146 (1995).

The Tennessee Legislature provided that claims brought pursuant to the TGTLA were (1) to be tried in the circuit court and (2) "without the intervention of a jury." In construing § 29-20-307, the court must give effect to both phrases of that section. If § 29-20-307 were

applicable to Plaintiff's claim, then not only would Plaintiff not be entitled to a jury, but also the state circuit court would have "exclusive original jurisdiction" over the claim. This would put the provision in direct conflict with EMTALA which allows a claim to be brought in either federal or state court.[9] Defendants have not argued that the circuit court has exclusive original jurisdiction over Plaintiff's EMTALA claim, thus implicitly acknowledging that § 29-20-307 does not apply to EMTALA claims.[10]

Furthermore, Plaintiff's claim has not been brought pursuant to the TGTLA. Although the court has determined in the first part of this order that EMTALA incorporated the limitation of damages provision of the TGTLA, this determination is not tantamount to a determination that all of the provisions of the TGTLA apply to the claim. Only those portions of state law that do not directly conflict with the provisions of EMTALA are applicable to a claim brought under the federal statute. The limitation of damages provision of the TGTLA does not directly conflict with EMTALA; the non-jury provision does directly conflict.

Consequently, Defendants' motion for partial dismissal and/or for partial summary

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[9] Although the federal statute is silent as to the proper forum for an EMTALA claim, the legislative history reveals that an aggrieved individual may bring suit "in an appropriate state or Federal district court." H.R. Rep. No. 241(I), 99th Cong., 1st Sess. 28 (1986). Courts have recognized that federal courts have subject matter jurisdiction over actions brought pursuant to EMTALA. See, e.g., Thornton v. Southwest Detroit Hosp., 895 F.2d 1131 (6th Cir. 1990); Jones v. Wake County Hosp., 786 F. Supp. 538 (E.D.N.C. 1991); Bryant v. Riddle Memorial Hosp., 689 F. Supp. 490, 492 (E.D. Pa. 1988).

[10] The court is aware that it previously held that a plaintiff bringing an EMTALA claim against a hospital that was also a governmental entity was not entitled to a jury. See Johnson v. Jackson-Madison County General Hospital, No. 96-1005 (W.D. Tenn. 1996). After further research, the court now determines that its previous holding was in error.

judgment is PARTIALLY GRANTED and PARTIALLY DENIED. The motion is granted to the extent that Plaintiff's potential damages for her EMTALA claim will be limited to $130,000. The motion is denied to the extent that Defendants sought to have Plaintiff's demand for a jury stricken.

IT IS SO ORDERED.

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JAMES D. TODD
UNITED STATES DISTRICT JUDGE

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DATE