

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>EDWARD BECKETT,</b>	)	
	)	
<i>Plaintiff</i>	)	
	)	
<b>v.</b>	)	<b>Docket No. 98-93-P-C</b>
	)	
<b>BRIAN CHIPMAN, et al.,</b>	)	
	)	
<i>Defendants</i>	)	

**MEMORANDUM DECISION ON DEFENDANT MAINE MEDICAL CENTER'S  
MOTION TO SEAL PLEADINGS**

Defendant Maine Medical Center (“MMC”) has moved to seal all pleadings and other filings in this action based on its construction of the allegations in Count II of the complaint. I deny the motion.

The initial complaint filed in this action asserted in Count II a claim against MMC under a municipal ordinance, section 13.5-21 *et seq.* of the City of Portland Code, also known as the Human Rights Ordinance. Complaint (Docket No. 1) at 7-8. On the same day, MMC filed a motion to dismiss Count II (Docket No. 3) and the motion to seal (“Motion”) (Docket No. 4), while the plaintiff filed his first amended complaint (Docket No. 2). The amended complaint makes no change in Count II, First Amended Complaint at 8, but adds a Count III against MMC based on the Emergency Medical Treatment and Active Labor Act (“EMTALA”), 42 U.S.C. § 1395dd, *id.* at 9-10. The other defendants have filed an answer to the amended complaint. Docket No. 7.

MMC contends that the court’s file in this action should be sealed because “the Complaint in this action was filed in violation of state law, particularly 24 M.R.S.A. § 2903,” Motion at 1, and

that the Maine Health Security Act, of which the cited statutory section is a part, requires confidentiality in cases of allegations of professional negligence until such claims have been evaluated by a pre-litigation screening panel.

Courts that have addressed the issue have uniformly held that an action under EMTALA is not an action for medical malpractice. *E.g.*, *Repp v. Anadarko Mun. Hosp.*, 43 F.3d 519, 522 (10th Cir. 1994); *Baucom v. DePaul Health Ctr.*, 918 F. Supp. 288, 291 (E. D. Mo. 1996) (EMTALA claim “entirely distinct” from claims alleging breach of duty of care by physicians and hospitals); *Cooper v. Gulf Breeze Hosp., Inc.*, 839 F. Supp. 1538, 1542 (N. D. Fla. 1993) (EMTALA and state medical malpractice statutes provides “distinct remedies for different wrongs”). Therefore, MMC’s motion can only be based on Count II of either the initial or the amended complaint.

The Maine Health Security Act provides that “[n]o action for professional negligence may be commenced” until the plaintiff has complied with other provisions of the Act, including service of a notice of claim and initiation of proceedings before a pre-litigation screening panel. 24 M.R.S.A. § 2903. The notice of claim must also be filed with the clerk of the Maine Superior Court, and the notice of claim “and all other documents filed with the clerk in the action” are confidential. 24 M.R.S.A. § 2853(1-A). Once so initiated, all proceedings before the panel “shall be treated in every respect as private and confidential.” 24 M.R.S.A. § 2857(1). In *Feinstein v. Massachusetts Gen. Hosp.*, 643 F.2d 880 (1st Cir. 1981), the First Circuit held that claims of medical malpractice subject to procedural requirements of state law must proceed pursuant to those requirements rather than being heard in federal court when jurisdiction is based solely on diversity of citizenship. *Id.* at 883.

The plaintiff in the instant action does not invoke the court’s diversity jurisdiction. Even if he had, however, MMC’s assumption that the cause of action alleged in Count II is one for

professional negligence is not borne out by the record. The Maine Health Security Act defines an “action for professional negligence” as “any action for damages for injury or death against any health care provider . . . whether based upon tort or breach of contract or otherwise, arising out of the provision or failure to provide health care services.” 24 M.R.S.A. § 2502(6). The Act also defines “professional negligence” in part to mean that “[t]here is a reasonable medical or professional probability that the acts or omissions complained of constitute a deviation from the applicable standard of care by the health care . . . provider charged with that care.” 24 M.R.S.A. § 2502(7)(A).

Count II of the complaints alleges that MMC refused, withheld or denied services to the plaintiff’s decedent on account of her sexual orientation in violation of sections 13.5-21 through 13.5-33 of the Portland Code. Complaint ¶¶ 64-65; Amended Complaint ¶¶ 68-69. Specifically, the claim appears to be one of unlawful public accommodations discrimination under section 13.5-27 of the ordinance. That section provides, in relevant part, that “[i]t shall be unlawful public accommodations discrimination, in violation of this article” for any agent or employee of a place of public accommodation, which is defined at section 13.5-22 to include hospitals, “to directly or indirectly refuse, withhold from or deny to any person, on account of sexual orientation, any of the accommodations, advantages, facilities or privileges of such place . . . or for such reason in any manner to discriminate against any person.” The ordinance provides that a violation of the article “shall be a civil infraction” and authorizes a private cause of action. Section 13.5-30. The possible remedies available on the plaintiff’s claim include orders to cease and desist and payment of civil penal damages not in excess of \$1,000 in the case of the first order under the ordinance against the respondent. Section 13.5-32(2).

In order to prove a violation of the ordinance, it will not be necessary for the plaintiff to prove any deviation from a standard of care by MMC. Nor may the plaintiff’s action under the ordinance

be construed as one for damages for injury or death, since neither injury nor death is an element of proof of the asserted violation. Therefore, I conclude that the cause of action asserted in Count II is not one for professional negligence within the scope of the Maine Health Security Act. Accordingly, the confidentiality provisions of the Act are not applicable to any portion of the proceedings in this court.

For the foregoing reasons, defendant MMC's motion to seal is **DENIED**.

*Dated this 23rd day of April, 1988.*

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*David M. Cohen*  
*United States Magistrate Judge*