IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SAMUEL RATMANSKY, by his son PAUL RATMANSKY,	:	
Plaintiff,	:	**CIVIL ACTION**
v.	:	
PLYMOUTH HOUSE NURSING HOME, INC., CHESTNUT HILL REHABILITATION HOSPITAL, PENNSYLVANIA HOSPITAL and THOMAS JEFFERSON UNIVERSITY HOSPITAL,	:	**No. 05-0610**
Defendants.	:	

MEMORANDUM AND ORDER

Schiller, J. **April 5, 2005**

Plaintiff, Paul Ratmansky brings this action on behalf of his father Samuel Ratmansky ("Ratmansky"), alleging claims of negligence, including negligence per se, and breach of contract. These claims were originally brought in the Philadelphia County Court of Common Pleas. Defendant Chestnut Hill Rehabilitation Hospital ("Chestnut Hill Rehab") filed a notice of removal on February 8, 2005. The Court, *sua sponte*, requested briefing on whether removal was proper. Upon review of the papers submitted, the Court concludes that removal was improper and therefore remands this action to the Court of Common Pleas.[1]

I. FACTS

The sad facts of this case – taken from Plaintiff's Complaint and accepted as true for

[1] The Court's briefing Order provided Plaintiff two weeks to respond to Chestnut Hill's brief. (Order of February 23, 2005.) For unknown reasons, Plaintiff's counsel has not filed any brief or even communicated his client's position to the Court. Nevertheless, the Court is bound to determine whether it has subject matter jurisdiction over this case.

purposes of this motion – begin with Ratmansky's admission to Thomas Jefferson University Hospital ("Jefferson Hospital") in August of 2002 after he suffered a stroke. (Am. Compl. ¶ 5.) After being discharged from Jefferson Hospital, Ratmansky, unable to use the right side of his body due to the stroke, was transferred to Chestnut Hill Rehab. (*Id*. ¶ 6.) He left Chestnut Hill Rehab with what was termed a "minor skin irritation" on his left buttock. (*Id*.) His family was assured that the irritation would be noted in his discharge summary. (*Id*.) On October 1, 2002, Ratmansky moved to Plymouth House Nursing Home, Inc. ("Plymouth"). (*Id*. ¶ 7.) Shortly thereafter, the family noticed disturbing signs of possible neglect at Plymouth. For example, Ratmansky's dressing gown was not being changed, he was sitting in dirty diapers, and he was left sitting in a chair for up to ten hours. (*Id*. ¶¶ 7-8.) Eventually, Ratmansky became unable to eat on his own, was not speaking or sleeping, and was very lethargic. (*Id*. ¶9.) On October 18, 2002, Ratmansky was taken to Pennsylvania Hospital, where his family was told that he was suffering from dehydration, malnutrition, and a late stage bedsore on his left buttock. (*Id*. ¶10.) Ratmansky remained at Pennsylvania Hospital for three weeks and now suffers from a permanent scar. (*Id*.)

Paul Ratmansky, armed with power of attorney for his father, initiated this litigation in the Court of Common Pleas of Philadelphia County. Defendant Chestnut Hill Rehab sought removal to this Court under 28 U.S.C. § 1441, asserting that the Complaint contained claims based upon violations of the laws of the United States. (Def.'s Notice of Removal ¶¶ 3-4.) Plaintiff filed an Amended Complaint in this Court on February 15, 2005, which Chestnut Hill Rehab moved to dismiss under Rules 12(b)(5) and 12(b)(6) of the Federal Rules of Civil Procedure. On February 23, 2005, this Court stayed Chestnut Hill Rehab's motion to dismiss and ordered briefing on the question

of subject matter jurisdiction.[2] (Order of February 23, 2005.)

II. STANDARD OF REVIEW

Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). They must have both personal jurisdiction over all parties and subject matter jurisdiction over the litigation. Parties may not waive subject matter jurisdiction nor may they confer subject matter jurisdiction upon the court by consent. *United Indus. Workers v. Gov't of V.I.*, 987 F.2d 162, 168 (3d. Cir. 1993). It is proper for the Court to raise the issue of jurisdiction *sua sponte* at any stage of the proceedings. *See Kontrick v. Ryan*, 540 U.S. 443, 455 (2004); *see also Liberty Mut. Ins. Co. v. Ward Trucking Corp.*, 48 F.3d 742, 750 (3d Cir. 1995).

The law grants subject matter jurisdiction to the federal district courts over "all civil actions arising under the Constitution, law, or treaties of the United States." 28 U.S.C. § 1331 (2005). Moreover, a defendant may remove a civil action that could have originally been brought by the plaintiff in federal court. *See* 28 U.S.C. § 1441(a) (2005) ("any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendants or defendants . . . ."). As the parties in this case are not completely diverse, this Court has subject matter jurisdiction – and therefore defendant can remove – only if Plaintiff's complaint presents a federal question. *See Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987).

It is the defendant's burden to show the existence of federal jurisdiction. *See Pullman Co. v. Jenkins*, 305 U.S. 534, 540 (1939); *Boyer v. Snap-On Tools Corp.*, 913 F.2d 108, 111 (3d Cir.

---

[2] While the Court was awaiting briefing on this issue, Defendants Jefferson Hospital, Pennsylvania Hospital and Plymouth all filed motions to dismiss, claiming, inter alia, that this Court lacks subject matter jurisdiction. This Memorandum and Order disposes of those motions.

1990). In considering whether to remand, "[b]ecause lack of jurisdiction would make any decree in the case void and continuation of the litigation in federal court futile, the removal statute should be strictly construed and all doubts should be resolved in favor of remand." *Abels v. State Farm Fire & Cas. Co.*, 770 F.2d 26, 29 (3d Cir. 1995); *see also Brown v. Francis*, 75 F.3d 860, 864-65 (3d Cir. 1996). If there is any doubt as to the propriety of removal, that case should not be removed to federal court. *Brown*, 75 F.3d at 865 (*citing Boyer*, 913 F.2d at 111; *Abels*, 770 F.2d at 29). When the basis of removal is federal question jurisdiction, the propriety of the removal rests on whether plaintiff's well-pleaded complaint raises claims that arise under federal law. *Caterpillar*, 482 U.S. at 392. In those instances where federal law creates the cause of action, subject matter jurisdiction is undeniable. In cases where state law creates the cause of action however, a case may only arise under federal law if the well-pleaded complaint demonstrates that the right to relief "necessarily depends on resolution of a substantial question of federal law." *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 28 (1983); *see also Merrell Dow Pharms., Inc. v. Thompson*, 478 U.S. 804, 808 (1986). If it appears that this Court lacks subject matter jurisdiction, the appropriate course of action is to remand the matter to the state court. *See* 28 U.S.C. § 1447(c) ("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.").

III. DISCUSSION

Plaintiff's Complaint alleges that Defendants acted negligently in caring for Ratmansky. Specifically, Count I is a claim for negligence per se, stemming from Defendants' alleged violation of the rights provided to Ratmansky under 42 U.S.C. § 1395(i), et seq. and 42 C.F.R. Part 483, et

seq. (Am. Compl. ¶¶ 11-28.) Plaintiff also claims that Defendants "were subject to the provisions of the rules and regulations set forth in 42 U.S.C. § 1395(i), et seq., 42 C.F.R. Part 483, et seq." (*Id*. ¶ 16.) Counts II and III of the Complaint, which are claims for gross negligence and negligence, also rely on 42 U.S.C. § 1395(i) and 42 C.F.R. Part 483. (*Id*. ¶¶ 29-39.) Finally, Counts IV, V, and VI allege corporate negligence, breach of contract, and breach of third-party contract, respectively. (*Id*. ¶¶ 40-52.)

Defendant Chestnut Hill Rehab contends that a federal question is present because Plaintiff's claims arise under federal law since Plaintiff alleges a violation of a federal statute and federal regulations. (Def.'s Br. in Supp. of Subject Matter Jurisdiction at 3-4.) Specifically, Chestnut Hill asserts that Plaintiff's negligence per se claim "would not exist were it not for federal law" and that "[f]ederal law permeates plaintiff's Amended Complaint." (*Id*.) But the argument that a federal case is created simply because a federal statute is at issue is not novel nor ordinarily successful, and in fact was rejected by the Supreme Court in *Merrell Dow*. *Merrell Dow* involved drugs that had been misbranded in violation of the Food, Drug, and Cosmetic Act (FDCA). *Merrell Dow*, 478 U.S. at 805-06. The Plaintiff argued that the FDCA established a rebuttable presumption of negligence under State law. *Id*. at 806. Defendants removed, and the district court held that plaintiff's reliance on the defendants' violation of the FDCA, a statute which did not provide a private cause of action, rendered the action one which arose under federal law. *Id*. On appeal, the Supreme Court examined "whether the incorporation of a federal standard in a state-law private action, when Congress has intended that there not be a federal private action for violations of that federal standard, makes the action one 'arising under the Constitution, laws, or treaties of the United States.'" *Id*. at 805. The Court held that such a situation did not create federal question jurisdiction. Instead, a complaint

which alleges "a violation of a federal statute as an element of a state cause of action, when Congress has determined that there should be no private, federal cause of action for the violation, does not state a claim 'arising under the Constitution, laws, or treaties of the United States.'" *Id*. at 817; *see also Teglas v. E. Strut Supply, Inc.*, Civ. A. No. 02-0174, 2003 U.S. Dist. LEXIS 6577, at *7 (E.D. Pa. Mar. 27, 2003). Furthermore, the Third Circuit has held that when a state law cause of action incorporates a federal statutory standard, a private federal remedy for a violation of the federal statute is a *prerequisite* for finding federal question jurisdiction. *Smith v. Indus. Valley Title Ins. Co.*, 957 F.2d 90, 93 (3d Cir. 1992); *see also Polcha v. AT & T Nassau Metals Corp.*, 837 F. Supp. 94, 96 (M.D. Pa. 1993). Therefore, if there is no private federal remedy here, there is no federal question jurisdiction.

In this case, the federal statute and regulations mentioned in the Complaint, Title XVIII of the Social Security Act and the Requirements for States and Long-Term Care Facilities, do not create a private cause of action. In fact, Chestnut Hill itself accurately notes that "the Eastern District of Pennsylvania has not recognized an implied right of action under the Social Security Act." (Def.'s Br. in Supp. of Subject Matter Jurisdiction at 5); *see also Sparr v. Berks Cnty.*, Civ. A. No. 02-2576, 2002 WL 1608243 (E.D. Pa. July 18, 2002) (applying *Cort v. Ash*, 422 U.S. 66 (1975), test for determining if implied right of action exists and holding that no implied right of private action exists to enforce Bill of Resident Rights); *Chalfin v. Beverly Enters., Inc.*, 741 F. Supp. 1162, 1169 (E.D. Pa. 1989) ("there is no indication that Congress intended, either explicitly or implicitly, for a private care patient to bring a private action for money damages under the [Social Security Act]"); *Brogdon v. Nat'l Healthcare Corp.*, 103 F. Supp. 2d 1322, 1330 (N.D. Ga. 2000) ("Plaintiffs contend that residents of nursing homes may sue to enforce compliance with federal standards imposed under

Medicare and Medicaid Acts. These statutes, however, do not expressly authorize private causes of action to enforce their provisions. . . [t]he Court concludes that Congress did not intend to create such a remedy."). Accordingly, this situation is indistinguishable from the one presented in *Merrell Dow*, where the Supreme Court found that Congress' decision not to provide a private cause of action under the FDCA amounted to a decision that a state cause of action predicated on a claimed violation of that statute is insufficiently substantial to grant federal question jurisdiction. *Merrell Dow*, 478 U.S. at 814.

Nor do the regulations cited in the Complaint confer federal jurisdiction. It remains in the hands of Congress to create private causes of action; federal regulations cannot accomplish what Congress did not set out to achieve. *See Alexander v. Sandoval*, 532 U.S. 275, 291 (2001) ("Language in a regulation may invoke a private right of action that Congress through statutory text created, but it may not create a right that Congress has not . . . it is most certainly incorrect to say that language in a regulation can conjure up a private right of action that has not been authorized by Congress. Agencies may play the sorcerer's apprentice but not the sorcerer himself."); *see also Stewart v. Bernstein*, 769 F.2d 1088, 1092-93 (5th Cir. 1985) (holding that Congress did not intend to create a judicially enforceable cause of action between Medicaid residents and their private nursing homes and further noting that "the federal regulations cannot themselves create a cause of action; this is a job for the legislature.").

The mere fact that Plaintiff will be required to show that the Defendants violated a federal statute fails to advance Chestnut Hill Rehab's position. Pennsylvania Courts are not disqualified from deciding cases that involve federal issues; state courts are perfectly capable of examining federal law should the need arise. *See Solter v. Health Partners of Phila., Inc.*, 215 F. Supp. 2d 533,

540 (E.D. Pa. 2002) ("To the extent that resolution of these state causes of action would implicate federal issues, the state courts are fully competent to analyze and determine any federal issues involved."); *see also Powers v. Southland Corp.*, 4 F.3d 223, 235 (3d Cir. 1993).

The mere violation of a duty established by federal law or regulation which serves as the foundation of a negligence per se claim under state law does not create federal jurisdiction. In *Teglas v. Eastern Strut Supply, Inc.*, my learned colleague, Judge Surrick, considered issues similar to those in the instant litigation. The Plaintiff in *Teglas* sued nine defendants in the Court of Common Pleas of Lehigh County after falling from scaffolding and suffering serious injuries. *Teglas*, 2003 U.S. Dist. LEXIS 6577, at *2. Two of the defendants removed the case asserting federal question jurisdiction. *Id*. at *3. At the time of the accident, the plaintiff was a trainee in the Exchange Visitor Program from Romania. *Id*. at *2. He alleged, inter alia, a negligence per se claim stemming from the defendants' violation of the duty of care owed to him under federal regulations applicable to the Exchange Visitor Program. *Id*. at *3. Noting that the Exchange Visitor Program created no private right of action, the court remanded the case because the regulations at issue "merely establish a standard or duty, the violation of which would constitute negligence per se under Pennsylvania law. They do not create an independent basis of tort liability but rather establish a standard of care appropriate to the underlying tort." *Id*. at *12. Likewise, the statute relied upon here merely serves to establish Plaintiff's claim – should Plaintiff prevail, it will be on a state law cause of action.

Moreover, the Complaint filed in this case makes clear that negligence per se is but one basis for finding defendants liable for their treatment (or lack thereof) of Ratmansky. In *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800 (1988), the Supreme Court held that where federal law

was only essential to one of several theories under which the plaintiff sought relief for the same claim, the invocation of that law was not sufficient to confer federal question jurisdiction. As one Court of Appeals has aptly phrased it, "*Christianson* teaches us that, if a claim is supported not only by a theory establishing federal subject matter jurisdiction but also by an alternative theory which would not establish such jurisdiction, then federal subject matter jurisdiction does not exist." *Mulcahey v. Columbia Organic Chems. Co.*, 29 F.3d 148, 153 (4th Cir. 1994). The logic of *Christianson* dictates that federal question jurisdiction is absent here because a jury could find defendants liable for negligence despite finding that defendants did not violate any federal laws or regulations. *See Polcha*, 837 F. Supp. at 98 ("negligence per se under [federal law] is only one of plaintiff's theories of recovery, so that the federal issue raised thereby is not substantial pursuant to *Christianson*"); *see also Mulcahey*, 29 F.3d at 153 ("Even if [defendant] was found not to have violated any federal statute, the Plaintiffs might still be entitled to recover under an alternative theory of negligence.").

IV. CONCLUSION

The Court concludes that the mere incorporation of a federal standard into Plaintiff's state law claims does not confer federal subject matter jurisdiction. Therefore, the Court holds that this case was improperly removed and accordingly remands this case to the Court of Common Pleas of Philadelphia County. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SAMUEL RATMANSKY, by his son PAUL RATMANSKY,	:	
Plaintiff,	:	**CIVIL ACTION**
v.	:	
PLYMOUTH HOUSE NURSING HOME, INC., CHESTNUT HILL REHABILITATION HOSPITAL, PENNSYLVANIA HOSPITAL and THOMAS JEFFERSON UNIVERSITY HOSPITAL,	:	**No. 05-0610**
Defendants.	:	

ORDER

AND NOW, this **5th** day of **April**, **2005**, upon consideration of Defendant Chestnut Hill's Brief in Support of Subject Matter Jurisdiction (Document No. 11), and for the foregoing reasons, it is hereby **ORDERED** that:

1. This case is **REMANDED** to the Philadelphia County Court of Common Pleas.

2. Defendant Chestnut Hill Rehabilitation Hospital's Motion to Dismiss (Document No. 5) is **DENIED as moot**.

3. Defendant Thomas Jefferson University Hospital's Motion to Dismiss (Document No. 8) is **DENIED as moot**.

4. Defendant Pennsylvania Hospital's Motion to Dismiss (Document No. 12) is **DENIED as moot**.

5. Defendant Plymouth House Nursing Home, Inc.'s Motion to Dismiss (Document No. 13) is **DENIED as moot**.

6. The Clerk of Court is directed to close this case for statistical purposes.

BY THE COURT:

Berle M. Schiller, J.