UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

NOT FOR PUBLICATION

COMPREHENSIVE NEUROSURGICAL, P.A., Plaintiff, v. NALC HEALTH BENEFIT PLAN, Defendant.	)	Civil Action No. 03-4300 **OPINION**

KATHARINE S. HAYDEN, U.S.D.J.

On April 12, 2004, Magistrate Judge Shwartz heard oral argument on plaintiff's motion to remand this case to state court. Judge Shwartz delivered an oral opinion recommending a remand. This Court now addresses defendant's objections to the Report and Recommendation ("R&R"). Defendant's argument is that removal was proper because plaintiff's claims are completely preempted by the Federal Employees Health Benefits Act ("FEHBA"), and even if not completely preempted, that the claims fall within the civil enforcement provisions of that statute or otherwise present federal questions that this Court must resolve.

DISCUSSION

The pertinent facts, taken from Magistrate Judge Shwartz's R&R, are as follows: (1) defendant is a federal employee health benefit plan; (2) plaintiff is a health care provider that is not under defendant's benefit plan; (3) a federal employee, covered by defendant's plan, sought out-of-plan services from plaintiff; (4) plaintiff provided those services, expecting reimbursement from defendant based on oral communications between the parties; (5) plaintiff

claims defendant paid significantly less than what defendant represented it would pay.

In considering defendant's objections, the Court reviews the magistrate judge's legal conclusions *de novo*. Local Civ. R. 72.1c(2).

To determine whether a case was properly removed from state court based upon federal question jurisdiction, the analysis begins with the 'well- pleaded' complaint rule, which requires not only that the complaint present issues of federal law, but that the claims be "founded directly upon federal law." PAAC v. Rizzo, 502 F.2d 306, 312 (3d Cir. 1974); *see* Exxon Corp. v. Hunt, 683 F.2d 69, 72 (3d Cir. 1982) (stating that "[t]he federal question must appear on 'the face of the complaint'"). But there is a familiar exception that permits removal when a federal statute "wholly displaces the state-law cause of action through complete pre-emption." Beneficial Nat. Bank v. Anderson, 539 U.S. 1, 8 (2003). "When the federal statute completely pre-empts the state-law cause of action, a claim which comes within the scope of that cause of action, even if pleaded in terms of state law, is in reality based on federal law." Id.

Plaintiff sued based on breach of an oral contract, breach of the covenant of good faith and fair dealing, promissory estoppel, and negligent misrepresentation. The complaint does not assert a contractual relationship between plaintiff and defendant under defendant's benefit plan, does not assert that the services plaintiff provided were covered by defendant's plan, and does not cite to FEHBA. Plaintiff does not allege that it is bringing suit on behalf of the federal employee, as the assignee of that employee, or with the consent of that employee. In support of removal to federal court, defendant argues that FEHBA completely preempts plaintiff's claims, no matter how they are framed in the complaint, and alternatively that the claims come close enough because they are enforceable under the terms of FEHBA.

Complete Preemption Under FEHBA

On the issue of complete preemption, the Third Circuit has framed a two-part test:

> [W]e have held that the complete preemption doctrine applies only if 'the statute relied upon by the defendant as preemptive contains civil enforcement provisions within the scope of which the plaintiff's state claim falls.' We also have identified a second prerequisite for the application of the complete preemption doctrine: 'a clear indication of a Congressional intention to permit removal despite the plaintiff's exclusive reliance on state law.'

Goepel v. National Postal Mail Handlers Union, a Div. of LIUNA, 36 F.3d 306, 311 (3d Cir. 1994) (internal citations omitted).

Magistrate Judge Shwartz applied this test, and she concluded FEHBA does not preempt plaintiff's state common law claims. This Court agrees based on Judge Shwartz's sound analysis and explicit Third Circuit precedent announced in Goepel, where the court defined a limited class of cases in which FEHBA preempts state law claims, and concluded that under FEHBA "there is no preemption . . . unless there is a conflict between the particular state law being relied upon in the litigation and a specific contractual provision in an FEHBA policy." Goepel, 36 F.3d at 312 n. 7. Plaintiff's claims in Goepel were distinguishable from entitlements granted under FEHBA, the court found, and thus it rejected complete preemption:

> Based on the language of FEHBA and the regulations promulgated pursuant to it, it is clear that FEHBA does not create a statutory cause of action vindicating the same interest that the [plaintiffs'] state causes of action seek to vindicate . . . . Consequently, we conclude that the complete preemption doctrine does not apply . . . , and thus 'recharacterization' of their state claims as federal claims is 'not possible' and 'there is no claim arising under federal law to be removed and litigated in the federal court.'

Id. at 313 (citations omitted).

Defendant urges this Court to follow a district court in the North District of Iowa that

found Goepel was "outdated and cannot be relied upon" because it had been superseded by regulation. *See generally* Hanson v. Blue Cross Blue Shield of Iowa, 953 F. Supp. 270, 275 n. 4 (N.D. Iowa, 1996). This Court rejects any underlying rational in Hanson that statutory changes ushered in wholesale preemption, and as applied here the case is not persuasive because the changes in the law to which defendant cites do not affect the Third Circuit's analysis in Goepel.

In Goepel, the Third Circuit found relevant that the civil enforcement provision of FEHBA only preempted those narrowly defined claims where state law was "inconsistent" with the terms of the "contractual provisions" relating to health benefits under FEHBA. Although subsequent changes to the language of the civil enforcement provision result in a broader application, they do not disturb the Third Circuit's rejection of complete preemption. Only those claims which are governed by the "terms of any contract" relating to a benefit plan under FEHBA fall into the category of preempted claims under the new language, and the non-binding reasoning of the Iowa district court does not change Goepel's binding precedent.

Civil Enforcement Encompassed by FEHBA

Defendant also objects to Magistrate Judge Shwartz's recommended ruling that plaintiff's claims did not fall within the scope of FEHBA's civil enforcement provision, which states that "[t]he terms of any contract under this chapter which relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supercede and preempt any State or local law, or any regulation issued thereunder, which relates to health insurance or plans." 5 U.S.C. § 8902(m)(1).

Defendant contends that plaintiff's claims relate to "health insurance or plans," that they fall within the scope of FEHBA, and so must be litigated in federal court. But the undisputed

facts do not support defendant's argument because the parties agree that plaintiff is an out-of-network provider and *not* a party to defendant's plan. So, there is no "contract under this chapter" which is at issue in this case. Plaintiff has conceded that if it were an in-plan provider, bound by the terms of defendant's plan, it would not have filed this lawsuit because what defendant chose to pay would constitute all that plaintiff was entitled to under the plan documents. (Hr'g Tr. 17:22-24, Apr. 12, 2004; id. 24:3-12.) Magistrate Judge Shwartz correctly determined that "plaintiff's claims are completely severable from the terms of the plan and have absolutely nothing to do with the plan, nor do the payments 'relate to the plan.'" (Id. 44:21-24.) She properly concluded that as a consequence, plaintiff's claims fall outside the civil enforcement provision of FEHBA. (Id. 41:8-9.) This Court's *de novo* review leads to the same conclusion.

Federal Question Jurisdiction Generally

Defendant's final contention is that, independent of its arguments invoking FEHBA, the complaint presents federal questions that vest this Court with jurisdiction because the lawsuit involves a benefit plan established under a contract with an agency of the federal government. As such, the argument goes, any claims against it necessarily implicate uniquely federal interests and require application of federal common law. Defendant contends that Magistrate Judge Shwartz failed to apply the "uniquely federal analysis" required by Boyle v. United Techs. Corp., 487 U.S. 500 (1988), in reaching her recommended ruling that no federal questions were presented by the complaint.

Boyle was a wrongful death suit brought by a private party against a private contractor that provided helicopters to the federal government. Under federal law the contractor was

immunized from liability, but under state law it was not. Plaintiff brought state claims, and the issue became whether the federal government's unique interest in assuring its contractors' immunity trumped any conflicting state law. The Supreme Court stated:

> That the procurement of equipment by the United States is an area of uniquely federal interest does not, however, end the inquiry. That merely establishes a necessary, not a sufficient, condition for the displacement of state law. Displacement will occur only where, as we have variously described, a 'significant conflict' exists between an identifiable 'federal policy or interest and the [operation] of state law,' or the application of state law would 'frustrate specific objectives' of federal legislation. The conflict with federal policy need not be as sharp as that which must exist for ordinary pre-emption . . . . [b]ut conflict there must be.

Boyle, 487 U.S. at 507-08 (internal citations omitted). Ultimately, the Court's ruling was narrow, holding that "state law which holds Government contractors liable for design defects in military equipment does *in some circumstances* present a 'significant conflict' with federal policy and must be displaced." Id. at 512 (emphasis added).

Here, defendant asserts that providing health benefits to federal employees pursuant to a contract with a federal agency implicates a uniquely federal interest that would impermissibly be in conflict with state common law claims asserted against a private insurer administering those benefits. Defendant contends that should it be found liable to plaintiff under state law, its insurance premiums might go up in price. These premiums are partially subsidized by the federal government. Thus liability under state law would "conflict" with the government's interests in economically providing health benefits to its employees.

Boyle is very clear that any conflict that would displace state law must be significant. Plaintiff wants defendant to reimburse it approximately $8,000; its lawsuit had to be brought in the Special Part of the Superior Court because the amount at stake was so small. Permitting this

case, under its particular facts, to go forward in state court does not present a significant conflict with a federal interest in providing health benefits to postal employees nationwide on an economical basis. The financial impact is not large enough in and of itself to create a significant conflict with the goal of economical health insurance premiums, and economy in health benefits is not a "uniquely" federal interest.

CONCLUSION

This Court adopts Magistrate Judge Shwartz's recommendation that this matter be remanded to state court. Absent subject matter jurisdiction, the Court does not have authority to decide the defendant's pending motion for judgment on the pleadings, and it is denied. An appropriate order will be entered.

Date: September 21, 2004

s/ Katharine S. Hayden

Katharine S. Hayden, U.S.D.J.