

FILED: September 1, 2009

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 08-1930  
(1:07-cv-02197-JFM)

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ISAAC ISAIAH, M.D.,

Plaintiff - Appellant

v.

WHMS BRADDOCK HOSPITAL CORPORATION; MEMORIAL HOSPITAL AND  
MEDICAL CENTER OF CUMBERLAND, INCORPORATED,

Defendants - Appellees

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J U D G M E N T

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In accordance with the decision of this Court, the judgment  
of the District Court is affirmed.

This judgment shall take effect upon issuance of this  
Court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

**UNPUBLISHED**

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**No. 08-1930**

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ISAAC ISAIAH, M.D.,

Plaintiff - Appellant,

v.

WMHS BRADDOCK HOSPITAL CORPORATION; MEMORIAL HOSPITAL AND  
MEDICAL CENTER OF CUMBERLAND, INCORPORATED,

Defendants - Appellees.

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Appeal from the United States District Court for the District of  
Maryland, at Baltimore. J. Frederick Motz, District Judge.  
(1:07-cv-02197-JFM)

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Submitted: July 31, 2009

Decided: September 1, 2009

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Before WILKINSON, SHEDD, and AGEE, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Conrad W. Varner, VARNER & GOUNDRY, P.C., Frederick, Maryland,  
for Appellant. Jack C. Tranter, Sarah Downing Howard, GALLAGHER  
EVELIUS & JONES LLP, Baltimore, Maryland, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Isaac Isaiah, M.D., appeals an order granting summary judgment against him in an action he brought against WMHS Braddock Hospital Corp., et al. (collectively "WMHS"). Because Dr. Isaiah does not challenge one of the bases for the decision against him, we affirm.

Dr. Isaiah initiated the present action alleging several state claims against WMHS arising from the precautionary suspension and subsequent revocation of his medical privileges at WMHS. Federal jurisdiction is based on diversity. See 28 U.S.C. § 1332.

The district court considered both parties' motions for summary judgment, and granted WMHS summary judgment upon two distinct and independent grounds, (1) immunity under the federal Health Care Qualified Immunity Act ("HCQIA"), 42 U.S.C. § 11112, et al., and (2) immunity under the Maryland statutes providing immunity for peer review activity, Md. Code Ann., Health Occ. § 14-502 and Cts. & Jud. Proc. § 5-638. The district court's order granting summary judgment to WMHS is based accordingly.

On appeal, although Dr. Isaiah challenges the district court's ruling on the issue of immunity under the HCQIA, he does not challenge the district court's determination that WMHS was entitled to immunity under the Maryland statute. Dr. Isaiah

does not mention the judgment of immunity under Maryland law in his statement of issues or anywhere else in his brief.

WMHS contends that because Dr. Isaiah failed to challenge this separate, but equally dispositive, ruling, he has waived the right to challenge it on appeal. We agree.

Federal Rule of Appellate Procedure 28(a)(9)(A) requires that the argument section of an appellant's opening brief must contain the "appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies." Failure to comply with the specific dictates of this rule with respect to a particular claim triggers abandonment of that claim on appeal. See 11126 Baltimore Boulevard, Inc. v. Prince George's County, 58 F.3d 988, 993 n.7 (4th Cir. 1995) (en banc). Furthermore, Federal Rule of Appellate Practice 28(a)(5) requires a statement of issues presented for review, but Dr. Isaiah's statement of issues does not raise any claim of error as to the district court's judgment of immunity under Maryland law. Because Dr. Isaiah failed to challenge the district court's ruling as to immunity under the Maryland statutes, he has waived the right to review of that ruling on appeal.\*

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\* Despite this specific point being raised in the Appellees' brief, Dr. Isaiah did not file a reply brief, and the time for filing it has long passed. Even if he had addressed the issue (Continued)

Immunity under the HCQIA is a separate legal analysis from the grant of immunity for peer review actions under the Maryland statute. In Imperial v. Suburban Hospital Ass'n, 37 F.3d 1026 (4th Cir. 1994), we observed that the Maryland statute is "broader in scope than the immunity granted by the [HCQIA]," and noted that the state statute extends immunity to "all civil liability" and is based on whether an individual "acts in good faith and within the scope of the jurisdiction of a Medical Review committee." Id. at 1031-32 & 1031 n.\* (emphasis omitted). Similarly, the Maryland Court of Appeals has stated:

[B]ecause the Maryland statute requires that a member of a review committee act in good faith, while the HCQIA employs objective standards of reasonableness, "the State law . . . may, in some circumstances, provide additional immunity or protection to medical review bodies. The State law is preempted by the Federal only to the extent that it provides less immunity than the Federal, not to the extent it provides more."

Goodwich v. Sinai Hosp., 680 A.2d 1067, 1082 (Md. 1996) (emphasis omitted). While a person is only exempt under the HCQIA when the objective standards set forth in that statute are satisfied, a person who does not meet those objective standards

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in a reply brief, the Court will generally not consider issues raised for the first time in that manner, United States v. Brooks, 524 F.3d 549, 556 n.11 (4th Cir. 2008), or in oral argument. Goad v. Celotex Corp., 831 F.2d 508, 512 n.12 (4th Cir. 1987).

may still be entitled to immunity under the Maryland statute if those actions "were nonetheless taken in good faith." Bender v. Suburban Hosp., Inc., 758 A.2d 1090, 1104 (Md. Ct. Spec. App. 2000).

Because the Maryland statute provides an independent basis for the district court's judgment granting summary judgment to WMHS, and because Dr. Isaiah has abandoned any challenge to that determination on appeal by failing to raise it in his opening brief, there is no reason to consider the underlying merits of his HCQIA-based claim. Dr. Isaiah had to challenge both bases for the district court's judgment in order to prevail on appeal. See, e.g., Atwood v. Union Carbide Corp., 847 F.2d 278, 280 (5th Cir. 1988) (holding that where an issue "constituted an independent ground for [the disposition] below, appellants were required to raise it to have any chance of prevailing in [their] appeal"). Even if Dr. Isaiah's appeal were successful, the alternate basis for the district court's judgment would stand, and Dr. Isaiah's appeal would be of no effect.

Because Dr. Isaiah has waived review of the district court's independent and alternate ground for its judgment, we conclude that oral argument would not assist the decisional process. For the aforementioned reasons, we affirm the district court's order granting summary judgment to WMHS.

AFFIRMED

FILED: September 1, 2009

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

No. 08-1930, Isaac Isaiah v. WHMS Braddock Hospital  
Corpora  
1:07-cv-02197-JFM

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NOTICE OF JUDGMENT

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Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

**PETITION FOR WRIT OF CERTIORARI:** To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this Court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons. ([www.supremecourtus.gov](http://www.supremecourtus.gov))

**NOTICE REGARDING CERTIORARI IN CRIMINAL CASES:** In criminal cases, counsel is required to inform the defendant, in writing, of the right to file a petition for writ of certiorari from an adverse decision. If the defendant requests, in writing, that a petition for certiorari be filed and there are grounds for seeking review, counsel shall prepare and file the petition. If counsel believes the requested petition would be frivolous, counsel may file a motion to withdraw with this Court. The motion must reflect that a copy was served on the client and the client advised of the right to file a response to the motion within seven days. (Loc. R. 46(d) & CJA Plan).

**VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL:** Vouchers are sent to counsel appointed or assigned by the Court in a separate transmission at the time judgment is entered. CJA 30 vouchers are sent to counsel in capital cases. CJA 20 vouchers are sent to counsel in criminal, post-judgment, habeas, and § 2255 cases. Assigned counsel vouchers are sent to counsel in civil, civil rights, and agency cases. Vouchers should be completed and returned within 60 days of the later of entry of judgment, denial of a petition for rehearing, or the grant or

denial of a petition for writ of certiorari. If counsel appointed or assigned by the Court did not receive a voucher, forms and instructions are available from the Court's web site, [www.ca4.uscourts.gov](http://www.ca4.uscourts.gov), or from the clerk's office.

**BILL OF COSTS:** A party to whom costs are allowed, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

**PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC:** A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition to identify the cases to which the petition applies and to avoid companion cases proceeding to mandate during the pendency of a petition for rehearing in the lead case. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this Court, or another Court of Appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 15 pages. Copies are not required unless requested by the Court. (Fed. R. App. P. 35 & 40, Loc. R. 40(c)).

**MANDATE:** In original proceedings before this Court, there is no mandate. Unless the Court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay

the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (Fed. R. App. P. 41, Loc. R. 41).