

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FRANCIS J. SAVARIRAYAN, M.D.

Plaintiff,

v.

**Neil A. Brunetz, J.D. (of the Law Firm –
Martin & Miller and Attorney for
BLUECROSS BLUESHIELD OF
TENNESSEE) BLUECROSS
BLUESHIELD OF TENNESSEE,
BLUECROSS BLUESHIELD OF
ILLINOIS, Brian Cummings, J.D. et al.,
DOE #1, Doe #2, DOE #3, DOE #4**

Defendants.

No. 10 CV 04723

Judge William T. Hart

Magistrate Judge Young B. Kim

**DEFENDANT HEALTH CARE SERVICE CORPORATION, A MUTUAL LEGAL
RESERVE COMPANY’S 12(b)(6) MOTION TO DISMISS PLAINTIFF’S FIRST
AMENDED COMPLAINT**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant, Health Care Service Corporation, a Mutual Legal Reserve Company (“HCSC”) (erroneously named as “BlueCross BlueShield of Illinois in Plaintiff’s First Amended Complaint), hereby requests that Plaintiff’s First Amended Complaint in this matter be dismissed for failure to state a claim upon which relief can be granted. The bases for this motion are set forth in HCSC’s Memorandum of Law in Support, which is filed herewith and made a part of this motion. In support thereof, HCSC states as follows:

1. On July 28, 2010, Plaintiff Francis Savarirayan, M.D. (“Plaintiff”), filed a Complaint on behalf of himself and other “Foreign Medical Graduates” alleging race, color, and national origin discrimination under Title VII of the Civil Rights Act of 1964 (“Title VII”), and age discrimination under the Age Discrimination in Employment Act of 1967 (“ADEA”). On

October 28, 2010, Plaintiff filed his First Amended Complaint alleging essentially the same claims as his original Complaint.

2. At its core, all of Plaintiff's claims should be dismissed as untimely because he failed to file a charge of discrimination with the Equal Employment Opportunity Commission within 300 days of the alleged discriminatory conduct plead in his First Amended Complaint.

3. Additionally, Plaintiff was never an "employee" of HCSC as that term is defined by Title VII and the ADEA, and, therefore, he was not entitled to the protections of either statute. Further, HCSC was not Plaintiff's de facto/indirect employer.

WHEREFORE, Defendant Health Care Service Corporation, a Mutual Legal Reserve Company, respectfully requests that Plaintiff's First Amended Complaint be dismissed in its entirety, with prejudice, that judgment be granted in its favor and against Plaintiff on all counts and claims herein, and further requests that it be granted such other relief deemed appropriate by the Court.

Respectfully submitted,

/s/Michael A. Wilder

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Dated: January 14, 2011

CERTIFICATE OF SERVICE

I, **Michael A. Wilder**, an attorney, certifies that he caused a copy of the foregoing **Defendant Health Care Service Corporation, a Mutual Legal Reserve Company's 12(b)(6) Motion to Dismiss Plaintiff's First Amended Complaint** to be served upon the following individuals listed below electronically with the Clerk of the Court using the CM/ECF system, which sent notification of such filing on **January 14, 2011**:

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and by depositing in the United States mail, postage prepaid from 321 N. Clark St., Suite 1000, Chicago, IL 60654 and served upon:

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/s/ Michael A. Wilder

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