

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ROGER GODWIN,

Plaintiff,

v.

BELINDA SCHRUBBE,
CHARLES LARSON,
MARK (last name unknown), and
RICK RAEMISCH,

Defendants.

ORDER

07-C-208-C

In this civil action, plaintiff Roger Godwin contends that defendants violated his Eighth Amendment rights by failing to treat his back problems. Defendants answered plaintiff's complaint on June 18, 2007. Now, plaintiff has filed a document in which he says he is moving to have the case "voluntary on my own dismissed," which I construe as a motion for voluntary dismissal under Fed. R. Civ. P. 41.

When a motion for voluntary dismissal is filed after the defendants have filed an answer such as in this case, Rule 41(a)(2) provides that the action may be dismissed by the plaintiff "only upon order of the court and upon such terms and conditions as the court

deems proper." Because defendants have been required to defend this action, I will grant plaintiff's motion for voluntary dismissal only on the condition that the dismissal is with prejudice, unless defendants agree to a dismissal without prejudice as plaintiff asks. If defendants do not agree to a dismissal without prejudice, then plaintiff will have an opportunity to withdraw his motion.

ORDER

IT IS ORDERED that defendants may have until August 7, 2007, in which to advise plaintiff and the court whether they agree to a dismissal of this action without prejudice. If defendants agree to such a dismissal, the clerk of court is directed to enter a judgment of dismissal without prejudice. If defendants do not agree to such a dismissal, plaintiff may have until August 21, 2007, in which to withdraw his motion for voluntary dismissal. If, by August 21, 2007, plaintiff fails to request withdrawal of his notice of voluntary dismissal, the

clerk of court is directed to enter judgment dismissing this case with prejudice.

Entered this 24th day of July, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge