

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

JODY M. WAGNER,

Plaintiff,

v.

KEN SCHREIBMAN, M.D. and
MATTHEW BACKER D.R.,

Defendant.

ORDER

13-cv-439-bbc

Plaintiff Jody M. Wagner filed a proposed complaint in this case on June 21, 2013, contending that he had suffered a severe bacterial infection as a result of an injection. He alleged that defendant Backer, acting under the supervision of Dr. Schreibman, was negligent in giving him the injection at the University of Wisconsin hospital. In an order entered on September 6, 2013, I dismissed the complaint on the ground that plaintiff had alleged only that the injection had been administered negligently; he did not allege that either of the defendants had acted with deliberate indifference to a serious medical need that he had. Dkt. #6. Medical malpractice is a state law claim and plaintiff had not alleged any basis on which this court could hear the claim. I declined to exercise supplemental jurisdiction over it. Id.

Subsequently, plaintiff filed a motion to alter the judgment and asked for an opportunity to file an amended complaint. Dkt. #9. I denied the motion to alter but

allowed plaintiff an opportunity to file an amended complaint. Dkt. #10. On November 4, 2013, plaintiff filed a motion to withdraw his case and to seek a refund for the filing fees that he has paid.

Plaintiff's motion to withdraw will be granted, but his request for a refund of his filing fees must be denied. Unfortunately for plaintiff, the law does not permit refunds of filing fees. Congress has set forth in 28 U.S.C. § 1915 the manner in which prisoners must pay the fees for filing federal lawsuits: "if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner is required to pay the full amount of the filing fee." The courts have no discretion to modify this statute.

ORDER

IT IS ORDERED that plaintiff Jody M. Wagner's motion to withdraw his case, dkt. #12, is GRANTED; his motion for a refund of filing fees is DENIED.

Entered this 12th day of November, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge