

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

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JOSEPH VAN PATTEN,

Plaintiff,

v.

ORDER

06-C-374-C

D.O.C., MATTHEW FRANK,  
WARDEN DEPPISCH,  
JOSEPH LADWIG and DR. LUY,

Defendants.  
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On October 19, 2006, I granted plaintiff Joseph Van Patten leave to proceed in forma pauperis in this action on his claims that defendants Luy, Deppisch and Frank exhibited deliberate indifference to his serious medical needs by ignoring his need for appropriate treatment of his broken leg and that defendant Ladwig exhibited deliberate indifference to his serious medical needs when Ladwig forced him to walk unassisted for half a mile in order to obtain medical treatment for his broken leg. On November 24, 2006, defendants answered plaintiff's complaint. Subsequently, a preliminary pretrial conference was held before United States Magistrate Judge Stephen Crocker, who set a trial date and scheduled deadlines for completing the various steps required to move a case to resolution.

Now plaintiff has filed a document titled "Request to Close File Without Prejudice

for Petitioner to P[ursue Case at a Later Date.” I construe plaintiff’s submission as a motion for voluntary dismissal of the case.

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 February 20, 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 March 2, 2007, in which to withdraw his motion for voluntary dismissal. If, by March 2, 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 12th day of February, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge