

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

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JODY M. WAGNER,

Plaintiff,

v.

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

Defendants.  
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ORDER

13-cv-439-bbc

In a September 6, 2013 order, I dismissed this case for plaintiff Jody Wagner's failure to state a claim upon which relief may be granted because his complaint alleged only state law medical negligence claims, over which this court does not have jurisdiction. Judgment was entered on September 9, 2013. Now before the court is plaintiff's motion to alter or amend the judgment under Fed. R. Civ. P. 59. Plaintiff asks for a chance to amend his complaint so that he might state federal claims. Thus I understand him to be bringing a motion for leave to file an amended complaint as well.

Plaintiff's original complaint quite clearly stated no federal claims, and plaintiff has provided no information suggesting that there were missing allegations that would properly state a federal claim, so I will deny his Rule 59 motion for the time being. However, pro se plaintiffs should be given the same leeway as paying litigants, who ordinarily retain the ability to amend their complaint once as a matter of right, "even after a court grants a

motion to dismiss.’” Luevano v. Wal-Mart Stores, Inc., 722 F.3d 1014, 1024 (7th Cir. 2013) (quoting Alioto v. Town of Lisbon, 651 F.3d 715, 721 (7th Cir. 2011)). Therefore, I will grant his motion for leave to file an amended complaint, and give him a short time to submit the complaint. If it states a federal claim, I will vacate the judgment and reopen the case.

### ORDER

IT IS ORDERED that

1. Plaintiff Jody Wagner’s motion to alter or amend the judgment, dkt. #9, is DENIED without prejudice.

2. Plaintiff’s motion for leave to file an amended complaint, dkt. #9, is GRANTED; plaintiff may have until November 5, 2013 to submit his proposed amended complaint.

Entered this 22d day of October, 2013.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge