

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez**

Civil Action No. 14-cv-2459-WJM-KMT

ANDRE MAY, M.D.,

Plaintiff,

v.

COLORADO MEDICAL BOARD,
ERIC GROCE, in his official capacity as a member of Board Inquiry Panel B;
TY HIGUCHI, in his official capacity as a member of Board Inquiry Panel B;
JEAN MILOFSKY, in her official capacity as a member of Board Inquiry Panel B;
MICHAEL RAGGIO, in his official capacity as a member of Board Inquiry Panel B; and
JUDITH SCHULMAN, in her official capacity as a member of Board Inquiry Panel B;

Defendants.

**ORDER GRANTING PLAINTIFF'S ALTERNATIVE REQUEST TO DISMISS
CLAIMS ONE AND FOUR WITHOUT PREJUDICE**

Plaintiff Andre R. May, M.D. ("Plaintiff") originally filed this action against Defendant Colorado Medical Board (the "Board") in Denver County District Court on September 3, 2014. (ECF No. 4.) The Board removed the case to this Court pursuant to 28 U.S.C. § 1331, as Plaintiff brought a claim pursuant to 42 U.S.C. § 1983 (ECF No. 1.) Plaintiff then filed an Amended Complaint which added individual members of the Board as Defendants, and which asserted four claims—three state law claims and one § 1983 claim. (ECF No. 15.)

On October 20, 2014, Plaintiff filed a Notice of Dismissal which voluntarily dismissed with prejudice the second and third claims brought in the Amended Complaint. (ECF No. 23.) As Defendants had yet to file an answer or a motion for

summary judgment, this dismissal was self-executing, and claims two and three are no longer pending in this action. See Fed. R. Civ. P. 41(a)(1)(A)(i). As such, the only claims remaining are claims one and four, both of which are state law claims. (ECF No. 15.)

On the same day, Plaintiff filed a Motion for Remand to State District Court, or in the alternative, Notice of Dismissal of Counts Without Prejudice (“Motion”). (ECF No. 24.) Based on the representations in the Motion, Defendants oppose remand of this case, but take no position on the dismissal of the claims without prejudice. (*Id.* at 1-2.) If the Court were to consider remanding the action, it would be required to wait for Defendants to file their response to the Motion before making its determination. As Plaintiff’s request for injunctive relief is still pending in this case, the Court finds that further delay of this action is not warranted. Rather, the Court will grant the unopposed alternative relief requested by Plaintiff, and order dismissal of claims one and four without prejudice.

For the reasons set forth above, the Court ORDERS as follows:

1. Plaintiff’s Motion for Remand to State District Court, or in the alternative, Notice of Dismissal of Counts Without Prejudice (ECF No. 24) is DENIED to the extent it seeks remand of this case, but GRANTED in so far as it seeks to voluntarily dismiss the remaining claims (claims one and four) without prejudice;
2. The only claims remaining in this case—claims one and four of the Amended Complaint—are DISMISSED WITHOUT PREJUDICE; and

3. The Clerk shall enter judgment and close this case.

Dated this 21st day of October, 2014.

BY THE COURT:



William J. Martinez
United States District Judge