

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

SHEDINA VEALE,

v.

Case No: 2:13-cv-77-FtM-38UAM

FLORIDA DEPARTMENT OF HEALTH,

Defendant.

ORDER

This matter comes before the Court on Defendant's Motion to Dismiss the Amended Complaint (Doc. #12) filed on April 9, 2013 and Plaintiff's Motion to Strike (Doc. #15) filed on April 22, 2013.

On March 13, 2013, Defendant filed a Motion to Dismiss (Doc. #6) Plaintiff's original Complaint. After that, Plaintiff filed an opposed Motion to Amend the Complaint to correct certain deficiencies identified by Defendant in its Motion to Dismiss. (Doc. #11). The Court has yet to issue a ruling on the Motion to Amend. Nonetheless, Defendant filed a Motion to Dismiss the Amended Complaint (Doc. #12) on April 9, 2013. Plaintiff then filed a Motion to Strike the Motion to Dismiss the Amended Complaint (Doc. #15) on the grounds that the filing of the Motion to Dismiss the Amended Complaint was premature as the Court had not yet granted leave for Plaintiff to file the Amended Complaint. The Court agrees and finds that the Motion to Dismiss the Amended Complaint was filed in error as the Court had not yet granted leave for Plaintiff to file an amended complaint. Thus, the Court grants Plaintiff's Motion to Strike Defendant's Motion to Dismiss the Amended Complaint, and will allow Plaintiff to amend his Complaint. Defendant shall respond to the Amended Complaint within the time

allowed pursuant to the Federal Rules. The amendment will moot the original Motion to Dismiss the first Complaint.

Accordingly, it is now

ORDERED:

- (1) Plaintiff's Motion to Strike Defendant's Motion to Dismiss the Amended Complaint (Doc. #15) is **GRANTED**.
- (2) Defendant's Motion to Dismiss the Amended Complaint (Doc. #12) is **DENIED as premature**.
- (3) Plaintiff's Motion to Amend Complaint (Doc. #11) is **GRANTED**. **The Clerk of Court is directed to docket Plaintiff's Amended Complaint and its exhibit (Doc. #11-1, 11-2) as a separate entry in the CM/ECF system.**
- (4) Defendant's Motion to Dismiss (Doc. #6) is **DENIED AS MOOT**.

DONE and **ORDERED** in Fort Myers, Florida this 3rd day of June, 2013.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record