

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

JOSEPH STAMBAUGH,)	
)	
Plaintiff,)	
)	
v.)	CAUSE NO. 3:14 CV 582
)	
ST. JOSEPH COUNTY)	
SHERIFF MIKE GRZEGOREK,)	
<i>et al.</i> ,)	
)	
Defendants.)	

OPINION AND ORDER

This matter is before the Court on the Defendant Beacon's Motion to Dismiss, filed by Defendant, Beacon Health Ventures, Inc. d/b/a Memorial Home Care, Inc. a/k/a Memorial Home Care (hereinafter "Beacon"), on April 29, 2015 (DE #43). For the reasons set forth below, the motion (DE #43) is **GRANTED**. The federal claims against Beacon are **DISMISSED WITH PREJUDICE** and the state law claims are **DISMISSED WITHOUT PREJUDICE**. The Clerk is **ORDERED** to **CLOSE** this case.

BACKGROUND

The facts of this case are largely set forth in this Court's recent opinion and order dated April 29, 2015, and need not be gone through again. Defendant Beacon filed the instant motion to dismiss on April 29, 2015 (DE #43), arguing Beacon cannot be held

liable for the actions of John/Jane Does who were not identified as parties or served with process, and cannot be held liable under the doctrine of respondeat superior for claims under 42 U.S.C. § 1983. In response, Plaintiff stated it "will not be proceeding further as to claims against individual employees of Beacon who identified as John/Jane Doe" and "Plaintiff will not be proceeding with any constitutional claims against Defendant Beacon" and "Plaintiff similarly will not be proceeding further with any claims for constitutional violations by any "John/Jane Doe" employees of Beacon." (DE #47, p. 4.) In reply, Beacon requests that because the federal claims have been abandoned, dismissal is warranted, and the state law claim for medical malpractice should be dismissed without prejudice. (DE #49.)

DISCUSSION

Beacon is the only remaining defendant, as this Court previously granted the motion to dismiss the claims against the John/Jane Doe Defendants and St. Joseph County Sheriff Mike Grzegorek (DE #42). Plaintiff has now expressly waived and abandoned its federal claims against Beacon. (DE #47, p. 4.) Plaintiff concedes that this Court could exercise supplemental jurisdiction over state law claims, "[h]owever, should the Court not exercise its jurisdiction on the Plaintiff's remaining state tort respondeat superior claim against Beacon, the claim should be

dismissed without prejudice, so that the Plaintiff may refile his state tort claim in state court." (DE #47, p. 6.)

Upon due consideration, the state law claims are **DISMISSED WITHOUT PREJUDICE** because the federal claims have been dismissed prior to trial. 28 U.S.C. § 1367(c)(3); *Groce*, 193 F.3d at 501 ("[I]t is the well-established law of this circuit that the usual practice is to dismiss without prejudice state supplemental claims whenever all federal claims have been dismissed prior to trial.").

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DATED: June 2, 2015

/s/ RUDY LOZANO, Judge
United States District Court