

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

PHYLLIS FAHLENKAMP and
RANDY FAHLENKAMP,

Plaintiffs,

vs.

AVERA HEALTH, a South Dakota
corporation, *dba* AVERA SPENCER
FAMILY CARE,

Defendant.

No. C10-4116-DEO

ORDER

On January 7, 2011, the plaintiffs filed an Amended Complaint. Doc. No. 12. On January 10, 2011, the court struck the Amended Complaint on the grounds that the plaintiffs had failed to comply with Federal Rule of Civil Procedure 15, and Local Rules 15 and 7(l). Doc. No. 13.

In striking the Amended Complaint, the court did not apply amended Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure. The rule was amended effective December 1, 2009, to change the times when a party may amend a pleading as a matter of course. Under the previous rule, service of a responsive pleading terminated the right to amend as a matter of course. After service of a responsive pleading, leave of court was required in order to amend a pleading. Under the new rule, a party may amend once as a matter of course within 21 days after service of a responsive pleading. The comments to the 2009 Amendments explain the rationale behind this change as follows:

[T]he right to amend once as a matter of course is no longer terminated by service of a responsive pleading. The responsive pleading may point out issues that the original pleader had not considered and persuade the pleader that amendment is wise. Just as amendment was permitted by

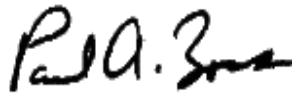
former Rule 15(a) in response to a motion, so the amended rule permits one amendment as a matter of course in response to a responsive pleading. The right is subject to the same 21-day limit as the right to amend in response to a motion.

Fed. R. Civ. P. 15, Comments to 2009 Amendments.

Accordingly, the court's order striking the Amended Complaint is **withdrawn**, and the Amended Complaint is deemed properly filed. The Clerk of Court is directed to remove the "Stricken" designation from the Amended Complaint, and the defendants are directed to respond in due course as required by the Rules.

IT IS SO ORDERED.

DATED this 11th day of January, 2011.



PAUL A. ZOSS
CHIEF MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT