UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JAYNE BELCHER ET AL.	**CIVIL ACTION**
VERSUS	**NO: 18-7368**
SHERIFF JOSEPH LOPINTO, III, ET AL.	**SECTION: "H"**

ORDER AND REASONS

Before the Court is a Motion to Dismiss (Doc. 17) by Defendants CorrectHealth Jefferson, LLC ("CorrectHealth") and Ironshore Specialty Insurance Company ("Ironshore").

Defendants argue that "the Louisiana Medical Malpractice Act applies to Plaintiffs' claims" against them, and that such claims should be dismissed as premature because of Plaintiffs' failure to comply with certain requirements of the Act.[1] In both their Complaint and their First Amendment Complaint, however, Plaintiffs specifically waived any claims they may have had against Defendants under the Louisiana Medical Malpractice Act.[2] Moreover, Plaintiffs' "claim of deliberate medical indifference under the Fourteenth Amendment asserts a claim based on the violation of constitutional civil rights

---

[1] Doc. 17-1 at 3.

[2] Doc. 1 at 15, ¶ 83 ("Plaintiffs are not proceeding under the Louisiana Medical Malpractice Act."); Doc. 32 at 16, ¶ 83 (same).

1

under 42 U.S.C. § 1983, and therefore the Louisiana Medical Malpractice Act does not apply."[3] Similarly, because "the Louisiana Medical Malpractice Act defines malpractice as an '*unintentional* tort or breach of contract,'" the Act also does not apply to Plaintiffs' Louisiana law intentional infliction of emotional distress claims.[4]

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss is **DENIED**.

New Orleans, Louisiana this 8th day of February, 2019.

_____

JANE TRICHE MILAZZO
UNITED STATES DISTRICT JUDGE

---

[3] Colbert v. City of Baton Rouge/Par. of E. Baton Rouge, No. CV 17-28, 2018 WL 344966, at *7 (M.D. La. Jan. 9, 2018).
[4] Bailey v. E.B.R. Par. Prison, No. 12-224, 2015 WL 545706, at *3 (M.D. La. Feb. 9, 2015) (emphasis in original) (quoting LA. REV. STAT. § 40:1231.1(A)(13)).