

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

VIA CHRISTI REGIONAL MEDICAL )  
CENTER, INC. and CECILLIA ARNOLD, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 BLUE CROSS AND BLUE SHIELD OF )  
 KANSAS, INC., )  
 )  
 Defendant. )  
 \_\_\_\_\_ )  
 )  
 BLUE CROSS AND BLUE SHIELD OF )  
 KANSAS, INC., )  
 )  
 Third-Party Plaintiff, )  
 )  
 v. )  
 )  
 IMA OF KANSAS, INC., )  
 )  
 Third-Party Defendant. )  
 \_\_\_\_\_ )

Case No. 04-1253-WEB  
(Consolidated with  
Case No. 04-1339-WEB)

**Order of Dismissal**

This matter comes before the court in the wake of this court's show cause order entered on September 12, 2007. In that order, the court gave plaintiff Cecillia Arnold until October 1, 2007, to show cause why her attorneys' motion to withdraw should not be granted and to show cause why her claims should not be dismissed with prejudice. Ms. Arnold has not responded to the order.

The record before the court shows that Ms. Arnold's counsel, W. Thomas Gilman, has done all that could reasonably be expected of counsel to prompt Ms. Arnold to provide discovery and to prosecute her claims, but she has failed to do so. Based upon counsel's motion, as well as

the circumstances of the case, the court concludes that good cause exists to grant counsel's motion to withdraw.

Furthermore, based upon its authority under Fed.R.Civ.P. 37 and 41(b), as well as its inherent authority, the court concludes that plaintiff Arnold's claims in this action should be dismissed with prejudice for her failure to comply with discovery orders and her failure to prosecute the action. The court has considered all of the circumstances, including the following: (1) the degree of actual prejudice to the other party; (2) the amount of interference with the judicial process; (3) the litigant's culpability; (4) whether the court warned the party in advance that dismissal would be a likely sanction for noncompliance; and (5) the efficacy of lesser sanctions. *See Ehrenhaus v. Reynolds*, 965 F.2d 916 (10th Cir.1992). *See also Ecclesiastes 9:10-11-12, Inc. v. LMC Holding*, 497 F.3d 1135 (10th Cir. 2007). Ms. Arnold's failure to pursue her claims has once again brought the litigation to a halt. The record shows that she alone bears responsibility for this failure, and is apparently unwilling to pursue the claims. Plaintiff has been warned previously that her claims could be dismissed if she failed to prosecute the action, and it is apparent that any sanction less than dismissal would be ineffective.

Conclusion.

The motion of W. Thomas Gilman, Joseph H. Cassell, and the law firm of Redmond & Nazar, L.L.P. to withdraw as counsel for plaintiff Cecillia Arnold (Doc. 120) is GRANTED.

Further, the claims of plaintiff Cecillia Arnold against defendant Blue Cross and Blue Shield of Kansas, Inc., are hereby DISMISSED with prejudice.

Inasmuch as all claims of the plaintiffs in this consolidated action have now been dismissed, and any remaining third-party claims are moot, the court hereby dismisses the action

and directs the clerk of the court to enter final judgment.

IT IS SO ORDERED this 11th Day of October, 2007, at Wichita, Ks.

s/Wesley E. Brown

Wesley E. Brown

U.S. Senior District Judge