

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

Tony Cox,

Plaintiff,

vs.

Case No. 11-2680-JTM

Danny M. Gurba, M.D. *et al.*,

Defendants.

MEMORANDUM AND ORDER

This matter is before the court on the Motion to Dismiss Without Prejudice of the plaintiff Tony Cox (Dkt. 44), which comes after the defendants have sought and obtained an Order (Dkt. 35) granting their motion to compel the production of certain discovery responses. That Order directed Cox to submit the required discovery responses and executed medical records authorizations by a date certain. After Cox failed to respond, the defendants filed a Motion for Sanctions (Dkt. 36).

The plaintiff's subsequent motion to dismiss stresses the recent health problems of his counsel. The plaintiff also agrees that "upon re-filing he will provide the defendants with those documents which have been collected and ... updated responses to the interrogatories and other discovery requests," and that he "will voluntarily produce his

documents and supplement his discovery responses prior to or contemporaneously re-filing.” (Dkt. 44, at 4, 5).

The defendants express sympathy for those problems, and do not oppose the dismissal under the circumstances of the case, but suggest that the court attach certain conditions to the dismissal. The plaintiff has filed no pleading indicating opposition to the specified conditions. (Dkt. 45, at 2-3).

In light of all the circumstances of the case, the court in its discretion, hereby dismisses this action without prejudice, subject to the requirement and directive that:

1. In the event the action is re-filed, plaintiff will produce within ten days a fully executed medical authorization permitting *ex parte* communications with plaintiff’s treating health care providers.
2. In the event the action is re-filed, plaintiff will respond to any currently outstanding and unanswered discovery requests to the extent this issue remains a concern.
3. The dismissal shall be at the cost of the filing fee previously incurred and paid by plaintiff.

IT IS SO ORDERED this 8<sup>th</sup> day of November, 2012, that the plaintiff’s Motion to Dismiss (Dkt. 44) is granted as provided herein.

s/ J. Thomas Marten  
J. THOMAS MARTEN, JUDGE