

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

GUY CUMMINGS,)
)
 Plaintiff,)
)
 vs.) No. 1:13-cv-00952-JMS-TAB
)
 CORIZON, INC.,)
 RICHARD TANNER M.D.,)
 DANAWITZ Dr.,)
)
 Defendants.)

ORDER GRANTING MOTION TO DISMISS PURSUANT TO RULE 41(E)

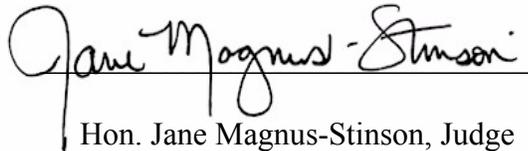
Defendants, Corizon, Inc. and Dr. Richard Tanner, M.D., by counsel, have filed a Motion to Dismiss Pursuant to Rule 41(E). Mr. Cummings has not responded to the motion, and a similar lack of communication has previously prompted the withdrawal of Mr. Cummings’ prior counsel. [[Filing No. 45](#); [Filing No. 46](#).] Mr. Cummings also failed to appear for a duly noticed deposition. [[Filing No. 48-2](#).] Pursuant to Federal Rules of Civil Procedure 37 and 41(b)¹ the Court finds dismissal to be the appropriate course of action due to Mr. Cummings’ failure to prosecute this action. The Court concludes he has abandoned this action and finds the sanction of dismissal would be appropriate in this case if not for the entry of summary judgment. [Fed. R. Civ. P. 37\(b\)\(2\), \(c\)\(1\)\(C\)](#); *see also Link v. Wabash R. Co., 370 U.S. 626, 630-631 (1962)* (“The authority of a court to dismiss sua sponte for lack of prosecution has generally been considered an ‘inherent power,’ governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of

¹ Defendants incorrectly cite to Rule 41(E), the Indiana counterpart.

cases”); *see also* [GCIU Employer Retirement Fund v. Chicago Tribune Co., 8 F.3d 1195, 1198-1199 \(7th Cir. 1993\)](#) (“[A] party cannot decide for itself when it feels like pressing its action and when it feels like taking a break because trial judges have a responsibility to litigants to keep their court calendars as current as humanly possible”) (quotation omitted).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants’ Motion to Dismiss is **GRANTED**, and the above-captioned matter is hereby dismissed, with prejudice. The Court notes that Defendant Dr. Danawitz was previously dismissed by agreement. [[Filing No. 38.](#)] Final judgment shall now issue.

ALL OF WHICH IS ORDERED

A handwritten signature in black ink that reads "Jane Magnus-Stinson". The signature is written in a cursive style and is positioned above a horizontal line.

Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

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