

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

STEVE HESS,

Plaintiff,

v.

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CIVIL ACTION NO. 1:10CV192  
(Judge Keeley)

ADRIAN HOKE, Warden;  
DR. DAVID PROCTOR,  
JANE DOE (ALLY) (Wexford  
Medical Sources); and  
TRISTAN TENNEY,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

After the pro se plaintiff, Steve Hess ("Hess"), filed his complaint pursuant to 42 U.S.C. §1983 alleging claims of deliberate indifference, medical negligence, and medical malpractice against the defendants, the Court referred the matter to United States Magistrate Judge John S. Kaul for initial screening and a report and recommendation in accordance with Local Rule of Prisoner Litigation 83.02. On August 31, 2011, Magistrate Judge Kaul issued a Report and Recommendation ("R&R") that recommended dismissing Hess's complaint for failure to state a claim. First, he concluded that Hess's claims for deliberate indifference should be dismissed because he had failed to show that the defendants' actions constituted "deliberate indifference," amounting to a violation of a constitutional right. Second, he concluded that Hess's claims for medical negligence and medical malpractice should

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be dismissed because Hess had failed to comply with the requirements of West Virginia Code § 55-7B-6.

Magistrate Judge Kaul informed Hess that failure to object to the R&R within ten (10) days would result in the waiver of his appellate rights on this issue. Hess filed no objections.<sup>1</sup>

Following review of the matter, the Court **ADOPTS** the Report and Recommendation in its entirety, **DISMISSES** this case **WITHOUT PREJUDICE**, and **ORDERS** that it be **STRICKEN** from the Court's docket.

The Court also directs the Clerk of Court to mail a copy of this Order to the pro se plaintiff, certified mail, return receipt requested.

Dated: September 21, 2011

/s/ Irene M. Keeley  
IRENE M. KEELEY  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Hess's failure to object to the Report and Recommendation waives his appellate rights in this matter and relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).