

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION

KEVIN RAY PEARCY  
ADC #146408

PLAINTIFF

v.

No. 5:15-cv-364-DPM

WENDY KELLEY, Director, ADC

DEFENDANT

ORDER

1. Unopposed recommendation, *No. 4*, adopted in part and declined in part. FED. R. CIV. P. 72(b) (1983 addition to the advisory committee notes).

The Court adopts Sections I and III and the first paragraph of Section II.

2. It isn't clear whether the prison medical provider determined Breathe Right strips weren't medically necessary or whether Health Services made that call in reviewing Percy's grievance. *No. 2 at 13-15*. The Court therefore declines the second and third paragraphs of Section II. *No. 4 at 2-3*.

3. In any event, Percy's complaint still doesn't state a claim against Kelley. It will therefore be dismissed without prejudice. This dismissal counts as a "strike" for purposes of 28 U.S.C. § 1915(g). An *in forma pauperis* appeal from this Order and accompanying Judgment will not be taken in good faith. 28 U.S.C. § 1915(a)(3).

So Ordered.

*D.P. Marshall Jr.*  
D.P. Marshall Jr.  
United States District Judge

*17 December 2015*