

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Case No. 07-cv-01849-REB-MEH

EDWARD FRANCIS BENGE,

Plaintiff,

v.

DR. RICHARD A. POUNDS, M.D., and
DR. JOHN R. DEQUARDO, M.D., CMHIP Superintendent,

Defendants.

**ORDER OVERRULING OBJECTIONS TO AND ADOPTING
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

The matters before me are (1) the **Recommendation on Defendants' Motion To Dismiss** [#37], filed December 12, 2007; and (2) plaintiff's **Third Objection to Defendants' Motion To Dismiss Second Amended Prisoner Complaint** [#43], filed December 21, 2007. I overrule the objections, adopt the recommendation, and grant defendants' motion to dismiss.

As required by 28 U.S.C. § 636(b), I have reviewed *de novo* all portions of the recommendation to which objections have been filed, and have considered carefully the recommendation, objections, and applicable case law. In addition, because plaintiff is proceeding *pro se*, I have construed his pleadings more liberally and held them to a less stringent standard than formal pleadings drafted by lawyers. **See *Erickson v. Pardus***, ___ U.S. ___, 127 S. Ct. 2197, 2200 (2007); ***Andrews v. Heaton***, 483 F.3d

1070, 1076 (10th Cir. 2007); *Hall v. Belmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) (citing *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972)). The recommendation is detailed and well-reasoned. Plaintiff's objections thereto are imponderous and without merit. Therefore, I find and conclude that the arguments advanced, authorities cited, findings of fact, conclusions of law, and recommendation proposed by the magistrate judge should be approved and adopted.¹

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation on Defendants' Motion To Dismiss** [#37], filed December 12, 2007, is **APPROVED AND ADOPTED** as an order of this court;
2. That plaintiff's **Third Objection to Defendants' Motion To Dismiss Second Amended Prisoner Complaint** [#43], filed December 21, 2007, is **OVERRULED**;
3. That **Defendants' Motion To Dismiss Second Amended Prisoner Complaint** [#34], filed November 30, 2007, is **GRANTED**;
4. That plaintiff's claims against defendants are **DISMISSED WITH PREJUDICE** for failure to state claims on which relief may be granted;
5. That judgment **SHALL ENTER** for defendants, Dr. Richard A. Pounds, M.D., and Dr. John R. DeQuardo, M.D., CMHIP Superintendent, against plaintiff, Edward Francis Bengé, on all claims and causes of action; and

¹ I note that although plaintiff attempted to file a Third Amended Complaint ([#50], filed December 26, 2007), presumably to attempt to address the deficiencies noted in the motion to dismiss, the complaint was struck for failure to obtain leave of court to file an amended pleading (**see Minute Order** [#52], filed January 14, 2008). Plaintiff did not thereafter seek leave of court to file a Third Amended Complaint, and the deadline for amendment of the pleadings has now expired (**see Minute Order** [#40], filed December 19, 2007) (setting January 31, 2007, deadline for filing of amended complaint).

6. That defendants are **AWARDED** their costs, to be taxed by the Clerk of the Court pursuant to Fed.R.Civ.P. 54(d)(1) and D.C.COLO.LCivR 54.1.

Dated February 7, 2008, at Denver, Colorado.

BY THE COURT:

s/ Robert E. Blackburn
Robert E. Blackburn
United States District Judge