

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

Civil Case No. 09-cv-00482-REB-KLM

CALVIN RHODES,

Plaintiff,

v.

PHYSICIAN HEALTH PARTNERS (PHP), CDOC Medical Care Provider,  
JAY WANT, M.D., Chief Executive Officer of (PHP), and  
STEPHEN R. KREBS, M.D., Medical Director of Casemanagement,

Defendants.

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**ORDER ADOPTING RECOMMENDATION OF  
UNITED STATES MAGISTRATE JUDGE**

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**Blackburn, J.**

This matter is before me on the following: (1) **Defendants' Motion To Dismiss Plaintiff's Complaint** [#24]<sup>1</sup> filed May 28, 2009; and (2) the **Recommendation of United States Magistrate Judge** [#35] filed September 23, 2009. I approve and adopt the recommendation and grant the motion to dismiss.

There have been no filings in this case since October 1, 2009, when the magistrate judge denied as moot the plaintiff's motion for extension of time. The plaintiff has had an ample opportunity to file objections to the recommendation or to seek an extension of time to file objections, but he has not done so. Therefore, I review the recommendation only for plain error. **See Morales-Fernandez v. Immigration &**

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<sup>1</sup> [#24] is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

**Naturalization Service**, 418 F.3d 1116, 1122 (10<sup>th</sup> Cir. 2005).<sup>2</sup> I have considered carefully the recommendation and the applicable case law. The recommendation is detailed and well-reasoned. Finding no error, much less plain error, in the magistrate judge's reasoning and recommended disposition, I find and conclude that the arguments advanced, authorities cited, and findings of fact, conclusions of law, and recommendation proposed by the magistrate judge should be approved and adopted.

The plaintiff's complaint concerns a knee injury that was examined and diagnosed while the plaintiff was in the custody of the Colorado Department of Corrections (DOC). The plaintiff was diagnosed with a possible meniscus tear and surgery to repair the injury was recommended by an examining doctor. The plaintiff alleges that the defendants refused to treat his knee injury. However, Dr. Krebs, one of the defendants, denied the plaintiff's request for knee surgery, finding that the surgery was not medically necessary, and the surgery could be delayed safely until the plaintiff's release from prison in December, 2009. *Complaint* [#3], p. 13. I agree with the analysis detailed by the magistrate judge and with her ultimate conclusion that the allegations in the plaintiff's complaint do not state a claim on which relief can be granted.

**THEREFORE, IT IS ORDERED** as follows:

1. That the **Recommendation of United States Magistrate Judge** [#35] filed September 23, 2009, is **APPROVED AND ADOPTED** as an order of this court;
2. That the **Defendants' Motion To Dismiss Plaintiff's Complaint** [#24] filed May 28, 2009, is **GRANTED**;
3. That **JUDGMENT SHALL ENTER** in favor of the defendants, Physician

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<sup>2</sup> This standard pertains even though plaintiff is proceeding *pro se*. **Morales-Fernandez**, 418 F.3d at 1122.

Health Partners (PHP), Jay Want, M.D., and Stephen R. Krebs, M.D., and against the plaintiff, Calvin Rhodes;

4. That the 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; and
5. That this case is **DISMISSED**.

Dated February 24, 2010, at Denver, Colorado.

BY THE COURT:



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