

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 13-cv-01584-PAB-MEH

JEREMY NECHOL DENISON,

Plaintiff,

v.

CORRECTIONAL HEALTH PARTNERS, Utilization Mgmt Comm.,
JILL LAMPELA, CSP HSA,
NEAL LOUSBERG, CSP Medical Provider,
RICHARD HODGE, CSP Medical Provider,
MARK WIENPAL, CSP Medical Provider,
KATHLEEN BOYD, CSP Medical Provider, and
JOSEPH WRIGHT, CSP Medical Provider,

Defendants.

ORDER ACCEPTING MAGISTRATE JUDGE'S RECOMMENDATION

This matter is before the Court on the Recommendation of United States Magistrate Judge Michael E. Hegarty filed on April 3, 2014 [Docket No. 59]. The Recommendation states that objections to the Recommendation must be filed within fourteen days after its service on the parties. See 28 U.S.C. § 636(b)(1)(C). The Recommendation was served on April 3, 2014. No party has objected to the Recommendation.

In the absence of an objection, the district court may review a magistrate judge's recommendation under any standard it deems appropriate. See *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985) ("[i]t does not appear that Congress intended to require district court review of a

magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings"). In this matter, the Court has reviewed the Recommendation to satisfy itself that there is "no clear error on the face of the record."¹ Fed. R. Civ. P. 72(b), Advisory Committee Notes. Based on this review, the Court has concluded that the Recommendation is a correct application of the facts and the law. Accordingly, it is

ORDERED as follows:

1. The Recommendation of United States Magistrate Judge [Docket No. 59] is ACCEPTED.
2. The Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(B)(1) and (6) by Defendants Boyd, Hodge, Lampela, Lousberg, Wienpahl, and Wright [Docket No. 49] is GRANTED in part and DENIED in part. It is denied with respect to plaintiff Jeremy Nechol Denison's claims for breach of contract and violation of the Eighth Amendment against defendant Kathleen Boyd for her alleged failure in August 2012 to request an MRI for plaintiff's back problem. It is denied with respect to plaintiff's Eighth Amendment claim against defendant Neal Lousberg for his alleged discontinuation of plaintiff's gabapentin prescription in July 2012. It is granted in all other respects.
3. Assuming that plaintiff requests leave to amend to address deficiencies noted in the Recommendation, such leave is denied for the reasons referred to in the Recommendation, Docket No. 59 at 34-35.

¹This standard of review is something less than a "clearly erroneous or contrary to law" standard of review, Fed. R. Civ. P. 72(a), which in turn is less than a *de novo* review. Fed. R. Civ. P. 72(b).

DATED April 28, 2014.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge