

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

CLINT BRECKLE

CIVIL ACTION

VERSUS

No.: 17-13500

DR. MACFAY, ET AL.

SECTION: "J"(3)

**ORDER**

The Court, having considered the record, the applicable law, the *Motion to Dismiss* (**Rec. Doc. 21**) filed by Defendants, Dr. Casey McVea, the Partial Report and Recommendation of the United States Magistrate Judge (Rec. Doc. 27), and Plaintiff's failure to file any objections thereto, hereby approves the Report and Recommendation of the United States Magistrate Judge and adopts it as its opinion herein. Accordingly,

**IT IS ORDERED** that the *Motion to Dismiss* (**Rec. Doc. 21**) is hereby **DENIED IN PART** and **GRANTED IN PART**. The motion is **DENIED** with respect to the claim that Dr. McVea, in his individual capacity, violated Plaintiff's federal constitutional rights by refusing to provide him with a continuous positive airway pressure machine.

**IT IS FURTHER ORDERED** that the motion is **GRANTED** in all other respects and that all other claims against Dr. McVea are hereby **DISMISSED WITHOUT PREJUDICE**.

**IT IS FURTHER RECOMMENDED** that plaintiff's "Motion for Post-Conviction Relief," Rec. Doc. 25, be **DENIED WITHOUT PREJUDICE** to his ability to seek federal habeas corpus relief in a separate proceeding.

New Orleans, Louisiana, this 27th day of August, 2019.



CARL J. BARBIER  
UNITED STATES DISTRICT JUDGE