

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

NICHOLAS A. GLADU,)	
)	
PLAINTIFF)	
)	
v.)	CIVIL No. 2:15-cv-384-DBH
)	
CORRECT CARE SOLUTIONS,)	
ET AL.,)	
)	
DEFENDANTS)	

ORDER ON PLAINTIFF'S MOTION TO VACATE UNDER RULE 60

The motion to vacate the Order of May 6, 2016, is **DENIED**.

The Court's Order in question states that "[t]he time within which to file objections expired April 15, 2016, and no objections have been filed," Order Adopting Recommended Decision (ECF No. 127), and that the Magistrate Judge had notified the parties "that failure to object would waive their right to de novo review and appeal." Id. It thereupon adopted the Recommended Decision of the Magistrate Judge and dismissed the state law medical malpractice claim without prejudice. Id.

The plaintiff says that the Order is in error. Pl.'s Mot. to Vacate Order at 1 (ECF No. 134). He says that he filed an objection on about March 31, 2016, and at the same time requested an extension of time. Id. at 2. The record reveals that on April 1, 2016, the plaintiff requested "an extension of time to respond to the Magistrate Judge's Order for a partial dismissal." Mot. Req. an Extension of Time (ECF No. 114). The last sentence of the request for extension states:

“Attached is plaintiff’s objection to be timely filed *should the Court deny this motion.*” *Id.* at 2 (emphasis added). A document entitled “Objection” was in fact attached. *Id.* at 3. However, the Court *did grant* the motion to extend time for filing the objection as the plaintiff requested, and thus the conditional objection was not treated as an active objection. When the extension period had expired without a further filing, the Court properly treated the Magistrate Judge’s recommended decision as not opposed. There was no error.

In any event, even if the April 1 attachment were treated as an active objection, it does not furnish grounds for rejecting the Magistrate Judge’s decision upon de novo review. The Magistrate Judge recommended dismissal of the state law medical malpractice claim on the basis that the plaintiff had not completed the mandatory state law screening process. Recommended Decision on Partial Mot. to Dismiss at 2-3 (ECF No. 87). Despite the lapse of time, the record still does not show that the plaintiff has satisfied that requirement.

Accordingly the motion to vacate is **DENIED**.

SO ORDERED.

DATED THIS 13TH DAY OF JULY, 2016

/s/D. BROCK HORNBY
D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE