IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID M. ROBERTSON, Plaintiff, vs. SCOTT R. FRAKES, DR. RANDY KOHL, BARBARA LEWIEN, DR. KATHLEEN OGDEN, and MARGARET ANTLEY, Defendants.	**8:16CV391** **MEMORANDUM AND ORDER**

Plaintiff filed a Complaint on August 12, 2016. (Filing No. 1.) Plaintiff alleged that prison officials and staff exhibited deliberate indifference to his serious medical needs in violation of 42 U.S.C. § 1983 and state law. (*Id.*) On December 5, 2016, the court ordered Plaintiff to file an amended complaint that states a claim upon which relief may be granted. (Filing No. 9.) Specifically, the court informed Plaintiff:

> [I]t appears that Defendants were responsive to Plaintiff's requests for treatment and engaged in active efforts to address Plaintiff's medical conditions. Allegations suggesting that Defendants acted negligently or refused to follow Plaintiff's requested course of treatment are insufficient to support an Eighth Amendment claim. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (holding that mere negligence or medical malpractice are insufficient to rise to a constitutional violation); *Bender v. Regier*, 385 F.3d 1133, 1137 (8th Cir. 2004) (stating that "an inmate's mere disagreement with the course of his medical treatment fails to state a claim of deliberate indifference").

Id.

On January 6, 2017, Plaintiff filed an Amended Complaint. (Filing No. 12.) Plaintiff simply repeated some, but not all, of his allegations from his Complaint in his Amended Complaint. Accordingly, for the reasons set forth in the court's previous order, Plaintiff's § 1983 claims are dismissed with prejudice. His state-law claims are dismissed without prejudice to reassertion in the proper forum.

IT IS THEREFORE ORDERED that:

1. Plaintiff's § 1983 claims are dismissed with prejudice for failure to state a claim upon which relief may be granted.

2. Plaintiff's state-law claims are dismissed without prejudice to reassertion in the proper forum.

3. The court will enter Judgment by separate document.

Dated this 6th day of March, 2017.

BY THE COURT:

s/ *Richard G. Kopf*
Senior United States District Judge