

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

STEPHAN PACHECO,

Plaintiff,

v.

SOON KIM,

Defendant.

Case No. 3:14-cv-00124-MMD-VPC

ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION OF
MAJISTRATE JUDGE
VALERIE P. COOKE

Before the Court is the Report and Recommendation of United States Magistrate Judge Valerie P. Cooke (dkt. no. 3) (“R&R”) relating to Plaintiff application to proceed *in forma pauperis* (dkt. no. 1) and *pro se* complaint (dkt. no. 1-1). Plaintiff filed his objection to the R&R on June 13, 2014 (dkt. no. 4).

This Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge’s report and recommendation, then the court is required to “make a *de novo* determination of those portions of the [report and recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). In light of Plaintiff’s objection, the Court engages in a *de novo* review to determine whether to adopt Magistrate Judge Cook’s Recommendation.

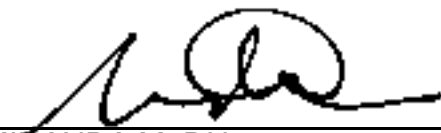
The Magistrate Judge construes Plaintiff’s Complaint to assert a claim for violation of his privacy rights under the Health Insurance Portability and Accountability (“HIPAA”) and a claim for medical malpractice. (Dkt. no. 3 at 3-4.) The Magistrate Judge recommends dismissal of Plaintiff’s HIPAA claim with prejudice because HIPAA does

1 not provide for a private right of action. *Webb v. Smart Document Solutions, LLC*, 499
2 F.3d 1078, 1081 (9th Cir. 2007) (“HIPAA itself provides no private right of action”). The
3 Magistrate Judge recommends dismissal of Plaintiff’s medical malpractice claim without
4 prejudice because Plaintiff fails to attach an affidavit of a medical expert supporting
5 Plaintiff’s medical malpractice claim as required under Nevada law. NRS § 41A.071.
6 This means Plaintiff may file a new action for medical malpractice once he has obtained
7 a medical expert’s opinion to support his claim and attach an affidavit by that expert with
8 his complaint. Plaintiff’s objection fails to address the merits of the Magistrate Judge’s
9 findings. After reviewing the records, the Court agrees with the Magistrate Judge. The
10 Court therefore adopts the Magistrate Judge’s R&R in full.

11 It is therefore ordered that Plaintiff’s Complaint is dismissed. Plaintiff’s claim
12 under HIPAA is dismissed with prejudice. Plaintiff’s claim for medical malpractice claim
13 is dismissed without prejudice.

14 The Clerk is directed to close this case.

15 DATED THIS 27th day of October 2014.

16
17 
18 _____
19 MIRANDA M. DU
20 UNITED STATES DISTRICT JUDGE
21
22
23
24
25
26
27
28