

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LORETTA GREASLEY, As Executor
of the Estate of Michael J. Marranco,

Plaintiff,

v.

DECISION AND ORDER
15-CV-642-A

UNITED STATES OF AMERICA,

Defendant.

This action under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671–80, alleges that negligence and medical malpractice on the part of the Department of Veterans Affairs (the “VA”) proximately caused personal injuries and the death of Michael J. Marranco. The case was referred to Magistrate Judge Jeremiah J. McCarthy for the conduct of pretrial proceedings pursuant to 28 U.S.C. § 636(b)(1).

On January 18, 2018, Magistrate Judge McCarthy filed a Report and Recommendation (Dkt. No. 31) recommending that defendant United States’ motion for summary judgment pursuant Fed. R. Civ. P. 56 (Dkt. No. 18), be granted, in part, and denied, in part. Magistrate Judge McCarthy recommended summary judgment be granted in defendant’s favor on plaintiff’s Third Cause of Action alleging that the VA violated Department of Health and Human Services (“HHS”) regulations during its care and treatment of Mr. Marranco, but that summary judgment be denied as to plaintiff’s causes of action alleging negligence and medical malpractice.

Defendant United States objects to the Report and Recommendation to the extent it recommends that the Court should deny summary judgment on the plaintiff’s

negligence and medical practice claims. Plaintiff objects to the recommendation that the Court grant summary judgement on the plaintiff's breach-of-HHS-standards claim.

Pursuant to 28 U.S.C. §636(b)(1), the Court makes a *de novo* determination of those portions of the Report and Recommendation to which specific objections have been made. *Id.* Upon *de novo* review, the Court "may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." Fed. R. Civ. P. 72(b)(3).

The Court has carefully reviewed the Report and Recommendation, the objections, and the parties' responses to the objections. The Court presumes the parties familiarity with the allegations, facts, prior proceedings and issues under *de novo* review. The Court adopts the Report and Recommendation [31] for the reasons stated by the Magistrate Judge.

The parties shall appear to set a date for trial on plaintiff's First, Second, and Fourth Causes of Action on July 2, 2018, at 11:30 a.m.

IT IS SO ORDERED.

Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: June 29, 2018