

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

DAVID GARLAND ATWOOD, II,	)
	)
Plaintiff,	)
	)
v.	)
	)
UNITED STATES OF AMERICA,	)
DOCTOR SPENCER ZEAVIN,	)
PHYSICIAN ASSISTANT AARON	)
RUSSELL, DOCTOR DAVID HUNTER,	)
and DOCTOR KEITH CLARK,	)
	)
Defendants.	)

Case No. CIV-17-00629-PRW

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On August 22, 2019, United States Magistrate Judge Suzanne Mitchell issued a Report and Recommendation (Dkt. 96) in this matter recommending that the Court:

- (1) grant Plaintiff’s Motion to Dismiss Complaint (Dkt. 92);
- (2) dismiss this action with prejudice to refiling and close the case; and
- (3) deem Defendant United States’ Motion for Summary Judgment (Dkt. 89) (SEALED) moot.

The parties were advised of their right to file an objection to the Report and Recommendation (Dkt. 96) on or before September 12, 2019,<sup>1</sup> but no objections have been filed. Thus, the parties have waived further review of the issues addressed in the Report

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<sup>1</sup> R. & R. (Dkt. 96) at 5.

and Recommendation (Dkt. 96).<sup>2</sup> Under 28 U.S.C. § 636(b)(1), a district judge has [pwer to “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge” and “also [to] receive further evidence or recommit the matter to the magistrate judge with instructions.”

Upon *de novo* review, the Court:

- (1) **ADOPTS** the Report and Recommendation (Dkt. 96) issued by the Magistrate Judge on May 30, 2019;
- (2) **GRANTS** the Plaintiff’s Motion to Dismiss Complaint (Dkt. 92) and accordingly **DISMISSES WITH PREJUDICE** the entire action; and
- (3) deems Defendant United States’ Motion for Summary Judgment (Dkt. 89) (SEALED) **MOOT**.

**IT IS SO ORDERED this 23rd day of September, 2019.**

  
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PATRICK R. WYRICK  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> *Olivera v. Cate*, No. 5:14-cv-00162-D, 2016 WL 1436694, at \*1 (W.D. Okla. Apr. 11, 2016) (citing *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991); *United States v. 2121 E. 30th Street*, 73 F.3d 1057, 1060 (10th Cir. 1996)).