

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

SCOTT NJOS,	:	
Plaintiff	:	No. 3:14-cv-01960
	:	
v.	:	(Judge Kane)
	:	
UNITED STATES OF AMERICA,	:	(Magistrate Judge Carlson)
Defendant	:	

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Before the Court is the June 22, 2017 Report and Recommendation of Magistrate Judge Carlson (Doc. No. 129), converting Defendant’s motion to dismiss, or in the alternative, motion for summary judgment, to a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56, and recommending that the Court grant Defendant summary judgment on Plaintiff Scot Njos’ medical malpractice and negligence claims brought under the Federal Tort Claims Act. (Doc. No. 101.) Specifically, in his Report and Recommendation, Magistrate Judge Carlson finds that Plaintiff’s medical malpractice claims fail as a matter of law, reasoning that the certificate of merit submitted by Plaintiff, consisting of letters which he solicited from a licensed psychologist, is legally insufficient and not in comportment with the requirements of Pennsylvania Rule of Civil Procedure 1042.3. (Doc. No. 129 at 24.) Further, Magistrate Judge Carlson finds that Plaintiff’s property owner tort claim and ordinary negligence claim to be mislabeled medical malpractice claims, which are likewise subject to dismissal as a matter of law. (Id. at 26-32.)

Plaintiff objects to the Report and Recommendation.¹ (Doc. Nos. 132.) By the Court’s reading of these objections, it appears that Plaintiff generally disputes Magistrate Judge Carlson’s

¹ Defendant has filed a brief in opposition to Plaintiff’s objections, wherein Defendant maintains that Magistrate Judge Carlson properly determined that the United States is entitled to judgment as a matter of law because Plaintiff failed to file a proper certificate of merit. (Doc. No. 133.) Defendant also notes that Plaintiff’s objections are “irrelevant and have no legal significance

recitation of the events giving rise to his Federal Tort Claims Act lawsuit, particularly Magistrate Judge Carlson’s focus on Plaintiff’s history of institutional misconduct, and Magistrate Judge Carlson’s recommendations as to Plaintiff’s legally infirm medical malpractice claims. Having reviewed these objections in conjunction with Magistrate Judge Carlson’s Report and Recommendation, the Court finds that Magistrate Judge Carlson correctly and comprehensively resolved the substance of Plaintiff’s objections in the Report and Recommendation itself.² Thus, the Court will not write separately to address Plaintiff’s objections and will adopt Magistrate Judge Carlson’s Report and Recommendation in its entirety.

ACCORDINGLY, on this 28th day of July 2017, upon independent review of the record and the applicable law, **IT IS ORDERED THAT**:

1. The Court **ADOPTS** the Report and Recommendation (Doc. No. 129), of Magistrate Judge Carlson;
2. Defendant’s motion to dismiss, or in the alternative, for summary judgment (Doc. No. 101), is **GRANTED**; and
3. The Clerk is directed to enter judgment in favor of Defendant and against Plaintiff, and to **CLOSE** this case.

s/ Yvette Kane
Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania

because a finding in his favor on those issues will not change the fact that this is a medical malpractice action and he has failed to file a [certificate of merit] as required.” (Id. at 2 n.2.)

² With respect to Plaintiff’s objection that Magistrate Judge Carlson exhibited bias through his presentation of the factual background of this case as it related to Plaintiff’s institutional history of misconduct in the Report and Recommendation, the Court notes that it has detected nothing from its review of the Report and Recommendation that could even arguably raise an inference of bias. Harriott v. City of Wilkes Barre, 640 F. App’x 191, 194 (3d Cir. 2016) (citing Liteky v. United States, 510 U.S. 540, 555 (1994) (“[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion.”)).