

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

DENON KITT,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

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**3:15-CV-1115
(JUDGE MARIANI)**

ORDER

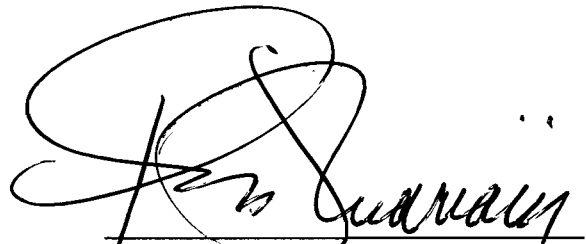
AND NOW, THIS 19th **DAY OF JANUARY, 2017,** upon review of Magistrate Judge Mehalchick's Report & Recommendation, (Doc. 37), for clear error and manifest injustice,¹ **IT IS HEREBY ORDERED THAT:**

1. The Report & Recommendation, (Doc. 37), is **ADOPTED**, for the reason stated therein, except as modified below.
2. Defendant's Motion to Dismiss, (Doc. 23), is **WITHDRAWN**.²
3. Defendant's Motion for Summary Judgment, (Doc. 24), is **GRANTED IN PART AND DENIED IN PART**, as follows:

¹ The United States never filed objections to the Report and Recommendation. On January 6, 2016, Plaintiff filed a Motion which this Court interpreted as a request for an extension of time to file objections. (Docs. 38 & 39). This Court gave Plaintiff until January 27, 2017, to file objections to the Report and Recommendation. (Doc. 39). On January 13, 2017, however, Plaintiff filed a notice informing the Court that he would not be filing objections to the Report and Recommendation. (Doc. 40).

² Defendant filed a Motion to Dismiss on June 27, 2016, and a Motion for Summary Judgment on June 28, 2016. (Docs. 23 & 24). After an extension of time, Defendants filed a single brief in support of these motions. (Doc. 30). Although the brief refers to the Motion to Dismiss, it only addresses the Motion for Summary Judgment. Thus, the Court does not view the brief as supporting the Motion to Dismiss and, pursuant to Local Rule 7.5, deems the Motion to Dismiss withdrawn.

- a. To the extent that Plaintiff's complaint asserts a medical malpractice claim, that claim is **DISMISSED WITHOUT PREJUDICE**.
 - b. Defendant's Motion for Summary Judgment is **DENIED** with respect to Plaintiff's claim of ordinary negligence **WITHOUT PREJUDICE** to Defendant's right to file a motion for summary judgment at the appropriate time after discovery is conducted.
4. The case is **REMANDED** to Magistrate Judge Mehalchick for further proceedings consistent with this Order.



Robert D. Mariani
United States District Judge