IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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MARK RAHOI,

Plaintiff,

v.

DOCTOR SIRIN, DOCTOR HUIBREGTSE, and DOCTOR BURTON COX, JR., all sued individually and in their official capacities,

Defendants.

ORDER

06-C-691-C

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Plaintiff has filed two documents that are now before the court. First, plaintiff has filed a document he calls "Response to Defendants' Answers and Suggested Affirmative Defenses to Plaintiff's Complaint." In this document, plaintiff replies to factual statements made in defendants' answer and argues that certain of defendants' affirmative defenses are not valid.

Fed. R. Civ. P. 12(b) permits defendants to avoid litigation of a case if plaintiff's allegations of fact, even if accepted as true, would be insufficient to make out a legal claim against the defendants. Although defendants have raised certain affirmative defenses in their answer they have not filed a motion to dismiss. If such a motion were to be filed, plaintiff

would be allowed to respond to it. Otherwise, it is not necessary for plaintiff to respond to defendants' answer. In fact, Fed. R. Civ. P. 7(a) forbids a plaintiff to submit a reply to an answer unless the court directs a reply to be filed. No such order has been made in this case. Plaintiff should be aware, however, that he is not prejudiced by Rule 7(a). Fed. R. Civ. P. 8(d) provides averments in pleadings to which a response is not allowed are assumed to be denied. Therefore, although plaintiff is not permitted to respond to defendants' answer, the court assumes that he has denied the factual statements and affirmative defenses raised in that answer.

Second, plaintiff has filed a motion for a preliminary injunction, although the basis for the motion and the relief he seeks is not clear. In his motion, plaintiff writes: "So I can get help for my medical condition, MRI Specialist surgery is needed physical therapy to continue stop this waiting and waiting all the time, pain medications that work, check ups outside care. Whatever the specialist says I need this time." In addition, he says he has "waited long enough to get help in fact I am getting worse as time goes on, I suffer pain now, even irreparable damage done."

The standard applied to determine whether plaintiff is entitled to preliminary injunctive relief is well established.

> A district court must consider four factors in deciding whether a preliminary injunction should be granted. These factors are: 1) whether the plaintiff has a reasonable likelihood of success on the merits; 2) whether the plaintiff will have

> an adequate remedy at law or will be irreparably harmed if the injunction does not issue; 3) whether the threatened injury to the plaintiff outweighs the threatened harm an injunction may inflict on defendant; and 4) whether the granting of a preliminary injunction will disserve the public interest.

Pelfresne v. Village of Williams Bay, 865 F.2d 877, 883 (7th Cir. 1989). At the threshold, a plaintiff must show some likelihood of success on the merits and that irreparable harm will result if the requested relief is denied. If plaintiff makes both showings, the court then moves on to balance the relative harms and public interest, considering all four factors under a "sliding scale" approach. In re Forty-Eight Insulations, Inc., 115 F.3d 1294, 1300 (7th Cir. 1997).

This court requires that a party seeking emergency injunctive relief follow specific procedures for obtaining such relief. Those procedures are described in a document titled Procedure To Be Followed On Motions For Injunctive Relief, a copy of which is included with this order. Plaintiff should pay particular attention to those parts of the procedure that require him to submit proposed findings of fact in support of his motion and point to admissible evidence in the record to support each factual proposition.

In support of his motion for a preliminary injunction, plaintiff has filed only a number of health service request forms, but he has not proposed findings of fact from these documents or otherwise explained how they support his motion for a preliminary injunction. To obtain a preliminary injunction, a moving party must meet an exacting standard. Abbott

Labs. v. Mead Johnson & Co., 971 F.2d 6, 11 (7th Cir. 1992). This means that plaintiff must submit evidence showing that there is some likelihood that he will prevail on his claim that defendants were aware of plaintiff's serious medical needs and failed to take reasonable measures to address those needs. To do this, plaintiff must do more than submit a stack of documents that he believes supports his claim. He must propose facts identifying with particularity the evidence showing he is entitled to relief.

Because plaintiff has neither followed the procedures for preliminary injunctive relief nor made the necessary showing of entitlement to such relief, his motion will be denied without prejudice.

ORDER

IT IS ORDERED that plaintiff Mark Rahoi's motion for a preliminary injunction is DENIED.

Entered this 21st day of March, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge