IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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THOMAS W. REIMANN,

Plaintiff,

v.

DAVID ROCK, JOHN PAQUIN,
MS. TIERNEY, CATHERINE FERREY
and LIZZIE TEGELS,

Defendants.

ORDER

05-C-501-C

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In an order dated March 31, 2006, I stayed a decision on plaintiff Thomas Reimann's motion for a preliminary injunction until plaintiff submitted proposed findings of fact and evidentiary materials in support of his motion. Plaintiff has filed a statement of facts and conclusions of law along with several medical documents and affidavits in support of his motion, in which he requests that the court order defendant David Rock, a nurse practitioner at the Stanley Correctional Institution, to stop withholding medications prescribed to treat plaintiff's chronic pain. After reviewing plaintiff's proposed findings and his evidentiary materials, I have concluded that an evidentiary hearing is warranted to determine whether defendant Rock's decision to reduce plaintiff's medication was gratuitous

or pursuant to a legitimate medical purpose. Therefore, I will stay a decision on plaintiff's motion until after the hearing.

From plaintiff's proposed findings of fact that the affidavits he submitted in support of the motion, I find the following facts solely for the purpose of deciding the present motion.

FACTS

Plaintiff Thomas Reimann is incarcerated at the Stanley Correctional Institution in Stanley, Wisconsin. Plaintiff suffers from Hepatitis C and chronic liver disease. Defendant David Rock is a nurse practitioner at the institution.

On September 11, 2003, plaintiff attended an appointment with Dr. Andrew Waclawik at the University of Wisconsin Neurology Clinic in Madison. Dr. Waclawik diagnosed plaintiff with chronic pain, the result of a "right femoral neuropathy." In November 2004, plaintiff was transferred to the Jackson Correctional Institution, where Dr. Fern Springs prescribed oral methadone for plaintiff's leg, knee and back pain. Plaintiff began chewing the methadone and another medication, carisoprodol, in front of staff at Jackson to avoid being accused of hoarding his medications. Plaintiff was transferred from Jackson to the Stanley Correctional Institution in May 2005.

On July 20, 2005, plaintiff was seen by Dr. Nathan Rudin at the University of

Wisconsin Hospital Pain Clinic in Madison. Dr. Rudin diagnosed plaintiff as suffering from patellofemoral arthritis, lower back pain and right femoral neuropathy. Dr. Rudin recommended that plaintiff continue to receive methadone but stated that if he exercised and performed physical therapy, "he probably will be able to go off methadone, or at least tolerate a lower dose. I would expect the methadone could be tapered and discontinued gradually over a period of 3 to 6 months." With respect to carisoprodol, Dr. Rudin stated that "[w]hile we do not normally like to use carisoprodol, he is taking a very modest dose, and this can be continued." The day after his appointment with Dr. Rudin, plaintiff was summoned to the Health Services Unit and Stanley and given a paper from defendant Rock which stated that his medications would be discontinued. From that date, plaintiff's dose of methadone was reduced 25% and his dose of carisoprodol was reduced 50%. Defendant Rock did not examine plaintiff before reducing his medications.

On August 11, 2005, plaintiff saw defendant Rock and complained about his reduced medications. Defendant Rock said "I don't care. I don't care if you suffer, I don't care if you sue me, I don't care if you go without medication. That's why I work here: because I don't care." He directed plaintiff to take ibuprofen for his pain without advising plaintiff that it is harmful to the liver when taken by someone who has Hepatitis C. Ninety tablets of methadone, each a dose of 5 milligrams, cost the Department of Corrections $4.80. Currently, plaintiff takes 5 mg of methadone at 6:00 a.m. each day and another 5 mg at 5:45

p.m. He experiences pain throughout the night. The dose he is receiving currently is not sufficient to relieve his pain entirely. However, the pain in his legs has decreased and he is able to tolerate a lower dose of methadone because he has followed the exercise regimen provided by Dr. Rudin. In addition, he has experienced diarrhea since he stopped receiving a dose of methadone at noon.

DISCUSSION

A preliminary injunction is "'an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.'" Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (quoting 11A Charles Alan Wright et al., Federal Practice and Procedure § 2948 (2d ed.1995)). In determining whether preliminary injunctive relief is appropriate, district courts are guided by four factors: 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. Joelner v. Village of Washington Park, 378 F.3d 613, 619 (7th Cir. 2004); Faheem–El v. Klincar, 841 F.2d 712, 716 (7th Cir. 1988). 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).

Plaintiff's claim is that defendant Rock violated his Eighth Amendment protection against cruel and unusual punishment by purposely reducing his doses of methadone and carisoprodol rapidly in order to cause him to suffer needless pain. Recently, the court of appeals acknowledged that prison officials may violate the Eighth Amendment by withholding medication if it results in gratuitous pain. Johnson v. Doughty, 433 F.3d 1001, 1017 (7th Cir. 2006). In Calhoun v. DeTella, 319 F.3d 936, 939 (7th Cir. 2003) (quoting Gregg v. Georgia, 428 U.S. 153, 173 (1976)), the court stated that "the Eighth Amendment prohibits unnecessary and wanton infliction of pain, thus forbidding punishment that is 'so totally without penological justification that it results in the gratuitous infliction of suffering.'" Further, the court held that "[s]uch gratuitous infliction of pain always violates contemporary standards of decency and need not produce serious injury in order to violate the Eighth Amendment." Id.

From the facts plaintiff has proposed it appears that in plaintiff's view, defendant Rock's decision to reduce his medication was intended to cause him to suffer needlessly. I conclude that an evidentiary hearing is necessary in order to determine whether the decision

to reduce plaintiff's medications by 25% and 50%, respectively, was in accordance with the recommendations defendant received from Dr. Rudin or was a decision maliciously made.

At the hearing, the parties will have the opportunity to call witnesses and present evidence on their behalf. Because plaintiff can testify to all of the relevant facts himself, a writ of habeas corpus ad testificandum will issue for him to attend the hearing. If plaintiff believes any other incarcerated person heard the statement he alleges defendant Rock made on August 11, 2005, he may request a writ of habeas corpus ad testificandum for that witness. However, before the court will issue a writ of habeas corpus ad testificandum for another incarcerated individual, the court must be satisfied that the witness is willing to attend and that he has actual knowledge of the conversation. Plaintiff can show that a prospective witness is willing to testify by (1) submitting an affidavit in which he swears that the witness is willing to testify voluntarily (that is, without being subpoenaed) or (2) obtaining and submitting an affidavit from the prospective witness in which the witness states that he is willing to testify voluntarily. Plaintiff can show that a prospective witness heard the statement plaintiff alleges defendant Rock made on August 11, 2005 by (1) swearing in his own affidavit that the prospective witness heard the statement or (2) having the prospective witness swear in an affidavit that he was an ear-witness to the statement.

If plaintiff intends to introduce the testimony of an incarcerated witness, he must serve and file a written motion for a court order requiring that such witness be brought to

court at the time of the hearing. The motion must state the name and address of the witness and be accompanied by the necessary affidavits showing that the witness is willing to testify and how he has actual knowledge of the relevant facts. Any such motion must be filed within the next 10 days so that proper arrangements may be made to transport the witness to court. Finally, I remind plaintiff that, at the hearing, the burden of persuasion remains with him to show that he is entitled to injunctive relief. As part of this burden, plaintiff will have to show that, without injunctive relief, he will continue to experience gratuitous pain.

ORDER

IT IS ORDERED that the stay of the decision on plaintiff Thomas Reimann's motion for a preliminary injunction is LIFTED. FURTHER, IT IS ORDERED that an evidentiary hearing will be held on plaintiff's motion on May 25, 2006 at 10:00 a.m. in Room 250 at the U.S. District Courthouse in Madison, Wisconsin. Plaintiff may have until May 10, 2006 in which to submit any requests for issuance of writ of habeas corpus ad testificandum he may have, seeking to secure the appearance at the hearing of any incarcerated witness having first hand knowledge of defendant Rock's alleged statement made on August 11,

2005.

Entered this 1st day of May, 2006.

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