UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JAMES E. CUNNINGHAM, SR.	:	Civ. No. 3:21CV00273(SALM)
v.	:	
FRANCESCO LUPIS, et al.	:	January 24, 2022

RULING ON MOTION FOR PRELIMINARY INJUNCTION

Self-represented plaintiff James E. Cunningham, Sr. ("plaintiff") is an inmate in the custody of the Connecticut Department of Correction ("DOC") currently confined at MacDougall-Walker Correctional Institution ("MacDougall").[1] After initial review, the remaining defendants in the case are Dr. Francesco Lupis, Colleen Gallagher, and Rudy Alvarez, all of whom are alleged to be current or former employees of DOC, and APRN Chena McPherson. Plaintiff has filed a motion for preliminary injunctive relief [Doc. #12], and two separate

[1] The Court may take judicial notice of matters of public record. See, e.g., Mangiafico v. Blumenthal, 471 F.3d 391, 398 (2d Cir. 2006); United States v. Rivera, 466 F. Supp. 3d 310, 313 (D. Conn. 2020) (taking judicial notice of BOP inmate location information); Ligon v. Doherty, 208 F. Supp. 2d 384, 386 (E.D.N.Y. 2002) (taking judicial notice of state prison website inmate location information). The Court takes judicial notice of the Connecticut DOC website, which reports that plaintiff was sentenced to a term of imprisonment on February 18, 2014, that has not expired. See Connecticut State Department of Correction, Inmate Information, http://www.ctinmateinfo.state.ct.us/detailsupv.asp?id_inmt_num=233982 (last visited Jan. 19, 2022).

motions seeking a hearing on that motion. [Docs. #13, #15].[2] Defendants oppose the motions, asserting that plaintiff has not satisfied the requirements for issuance of injunctive relief. See generally Doc. #58.

For the following reasons, plaintiff's Motion for Injunction [**Doc. #12**], Motion to Hear Injunction [**Doc. #13**], and Amended Motion to Hear Injunction [**Doc. #15**] are **DENIED**.

I. Background

Plaintiff brought this action asserting multiple claims pursuant to 42 U.S.C. §1983, the Americans with Disabilities Act, the Rehabilitation Act, and state law. After initial review, the remaining claims are:

- Count 2 against Dr. Lupis for deliberate indifference to serious medical needs relating to testosterone deficiency in violation of the Eighth Amendment.
- Count 2 against Dr. Lupis for negligent infliction of emotional distress ("NIED") and intentional infliction of emotional distress ("IIED") related to his alleged deliberate indifference to serious medical needs relating to plaintiff's testosterone deficiency.

[2] Plaintiff generally addresses the motions to "all defendants." Doc. #12 at 1, 2. Defendant McPherson, however, is not employed by the Department of Correction. See Doc. #50 at 2. She seeks to have the motions denied as to her because the care she provided is not referenced in the motions, and she cannot provide plaintiff the requested relief. See generally id. In reply, plaintiff states that he did not intend these motions to apply to McPherson. See Doc. #52 at 1 ("[T]his injunction does NOT include APRN, McPherson[.]"). Accordingly, the Court construes the motions are being directed solely to the other defendants. The Court will use the term "defendants" in this ruling to refer solely to defendants Lupis, Gallagher, and Alvarez.

- Count 3 against Dr. Lupis and McPherson for deliberate indifference to serious medical needs relating to plaintiff's diabetes in violation of the Eighth Amendment.

- Count 3 against Dr. Lupis and McPherson for NIED and IIED related to the alleged deliberate indifference to serious medical needs relating to plaintiff's diabetes.

- Count 5 against Dr. Lupis and Gallagher for deliberate indifference to the need for exercise in violation of the Eighth Amendment.

- Count 5 against Dr. Lupis and Gallagher for NIED and IIED related to the alleged deliberate indifference to plaintiff's need for exercise.

- Count 5 against Alvarez alleging retaliation in violation of the First Amendment.

- Count 7 against Dr. Lupis alleging retaliation in violation of the First Amendment.

Doc. #74 at 13-14.

In the motions now before the Court, plaintiff makes wide-ranging allegations relating to his medical care, many of which are beyond the scope of the remaining claims in the case. For example, in the motion for preliminary injunction, plaintiff states that Dr. Lupis has canceled medications and his medical diet, refuses to control or adjust his insulin levels, refuses to send him back to various specialists for pain control and orthopedic follow-up examinations, and fails to monitor his blood pressure, blood sugar levels, and edema. See generally Doc. #12 Plaintiff contends that his requests for care for orthopedic, vascular, diabetic, endocrine, musculoskeletal,

pulmonary, thyroid issues, skin infections, pain, and neuropathy have been ignored. See generally id.

In his first motion seeking a hearing, plaintiff states that he complained about Dr. Lupis to District Administrator Rodriguez and, in retaliation, Dr. Lupis threatened to take away plaintiff's wheelchair. See generally Doc. #13 Plaintiff states that he has used a wheelchair for five years due to his obesity and issues with his knees, hip, and rotator cuff. See generally id. He seeks return of the wheelchair. See generally id.

In the amended motion for hearing, plaintiff repeats his demand for a wheelchair, asserting that he requires the wheelchair because he has had three knee surgeries that did not correct issues with a torn ACL in his right knee, suffers from degenerative joint disease in most joints and osteoarthritis in his hip, and suffers from severe diabetic neuropathy causing numbness in his feet and hammer toes. See generally Doc. #15. Plaintiff also alleges that Dr. Lupis reduced his neuropathic pain medication and refuses to honor Plaintiff's five-day-per-week gym pass. See generally id. Dr. Lupis also allegedly reduced plaintiff's daily insulin dose. See generally id.

Plaintiff asks the Court

> to put him under the care of an independent health care provider, doctors specialists not under the control of (doc) or the other defendants so they will not interfere with Cunninghams health care to protect (doc), all defendants because (doc) employees, healthcare, all

> defendants will not go against their bosses in fear of retaliation from them.
>
> [Plaintiff] requests to be examined by independent doctors, specialists, tests, etc, about everything listed in complaint and for all defendants and (doc) be ordered to follow all independent outside doctors, specialists, pain management orthopedic, endocrinologist, vascular, but not limited to so Cunningham does not get worse or lose of limb or death.

Doc. #12 at 2 (sic).

II. Standard for Preliminary Injunctive Relief

Interim injunctive relief "is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." Grand River Enter. Six Nations Ltd. v. Pryor, 481 F.3d 60, 66 (2d Cir. 2007) (citation and quotation marks omitted).

> A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.

Glossip v. Gross, 576 U.S. 863, 876 (2015) (citation and quotation marks omitted). "A showing of irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction." Faiveley Transp. Malmo AB v. Wabtec Corp., 559 F.3d 110, 118 (2d Cir. 2009) (citation and quotation marks omitted).

"[I]n seeking preliminary injunctive relief, Plaintiff cannot rest on mere arguments; he must proffer admissible

evidence that clearly demonstrates his entitlement to the requested relief." Howe v. Burwell, No. 2:15CV00006(CR), 2015 WL 4479757, at *6 (D. Vt. July 21, 2015). With respect to prison conditions, federal law narrowly confines the scope of available preliminary relief.

> Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief and shall respect the principles of comity set out in paragraph (1)(B) in tailoring any preliminary relief.

18 U.S.C. §3626(a)(2).

"[T]he court's task when granting a preliminary injunction is generally to restore, and preserve, the status quo ante, i.e., the situation that existed between the parties immediately prior to the events that precipitated the dispute." Asa v. Pictometry Intern. Corp., 757 F. Supp. 2d 238, 243 (W.D.N.Y. 2010); see also Transamerica Rental Finance Corp. v. Rental Experts, 790 F. Supp. 378, 381 (D. Conn. 1992) ("It is well established in this Circuit that the purpose of a preliminary injunction is to preserve the status quo between two parties.").

"Because mandatory injunctions disrupt the status quo, a party seeking one must meet a heightened legal standard by showing 'a clear or substantial likelihood of success on the merits.'" N. Am. Soccer League, LLC v. U.S. Soccer Fed'n, Inc.,

883 F.3d 32, 37 (2d Cir. 2018) (quoting N.Y. Civil Liberties Union v. N.Y.C. Transit Auth., 684 F.3d 286, 294 (2d Cir. 2012)). "A mandatory preliminary injunction 'should issue only upon a clear showing that the moving party is entitled to the relief requested, or where extreme or very serious damage will result from the denial of preliminary relief.'" Cacchillo v. Insmed, Inc., 638 F.3d 401, 406 (2d Cir. 2011) (quoting Citigroup Global Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd., 598 F.3d 30, 35 n.4 (2d Cir. 2010)); see also Tom Doherty Assocs., Inc. v. Saban Ent., Inc., 60 F.3d 27, 34 (2d Cir. 1995) (A party seeking a mandatory injunction must make a "clear or substantial showing" of likelihood of success on the merits of his or her claim. (citation and quotation marks omitted)).

A "district court has wide discretion in determining whether to grant" preliminary injunctive relief. Moore v. Consol. Edison Co. of N.Y., Inc., 409 F.3d 506, 511 (2d Cir. 2005). "In the prison context, a request for injunctive relief must always be viewed with great caution so as not to immerse the federal judiciary in the management of state prisons." Fisher v. Goord, 981 F. Supp. 140, 167 (W.D.N.Y. 1997); see also Farmer v. Brennan, 511 U.S. 825, 846-47 (1994). The Supreme Court has repeatedly stated that "plaintiffs seeking preliminary relief [must] demonstrate that irreparable injury is likely in

the absence of an injunction." Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 22 (2008). "Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." Id.

A plaintiff's request for preliminary injunctive relief must relate to the claims in the operative complaint. See, e.g., De Beers Consol. Mines Ltd. v. United States, 325 U.S. 212, 220 (1945) (finding preliminary injunction inappropriate that "deals with a matter lying wholly outside of the issues in the suit[]"); McMillian v. Konecny, No. 9:15CV00241(GTS), 2018 WL 813515, at *2 (N.D.N.Y. Feb. 9, 2018) ("[T]he relief sought by a plaintiff in a motion for a temporary restraining order or preliminary injunction must relate to the claims of the plaintiff's complaint."); Torres v. UConn Health, No. 3:17CV00325(SRU), 2017 WL 3713521, at *2 (D. Conn. Aug. 29, 2017) (preliminary injunctive relief "not warranted" where "the motion is unrelated to underlying claims[]" in complaint).

III. Discussion

Plaintiff bears the burden of establishing that irreparable harm is likely if the Court denies his request for immediate injunctive relief. In response to plaintiff's motions, defendants have submitted copies of plaintiff's medical records

and the declaration of Dr. Cary Freston. See Docs. #58-1, #73. Defendants contend that plaintiff has not demonstrated that he will suffer irreparable harm if the motions are denied, nor a likelihood of success on the merits of his claims. See generally Doc. #58.

A. Requests for Hearing

Plaintiff has filed a motion entitled "emergency motion to hear injunction against Dr. Lupis" Doc. #13 (sic), and another entitled "amendment #1 to emergency motion to hear injunction[.]" Doc. #15 (sic). In spite of their titles, neither motion actually addresses the question of whether a hearing is necessary on plaintiff's request for preliminary injunctive relief. Rather, both submissions appear to simply provide additional allegations against Dr. Lupis and others.

On the current record, and for the reasons stated in the remainder of this Ruling, there is no need for a hearing on plaintiff's motion for preliminary injunction. See, e.g., Jarecke v. Hensley, 552 F. Supp. 2d 261, 264-65 (D. Conn. 2008) (denying motion for preliminary injunction without a hearing where plaintiff had failed to show a clear likelihood of success on the merits); Wall v. Constr. & Gen. Laborers' Union, 80 F. App'x 714, 716 (2d Cir. 2003) ("[T]he district court did not abuse its discretion in denying plaintiffs' motion for a

preliminary injunction without a hearing[.]"). Accordingly, plaintiff's motions for hearing [**Docs. #13, #15**] are **DENIED.**

B. Allegations Outside the Scope of Remaining Claims

As noted, many of the allegations in plaintiff's submissions do not relate to the claims remaining in this case. The Court dismissed, on initial review, all claims relating to deliberate indifference to orthopedic issues relating to plaintiff's knee, elbow, and shoulder, see Doc. #17 at 32-34; the failure to provide adequate pain management or adequately service and maintain various pieces of his medical equipment, see id. at 34-35; the failure or refusal to have him seen by specialists, and refusal to comply with the recommendations of specialists, see id. at 35. To the extent the preliminary injunctive relief sought relates to the dismissed claims, including any orthopedic issues, pain management, assignment of a wheelchair, and cell assignment, the requests are **DENIED.**

C. Demand for Treatment by Outside Providers

Plaintiff's request for injunctive relief, though accompanied by dozens of pages of rambling and wide-ranging claims, is a simple one: He asks the Court to order the DOC to provide him with medical care by providers outside of the DOC medical system, who are "not under the control of" DOC or any defendant. Doc. #12 at 2.

The Court is required, in evaluating a prisoner's request for injunctive relief, to "give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief" requested. 18 U.S.C. §3626(a)(2). The federal courts must be forever mindful that "within prison walls, even relatively simple changes in procedure can have far-reaching security and other consequences." Carter v. Fagin, 363 F. Supp. 2d 661, 666 (S.D.N.Y. 2005). "Congress has specifically instructed federal courts to be highly conscious of the unique security needs of prisons and, accordingly, to be deferential to the judgment of administrators who have unique expertise." Williamson v. Maciol, 839 F. App'x 633, 638 (2d Cir. 2021).

Plaintiff's submissions make clear that he disagrees with the treatment decisions of the medical staff assigned to his care, particularly Dr. Lupis. He contends that he must receive treatment from outside providers because DOC providers "will not go against their bosses[.]" Doc. #12 at 2. This is the sole rationale offered by plaintiff for the need to seek outside care. Notably, the defendants remaining in this matter are not "bosses." Defendant Lupis is plaintiff's "primary care physician[.]" Doc. #58-1 at 3. Alvarez is "a gym teacher at MacDougall who was responsible for the exercise programs." Doc. #17 at 20 (footnote omitted). Gallagher is alleged to be the

"Program Director, Quality Improvement of Health and Addiction Services" who provides "medical care services to inmates at MacDougall[.]" Doc. #1 at 4.

Dr. Cary Freston, who is the Acting Regional Medical Director of DOC, has reviewed plaintiff's medical records, and offered his opinion. See Doc. #58-1. There is no indication in plaintiff's submissions that Dr. Freston would fear contradicting Lupis, Alvarez, or Gallagher; if anything, it appears that Dr. Freston is of higher rank and position in the DOC than any of the defendants. Dr. Freston has provided a sworn statement indicating that plaintiff "is receiving all appropriate medical care for these conditions and has continuously received routine and necessary care by his providers." Doc. #58-1 at 4. After a thorough discussion of plaintiff's medical treatment, Dr. Freston concluded: "In my opinion, the current medical care being provided to the Plaintiff reduces the risk of worsening of, his various medical conditions, and there is no imminent sign or indication of risk of harm or death." Id. at 17.

Defendants have submitted extensive evidence revealing that plaintiff has been receiving consistent medical care and attention. See Doc. #58-1 (affidavit of Dr. Cary), Doc. #73 (excerpts of plaintiff's medical records). That evidence strongly rebuts plaintiff's conclusory allegations that he is

not receiving adequate care. Plaintiff has not demonstrated that he will suffer irreparable harm if he is not treated by outside physicians. Defendants have presented the sworn testimony of a physician who has opined that the care plaintiff is receiving is appropriate; plaintiff has offered nothing but speculation that an outside doctor would see it differently. "Speculative, remote or future injury is not the province of injunctive relief." Tolbert v. Koenigsmann, No. 9:13CV01577(LEK), 2015 WL 7871344, at *2 (N.D.N.Y. Dec. 4, 2015); see also City of Los Angeles v. Lyons, 461 U.S. 95, 111-12 (1983).

Plaintiff has also failed to demonstrate a likelihood of success on the merits on the issue of the adequacy of his medical treatment. "It is well-established that mere disagreement over the proper treatment does not create a constitutional claim. So long as the treatment given is adequate, the fact that a prisoner might prefer a different treatment does not give rise to an Eighth Amendment violation." Chance v. Armstrong, 143 F.3d 698, 703 (2d Cir. 1998). Indeed, "a prison inmate has no independent constitutional right to outside medical care." Tindal v. Goord, No. 04CV06312(DJL), 2006 WL 2583273, at *1 (W.D.N.Y. Sept. 6, 2006) (citation and quotation marks omitted). "At best, Plaintiff has established a pattern of disagreement over the course of his treatment and takes issue with Defendants' medical judgment. This evidence

does not form the basis of a deliberate indifference claim and is insufficient to establish the likelihood of success on the merits." Tolbert v. Koenigsmann, No. 9:13CV01577(LEK), 2016 WL 3349317, at *4 (N.D.N.Y. June 15, 2016); see also Lewal v. Wiley, 29 F. App'x 26, 28 (2d Cir. 2002) ("Lewal's desire to be examined by an independent specialist, in the face of the FCI's conclusion that further testing is unwarranted, is nothing more than a dispute between patient and doctor over the proper diagnosis for his symptoms, and is therefore not cognizable.").[3]

In sum, plaintiff's disagreement with the treatment decisions by defendants is insufficient, in the face of evidence that he is receiving adequate care, to show a risk of irreparable harm or a likelihood of success on the merits. Furthermore, plaintiff has not demonstrated that the relief he seeks, treatment by outside providers, is reasonable or necessary in the circumstances.

[3] The Court notes that plaintiff has not offered any evidence that would override the express statutory mandate that the Court "give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief" requested. 18 U.S.C. §3626(a)(2). Plaintiff's demand would require that he be physically transported to an outside medical facility for treatment, even for routine matters. This raises obvious security concerns. It would require that plaintiff be treated differently than all other inmates, though many inmates suffer from similar medical conditions, which could cause unrest and disruption.

IV. Conclusion

Plaintiff's Motion for Injunction [**Doc. #12**], Motion to Hear Injunction [**Doc. #13**], and Amended Motion to Hear Injunction [**Doc. #15**] are **DENIED.**

It is so ordered this 24th day of January, 2022, at New Haven, Connecticut.

___/s/_____
Hon. Sarah A. L. Merriam
United States District Judge