

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER ALLEN, et al.,

Plaintiffs,

-against-

CARL KOENIGSMANN, et al.,

Defendants.

No. 19-CV-8173 (LAP)

ORDER

LORETTA A. PRESKA, Senior United States District Judge:

This matter is before the Court on Plaintiffs' motion for a preliminary injunction. For the reasons summarized below and those outlined in the Court's opinion granting Plaintiffs' motion, (dkt. no. 552), the Court issues the following Order.

I. Background

Plaintiff prisoners in the New York State Department of Corrections and Community Supervision ("DOCCS") system filed this action in September of 2019 alleging violations of their rights to be free of cruel and inhuman treatment pursuant to the protections of the Eighth Amendment. Specifically, Plaintiffs alleged that DOCCS medical staff denied and/or discontinued medications with abuse potential ("MWAP") pursuant to policies, practices, and customs, without individualized assessments of patients' needs or the efficacy of treatment. These policies,

practices, and customs included but were not limited to the MWAP Policy¹ promulgated in June of 2017.

In December of 2020, Plaintiffs moved for leave to file a Second Amended and Supplemental Complaint ("SAC") seeking, in part, prospective relief to remedy the alleged policies, customs, and practices of denying or discontinuing medications without medical justification. (Dkt. no. 189.) Leave was granted (dkt. no. 250), and the SAC was filed on June 25, 2021. (Dkt. no. 256.) On February 8, 2021, Defendants rescinded the MWAP Policy and replaced it with Health Services Policy 1.24A, "Prescribing for Chronic Pain."

In May of 2022, Plaintiffs moved for certification of injunctive and liability classes and class-wide preliminary injunctions. (Dkt. no. 346). In opposition, Defendants argued, inter alia, that the motion was moot because the MWAP Policy had been rescinded and replaced by Policy 1.24A (which did not require approval of a RMD before a PCP could prescribe an MWAP). (Dkt no. 450 at 5-6.) After the motions were fully briefed, the Court held an evidentiary hearing on February 6-8, 2023, regarding Defendant Moores' voluntary cessation defense. As set out in the Opinion and Order granting the preliminary injunction

¹ Policy 1.24 ("the MWAP Policy") required, inter alia, the approval of a Regional Medical Director ("RMD") before a primary care provider ("PCP") could prescribe an MWAP for a patient.

motion (dkt. no. 552), several DOCCS inmates testified to what the Court found to be ongoing constitutional violations with respect to treatment of chronic pain patients. The parties also filed post-hearing briefs. (Dkt. nos. 536 and 545.)

During the hearing, Dr. Moores' definition of an individualized assessment for chronic pain treatment was received into evidence. She stated that an individualized assessment must include: i) a review of the patient's entire medical history; ii) a thorough physical exam; iii) a list of the patient's diagnoses and source(s) of pain; iv) the patient's current pain level; v) a note of what past medications have worked and what medications have not worked with notes related to side effects; and, vi) a detailed plan going forward on how DOCCS health providers plan to treat the patient. (Hearing Exhibit D-3.)²

On March 31, 2023, this Court granted Plaintiffs' motion for certification of a class of prisoners for injunctive purposes pursuant to Fed. R. Civ. P. 23(b)(2) and denied certification of a liability class. (Dkt. No. 553.) The

² (Memorandum to Deputy Superintendents for Administration and Health, Facility Health Services Directors, and Nurse Administrators from Carol A. Moores, MD, MPH, MSHA, Deputy Commissioner/Chief Medical Officer regarding Health Care for Chronic Pain Patients, dated October 31, 2022. [Dkt. no. 489-3.])

certified injunctive class was defined as, “[a]ll incarcerated individuals who are or will be in the care and custody of the New York State Department of Corrections and Community Supervision who suffer or will suffer from chronic pain and/or neuropathies who require individualized assessments of medical need for treatment with MWAP medications.” (“Plaintiff Class” or “Plaintiff Class members”) (dkt. no. 553 at 17.) The Court also granted the Plaintiffs’ motion for a preliminary injunction and, pursuant to the cautions embodied in Dean v. Coughlin, 804 F.2d 207, 213 (2d Cir. 1986), directed the parties to confer and submit a proposal for the provisions of the preliminary injunction. (Dkt. no. 552 at 66.) On May 4, 2023, Defendant Moores filed a proposed form of order that was unacceptable to the Court. (Dkt. no. 575.) After an in-person conference and a meet and confer, Defendants submitted a second proposed form of order on May 16, 2023. (Dkt. no. 579-1.) In response, Plaintiffs sought leave to file an alternative proposed form of order on May 25, 2023. (Dkt. no. 579.) The Court granted Plaintiffs’ request. (Dkt. no. 580.)

Having considered the papers, arguments, and briefs filed by the parties and the evidence presented at the hearing, the Court found that the evidence supported the granting of a class-wide preliminary injunction. (Dkt. no. 552.) Specifically, the Court found that Plaintiff Class members were likely to prevail

on the merits of their claims that DOCCS medical providers are deliberately indifferent to the Plaintiff Class members' serious medical need of treatment for chronic pain and neuropathies. In granting the injunction, the Court found that the potential for harm to Plaintiff Class members outweighed the potential harm to Defendant Moores, that the harm to the Plaintiff Class if the Court failed to grant an injunction is irreparable, and that it is in the public interest to grant the injunction. Before setting out the terms of the injunction, the Court will discuss the requirements of the Prison Litigation Reform Act ("PLRA"). 18 U.S.C. § 3626.

II. Legal Standard

The PLRA requires that any preliminary injunctive relief concerning prison conditions "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." In weighing a request for preliminary injunctive relief, "[t]he 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."

Green Haven Prison Preparative Meeting of Religious Soc'y of Friends v. New York State Dep't of Corr. & Cmty. Supervision, 16 F.4th 67, 78 (2d Cir. 2021) (quoting 18 U.S.C. § 3626(a)(2)). "Narrow tailoring requires a 'fit' between the [remedy's] ends and the means chosen to accomplish those ends. The scope of the remedy must be proportional to the scope of the violation, and

the order must extend no further than necessary to remedy the violation.” Brown v. Plata, 563 U.S. 493, 531 (2011) (citation and quotation marks omitted). Courts may not impose remedial orders that “unnecessarily reach out to improve prison conditions other than those that violate the Constitution.” (Id.) (citation omitted).

[I]n 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 [] prisons.” V.W. v. Conway, 236 F. Supp. 3d 554, 581 (N.D.N.Y. 2017) (quoting Fisher v. Goord, 981 F. Supp. 140, 167 (W.D.N.Y. 1997)). . . . However, “[c]ourts may not allow constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration.” Brown v. Plata, 563 U.S. 493, 511 (2011).

Barrett v. Maciol, 20-CV-537 (MAD/DJS), 2022 WL 130878, at *4 (N.D.N.Y. Jan. 14, 2022).

III. Discussion

Based on the evidence in the record and the findings made by the Court in its preliminary injunction opinion, (dkt. no. 552), the Court finds that Defendants continue to deny or discontinue chronic pain and neuropathy medications to patients throughout the DOCCS system without medical justification. To remedy these violations of Plaintiff Class members’ rights, the Court orders the following relief, which is directly aligned with the implementation and enforcement of DOCCS’ own Policy 1.24A. The Court finds this relief is narrowly drawn, extends

no further than necessary to correct the violation of the constitutional rights at issue, and is the least intrusive means necessary to correct the violations of the Plaintiff Class members' federal rights. The Court finds that the scope of this relief is proportional to the scope of Defendants' violations. In fashioning the following terms, the Court has given appropriate weight to the potential adverse impact on public safety or the operation of the criminal justice system that may result from the preliminary injunction.

IT IS HEREBY ORDERED that Defendant Moores shall provide a copy of this Order to all DOCCS medical personnel, including administrators, PCPs, and nursing staff, within ten days of entry of this Order.

IT IS FURTHER ORDERED that Defendant Moores and any succeeding Chief Medical Officer who serves in that official capacity, and each of her/his officers, agents, servants, employees, and attorneys, as well as any other person acting in concert with them or on their behalf who receives actual notice of this Order shall:

1. Order that all DOCCS Facility Health Services Directors ("FHSD"), PCPs, and relevant medical staff comply with the provisions of DOCCS Health Services Policy 1.24A, entitled,

"Prescribing for Chronic Pain." Complying with Policy 1.24A shall include the following actions:

a) Each DOCCS patient with a chronic pain condition shall be given the Problem List Code 338 "Pain Management."

b) A PCP may prescribe any medication(s) deemed appropriate for treatment of the patient's chronic pain condition. There is no requirement for an approval process except when a non-formulary medication is requested. Non-formulary medications shall be approved in cases where it is documented that other formulary treatments were tried and shown to:

- 1) be unsuccessful in achieving functional treatment goals; or
- 2) cause unacceptable side effects.

c) Specialty consultations will be ordered as indicated for the evaluation and care of chronic pain patients.

d) In the event the PCP does not accept the recommendations of the specialist, the PCP shall:

- Document in the patient's Ambulatory Health Record ("AHR") the reasons why the PCP does not accept the recommendations;
- Call the specialist to discuss the case to clarify that the specialist understands the pertinent details of the patient's situation;

- If the PCP still does not accept the specialist's final recommendations, the PCP shall discuss the case with another DOCCS provider, FHSD, or the RMD;
- Documentation of these discussions shall be recorded in the patient's AHR; and
- All treatment decisions will be made by the PCP.

e) Pain management medication shall only be discontinued after a provider has met with the patient, discussed the issues regarding the use of the medication, analyzed the patient's situation, and subsequently determined that it is in the best interest of the patient for the medication to be discontinued. The discussion with the patient and the reasons for the discontinuation of the pain medication shall be recorded in the patient's AHR.

f) Patients with the Pain Management designation Code 338 shall be seen at least every 90 days by a PCP. At least annually, the PCP shall meet with the patient to discuss the patient's treatment plan.

2. Within 45 days of the entry of this Order, Defendant Moores or her officers, agents, servants, or employees shall train all relevant DOCCS medical personnel on the above provisions and how they should be implemented.

3. Within 60 days of the entry of this Order, Defendant Moores or her officers, agents, servants, or employees shall

develop and implement a program for identifying new medical providers hired or rehired by DOCCS and ensure that each is trained on the provisions of DOCCS Health Services Policy 1.24A within 60 days of his/her hire date.

4. Within 60 days of the entry of this Order, Defendant Moores or her officers, agents, servants, or employees shall identify all patients in custody at one of DOCCS facilities who suffer from a chronic pain condition and add Code 338 to his/her Medical Problem List, including those still in DOCCS custody who suffer from a chronic pain condition and were denied or discontinued from MWAP medications pursuant to the former MWAP Policy.

5. Within 60 days of the entry of this Order, Defendant Moores or her officers, agents, servants, or employees shall develop and implement a system for identifying all patients who transfer into the custody of DOCCS and suffer from chronic pain conditions and ensure that Code 338 is included in his/her Medical Problem List.

6. Within six months after Code 338 is added to patient's Medical Problem List, Defendant Moores or her officers, agents, servants, or employees shall ensure the completion of an individualized assessment of that patient's chronic pain management needs by a PCP if one has not been conducted in the sixty days prior to the addition of Code 338. Such

individualized assessment shall conform to Defendant Moores' description of an individualized assessment:

- a review of the patient's medical chart or history;
- a thorough physical examination;
- the creation of a list of the patient's diagnoses and source(s) of pain;
- the patient's current pain level;
- notations of what past medications have worked to treat the patient's chronic pain, what medications have not worked, and any side effects from medications trialed;
- creation of a detailed plan of care for treatment of the patient's chronic pain;
- a discussion with the patient about appropriate treatment options; and
- documentation of the individualized assessment pursuant to current DOCCS Health Services Policies.

7. Within sixth months of the date of this Order, Defendant Moores or her officers, agents, servants, or employees shall ensure the completion of an individualized assessment by a PCP of the chronic pain management needs for all patients who have Code 338 on their medical Problem List as of the date of this Order if one has not been conducted in the sixty days

prior. Such individualized assessment shall include the following:

- a review of the patient's medical chart or history;
- a thorough physical examination;
- the creation of a list of the patient's diagnoses and source(s) of pain;
- the patient's current pain level;
- notations of what past medications have worked to treat the patient's chronic pain, what medications have not worked, and any side effects from medications trialed;
- creation of a detailed plan of care for treatment of the patient's chronic pain;
- a discussion with the patient about appropriate treatment options; and
- documentation of the individualized assessment pursuant to current DOCCS Health Services Policies.

8. To ensure progress is made on the individualized reassessments mentioned in paragraphs 6 and 7 above, Defendant Moores or her officers, agents, servants or employees shall produce to Plaintiffs, every thirty days from the date of entry of this Order, documentary proof of the individualized assessments of chronic pain patients which includes the identity of the patient, the date of the reassessment, the facility in

which the reassessment took place, the identity of the provider who conducted the reassessment, and all results of the reassessment.

IT IS FURTHER ORDERED that Defendant Moores, her successor and/or her counsel shall notify the Court and all parties if any change to Health Services Policy 1.24A is made by DOCCS;

IT IS FURTHER ORDERED that the failure to comply with this Order shall not be excused by allegations of inadequate staffing;

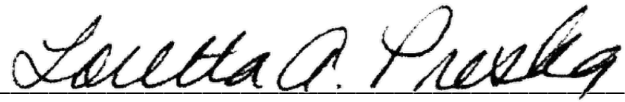
IT IS FURTHER ORDERED, given the PLRA's provision for automatic expiration of preliminary injunctive relief 90 days after its entry, (18 U.S.C. § 3626(a)(2)), before the expiration of the preliminary injunction, the parties shall either:

1. Stipulate that the preliminary injunction shall remain in effect for an additional 90 days; or

2. Move forward with the evidentiary hearing, scheduled to begin August 7, 2023, to determine whether the preliminary injunction should be converted into a permanent injunction or whether permanent injunctive relief should be denied.

SO ORDERED.

Dated: June 12, 2023
New York, New York

A handwritten signature in black ink, reading "Loretta A. Preska". The signature is written in a cursive style with a horizontal line underneath.

LORETTA A. PRESKA

Senior United States District Judge