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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 BRANDON RUIZ,

11 Plaintiff,

No. CIV S-09-0318 GGH P

12 vs.

13 DR. AKINTOLA, et al.,

14 Defendants.

ORDER; FINDINGS AND RECOMMENDATION

15 _____/
16 Introduction

17 Plaintiff has filed on April 8, 2009, his second (at least) motion for temporary
18 restraining order/preliminary injunction requesting, now, that his pain medication Tramadol be
19 re-prescribed, but in uncrushed form. Plaintiff alleges stomach problems from taking this
20 addictive drug in crushed form, and desires whole pills.

21 In his complaint filed on February 4, 2009, Ruiz related that he had undergone his
22 most recent knee surgery, but that on return to prison he was not being given the necessary
23 physical therapy or pain medication. The undersigned ordered the named defendants to respond
24 to Ruiz' in-complaint request for injunctive relief. On March 6, 2009, defendants related that
25 plaintiff was indeed receiving his physical therapy, but were silent with respect to pain
26 medication. The undersigned then ordered further response on the pain medication on March 12,

2009. The first request for injunctive relief was denied as moot when the response indicated that plaintiff was receiving physical therapy and was again receiving pain medication, albeit in crushed form. The plaintiff then filed his injunctive relief motion at bar on April 8, 2009.

The court has received the further declaration of Dr. Sahir Naseer (April 10, 2009) in which he details plaintiff's treatment odyssey, and his firm opinion that plaintiff is way past the date on which pain medication would usually be cutoff. Plaintiff is not receiving Tramadol at this time.

Discussion

Plaintiff must recognize that his claim is not one for "best medical practices," but one for deliberate indifference to a serious medical need. Therefore, injunctive relief is predicated on that standard as well. Plaintiff has produced no expert testimony to the effect that cutting off addictive medication months after the surgical event in this case is shockingly below normal standards; he has produced no expert testimony at all. Defendants have submitted the declaration of a medical doctor who does not see a problem in cutting off the pain medication at this time – be it crushed or uncrushed. Plaintiff's request for uncrushed addictive medication, i.e., in pill form, raises the specter of manipulation or drug seeking behavior.

In any event, plaintiff's case at present rests upon the assertions of a lay prisoner versus a medical doctor. Such expressions of differences of opinion as to medical care do not state a claim under the Eighth Amendment. Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996). As such, plaintiff has not even raised serious questions as to the existence of a viable Eighth Amendment claim, much less demonstrated some likelihood of success. See Raich v. Gonzales, 500 F.3d 850-857-58 (9th Cir. 2007).

Conclusion

IT IS HEREBY ORDERED that the Clerk assign a district judge to this action;

IT IS HEREBY RECOMMENDED that plaintiff's motion for a temporary restraining order/preliminary injunction (Docket # 20) be denied.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge's Findings and Recommendations.” Any reply to the objections shall be served and filed within ten days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

DATED: April 17, 2009

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

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