

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 TODD A. ASHKER,

No. C 05-3759 CW

5 Plaintiff,

ORDER RE
PLAINTIFF'S
DECEMBER 10, 2013
NOTICE OF
DEFENDANTS'
VIOLATION OF
COURT'S ORDER

6 v.

7 MICHAEL C. SAYRE, et al.,

8 Defendants.

9 _____/

10
11 Plaintiff has filed a notice of violation of the Court's
12 February 4, 2010 Order for Specific Performance. Defendants have
13 filed a response. The matter was decided on the papers.

14 BACKGROUND

15 Following a five-day jury trial, on February 4, 2010, this
16 Court entered an Order for Specific Performance of the 2002
17 Settlement Agreement between the California Department of
18 Corrections and Rehabilitation (CDCR) and Plaintiff. The order
19 required, among other things, that Defendants arrange for a
20 consultation with a pain management specialist to establish a pain
21 management regimen. Defendants were further ordered to
22 implement the specialist's recommended pain management
23 regimen and continue that regimen until . . . the
24 specialist and the CDCR's physician concur in the
25 opinion that Plaintiff's medical needs have changed such
26 that the regimen should be changed or discontinued.

27 Docket. No. 434 at 13. Finally, Defendants were ordered to submit
28 a report every three weeks indicating the status of the
performance of the 2002 Settlement Agreement between the CDCR and
Plaintiff.

1 Plaintiff was evaluated by a pain specialist at the UCSF Pain
2 Management Center. The specialist recommended as follows:

3 As the patient has received excellent pain relief from
4 concurrent use of Ultram and Tylenol in the past, we
5 will recommend that the patient be weaned off of
6 morphine and started on Ultram 50 mg three times daily.
7 The patient can also use Tylenol 650 mg along with
8 Ultram in three times daily dosing, as long as he is
9 clear from a medical standpoint. Although the patient
10 does have a history of hepatitis C, he reports there are
11 no current issues with his liver.

12 Ashker Dec. ISO Notice of Violation, Ex. A. Following the
13 evaluation, Defendants began providing Plaintiff with 50 mg of
14 Ultram and 650 mg of Tylenol three times daily.

15 On April 9, 2012, this Court entered an order in which it
16 found that Defendants had "fulfilled the requirements in the Order
17 for Specific Performance." Docket No. 550 at 3. Accordingly, the
18 Court ordered Defendants to submit a progress report once a year,
19 instead of once every three weeks. However, the Court ordered
20 Defendants to "inform the Court immediately of any change in the
21 medical condition of Plaintiff's injured arm or in the treatment
22 program that [they] now provide[] to Plaintiff." Docket No. 550
23 at 3.

24 Plaintiff's prescription for Tylenol was discontinued on
25 October 26, 2012. After efforts to have his prescription refilled
26 using the prison's Health Care Services Request Form were
27 unsuccessful, Plaintiff filed the instant notice of violation on
28 December 10, 2012.

On January 9, 2013, Plaintiff had a blood test that indicated
his liver function was normal. Ashker Dec. ISO Reply ¶¶ 13, 14.
On January 15, 2013, Plaintiff's prescription for 650 mg of
Tylenol three times daily was renewed. Id. at ¶ 14.

DISCUSSION

Defendants assert that the pain management specialist's statement that Plaintiff "can also use Tylenol 650 mg along with Ultram in three times daily dosing, as long as he is clear from a medical standpoint" indicates that the use of Tylenol was "permissive, and not a mandatory part of the recommended pain management regimen." Defendants' Response at 2. Defendants further note that the recommendation "was made in the context of the potential concern for liver problems in association with Mr. Ashker's history of hepatitis C." Id. However, the Court interprets the pain management specialist's recommendation to provide for the 650 mg of Tylenol three times daily unless there is a medical reason not to do so.

Here, Defendants discontinued Plaintiff's prescription over two months before testing him to determine if there was a medical reason for him to stop taking the Tylenol. Moreover the blood test revealed that any concerns about Plaintiff's liver were unfounded.

Accordingly, the Court finds that Defendants violated the Court's February 4, 2010 Order for Specific Performance. In addition, Defendants' failure to inform the Court of the change to Plaintiff's treatment program was a violation of the Court's April 9, 2012 Order. However, it appears that Plaintiff is currently receiving the 650 mg of Tylenol three times daily as recommended by the pain management specialist and no action by the Court is necessary at this time.

Going forward, Defendants shall continue to renew Plaintiff's prescription for 650 mg of Tylenol three times daily unless they

1 have a documented medical reason for discontinuing the drug.
2 Moreover, Defendants are reminded of the Court's order that they
3 inform the Court immediately of any change in the medical
4 condition of Plaintiff's injured arm or in the treatment program
5 that they provide to Plaintiff. Defendants shall also inform the
6 Court of the reasons for any such changes.

7 IT IS SO ORDERED.

8
9 Dated: 3/7/2013


CLAUDIA WILKEN
United States District Judge