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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JEHAN ZEB MIR,

Plaintiff,

vs.

MEDICAL BOARD OF
CALIFORNIA, et al.,

Defendant.

CASE NO. 12cv2340-GPC-DHB

**ORDER DENYING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION AND GRANTING
DEFENDANT'S REQUEST FOR
JUDICIAL NOTICE**

[DKT. NOS. 17-18]

For the reasons below, the Court **DENIES** Plaintiff's motion for a preliminary injunction and **GRANTS** Defendant's request for judicial notice. (Dkt. Nos. 17-18.)

BACKGROUND

On September 25, 2012, Plaintiff Jehan Zeb Mir (hereinafter "Plaintiff"), proceeding in propria persona, filed this lawsuit in federal court alleging that the California Medical Board wrongfully took disciplinary actions against Plaintiff's physician's and surgeon's certificate. (Dkt. No. 1.) On January 17, 2013, Plaintiff filed a first amended complaint seeking injunctive and declaratory relief. (Dkt. No. 8.) On February 13, 2013, Defendants filed a motion to dismiss Plaintiff's amended complaint. (Dkt. No. 13.) On February 20, 2013, Plaintiff filed a motion for preliminary injunction. (Dkt. No. 17.) On March 5, 2013, Defendants filed an opposition to Plaintiff's motion for preliminary injunction, which included a request

1 for judicial notice. (Dkt. No. 18.) As the motion to dismiss has not been fully
2 briefed, the only issue before the Court is Plaintiff’s motion for preliminary
3 injunction.

4 This case follows a litany of lawsuits filed by the Plaintiff in an attempt to
5 reverse the California Medical Board’s decision to revoke Plaintiff’s medical
6 licenses. In his first amended complaint, Plaintiff provides a complicated history of
7 his treatment for one particular patient, which ultimately resulted in his termination
8 from Pomona Valley Hospital and numerous review proceedings before the
9 California Medical Board. (Dkt. No. 8.) Plaintiff’s complaint provides further
10 background as to the state court proceedings in which he contested the California
11 Medical Board’s decision to revoke his licenses. (Id.)

12 Plaintiff was licensed by the Defendant State of California in 1972 to practice
13 medicine. (Plaintiff’s First Amended Complaint (hereinafter, “FAC”, ¶ 6).) On June
14 8, 2000, Plaintiff treated an 81-year old female patient with a history of medical
15 complications at Pomona Valley Hospital, where he was a provisional member of
16 the medical staff. (FAC ¶¶ 6, 11, 12.) Plaintiff performed a series of surgeries on
17 the patient, leading up to an above-the-knee amputation of the patient’s leg due to
18 gangrene. (FAC ¶¶ 30, 33-34, 42-45, 48-49.) Related to Plaintiff’s mistreatment of
19 the patient and other concerns about the Plaintiff’s performance as a provisional
20 staff member, Pomona Valley Hospital (“PVH”) terminated Plaintiff around
21 November 2000. (FAC ¶¶ 59-63.)

22 Plaintiff has a history of filing lawsuits resulting in unfavorable
23 determinations and Court-ordered sanctions against Plaintiff. Plaintiff sued PVH
24 twice for injunctive relief and damages. The Superior Court denied relief on both
25 occasions, and the Court of Appeals affirmed the decision and determined Plaintiff
26 was a vexatious litigant. (FAC ¶¶ 57, 59; Defendant’s Request for Judicial Notice,
27 Exhibit B, Mir v. Pomona Valley Hosp. Medical Center, 2003WL 403301, *2-*6
28 (Cal. App. Feb. 24, 2003).) The Court of Appeal even observed that Plaintiff had a

1 long history of filing and maintaining frivolous and harassing litigation, including
2 in a previous case where the Ninth Circuit affirmed a sanctions award for Plaintiff's
3 frivolous filings in litigating a hospital's denial of staff privileges for over nine
4 years. (*Id.* at *20-*21; see also Mir v. Little Company of Mary Hospital, 844 F.2d
5 646, 653 (9th Cir. 1988)).

6 In this action, Plaintiff seeks injunctive and declaratory relief from the
7 California Medical Board's decision to revoke Plaintiff's medical license. The
8 Medical Board's actions commenced in 2003, when they first charged Plaintiff with
9 gross negligence and incompetence in connection with his care of the
10 aforementioned PVH patient. In January 2007, the Medical Board issued a decision
11 revoking Plaintiff's medical license. (FAC ¶163.) Following this determination,
12 Plaintiff filed a writ of mandamus with the California Superior Court, which granted
13 the petition and remanded the matter to the Medical Board for reconsideration of the
14 penalty issue. (FAC ¶¶ 163-164, 175.) Plaintiff also filed a petition for writ relief
15 with the Court of Appeal, which was denied. (FAC ¶ 177.) After a lengthy appeal
16 process, reconsideration by the Medical Board, and specified terms for a period of
17 probation, the Medical Board issued its final decision revoking Plaintiff's medical
18 license in August 2012 for failure to comply with the conditions of his probation.
19 (FAC ¶¶ 191, 198-200, 202-209, 223-227.)

20 Plaintiff's motion for a preliminary injunction largely asserts the same factual
21 allegations as the first amended complaint. (Dkt. No. 17.) Plaintiff claims that the
22 Court should dismiss the Medical Board's 2003 charges for several reasons: first,
23 the Medical Board allegedly failed to follow the Superior Court's order; second,
24 Plaintiff asserts that the right to practice medicine is a constitutionally protected
25 right; third, Plaintiff alleges he was denied due process and that the Medical Board
26 discriminated against him as a member of a minority group; finally, Plaintiff claims
27 that he will suffer irreparable harm without an injunction. (*Id.*) Throughout these
28 claims, Plaintiff asserts a series of factual allegations regarding the Medical Board's

1 reliance on false testimony and inaccurate information to make it's determination.

2 **LEGAL STANDARD**

3 To obtain a preliminary injunction, the moving party must show: (1) a
4 likelihood of success on the merits; (2) a likelihood of irreparable harm to the
5 moving party in the absence of preliminary relief; (3) that the balance of equities
6 tips in the moving party's favor; and (4) that an injunction is in the public interest.
7 Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). Under the Ninth
8 Circuit's "sliding scale" approach, the first and third elements are to be balanced
9 such that "serious questions" going to the merits and a balance of hardships that
10 "tips sharply" in favor of the movant are sufficient for relief so long as the other two
11 elements are also met. Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127,
12 1134–35 (9th Cir. 2011). A preliminary injunction is "an extraordinary remedy that
13 may only be awarded upon a clear showing that the plaintiff is entitled to such
14 relief," Winter, 555 U.S. at 22, and the moving party bears the burden of meeting all
15 four Winter prongs. See Cottrell, 632 F.3d at 1135; DISH Network Corp. v. FCC,
16 653 F.3d 771, 776–77 (9th Cir. 2011).

17 Furthermore, the Supreme Court and the Ninth Circuit have stressed that
18 district courts must be sensitive to concerns of equity, federalism, and comity when
19 considering injunctive relief against State agencies. Rizzo v. Good, 423 U.S. 362,
20 375 (1976); Thomas v. County of Los Angeles, 978 F.2d 504, 508 (9th Cir. 1992).
21 A strong factual record is necessary before a federal district court may enjoin a State
22 agency. Thomas, 978 F.2d at 508. The Ninth Circuit requires a showing of
23 pervasive and intentional misconduct before a district court may enjoin a State
24 agency. Id.

25 **DISCUSSION**

26 Plaintiff has failed to provide sufficient support for the Winter factors, and
27 therefore cannot succeed on a claim for preliminary injunction. As a preliminary
28 matter, Plaintiff does not allege any comprehensible facts to support three of the

1 four Winter elements. Plaintiff’s motion includes confusing assertions that
2 mix law and facts, and he spends much effort arguing in support of this Court’s
3 jurisdiction over his claim. As to the first Winter factor, the Court is unable to parse
4 out any facts that indicate Plaintiff will succeed on the merits of the complaint. The
5 assertions that Plaintiff does provide are conclusory and fail to provide any insight
6 into the decisions made by the California Medical Board. Moreover, Plaintiff relies
7 on previous state court decisions in cases which he filed a writ of mandamus to
8 contest the California Medical Board’s determination. Upon review of the
9 California Court of Appeals decisions affirming the Superior Court rulings, this
10 Court finds that, at best, Plaintiff misinterprets the state court decisions. At worst,
11 the previous decisions indicate that this claim reflects Plaintiff’s frivolous attempt
12 to re-litigate the same set of issues that have been fully adjudicated before the
13 California courts and exhausted through the administrative process before the
14 California Medical Board.

15 Having reviewed the motion and supporting exhibits, the Court finds that
16 Plaintiff failed to plead any facts that support three Winter factors. The Court finds
17 there is little likelihood of success on the merits of Plaintiff’s claims, especially as it
18 appears that the same issues have already been adjudicated through state court
19 proceedings. A balance of the equities tips does not tip in Plaintiff’s favor, as
20 Plaintiff has exhausted both judicial and administrative remedies regarding this
21 matter. Finally, Plaintiff has not pled any facts to indicate that injunctive relief
22 would be in the public interest.

23 Plaintiff asserts that he will suffer irreparable injury if preliminary injunctive
24 relief is not granted. Plaintiff claims that the Court must “prevent future wrongs of
25 Defendants,” and that “Defendants are discriminating members of the minority
26 group which includes plaintiff in targeting for discipline and imposing
27 disproportionately harshest penalties.” (Dkt. No. 17 at 24.) Plaintiff further claims
28 that “deprivation of constitutional rights is irreparable injury.” The Court finds that

1 this potential harm is nothing more than mere speculation, and reassertion of facts
2 of an alleged past harm. Therefore, Plaintiff has failed to demonstrate an
3 “immediate threatened harm.” Caribbean Marine Services Co., Inc. v. Baldrige, 844
4 F.2d 668, 674 (9th Cir. 1988). “Past exposure to illegal conduct does not in itself
5 show a present case or controversy regarding injunctive relief.” City of Los
6 Angeles v. Lyons, 461 U.S. 95, 102 (1983). Plaintiff has failed to establish
7 irreparable harm, and does not meet the additional Winter factor required to support
8 a claim for a preliminary injunction. As such, Plaintiff has failed to meet the
9 required burden and the Court therefore **DENIES** Plaintiff’s motion for a
10 preliminary injunction.

11 **Request for Judicial Notice**

12 A court must take judicial notice if a party requests it and supplies the court
13 with the requisite information. Fed. R. Evid. 201(d). “A judicially noticed fact must
14 be one not subject to reasonable dispute in that it is either (1) generally known
15 within the territorial jurisdiction of the trial court or (2) capable of accurate and
16 ready determination by resort to sources whose accuracy cannot reasonably be
17 questioned.” Fed. R. Evid. 201(b). A district court may take judicial notice of
18 unpublished decisions and court records. See Wendt v. Smith, 273 F. Supp. 2d
19 1078, 1082 (C.D. Cal. 2003); MGIC Indem. Corp. V. Weisman, 803 F.2d 500, 504
20 (9th Cir. 1986); United States v. Black, 482 F.2d 1035, 1041 (9th Cir. 2007).

21 Defendants request that the Court take judicial notice pursuant to Federal Rule of
22 Evidence 201 of a similar complaint filed by the Plaintiff in the U.S. District Court,
23 Central District of California. Defendants also ask the Court to take judicial notice
24 of two California Appellate Court decisions rendered in a case filed by the Plaintiff
25 also regarding similar, if not the same, allegations. Having reviewed, the Court
26 **GRANTS** Defendants’ request.

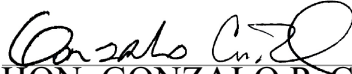
27 **CONCLUSION**

28 Based on the foregoing, the Court **DENIES** Plaintiff’s motion for a

1 preliminary injunction and **GRANTS** Defendants' request for judicial notice.
2 Accordingly, the Court hereby **VACATES** the hearing set for this matter scheduled
3 on Friday, March 22, 2013.

4 **IT IS SO ORDERED.**

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6 DATED: March 19, 2013

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8 HON. GONZALO P. CURIEL
9 United States District Judge
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