

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SHAWN FRANCIS,

Plaintiff,

v.

STEVEN HAMMOND, et al.,

Defendants.

CASE NO. C12-6023 RBL-JRC

ORDER DENYING MOTION FOR
STAY PENDING APPEAL

[DKT. #29]

THIS MATTER is before the Court on Defendants' Motion to Stay [Dkt. #29] this Court's Order [Dkt. #25] Adopting Magistrate Judge Creatura's Report and Recommendation [Dkt. #22] and enjoining Defendants to provide medical services to the Plaintiff. The Defendants have appealed the Order and now ask this Court to stay its Order pending that appeal, under Fed. R. Civ. P. 62(c):

While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights.

The following factors regulate the decision whether or not to stay an injunction pending appeal:

1 (1) whether the stay applicant has made a strong showing that he is likely to succeed on
2 the merits;

3 (2) whether the applicant will be irreparably injured absent a stay;

4 (3) whether issuance of the stay will substantially injure the other parties interested in the
5 proceeding; and

6 (4) where the public interest lies.

7 *Hilton v. Braunskill*, 481 U.S. 770, 776(1987) (citations omitted). This standard is, of course,
8 comparable to the standard against which the Court's injunction was initially issued:

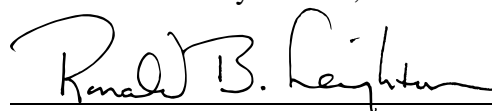
9 The proper legal standard for preliminary injunctive relief requires a party to
10 demonstrate "that he is likely to succeed on the merits, that he is likely to suffer
irreparable harm in the absence of preliminary relief, that the balance of equities
tips in his favor, and that an injunction is in the public interest."

11 *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (2009) (Citing *Winter v. Natural Res. Def.*
12 *Council, Inc.*, 555 U.S 7 (2008)).

13 Plaintiff Francis met his burden of demonstrating a likelihood of success on the merits
14 and of the remaining factors warranting the injunction in the first place. Defendants have not
15 and cannot make the reverse showing on any factor in seeking a stay. Importantly, the potential
16 harm to Francis in not getting the medical procedure outweighs the potential harm to the
17 Defendants in incurring its cost unnecessarily. For the reasons outlined in the Report and
18 Recommendation, the Defendants' Motion to Stay enforcement of the Court's Injunction
19 pending appeal is DENIED.

20 IT IS SO ORDERED.

21 Dated this 10th day of June, 2013.

22 

23 RONALD B. LEIGHTON
24 UNITED STATES DISTRICT JUDGE