

**IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF PENNSYLVANIA**

MUMIA ABU-JAMAL, et al.,	:	
Plaintiffs	:	Civil Action No. 3:15-CV-00967
	:	
v.	:	(Judge Mariani)
	:	
JOHN KERESTES, GEISINGER	:	(Magistrate Judge Mehalchick)
MEDICAL CENTER	:	
Defendants	:	FILED ELECTRONICALLY

**DEFENDANT’S BRIEF IN OPPOSITION TO PLAINTIFF’S MOTION FOR  
PRELIMINARY INJUNCTIVE RELIEF**

**STATEMENT OF THE CASE**

Plaintiff, Mumia Abu-Jamal (“Plaintiff”), is an inmate incarcerated at the State Correctional Institution at Mahanoy (“SCI-Mahanoy”). The Defendants are SCI-Mahanoy Superintendent John Kerestes and a private medical facility, Geisinger Medical Center.

Plaintiff initiated this action pursuant to 42 U.S.C. § 1983 with the filing of a complaint on May 18, 2015. (Doc. 1.) Plaintiff’s counsel were co-plaintiffs in the original action and, together, they asserted violations of their First, Fifth and Fourteenth Amendment rights when Plaintiff was denied visits during a one-week hospitalization at Geisinger Medical Center. Plaintiff’s counsel subsequently withdrew their claims on June 19, 2015. (Docs. 17, 18.)

Plaintiff subsequently filed a motion seeking leave to amend and supplement his complaint on August 3, 2015. (Doc. 21.) In his proposed amended complaint, which has not yet been accepted for filing, Plaintiff seeks to amend his complaint to include additional Defendants, claims, and prayers for relief. Plaintiff add claims for deliberate indifference and medical malpractice for failure to properly treat Plaintiff's hyperglycemia, Hepatitis C, and skin rash. He also adds a request for injunctive relief directing the Defendants to: "perform medically necessary tests and treatment for [his] Hepatitis C; "treat [his] skin condition in accordance with his experts' recommendations"; "grant [him] the right to an in-person consultation and examination by the medical doctor of his choice". (Doc. 21-2 at pp. 28-29.)

Plaintiff has since filed a motion for preliminary injunctive relief seeking the injunctive relief requested in his proposed amended complaint. (Doc. 23.) For the reasons that follow, Plaintiff's motion should be denied.

### **STATEMENT OF QUESTIONS INVOLVED**

- I. Whether Plaintiff's Motion For Preliminary Injunction Should Be Denied Where The Asserted Injury Is Not Related To The Active Complaint In This Matter?
- II. Whether Plaintiff's Motion For Preliminary Injunction Should Be Denied Where Plaintiff Has Not Established An Irreparable Injury?
- III. Whether Plaintiff's Motion Should Be Denied Where Plaintiff Has Not Established A Reasonable Likelihood Of Success On The Merits?
- IV. Whether Plaintiff's Motion Should Be Denied Where Plaintiff Has Not Established An Imminent Risk Of Harm?

## ARGUMENT

In order to obtain a preliminary injunction pursuant to Fed. R. Civ. P. 65(a), there must, as an initial matter, be an active case and controversy with a “relationship between the injury claimed in the party’s motion and the conduct asserted in the complaint.” *Ball v. Famiglio*, 396 Fed. Appx. 836, 837 (3d Cir. 2010) (quoting *Devose v. Herrington*, 42 F.3d 470, 471 (8th Cir.1994)). A preliminary injunction is an extraordinary remedy which is not granted as a matter of right. *Kershner v. Mazurkiewicz*, 670 F.2d 440, 443 (3d Cir. 1982).

The moving party must clearly establish the right to relief. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). To establish the right, the moving party must show: (1) a reasonable probability of success on the merits; (2) that the movant will be irreparably injured by denial of the relief, (3) that granting the relief will not result in even greater harm to the nonmoving party; and (4) that granting the preliminary relief will not adversely affect the public interest. *Gerardi v. Pelullo*, 16 F.3d 1363, 1373 (3d Cir. 1994). Thus, for an inmate to establish a right to a preliminary injunction, he must demonstrate *both* a reasonable likelihood of success on the merits, and that he will be irreparably harmed if the requested relief is not granted. *Abu-Jamal v. Price*, 154 F.3d 128, 133 (3d Cir. 1998); *Kershner*, 670 F.2d at 443. If he fails to carry this burden on either of these elements, the motion should be denied. *Id.*; see also *Hohe v. Casey*, 868 F.2d 69, 72 (3d Cir. 1989) (quoting *Morton v. Beyer*, 822 F.2d 364 (3d Cir. 1987)).

“[T]he irreparable harm must be actual and imminent, not merely speculative.” *Angstadt ex rel. Angstadt v. Midd-West Sch.*, 182 F. Supp. 2d 435, 437 (M.D. Pa. 2002). An injunction is not issued “simply to eliminate the possibility of a remote future injury.” *Acierno v. New Castle County*, 40 F.3d 645, 655 (3d Cir. 1994).

“[W]hen the preliminary injunction is directed not merely at preserving the status quo but . . . at providing mandatory relief, the burden on the moving party is particularly heavy.” *Punnett v. Carter*, 621 F.2d 578, 582 (3d Cir. 1980). Mandatory injunctions should be used sparingly and, where sought in the prison context, “must always be viewed with great caution because judicial restraint is especially called for in dealing with the complex and intractable problems of prison administration.” *Goff v. Harper*, 60 F.3d 518 (3d Cir. 1995). In the prison context, preliminary injunctive relief “must 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. The 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 and shall respect the principles of comity....” 18 U.S.C § 3626(a)(2).

I. PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION SHOULD BE DENIED BECAUSE THE ASSERTED INJURY IS NOT RELATED TO THE ACTIVE COMPLAINT IN THIS MATTER.

A court issues a preliminary injunction in a lawsuit only to preserve the *status quo* and to prevent irreparable harm until the court has an opportunity to rule on the

lawsuit's merits. *Devose*, 42 F.3d at 471. (8th Cir. 1994). Thus, a party moving for a preliminary injunction must necessarily establish a relationship between the injury claimed in the party's motion and the conduct asserted in the complaint. *Id.* A court may not grant a preliminary injunction when the issues raised in the motion are different from those raised in the complaint. *Stewart v. United States Immig. & Nat. Svc.*, 762 F.2d 193, 199 (2d Cir. 1985); *see also Kaimowitz v. Orlando*, 122 F.3d 41, 43 (11th Cir. 1997). Plaintiff's request for a preliminary injunction compelling the Department to provide him specific forms of treatment to address a skin condition and Hepatitis C, and to permit him an independent medical examination by an outside physician of his choosing, are not related to the complaint, which asserts violations of Plaintiff's First and Fourteenth Amendment rights associated with denial of visits during a period that Plaintiff was hospitalized at Geisinger Medical Center. Accordingly, Plaintiff's motion should be denied.

II. PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION SHOULD BE DENIED BECAUSE PLAINTIFF HAS NOT ESTABLISHED AN IRREPARABLE INJURY.

Even assuming the Court accepts Plaintiff's proposed amended complaint for purposes of considering an injunction, it is clear that Plaintiff has not established an irreparable injury. An irreparable injury is one incapable of redress through law or other equitable relief. *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 801 (3d Cir.1989). "The possibility that adequate compensatory or other corrective

relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.” *Id.* (quoting *Sampson v. Murray*, 415 U.S. 61, 90 (1974)). Thus, “where the inmate-‘Plaintiff’s request for immediate relief in his motion for preliminary injunction necessarily seeks resolution of one of the ultimate issues presented in [the] . . . Complaint, . . . [the] Plaintiff cannot demonstrate that [s]he will suffer irreparable harm if he is not granted a preliminary injunction, because the ultimate issue presented will be decided either by this Court, upon consideration of Defendants’ motion to dismiss, or at trial. As a result, Plaintiff’s motion for preliminary injunction should be denied.’” *Kelly v. Merrill*, No. 1:14-CV-2322, 2014 U.S. Dist. LEXIS 181621, \*8-9, (M.D. Pa. Dec. 11, 2014) (quoting *Messner v. Bunner*, 2009 U.S. Dist. LEXIS 128910 (W.D. Pa. Jan. 26, 2009), *report and recommendation adopted* (M.D. Pa. Feb. 3, 2015)).

III. PLAINTIFF’S MOTION SHOULD BE DENIED BECAUSE PLAINTIFF HAS NOT ESTABLISHED A REASONABLE LIKELIHOOD OF SUCCESS ON THE MERITS.

A. Failure To Exhaust Administrative Remedies

Plaintiff does not have a reasonable probability of success on the merits because he has failed to exhaust his administrative remedies under 42 U.S.C. §1997e(a) and, as a result, the claims raised in the complaint and the proposed amendment in this action are barred. Section 1997e(a) provides that “[n]o action shall be brought with respect to prison conditions under . . . [42 U.S.C. § 1983], or any other Federal law, by a

prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” The exhaustion requirement of § 1997e(a) is a mandatory precondition to filing suit that may not be waived by the courts. *Porter v. Nussle*, 122 S. Ct. 983, 988, 152 L. Ed. 2d 12, 21 (2002). This requirement “applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong.” *Id.* at 992.

Inmates seeking redress for such claims must exhaust their administrative remedies regardless of whether the administrative process can provide the inmate-plaintiff with the relief he subsequently seeks in his federal action. *Booth v. Churner*, 121 S. Ct. 1819, 1825, 149 L. Ed. 2d 958 (2001). Prison grievance procedures provide the guidelines against which administrative exhaustion is measured for purposes of §1997e(a), and an inmate procedurally defaults on his claims when he fails to follow the established procedures. *Woodford v. Ngo*, 126 S. Ct. 2378, 2387 165 L. Ed. 2d 368 (U.S. 2006); *Spruill v. Gillis*, 372 F.3d 218, 231 (3d Cir. 2004). Where a plaintiff has failed to exhaust his administrative remedies, the defendant bears the burden of pleading and proving the failure. *Jones v. Bock*, 127 S. Ct. 910, 921, 166 L. Ed. 2d 798 (2007); *Ray v. Kertes*, 285 F.3d 287, 295 (3d Cir. 2002) (“failure to exhaust is an affirmative defense to be pleaded by the defendant”).

The administrative remedies for inmate grievances are provided for in Department of Corrections Administrative Directive 804 (“DC-ADM 804”). (West Decl. ¶ 5, attached as Exhibit 1.) The Department’s grievance system is a three-tiered system. (*Id.* at ¶ 6.) Pursuant to DC-ADM 804, the first step in the inmate grievance process is the initial review. (*Id.* at ¶ 7.) Grievances must be filed within 15 working days of the event on which the grievance is based, and the grievance must be filed at the institution where the incident occurred. (*Id.* at ¶¶ 7-8.)

An inmate who is dissatisfied with the initial review decision is permitted to appeal to the Superintendent. (*Id.* at ¶¶ 9-10.) An appeal to final review may be sought through the Secretary’s Office of Inmate Grievances and Appeals (“SOIGA”) by filing an appeal to that office within 15 working days of the date of the Superintendent’s decision. (*Id.* at ¶ 11.)

Plaintiff seeks prospective relief directing that he receive specified skin and Hepatitis C care. Of the five grievances filed by Plaintiff since his transfer to SCI-Mahanoy in 2011, only one of the grievances (Grievance 561400) relates to medical care. (Hinman Decl. ¶¶ 5-16, attached as Exhibit 2.) Further, Plaintiff raised only treatment for his diabetes condition in that grievance. (*Id.* at ¶ 7, Ex. 2-A.) Finally, although Plaintiff has appealed that grievance to final review on July 6, 2015, he has not received a final review decision on that appeal. (West Decl. ¶ 16.) Because Plaintiff has not completed the grievance process on the issues raised in his underlying

complaint or in the instant motion for preliminary injunctive relief, these claims are barred. Thus, Plaintiff does not have a reasonable probability of succeeding on these claims and request for prospective relief should be denied. *See Bronson v. Houdeshell*, 2007 U.S. Dist. LEXIS 4340 \*2-3 (M.D. Pa. Jan. 22, 2007) (no right to preliminary injunction where inmate has failed to exhaust administrative remedies); *Carabello v. Beard*, 2008 U.S. Dist. LEXIS 16814 (E.D. Pa. Mar. 3, 2008) (no right to injunctive relief because inmate could not establish reasonable likelihood of success on the merits where he did not exhaust administrative remedies); *Torrence v. Thompson*, 2010 U.S. Dist. LEXIS 107375 (W.D. Pa. Aug. 2, 2010) report and recommendation adopted (W.D. Pa. Oct. 6, 2010) (same).

#### B. Failure To State A Claim For Deliberate Indifference

Additionally, Plaintiff does not have a reasonable probably of success on the merits of the deliberate indifference claims set forth in his proposed amended complaint. In order to establish an Eighth Amendment medical claim, the plaintiff must establish by a preponderance of the evidence that the defendant acted with deliberate indifference to his serious medical needs. *Estelle v. Gamble*, 429 U.S. 97 (1976). A prison official may be found deliberately indifferent only if the official “knows of and disregards an excessive risk to inmate health or safety.” *Farmer v. Brennan*, 511 U.S. 825, 837, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (U.S. 1994). The official “must both be aware of facts from which the inference could be drawn that a

substantial risk of serious harm exists, and he must also draw the inference.” *Id.* The official must disregard that risk by failing to take reasonable measures to abate it. *Id.* “Prison officials who lacked knowledge of the risk cannot be said to have inflicted punishment.” *Farmer*, 511 U.S. at 844. Similarly, those “who actually knew of a substantial risk to inmate health or safety may be found free of liability if they responded reasonably to the risk, even if harm ultimately was not averted.” *Id.*

Prison officials, who are not physicians, are entitled to rely on the expertise of their institution’s medical staff and cannot be considered deliberately indifferent simply because they failed to respond to the medical complaints of a prisoner who was already being treated by medical personnel of the prison. *Durmer v. O’Carroll*, 991 F.2d 64, 69 (3d Cir. 1993).

Prison medical authorities are given considerable latitude in the diagnosis and treatment of medical problems of inmates and courts will “disavow any attempt to second guess the propriety or adequacy of a particular course of treatment . . . which remains a question of sound professional judgment.” *Inmates of Allegheny County Jail v. Pierce*, 612 F.2d 754, 762 (3d Cir. 1979).

Furthermore, mere medical malpractice does not give rise to a violation of the Eighth Amendment. *White v. Napoleon*, 897 F.2d 103, 108 (3d Cir. 1990). “While the distinction between deliberate indifference and malpractice can be subtle, it is well established that as long as a physician exercises professional judgment his behavior

will not violate a prisoner's constitutional rights." *Brown v. Borough of Chambersburg*, 903 F.2d 274, 278 (3d Cir. 1990).

Mere disagreement as to the proper medical treatment does not support an Eighth Amendment claim. *Monmouth County Correctional Institutional Inmates v. Lanzaro*, 834 F.2d 326, 346 (3d Cir. 1987); *Spruill v. Gillis*, 372 F.3d 218, 235 (3d Cir. 2004) (citations omitted). "Thus, the key question . . . is whether defendants have provided plaintiff with some type of treatment, regardless of whether it is what plaintiff desires." *Farmer v. Carlson*, 685 F. Supp. 1335, 1339 (M.D. Pa. 1988) quoting *Lamb v. Maschner*, 633 F. Supp. 351, 353 (D. Kan. 1986).

Inmates are not entitled to the treatment of their choice. *Colon-Montanez v. Pennsylvania Healthcare Serv. Staffs*, 530 Fed. Appx. 115 (3d Cir. 2013) (inmate not entitled to Hepatitis C treatment of his choice); *Birckbichler v. Butler County Prison*, 2009 U.S. Dist. LEXIS 84949 (W.D. Pa. September 17, 2009) (summary judgment granted where inmate sued over the drugs he preferred for his AIDS treatment); *Ascenzi v. Diaz*, 2007 U.S. Dist. LEXIS 23475 (M.D. Pa. March 30, 2007) (medical decision not to order an X-ray, or like measure, does not represent cruel and unusual punishment).

Plaintiff's underlying deliberate indifference claims, as well as the assertions in the instant motion for preliminary injunction, fail to establish anything more than a disagreement between medical professionals regarding treatment. With respect to

Plaintiff's skin condition, he concedes that he has been seen by medical professionals and that, prior to the filing of his complaint in this matter, he received topical creams, antibiotics, and steroids as treatment for his skin condition. (*See* Doc. 1 at ¶¶ 9, 10, 12.) He continues to be treated and examined by a dermatologist and has been diagnosed with eczema, a diagnosis that has been confirmed by physicians at an outside medical facility. (Noel Decl. ¶¶ 8, 12 (attached as Exhibit 3); M.R. p. 5, 34, 39 (attached as Exhibit 4)). His skin condition has also been evaluated by his consulting infectious disease specialist, and other causes for his skin condition, including the possibility that the condition is caused by his Hepatitis C, have been ruled out. (Noel Decl. ¶¶ 10-11, M.R. 7, 24-7, 157.) As recommended by his consulting dermatologist and physicians at Geisinger Medical Center, Plaintiff's condition is being treated successfully with petroleum jelly and hydrocortisone cream. (Noel Decl. ¶13, M.R. 40, 67, 183-84); Although Plaintiff asserts that his skin condition has caused him pain, his medical records indicate no such complaints. (M.R. 62-84, 109-182.) Rather, his primary complaint is of itchy skin, which is addressed through the application of the petroleum jelly and hydrocortisone cream. (Noel Decl. ¶ 13.) His rash continues to heal and, on recommendation of his dermatologist, he will begin phototherapy treatments to further address his condition and will continue to be followed by the dermatologist until his eczema resolves and no further consultations are needed. (*Id.* at ¶¶ 14, 17, M.R. 62-84, 109-182)

With respect to Plaintiff's Hepatitis C, he has been reviewed by an infectious disease specialist. (Noel Decl. ¶ 18, M.R. ¶¶ 99, 104, 108-113, 155-57, 167.) He has received an ultrasound of the liver. (Noel Decl. ¶ 18, 104, 114.) Additionally, blood testing has been done to determine the virus genotype and viral load, as well as his blood platelet count. (Noel Decl. ¶ 18, M.R. 85-98.) Regular blood testing will continue to monitor the platelet count and viral load, and Plaintiff will continue to be monitored by his treatment team through the Hepatitis C chronic clinic at his place of confinement. (Noel Decl. ¶¶ 18, 23.) An ultrasound of Plaintiff's liver, performed subsequent to the scan relied upon by Plaintiff's "consultant", indicates no cirrhosis of the liver, masses or other impairment. (Noel Decl. ¶19, M.R. 114.) Additionally, Plaintiff's platelet count, which is an indicator for liver impairment, is well within the normal range. (Noel Decl. ¶ 20.) A normal platelet count for a healthy person ranges between 150 to 400 th/cumm, and Plaintiff's levels have consistently fallen within that range. (*Id.*, M.R. 22, 28, 46-50, 52, 85-96.) In addition to the lack of indication of impairment, Plaintiff's Hepatitis C viral load is 46,446 IU/ml, which is considered a low viral load. (Noel Decl. ¶ 21, M.R. 90.) Viral loads are generally not considered to be high until they reach 800,000 IU/ml, a level that is almost 20 times higher than Plaintiff's current viral load. (Noel Decl. ¶ 21.)

Although Plaintiff insists that he requires the "latest direct acting anti-viral drugs" and other specific medication to adequately treat his Hepatitis C and eczema

conditions, it is clear that he is being tested, treated and monitored. Thus, he cannot establish deliberate indifference to his conditions and cannot prevail on his underlying claims. *See Colon-Montanez v. Pennsylvania Healthcare Serv. Staffs*, 530 Fed. Appx. at 117. Because his underlying deliberate indifference claims are not likely to succeed on the merits, Plaintiff is not entitled to a mandatory injunction compelling the specified treatments his physicians and attorneys request.

IV. PLAINTIFF'S MOTION SHOULD BE DENIED BECAUSE HE HAS NOT ESTABLISHED AN IMMINENT RISK OF HARM

Plaintiff has not established an imminent risk of harm. He is medically stable, and his skin condition is resolving and continues to be followed and treated. (Noel Decl. ¶¶ 13-14, 22.) With respect to his Hepatitis C condition, his ultrasound and blood tests indicate that his viral load is low and that he has no liver impairment. (*Id.* at ¶¶ 19-21.) Given the nature of the Hepatitis virus, it is entirely conceivable that he will remain at his current levels without liver impairment or other ill-effects for years. (*Id.* at ¶ 22.) Thus, it is clear that Plaintiff cannot establish an imminent risk of harm. (*Id.* at ¶ 24.)

With respect to Plaintiff's request to have an independent medical examination, it is clear that Plaintiff wishes to obtain that relief solely for the purpose of second-guessing the treatment and diagnoses rendered by his physicians and the outside specialists by whom he has already been treated and examined. He is not entitled to such relief. *See Fontroy v. Wetzel*, 2014 U.S. Dist. LEXIS 124897 (W.D. Pa. Sept. 8,

2014). Further, an order for such arrangements will impede on the current diagnostic and treatment processes. (*See id.* at ¶ 25.) Plaintiff has already refused medical treatment (the very treatment he now demands for his skin) based at the direction of his outside “consulting” physicians. (M.R. 5-6 (noting that Plaintiff’s statement that his “outside medical consultant” directed him not to use the Protopic cream offered by physicians at SCI-Mahanoy). Because Plaintiff is already receiving treatment and the requested relief will interfere with his current treatment team, his request should be denied.

**CONCLUSION**

For the foregoing reasons, the Defendants request that the Court deny Plaintiff’s motion for preliminary injunction.

Respectfully submitted,  
Office of General Counsel

Dated: September 10, 2015

by /s/ Laura J. Neal  
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v. : (Judge Mariani)  
 :  
JOHN KERESTES, GEISINGER : (Magistrate Judge Mehalchick)  
MEDICAL CENTER :  
Defendants : FILED ELECTRONICALLY

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true and correct copy of the foregoing document upon the following person(s) in the manner indicated below.

Served Via ECF:

<u>For Defendant Geisinger Medical Center:</u>  <b>Daniel T. Brier, Esq.</b> dbrier@mbklaw.com <b>John B. Dempsey, Esq.</b> jdempsey@mbklaw.com <b>Suzanne Conaboy, Esq.</b> sconaboy@mbklaw.com	<u>For Plaintiffs:</u>  <b>Bret D. Grote, Esq.</b> bretgrote@abolitionistlawcenter.org <b>Robert J. Boyle, Esq.</b> rjboyle55@gmail.com
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s/ Laura J. Neal  
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Dated: September 10, 2015

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MEDICAL CENTER	:	
Defendants	:	FILED ELECTRONICALLY

**DECLARATION OF PAUL A. NOEL, M.D., FAAFP, CCHP**

I, Paul Noel, M.D., hereby state the following:

1. I am a medical doctor licensed to practice medicine in the Commonwealth of Pennsylvania. I am a Certified Correctional Health Professional (CCHP), as well as a Fellow of the American Academy of Family Physicians (FAAFP). I have more than 30 years of medical practice experience, more than 20 years of which have been in the correctional setting.
2. I am the Chief of Clinical Services for the Department of Corrections Bureau of Healthcare Services. In my capacity as Chief of Clinical Services, I am responsible for administering the provision of clinical services to inmates within the Department's custody.
3. I am aware that Mumia Abu-Jamal has filed a motion for preliminary injunction requesting that he be provided with the following specific treatments: immediate treatment for his Hepatitis C "with the latest direct

acting anti-viral drugs; treatment for his skin condition “with zinc supplementation and Protopic cream.” I am also aware that Mr. Abu-Jamal’s attorneys have requested an independent medical examination by a physician of his own choosing.

4. Counsel for the Department of Corrections has requested that I review the appropriateness of Mr. Abu-Jamal’s current treatment and the treatment requested by Mr. Abu-Jamal to determine whether: Mr. Abu-Jamal is at imminent risk of irreparable harm; and whether the requested treatment is medically necessary at this point in time.
5. In reviewing Mr. Abu-Jamal’s medical treatment, I have reviewed his medical records and consulted with his medical treatment team, including the contracted medical providers administering care at SCI-Mahanoy and his outside consulting specialists.
6. Currently, Mr. Abu-Jamal is housed in the infirmary at SCI-Mahanoy where he is monitored and treated by medical staff.
7. He receives regular blood sugar checks to monitor his blood sugar, which is well controlled.
8. With respect to Mr. Abu-Jamal’s skin condition, he continues to be followed by a dermatologist. He is treated by the medical staff at SCI-Mahanoy in accordance with the recommendations of that specialist.

9. Mr. Abu-Jamal's skin condition has also been evaluated by his consulting infectious disease specialist to determine whether his eczema might be a secondary condition related to his Hepatitis C.
10. The infectious disease specialist has determined that Mr. Abu-Jamal's eczema is not secondary to his Hepatitis C.
11. Additionally, a skin biopsy has also been done to rule out cancer as a cause of the condition.
12. Mr. Abu-Jamal's diagnosed skin condition is eczema. This diagnosis was confirmed by physicians at Geisinger Medical Center.
13. As recommended by his consulting dermatologist and physicians at Geisinger Medical Center, Mr. Abu-Jamal's condition is being treated successfully with petroleum jelly and hydrocortisone cream. His primary complaints are of itchy skin, which is alleviated with the application of the petroleum jelly and hydrocortisone cream.
14. His rash continues to heal and, on recommendation of his dermatologist, he will begin phototherapy treatments within the next few weeks to further address his condition.
15. Administration of Protopik or other treatments to address his eczema has not been recommended by his consulting dermatologist or the physicians at Geisinger Medical Center who evaluated Mr. Abu-Jamal in May. On the

contrary, physicians at Geisinger Medical Center recommended discontinuing the Protopic.

16. Because Mr. Abu-Jamal's eczema is responding successfully to the treatment recommended by his dermatologist, the treatments recommended by Mr. Abu-Jamal's private consulting physicians are not medically necessary or appropriate at this time.
17. Mr. Abu-Jamal will continue to be followed by the dermatologist until his eczema resolves and the dermatologist indicates that no further consultations are needed.
18. With respect to Mr. Abu-Jamal's Hepatitis C, he has been reviewed by an infectious disease specialist. He has received an ultrasound of the liver. Additionally, blood testing has been done to determine the virus genotype and viral load, as well as his blood platelet count. Regular blood testing will continue for the purpose of monitoring the platelet count and viral load.
19. The ultrasound of Mr. Abu-Jamal's liver indicated no masses, cirrhosis, or other impairment.
20. Additionally, Mr. Abu-Jamal's platelet count, which is an indicator for liver impairment, is well within the normal range. A normal platelet count for a healthy person ranges between 150 to 400 th/cumm, and Mr. Abu-Jamal's levels have consistently been well within that range.

21. In addition to the lack of indication of impairment, Mr. Abu-Jamal's Hepatitis C viral load is 46,446 IU/ml, which is considered a low viral load. Viral loads are generally not considered to be high until they reach 800,000 IU/ml.
22. Mr. Abu-Jamal is medically stable. Given the nature of the Hepatitis C virus, his current platelet count and viral load could remain at or near the current levels for years without any liver impairment or deleterious impact on Mr. Abu-Jamal's overall health or quality of life.
23. He will continue to be followed by his treatment team through the Hepatitis C chronic care clinic at SCI-Mahanoy.
24. Given the foregoing, and upon review of Mr. Abu-Jamal's records and his consulting physicians and treatment team, it is my medical opinion within a reasonable degree of medical certainty, that Mr. Abu-Jamal is not at imminent risk of physical harm resulting from his medical conditions.
25. Further, with respect to Mr. Abu-Jamal's request for independent medical examinations by outside physicians who are not part of Mr. Abu-Jamal's treatment team, it is my opinion that Mr. Abu-Jamal's current treatment and diagnoses are medically appropriate. Additional evaluation and diagnoses are not necessary to Mr. Abu-Jamal's current treatment and risks confusion or interference with the ongoing care and treatment being provided to Mr. Abu-Jamal.

The foregoing is rendered within a reasonable degree of medical certainty and is made subject to 28 U.S.C. § 1746.

Dated: 9.10.2015

  
Paul A. Noel, MD  
Chief, Clinical Services  
Bureau of Healthcare Services  
Pennsylvania Department of Corrections