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**NOTIFY**

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

**SUPERIOR COURT  
CIVIL ACTION  
No. 22-02805**

**JOHN DOE**

**v.**

**BOSTON MEDICAL CENTER CORPORATION INC., ARCHANA ASUNDI, JAI  
MARATHE AND MARGARET COOKE**

The court held a hearing on the plaintiff's request for a temporary restraining order on December 14, 2022, two days after he essentially re-filed his October 13, 2022 lawsuit against the Boston Medical Center defendants.<sup>1</sup> After consideration of the arguments of counsel and a review of the written submissions, the Court finds that the plaintiff has failed to demonstrate either irreparable harm or a likelihood of success on the merits of his claims and, balancing the interests of the parties, the Court **DENIES** the requested temporary restraining order.

To prevail on a motion for preliminary injunction, a plaintiff must show "(1) a likelihood of success on the merits; (2) that irreparable harm will result from denial of the injunction; and (3) that in light of the plaintiff's likelihood of success on the merits, the risk of irreparable harm

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<sup>1</sup> In this suit, the plaintiff sought an immediate, ex parte temporary restraining order enjoining Boston Medical Center Corporation, Inc., Archana Asundi and Jai Marathe (collectively, "the BMC Defendants") from enforcing any face mask requirement against Mr. Doe and ordering the BMC Defendants to immediately resume Mr. Doe's HIV treatment, to include refilling a prescription for certain medication that Mr. Doe asserts he will run out of on December 15, 2022. In this suit, Mr. Doe adds Margaret Cooke, the Commissioner of the Massachusetts Department of Public Health, in her individual and official capacities, as a defendant. Any emergency situation relating to the plaintiff's anti-retroviral therapy and other treatment needs is of his own creation. The dispute between the parties has been percolating for ten months. Two months ago, on October 13, 2022, the plaintiff filed substantially the same lawsuit against the BMC Defendants. Suffolk Superior Court, Docket No. 2284CV02343. Upon notice that the BMC Defendants intended to file a motion to dismiss, the plaintiff voluntarily dismissed that complaint on November 17, 2022. The plaintiff then refiled essentially the same pleading (Mr. Doe added a new count for medical battery and a new defendant, Ms. Cooke), after a more than an eight-week delay, just three days before he would run out of his prescription medication.

to the plaintiff outweighs the potential harm to the defendant in granting the injunction.” *Tri-Nel Mgt., Inc. v. Board of Health of Barnstable*, 433 Mass. 217, 219 (2001), citing *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass 609, 617 (1980). A preliminary injunction is an extraordinary remedy that should not be granted unless the moving party has made a clear showing of entitlement thereto. *Student No. 9 v. Board of Educ.*, 440 Mass. 752, 762 (2004). A.R. Miller & M.K. Kare, *Federal Practice & Procedure* sec. 2729, at 194 (1983).

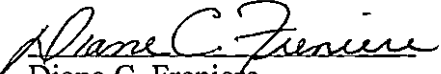
Mr. Doe brings eight claims in his lawsuit: violation of constitutional right to privacy (count 1 ), medical battery (count 2 ), attempted medical battery (count 3 ), conspiracy to commit medical battery (count 4 ), violation of Massachusetts Patients’ Bill of Rights (count 5 ), violation of Massachusetts Public Accommodations law (count 6 ), violation of the Americans with Disabilities Act (count 7 ), and interference with civil rights (count 8 ). For the reasons detailed in the BMC Defendants’ Memorandum of Law in Support of Their Opposition to Plaintiff’s Motion for Preliminary Relief, docket number 7 (pp. 6-10), which the court adopts but will not repeat herein, Mr. Doe has failed to prove a likelihood of success on any of his claims.

Next, as to irreparable harm if the injunctive relief is not granted, the BMC Defendants are correct when they argue that Mr. Doe improperly frames his situation as if Boston Medical Center is the sole provider of the anti-retroviral therapy/medication he seeks. The plaintiff has not shown that the BMC Defendants are the only providers of the treatment he seeks *or* that he cannot obtain the treatment he seeks by wearing a mask *or* by properly showing a medical need to be exempted from the mask requirements (or have another accommodation). In short, Mr. Doe has other options he can pursue to obtain the medical treatment he desires. In addition, the plaintiff has made an insufficient showing that the failure to obtain the desired anti-retroviral medication for a defined period would cause him irreparable medical harm, something the court

cannot determine without expert medical evidence. Although plaintiff's verified complaint cites to a Yale Journal of Biology and Medicine article, Verified Complaint, n. 2, and other writings on clinical trials involving interrupted anti-retroviral therapy, *id.* n. 6, the court is not in a position without expert assistance to understand the impact of the science on this individual. Said another way, proof of irreparable harm must be specific to the impact of treatment interruption *on Mr. Doe* and cannot be generalized or speculative.

Finally, balancing the parties' interests, the relief requested, if granted, would require the BMC Defendants to violate the directives of the Massachusetts Department of Public Health and its own infection control policies. Doing so would place the BMC healthcare providers and other patients, particularly the immunocompromised patients seeking care in BMC's Center for Infectious Diseases, at an increased risk for infection. Balancing these harms against the harms supported by the plaintiff's presentation weighs strongly in favor of denying the requested injunctive relief. For the foregoing reasons, Mr. Doe's request for a temporary restraining order is **DENIED**.

An evidentiary hearing shall be held on the plaintiff's motion for a preliminary injunction on January 5, 2022, at 10:00 am.

  
Diane C. Freniere  
Justice of the Superior Court

DATE: December 16, 2022