

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>TONY DONNELL GRANDISON,</b>	)	
Plaintiff	)	Civil Action No.: 7:16cv00189
	)	
v.	)	
	)	
	)	<b><u>REPORT AND</u></b>
	)	<b><u>RECOMMENDATION</u></b>
<b>M. STANFORD, et al.,</b>	)	By: PAMELA MEADE SARGENT
Defendants	)	United States Magistrate Judge

The pro se plaintiff, Tony Donnell Grandison, (“Grandison”), an inmate incarcerated at Wallens Ridge State Prison, (“Wallens Ridge”), brings this civil rights action pursuant to 42 U.S.C. § 1983, against the defendants, M. Stanford, Medical Administrator at Wallens Ridge; Dr. McCarthy, Head Contracted Physician at Wallens Ridge; Leslie Fleming, Head Warden at Wallens Ridge; and J.C. Combs, Assistant Warden at Wallens Ridge. Grandison has filed two motions requesting a temporary restraining order and that preliminary injunctive relief be entered. (Docket Item Nos. 6, 15, (“Motions.”)) An evidentiary hearing was held on the Motion on July 13, 2016.<sup>1</sup> At the conclusion of this hearing, the court ordered the Warden to allow Grandison access to his medical records within 7 days, and Grandison was given 14 days from the date of production of these records to file additional evidence with the court in support of the Motions.

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<sup>1</sup> The court notes that, at the time of the hearing, the Attorney General’s Office had noted an appearance on behalf of the Warden and the Assistant Warden, but not on behalf of Dr. McCarthy or M. Stanford. Therefore, the Warden and Assistant Warden had notice of the hearing. However, no representative from the Attorney General’s Office was present at the July 13, 2016, hearing on the Motions. That being said, the undersigned advised Grandison at the hearing that, if relief was warranted, the court would enter preliminary injunctive relief as to the Warden and Assistant Warden and a temporary restraining order as to Dr. McCarthy and M. Standford. *See* Fed. R. Civ. P. 65.

Grandison timely filed such additional evidence with the court. For the reasons discussed below, I recommend that the court grant Grandison's Motions requesting preliminary injunctive relief.

### *I. Facts*

In his Complaint, (Docket Item No. 1), Grandison claims that the defendants have been deliberately indifferent to his serious medical needs, in violation of his Eighth Amendment rights. Specifically, he claims that he suffers from "chronic orchialgia,"<sup>2</sup> for which three outside treatment providers have recommended the following course of treatment: (1) the use of supportive undergarments; (2) ibuprofen for pain relief; and (3) referral to a pain management specialist for evaluation and a possible nerve block. Grandison alleges that he suffers some degree of testicular pain on a daily basis, which interferes with his ability to sleep, to walk long distances and to exercise. Nonetheless, he claims that the defendants have failed to follow the recommended course of treatment, thereby failing to provide him with adequate medical care.

In his Complaint, in addition to monetary relief, Grandison seeks injunctive relief requiring the defendants to provide him treatment from a pain specialist. (Complaint at 7.) In the Motions, Grandison also seeks preliminary injunctive relief requiring the defendants to provide him a medically appropriate course of pain management therapy, including a nerve block in his left testicle, transfer to an appropriate facility to be examined by a qualified pain management specialist, the provision of supportive undergarments, the provision of an unimpeded amount of

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<sup>2</sup> Orchialgia refers to pain in the testicles. See DORLAND'S ILLUSTRATED MEDICAL DICTIONARY, ("Dorland's"), 1187 (27<sup>th</sup> ed. 1988).

follow-up treatment from a pain specialist and the prescription of a course of physical therapy to restore and maintain his condition and health.

Grandison has been housed in segregation at Wallens Ridge since his arrival there on August 14, 2014.<sup>3</sup> He stated that he refused to go to general population due to his medical condition, which caused mobility problems and made him feel vulnerable. Grandison testified that inmates in segregation are offered showers three times weekly and recreation five days weekly, and they receive their food trays in their cells. However, Grandison testified that his pain is so unbearable at times, he does not even get up to retrieve his tray. At the July 13 hearing, Grandison testified that he suffered from testicular pain, particularly on the left side, for which he was referred to the Medical College of Virginia, (“MCV”), by the institutional physician at Lawrenceville. He testified that, in June 2013, Dr. Calhoun at MCV diagnosed him with chronic orchialgia, for which the doctor recommended the following course of treatment: (1) supportive undergarments; (2) Motrin for pain; and (3) referral to a pain specialist for evaluation of his condition and a possible nerve block. Grandison testified that the medical staff at Lawrenceville, however, never followed any of these recommendations before transferring him to Keen Mountain. Likewise, he testified that the medical staff at Keen Mountain ignored these recommendations. Grandison testified that, once he arrived at Wallens Ridge, Dr. Rose Dulaney, the institutional physician at that time, evaluated him and referred him back to MCV, where he saw Dr. Benjamin Ulep in January 2015. After evaluating Grandison, Dr. Ulep also ordered supportive undergarments and referral for pain management. Thereafter, on

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<sup>3</sup> Prior to being transferred to Wallens Ridge, Grandison was housed at Keen Mountain Correctional Center, (“Keen Mountain”), and Lawrenceville Correctional Center, (“Lawrenceville”).

February 21, 2015, Grandison saw Regina C. Foster, P.A., a physician's assistant at MCV, for a follow-up appointment. After an ultrasound of Grandison's left testicle failed to pinpoint the source of his pain, Foster recommended supportive undergarments, Motrin and referral to pain management.

According to Grandison, defendant M. Stanford, the Medical Administrator at Wallens Ridge, has advised him that supportive undergarments cannot be provided, as he could use them to choke himself. She further has advised him that Wallens Ridge does not provide pain management services. According to Grandison, he has received no treatment for his chronic orchialgia at Wallens Ridge except for orders for ibuprofen, which does not relieve his testicular pain and causes pain in his right kidney. Despite Grandison's complaints to her that Motrin causes him right kidney pain, Stanford has offered no alternative medication or treatment. Grandison testified that he had requested to be prescribed Mobic, which he had received at Lawrenceville and which had alleviated his pain, but Dr. C. Lard, another institutional physician at Wallens Ridge, advised him in February 2016 that there was nothing else he could take. He testified that the medical staff at Wallens Ridge will not explain to him why he cannot be prescribed Mobic. He testified that he also received a jock strap while at Lawrenceville, but it was too small, resulting in pain and discomfort. Although a larger size was ordered, he was transferred to Keen Mountain before he received it. He has never been provided any type of supportive undergarment at Wallens Ridge.

According to Grandison, he has exhausted his administrative remedies on this issue nine times and testified that he believed he is viewed as a nuisance at this point. According to Grandison, he has received 13 request forms back, advising him to take the issue up with the Medical Department. He further stated that he has

made both the Assistant Warden and the Warden aware of his situation, but they have failed to take any corrective action. In particular, he testified that he had shown them both request forms in 2015 and 2016, as well as the medical reports from MCV. Both Warden Fleming and Assistant Warden Combs have deemed Grandison's grievances unfounded based on Stanford's statements that he is being treated according to Wallens Ridge physicians' plan of care. In response, however, Grandison contends that VDOC Operating Procedure, ("OP"), 720.1<sup>4</sup> provides for transfer to another facility if the offender's current facility cannot manage the health problem at issue.

Grandison testified that he last saw a physician at Wallens Ridge on February 28, 2016, at which time Dr. Lard offered him Motrin. He stated that he had not received ibuprofen, however, as he informed the doctor that it causes pain in his right kidney. He claims that he has been offered no alternative treatment by the medical staff at Wallens Ridge. Grandison testified that, since 2014, he has seen five institutional physicians at Wallens Ridge, all of whom have advised him that the facility does not provide pain management. Dr. Lard no longer works at Wallens Ridge. According to Grandison, in September 2015, Dr. Dulaney, the institutional physician at that time, refused to come to his cell on the top tier to evaluate his complaints of testicular pain. He testified that he was in too much pain to walk down the stairs to the bottom tier to be evaluated, and Dr. Dulaney refused to come upstairs. As Dr. Dulaney was leaving the pod, Grandison began kicking his cell door in a desperate attempt to get medical assistance, but to no avail. Dr.

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<sup>4</sup> Operating Procedure 720.1, "Access to Health Services," specifically states that "[t]reatment of offenders' health problems will not be limited to resources available within a facility. If a higher level of care is required than can be provided at the assigned facility, the offender should be moved to an appropriate facility or provided community services if necessary." (Docket Item No. 42-1 at 72.)

Dulaney stated to one of the corrections officers that if Grandison could kick his cell door, he could walk to the bottom tier to be assessed. Grandison testified that he suffered testicular pain on a daily basis with intermittent swelling, and on the day of the hearing, he rated his pain as a 5 to 7 on a 10-point scale. Grandison testified that he saw Nurse Lori Davis the day before the hearing, at which time she said that Stanford had stated that the recommendations of the three outside treatment providers were just that – recommendations, and that the institutional physician controls an inmate’s plan of care. He testified that ibuprofen was the most recent medication provided to him.

Grandison has submitted his medical records into evidence, including a VDOC Consultation Report, dated June 19, 2013, while he was housed at Lawrenceville, which indicates that Dr. Calhoun referred him to the Urology Department at Virginia Commonwealth University, (“VCU”), for left testicular pain for four months without improvement on doxycycline, Cipro and NSAIDS. (Plaintiff’s Exhibit No. 2, Docket Item No. 34-2.) It further noted that an ultrasound was negative. The consulting physicians at VCU, Drs. Orton and Habibi, diagnosed chronic orchialgia and recommended ibuprofen (600 mg as needed for pain); scrotal support at all times; and referral to a pain specialist for a possible nerve block. In a Pre-Registration Request Form, dated May 12, 2014, while Grandison was housed at Keen Mountain, an appointment was requested for a new patient evaluation for pain management for chronic orchialgia, for which a referral to a pain specialist for a possible nerve block in the left testicle was recommended. (Docket Item No. 42-1 at 15.) There is a handwritten note attached to this form, stating as follows: “At WRSP. We do have a pain [management] clinic, but they do not see our [patients] here. Sorry for the inconvenience. Please refer elsewhere.” In an undated VDOC Specialty Service/Consultation Request,

completed while Grandison was at Wallens Ridge, it is noted by Dr. Benjamin T. Ulep, M.D., at Wallens Ridge, that the Urology Department at MCV had recommended conservative measures and pain management, as well as a possible nerve block. (Plaintiff's Exhibit No. 3, Docket Item No. 34-3.) Dr. Ulep noted that Grandison was referred back to the urologist, who he saw on January 21, 2015. Grandison also submitted into evidence the treatment note from this January 21, 2015, visit to the Urology Department at MCV, at which time he saw physician's assistant Regina C. Foster. (Plaintiff's Exhibit No. 4, Docket Item No. 34-4.) She noted that the department had been following Grandison for almost two years for his chronic left testicular pain. Grandison reported being prescribed Mobic, which he did not feel was helping, and the facility provided a jock strap, but it was too small, making matters worse. He reported experiencing daily pain, ranging from 5 to 8 on a 10-point scale. Foster stated that, because Grandison's pain had persisted, she would order a repeat ultrasound. However, she informed him that there was not a lot more they could do for him since they could not find a cause for his pain. Grandison stated that he would try to obtain a larger jock strap. She recommended that, when his symptoms were unbearable, he could take ibuprofen, and he was to follow up with her once the ultrasound was completed. Foster stated that if they still could not find a cause for Grandison's pain, they again would recommend the facility refer him to a pain specialist for evaluation and a possible nerve block. Grandison also has submitted into evidence a treatment note from February 18, 2015, from physician's assistant Foster. (Docket Item No. 42-1 at 16.) Foster noted that a scrotal ultrasound from February 5, 2015, had failed to reveal any abnormalities. She noted Grandison's chronic orchialgia diagnosis and stated that a cause could not be determined. Therefore, she indicated that she had advised the facility to get him in with a pain management specialist.

Michael John Lancaster, #1437220, another inmate housed at Wallens Ridge, testified on Grandison's behalf at the July 13 hearing. According to Lancaster, who is housed two cells down from Grandison, in Cell D-420, he wrote three affidavits on Grandison's behalf detailing the defendants' refusal to provide Grandison medical treatment. In particular, he recounted an incident on November 2, 2015, when Grandison was unable to walk down the stairs to see the institutional physician, Dr. Dulaney, for sick call, so he asked Dr. Dulaney to come up to the top tier to his cell. (Docket Item No. 42-1 at 31.) She refused to come to the top tier, stating that if Grandison could kick his cell door, he could have exited his cell to be evaluated. (Docket Item No. 42-1 at 31.) However, two days later, Dr. Dulaney came up to the top tier to see another inmate. (Docket Item No. 42-1 at 31.) Lancaster testified that he remembered Grandison kicking his cell door only in an attempt to get medical attention. On December 23, 2015, Officer Hughes told Grandison that Dr. Dulaney said she was not coming to the top tier to see him, and if he did not exit his cell, then he was considered to have "refused" treatment. (Docket Item No. 42-1 at 33.) However, according to Lancaster, Dr. Dulaney did not impose this same stipulation on another inmate whom she visited on the top tier. (Docket Item No. 42-1 at 33.)

Grandison has submitted additional sworn affidavits from other inmates, in addition to himself, which echo the statements in Lancaster's affidavits. (Docket Item No. 42-1 at 29-30, 34, 38.) In one of Grandison's affidavits, he stated that Dr. Dulaney knows about his testicular pain and swelling, but refuses to respect the recommendation of MCV physician's assistant Foster to provide a pain management specialist. (Docket Item No. 42-1 at 36.) He claims that Dr. Dulaney has told him several times that pain management is not an option for him at Wallens Ridge due to cost. (Docket Item No. 42-1 at 36.) According to Grandison,

Dr. Dulaney is aware that the pain medication being prescribed does not work. (Docket Item No. 42-1 at 36.) Grandison also has provided a sworn affidavit, stating that, on March 7, 2016, he spoke with Dr. McCarthy regarding treatment by a pain management specialist, but Dr. McCarthy said he would not get that type of treatment because “Wallens Ridge just doesn’t provide that kind of treatment.” (Docket Item No. 42-1 at 37.) He further stated that he had written several request forms and shown Warden Fleming documents regarding this issue, but he failed to respond. (Docket Item No. 42-1 at 37.) Grandison stated that he spoke with Assistant Warden Combs, showed him documents and wrote him multiple request forms pleading for his help to get proper treatment. (Docket Item No. 42-1 at 37.) However, they both have refused to thoroughly investigate these issues. (Docket Item No. 42-1 at 37.) Grandison also has submitted three Offender Request forms, directed to Assistant Warden Combs. These Offender Request forms are dated February 28, March 2, and March 3, 2016. In the first one, Grandison stated that Combs needed to do something about seeing that he got adequate medical treatment. (Docket Item No. 42-1 at 45.) Grandison further noted that he had shown Combs documentary evidence of his medical condition and the recommended course of treatment, but claimed that Combs failed to correct the Medical Department’s failure to treat him. Assistant Warden Combs’s response was only to ask Grandison where he was provided treatment. In the March 2, 2016, Offender Request form, Grandison again stated his need for adequate medical treatment, which he could not obtain at Wallens Ridge. (Docket Item No. 42-1 at 46.) He requested a transfer to an appropriate facility as contemplated by OP 720.1. In his response, Assistant Warden Combs simply stated that he was not a medical expert and asked Grandison to address this issue with the Medical Department. The following day, on March 3, 2016, Grandison submitted another Offender Request form to Combs. (Docket Item No. 42-1 at 47.) Grandison

acknowledged that Combs was not a medical expert, but alleged that, in his position, he is in charge of all employees at Wallens Ridge's administration and responsible for the welfare of the inmates. He further alleged that Combs had failed to take any initiative to investigate any of his issues even after he showed him documentary evidence of what the last off-site medical provider recommended as a treatment plan. Lastly, Grandison alleged that Combs was over the nursing staff and could make them properly carry out their jobs. Combs, again, simply stated that he is not a medical expert.

Grandison submitted yet another sworn affidavit, dated January 21, 2016, in which he stated that when, on January 18, 2016, he told Dr. Dulaney he needed pain management therapy in accordance with the outside treatment providers' recommendations, she stated, "We've talked about your medical condition Mr. Grandison, and I don't care what another physician says [at] MCV Hospital, because I'm the physician here [at] Wallens Ridge and I determine your level of health care. Have a nice day, Mr. Grandison." (Docket Item No. 42-1 at 39.) He further stated that Dr. Dulaney had not prescribed any pain medication for about six months at that time. (Docket Item No. 42-1 at 39.) He claims that Dr. Dulaney was retaliating against him for reporting her to the Department of Health Professions. (Docket Item No. 42-1 at 39.)

Grandison also has submitted several Offender Request forms, Informal Complaints and Grievances in support of his Motions. For instance, in an Offender Request form, dated August 3, 2015, Grandison noted continued testicular pain. (Docket Item No. 42-1 at 40.) Defendant Stanford responded that this testicular pain was something he had experienced for years. In a February 20, 2016, Offender Request form, Grandison requested sick call for supportive

undergarments, among other things. (Docket Item No. 42-1 at 44.) Stanford responded that he was scheduled for sick call. In a May 11, 2016, Offender Request form, Grandison requested sick call for multiple issues, including supportive undergarments, pain medication and referral to a pain management specialist, as prescribed by outside physicians. (Docket Item No. 42-1 at 49.) Stanford again responded that he was scheduled for sick call. In an Informal Complaint, dated September 25, 2014, Grandison complained of continued testicular pain, sometimes unbearable, and swelling, noting that the outside treatment providers' recommendations had not yet been followed, and he requested a second medical opinion. (Docket Item No. 42-1 at 51.) Stanford responded that, after reviewing his medical record, she determined that Grandison was advised to wear supportive undergarments, and Mobic was ordered for pain. She further noted that he had been seen by the Medical Department at his previous institution, by Dr. Dulaney at Wallens Ridge and by a urologist at MCV. Stanford advised Grandison that the institutional physician would determine the need for an off-site consultation. In another Informal Complaint, dated January 18, 2016, Grandison stated that he saw Dr. Dulaney that day for his chronic orchialgia. (Docket Item No. 42-1 at 53.) When he asked her about pain management, she said "We discussed this many times before Mr. Grandison. That kind of treatment is not available here [at] Wallens Ridge." Grandison further stated that he requested supportive undergarments and pain medications. Stanford responded that Dr. Dulaney was aware of Grandison's chronic pain and "we" also are aware of the urology visit from last year, after which the recommendations were made to provide ibuprofen when the symptoms become unbearable. Stanford stated that Dr. Dulaney would review Grandison's chart. Thereafter, on January 27, 2016, Grandison filed a Regular Grievance, noting that Stanford had responded in the Informal Complaint only to the recommendation that he be provided ibuprofen for

pain, not to the recommendation that he be given supportive undergarments or that he be referred to a pain management specialist. (Docket Item No. 42-1 at 54.) Although Grandison appealed to both Level I and Level II, both were deemed unfounded, based on Stanford's statements. On May 30, 2016, Grandison submitted another Informal Complaint to Stanford, requesting the reasons for not providing or interfering with his course of medical treatment, as ordered by three outside treatment providers for his chronic orchialgia. (Docket Item No. 42-1 at 62.) He alleged that Stanford refused to provide supportive undergarments, to renew prescriptions for pain relievers and to provide a pain specialist. Stanford responded that the plan of care is determined by the institutional doctor, who takes into consideration the recommendations of off-site consultants.

## *II. Analysis*

The Eighth Amendment to the U.S. Constitution not only prohibits excessive sentences, but it also protects inmates from inhumane treatment and conditions while imprisoned. *See Williams v. Benjamin*, 77 F.3d 756, 761 (4<sup>th</sup> Cir. 1996); *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). This includes a requirement that a state provide medical care to those it punishes by incarceration. *See Estelle v. Gamble*, 429 U.S. 97, 103 (1976); *Chapman v. Rhodes*, 434 F. Supp. 1007, 1020 (S.D. Ohio 1977), *aff'd*, 624 F.2d 1099 (6<sup>th</sup> Cir. 1980), *rev'd on other grounds*, 452 U.S. 337, 344 (1981); *Stokes v. Hurdle*, 393 F. Supp. 757, 761 (D. Md. 1975), *aff'd*, 535 F.2d 1250 (4<sup>th</sup> Cir. 1976.) For a prisoner or a pre-trial detainee to state a constitutional claim for denial of medical care, he must demonstrate that a defendant's acts or omissions amounted to deliberate indifference to his serious medical needs. *See Estelle*, 429 U.S. at 106. In essence, the treatment rendered must be so grossly incompetent or inadequate as to shock the conscience or to be

intolerable to fundamental fairness. *See Miltier v. Beorn*, 896 F.2d 848, 851 (4th Cir.1990) (citation omitted).

“Deliberate indifference may be demonstrated by either actual intent or reckless disregard.” *Miltier*, 896 F.2d at 851. Reckless disregard occurs when a defendant “knows of and disregards an excessive risk to inmate health or safety; the [defendant] 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.” *Farmer*, 511 U.S. at 837. Thus, a health care provider must have actual knowledge of a serious condition, not just knowledge of the symptoms. *See Johnson v. Quinones*, 145 F.3d 164, 168 (4th Cir.1998). In order to state a plausible claim for deliberate indifference to a serious medical need, the plaintiff must allege that a defendant deliberately denied, delayed or interfered with his medical care with knowledge of his condition. *See Newbrough v. Piedmont Reg’l Jail Auth.*, 822 F. Supp. 2d 558, 577 (E.D. Va. 2011); *Smith v. Smith*, 589 F.3d 736, 738-39 (4<sup>th</sup> Cir. 2009). The Fourth Circuit has held that “intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed” amounts to deliberate indifference. *Smith*, 589 F.3d at 738-39. Moreover, the Fourth Circuit has held that a medical official’s failure to follow up on a prescribed course of treatment presents a plausible claim of deliberate indifference. *See Miltier*, 896 F.2d at 853 (denying the defendant’s motion for summary judgment where a jail’s chief doctor, after approving a recommendation for referral to a hospital, “did nothing to follow up” despite the inmate’s “continued complaints.”). When nonmedical, supervisory personnel are defendants, the deliberate indifference standard is even more difficult to satisfy. Under such circumstances, a plaintiff must show one of three things to trigger § 1983 liability: (1) that the supervisory defendant was personally involved with the

denial of treatment; (2) that the supervisory defendant deliberately interfered with the prison doctor's performance; *see Gamble v. Estelle*, 554 F.2d 653, 654 (5<sup>th</sup> Cir. 1977), or (3) that the supervisory defendant tacitly authorized or was indifferent to the prison physician's constitutional violation. *See Slakan v. Porter*, 737 F.2d 368, 372-73 (4<sup>th</sup> Cir. 1984); *Miltier*, 896 F.2d at 854.

“The standard for granting either a temporary restraining order or a preliminary injunction is the same.” *Moore v. Kempthorne*, 464 F. Supp. 2d 519, 525 (E.D. Va. 2006) (quoting *U.S. ex rel. \$12,642.00 U.S. Currency v. Commonwealth of Va.*, 2003 WL 23710710, at \*1 (E.D. Va. 2003) (not reported) (citing *Rum Creek Coal Sales, Inc. v. Caperton*, 926 F.2d 353 (4<sup>th</sup> Cir. 1991); *Ry. Labor Execs. v. Wheeling Acquisition Corp.*, 736 F. Supp. 1397 (E.D. Va. 1990)). A plaintiff seeking preliminary relief is required to demonstrate that he is likely to succeed on the merits of his claim, that he is likely to suffer irreparable injury in the absence of an injunction, that the balance of equities tips in his favor and that injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). A preliminary injunction is an extraordinary remedy, never awarded as of right. *See Winter*, 555 U.S. at 24. The plaintiff bears the burden of establishing that the court should grant a preliminary injunction or temporary restraining order. *See Manning v. Hunt*, 119 F.3d 254, 263 (4<sup>th</sup> Cir. 1997) (citing *Hughes Network Sys., Inc. v. InterDigital Commc'ns Corp.*, 17 F.3d 691, 693 (4<sup>th</sup> Cir. 1994)).

First, I find that Grandison has demonstrated that his chronic orchialgia constitutes a serious medical need. A medical need is objectively serious if it is “one that has been diagnosed by a physician as mandating treatment or that is so obvious that even a lay person would easily recognize the necessity for a doctor's

attention.” *Iko v. Shreve*, 535 F.3d 225, 241 (4<sup>th</sup> Cir. 2008) (quoting *Henderson v. Sheahan*, 196 F.3d 839, 846 (7<sup>th</sup> Cir. 1999) (internal quotations omitted)). Chronic pain can constitute a serious medical need. *See Mata v. Saiz*, 427 F.3d 745, 754-55 (10<sup>th</sup> Cir. 2005) (severe, long-term pain that required treatment constitutes a serious medical need); *Gutierrez v. Peters*, 111 F.3d 1364, 1373 (7<sup>th</sup> Cir. 1997) (A serious medical need includes: (1) when the failure to treat the condition could result in further significant injury or the unnecessary and wanton infliction of pain; and (2) the existence of chronic and substantial pain); *Hathaway v. Coughlin*, 37 F.3d 63, 64-65 (2d Cir. 1994) (A serious medical need includes the failure to remove broken hip pins from prisoner’s hips for over three years despite prisoner’s complaint of persistent pain). Here, Grandison has produced evidence that his condition was diagnosed by a medical doctor in 2013, and two physicians and a physician’s assistant have found that multi-faceted treatment is necessary to reduce or eliminate his pain. Thus, I find that he has sufficiently shown the existence of a serious medical need.

Next, I find that Grandison also has sufficiently demonstrated the defendants’ deliberate indifference to his serious medical need. I will begin with the medical personnel defendants before turning to the nonmedical personnel defendants. With regard to Stanford, the Medical Authority at Wallens Ridge, it is clear that she knew of Grandison’s serious medical condition. As set forth in detail herein, Grandison has presented evidence in the form of Offender Request forms, Informal Complaints and Grievances, showing that Stanford had actual knowledge of his serious medical condition. These forms reflect that Stanford knew he had experienced testicular pain “for years,” that he was requesting to be provided the specific medical treatment as recommended by the outside medical providers and that he had requested another medical opinion. However, Stanford’s responses

were that he was scheduled for sick call, that the physician at Wallens Ridge would determine his plan of care and that pain management services are not available at Wallens Ridge. Therefore, I find that it is clear from the multitude of Offender Request forms, Informal Complaints and Grievances that Grandison has submitted in relation to his claims of testicular pain and the failure to provide the recommended treatment, to which Stanford personally responded, that she had actual knowledge of his serious medical condition. It is equally clear that Grandison's requests and complaints were met with virtual disregard by Stanford, who either did not directly address the concerns voiced by Grandison, only partially addressed his concerns or simply stated that the institutional physician was not obligated to follow the recommended medical treatment. For these reasons, I find that Grandison is likely to be able to sustain a claim against Stanford for deliberate indifference to his serious medical need.

With regard to Dr. McCarthy, I find that Grandison also likely is able to sustain a claim for deliberate indifference to his serious medical need. In his Complaint, Grandison states that Dr. McCarthy is the current Chief Institutional Physician at Wallens Ridge and is responsible for scheduling medical appointments with outside physicians when an inmate is in need of specialized treatment. He further states that Dr. McCarthy is responsible for carrying out already prescribed treatment. (Complaint at 9.) Grandison also presented an affidavit in which he stated that, on March 7, 2016, he spoke with Dr. McCarthy about seeing a pain management specialist for a possible nerve block, as prescribed by the off-site medical providers, but Dr. McCarthy advised him that he would not get that kind of treatment at Wallens Ridge "because Wallens Ridge just doesn't provide that kind of treatment." (Docket Item No. 42-1 at 37.) Thus, I find that Grandison has presented uncontradicted evidence that Dr. McCarthy knew of his

serious medical need, but, essentially, informed him that he would not be receiving the recommended treatment.

As for the nonmedical personnel defendants, Warden Fleming and Assistant Warden Combs, I also find that Grandison has presented sufficient evidence to sustain claims of deliberate indifference against them. For instance, Grandison has presented uncontradicted affidavit evidence, in which he states that he wrote several Offender Request forms to Warden Fleming and showed him documentation of his condition and recommended treatment, but he failed to respond. With regard to Assistant Warden Combs, Grandison has presented affidavit evidence, stating that he spoke with and showed him documentation and wrote him multiple Offender Request forms pleading for his help to be properly treated. Grandison also provided three Offender Request forms, directed to Assistant Warden Combs, which include Grandison's complaints of not receiving the recommended treatment for his chronic orchialgia and his requests that the same be provided. However, Combs merely responded that he was not a medical expert. When Grandison acknowledged that Combs was not a medical expert, but claimed he was responsible for the inmates' welfare and had failed to investigate his issues, Combs again simply stated that he was not a medical expert. All of this being the case, I find that Grandison has presented sufficient evidence to sustain claims for deliberate indifference to his serious medical needs against defendants Fleming and Combs. More specifically, he has sufficiently shown that they tacitly authorized or were indifferent to the prison physician's constitutional violation. *See Slaken*, 737 F.2d at 372-73; *Miltier*, 896 F.2d at 854.

For all of the above-stated reasons, I find that Grandison is likely to succeed on the merits of his deliberate indifference claims against the defendants. Next, I

turn to the second requirement for the issuance of preliminary injunctive relief – whether he will suffer irreparable harm in the absence of the requested injunctive relief. For the following reasons, I find that Grandison also has satisfied this requirement. Irreparable harm means that the plaintiff is unlikely to be made whole by an award of damages or other relief at the end of the trial. “In determining what is considered irreparable harm, the ‘key word ... is irreparable.’” *Doe v. Pittsylvania Cty., Va.*, 842 F.Supp. 2d 927, 932 (W.D. Va. 2012) (quoting *Va. Chapter, Associated Gen. Contractors, Inc. v. Kreps*, 444 F. Supp. 1167, 1182 (W.D. Va. 1978)). “The possibility that an 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.” *Va. Petroleum Jobbers Ass’n v. Fed. Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958). The violation of a fundamental constitutional right constitutes irreparable harm, even if temporary. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976). “[P]ain, suffering and the risk of death constitute ‘irreparable harm’ sufficient to support a preliminary injunction in prison cases.” *Jones’El v. Berge*, 164 F. Supp. 2d 1096, 1123 (W.D. Wis. 2001) (citing *Von Colln v. Cty. of Ventura*, 189 F.R.D. 583, 598 (C.D. Cal. 1999); *Arnold v. Lewis*, 803 F. Supp. 246, 255 (D. Ariz. 1992)). Grandison’s complaint is that he has suffered testicular pain for years which has gone virtually untreated, and without this court’s order of preliminary injunctive relief, he will continue to suffer such pain.

Next, I find that the balance of equities tips in Grandison’s favor. Grandison asks to be provided the medical treatment that has been recommended by multiple outside medical sources for his chronic orchialgia. He asks that he be transferred to a different facility if necessary in order to obtain this treatment. For the defendants, the harm that would result from granting Grandison’s Motions is

minimal. Transfer of inmates occurs regularly within prison facilities and, therefore, should not burden the VDOC logistically or financially. Should a transfer be deemed unnecessary, the only harm to the defendants would be the financial expense in transporting Grandison to an outside pain management specialist, in providing pain medications and in providing the appropriate supportive undergarments. As stated earlier, counsel for the defendants was not present at the hearing and has provided the court with no evidence that the provision of the recommended treatment is cost-prohibitive or unfeasible for any other reason. The harm to Grandison, on the other hand, is great. Without the recommended medical treatment, he will continue to suffer pain, sometimes unbearable, on a daily basis. The court has no reason to believe that, without ordering the requested preliminary injunctive relief, Grandison's requests for treatment will not continue to be met with resistance and apathy toward his medical condition.

Finally, I find that an injunction is in the public interest. "Respect for law, particularly by officials responsible for the administration of the State's correctional system, is in itself a matter of the highest public interest. The public at large is not served by ... the willful or wanton infliction of pain and suffering...." *Duran v. Anaya*, 642 F. Supp. 510, 527 (D. N.M. 1986). Here, the public interest is not served by allowing the defendants to continue to deny treatment to Grandison – treatment which was recommended by medical sources to whom the defendants themselves referred him for evaluation. I find, instead, that the public interest will be served by protecting Grandison's Eighth Amendment rights and providing the treatment that has been recommended to treat his chronic medical condition.

Pursuant to Federal Rules of Civil Procedure Rule 65(c):

No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

FED. R. CIV. P. 65(c). However, under 28 U.S.C. § 1915(a)(1):

... any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding ... without the prepayment of fees *or security therefor*, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable ... to give security therefor.

28 U.S.C.A. § 1915(a)(1) (West 2006) (emphasis added). Also, under 28 U.S.C. § 1915(a)(2), such individual must submit a certified copy of the inmate trust account statement, or the institutional equivalent, for the six-month period immediately preceding the filing of the Complaint. *See* 28 U.S.C. § 1915(a)(2) (West 2006). Here, Grandison is proceeding pro se, and the court has granted him in forma pauperis status. He submitted an affidavit, dated March 28, 2016, stating that he is unable to pay the costs of the action and that his assets total \$26.79. (Docket Item No. 5.) He also submitted his inmate account records for the six months preceding the filing of his Complaint. (Docket Item No. 4.) These records support Grandison's affidavit, reflecting a balance of approximately \$26.00 in his inmate account over this time period. Based on this information, I recommend that the court require no security from Grandison prior to the entry of injunctive relief in this case.

## **PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

As supplemented by the above summary and analysis, the undersigned now submits the following formal findings, conclusions and recommendations:

1. Grandison has shown that the defendants have denied him adequate medical care;
2. Grandison has shown that his chronic orchialgia constitutes a serious medical need;
3. Grandison has shown that he is likely to succeed on his claim that the defendants have been deliberately indifferent to his serious medical need;
4. Grandison has shown that he is likely to suffer irreparable injury without a preliminary injunction;
5. Grandison has shown that the balance of equities tips in his favor;
6. Grandison has shown that an injunction is in the public interest; and
7. Grandison has shown that the requested preliminary injunctive relief is appropriate.

## **RECOMMENDED DISPOSITION**

Based on the above-stated reasons, I recommend the court grant Grandison's Motions requesting preliminary injunctive relief and enter a preliminary injunction against Warden Fleming and Assistant Warden Combs and a temporary restraining order against Stanford and Dr. McCarthy. More specifically, I recommend that the court enter an injunction ordering the defendants to provide the following medical treatment to Grandison, as recommended by the outside treatment providers: (1) supportive undergarments; (2) referral to an outside pain management specialist for evaluation and a possible nerve block; and (3) any medically necessary follow-up treatment from a pain specialist. If the defendants are unable to provide such medical treatment to Grandison, they are ordered, pursuant to OP 720.1, to transfer

him to a facility that is able to provide the recommended medical treatment for his chronic orchialgia. I further recommend that Grandison not be required to post a security prior to the entry of injunctive relief.

### **Notice to Parties**

Notice is hereby given to the parties of the provisions of 28 U.S.C. § 636(b)(1)(C):

Within fourteen days after being served with a copy [of this Report and Recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed finding or recommendation to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

Failure to file written objection to these proposed findings and recommendations within 14 days could waive appellate review. At the conclusion of the 14-day period, the Clerk is directed to transmit the record in this matter to the Honorable Michael F. Urbanski, United States District Judge.

The Clerk is directed to send copies of this Report and Recommendation to all counsel of record and unrepresented parties.

DATED: September 14, 2016.

/s/ Pamela Meade Sargent  
UNITED STATES MAGISTRATE JUDGE