

**FILED**

FEB 10 2004

IN THE UNITED STATES DISTRICT COURT CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
FOR THE EASTERN DISTRICT OF CALIFORNIA DEPUTY CLERK

JAMES CLAYWORTH, R.Ph., doing  
business under the fictitious  
name and style of Clayworth  
Healthcare Pharmacy; WAYNE  
ROBERTS; and MADELEINE MADDEN,

Plaintiffs,

v.

DIANA M. BONTA, Director of the  
Department of Health Services,  
State of California; and  
DEPARTMENT OF HEALTH SERVICES, a  
department of the State of  
California,

Defendants.

CALIFORNIA MEDICAL ASSOCIATION,  
et al.,

Plaintiffs,

v.

DIANA M. BONTA, Director of the  
Department of Health Services,  
State of California,

Defendant.

CIV-S-03-2110 DFL/PAN  
CIV-S-03-2336 DFL/PAN

MEMORANDUM OF OPINION  
AND ORDER

Defendant Diana Bonta ("defendant" or "Bonta") moves for  
reconsideration of the court's December 23, 2003 order issuing a

1 preliminary injunction preventing the California Department of  
2 Health Services ("DHS") from implementing the five-percent cut in  
3 the reimbursement rate paid to Medi-Cal providers.

4 "Reconsideration is appropriate if the district court (1) is  
5 presented with newly discovered evidence, (2) committed clear  
6 error or the initial decision was manifestly unjust, or (3) if  
7 there is an intervening change in controlling law. There may be  
8 other, highly unusual, circumstances warranting reconsideration."

9 Sch. Dist. No. 1J, Multnomah County, Or. v. A,C, & S, Inc., 5  
10 F.3d 1255, 1263 (9th Cir. 1993). Defendant presents two grounds  
11 for reconsideration, and neither one meets the requirements of  
12 this test.

13 First, defendant points to Sanchez v. Johnson, No. C 00-  
14 01593 CW (N.D.Cal. Jan. 5, 2004), a district court order issued  
15 after this court's December 23, 2003 order. In that order, the  
16 district judge reconsidered her earlier ruling and held that 42  
17 U.S.C. § 1396a(a)(30)(A) ("section 30(A)") does not create a  
18 right to quality of care and equal access enforceable by Medi-Cal  
19 beneficiaries under 42 U.S.C. § 1983. The Sanchez order does not  
20 persuade the court to reconsider its earlier ruling for several  
21 reasons. First, as a ruling of another district court, the  
22 Sanchez order does not constitute an intervening change in  
23 controlling law. Second, the district judge reconsidered her  
24 earlier ruling in light of Gonzaga University v. Doe, 536 U.S.  
25 273, 122 S.Ct. 2268 (2002), which was issued after her initial  
26 ruling. By contrast, this court fully considered Gonzaga in its

1 December 23, 2003 order and concluded that Gonzaga does not  
2 foreclose an enforceable right to equal access and quality care  
3 for Medi-Cal beneficiaries under § 1983. Finally, the Sanchez  
4 order does not consider 42 U.S.C. §§ 1320a-2 & 1320a-10, which  
5 indicate that provisions of the Medicaid Act, including section  
6 30(A), should not be construed as foreclosing an enforceable  
7 right under § 1983 for Medicaid beneficiaries just because the  
8 benefits conferred on those beneficiaries are phrased in terms of  
9 requirements that a state's Medicaid plan must meet. For these  
10 reasons, the Sanchez order does not cause the court to reconsider  
11 its order granting a preliminary injunction.

12 Second, defendant submits a study produced in January 2004  
13 ("2004 DHS study"), which purports to show that the proposed  
14 five-percent cut would result in reimbursement rates to  
15 pharmacists that bear a reasonable relationship to the cost of  
16 acquiring and dispensing drugs in a quality manner, in accordance  
17 with the standard established by the Ninth Circuit in Orthopaedic  
18 Hospital v. Belshe, 103 F.3d 1491, 1500 (9th Cir. 1997). This  
19 study is not newly discovered evidence that might provide grounds  
20 for reconsidering the court's previous order. The 2004 DHS study  
21 relies on figures for pharmacists' costs from the 2002 Myers &  
22 Stauffer study previously provided to the court. It adjusts  
23 these cost figures for inflation to 2004 levels and compares them  
24 to the proposed reduced Medi-Cal reimbursement rates. There is  
25 no reason that defendant could not have conducted this study  
26 before the court issued the preliminary injunction. It is thus

1 not an appropriate basis on which to reconsider the December 23,  
2 2003 order. The 2004 DHS study may well be appropriate to  
3 consider at a later stage in deciding whether to vacate the  
4 preliminary injunction or to make it permanent. Before that  
5 time, however, the parties are entitled to conduct discovery and  
6 develop the record in this case. Neither party may short-circuit  
7 or circumvent the normal rules of procedure by developing or  
8 finding something favorable to its case and then immediately  
9 insisting that the court either vacate its earlier order or make  
10 it permanent before the other side has an opportunity to take  
11 depositions and undertake its own expert studies.

12 For the foregoing reasons, defendant's motion for  
13 reconsideration is DENIED. The parties are ordered to submit a  
14 joint status order within ten (10) days of this order. The court  
15 is open to an expedited schedule in view of the public importance  
16 of the issues presented.

17  
18 IT IS SO ORDERED.

19  
20 Dated: 10 February 2004.

21  
22 David F. Levi  
23 DAVID F. LEVI  
24 United States District Judge  
25  
26

United States District Court  
for the  
Eastern District of California  
February 11, 2004

\* \* CERTIFICATE OF SERVICE \* \*

2:03-cv-02110  
2:03-cv-02336

Clayworth

v.

Bonta

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on February 11, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

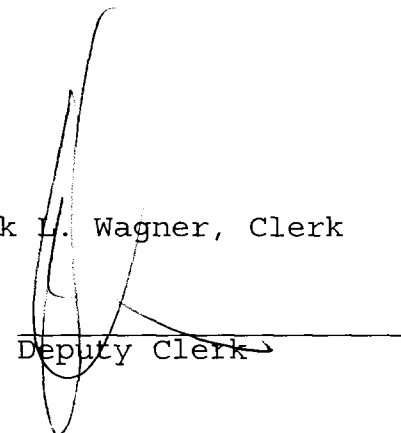
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Jack L. Wagner, Clerk

BY:   
Deputy Clerk