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1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 DENNIS ECKHART, Supervising
Deputy Attorney General
3 JOSEPH O. EGAN, State Bar No. 53469
Deputy Attorney General
4 P.O. Box 944255
Sacramento, California 94244-2550
5 Telephone: (916) 323-8789

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CLERK, U. S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

6 Attorneys for Defendants
Sandra Smoley, R.N., Andrew M. Mecca
and S. Kimberly v. Belshé

LODGED

JAN 30 1995
FOR THE
JACK L. WAGNER, CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

12 REBA Z. SOBKY, M.D., Ph.D.,)
HUMANISTIC ALTERNATIVES TO)
13 ADDICTION RESEARCH AND)
TREATMENT, INC., JANE DOE,)
14 FRANCES FOE, and HENRY HOE, on)
behalf of themselves and all)
15 others similarly situated,)

No. CIV S-92-613 DFL GGH
JUDGMENT

16 Plaintiffs,

17 v.

18 SANDRA SMOLEY, R.N., in her)
official capacity as Secretary)
19 of the California Health and)
Welfare Agency, ANDREW M. MECCA,)
20 in his official capacity as)
Director, California Department)
21 of Alcohol and Drug Programs,)
KIMBERLY BELSHÉ, in her official)
22 capacity as Director, California)
Department of Health Services,)

23 Defendants.

I hereby certify that the annexed
instrument is a true and correct copy of
the original on file in my office.
ATTEST: JACK L. WAGNER
Clerk, U. S. District Court
Eastern District of California
By _____ Deputy Clerk
Dated JAN 12 1996

26 On December 14, 1992, the court issued an order
27 consolidating Merritt v. Coye, No. CIV S-92-1905 DFL (hereafter

1 "Merritt") with this action, Sobky v. Smoley, S-92-613 DFL
2 (hereafter "Sobky"), under the Sobky caption.

3 On April 13, 1994, the court dismissed without
4 ~~prejudice, pursuant to stipulation, the eighth and ninth claims~~
5 for relief in Merritt.

6 On October 28, 1993, the court issued a Memorandum of
7 Decision and Order, including findings of fact and conclusions of
8 law, granting a preliminary injunction on plaintiffs' claims that
9 defendants failed to provide methadone maintenance services
10 statewide in violation of 42 U.S.C. § 1396a(a)(1) (Sobky claim
11 five, Merritt claim two), dismissing plaintiffs' claim of
12 unlawful delegation (Sobky claims one and two, Merritt claim
13 one), and granting summary judgment for defendants on plaintiffs'
14 claim of violation of due process (Merritt claim ten).

15 On December 1, 1993, the court issued a preliminary
16 injunction enjoining defendants from violating 42 U.S.C. §
17 1396a(a)(1) pending trial or further order of the court.

18 On June 14, 1994, the court issued, upon plaintiffs'
19 further motion for summary judgment and motion for
20 reconsideration, an amended Memorandum of Decision and Order,
21 including findings of fact and conclusions of law, which
22 superseded and modified the Court's previous opinion of
23 October 28, 1993, granting summary judgment for plaintiffs on
24 their claims for violation of 42 U.S.C. § 1396a(a)(8) and
25 1396a(a)(10)(B) (Sobky claim six, Merritt claims four and six).

26 On August 22, 1994, the court issued a permanent
27 injunction on plaintiffs' claims that defendants failed to

1 provide methadone maintenance services with reasonable promptness
2 and failed to provide comparable services to the categorically
3 needy and the medically needy in violation of 42 U.S.C. §
4 1369a(a)(8) and (a)(10).

5 The parties having stipulated that they desire to make
6 the Court's December 1, 1993, preliminary injunction permanent,
7 and to dismiss without prejudice all of plaintiffs' unadjudicated
8 claims in Sobky and Merritt,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

10 1. The plaintiff class consists of:

11 All persons in the State of California
12 eligible for Medi-Cal for whom methadone
13 maintenance treatment is medically necessary
14 and otherwise appropriate but who are, or may
15 be in the future, unable to obtain methadone
16 maintenance treatment through the Med-Cal
17 program.

18 2. Plaintiffs' third, fourth, seventh, eighth, ninth,
19 and tenth claims in Sobky are dismissed, without prejudice, and
20 nothing in this order shall be an adjudication of the merits of
21 those claims. Plaintiffs' third, fifth, seventh, eleventh, and
22 twelfth claims in Merritt are dismissed, without prejudice, and
23 nothing in this order shall be an adjudication of the merits of
24 those claims. Plaintiffs' first and second claims in Sobky and
25 first claim in Merritt are dismissed with prejudice.

26 3. The preliminary injunction issued on December 1,
27 1993, and Defendants' Preliminary Injunction Implementation Plan
filed February 25, 1994, are modified and superseded by this
judgment, which shall constitute a permanent injunction.

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1 4. DEFENDANTS AND THEIR SUCCESSORS, AGENTS, OFFICERS
2 SERVANTS, EMPLOYEES, ATTORNEYS AND REPRESENTATIVES, AND ALL
3 PERSONS IN ACTIVE CONCERT OR PARTICIPATION WITH THEM, ARE HEREBY
4 ENJOINED AS FOLLOWS:

5 a. From violating Title 42 U.S.C. § 1396a(a)(1) in the
6 provision of methadone maintenance services under the Medi-Cal
7 program;

8 b. To expeditiously take all practicable steps to
9 assure that, in all counties where Drug Medi-Cal methadone
10 maintenance services are available, they are available without
11 regard to Medi-Cal beneficiaries' county of residence. These
12 steps shall include: (1) written notice to all counties
13 participating in the Drug Medi-Cal methadone maintenance program,
14 directing that Medi-Cal methadone maintenance services, provide
15 either directly by the county or pursuant to contract with
16 methadone maintenance program providers, must be provided without
17 regard to the Medi-Cal beneficiaries' county of residence and
18 that any policy or contract provision to the contrary is invalid
19 and must be eliminated forthwith, (2) monitoring to assure
20 compliance with these directives, and (3) development, as
21 necessary, of a process to assure that the cost of providing
22 services to out-of-county beneficiaries is covered;

23 c. To expeditiously take all practicable steps to
24 assure that, pursuant to either contracts between counties and
25 the Department of Alcohol and Drug Programs pursuant to
26 California law or direct contracts between certified Medi-Cal
27 methadone maintenance providers and the defendants, Medi-Cal

1 methadone maintenance services are available in all counties
2 throughout the state where licensed methadone maintenance
3 programs are available to non-Medi-Cal patients;

4 d. For the purpose of implementing paragraph 4.c,
5 above, to offer licensed methadone maintenance providers, who are
6 not certified as Medi-Cal providers, the opportunity to provide
7 methadone maintenance services to Medi-Cal beneficiaries, and to
8 expedite requests for Medi-Cal provider certification in those
9 counties where no methadone maintenance provider is certified as
10 a Drug Medi-Cal provider, including response within 30 days of
11 receipt of a complete application for certification from a
12 licensed methadone maintenance program.

13 5. Nothing herein shall be deemed to require
14 defendants to assure that a licensed methadone maintenance
15 program exists in every county in the state.

16 6. DEFENDANTS AND THEIR SUCCESSORS, AGENTS, OFFICERS,
17 SERVANTS, EMPLOYEES, ATTORNEYS AND REPRESENTATIVES, AND ALL
18 PERSONS IN ACTIVE CONCERT OR PARTICIPATION WITH THEM, ARE HEREBY
19 ENJOINED AS FOLLOWS:

20 a. From violating Title 42 U.S.C. § 1396a(a)(8) in the
21 provision of methadone maintenance services under the Medi-Cal
22 program;

23 b. From violating Title 42 U.S.C. § 1369a(a)(10)(B) in
24 the provision of methadone maintenance services under the Medi-
25 Cal program;

26 c. To expeditiously take all practicable steps to
27 assure that, pursuant to either contracts between counties and

1 the Department of Alcohol and Drug Programs pursuant to
2 California law or direct contracts between certified Medi-Cal
3 methadone maintenance providers and the defendants, (1) all Medi-
4 Cal eligible, categorically needy individuals, meeting licensing,
5 Medi-Cal certification and utilization requirements, lawful
6 contractual standards for drug treatment programs, and lawful
7 conditions established by the provider for participation in a
8 methadone maintenance program, receive methadone maintenance
9 treatment services that are equal in amount, duration, and scope;
10 (2) all Medi-Cal eligible categorically needy persons meeting
11 licensing, Medi-Cal certification and utilization requirements,
12 lawful contractual standards for drug treatment programs, and
13 lawful conditions established by the provider for participation
14 in a methadone maintenance program, receive methadone maintenance
15 treatment services that are at least equal in amount, duration,
16 and scope to services provided to Medi-Cal eligible, medically
17 needy persons, meeting licensing, Medi-Cal certification and
18 utilization requirements, lawful contractual standards for drug
19 treatment programs, and lawful conditions established by the
20 provider for participation in a methadone maintenance program;
21 (3) Medi-Cal funded methadone maintenance treatment services
22 shall be furnished with reasonable promptness; and (4) no persons
23 eligible for Medi-Cal funded methadone maintenance treatment
24 services will be placed on waiting lists for such services due to
25 budgetary constraints;

26 d. To provide written notice of this judgment to all
27 methadone maintenance programs licensed by the Department of

1 Alcohol and Drug Programs and each Drug Program Administrator for
2 each county of the State of California;

3 e. To direct each methadone maintenance program in the
4 ~~State of California to prominently post a notice informing~~
5 methadone patients and persons seeking methadone maintenance of
6 the availability of methadone maintenance under Medi-Cal, if the
7 person is otherwise eligible for Medi-Cal services;

8 f. To monitor the availability of methadone
9 maintenance services to Medi-Cal beneficiaries in all counties of
10 the state (nothing in this provision shall be deemed to require
11 defendants to prepare or submit written reports with respect to
12 such monitoring after December 31, 1997);

13 g. To file with the court and serve on counsel for
14 plaintiffs, no less than quarterly, beginning with the quarter
15 ending December 31, 1994, through the quarter ending December 31,
16 1997, a written report (each report shall be submitted within 30
17 days of the end of the preceding quarter), for each county where
18 there is a certified Medi-Cal methadone maintenance provider,
19 describing the number of persons receiving methadone maintenance
20 under Medi-Cal from each certified provider, the number of
21 treatment slots available to Medi-Cal beneficiaries, as
22 determined by each provider, the number of Medi-Cal
23 beneficiaries, if any, on a waiting list, and the earliest date
24 on the list;

25 h. To provide Medi-Cal payments, based on Medi-Cal
26 rates in effect at the time services were provided to (1) Medi-
27 Cal beneficiaries, eligible for methadone maintenance services,

1 who paid a Medi-Cal certified provider for such services on or
2 after July 1, 1994, as a result of placement on a waiting list
3 due to budgetary constraints, or (2) Medi-Cal certified providers
4 who provided methadone maintenance services to Medi-Cal
5 beneficiaries, eligible for such services, on or after July 1,
6 1994, as a result of placement on a waiting list due to budgetary
7 constraints, provided that such services were provided consistent
8 with Medicaid laws and regulations and that the provider has not
9 been paid by the beneficiary.

10 7. Nothing herein shall be deemed to require
11 defendants to assure that a licensed methadone maintenance
12 program exists in every county in the state or to preclude
13 placement of persons eligible for Medi-Cal funded methadone
14 treatment services on waiting lists for such services due to no
15 budgetary constraints.

16 8. For purposes of this judgment, the term "agents"
17 includes the counties of California.

18 9. The Court's Order for Permanent Injunction Re:
19 42 U.S.C. § 1396a(a)(8) and (a)(10)(B) is modified to delete
20 paragraph four, including Exhibits A and B thereof. In all other
21 respects, this judgment does not alter or modify the Court's
22 Order for Permanent Injunction Re 42 U.S.C. § 1396a(a)(8) and
23 (a)(10)(B), entered on August 22, 1994, or defendants' plan for
24 implementing paragraph 3 of that order, filed on November 29,
25 1994.

26 10. This judgment, the Court's Order For Permanent
27 Injunction Re: 42 U.S.C. § 1396a(a)(8) and (a)(10)(B), entered on

1 August 22, 1994, and defendants' plan for implementing paragraph
2 3 of that order, are subject to modification, upon stipulation of
3 the parties, or upon further order of the court, and nothing

4 herein shall be deemed to preclude plaintiffs or defendants from
5 seeking court approval to modify this judgment, the permanent
6 injunction, or the plan, provided they give reasonable prior
7 written notice of any proposed amendment.

8 11. Judgment is hereby entered in favor of defendants
9 on plaintiffs' claim for violation of due process (Merritt claim
10 ten).

11 12. The court reserves jurisdiction.

12 13. On March 31, 1998, the defendants' plan for
13 implementing paragraph 3 of the Court's permanent injunction,
14 entered on August 22, 1994, may be terminated by defendants
15 unless the court determines, after an evidentiary hearing, that
16 defendants are in violation of the provisions of the injunction
17 or the provisions of 42 U.S.C. § 1396a(a)(1), (8), or (10)(B).

18 14. Notwithstanding Fed. R. Civ. Proc. 54(d)(2)(B) and
19 Eastern District Local Rule 293, plaintiffs may file a motion for
20 attorneys' fees and costs, pursuant to 42 U.S.C. § 1988, within
21 90 days of entry of judgment, in order to provide sufficient time
22 for the parties to meet and confer with respect to an award of
23 reasonable fees and costs.

24 DATED: February 1, 1995

25 David F. Levi
26 DAVID F. LEVI
27 United States District Judge

