ENDORSED
FEB 28 2002
By E. KLEIN, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

CALIFORNIA MEDICAL ASSOCIATION, No. 01CS01265 Dept. 11

Plaintiff/Petitioner, RULING ON SUBMITTED MATTER

vs.

DANIEL ZINGALE, Director, Department of Managed Health Care; DEPARTMENT OF MANAGED HEALTH CARE; and DOES ONE through TEN, inclusive,

Defendants/Respondents.

_____/

This matter came on for hearing on November 30, 2001. The matter was argued and taken under submission. On December 5, 2001, the Court ordered that the parties submit legislative history of the statute in question and specific references to the administrative record on certain issues. The parties' final additional papers were filed on January 7, 2002, and the matter was then taken under submission. The Court, having received and considered the arguments and the evidence submitted by the parties, now makes its ruling as follows.

Petitioner's objection to the documents submitted by respondents on December 21, 2001, is overruled. The Court finds that those documents are properly part of the administrative record to be considered by the Court in this matter.

Petitioner challenges respondents' adoption of California Code of Regulations, title 28, sections 1300.75.4(a), 1300.75.4.2, and 1300.75.4.4, on numerous grounds.

Petitioner contends that the necessity for section 1300.75.4.4, which contains provisions regarding confidentiality and disclosure of information submitted by risk bearing organizations, is not supported by substantial evidence. However, the Legislature in Health and Safety Code section 1375.4 (b)(7) has directed respondent director to adopt regulations on this subject. Thus petitioner's challenge to the need for the regulation fails.

Petitioner alleges that the challenged regulations violate Health and Safety Code section 1375.4. Health and Safety Code section 1375.4, subdivision (b), provides in part:

> "In accordance with subdivision (a) of Section 1344, the director shall adopt regulations on or before June 30, 2000, to implement this section which shall, at a minimum, provide for the following:
>
> . . .
>
> (2) The information required from risk-bearing organizations to assist in reviewing or grading these risk-bearing

> organizations, including balance sheets, claims reports, and designated annual, quarterly, or monthly financial statements prepared in accordance with generally accepted accounting principles, to be used in a manner, and to the extent necessary, provided to a single external party as approved by the director to the extent that it does not adversely affect the integrity of the contract negotiation process between the health care service plan and the risk-bearing organizations." (Health & Saf. Code, § 1375.4(b).)

Petitioner contends that Health and Safety Code section 1375.4, subdivision (b)(2) should be interpreted to provide that regulations adopted by the director may require risk-bearing organizations to provide information only to the extent that the provision of the information does not adversely affect the integrity of the contract negotiation process between the health care service plan and the risk-bearing organizations. Respondents, on the other hand, contend that subdivision (b)(2) should be interpreted to provide a limit only if the director provides (or has the risk-bearing organizations provide) the information to "a single external party". Respondents contends that the director has avoided such a limitation by not using such an external party in the process of receiving and analyzing the information.

Petitioner has submitted materials regarding the legislative history of S.B. 260, Statutes of 1999, chapter 529. However, these materials provide little or no assistance regarding the issues of statutory construction before this Court.

The Court concludes that the proper interpretation of Health and Safety Code section 1375.4, subdivision (b)(2) is that it is a limitation on the collection and use of the information regardless of whether the director decides to use an external party. Respondents' interpretation renders meaningless the words "to be used in a manner". Further, there is similar language in section 1375.4, subdivision (a)(1). Subdivision (a)(1) clearly places a limitation on the provision of information by the risk-bearing organization to the health care service plan. The language in subdivision (b)(2) appears to this Court to be intended to place a similar limitation on the information which the risk-bearing organizations must provide for the purpose of reviewing or grading. All parts of a statute must be construed together. It appears unreasonable to suggest that the Legislature would limit the information a plan may require from a risk-bearing organization with which it contracts but nevertheless allow respondent to collect information without such a limitation and thereafter make it available to the public.

Health and Safety Code section 1375.4, subdivision (b)(7), provides that regulations shall, at a minimum, provide for "[t]he confidentiality of financial and other records to be produced, disclosed, or otherwise made available, unless as otherwise determined by the director." The legislative history provided by petitioner sheds little light on the Legislature's intent. However, the statement of the bill's author, Senator Jackie Speier, concerning the

legislative intent, although not determinative, is relevant and is to be considered. Senator Speier, in her letter dated August 27, 2001 to Senator John Burton, states that it was intended that the records be confidential except in an unforeseen, unusual or unique circumstance that would allow the director to use his or her discretion on an individual, case-by-case basis. (Exhibit H to Declaration of Astrid G. Meghrigian dated September 4, 2001.)

Petitioner contends that the regulations, by requiring detailed and sensitive financial information be submitted to the Department of Managed Health Care and by providing that much of the information submitted is deemed public information, will "adversely affect the integrity of the contract negotiation process between the health care service plan and the risk bearing organizations." Petitioner contends that the regulations do not conform to the statute and that respondents' adoption of the regulations was an abuse of discretion. The Court concludes that this contention has merit. The Court has reviewed the rulemaking record, including the additional materials submitted by respondents on December 21, 2001. During the rulemaking process, many persons expressed their concern that the proposed regulations would adversely affect the negotiation process. Respondents never addressed this issue. Respondents only made more general responses concerning the public's interest in information relating to the viability of the health care delivery system and their right to make informed decisions. There appears to be no evidence in the

rulemaking record that the disclosure would *not* adversely affect the negotiation process. Without such evidence, respondents' adoption of section 1300.75.4.2 of the regulations, requiring the submission of detailed information, and section 1300.75.4.4, providing that most of the information is available to the public, was arbitrary and capricious.

Petitioner also contends that the forms upon which risk-bearing organizations are to submit their reports call for information which exceeds that required by the regulations. The Court concludes that petitioner has failed to establish that they do so, in light of section 1300.75.4.2(c)(12) of the regulations which provides that the information to be provided shall include "[a]ny other information which the Director deems reasonable and necessary to understand the operational structure and finances of the organization." Petitioner's arguments concerning what is required by generally accepted accounting principles ("GAAP") are unsupported by reference to the administrative record or any other evidence.

The Court finds petitioner's other contentions to be without merit, including its contention that information may only be provided to an external party and thus that section 1300.75.4(a) of the regulations is invalid and its contentions that respondents failed to comply with the provisions of Government Code section 11340 et seq., by failing to make certain determinations and explanations in the Final Statement of Reasons and by failing to renotice

the modified proposed regulation for an additional 45-day period. The Court also finds that petitioner has not established a violation of the Uniform Trade Secret Act, Civil Code section 3426 et seq.

The Court concludes that California Code of Regulations, title 28, sections 1300.75.4.2 and 1300.75.4.4, are invalid for the reasons stated above. Judgment shall be entered granting the petition and complaint. The judgment shall provide that an injunction shall issue prohibiting and restraining the Department of Managed Health Care, its officers, agents, employees, representatives and all persons acting in concert or participating with the Department of Managed Health Care from implementation of sections 1300.75.4.2 and 1300.75.4.4. The judgment shall also provide that a writ of mandate shall issue commanding the Department of Managed Health Care to cease and desist its implementation of sections 1300.75.4.2 and 1300.75.4.4. The judgment shall also declare that sections 1300.75.4.2 and 1300.75.4.4 are invalid.

Petitioner shall prepare a proposed judgment and writ, submit them to respondents for approval as to form, and submit them to the Court for signature.

DATED: FEB 28 2002

GAIL D. OHANESIAN

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JUDGE OF THE SUPERIOR COURT

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(3))

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing RULING ON SUBMITTED MATTER by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at Sacramento, California, each of which envelopes was addressed respectively to the persons and addresses shown below:

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I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: February 29, 2002

Superior Court of California,
County of Sacramento

By: Erlene Klein
Deputy Clerk