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FILED

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

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

12 REDA 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. )  
24 )

25  
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  
28           filed February 25, 1994, are modified and superseded by this  
29           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, provided  
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 non-  
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



United States District Court  
for the  
Eastern District of California  
February 3, 1995

vc

\* \* CERTIFICATE OF SERVICE \* \*

2:92-cv-00613

Sobky

v.

Gould

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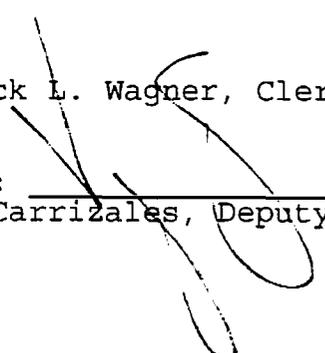
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on February 3, 1995, 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, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Amitai Schwartz  
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HV/DFL  
DAG, Egan

Jack L. Wagner, Clerk

BY:   
V Carrizales, Deputy Clerk