

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 02 2005

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

JAMES CLAYWORTH, R.Ph, dba
Clayworth Healthcare Pharmacy; WAYNE
ROBERTS; MADELEINE MADDEN,

Plaintiffs - Appellees,

v.

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

Defendant - Appellant,

and

DEPARTMENT OF HEALTH
SERVICES, a department of the state of
California,

Defendant.

No. 04-15498

D.C. No. CV-03-02110-DFL

MEMORANDUM*

CALIFORNIA MEDICAL
ASSOCIATION; AMERICAN
ACADEMY OF PEDIATRICS-
CALIFORNIA DISTRICT; AMERICAN
COLLEGE OF OBSTETRICIANS AND

No. 04-15532

D.C. No. CV-03-02336-DFL

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

GYNECOLOGISTS-DISTRICT IX;
CALIFORNIA CHAPTER AMERICAN
COLLEGE OF EMERGENCY
PHYSICIANS; CALIFORNIA DENTAL
ASSOCIATION; LONG TERM CARE
PHARMACY ALLIANCE;
CALIFORNIA FOUNDATION FOR
INDEPENDENT LIVING CENTERS;
CALIFORNIA PHARMACISTS
ASSOCIATION; AIDS HEALTHCARE
FOUNDATION; PROFESSIONAL
PHARMACY ALLIANCE OF
CALIFORNIA; BRAIN INJURY POLICY
INSTITUTE; LONG TERM CARE
MANAGEMENT COUNCIL;
OSTEOPATHIC PHYSICIANS AND
SURGEONS OF CALIFORNIA,

Plaintiffs - Appellees,

v.

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

Defendant - Appellant.

Appeal from the United States District Court
for the Eastern District of California
David F. Levi, District Judge, Presiding

Argued & Submitted December 8, 2004**
San Francisco, California

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: O'SCANNLAIN, COWEN,^{***} and BEA, Circuit Judges.

James Clayworth, dba Clayworth Healthcare Pharmacy, and two Medicaid recipients, brought suit against Diana Bonta, in her official capacity as Director of the California Department of Health Services, and the California Department of Health Services.¹ Separately, a consortium of 14 Medi-Cal service providers and the Disabled Rights Union, a non-profit association of disabled persons, also brought suit against Bonta. From adverse judgments in district court, Bonta brought these appeals, which we have consolidated.

The legal issue here has been resolved by *Sanchez v. Johnson*, 04-15228 ___ WL ___, (9th Cir. 2005), filed this date, in which we held that neither Medicaid recipients nor providers have a private right to challenge California's compliance with Medicaid provision § 30(A) under 42 U.S.C. § 1983.

The judgment of the district court is

REVERSED.

^{***} The Honorable Robert E. Cowen, Senior United States Circuit Judge for the Third Circuit, sitting by designation.

¹ The case against the California Department of Health Services was eventually dismissed on the basis of Eleventh Amendment immunity and no cross-appeal has been filed.