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By E. KLFM, Deputy Clerk

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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.

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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.

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

6           Petitioner challenges respondents' adoption of  
7 California Code of Regulations, title 28, sections  
8 1300.75.4(a), 1300.75.4.2, and 1300.75.4.4, on numerous  
9 grounds.

10          Petitioner contends that the necessity for section  
11 1300.75.4.4, which contains provisions regarding  
12 confidentiality and disclosure of information submitted by  
13 risk bearing organizations, is not supported by substantial  
14 evidence. However, the Legislature in Health and Safety  
15 Code section 1375.4 (b)(7) has directed respondent director  
16 to adopt regulations on this subject. Thus petitioner's  
17 challenge to the need for the regulation fails.

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

22                    "In accordance with subdivision (a)  
23 of Section 1344, the director shall  
24 adopt regulations on or before June 30,  
25 2000, to implement this section which  
26 shall, at a minimum, provide for the  
27 following:

26                    . . .

27                    (2) The information required from  
28 risk-bearing organizations to assist in  
reviewing or grading these risk-bearing

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

9 Petitioner contends that Health and Safety Code section  
10 1375.4, subdivision (b) (2) should be interpreted to provide  
11 that regulations adopted by the director may require risk-  
12 bearing organizations to provide information only to the  
13 extent that the provision of the information does not  
14 adversely affect the integrity of the contract negotiation  
15 process between the health care service plan and the risk-  
16 bearing organizations. Respondents, on the other hand,  
17 contend that subdivision (b) (2) should be interpreted to  
18 provide a limit only if the director provides (or has the  
19 risk-bearing organizations provide) the information to "a  
20 single external party". Respondents contends that the  
21 director has avoided such a limitation by not using such an  
22 external party in the process of receiving and analyzing the  
23 information.

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

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

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

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

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

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

8 Petitioner also contends that the forms upon which  
9 risk-bearing organizations are to submit their reports call  
10 for information which exceeds that required by the  
11 regulations. The Court concludes that petitioner has failed  
12 to establish that they do so, in light of section  
13 1300.75.4.2(c)(12) of the regulations which provides that  
14 the information to be provided shall include "[a]ny other  
15 information which the Director deems reasonable and  
16 necessary to understand the operational structure and  
17 finances of the organization." Petitioner's arguments  
18 concerning what is required by generally accepted accounting  
19 principles ("GAAP") are unsupported by reference to the  
20 administrative record or any other evidence.

21 The Court finds petitioner's other contentions to be  
22 without merit, including its contention that information may  
23 only be provided to an external party and thus that section  
24 1300.75.4(a) of the regulations is invalid and its  
25 contentions that respondents failed to comply with the  
26 provisions of Government Code section 11340 et seq., by  
27 failing to make certain determinations and explanations in  
28 the Final Statement of Reasons and by failing to renote

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

5 The Court concludes that California Code of  
6 Regulations, title 28, sections 1300.75.4.2 and 1300.75.4.4,  
7 are invalid for the reasons stated above. Judgment shall be  
8 entered granting the petition and complaint. The judgment  
9 shall provide that an injunction shall issue prohibiting and  
10 restraining the Department of Managed Health Care, its  
11 officers, agents, employees, representatives and all persons  
12 acting in concert or participating with the Department of  
13 Managed Health Care from implementation of sections  
14 1300.75.4.2 and 1300.75.4.4. The judgment shall also  
15 provide that a writ of mandate shall issue commanding the  
16 Department of Managed Health Care to cease and desist its  
17 implementation of sections 1300.75.4.2 and 1300.75.4.4. The  
18 judgment shall also declare that sections 1300.75.4.2 and  
19 1300.75.4.4 are invalid.

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

23 DATED: FEB 23 2002

24  
25 GAIL D. OHANESIAN

26 GAIL D. OHANESIAN  
27 JUDGE OF THE SUPERIOR COURT  
28

**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:

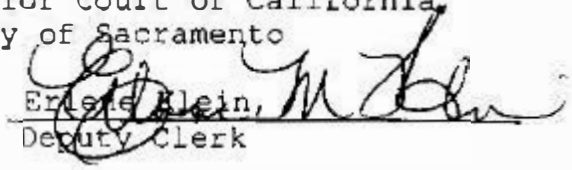
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California Department of  
Managed Health Care  
Kevin F. Donohue  
Attorney at Law  
980 Ninth Street, Suite 500  
Sacramento, CA 95814

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