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LOS ANGELES
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DAISY TAILFEATHER, LUCY RITORTO,
ELIZABETH MENDLEY and ABELARDO
RODRIGUEZ, on behalf of them-
selves and all others similarly
situated,

Plaintiffs,

vs.

BOARD OF SUPERVISORS OF THE
COUNTY OF LOS ANGELES and ROBERT
GATES, Director of Los Angeles
County Department of Health
Services,

Defendants.

) No. BC 080929
) (*OPINION* on)
) DEFENDANTS' MOTION FOR
) SUMMARY JUDGMENT AND
) PLAINTIFF'S MOTION FOR
) SUMMARY ADJUDICATION OF
) ISSUES

After full consideration of the evidence, the court has considered the plaintiffs' and defendants' evidentiary objection to exclude irrelevant and improper evidence **from the** defendant and plaintiffs' declarations and exhibits. Therefore the Court is disregarding all the portions of evidence that it considers to be incompetent and inadmissable. Further, after reviewing the separate statements of each party, the objections filed by defendant and the authorities submitted by counsel, as well as counsel's oral argument, the Court finds there is no triable

1 issue of material facts in this action and that the moving party
2 is entitled to summary judgment as a matter of law and
3 plaintiffs' motion for adjudication of issues is denied for the
4 following reasons:

5 THE FIRST CAUSE OF ACTION FOR DECLARATORY AND INJUNCTIVE
6 RELIEF FOR VIOLATION OF WELFARE AND INSTITUTIONS CODE ("**WIC**")
7 STATUTE 17000 AND 17001 FAILS TO STATE A CAUSE OF ACTION, AS
8 THERE IS NO DUTY UNDER WIC **§§** 1700 AND 17001 TO ADOPT WAITING
9 TIME "STANDARDS" FOR COUNTY MEDICAL FACILITIES. ALSO, DEFENDANTS
10 HAVE NO DUTIES TO "ABILITY-TO-PAY" ("ATP") AND MEDI-CAL
11 PARTICIPANTS UNDER WIC **§§** 17000 AND 17001.

12 A cause of action must exist before injunctive relief may be
13 granted. Korean American Legal Advocacy Foundation v. City of
14 Los Angeles, 23 **Cal.App.4th** 376, 399. Current law clearly
15 evidences the complete lack of Legislative intent to require the
16 adoption of "waiting time **standards**" (Exh. B, page 5).

17 AB 1012 abolished the requirement of access standards for
18 indigent health care **in the** former Health and Safety Codes.
19 Repeal of the Beilenson Community Standard eliminated
20 California's only statutory language speaking directly to
21 standards for indigent health care. The only standards counties
22 are required to meet for indigent health care and general relief
23 (GR) are the fiscal standards in the Realignment statutes and WIC
24 section 17000.5. These standards set the maximum amount that
25 counties may be required to expend for these programs.
26 Therefore, plaintiffs have no right to require higher levels of
27 health care spending.

28 ///

1 The County has no duty to adopt access or waiting time
2 standards for health care in County Medical facilities **or**
3 emergency rooms ("**HSC**") section 1317. Triage standards insure
4 that emergencies are timely treated. Waiting time "**standards**"
5 are clearly inappropriate for emergency-care, which must be given
6 as medically required, not within any arbitrary time period.

7 See Dr. Loos' declaration in defendants BR at page 27.
8 Waiting time standards in emergency rooms would impede proper
9 care by basing priority on waiting and not on medical condition.
10 Refer to Countywide patient availability (See Exh. I by Robert
11 Gates, defendants' reply to plaintiffs' opposition to County
12 Summary Judgment dated **10/25/94**).

13 There is no right to non-emergency care in emergency rooms.
14 (HSC § 1317(c)).

15 The promptness of medical health needs in County Medical
16 facilities is wholly discretionary (HSC § 441 and 1445).

17 Plaintiffs have no right to order the exercise of discretion
18 in any particular manner. See Building Industry Assn. v. Marin
19 Mun. Water Dist. 235 **Cal.App.3d 1641**, 1646 (1991). Therefore,
20 there is no right to an injunction.

21 The County Medical Facilities Act (HSC 1440 et seq.) and the
22 repeal of the Beilenson access standards in AB 1012 are specific
23 with respect to access for health care for the poor in Medical
24 facilities and control the general statutes relating to the
25 support of indigents. The County has not violated any duty to
26 any class subgroup such as ATP (ability-to-pay) or Medi-Cal
27 patients. The County should be able to distinguish ATP and **Medi-**
28 Cal where resources are limited accepting those who cannot pay.

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20 California's only statutory language speaking directly to
21 standards for indigent health care. The only standards counties
22 are required to meet for indigent health care and general relief
23 (GR) are the fiscal standards in the Realignment statutes and WIC
24 section 17000.5. These standards set the maximum amount that
25 counties may be required to expend for these programs.
26 Therefore, plaintiffs have no right to require higher levels of
27 health care spending.

28 **///**

1 Since the County may establish standards under WIC 17000,
2 they are not required to provide benefits to indigents not
3 eligible under County standards and therefore not required to
4 provide medical care to those who are ineligible for GR. Also,
5 the County is legally authorized to charge fees to class
6 subgroups (see HSC 1473) and even may recover costs from GR for
7 medical aid and for after acquired property and from responsible
8 relatives.

9 The County has met its duty to provide medical care to
10 general relief (GR) recipients by enacting a sufficient standard
11 of aid or GR under WIC section 17000.5. Therefore, no subgroup
12 of plaintiffs' class is entitled to an injunction.

13 The County violated no duty under prior law. The decision
14 when a patient must **be** treated **is a** medical not a legislative
15 decision.

16 WIC 17001 pertaining to subsistence standards has never been
17 applied to Medical facilities. Insofar as **§17001** required
18 standards for GR, it was preempted by WIC 17000.5 which requires
19 only one standard for GR which the County has satisfied.

20 Lack of funds is a defense under **CCPS 128(f)** and **AB1012**, in
21 that; counties may not be ordered to incur costs for which there
22 are no revenues.

23 Although there are extreme backlogs at certain times at the
24 County health facilities, they still need a doctor's referral
25 system to monitor outpatient care. Without doctor referrals, it
26 would create a chaotic situation to an already overcrowded
27 system.

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1 Private patients in emergency rooms and outpatient
2 facilities are not entitled to written time standards.

3 WIC 10000 expresses the general policy that public aid shall
4 be administered promptly but HSC 1445 controls in that it vests
5 exclusive discretion over the reasonable promptness of medical
6 care in County Medical facilities with the Board of Supervisors.

7 As to plaintiffs' affidavits of doctors and nurses, there
8 appears to be a concern about future budget cuts affecting the
9 County Medical facilities which would increase emergency and
10 outpatient care on an already **crowded** system. Further, the
11 affidavits of the doctors and nurses as submitted by the
12 plaintiffs set no standards but just indicate a problem.

13 The originals of plaintiffs' declarations were drafted,
14 signed, dated, and submitted in the Beilenson hearings. They
15 purport to predict long waits for medical services in the event
16 budget cuts were made. The declarants did not purport to testify
17 to the standard of care in County Medical facilities. Rather,
18 they opined that predicted long waits for nonemergency services
19 could negatively affect patients.

20 Since counties are not required by the Legislature to
21 eliminate long waits, these predictions are totally irrelevant to
22 the legal issues. The former Beilenson access requirements were
23 abolished in the face of these declarations.

24 SECOND CAUSE OF ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF
25 FOR VIOLATION OF HSC § 450 FAILS TO STATE A CAUSE OF ACTION, AS
26 THERE IS NO MEDICAL WAITING TIME STANDARDS IN COUNTY MEDICAL
27 FACILITIES UNDER HSC § 450.

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1 **There is** no constitutional right to medical care. Emergency
 2 medical care is a statutory benefit under HSC section 1317. It
 3 is not a constitutional right. The Board's authority to provide
 4 health care to the working poor derives from the police power
 5 over the general welfare. Goodall v. Brite 11 Cal.App.2nd 450,
 6 1936. The Board's obligation to provide GR is strictly statutory
 7 and may be changed by the Legislature at any time. Mendly v.
 8 County of Los Angeles, 23 Cal.App.4th, 1193, (1994).

9 There is no constitutional right to publicly paid medical
 10 care. Committee to Defend Reproductive Riachts v. Myers, 29
 11 Cal.3d 252, 262 (1981). The State has no obligation to provide
 12 medical care to the poor; Goodall v. Brite, supra (provision of
 13 County medical care to those able to pay for such care violates
 14 the constitution). Therefore, there is no constitutional right
 15 to a specific level of Medical benefits. There is no known
 16 constitutional right to waiting time standards for publicly paid
 17 medical care. There is no duty to adopt standards under HSC
 18 section 450 et seq.

19 THE THIRD CAUSE OF ACTION FOR INJUNCTIVE RELIEF AND
 20 DECLARATORY RELIEF FOR VIOLATION OF THE CALIFORNIA CONSTITUTIONAL
 21 ARTICLE 1 § 1 FAILS TO STATE A CAUSE OF ACTION AS THERE IS NO
 22 CONSTITUTIONAL RIGHT TO PUBLICLY PAID MEDICAL CARE UNDER ARTICLE
 23 1 § 1 OF THE CALIFORNIA CONSTITUTION OR UNDER U.S. CONSTITUTION.

24 **The County** operates a public health division and provides
 25 public health programs such as vaccinations, AIDS education for
 26 the public health, and not for individual health care. The
 27 preservation of public health in the County is a question of
 28 prevention and the cure of **disease generally** and not the

1 accomplishment of these ends by particular means or in any
2 particular institution. Goodall v. Brite, supra, p.547. There
3 is no entitlement to individual medical attention under HSC
4 section 450 et seq. Health services are distinct from inpatient
5 and outpatient health services provided in County Medical
6 facilities. (See 17 CCR § 1435, Exh. C, p.35; defining public
7 health services as "those health promotion, surveillance, and
8 disease prevention services designed to protect the health of the
9 public population groups and individuals.) Programs such as
10 immunizations fall within this definition. These sections do not
11 authorize counties to maintain Medical facilities or undertake
12 individual medical care. Indigent health care is not a public
13 health service as defined in State regulations. Plaintiffs cite
14 Maher vs. Roe, 432 U.S. 464, p. 466, plaintiffs' BR, but in this
15 case the states have wide latitude in choosing among competing
16 demands for limited public funds.

17 The due process clause does not establish a constitutional
18 right to medical care, Richardson v. Belcher. Page 21 of BR, CRT
19 404 US 78, 81 (1971). Indigents do not have a property right to
20 a particular level of welfare benefits. (See Mendly v. County of
21 Los Angeles, supra.) There is no property right to medical care
22 as a matter of "substantive" due process. "Substantive" due
23 process protects vested or fundamental rights for arbitrary
24 government action. (See Fleming v. Nestor, 363 US 603, 608-11.)
25 The Court finds that County has adopted standards for
26 administering health services and that the standards are **not**
27 arbitrary or capricious or for the purpose of denying benefits to
28 indigents. (See Deposition of Gates and Loos.)

1 FOURTH CAUSE OF ACTION FOR A WRIT OF MANDATE PURSUANT TO CCP
2 **§** 1085 FAILS TO STATE A CAUSE OF ACTION, AS MANDAMUS MAY NOT BE
3 GRANTED AS A MATTER OF LAW.

4 Mandamus lies to compel a governmental entity only when
5 there is a clear, present, and ministerial obligation to take
6 such action. If the act sought to be ordered involves the
7 exercise of judgment and discretion, performance of the act is
8 not a ministerial duty. Orange County Employees Assn. v. County
9 of Oranae, 234 **Cal.App.3rd** 833, 845 (1991). (County may not be
10 compelled to provide health benefits to retired employees **equal**
11 to those of current employees.)

12 Mandamus cannot invade the area of discretion with which an
13 administrative action is vested over a given subject.

14 There is no clear, present, or ministerial obligation to
15 adopt standards for waiting times in County Medical facilities.
16 Rather, the rules for operation of County Medical facilities are
17 entirely discretionary (HSC **§** 1441). Therefore, mandamus will
18 not issue as a matter of law. Further waiting time standards
19 would clearly invade the area of discretion which the Board is
20 vested over County Medical facilities. Therefore, mandamus must
21 not be issued. The option of the Los Angeles County Medical
22 facilities involves the exercise of discretion over a complex
23 system of public hospital, emergency rooms, inpatient and
24 outpatient facilities, and **medical training** institutions serving
25 millions of people. No aspect of this operation is ministerial.
26 Rather, professional as well as administrative discretion is
27 required. Therefore, mandamus will not lie. Hutchinson v. the
28 City of Sacramento 17 **Cal.App.4**, 791 and 796 (1993).

1 Dissatisfaction with the Board's determination of how best
2 to respond to public hospital overcrowding does not establish the
3 breach of statutory duty. Since the adoption of waiting time
4 standards is a Legislative function, it is not subject to review
5 as a ministerial duty. Hutchinson, supra, p. 796 .

6 The County of Los Angeles, Department of Health Services
7 (DHS) currently operates six hospitals, six comprehensive health
8 centers, and 40 public centers. The County health care system
9 provides a range of Medical services including both outpatient
10 and emergency care (see plaintiffs' undisputed facts No. 1).

11 The Board's discretion has been reasonably, properly, and
12 professionally exercised. County facilities meet all State
13 requirements and medical standards. County meets its required
14 functional effort. Last year the County provided medical care to
15 over 3 million people. The County has diligently studied the
16 problems arising from increasing demand for public health
17 services and is moving to accommodate this demand through managed
18 care. The County operates its facilities the best that it can
19 within the present capacity, which is all the Legislature
20 requires it to do.

21 Declaratory relief is not available to compel an agency to
22 adopt regulations within its discretionary area of authority (see
23 Zitterberg v. State Department of Public Health, 43 **Cal.3d** 657,
24 662 (1974)).

25 The Los Angeles County Department of Health Services (DHS)
26 is the largest local health service department in the nation.
27 The 1994 to 1995 the budget was \$3.7 billion, which is a 371%
28 increase in 10 years. It operates six hospitals with a total bed

1 capacity of 4,332, and available beds of 3,277, of which 2,600
2 are acute medical/surgical beds in 1991-1992. Three of the
3 County hospitals operate trauma centers. In **1991** to 1992, County
4 hospitals provided more than 180,000 admissions, 300,000
5 emergency room visits, and sees more than 3 million patients a
6 year. Welfare, health and mental health services amount to 53.1%
7 of our 14.53 billion dollar budget, or **\$7,705,430** billion
8 dollars.

9 THE PLAINTIFFS' CROSS-MOTION OF SUMMARY ADJUDICATION IS
10 DENIED. DEFENDANTS DO NOT HAVE THE DUTY UNDER WELFARE &
11 INSTITUTIONS CODE 17,000, 10,000, AND 17,001 TO ADOPT STANDARDS
12 CONCERNING THE PROMPT DELIVERY OF OUTPATIENT AND EMERGENCY CARE
13 TO MEMBERS OF THE PLAINTIFFS' CLASS IN THE PLAINTIFFS' **1ST** AND
14 4TH CAUSE OF ACTION (SEE RULING ON SUMMARY JUDGMENT, SUPRA).

15 Defendants do not have the duty under Health and Safety Code
16 450 to adopt standards concerning the prompt delivery of
17 outpatient care to members of plaintiffs' class.

18 IN PLAINTIFFS' 2ND AND 4TH CAUSE OF ACTION, THE SUMMARY OF
19 ADJUDICATION **OF** ISSUES IS DENIED. (See discussion in summary
20 judgment, supra.)

21 DEFENDANTS DO NOT HAVE THE DUTY UNDER THE DUE PROCESS CAUSE
22 **OF** CALIFORNIA AND THE UNITED STATES CONSTITUTION TO ADOPT
23 STANDARDS CONCERNING THE PROMPT DELIVERY OF OUTPATIENT AND
24 EMERGENCY CARE TO MEMBERS OF THE PLAINTIFFS' CLASS IN THE
25 PLAINTIFFS' 3RD AND **4TH** CAUSE OF ACTION. (See the summary
26 adjudication of issues denied. See discussion, supra.

27 The plaintiffs should look to the Federal Government which
28 has failed to act on a national comprehensive medical plan for

1 U.S. citizens or to the State of California, or obtain a ballot
2 proposition to get the relief required.

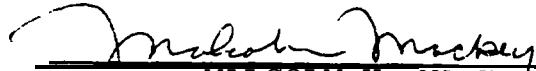
3 Plaintiffs ought to be congratulated for pointing out the
4 problems and frustrations of the Los Angeles County health care,
5 but plaintiffs' complaint fails to state a cause of action
6 because users of the County Medical facilities have no right
7 under any statute or law to access waiting time standards in
8 County Medical facilities.

9 It is hoped that the County will reactivate the County
10 Health Task Force to work with the State and Federal Government
11 to alleviate the problem in medical health by looking at new ways
12 of running health programs, seeking additional state and federal
13 funding or mandate relief, and of protecting hospitals from cuts
14 if possible. The legal profession has attorneys providing **pro-**
15 **bono** services for the indigent and reduced fee panels for those
16 with some ability to pay. Therefore, it would seem that the Los
17 Angeles County Medical Association, with its 22,700 licensed
18 physicians and 140 acute care hospitals with 85 licensed
19 emergency care centers should explore treatment for the ATP **and**
20 Medi-Cal patients on a reduced fee for clinics and some pro-bono
21 services. Also by creating more low cost clinics, more doctors
22 and nurses to keep with the overcrowding County Medical
23 facilities, but the Court is not in a position to do so.

24 Plaintiffs' Motion to file an amended complaint is off
25 calendar as all the issues, including those in purported amended
26 complaint have been decided by the summary judgment motion.

27 Motion of plaintiff to compel defendants' answer to
21 interrogatory No. 12 is off calendar.

Dated: May 3, 1995



MALCOLM H. MACKEY
Judge of the Superior Court

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