

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 27 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DOROTHY CALABRESE, M.D.; PAUL
MESSER,

Plaintiffs - Appellants,

v.

U.S. DEPARTMENT OF HEALTH &
HUMAN SERVICES, KATHLEEN
SEBELIUS, Secretary,*

Defendant - Appellee.

No. 10-56352

D.C. No. 8:07-cv-01444-CJC-
RNB

MEMORANDUM**

Appeal from the United States District Court
for the Central District of California
Cormac J. Carney, District Judge, Presiding

Submitted July 12, 2011***

Before: SCHROEDER, ALARCÓN, and LEAVY, Circuit Judges.

* Kathleen Sebelius is substituted for her predecessor, Michael O. Leavitt, as Secretary of the Department of Health and Human Services under Fed. R. App. P. 43(c)(2).

** This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Accordingly, plaintiffs' request for oral argument is denied.

Dorothy Calabrese, M.D., and her patient Paul Messer, appeal pro se from the district court's order dismissing their action alleging that Medicare contractor National Heritage Insurance Company and its medical director, Dr. Quinn, made false statements and engaged in fraudulent conduct in connection with plaintiffs' claims for Medicare reimbursements. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Uhm v. Humana, Inc.*, 620 F.3d 1134, 1139-40 (9th Cir. 2010), and we affirm.

The district court properly dismissed the action because, to the extent that plaintiffs exhausted their administrative remedies, they failed to state a claim for relief. *See Orkin v. Taylor*, 487 F.3d 734, 738-39 (9th Cir. 2007); *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1482 (9th Cir. 1997), *aff'd*, 525 U.S. 299 (1999).

Plaintiffs' remaining contentions are unpersuasive.

AFFIRMED.