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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PHYSICIANS FOR INTEGRITY IN
MEDICAL RESEARCH, INC.,

Plaintiff - Appellant,

v.

MARGARET HAMBURG, Commissioner
of Food and Drug Administration,

Defendant - Appellee.

No. 12-56119

D.C. No. 2:11-cv-08334-GAF-
FMO

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Gary A. Feess, District Judge, Presiding

Argued and Submitted February 13, 2014
Pasadena, California

Before: FARRIS, N.R. SMITH, and WATFORD, Circuit Judges.

The district court correctly dismissed Physicians for Integrity in Medical Research, Inc.’s (“PIMR”) complaint with prejudice for lack of standing. For an association like PIMR to have standing to sue on behalf of its members, the

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

members must “otherwise have standing to sue in their own right.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000). Dr. Steve Gupta, the only member of PIMR that the complaint alleges has standing, would not have standing to bring this action in his own right.

We assume for purposes of argument that Dr. Gupta’s alleged injuries are sufficiently “concrete and particularized” and “actual or imminent,” as opposed to “conjectural or hypothetical,” to support standing. *NRDC v. EPA*, 735 F.3d 873, 878 (9th Cir. 2013). Dr. Gupta’s first alleged injury, for uncompensated time spent counseling patients about Alair, is not fairly traceable to the challenged FDA action. *Id.* As Dr. Gupta acknowledges in his opening brief on appeal, whether he is compensated for time spent counseling patients is a function of the reimbursement schedule for office visits set by other components of the federal government, not by the FDA.

The second and third alleged injuries, for lost patients and loss of credibility, will occur only if one of Dr. Gupta’s patients makes an independent choice—either to find another physician or to view Dr. Gupta less favorably as a result of his advice about Alair. Because Dr. Gupta’s theory of standing with respect to these injuries “rest[s] on speculation about the decisions of independent actors,” the

injuries are not fairly traceable to the FDA. *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1148–50 (2013).

PIMR's motion for supplemental briefing, filed on February 19, 2014, is denied.

AFFIRMED.