

1 ROGER F. ALLEN (SBN 075678)
2 ERICKSEN ARBUTHNOT
3 155 Grand Avenue, Ste. 1050
4 Oakland, California 94612
5 Telephone: (510) 832-7770
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7 Sole Neutral Arbitrator

8 IN THE MATTER OF ARBITRATION

9 Arbitration No.: 12055

10 Claimants,

11 vs.

12 Respondent.

ORDER DISMISSING ARBITRATION

Date of Hearing: January 13, 2014

Time: 4:00 p.m.

Dial-In No. (866) 528-2256

Access Code: 5169763

13 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

14 At the above time and date, the motion by respondent,

15 , (hereinafter referred to as “ ”) for terminating sanctions against

16 claimant, (hereinafter referred to as “ ”) came on for hearing via

17 telephonic appearance. Claimant appeared in propria persona and respondent appeared

18 through its counsel

19 Respondent moved for terminating sanctions for the failure of claimant to
20 answer form interrogatories, special interrogatories, request for production of documents, and
21 to sign authorization for release of psychiatric records.

22 motion was received by the arbitrator on or about December 6, 2013 and was
23 duly calendared for telephonic hearing on January 9, 2014.

1 The arbitrator, on his own initiative, continued the date of the hearing via telephone to
2 January 13, 2014.

3 motion referred to orders by the arbitrator following hearings on September
4 18, 2013 and September 23, 2013 ordering claimant to respond to respondent's request for
5 production of documents, special interrogatories and form interrogatories within 35 days of
6 service of the order. The aforementioned discovery has been pending since February 25,
7 2013. The arbitrator also granted on September 23, 2013 a motion by to compel
8 plaintiff to sign a properly drawn authorization form to permit counsel for to obtain
9 sensitive and otherwise privileged psychiatric records from pertaining to claimant's
10 allegations against

11 The arbitrator is satisfied that assertions that attorneys are not
12 authorized to act on behalf of is without merit.

13 The arbitrator, after having reviewed the moving papers, numerous emails submitted
14 by in response to the motion and reply papers submitted by hereby rules as
15 follows:

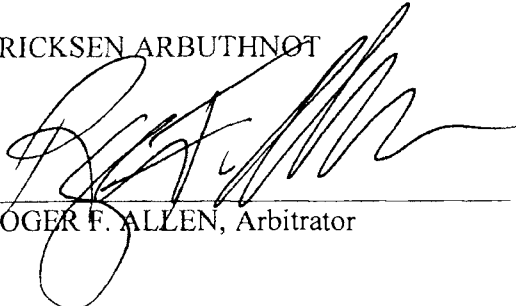
16 **The claim of bearing arbitration number 12055 is hereby**
17 **dismissed in its entirety for claimant's continued and willful failure to respond to**
18 **discovery and specifically for claimant's continued and willful failure to comply with**
19 **lawful court orders issued by this arbitrator.**

20 The arbitrator shall retain jurisdiction of claims brought by against .

21 Nothing in this ruling prohibits or restricts the enrollee () from discussing or
22 reporting the underlying facts, results, terms and conditions of this decision to the
23 Department of Managed Healthcare.

24 DATED: January 30, 2014

ERICKSEN ARBUTHNOT

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ROGER F. ALLEN, Arbitrator

1 ROGER F. ALLEN (SBN 075678)
2 PMB 349, 4100 Redwood Road, Suite 10
3 Oakland, CA 94619-2363
4 510-517-5482
5 roger@rogerallenmediator.com

6 Sole Neutral Arbitrator

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8 IN THE MATTER OF ARBITRATION

9 Arbitration No.:13745

10
11 Claimants,
12 vs.
13 , M.D.
14 Respondent.

**ORDER GRANTING SUMMARY
JUDGMENT
Revised**

**Date of Hearing: September 23, 2016
Time: 10:00 a.m.
Dial-In No. 641-715-3580
Access Code: 475611**

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17 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

18 At the above time and date, motion for summary judgment by Respondent
19 , M. D, hereinafter referred to as Respondent came on for hearing via telephonic
20 appearance. Claimant appeared telephonically. Respondent appeared telephonically through
21 its counsel

22 Respondent moved on May 27, 2016, for summary judgment to be heard on August
23 19, 2016, and submitted the following documents in support:

- 24 1. Notice of Motion and Motion for Summary Judgment
25 2. Separate Statement of Undisputed Material Facts
26 3. Memorandum of Points and Authorities
27

1 4. Declaration of Attorney with Exhibits A through W
2 attached

3 5. Declaration of , M. D.
4

5 Claimant submitted no written opposition to the motion for summary
6 judgment calendared for hearing on August 19, 2016.
7

8 The moving papers established that there is no triable issue of fact. The Separate
9 Statement of 26 Undisputed Facts, the Declaration of Attorney ; and the
10 Declaration of , M. D., are sufficient to support the grant of the motion
11 for summary judgment. The declaration of Dr. specifically stated that Respondent
12 , M. D., did not breach the applicable standard of care in performing a left
13 total hip replacement on June 10, 2015, the subsequent revision on September 14, 2015, or in
14 the post operative periods. Further, Dr. 's declaration supports the determination
15 that Dr. ' care did not cause or contribute to any of claimant's left hip dislocations.

16 Given that the moving papers put forth papers supporting the grant of summary
17 judgment, California Code of Civil Procedure Section 437c (p) (2) shifts the burden to
18 Claimant "to show that a triable issue of one or more material facts exists..."
19 Claimant submitted no evidence to dispute the declaration of Dr. for the telephonic
20 hearing on August 19, 2016.
21

22 At the telephonic hearing on August 19, 2016, Claimant stated she was seeing a
23 medical doctor on September 1, 2016, with whom she would discuss her case. The arbitrator
24 then continued the telephonic hearing on Dr. ' motion to September 23, 2016, at
25 10:00 a.m. to permit claimant to submit in proper form a response to Dr. ' motion.
26 The Arbitrator informed the parties at the hearing on August 19, 2016, that Ms.
27
28

1 should submit in proper form to the Arbitrator and counsel for written opposition by
2 5:00 p.m. on September 8, 2016.

3
4 The Arbitrator did not receive any written opposition from Ms.

5
6 The Arbitrator convened a telephonic hearing at 9:30 am on September 23, 2016.
7 Ms. appeared on behalf of herself. Mr. appeared for Ms.
8 stated she sent the opposition by facsimile to Mr. , but did not understand she was
9 required to send it to the arbitrator. The Arbitrator then asked Mr. to forward by
10 email the written opposition of Ms. to the Arbitrator. A further telephonic hearing
11 was scheduled for 11:30 a.m. on September 23, 2016.

12
13 The Arbitrator received those papers by email at approximately 10:15 am on
14 September 23 and reviewed them at length. In the papers submitted by Ms. in
15 opposition there is no admissible evidence disputing the assertion by 's expert witness
16 that Dr. did not commit malpractice. The assertions by Ms. in those
17 papers that Dr. should have performed a revision of the left hip following the
18 second dislocation on July 17, 2015, rather than recommending the continued use of the
19 abductor brace and that Dr. committed malpractice in so doing are not admissible,
20 because Ms. is not a qualified medical expert. The note by Dr. dated 9/1/16
21 contains no assertion that Dr. ' care fell below the applicable standard and
22 moreover is not a sworn declaration.

23
24 This order was revised to place in bold face the final sentence of the order and to state
25 that a revision has taken place. The findings of the Arbitrator and the order of the Arbitrator
26 in this revised order is identical to the one that was served on September 23, 2016.

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The Arbitrator, having reviewed the papers submitted in support of the motion for summary judgment and having conducted two telephonic hearings on said motion on September 23, 2016, and good cause appearing hereby rules as follows:

The Motion for Summary Judgment is granted.

Nothing in this ruling prohibits or restricts the enrollee from discussing or reporting the underlying facts, results, terms and conditions of this decision to the Department of Managed Healthcare.

DATED: October 4, 2016



ROGER F. ALLEN

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(State Bar No.)

(State Bar No.)

Telephone:
Facsimile:

Attorneys for Respondents

ARBITRATION

IN THE MATTER OF ARBITRATION
BETWEEN:

Claimant,

vs.

Respondents.

~~PROPOSED~~ ORDER GRANTING
SUMMARY JUDGMENT AND
ENTERING JUDGMENT IN FAVOR OF
RESPONDENTS

, AND

Date: August 24, 2017
Time: 10:00 a.m.
Via Telephone: 888-522-5391
Code: 2821789#

Arbitrator: Roger F. Allen

The Motion for Summary Judgment brought by respondents,

, and

MEDICAL GROUP INC., came on regularly for hearing on August 24, 2017, before Roger F. Allen, Esq.

Respondents and moving parties,

, and

were represented by _____, Esq., of

_____. Claimant was represented by _____, Esq. of

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After full consideration of the evidence, the moving papers, the authority submitted by counsel, oral argument, and good cause appearing therefore, the arbitrator finds that:

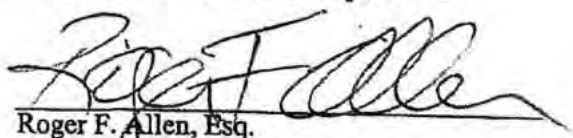
Respondents' motion for summary judgment is GRANTED on the grounds that there are no triable issues of material fact in this action as to either the standard of care or causation and moving parties are entitled to summary judgment as a matter of law.

IT IS THEREFORE ORDERED that the said Motion for Summary Judgment is granted and the judgment shall be entered forthwith in favor of respondents

_____, AND
_____, and against claimant

Nothing in this arbitration decision prohibits or restricts the enrollee from discussing or reporting the underlying facts, results, terms and conditions of this decision to the Department of Managed Health Care.

Dated: 8/25/17


Roger F. Allen, Esq.
Arbitrator