

1 M.D. are entitled to judgment as a matter of law for the following reasons.

2 Respondents have met their burden of persuasion that there is no triable issue of material fact
3 on causation and damages. In particular, the Declaration of _____, M.D. at paragraphs 7 through
4 10 support Respondents' position that there was no causation or damages to the claimant.

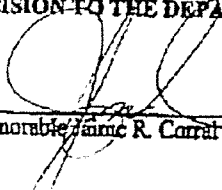
5 The arbitrator finds that facts 1 through 6 in the Separate Statement of Undisputed Facts are
6 supported by competent, admissible evidence and have established sufficiently pursuant to *Code of Civil
7 Procedure section 437c(b)(3)* and *437c(p)(2)* to warrant summary judgment. The burden shifts to
8 claimant to show a triable issue of material facts existed. Claimant has not done so. Since Respondents
9 have established that there was no issue as to causation or damages, there remain no issues of disputed
10 facts to be determined for summary judgment.

11 Therefore, IT IS ORDERED that the Motion for Summary Judgment ought to be and hereby is
12 granted, and that judgment in favor of Respondents

13 _____, M.D.,
14 M.D. shall be entered.

15 **NOTHING IN THIS ARBITRATION DECISION PROHIBITS OR RESTRICTS THE**
16 **ENROLLEE FROM DISCUSSING OR REPORTING THE UNDERLYING FACTS, RESULTS,**
17 **TERMS AND CONDITIONS OF THIS DECISION TO THE DEPARTMENT OF MANAGED**
18 **HEALTHCARE.**

19 Dated: September 24, 2014



Honorable James R. Corral (Ret.)

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ARBITRATION AWARD

Claimant vs

ARC CASE NO: 70k462a

A Binding Arbitration hearing was held in the week of January 23, 2017 at the offices of ARC in Los Angeles. The undersigned Neutral Arbitrator heard testimony of witnesses, read and studied exhibits (1 to 98) stipulated by the parties, and final arguments of counsel. After both sides rested, the Claimant made a motion to submit further briefs to address medical records submitted but not discussed during the arbitration and briefing on testimony of Dr. [redacted] who was not produced for deposition before the arbitration. This motion was opposed by Respondent. After argument the motion was granted but only as to argument but not to reopen the arbitration. When the briefs were submitted, the Respondent attached a declaration by Dr. [redacted] to which Claimant objected and made a motion to strike it because it was new evidence. That motion was granted and the declaration was stricken from the record.

After consideration of all the testimony, exhibits, and argument of counsel, the Neutral Arbitrator makes the following findings based on the allegations that the Respondent's negligence was the cause of the unfortunate death of the Claimant's husband, [redacted] who was a patient of the Respondent.

The patient was diagnosed with Stage 1 cancer in 2003 and he successfully underwent surgery for the removal of the tumor. He was thereafter assigned to Oncologist Dr. [redacted]

for follow up care. In November, 2013, a CT scan was done which showed no trace of colon cancer. Dr. [redacted] noted that Stage 1 cancer has a 10% chance of reoccurrence probability. Pursuant to the National Comprehensive Cancer Network (NCCN) guidelines, surveillance to include physical exam every three to six months for 2 years, Dr. [redacted] scheduled routine checkups accordingly.

In November 2013 a CT scan showed a lesion in the liver and sclerotic lesions and Radiologist Dr. [redacted] recommended a bone scan to exclude metastasis. Dr. [redacted] ordered the scan but at the next appointment in March 2014, he noted that the patient had not scheduled it as advised. Mr. [redacted] said he would do so after returning from Germany in June but later declined it and agreed to a CT scan in October, 2014. In September, a month earlier, he had had a colonoscopy which showed some polyps.

This October CT scan showed a 19 mm lesion in the liver which had not been seen in the prior CT scans. Radiologist Dr. [redacted] then recommended further evaluation and follow up to see if the lesion was malignant, possibly with a biopsy, MRI, or PET scan.

Dr. [redacted] next met with his patient in December and advised him of the new finding. Since there was no physical evidence of cancer, no symptoms, and the patient was in very good physical condition (he was playing soccer 2-3 times a week) discussions led him to decide to continue surveillance as recommended by the NCCN guidelines.

In May 2015, the regularly scheduled CT scan showed the lesion to have grown from 19mm to 4.8x7.6 cm. Dr. [redacted] was shocked to see such growth in such a relatively short period of time. The biopsy showed that it was a metastatic lesion so large that surgery was out of the question. Chemotherapy treatment was started and seemed to be effective to some degree but unfortunately the patient passed away in November 2016.

Based on the above findings and considering the expert testimony of Drs. [redacted] and [redacted] this decision rests on the weight given to each to determine whether the Claimant has proven its case by a preponderance of the evidence. The Claimant alleges four (4) failures by Dr. [redacted] as evidence to prove its case.

1.He failed to order a biopsy of the new lesion.

The NCCN guidelines do not require that a specific recommendation be followed. According to Dr. [redacted] the expert witness Radiologist, the standard of care does not tell clinician what and how to treat the patient. Dr. [redacted] recommended further evaluation and follow ups. He never specifically recommended any one of the three he had in mind. Dr. [redacted] did in fact continue to evaluate with regularly scheduled appointments per NCCN guidelines.

2.He failed to order a timely CT scan.

The new lesion was found in the October 2014 CT scan and Dr. [redacted] scheduled an appointment in November but the patient called and said he couldn't make so he came in December. He was told of the new lesion and scheduled follow ups. He didn't order a CT scan at that time because he didn't see any physical evidence to require such a need. The patient appeared healthy without any symptoms and was playing soccer regularly so he had no concerns, given 19mm size of the lesion.

3.He failed to notify the patient of the new lesion in the liver.

Dr. [redacted] testified that he did even though the records do not reflect it. However, assuming that he did not, Dr. [redacted] testified that it is not necessarily below the standard of care "if you want to be parental about it".

4.He failed to summon the patient in for a consultation.

This has already been addressed in number 2 above.

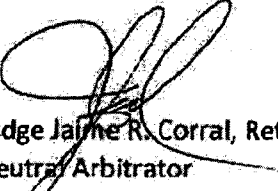
The standard of care is judged by the reasonableness of the decisions made at the time of the action or inaction by the clinician, not by results of that decision. Doctors are not held to a standard of perfection and are not negligent just because their efforts were unsuccessful.

Expert witness Dr. _____ testified that in his opinion Dr. _____ diagnosis and treatment was below the standard of care. Dr. _____ an equally qualified expert, testified that it was not below the standard and this Neutral Arbitrator finds his testimony more, or at very least, equally persuasive. Since the burden of proof is on the Claimant, and even if the evidence on both sides was equally compelling, the Claimant's burden has not been met.

Therefore, this Neutral Arbitrator hereby enters an Award in favor of the Respondent.

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.

Respectfully submitted,



Judge Jaime R. Corral, Ret.
Neutral Arbitrator

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action. My business address is

On April 27, 2017, I served the foregoing document(s) described as **ARBITRATION AWARD** on the following interested parties in this action as follows:

Esq.

Esq.

1 Hon. Jaime R. Corral, Ret.
2 Alternative Resolution Centers, LLC
3 1875 Century Park East
4 Suite 450
5 Los Angeles, California 90067
6 Tel: 310-284-8224
7 Fax: 310-284-8229

8 **ALTERNATIVE RESOLUTION CENTERS, LLC**

9 **CASE NO.: 70K490C**

10 Claimant(s),

11 vs.

12 Respondent(s).

13 **RULING ON MOTION FOR**
14 **SUMMARY JUDGMENT**

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18 This Arbitrator makes the following ruling on the Motion for Summary
19 Judgment based on two findings:

- 20 1. The opposition raises a new theory which was never even suggested prior to this
21 motion.
22 2. The material issue on causation was presented in the form of Claimant's experts,
23 neither of which based their opinions on facts supported by any evidence; there
24 opinions were based primarily on speculation and conclusions.
25 3. The Motion for Summary Judgment is GRANTED.
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[SBN]
[SBN]

Telephone:
Facsimile:

Attorneys for Respondents,

and

IN THE MATTER OF THE ARBITRATION BETWEEN

Claimant,
vs.

and DOES 1 TO
50, inclusive,
Respondents.

ARBITRATION NO.: 15419
ORDER OF DISMISSAL
Arbitration Demand: April 10, 2018
Arbitration Dates: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

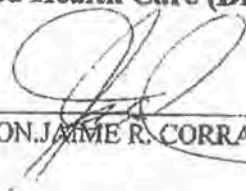
Respondents' Motion for Terminating Sanctions was heard on August 30, 2018. Claimant appeared as did counsel for Respondents. As of the date of the hearing, Claimant failed to comply with the Neutral Arbitrator's Order to provide discovery responses without objection by July 27, 2018. Claimant failed to file opposition to the Motion, and failed to request additional time prior to the hearing.

IT IS THEREFORE ORDERED that Respondents' Motion for Terminating Sanctions Is granted and, all claims shall be dismissed with prejudice in their entirety against all named and served Respondents, including but not limited to and as well as all named and unserved Respondents, including but not limited to

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

Dated: August 31, 2018



HON. JAIMÉ R. CORRAL, RET.

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IN THE MATTER OF ARBITRATION BETWEEN

Claimant(s),
vs.
Respondent(s).

ARC CASE NO.: 70K541C

ORDER RE: MOTION FOR SUMMARY
JUDGMENT

After full consideration of the evidence, the separate statement submitted by Respondents, the authorities submitted by counsel, as well as oral arguments by the parties, this Neutral Arbitrator finds that here is no triable issue of material fact as to Claimant's cause of action for medical negligence against Respondents,

and
and the treatment of Claimant, by
Respondents,
and was, at all times, within the standard of care in the community, and to a reasonable degree of medical probability, was not the cause any injuries to Claimant,

1 Alternatively, there is no triable issue of material fact as to Claimant’s cause of
2 action for medical negligence against Respondent,
3 as duty has not been established as it does not provide medical care and treatment.


4 IT IS SO ORDERED that the Motion for Summary Judgment is granted and
5 Judgment shall be entered forthwith as requested in favor of Respondents,

6
7 and

8 and against Claimant,

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10 **Nothing in this arbitration decision prohibits or restricts the enrollee from**
11 **discussing or reporting the underlying facts, results, terms and conditions of this**
12 **decision to the Department of Managed Health Care.**
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17 Dated: September 28, 2018

18 By  _____
19 Jaime R. Corral, Judge (Ret.)
20 Arbitrator
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