

**JAMS ARBITRATION CASE REFERENCE NO. 1120013971**

**Claimant(s),**

**and**

**- Arbitration No. 15325,  
Respondent(s).**

---

**RESPONDENT'S MOTION FOR SUMMARY JUDGMENT  
ORDER**

**D.P.M. Opinion is Legally Insufficient to Overcome Motion for Summary  
Judgment**

The opinion of Dr. \_\_\_\_\_ lacks the proper foundation for an expert witness and therefore he is not qualified to express an opinion on matters as he does not have personal knowledge of facts for which he opines. He admits he did not review the \_\_\_\_\_ records instead he only reviewed the following: (1) \_\_\_\_\_ medical records, (2) the claimant's demand letter and (3) the pre and post-operative radiographic images of Ms. \_\_\_\_\_'s right foot. The failure to review \_\_\_\_\_ records is fatal to the Arbitrator's acceptance of the expert opinion of Dr. \_\_\_\_\_.

The Arbitrator finds the above record review by Dr. \_\_\_\_\_ very problematic as Claimant submitted those very \_\_\_\_\_ records with her Opposition to the Motion along with the \_\_\_\_\_ Opinion, yet she failed to give those same records to Dr. \_\_\_\_\_.

Moreover, Dr. \_\_\_\_\_'s simply signed a letter to a "Mr. \_\_\_\_\_" and did not submit an affidavit or a declaration under the penalty of perjury as required by California Code of Civil Procedure sec. 437c.

Apparently as a result, the cautionary opinion of \_\_\_\_\_ is simply that Dr. \_\_\_\_\_ "may have deviated from the applicable standard of care" This is mere conjecture and inadmissible speculation. In fact, those \_\_\_\_\_ records clearly indicate all aspects of the surgical procedures were recognized and discussed with claimant and Dr. \_\_\_\_\_ well before surgery according to the \_\_\_\_\_ records submitted by Claimant to the Arbitrator.

Dr. [redacted] then opines that her tailor's bunion was asymptomatic. However, [redacted] records including Dr. [redacted]'s notes indicate the opposite. As Dr. [redacted] notes "without Dr. [redacted]'s notes I have no way to ascertain his reasoning for performing this procedure"

Finally, Dr. [redacted] notes the surgical results "good" as to alignment and no overcorrection and concludes that the fifth toe problem "is mostly the post-operative result of soft tissue contracture" and the stiffness of the big toe joint "is the result of degenerative disease"

### **Claimant's Opinions are Legally Insufficient, and Dr. [redacted]'s Declaration is From the Sole Qualified Expert**

Claimant improperly submits only her own layperson opinion in her Demand and her Opposition. Claimant lacks the expert qualifications to submit a contrary expert opinion.

Dr. [redacted] D.P.M. is the sole qualified expert to submit an opinion regarding the standard of care for a podiatrist and he opined "to a reasonable degree of medical probability that Claimant underwent a medically indicated, consented to and a successful Lapidus bunionectomy and a medically indicated, consented to and a successful tailor's bunionectomy on February 17, 2017. Furthermore, the post-operative treatment, including removal of Claimant's stitches on February 24, 2017, complied with the applicable standard of care. No negligent acts or omissions by Respondent caused harm to Claimant."

### **Claimant's Informed Consent is Legally Insufficient as a Matter of Law**

Claimant signed extensive informed consent forms prior to surgery in which she agreed to the risks and benefits of the surgery. Dr. [redacted] stated that Dr. [redacted] provided sufficient informed consent. Plaintiff submitted no expert testimony on the subject. Subsequent to the surgeries, Claimant met with Dr. [redacted] and Dr. [redacted] but neither offered any criticisms of Dr. [redacted]'s care and treatment of Claimant nor mentioned the lack of informed consent.

Further Claimant has offered no evidence regarding reasonably prudent person test or that Claimant was harmed by a risk that Dr. [redacted] failed to explain.

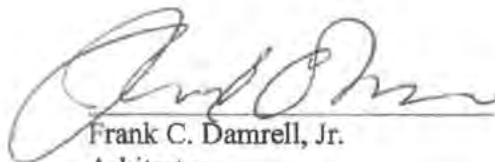
Claimant has simply failed to submit any evidence of the lack of informed consent.

**Arbitrator's Conclusion**

D.P.M. is the sole qualified expert and his opinion is not disputed by any qualified expert. There being no triable issue of fact, pursuant to California Code of Civil Procedure sec. 437c, the Arbitrator must, therefore, grant the Motion for Summary Judgment.

**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: 12/10/18

  
Frank C. Damrell, Jr.  
Arbitrator