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IN RE THE MATTER OF ARBITRATION BETWEEN

Claimant,

v.

a Non-Profit
Corporation;
N
Non-Profit Corporation; and
a Professional
Corporation.
Respondents.

ARBITRATION NO. 14159

ORDER DENYING MOTION FOR
RECONSIDERATION AND GRANTING
MOTION FOR SUMMARY JUDGMENT

The Arbitrator issued his Intended Decision granting Respondent's Motion for Summary Judgment on June 9, 2017.

Petitioner filed a Motion for Reconsideration on or about June 13, 2017. The motion was submitted for decision on July 5, 2017.

Having reviewed the matter, the Motion for Reconsideration is denied. The Intended Decision is adopted as the ruling of the Court.

The Order granting Respondent's Motion for Summary Judgment submitted by Respondent including the language contained on page 3, lines 4-6, is issued as the final ruling in this matter.


HON. MICHAEL B. DUFFICY (Ret.)
ARBITRATOR

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IN THE MATTER OF ARBITRATION OF

N
Claimant,
v.
S
and
Respondents.

ARBITRATION NO. 14159

¹¹³³
[PROPOSED] ORDER GRANTING
RESPONDENTS' MOTION FOR
SUMMARY JUDGMENT

Date: June 7, 2017
Time: 9:00 a.m.
Arb. Date: December 4, 2017
Arbitrator: Hon. Michael B. Dufficy (Ret.)

Hearing on Respondents' Motion for Summary Judgment was heard by agreement of the parties on a conference call held at 9:00 a.m. on June 7, 2017. Claimant appeared representing herself, and Esq. appeared on behalf of Respondents and

It should be noted that in the course of the hearing, a Mr. who identified himself as an attorney, spoke on behalf of Claimant, although he didn't request to appear as Claimant's attorney. Ms spoke on her own behalf.

Respondents filed and served by mail their Motion for Summary Judgment on January 30, 2017. A Proof of Service was submitted with Respondents' moving papers, which complies with both the Civil Code and the Code of Civil Procedure. See also, Evidence Code section 641.

1 A telephone status conference was held on March 15, 2017, in which Claimant participated,
2 and confirmed the hearing date of June 7, 2017 for the hearing of the Motion for Summary
3 Judgment. See Status Conference Report dated April 3, 2017.

4 Claimant's allegation that she did not receive copies of Respondents' Motion is rebutted by
5 Mr. [redacted]'s Declaration dated June 1, 2017.

6 After listening to arguments by both sides, the Arbitrator overruled objections by Claimant,
7 and ruled that the hearing had been properly noticed as a matter of law, and would proceed.

8 Further argument proceeded with both Claimant and Mr. [redacted] speaking on her behalf.
9 Mr. [redacted] argued for Respondents.

10 At the conclusion of the hearing, the Arbitrator took the matter under submission.

11 **Decision**

12 1. The Motion for Summary Judgment filed by Respondent [redacted] was properly served
13 and filed.

14 2. After reviewing the testimony of [redacted], M.D., contained in his
15 Declaration in Support of Respondents' Motion for Summary Judgment, the Arbitrator finds that
16 Dr. [redacted] qualifies as an expert witness in the field of orthopedic surgery, and that his opinion
17 testimony on the standard of care is admissible as evidence, and must be considered by the
18 Arbitrator.

19 3. Claimant has submitted no evidence in opposition to Dr. [redacted]'s testimony.

20 4. Having reviewed the evidence and based thereon, the Arbitrator finds that "to a
21 reasonable degree of medical probability that [redacted], its physicians, staff, and agents, including Dr.
22 [redacted], complied with the applicable standard of care during the care and treatment
23 rendered to Ms. [redacted] for her complaints of knee pain, including, but not limited to, the visit on
24 May 27, 2015 by Dr. [redacted], and the care and treatment following that visit. In addition [redacted] to a
25 reasonable medical probability that no alleged act or omission of [redacted], its Physicians, or Agents
26 caused Ms. [redacted]'s alleged injuries or damages." ([redacted] Declaration, page 7, lines 10-16.)

27 5. Claimant did not produce any evidence to refute or cast doubt on Dr. [redacted]'s
28 opinion.

1 6. There being no triable issue of material fact as to any claim asserted by Claimant, the
2 Motion for Summary Judgment is granted and Judgment shall be entered in favor of Respondents
3 and against Claimant.

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

7
8 Dated: ^{Duffy}~~June~~ 13, 2017



Hon. Michael B. Duffy, Arbitrator

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IN RE THE MATTER OF ARBITRATION BETWEEN

)	ARBITRATION NO. 14822
Claimant,)	
v.)	
)	FINAL DECISION RE: MOTIONS FOR
a Non-Profit)	SUMMARY JUDGMENT
Corporation;)	
)	
Non-Profit Corporation; and)	
)	
a Professional)	
Corporation,)	
)	
Respondents.)	

Following issuance of the Arbitrator's Intended Decision dated January 10, 2018, Claimant requested oral argument. A telephonic hearing was held on January 15, 2018, at 4:30 p.m. Claimant appeared in pro per, and Respondent appeared by counsel. Following the hearing the matter was submitted.

Having reviewed the matter, the Arbitrator adopts the Intended Decision as the Final Decision in this Matter.

Claimant's Motion for Summary Judgment is denied. Respondent's Motion for Summary Judgment is granted, and Respondent's Proposed Order is adopted and issued.

Dated: January 18, 2018.


 HON. MICHAEL B. DUFFICY (Ret.)
 ARBITRATOR

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, State Bar No.

Telephone:
Facsimile:

Attorneys for Respondents

, and

IN RE ARBITRATION

Case No. 14822

Claimant,

**[PROPOSED] ORDER GRANTING
RESPONDENTS' MOTION FOR SUMMARY
JUDGMENT**

v.

Date: January 16, 2018

Time: 10:00 a.m.

Arbitrator: Hon. Michael Dufficy (Ret.)

and

Respondents.

Respondents'

and

. Motion for

Summary Judgment was heard via telephonic conference by The Honorable Michael Dufficy (Ret.), Neutral Arbitrator, on January 16, 2018. Respondents were represented by

of . Claimant appeared representing himself.

Claimant was also properly served with the Notice of Respondent's Motion for Summary Judgment on October 31, 2017.

Upon consideration of the pleadings submitted in this matter, and good cause appearing therefore, IT IS HEREBY ORDERED THAT:

1. Respondents' Motion for Summary Judgment is GRANTED.

1 2. The undisputed material facts establish that Claimant's allegation of negligence
2 arising from the November 11, 2013 mitral valve surgery is barred by the three year statute of
3 limitations set forth in California Code of Civil Procedure Section 340.5. Moreover, the
4 undisputed material facts establish that Claimant was on notice of this claim more than one year
5 before he initiated the present action on January 4, 2017.

6 3. The undisputed material facts, including the un rebutted Declaration
7 M.D., establish that Respondent met the standard of care in connection with the care and
8 treatment provided Claimant with respect to the penile implant procedure on November 4, 2016.
9 There was no negligent act or omission attributable to Respondent that caused or contributed to
10 any injury sustained by Claimant.

11 4. Summary Judgment having been granted, Claimant's action is DISMISSED. Each
12 party shall bear its own attorney fees and costs.

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

16 IT IS SO ORDERED:

17
18 DATED: January 18, 2018

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18 By: 
19 Hon. Michael Dufficy, Ret.

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IN RE THE MATTER OF ARBITRATION BETWEEN

<p>Claimant,</p> <p>v.</p> <p>a Non-Profit Corporation;</p> <p>Corporation; and</p> <p>Corporation,</p> <p>Respondents.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>ARBITRATION NO. 14911</p> <p>FINAL DECISION GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT</p>
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I. SUMMARY

This is an action brought by Claimant against Respondents
 , a California non-profit public benefit corporation,
 and
 (collectively "Respondents"), for multiple claims for medical negligence arising from
 care and treatment provided by Respondents.

Claimant asserted the following four claims:

(1) **Dermatology Claim:** Claimant alleges negligence arising from medical
 treatment she received from Dermatology "commencing in November 21, 2014." The

1 allegations include the following: (a) Failure to adequately treat her rash; (b) Failure to recognize
2 that she was allergic to steroids; and, (c) Misdiagnosis of syphilis.

3 (2) **Epidural Steroid Injections Claim:** Claimant alleges negligence in
4 administering steroid injections. She alleges that she was negligently administered two epidural
5 injections by PM&R Department, on January 25, 2017, and April 29, 2017.

6 (3) **Psychological Stress Workers' Compensation Claim:** Negligence in the
7 treatment she received from Occupational Health Department related to the psychological
8 stress claim filed with her employer on July 20, 2016.

9 (4) **Cervical Neck Injury Workers' Compensation Claim:** Negligence in the
10 treatment she received from Occupational Health Department related to the cervical neck
11 injury claim filed with her employer on August 12, 2016.

12 Respondents have filed a Motion for Summary Judgment pursuant to Code of Civil
13 Procedure Section 437(c). The motion is supported by voluminous pleadings setting forth the
14 nature of the motion in general, Points and Authorities, Statement of Undisputed Material Facts,
15 and several declarations under penalty of perjury from qualified medical experts expressing
16 opinion testimony regarding the facts of Claimant's claims and the relevant standard of medical
17 care pertaining to the claims.

18 Claimant has replied with voluminous pleadings in opposition to Respondents' motion.

19 On June 19, 2018, a telephonic hearing regarding Respondents' Motion for Summary
20 Judgment was held. Claimant appeared in pro persona. , Esq. appeared
21 for Respondents.

22 II. LEGAL AND PROCEDURAL ISSUES

23 1. Claimant has submitted no qualified medical testimony in support of her
24 allegations that the care she received was not within the standard of applicable medical care.

25 Having no expert opinion evidence in support of her claims of medical negligence,
26 Claimant asserts the doctrine of *res ipsa loquitur* pursuant to California Evidence Code §646
27 (the thing speaks for itself).

1 A review of both parties' pleadings leads to the conclusion that under California law *res*
2 *ipsa loquitur* does not apply to any of Claimant's claims.

3 Before the doctrine of *res ipsa loquitur* is applicable, three conditions must be established
4 by the evidence: (1) Claimant's harm must be of a kind which ordinarily does not occur in the
5 absence of someone's negligence (In deciding this issue, the trier of fact must consider the
6 testimony of the expert witnesses); (2) it must be caused by an agency or instrumentality within
7 the exclusive control of the respondents; and (3) it must not have been due to any voluntary
8 action or contribution on the part of Claimant; and whether these conditions exist is normally a
9 question of fact for the jury. *Griffin v. Sardella* (1967) 253 Cal App 2d 937, 940; CACI No. 518
10 "Medical Malpractice: Res ipsa loquitur." The requirements for applying the doctrine of *res*
11 *ipsa loquitur* are well established in common law, the California Evidence Code, and California
12 Civil Jury Instructions.

13 Although expert opinion is not always required in the application of *res ipsa loquitur*,
14 expert opinion evidence is required when the subject matter of the claims is complex. "Since
15 the *res ipsa loquitur* instruction permits the jury [or trier of fact] to infer negligence from the
16 happening of the accident alone, there must be a basis either in common experience or expert
17 testimony that when such an accident occurs, it is more probably than not the result of
18 negligence." *Tomei v. Henning* (1967) 67 Cal.2d 319, 322 (internal citations omitted). "It is of
19 course the rule that the doctrine of *res ipsa loquitur* does not shift the burden of proof to the
20 defendant, and the plaintiff must still prove his case by a preponderance of the evidence." *Griffin*
21 *v. Sardella, supra*, at 939.

22 2. Claimant's request for an extension of time to depose QME provider
23 , MD., is denied.

24 3. Claimant having failed to file a timely opposition to Respondents' Separate
25 Statement of Undisputed Material Facts, Respondents' material facts are deemed admitted.

26 4. Claimant's assertion that her rights to due process re: discovery matters were
27 violated is denied.

28

1 in its entirety.

2 **NOTHING IN THIS DECISION PROHIBITS OR RESTRICTS THE ENROLLEE**
3 **FROM DISCUSSING OR REPORTING THE UNDERLYING FACTS, RESULTS,**
4 **TERMS AND CONDITIONS OF THIS DECISION TO THE DEPARTMENT OF**
5 **MANAGED HEALTH CARE.**

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Dated: June 22, 2018


HON. MICHAEL B. DUFFICY (Ret.)
ARBITRATOR