

## Arbitration Award

**Instructions:** Use of this form is optional. Within fifteen business days of the date of the closing of most arbitration hearings, the Neutral Arbitrator must serve the Arbitration award on the Parties and the Independent Administrator. If there were three arbitrators, the Award must be signed by at least two of them. See Arbitration Rules 37 39. Return to:

Office of the Independent Administrator  
3580 Wilshire Boulevard, Suite 2020  
Los Angeles, California 90010  
Fax: 213-637-8658

**Arbitration Name:**

**Arbitration Number: 11620**

Steven R. Enochian, the Arbitrator selected to determine the dispute between the Parties in the above referenced action, finds:

A hearing on Respondent's Motion for Summary Judgment was held on March 21, 2013.

It is the decision of the Arbitrator that the prevailing Party in this Arbitration is **Check one:**

The Claimant(s) is entitled to \_\_\_\_\_

**Or:**

The Respondent(s) are entitled to granting of their Motion for Summary Judgment and judgment in their favor and against Claimant and it is so ordered.

**The reasons for this decision are attached.**

(Arbitration Rule 38 requires that the Award provide findings of fact and conclusions of law, consistent with California Code of Civil Procedure Section 437c(g) or Section 632.)

**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.**

  
\_\_\_\_\_  
Signature of Neutral Arbitrator

3/21/13  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Party Arbitrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Party Arbitrator

\_\_\_\_\_  
Date

### Reasons for Decision

The reason for this decision is that in response to Respondent's Motion for Summary Judgment Claimant has failed to raise any triable issues of fact as to the alleged negligence of Respondent.

Respondent's Motion is supported by the declarations of \_\_\_\_\_, M.D. a board certified Internist and \_\_\_\_\_, M.D. a physician board certified in emergency medicine. Both of these physicians declare under penalty of perjury that they have reviewed all relevant medical records in this case and that they have concluded that there was no breach of the standard of care on the part of Respondent in the care and treatment of Claimant.

Claimant in response submitted a hand written letter dated 2/24/2013 stating that he was incapable of talking to a lawyer but alleging that his medical records provided enough information for the arbitrator "to make the necessary decision in this matter." Claimant submitted no evidence to refute the opinions of Dr. \_\_\_\_\_ or Dr. \_\_\_\_\_. Without such evidence the motion must be granted.

In addition, Claimant's hand written "opposition" meets none of the procedural or substantive requirements of CCP §437c regarding oppositions to Motions for Summary Judgment.

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5 Neutral Arbitrator

6  
7  
8 IN THE MATTER OF ARBITRATION

9  
10 ) Arbitration No.: 12750  
11 )  
11 Claimant, )  
12 vs. ) **AMENDED ORDER SUSTAINING**  
13 ) **DEMURRER WITHOUT LEAVE TO**  
14 ) **AMEND**  
14 ) **Date: March 16, 2015**  
14 ) **Time: 10:00 a.m.**  
15 )  
15 Respondents. )

16  
17 TO ALL PARTIES AND THEIR ATTORNEYS' OF RECORD:

18 At the above time and date, the Demurrer by Respondents came on for hearing via  
19 telephonic appearance. Claimant, appeared telephonically and in pro per.  
20 Respondents appeared telephonically through their counsel

21 Respondents demurred to the demand for arbitration submitted by Claimant on February  
22 12, 2014 on multiple grounds including that 1) the demand for arbitration in the above-  
23 referenced matter is barred on its face by the Doctrine of Res Judicata; and 2) the demand for  
24 arbitration is barred on its face by the Statute of Limitations.

1 Claimant asserts that Arbitration No. 12750 "is not valid." The arbitrator finds this  
2 position untenable and unsupported in fact. On February 12, 2014 Claimant sent by Certified  
3 Mail to the Regional Legal Department of a "demand for arbitration for  
4 (Claimant)." In that demand for arbitration, Claimant alleges that on January 5, 2009  
5 deliberately and maliciously changes (sic) medical records then covered up these records  
6 including hijacking and theft." Then on February 19, 2014 in a letter to  
7 Mr. reiterated his request to "proceed to arbitration." Although  
8 's notice of demurrer references Arbitration No. 12055, the arbitrator considers this to be a  
9 typographical error because 's memorandum of points and authorities and other supporting  
10 documents correctly references Arbitration No. 12750. The undersigned arbitrator considers  
11 's demurrer as a demurrer to Claimant's demand for arbitration dated February 12, 2014.

12 In his demand for arbitration, Claimant for the first time, as far as this arbitrator can  
13 determine, claims that on January 5, 2009 changed medical records and then covered up  
14 these records "including hijacking and theft." This arbitrator cannot make heads or tails of  
15 exactly what Claimant is alleging but based on this arbitrator's review of the history leading up  
16 to the most recent demand for arbitration, it is clear that these allegations, like all of the  
17 Claimant's previous allegations, arise out of Claimant's claim that back in January of 2009  
18 Claimant was injured as a result of alleged acts of medical negligence committed by and  
19 its employees. As such, it is clear that as of February 12, 2014, the Statute of Limitations for  
20 bringing an action based on medical negligence had long since run.

21 In addition, this is the fourth arbitration demanded by Claimant arising out of the same  
22 set of circumstances and events as the three previous arbitrations demanded by Mr. The  
23 first arbitration that Mr. filed (No. 10102) was decided by the granting of a Motion for  
24 Summary Judgment in 's favor by a duly appointed arbitrator. The second arbitration Mr.  
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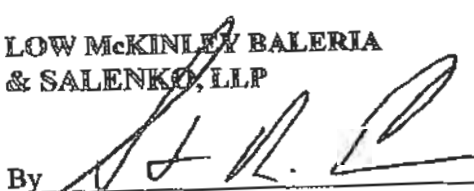
1 filed (No. 11369) was decided by the granting of a Demurrer without leave to amend in  
2 's favor. The third arbitration filed by Claimant (No. 12055) was dismissed by the  
3 arbitrator for Mr. s willful failure to respond to discovery propounded by and for a  
4 willful failure to follow the arbitrator's orders.

5 Based on this history, this arbitrator finds that Claimant's fourth demand for arbitration  
6 (No. 12750) is barred not only by the applicable Statute of Limitations (CCP §340.5 and  
7 §340(c)) but also by the Doctrine of Res Judicata (*Kahn v. Kahn* (1977) 68 Cal. App. 3d 372).  
8 Because the arbitrator, based on his review of the three prior arbitrations, his review of  
9 correspondence and multiple emails sent by Mr. and the materials submitted by  
10 Respondents in support of their Demurrer, does not believe that Claimant can cure the factual  
11 allegations or the procedural history upon which this decision is based, the arbitrator GRANTS  
12 Respondents' demurrer without leave to amend.

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

16 Dated: March 27, 2015

17 LOW MCKINLEY BALERIA  
18 & SALENKO, LLP

19 By   
20 STEVEN R. ENOCHIAN  
Neutral Arbitrator

1 STEVEN R. ENOCHIAN, Bar No. 61056  
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4 NEUTRAL ARBITRATOR

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7 IN RE ARBITRATION OF:

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9  
10 ) Case No.: No. 12989

11 ) Claimant,

11 ) **ORDER DENYING RESPONDENT'S**  
12 ) **MOTION FOR SUMMARY JUDGMENT**

12 ) vs.

13 )  
14 )  
14 ) , AND DOES 1 THROUGH 100,  
15 ) INCLUSIVE,

15 ) Respondents.  
16 )

17  
18 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

19 On August 26, 2015, 's Motion for Summary Judgment came on regularly for  
20 hearing. The hearing proceeded telephonically. Present for moving party was ,  
21 Esq. Present for responding party was , Esq. The arbitrator after hearing oral  
22 argument and considering all papers, memoranda and documents submitted both in support of  
23 said motion and in opposition to said motion save and except for claimant's pleading entitled  
24 Claimant's Offer of Proof of Verification and/or Authenticity of Documents, and Declaration  
25 because it was not timely filed, hereby



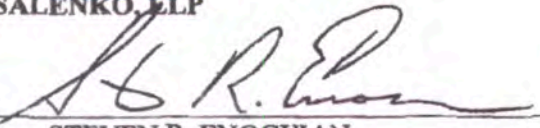
1 DENIES 's Motion for Summary Judgment and finds that the Declaration of  
2 , M.D. submitted in opposition to the Motion for Summary Judgment raises a triable issue of  
3 fact both as to whether or not the standard of care was breached and as to whether or not, if the  
4 standard of care was breached, claimant was injured as a result. *Powell v. Kleinman* (2007) 151  
5 Cal. App. 4<sup>th</sup> 112.

6 In addition, having considered 's Objections to Evidence Submitted in Opposition  
7 to 's Motion for Summary Judgment, said objections and each of them are hereby  
8 OVERRULED.

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

12 Dated: September 17, 2015

13 **LOW MCKINLEY BALERIA**  
14 **& SALENKO, LLP**

15 By   
16 STEVEN R. ENOCHIAN  
17 ARBITRATOR  
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4 NEUTRAL ARBITRATOR

6 IN RE ARBITRATION OF:

9  
10 ) Case No.: No. 12989  
11 )  
11 Claimant, )  
12 ) **JUDGMENT – FINDINGS OF FACT and**  
12 vs. ) **CONCLUSIONS OF LAW**  
13 ) **Arbitration Dates: 1/19-22/16**  
13 )  
14 )  
14 AND DOES 1 THROUGH 100, )  
15 INCLUSIVE, )  
16 Respondents. )

17 **FINDINGS OF FACT**

18 The Arbitrator finds the following facts were established:

- 19
- 20 1. Claimant at all times relevant to the issues presented in this case was not a
- 21 “member.”
- 22 2. That irrespective of Claimant’s status Respondent rendered medical care and
- 23 treatment to Claimant.
- 24 3. That at times relevant to the issues presented in this case Claimant was:
- 25 a. Unemployed and had no immediate prospects for employment;



1           b.     Uninsured;

2           c.     Living with his mother; and

3           d.     Without provable resources to pay for medical care or prescriptions. The

4 Arbitrator notes that while Mr.           claimed he could sell a boat to get the money to pay for  
5 12 months of dual anti-platelet therapy the Arbitrator was provided with no evidence to support  
6 that claim including but not limited to evidence that Mr.           even owned a boat, if he did  
7 what kind of boat it was and what was its value if Mr.           could sell it.

8           4.     That under appropriate circumstances bare metal stents are equally acceptable to  
9 treat cardiovascular disease as are drug eluting stents and in this case bare metal stents were an  
10 appropriate and reasonable choice.

11          5.     That by his own admission, Mr.           was provide with a full and detailed  
12 informed consent by Dr.           and Dr.           ; including but not limited to the differences  
13 between bare metal stents and drug eluting stents and the risks and benefits of both.

14          6.     That Mr.           began to experience right leg pain (claudication) after his initial  
15 heart procedure which temporally was related to the heart procedure. However no credible  
16 evidence was produced by Claimant to prove by a preponderance of the evidence that the  
17 claudication was actually medically related to the heart surgery and therefore the Arbitrator find  
18 that it was not.

19          7.     That the           physicians adequately and appropriately diagnosed PVD in Mr.  
20           's right leg and chose to treat it conservatively which was an appropriate clinical  
21 judgment.

22          8.     That per Mr.           's admission and the admission of his counsel, Mr.  
23 no longer has chest pain and was not "injured" by the cardiac procedures performed by the  
24           physicians.



1                   , Esq. (SBN:  
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3 Telephone:  
4 Facsimile:

5 Attorney for Respondents  
6

7 and

8   IN THE MATTER OF ARBITRATION  
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10   ) ARBITRATION NO.: 14142  
11   ) <sup>see</sup> ~~PROPOSED~~ ORDER GRANTING  
12   ) RESPONDENTS' MOTION FOR SUMMARY  
13   ) JUDGMENT

14 vs.

15   ) Date:           May 17, 2017  
16   ) Time:           10:00 a.m.  
17   ) Arbitrator:   Steven R. Enochian, Esq.  
18   ) Dial In:       TBD

19 and

20   ) Respondents.  
21   )

22 Respondents

23 and

24 ("Respondents") Motion for

25 Summary Judgment was GRANTED pursuant to Arbitrator Steven R. Enochian's Tentative  
26 Ruling Issued May 16, 2017.  
27

28                   "The Motion for Summary Judgment shall be granted if all the papers  
submitted show that there is no triable issue as to any material fact and that  
the moving party is entitled to a Judgment as a matter of law." Cal. Code Civ.  
Pros. 437(c). "[F]rom commencement to conclusion, the party moving for  
summary judgment bears the burden of persuasion that there is no triable  
issue of material fact and that he is entitled to judgment as a matter of law."  
(*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) "A defendant  
bears the burden of persuasion that 'one or more elements of the 'cause of

1 action' in question' cannot be established,' or that 'there is a complete  
2 defense' thereto. (*Id.* §437(c), sub. (o)(2).)" (*Agullar v. Atlantic Richfield Co.*  
3 (2001) 25 Cal.4<sup>th</sup> 826, 850.)

4 Respondents have presented evidence to show that the Claimant  
5 cannot establish the elements of her claim for medical malpractice. The  
6 burden then shifts to Claimant to submit evidence sufficient to raise a triable  
7 issue of fact. Claimant has failed to meet her burden.

8 First it will be noted that Claimant was allowed to file a late  
9 opposition to Respondents' Motion for Summary Judgment. That opposition  
10 contains no response to Respondents' Separate Statement of Undisputed  
11 Facts nor does the opposition contain a declaration from a competent expert  
12 witness. In opposing a defendant's motion for summary judgment, the  
13 plaintiff must submit as separate statement setting forth the specific facts  
14 showing that a triable issue of material facts exists. (*Hobson v. Raychem*  
15 *Corp.* (1999) 74 Cal.App.4<sup>th</sup> 614, 622; *North Coast Business Park v. Neilson*  
16 *Construction Co.*, *supra*, 17 Cal.App.4<sup>th</sup> at pp. 30-31. Without a separate  
17 statement of undisputed facts with references to supporting evidence in the  
18 form of affidavits or declarations, it is impossible for the plaintiff to  
19 demonstrate the existence of disputed facts. (*Lyons v. Security Pacific*  
20 *National Bank*, 44 Cal.App.4<sup>th</sup> at pp. 1006-1007.) When a fact upon which  
21 plaintiff relies is not mentioned in the separate statement, it is irrelevant  
22 that such fact might be buried in the mound of paperwork filed with the trial  
23 courts; the court does not have the burden to conduct a search of facts that  
24 counsel failed to bring out. (*North Coast Business Park v. Neilson*  
25 *Construction Co.*, 17 Cal.App.4<sup>th</sup> at p. 31.)

26 Moreover, in any medical malpractice action, the plaintiff/claimant  
27 must establish: "(1) the duty of the professional to use such skill, prudence,  
28 and diligence as other members of his profession commonly possess and  
exercise; (2) a breach of that duty; (3) a proximate causal connection  
between the negligent conduct and the resulting injury; and (4) actual loss or  
damage resulting from the professional's negligence." (*Hanson v. Grody*  
(1999) 76 Cal.App. 4<sup>th</sup> 601, 606.) Respondents have presented opinion  
testimony that Respondents did not breach the standard of care of the  
medical community in diagnosing and treating Claimant. In response,  
Claimant has not offered any opinion evidence to contradict the  
Respondents' expert. "the standard of skill, knowledge and care prevailing  
in a medical community is ordinarily a matter within the knowledge of  
expert." (*Vandl v. Permanente Medical Group, Inc.* (1992) 7 Cal.App.4<sup>th</sup> 1064,  
1071.) Whether the standard of care in the community has been breached  
presents the basic issue in a malpractice action and can only be proved by  
opinion testimony unless the medical question is within the common  
knowledge of lay persons. (*Landeros v. Flood* (1976) 17 Cal.3d 399, 410;  
*Cobbs v. Grant* (1972) 8 Cal.3d 229, 236; *Vandi v. Permanente Medical*

1 **Group, Inc., supra, 7 Cal.App.4<sup>th</sup> at p. 1071).** Claimant's absence of opinion  
2 **evidence on this issue is fatal to her cause of action. Accordingly, the issue**  
3 **of Respondents' negligence in the care and treatment of Claimant is**  
4 **resolved in favor of Respondents necessitating the granting of Respondents'**  
5 **Motion for Summary Judgment.**

6 **Each side to bear its own costs and attorneys' fees.**

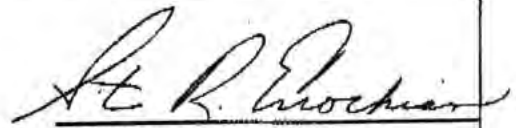
7 **Nothing in this arbitration decision prohibits or restricts the enrollee**  
8 **from discussing or reporting the underlying facts, results, terms and**  
9 **conditions of this decision to the Department of Managed Health Care.**

10 **The Arbitrator having read the moving papers, memorandum of points and**  
11 **authorities, supporting declarations, claimant's opposition and respondents' reply, and**  
12 **good cause appearing therefore,**

13 **IT IS SO ORDERED.**

14 **Dated: May 17, 2017**

15 **LOW McKINLEY BALERIA**  
16 **& SALENKO, LLP**

17 

18 **STEVEN R. ENOCHIAN**  
19 **Arbitrator**

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7 Neutral Arbitrator

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IN RE ARBITRATION

	)	Case No.: 14192
	)	
Claimant,	)	<b>ORDER GRANTING RESPONDENTS'</b>
	)	<b>MOTION FOR MONETARY SANCTIONS</b>
vs.	)	<b>AND A TERMINATING SANCTION BY</b>
	)	<b>AN ORDER DISMISSING CLAIM</b>
	)	
	)	<b>DATE: November 1, 2017</b>
	)	<b>TIME: 10:00 a.m.</b>
	)	
	)	
Respondents.	)	

Respondents' Motion for Monetary Sanctions and a Terminating Sanction by an Order Dismissing the Claim was heard by neutral arbitrator Steven R. Enochian on Wednesday, November 1, 2017 at 10:00 a.m. Respondents were represented by \_\_\_\_\_ of \_\_\_\_\_ . Claimant \_\_\_\_\_ did not appear. Claimant was properly served with Respondents' motion.

Upon consideration of the documents submitted in this matter, the presentations by counsel at the hearing, and good cause appearing therefore, IT IS HEREBY ORDERED THAT:

1. Respondents' Motion for a Monetary Sanction is GRANTED. Claimant shall pay Respondents \$363 in monetary sanctions.





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4 Arbitrator

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6  
7 IN THE MATTER OF THE ARBITRATION OF

8  
9  
10 Claimant, ) OIA Arbitration No. 14392  
11 vs. )  
12 ) **ORDER GRANTING RESPONDENT'S**  
13 Respondent. ) **MOTION FOR SUMMARY JUDGMENT**  
14 ) **DATE: December 27, 2017**  
15 ) **TIME: 10:00 a.m.**  
16 ) **Location: Telephonic**  
17 ) **Arbitration Date: 3/7-9/2018**  
18 )

19 Respondents

Motion for Summary

20 Judgment was heard via telephonic conference by Neutral Arbitrator Steven Enochian, Esq. on  
21 **Wednesday, December 27, 2017 at 10:00 a.m.** Respondent was represented by

22 of . Claimant was unrepresented but  
23 and appeared telephonically.

24 Upon consideration of the pleadings submitted in this matter and finding no triable issue  
25 of material fact, and good cause appearing therefore, IT IS HEREBY ORDERED THAT:

1. Respondent's Motion for Summary Judgment is GRANTED

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

1           Nothing in the Order prohibits or restricts the enrollee from discussing or reporting  
2 the underlying facts, results, terms and conditions of this decision to the Department of  
3 Manage Health Care.

4 **IT IS SO ORDERED.**

5 Dated: 12/27/17

By:   
STEVEN ENOCHIAN, ESQ.

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