JUDICIAL ARBITRATION AND MEDIATION SERVICES (JAMS)

In re the Arbitration of:

,	JAMS Ref. No.
Claimant	Arb. No. 14971
vs.	
	FINAL AWARD
Respondents	

I. Preface

This claim against a health care provider for professional negligence was arbitrated by agreement of the parties pursuant to the Rules For

The matter has been fully litigated and post arbitration briefs have been submitted. Counsel are thoroughly acquainted with the facts and applicable law, and thus an exhaustive recitation of the facts, evidence and governing law is unnecessary. The facts set forth herein consist of those found by the arbitrator to be true and necessary to a resolution of the dispute. To the extent this recitation differs from any party's position, that is the result of determinations as to credibility, relevance, burden of proof, and the weighing of evidence, both oral and documentary. Similarly, the legal issues and governing legal principles discussed are those applicable to the particular circumstances of this case.

II. Background

To alleviate back pain and correct neurological symptoms in her right leg and foot Claimant underwent spinal surgery (hemilaminectomy, discectomy and formaninotomy)

for a herniated disc in Respondents' hospital on January 4, 2017, as a result of which she developed a spinal epidural hematoma. Claimant's surgery on the right side of L4-5 was completed at approximately 2100 hrs. on January 4.[1] During the early morning hours of January 5 Claimant was experiencing pain, back spasms and neurological symptoms in her left leg, which had previously been asymptomatic. At or about 0100 nurse called the on-call neurosurgeon, Dr. , and reported these symptoms and that Claimant could not raise either leg. Dr. ordered an immediate CT scan, which he then reviewed with a radiologist and both agreed there was no sign of an epidural hematoma, although there was some blood in the surrounding tissues as is normal after such a surgical procedure. Following his review of the CT scan with the radiologist, Dr. personally performed a clinical examination of Claimant around 0300 and discovered that her condition as reported by nurse had improved significantly in that she could raise both legs, demonstrated increased motor function in each, and had no numbness in her groin or buttocks. His notes at that time state:

> "Currently pt reports that she can now move left foot but has tingling in foot and numbness of left lateral thigh which is new. No numbness of groin or buttox [sic]. Motor is 4/5 left dorsiflexor, quad, hip flexor with 0/5 right dorsiflexor, 4/5 quad and hip flexor."
>
> "Pt. with weakness and numbness possibly related to severe back spasms that is now improved. Only new finding seems to be sensory change in left L5 distribution which could be explained by recent root irritation from discectomy. Plan is to observe for next several hours and if no improvement consider MRI scan."

At 0810 Dr. noted that Claimant was reporting decreased sensation in her buttocks and groin and ordered an MRI, which was completed at 1100 and revealed an epidural hematoma. Claimant was immediately scheduled for corrective surgery and

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[1] All time references are in 24 hour format and are approximate.

at 1245 on January 5 Dr. evacuated the hematoma. As a result of the hematoma Claimant suffers from cauda equina syndrome.

III Discussion

Physicians are not guarantors or insurers of success. (*Majetich* v. *Westin* (1969) 276 CA2d 216, 220-221; *Stephenson* v. *Kaiser Foundation Hospitals* (1962) 203 CA2d 631, 636.) To establish a health care provider's liability for professional negligence the plaintiff has the burden of proving that the defendant violated the applicable standard of care and that the violation caused the plaintiff's damages. (See, e.g., *Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 999; *Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1077.) Causation generally asks whether the defendant's conduct was a substantial factor in bringing about the injury. (*Mitchell v. Gonzales* (1991) 54 Cal.4th 1041, 1049.) "In a medical malpractice action, the evidence must be sufficient to allow the [finder of fact] to infer that in the absence of the defendant's negligence, there was a reasonable medical probability the plaintiff would have obtained a better result. (Citations.)" (*Alef v. Alta Bates Hospital* (1992) 5 Cal.App.4th 208, 216); *Espinosa v. Little Company of Mary Hospital* (1995) 31 Cal.App.4th 1304, 1314-1315.)

Claimant does not attribute the hematoma to any negligence by Respondents; she does not challenge either the initial disc surgery, the second surgery for evacuation of the hematoma or claim a lack of informed consent for either procedure. Rather, she contends Respondents failed to diagnose and remove the hematoma in time to prevent her current condition. In her pretrial brief Claimant contends Dr. failed to include an epidural hematoma in his differential diagnosis, but the medical records belie this with Dr. 's note that the stat CT scan he ordered after receiving nurse 's call "does not show swollen wound or significant hematoma," and Claimant has since abandoned this theory. She now contends that (1) "[b]ased on Ms. 's symptoms

post-surgery, the standard of care required Dr. to consider an epidural lumbar hematoma as the most likely cause" and (2) "[o]nce an epidural lumbar hematoma is suspected as the cause of symptoms, an MRI is the required diagnostic imaging test to confirm or dispel an epidural lumbar hematoma if an imaging test is conducted," claiming that "[a] hematoma is the only thing that could be causing these symptoms."

Claimant relies primarily on her standard of care expert, Dr. whose testimony was equivocal. For example, he admitted that a "clinical examination is the most important piece of information and evaluation of a possible epidural hematoma," but also testified that based on nurse 's call to Dr. "there's no other explanation than a hematoma" and that Claimant should immediately have been taken to surgery without any imaging studies or clinical examination. Claimant seems to advance this approach by stating "the standard of care does not require imaging to be ordered, a physician can decide to operate without any imaging." It suffices to say that Respondents' experts held contrary opinions. As Respondents' expert testified: "[I]f [Dr.] didn't order a scan at that point, that would be simply bad medicine. It would have been wrong. But a CT scan is precisely what I and the great, great number of other neurosurgeons who were seeing that patient would have done. It's just you get an answer question [sic] very quick."

Evaluating Claimant's contentions in light of the entire record, the weight of the evidence establishes that: (1) the symptoms reported to Dr. by nurse are common in patients emerging from anesthesia after spinal surgery; (2) there are several causes other than an epidural hematoma that can account for those symptoms; (3) an epidural hematoma is an extremely rare event, occurring in only 0.1 to 0.3 percent of

cases[2]; (4) CT scans produce a much quicker image than an MRI, particularly at that hour of the morning when no MRI technician was on duty at the hospital, they are regularly used in these circumstances by neurosurgeons for those reasons, and their use for such purposes is within the standard of care; (5) Dr. 's clinical examination of Claimant following her CT scan revealed that her condition as reported by nurse was improving rather than deteriorating as Claimant contends; (6) it has not been established to a reasonable medical probability that earlier surgical intervention would have prevented Claimant's cauda equina syndrome, and (7) as soon as the hematoma was revealed Claimant was immediately taken to the OR for its evacuation.

In determining whether Dr. acted within the standard of care it must be viewed not from hindsight, but from his perspective from the time he was first notified about a patient in distress. When Dr. received nurse 's call about Claimant's symptoms he ordered an immediate CT scan which did not show a significant hematoma. He did not simply rely on his own review of the scan, but conferred with the radiologist, who agreed. Consequently, at that point in time there was no need to rush the patient into surgery as Claimant contends. Furthermore, when Dr. personally examined Claimant after reviewing her CT scan her condition had improved significantly as indicated, *supra*, an additional factor indicating that exploratory surgery was not indicated at that time either. When Claimant's condition later changed Dr. ordered an immediate MRI which revealed an epidural hematoma and she was immediately taken to the OR for its removal.

In summary, in response to Claimant's contention that Dr. had to "consider an epidural lumbar hematoma as the most likely cause," it is apparent from his

[2] Claimant's expert testified it could be even less, based on his experience.

progress notes that he did, but that the CT scan and his clinical examination of Claimant did not indicate an epidural hematoma existed at either of those times. Claimant stresses, correctly, that an MRI produces a better image of an epidural spinal epidural hematoma than a CT scan, but that is not the critical issue here. The issue is whether Respondents' use of the CT under these circumstances complied with the standard of care. As indicated, *supra*, the weight of the evidence establishes that Dr. 's imaging choice under these circumstances was within the standard of care. Furthermore, it bears repeating that Dr. did not rely on the CT imaging alone, but also on his personal clinical examination of Claimant which her own expert agreed was the most important diagnostic step in determining the existence of an epidural hematoma. That clinical examination revealed a patient whose condition was demonstrably improving and who did not appear to be suffering from an epidural hematoma.

"Medicine is not a field of absolutes. There is not ordinarily only one correct route to be followed at any given time. There is always the need for professional judgment as to what course of conduct would be most appropriate with regard to the patient's condition. . . [W]here there are several methods of approved diagnosis or treatment, which could be made available to a patient, it is for the doctor to use his best judgment to pick the proper one." (*Barton* v. *Owen* (1977) 71 CA3rd 484, 501-502.) "A difference of medical opinion concerning the desirability of one particular medical procedure over another does not . . . establish that the determination to use one of the procedures was negligent." (*Clemens* v. *Regents of Univ. of California* (1970) 8 CA3rd 1, 13.)

IV. Conclusion

I find and conclude that Respondents' care and treatment of Claimant in relation to this claim was at all times conducted within the appropriate medical standard of care.

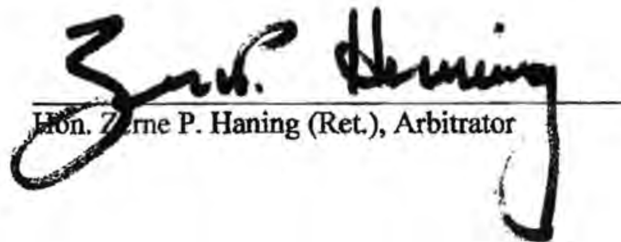
Claimant's condition is admittedly tragic, but it is not due to any fault or negligence on the part of Respondents. Because Respondents bear no liability for Claimant's condition there is no need to discuss the parties' remaining arguments on damages.

V. Decision and Award

IT IS THEREFORE THE DECISION OF THE ARBITRATOR that Respondents bear no liability for Claimant's condition, are the prevailing parties herein, and are entitled to and hereby are granted an award of no negligence or liability in their favor against Claimant. This Award resolves all issues between the parties submitted for decision in this proceeding in favor of Respondents.

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: March 29, 2019



Hon. Zerne P. Haning (Ret.), Arbitrator