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Attorneys for Respondents

ARBITRATION

IN THE MATTER OF ARBITRATION
BETWEEN:

Claimant,

vs.

Respondents.

JJK
~~PROPOSED~~ ORDER GRANTING
RESPONDENTS' MOTION FOR
SUMMARY JUDGMENT

Date: April 2, 2013
Time: 9:30 a.m.
Location: Via telephone
To set up call

Arbitrator: Hon. Margaret J. Kemp

The Motion for Summary Judgment of respondents
, and , served on January 11,
2013 was set for a telephonic hearing on April 2, 2013. On January 20, 2013 claimant served his
Statement of Non-Opposition to the Motion for Summary Judgment.

After full consideration of the evidence, the moving papers, the authority submitted by
counsel, oral argument, and good cause appearing therefore, the arbitrator finds that:

Respondents' motion for summary judgment is GRANTED.

There are no triable issues of material fact in this action and that moving party is entitled
to summary judgment as a matter of law.

///

1 IT IS THEREFORE ORDERED that the said Motion for Summary Judgment is granted
2 and the judgment shall be entered forthwith in favor of respondents

3
4 and against claimant

5 IT IS FURTHER ORDERED that each party shall bear their own fees and costs of
6 litigation.

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

11 Dated: Sub: 28, 2013

12 
13 HON. MARGARET J. KEMP

1 Margaret J. Kemp
ADR SERVICES, INC.
2 100 First Street, 27th Floor
San Francisco, CA 94105

3
4 IN BINDING ARBITRATION

5) Case No: OIA 11373

6) DECISION AND AWARD AFTER
7) ARBITRATION HEARING

8 Claimants,

9 vs.

10 ,
11
12 Defendant

13 _____
14 INTRODUCTORY STATEMENT

15 Pursuant to agreement with its members and the
16 governing rules of the Office of the Independent Administrator, this binding
17 arbitration on a claim of medical malpractice was heard on May 20, 21 and 22,
18 2013 by Hon. Margaret J. Kemp, Judge of the Superior Court (ret) in the
19

20 DECISION AND AWARD AFTER
ARBITRATION HEARING - 1

1 conference room of the law offices of _____, claimant's counsel, in
2 Fresno, California.

3 Claimants _____ and _____ appeared in person represented by
4 _____, Esq. and Respondent _____ appeared
5 and were represented by _____, Esq. of _____

6 The following persons were sworn, testified and cross-examined in the
7 proceedings though not in the following order. Claimants _____ and
8 _____, each testified, and called as witnesses the following persons: _____,
9 an R.N. at _____ who attended _____ during her labor; _____, the
10 claimant's mother; _____, M.D., an OB-GYN and the attending
11 physician during _____'s labor and delivery of her baby, _____, M.D. an
12 OB-GYN who saw _____ after the delivery of the baby for her urinary and bladder
13 problems; _____, the claimant's mother; _____, a
14 R.N. who attended _____ during her labor; _____, a _____ R.N. who
15 attended _____ during her labor; _____, a vocational rehabilitation
16 consultant; _____, a forensic economist; _____, a health
17 care financial administrator; and _____, M.D. OB-GYN. The
18 respondent called _____, M.D. and OB-GYN; _____,
19
20

1 M.D. Urologist; and , a certified rehabilitation counselor
2 and certified earnings analyst.

3 STATEMENT OF FACTS

4 was pregnant with her second child, who she planned to
5 deliver vaginally through labor to be induced on January 27, 2011 by Dr.
6 at who had seen throughout her pregnancy. Before that
7 could occur, 's water broke at about 3a.m. on January 24, 2011. At about
8 8:45 a.m. on that date, called the advice nurse and was told to come
9 into the birthing center for evaluation. Based on the examination and evaluation
10 conducted at the birthing center, was admitted and seen for the first time by
11 Dr. at 11:33 a.m. She was determined to have 2 centimeters dilation of the
12 cervix. This was the beginning of a protracted labor which concluded the next day,
13 about 8:11 a.m. on January 25, 2011, with the birth of a healthy baby boy via
14 vacuum extraction procedure. The baby received an APGAR score of 9 out of 10,
15 the highest such score Dr. had ever seen. It is the length of the labor and
16 what transpired during it culminating in the birth, which comprise gravamen of this
17 case.

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DECISION AND AWARD AFTER
ARBITRATION HEARING - 3

1 STATEMENT OF ISSUES

2 The first issue is whether the care received by during her labor
3 and delivery at on January 24 and 25, 2011 were beneath the standard of
4 care for labor and delivery providers. The second issue is if the standard of care
5 was breached by the respondent through its employees, did it result in the stress
6 incontinence and urinary retention problems suffered by the claimant,
7 thereafter. The third issue is whether suffered damages for which the
8 respondent is liable and if so, in what amount. The final issue is whether,
9 as the claimant 's husband is due compensation for loss of consortium if
10 respondent's care fell beneath the standard of care of the community.

11 DISCUSSION

12 What is clear in this case is that developed bladder complications
13 after her baby's birth. What is less clear is what those complications were, what
14 caused them, and what, if any, responsibility for those complications belongs to the
15 medical staff. The lion's share of the testimony, and submitted exhibits
16 and depositions, both lay and medical, in this matter goes to the question of the
17 length of 's labor and what if anything should have been done differently by
18 those attending to during her labor and delivery. The testimony in this case
19 came in a rather unorthodox manner with the claimant and her medical expert, Dr.

20 DECISION AND AWARD AFTER

1 catheterized during the first stage of her labor, but when she reached ten
2 centimeters of dilation and the second stage of labor, the catheter was removed by
3 the nursing staff. The testimony at the hearing was that this practice varied from
4 hospital to hospital and doctor to doctor. At Medical Center where Dr.
5 primarily practices, most doctors leave the catheter in place until the baby
6 is born. Some of the doctors at however, remove it before the birth with
7 the time of removal varying with the patient. None of the experts however, found
8 's practice of removing the catheter at the beginning of the second stage of
9 labor to be beneath the standard of care, and there was no testimony that by
10 removing it nerve injury was caused which resulted in the urinary retention
11 problem.

12 What remains is Mrs. ' claim that she never voided her bladder
13 between the time that she began the pushing which resulted in the baby's birth to
14 the time she left the hospital on January 26th. This is however, inconsistent with
15 the nursing records made at the time of the events, which record her having voided
16 three times for a total of 650 cc of urine within six hours after delivery.
17 further states that she did not empty her bladder until she was catheterized her on
18 January 27th removing only 250 cc of urine at that time. This is a relatively small
19 amount and is not consistent with someone not having urinated for essentially a

20

1 sphincter. He specifically had no opinion as to what caused the post partum
2 urinary retention in . He specifically denied that he thought the seven
3 hour second stage of labor experienced by had caused the urinary retention
4 problem because she was not actively pushing for significant periods of time
5 during that protracted time. He opined that 's injury was a nerve injury and
6 not a muscular one. During delivery of a baby the mother's nerves may become
7 compressed. The prudential nerve is one that is most often injured, but he further
8 opined that 's problem may due more to a misfiring of the nerve rather than
9 an actual injury to it. In 's case he found no obvious cause for her non-
10 obstructive urinary retention. He did opine that the inter stem device, which
11 has looked into, stimulates urinary function and allows the bladder to squeeze more
12 normally in about half of all female patients in whom it is implanted.

13 Dr. , the other defense expert, testified that he has seen post partum
14 urinary retention in his practice. It is his opinion that it is mostly caused by
15 epidurals administered to the mother during labor to ease her discomfort.
16 had an epidural and then a bolus and then a rebolus or a total of three
17 administrations of epidurals to ease her pain during labor. He did note that the
18 second stage of labor in 's case at seven hours was considerably longer than
19 the typical second stage of labor which lasts one and half to two hours. He

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1 however, did not find any violation of the standard of care by Dr. or the
2 nurses in allowing the second stage to go on for seven hours. The nurses were
3 administering Pitocin to increase the contractions, and despite Mrs. ,
4 requests for a Caesarian section, there was no medical reason to do so as there was
5 no fetal distress and no indication that the baby's head was too large to safely pass
6 through the mother's pelvis. The vacuum extraction later demonstrated this to be
7 accurate. Dr. perhaps would have encouraged to push more rather
8 than resting, which the epidurals permitted her to do. He is not critical of the
9 personnel's decision to allow rest periods during her labor given her
10 state of exhaustion. It is his opinion that 's care at was within the
11 standard of care.

12 Dr. has a contrary view. It is his opinion as the claimants' expert on
13 standard of care that was not given adequate attention by the medical
14 personnel during the second stage of her labor which he believes was contributory
15 if not the cause of her current bladder retention issues. It is his further his opinion
16 that the length of her labor caused enervation of her bladder together with the
17 epidurals and vacuum delivery. He opined that after two hours of second stage
18 labor, an assessment should have been done and that should have included a
19 physical examination. The nursing notes reflect that Dr. was at 's

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DECISION AND AWARD AFTER

ARBITRATION HEARING - 9

1 bedside in that time frame, but there is no indication of whether or not a physical
2 examination occurred. Dr. opined that without a physical exam, there was
3 a violation of the standard of care, but without a notation by the doctor he cannot
4 say that there was a violation of the standard of care for failure to perform a
5 physical examination. He did opine that failure to make adequate notations in this
6 regard were beneath community standards. With regard to 's request in the
7 early morning hours to have a C section performed, there should have been an
8 assessment done to see if that would have been appropriate according to Dr.
9 and without a notation by Dr. , he cannot determine if such an
10 assessment was done. The failure to make a note of any assessment is beneath the
11 standard of care in Dr. 's opinion because those who later read the notes
12 cannot determine which transpired.

13 The problem with Dr. 's testimony in this arbitrator's evaluation is
14 that it doesn't give any guidance or standard as to what proper care for
15 should have been. He is only critical of what personnel did, but provides no
16 guidance as to what could or should have been done to avoid the urinary retention
17 problem later. Could the retention problem have been avoided or could the nerve
18 misfiring /damage have already occurred by the time the 3a.m. examination was
19 done? Dr. could not say. At the 3a.m. assessment, should a Caesarian

20 DECISION AND AWARD AFTER

1 have been ordered? Would a C section have been appropriate when the baby was
2 only at Station 1 in the second stage of the delivery process, in no fetal distress,
3 and capable of vaginal delivery? Would a C section at this juncture or thereafter
4 prior to the vaginal birth have prevented the later urinary retention problems?
5 Would potential hazards to the baby and mother by a C section outweigh the desire
6 to avoid potential bladder problems later in the mother. These are unknowns and
7 certainly cannot be determined from Dr. 's testimony or perhaps at all. The
8 urinary retention problem as seen in is probably caused by nerve
9 compression at some time during the labor or delivery. It is unknown when or how
10 either specifically in or generally in other women in similar circumstances.
11 Dr. notes that a large baby, such as the one here of over eight pounds, can
12 compress a nerve or nerves during delivery. That alone could cause the urinary
13 retention problem, and would not be due to any negligence on the medical
14 staff's part.

15 CONCLUSION

16 The arbitrator is extremely sympathetic to Mrs. ' urinary tract/bladder
17 issues. There is just insufficient evidence that they were caused by breaches in the
18 standard of care by medical personnel. Post partum bladder issues are not
19 unusual among women with multiple vaginal deliveries. Why and how they are

20 DECISION AND AWARD AFTER

1 caused is not yet known to medical science, and more importantly how they can be
2 prevented is also unknown.

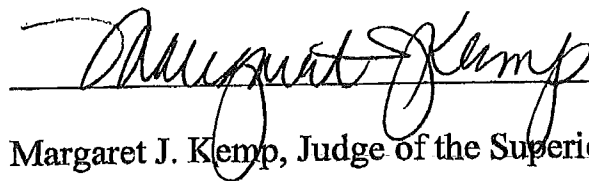
3 AWARD

4 Accordingly, the arbitrator therefore finds that there is insufficient evidence
5 of a breach or breaches of the standard of care by any of the medical
6 personnel and therefore finds for the defense and against the claimant

7 . By this finding, the claim of loss of consortium by also
8 cannot be sustained and the arbitrator finds for the defense on his claim as well.

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

12
13 Dated this 1st day of July, 2013

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17 Margaret J. Kemp, Judge of the Superior Court (ret)

18 Arbitrator

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20 DECISION AND AWARD AFTER

ARBITRATION HEARING - 12

Kemp

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IN RE THE ARBITRATION BETWEEN:

and	
Claimant(s),	
vs.	
non-profit corporation,	, a
non-profit corporation, and	, a
professional corporation,	, a
Respondent(s).	

[Signature]

**[PROPOSED] ORDER GRANTING
MOTION FOR TERMINATING
SANCTION FOR FAILURE TO
COMPLY WITH THE NEUTRAL
ARBITRATOR'S ORDER, AND
DISMISSING DEMAND FOR
ARBITRATION WITH
PREJUDICE**

The Motion for Terminating Sanction for Failure to Comply with the Neutral Arbitrator's Order of respondents, [redacted], a non-profit corporation, [redacted], a non-profit corporation, and [redacted], a professional corporation, came on regularly for hearing on June 30, 2014 at 3:30 p.m. via telephone conference. [redacted], Esq. appeared for respondents. Claimant in *propria persona* [redacted] appeared on her own behalf, but no appearance was made for claimant in *propria persona* [redacted].

On May 22, 2014, claimants were ordered to serve responses to respondents' Form

1 Interrogatories, Set One, Special Interrogatories, Set One, and Demand for Inspection of
2 Documents, Set One. Claimants failed to comply with this written order, and offered no
3 justification for their failure to comply with this order. Furthermore, the claimants did not
4 oppose the respondents' Motion for Terminating Sanction for Failure to Comply with the Neutral
5 Arbitrator's Order.

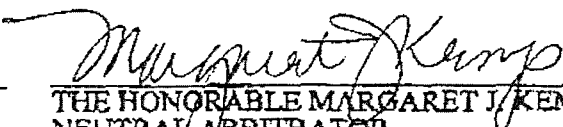
6 Having reviewed respondents' moving papers, and good cause appearing therefor,

7 IT IS HEREBY ORDERED:

8 Respondents' Motion for Terminating Sanction for Failure to Comply with the Neutral
9 Arbitrator's Order is granted, whereby claimants' Demand for Arbitration dated July 8, 2013 is
10 dismissed with prejudice in its entirety.

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

14
15 DATED: July 2, 2014

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18 _____
19 THE HONORABLE MARGARET J. KEMP (RET.)
20 NEUTRAL ARBITRATOR
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2 A Professional Corporation

3 Telephone:
4 Facsimile:
5 E-mail:

6 Attorneys for Respondent(s),
7 , a non-profit
8 corporation;
9 , a non-profit corporation; and
10 professional corporation , a

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12 **IN RE THE ARBITRATION BETWEEN:**

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Claimant(s),
vs.
, a
non-profit corporation;
, a
non-profit corporation; and
professional corporation,
Respondent(s).

ORDER REGARDING
RESPONDENTS' MOTION FOR
SUMMARY JUDGMENT OR,
ALTERNATIVELY, SUMMARY
ADJUDICATION OF CLAIMS

21 The Motion for Summary Judgment, or, Alternatively, Motion for Summary
22 Adjudication of Claims of Respondents,
23 , and
24 came on regularly for hearing on October 31, 2014, before the neutral arbitrator, The Honorable
25 Margaret J. Kemp. Also included in the hearing was claimants' Request for a Continuance of the
26 Motion for Summary Judgment. The parties appeared telephonically. , Esq.,
27 appeared for the Claimants and , Esq., of appeared
28 for the Respondents.

1 After oral argument, Claimants request for a continuance of the hearing on the Motion for
2 Summary Judgment was denied. The Request for a Continuance was made just four days prior
3 to the hearing date, with no Request to Shorten Time and there was no reasonable reason for the
4 late filing.

5 After full consideration of the evidence, the parties' Separate Statements of Undisputed
6 Material Facts and the authorities, the neutral arbitrator finds that there is no triable issue of
7 material fact as to the Claimants' claim of negligent medical care, and there is no actionable
8 claim or cause of action under California Law against Respondents as to the claim of failure to
9 provide spiritual care, and Respondents are entitled to Summary Adjudication of each claim as a
10 matter of law for the reasons set forth in Respondents' motion. The Respondents' providers met
11 the applicable standard of care in providing medical care to Claimant, , and to the
12 decedent, , and did not negligently cause decedent's death, nor did they negligently
13 cause the Claimants to suffer emotional distress. These findings are based on the evidence set
14 forth in Respondents' Separate Statement of Undisputed Material Facts, particularly the
15 Declarations of Respondents' experts. This evidence is sufficient to warrant Summary
16 Adjudication of each claim.

17 The arbitrator denies claimants' request to proceed on the theory of negligent
18 misrepresentation, as this has never been alleged nor raised as a theory of liability prior to this
19 hearing. This request is not timely, as the arbitration hearing is set to commence a little over one
20 month after the hearing date on this motion and this is insufficient time for a change in
21 Claimants' theory of liability for recovery.

22 IT IS HEREBY ORDERED that the Motion for Summary Judgment or, Alternatively, the
23 Motion for Adjudication of Claims of Respondents, ,
24 , and
25 , is granted. Each party will bear their own costs incurred in this action.

26 ///
27 ///
28 ///

1 Ross E. Lampe, Esq. (SBN 172336)
2 Janelle Covington (SBN: 305634)
3 MURO & LAMPE, INC.
4 75 Iron Point Circle, Suite 155
5 Folsom, CA 95630
6 Telephone: (916) 817-6300
7 Facsimile: (916) 817-6355

8 Attorneys for Respondents

9 and

10 IN THE MATTER OF ARBITRATION

11	Claimants,)	ARBITRATION NO.: 13711
12	vs.)	[PROPOSED] ORDER GRANTING MOTION
13)	FOR SUMMARY JUDGMENT
14)	Date: September 6, 2016
15	and)	Time: 3:30 p.m.
16	Respondents.)	Arbitrator: Judge Margaret Kemp
17)	Location: Telephonic Hearing
)	Dial In: 1-716-749-0656
)	Access Code: 07980#

18 The Motion for Summary Judgment of Respondents

19 and

20 ("Respondents") came for hearing on September 6, 2016, before the Arbitrator

21 Hon. Margaret Kemp. Esq. appeared on behalf of Claimant
22 ("Claimant"), and , Esq. of Inc. appeared for
23 Respondents.
24

25 After consideration and reading of the moving papers, including the Memoranda of
26 Points and Authorities, Separate Statements of Undisputed Material Facts and the
27 supporting Declarations and exhibits, and the arguments of counsel, Arbitrator Hon.
28

1 Margaret Kemp, finds that there are no triable issues of material fact and Respondents are
2 entitled to judgment as a matter of law.

3 THEREFORE,

4
5 ARBITRATOR HON. MARGARET KEMP, HEREBY ORDERS AND DECREES that
6 Respondents' Motion for Summary Judgment is hereby GRANTED.

7 FURTHER,

8
9 ARBITRATOR HON. MARGARET KEMP, HEREBY ORDERS AND DECREES that
10 JUDGMENT is entered in favor of Respondents and against Claimant as to the entirety of
11 this action and the Demand for Arbitration and this matter is DISMISSED.

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

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16 Dated: 9/27/16

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18 Arbitrator, Hon. Margaret Kemp

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