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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,

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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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Facsimile:

Attorneys for Respondents
a Non-Profit Corporation;
a Non-Profit Corporation; and
a Professional Corporation

IN RE THE MATTER OF ARBITRATION BETWEEN

Claimants,
v.
a Non-Profit Corporation;
Corporation; and
Corporation, a Non-Profit
a Professional
Respondents.

CASE NO.: 14779

**(PROPOSED) ORDER ON
RESPONDENTS' MOTION FOR
SUMMARY JUDGMENT**

**DATE: October 24, 2018
TIME: 3:30 p.m.
BEFORE: Hon. Margaret Kemp**

Arbitration Date: May 6-10, 2019

Respondents, a Non-Profit Corporation;
, a Non-Profit Corporation; and
.. a Professional Corporation (hereafter "Respondents"), Motion for
Summary Judgment was heard on October 24, 2018, at 3:30 p.m., before Honorable Margaret
Kemp.

Having considered the moving papers, the evidence and arguments presented at the hearing,
and the applicable legal authorities, IT IS HEREBY ORDERED THAT:

Respondents' motion for summary judgment is GRANTED.

The motion is granted on the basis that there is no triable issue of fact for arbitration.

1 **REASONS FOR DECISION**

2 There is no evidence submitted that supports a claim of medical negligence against
3 Respondents. The deposition of claimant's expert, Dr. , was taken by Respondents after the
4 original opposition to the MSJ was served. In that deposition, Dr. conceded the following
5 pertinent facts on liability and causation.

- 6 (1) The CT scan before the D&C was read to show possible clot versus retained placenta, and it
7 was appropriate that these differential diagnoses be considered even after the D&C;
- 8 (2) The dilation and curettage and related procedures Claimant underwent on 4/26/2016 were
9 within the standard of care;
- 10 (3) The Claimant was discharged from the hospital in stable condition;
- 11 (4) There was no evidence that Claimant told her medical providers about abnormal pain or
12 bleeding before her visit with Dr. on May 25, 2016;
- 13 (5) There is no evidence that the visit with Dr. , including the exam and plan, breached
14 the standard of care;
- 15 (6) The dilation and curettage and related procedures Claimant underwent on June 22, 2016
16 were within the standard of care;
- 17 (7) It is possible that the placenta tissue removed on June 22, 2016 could have been the result of
18 a fragment of placenta embedded in the wall of the uterus, not visible at surgery, which
19 grew into a placental polyp. And, there was no reasoned explanation from Dr. as to
20 why retained placenta, as opposed to a placental polyp, was the cause in fact of the claimed
21 injuries;
- 22 (8) It would be speculation to say that the ischemic stroke claimant suffered during the June
23 22nd D&C procedure would not have occurred with an earlier surgery. Thus, there is no
24 competent evidence that the stroke was in any way related to medical negligence. As such,
25 there is no triable question of fact on causation.

26 As a result of these concessions by Dr. ; the Claimant has failed to present any
27 evidence to support a claim of medical negligence and causation.

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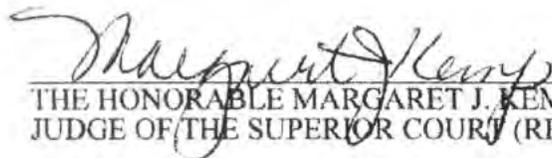
JUDGMENT

Accordingly, Respondents' motion for summary judgment is GRANTED. Judgment is hereby entered in favor of Respondents and against Claimant.

"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."

IT IS SO ORDERED.

Dated: Oct. 31, 2018


THE HONORABLE MARGARET J. KEMP
JUDGE OF THE SUPERIOR COURT (RETIRED)