

JAMS ARBITRATION CASE REFERENCE NO. 1120010959

Claimant(s),

and

**- Arbitration No. 11511,
Respondent(s).**

ORDER REGARDING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

A telephonic hearing was conducted in this matter on 4/30/2013 to address respondent's Motion. Esq. appeared for Respondent. Ms.

appeared for herself. The matter was argued and taken under submission. The Arbitrator, having reviewed the Motion and supporting papers and Claimant's opposition to the Motion now makes the following order:

REVIEW OF FACTS AND GROUNDS FOR MOTION

The Demand for Arbitration filed on behalf of Ms. alleges on April 4, 2011 claimant was negligently cared while a patient at an unidentified by being left unattended and unsecured in her hospital bed after calls for help which allowed her to fall from bed proximately causing injury and damages. The Arbitrator in reviewing the documents filed in support of and in opposition to the Motion believes the following is a reasonable summary of the facts concerning the Demand:

Ms. was an inpatient at Hospital following spine surgery on 3/31/2011. During the evening of April 3-4, 2011 Ms. was found on the floor of her room next to her bed by her night Nurse Ms. , with a pillow under her head. While the facts are somewhat in dispute as to when and how she got there, Ms. apparently slid out of bed after calling for help for a bedpan previously placed by the Nurse. The Nurse heard Ms. yelling, responded, and assisted her back to bed. Examinations by the Nurse and Dr. , a hospital based physician, documented by declarations filed in support of the Motion found no change in neurological, motor, or sensory function, and no change in pain level prior to the incident. Dr. also declared her examination findings after the incident were no different than her exam the previous day.

Ms. Opposition quotes portions of her deposition that deny certain facts and statements appearing in the records and declarations filed in support of the Motion. While

the Opposition is not in the proper form of a declaration, under oath deposition testimony could be used to create questions of fact as to the actions and events leading up to being found on the floor. However, the Opposition makes no mention of the incident causing any claimed injury or damages from the slip or fall from the bed or any deposition testimony creating any questions of fact as to causation of damages.

Respondents' Motion is based on 2 arguments: [1] No expert opinions have been offered by declaration that the Nursing care was below the applicable standard of care; and [2] no expert testimony has been offered by declaration to establish any alleged below standard of care nursing care was as a reasonable medical probability the cause of any alleged damages to Ms.

DISCUSSION OF LAW AND FACTS

In Medical Malpractice cases Expert opinion testimony is usually required to prove or disprove that the defendant complied with the standard of care. *Kelley v Trunk* 66 Cal.App.4th 519[1998]. In cases involving Nursing care, however, expert opinion may not be required where alleged negligence is within the common knowledge of layman. *Massey v Mercy Medical Center Redding*, 180 Cal.App.4th 690[2009]. Insufficient attention by a Nurse to a fall risk patient who falls from bed is an instance where expert opinion has not been required. *Massey v Mercy Medical Center Redding*, *supra*; *Griffen v County of Colusa* 44 Cal.App.2nd 915[1941]; *Stevenson v Alta Bates, Inc.* 20 Cal.App.2nd 303[1937]. The undisputed fact statement filed in support of the motion states Ms. Drummond required nursing assistance to get out of bed and sit in a chair. While the Massy case has some facts similar to ours, there is one major exception! The Massy patient's fall caused a compression fracture to his back at T-12.

Given case law and the facts and contentions outlined in the Motion and Opposition to the Motion, Expert opinion testimony may not be required here to prove the Nurse was negligent. Respondent has offered a declaration in support of the Motion from the Nurse whose conduct is in question stating that she was at all times in compliance with the standard of care in the community. The declaration gives only the opinion. Whether that declaration is sufficient, however, is not an issue since no opposing Expert declaration was filed. See *Kelley v Trunk*, *supra* at p.524.

Negligence or breach of the standard of care is not the only issue that must be proven by claimant in a Bodily Injury Medical malpractice case. Injury Causation must be proven within a reasonable medical probability based upon competent expert testimony. Mere possibility alone is insufficient to prove a prima facie case. *Bromme v Pavit* 5 Cal.App.4th 1487[1992], *Jones v Ortho Pharmaceutical Corp.* 163 Cal. App.3rd. 396[1985]. Here, Respondents have offered expert declarations and hospital records showing observation and examination following the incident showed no objective or subjective findings of injury. No opinion evidence or opposition to the issue of causation and damages was filed.

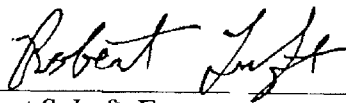
A Motion for Summary Judgment will be granted if the moving papers establish that there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law. *Branley v Pisaro* 42 Cal.App.4th 1591[1996]. In a medical malpractice case when the defendant shows by opinion evidence that a claim has no merit the burden shifts to the claimant to show a triable issue of fact exists. *Jambazian v Borden* 25 Cal.App.4th 836[1994]. Claimant offered no expert opinion evidence to contradict the issue of damages and causation. Since this is required to create questions of fact to defeat a motion for summary judgement this motion must be granted.

ORDER

1. The Respondent's Motion for Summary Judgment is Granted. The claim is ordered dismissed.
2. The Arbitration hearing dates currently set for 7/23/2013 - 7/24/2013 are ordered off calendar.

Dated:

5/13/2013



Robert S. Luft, Esq.
Arbitrator

JAMS ARBITRATION CASE REFERENCE NO. 1120013588

Claimant(s),

and

**- Arbitration No. 14481,
Respondent(s).**

ORDER REGARDING MOTION FOR SUMMARY JUDGMENT

In October 2017 the Respondent _____ filed a Motion for Summary Judgment. The Motion was supported by Respondents' expert Dr. _____ MD. Dr. _____ gave a written declaration stating Claimant's medical treatment by _____ was performed within the standard of care. Dr. _____ provided adequate information and reasons to support his opinion to a degree of medical probability. The Claimant Mr. _____ filed written opposition to the Motion which included a very short letter from Dr. _____ an Otolaryngologist. Claimant also provided Dr. _____ medical background including education, practice experience and Administrative position.

The written information provided by Dr. _____'s letter was inadequate evidence to support a granting or denial of the motion for Summary Judgment. The Arbitrator granted a further hearing on the Motion and the wishes of the parties to depose Dr. _____. The Deposition was taken on 1/12/2018. Claimant and Respondent attended the Deposition. A copy of the Deposition has been provided to the Arbitrator. Both parties questioned Dr. _____. The Arbitrator has read the deposition.

Code of Civil Procedure sec. 437c provides that a 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

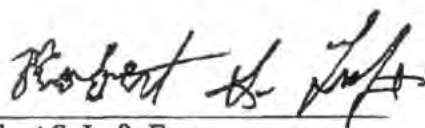
party is entitled to a judgment as a matter of Law. Claimant in this matter did not submit any declaration of an expert in opposition to the Motion for Summary Judgment.

In reviewing the papers submitted by the parties, the Arbitrator found no evidence from the 2 medical experts Dr. [redacted] and Dr. [redacted] that would prove medical malpractice. In page 22 of Dr. [redacted]'s deposition Mr. [redacted] states Dr. [redacted] "is my expert and he is an expert." In reviewing the deposition Dr. [redacted] testified [redacted]'s treatment was appropriate and met the standard of care. He also agreed with declarations and statements by Dr. [redacted] and that [redacted]'s treatment was within the standard of care. In conclusion, the deposition testimony of Dr. [redacted] and the declaration of Dr. [redacted] both establish that Respondents medical care was within the standard of care and to a degree of medical probability did not cause and was not responsible for the alleged damages in this matter.

There existed no triable issue of material fact established by Dr. [redacted] and/or Dr. [redacted] who appear to have been retained experts in this case. Even if Dr. [redacted] was not a retained expert his deposition testimony coupled with the declaration of Dr. [redacted] there is no triable issue as to any material fact and the Arbitrator, finds the Motion for Summary Judgment shall be granted as a matter of Law.

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 19, 2018


Robert S. Luft, Esq.
Arbitrator

JAMS ARBITRATION CASE REFERENCE NO.

Claimant(s),

and

**- Arbitration No. 14572,
Respondent(s).**

REPORT AND DECISION REGARDING MOTION FOR SUMMARY JUDGMENT

On March 16, 2018, Respondent filed and served a Motion for Summary Judgment. The motion and supporting papers were served on the Arbitrator and Claimant. A telephonic hearing was scheduled and held on June 5, 2018 at 9:00 a.m. Any opposition to the motion must be filed and served not less than 14 days preceding the noticed date of the hearing. No opposition was filed and Claimant did not appear for the hearing on the motion.

The Arbitrator received an email from Claimant just prior to the day of hearing on the Motion for Summary Judgment. The email stated he had filed a complaint in a different forum, was changing venue, and had filed a petition for bankruptcy. There is no mechanism or rule in Arbitrations that an ongoing or scheduled hearing on a Motion for Summary Judgment should be cancelled or stayed because claimant had filed a petition for Bankruptcy.

Decision Regarding Motion for Summary Judgment

The Respondents' Motion for Summary Judgment is granted based on the lack of medical evidence to prove the issue of medical malpractice.

The medical malpractice claim in this matter alleges Dr. _____ of _____ was medically negligent and caused permanent injury to Claimant. The issue of medical negligence (malpractice) must

be decided on the basis of expert testimony.

The undisputed facts are that Dr. [redacted] 's medical care of Mr. [redacted], including surgery and follow-up care, was reasonable, appropriate, and within the standard of care.

Respondents' expert is Dr. [redacted], who is a Professor of Neurosurgery at [redacted]. He is a Board Certified Neurological Surgeon. Dr. [redacted] reviewed medical records regarding Mr. [redacted] and his medical care. There was no triable issue or opposition to any material fact from Dr. [redacted].

The Claimant offered no medical expert in opposition to Dr. [redacted]. Dr. [redacted] of [redacted] was deposed by Claimant. There was no evidence of Dr. [redacted] acting below the standard of care.

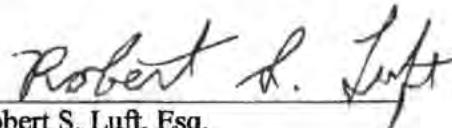
In conclusion, there was no actual loss or damage to Claimant resulting from Dr. [redacted] 's care and treatment and there was no evidence of medical negligence or medical malpractice. A Motion for Summary Judgment shall be granted if all papers submitted show there is no triable issues as to any material fact. Based on the evidence submitted, the Motion for Summary Judgment is granted.

The issue of Claimant filing a Petition for Bankruptcy just prior to the hearing on the Motion for Summary Judgment:

There is no mechanism in the [redacted] Rules that stay the proceedings upon the filing of a Petition for Bankruptcy. We did not receive any documentation from the Court or automatic stay of the Motion for Summary Judgment Hearing from the Court. The hearing on the Motion for Summary Judgment remained filed and served and scheduled for telephonic hearing on June 5, 2018 at 9:00 a.m.

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: 6/18/2018


Robert S. Luft, Esq.
Arbitrator