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IN RE ARBITRATION BETWEEN

Case No. 13993

Claimant,

AWARD OF ARBITRATOR

v.

and

Respondents.

The above-entitled matter came on for hearing on May 23-24, 2017, before Arbitrator Monty A. McIntyre. Claimant was represented by attorney Esq., and Respondents and were represented by attorney Esq. of

Summary of the Facts

In 2013 and 2014 Claimant experienced groin pain and underwent appropriate conservative treatment for her condition. Ultimately, M.D. indicated that Claimant would benefit from a right total hip arthroplasty, but she would not be able to continue playing pickle ball. Claimant sought another opinion and met with M.D., who agreed that Claimant was a candidate for a right total hip arthroplasty, but he felt she could resume playing pickle ball after she recovered from her surgery.

1 On July 31, 2014, Dr. performed a right total hip arthroplasty using a DePuy
2 Pinnacle cup and a polyethylene liner. Both medical experts agreed that the operative report of
3 Dr. described proper placement of the cup and proper locking of the liner into the cup.
4 Post-operative xrays showed the right hip replacement in good position and no evidence of
5 fracture. Claimant was discharged from the hospital on August 3, 2014.

6 On December 4, 2014, Claimant felt a "pop" in her right leg while dancing. Claimant
7 emailed Dr. on December 9, 2014 to inform him of this incident. Dr. was not
8 routed this email and did not see it in December. It was routed to a physician assistant (PA),
9 and was responded to by P.A. His response, in part, said to offer Claimant a
10 follow up to discuss in clinic. L.V.N. called Claimant, read her the response by P.A.
11 and documented that Claimant preferred to monitor her symptoms for now before
12 scheduling a follow up visit.

13 On February 23, 2015, Claimant fell at a pickle ball court and ended up being taken to
14 the emergency room at A CT scan suggested she had a disassociated liner.
15 Claimant returned to Dr. who opined that the liner was disassociated. Surgery to revise
16 the right total hip arthroplasty was performed on February 28, 2015. Dr. found the liner
17 was disengaged and flipped out inferiorly. Inspection of the liner revealed that over half of the
18 locking tabs were broken from the rim of the cup. Dr. inserted a new Zimmer cup and a
19 new polyethylene liner. Claimant was discharged from the hospital on March 3, 2015.

20 After the revision surgery Claimant developed several problems including a right foot
21 drop problem, a right "rod" like pain in her buttocks, and "denting" in her buttocks.

22 On April 15, 2015, Claimant had a post-surgery follow up visit with Dr. Dr.
23 testified that he told Claimant the original liner had become disassociated. Claimant
24 testified that during this meeting Dr. told Claimant and her friend, that
25 he had put the liner in wrong. Dr. denied ever doing this or saying this.

26 The Alleged Negligence

27 Claimant presented two theories of medical negligence. First, Claimant alleged that Dr.
28 negligently and improperly placed the original liner and this caused the disassociation.

1 Second, Claimant alleged that Dr. [redacted] negligently failed to follow up on the December 9,
2 2014 email from Claimant.

3 The Award

4 Having received and considered evidence both oral and written, and having considered
5 the arguments of counsel, the award of the Arbitrator is as follows: **the Arbitrator finds for**
6 **Respondents and against Claimant.**

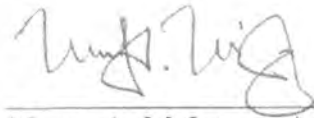
7 Claimant did not prove that Dr. [redacted] negligently inserted the original liner. Both
8 expert physicians agreed that the operative report described proper placement of the liner and
9 the cup. Claimant's expert, [redacted] M.D., testified that the fact that the liner
10 ultimately disassociated meant it had been improperly placed by Dr. [redacted] But respondents'
11 expert, [redacted] M.D., testified that the medical literature indicates there have been 34
12 or 35 instances of Pinnacle liner disassociations, from as early as three months post-surgery to
13 as late as five years post-surgery, and the literature did not suggest that any of the physicians
14 who had placed the liners were negligent. Under this evidence, Claimant did not satisfy her
15 burden of proof on the issue of negligence in placing the liner.

16 Claimant did not prove that Dr. [redacted] negligently failed to respond to Claimant's email
17 dated December 9, 2014. The evidence was uncontradicted that Dr. [redacted] was not made aware
18 of Claimant's email in December and that email was responded to by other [redacted] employees.
19 Respondent's expert Dr. [redacted] testified that the response by the other [redacted] employees
20 satisfied the standard of care. Claimant's expert Dr. [redacted] criticized Dr. [redacted] for not
21 following up on the email, but he offered not testimony criticizing the follow up by the other
22 [redacted] employees. Moreover, Dr. [redacted] admitted that he did not know if the ultimate problem
23 would have been found sooner even if Dr. [redacted] had followed up differently in December.
24 This testimony by Dr. [redacted] indicated that no causation could be proven even if the follow up
25 to the email had been below the standard of care. Claimant did not satisfy her burden of proof
26 on the issue of negligence in not following up further on the December email.

27 **NOTHING IN THIS ARBITRATION AWARD PROHIBITS OR RESTRICTS THE**
28 **ENROLLEE FROM DISCUSSING OR REPORTING THE UNDERLYING FACTS,**

1 RESULTS, TERMS AND CONDITIONS OF THIS DECISION TO THE DEPARTMENT OF
2 MANAGED HEALTH CARE.

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4 Dated: June 12, 2017



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Monty A. McIntyre, Arbitrator