

JUDICATE WEST
SANTA ANA OFFICE



IN THE MATTER OF THE ARBITRATION)
BETWEEN:)

) Arbitrator: Hon. Gregory Munoz, Retired

) AWARD OF ARBITRATOR

) Claimant,

) Vs.

) Respondent.

14
15 This binding arbitration came on for hearing at the office of Judicate West in Santa Ana. The
16 Arbitrator was Hon. Gregory Munoz, retired judge. Esq., represented the
17 Claimant, Esq., and Esq., from the Law Firm
18 of represented the Respondent,

19 The arbitration was heard on February 27
20 and March 1, 2018, and submitted for ruling. The parties previously stipulated to the
21 dismissal of the case as to and

22 There was no claim for special damages for lost earnings or medical expenses.

23
24 INTRODUCTION

1 This is a medical negligence case that arose out of an exploratory laparoscopy that was
2 performed on Claimant on February 24, 2016, by Dr. M.D., at
3 California. was 24 at the time of this procedure.

4 Despite her young age, she had an extensive and complicated medical history. Some of her
5 most significant maladies were anemia, proteinuria, thrombocytopenia, autoimmune
6 lymphoproliferative syndrome (ALPS), and an enlarged liver and spleen. In 2014, she
7 experienced pain in the abdomen and pelvic area and was prescribed Prednisone. In 2015,
8 she was diagnosed with ALPS. In November 2015, an MRI of her pelvis showed findings that
9 were suggestive of peritoneal carcinomatosis. In December 2015, a CT of her abdomen and
10 pelvis revealed extensive omental/peritoneal nodularity, suggesting again the possibility of
11 lymphoma or cancer. In January 2016, she had a CT-guided biopsy of the omentum that
12 showed acute and chronic inflammation of the omentum but no carcinoma. Nevertheless, the
13 physicians were concerned that she might have an undiagnosed malignancy, and she

14 was referred to Dr. for the purpose of discussing a laparoscopic biopsy of the
15 omentum. She met with Dr. on February 18, 2016. They discussed the fact that she
16 was having pelvic pain and the need for having the laparoscopic procedure. Dr.
17 explained the risks of the procedure. Claimant agrees that she was informed of certain risks
18 but denies that she was told of the possibility of the need for a bowel resection. The
19 laparoscopic procedure was scheduled to be performed on February 24, 2016, at

20 California. The operative report reflects that after the patient
21 was placed under general anesthesia, a 5mm supraumbilical incision was made through a
22 scar left from a prior procedure. The report further states that "on exploration of the abdomen
23 it was noted that there was a large omental adhesions (sp) adherent to the abdominal wall
24 between the pubis and umbilicus. There was also fluid in the pelvis which was aspirated out

1 and sent for cell block pathology. The omental adhesions were taken off the abdominal wall
2 with the Ligasure by first dividing it from the mass. And then removing the mass from the
3 peritoneum." (It was later determined that the pathologic specimens were benign.) The
4 operative report goes on to state that the belly showed some nodular lesions and evidence of
5 endometriosis in the pelvis and the ovaries, and this was confirmed with the oncologist and
6 Dr. who came in to evaluate the findings. The report states that the umbilicus was
7 opened from the defect up to the supraumbilical incision and Bovie electrocautery was used
8 to divide the tissues entering the peritoneal cavity. The mass was removed and sent to
9 pathology. Dr. testified in his deposition that he believed that he used a Ligasure
10 instrument to free up the multiple omental adhesions that were almost solid from the
11 umbilicus to the pubis. The Ligasure has the ability to cauterize and then cut the tissue once
12 it is fully cauterized. He testified that the Ligasure has the advantage of having a low thermal
13 spread, less than 1 to two mm. The mass was found to be sitting in the middle of the
14 omentum. They removed the entire mass by first removing it from the abdominal wall and
15 then cutting all the way around it. Dr. further testified that he removed the mass from
16 the omentum with the Ligasure. The mass was between the sigmoid colon and the cecum,
17 and he was cutting tissue with the Ligasure immediately above this area. Dr.
18 testified that before closing the abdomen, they observed the area where they operated by
19 looking with the camera. When asked if he could visualize any part of the sigmoid colon by
20 using the camera, he replied, "In a usual case, yes." Then he was asked, "How about this
21 case?" His reply was "I can't give you a direct recollection of it, but I'm looking at the ovaries
22 and tubes, so I imagine I've moved the sigmoid colon off of them to allow me to look at
23 those." He did say later in his deposition that he did not recall having to move or pick up the
24 sigmoid colon during this procedure.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Ms. [redacted] was discharged from the hospital on February 24, 2016, on the evening of the day of her surgery. She was feeling better except for some tenderness and soreness. However, within 2 days after surgery, she started having unbearable pain, and she was rushed to [redacted] where she reported that she had severe diffuse abdominal pain with vomiting for 1.5 days. After working her up, doctors determined that a laparoscopy should be performed. She had surgery in the late hours of February 27, 2016.

Because of her delicate condition, the surgeon, Dr. [redacted] decided to do a laparotomy. During the surgery Dr. [redacted] found a perforation in the anterior midsigmoid colon. He re-sected the sigmoid colon and did a colostomy, with the placement of a Hartman's pouch. Normally, a colostomy is closed within three to six months, but because of her anemia and other conditions, hers was not closed until February 14, 2017. Dr. [redacted] also excised a large keloid scar and repaired a hernia of the stoma.

CONTENTIONS OF THE PARTIES

Respondent's Contentions

It is Respondent's position that Dr. [redacted] was not negligent because Claimant had a host of serious chronic conditions that prevented her from healing from a thermal injury, from which a normal person would have healed without medical intervention. Respondent contends in its trial brief that "an unintentional, unnoticeable thermal injury occurred which a normal person would have healed from. But in Ms. [redacted] case, this injury eventually

1 progressed to a full perforation. Respondent contends that was an unanticipated event, so
2 Dr. was not required to inspect the colon for an unexpected thermal injury.”

3
4 **Claimant's Contentions**

5 There is no merit to Respondent's arguments. Respondent argues that Dr. should
6 not be required to anticipate that Claimant was in such poor physical shape that she would
7 not heal from a thermal injury caused by the Ligasure the way a healthy, normal person
8 would. Even if this is true, Respondent knew better than anyone else the medical history of
9 Claimant and, in fact, was aware of every malady from which Claimant suffered. Furthermore,
10 the evidence reflects that Claimant was in fairly good physical condition as evidenced by the
11 fact that except for the perforation and the ensuing peritonitis, she made a good recovery
12 from the three surgeries involved here. Knowing of Claimant's illnesses, Respondent should
13 have been more cautious in caring for Claimant. Dr. failed to exercise the degree of
14 care that was required of him. He should have been more careful in operating the Ligasure
15 to avoid having it come in contact or in close proximity to the colon. He also failed to conduct
16 a thorough inspection of the colon before closing the abdomen, which would have revealed
17 the thermal injury. If he had done this, he could have prevented the perforation by placing a
18 few sutures at the injury site.

19
20 **INJURIES AND DAMAGES**

21 I have carefully and conscientiously weighed and considered the evidence in this case.
22 I find that Claimant has carried her burden of proof in establishing that Dr. fell below
23 the standard of care in the care and treatment of Claimant. I also find that Claimant has
24 proven that she has sustained general damages for her pain and suffering in the sum of

1 two hundred and fifty thousand dollars (\$250,000.00) and award damages in that sum to her
2 and against Respondent

3
4 **Nothing in this arbitration decision prohibits or restricts the enrollee from discussing**
5 **or reporting the underlying facts, results, terms and conditions of this decision to the**
6 **Department of Managed Health Care.**

7
8
9 two hundred and fifty thousand dollars (\$250,000.00) and award damages in that sum to her
10 and against Respondent

11
12
13 **Dated: March 5, 2018**



14 **Gregory Munoz, Judge (ret)**

15 **ARBITRATOR**
16
17
18
19
20
21
22
23
24