

1 Thomas D. Reese - BAR 31540
2 80 Kirby Place, Suite A
3 Palo Alto CA 94301-3039
4 Tel: 650 323 2450
5 Fax: 650 323 2426

6 ARBITRATION # 11571

7 Claimant)
8 vs.) STATEMENT OF
9 Respondents) DECISION
10)
11)

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13 Harm is clearly proven. Negligence of personnel is not clear. The primary issue
14 here is causation.

15 This case arises from a phone request by the decedent for an injection of hydromor-
16 phone to reduce pain from a migraine headache. She received the injection at
17 at approximately 3:00 PM on May 5, 2011. She expired 5 to 7 hours later. She had
18 returned home, had a sandwich, and then went to bed. Her husband heard her snoring, but
19 later noticed the snoring had stopped. She was not breathing; he administered CPR and then
20 called 911 for aid. Her body was found by the 911 responders to warm. After attempting to
21 restore her, she was pronounced dead.
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24 Ms. 's condition, symptoms, after she and her husband returned home from
25 is unclear. In his direct, Mr described how he had to assist her walking;
26 she had trouble balancing; she was dropping things; she was groggy. But in his deposition
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1 he testified that she needed no assistance in walking and that he noticed nothing unusual in
2 her speech and gait. He said that he put her to bed around 7:00 PM.

3 The focus of Claimant's case is on Nurse and Dr. , Nurse expert
4 listed many steps Nurse should have taken, but did not on either April 15,
5 2011 and May 5, 2011. Nurse testified that these omissions fell below a nurse's stan-
6 dard of care.
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8 Nurse testified that these steps were not appropriate for this patient on May 5,
9 2011 because Ms. had tolerated a total of 14 injections of hydromorphone of 4 mg
10 and 2 injections of 6 mg. Nurse deferred to a superior manager who ordered the
11 injection be given April 15, 2011 even though Nurse had evaluated Ms.
12 and found that she was not suited for it that day and initially refused to give.
13

14 On May 5, 2011 Nurse was ordered, she felt, to give the injection and did so
15 "as a service." She found Ms. in far better condition May 5th than on April 15th.
16 Nurse knew the history of Ms with drugs. There was considerable testi-
17 mony from many that each patient is different regarding their tolerance to narcotics; the ef-
18 fectiveness of such drugs; the impact from other drugs also taken. So it is not clear that
19 Nurse was negligent and under the circumstances failed to meet the standard of care.
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21 But suppose it was found that Nurse failed the standard of care on May 5, 2011:
22 then what? Did that failure cause the death of Ms. ? Had Nurse done what
23 Nurse said she should have done, would Ms. have been alive on May 6,
24 2011? We don't know. No expert has testified that she would have been alive.
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1 It is much the same with Dr. . She had followed Ms for 4 years.
2 She had previously prescribed injections of hypomorphone, along with Dr. , who last
3 so ordered, a 6 mg. dose. Dr. had seen and frequently evaluated Ms. in
4 person. She was aware of her narcotic tolerance history. She felt comfortable with a tele-
5 phone evaluation when Ms. called requesting the injection. No expert testified that
6 on May 5, 2011 Dr. acted below a Neurologist's standard of care.
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9 Such was suggested by underscoring the procedures taken by Dr , a primary care
10 physician, when he administered the hydromorphone injection. Over the many years he
11 treated Ms. , Dr. made strenuous efforts to relieve Ms. 's drug de-
12 pendency, and to find the cause of the migraine headaches. Ms. spent time in a
13 rehab program. Dr. forced fed her, in a sense, in hopes that eating would ease the mi-
14 graines. Dr. obtained MRIs. He, and Dr. , tried to get her off the drugs be-
15 cause they believed that drugs she was taking caused the headaches.
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18 But again: suppose Dr. did everything that Dr. had done. Would Ms.
19 have bene alive May 6, 2011? We don't know and no expert has so testified. There
20 is no proof that Ms "survived" the April 26, 2011 6 mg. injection because of Dr.
21 's procedures.
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24 Could it be said that personnel overprescribed the drugs that the Coroner and
25 the toxologist found in her system, and therefore is responsible. No expert has so
26 testified. Further, as Dr. said, personnel, including both Nurse and Dr.
27 , tried to cut down their patient's drug intake, but could not. No expert has testified
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1 that could have succeeded in cutting back her heavy dosing of drugs. Ms

2 “was not convinced” such would be beneficial.

3
4 Further, the mixed combination of drugs that the Coroner concluded was the cause of
5 her death included at least 4 over the counter drugs. If could have stopped prescrib-
6 ing drugs, or even only the narcotics, from all indications Ms would have obtained
7 them elsewhere and they would have been prescribed without the history had accu-
8 mulated and used to monitor her intoxication to the extent they could.

9
10 Finally, the testimony of Dr. is significant as a toxicologist and pharmacolo-
11 gist. His expertise focuses on the core of this case; namely, drugs and intoxication. He is of
12 the opinion that the injection of hydromorphone was not the cause of death, because:
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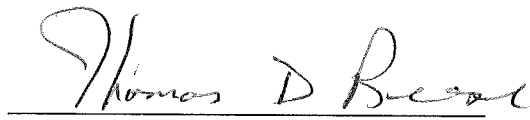
- 14 1. History of tolerance;
- 15 2. The drug peaks within 30 to 60 minutes;
- 16 3. Injection into the muscle, which absorbs quickly, and at 5 to 7 hours is at 30% to 40% of
17 its strength;
- 18 4. Many other drugs were in her system;
- 19 5. Very high levels of vicodin were found along with 6 to 10 times normal dosage of anti-
20 histamines,
- 21
- 22
- 23

24 Dr believed that Ms had taken drugs after the injection of hydro-
25 morphine. Mr. denies this, although he was himself under the weather and per-
26 haps he was distracted. We do know that Mr. gave all four vicodin to his wife in
27 the morning; we don't know when she took them. Dr. 's records show that he pre-

1 scribed one vicodin every 6 hours, or 4 over 24 hours.

2 Ms , quite unfortunately, had many ailments. She was prescribed many drugs
3 for them in addition to those she obtained over the counter. Tragically, the evidence shows
4 that she sought drugs, including narcotics, for those ailments and for pain killers. Several
5 testified that she was addicted to drugs and that many at and in her family tried to
6 protect her from her addiction.
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9 DATED: July 31, 2013

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12 Thomas D. Reese, Neutral Arbitrator

1 Thomas D. Reese - BAR 31540
2 80 Kirby Place, Suite A
3 Palo Alto CA 94301-3039
4 Tel: 650 323 2450
5 Fax: 650 323 2426
6 tom__reese@att.net

IN RE ARBITRATION

) Arb No. 14187
)
) ORDER: Motion for
) Summary Judgment

7 Claimant

8 vs.

9 Respondents

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12 A telephone hearing on Respondents' Motion for Summary Judgment was heard March 21,
13 2017. appeared on behalf of Respondents and appeared as
14 Claimant. Claimant has no Counsel.

15 Upon reviewing the Motion and supporting papers, comments of Claimant and Respondents'
16 Counsel, and the Response papers and email evidence submitted by Claimant, and upon assur-
17 ances by them that neither party offered or wanted to offer additional evidence:

18 IT IS HEREBY ORDERED: That Respondents Motion is Granted.

19 STATEMENT OF DECISION:

20 Respondents moved for Summary Judgment on 2 grounds:

21 1. Claimant failed to respond with appropriate evidence to Respondents' declared
22 evidence that it had established by Dr. that there was no breach of the standard of care in a
23 claim for medical malpractice. Thus the burden of proof shifts to Claimant to establish with ex-
24 pert testimony that a triable issue remains regarding assertion of medical malpractice. Such did
25 not occur.

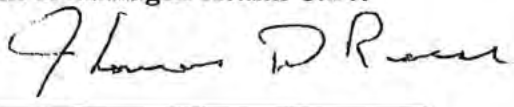
26 2. Claimant's claim for professional negligence is barred by the Statute of Limitations,
27 CCP 340.5. The injury, and hence the discovery of it, occurred in November 2014 through Feb-
28 ruary 2015. The Demand for Arbitration was filed May 22, 2016, more than one year after dis-
covery of the injury.

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The Arbitrator finds that CCP 340.5 applies to a claim for medical malpractice; not CCP 335.

On the morning of the Hearing, Claimant asked that the case not proceed, including the subject Motion presumedly, until [redacted] has produced data regarding the subject container so as to determine what drug was used that is subject to the medical malpractice claim. The request is DENIED. Without commenting on the relevance of this request, it is this sort of information that is typically sought through the discovery process; i.e, depositions, for example.

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.



3/21/17

Thomas D. Reese