MICHAEL F. SAYDAH, ESQ. (SBN 090124)
Mediator - Arbitrator - Referee - Umpire
12700 Stowe Drive, #120
Poway, Calif. 92064
Telephone: 858.748.3009
Facsimile: 858.486.8484

Neutral Arbitrator

In the Matter of the Arbitration Between:

Claimants,

Vs.

et al.

Respondents

Case No.: 10481

ARBITRATION AWARD

The arbitration in the above-entitled matter was held on March 5, 6 and 7, 2012, at et al., Calif., pursuant to notice to all parties. Esq., the duly appointed and agreed upon neutral Arbitrator selected to determine the dispute between the Claimants, and and the Respondent, et al., called the hearing to order each day. Claimants, and were present each day with their lawyer Esq., Law Offices of

Respondent, et al., was present

MICHAEL F. SAYDAH, ESQ
Mediator - Arbitrator - Referee - Umpire
12700 Stowe Drive
Suite 120
Poway, CA 92064
(858) 748-3009

each day with its lawyers, Esq. and Esq., of et al.,

There were no other persons present other than witnesses at periodic times through out the hearing.

The parties to this arbitration are: Claimants, and and Respondent, et al.

The witnesses were: percipient, percipient, Dr. M.D. expert for the Claimants; and, Dr. M.D., percipient and Dr. M.D. expert for Respondent.

All witnesses each party desired to call were duly sworn; all testimony and documentary evidence, including the medical chart, was offered for the truth of the matter and was taken; each party presented their case, and questioned the other.

This arbitration is binding.

AWARD:

It is the decision of the arbitrator the prevailing party in this arbitration is: Respondent, et al.

DETERMINATION OF ISSUES PRESENTED:

The claimants are the husband and daughter of decedent

The claim considered and arbitrated herein is for the wrongful death of Mrs.

Claimants seek damages related to Respondent, Dr. alleged failure to diagnose and properly treat Mrs. abdominal infection.

MICHAEL F. SAYDAH, ESQ
Mediator - Arbitrator - Referee - Umpire
12700 Stowe Drive
Suite 120
Poway, CA 92064
(858) 748-3009

Claimants claim a breach of the standard of care in the failure to re-operate on Mrs. and/or insert a drainage catheter into the abscess area of Mrs. abdominal cavity. Furthermore, Claimants claim fell below the standard of care because of a failure to have a catheter of sufficient length available to Radiology that could be placed and drain the abscess. Claimants claim these failures are a substantial factor to Mrs. death.

Respondents contend Mrs. was morbidly obese who developed difficult to control low blood sugars. She had been diagnosed with MEN1, an inherited disorder that causes tumors in the endocrine glands. They contend further Dr. and et al. met the standard of care in their operative and post-operative care and treatment of Mrs. and that she died from underlying co-morbidities wherein she developed multi-system organ failure.

In general, the evidence shows after Mrs. surgery to remove her pancreas and spleen she developed an abscess in the abdominal cavity where her pancreas and spleen had been. Since fluid accumulation after surgery is not unusual, Respondents treated the abscess conservatively with antibiotics and by aspirating the fluid accumulation. Claimants allege after the fluid accumulation recurred surgery was warranted to surgically go in to the abscess area and clean it out. Respondents claim, the conservative treatment they gave was appropriate under the circumstance because of the risks of resurgery with this particular patient.

The standard of care against which the acts of a medical practitioner are to be measured is a matter peculiarly within the knowledge of expert

MICHAEL F. SAYDAH, ESQ
Mediator - Arbitrator - Referee - Umpire
12700 Stowe Drive
Suite 120
Poway, CA 92064
(858) 748-3009

witnesses; it presents the basic issue in a medical malpractice action and can only be proved by an expert's testimony. Alef v Alta Bates Hospital (1992) 5 Cal.App.4th 208, 215, 6 Cal.Rptr.2nd 900.

In this case the claim was presented with two breaches of the standard of care in the post operative care and treatment of Mrs.

1. The failure to intervene surgically to treat and clean a recurring abscess in Mrs. abdominal cavity; and,
2. The failure to place a drainage catheter into the area of the abscess to drain the abscess fluid. A sub-issue here is the allegation did not have a catheter of sufficient length available to the radiologist for placement.

Factually, it was undisputed Mrs. was diabetic, morbidly obese and had been diagnosed with MEN1 (Multiple Endocrinal Neoplasm 1). MEN1 is an inherited disorder that causes tumors in the endocrine glands. In October 2008 Mrs. was complaining of fatigue, agitation, nausea and vomiting. She went to Hospital wherein, after testing, MRI's, CT scans and endoscopic ultrasounds she was found to have insulinoma, a pancreatic tumor that secretes insulin thereby lowering her blood sugar. She also had multiple masses in the pancreas.

Mrs. first met Dr. in December of 2008. Dr. noted the medical history was significant for asthma, morbid obesity and duodenal ulcers. She also had a prior gall bladder surgery and a prior knee surgery.

MICHAEL F. SAYDAH, ESQ
Mediator - Arbitrator - Referee - Umpire
12700 Stowe Drive
Suite 120
Poway, CA 92064
(858) 748-3009

In December 2008, Dr. recommended a total removal of Mrs. pancreas and a total removal of her spleen. On February 12, 2009 the pancreatectomy and spleenectomy surgery was performed. Mrs. remained in the hospital until March 21, 2009 at which point she was discharged to her home.

During Mrs. course of post surgical treatment, between February 12, 2009 and March 21, 2009, while still in the hospital, there was the usual testing and monitoring and watching the vital signs; there was caring for the incision surficial wound and the interior cavity area. There were some complications maintaining blood sugars and the development of a fluid pocket, as seen from a CT scan on February 23, 2009.

All post surgical complications, according to both expert witnesses, were properly dealt with. Mrs. exterior wound began to heal well, her activity increased, she was gaining strength and moving well. She was eating better through her mouth and together with regular bathroom breaks and a plan for blood sugar control, she was discharged to her home.

Claimants and Respondents agree there is no issue as to the necessity of the February 12, 2009 surgery, the consent thereto nor the post operative care and treatment of Mrs. through May 8, 2009.

Mrs. did develop a fluid pocket in the area of her abdomen where her pancreas and spleen had been. These were seen on various CT scans. The evidence from the experts at the arbitration and the medical chart does show the fluid pocket developed, and was aspirated. Mrs. was being

MICHAEL F. SAYDAH, ESQ
Mediator - Arbitrator - Referee - Umpire
12700 Stowe Drive
Suite 120
Poway, CA 92064
(858) 748-3009

treated conservatively with antibiotics for the infection and aspiration of the abscess fluid.

Rules Followed

California Civil Jury Instructions (CACI) 500 sets out the essential factual elements in a medical malpractice case. The essence of CACI 500 is that Claimant must prove Respondent was negligent (a want of ordinary care or skill); that Claimants were harmed; and, Respondents negligence (want of ordinary care or skill) was a substantial factor in causing Claimants harm. The fact that physicians are involved with their specialized education and training is relevant to an overall assessment of what constitutes 'ordinary care' in the particular situation. Flowers v Torrance Memorial Hospital (1994) 8 Cal.4th 992, 997-998, 35 Cal.Rptr.2nd 685.

This case is about the standard of care of the physicians and Hospital. The particular standard of care is set forth in CACI 501 and 502.

CACI 501 provides the standard of care for health care professionals in general. In essence, the physician is negligent if he fails to use the level of skill, knowledge and care in diagnosis and treatment that other reasonably careful physicians would use in the same or similar circumstances. It is this level of skill, knowledge and care that is referred to as the standard of care.

CACI 502 provides the standard of care for Medical Specialists. In essence, the specialist is negligent if he fails to use the level of skill, knowledge and care in diagnosis and treatment that other reasonable careful specialists would use in similar circumstances. Since Dr. is a Board Certified

MICHAEL F. SAYDAH, ESQ
Mediator - Arbitrator - Referee - Umpire
12700 Stowe Drive
Suite 120
Poway, CA 92064
(858) 748-3009

general surgeon with an additional certification in critical care, he is held to the standard of a medical specialist. The critical care certification gives him special expertise in the pre operative care and post operative care of his patients.

But, a physician is not necessarily negligent just because his efforts are unsuccessful or if he makes an error that was reasonable under the circumstances. The physician/specialist is negligent only if he was not as skillful, knowledgeable, or as careful as other reasonable specialists would have been in similar circumstances. CACI 505. Furthermore, a physician/specialist is not necessarily negligent just because he chooses one medically accepted method of treatment or diagnosis and it turns out that another medically accepted method would have been a better choice. CACI 506.

A physician cannot be held liable for errors of judgment or for erroneous conclusions on matters of opinion. A difference of medical opinion concerning the desirability of one particular medical procedure over another does not ... establish that the determination to use one of the procedures was negligent. Clemens v Regents of the University of California (1970) 8 Cal.App.3rd 1, 13, 87 Cal.Rptr. 108. Medicine is not a field of absolutes. There is not ordinarily only one correct route to be followed at any given time. There is always the need for professional judgment as to what course of conduct would be most appropriate with regard to the patient's condition. Barton v Owen (1977) 71 Cal.App.3rd 484, 501-502, 139 Cal.Rptr. 494.

In looking at the standard of care we look at the whole treatment of Mrs. in order to determine whether or not a breach of the standard of

MICHAEL F. SAYDAH, ESQ
Mediator - Arbitrator - Referee - Umpire
12700 Stowe Drive
Suite 120
Poway, CA 92064
(858) 748-3009

care occurred. A breach of the standard of care cannot be viewed in the abstract; a breach of the standard of care is determined in the context of the entire treatment plan for Mrs. and whether or not the level of skill, knowledge and care that other reasonably careful physicians would use in the same or similar circumstances.

The Re-Surgery

The picture of the case from Dr. the surgical expert for the claimant, was that Mrs. was basically on a downward trend, with an occasional upward movement. The picture of the case from Dr. the surgical expert for the Respondent, was basically Mrs. was on an upward trend, with an occasional downward movement, until the last few days when a urinary tract infection and treatment (unrelated to the initial hospitalization) led to a C-Difficile (Clostridium difficile) infection which proved fatal.

The issue here is whether or not the standard of care was breached by Dr. for failing to surgically intervene to clean out the abscess after May 8, 2009 and continuing to treat Mrs. conservatively by monitoring her systems and giving her antibiotics and aspirating the abscess fluid. Dr. opinion is that after the fluid pocket had been identified and aspirated and it still recurred, surgery was warranted as of mid May 2009 to get in there and clean out the abdominal cavity. Dr. is of the opposite view, as long as the aspiration was working by removing all of the abscess fluid and conservative treatment continued with antibiotics with overall positive results, no further surgery was warranted.

MICHAEL F. SAYDAH, ESQ
Mediator - Arbitrator - Referee - Umpire
12700 Stowe Drive
Suite 120
Poway, CA 92064
(858) 748-3009

Before doing the re-surgery Dr. would look at the entire clinical picture of Mrs. as she testified in her deposition and at the arbitration. She would look at and consider the size and recurrence of the abscess, whether Mrs. health was improving, whether or not she was getting better, getting stronger, able to eat, converse, able to get up and walk, whether Mrs. white blood count was normalizing and whether her blood pressure was getting better and whether she could heal properly. Dr. testified he would do the exact same thing. Dr. testified at deposition and in the arbitration he did just that. The entire clinical picture includes: All of the items mentioned by Dr. but it also includes risks in re-surgery. The risks with re-surgery with a morbidly obese patient include infection, difficulty to intubate, anesthesia risks, cardiopulmonary risks, risks of stroke as well as some others. The point here is Dr. went through the exact same analysis Dr. would have used. The case boils down to a judgment call by Dr. Dr. viewed the entire medical chart and the trends of Mrs. In his opinion Dr. exercised the proper level of skill, knowledge and care of Mrs. in considering her overall progress and the risks of resurgery. Dr. was clear this was a judgment call by Dr. His opinion was Dr. considered resurgery as well as maintaining the treatment he had been giving (antibiotics and aspiration) which was producing positive results.

The basis for Dr. conclusion Dr. met the standard of care was the clinical testing was showing the size of the abscess was diminishing. The chart notes repeatedly, and in general, show Mrs. reporting her current health to Dr. and other physicians at Hospital she is feeling better, gaining strength, eating well, little or no

MICHAEL F. SAYDAH, ESQ
Mediator - Arbitrator - Referee - Umpire
12700 Stowe Drive
Suite 120
Poway, CA 92064
(858) 748-3009

nausea, a soft abdomen, regularly going to the bathroom, she was walking, she was alert and oriented. And, her outside wound was granulating and healing, and lastly, her sugars were quite well controlled. In Dr. opinion, Dr. and properly and within the standard of care recognized the multiple complications that did arise post operatively and treated them with multiple medical modalities to address Mrs. problems and post operative issues.

For resurgery, Dr. would have to be convinced the cavity was enlarging and that the benefit of surgery would out-weigh the risks of not operating. In considering surgery, before all else, Mrs. health is paramount. Her weight, age, heart, tolerance for anesthesia, ability to heal, current health condition all play a part in the decision. Dr. testified he considered all of this and concluded the risks of resurgery were greater than the benefits, given the positive results he was seeing with the antibiotics and aspirations. Admittedly, there were some downturns as Dr. and Dr. told us. There were two readmissions to the hospital and a white blood count that was as high as the 30's and as low as the low teens but never in the 11 to 11.5 range which was considered normal. But, Dr. agreed the treatment modalities Dr. and did was within the standard of care given this particular patients needs and risks. As long as Dr. uses the skill, knowledge and care of other physicians in the same or similar circumstance and considers all of the options (antibiotics, aspiration, risks and benefits of resurgery) as other physicians in the same or similar circumstance would do and then exercises his professional judgment in coming to a conclusion, he does not breach the standard of care.

MICHAEL F. SAYDAH, ESQ
Mediator - Arbitrator - Referee - Umpire
12700 Stowe Drive
Suite 120
Poway, CA 92064
(858) 748-3009

Dr. did not offer a treatment modality that Dr. did not consider. Dr. is simply of the opinion surgery was warranted and needed as of May and June 2009. Dr. and Dr. are of the opposite view. The result could possibly have been different had resurgery been performed as Dr. would have done. But the law we must apply, to be fair to all parties in this case is that Dr. is required to use the skill, knowledge and care in diagnosis and treatment that other reasonably careful physicians would use in the same or similar circumstances. Dr. cannot guarantee success, just as Dr. and Dr. cannot guarantee success. Dr. is certainly not wrong in her opinion of resurgery. She simply has a different opinion, based on her judgment, skill, knowledge and care after reviewing the medical chart. Dr. and Hospital, at the time the events were unfolding, had a different opinion (treat with antibiotics and aspirations) based on his judgment, skill, knowledge and care.

Dr. concluded Dr. used the level of skill, knowledge and care in the diagnosis and treatment that other reasonable careful physicians would use in the same or similar circumstances. In Dr. opinion, resurgery is a consideration balanced against the risks of that resurgery and alternative methods of care. This is the same analysis Dr. went through. The testimony at the arbitration shows Dr. considered resurgery to drain the abscess and in this, he considered all of Mrs. associated conditions in proximity to her original operation, her trend toward improvement as noted from the progress notes as well as the decreasing size of the fluid collections on subsequent CT scans and Mrs. ability to heal.

MICHAEL F. SAYDAH, ESQ
Mediator - Arbitrator - Referee - Umpire
12700 Stowe Drive
Suite 120
Poway, CA 92064
(858) 748-3009

When the white blood count fluctuated other vitals were in good shape. When the white blood count came down, some of the other vitals were fluctuating to some abnormal ranges. When Dr. viewed the entire picture, not just the numbers in the abstract, he concluded resurgery was too risky.

Dr. and do not breach the standard of care because their efforts were not successful. They only breach the standard of care if they were not as skillful, knowledgeable or careful as other reasonable careful knowledgeable and skillful physicians in the same or similar circumstances.

The Catheter

The second error Dr. raises is the failure of Hospital to have a drainage catheter of sufficient length to drain the abscess cavity. It should be noted Dr. did ask for a drainage catheter to be inserted and presumably left in place so the abscess area would continuously drain until healed. Leaving a drainage catheter was not done by the interventional radiologists, who had the job of aspirating the abscess, because as the chart notes say and as both experts said, there was not a drainage catheter of sufficient length.

CACI 514 provides a hospital is negligent if it does not use reasonable care towards its patients. A hospital is must provide procedures, policies, facilities supplies and qualified personnel reasonably necessary for the treatment of its patients.

MICHAEL F. SAYDAH, ESQ
Mediator - Arbitrator - Referee - Umpire
12700 Stowe Drive
Suite 120
Poway, CA 92064
(858) 748-3009

This is an area that requires an expert opinion. I have no idea what the standard of care for a community hospital is for supplies such as this. There was no qualified opinion on this issue from either side since neither Dr. nor Dr. is an interventional radiologist with knowledge of the supply chain for supplies, and whether or not a catheter of sufficient length even exists.

The standard of care against which the acts of a medical practitioner are to be measured is a matter peculiarly within the knowledge of experts, ... unless the conduct required by the particular circumstances is within the common knowledge of laymen. Alef v Alta Bates Hospital, supra, at page 215.

I have no factual basis to conclude a drainage catheter of sufficient length was even available and a simple phone call would have secured it. The ready supply of this type of specialized medical equipment is not within my realm of common knowledge. So an expert opinion is needed.

From the testimony at arbitration and in her deposition, Dr. does not criticize the aspiration of the abscess through May 8, 2009. She felt the conservative treatment and aspiration (rather than a catheter) was within the standard of care. The medical chart note of May 8, 2009 (page 8768) shows the difficulty the radiologist was having in inserting a catheter which I am sure Dr. considered. In addition to the length (due to the location of the abscess and Mrs. size) there was difficulty in getting the dilator beyond the abscess wall. The lesion also pushed away from the blunt catheter tip, and given the tenuous access and the lack of support,

MICHAEL F. SAYDAH, ESQ
Mediator - Arbitrator - Referee - Umpire
12700 Stowe Drive
Suite 120
Poway, CA 92064
(858) 748-3009

radiology did not place a drainage catheter. On May 7, 2009 an aspiration was done and it was successful.

When one considers all of the reasons the catheter was not inserted on May 7, 2009 and coupled with the later attempts, the reduction in size of the abscess cavity, the successful aspirations of the abscess fluid, the general overall progress Mrs. was making up to the very end, I have no factual basis to conclude Hospital is negligent and fell below the standard of care simply because the radiologist said he did not have one of sufficient length.

Conclusion

The award is for Respondent et al. for the reasons stated herein.

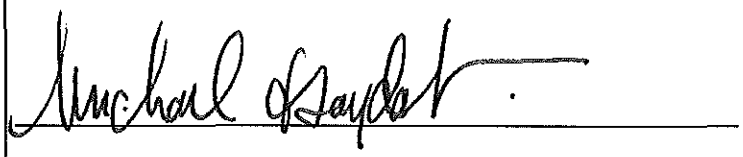
From the limited exposure I had to Mrs. from the testimony of Mr. and and from the pictures of her and her grandchildren, I am convinced Mrs. was a wonderful, caring and attentive grandmother, mother and wife. I am convinced of the solid and genuine relationship she had with Mr. and the grandchildren.

But I am also convinced she received the best care by the physicians, surgeons, nurses and staff of

MICHAEL F. SAYDAH, ESQ
Mediator - Arbitrator - Referee - Umpire
12700 Stowe Drive
Suite 120
Poway, CA 92064
(858) 748-3009

No one can lessen the sense of loss due to her passing. But I can only hope Mr. and cherish the time they had with Mrs. and pass those cherished memories on to her grandchildren.

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.



Neutral Arbitrator — Date: March 19, 2012

Michael F. Saydah, Esq.

MICHAEL F. SAYDAH, ESQ
Mediator - Arbitrator - Referee - Umpire
12700 Stowe Drive
Suite 120
Poway, CA 92064
(858) 748-3009

IN RE THE ARBITRATION BETWEEN:

[redacted] Claimant,	**ARBITRATION NO. 11428**
v.	**ARBITRATION AWARD**
KAISER FOUNDATION HEALTH PLAN, INC., KAISER FOUNDATION HOSPITALS and SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, Respondents.	NEUTRAL ARBITRATOR: MICHAEL SAYDAH, ESQ.

TO CLAIMANT [redacted] *in pro per* and Respondents KAISER FOUNDATION HEALTH PLAN, INC., KAISER FOUNDATION HOSPITALS and SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP:

Having granted the motion for summary judgment submitted by Respondents KAISER FOUNDATION HEALTH PLAN, INC., KAISER FOUNDATION HOSPITALS and SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, the neutral arbitrator hereby issues this Arbitration award in favor of Respondents, KAISER FOUNDATION HEALTH PLAN, INC., KAISER

///

///

///

///

///

FOUNDATION HOSPITALS and SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, and against Claimant [redacted] on all claims asserted in the above-captioned matter. Claimant [redacted] shall take nothing in this matter.

NOTHING IN THIS ARBITRATION AWARD PROHIBITS OR RESTRICTS THE ENROLLEE OR THE UNDERSIGNED FROM DISCUSSING OR REPORTING THE UNDERLYING FACTS, RESULTS, TERMS AND CONDITIONS OF THIS AWARD TO THE DEPARTMENT OF MANAGED CARE.

Date: Dec. 10, 2012

MICHAEL SAYDAH, ESQ.
NEUTRAL ARBITRATOR

IN RE THE ARBITRATION BETWEEN:

[redacted] Claimant, v. KAISER FOUNDATION HEALTH PLAN, INC., KAISER FOUNDATION HOSPITALS and SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP, Respondents.	**ARBITRATION NO. 11428** **ORDER ON RESPONDENTS' MOTION FOR SUMMARY JUDGMENT** NEUTRAL ARBITRATOR: MICHAEL SAYDAH, ESQ.

TO CLAIMANT [redacted] *IN PRO PER*, AND RESPONDENTS, KAISER FOUNDATION HEALTH PLAN, INC., KAISER FOUNDATION HOSPITALS AND SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP:

Respondents KAISER FOUNDATION HEALTH PLAN, INC., KAISER FOUNDATION HOSPITALS and SOUTHERN CALIFORNIA PERMANENTE MEDICAL GROUP's motion for summary judgment came on for hearing on December 6, 2012, before Michael Saydah, Esq., the single Neutral Arbitrator for this matter.

The unopposed Summary Judgment motion filed by Respondents is hereby granted. The Respondents' Separate Statement of Undisputed Facts, supported by the declaration of [redacted], a board-certified Anesthesiologist, as well as by the authenticated documents lodged in support of the motion, establish that there is no triable issue of material fact and, as a matter of law, Respondents should prevail in this arbitration.

The declaration of [redacted] establishes that claimant's health care providers related to this Demand for Arbitration completely met the standard of care at all times during their care and treatment of Claimant and were not the legal cause of any of Claimant's claimed damages. Specifically, [redacted] declared that Respondents completely met the applicable standard of care at all times during their care and treatment of Claimant, [redacted] As such, Claimant suffered no harm or injury as a result of Respondents' care and treatment. The evidence presented by Respondents shows that the intubation at issue was performed in an atraumatic manner and that the extubation was performed without incident. The evidence submitted by Respondents also shows that Respondents obtained Claimant's adequate and proper informed consent for the administration of anesthesia required for the biopsy of Claimant's bladder and urethra performed by [redacted] on October 24, 2011. The evidence submitted by Respondents shows that prior to the anesthesia care Claimant was documented to have numerous missing teeth and several chipped upper teeth. Moreover, Respondents presented adequate admissible evidence to show that none of the numerous health care providers who interacted with Claimant on the date of this event documented witnessing any injury to his teeth. Rather, the evidence shows that the procedure was performed without complication. The arbitrator concludes that had any injury to Claimant's teeth occurred at the time of the care of Respondents as alleged, there would have been some documentation by one of the health care providers of that fact; there is no such evidence. Finally, [redacted] declared that even if Claimant's teeth were knocked out during surgery, such an event occurred in the absence of negligence. Therefore, Respondents properly met their burden of proof to have this motion for summary judgment be granted.

As a result of the above, the burden of proof switched to Claimant to submit admissible evidence to show a triable issue of material fact sufficient to justify denial of this motion. Claimant failed to meet his burden of proof. Thus, Respondents' motion for summary judgment must be granted as a matter of law. Claimant filed no expert declarations to refute the declarations filed in support of Respondents' motion for summary judgment. [redacted] failed to offer any proper and valid conflicting expert evidence. Moreover, Claimant failed to file any opposition whatsoever to Respondents' motion, and failed to submit a counter separate statement of disputed facts as required by law. Claimant's failure to do so also justifies the granting of this motion. Furthermore, the evidence

presented shows that Claimant did not designate any expert witness on the first or second expert exchange. As a result, Claimant is unable to meet his burden of proof at the time of this motion or at the time of any subsequent arbitration hearing. Additionally, Claimant failed to timely request a continuance of the hearing of this motion in order for him to conduct discovery to obtain the necessary facts and evidence to oppose this motion. No such continuance is now allowable as a matter of law. Finally, Claimant failed to appear at the hearing on Respondents' motion despite fact that the notice of the motion specifically indicated that a personal appearance was required. Even so, the arbitrator delayed the proceedings by 45 minutes giving Claimant sufficient time to appear or call the arbitrator to explain the reasons for his non-appearance. Claimant had called the arbitrator prior to this hearing date and thus demonstrated his ability to contact the arbitrator by telephone. No such call from Claimant was received by the arbitrator. Thus, Respondents were entitled to a hearing on their timely noticed motion.

Therefore, the arbitrator hereby rules that because the declaration and documentary evidence upon which the Respondents rely establishes an adequate foundation for the opinions stated within the declaration and therefore properly supports Respondents' unopposed Separate Statement of Undisputed Facts, Respondents are entitled to summary judgment. [*Munro v. Regents of University of California*, 215 Cal. App. 3d 977, 984-985 (1989); see also *Dumas v. Cooney*, 235 Cal. App. 3d 1593, 1603 (1991).] No triable issue of material fact remains with regard to the issues of claimed medical negligence and the motion for summary judgment is hereby granted on this ground.

IT IS SO ORDERED:

NOTHING IN THIS RULING 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.

Date: Dec - 10 2012

MICHAEL SAYDAH, ESQ.
NEUTRAL ARBITRATOR

MICHAEL F. SAYDAH, ESQ. (SBN 090124)
Mediator - Arbitrator - Referee - Umpire
12700 Stowe Drive, #120
Poway, Calif. 92064
Telephone: 858.748.3009
Facsimile: 858.486.8484

Neutral Arbitrator

IN THE MATTER OF THE ARBITRATION BETWEEN

Claimant,

Vs.

Respondents

Arbitration No.: 11296

RULING ON MOTION TO DISMISS

ARBITRQATOR: MICHAEL F. SAYDAH
HEARING DATE: JANUARY 31, 2013
TIME: 09.00AM
LOCATION: TELEPHONE

and

Motion to Dismiss for Failure to State a Cause of Action came on regularly for telephonic hearing on January 31, 2013 at 09.00am, pursuant to notice and the Arbitration Management Conference Statement.

On the telephone were: , Esq. for claimant herein; Esq, for moving parties ; and Esq. for

MICHAEL F. SAYDAH, ESQ
Mediator - Arbitrator - Referee - Umpire
12700 Stowe Drive
Suite 120
Poway, Calif. 92064
(858) 748-3009

After considering the moving papers and points and authorities therein, the opposition and the points and authorities it is the conclusion of the arbitrator the motion to dismiss be denied.

A motion to dismiss is treated like a general demurrer. In this case there are sufficient charging allegations contained in paragraph 8 of the complaint and incorporated into the third and fourth causes of action to survive a general demurrer. The difference between this case and Lisa M. v. Henry Mayo Newhall Memorial Hospital (1995) 12 Cal.4th 291, the case cited as authority by is the posture of Lisa M. was on a motion for summary judgment wherein the court had all of the factual evidence before it and could actually weigh that evidence in determining whether or not *respondeat superior* would apply. In this case we are dealing with a motion to dismiss where we only have the pleadings before us and we do not have any factual evidence.

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: January 31, 2013

By: _____
MICHAEL F. SAYDAH
Arbitrator-Mediator-Referee-Umpire

MICHAEL F. SAYDAH, ESQ
Mediator - Arbitrator - Referee - Umpire
12709 Stowe Drive
Suite 120
Poway, Calif. 92064
(858) 748-3009

TITLE

ESQ. SBN

Telephone:
Facsimile:

Attorneys for Respondent.

IN THE MATTER OF ARBITRATION BETWEEN

Claimant,

v.

Respondent.

In Re Arbitration
No.: 14363

~~[PROPOSED]~~ **AWARD RE: MOTION FOR SUMMARY JUDGMENT OF RESPONDENT,**

TO CLAIMANT, IN PROPRIA PERSONA:

The Motion for Summary Judgment of Respondent,

came on regularly for hearing before this Neutral Arbitrator on April 4, 2017, at 8:00 a.m.

After full consideration of the evidence and Points and Authorities submitted by Respondent, which was unopposed, this Neutral Arbitrator grants the Motion for Summary Judgment of Respondent,

made under *Code of Civil Procedure*, Section 437c on the grounds that Claimant's action has no merit and fails to present any triable issue of material fact.

The evidence establishes that Respondent,

complied at all times with the standard of practice in the professional community with regard to the

medical care rendered to Claimant, and Respondent did not cause or substantially contribute to Claimant's alleged injuries.

IT IS ORDERED, ADJUDGED AND DECREED that an award shall be entered in favor of Respondent, 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 (or Settlement Agreement) to the Department of Managed Health Care.

Dated: April 5, 2017

Michael F. Saydah, Esq.

IN THE MATTER OF ARBITRATION BETWEEN

Claimant,	In Re Arbitration No.: 14363
v.	**ORDER ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**
Respondent.	

The Motion for Summary Judgment of Respondent, came on regularly for before the Neutral Arbitrator on April 4, 2017.

Respondent's Motion for Summary Judgment was unopposed. After full consideration of the evidence, the separate statement submitted by Respondent, and the authorities submitted by counsel, this Neutral Arbitrator finds the following to be true:

1. The treating healthcare providers, including, but not limited to P.A., complied with the standard of care at all times. Specifically, on December 1, 2015, the patient presented to the clinic with non-specific complaints of a fever and an upset stomach for two weeks. P.A. took a history and performed a physical examination which complied with the standard of care. The physical examination did not reveal any findings consistent with a surgical abdomen (including appendicitis) such as rebound tenderness or guarding. The patient's complaints and findings on physical examination were non-specific and the

standard of care was met when P.A. ordered labs and an ultrasound and instructed the patient to go to the urgent care or emergency department if his symptoms worsened or persisted within 8-12 hours.

2. The treating healthcare providers complied with the standard of care during the admissions of December 10, through 21, 2013. Specifically, the patient was timely diagnosed with appendicitis and was taken to surgery in a timely manner compliant with the standard of care.

3. The laparoscopic surgical procedure performed by M.D., was performed in a manner which complied with the standard of care.

4. Postoperatively, Mr. developed an ileus which is a temporary disruption of intestinal peristalsis in the absence of a mechanical bowel obstruction. In compliance with the standard of care, the patient was provided with conservative care for his ileus including NG tube decompression, hydration and peripheral parenteral nutrition (PPN). At no time did the standard of care require that the patient be returned to the operating room for treatment of his ileus.

5. By December 21, 2105, the patient's ileus had resolved and the patient was discharged in compliance with the standard of care.

6. Post-discharge, the patient did well and was followed by Dr. through at least January 8, 2016, in compliance with the standard of care.

7. Within a reasonable medical probability, no negligent action or omission on the part of the Respondent healthcare providers caused the patient's appendix to rupture.

8. Within a reasonable medical probability, even if the patient had been diagnosed with appendicitis on December 1, 2015, he would have required a laparoscopic appendectomy.

9. Within a reasonable medical probability, no negligent action or omission by the Respondent healthcare providers caused the patient's ileus. An ileus can and does occur in the absence of negligence subsequent to any abdominal surgery, such as

was the case in this particular situation.

Based upon the above, this Neutral Arbitrator finds that there is no triable issue of material fact as to Claimant's cause of action for medical negligence against Respondent, and the treatment of Claimant, by Respondent, was, at all times, within the standard of care in the community, and to a reasonable degree of medical probability, was not the cause any injuries to Claimant,

IT IS SO ORDERED that the Motion for Summary Judgment is granted and an award shall be entered forthwith as requested in favor of Respondent, 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 (or Settlement Agreement) to the Department of Managed Health Care.

Dated: April 5, 2017

Michael F. Saydah, Esq.