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**IN RE THE MATTER OF ARBITRATION BETWEEN**

Claimant, .

v.

Respondents.

Arbitration No.: 11983

**AMENDED  
ORDER GRANTING RESPONDENT**

**MOTION FOR SUMMARY  
JUDGMENT**

Arbitration Date: November 8, 2013

On August 13, 2013, commencing at 1:00 p.m., a telephonic hearing on Respondents' Motion for a Summary Judgment was held. Participating in the conference was Claimant, in Pro Per, Esq., counsel for Respondents, and Arbitrator Richard M. Williams.

In response to the Motion for Summary Judgment, claimant submitted no declaration from an expert.

In the instant case, respondents' showing, evidentiary and otherwise, establishes that there was no breach of the standard of care and no causation. Absent contrary showing by claimant, respondents are entitled to award in their favor as a matter of law.

After reviewing the moving, opposition and reply papers which were submitted to the

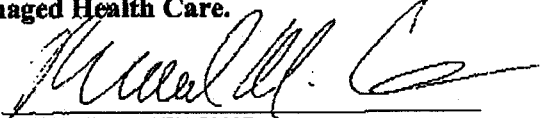
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Arbitrator and conducting the telephonic hearing and good cause hearing therefore, IT IS HEREBY ORDERED THAT:

1. Respondents' Motion for Summary Judgment is GRANTED.
2. Summary Judgment having been granted, Claimant's action is dismissed. Each party shall bear its own attorney fees and costs.

**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.**

Date: 8/26/13

  
RICHARD M. WILLIAMS  
Arbitrator

1 **Richard M. Williams, Arbitrator**  
2 **GRAY • DUFFY, LLP**  
3 **210 B Twin Dolphin Drive**  
4 **Redwood City, California 94065**  
5 **Telephone (650) 365-7343**

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8 **IN THE MATTER OF THE ARBITRATION BETWEEN**

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12 Claimant(s),  
13 vs.  
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18 Respondent(s).

Case No. 11924

**ORDER GRANTING RESPONDENTS'  
MOTION FOR SUMMARY  
JUDGMENT**

Date: November 19, 2013  
Time: 10:00 a.m.

19  
20 A hearing on the Motion of Respondents

21  
22 Motion for Summary Judgment was held commencing at 10:00 a.m. on November 19, 2013.

23 , Esq. appeared telephonically representing the moving parties, and Claimant  
24 ; in Pro Per, appeared telephonically representing himself.

25 The neutral arbitrator, having reviewed all of the moving, opposing and reply papers, and  
26 exhibits and declarations attached hereto, and having conducted the subject telephonic hearing,  
27 hereby rules as follows:

28 ///

1 The Motion for Summary Judgment filed by Respondents is hereby GRANTED. California  
2 Code of Civil Procedure Section 437(c)(e) requires the party opposing a Summary Judgment  
3 Motion to show that some "material fact" is in controversy. Claimant must  
4 provide a declaration from a qualified expert that the care and treatment rendered to him by his  
5 providers was below the standard of care and caused his injury. The Claimant has failed  
6 to meet this burden of proof and has not provided the Arbitrator with a declaration from a qualified  
7 physician or other medical professional addressing the standard of care issue or in any way  
8 rebutting the opinion of \_\_\_\_\_, M.D. that there was no violation of the appropriate standard  
9 of care which caused injury to Mr. \_\_\_\_\_.

10 The standard of care against which the acts of a physician are to be measured is a matter  
11 peculiarly within the knowledge of experts and can only be proved by expert testimony. (Flowers  
12 v. Torrance Memorial Hospital Medical Center, (1994) 8 Cal.4th 992, 1001)

13 Based upon the above, IT IS HEREBY ORDERED THAT:

14 The Motion for Summary Judgment submitted by Respondents is hereby GRANTED.

15 **Nothing in this arbitration decision prohibits or restricts the enrollee from discussing**  
16 **or reporting the underlying facts, results, terms and conditions of this decision to the**  
17 **Department of Managed Healthcare.**

18  
19 DATED: November 19, 2013

GRAY • DUFFY, LLP

20  
21 By:

  
22 RICHARD M. WILLIAMS, Arbitrator

*Handwritten signature*

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**IN THE MATTER OF THE ARBITRATION BETWEEN**

Claimant(s),  
vs.  
Respondent(s).

Case No. 11704

**ORDER AND AWARD OF  
ARBITRATOR ON RESPONDENTS  
MOTION FOR SUMMARY  
JUDGMENT, MOTION TO VACATE  
CLAIMANT'S VOLUNTARY  
DISMISSAL, AND MOTION FOR  
MONETARY SANCTIONS AGAINST  
CLAIMANT**

DATE: January 24, 2014  
TIME: 10:00 a.m.  
PLACE: Telephone Conference

ARBITRATION DATE: February 27, 2014

This matter came on for its scheduled hearing of the Summary Judgment Motion of Respondents on January 24, 2014 at the hour of 10:00 a.m. appeared as counsel for Respondents and there was no appearance on behalf of Claimant In Pro Per.

Having reviewed all of the papers herein, including the Respondents' Motion for Summary Judgment, its Motion to Vacate Claimant's Voluntary Dismissal, its Motion for Monetary Sanctions against Claimant, and the Memoranda of Points and Authorities and Declarations in support of these motions, the neutral arbitrator issues the following ruling:

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The Motion of Respondents \_\_\_\_\_, a non-profit corporation and \_\_\_\_\_, a professional corporation, for summary judgment is hereby GRANTED in its entirety. In spite of a Claimant-requested, and granted, continuance, no timely opposition was received by the arbitrator. Furthermore, the voluntary dismissal of the Claimant's claim by email dated January 20, 2014, Exhibit "E" to the Motion of Respondents to Vacate the Claimant's Voluntary Dismissal, is vacated, and the arbitrator specifically finds that said voluntary dismissal was made in bad faith and not in compliance with the rules of the \_\_\_\_\_, specifically Rules 40 and 41, which require that a timely notice of withdrawal of claim be served on counsel, the arbitrator, and the \_\_\_\_\_, and further that the arbitrator may order appropriate sanctions for failure of any party to comply with its obligations under the \_\_\_\_\_ rules and applicable law.

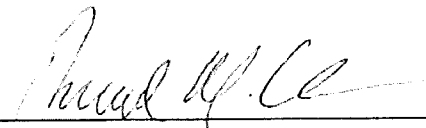
As a result of the above findings, it is the award of this arbitration that sanctions in the amount of \$720 be levied and awarded against Claimant based upon his conduct in these proceedings.

Summary Judgment having been granted, it is also the award of this arbitration that Claimant's action is dismissed. Each party shall bear its own attorneys' fees and costs. Sanctions in the amount of \$720, as awarded above, shall be paid by the Claimant to Respondents.

**Nothing in this Order prohibits or restricts the enrollee from discussing or reporting the underlying facts, results, terms and conditions of this decision to the Department of Managed Healthcare.**

IT IS SO ORDERED:

DATED: January 24, 2014

By:   
\_\_\_\_\_  
RICHARD M. WILLIAMS  
Arbitrator

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IN RE:                      ARBITRATION

Claimant,  
vs.  
Respondents.

Arbitration No. 11113  
**AWARD OF ARBITRATOR**  
[Bifurcated Proceeding]

**BACKGROUND**

On January 29, 2014, a hearing was held on the issue of whether or not the standard of care for healthcare professionals or medical specialists was violated with respect to the care and treatment of Claimant,                      Presiding over the hearing was Neutral Arbitrator, Richard M. Williams. Counsel present were                      , Esq. representing Claimant                      and                      , Esq. representing Respondents                      and                      .

Testifying at the hearing were witnesses, Dr.                      , Claimant and Dr.                      Video taped depositions of Dr.                      , expert for Claimant and Dr.                      , expert for Respondent, were also submitted to the Arbitrator. Also submitted were

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1 extensive briefs on several discrete legal issues, including qualifications of experts to testify and  
2 whether an expert witness with an alleged financial interest in the outcome of the proceeding  
3 should be allowed to testify. Finally, voluminous medical records and depositions of Claimant and  
4 his wife, as well as several photographs of the Claimant's surgical incisions and anatomical charts  
5 were also submitted for the Arbitrator's review and consideration.

#### 6 **PRELIMINARY RULINGS**

7 Prior to the commencement of testimony, motions were made by counsel representing the  
8 Respondents to block the testimony of Drs. and , based upon their alleged lack  
9 of qualification in the subject matter at hand, i.e. urological surgery. Those objections were  
10 overruled, the Arbitrator ruling that the particular qualifications of Dr. , a Physical  
11 Medicine and Rehabilitation Pain Specialist and Dr. , a Retired Pathologist, went to the  
12 weight to be given to their testimony, rather than to its' admissibility.

13 An objection was also made to the admissibility of the testimony of Dr. based  
14 upon an alleged financial interest in the outcome of the proceedings, in as much as his billing for  
15 his preparation and testimony was to be paid from any award in this matter. That objection was  
16 likewise overruled.

#### 17 **FINDINGS OF THE ARBITRATOR**

18 This is a urology case which involves a radical prostatectomy, performed by Dr.  
19 , extensive post-operative follow-up and complications and a second exploratory  
20 laparoscopy surgery necessitated by post-operative problems. Sometime following the second  
21 surgery, Claimant developed permanent severe pain in his left anterior thigh. Dr.  
22 opined that Mr. developed a nerve lesion, involving the lateral femoral cutaneous nerve  
23 ("LFCN"), caused by the development of large hematomas following the initial radical  
24 prostatectomy surgery. Dr. further opined that Mr. should not have been  
25 discharged following the first surgery on June 15, 2010. Dr. feels that the developed  
26 hematomas should have been decompressed before Mr. was discharged and that a CT scan  
27 should have been performed prior to discharge which would have detected the hematomas and  
28 dictated their decompression or removal before discharge. However, Dr. does not



1 attribute the nerve injury to Mr. to the development of the hematomas. Rather, it is his  
2 opinion that the nerve injury resulted from the second surgery performed on June 29, 2010. He  
3 believes the initial discharge following the first surgery was a violation of the standard of care since  
4 he believes based upon his records review that the Claimant was still bleeding and was, therefore,  
5 not in a sufficiently stable condition to have been discharged home.

6 Based upon his examination and testing of Claimant, , Dr.  
7 believes that a "figure 8" suture used by Dr. in the second surgery was the most likely cause  
8 of the nerve injury. Dr. does note that the size of the hematoma also could have been  
9 a contributing cause of pressure to the nerve and the ensuing damage. Based upon his EMG  
10 testing, Dr. believes that the LFCN is "almost completely damaged" and that Mr.  
11 has virtually no sensation or enervation from that nerve. The doctor further opines that this  
12 nerve damage cannot be repaired neurosurgically. In sum, Dr. opined that in  
13 descending order, the most likely causes of the LFCN injury were the "figure 8" suture, pressure  
14 from the extremely large hematoma, or damage caused by the removal of the hematoma in the  
15 second surgery. He also opined that there was possibility of a retractor injury or damage caused  
16 by the use of a bovie cauterizer during the second surgery.

17 Dr. , a retired pathologist from Hawaii, essentially opined that the lumbar  
18 plexus was damaged when the hematoma was removed during the second surgery. On this point,  
19 he and Dr. appear to disagree.

20 The Arbitrator finds it compelling that neither Dr. , a retired pathologist, nor  
21 Dr. , a Physical Medicine and Rehabilitation Specialist, has ever performed a radical  
22 prostatectomy. While both appear well qualified in their chosen fields of medicine, neither has the  
23 surgical experience of Dr. , nor the experience of Dr. . These failures of experience  
24 are noteworthy.

25 While Respondent's argument "don't criticize a man unless you have walked a mile in his  
26 shoes" is perhaps melodramatic, it does raise a valid concern as to the weight of the testimony of  
27 Drs. and . Both Drs. and are experienced, qualified urologists  
28 with intimate personal working knowledge of the procedures undertaken by Dr. and other

GRAY • CURRY • P.C.

1 doctors concerning Mr. surgical and post-surgical care.

2 The Arbitrator has very carefully reviewed the medical records submitted in this matter, as  
3 well as the video testimony of the experts. It is significant to the Arbitrator that there is no mention  
4 of any left anterior thigh pain or any left leg pain, in the records until August 9, 2010, well  
5 over one month following the second surgery on June 29, 2010. This is completely inconsistent  
6 with the testimony of Mr. that he felt serious pain in his left leg immediately upon  
7 awakening from the June 29, 2010 surgery. The records are devoid of any mention of left leg pain,  
8 despite numerous examinations by nurses and physicians, during the month following the second  
9 surgery.

10 Dr. , a Board Certified Urological Surgeon, testified that he saw Mr.  
11 everyday he was in the hospital, with the exception of a weekend off. He personally examined  
12 Mr. on a daily basis, spoke with him and reviewed all available lab studies. Based upon  
13 all available clinical information, including hematocrit and hemoglobin levels which were  
14 stabilizing, and stable vital signs, Dr. believed that the earlier bleeding had stopped.  
15 Furthermore, Mr. was out of bed and ambulating, his pain seemed well controlled and, in  
16 Dr. opinion, after conferring with the other physicians involved in Mr. care, he  
17 was ready to be discharged. Dr. testified that Mr. hematocrit and hemoglobin  
18 values could not rise in the manner they did over a 48 hour period if there was an ongoing bleed.  
19 This testimony was not contradicted by any expert in the case. In fact, Dr. went so far as  
20 to testify that absent any clinical evidence suggesting an ongoing bleed, it would have been  
21 "malpractice" to subject Mr. to the radiation of an unnecessary CT scan.

22 Dr. further opines that the increase in volume to the hematoma detected on the CT  
23 scan done just prior to the June 29, 2010 surgery was due to the dislodging of the catheter from  
24 Mr. bladder, causing saline and other fluids to be discharged directly into Mr.  
25 pelvis, thus enlarging the volume of the hematoma. Since the second CT scan clearly showed the  
26 catheter had dislodged and was no longer in Mr. bladder, (which was confirmed by a  
27 radiologic consultation) this is consistent with the lack of an ongoing bleed. Dr. further  
28 testified that he telephoned Mr. on a daily basis after discharge. Dr. notes indicate

1 Mr.            was “doing well and improving.” They further reflect that there was no blood in the  
2 catheter and Mr.            pain was under control. According to Dr.           , Mr.            was  
3 progressing well and there were no indications of ongoing bleeding issues or any other problem.

4 Dr.            testified that over the weekend of June 26 and 27, 2010, Mr.            said he felt  
5 a “pop” and thereafter he started having some blood in his urine and some pelvic discomfort again.  
6 According to the records, Mr.            went to the emergency room and had a urine culture, and his  
7 catheter was irrigated. His white count was a bit elevated from his previous discharge and he was  
8 started on Cipro. The next day, Monday, June 28<sup>th</sup>, Mr.            was seen by Dr.            in the  
9 clinic. At that time he had blood in his urine and Dr.            ordered a CT scan, done the next day,  
10 which showed a pelvic abscess and that the Foley catheter was dislodged from the bladder. This  
11 led to the second exploratory surgery on June 29, 2010. The surgery was performed, with the  
12 assistance of Dr.           , a general surgeon, and the anastomosis was repaired, the catheter  
13 reinserted, and the large hematoma removed.

14 Anatomical questions arise here. Dr.            believes the lumbar plexus was damaged.  
15 Dr.            believes the LFCN was “strangulated” by Dr.            using the figure 8 suture.  
16 Dr.            testified as to both of these issues that neither of these nerve bundles was within the  
17 surgical field and anatomical charts presented to the arbitrator at the hearing appear to support this  
18 fact. The only direct testimony to this point, from Dr.           , was that there was no significant  
19 disruption of Mr.            anatomy noted at the time of the second surgery.

20 Dr.            further testified that the “figure 8” suture was placed along a neuro vascular  
21 bundle that provides blood flow and innervation to the prostate and the penis. He testified that if  
22 that nerve had been damaged, the result would be impotence, not the pain Mr.            experiences  
23 in his left anterior thigh. Dr.            further testified that the suture he used was very small and  
24 weak, and was an absorbable suture which would have been absorbed by the body within a matter  
25 of days.

26 The arbitrator finds that the testimony of Dr.           , supported by the testimony of  
27 Dr.           , preponderates on these issues.

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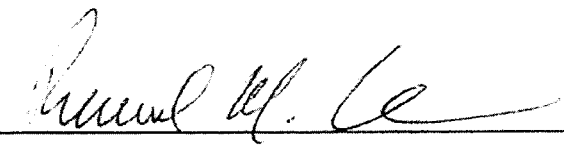
Based upon the above discussion and review of the pertinent evidence, the arbitrator finds as follows:

1. The standard of care for healthcare professionals as defined in CACI 501 has not been violated or breached in this matter by Dr. \_\_\_\_\_ or by any other physician. The evidence presented by Respondents in the form of medical records, percipient testimony and expert testimony, preponderates over the expert testimony presented by Claimant in the form of the testimony of Drs. \_\_\_\_\_ and \_\_\_\_\_. The arbitrator specifically finds that the qualifications and testimony of Dr. \_\_\_\_\_ and \_\_\_\_\_, with respect to the urologic surgical issues and post surgery care issues presented in this case carry more evidentiary weight than those of Drs. \_\_\_\_\_ and \_\_\_\_\_ on the issues of standard of care and medical causation. As noted in CACI 502, Standard of Care for Medical Specialists, they are "held to that standard of learning and skill normally possessed by such specialists in the same or similar locality under the same or similar circumstances." (Quintal v. Laurel Grove Hospital (1964) 62 Cal.2d 154). That standard has been met in this case.
2. Based upon finding number 1 that the Respondents have not violated or breached the standard of care with respect to the care and treatment of Claimant \_\_\_\_\_, the claim of \_\_\_\_\_ in \_\_\_\_\_ Arbitration No. 11113 is ordered dismissed.

IT IS SO ORDERED.

**Nothing in this Order prohibits or restricts the enrollee from discussing or reporting the underlying facts, results, terms and condition of this decision to the Department of Managed Healthcare.**

Dated: March 4, 2014

By:   
RICHARD M. WILLIAMS, Arbitrator

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3 Telephone:  
4 Facsimile:  
5 E-mail:

6 Attorneys for Respondents. \_\_\_\_\_, a non-profit  
7 corporation, \_\_\_\_\_, a non-profit corporation, and  
8 professional corporation \_\_\_\_\_, a

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12 **IN RE: THE ARBITRATION BETWEEN:**

13 \_\_\_\_\_ and \_\_\_\_\_,  
14 Claimants,  
15 vs.  
16 \_\_\_\_\_, a  
17 non-profit corporation. \_\_\_\_\_, a  
18 non-profit corporation, and \_\_\_\_\_, a  
19 professional corporation,  
20 Respondents.

*DMW*  
**~~PROPOSED~~ ORDER AND AWARD  
OF ARBITRATOR ON  
RESPONDENTS' MOTION FOR  
SUMMARY JUDGMENT**

21  
22 The Motion for Summary Judgment of respondents,  
23 \_\_\_\_\_, a non-profit corporation,  
24 \_\_\_\_\_, a non-profit corporation, and \_\_\_\_\_, a  
25 professional corporation, came on regularly for hearing on January 29, 2015, at 10:00 a.m.,  
26 before the neutral arbitrator. The parties appeared telephonically. Claimant,  
27 appeared in propria persona; \_\_\_\_\_, Esq., appeared for respondents.

28 ///

1 The motion had been originally scheduled for January 28, 2015, and was continued by  
2 the neutral arbitrator to the following day.

3 Having reviewed all of the papers herein, including the respondents' Motion for  
4 Summary Judgment, the Memorandum of Points and Authorities, the Separate Statement, and  
5 the supporting Declarations and Exhibits, and after full consideration of Ms. ' and Mr.  
6 's oral argument at the hearing, the neutral arbitrator issues the following ruling:

7 The Motion of respondents, , a non-profit  
8 corporation, , a non-profit corporation,  
9 and , a professional corporation, is hereby

10 in its entirety. No Opposition was received by the neutral arbitrator. At the hearing,  
11 Ms. confirmed that claimants did not have an Opposition to submit. The neutral

12 arbitrator finds that there is no triable issue of material fact in the action of claimants,

13 and , against respondents, and that respondents are entitled to

14 summary judgment as a matter of law for the reasons set forth in respondents' motion. The

15 health care providers met the applicable standard of care in providing medical care to

16 claimants' decedent, , and did not cause decedent's death. There is no evidence that

17 the health care providers diagnosed Mrs. with multiple myeloma and choose not to

18 tell her of this diagnosis and choose not to treat her.

19 These findings are based on the evidence set forth in respondents' Separate Statement of

20 Undisputed Material Facts, particularly the declaration of respondents' oncology expert,

21 , M.D. (Facts Nos. 16 and 20). Respondents' evidence is sufficient to warrant summary

22 judgment, and no controverting evidence was presented.

23 Summary Judgment having been granted, it is also the award of this arbitration that the

24 action of claimants, and , is dismissed. Each party shall

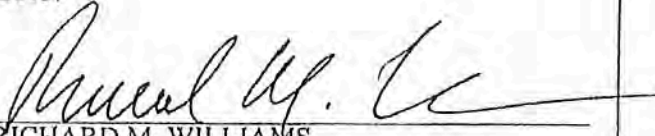
25 bear its own attorney's fees and costs.

26 **NOTHING IN THIS Order prohibits or restricts the enrollee from discussing or**

27 **reporting the underlying facts, results, terms and conditions of this decision to the**

28 **Department of Managed Healthcare.**

DATED: 2-19, 2015.

  
RICHARD M. WILLIAMS  
Neutral Arbitrator

APPROVED AS TO FORM AND CONTENT:

DATED: \_\_\_\_\_

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**ARBITRATION**

IN THE MATTER OF ARBITRATION  
BETWEEN:

ARBITRATION NO. 14326

**AMENDED ORDER GRANTING  
RESPONDENT'S MOTION FOR  
SUMMARY JUDGMENT**

Claimant,

v.

California non-profit public benefit  
Corporation,

and

Respondents.

, a

A hearing on the motion of Respondents

, a

California non-profit public benefit Corporation,

and

S Motion for Summary Judgment was held

in this matter on September 20, 2017.

Appearing at the telephonic hearing were Claimant in Pro Per,

and

, Esq. counsel for Respondents. Following comprehensive review of the

motion, separate statement of undisputed material facts in support of the motion, declarations of

and Dr. , numerous medical and other records and discovery



1 responses and exhibits attached to the motion, as well as the opposition of Claimant  
2 with attachments including a letter from Dr. and Respondent's reply  
3 thereto, and oral argument of Ms. and Ms. , the arbitrator hereby issues the  
4 following order.

5 Respondent's summary judgment motion is essentially two-pronged. First, Respondents  
6 argue that the Claimant's demand for arbitration is barred by the applicable Statute of Limitations,  
7 California Code of Civil Procedure §340.5. Second, Respondents argue that Claimant did not  
8 provide a declaration from a qualified medical expert that states, to a *reasonable degree of medical*  
9 *probability*, that Respondents breached the applicable standard of care and that a negligent act or  
10 omission by Respondents caused Claimant's injuries. Although the motion is susceptible to being  
11 granted on both prongs of the Respondent's arguments, the arbitrator finds that he need not address  
12 the second prong of the motion dealing with allegations of proof, to a reasonable degree of medical  
13 certainty, of medical negligence that caused an injury to Claimant.

14 The arbitrator finds by a preponderance of the evidence that the Claimant's demand for  
15 arbitration is barred by California Code of Civil Procedure §340.5, which states in pertinent part:

16 In an action for injury or death against a health care provider based  
17 upon such persons alleged professional negligence, the time for the  
18 commencement of action shall be three years after the date of injury  
19 or one year after the plaintiff discovery, or through the use of  
20 reasonable diligence should have discovered, the injury, which ever  
21 occurs first. In no event shall a time for commencement of legal  
22 action exceed three years unless toll for any of the following: (1)  
23 upon proof of fraud, (2) Intentional concealment, or (3) The  
24 presence of a foreign body, which has no therapeutic or diagnostic  
25 purpose or effect, in the person of the injured person.

26 There is no evidence before the arbitrator of fraud, intentional concealment or the presence  
27 of a foreign body in the Claimant so as to toll the applicable period of limitations.

28 Further, it is clear from the medical records reviewed in this case that from the most  
expansive reading of the records in this case, giving the Claimant all reasonable benefit of the  
doubt as to when her statute of limitations commenced to run, February 18, 2014, is the latest date  
when one could reasonably argue that the statute of limitations began to run. It was on this date  
that Claimant first reported a rash to her treating physicians at : Using that date as the date

1 the statute of limitations began to run, the one-year statute of limitations applicable to this case,  
2 running from the "discovery of injury" would have expired on February 18, 2015. Since the  
3 Claimant's initial demand for arbitration was not served until August 12, 2016, the statute of  
4 limitations had expired 18 months prior to the date of the service of that demand.

5 As such, the Claimant's claim for medical negligence and damages flowing therefrom is  
6 time-barred pursuant to California Code of Civil Procedure §340.5. Having so ruled, the other  
7 issues raised by the Respondent's motion or by the Claimant's opposition are rendered moot.

8 Wherefore, the Motion for Summary Judgment is hereby GRANTED, with costs awarded  
9 to the prevailing party.

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

13  
14 Dated: September 21, 2017

15 *Richard M. Williams*  
16 \_\_\_\_\_  
17 RICHARD M. WILLIAMS  
18 Arbitrator  
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(State Bar No. )

Telephone:  
Facsimile:

Attorneys for Respondents  
public benefit corporation,  
and

, a California non-profit

ARBITRATION

IN THE MATTER OF ARBITRATION  
BETWEEN:

of , as Executrix of the Estate  
" Claimant,

vs.

California non-profit public benefit  
corporation,

and

Respondents.

ARBITRATION NO. 14707

ORDER GRANTING  
RESPONDENTS' MOTION FOR  
SUMMARY JUDGMENT

A hearing on the motion of Respondents

California non-profit public benefit corporation,

, and

Motion for Summary Judgment

was held in this matter on February 26, 2018.

Appearing at the telephonic hearing were Claimant in Pro Per , as executrix  
of the estate of and , Esq. counsel for Respondents.

Following comprehensive review of the motion and supporting documents, as well as the

1 opposition of Claimant and supporting documents (submitted the morning of the summary  
2 judgment hearing), the arbitrator hereby issues the following order.

3 Respondents argue Claimant did not provide a declaration from a qualified medical expert  
4 that states, to a reasonable degree of medical probability, Respondents breached the applicable  
5 standard of care and that a negligent act or omission by Respondents was the proximate, probable  
6 cause of decedent ' death. *Jones v. Ortho Pharmaceutical Corp.* (1985) 163  
7 Cal.App.3d 396, 402-406; *Morgenroth v. Pacific Medical Center, Inc.* (1976) 54 Cal.App.3d 521.

8 The arbitrator finds by a preponderance of the evidence Respondents sufficiently met their  
9 burden with support of the Declaration of , M.D., a physician board certified in  
10 Internal Medicine and Geriatrics. Claimant failed to sufficiently rebut Respondents' motion with  
11 a declaration from an equally qualified expert identifying a breach in the standard of care, or  
12 causation of death as a result of a negligent act or omission by Respondents; therefore, as a matter  
13 of law Respondents are entitled to summary judgment. *Evans v. Ohanesian* (1974) 39  
14 Cal.App.3d 121; *Carmichael v. Reitz* (1971) 17 Cal.App.3d 958.

15 Furthermore, Respondents' objections to the evidence are ruled upon as follows:


16 Respondents' objection to Exhibit A (February 8, 2016  
17 , M.D.) to Claimant's Opposition on the basis of inadmissible hearsay and  
18 unauthenticated evidence is SUSTAINED.

19 Respondents' objection to the admission of the statement from  
20 , NP as a declaration, as it does not comply with California Code of  
21 Civil Procedure section 2015.50, is SUSTAINED.

22 Wherefore, Respondents' Motion for Summary Judgment is hereby GRANTED.

23 **NOTHING IN THIS ARBITRATION DECISION PROHIBITS OR RESTRICTS**  
24 **THE ENTROLLEE FROM DISCUSSING OR REPORTING THE UNDERLYING**  
25 **FACTS, RESULTS, TERMS AND CONDITIONS OF THIS DECISION TO THE**  
26 **DEPARTMENT OF MANAGED HEALTH CARE.**

27 Dated: 2/27/18

28   
RICHARD M. WILLIAMS  
Arbitrator