

## Arbitration Award

**Instructions:** Use of this form is optional. Within fifteen business days of the date of the closing of most arbitration hearings, the Neutral Arbitrator must serve the Arbitration Award on the Parties and \_\_\_\_\_ . If there were three arbitrators, this Award must be signed by at least two of them. See Arbitration Rules 37 - 39. Return to:

Arbitration Name:

Arbitration Number: 10808

DEBORAH Z. NISSLEY, the Arbitrator(s) selected to determine the dispute between the Parties in the above referenced action, find(s):

An arbitration hearing was held on NOVEMBER 6, 7 + 8, 2013, BRIEFING TO 11/22/13.

It is the decision of the Arbitrator(s) that the prevailing Party in this Arbitration is Check one:

The Claimant(s) is entitled to \$195,000.<sup>00</sup>

Or:

The Respondent(s) is entitled to \_\_\_\_\_

**The reasons for this decision are attached.**

(Arbitration Rule 38 requires that the Award provide findings of fact and conclusions of law, consistent with California Code of Civil Procedure Section 437c(g) or Section 632.)

**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.**

  
Signature of Neutral Arbitrator

12/9/13  
Date

\_\_\_\_\_  
Signature of Party Arbitrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Party Arbitrator

\_\_\_\_\_  
Date

Arbitration Name:

Arbitration Number: 10808

Attachment to Arbitration Award;

Reasons for the Decision / Findings of Fact and Conclusions of Law Page 1 of 3

---

On March 22, 2010 Respondents' Surgeon, \_\_\_\_\_, M.D., performed a hernia surgery on Claimant \_\_\_\_\_. [undisputed]

Respondents' consent form for the hernia surgery stated that its risks included adhesions and bowel obstruction. [Exhibit 101.]

On March 27, 2010, Claimant presented to Respondents' E.R. with a complaint of vomiting and hiccups since the hernia surgery. [Exhibit 103.]

On March 29, 2010, Claimant emailed his \_\_\_\_\_ primary care physician (PCP), Dr. \_\_\_\_\_ and complained that he had horrific vomiting, severe hiccups and it was a "nightmare". [Exhibit 7-2; Claimant testimony; \_\_\_\_\_ testimony.]

On April 12, 2010, Claimant told Dr. \_\_\_\_\_ about the E.R. visit and complaints. [Claimant testimony.] Dr. \_\_\_\_\_ did not review Claimant's records. [\_\_\_\_\_ testimony.] He noted that Claimant had hiccups and no other complaints. [Exhibit 5-204.] Dr. \_\_\_\_\_ scheduled no follow up. [\_\_\_\_\_ testimony.] Dr. \_\_\_\_\_ testimony that he was aware only of hiccups and that they are not a symptom of bowel obstruction [contra, \_\_\_\_\_ testimony], was not credible.

On November 15, 2010, Claimant sent Dr. \_\_\_\_\_ an email stating that he'd had eight months of vomiting since the hernia surgery, and that he'd reached his breaking point. [Exhibit 7-5, Claimant testimony.] Dr. \_\_\_\_\_ said he did not know why Claimant had hiccups, advised that Claimant see his PCP for medications, and stated that he had no other answers. Dr. \_\_\_\_\_ scheduled no follow up. [Exhibit 110, \_\_\_\_\_ testimony.]

Dr. \_\_\_\_\_ arbitration testimony of having no recall of Claimant reporting his E.R. visit and no recall of the 11/15/10 email was not credible; Dr. \_\_\_\_\_ was or should have been aware that Claimant's symptoms included eight months of nausea/vomiting.

Given Claimant's complaints immediately following and continuing after the hernia surgery, the standard of care applicable to Dr. \_\_\_\_\_ as a surgeon required him to create a differential diagnosis that included surgical complication, and to follow up with Claimant. Due to the life threatening nature of the known risk of bowel obstruction via post surgical adhesions, surgical complication should have been within the top three considerations for a differential diagnosis. [Testimony of Drs. \_\_\_\_\_, \_\_\_\_\_ & \_\_\_\_\_; contra, testimony of Dr. \_\_\_\_\_.]

Dr. \_\_\_\_\_ did not create a differential diagnosis that included surgical complication. [Testimony of Dr. \_\_\_\_\_.]

Arbitration Name:

Arbitration Number: 10808

Attachment to Arbitration Award;

Reasons for the Decision / Findings of Fact and Conclusions of Law Page 2 of 3

---

Dr. [redacted] did not follow up with Claimant. [Testimony of Dr. [redacted].]

In failing to create an appropriate differential diagnosis and in failing to follow up with Claimant, Dr. [redacted] fell below the standard of care applicable to him as a surgeon. [Testimony of Drs. [redacted].]

Claimant's vomiting and hiccups continued for over 2-1/2 years post hernia surgery. [Claimant testimony; [redacted] medical records.]

Three months post surgery, and continuing to June of 2012, Respondents' non-surgeon physicians conducted testing to rule out causes other than surgical complication. The testing included a negative CT and a negative Small Bowel Follow Through test (SBFT), neither of which can rule out an intermittent small bowel obstruction. [ [redacted] medical records, Testimony of Drs. [redacted], [redacted], [redacted], & [redacted]. ]

The testing resulted in Respondents' 6/4/2012 diagnosis of "intractable cyclical vomiting, no known etiology" for Claimant's chronic symptoms. [Exhibit 132, testimony of Drs. [redacted] and [redacted].]

In June of 2012, Dr. [redacted] asked Respondents' surgeon, [redacted], M.D. for a consult, noting that Claimant had seen a [redacted] surgeon who had recommended revision of the hernia repair. [Exhibit 128, testimony of Dr. [redacted].]

On June 27, 2012, Dr. [redacted] examined Claimant, ordered a SBFT and offered to perform a laproscopy to visualize the hernia repair area, opining that it was unlikely to reveal the source of Claimant's problem. Dr. [redacted] did not recommend laproscopy, thought "cyclical vomiting" was a likely diagnosis, but offered laproscopy because Claimant was miserable and could be an atypical patient. [Exhibit 128, testimony of Dr. [redacted] and Claimant.]

Given the failure of all testing to provide an etiology for Claimant's longstanding symptoms and given the possibility of Claimant being an atypical patient, Dr. [redacted] offer of what he advised would likely be an unproductive procedure and his failure to encourage Claimant to undergo laproscopy, was below standard. [Testimony of Dr. [redacted], contra testimony of Dr. [redacted].]

Claimant, who had already initiated this Claim [Exhibit 128, Claimant testimony], distrusted Dr. [redacted] [Claimant testimony] and did not undergo laproscopy [undisputed]. Given the fact that he had instituted a claim and given the fact that Dr. [redacted] discouraged laproscopy, his distrust was reasonable.

Arbitration Name:

Arbitration Number: 10808

Attachment to Arbitration Award;

Reasons for the Decision / Findings of Fact and Conclusions of Law Page 3 of 3

---

Claimant's symptoms resolved after a 1/28/2013 laparotomy/revision at \_\_\_\_\_ surgeon diagnosed that an internal hernia (caused by adhesions resulting from the 3/22/2010 hernia repair) had resulted in an intermittent small bowel obstruction, the cause of Claimant's symptoms. [Claimant testimony; Dr. \_\_\_\_\_ testimony. Contra, Dr. \_\_\_\_\_ testimony.]

Three months was a sufficient amount of time for Respondents to rule out differential diagnoses other than surgical complication; Respondent's post surgery patient management that expended more than two years to do so was below standard. [Testimony of Dr. \_\_\_\_\_ . Contra, testimony of Drs. \_\_\_\_\_ and \_\_\_\_\_ .]

As an actual and proximate result of Respondents' negligence, Claimant suffered from 6/22/2010 to 1/28/2013, except for a two week period in April 2010 during which symptoms abated. Claimant had debilitating hiccups, nausea and vomiting three times per week for 130 weeks, i.e. 390 days. [Exhibit 106; Claimant testimony; \_\_\_\_\_ medical records re chronicity of complaints.]

Claimant failed to prove special damages by a preponderance of the credible, substantive evidence. In this regard, Claimant's evidence regarding claimed lost earnings and dental damages was unpersuasive. The testimony of Drs. \_\_\_\_\_ and \_\_\_\_\_ , regarding no such damages, in contrast, was persuasive.

Claimant sustained general damages in the amount of \$195,000.00.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**IN THE MATTER OF THE ARBITRATION BETWEEN**

Claimants,  
vs.  
Respondent.

Arbitration No. 12609

**[PROPOSED] ORDER OF DISMISSAL**

DISCOVERY CUT-OFF: 03/20/15  
ARBITRATION DATE: 4/20/15  
ACTION FILED: 11/27/13

Respondent's Motion for Terminating Sanctions based on claimants' failure to comply with a previous order to provide discovery responses came on regularly for hearing by telephone conference call on January 19, 2015. No written opposition to the motion was submitted. No one participated in the conference call hearing on behalf of claimants. of appeared on behalf of Respondent and moving party. Upon due consideration of the facts and issues raised by Respondent's motion, and based on the procedural history of the case, the motion is granted.

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

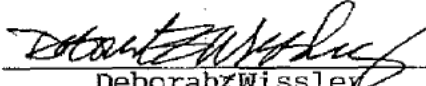
Claimants' action in arbitration is dismissed.

*claims resolution*  
**Nothing in this settlement agreement prohibits or restricts**  
**the enrollee from discussing or reporting the underlying**  
**facts, results, terms and conditions of this *claims resolution* settlement**  
**agreement to the Department of Managed Health Care.**

DZW

DZW

Dated: 1/21/15

  
\_\_\_\_\_  
Deborah Wissley  
Neutral Arbitrator

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[SBN ]  
[SBN ]

Telephone:  
Facsimile:

Attorneys for Respondents,

and

IN THE MATTER OF THE ARBITRATION BETWEEN

, as heir of  
, Deceased  
Claimant,

v.

and

Respondents.

Arbitration No. 14994

**ORDER OF DISMISSAL**

Arbitration Demand: August 10, 2017  
Arbitration Date: January 15-17, 2019

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 20, 2017, Respondents' Motions to Deem Requests for Admissions Admitted and Motion to Compel Responses to Form and Special Interrogatories came on regularly for telephonic hearing. appeared on behalf of Respondents and moving parties. Claimant failed to appear or file any opposition or respond to any of the requested discovery. Based on the foregoing and the fact Claimant failed to appear for the previous AMC on December 6, 2017, the Neutral Arbitrator made the following rulings:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1. Respondents' Motion to Deem Requests for Admissions Admitted is granted;
2. Respondents Motions to Compel Responses to Form and Special Interrogatories, and Request for Production, Sets One and Two is granted. Claimant has ten days from the date of this Notice, i.e., **December 30, 2017** in which to serve responses to Form and Special Interrogatories and Request for Production of Documents, without objection;
3. In light of Claimant's failure to appear at this hearing and the prior Arbitration Management Conference, should Claimant fail to timely comply with this Order and serve discovery responses without objection by December 30, 2017, Respondents may submit a letter to the Neutral Arbitrator and Claimant advising of such failure to comply along with a dismissal of the action with prejudice which will be signed and the action dismissed.

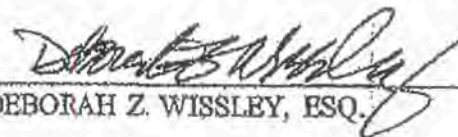
Per Respondent's unopposed motion for dismissal and Claimant's failure to comply with the Neutral Arbitrator's order of December 20, 2017:

**IT IS THEREFORE ORDERED** that based on Claimant's repeated failure to appear and failure to comply with the Neutral Arbitrator's Order, all claims shall be dismissed with prejudice in their entirety against Respondents, including but not limited to

AND

**Nothing in this arbitration decision prohibits or restricts the enrollees from discussing or reporting the underlying facts, results, terms, and conditions of this decision to the Department of Managed Health Care (DMHC).**

Dated: January 13, 2018

  
DEBORAH Z. WISSLEY, ESQ.



1 State Bar No.  
2 State Bar No.

3 Telephone • Facsimile

4 Attorneys for Respondent,

6  
7  
8 **IN THE MATTER OF THE ARBITRATION BETWEEN**

11  
12 Claimant,

13 vs.

15 Respondent.

ARBITRATION NO.: 15148

Arbitrator: Deborah Z. Wissley, Esq.

~~PROPOSED~~ ORDER AND AWARD  
GRANTING RESPONDENT

**MOTION FOR SUMMARY JUDGMENT**

DATE: July 19, 2018

TIME: 9:00 A.M.

LOCATION: Telephonic: 1-866-590-5055  
Access Code: 6748653

*(Filed concurrently with Notice of Motion,  
Memorandum of Points and Authorities with  
Declaration of M.D., and Separate  
Statement)*

DISCOVERY CUT-OFF: 02/01/19

ARBITRATION DATE: 03/05/19

ACTION FILED: 11/06/17

23 **ORDER**

24 The Motion of Respondent Motion for  
25 Summary Judgment, came on regularly for telephonic hearing before the Neutral Arbitrator, Deborah Z.  
26 Wissley, Esq., on July 19, 2018, at 9:00 A.M.

27 After full consideration of the evidence and the Points and Authorities submitted by the parties,  
28 and oral argument of counsel, it appears and the Neutral Arbitrator finds that Respondent



AWARD


The Motion for Summary Judgment of Respondent came on regularly for telephonic hearing before the Neutral Arbitrator, Deborah Z. Wissley, Esq., on July 19, 2018, at 9:00 A.M., or as soon thereafter as it was able to be heard.

At the above time and place, the Neutral Arbitrator granted the Motion for Summary Judgment by Respondent and ordered entry of Judgment as requested in said Motion.

IT IS ORDERED that the Motion for Summary Judgment is granted and an Award is entered forthwith as requested in said Motion in favor of Respondent

**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: July 19, 2018

  
Deborah Z. Wissley, Esq.