Barnes

ARBITRATION
Arbitration No. 12090
(JAMS Reference No. 1120011453)

, a minor, by and
Through his Guardian Ad Litem,
,

Claimant,

vs.

, a
non-profit corporation,
,
a non-profit corporation,
., a professional
corporation,

Respondents.

_____/

FINAL AWARD

THE UNDERSIGNED ARBITRATOR, having been duly appointed in accordance with the Rules for Member Arbitrations (as administered by), and having examined the submissions, proofs, and allegations of the parties, finds, concludes, and issues this Final Award.

I. INTRODUCTION AND PROCEDURAL BACKGROUND

A. Parties and Representatives:

For Claimant:

For Respondents:

B. Arbitrator:

Hon. Robert A. Baines (Ret.)
JAMS
160 W. Santa Clara Street, Suite 1600
San Jose, CA 95113
408/288-2240 408/295-5267(fax)
rbaines@jamsadr.com

C. Arbitrator's Case Manager:

D. Agreement to Arbitrate: As a member of the , Claimant agreed to submit any claim of professional negligence to binding arbitration.

E. Demand for Arbitration: Claimant's Demand for Arbitration was filed with on or about February 28, 2013.

F. Appointment of Arbitrator: The Honorable Robert A. Baines, Judge of the Superior Court (Ret.) was appointed as the Arbitrator on or about June 20, 2013, and his written disclosures sent to all parties shortly thereafter.

G. Applicable Law and Rules: These proceedings were governed by California substantive law and the California Evidence Code, and procedurally by the Rules for Member Arbitrations.

H. The Arbitration Hearing: The evidentiary hearing took place on June 4, 5, 6, 9, and 10, 2014, at JAMS Walnut Creek Resolution Center, 1255 Treat Boulevard, Suite 700, Walnut Creek, California. A total of thirteen witnesses testified,[1] and a number of exhibits were admitted into evidence. All testimony was taken under oath. The proceedings were reported by a certified shorthand reporter; however, no transcript was ordered. At the conclusion of the evidence on June 10, 2014, the matter was argued by counsel and submitted for decision.

II. SUMMARY OF FACTS

The events relevant to this malpractice action transpired over a four-day period beginning on the evening of Thursday, February 3, 2011, when 14-year old (" ") fell on his left wrist while making a slide tackle on a wet soccer field. Despite experiencing wrist pain, he finished the soccer practice and went about his usual activities that evening.

The next morning his left wrist was quite painful and swollen. Around 9:00 a.m., after first talking to a advice nurse on the telephone, his mother took him to the Walnut Creek minor injury clinic for an evaluation. An X-ray revealed a closed fracture of the scaphoid bone in his left wrist. His left arm was placed in a splint, and he was told to take Tylenol or ibuprofen for pain, as needed. All his vital signs were normal at that time, including lack of a fever.

Later that same day, around 3:30 p.m., he returned to because the splint felt too tight and his pain relievers were not working (including Vicodin he had taken at home). He was seen in the Emergency Department, where his splint was replaced, and he accepted the doctor's offer of a pain shot. He was given two inter-muscular ("IM") injections by the LVN: one was for pain (hydromorphone, an opiate, known as

[1] Alphabetically: , , , , M.D., , M.D., , M.D., , M.D., , M.D., , and , M.D.

Dilaudid), which was administered in his right buttock, and one (Phenergan) to counteract any nausea the opiate might cause, given in his left buttock. The Dilaudid injection was painful and there was slight bleeding at the injection site; also, a nerve may have been irritated by the injection, as he felt pain radiating down his right leg. The Phenergan shot was uneventful. He was also given a prescription for Precocet, an oral pain killer (a mixture of oxycodone, an opiate, with acetaminophen). He and his parents filled the prescription and went home. His vitals were normal at that time, too.

That evening, experienced a restless night in which he developed a high fever and experienced hallucinations. There was no testimony, however, as to whether these symptoms might have resulted from the opiate medications (the Dilaudid and the Percocet) or from the Phenergen. The site of the Dilaudid injection remained painful.

The next afternoon, Saturday, February 5, 2011, 's father called around 3:45 p.m. to report the fever and the hallucinations of the night before. He also reported that was now better, without fever, and was sleeping. At some point on Saturday, 's right foot began to experience pain. He testified that this pain began during the day on Saturday; in the medical records, his father reported that the foot pain did not start until Saturday evening.

The following day, Sunday, February 6, 2011, began experiencing a high fever, as well as a racing heartbeat, and chest pain; his right buttock was red, swollen, and painful; his right foot continued to become more painful. His parents took him to the Emergency Department around noon. His overt symptoms (a fever of 102°, a racing heart beat, unusual heart sounds, and overall poor appearance), as well as the initial blood test results (elevated lactate level, elevated white blood count) indicated the likely presence of an active infection somewhere in his body. Initially, the doctors also suspected that he might have either a pulmonary embolism or a heart infection. The diagnosis was soon narrowed to toxic shock from bacteremia (a bacterial infection of his blood); the type and source of the infection were still unclear. He was started on intravenous antibiotics that afternoon, and taken by ambulance to intensive inpatient care at 's Oakland hospital that evening.

His blood infection was cultured and determined to contain Group A Streptococcus ("GAS") bacteria, which apparently had "seeded," i.e., settled, in three areas in his body, his recently broken left wrist, his right foot (where he had an old fracture), and the area of his right buttock where he had received the Dilaudid injection. There was no dispute that the GAS bacteria, when in a patient's blood stream, settles in areas of present or past damage, where the body's immune defenses may be altered or weakened.

His strain of GAS was a virulent one and progressed to full-blown osteomyelitis in his left wrist. He remained hospitalized for a full month, and had a total of six surgeries to remove the infection from his left wrist. His doctors suspected that his right

foot pain was also caused by osteomyelitis from his GAS infection; however, that diagnosis was not confirmed.

Although the infection has now fully resolved, now has a surgically scarred left wrist and hand, with pain and significant range of motion limitations in his left wrist and fingers. Although he continues to play soccer, he must guard that wrist from trauma to the greatest extent possible. When he helps with his father's work on weekends, he no longer can perform some of his previous manual tasks.

III. ISSUES AND CONTENTIONS

A. The Issues:

This case presents two closely intertwined medical/legal issues: (1) what was the most likely source of 's GAS infection, and, (2) depending on that source, is legally responsible for that infection.[2]

B. The Contentions:

1. _____: contends that the Dilaudid injection into his right buttock introduced GAS bacteria into his blood stream, resulting in sepsis and osteomyelitis. He argues that the LVN who administered that injection must have been negligent in his preparation or handling of that injection, and thus is liable for his resulting illness and injury.[3]

2. _____: maintains that the evidence did not demonstrate that the Dilaudid injection was the source of 's GAS infection, and further, even if that injection was the source of his infection, has not proven that was negligent; thus denies all liability.[4]

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[2] There is no claim that was negligent in diagnosing and treating 's GAS infection. Also, damages are not an issue; there is no dispute that *if* is found liable, is entitled to receive the maximum general damages allowed under Civil Code § 3333.2 ($250,000) for his past general damages. He has made no claim for medical special damages, past or future.

[3] does not contend that he acquired this bacteria from any other source at , such as from the triage nurse or the emergency room examining doctor.

[4] has not claimed, as a defense, that if it is determined that the needle, syringe, or Dilaudid were contaminated, that one or more manufacturers supplied a contaminated product, of which was unaware.

IV. THE THREE POSSIBLE SOURCES OF INFECTION

Under our facts, there are three possible scenarios regarding the source of 's GAS infection:

Scenario #1: Pure Coincidence: Under this scenario, there was no relationship, other than temporal, between 's treatment at and his subsequent GAS infection; he simply came down with that infection from an unknown source unrelated to his treatment at . Included in the "coincidence" scenario is the possibility that was an asymptomatic carrier of GAS bacteria before these events (i.e., he carried this bacteria in his pharynx, on his skin, or in his blood stream), and it simply progressed from this asymptomatic state to a fully infected state (such as by the bacteria leaving his pharynx and invading his blood stream), but not as the result of his care. Under either of these "coincidence" scenarios, would have no liability.

Scenario #2: Already Had the GAS Bacteria on his Skin, and the Dilaudid Injection Carried it into his Blood Stream: Under this scenario, was an asymptomatic carrier, with GAS bacteria on his skin, and the Dilaudid injection caused that bacteria to enter his blood stream and multiply. Claimant maintains that under this scenario would be liable, as it demonstrates the LVN was negligent in not properly scrubbing the injection site with alcohol so as to kill all skin bacteria (including GAS). maintains, however, that even the best of alcohol scrubbing would not necessarily have removed all GAS bacteria dwelling in the lower levels of his skin (such as at the base of hair follicles and in sweat glands), and thus the transfer of the bacteria from his skin to the blood stream by way of the needle would not mean the LVN was negligent in swabbing the injection site.

Scenario #3: A Contaminated Needle, Syringe, or Dilaudid: Under this scenario, was not a carrier of the GAS bacteria, and it was introduced into his body solely by way of the Dilaudid injection, which was contaminated with that bacteria. Under this scenario, argues must be liable, as its LVN obviously violated the standard of care by contaminating the needle or syringe when preparing for the injection. rejoins that it would be liable only if the evidence demonstrated that the LVN was somehow negligent in his preparation of the needle and syringe; if he followed all proper protocols for giving injections, would not be liable even though an infection resulted.

V. DISCUSSION/ANALYSIS

A. The Claimant's Evidentiary Burden:

, of course, has the burden of proving, by a preponderance of the evidence, each element of his claim. Under his theory liability, he must prove that the source of his GAS infection was the Dilaudid injection, and that this infection would not have occurred in the absence of negligence on 's part. believes he has

met his burden on both of these elements, including by use of the doctrine of *res ipsa loquitur*.

B. Analysis of Scenario #1: Pure Coincidence:

argues that any connection between 's medical care on February 4, 2011, and his subsequent GAS infection was temporal only, and purely coincidental. 's expert, Dr. , M.D., testified that forty-five percent of cases of GAS infections are idiopathic, and could well have acquired this bacteria from any number of sources unrelated to his care at .

also argues that, at the time of receiving the Dilaudid injection, likely was an asymptomatic carrier of GAS, as are twenty percent of school age youth, with this bacteria already present in his pharynx, on his skin, or in his blood. As such, this bacteria could have progressed, as it sometimes does, from this benign carrier state to a full blown infection with no known cause.

's experts disagreed with both of these "coincidence" scenarios. Dr. , M.D., although acknowledging that the relationship between the injection and the infection *could* have been coincidental, concluded that that the bacteria "most likely" entered by way of the Dilaudid injection. And similarly, Dr. , M.D., testified that the bacteria was "most likely" introduced by way the injection. Dr. , M.D., was even more certain; he opined that 's GAS infection "would not have happened" without the Dilaudid injection. Even 's main expert witness, Dr. , seemed to discount the possibility of a coincidence here; he felt that the Dilaudid injection was the most likely source of the bacteria (although he disputed that was negligent).

Given (1) the temporal proximity between the injection and the manifestation of the infection, which corresponds well with the incubation period for a GAS infection, (2) the lack of any prior signs of this illness, (3) the presence of an immediate infectious reaction (cellulitis) at the site of the Dilaudid injection but not at the site of the Phenergan injection, and (4) Claimant's expert witnesses' opinions that the Dilaudid injection was the most likely source of his infection, it is hereby determined that the appearance of this infection following his injection was not coincidental. Rather, as will be discussed in more detail below, the Dilaudid injection is found to have been the source of his infection. Of course, this finding does not necessarily mean that was negligent.

C. Analysis of Scenario #2 (was a Carrier of GAS Bacteria on his Skin and the Injection Transferred it to his Blood Stream):

's infectious disease expert, Dr. , opined that the most likely source of 's infection was that he was an asymptomatic carrier, with this bacteria on his skin, and it was transferred to his blood stream by the Dilaudid needle. argues that this would not necessarily mean that the LVN was negligent in preparing the injection site; Dr. testified that the swabbing of the skin with alcohol before an

injection, even when done properly, would not necessarily remove all strep bacteria under the skin (such as bacteria in the sweat glands or at the base of hair follicles), and thus the GAS could have been introduced to the blood stream by this injection in the absence of any negligent preparation by the LVN.

Although 's experts downplayed the chances that he was a carrier, none found it impossible and several acknowledged that he could well have been a GAS carrier and that the Dilaudid injection transferred that bacteria to his blood stream.

There was a direct conflict in the evidence as to whether this "transfer" scenario, if found to have occurred, meant that the LVN was negligent when giving that injection. Dr. opined as noted above, and concluded that the infection could have been transferred to the blood stream without any negligence on the part of the LVN. Dr. , 's primary infectious disease expert, disagreed; he testified that such a transfer would mean that the LVN had been negligent when swabbing the injection site.

The undersigned finds that this skin to blood transfer was established by the evidence as the most likely source of 's GAS infection, and that Dr. 's testimony on the issue of negligence is the more persuasive, i.e., that the transfer of the GAS bacteria from 's skin to his blood stream by the Dilaudid injection involved a breach of the standard of care by the LVN in preparing the injection site.

(For completeness, although liability has been found to exist under the transfer scenario, discussed above, 's other basis for 's alleged liability will also be evaluated, below.)

D. Analysis of Scenario #3 (A Contaminated Needle):

also asserts that a contaminated needle was a likely source of his infection, and, relying on the doctrine of *res ipsa loquitur*, claims that the presence of this infection following that injection raises a presumption that the LVN was negligent in his handling of the needle and syringe, citing to CACI jury instruction No. 518 (Medical Malpractice: Res ipsa loquitur).

Obviously, it is a common response to assume that if an unusual injury or illness follows a routine injection, that injection must have been performed negligently. For example, in *Bauer v. Otis* (1955) 133 Cal.App.2d 439, 444, the Court of Appeal penned the often-cited observation: " . . . it is a matter of common knowledge among laymen that injections in the muscles of the arm, as well as other portions of the body, do not cause trouble unless unskillfully done or there is something wrong with the serum." However, later cases have noted that *Bauer*, and the majority of the cases citing *Bauer*, have involved situations in which "the injury was due to an improper insertion of the needle rather than to a consequent infection." *Contreras v. St. Luke's Hospital* (1978) 78 Cal.App.3d 919, at 932.

The undersigned has found one case that presented a factual and legal scenario very similar to ours. In *Barham v. Widing* (1930) 210 Cal. 208, plaintiff Barham's dentist performed a tooth extraction and, as part of that procedure, injected a local anesthetic. A few days later, Barham developed a severe jaw infection, which he attributed to the dentist's use of a contaminated needle for the anesthetic. At trial, Barham presented expert testimony that the injection indeed was the source of his infection, but offered no other evidence of negligence on the part of the dentist. The dentist and his nurse both testified that they followed the usual process for sterilization. The jury was instructed, *inter alia*, that if they found that a contaminated needle had been used and that it caused the infection, they could find for the plaintiff; the instruction did not include language that a finding of negligence was also required. The dentist was found liable, and on appeal contended that the instruction was defective in that it did not require a finding of negligence: "appellant urges that the challenged instruction was fatally defective . . . in that it definitely instructed the jury . . . that plaintiffs were entitled to recover if they found that the defendant 'used or employed either an unsterile hypodermic needle or solution' which proximately caused the infection from which the injuries resulted, whereas obviously the fluid used as an anesthetic might have been contaminated or unsanitary in spite of reasonable care on the part of the dentist and his nurse, or possibly the needle may have communicated disease to the jaw after the usual precautions have been taken to sterilize it." 210 Cal. at 217.

The California Supreme Court rejected the dentist's argument and upheld the jury's verdict. It found no error in the instruction, partly because the jury had been instructed elsewhere that a verdict for plaintiff would require a finding of negligence. However, the Court went on to hold that the jury's finding that the needle was contaminated was sufficient, in and of itself, to establish negligence without additional expert testimony regarding negligence: " . . . under the evidence it became apparent that, as observance of the ordinary standards of practice would preclude the use of an unsterile needle or solution, such use could be due only to carelessness or negligence, hence the inclusion of the allegedly omitted words [requiring a finding of negligence] was not absolutely necessary to a proper charge." 210 Cal. at p. 218. In essence, the Court applied something akin to a conclusive presumption of negligence from the dentist's use of a contaminated needle.

Unfortunately for 's negligent contamination theory, later case law does not support this type of presumption in *res ipsa* situations. Rather, under current *res ipsa* analysis, if a medical treater presents competent evidence of having followed procedures that conform to the standard of care, there is no presumption of negligence, and the plaintiff will be required to offer proof of negligence other than the fact that the treatment resulted in an unusual and unanticipated injury. For example, in *Contreras v. St. Luke's Hospital* (1978) 78 Cal.App.3d 919, the Court of Appeal upheld the granting of a nonsuit against a plaintiff who had developed an infection following knee surgery, but who offered no additional evidence of negligence: "Plaintiff has submitted no evidence that the methods of sterilization and inspection or other procedures followed by defendants were not in accord with the standards of care usually and reasonably followed

by doctors and hospitals under similar circumstances; nor is there evidence that procedures ordinarily considered safe and effective are capable of detecting and rendering harmless all defective equipment or all infectious materials. Defendants, of course, are not insurers against the possibility an unsterile tool or an infectious substance might escape a reasonable inspection, and this is particularly true in a case such as the present where the only expert evidence on the subject is that the type of infection acquired by plaintiff was 'rare.'" 78 Cal.App.3d at 933.[5]

Thus, even if *res ipsa* applies under our facts, the presumption it furnishes (which shifts the burden of producing evidence regarding negligence) is a rebuttable one,[6] and has been rebutted by Respondents' evidence. Respondents have provided evidence which would support a finding that the LVN complied with the applicable standard of care for giving IM injections: the LVN testified that he always follows all required protocols, and 's nursing expert testified that if those protocols were followed, the LVN acted within the standard of care. Although the LVN's testimony regarding his compliance with the protocols was not based on his actual recollection of our particular events, his "custom and practice" testimony was sufficient to rebut the *res ipsa* presumption.[7] As such, 's evidence regarding negligent contamination must be evaluated without a burden-shifting presumption.

In evaluating 's evidence supporting his negligent contamination claim, it is apparent that we do not have persuasive evidence that the needle was contaminated or that the LVN was deficient in his handling of the injection at that stage. Of course, the needle and syringe, as well as the left-over vial of Dilaudid, were neither saved nor tested. No witness observed the LVN handle the needle and syringe in an unsterile manner, and the testimony by and his parents regarding the LVN's actions, as well as 's computerized medical records regarding our events, were insufficient to demonstrate that the LVN could not have followed the protocols he said he followed. All of the expert witnesses agreed that the initial pain and bleeding experienced by from the Dilaudid injection were not indicators that the needle or syringe were contaminated. Finally, none of 's experts offered an opinion that a contaminated needle, if proven to have been present, meant that the LVN was negligent. In an observation applicable to our case, the Court in *Contreras*, *supra*, note that "[a]lthough plaintiff could have established a prima facie case by presenting expert testimony that in the rare situation where a post-operative knee infection does

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[5] The Court in *Contreras* did mentioned *Barham, supra*, but concluded that its analysis was outdated in that it did not call for a weighing of the evidence regarding negligence: "The court [in *Barham*] did not discuss the question considered in the more recent cases of whether, in the rare care where a harmful result does occur, a negligent cause is more probably than a non-negligent one." 78 Cal.App.3d at 933.

[6] As described in the Judicial Council's "Directions for Use" of CACI 518, "[t]he last two paragraphs of the instruction assume that the defendant has presented evidence that would support a finding that the defendant was not negligent or that any negligence on the defendant's part was not a proximate cause of the accident. In this case, *the presumption drops out, and the plaintiff must prove the elements of negligence without the benefit of the presumption of res ipsa loquitur*." [italics added]

[7] See Evid. Code § 1105; *Dincau v. Tamayose* (1982) 131 Cal.App.3d 780, 793-795.

occur, it probably resulted from negligence by the doctor or hospital staff, he did not do so." 78 Cal.App.3d at 934.

In sum, has not supplied evidence sufficient to demonstrate, by a preponderance, that if a contaminated needle was present here, the LVN was negligent in preparing that needle and syringe for the injection.

E. Conclusion:

Based on the findings in Section V(C), above, it is hereby concluded that has established, by a preponderance of the evidence, that was negligent in the administration of the Dilaudid injection given on February 4, 2011 (by not adequately scrubbing the injection site so as to remove all GAS bacteria), and that his GAS infection, and subsequent injuries, resulted from that negligence.

VI. AWARD

Based on the above findings and conclusions, an award is hereby entered in favor of Claimant and against the Respondents herein, for past general damages in the sum of $250,000.00.

Pursuant to the arbitration rules, each side is to bear its own attorneys' fees and costs incurred herein, with Respondents to pay the costs of this arbitration proceeding, other than any initial fees paid by Claimant at the time of filing of his Demand for Arbitration.

Note: 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: June 20, 2014.

Hon. Robert A. Baines
Judge of the Superior Court (Ret.)
Arbitrator

ARBITRATION
Arbitration No. 13125
(JAMS Reference No. 1120012189)

_____,

Claimant,

vs.

_____, a non-profit corporation,

_____, a non-profit corporation,

_____, a professional corporation,

Respondents.

_____/

FINAL AWARD

THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the provisions of the Rules for Member Arbitrations (as administered by), and having been duly sworn, and having previously granted Respondents' Motion for Summary Judgment, hereby issues this Final Award, disposing of all matters raised herein:

I. INTRODUCTION AND PROCEDURAL BACKGROUND

A. Parties and Representatives:

For Claimant, *in propria persona*:

For Respondents , a non-profit corporation, , a non-profit corporation, ., a professional corporation:

B. Arbitrator:

Hon. Robert A. Baines (Ret.)
JAMS
160 W. Santa Clara Street, Suite 1150
San Jose, CA 95113
408/288-2240 408/295-5267(fax)
rbaines@jamsadr.com

C. Agreement to Arbitrate:

As a member of the , Claimant agreed to submit any claims of professional negligence to binding arbitration.

D. Demand for Arbitration:

On or about October 10, 2014, Claimant filed her Demand for Arbitration with

E. Appointment of Arbitrator:

On or about November 14, 2014, the undersigned was appointed as the Arbitrator, and his written disclosures were sent to all parties shortly thereafter.

F. Applicable Law and Rules:

These proceedings were governed by California substantive law, and procedurally by the Rules for Member Arbitrations.

G. The Respondents' Summary Judgment Motion, and Order Thereon:

On or about May 13, 2015, Respondents filed a motion for summary judgment, alleging that Claimant would be unable to establish her claim regarding Respondents' alleged professional negligence. That motion was based, in part, on the Declaration of Dr. M. D., who had reviewed Claimant's medical records and opined that there was no breach of the standard of care by any of the Respondents.

When Respondents' motion initially came on for hearing on August 11, 2015, it was determined that Claimant had filed no timely opposition. At that time, the Arbitrator advised Claimant that, due to nature of her claim, she needed a declaration by a qualified medical expert if she wanted to oppose the Respondents' summary judgment motion. Thereafter, the Arbitrator granted Claimant until August 31, 2015, within which to obtain and submit proper opposition to the motion, including a declaration by a qualified expert.

No expert declaration was submitted by the Claimant within the additional time allowed. As such, and based on the sufficiency of the Respondents' moving papers, including the Declaration of Dr. , M. D., the Arbitrator granted Respondents' motion on September 1, 2015. (See Order Granting Respondents' Motion for Summary Judgment.) That Order adjudicated all claims herein in favor of the Respondents.

II. FINAL AWARD

Based on the granting of Respondents' Motion for Summary Judgment, and there being no other matters remaining for resolution herein, Claimant's claims herein are respectfully denied in their entirety, and an Award is entered in favor of Respondents , a non-profit corporation, , Inc., a non-profit corporation, and , a professional corporation.

Each side is to bear its own fees and costs incurred herein, with Respondents to pay the costs of this arbitration proceeding, other than any initial fees paid by Claimants at the time of filing of the Demand for Arbitration.

Note: 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: September 1, 2015.

Hon. Robert A. Baines
Judge of the Superior Court (Ret.)
Arbitrator

ARBITRATION
Arbitration No. 13125
(JAMS Reference No. 1120012189)

,

Claimant,

vs.

, a non-profit corporation,

, a non-profit corporation,

, a professional corporation,

Respondents.

/

ORDER GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT

Respondents' motion for summary judgment, filed on or about May 13, 2015, initially came on for a telephonic hearing on August 11, 2015, at10:00 a.m., before the undersigned. Claimant participated *in propria persona*; Respondents appeared through their counsel, , Esq., of ,

.

Although Claimant had submitted no papers in opposition to the motion, the Arbitrator gave Claimant until August 31, 2015, within which to submit proper opposition to Respondents' motion, including a declaration by a qualified medical expert. (See Orders on Respondents' Motion fro Summary Judgment, dated August 11, 2015). Claimant was advised in that Order that if opposition papers were not filed by August 31,

2015, the Respondents' summary judgment motion would be granted without a further hearing.

No declaration was submitted by the Claimants by the August 31, 2015, deadline, and no claim was made by Claimant as to the legal insufficiency of the Respondents' moving papers.

The Arbitrator, having read and considered Respondents' moving papers, including the Declaration of Dr. , M.D. (opining, based upon her review of the Claimant's medical records, that there was no breach of the standard of care by Respondents), and good cause appearing, enters the following Orders:

IT IS HEREBY ORDERED that Respondents' Motion for Summary Judgment be, and is, GRANTED. To oppose this motion, Claimant was required to produce some evidence, in the form of a declaration from a qualified medical expert, that there *was* a breach of the standard of care by one or more of the Respondents, or their employees or agents, in their care and treatment of the Claimant, and that this breach caused injury to her. No such evidence was submitted by the deadline given, and thus Respondents are entitled to have their motion granted and an award entered in their favor as a matter of law. The Arbitrator will issue such award shortly.

Dated: September 1, 2015.

Hon. Robert A. Baines
Judge of the Superior Court (Ret.)
Arbitrator

ARBITRATION

Arbitration No. 14150
(JAMS Reference No. 1120013261)

Claimant,

vs.

Respondents.

ORDER DISMISSING ARBITRATION PROCEEDING

TO CLAIMANT :

PLEASE TAKE NOTICE that, due to your non-appearance at the regularly-noticed Arbitration Management Conferences held telephonically on November 23, 2016, and on December 15, 2016, and good cause appearing:

IT IS HEREBY ORDERED that this arbitration proceeding is DISMISSED for failure to prosecute.

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: December 15, 2016.

Hon. Robert A. Baines
Judge of the Superior Court (Ret.)
Neutral Arbitrator

ARBITRATION
Arbitration No. 14918
(JAMS Reference No.)

,

Claimant,

vs.

, a
California non-profit public benefit
Corporation,
and

Respondents.
_____/

ORDER DISMISSING ARBITRATION, WITH PREJUDICE

Pursuant to the undersigned's Order Sustaining Demurrer, Without Leave to Amend, dated May 18, 2018, this arbitration proceeding is hereby dismissed, with prejudice. Each side is to bear its own attorneys' fees and costs incurred to date in this proceeding.

NOTHING IS THIS ORDER PROHIBITS OR RESTRICTS THE ENROLLEE FROM DISCUSSING OR REPORTING THE UNDERLYING FACTS, RESULTS, TERMS OR CONDITIONS OF THIS DECISION TO THE DEPARTMENT OF MANAGED HEALTH CARE.

May 24, 2018.

Hon. Robert A. Baines
Judge of the Superior Court (Ret.)
Arbitrator