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IN THE MATTER OF ARBITRATION

<p>Claimant,</p> <p>vs.</p> <p>Respondents.</p>	<p>Arbitration No.: 12528</p> <p><b>ORDER GRANTING MOTION FOR SUMMARY JUDGMENT IN FAVOR OF RESPONDENTS,</b></p>
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The motion of Respondents

\_\_\_\_\_ M.D., and \_\_\_\_\_, M.D. was heard on September 15, 2014 telephonically with Judge Jaime R. Corral (Ret.). Claimant was represented by \_\_\_\_\_ appeared on behalf of Respondent. Claimant filed opposition to the Motion for Summary Judgment.

After full consideration of the evidence and the reasonable inferences to be drawn therefrom, as well as the Points and Authorities and Separate Statement submitted, the arbitrator finds there is no triable issue of material fact and that Respondents

\_\_\_\_\_, M.D. and \_\_\_\_\_

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

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M.D. are entitled to judgment as a matter of law for the following reasons.

Respondents have met their burden of persuasion that there is no triable issue of material fact on causation and damages. In particular, the Declaration of \_\_\_\_\_, M.D. at paragraphs 7 through 10 support Respondents' position that there was no causation or damages to the claimant.

The arbitrator finds that facts 1 through 6 in the Separate Statement of Undisputed Facts are supported by competent, admissible evidence and have established sufficiently pursuant to *Code of Civil Procedure* section 437c(b)(3) and 437c(p)(2) to warrant summary judgment. The burden shifts to claimant to show a triable issue of material facts existed. Claimant has not done so. Since Respondents have established that there was no issue as to causation or damages, there remain no issues of disputed facts to be determined for summary judgment.

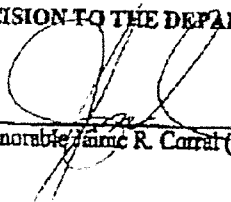
Therefore, IT IS ORDERED that the Motion for Summary Judgment ought to be and hereby is granted, and that judgment in favor of Respondents

\_\_\_\_\_, M.D.,

M.D. shall be entered.

**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 HEALTHCARE.**

Dated: September 24, 2014

  
\_\_\_\_\_  
Honorable James R. Corral (Ret.)

## ARBITRATION AWARD

Claimant vs

ARC CASE NO: 70k462a

A Binding Arbitration hearing was held in the week of January 23, 2017 at the offices of ARC in Los Angeles. The undersigned Neutral Arbitrator heard testimony of witnesses, read and studied exhibits (1 to 98) stipulated by the parties, and final arguments of counsel. After both sides rested, the Claimant made a motion to submit further briefs to address medical records submitted but not discussed during the arbitration and briefing on testimony of Dr. who was not produced for deposition before the arbitration. This motion was opposed by Respondent. After argument the motion was granted but only as to argument but not to reopen the arbitration. When the briefs were submitted, the Respondent attached a declaration by Dr. to which Claimant objected and made a motion to strike it because it was new evidence. That motion was granted and the declaration was stricken from the record.

After consideration of all the testimony, exhibits, and argument of counsel, the Neutral Arbitrator makes the following findings based on the allegations that the Respondent's negligence was the cause of the unfortunate death of the Claimant's husband, who was a patient of the Respondent.

The patient was diagnosed with Stage 1 cancer in 2003 and he successfully underwent surgery for the removal of the tumor. He was thereafter assigned to Oncologist Dr.

for follow up care. In November, 2013, a CT scan was done which showed no trace of colon cancer. Dr. noted that Stage 1 cancer has a 10% chance of reoccurrence probability. Pursuant to the National Comprehensive Cancer Network (NCCN) guidelines, surveillance to include physical exam every three to six months for 2 years, Dr. scheduled routine checkups accordingly.

In November 2013 a CT scan showed a lesion in the liver and sclerotic lesions and Radiologist Dr. recommended a bone scan to exclude metastasis. Dr. ordered the scan but at the next appointment in March 2014, he noted that the patient had not scheduled it as advised. Mr. said he would do so after returning from Germany in June but later declined it and agreed to a CT scan in October, 2014. In September, a month earlier, he had had a colonoscopy which showed some polyps.

This October CT scan showed a 19 mm lesion in the liver which had not been seen in the prior CT scans. Radiologist Dr. then recommended further evaluation and follow up to see if the lesion was malignant, possibly with a biopsy, MRI, or PET scan.

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Dr. [redacted] next met with his patient in December and advised him of the new finding. Since there was no physical evidence of cancer, no symptoms, and the patient was in very good physical condition (he was playing soccer 2-3 times a week) discussions led him to decide to continue surveillance as recommended by the NCCN guidelines.

In May 2015, the regularly scheduled CT scan showed the lesion to have grown from 19mm to 4.8x7.6 cm. Dr. [redacted] was shocked to see such growth in such a relatively short period of time. The biopsy showed that it was a metastatic lesion so large that surgery was out of the question. Chemotherapy treatment was started and seemed to be effective to some degree but unfortunately the patient passed away in November 2016.

Based on the above findings and considering the expert testimony of Drs. [redacted] and [redacted] this decision rests on the weight given to each to determine whether the Claimant has proven its case by a preponderance of the evidence. The Claimant alleges four (4) failures by Dr. [redacted] as evidence to prove its case.

1.He failed to order a biopsy of the new lesion.

The NCCN guidelines do not require that a specific recommendation be followed. According to Dr. [redacted] the expert witness Radiologist, the standard of care does not tell clinician what and how to treat the patient. Dr. [redacted] recommended further evaluation and follow ups. He never specifically recommended any one of the three he had in mind. Dr. [redacted] did in fact continue to evaluate with regularly scheduled appointments per NCCN guidelines.

2.He failed to order a timely CT scan.

The new lesion was found in the October 2014 CT scan and Dr. [redacted] scheduled an appointment in November but the patient called and said he couldn't make so he came in December. He was told of the new lesion and scheduled follow ups. He didn't order a CT scan at that time because he didn't see any physical evidence to require such a need. The patient appeared healthy without any symptoms and was playing soccer regularly so he had no concerns, given 19mm size of the lesion.

3.He failed to notify the patient of the new lesion in the liver.

Dr. [redacted] testified that he did even though the records do not reflect it. However, assuming that he did not, Dr. [redacted] testified that it is not necessarily below the standard of care "if you want to be parental about it".

4.He failed to summon the patient in for a consultation.

This has already been addressed in number 2 above.

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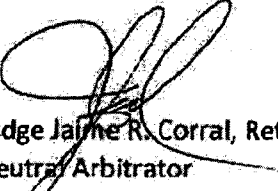
The standard of care is judged by the reasonableness of the decisions made at the time of the action or inaction by the clinician, not by results of that decision. Doctors are not held to a standard of perfection and are not negligent just because their efforts were unsuccessful.

Expert witness Dr. \_\_\_\_\_ testified that in his opinion Dr. \_\_\_\_\_ diagnosis and treatment was below the standard of care. Dr. \_\_\_\_\_ an equally qualified expert, testified that it was not below the standard and this Neutral Arbitrator finds his testimony more, or at very least, equally persuasive. Since the burden of proof is on the Claimant, and even if the evidence on both sides was equally compelling, the Claimant's burden has not been met.

Therefore, this Neutral Arbitrator hereby enters an Award in favor of the 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.**

Respectfully submitted,



Judge Jaime R. Corral, Ret.  
Neutral Arbitrator

### PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action. My business address is

On April 27, 2017, I served the foregoing document(s) described as **ARBITRATION AWARD** on the following interested parties in this action as follows:

Esq.

Esq.

---

1 Hon. Jaime R. Corral, Ret.  
2 Alternative Resolution Centers, LLC  
3 1875 Century Park East  
4 Suite 450  
5 Los Angeles, California 90067  
6 Tel: 310-284-8224  
7 Fax: 310-284-8229

8  
9  
10 **ALTERNATIVE RESOLUTION CENTERS, LLC**

11  
12 **CASE NO.: 70K490C**

13  
14 Claimant(s),

15 vs.

16  
17 **RULING ON MOTION FOR  
18 SUMMARY JUDGMENT**

19 Respondent(s).

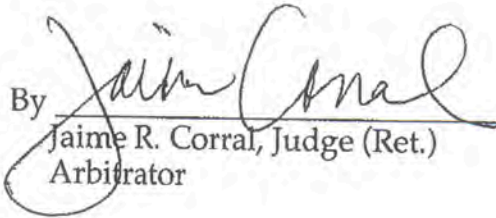
20 This Arbitrator makes the following ruling on the Motion for Summary  
21 Judgment based on two findings:

- 22 1. The opposition raises a new theory which was never even suggested prior to this  
23 motion.
- 24 2. The material issue on causation was presented in the form of Claimant's experts,  
25 neither of which based their opinions on facts supported by any evidence; there  
26 opinions were based primarily on speculation and conclusions.
- 27 3. The Motion for Summary Judgment is GRANTED.

1            Nothing in this arbitration decision prohibits or restricts the enrollee from  
2 **discussing or reporting the underlying facts, results, terms and conditions of this**  
3 **decision (or Settlement Agreement) to the Department of Managed Health Care.**  
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8 Dated: March 26, 2018

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By   
Jaime R. Corral, Judge (Ret.)  
Arbitrator

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[SBN ]  
[SBN ]

Telephone:  
Facsimile:

Attorneys for Respondents,

and

IN THE MATTER OF THE ARBITRATION BETWEEN

Claimant,  
vs.  
  
and DOES 1 TO  
50, inclusive,  
Respondents.

ARBITRATION NO.: 15419  
**ORDER OF DISMISSAL**  
Arbitration Demand: April 10, 2018  
Arbitration Dates: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Respondents' Motion for Terminating Sanctions was heard on August 30, 2018. Claimant appeared as did counsel for Respondents. As of the date of the hearing, Claimant failed to comply with the Neutral Arbitrator's Order to provide discovery responses without objection by July 27, 2018. Claimant failed to file opposition to the Motion, and failed to request additional time prior to the hearing.

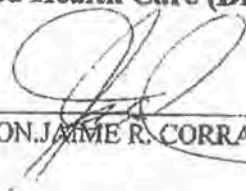
**IT IS THEREFORE ORDERED** that Respondents' Motion for Terminating Sanctions Is granted and, all claims shall be dismissed with prejudice in their entirety against all named and served Respondents, including but not limited to and as well as all named and unserved Respondents, including but not limited to



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**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: August 31, 2018

  
\_\_\_\_\_  
HON. JAIMÉ R. CORRAL, RET.

1 Hon. Jaime R. Corral, Ret.  
2 Alternative Resolution Centers, LLC  
3 1875 Century Park East  
4 Suite 450  
5 Los Angeles, California 90067  
6 Tel: 310-284-8224  
7 Fax: 310-284-8229

8 **IN THE MATTER OF ARBITRATION BETWEEN**

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11 Claimant(s),  
12 vs.  
13  
14 Respondent(s).  
15

**ARC CASE NO.: 70K541C**

**ORDER RE: MOTION FOR SUMMARY  
JUDGMENT**

16 After full consideration of the evidence, the separate statement submitted by  
17 Respondents, the authorities submitted by counsel, as well as oral arguments by the  
18 parties, this Neutral Arbitrator finds that here is no triable issue of material fact as to  
19 Claimant's cause of action for medical negligence against Respondents,  
20

21 and  
22 and the treatment of Claimant, by  
23 Respondents,

24 and was, at all times, within the standard of  
25 care in the community, and to a reasonable degree of medical probability, was not the  
26 cause any injuries to Claimant,  
27



1 Hon. Jaime R. Corral, ret.  
2 Alternative Resolution Centers, LLC  
3 800 S. Figueroa Street  
4 Suite 1200  
5 Los Angeles, California 90017  
6 Tel: 213-623-0211  
7 Fax: 310-623-0228

8 **IN THE MATTER OF ARBITRATION BETWEEN**

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11 Claimant(s),  
12 vs.  
13  
14 Respondent(s).  
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**CASE NO.: 70K526A**

**ARBITRATION AWARD**

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17 A Binding Arbitration hearing was held in the above matter in the week of May  
18 13, 2019 through May 20, 2019 at the offices of ARC in Los Angeles.

19 The undersigned Neutral Arbitrator heard testimony of witnesses, read and  
20 studied exhibits submitted by the parties, and heard final arguments of counsel. In  
21 addition, the case submitted by Respondent as authority for a Motion for a Directed  
22 Verdict [Williamson v Prida at 75 CA4 1417] was read even after the motion was denied  
23 but was nevertheless taken into consideration in this final decision.

24  
25 After consideration of all of the above, this Arbitrator makes the following  
26 findings based on the allegation that the Respondent's negligence was the cause of the  
27 unfortunate death of the Claimant's husband, \_\_\_\_\_, who was treated at the  
28

1 Respondent's Emergency Room on August 12, 2016. The negligence alleged was a  
2 breach of the standard of care. That the standard of care was breached because, given  
3 the medical history of Mr. [redacted]'s treatment at this same facility nine months  
4 earlier in November of 2015, he should not have been released but kept for further  
5 monitoring in the ER or admission to the hospital.  
6

7 In November 4, 2015, Mr. [redacted] presented to the ER at this same  
8 [redacted] with sever shortness of breath, fever, and chest pain. He was noted to be  
9 hypoxemic with oxygen saturation of 63%. Normal is above 90%. Physical examination  
10 of the lungs revealed rales, crackles, and wheezing. A chest X ray showed bilateral  
11 pneumonia and he was admitted for further treatment. He was found to have a history  
12 of obstructive sleep apnea and had been referred for a sleep study twice but he never  
13 followed up.  
14

15 On November 6, he was diagnosed with hypercapnic respiratory failure and sent  
16 to ICU and was intubated. The pneumonia was significant and resulted in septic shock  
17 and affected his ability to expel carbon dioxide. He was discharged on November 9 but  
18 continued with follow ups and reported no shortness of breath.

19 On the morning of August 12, 2016, Mr. [redacted] was involved in a single car  
20 accident while working as a security guard. The Emergency Medical Technicians were  
21 summoned. They examined him and asked if he was alright. He said that he was and  
22 declined transportation to the hospital. He then decided to drive himself to the  
23 [redacted] where he had membership. He arrived at around 6:30 am, about an  
24 hour after the accident and walked approximately 100 yards from where he parked to  
25 the ER entrance.  
26  
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1 While there, a nurse examined him and took his vital signs, all of which were in  
2 the normal range. He complained of right wall chest pain, back pain and bilateral hand  
3 pain. His lung sounds were clear to auscultation and he denied shortness of breath. He  
4 spoke in full sentences and denied nausea, vomiting, abdominal pain, headache and  
5 distress. He was placed on a cardiac monitor for continuous observation of vital signs  
6 and cardiac rhythm which appeared normal.  
7

8 At 6:58 am, ER physician \_\_\_\_\_, M.D. assessed the patient  
9 and noticed that the patient had a previous medical history of Type II diabetes,  
10 hypertension, sever obesity, an acute episode of hypercapnic respiratory failure  
11 associated with pneumonia and congestive heart failure. He noted that the patient did  
12 not display any neurological symptoms or concerns. He ordered a CT which showed  
13 questionable nondisplaced rib fractures. He ordered X rays of both hands,  
14 comprehensive blood work, IV fluids, morphine and Zofran as well as an EKG. The 2  
15 milligrams of morphine caused the oxygen level to drop from 94% upon admission to  
16 91%. He was then placed on 2 liters of oxygen and saturation level increased to 93% at  
17 8:00 am and 96% at 9:13 am.  
18

19 A CT of the abdomen and chest with contrast showed no evidence of any lung  
20 injury or damage to the chest wall. The lab results showed nothing of concern such as  
21 bleeding, significant acidosis or respiratory distress.  
22

23 Dr. \_\_\_\_\_ reexamined the patient at around 10:26 am and found no evidence of  
24 respiratory difficulties. The patient was given an incentive spirometer for use because  
25 the possible rib fractures could develop pneumonia and the spirometer would help  
26 prevent it.  
27

1 Dr. discussed with Mr. the results of the tests, what findings he  
2 made as to the to the problems, course of treatment, his prospect for recovery and  
3 follow up needs. He was discharged at 10:51 am. at which time the nurse noted that his  
4 over appearance and demeanor such as speech and walking ability seemed well with a  
5 steady gait even if he had some assistance from his wife and son going to the car.  
6

7 Mr. returned home and went to sleep while his wife prepared  
8 something to eat. When she tried to wake him up a couple of hours later, he was  
9 unresponsive and 911 was called and paramedics performed CPR to no avail, and he  
10 was subsequently pronounced dead. The coroner said the cause of death was due to  
11 atherosclerotic hypertrophic heart disease and not to any respiratory failure.  
12

13 Given that the burden of proof is on the Claimant to prove by a preponderance  
14 of the evidence that the standard of care was breached, we must consider the testimony  
15 of the experts. Here we heard from very well qualified medical doctors on both sides in  
16 the specialties relevant to the issues in this case, especially regarding the standard of  
17 care in emergency room situations. The Claimant called Dr. , a pulmonologist  
18 who opined that the cause of death was due to respiratory failure at home to sleep  
19 apnea. He testified that if the patient would have been at the hospital the monitor  
20 would have alerted the nurse and he would have been saved as in November of 2015.  
21

22 Dr. , an ER specialist, testified that the standard of care required Dr.  
23 to perform a blood gas test. He also defined the standard of care is "to a  
24 reasonable degree of medical certainty". Anything else is below the standard.  
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26 The Respondent's ER expert, Dr. testified just the opposite but  
27 unlike Dr. , he didn't try to add to his answers by being somewhat  
28 argumentative with opposing counsel during cross examination. Dr. has devoted

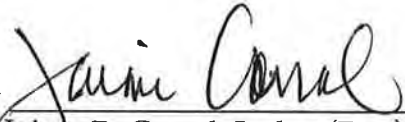
1 almost his entire career in ER medicine and trauma centers. Claimant's experts opined  
2 that Dr.           breached the standard of care by not keeping him in the hospital longer  
3 because that would have saved his life. The question as to how long he should have  
4 been kept was never asked and he didn't volunteer it.

5  
6           Respondent's experts said that he complied with the standard of care and that to  
7 do what Claimant's experts say is purely speculative. We judge the standard not by the  
8 results but by the reasonable degree of medical probability by which the act or omission  
9 was done. The evidence shows that Dr.           made every effort to assure that the  
10 patient was stable, ambulatory (had patient perform a road test), and was able to speak  
11 and understand everything that he was told including any possible issues at home.  
12 Other than the testimony of Claimants experts, there are no objective findings to  
13 support their opinions.  
14

15           Therefore, taking all of the above into consideration, this Arbitrator finds that the  
16 Claimant has not met the burden of proof by the preponderance of the evidence and  
17 this Neutral Arbitrator hereby enters an Award in favor of the Respondent.

18           **Nothing in this arbitration decision prohibits or restricts the enrollee from**  
19 **discussing or reporting the underlying facts, results, terms and conditions of this**  
20 **decision to the Department of Managed Care.**  
21

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24  
25 Dated: May 31, 2019

By   
\_\_\_\_\_  
Jaime R. Corral, Judge (Ret.)  
Arbitrator