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Arbitrator

IN THE MATTER OF THE ARBITRATION

, Claimant, vs. ., Respondent.	Case No. 12884 **ORDER GRANTING SUMMARY JUDGMENT MOTION**

On June 2, 2015, commencing at 10:00 a.m., a telephonic hearing was held on Respondent's Motion for Summary Judgment herein (hereinafter sometimes referred to as "said Motion"), Arnold H. Gold, Arbitrator, presiding. Claimant participated *in propria persona*. Respondent participated by its attorneys, , by , Esq. Claimant and Mr. argued orally, and said Motion was taken under submission.

The Arbitrator, having read and considered the documents submitted in support of and in opposition to said Motion and having heard and considered the oral arguments of Claimant and Mr. and

the oral objections of Mr. , now rules and orders as follows on said Motion:

SAID MOTION IS HEREBY GRANTED. A SUMMARY JUDGMENT HEREIN IN FAVOR OF RESPONDENT AND AGAINST CLAIMANT IS HEREBY ORDERED. IMMEDIATELY FOLLOWING HIS SIGNING AND FILING OF THE WITHIN ORDER, THE ARBITRATOR IS SIGNING AND FILING A SUMMARY JUDGMENT HEREIN IN FAVOR OF RESPONDENT AND AGAINST CLAIMANT.

REASONING

"The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code of Civil Procedure Section 437c, subd. c.) If only the papers submitted by Respondent are considered, Respondent has met its burden - the Declaration of , M.D. is sufficient to establish that the conduct of Respondent did not violate any applicable standard of care in the care and treatment of Claimant.

However, Claimant has filed opposition papers. The question then becomes: Do Claimant's opposition papers show that a triable issue of one or more material facts exists as to Claimant's claims herein? (See Code of Civil Procedure Section 437c, subd. (p)(2).)

Claimant's opposition papers do not point out any defect in Respondent's moving papers, except for a contention that the Declaration of Dr. should be ignored because he is biased (a "hired gun"). No factual showing of bias on the part of Dr. is contained in Claimant's opposition. The fact that Dr. has been willing to give a declaration is not a showing of bias; nor is the fact that Dr. was paid for giving a declaration - if that be a fact - again, no factual showing of payment has been made by Claimant.

If Claimant's contention were correct - and it is not - Respondent could never submit an expert declaration; Claimant would always be able to claim that the mere fact of giving a declaration in favor of one side demonstrates disqualifying bias against the other side!

So because Claimant has not pointed out any defect in Respondent's moving papers, the inquiry then becomes: Do Claimant's papers show facts undermining Respondent's moving papers?

Code of Civil Procedure Section 437c, subd. (b)(2), contemplates that the party opposing a summary judgment motion (here, Claimant) is to make his factual showing by "affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken." Of these methods, the only one utilized by Claimant is "declaration": Claimant's own declaration. So the question then becomes: Does Claimant's declaration set forth facts that undermine Respondent's moving papers?

It would, if no objection thereto was made and sustained. However, subdivision c of Code of Civil Procedure Section 437c does not permit the judicial officer (here, the Arbitrator) hearing the motion to consider evidence set forth in the papers as to which objections have been made and sustained.

Respondent has objected to each item of evidence set forth in Claimant's declaration on multiple grounds, including but not limited to hearsay, lack of relevance, violation of Evidence Code Section 720 and violation of Evidence Code Sections 803 and 804.

Subdivision (d) of Code of Civil Procedure Section 437c requires that declarations in opposition to a summary judgment motion "shall be made by [a] person on personal knowledge, shall set forth admissible evidence, and shall show affirmatively that the affiant is

competent to testify to the matters stated in the" declaration. Claimant's declaration does not satisfy those requirements:

1. Claimant's declaration is, in relevant part,[1] entirely an expression of Claimant's opinion - that is, Claimant expresses the opinion that the exhibits attached to his declaration constitute and prove various things. However, the exhibits attached to Claimant's declaration are entirely inadmissible hearsay.

A non-expert ("lay") witness cannot render an opinion based on hearsay rather than on the perception of the witness. (Evidence Code Section 800.) However, under limited circumstances an expert can express an opinion based upon hearsay materials and can set forth the matters upon which that opinion is based. (Evidence Code Section 802.) In his declaration Claimant does not purport to express his own opinion that Respondent breached any standard of care or that any such breach caused Claimant's injuries, loss or damages; instead, Claimant's declaration expresses the opinion that the attached exhibits show such breaches and causation. But even if Claimant's declaration had expressed his own opinion that Respondent breached any standard of care or that any such breach caused Claimant's injuries, loss or damages, there would be no foundation for such an opinion because Claimant has not demonstrated that he is an expert[2] - and so Claimant's opinion would not be admissible under the limited circumstances permitted under Evidence Code Section 802 for the

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[1] I say "in relevant part" because Paragraph 1 thereof, declaring that declarant is the Claimant, while relevant and not objectionable, is undisputed. It is Paragraph 2 of Claimant's declaration that represents Claimant's effort to demonstrate the existence of a triable issue of material fact.

[2] See the requirements set forth in Evidence Code Section 720 for a person to qualify as an expert. Claimant has submitted no evidence tending to demonstrate that he satisfies any of these requirements.

opinion of an expert. Under such circumstances, the Arbitrator must exclude Claimant's opinion. (Evidence Code Section 803.)

2. As an entirely independent defect in Claimant's opposition: Even if the exhibits attached to Claimant's declaration had been properly authenticated, they do not show what Claimant says they show, namely, that Respondent or its health professionals breached any standard of care in the treatment of Claimant. At least some of the articles that are the exhibits to Claimant's declaration suggest different - and, in some instances, what the article's author(s) believe are better - methods for treating the health problems from which Claimant suffered. However, not one of those articles opines that not following the suggestions contained in the article amounts to a breach of a standard of care. Not following what one or some experts feel are best practices does not mean that not adhering to those practices is conduct below the standard of care in the profession. For example, one cannot say that when a new treatment regimen is discovered or developed, every medical practitioner who has not yet decided to follow that regimen has breached the "standard of care" in the profession.

CONCLUSION

For the foregoing reasons, Claimant's opposition does not demonstrate the existence of a triable issue of material fact, and the Arbitrator concludes that there is no triable issue as to any material fact herein and that the moving party is entitled to a judgment as a matter of law. A Summary Judgment herein in favor of Respondent and against Claimant is hereby granted.

Nothing in this decision prohibits or restricts Claimant or Respondent from discussing or reporting the underlying facts, results,

terms and conditions of this decision to the Department of Managed Health Care.

DATED: June 19, 2015.

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IN THE MATTER OF THE ARBITRATION

AND ,

Claimants,

vs.

, et al.,

Respondents.

Case No. 15089

ARBITRATION AWARD

The above-entitled case came on regularly for arbitration trial on June 3, 2019, commencing at 10:00 a.m., in the offices of , located at , Arnold H. Gold, Arbitrator (hereinafter sometimes referred to as "the Arbitrator"), presiding. Said trial continued from day to day thereafter, on June 4, 5, 6, 7 and 8, 2019, at the same location. Claimants appeared by their attorneys, , by , Esq. Respondents appeared by their attorneys, , by , Esq.

Evidence, both oral and written, was received, and written and

oral argument was presented, and the matter was submitted for decision.

AWARD

The Arbitrator, having heard and considered said oral evidence and oral argument and having read and considered said written evidence and written argument, now issues the following Award:

Claimants shall recover nothing on their claims presented herein.

RATIONALE FOR AWARD

Preliminary observation: The Arbitrator feels great sympathy for the horrendous ordeal that Mr. and Mrs. went through. However, an inability to quickly and relatively painlessly resolve a patient's medical condition of course does not necessarily mean that unsuccessful efforts to help that patient involved malpractice.

Misstatements in Claimants' closing briefs

Claimants' Closing Brief and Closing Rebuttal Brief are replete with misstatements. While Claimants are not being penalized by the Arbitrator for having made these misstatements, as a preliminary matter so that the record can be reasonably clear, the Arbitrator will now list some of those more significant misstatements:[1]

A. Statement: "Dr. opined that the constant administration of liquids, even solids, orally, contributed to the

[1]The omission from the list that follows of any statement contained in Claimants' Closing Brief and/or in Claimants' Closing Rebuttal Brief is not intended as an indication that the Arbitrator believes that such omitted statement is true or valid. The list that follows is only a partial list.

rupture and perforation of Mr. 's colon." (Claimants' Closing Brief, p. 5, lines 11-1/2 - 13-1/2.) No such testimony was given by Dr. .

B. Statement: "Dr. further opined that the delay in proper treatment was a substantial cause of Mr. 's perforation and necrosis of the colon." (Claimants' Closing Brief, p. 5, lines 16 - 18.) No such testimony was given by Dr. .

C. Statement: "The record indicates . . . [a] deminimis [*sic*] [bowel] movement on the 17th or 18th." (Claimants;' Closing Brief, p. 5, lines 27-28.) records reflect bowel movements on both the 17th and 18th and does not reflect that they were *de minimus*. (See Exhibits 1-34, 1-58 and 1-54.)

D. Statements: Mr. "arrived in the [ ] ER somewhere between 8:30 and 9:30 p.m. . . . 's assessment at 2-17 showed septic shock, critically ill, hypotensive shock on 3 pressors and intubated. A CT scanned [*sic*] was performed on 12/20/16 about 12:30 a.m." (Claimants' Closing Brief, p. 7, lines 20-26.) The sequence in which these statements are set forth in Claimants' Closing Brief imply that the assessment at 2-17 occurred immediately upon Mr. 's 8:30 - 9:30 arrival at and before his 12:30 a.m. CT scan. In fact, that assessment occurred after (and based upon) the CT scan - Approximately three to four hours after his arrival at . The assessment given on Mr. 's arrival at (Exhibit 2-3) showed no such symptoms/problems.

E. Statements: Dr. "opined that . . . 's employees who treated Mr. , including Dr.

breached the standard of care." (Claimants' Closing Brief, p. 8, lines 22-24.) Dr. did not testify that Dr. breached the standard of care.

F. Statement: Dr. testified "that the delay in treating Mr. 's recto-sigmoid mass/obstruction and the administration of oral substances given his signs, symptoms and radiographs both contributed to the rupture of his colon, necrosis and ischemia." (Claimants' Closing Brief, p. 8, lines 24-26.) Dr. did not testify to such a causal connection.

G. Statement: "Mr. left AMA after the gastrofin enema because he was in pain . . ." (Claimants' Closing Rebuttal Brief, p. 2, line 25.) 's records indicate that Mr. was not in pain when he left . (Exhibit 1-44.)

H. Statement: "When he arrived at the same [that Mr. was in pain] was true." (Claimants' Closing Brief, p. 2, line 27.) Mr. was not in pain when he arrived at . (Exhibit 2-3.)

I. Statement: "The evidence at trial showed that he arrived at in a grave condition." Claimants' Closing Rebuttal Brief, p. 2, lines 27 - 28.) It was not until sometime <u>after</u> his arrival at that Mr. 's condition became grave. (See Paragraphs D and H above.)

J. Statement: "The record shows that . . . during Mr. 's stay from the 15th-19th his bowel movements were basically non-existent, except for traces of fecal matter." (Claimants' Closing Rebuttal Brief, p. 4, lines 13-1/2 - 16.) 's records show bowel

movements on December 17 and 18 and do not reflect that they were only "traces of fecal matter." (Exhibits 1-34, 1-58 and 1-54.)

Now to the Arbitrator's findings and conclusions:

1. **Malpractice**:

Conclusion: Claimants have not proved that any Respondent or any agent or employee of any Respondent committed malpractice.

Findings: The Arbitrator does not agree with any of Dr. 's opinions that staff were guilty of malpractice.

A. The principal malpractice that Dr. opined was committed was the continued administration of fluids (laxatives and contrast). The Arbitrator finds that Dr. ' opinion in this regard was wrong:

(i) Dr. ' opinion in this regard ignores the fact that most of the fluids administered to Mr. were laxatives - having a propensity to relieve the impaction rather than compounding it.

Dr. opined that the proper treatment for Mr. was to perform a colonoscopy or a flexible sigmoidoscomy on December 17th. But as several of Respondents' witnesses testified, in order to perform a colonoscopy without undue risk of perforating a colon wall, the colon must first be cleaned out - presumably by the administration of laxatives. Dr. did not explain how performing a colonoscopy on December 17, before Mr. 's colon was cleaned out, would not have entailed undue risk.

Insofar as performing a flexible sigmoidoscopy is concerned, the Arbitrator finds - based upon the testimony of Dr.

- that such a procedure before cleaning out the colon would, as with a colonoscopy, have entailed too much risk. The Arbitrator also accepts Dr. 's opinion that a flexibly sigmoidoscopy would have served no useful purpose because the flexible sigmoidoscopy would not have reached the troubled area of Mr. 's colon.

(ii) Dr. 's testimony would mean that each of several physicians conducted himself/herself below the standard of care: Dr. , Dr. , and even Dr. or Dr. (the physicians, one of whom who directed that more than one cup of contrast liquid be administered to Mr.). It is, of course, possible that multiple physicians can commit the same malpractice in treating the same patient, but it may be that the greater the number, the less likely the conduct in question is below the standard of care.

(iii) Dr. ' opinion ignores the fact that Mr. was passing gas and having some bowel movements as his stay at progressed. These symptoms are inconsistent with a complete blockage of the colon and presumably indicate that a laxative may loosen the partial blockage.

(iv) If Dr. 's opinion were correct, it would seem that no one who is severely constipated should take a liquid laxative. The Arbitrator does not believe that the standard of care so dictates.

B. Dr. criticized Dr. for (i) not having seen Mr. 's CT scan before expressing his views to Dr. and (ii) not examining Mr. in person. Given the circumstances

confronting Dr. at the time, he Arbitrator accepts Dr. 's opinion that the conduct of Dr. in this regard did not fall below the standard of care.

C. Dr. apparently criticized Dr. for not having ordered a second KUB. Any such criticism is wrong and unfair. Dr. promptly sent Mr. by ambulance to for a CT scan, and further responsibility for the patient thereupon shifted to . The Arbitrator rejects any notion that Dr. should have held Mr. at Dr. 's facility in order to perform a second KUB.

D. Closest to malpractice was delay in administering the gastrografin enema. However, given the facts before Dr. at the time the decision was made not to call the radiologist in over the weekend, the Arbitrator accepts Dr. 's opinion that Dr. 's decision in that regard did not fall below the standard of care.

C. While Dr. questioned why the CT exam performed at was performed with IV contrast instead of GI contrast, he did not opine that the use of the IV contrast fell below the standard of care - or, for that matter, express any opinion on malpractice on the part of any of the radiologists.

2. **Causation**:

Conclusion: Claimants have not proved that any malpractice on the part of any Respondent or any agent or employee of any Respondent caused any injury or damage to either Claimant.

Findings: Not a single witness - not even Claimants' expert

Dr. - opined that any alleged malpractice in this case caused the perforation or any of the other problems that resulted in the surgery performed on Mr. or any of the post-surgery problems that he experienced. Respondents' Written Closing Argument refers to "the testimony of Dr. on causation" (see p. 13, lines 13-14). However, the Arbitrator listened carefully to Dr. 's testimony, listening in vain for an opinion on causation, and took copious notes on Dr. 's testimony; and while Dr. 's testimony may have implied that there was a causal link between the alleged malpractice and the perforation and surgery (such an implication having arisen, if at all, essentially from (I) the fact that he testified at length about various alleged malpractice and (ii) why would he be doing so unless he felt that the malpractice caused some harm to Mr.), he did not affirmatively testify (whether to a reasonable medical probability or otherwise) that any of the alleged malpractice caused the harm that ultimately befell Mr. .[2]

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: August 6, 2019.

ARNOLD H. GOLD, Arbitrator

[2]Dr. did testify that in his opinion the delay in performing the gastrografin enema "worsened" Mr. 's "condition." "Worsen"? "Condition?" Caused Mr. 's blood pressure to rise by 20 points? Increased his pulse rate by 15 beats? Mr. isn't suing for an increase in blood pressure or pulse rate. He's suing for a perforated colon and surgery and post-operative complications in connection therewith. The opinion of Dr. just cited is a far cry from an opinion that it is reasonably probable that the delay in performing the gastrografin enema caused the perforated colon and the events that occurred thereafter.

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IN THE MATTER OF THE ARBITRATION

and , Claimants, vs. , et al., Respondents.	Case No. 15884 ARBITRATION AWARD

The above-entitled case came on regularly for arbitration trial on September 16, 2019, commencing at 10:35 a.m., in the offices of Alternative Resolution Centers located at 800 South Figueroa Street, Suite 1200, Los Angeles, California 90017, Arnold H. Gold, Arbitrator (hereinafter sometimes referred to as "the arbitrator"), presiding. Said trial continued from day to day thereafter, on September 17, 18, 19 and 20, 2019, at the same location. Claimants appeared by their attorneys, , by , Esq. Respondents appeared by their attorneys, , by , Esq. and , Esq., Esq.

Evidence, both oral and written, was received, and written and oral argument was presented, and the matter was submitted for decision.

AWARD

The arbitrator, having heard and considered said oral evidence and oral argument and having read and considered said written evidence and written argument, now issues the following Award:

1. **Claimants shall recover nothing on their claims against herein.**

2. **Claimants shall recover nothing on their claims against herein.**

3. **Claimants shall recover nothing on their claim against , M.D. herein.**

4. **Claimant (hereinafter sometimes referred to as "Mrs. ") is hereby awarded the sum of forty-five thousand dollars ($45,000) against , , M.D. (Hereinafter sometimes referred to as "Dr. ") and (hereinafter sometimes referred to as " "), jointly and severally.**

5. **Claimant is hereby awarded the sum of six thousand dollars ($6,000) against , , M.D. and , jointly and severally.**

RATIONALE FOR AWARD

Preliminary observation: Claimants do not claim herein that Mrs. could have been cured of cancer (or that the progress of her cancer could have been arrested or reversed) by any conduct on the part of any of the Respondents. Rather, their only claim herein is

that negligent delay on the part of Respondents in diagnosing her cancer resulted in a delay in administering or prescribing strong enough pain medication to greatly mitigate the pain that Mrs. endured.

The Arbitrator's findings and conclusions:

1. _____:

During said trial Claimants conceded that the evidence presented did not warrant an award herein against Respondent

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2. _____:

The evidence pre3senbted at the arbitration trial against (to the extent that there was any) does not support a finding that Respondent itself breached any duty owed to either of the Claimants herein, nor did it establish that said Respondent was, on a *respondeat superior* or agency theory, liable for any breach of duty on the part of any other Respondent herein (or, for that matter, on the part of any other person or entity). There was no evidence presented at the arbitration trial that any person who treated or evaluated Mrs. or consulted concerning Mr. was an employee or agent of . There was no (or insufficient) evidence presented at the arbitration of the arbitration trial to persuade the arbitrator that any action or inaction on the part of itself breached any duty to Mrs. . The conduct below the standard of care hereinafter described was either a failure on the part of Dr. (and there was no evidence introduced at the

arbitration trial that Dr. was an employee or agent of) or on the part of one or more persons (the person or persons responsible for promptly reporting the results of Mrs. 's CT scan) whose identity or whose employer was not the subject of any evidence presented at said trial.

3. _____):

The evidence presented at the arbitration trial herein does not support a finding that itself breached any duty owed to and of the Claimants herein. However, at all times relevant herein Dr. was an employee of ; and, under the doctrine of *respondeat superior*, is therefore liable for any negligence on the part of Dr. committed during the course of Dr. 's employment by . The arbitrator hereby finds that the hereinafter-described malpractice on the part of Dr. was committed during the course of his employment by .

4. Pre-February 12, 2018 conduct:

First of all, while the evidence is in conflict on the subject, the arbitrator finds that for the reasons given in the testimony of Respondents' experts, the failure to order a CT scan for Mrs. before February 15, 2018 (the date on which a CT scan was ordered for her) or before February 16, 2018 (the date on which a CT scan was ordered to include Mrs. 's back) did not fall below any standard of care. The arbitrator finds that the "red flags" for cancer (particularly given the long time elapsed since Mrs. 's previous bout with cancer) never were such as would, under any applicable standard of care, have required that a CT scan be ordered

before the date it was ordered.

With respect to pain, the arbitrator finds that no action or omission concerning Mrs. by any Respondent (or by any employee or agent of any Respondent) prior to February 12, 2018 fell below the standard of care required of any Respondent or required of any agent or employee of any Respondent. While there is evidence that would support a finding that conduct on the part of Dr. before February 12, 2018 fell below the relevant standard of care, the arbitrator is persuaded by the evidence to the contrary.

The arbitrator finds that among other things, the fact that before February 12, 2018 Mrs. 's pain was sometimes intermittent, varying in intensity, and sometimes responsive to the pain medication prescribed prior to February 12, 2018,[1] excused any obligation on Dr. 's part to cause Mrs. to be given stronger pain medication before February 12, 2018.

5. Post-February 11, 2018 conduct:

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[1]See, *e.g.*, Respondents' exhibit book, records for October 10, 2017 (no chest pain); October 19, 2017 (no chest pain; albuterol helped, no distress), December 13, 2017 (pain comes and goes, pain medicine injected and stronger pain medication prescribed), December 15, 2017 (patient experiences much pain when she gets to the end of the six hours since the last dose of pain medication); December 18, 2017 (while patient in severe pain yesterday, pain medications helped to some degree, patient prescribed stronger pain medication), January 2, 2018 (pain has gone from constant "8 - 11/10" to intermittent, depending on the activity - all in all, pain in various areas subsiding), January 8, 2018 (Flexeril helped, pain reduced significantly since starting steroids), January 12, 2018 (patient thinks she now is better able to sleep) , January 15, 2018 (pain in chest region has continued to improve, now able to put dishes away and retrieve them without difficulty, new onset of lumbar pain already improving), no pain with overhead press or modified push-ups, sternocostal joint pain appears to be resolving, physical therapy goals mostly met), January 19, 2018 (no chest pain or shortness of breath, energy is better), February 5, 2018 (while patient on 2/3/18 reported continuous severe back and side pain, pain now controlled with prescribed pain medication), February 7, 2018 (visit prompted by discovery of lump in abdomen; pain in back and side which "is not consistent").

However, the arbitrator further finds that under the applicable standard of care, the findings and report by Dr. of her encounter with Mrs. on February 12, 2018 triggered a duty to increase the strength of Mrs. 's pain medication and that the failure to increase that medication caused Mrs. to suffer extreme pain and suffering until Dr. prescribed stronger pain medication for Mrs. on March 1, 2019. In other words, as a result of conduct that fell below the applicable standard of care, Mrs. suffered extreme pain and suffering for 17 days - from February 12 to March 1, 2018.

The aspect of Mrs. 's encounter with Dr. on February 12, 2018 that triggered the duty to increase the strength of Mrs. 's pain medication was Dr. 's note that Mrs. 's "low back pain <u>is</u> 10/10 intensity." [Emphasis added.] (Respondent's exhibit book, page 180.) While there was evidence that that note was intended by Dr. to report Mrs. 's past condition rather than her current condition, whether or not that was Dr. 's intention the word "is" in that note certainly conveys to the reader that the note is speaking of Mrs. 's current condition - and Dr. should have so interpreted it.[2]

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[2] The arbitrator does not believe that when examined by Dr. on February 12, 2018, Mrs. 's pain level was literally "10/10." If her pain had been that intense that day, it is doubtful that she could have come to Dr. 's office that day. Instead, the arbitrator construes the "10/10" reference in Dr. 's notes to be Mrs. 's way of emphasizing that her pain level was very, very severe.
Dr. 's notes also contain the notation that Dr. 's physical examination of Mrs. indicated that in general, Mrs. was in "[n]o acute distress." (Respondent's exhibit book, page 181.) The arbitrator finds that the presence of that somewhat cryptic notation did not excuse Dr. from immediately causing Mrs. to receive stronger medication.

Dr. , when on February 12, 2018 he received a copy of Dr. 's report of her February 12th encounter with Mrs. , had a duty to cause the strength of Mrs. 's pain medication to be increased - and he did not, thereby breaching the applicable standard of care.

Did Dr. also breach the applicable standard of care? Given the fact that Dr. was Mrs. 's primary care physician and Dr. was only a rheumatology consultant, the arbitrator finds that there was insufficient evidence that Dr. herself had the duty to prescribe stronger pain medication for Mrs. , rather than sending Dr. a copy of her report and leaving that decision to Dr. , who was responsible for Mrs. 's care and who had "the whole picture."

6. Delay in reporting results of the CT scan:

There was evidence introduced that there was an inordinate delay in reporting the results of the CT scan to Dr. (and then to Mrs.). However, for each and all of the following reasons, the arbitrator makes no award by reason of any such inordinate delay:

A. There was no showing as to how much time should have elapsed, according to the applicable standard of care, between the date that the results of the CT scan were first known (February 21, 2018) and the date that those results were reported to Dr. (February 27, 2018).

B. There was no showing as to who the person was whose fault caused any inordinate delay.

C. There was no showing as to who the employer was of

the person whose fault caused any inordinate delay.

D. The evidence not having disclosed the identity of the person referred to in Subparagraph B of the within Paragraph 6 or who the employer of such person was, the arbitrator does not know whether such person and/or such employer was a Respondent herein. If not, such person and/or such employer has had no opportunity in the within arbitration to offer evidence tending to show that there was no inordinate delay; and the arbitrator cannot properly determine whether or not to make an award against such person or such employer without affording him/her/it an opportunity to offer such evidence.

E. The amount of damages flowing from any such inordinate delay (pain and suffering) has been subsumed in the damages awarded hereinbove against Dr. and - that is, any subjecting of Mrs. to pain and suffering occurring at any time between February 12 and March 1, 2018 (a period of time encompassing the period of any inordinate delay in reporting the CT scan results) has already been compensated for by the award against Dr. and hereinabove awarded.

7. _____:

The arbitrator finds that as a result of Dr. 's aforementioned breach of his duty of care, Claimant suffered a substantial loss of consortium. He was unable to live a normal life while his wife was in extreme pain (certainly including the period from February 12 to March 1, 2018) and had to assist his wife with various daily activities (e.g., dressing, toileting) that but for her extreme pain she would have performed for herself.

8. Punitive damages:

The arbitrator finds that no conduct of any Respondent was wilful or reckless and that no Respondent was guilty of oppression, fraud or malice. Consequently no punitive damages are awarded to either of Claimants herein.

The Arbitrator believes that the within Award resolves the all of the issues referred to arbitration before the Arbitrator herein. However, just in case there are any unresolved issues referred to the Arbitrator herein, the Arbitrator hereby reserves jurisdiction to hear and resolve any issue heretofore referred to the Arbitrator herein and not resolved by the within Award.

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: October 5, 2019.

ARNOLD H. GOLD, Arbitrator