

JAMS ARBITRATION CASE REFERENCE NO. 1120013968

**(2nd),
Claimant(s),**

and

**- Arbitration No. 15282,
Respondent(s).**

**AMENDED FINAL DECISION REGARDING RESPONDENTS' MOTION FOR SUMMARY
JUDGMENT**

Pursuant to Code of Civil Procedure section 437c, Respondents

, and

Respondents) move for summary judgment.

Section 437c provides that a motion for summary judgment may be granted if there is no triable issue of fact and the issues raised by the pleadings may be decided as a matter of law.

Respondents argue there are no triable issues of material fact because Respondents' medical treatment was within the standard of care and did not cause Claimant (Claimant) injuries.

Respondents also move for summary judgment pursuant to Code of Civil Procedure section 340.5 on the ground that Claimant's Demand for Arbitration is barred by the one-year statute of limitation.

Claimant filed a Declaration of Response opposing the motion.

The motion was argued during a conference call on August 23, 2018. Claimant represented herself, and Respondent was represented by . Having considered the briefing, cited authorities, and the arguments of the parties, Respondents' Motion for Summary Judgment is GRANTED.

1. Claimant failed to file a Separate Statement of Facts.

Code of Civil Procedure section 437c(3) provides: “ The opposition papers shall include a separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating if the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. *Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion.*” (Emphasis added.)

In her Declaration of Response, Claimant failed to provide a separate statement identifying each of the material facts in dispute, and thus her Response fails to comply with section 437c(3). The separate statement is critical in determining what material facts may be in dispute. (*Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 115.) Therefore, summary judgment may be granted on this basis alone. (Code of Civil Procedure section 437c(3); *Oldcastle Precast, Inc. v. Lumbermens Mutual Casualty Company* (2009) 170 Cal.App.4th 554, 568.)

However, Claimant is representing herself pro per, and may not be familiar with all the procedural requirements of a summary judgment motion. Thus although she should have familiarized herself with this requirement, the motion is not granted on this basis.

2. Code of Civil Procedure section 340.5's one year statute of limitation.

Code of Civil Procedure section 340.5 sets forth the applicable statute of limitations for actions against health care providers: “In an action for injury or death against a health care provider based upon such person's alleged professional negligence, the time for the commencement of action shall be three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first. In no event shall the time for commencement of legal action exceed three years unless tolled for any of the following: (1) upon proof of fraud, (2) intentional concealment, or (3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.” Once a patient knows, or by reasonable diligence should have known, that he or she has been harmed through professional negligence, he or she has one year to bring suit (*Gutierrez v. Mofid* (1985) 39 Cal.3d 892, 896.)

Claimant's responses to Respondents' discovery requests provide that her claims relate to her admission to [redacted] from November 17 to 19, 2016, at which time she became aware or should have become aware of Respondents purported negligence. However, Claimant did not file a Demand for Arbitration against Respondents until approximately January 9, 2018. Thus her Arbitration Demand would appear to be barred by the one year statute of limitation set forth in section 340.5.

However, during the August 22 conference call, Claimant argued her arbitration demand was delayed by [redacted] failing to promptly respond to her grievance. Submitted with Claimant's Declaration of Response was a handwritten grievance which [redacted] marked as received on December 7, 2017. Notably this is more than one (1) year after the claimed incident. However, Claimant's December 7 grievance letter refers to a grievance being previously filed. Unfortunately Claimant did not submit a copy of an earlier letter.

The grievance stamped as received on December 7 is acknowledged by [redacted] in a letter dated December 11, 2017. This letter also refers to an earlier grievance letter, dated June 8, 2017, which [redacted] had denied. However, what is confusing is that in a later letter, dated July 7, 2017, [redacted] again cites a June 8, 2017 letter, as relating to what happened on November 17 to 19, 2016. Given this confusion, the motion is not granted on this basis.

3. The undisputed facts establish Claimant's Demand has no merit.

Code of Civil Procedure section 437c(p)(2) provides: "A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto."

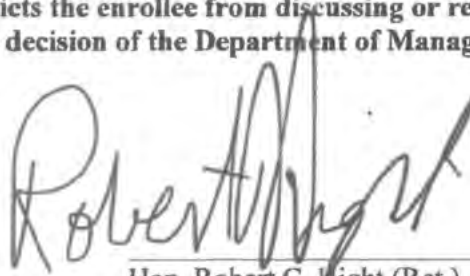
Claimant acknowledges that the standard of physician care is not at issue. Even assuming it was an issue Respondents submitted an expert Declaration by Dr. [redacted] stating that the medical treatment provided by Respondents was appropriate and within the standard of care.

Rather in her Response she takes fault with the staff for failing to secure a book () and prescription glasses with her other belongs when she was admitted to the hospital. However, the evidence submitted by Respondents establishes that all her possessions were properly secured (Declaration of) With this evidence the burden then shifted to Claimant to establish a triable issue of material fact. However, Claimant offers no credible evidence in opposition and thus fails to establish any disputed material fact.

During the August 23, 2018 conference call Claimant disputed that her belongings had been properly secured. However, outside of her testimony she presented no evidence to conclude otherwise. As stated in *McGonnell v. Kaiser Gypsum Co.* (2002) 98 Cal.App.4th 1098, 1105: "It is not enough to produce just some evidence. The evidence must be of sufficient quality to allow the trier of fact to find the underlying fact in favor of the party opposing the motion for summary judgment." Absent such evidence no triable issue of material fact exists. Thus granting summary judgment is appropriate on this basis.

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

Dated: August 27, 2018



Hon. Robert C. Hight (Ret.)
Arbitrator