

1 LAWRENCE E. KERN, ESQ. 046865  
2 **KERN, NODA, DEVINE & SEGAL**  
3 1388 Sutter Street, Suite 600  
4 San Francisco, CA 94109  
5 Tel: (415) 474-1900

6  
7 NEUTRAL ARBITRATOR

8  
9  
10 IN THE MATTER OF THE ARBITRATION OF

11  
12  
13  
14 ARBITRATION NO. 12131

15  
16 Claimant,

**ORDER RE: DISMISSAL WITHOUT  
PREJUDICE**

17 vs.

18  
19 Respondent.

20  
21  
22 IT IS HEREBY ORDERED that Arbitration No. 12131 regarding the claim  
23 of be DISMISSED without prejudice.

24  
25 Nothing in this Order prohibits or restricts the enrollee from discussing or reporting  
26 the underlying facts, results, terms and conditions of this decision to the Department of  
27 Managed Health Care.

28 DATED: March 19, 2014

KERN, NODA, DEVINE & SEGAL

By: 

LAWRENCE E. KERN  
Neutral Arbitrator

ORDER RE: DISMISSAL WITHOUT PREJUDICE

Kern

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

Attorneys for Respondent

IN RE ARBITRATION

and  
Claimants,  
v.  
Respondent.

Case No. 12534

**ORDER GRANTING RESPONDENT'S  
MOTION FOR SUMMARY JUDGMENT**

Respondent's Motion for Summary Judgment was heard by Neutral Arbitrator Lawrence Kern via telephone conference on July 9, 2014. Claimant appeared representing himself. Respondent was represented by Claimant. Claimant was properly served with Respondent's motion. Claimant filed no Opposition to the Motion for Summary Judgment.

Upon review and consideration of the moving papers, and following presentation by the parties at the hearing of the matter, and good cause appearing therefor, IT IS HEREBY

ORDERED THAT:

1. Respondent's Motion for Summary Judgment is GRANTED. Respondent filed a declaration of an expert physician expressing the opinion that there was no breach of the applicable standard of care in connection with the evaluation and treatment Respondent provided

1 Claimant . Claimant did not file an Opposition nor a declaration sufficient to  
2 create a triable issue of material fact regarding the question of Standard of Care. Therefore,  
3 Claimant failed to establish a triable issue and, pursuant to California law, the motion must be and  
4 is granted.

5 2. Summary Judgment having been granted, Claimant's action is DISMISSED. Each  
6 party shall bear its own attorney fees and costs.

7 **Nothing in this Order prohibits or restricts the enrollee from discussing or reporting**  
8 **the underlying facts, results, terms or conditions of this decision to the Department of**  
9 **Managed Health Care.**

10  
11 DATED: July 25, 2014  
12

13  
14 BY Lawrence E Kern  
15 LAWRENCE KERN  
16 Neutral Arbitrator  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 LAWRENCE E. KERN, ESQ. 046865  
2 KERN, NODA, DEVINE & SEGAL  
3 1388 Sutter Street, Suite 600  
San Francisco, CA 94109  
Tel: (415) 474-1900

4 ARBITRATOR

5  
6 IN RE THE ARBITRATION BETWEEN:

7 ARB. NO.: 7817

8 Claimant,

AMENDED ORDER GRANTING  
RESPONDENT'S MOTION FOR  
SUMMARY JUDGMENT

9 vs.

10 Date: February 8, 2016  
11 Arbitration Date: April 11, 2016  
12 Arbitrator: Lawrence E. Kern

13 Respondents.  
14 \_\_\_\_\_ /

15 On November 4, 2015, the Motion for Summary Judgment by RESPONDENTS

16 and ("RESPONDENTS") came on for  
17 hearing. Esq. appeared for RESPONDENTS. CLAIMANT  
18 appeared in propria persona.

19 The Arbitrator finds that RESPONDENTS' motion was properly served and filed.  
20 CLAIMANT did not serve an opposition to RESPONDENTS' motion. Nor did  
21 CLAIMANT present any competent expert testimony in opposition to RESPONDENTS'  
22 motion.

23 The Arbitrator further finds that RESPONDENTS' motion is supported by the  
24 Declaration of , M.D., which establishes to a reasonable degree of medical  
25 probability that all of the care and treatment CLAIMANT  
26 ("CLAIMANT") received from RESPONDENTS was within the applicable standard of  
27 care, including the treatment CLAIMANT received from RESPONDENTS before, during  
28

AMENDED ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

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

and after her March 10, 2014 parathyroid surgery. After full consideration of the evidence, and the written and any oral submissions by the parties, the Arbitrator finds that there is no triable issue of material fact with respect to CLAIMANT's Demand for Arbitration. There being no triable issue of material fact as to any claim asserted by claimant, the Motion for Summary Judgment shall be and hereby is granted and judgment entered in favor of RESPONDENTS and against CLAIMANT.

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: February 8, 2016

KERN, NODA, DEVINE & SEGAL

By: Lawrence E Kern  
LAWRENCE E. KERN  
Arbitrator

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

(SBN )  
(SBN )

Telephone:  
Facsimile:  
Attorney for Respondents

, and

IN THE MATTER OF ARBITRATION OF

**ARBITRATION NO. 14917**  
**ORDER GRANTING RESPONDENTS'**  
**MOTION FOR SUMMARY JUDGMENT**

Claimant,  
v.  
and  
Respondents.

**Date: June 18, 2018**  
**Time: 11:00 a.m.**  
**Dial-In: (800) 861-4084**  
**Code: 9351088904**  
**Arb. Dates: September 10, 2018**  
**Arbitrator: Lawrence E. Kern**

The Motion for Summary Judgment by RESPONDENTS

and

("RESPONDENTS") was properly served and filed.

After full consideration of the evidence, and the written and any oral submissions by the parties, the Arbitrator finds that there is no triable issue of material fact with respect to any claim.

RESPONDENTS' motion is supported by the Declaration of , M.D., an expert in interventional cardiology, which establishes to a reasonable degree of medical probability that CLAIMANT ("CLAIMANT") cannot prove her claim for lack of informed consent because RESPONDENTS have negated an essential element and established an affirmative defense.

///

1 CLAIMANT'S claim fails on a battery theory because she provided her written consent for a  
2 "cardiac catheterization and possible percutaneous coronary intervention [PCI]" with possible  
3 coronary stenting, CLAIMANT admits that she consented to a coronary angiography, all that was  
4 done beyond the coronary angiography was the insertion of a stent, and the uncontroverted expert  
5 testimony of Dr. establishes that the cardiac catheterization was not a substantially  
6 different treatment and the PCI with coronary stenting was not a substantially different procedure  
7 than the coronary angiography. Thus, there was no battery. Further, the expert testimony of  
8 Dr. establishes that CLAIMANT had a life-threatening medical condition uncovered  
9 during the coronary angiography and she would have suffered further serious injury to her heart had  
10 the physicians not performed the PCI with coronary stenting such that failure to perform the  
11 PCI would have endangered CLAIMANT'S health or life, which is a complete defense to  
12 CLAIMANT'S claim.

13 CLAIMANT'S claim must fail on a negligence theory because: (1) obtained  
14 CLAIMANT'S informed consent to the procedure that was done, where CLAIMANT provided her  
15 written consent, CLAIMANT'S testimony shows that she gave her informed consent to a coronary  
16 angiography and all that was done beyond the coronary angiography was the insertion of a stent,  
17 where the written consent form expressly accounted for the possibility that a stent would be placed  
18 and Dr. opines that insertion of a stent was the only safe and reasonable treatment  
19 option and was required by the standard of care; (2) did not need to obtain CLAIMANT'S  
20 consent to the emergency procedure performed; (3) a reasonable person would have consented; and  
21 (4) there is no causal relationship between 's alleged failure to inform and the alleged injuries  
22 to CLAIMANT.

23 On June 1, 2018, the arbitrator advised CLAIMANT that she needed to obtain counsel or  
24 file her opposition by June 11, 2018 or RESPONDENTS' motion would be granted. CLAIMANT  
25 failed to do so.

26 Thus, there is no triable issue of fact and RESPONDENTS are entitled to summary  
27 judgment.

28 There being no triable issue of material fact as to any claim asserted by CLAIMANT, the

1 Motion for Summary Judgment shall be and hereby is granted and judgment entered in favor of  
2 RESPONDENTS and against CLAIMANT.

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

6  
7 Dated: 6/25/, 2018

Lawrence E Kern  
LAWRENCE E. KERN, Arbitrator

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28





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

(State Bar No.

Telephone:  
Facsimile:

Attorneys for Respondents

ARBITRATION

IN THE MATTER OF ARBITRATION  
BETWEEN:

),  
Claimant,  
vs.  
Respondents.

ORDER GRANTING SUMMARY  
JUDGMENT AND ENTERING  
JUDGMENT IN FAVOR OF  
RESPONDENTS

. AND

Date: January 16, 2019  
Time: 10:00 a.m.  
Dial In No.: 888-330-9551  
Passcode: 9373439#

Arbitrator: Lawrence E. Kern, Esq.

The Motion for Summary Judgment or, in the Alternative, Summary Adjudication brought  
by Respondents

and came on regularly for a  
scheduled telephonic hearing on January 16, 2019, before Neutral Arbitrator Lawrence E. Kern,  
Esq.

Respondents and moving parties,  
and  
were represented by , Esq., of  
. Ms. (made no appearance. The Neutral Arbitrator waited ten minutes for

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

Ms. to join the call.

//

On proof having been made to the satisfaction of the Neutral Arbitrator and good cause appearing therefor:

**IT IS HEREBY ORDERED** that Summary Judgment is granted in favor of Respondents, and

No triable issues of material fact exist upon which to establish claimant's claims for medical negligence or elder abuse.

**IT IS FURTHER ORDERED** that Judgment is entered in favor of Respondents

and against claimant, and

Respondent's and

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.

Date: 01/25/2019

Lawrence E. Kern  
Lawrence E. Kern, Esq.  
Arbitrator