

1 Barbara Monty (SBN 131085)
2 **RESOLUTION REMEDIES**
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9 **Arbitrator**

10 **IN THE MATTER OF ARBITRATION**

11 _____) **Arbitration No. 13173**
12 Claimant,) **AMENDED ARBITRATION AWARD**
13 vs.)
14 _____)
15 and)
16 _____)
17 Respondents.)

18
19 On October 2, 2015, the Arbitration Hearing went forward at the offices of
20 Resolution Remedies in San Rafael, CA. Claimant, _____, represented
21 herself. Respondents _____,

22 _____, AND
23 were represented by _____ of _____.

24
25 **THE HEARING**

26 Both parties made opening statements and Ms. _____ provided direct
27 testimony herself. Her testimony was impassioned and compelling. She testified that
28 during a medical appointment for vaginal itching, Dr. _____, a _____,

1 OB/GYN doctor, told Ms. that she "had AIDS." This caused Ms.
2 great emotional suffering which kept her in her house for weeks thinking her death
3 was imminent. Ms. also testified that in a few weeks she made an
4 appointment with Dr. , her primary care physician, to get a second
5 opinion. Ms. told Dr. that Dr. had alcohol on her breath when she
6 told Ms. that she "had AIDS" and had not done any tests, just gave her a
7 physical examination but was convinced of this diagnosis. Ms. testified that
8 Dr. told her not to trust the arbitrator, or the doctors, and said that Dr.
9 was wrong in telling her she had AIDS and recommended a blood test that day,
10 which had a negative result for the HIV virus.

11 Ms. also testified that she spoke with Mr. , Director
12 of Medicine at the hospital, and that he said he would speak with Dr. about her
13 behavior, which was wrong. According to Ms. , Mr. apologized for
14 the treatment by Dr.

15 In cross-examination, Mr. questioned Ms. at great length
16 about three prior felonies and Ms. could recall little, responding "I don't recall"
17 to at least seven questions. Reading conviction reports did not refresh her memory.

18 Dr. testified supposedly in response to faulty subpoenas but
19 Respondent did not move to quash such testimony, thus it was allowed. Dr. 's
20 testimony differed from that of Ms. in several areas.

21 Dr. testified that she did not double Ms. 's blood pressure
22 medicine. Dr. testified that she did not tell Ms. not to trust the arbitrator
23 or the arbitration process, or doctors.

24 Dr. testified that she did not say that Dr. 's actions were wrong, in
25 fact, she did not comment on Dr. 's actions or alleged diagnosis.

26 Dr. testified that Ms. came in for pain management, not for a second
27 opinion on a diagnosis for AIDS.

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1 Dr. testified that she had Ms. tested for the HIV virus and
2 discussed the negative results but that she does not think that Ms.
3 understood. The spent twenty minutes discussing the results but Ms.
4 remained confused.

5 Dr. testified that the confusion could have been the result of very high
6 levels of blood sugar, which can lead to confusion and unclear thinking.

7 Next Mr. was called apparently as a witness by Claimant
8 pursuant to a late served subpoena, but since there was no Motion to Quash, his
9 testimony was allowed. Mr. , the Director of Medicine, testified that he did
10 speak with Ms. and apologized that she "felt that way" about Dr. , but
11 said he never told her that he would reprimand Dr. and in fact, he never did
12 speak with Dr. , but with the manager of her department.

13 Ms. then called Mr. , who had not been included in the list
14 of witnesses, but in an effort to be generous to a pro per Claimant, Mr. was
15 allowed to testify. He said he heard Ms. tell him about being upset about
16 being diagnosed with AIDS. Ms. then rested.

17 Mr. called Dr. who denied telling Ms. she "had
18 AIDS" but did recommend Ms. have the HIV screen done because her blood
19 sugar was very high and Dr. wanted to test her for diabetes and thyroid issues
20 as well. Dr. also testified that despite spending a significant amount of time
21 with Ms. during her February 14, 2014 visit, Ms. appeared upset and
22 confused.

23 Mr. called Dr. to testify about the standard of care in
24 Obstetrics and Gynecology. Dr. has been qualified as an expert witness for
25 trial and his background evidences that he is qualified to offer an opinion regarding
26 the standard of care of the practice. His opinion was that the actions of Dr.
27 were within the standard of care for Obstetrics and Gynecology. There was no cross-
28 examination by Ms. . Thus, his opinion is accepted.

1 Ms. then in closing offered to play a recording on her phone that she
2 said she had made of her February 14, 2014 appointment with Dr. . When the
3 arbitrator asked Ms. about the legality of recording a conversation without the
4 knowledge and permission of the other person, Ms. testified that yes, she
5 knew it was "against the law...probably a crime", but she accidentally recorded it and
6 kept it for evidence. When the arbitrator asked Ms. to play the recording,
7 there was nothing recorded.

9 LEGAL ISSUES

10 An opinion of what actually happened during the February 14, 2014
11 appointment is not within the scope of the arbitrator's assignment. The assignment is
12 merely to render an opinion based on the presented evidence and the law.

13 Except for Ms. 's assertion that Dr. told her she "had AIDS,"
14 there is no other evidence offered to support that assertion. The "more likely than
15 not" test regarding the assertion, has not been met. There was no evidence that Dr.
16 would have said this considering that the diagnosis would have to have been
17 made after a blood test had been completed, which it was not. Dr. did not
18 support Ms. 's testimony of what transpired during the March 2014
19 appointment including allegedly saying that what Dr. did was wrong, not to trust
20 the arbitration process, not to trust the arbitrator, not to trust any doctors.

21 By Ms. 's own testimony, she did not seek any treatment or help from
22 what she testified as feeling her life was over and that she would die soon. She
23 testified that she went to see Dr. about the alleged diagnosis for AIDS, yet Dr.
24 testified that Ms. came in with complaints of increased vaginal pain. Dr.
25 and Dr. testified that Ms. 's blood sugar count was so high that it is
26 likely she was confused. Mr. 's testimony of his interaction with Ms.
27 did not comport with her account of their discussion.

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1 Ms. [redacted] apparently had at least three convictions for felonies in the past
2 and knowing that it was illegal, testified that she had recorded the conversation with
3 Dr. [redacted] and was prepared to offer the recording as evidence at the arbitration
4 hearing. Yet, there was no recording.

5
6 **AWARD**

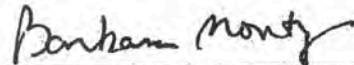
7 Based on all of the above testimony, review and consideration of the
8 arbitration briefs and numerous exhibits including Ms. [redacted]'s medical
9 records, criminal convictions, written discovery, and deposition transcript, Ms.
10 [redacted] has not met her burden of proof that Dr. [redacted] told her that she had AIDS. It
11 is clear, however, that Ms. [redacted] was upset after the February 14, 2014
12 appointment with Dr. [redacted].

13 Since the first element has not been met, it is not necessary to opine on
14 whether the fear of AIDS in the matter before us, is actionable in the same way as is
15 fear of cancer and thus compensable for the negligent infliction of emotional distress.

16 Claimant Ms. [redacted] has not met her legal burden of proof and as such is
17 not entitled to an award.

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

21 Dated: October 16, 2015.

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23 

24 **RESOLUTION REMEDIES**
25 By: Barbara S. Monty
26 Arbitrator
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9 **Arbitrator**

10 **IN THE MATTER OF ARBITRATION**

11 and

12 Claimants,

13 vs.

14 a non-profit corporation;

15 a non-profit corporation; and

16 a professional corporation,

17 Respondents.

18 **ARBITRATOR'S ORDER ON
19 RESPONDENTS' MOTION FOR
20 SUMMARY JUDGMENT**

21 **BACKGROUND**

22 Claimants Ms. _____ and Mr. _____ served a Demand for
23 Arbitration on July 9, 2016, alleging medical malpractice and loss of consortium
24 related to care provided Ms. _____ on July 24, 2014.

25 Specifically, Claimants alleged Respondent, failed to identify and cut
26 Ms. _____'s left uterine artery during a C-section, which caused Ms. _____ to suffer
27 excessive bleeding with resultant transfusions and further surgery. Respondent had
28 allegedly failed to diagnose and treat the hemorrhage caused by the excessive blood
loss and injury.

1 Arbitration was set for hearing November 7-9, 2016, at Resolution Remedies.

2 On June 21, 2016, this arbitrator received a Motion for Summary Judgment
3 on behalf of Respondent, to be heard September 7, 2016.

4 On August 24, 2016, this arbitrator received Claimants' Notice of Non-
5 Opposition to the Motion for Summary Judgment by Respondent.

6 On August 31, 2016, this arbitrator notified both counsel for Claimants and
7 Respondents that since there was no opposition, the Motion for Summary Judgment
8 set for September 7, 2016, was off calendar and that she would instead issue an
9 order from review of the papers. This Order is such ruling.

10
11 **LEGAL BASIS**

12 The arbitrator has authority to hear and decide the Motion for Summary
13 Judgment based on *Schlessinger v. Rosenfeld, Meyer & Susman* (1995) 40 Cal. App
14 4th 1096, 1105-1109, 47 Cal. Rptr 2d 650.

15 The neutral arbitrator also has authority to decide the Motion for Summary
16 Judgment under the Rules for Member Arbitrations Amended
17 As Of January 1, 2016, Rule 6, Authority of Arbitrator and Rule 54 Legal Advice.

18 Code of Civil Procedure §437c (o) (2) provides that a moving party is entitled
19 to summary judgment if he/she shows that an element of a cause of action cannot be
20 established.

21 Here, Respondents provided a declaration from medical expert
22 , M.D. declaring that health providers met the standard of care and, to
23 a reasonable medical probability, did not cause injury to Ms.

24 Claimants provided no opposing expert declaration or testimony to refute this
25 assertion, and in fact have not opposed the Motion for Summary Judgment. Thus,
26 Claimants have failed to provide evidence of medical malpractice.

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On this basis alone, Ms. [redacted]'s cause of action for medical malpractice fails and thus her husband, [redacted]'s loss of consortium falls as well.

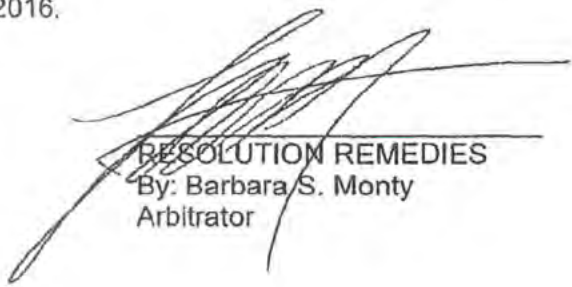
Since Claimants have failed to meet their burden, the Motion for Summary Judgment is granted on behalf of Respondent

[redacted] and [redacted]

The Arbitration Hearing set for November 7-9, 2016 is hereby vacated.

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, 2016.



RESOLUTION REMEDIES
By: Barbara S. Monty
Arbitrator