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IN RE THE MATTER OF ARBITRATION BETWEEN:

)	Arbitration No. 13155
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Claimant,)	RULING OF THE NEUTRAL ARBITRATOR
v.)	GRANTING RESPONDENT'S MOTION FOR
)	SUMMARY JUDGMENT
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Respondent.)	
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On April 13, 2015, a telephonic hearing was conducted before the single Neutral Arbitrator, Hon. Wayne Peterson (Ret.), on Respondent's Motion for Summary Judgment. Appearing for Respondent was Esq. Claimant, proceeding *in pro per*, appeared on behalf of herself.

Respondent filed and served its motion by U.S. Mail on March 13, 2015. The filed documents appropriately included the Notice, Memorandum of Points and Authorities, the Separate Statement of Undisputed Material Facts, the Declaration of , the Declaration of M.D., the Declaration of M.D., the Declaration of Esq., and Notice of Lodgment, and supporting exhibits. On March 27, 2015, Claimant requested a continuance in which to file her opposition and this was granted. On March 31, 2015, Claimant filed and served her opposition by fax. The opposition included a Memorandum of Points and Authorities. Claimant's opposition did

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1 not include a Separate Statement of Undisputed Material Facts, nor did it include any supporting
2 declarations or exhibits.

3 When a party proceeds *in pro per*, she “is entitled to the same, but no greater, consideration than
4 other litigants and attorneys.” [*Burnete v. La Case Dana Apartments*, 148 Cal.App.4th 1262, 1267
5 (2007).] Papers submitted in opposition to a motion for summary judgment must include a separate
6 statement that (a) responds to each material fact that the moving party contends to be undisputed, and
7 (b) identifies any other material facts that the opposing party contends are disputed. “Without a
8 separate statement of undisputed facts with references to supporting evidence in the form of affidavits
9 or declarations, it is impossible for the plaintiff [and Claimant] to demonstrate the existence of disputed
10 facts. (Citation.)” [CAL.CIV.PROC.CODE § 437c(b)(3); *Lewis v. County of Sacramento*, 93 Cal.App.4th
11 107, 115-116 (2001).] When a moving party meets its burden of showing that no triable issue of
12 material fact exists, the opposing party’s failure to submit a separate statement, in and of itself, may
13 constitute sufficient grounds for the granting of the motion. [CAL.CIV.PROC.CODE § 437c(b)(3); see
14 *Oldcastle Precast, Inc., v. Lumbermens Mut. Cas. Co.*, 170 Cal.App.4th 554, 568 (2009); *Kojababian v.*
15 *Genuine Home Loans, Inc.*, 174 Cal.App.4th 408, 418 (2009); *Batarse v. Service Employees Int’l Union*
16 *Local 1000*, 209 Cal.App.4th 820, 831-833 (2012).]

17 Claimant’s opposition does not contain a separate statement. In light of statutory law and case
18 law, Claimant’s failure to submit a separate statement means that she has failed to demonstrate the
19 existence of disputed material facts. Consequently, each of the material facts identified by Respondent
20 in its own separate statement is deemed conclusively undisputed. Without any disputed material facts,
21 no triable issues exist on Claimant’s medical negligence, informed consent, and defamation claims. In
22 addition, because Respondent’s motion for summary judgment has met its burden of proof in negating
23 key elements for each of Claimant’s claims, the arbitrator has discretion to grant Respondent’s motion
24 based *solely* on Claimant’s failure to comply with the separate statement requirement.

25 Claimant alleged medical negligence against Respondent in this matter arising out of the care
26 and treatment provided to Claimant by Psychiatrist, Dr. In a medical malpractice
27 case, it is necessary to have expert testimony to establish the standard of care and to establish that the
28 respondent breached the duty of care, unless the breach would be obvious to a layperson. [*Kelley v.*

1 *Trunk*, 66 Cal.App.4th 519, 523 (1998).] Expert testimony is necessary in this case to establish the
2 standard of care for a Psychiatrist because it is not obvious to a layperson whether or not Dr. 's
3 assessments and recommendations were reasonable. In its motion for summary judgment,
4 Respondent's submitted the declaration of , M.D., who is an expert in General Psychiatry,
5 Forensic Psychiatry, and Addiction Psychiatry. Dr. 's opinion was based on his review of the
6 medical records as well as Claimant's responses to discovery propounded by Respondent. Respondent
7 laid the proper foundation for Dr. 's educational background, his certification in Psychiatry, and
8 his medical experience regarding the Psychiatry issues involved in this case. Dr. 's declaration
9 established that Dr. acted in accordance with the applicable standard of care in his assessments of
10 Claimant, his treatment recommendations for Claimant, and the manner in which the office visit was
11 concluded.

12 In her opposition, it was Claimant's burden to submit the declaration of a qualified expert to
13 dispute the opinions of Dr. regarding the standard of care issue identified in his declaration.
14 Because Claimant failed to submit any expert declaration establishing that Dr. breached the
15 standard of care, she did not meet her burden of showing the existence of a triable issue of material fact
16 on her medical negligence claim. [See *Munro v. Regents of University of California*, 215 Cal.App.3d
17 977, 984-985 (1989).]

18 Respondent's motion for summary judgment negated key elements for Claimant's claim for
19 lack of informed consent. Claimant failed to prove that she underwent a treatment or procedure that
20 was performed by Dr. She also failed to prove that "consent to the treatment [or procedure]
21 would not have been given" if she had been adequately informed. [*Cobbs v. Grant*, 8 Cal.3d 229, 245
22 (1972; CACI 533.)] In its motion for summary judgment, Respondent submitted Claimant's responses
23 to discovery propounded by Respondent. In her discovery responses, Claimant admitted that she
24 refused the Chemical Dependency Recovery Program treatment recommended by Dr.
25 Furthermore, Claimant has never argued or presented evidence that she would have made a different
26 decision regarding the treatment recommended by Dr. if he had supplied her with different
27 information. Thus, Claimant has failed to meet her burden of showing the existence of a triable issue of
28 material fact on her claim for lack of informed consent.

1 Respondent's motion for summary judgment negated key elements of Claimant's defamation
2 claim. The elements of a defamation claim are (1) a publication of a statement of fact that is (2) false,
3 (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage.
4 [*Wong v. Jing*, 189 Cal.App.4th 1354, 1369 (2010).] The claimant must prove that the respondent
5 failed to use reasonable care to determine the truth or falsity of the statement(s). [See *Carney v. Santa*
6 *Cruz Women Against Rape*, 221 Cal.App.3d 1009, 1016 (1990).]

7 In support of its motion for summary judgment, Respondent submitted the declaration of Dr.
8 , signed under penalty of perjury, establishing that the information Dr. documented
9 regarding Claimant's drug use was obtained directly from Claimant during the office visit. Claimant's
10 opposition did not submit any admissible evidence to controvert Dr. 's declaration. Unless the
11 moving party's declarations are controverted, they must be accepted as true. [*Trujillo v. First American*
12 *Registry, Inc.*, 157 Cal.App.4th 628, 636 (2007).] Because it is undisputed that Dr. simply
13 documented what Claimant told him, Claimant cannot prove the existence of a question of material fact
14 as to whether Dr. used reasonable care in describing Claimant's drug use in his progress note.

15 Respondent's motion for summary judgment also established that the common interest
16 privilege, which is codified in California Civil Code Section 47(c), applies to the information Dr.
17 documented in his progress note regarding Claimant's drug use. It has been long held in California that
18 the common interest privilege applies to statements made by doctors or nurses concerning patients
19 regarding the patient's health. [See *Shoemaker v. Friedberg*, 80 Cal.App.2d 911, 919-920 (1947); see
20 also 5 Witkin Summary of California Law (10th ed. 2005) Torts § 594, p. 872.] In her opposition,
21 Claimant had the burden to defeat the common interest privilege by showing that Dr. acted with
22 malice when he documented Claimant's drug use in his progress note. [See *Taus v. Loftus*, 40 Cal.4th
23 683, 721 (2007).] To show malice, Claimant must prove either (a) that Dr. was motivated by
24 hatred or ill will towards Claimant, or (b) that Dr. lacked reasonable grounds for belief in the
25 truth of what he documented. [*Taus v. Loftus*, 40 Cal.4th at 721.] Claimant's opposition offered no
26 argument or admissible evidence that Dr. was motivated by hatred or animosity when he
27 documented Claimant's drug use. Claimant's opposition also failed to present any admissible evidence
28 showing that Dr. lacked reasonable grounds for believing the truthfulness of the information he

1 documented regarding Claimant's drug use. Therefore, Claimant failed to demonstrate the existence of
2 a triable issue of material fact for her defamation claim.

3 Claimant named (hereinafter " ") as the sole
4 Respondent in this matter arising from alleged acts or omissions committed by Dr.
5 Respondent's motion for summary judgment established that is a health care service plan
6 licensed by the California Department of Managed Care under the Knox-Keene Health Care Service
7 Plan Act of 1975. Respondent's motion for summary judgment further established that Dr. is a
8 healthcare provider with whom contracts. In light of applicable statutory law and case law,
9 cannot be found liable for the acts or omissions of a health care provider with whom it contracts.
10 [CAL.HEALTH & SAF.CODE §1371.25; see *Martin v. PacifiCare of California*, 198 Cal.App.4th 1390,
11 1404-1405 (2011); see also *Watanabe v. California Physicians' Service*, 169 Cal.App.4th 56, 63-64
12 (2008).] Thus, Claimant has failed to sue the appropriate entity for her claims of medical negligence,
13 lack of informed consent, and defamation against Dr.

14 Because Claimant presents no evidence of any delay or denial of health care services caused by
15 there is no viable basis of liability against under any theory of liability. [CAL.CIV.CODE
16 §3428(a).]

17 Finally, during the telephonic hearing, Claimant confirmed that she was not disputing the
18 tentative ruling of the arbitrator in granting Respondent's motion, that she no longer had any desire, for
19 stated personal reasons, to continue to pursue this litigation and that she accepted the arbitrator's
20 decision to grant this motion for summary judgment. Respondent's counsel submitted on the tentative
21 ruling. No further argument was made by either party.

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1 Therefore, based on the foregoing reasons, the telephonic hearing on April 13, 2015, and after
2 considering the papers and exhibits submitted by Respondent and Claimant, Respondent's motion for
3 summary judgment is hereby granted as to all causes of action and claims asserted by Claimant against
4 Respondent in these arbitration proceedings.

5 **NOTHING IN THIS DECISION PROHIBITS OR RESTRICTS THE ENROLLEE**
6 **OR THE UNDERSIGNED FROM DISCUSSING OR REPORTING THE**
7 **UNDERLYING FACTS, RESULTS, TERMS AND CONDITIONS OF THIS**
8 **DECISION TO THE DEPARTMENT OF MANAGED CARE.**

9 Dated: April 15, 2015

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12 Hon. Wayne Peterson (Ret.)
13 Arbitrator
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IN RE THE MATTER OF ARBITRATION BETWEEN:

Claimant,) Arbitration No. 13155
v.))
Respondent.) **ARBITRATION AWARD**

TO CLAIMANT, and RESPONDENT

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1 Having granted the motion for summary judgment submitted by Respondent,
2 the neutral arbitrator hereby issues this Arbitration award in
3 favor of Respondent, and against Claimant
4 on all claims asserted in the above-captioned matter. Claimant
5 shall take nothing in this matter.

6 **NOTHING IN THIS ARBITRATION AWARD PROHIBITS OR RESTRICTS**
7 **THE ENROLLEE OR THE UNDERSIGNED FROM DISCUSSING OR**
8 **REPORTING THE UNDERLYING FACTS, RESULTS, TERMS AND**
9 **CONDITIONS OF THIS AWARD TO THE DEPARTMENT OF MANAGED**

10 Date: 4-15-15

11 
12 HON. WAYNE PETERSON, RET.
13 NEUTRAL ARBITRATOR