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ESQ. SBN

Telephone:
Facsimile:

Attorneys for Respondent.

IN THE MATTER OF ARBITRATION BETWEEN

In Re Arbitration
No.: 14363

~~PROPOSED~~ AWARD RE: MOTION
FOR SUMMARY JUDGMENT OF
RESPONDENT,

Claimant,

v.

Respondent.

TO CLAIMANT, IN PROPRIA PERSONA:

The Motion for Summary Judgment of Respondent,
came on regularly for hearing before this Neutral Arbitrator on April 4, 2017, at 8:00
a.m.

After full consideration of the evidence and Points and Authorities submitted by Respondent,
which was unopposed, this Neutral Arbitrator
grants the Motion for Summary Judgment of Respondent,
made under *Code of Civil Procedure*, Section 437c on the grounds that Claimant's
action has no merit and fails to present any triable issue of material fact.

The evidence establishes that Respondent,
complied at all times with the standard of practice in the professional community with regard to the

**~~PROPOSED~~ AWARD RE: MOTION FOR SUMMARY JUDGMENT OF
RESPONDENT,**

1 medical care rendered to Claimant, and Respondent did not cause or substantially contribute to
2 Claimant's alleged injuries.

3 IT IS ORDERED, ADJUDGED AND DECREED that an award shall be entered in favor of
4 Respondent, and against Claimant,

5
6 Nothing in this arbitration decision prohibits or restricts the enrollee from discussing
7 or reporting the underlying facts, results, terms and conditions of this decision (or Settlement
8 Agreement) to the Department of Managed Health Care.

9 Dated: April 5, 2017

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12 Michael F. Saydah, Esq.

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IN THE MATTER OF ARBITRATION BETWEEN

Claimant,

v.

Respondent.

In Re Arbitration
No.: 14363

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

The Motion for Summary Judgment of Respondent,

came on regularly for before the Neutral Arbitrator on April 4, 2017.

Respondent's Motion for Summary Judgment was unopposed. After full consideration of the evidence, the separate statement submitted by Respondent, and the authorities submitted by counsel, this Neutral Arbitrator finds the following to be true:

1. The treating healthcare providers, including, but not limited to P.A., complied with the standard of care at all times. Specifically, on December 1, 2015, the patient presented to the clinic with non-specific complaints of a fever and an upset stomach for two weeks. P.A. took a history and performed a physical examination which complied with the standard of care. The physical examination did not reveal any findings consistent with a surgical abdomen (including appendicitis) such as rebound tenderness or guarding. The patient's complaints and findings on physical examination were non-specific and the

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standard of care was met when P.A. ordered labs and an ultrasound and instructed the patient to go to the urgent care or emergency department if his symptoms worsened or persisted within 8-12 hours.

2. The treating healthcare providers complied with the standard of care during the admissions of December 10, through 21, 2013. Specifically, the patient was timely diagnosed with appendicitis and was taken to surgery in a timely manner compliant with the standard of care.

3. The laparoscopic surgical procedure performed by M.D., was performed in a manner which complied with the standard of care.

4. Postoperatively, Mr. developed an ileus which is a temporary disruption of intestinal peristalsis in the absence of a mechanical bowel obstruction. In compliance with the standard of care, the patient was provided with conservative care for his ileus including NG tube decompression, hydration and peripheral parenteral nutrition (PPN). At no time did the standard of care require that the patient be returned to the operating room for treatment of his ileus.

5. By December 21, 2015, the patient's ileus had resolved and the patient was discharged in compliance with the standard of care.

6. Post-discharge, the patient did well and was followed by Dr. through at least January 8, 2016, in compliance with the standard of care.

7. Within a reasonable medical probability, no negligent action or omission on the part of the Respondent healthcare providers caused the patient's appendix to rupture.

8. Within a reasonable medical probability, even if the patient had been diagnosed with appendicitis on December 1, 2015, he would have required a laparoscopic appendectomy.

9. Within a reasonable medical probability, no negligent action or omission by the Respondent healthcare providers caused the patient's ileus. An ileus can and does occur in the absence of negligence subsequent to any abdominal surgery, such as

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was the case in this particular situation.

Based upon the above, this Neutral Arbitrator finds that there is no triable issue of material fact as to Claimant's cause of action for medical negligence against Respondent, and the treatment of Claimant, by Respondent, was, at all times, within the standard of care in the community, and to a reasonable degree of medical probability, was not the cause any injuries to Claimant,

IT IS SO ORDERED that the Motion for Summary Judgment is granted and an award shall be entered forthwith as requested in favor of Respondent, 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 (or Settlement Agreement) to the Department of Managed Health Care.

Dated: April 5, 2017


Michael F. Saydah, Esq.

1 MICHAEL F. SAYDAH, ESQ. (SBN 090124)
2 Mediator - Arbitrator - Referee - Umpire
3 12700 Stowe Drive, #120
4 Poway, Calif. 92064
5 Telephone: 858.748.3009
6 Facsimile: 858.486.8484

7 Neutral Arbitrator

8 In the Matter of the
9 Arbitration Between:

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11 Claimant,
12 Vs.

13
14 et al.
15 Respondents

) Case No.: 15085
)
)
) ARBITRATOR DECISION ON
) , et al. MOTION FOR
) SUMMARY JUDGMENT
)
) ARBITRATOR: MICHAEL F. SAYDAH,
) ESQ.
) HEARING DATE: JUNE 28, 2018
) TIME: 08.30AM
) PLACE: TELEPHONE CONFERENCE
) CALL
)
)
)

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19 Respondents , et al. Motion for Summary
20 Judgment came on regularly for telephonic hearing Thursday, June
21 28, 2018 at 08.30am, by way of telephonic conference call
22 pursuant to proper notice to all parties.
23

24 On the telephone were: , in pro per, for
25 himself as Claimant; and, , Esq., for Respondents and
26 moving parties, , et al.
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1 After considering the moving papers, points and
2 authorities, exhibits and declaration of the Respondents, the
3 responsive papers and exhibits of the Claimant, the Reply papers
4 filed by moving party and the series of emails post Reply filed
5 by Claimant it is the conclusion of the arbitrator the motion
6 for summary judgment is granted.

7
8 **DETERMINATION OF ISSUES PRESENTED:**

- 9 1. The first issue raised by Respondent is the statute of
10 limitations.

11 Respondent argues the appropriate statute of limitation is
12 contained in Code of Civil Procedure section 340.5, and the
13 limitation period is 3 years from the date of injury or within 1
14 year after the claimant discovers, or is on reasonable inquiry
15 of, he/she has been wronged.

16 Section 340.5 creates two separate statutes of limitation,
17 both of which must be satisfied if a plaintiff (claimant) is to
18 timely file a medical malpractice action. First, the plaintiff
19 must file within one year after he first 'discovers' the injury
20 and the negligent cause of that injury. Secondly, he must file
21 within three years after he first experiences harm from the
22 injury. This means that if a plaintiff does not 'discover' the
23 negligent cause of his injury until more than three years after
24 he first experiences harm from the injury, he will be unable to
25 bring a malpractice against the medical practitioner or hospital
26 whose malpractice caused the injury. Ashworth v Memorial
27 Hospital (1988) 206 Cal.App.3d 1046, 1054, 254 Cal.Rptr. 104.

1 When a plaintiff (claimant) has information which would
2 place a reasonable person on inquiry, when a plaintiff's
3 'reasonable founded suspicions (have been) aroused' and the
4 plaintiff has 'become alerted to the necessity for investigation
5 and pursuit of her remedies', the one-year period commences.
6 'Possession of 'presumptive' as well as 'actual' knowledge will
7 commence the running of the statute'. Dolan v Borelli (1993) 13
8 Cal.App.4th 816, 823, 16 Cal.Rptr.2d 714.

9 In this case, Claimant's wife passed away July 15, 2016.
10 Claimant apparently had a Medicare problem wherein Medicare
11 denied certain reimbursement requests. Claimant filed a
12 grievance with Medicare August 18, 2016 and cited his belief the
13 use of the prescription drug Letairis caused or contributed to
14 his wife's death. He testified the same way in a later
15 deposition and also during that deposition authenticated the
16 Medicare grievance filing. Based on these facts, I find the one
17 year statute of limitation applies and the application for
18 arbitration should have been filed on or before August 18, 2017.
19 The Claimant at the time of filing the Arbitration application
20 with was represented by counsel. Unfortunately, the
21 Arbitration application, dated October 2, 2017, was not filed or
22 received by until October 5, 2017.

23 Claimant, in his response to 's motion basically
24 argues the one-year statute should be tolled due to delays and
25 obstruction by 340.5 has very specific exceptions to
26 the one-year (or three-year) limitation period. They are CCP
27 section 351 (absence from the state), section 352 (insanity),
28 section 352.1 (a prisoner), section 352.5 (restitution order),

1 section 353.1 (court's assumption of attorney law practice),
2 section 354 (war), or, section 356 (injunction). None of those
3 appear to apply here.

4 Therefore, the one-year statute of limitation applies and
5 the filing of the petition for arbitration was not timely. No
6 exception to the one-year limitation applies.

7 2. The second issue raised by the motion for summary
8 judgment is the lack of an expert witness to contradict
9 Respondent's expert opinion.

10 The standard of care against which the acts of a medical
11 practitioner are to be measured is a matter peculiarly within
12 the knowledge of expert witnesses; it presents the basic issue
13 in a medical malpractice action and can only be proved by an
14 expert's testimony. Alef v Alta Bates Hospital (1992) 5
15 Cal.App.4th 208, 215, 6 Cal.Rptr.2nd 900.

16 California Civil Jury Instructions (CACI) 500 sets out the
17 essential factual elements in a medical malpractice case. The
18 essence of CACI 500 is that Claimant must prove Respondent
19 was negligent (a want of ordinary care or
20 skill); that Claimants were harmed; and, Respondents negligence
21 (want of ordinary care or skill) was a substantial factor in
22 causing Claimants harm. The fact that physicians are involved
23 with their specialized education and training is relevant to an
24 overall assessment of what constitutes 'ordinary care' in the
25 particular situation. Flowers v Torrance Memorial Hospital
26 (1994) 8 Cal.4th 992, 997-998, 35 Cal.Rptr.2nd 685.

27 CACI 501 provides the standard of care for health care
28 professionals in general. In essence, the physician is

1 negligent if he/she fails to use the level of skill, knowledge
2 and care in diagnosis and treatment that other reasonably
3 careful physicians would use in the same or similar
4 circumstances. It is this level of skill, knowledge and care
5 that is referred to as the standard of care.

6 As a general rule, the testimony of an expert witness is
7 required in every professional negligence case to establish the
8 applicable standard of care, whether that standard was breached
9 by the defendant, and whether any negligence by the defendant
10 caused the plaintiff's damages. Scott v Rayhrer (2010) 185
11 Ca.App.4th 1535, 1542 - 1543, 111 Cal.Rptr.3rd 36. There is a
12 narrow exception to this general rule when it can be said the
13 conduct of the defendant is within the common knowledge of the
14 layman, i.e. where a sponge or surgical instrument is left in a
15 patient following surgery. The common knowledge exception does
16 not appear to apply here.

17 In this case, has retained a medical
18 doctor with a specialty in pulmonology, , to opine
19 on the standard of care of the treating pulmonologist
20 . Both are members of the local community and are
21 familiar with treatment of patients similar to Claimant's wife.
22 Based on his background and experience and after a review of the
23 complete medical chart (17,000+ pages) Dr concludes it
24 was entirely appropriate to prescribe Claimant's wife Letairis
25 for treatment. Even with a small risk of making the liver
26 condition worse, the risk/benefit analysis favored Ms
27 taking the medication.

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Michael Saydah

Neutral Arbitrator

Date: June 28, 2018

Michael F. Saydah, Esq.

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IN RE ARBITRATION BETWEEN

vs. Claimants,
and Respondents.

and #: 16155

~~PROPOSED~~ ORDER REGARDING
RESPONDENTS' MOTION FOR
SUMMARY JUDGMENT

Date: June 4, 2020
Time: 8:00 a.m.
Telephonic

After full consideration of the Motion for Summary Judgment, the Separate Statement of Undisputed Material Facts, and Supporting Evidence of moving Respondents, and after ruling on the evidentiary objections, the arbitrator grants Respondents

and

Motion for Summary Judgment and finds that no triable issue of fact exists. First, the arbitrator finds that Claimants first cause of action for medical malpractice – negligence fails because Respondents' expert declaration was unopposed. Without any expert medical testimony or any argument whatsoever in opposition to Respondents' expert

1 declaration, Claimants cannot prevail, as a matter of law. Notably, the initial hearing date for
2 Respondents' motion was April 15, 2020. The Claimants had until April 1, 2020, to file and
3 serve their Opposition, which they did not do. After the Claimants had already failed to timely
4 file and serve their Opposition, the Respondents' motion was continued by

5 as a result of the COVID-19 Pandemic. The hearing date for
6 Respondents' motion was postponed to June 4, 2020. Whether the Claimants were granted
7 additional time to oppose the Respondents' Motion for Summary Judgment based on the new
8 hearing date is moot because Claimants never filed or served an Opposition in this matter.

9 Second, Claimant second cause of action for loss consortium fails because
10 the first cause of action for negligence fails.

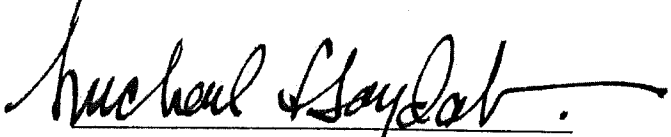
11 Lastly, Respondent is not a proper party in this
12 matter pursuant to the Knox-Keene Act.

13 IT IS THEREFORE ORDERED that judgment shall be entered forthwith in favor of
14 Respondents, and against Claimants. Costs are awarded according to proof.

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

18 IT IS SO ORDERED.

19 DATED: June 4, 2020


Michael F. Saydah, Esq., Arbitrator

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