PHILIP YOUNG – BAR NO. 34055
DAVIS & YOUNG, APLC
1960 The Alameda, Suite 210
San Jose, California 95126
Phone: (408) 244-2166
Fax: (408) 244-7815

IN RE THE ARBITRATION BETWEEN:

Claimants,	No. 11642
vs.	**ORDER OF ARBITRATOR**
Respondents.	Arbitration Date: 4/29/14-5/2/14

It is certainly understandable how the Claimants would have considered the treatment and services at inadequate. The CT scan did not work. Repairs were attempted and it still did not work. The decedent's blood pressure climbed. When a transfer was requested, it took longer than expected. The fact that the decedent became frustrated and considered leaving is certainly understandable. Given all this the Arbitrator can certainly understand the Claimants' dissatisfaction.

As an Arbitrator I must decide the case based on the evidence presented. The primary doctor for the Claimants was Dr. . He admits that the treatment before 1:00 p.m. and after 6:00 p.m. is not in issue. Thus, we are reduced to a timeframe from 1:00 p.m. to 6:00 p.m. His objections or criticisms of Dr. were as follows:

1. That he should not have relied upon the statement that it would take one to two hours to fix the CT scan. This is not persuasive. In Dr. 's deposition he indicated that this information came from the nurses; in the arbitration he was not clear as to where it came from. Why it would be improper to rely upon the nurses that the fix would be one to two hours is frankly not clear to me.

2. He testified that if Dr. knew at 2:00 p.m. that the CT scan "wouldn't be corrected" then a transfer was mandatory. The problem with this statement is that I did not hear evidence from anyone that it was clear that the CT scan would not be corrected. The repairman was working on the situation with limited results. However, as far as I recall, no one specifically said that the CT scan would not be corrected.

3. That should have been permitted to drive the decedent to Oakland as she apparently requested around 4:00 p.m. This is not a convincing argument. He admits that even if she had driven he cannot say that the decedent would still be alive. He even referred to this as "Plan D."

The above was the thrust and sum of Dr. ' testimony and it unfortunately was not convincing for the Claimants' point of view. It did not meet their burden of proof.

Dr. did admit that he had no objection to the blood pressure management by the Respondent, that the contrast study was the best choice and within the "doctor's judgment," that no other modalities were required by the defense doctor, that the decedent did not have a classic aortic dissection and even he would not have considered it, and finally that a four hour delay in obtaining and reading the CT scan would be too long, but he did not testify how long it should be.

Putting aside Dr. , in my view, ineffectual testimony, the case boils down to when the decedent should have been transferred to the Oakland facility and whether it would have made a difference in the outcome.

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Given all the evidence, I am not persuaded that even if the transfer was ordered at 2:30 p.m., given the time it would take for the ambulance to arrive, the patient loaded, travel to Oakland at a rather busy time of day, had the CT scan performed and the results read – I am not satisfied that this would have occurred before the decedent's rupture. Thus, it is not clear to the Arbitrator that the alleged negligent failure to more quickly transfer the decedent was a proximate cause or contributing factor to the result (the rupture).

There is also the medical complexity as to whether the decedent, having arrived with an aortic dissection, was likely to recover. If one accepts the testimony of Dr. , his prognosis was less than 50% for recovery with a dissecting aorta regardless of what was done.

I am mindful, as the Claimants' attorney argues, that we do not have all of the records – such as required by the Radiology Policy & Procedure. This does not, by itself, convince me that there was medical malpractice or that it contributed to the death.

I have mind the testimony of Dr. . He believed that this was a Type B dissection which could be treated with blood reducing medication resulting in an 80% chance of preventing the rupture. It would have been helpful to the Claimants if Dr. had endorsed this view. However, Dr. also testified that he was not stating an opinion as to what the defense doctor in this case should or should not have done. If I am required to choose the opinion of either Dr. or Dr. , I would pick the latter based upon his experience and expertise.

For all of the reasons listed above I find in favor of and against the Claimants.

I wish to commend the Claimants' attorney for the excellent job in his presentation, the hours and hours of time spent in preparation and the skill of advocacy. I commented at the arbitration on the wonderful qualities of the Claimants and I mean so sincerely.

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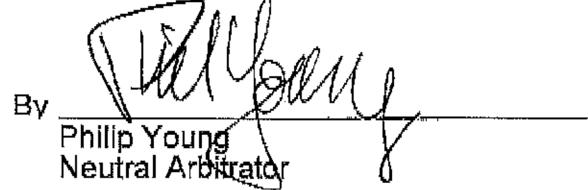
Nothing in the Order of Arbitrator dismissing the case prohibits or restricts the enrollee from discussing or reporting the underlying facts, results, terms and condition of this decision to the Department of Managed Health (DMH).

DATED: 5/5/14

DAVIS & YOUNG, APLC



By ______________________
Philip Young
Neutral Arbitrator

PHILIP YOUNG – BAR NO. 34055
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Phone: (408) 244-2166
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Arbitrator

IN RE: THE ARBITRATION BETWEEN:

, Claimant vs. , and , Respondents.	ARB NO.: 12904 **ORDER RE: MOTION FOR SUMMARY JUDGMENT** DATE: 6/12/15

TO ALL PARTIES HEREIN AND TO THEIR ATTORNEYS OF RECORD:

Having read the briefs of and Ms. , reviewed all medical reports, read the appropriate cases, and conducted a hearing with Ms. and , I find:

The Claimant has failed to present any competent medical evidence on the issue of causation to refute the declaration of Dr. , and therefore:

The motion for summary judgment is GRANTED.

The Claimant's case is dismissed.

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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: 6/12/15

Phillip Young
PHILIP YOUNG, Arbitrator

Arbitration Award

Instructions: Use of this form is optional. Within fifteen business days of the date of the closing of most arbitration hearings, the Neutral Arbitrator must serve the Arbitration Award on the Parties and . If there were three arbitrators, this Award must be signed by at least two of them. See Rules 37 - 39. Return to:

Arbitration Name: **Arbitration Number: 12904**

Philip Young, the Arbitrator(s) selected to determine the dispute between the Parties in the above referenced action, find(s):

An arbitration hearing was held on June 12, 2015.

It is the decision of the Arbitrator(s) that the prevailing Party in this Arbitration is **Check one:**

______ The Claimant(s) is entitled to ____________________.

Or:

✓ The Respondent(s) is entitled to Summary Judgment.

The reasons for this decision are attached.
(Rule 38 requires that the Award provide findings of fact and conclusions of law, consistent with California Code of Civil Procedure Section 437c(g) or Section 632.)

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.

Philip Young
Signature of Neutral Arbitrator — Date 6/12/15

____
Signature of Party Arbitrator — Date

____
Signature of Party Arbitrator — Date

PHILIP YOUNG – BAR NO. 34055
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Arbitrator

IN RE: THE ARBITRATION BETWEEN:

, Claimant vs. , , and , , Respondents.	ARB NO.: 12933 **ORDER GRANTING MOTION FOR SUMMARY JUDGMENT** DATE: 8/4/15

Findings of Fact and Conclusions of Law, Rule 38

Respondent filed a motion for summary judgment supported by the Declaration of Dr. .

Claimant failed to file any response and was not available either in person or by phone on the hearing date of August 4, 2015 at 10:00 a.m.

Consequently, the Respondent's motion is GRANTED and claimant's case is dismissed.

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EXHIBIT A

1 **Nothing in this decision prohibits or restricts the enrollee from discussing or**
2 **reporting the underlying facts, results, terms and conditions of this decision to the**
3 **Department of Managed Health Care.**
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5 DATED: 8/13/15

Phillip Young .
PHILIP YOUNG, Arbitrator

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(State Bar No. 151606)

Telephone: (925)
Facsimile: (925)

Attorneys for Respondents

, AND

ARBITRATION

IN THE MATTER OF ARBITRATION BETWEEN:	**NOTICE OF ENTRY OF ORDER GRANTING MOTION FOR SUMMARY JUDGMENT**
,	
Claimant,	
vs.	
., AND ,	
,	
Respondents.	

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the neutral arbitrator, on August 13, 2015, granted Respondents' Motion for Summary Judgment and ordered the claimant's case dismissed. A copy of said Order is attached hereto as Exhibit "A."

Dated: August 21, 2015

By:
FOR Attorneys for Respondents
, AND
,

1 (State Bar No.)

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4 Telephone:
Facsimile:
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Attorneys for Respondents
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8 ARBITRATION

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10 IN THE MATTER OF ARBITRATION BETWEEN: 11 12 , Claimant, 13 vs. 14 15 16 17 Respondents.	PY ~~[PROPOSED]~~ **ORDER GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT OR ALTERNATIVELY, SUMMARY ADJUDICATION** Date: December 30, 2016 Time: 10:00 a.m. Via Telephone: 218.339.7800 Access Code: 3928813 Arbitrator: Philip Young, Esq.

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19 The Motion for Summary Judgment brought by respondents,

20 , AND

21 ., came on regularly for hearing on December 30, 2016, before Philip Young, Esq.

22 Respondents and moving parties,

23 ., AND , were

24 ~~represented by~~ , ~~Esq., of~~

25 . Claimant appeared on her own behalf.

26 After full consideration of the evidence, the moving papers, the authority submitted by

27 counsel, oral argument, and good cause appearing therefore, the arbitrator finds that:

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Respondents' motion for summary judgment is GRANTED on the grounds that:

1. There are no triable issues of material fact in this action as to either the standard of care or causation and moving parties are entitled to summary judgment as a matter of law.

IT IS FURTHER ORDERED that Judgment is entered in favor of respondents

, AND

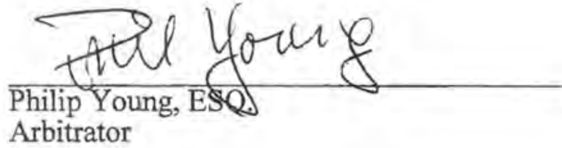
and against claimant this matter, and respondents

., AND

~~are awarded their costs~~ of suit. PY

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: 12/30/16



Philip Young, ESQ.
Arbitrator

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7 ARBITRATION
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9 In the matter of the arbitration between	**ARBITRATION AWARD**
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12 Claimant,	
13 vs.	
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15 Respondents.	

16 The analysis begins with the question: Did the speed bump create "an unreasonable
17 risk of harm" and the respondent failed to give "adequate warning of the condition"?
18 Claimant argues that the placement of the bump directly next to the disabled walkway
19 was an Invitation for this type of accident to occur. In addition, that the change in the
20 configuration of the bump created a gap at the bottom that may have contributed to the fall.
21 Also, that there were building code violations, and that her failure to see the bump just before
22 the fall Is due to visual Issues such as Inattention blindness and impaired working memory.
23 Finally, that the changes in the bump were made contrary to the manufactures guidelines.
24 Respondent alleges that the bump was properly and clearly marked, that the claimant
25 admits she saw It as she entered the walkway; that has not had any other complaints of
26 falls on any speed bumps in their garage in the past; that there were no code violations
27], that the arguments of visual impairment are not valid]; that according to
28 ///

witness she was attempting to step over the bump; and that if the bump was dangerous it was open and obvious or trivial.

It is necessary for me to decide between the two sets of experts on either side who present totally conflicting views. On this point, I believe the respondents experts are more believable. For example, Mr. opinion that there should be a sign for pedestrians warning of the speed bump Is unreasonable; he was unable to recall ever seeing such a sign in actual experience. I was also unimpressed with his claim of a violation of the code regarding 5 feet clearance adjacent to disabled parking space. And as to the conflict between Mr. and Mr. I found the latter much more convincing. It was simply not persuasive that the scene presented to claimant constituted a "clutter" that would excuse her seeing the speed bump at the last moment. Or, as Mr. claimed, that it wasn't in her "working memory".

However, this does not end the analysis. I can agree with Mr. that the placement of the speed bump is questionable, and that a gap of some dimension was created by the changes made by . Does this create liability?

My conclusion is that it does not. My reasoning is as follows. On the issue of the "gap", we do not know the height of the gap, or whether It has anything to do with the cause of the fall. If Mr. is correct she was simply trying to step over the bump when she fell. As to the placement, I simply cannot conclude that that was the proximate cause of the accident. Rather, it was Mrs. 's failure to see it after having observed the bump just seconds before. There is no question that it was very clearly marked. Had the bump been placed several feet away, but Mrs. didn't see it the same thing could have happened. The fact that there had never been another Incident or complaint about these bumps suggest they did not create an "unreasonable risk of harm". The marking on the speed bumps serve, in my opinion, as an "adequate warning of the condition". Therefore, I find for the respondent .

I wish to add a personal note. Mrs. is a classy lady who has suffered a serious Injury. She makes a wonderful witness and it is not an easy task for me to rule against her. If I were to decide this case on sympathy alone the result would be different. In addition, I

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wish to commend Mr. for an excellent presentation. His client was very well served. He argued the case as well as It could be done.

"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: March 31, 2017

DAVIS & YOUNG, APLC

By: *Philip Young*
PHILIP YOUNG
Arbitrator

ARBITRATION

In the matter of the arbitration between

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Claimant,

vs.

Respondents.

RULING ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

has filed a motion for summary judgment on the issue of no negligence or malpractice on the part of the treating doctors of Mr. supported by declarations from qualified doctors. Mr. has responded by filing a declaration of Dr. . However, this does not contain any criticism of the medical care provided by doctors. Thus, there is no factual issue raised and this motion is GRANTED in favor of .

The second issue is the one involving the claim of lack of informed consent. Mr. alleges he was not informed of the risks of surgery. He has filed two declarations. The first was insufficient under the ruling of the *Cobb* case. The second alleges two things. One, that he would not have had surgery had he been informed of the risks; and second, that if he had been informed of the risks he would have sought out a 2nd opinion, and after being informed of the "numerous risks" would have had the surgery by another physician or at another facility.

Does this create a triable issue of fact such as to deny the motion for summary judgment?

I believe it does not. Mr. is, in fact, alleging he would have had the same surgery, even after being informed of all the risks, but only by someone else. This then causes us to speculate...would the result have been any different? Would he have had the same residuals? This we can never know. I have already ruled that the surgeons treating Mr. were not negligent. How would the result with other surgeons be assumed to be any different? To raise a triable issue of fact there must be some claim of a causal connection between the alleged negligence (failure to warn) and the result (I wouldn't have had the surgery and the resulting residuals). But Mr. makes clear that even after being warned of the risks surgery would have followed. The fact it would have been with someone else is irrelevant.

The motion for summary judgment is GRANTED.

"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: April 27, 2017

DAVIS & YOUNG, APLC

By: *Philip Young*
PHILIP YOUNG
Arbitrator

ARBITRATION

In the matter of the arbitration between	**RULING ON RESPONDENTS' MOTION FOR SUMMARY JUDGMENT**
Claimant,	
vs.	
Respondents.	

The motion is GRANTED in favor of . Claimant's attorney failed to provide any doctors reports or declarations in opposition.

"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: August 1, 2017

DAVIS & YOUNG, APLC

By: *Philip Young*
PHILIP YOUNG
Arbitrator

ARBITRATION

In the matter of the arbitration between and i, Claimants, vs. Respondents.	**ARBITRATION AWARD**

In this action the 's seek compensation for the alleged malpractice of Or . They claim that his eventual 3 right foot surgeries were the result of improper treatment be her. The claimed negligence may logically be decided in two categories, A and B.

CATEGORY A.

1. Mr. had been suffering from a sore right foot for three weeks, and he planned a trip to Las Vegas that required extensive walking. He sought the doctor's advice as to whether it would be safe to go. She allegedly said Yes (Dr. denies this). He went, the foot got worse, and eventually he required 3 surgeries.

2. He was allegedly told to use RICE therapy during the trip, but only when he was in pain (again denied by Dr.). The therapy is in fact needed throughout the day.

3. He was not properly instructed on the warning signs of an infection. (I will not repeat that each of these claims are denied by Dr.).

4. He claimed that her records are either incomplete or erroneous.

5. That when his symptoms dramatically worsened he sought an office visit on May 25.

Allegedly she instead only agreed to discuss his symptoms by phone, refused to see him, and prescribed prednisone. Later that same day he required hospitalization.

To prove medical malpractice their expert Dr. would have had to testify that the above acts constituted substandard medical care AND that they were the proximate cause of the need for the surgeries. He did not do so. Therefore, on these points the claimants did not meet their burden of proof and a award is justified.

CATEGORY B.

On the visit on May 19 Dr. ' Impression was that he had a muscular skeletal problem foot Issue. Dr. testified that this was a mistake. In fact, according to him, he had an Infectious process. He should have been told to return in several days for a checkup, given an antibiotic, and the eventual need for surgery would have been eliminated. This testimony. If uncontested, would meet the burden of proof.

However, called two witnesses Dr. and Dr. . They testified that Dr. ' treatment met the standard of care. Specifically, that the muscular skeletal diagnosis was correct on May 19; that antibiotics were not Indicated on that date; that her records were accurate, her advice proper. Dr. specifically testified that the major cause of Mr. s strep G Infection was caused by Mr. 's failure to follow the RICE therapy prescribed by Dr. during his Las Vegas trip. Also, that the first sign of Strep G Infection did not occur until Mr. had been on his trip for 4 days, May 23. If true, this would establish two things: (1) that there was no infection to be seen on the visit of May 19; and (2) Dr. , an Infection disease expert, believed that on May 23 the outcome (surgery) was inevitable. In other words, nothing Dr. did or didn't do on the 25th made any difference. Mr. did not call an Infectious disease expert, nor directly rebut this testimony.

As the arbitrator I am required to weigh the conflicting expert testimony and decide which is more persuasive. My decision is that s experts were. This means that I do not

believe the claimants carried the burden of proof on both negligence (malpractice) and proximate cause. **My finding is for** .

However, I wish to express my sincere respect for Mr. and Mrs. . They are excellent people. Their injury was real and they suffered. This award does not reflect my belief regarding their honesty. For example, I believe it was not Mr. that cancelled the May 25 in office visit. I believe that Dr. did say, in effect, "who the hell gave you prednisone"; and that Mr. did say something to Dr. on May 19 re the trip to Vegas, but the details of that conversation were not made clear. Without Mr. 's expert specifically stating that these facts constituted medical negligence AND that they caused the outcome I cannot find in the 's favor.

Finally, my heartfelt congratulation to both attorneys for their excellent handling of this case.

As an afterthought, legal department should expunge any reference in Mr. 's records re a psychiatric referral.

"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: May 11, 2018

DAVIS & YOUNG, APLC

By: *Philip Young*

PHILIP YOUNG
Arbitrator