
APPENDIX A

IN THE MATTER OF THE ARBITRATION

BETWEEN

Claimant,

vs.

Respondents.

AWARD OF ARBITRATORS

[C.C.P. Sec. 1283.4]

On December 6, 7, 8, 9, 10, 1999, with deliberations on December 21, 1999,
the arbitrators heard evidence in the above-entitled matter:

After considering the evidence, the arbitrators make their Award as follows:

Judgment for Respondents,

and against Claimant,

Claimant to recover nothing.

Each side to bear its own costs with the costs of the neutral arbitrator to be
shared equally between the parties.


Dated: 1-27 1999.


Jack Byburn, Neutral Arbitrator

Dated: Jan 3, ²⁰⁰⁰ 1999.


Craig Figgs, Claimant's Arbitrator
I dissent

Dated: Dec. 29, 1999.


P. Theodore Hammock, Defense
Arbitrator

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Attorneys for Respondents,

IN THE MATTER OF ARBITRATION BETWEEN

Claimant,

vs.

Respondent.

ARBITRATION AWARD

An arbitration hearing in the above-entitled matter was held on November 13, 1999, with Claimant, , appearing in propria persona, Attorney , appearing on behalf of Respondent, , and Attorney , appearing on behalf of Co-Respondents,

At the conclusion of Claimant's presentation of evidence, Respondent and Co-Respondents moved for a non-suit, pursuant to C.C.P. §581c, on the grounds that Claimant failed to carry her burden or proof by presenting evidence sufficient to support a prima facie case based upon alleged medical negligence and/or general negligence.

1 The Motion for non-suit of Respondents,

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4 was also based upon
5 Claimant's failure to carry her burden of proof by presenting any
6 evidence whatsoever that Respondent,

7 , was an agent or employee under the
8 supervision or control of Co-Respondents,
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10 After fully considering all of the oral and written evidence
11 presented by the parties herein, as well as oral argument, it is
12 the finding of the undersigned that Claimant failed to carry her
13 burden or proof on the issues submitted and, therefore, the
14 Motions for non-suit of Respondent and Co-Respondents are
15 granted.

16 IT IS HEREBY ORDERED AND ADJUDGED, therefore, that Claimant
17 recover nothing and that judgment be entered in favor of
18 Respondent and Co-Respondents, and each of them, with each side
19 bearing their own costs.

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21 DATED: January 5, 2000


JUDGE JEROME BERENSON

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CONFLICT RESOLUTION
FOR THE 21ST CENTURY

AWARD NOTICE

| |
|----------------|
| Claimant (s) |
| vs. |
| Respondent (s) |

ARC Case No.

INSURANCE CLAIM NO. _____
 COURT CASE NO. _____
 DATE of HEARING _____ Monday, January 10, 2000
 REPRESENTING CLAIMANT _____
 REPRESENTING RESPONDENT _____
 ADDITIONAL PARTIES _____

AWARD: This matter came on for hearing pursuant to Section 8 of the _____ agreement applicable to all _____ members, of which Claimant _____ was one.

Claimant seeks damages as a result of cardiac complications arising from a surgical intervention to correct and/or repair a right shoulder rotator cuff impingement.

The thrust of her complaint is directed to the lack of pre-operative diagnostic analysis and examination to determine any risk to her cardiac system. The evidence finds the actual surgery was performed within the standard of care and has resulted in a satisfactory post-operative result.

PRESIDING JURIST Hon. Robert D. Fratianne, Ret. **DATE:** January 24, 2000
 LOS ANGELES • GLENDALE • SAN FRANCISCO



CONFLICT RESOLUTION
FOR THE 21ST CENTURY

ARC Case No.

Page 2

Cause of action for professional negligence is governed by California Code of Civil Procedure §364. Pursuant to that section, professional negligence means: "negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or licensed hospital."

It is a well known principle of tort law that Respondent will be held liable for Claimant's injuries only if Respondent breached a duty to exercise reasonable care. The California Supreme Court set out the standard in medical malpractice in Mann v. Cracchiola (1985) 38 Cal. 3d 18, 36; 210 Cal. Rptr. 762, 771. See also Munro v. Regents of the University of California 215 Cal. App. 3d 977; 263 Cal. Rptr. 878. In Mann, the court stated: "courts require only that physicians and surgeons exercise in diagnosis and treatment that reasonable degree of skill, knowledge and care ordinarily possessed and exercised by members of the medical profession under similar circumstances."

It is well settled that causation must be proven within a reasonable medical probability based upon competent expert testimony Bromme vs. Pavitt 5 Cal. App. 4th 1487 (1992).

Subsequent and in conjunction with the underlying surgery, evidence of atrial fibrillation and flutter was diagnosed. Clinically, and by the evidence, finds the heart may go into atrial fibrillation and or flutter with no other sign of heart disease, but more often the cause is an underlying problem, such as pneumatic heart disease, coronary artery disease, high blood pressure, alcohol abuse or excessive thyroid hormone.

These episodes may occur sporadically or may persist. Symptoms, by the evidence herein, are obvious consisting of, but not limited to, chest pain, palpitations, shortness of breath and edema, all accompanied by weakness, fatigue and general malaise. Generally, most obvious symptom is sinus tachycardia. Immediate treatment consists of dioxin and beta blockers.

Prior to the surgery, Claimant received medication to reduce heart rate, which was base line 134. Post operative she remained confined to the hospital for further treatment and observation. There is no evidence of permanent cardiac damage. Anxiety was diagnosed as cause of tachycardia.

Medical negligence does not necessarily connote an error in judgment or because medical efforts prove unsuccessful. Only if an error in judgment or lack of success is due to a failure to perform within the applicable standard of care. Obviously that standard of care is gleaned from the credible testimony and opinions of the physicians that have testified.

As the trier of fact it becomes my duty to weigh the conflicting testimony, not only as to liability, but also damages. To decide these issues, reliance is placed upon the convincing force of the evidence and the credibility of the parties and witnesses. To make that determination consideration is given to any matter that has a tendency in reason to prove or disprove the truthfulness of the testimony of the witness or party.