

Tentative Rulings for July 25, 2024
Department 403

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) *The above rule also applies to cases listed in this "must appear" section.*

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(35)

Tentative Ruling

Re: **Samrech v. Saint Agnes Medical Center et al.**
Superior Court Case No. 23CECG01594

Hearing Date: July 25, 2024 (Dept. 403)

Motion: by Defendant Saint Agnes Medical Center for Summary Judgment

If oral argument is timely requested, it will be entertained on Thursday, August 1, 2024, at 3:30 p.m. in Department 403.

Tentative Ruling:

To grant. Defendant Saint Agnes Medical Center is directed to submit to this court, within five days of service of the minute order, a proposed judgment consistent with the court's order.

Explanation:

Defendant Saint Agnes Medical Center ("Defendant") moves for summary judgment based on the declarations of medical experts, Robert Cole, M.D.; Laura Garminde, BSN, RN; and John Evank, M.D., who opined that Defendant's care and treatment of plaintiff Samuel Samrech ("Plaintiff") did not fall below the standard of care. The Complaint alleges as to Defendant one cause of action for medical malpractice, based on care provided on April 8, 2022 regarding a surgical procedure of a left inguinal incarcerated hernia repair, resulting in injuries and removal of the left testicle.¹

A trial court shall grant summary judgment where there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc. §437c(c); *Schacter v. Citigroup* (2009) 47 Cal.4th 610, 618.) The issue to be determined by the trial court in consideration of a motion for summary judgment is whether or not any facts have been presented which give rise to a triable issue, and not to pass upon or determine the true facts in the case. (*Petersen v. City of Vallejo* (1968) 259 Cal.App.2d 757, 775.)

The moving party bears the initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he or she carries this burden, the burden shifts to plaintiff to make a prima facie showing of the existence of a triable issue. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849.)

"The standard of care in a medical malpractice case requires that physicians 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. "The standard of care against which the acts of a physician are to be

¹ Defendant's Request for Judicial Notice is granted.

measured is a matter peculiarly within the knowledge of experts; it presents the basic issue in a malpractice action and can only be proved by their testimony, unless the conduct required by the particular circumstances is within the common knowledge of the layman." (Munro v. Regents of Univ. of Cal. (1989) 215 Cal.App.3d 977, 983-984, internal citations omitted.)

Normally, the question of whether a medical professional's care and treatment of a patient fell within the standard of care or caused the plaintiff's injuries is a matter that can only be established through expert testimony. (Landeros v. Flood (1976) 17 Cal.3d 399, 410.) Expert evidence is the standard for summary judgment in medical malpractice cases. (Willard v. Hagemester (1981) 121 Cal.App.3d 406, 412.) When a defendant moves for summary judgment and supports his motion with expert declarations that his conduct fell within the community standard of care, he is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence. (Ibid.)

Affidavits of the moving party must be strictly construed and those of the opponent liberally construed. (Petersen, supra, 259 Cal.App.2d at p. 775.) The facts in the affidavits shall be set forth with particularity. (Ibid.) The movant's affidavit must state all of the requisite evidentiary facts and not merely the ultimate facts or conclusions of law or conclusions of fact. (Ibid.) All doubts as to the propriety of granting the motion are to be resolved in favor of the party opposing the motion. (Hamburg v. Wal-Mart Stores, Inc. (2004) 116 Cal.App.4th 497, 502.)

Here, Defendant submits, among others, the declaration of Robert Cole, M.D. (Defendant's Statement of Evidence ["SOE"], Ex. 3.) Dr. Cole is a board-certified physician in Surgery since 1988. (Id., Ex. 3, ¶ 2.) He has significant experience in the diagnosis, clinical treatment, surgical repair, and post-operative care of hernia patients such as Plaintiff, having treated thousands of patients with similar conditions. (Id., Ex. 3, ¶ 5.) He is aware of the standard of care of medical health providers, including nursing, staff, and other hospital personnel. (Id., Ex. 3, ¶ 7.) He is aware of a legal cause of injury. (Id., Ex. 3, ¶ 8.)

Following his review of the medical records, Dr. Cole opined that the nursing staff met the standard of care in treating Plaintiff. (Defendant's SOE, Ex. 3, ¶ 12.) Namely, the nursing staff followed physician instruction and otherwise had no role in the surgical procedure. (Id., Ex. 3, ¶ 14(a).) After the hernia repair surgery, the nursing staff appropriately: documented the care provided to Plaintiff; did not place any undue pressure on the scrotum area; communicated with physicians and followed all orders; and provided standard and appropriate discharge instructions for a left inguinal hernia repair. (Id., Ex. 3, ¶ 14(b).) Dr. Cole opined that signs of testicular torsion would not be apparent at discharge, and usually takes 12 to 24 hours to manifest. (Id., Ex. 3, ¶ 14(c).) Upon return to Defendant's Emergency Department, the nursing staff and personnel expediently worked up Plaintiff's care. (Id., Ex. 3, ¶ 14(d).) Dr. Cole further opined that nothing Defendant's nursing staff or personnel did or failed to do caused Plaintiff's injury of a left testicle removal. (Id., Ex. 3, ¶ 16.)

Defendant further submits the declaration of Laura Gaminde, BSN, RN, who has over 43 years of nursing experience, the majority of which is in perioperative and surgical services. (Defendant's SOE, Ex. 4, ¶¶ 1, 3.) She has experience in the management and

(46)

Tentative Ruling

Re: **Patricia Ortega v. California Fair Plan Association**
Superior Court Case No. 24CECG00294

Hearing Date: July 25, 2024 (Dept. 403)

Motion: Defendant California Fair Plan Association's Demurrer to Plaintiff Patricia Ortega's Complaint

If oral argument is timely requested, it will be entertained on Thursday, August 1, 2024, at 3:30 p.m. in Department 403.

Tentative Ruling:

To overrule defendant California Fair Plan Association's demurrer. (Code Civ. Proc. § 430.10, subd. (e).) Defendant California Fair Plan Association is granted 10 days' leave to file its answer to the complaint. The time in which the answer can be filed will run from service by the clerk of the minute order.

Explanation:

A complaint for declaratory relief must demonstrate: (1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to the rights or obligations of a party. (*Brownfield v. Daniel Freeman Marina Hospital* (1989) 208 Cal.App.3d 405, 410.) The "actual controversy" requirement concerns the existence of present controversy relating to the legal rights and duties of the respective parties pursuant to contract, statute, or order. (*Id.*) A proper subject would be a determination of any question of construction or validity arising under an instrument or contract, or a declaration of the parties' rights or duties. (Code Civ. Proc., § 1060.) The interpretation of ordinances and statutes are proper matters for declaratory relief. (*Walker v. Los Angeles County* (1961) 55 Cal.2d 626, 637)

Here, plaintiff had a property policy with defendant. (Compl., ¶ 4.) She requested claim related documents pursuant to California Insurance Code section 2071. (Compl., ¶ 23.) The underlying dispute is centered on whether the independent adjuster reports and photographs fall within the definition of a claim related document. (Compl., ¶ 26, 27.) Plaintiff seeks a judicial determination of the rights and obligations of the parties under the insurance code. (Compl., ¶ 32.)

These facts as pled in the complaint are taken as true and thus present a plausible cause of action – there is an actual controversy between the parties that is subject to declaratory relief. Plaintiff would be entitled to relief, though what relief need not be determined at this time. The plaintiff's intent and the merits of plaintiff's claims are issues that can be argued and a demurrer is not the method by which they should be discussed or decided.

