



MARTIN C. HANDWEILER, Esq.
Judicate West
1851 E. First Street - Suite 1450
Santa Ana, CA. 92705
Tel: (714) 834-1340
Fax: (714) 834-1344

IN THE MATTER OF BINDING ARBITRATION BETWEEN

VARTAN MANSURYAN)	CASE NO: SC 092933
)	
Plaintiff)	
)	AWARD OF ARBITRATOR
vs.)	
)	
ALIREZA PANAHPOUR, D.D.S., aka)	
ALEXANDER PANA; and DOES 1 through)	
50, Inclusive)	
)	
Defendants)	

I. Nature of the Action

This arbitration involves a claim by plaintiff, VARTAN MANSURYAN, for personal injuries allegedly caused by the professional negligence of defendant, ALIREZA PANAHPOUR, D.D.S. The claim stems from defendant's rendition of professional dental services during January 2006.

II. Procedural Status

This action was filed in the Superior Court for the County of Los Angeles but, pursuant to the arbitration agreement executed by the parties, and by order of the court, is being heard in binding arbitration. An evidentiary hearing was conducted on December 12, 2008 at the offices of Judicate West in Long Beach, CA.

Attorney, David J. Wilzig, represented the plaintiff, VARTAN MANSURYAN, and James D. Savage, Esq., of Ford, Walker, Haggerty and Behar, represented the defendant, ALIREZA PANAHPOUR, D.D.S., etc., et al.

III. Evidence Presented

The plaintiff, VARTAN MANSURYAN, testified on his own behalf and offered the testimony of Rita Filikyan. The defendant, Dr. Panahpour testified on his own behalf.

By way of documentary evidence the plaintiff offered the expert opinions through the declarations of Hanna Hoesli, D.D.S., and Robert Baratz, M.D., Ph.D., D.D.S on the issue of standard of care. In addition, plaintiff submitted a copy of the Complaint, an uncertified copy of the Accusation and Decision and Order by the Dental Board of California, the declaration of Shameka Hunter, excerpts from the depositions of Dr. Panahpour in this action and in the matter entitled Filikyan vs. University of Texas Houston Health Science Center, et al. and a copy of defendant's office chart including his billing sheet for services rendered and the declaration Shameka Hunter.

The defense offered a copy of the defendant's office records.

Defendant objected to the admissibility of the Accusation and Decision and Order by the Dental Board of California which was sustained, and to portions of the declaration of Shameka Hunter which was also sustained. Defendant's objection to the declarations of Dr. Hoesli and Baratz on the grounds that each lacks a proper foundation was overruled on the grounds that the limited statement/opinions offered by these expert witnesses do not require a foundation beyond a description of their education, training and experience. Defendant's objection to certain portions of the declaration of S. Hunter was sustained on the grounds of hearsay and relevance.

The testimony and the admissible documentary evidence has been reviewed and

considered along with the supplemental Briefs in deciding the issues and rendering this Award.

IV. The Issue(s)

The general issues for resolution are;

(1) *If* the Defendant administered injections to Plaintiff's appendectomy scar in providing holistic dentistry care, does such conduct constitute professional negligence?

(2) Was such negligence, if any, a substantial factor in causing the harm suffered by plaintiff, and;

(3) If so, the nature and extent of the damages caused by defendant's alleged negligence.

(4) Did defendant's conduct constitute a battery?

(5) Was such battery, if committed, a substantial factor in causing the harm claimed by plaintiff, and;

(6) The nature and extent of the damages caused by the alleged battery.

V. The Competing Contentions

A. Plaintiff – Vartan Mansuryan

Plaintiff contends that defendant, A. Panahpour D.D.S.,

(1) Failed to conform to acceptable standards of dental practice by pursuing a course of conduct that lacked any scientific or clinical support.

(2) Fraudulently induced plaintiff to consent to undergoing the administration of injections as part of Defendant's treatment program thus committing a battery.

Plaintiff seeks economic damages \$805.52 plus non-economic damages of \$100,000 plus punitive damages.

B. Defendant – Alireza Panahpour, D.D.S.

Denies that he was negligent and specifically denies the administration of

injections below the neck. Further, the defendant contends that plaintiff gave his informed consent to all treatment and, finally, he contends that none of the conduct, even as alleged, caused the plaintiff any harm.

VI. Arbitrator's Findings and Decision

I find the Defendant liable for:

- (a) Failing to obtain an informed consent, and,
- (b) Committing a battery.

I find plaintiff's economic damages to be \$805.52 and award non-economic damages of \$1,000. The claim for punitive damages is denied.¹

This Award is based upon the factual evidence, expert opinions, applicable law and reasoning which follows.

VII. Summary of the Evidence and Decision

To say the least, this is an unusual case. Plaintiff sought treatment from the defendant who practices a holistic form of dentistry. Although plaintiff apparently knew that the defendant's techniques were unique, he claims that he believed the defendant was both a dentist and medical doctor and, based upon such beliefs, consented to undergo defendant's treatment program.

After completing several documents concerning medical history and current complaints, the Defendant began testing the plaintiff for allergies through a technique known as autonomic response testing. Based upon the results of such testing, the Defendant informed the plaintiff of

¹ There was no evidence of defendant's financial condition and, as set forth in the "Directions for Use" segment of CACI 3940, "A plaintiff seeking punitive damages is not seeking a mere declaration by the jury that he is entitled to punitive damages in the abstract. The plaintiff is seeking an award of real money in a specific amount to be set by the jury. Because the award, whatever its amount, cannot be sustained absent evidence of the defendant's financial condition, such evidence is essential to the claim for relief." (*Adams v. Murakami* (1991) 54 Cal.3d 105, 119 [284 Cal Rptr. 318 813 P 2d 1348]

certain allergies that he had which inhibited treatment and/or healing and proceeded to recommend the use of nutritional supplements which he sold to the plaintiff.

Although disputed, plaintiff claims he was also subjected to injections in his forehead and the area where he had undergone an appendectomy since both areas had residual scarring. Plaintiff contends he was led to believe that these procedures were preliminary to the contemplated removal of his amalgam fillings as such are considered unhealthy.

The essence of plaintiff's testimony was that he consented to these procedures based upon defendant's representation, express and/or implied, that he was a medical doctor as well as a dentist. Plaintiff testified that the injections to the appendectomy scar produced pain, tenderness, redness and swelling in that area of his body.

The defendant denied administering any injections to plaintiff's forehead scar or his appendectomy scar and testified that the only injections he administered were in the area of plaintiff's jaw due to spasms in that region. Further, that he used a 30 gauge needle (which is very small) and is inserted just below the skin to inject procaine (a numbing substance) requiring about two seconds time for each of the four injections he administered. Dr. Panahpour testified that neither the plaintiff nor any other patient has ever complained about any pain or discomfort associated with these injections.

Plaintiff testified the injections hurt "more than a bee sting" but on cross examination, and by reference to his deposition, admitted that the pain went away in 10 to 20 seconds adding that it returned a few hours after the initial injections. All treatment took place on two separate dates in January 2006.

At this hearing plaintiff testified that the pain lasted weeks or months but, in his deposition he testified, ". . . maybe a few days." Plaintiff did not seek any form of medical

attention for the problems that he claims developed in the area of his appendectomy scar and, in fact, administered no home remedy such as a cream, ointment, etc.

Plaintiff contends that because of this experience with Dr. Panahpour his faith in doctors and dentists has been lost and even though he is now troubled with back pain and a hand/wrist problem, he will not seek medical attention. He has not sought any counseling from any type of healthcare professional over the nearly three years that have passed since this experience and does not intend to do so in the future.

VIII. Applicable Law

Before addressing the specific issues it is important to note the law that is applicable to this case. As in all negligence claims it begins with reference to the burden of proof as set forth in CACI 200. It reads as follows:

“200. Obligation to Prove—More Likely True Than Not True
A party must persuade you, by the evidence presented in court, that what he or she is required to prove is more likely to be true than not true. This is referred to as “the burden of proof.”
After weighing all of the evidence, if you cannot decide that something is more likely to be true than not true, you must conclude that the party did not prove it. You should consider all the evidence, no matter which party produced the evidence.
In criminal trials, the prosecution must prove that the defendant is guilty beyond a reasonable doubt. But in civil trials, such as this one, the party who is required to prove something need prove only that it is more likely to be true than not true.”

As counsel are aware, plaintiff has the burden of proving that the defendant was negligent and that such negligence was a substantial factor in causing the harm claimed and the nature and extent of the harm suffered.

Continuing, CACI 501 sets forth the law as it relates to the standard of care, it reads:

501. Standard of Care for Health Care Professionals

A. *[insert type of medical practitioner]* is negligent if *[he/she]* fails

to use the level of skill, knowledge, and care in diagnosis and treatment that other reasonably careful [*insert type of medical practitioners*] would use in the same or similar circumstances. This level of skill, knowledge, and care is sometimes referred to as "the standard of care."

[You must determine the level of skill, knowledge, and care that other reasonably careful [*insert type of medical practitioners*] would use in the same or similar circumstances, based only on the testimony of the expert witnesses [including [*name of defendant*]] who have testified in this case.]

Based upon the cited law, plaintiff must prove his claim of negligence *based only* upon the testimony of expert witnesses.

A. Evidence re: Professional Negligence

At the hearing the plaintiff introduced the declarations of Hanna Hoesli, D.D.S. and Dr. Baratz in support of his claim that defendant failed to conform to acceptable standards of practice.

The *only* opinion expressed within Dr. Hoesli's declaration was, "...the injection of a patient's tissue and/or scars below the neck is beyond the parameters of proper dental practice and is considered medical, rather than dental, treatment."

As argued by the defense, even assuming such an injection was administered, this opinion of Dr. Hoesli does not say the administration of the alleged injection was done improperly, was unnecessary or anything else. It merely states that doing so constitutes medical and not dental care.

The essence of the second opinion from Dr. Baratz, a doctor of dentistry and medicine, is "...that the injection of a patient's tissue and/or scars below the neck, excepting for the administration of antibiotics, is beyond the parameters of proper dental practice and is considered medical, rather than dental, treatment."

In addition to the defense pointing to the fact that Dr. Baratz apparently disagrees with Dr. Hoesli by condoning injections below the neck when antibiotics are indicated, I do not find either of these declarations sufficient proof of the fact that Dr. Panahpour's unusual methods of practicing dentistry constitute professional negligence.

Plaintiff argues that expert testimony on this issue is not necessary in this particular instance based upon the "common knowledge" exception to requiring expert testimony. However, as plaintiff's supplemental brief acknowledges, the cited cases generally focus on situations involving the doctrine of *res ipsa loquitur* and/or the issue of causation. Moreover, there was no testimony from any source as to what the standard of care was in this particular case and I am unable to determine, through common knowledge, whether the consequences (transient pain, redness and swelling) are normal and expected when injecting a scar or were caused by negligence.

Even though I accept plaintiff's testimony that this injection did, in fact, take place, and hasten to add that I cannot *fathom* how such an injection could be of any benefit, this case deals with holistic dentistry which is certainly not an area that lends itself to common knowledge and, in my opinion, requires expert testimony. Absent expert opinions directly related to the testing, recommendation and injections of procaine, I cannot find that the defendant failed to meet the standard of practice.

B. Evidence of Negligence Based on Informed Consent

The Second Cause of Action of plaintiff's Complaint alleges defendant "negligently failed to obtain Plaintiff's informed consent for ART, neural therapy and supplemental therapy." And, by incorporating the allegations set forth in the First Cause of Action for Dental Malpractice, the Plaintiff asserts that the autonomic reflex testing process, which leads

to the recommendation and sale of such purported nutrients as freeze dried garlic and other such supplements is completely without any scientific support and is, in essence, a farce.

Plaintiff testified that he underwent the ART testing and permitted the injections because defendant represented himself to be a medical doctor as he would not have permitted a dentist to inject his abdomen.

In sum, plaintiff claims that defendant's entire course of conduct was a scam, constituted a fraud, and exceeded the bounds of his consent to treatment by the defendant.

The evidence offered by Dr. Panahpour in rebuttal to these claims was that he does not and, in this case did not, represent himself to be a medical doctor. He testified that as holistic dentist nutrition is a factor to be considered and "ART" (autonomic reflex testing) is part of a nutritional consultation within the purview of his practice.

Dr. Panahpour flatly denied administering any injections below the neck testifying, instead, that he administered trigger point injections in the submandibular and otic regions because of spasms in the muscles of the jaw. This is a procedure he learned at UCLA and USC Schools of dentistry.

On cross examination it was established that his records contained no notes regarding the site of the injections administered and no notes regarding any discussions with plaintiff as to the treatment plan. He also acknowledged that in treating at least one other patient he did administer an injection into the breast region.

His testimony about never representing himself to be a medical doctor was challenged by the testimony of another patient, Rita Filikyan, (plaintiff's mother), who testified that the defendant told her "a couple of times" that he was a medical doctor.

On weighing the testimony and considering the documentary evidence, I find it

is more likely than not that the plaintiff was not given all material information with which to make an informed decision and that he did not give his informed consent to the "treatment" rendered and/or that Dr. Panahpour's treatment went beyond the scope of plaintiff's consent.

CACI reads as follows:

"1303. Invalid Consent

[Name of plaintiff] claims that [his/her] consent [was obtained by fraud/mistake/duress] [was obtained as a result of [his/her] incapacity] [or that [name of defendant]'s conduct went beyond the scope of [his/her] limited consent].

If [name of plaintiff] proves that [his/her] consent was [insert ground for vitiating consent, e.g., "obtained by fraud," "exceeded"], then you must find that [he/she] did not consent."

I find defendant's failure to obtain an informed consent to be negligent.

IX. Cause of Action for Battery

Having found that the treatment went beyond the scope of plaintiff's consent it would also constitute a medical battery under CACI 530. However, this finding does not impact plaintiff's economic or non-economic damages and, as previously indicated, punitive damages are not recoverable under *Adams v. Murakami* (1991) 54 Cal.3d 105, 119

X. Damages

A. Economic Damages

Plaintiff's only claim for economic damages is the \$805.52 and I find him entitled to recover that sum as economic damages.

B. Non-economic Damages

Plaintiff's testimony regarding the nature and extent of the problems he encountered as a consequence of the injections into the appendectomy scar was inconsistent and unreliable but, even if viewed in its most favorable light, the physical harm was minimal. Plaintiff's deposition

testimony indicated brief pain, redness, tenderness and swelling that required no attention, medical or otherwise.

Plaintiff, age 27, also claims that defendant's conduct caused him to lose all faith and confidence in dentists and doctors. He testified that as a consequence of defendant's breach of trust he is unwilling to consult with any other dentist or doctor even though he currently has a problem with his hand and a back problem that interferes with his work. For this claimed harm plaintiff requests \$100,000 in compensatory (non-economic) damages.

I find this claimed element of harm to be unreasonable and unreliable. Cross examination of the plaintiff by use of his deposition established a lack of credibility and, based upon the totality of the evidence, I find reasonable compensation to be \$1,000.

Thus, the total award of economic and non-economic damages equals \$1,805.52

XI. Conclusion

I recognize the amount of time, effort and expense that attached to the preparation and presentation of the claims and defenses to this case and appreciate the fact that my findings on liability and damages will be disappointing to plaintiff and defendant.

Although the case was simple from a factual standpoint, it did raise complex legal issues. In preparing this Award I have attempted to explain the factual and legal basis for the decision and hope I have been successful.

I thank all concerned for entrusting this matter to me and Judicate West.

DATED: December 22, 2008

By: Martin C. Handweiler
MARTIN C. HANDWEILER
Arbitrator

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE:

I am employed in the County of Orange, State of California. I am over the age of 18 and am not a party to the within action. My business address is 1851 East First Street, Suite 1450, Santa Ana, California 92705.


On January 2, 2009, I served the **Award of Arbitrator** on the following parties in the matter of **Mansuryan vs. Panahpour** by placing a true copy to all parties enclosed in a sealed envelope addressed as follows:

David J. Wilzig, Esq.
Law Offices of David J. Wilzig, APC
1801 Century Park East
Suite 2200
Los Angeles, CA 90067
Fax: (310) 286-2711

James Savage, Esq.
Ford, Walker, Haggerty & Behar
One World Trade Center
Suite 2700
Long Beach, CA 90831
Fax: (562) 983-2555

- (X) BY U.S. MAIL: I caused such envelope(s), with postage fully prepaid, to be placed in the U.S. Mail at Santa Ana, California.
- (X) BY FACSIMILE: I caused such document to be sent via facsimile to each person on the attached mailing list.
- () BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the office of the addressee.
- (X) STATE: I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- () FEDERAL: I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on January 2, 2009 at Santa Ana, California.



Rebecca Hessen
Judicate West