68924-0

68924-0

COURT OF APPEALS NO. 68924-0

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

LEONARDO C. MARIANO, *pro se*,
Appellant

v.

SWEDISH CARDIAC SURGERY [*sic*],
Respondent.

RESPONDENT'S BRIEF

ELIZABETH A. COOPER, WSBA #25065
ANDREWS ▪ SKINNER, P.S.
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Seattle, WA 98119
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Attorney for Respondent

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I. INTRODUCTION

This matter arises out of the Mr. Mariano's allegations of medical negligence, five years following his successful Coronary Artery Bypass Grafting surgery. Mr. Mariano filed his lawsuit pursuant to RCW 7.70 *et. seq.*, against Swedish Cardiac Surgery [*sic*] ("Swedish") claiming that the care he received was below the applicable standard, and/or that there was a lack of informed consent. [CP 1-6].

The Superior Court dismissed all of Mr. Mariano's claims on summary judgment for failure to meet his burden of proof for claims pursued under RCW 7.70, *et. seq.* lack of supporting evidence. [CP 36-37]. The Superior Court commented on the untimely filing of Mr. Mariano's complaint in connection with an Order denying his motion for reconsideration. [CP 42-43].

II. COUNTERSTATEMENT OF ISSUES ON APPEAL

Mr. Mariano's statement of the issues on appeal is argumentative and repetitive. A concise statement of the relevant issue is as follows:

1. Did the lower court err in dismissing Mr. Mariano's medical negligence claims against Swedish Cardiac Surgery [*sic*] based on a lack of supporting evidence?

III. COUNTERSTATEMENT OF THE CASE

A. Procedural Background

Mr. Mariano filed a medical negligence action against Swedish on May 2, 2011. [CP 1-6]. On November 22, 2011, Swedish filed a motion for summary judgment based on the appellant's failure to identify or produce for deposition, a qualified expert witness supporting his claim. [CP 7-15]. Mr. Mariano first informally asked counsel for Swedish for a continuance of the date for hearing the summary judgment motion to accommodate a trip to the Philippines. [CP 191]. This request was granted. [CP 189-190]. Mr. Mariano then formally sought another continuance from the trial court that, ultimately, was denied. [CP 16-25, CP 200, CP 201-214, CP 215-16]. When Mr. Mariano failed to present any evidence to support his claim of medical negligence, the trial court properly granted Swedish's motion for summary judgment dismissing his claims. [CP 36-37].[1]

Mr. Mariano then moved for reconsideration of the Court's order dismissing his claims. [CP 38-41]. The trial court's order denying that motion cited both the lack of evidence (expert testimony) supporting the

[1] The Superior Court docket does not include this *pro se* Plaintiff's brief in Response to the Motion for Summary Judgment which was considered by the Trial Court and referenced in the Court's Order Granting Summary Judgment. [CP36-37] Because it is not on the docket, it was not included in the Clerk's Papers. For the sake of a complete record, however, the same is attached hereto for the Court's convenience, as Appendix A.

claim, and Mr. Mariano's untimely filing in violation of the Statute of Limitations as support for the original order dismissing all claims. [CP 42-43].

As will be discussed below, Mr. Mariano brought his medical negligence lawsuit without proper evidentiary support. Instead, his claims are based on his misunderstanding of his own health conditions and his personal interpretations of the medical records, as well as some unauthenticated, inappropriate articles he has printed from the internet which are inappropriately appended to his brief.[2] In this appeal, he continues to attempt to offer his own interpretation of medical records as support for his claims. Appellant's claims and the evidence required to proceed with such claims, are clearly controlled by existing law. Ch. 7.70 RCW. Appellant failed to present evidence to support his claim and the orders of the trial court should be affirmed.

B. Underlying Facts

On May 2, 2011, Mr. Mariano filed an action under RCW 7.70 for professional negligence in which he alleged that the defendant he identified as Swedish Cardiac Surgery failed to exercise the degree of care and skill expected of healthcare providers in the State of Washington when Mr.

[2] The attachments to Mr. Mariano's Appellate Brief were not presented to the trial court in connection with the subject motion for summary judgment and they are not properly before this Court. All reference to the exhibits contained in the Appendix to Mr. Mariano's brief should be stricken and not considered on appeal. RAP 10.3(a)(8).

Mariano was treated by healthcare providers at the facility. [CP 3-6]. Specifically, Mr. Mariano appears to believe that a portion of the coronary artery bypass surgery he received on April 4, 2006 was negligent or unwarranted.

Mr. Mariano does not have the required expert support for his claims. In answers to discovery seeking the identity of the expert witness(es) supporting plaintiff's claim, Mr. Mariano failed to identify a single witness. [CP 148-184]. Defense counsel wrote multiple letters and emails explaining plaintiff's burden of proof in a medical negligence case and supplying the statutory source of the applicable legal standards for this claim. [CP 186-187, CP 189-191, CP 193-194].

Instead of providing this necessary proof, Mr. Mariano indicated that his experts would be identified after the close of discovery, and then attempted to suggest that the doctrine of *res ipsa loquitur* applied to some or all of his claims. [CP 139-199]. Based on the nature of this claim and the presenting facts, *res ipsa loquitur* cannot apply to this healthcare negligence case. The primary basis for Swedish's motion for summary judgment was Mr. Mariano's lack of evidence and expert testimony relating to his allegations that defendant or defendant's providers breached the applicable standard of care. [CP 7-15].

In addition, Swedish's original motion offered by way of footnote, the fact that the statute of limitations for this claim expired in April 2009, well before Mr. Mariano filed this lawsuit on May 2, 2011. [CP 8]. In response, Mr. Mariano asserted that the alleged negligence was only recently discovered due, allegedly, to the actions of certain healthcare providers. Swedish argued that, given the facts of this matter, Mr. Mariano's claimed "recent discovery" is not reasonable, nor is his failure to timely bring this action excusable. Mr. Mariano's failure to produce the necessary evidence to proceed with his claim, alone, provides sufficient basis for summary dismissal. The applicable statute of limitations also bars this claim. RCW 4.16.350; [CP 42-43].

Swedish's motion for summary judgment was served and filed early to allow this pro se plaintiff nearly a month of additional time to respond. [CP 139-199]. The original hearing date was first continued at Mr. Mariano's request. Mr. Mariano had ample time in which to offer support for his claim but failed to do so.

C. Plaintiff's Claim

After studies demonstrated significant three vessel coronary artery disease, Mr. Mariano had a quadruple coronary artery bypass grafting (CABG) surgery on April 4, 2006. Based on his allegations, Mr. Mariano has no issue with the bypass surgery in general, or the specific bypass of his

right coronary artery. [CP 3-6]. Instead, his claim is premised on his personal belief that the bypass of his left coronary artery was unnecessary. [CP 3-6]. Mr. Mariano, however, failed to present any expert testimony supporting his personal belief.

Instead, and even in this appeal, he relies on medical records that predate the subject surgery, in addition to his personal opinion that a left artery bypass was not necessary. He also relies on his own interpretation of his medical records and various internet publications. Mr. Mariano is not and does not purport to be a qualified medical expert. The information he presents as "evidence" appended to his appeal brief is inappropriate and should not be considered by the Court. RAP 10.3(a)(8). Mr. Mariano misunderstands both the surgery that he had, and his own medical condition. He presented no evidence that the bypass of his left coronary artery caused him actual damages. Mr. Mariano failed to demonstrate any negligence and his claims were appropriately dismissed. This appeal followed.

IV. ARGUMENT

A. The Trial Court's Dismissal of Mr. Mariano's Complaint is Reviewed de Novo

Appellate review of a trial court's decision on summary judgment is de novo. Troxell v. Rainier Pub. Sch. Dist. No. 307, 154 Wash.2d 345, 350, 111 P.3d 1173 (2005) (citing Castro v. Stanwood Sch. Dist. No. 401,

151 Wn.2d 221, 224, 86 P.3d 1166 (2004)). A motion for summary judgment is properly granted where "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." CR 56(c). Here, there is no question that Mr. Mariano failed to raise a genuine issue of material fact with regard to his medical negligence claim.

B. The Trial Court Did Not Err in Dismissing Mr. Mariano's Medical Negligence Claims for Failure to Meet his Burden of Proof

In an action claiming injuries caused by negligent healthcare, Mr. Mariano was required to establish that the "injury resulted from the failure of a healthcare provider to follow the accepted standard of care." RCW 7.70.030(1). To meet his burden and to make a prima facie case for medical negligence, Mr. Mariano had to produce evidence to show (1) that the defendant failed to exercise the degree of care, skill, and learning expected of a reasonably prudent practitioner in the state of Washington; and (2) that such failure was a proximate cause of the claimed injuries. RCW 7.70.040; Miller v. Jacoby, 145 Wn.2d 65, 72, 33 P.3d 68 (2001); Berger v. Sonneland, 144 Wn.2d 91, 111, 26 P.3d 257 (2001).

Expert testimony is generally required to establish the standard of care and causation in healthcare negligence cases. Berger, 144 Wn.2d at 110-11. Because of the plaintiff's burden in this regard, a defendant

moving for summary judgment in a healthcare negligence action is entitled to dismissal if the plaintiff is unable to, or does not present admissible, competent medical expert testimony based on a foundation in fact to establish the standard of care, its breach, and causation. See Young v. Key Pharmaceutical, Inc., 112 Wn.2d 216, 226-27, 770 P.2d 182 (1989); see also Guile v. Ballard Community Hospital, 70 Wn. App. 18, 25, 851 P.2d 689, review denied, 122 Wn.2d 1010 (1993). When a defendant asserts (such as here) that plaintiff lacks competent expert testimony with sufficient factual foundation to establish the necessary elements of plaintiff's claims, the burden then shifts to the plaintiff to present testimony from a qualified expert alleging specific facts that establish a cause of action. Guile v. Ballard Community Hospital, 70 Wn. App. 18, 25, 851 P.2d 689 (1993) (citing Young, 112 Wn.2d at 226-27).

1. No Supporting Testimony from Qualified Expert Witness

In this case, Mr. Mariano failed to present or even identify competent expert testimony based on a foundation in fact that would establish the standard of care, its breach, and causation. *See*, APPENDIX A 001-015 (Plaintiff's Response to Motion for Summary Judgment). Mr. Mariano failed to produce evidence that any of the care and treatment provided to him fell below the applicable standard of care, he provided no definition of the applicable standard of care, and he offered no expert testimony to establish

that the care and treatment provided to him was the cause in fact or in law of any alleged injury. Id. Where the plaintiff fails to present expert testimony satisfying the burden of proof on each of the issues of breach of duty and proximate cause, the case must be decided in the moving party's favor as a matter of law.

Rather than presenting witness testimony, Mr. Mariano identified his current treating cardiologist and another cardiologist who treated him prior to the subject surgery as providers who may testify in this case. [CP 39-40]. He did not, however, present any proof that these providers are actually involved in this case as expert witnesses and that they will offer opinions supporting his claims. See, APPENDIX A 001-015 (Plaintiff's Response to Motion for Summary Judgment). There has never been any indication that these providers intend to take on a forensic role in this case, in fact the communication between Mr. Mariano and his providers, and from Mr. Mariano to defense counsel suggests otherwise. [CP 97-98, CP 126, CP 127, CP 26-30]. There is no indication that these providers intend to offer any testimony in support of Mr. Mariano's allegations. [CP 97-98, CP 126, CP 127, CP 26-30].

Because Mr. Mariano failed to present any competent medical evidence to support his claims of health care negligence, his claims were appropriately dismissed. [CP 36-37]. As a matter of long-standing

Washington law, his appeal should also be dismissed on the merits. RAP 18.14.

2. No Proof of Informed Consent Claim

Under Washington law, Mr. Mariano's allegations regarding informed consent also required more than his own, bare allegations. Informed consent claims require expert testimony. RCW 7.70.050(3); Smith v. Shannon, 100 Wn.2d 26, 33, 666 P.2d 351 (1983). Mr. Mariano signed a consent form regarding the bypass surgery. [APPENDIX A 008]. Mr. Mariano's purported misunderstanding of his medical condition at the time of surgery does not provide appropriate evidentiary support for an informed consent, or any other medical negligence lawsuit. Because Mr. Mariano presented nothing but his own commentary and beliefs regarding his claims, his lawsuit was properly dismissed and a motion on the merits is also appropriate.

3. The Doctrine of *Res Ipsa Loquitur* Does Not Apply Here

Although it has been asserted by Mr. Mariano, the doctrine of *res ipsa loquitur* does not apply to the claims in this case. The law governing such a claim is equally well-settled. The doctrine of *res ipsa loquitur* is applicable only when an "'occurrence is of itself sufficient to establish *prima facie* the fact of negligence on the part of the defendant, without further or direct proof thereof.'" Tinder v. Nordstrom, Inc., 84 Wn. App.

787, 791, 929 P.2d 1209 (1997) (quoting Morner v. Union Pac. R.R. Co., 31 Wn.2d 282, 291, 196 P.2d 744 (1948)). For the doctrine to apply, in a healthcare negligence case, the Appellant must establish that:

> (1) [T]he occurrence producing the injury must be of a kind which ordinarily does not occur in the absence of negligence, (2) the injury is caused by an agency or instrumentality within the exclusive control of the defendant; and (3) the injury-causing occurrence must not be due to any contribution on the part of the plaintiff.

Miller v. Jacoby, 145 Wn.2d 65, 74-75, 33 P.3d 68 (2001); Howell v. Spokane & Inland Empire Blood Bank, 114 Wn.2d 42, 58, 785 P.2d 815 (1990)(quoting Jackson v. Criminal Justice Training Comm'n, 43 Wn. App. 827, 829-30, 720 P.2d 457(1986)). Moreover, "[*r*]*es ipsa loquitur* is ordinarily sparingly applied, 'in peculiar and exceptional cases, and only where the facts and the demands of justice make its application essential.'" Tinder, 84 Wn. App. at 792 (quoting Morner, 31 Wn.2d at 293).

Here, Mr. Mariano claimed that his heart bypass surgery was somehow inappropriate in scope. [CP 3-6]. Given the facts of the case, Mr. Mariano is and was unable to demonstrate that *res ipsa loquitur* applies to this claim. Under Washington law, it does not. As a starting point, there is no evidence that any injury claimed by Mr. Mariano are of a type that ordinarily does not happen without negligence. Without

knowing the professional standard of care for a health care provider performing cardiac bypass surgery, or diagnosing a heart condition, a layperson would not be capable of determining that Mr. Mariano's claimed injury would not have occurred absent negligence.

Next, given Mr. Mariano's stated claims, there is no basis to conclude that the alleged instrumentality causing the "injury" claimed by him was within the exclusive control of Swedish. Finally, this is not a peculiar or exceptional circumstance. It is a typical healthcare negligence claim and *res ipsa loquitur* cannot supply an inference of negligence by Swedish. It is and was Mr. Mariano's burden to present expert testimony supporting each of his claims against the defendant in this case in order to proceed. Because Mr. Mariano did not and cannot do so, summary dismissal of this case was appropriate, as is a motion on the merits to affirm the trial court's decision.

4. No Evidence of Damages Related to Alleged Negligence

Mr. Mariano claims – without any medical support – that the bypass of his left coronary artery was somehow inappropriate. However, he admits that as of October 2009 (more than three years after the subject bypass surgery) "the bypass operation was a success." [APPENDIX A 002]. He has no demonstrable damages. Instead, Mr. Mariano now claims that because he felt answers to his questions about the surgery were "evasive" he

personally decided that there must be a basis for a medical negligence claim. [APPENDIX A 002]. Based on Mr. Mariano's own admissions, he is not critical of the care provided – the surgery was a success. Rather, he is actually critical of the answers to his questions. This does not provide the basis for a viable medical negligence claim – particularly here where Mr. Mariano has no expert testimony to support a negligence claim of any kind. Mr. Mariano failed to present evidence of an actual claim or damage, first to the trial court, and now on appeal. Affirmation of the Trial Court's Order Granting Summary Judgment is appropriate.

V. CONCLUSION

Swedish respectfully requests that this Court affirm the Trial Court's decision dismissing Mr. Mariano's claims in their entirety because Mr. Mariano failed to come forward with admissible evidence sufficient to meet his burden on this medical negligence claim.

RESPECTFULLY SUBMITTED this 7th day of February, 2013.

ANDREWS ▪ SKINNER, P.S.

By _____
ELIZABETH A. COOPER, WSBA #25065
Attorneys for Respondent

DECLARATION OF SERVICE

I, LIZ CURTIS, hereby declare as follows:

1. That I am a citizen of the United States and of the State of Washington, living and residing in King County, in said State, I am over the age of eighteen years, not a party to the above-entitled action, and competent to be a witness therein.

2. On the 7th day of February, 2013, I caused a copy of the attached to be served upon the following in the manner noted:

Pro se Appellant:
Leonardo C. Mariano
1123 Rainier Avenue, Suite 415
Everett, WA 98201
Via Email and US Mail

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED the 7th day of February, 2013, at Seattle, Washington.

LIZ CURTIS

APPENDIX A

HONORABLE JUDGE RICHARD EADIE

THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

LEONARDO C. MARIANO, *pro se* Plaintiff v. SWEDISH CARDIAC SURGERY Defendant	No. 11-2-15733-4 SEA PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This Motion must be denied for two main reasons:

A. At least two genuine issues of material facts still need to be **resolved during trial on the merits - not through the abbreviated convenience of a summary judgment.**

B. Contrary to the allegation of Defendant that the Complaint is not supported by evidence and medical opinion, Plaintiff has already submitted 16 exhibits which may be admissible in court. **Additional evidence will be added, given more time for discovery, the deadline of which is August 27, 2012.**

A. GENUINE ISSUE

From the Complaint, with the response of Defendant and the reply of Plaintiff, as well as from the interrogatories and requests for production of documents, **both parties have already identified and defined several controverted issues which are**

1. Defendant claims that the statute of limitation expired in 2009, three years after the bypass operation in 2006. Plaintiff contends that the statute started running only after the discovery of the medical malpractice in 2009.

Fact. In Plaintiff's letter to Defendant dated October 30, 2009, Plaintiff stated "the bypass operation was a success, a sincere thanks to you" but requested Defendant for clarifications of some doubts about the bypass (Exhibit M, attached). Meaning, Plaintiff had no intention of filing a complaint of medical malpractice at that time. Defendant responded to that letter only on April 27, 2011, more than one year later (Exhibit O). Defendant's answers were evasive and Plaintiff then became convinced a case for medical malpractice was in order. The Complaint was filed a week later, May 2, 2011.

Fact. RCW 4.16.350 provides "*a discovery rule that can allow a medical malpractice action to be brought later than the three-year period*". Also, RCW 4.16.350(3) "*allows the action to be brought no later than one year after '* ***the time the patient or his representative discovered or reasonably should have discovered that the injury or condition was caused by such act or omission'*** *".*

2. Defendant claims Plaintiff gave the consent to do bypass in the left arteries. Plaintiff contends the consent applied only to the right arteries which Defendant's diagnosis found to be the cause of Plaintiffs chest discomfort.

Facts. Exhibit I shows Defendant identified the right arteries needing the bypass.. However, Exhibit J admitted the bypass was done on the left arteries instead.

Defendant claims Plaintiff signed the consent form which described the bypass 3 procedure to be used, stated in general term, "coronary artery bypass graft" (Exhibit T). However, Plaintiff counters that the signed general consent should be read in conjunction with Exhibit I, clearly directing that the bypass be done specifically on the right arteries.

The consent form reads: "The medical procedure or surgery stated on this form, including the possible risks, complications, **alternative treatments (including non-treatment) and anticipated results WAS EXPLAINED by me to the patient ..."** Fact. No explanation was given because **Plaintiff was under anaesthesia.**

Had Plaintiff been ready to listen to any explanation, no consent would have been given anyway. Plaintiff took cognizance of the nuclear scan test done just before the operation which reveals no ischemia or no severe blockage in both the right and left arteries, thus insuring in the free flow of blood in the heart (Exhibit D). Plaintiff was focused on **alternative less invasive** forms of treatment and considered any bypass as off-limits.

B. EVIDENTIARY EXHIBITS

Defendant claims that the 16 exhibits attached to Plaintiff's complaint are not admissible. Plaintiff contends that the 16 exhibits, consisting of reports of laboratory tests done on Plaintiff by Defendant and corollary papers (Exhibit S, attached), are allowed by law and by the courts, especially by the doctrine of *res ipsa loquitor.*

RCW 5.45.020 reads: *Reports of lab test results contained in the physician's medical file are admissible ....."*

Medical records are generally relevant and admissible in a medical malpractice

case. *See Bell v. State, 147 Wn.2d, 166, 181, 52 P.3d 502 (2002).*

"The res ipsa loquitor doctrine allows the jury to infer negligence where three 4 *elements are met: (1) the accident or occurrence producing the injury is of a kind which ordinarily does not occur absent someone's negligence; (2) the injuries were caused by an agency or instrumentality within the exclusive control of the defendant; and (3) the injury-causing accident or occurrence was not due to any voluntary action or contribution on the part of the plaintiff".* Pacheco v. Ames, 149 Wn.2d 431, 436, 69.P.3d

324 (2003).

These exhibits support the two major issues raised in the Complaint; namely, wrong diagnosis and unnecessary bypass of the left arteries. They are the alternatives to the expert testimony demanded by Defendant in the Motion for Summary Judgment and in the interrogatories. However, Plaintiff cannot afford to hire an expert witness whose regular fee is $ 450 an hour. Regardless of this setback, the Complaint can still move forward pursuant to the court citations below.

Expert testimony is *"not required when medical facts are observable by a layman's senses and describable without medical training".* McLaughlin v. cooke, 112 Wn.2d 829, 838, 774 P.2d 1171 (1989). This refers to the 16 exhibits discussed above.

"A malpractice case may be proved without the aid of expert testimony by a chain of circumstances from which an ordinary layman may reasonably and naturally infer the ultimate fact required to be established". Shellenbarger v. Brigman, 101 Wn. App. 339, 347, 3 P.3. 211 (2000). The exhibits show that the wrong diagnosis of the cause of the chest pain (Exhibit I) directly led to the bypass on the left arteries (Exhibit J), the

Defendant not having been given any mandate to do so. 5

More evidence as alternatives to the medical expert testimony will be available from Plaintiff's written interrogatories and requests for production to Dr. John Petersen (diagnostician) and Dr. Frank Gartman (surgeon) of Swedish Medical Center.

PRAYER

Considering the above, Plaintiff prays that the Court denies Defendant's Motion for Summary Judgment and direct the resolution of the joint controverter issues raised by both parties to the scheduled trial on October 15, 2012 on the merits.

LEONARDO C. MARIANO
1123 Rainier Av., # 415
Everett, WA 98201

(425) 317-0854

December 31, 2012.

October 30, 2009

Dr. David M. Gartman
Swedish Cardiac Surgery
Seattle, WA 98122

On April 4, 2006, I had a heart bypass done by you. Now, tests at the Everett Clinic show my heart condition is in good shape, except for a mild mitral valve leakage, thus ruling out any heart problem as the cause of my current shortness of breath (mild to moderate). So, the bypass operation was a success, a sincere thanks to you.

The purpose of this letter is to seek your opinion on matters affecting my other health problems. Specifically, how accurate and reliable are laboratory tests, seen from my experience with the heart bypass and compared with other tests on my lungs, thyroid, stomach acid reflux and mild celiac aneurysm. Should I accept these findings at face value? Please treat this as consultation, covered by my medicare/medicaid insurance.

Annex A shows that the bypass operation centered only on the left side of my heart. Yet, in a complete reversal, Dr. Petersen (Annex B, catheterization) and Dr. Sheridan of Everett Clinic (Annex C, CT scan) pinpointed the right side as the "culprit", which was the main reason why a bypass was deemed necessary.

1. Since some arteries on the right side were completely damaged and must have occurred decades ago ("silent heart attack"), were they nonissues in my chest pain and shortness of breath before the bypass operation?
2. What major damages in the left side of my heart did you find and fix during the operation? Below were the relatively minor damages inaccurately reported by Dr. Sheridan and not contradicted by Dr. Petersen:
   - 10 - 20 % distal lesion in the left main coronary artery,
   - 20 - 30 % lesion in the LAD, in the ostial to proximal portion,
   - 70 - 80 % lesion in the left circumflex, in the first obtuse marginal of the proximal portion.
3. Assuming Dr. Sheridan found no damage at all in the right side of my heart, are the three minor damages in the left side of my heart listed above (without factoring new damages discovered later during the bypass) enough reason to call for a heart operation?

At age 78 and as an economist by profession (Philippine Congress, World Bank, United Nations), I look at problems in depth from an analytical angle, with primary focus on empirical data. I hope you understand why I am overly cautious in accepting medical tests without second and third opinions.

LEONARDO C. MARIANO (578-72-9037)
(425) 317-0854
(425) 275-7364

SWEDISH
HEART & VASCULAR INSTITUTE

1600 E. Jefferson, Suite 110
Seattle, WA 98122
T 206.320.7300
F 206.320.4698

Dear Mr. Mariano 4/27/2011

As Dr. Gartman talked to you about your cath report, I am mailing this report to you. If you have any questions feel free to call me or make an appointment to see Dr. Gartman.

Sincerely,

Nina Shah. RN.

PATIENT: _____ Patient No.: _____

Washington State law guarantees that you both have the *right* and *obligation* to make decisions concerning your health care. Your physician can provide you with the necessary information and advice, but as a member of the health care team, you must enter into the decision making process. This form has been designed to acknowledge your acceptance of treatment recommended by your physician.

1. I hereby authorize Dr. DAVID GARTMAN and/or such associates, assistants or designees, including medical residents in training as may be selected by said physician to treat the following condition(s) which has (have) been explained to me: *(Explain the nature of the condition(s) in professional and lay language.)*

Blocked heart blood vessels (coronary artery disease)

2. The procedures planned for treatment of my condition(s) have been explained to me by my physician. I understand them to be: *(Describe procedure to be performed in professional and lay language.)*

coronary artery bypass graft

At: Swedish Medical Center First Hill

3. I recognize that, during the course of the operation, post operative care, medical treatment, anesthesia or other procedure, unforeseen conditions may necessitate additional or different procedures than those above set forth. I therefore authorize my above named physician, and his or her assistants or designees, to perform such surgical or other procedures as are in the exercise of his, her or their professional judgment necessary and desirable. The authority granted under this paragraph shall extend to the treatment of all conditions that require treatment and are not known to my physician at the time the medical or surgical procedure is commenced.

4. I have been informed by my physician that there are significant risks such as severe loss of blood, infection and cardiac arrest that can lead to death or permanent or partial disability, which may be attendant to the performance of any procedure. I acknowledge that no warranty or guarantee has been made to me as to result or cure.

5. FULL DISCLOSURE

I certify that my physician has informed me of the nature and character of the medical procedure or surgery described on this form, including its possible significant risks, complications and anticipated results; and the alternative forms of treatment, including non-treatment and their significant risks, complications and anticipated results.

6. **LIMITED DISCLOSURE to be signed by patient if patient elects not to be informed.**

I certify that my physician has explained to me and I have the right to have clearly described to me the nature and character of the proposed medical procedure or surgery described on this form, including its possible significant risks, complications and anticipated results, and the alternative forms of treatment, including non-treatment, and their significant risks, complications and anticipated results.

I do not wish to have these risks and facts explained to me.

_____

PATIENT/OTHER LEGALLY RESPONSIBLE PERSON SIGN IF APPLICABLE

7. I consent to the administration of anesthesia by my attending physician, by an anesthesiologist, or other qualified party under the direction of a physician as may be deemed necessary. I have been informed by my physician and understand that all anesthetics involve risks of complications and serious possible damage to vital organs such as the brain, heart, lung, liver and kidney and that in some cases may result in paralysis, cardiac arrest and/or brain death from both known and unknown causes.

8. I consent to the transfusion of blood and blood products as deemed necessary. I understand that all blood and blood products involve risks of a reaction, bruising, fever, hives, and in rare circumstances infectious diseases such as hepatitis and HIV/AIDS. I understand that precautions are taken by the Puget Sound Blood Center in screening donors and in matching blood for transfusion to minimize risks.

9. Any tissues or parts surgically removed may be disposed of by the hospital or physician in accordance with accustomed practice. Any biological specimens, such as tissue, blood, bodily fluids, etc. may be disposed of or used for medical study, medical procedure or in research.

PHYSICIAN'S STATEMENT: The medical procedure or surgery stated on this form, including the possible risks, complications, alternative treatments (including non-treatment) and anticipated results, was explained by me to the patient or his/her representatives before the patient or his/her representatives consented.

PHYSICIAN'S SIGNATURE _____ DATE _____ TIME _____

PATIENT OR PATIENT REPRESENTATIVE'S ACKNOWLEDGMENT: I acknowledge that I have read (or have had read to me) and fully understand the above consent, the explanations referred to were made and all blanks or statements requiring insertion or completion were filled in before I affixed my signature.

SIGNATURE OF PATIENT OR PATIENT REPRESENTATIVE (X) Jennifer C Mariano DATE 03/30/06 TIME 3:45 PM

WITNESS ACKNOWLEDGMENT: I acknowledge that I, as witness, have identified the above individual and have observed his/her signature on this document.

WITNESS SIGNATURE _____ DATE 3-30-06 TIME 3:45 pm

NAME PLATE

578729037 03/30/06
MARIANO, LEONARDO
MARIANO, LEONARDO M
PETERSEN, JOHN L
IPR CATH POS060RR-10336

SWEDISH MEDICAL CENTER
SEATTLE, WASHINGTON
BALLARD CAMPUS, FIRST HILL CAMPUS, PROVIDENCE CAMPUS

S-#21 (01/05) FV

SPECIAL CONSENT TO OPERATION, POST OPERATIVE CARE, MEDICAL TREATMENT, ANESTHESIA, OR OTHER INVASIVE PROCEDURE

March 30, 2006

John Lank, MD
Everett Clinic
3901 Hoyt Ave
Everett WA 98201

RE: MARIANO, Leonardo C.

Dear Dr. Lank:

We did proceed with diagnostic cardiac catheterization studies on Mr. Mariano. He has three-vessel disease that is of some significance and, in addition, has very calcified vessels and torturous vessels.

I think the best approach in this case is with direct coronary revascularization, and I have asked Dr. David Gartman to see Mr. Mariano for this procedure.

He did have some chest pain simply by walking around on the floor after the procedure, and I have kept him in the hospital perhaps even until the surgery. These symptoms are not a great deal different than they have been over the last two months, but now that I know the anatomy with the critical lesion in his right coronary artery that I suspect is the "culprit" lesion, I feel uncomfortable with having him outside of the hospital. I have started him on Lovenox as will as nitro paste

I will keep you posted regarding the additional therapies.

Best regards,

John L. Petersen, MD/wc01/04

hn V. Olsen, M.D.
hn L. Petersen, M.D.
avid E. Panther, PA-C

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4/4/06

J

OPERATION DATE: 04/04/2006

SURGEON: DAVID M GARTMAN MD
ASSISTANT: TRACI REE PA-C

PREOPERATIVE DIAGNOSIS:
Diffuse triple-vessel coronary artery disease.

POSTOPERATIVE DIAGNOSIS:
Diffuse triple-vessel coronary artery disease.

OPERATION:
1. Coronary artery bypass graft x 4 with LIMA (left internal mammary artery) to LAD (left anterior descending), SVG (saphenous vein graft) to diagonal, sequential SVG (saphenous vein graft) to OM (obtuse marginal) to left ventricular extension branch.
2. Endoscopic harvest of greater saphenous vein of the left thigh.

ANESTHESIOLOGIST: Lori Heller, MD.

FINDINGS: The coronary arteries were very extensively diseased with very hard calcific atherosclerotic disease, making it very difficult to work with. The PDA and distal right coronary artery were so hard throughout their length, there was nothing I could do with those. The left internal mammary artery was a good conduit, as was the vein harvested from the left thigh endoscopically. There was a moderate amount of mitral regurgitation present by transesophageal echocardiogram.

PROCEDURE: The patient was taken to the operating room, placed supine on the operating room table. After adequate general endotracheal anesthesia, and insertion of appropriate lines and catheters, the patient was prepped and draped in the usual sterile fashion.

A median sternotomy was performed. The pericardium was opened in the midline. The left internal mammary artery was taken down and prepared. Simultaneously vein was harvested from the left thigh endoscopically and the wounds closed.

The pericardium was opened in the midline. The patient was heparinized and the ascending aorta and right atrium were cannulated. Cardiopulmonary bypass was instituted. Systemic hypothermia was employed. A crossclamp was placed across the ascending aorta. Cold blood cardioplegic solution was delivered into the ascending aortic root and repeated at routine intervals throughout the procedure. The left ventricular extension branch was opened and an end-to-side anastomosis with a segment of vein was performed of this. This was brought around the left side of the heart and a diamond side-to-side anastomosis to the mid obtuse marginal was performed. This was then trimmed to the length of the ascending aorta. The third lateral branch of the diagonal was opened and an end-to-side anastomosis with a segment of vein was performed to his, there was trimmed to an appropriate length to the ascending aorta. The LAD was opened to its distal 1/3 and an end-to-side anastomosis with the left internal mammary artery was performed. The two proximal anastomoses with the segments of vein were performed with the ascending aorta with running 6-0 Prolene suture and were marked with radiopaque tapes the crossclamp was removed from the aorta. After allowing a period of reperfusion and rewarming, the patient was easily weaned from cardiopulmonary bypass. The venous cannula was removed. Protamine was administered and the arterial cannula was removed. Two temporary ventricular pacing wires were inserted. Chest tube was inserted in the left pleural space and two in the retrosternal space. The sternum was closed with stainless steel wire. Fascia, subcutaneous tissues, and skin were closed with multiple layers of Surgidac and Biosyn.

FINAL SPONGE AND NEEDLE COUNTS: Correct.

DAVID M. GARTMAN, MD #

DMG:04/04/2006 13:22:00
cmc40/dmg:04/07/2006 10:44:45
550816 602863

cc: JOHN L PETERSEN, MD #
TRACI REE, PA-C #

DIAGNOSTIC IMAGING REPORT

PATIENT:	MARIANO	LEONARDO C	PATIENT#:	2554581
DOB:	07/20/1931	AGE: 74	X-RAY #	
Pt TYPE:	Outside Read		Accession#	001000212587
EXAM DATE:	08/11/2005	REFERRED BY	Thomas Tocher, MD	

NM MYOCARD SPECT MULTI STUDIES REST AND/OR STRESS 78465
(Adenosine Plus Walk Dual-Isotope Test)

AUG 15 2005

CLINICAL HISTORY: Diabetes and atypical chest pain.

SCAN PARAMETERS: SPECT in 180 degrees CW rotation for 64 views (32/head) at 25 seconds per view for the resting perfusion image and 40 seconds per view for the stress perfusion image. Gated data was acquired simultaneously with the stress perfusion image in 8 time bins. The rest raw data was then processed with a Butterworth filter and a cutoff frequency of 5. The stress raw data was processed with a Butterworth filter and a cutoff frequency of 5. The raw data is then summed and processed with a Butterworth filter and a cutoff frequency of 5. Slices are then reconstructed into the short axis, vertical long axis, and horizontal long axis views. The gated data is then processed and reconstructed using the Cedars Quantitative Gated SPECT protocol and displayed in three dimensions.

PROCEDURE: Thallium-201 chloride 4 mCi was injected intravenously and the heart imaged tomographically. The patient was then given an infusion of 60 mg of Adenosine plus a walk at 1.2 miles/hour. Three minutes into this, 30 mCi of technetium sestamibi was injected. Following the walk the patient was fed. An hour later the heart was imaged tomographically. From this, wall motion assessed and ejection fraction calculated.

See the procedure note for description of the imaging procedure.

DESCRIPTION:

1. TREADMILL PORTION: Patient's heart rate went from 77 to 88. The blood pressure from 130/60 to 110/76. Patient developed planar 1.5 mm inferolateral ST segment changes in the absence of chest pain, these are gone by 1 minute post-exercise. Patient developed chest pressure unlike his clinical syndrome.
2. NUCLEAR MEDICINE PORTION: The nuclear medicine portion showed normal left ventricular systolic function with ejection fraction of 65%. Normal heart size and no wall motion abnormalities. With this the pulmonary uptake of isotope was normal at rest and there is no transient ischemic dilatation of the left ventricle. Prominent uptake in the hepatobiliary system of the MIBI is noted. No perfusion defects are appreciated.

IMPRESSION:

1. ADENOSINE PLUS WALK PRODUCED THE EXPECTED HEMODYNAMIC RESPONSE WITHOUT ANGINA BUT WITH ST-T WAVE CHANGES WHICH WERE GONE IMMEDIATELY POSTEXERCISE.
2. LEFT VENTRICULAR SYSTOLIC FUNCTION IS PRESERVED WITH EF OF 65%.
3. INCREASED GI UPTAKE OF MIBI.

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MARIANO, LEONARDO C

DIAGNOSTIC IMAGING REPORT

PATIENT:	MARIANO	LEONARDO C		PATIENT#:	2554581
DOB:	07/20/1931	AGE: 74		X-RAY #	
Pt TYPE:	Outside Read			Accession#	001000212587
EXAM DATE:	08/11/2005	REFERRED BY	Thomas Tocher, MD		

4. NO ISCHEMIA IS IDENTIFIED.

DISCUSSION: This diabetic man who has a family history of heart disease, does not exhibit significant amounts of ischemia on the isotope images, and ST segment changes are present. This patient had a negative stress test 1½ years ago which was an augmented treadmill. This test is congruent with that. Continued monitoring of this man's symptoms would be appropriate given his diabetes, hyperlipidemia, and family history of heart disease. Considering another stress test in a year may be an appropriate approach.

Neale D Smith. MD
NS/erh
D: 08/11/2005 02:34:07 PM T: 8/12/2005 1:03:11 PM 8700 913504

CC: Thomas Tocher, MD

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MARIAN

PLAINTIFF'S LIST OF REFERENCE DOCUMENTS
(Answers to Defendant's Production of Documents.)

Exhibits

A Stress echocardiogram of Plaintiff by Dr. Kirk Prindle, Everett Clinic, 1/19/00

B Physical examination and stress electrocardiogram of Plaintiff by Dr. Frank Sheridan, Everett Clinic, 1/20/03

C Two-dimensional, M -mode echocardiogram of Plaintiff by Dr. Neale Smith, Western Washington Medical Group, 7/13/05

D Nuclear scan myocard spect rest/stress test of Plaintiff by Dr. Neale Smith (WWMG), 8/11/05

E Cardiac CT angiography of Plaintiff by Dr. Frank Sheridan, Everett Clinic, 1/09/06

F Plaintiff's letter to Dr. John Petersen (Swedish Heart Institute) for a second opinion, 3/6/06

G Letter of Dr. John Petersen (Swedish Heart Institute) to Dr. John Lank (Everett Clinic) on Plaintiff's request of a second opinion, 3/21/06

H Report on pre-diagnosis of heart condition of Plaintiff by Dr. John Petersen (SHI), 3/21/06

I Letter of Dr. John Petersen (SHI) to Dr. John Lank (Everett Clinic) on partial report of diagnostic cardiac catheterization of Plaintiff, 3/30/06.

J Partial report of quadruple heart bypass of Plaintiff by Dr. David Gartman (Swedish Heart Surgery), 4/4/06.

K Discharge Report on Plaintiff by Dr. David Gartman (Swedish Heart Surgery), 4/10/06.

L Note of Dr. David Gartmen (SHS) on Plaintiff's post-operation visit, 5/11/06.

M Letter of Plaintiff to Dr. David Gartman (SHS) seeking clarifications on diagnostic and surgical procedures used, 10/30/09.

N Follow-up letter of Plaintiff to Dr. David Gartman (SHS) who had not responded to Plaintiff's 10/30/09 letter. 4/24/11.

O Letter of Nina Shah, RN, on behalf of Dr. Gartman, attaching the final report on cardiac catheterization of Dr. Petersen (five years late) which was not responsive to Plaintiff's two earlier letters seeking clarifications. 4/27/11.