

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF VENTURA**

**Tentative Ruling**

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**202100557495CUMM: Frankie Leland vs. Los Robles Regional Medical Center  
03/05/2026 in Department 43  
Motion for Summary Judgment**

The morning calendar in courtroom 43 will normally begin at 8:45. Please arrive for your hearing no later than 8:30 a.m. The door will be opened before the calendar is called.

The Court allows appearances by CourtCall and Zoom. Refer to the Courtroom 43 webpage for more information about remote appearances. If appearing by CourtCall, call in no later than 8:30 a.m. If you wish to appear by CourtCall, you must make arrangements with CourtCall by 4:00 p.m. the court day before your scheduled hearing. Requests for approval of a CourtCall appearance made on the morning of the hearing will not be granted. No exceptions will be made.

For Zoom appearances, all counsel appearing by Zoom must email the court at [Courtroom43@ventura.courts.ca.gov](mailto:Courtroom43@ventura.courts.ca.gov) with a simultaneous copy to all other counsel/self-represented parties no later than 3:00 p.m. the court day before the hearing. INCLUDE THE PHRASE "ZOOM APPEARANCE ON (DATE OF HEARING)" IN THE SUBJECT LINE OF YOUR EMAIL. The email must identify the person who will make the appearance. You will receive the login information for your appearance in reply to your email. If appearing by Zoom, log into the hearing no later than 8:30 a.m. The Court will transfer you to the meeting room when your matter is called. Additional instructions can be found on the Courtroom 43 webpage. When you log in to Zoom, be sure that your name and the case name are used as your Zoom name. IF YOU DO NOT FOLLOW ALL OF THESE INSTRUCTIONS, YOU WILL NOT BE PERMITTED TO APPEAR BY ZOOM AT THE HEARING.

With respect to the tentative ruling below, no notice of intent to appear is required. If you wish to submit on the tentative ruling you can fax notice to Judge Coats's secretary, Ms. Brantner at 805-477-8790, stating that you submit on the tentative. Or you may email [Courtroom43@ventura.courts.ca.gov](mailto:Courtroom43@ventura.courts.ca.gov) with all counsel copied on the email. Do not call in lieu of sending a fax or email. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. If you are the moving party and do not advise the Court that you submit on the tentative, or you do not appear at the hearing, the Court may deny your motion irrespective of the tentative.

Unless stated otherwise at the hearing, if a formal order is required but not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

**Motion:** Defendants Diana Glasser and OBHG California's Motion for Summary Judgment

**Tentative Ruling:** Defendants Diana Glasser and OBHG California's Motion for Summary Judgment is DENIED. The motion and opposition are supported by competing expert opinions as

to the challenged elements of breach of duty and causation. Plaintiff has established the existence of triable issues of material facts regarding proving these elements.

Plaintiff is ordered to serve notice of the Court's ruling.

## **DISCUSSION.**

### Undisputed Material Facts (UMFs)

UMFs 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 35 are undisputed and established.

UMFs 7, 8, 33, 34, 36 (as to compliance with the standard of care), 37, 38, 39 (as to compliance with the standard of care), 41, 42, 43, 44, 45 are disputed and not established.

UMF 40 which states, "Moving defendants hereby re-state and incorporate facts 1 through 39 above herein" is not a material fact.

### Defendant's Objections

Defendants' objections are overruled. The issues raised concern the weight of the evidence and do not bar admission.

#### **I. Legal Standard**

Summary judgment is proper "if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) Where a defendant seeks summary judgment or adjudication, he must show that either "one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action." (Code Civ. Proc., § 437c, subd. (o)(2).)

The summary judgment standard is as follows: first, the party moving for summary judgment always bears the burden of *persuasion* that there is no triable issue of material fact and that he is entitled to judgment as a matter of law. Thus, in defendant's motion for summary judgment, he bears the burden of persuading the court that one or more elements of plaintiff's cause of action cannot be established or that there is a complete defense thereto. (Code Civ. Proc., § 437c, subd. (p).)

Second, the party moving for summary judgment bears an initial burden of *production* to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, the burden shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. Thus, in order to shift the burden of production to the plaintiff, defendant is required to produce evidence showing the nonexistence of some element of the claim. Until the moving defendant has discharged its burden of proof, the opposing plaintiff has no burden to come forward with any evidence. Once the moving defendant has discharged its burden as to a particular cause of action, however, the plaintiff may defeat the motion by producing

evidence showing that a triable issue of one or more material facts exists as to that cause of action. (Code Civ. Proc., § 437c, subd. (p)(2).)

Third, how the parties moving for, and opposing, summary judgment may each carry their burden of persuasion and/or production depends on which would bear what burden of proof at trial. Thus, where defendant moves for summary judgment against a party who bears the burden of proof at trial, he must present *evidence* that would require a reasonable trier of fact *not* to find any underlying material fact more likely than not. (*Aguilar v Atlantic Richfield Co.* (2001) 25 Cal.4th 826.)

As to any alternative request for summary adjudication of issues, such alternative relief must be clearly set forth in the Notice of Motion and the general burden shifting rules apply but the issues upon which summary adjudication may be sought are limited by statute. “A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.” (Code Civ. Proc., § 437c, subd. (f)(1).)

Whether a triable issue of fact exists is determined by the supporting papers, not the pleadings. (*Martins v. Winder* (1961) 191 Cal. App. 2d 143.) Such supporting papers must be evidentiary, and not ultimate facts or conclusions of law, and must be based upon the affiant’s personal knowledge. (*Estate of Nelson* (1964) 227 Cal. App. 2d 42.)

As a general rule, in reviewing the evidence presented on summary judgment, the moving party’s evidence is strictly construed, and the opposing party’s evidence is liberally construed. (See e.g., *Brantley v. Pisaro* (1996) 42 Cal.App.4th 1591, and *Binder v. Aetna Life Insurance Company* (1999) 75 Cal.App.4th 832.) The court is to consider all evidence submitted by the parties, direct and circumstantial, except that to which a proper objection has been sustained. (Code Civ. Proc., § 437c, subd. (c).)

Summary adjudication is granted where a moving party establishes a right to adjudication of an issue in its favor as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) The purpose of a motion for summary judgment/adjudication is to penetrate evasive language and adept pleading to ascertain the existence or absence of triable issues of material fact. (*Chern v. Bank of America* (1976) 15 Cal.3d 866, 873.) The material issues on the motion are framed by the pleadings, and the motion can neither be granted nor denied on a ground not properly raised therein. (*Tsemetzin v. Coast Fed. Sav. & Loan Ass’n* (1997) 57 Cal.App.4th 1334, 1343; *FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 381-382.)

In ruling on a motion for summary judgment/adjudication, the trial court must consider not only the evidence submitted but the reasonable inferences deducible from such evidence. (*Binder v. Aetna Life Ins. Co.*, *supra*, 75 Cal.App.4th at p. 840.) Conflicting reasonable inferences must be resolved in favor of the party opposing the motion. (*Boicourt v. Amex Assurance Co.* (2000) 78 Cal.App.4th 1390, 1397, fn.4.)

## **II. Application**

### **A. Merits**

“[I]n any medical malpractice action, the plaintiff must establish: “(1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence.” [Citation].’ [Citation].” (*Hanson v. Grode* (1999) 76 Cal.App.4<sup>th</sup> 601, 606.)

“The standard of care in malpractice cases is also well known. With unimportant variations in phrasing, we have consistently held that a physician is required to possess and exercise, in both diagnosis and treatment, that reasonable degree of knowledge and skill which is ordinarily possessed and exercised by other members of his profession in similar circumstances.” (*Landeros v. Flood* (1976) 71 Cal.3d 399, 408.)

“”The standard of care against which the acts of a physician are to be 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 [citations], unless the conduct required by the particular circumstances is within the common knowledge of the layman.” [Citation].’ [Citation].” (*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4<sup>th</sup> 992, 1001.)

“California courts have incorporated the expert evidence requirement into their standard for summary judgment in medical malpractice cases. 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.’ [Citations.]” (*Munro v. Regents of University of California* (1989) 215 Cal.App.3d 977, 984–985; see also *Stephenson v. Kaiser Foundation Hospitals* (1962) 203 Cal.App.2d 631, 635 [“Expert evidence is conclusive where it appears that the matter in issue is one within the knowledge of experts only and is not within the common knowledge of laymen”]; *Jambazian v. Borden* (1994) 25 Cal.App.4<sup>th</sup> 836, 844 [The standard of skill, knowledge and care prevailing in a medical community is ordinarily a matter within the knowledge of experts].)

On the issue of causation, “in California, plaintiffs cannot recover where there is only a mere possibility the defendant's negligence caused the wrong.” (*Simmons v. West Covina Medical Clinic* (1989) 212 Cal.App.3d 696, 702.) “[T]he issue of proximate cause ordinarily presents a question of fact. However, it becomes a question of law when the facts of the case permit only one reasonable conclusion.” (*Capolungo v. Bondi* (1986) 179 Cal.App.3d 346, 354.)

“Liability for medical malpractice is predicated upon a proximate causal connection between the negligent conduct and the resulting injury. [Citation]. ‘[C]ausation must be proven within a reasonable medical probability based upon competent expert testimony. Mere possibility alone is insufficient to establish a prima facie case. [Citations.] That there is a distinction between a reasonable medical 'probability' and a medical 'possibility' needs little discussion. There can be many possible 'causes,' indeed, an infinite number of circumstances which can produce an injury or disease. A possible cause only becomes 'probable' when, in the absence of other reasonable causal explanations, it becomes more likely than not that the injury was a result of its action. This is the outer limit of inference upon which an issue may be submitted to the jury.’ [Citation].” (*Dumas v. Cooney* (1991) 235 Cal.App.3d 1593, 1603.)

“Expert evidence in a malpractice suit is conclusive as to the proof of the prevailing standard of skill and learning in the locality and of the propriety of particular conduct by the practitioner in particular instances because such standard and skill is not a matter of general knowledge and can only be supplied by expert testimony. [Citations.] [Citation].” (*Willard v. Hagemeister* (1981) 121 Cal.App.3d 406, 412.)

Defendants seek summary judgment on Plaintiffs’ failure to establish a breach of duty and causation.

*1. Breach of Duty*

The question of whether Dr. Glasser breached the applicable standard of care is addressed by the parties competing expert witness declarations. Defendants’ expert witness, L. Joel Kessler, M.D. declares that Dr. Glasser’s care and treatment was within the standard of care. (Evidence supporting UMFs 33, 34, 36, 37, 38, 39.) Plaintiffs’ expert witness, Karl I. Norris, M.D, disputes that opinion in his declaration. (Evidence disputing UMFs 33, 34, 36, 37, 38, 39.) Plaintiffs have established that there is a genuine issue of fact as to whether Dr. Glasser breached the standard of care. It is the province of the jury to determine which expert is more credible. These disputed material facts are sufficient to defeat the motion as to the breach of the duty of care.

*2. Causation*

As with breach of duty, the issue of causation may be refined to competing expert witness opinions. Defendants’ expert witness opined that Dr. Glasser’s failure to act could not have prevented, altered, or reversed the fetal compromise. (Evidence supporting UMFs 41-46.) Plaintiffs’ expert witness opined that there would have been a more favorable outcome in the baby’s favor had Dr. Glasser delivered the baby at 3:40 rather than waiting for Dr. De La Pena to perform a C-section at 4:17. (Evidence disputing UMFs 41-46.) Plaintiffs have established that there is a disputed material issue of fact as to whether Dr. Glasser’s breach of the standard of care caused harm to the baby. It is the province of the jury to determine which expert is more credible. These disputed material facts are sufficient to defeat the motion as to the issue of causation.

For the foregoing reasons, the motion is denied.