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FILED
Clerk of the Superior Court

JUL 25 2016

By: Anthony Shirley, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
CENTRAL DIVISION

ESTATE OF ELIZABETH ALEXANDER,
and CLENTON ALEXANDER, HEIR,

Plaintiffs,

v.

SCRIPPS MEMORIAL HOSPITAL LA
JOLLA, a California corporation; DONALD
RITT, an individual; GUSTAVO LUGO, an
individual; CHRISTOPHER WIESNER, an
individual; PREETI MEHTA, an individual;
MARIE SHIEH, an individual; SHAWN
EVANS, an individual; MARIE SHIEH, an
individual; AYANA BOYD KING, an
individual; ERNEST PUND, an individual;
CHARLES ETTARI, an individual; KAREN
KNIGHT, an individual; and DOES 1 through
15, inclusive,

Defendants.

CASE NO. 37-2014-00016257-CU-MM-CTL

**JUDGMENT IN FAVOR OF DEFENDANTS
SCRIPPS HEALTH dba SCRIPPS
MEMORIAL HOSPITAL LA JOLLA,
SHAWN EVANS, M.D., AYANA BOYD
KING, D.O., ERNEST PUND, M.D.,
CHARLES V. ETTARI, M.D. AND KAREN
KNIGHT**

IMAGED FILE

DATE: June 10, 2016
TIME: 11 a.m.
DEPT: C-70
IC JUDGE: Hon. Randa Trapp

CASE FILED: May 20, 2014
TRIAL DATE: September 9, 2016

The Motion for Summary Judgment or, in the alternative, Motion for Summary Adjudication (“Motion”) filed by defendants SCRIPPS HEALTH dba SCRIPPS MEMORIAL HOSPITAL LA JOLLA, SHAWN EVANS, M.D., AYANA BOYD KING, D.O., ERNEST PUND, M.D., CHARLES V. ETTARI, M.D., and KAREN KNIGHT (collectively the “SCRIPPS DEFENDANTS” unless otherwise indicated) came regularly for hearing on June 10, 2016, at 11:00 a.m. in Department C-70 of the San Diego Superior Court, located at 330 West Broadway, San Diego, California 92101, the

1 Honorable Randa Trapp presiding.

2 The Court, having considered the moving papers filed by the SCRIPPS DEFENDANTS, the
3 opposition thereto filed by plaintiffs ESTATE OF ELIZABETH ALEXANDER, CLENTON
4 ALEXANDER, JACQUELYN MCDERMET, and CHRISTOPHER ALEXANDER, the SCRIPPS
5 DEFENDANTS' reply papers, oral argument presented at hearing, and the Court's file on this matter,
6 and good cause appearing therefore, the Court issued its order on June 10, 2016, granting the Motion for
7 Summary Judgment by the SCRIPPS DEFENDANTS.

8 A true and correct copy of the Court's June 10, 2016 Minute Order granting the SCRIPPS
9 DEFENDANTS' Motion for Summary Judgment is attached hereto as Exhibit "A."

10 **NOW, THEREFORE, IT IS HEREBY ORDERED** that:

11 Judgment be entered in favor of defendants SCRIPPS HEALTH dba SCRIPPS MEMORIAL
12 HOSPITAL LA JOLLA, SHAWN EVANS, M.D., AYANA BOYD KING, D.O., ERNEST PUND,
13 M.D., CHARLES V. ETTARI, M.D., and KAREN KNIGHT, and against plaintiffs ESTATE OF
14 ELIZABETH ALEXANDER, CLENTON ALEXANDER, JACQUELYN MCDERMET, and
15 CHRISTOPHER ALEXANDER;

16 That plaintiffs ESTATE OF ELIZABETH ALEXANDER, CLENTON ALEXANDER,
17 JACQUELYN MCDERMET, and CHRISTOPHER ALEXANDER shall take nothing by way of their
18 Complaint, as amended, from defendants SCRIPPS HEALTH dba SCRIPPS MEMORIAL
19 HOSPITAL LA JOLLA, SHAWN EVANS, M.D., AYANA BOYD KING, D.O., ERNEST PUND,
20 M.D., CHARLES V. ETTARI, M.D., and KAREN KNIGHT; and,

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1 That defendants SCRIPPS HEALTH dba SCRIPPS MEMORIAL HOSPITAL LA JOLLA,
2 SHAWN EVANS, M.D., AYANA BOYD KING, D.O., ERNEST PUND, M.D., CHARLES V.
3 ETTARI, M.D., and KAREN KNIGHT shall recover from plaintiffs ESTATE OF ELIZABETH
4 ALEXANDER, CLENTON ALEXANDER, JACQUELYN MCDERMET, and CHRISTOPHER
5 ALEXANDER their costs of suit in the sum of \$ _____.

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DATED: July 25, 2016

JUDGE OF THE SUPERIOR COURT

By: Randa Trapp
HONORABLE RANDA TRAPP

Exhibit A

Exhibit A

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 06/10/2016

TIME: 11:00:00 AM

DEPT: C-70

JUDICIAL OFFICER PRESIDING: Randa Trapp

CLERK: Anthony Shirley

REPORTER/ERM: Lois Mason Thompson CSR# 3685

BAILIFF/COURT ATTENDANT: L. Wilks, S. Parriott

CASE NO: 37-2014-00016257-CU-MM-CTL CASE INIT.DATE: 05/20/2014

CASE TITLE: Estate of Elizabeth Alexander vs. Scripps Memorial Hospital La Jolla [IMAGED]

CASE CATEGORY: Civil - Unlimited CASE TYPE: Medical Malpractice

EVENT TYPE: Summary Judgment / Summary Adjudication (Civil)

MOVING PARTY: Charles Ettari, Karen Knight, Ayana Boyd King, Ernest Pund, Scripps Memorial Hospital La Jolla, Shawn Evans

CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment and/or Adjudication, 03/16/2016

EVENT TYPE: Summary Judgment / Summary Adjudication (Civil)

MOVING PARTY: Donald Ritt

CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment and/or Adjudication, 03/16/2016

APPEARANCES

Benjamin J Cheeks, counsel, present for Plaintiff(s).

Christopher Alexander, Plaintiff is present.

James Creason, counsel, present for Defendant(s) telephonically.

Kendra Anderson, specially appearing for counsel Robert W Frank, present for Defendant(s).

Scott Lusby, specially appearing for counsel Barton H Hegeler, present for Defendant(s).

James J Wallace II, counsel, present for Defendant(s).

The Court hears oral argument and CONFIRMS the tentative ruling as follows:

(1) MOTION FOR SUMMARY JUDGMENT by defendants Scripps Health dba Scripps Memorial Hospital La Jolla, Shawn Evans M.D., Ayana Boyd King D.O., Ernest Pund M.D., Charles Ettari M.D. and Karen Knight is GRANTED.

2) MOTION FOR SUMMARY JUDGMENT by defendant Donald Ritt M.D. is GRANTED.

Objections are sustained to the Boggeln Declaration at ¶¶ 6 and 57-72. All other objections are overruled. (See, *Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108, 1118, 1120-21; *Espinosa v. Little Co. of Mary Hospital* (1995) 31 Cal.App.4th 1304, 1314-15; *McGonnell v. Kaiser Gypsum Co., Inc.* (2002) 98 Cal.App.4th 1098, 1106; *Dumas v. Cooney* (1991) 235 Cal.App.3d 1593, 1603)

DATE: 06/10/2016

MINUTE ORDER

DEPT: C-70

Page 1

Calendar No. 34

This case concerns whether defendants were legally obligated to render life-saving care to a terminally ill patient pursuant to an Advanced Directive, Physician Orders for Life Sustaining Treatment [POLST] and the wishes of the family.

Plaintiffs' expert, Dr. Boggeln, conducted a limited review of plaintiffs' decedent's 'pertinent' medical records only from Scripps and Emeritus of Carmel Valley, a skilled nursing facility, and omitted any mention, review or opinion regarding the now undisputed facts that decedent had been diagnosed with Stage IV adenocarcinoma in June 2012 and went through chemotherapy and radiation therapy. The aggressive cancer spread to her liver, femur and bones and at some point before she was admitted to Scripps in February 2013, she was a candidate for hospice care. He opines that life-saving care would not have caused her harm, but would have sustained her life and improved the quality of her life. He concludes that defendants breached the standard of care and were a substantial factor in her death. However, Dr. Boggeln provided little explanation or reasoning for his conclusions. The omission of decedent's diagnosis of end stage terminal cancer and his opinion that life saving measures would have sustained her life and improved the quality of her life is devoid of any basis, explanation or reasoning. Thus, the conclusions are insufficient to show the standard of care was breached or that in the absence of negligence, there was a reasonable medical probability the plaintiffs' decedent would have obtained a better result. Further, as to other opinions, such as defendants failed to maintain the Advanced Directive, failed to document or communicate decedent's status to the family or improperly billed, there is no showing these omissions caused her death or injury.

The 7th cause of action for medical negligence and 8th cause of action for wrongful death as against the Scripps defendants and Dr. Ritt fail because defendants have produced admissible evidence they complied with the standard of care at all time and were not a substantial factor in decedent's injury or death based on a review of the records reviewed by Dr. Boggeln and other medical providers and depositions. (See, *Munro v. Regents of University of California* (1989) 215 Cal.App.3d 977, 984-85; Declarations of Boggeln, Roeland, and Ritt; Plaintiffs' Exs. B-F and Scripps' Exs. A-R and Ritt's Exs. A-C, I-Q)

Further, defendants Drs. Evans, Pund, Ettari and Boyd King did not owe plaintiffs a duty of care. These defendants are members of the Appropriate Care Committee who unanimously agreed with Dr. Ritt and other providers who recommended that based on decedent's medical condition, despite the family's wishes for full code status and continued treatment, such treatment would be medically ineffective and may cause harm. They believed the best course of action was to maximize her comfort during her transition. However, these defendants did not have a physician-patient relationship with the decedent so no duty of care exists. (See, *Mero v. Sadoff* (1995) 31 Cal.App.4th 1466, 1471; *Townsend v. Turk* (1990) 218 Cal.App.3d 278; *Rainer v. Grossman* (1973) 31 Cal.App.3d 539)

The 1st-5th causes of action for Probate Code violations fail as against the Scripps defendants and Dr. Ritt because there is no evidence defendants violated the specific sections.

Probate Code § 4730 requires that before implementing a health care decision made for a patient, a supervising health care provider shall promptly communicate to the patient the decision made and the identity of the person making the decision. A "supervising health care provider" means the primary physician or, if there is none, the health care provider who has undertaken primary responsibility for the patient's health care. (Probate Code § 4641) The Scripps defendants were not decedent's primary physician nor were they health care provider who undertook primary responsibility for decedent's health care. They were members of the Appropriate Care Committee and a nurse who worked on decedent's

transfer back to Emeritus. Dr. Ritt was one of several physicians who saw decedent, but there is no evidence presented that he undertook primary responsibility for her care. Plaintiffs argue that every physician who saw decedent was her primary physician, however, that argument is contrary to the plain language of the statute. If the purpose of the Code was to apply to all health care providers, it would not have defined and referenced only supervising health care providers.

Probate Code § 4731(a) requires a supervising health care provider who knows of the existence of an Advanced Health Care Directive to promptly record its existence in the record and if it is in writing, to request a copy and maintain it. Again, because there is no showing that the Scripps defendants or Dr. Ritt were supervising health care providers, this claim fails. Further, there is no evidence showing that plaintiffs actually provided the Advanced Health Care Directive to Scripps, although the existence of one was documented in the chart. Further, a POLST containing the same information was maintained in the chart. Thus, defendants complied with the intent of the statute.

Probate Code § 4732 requires a primary physician who makes a determination that a patient lacks capacity shall promptly record the determination in the patient's chart and communicate it to the patient and the persons who are authorized to make health care decisions for the patient. Here, there is no dispute that the person authorized to make health care decisions for the decedent was plaintiff Christopher Alexander, who communicated to defendants on behalf of his mother presumably because she lacked capacity or ability to make her own medical decisions since he signed the POLST. While the phrase "lacks capacity" was not entered in decedent's medical chart, there were documentations about her ability to communicate and understand, as well as her mental state.

Probate Code § 4736 requires that if a health care provider or health care institution declines to comply with a health care decision, they should, inter alia, make all reasonable efforts to assist in the transfer of the patient to another health care provider or institution that is willing to comply with the decision and provide continuing care until the transfer. In all cases, appropriate pain relief and other palliative care shall be continued. Defendants submitted expert evidence to show plaintiff Christopher Alexander was advised that defendants declined to comply with the POLST and/or advanced directive and defendants made reasonable efforts to transfer decedent on February 19, 2013, the day after she was admitted. A hold was placed because Emeritus would not accept the patient. However, a transfer was arranged back to Emeritus scheduled for February 21, 2013 at 4:00 p.m. Ultimately, decedent passed away an hour before the scheduled transfer. Thus, the court finds that defendants made all reasonable efforts to transfer decedent. Further, there is evidence that pain relief and palliative care was continued. The statute does not require defendants to provide anything more than comfort care while the transfer was pending.

Probate Code § 4742(b) provides that any person who coerces or fraudulent induces an individual to revoke a health care directive is subject to liability of \$10,000 or actual damages and reasonable attorney's fees. The evidence presented does not show that any defendant coerced decedent or plaintiffs to revoke the advanced health care directive. There is evidence defendants disagreed with the family's request that their mother remain on full code status and evidence explaining why full code status may cause their mother harm. Conversations about their mother's condition and the request for a change in code status do not rise to the level of actual coercion. In any event, the advanced directive was not actually revoked as the result of any discussion with defendants.

Lastly, as to the alleged Probate Code violations, there is expert evidence that defendants acted in good faith and in accordance with generally accepted health care standards so they are immune under Probate Code § 4740.

The 9th cause of action for misrepresentation fails against the Scripps defendants and Dr. Ritt because there is no competent evidence that defendants made any misrepresentation of fact without reasonable grounds for such belief. To the extent this is based on representations that decedent would receive pain medication and life-sustaining nutrition and fluids, the evidence shows decedent did receive pain medication, nutrition and fluids. Defendants' expert also opined that decedent received appropriate treatment for her condition, including IV hydration and pain medication.

The 10th cause of action for negligent infliction of emotional distress fails against the Scripps defendants and Dr. Ritt because plaintiffs cannot recover on a bystander theory. (*Bird v. Saenz* (2002) 28 Cal.4th 910, 921; *Thing v. La Chusa* (1989) 48 Cal.3d 644, 667-68) There is no evidence plaintiffs were present at the scene of the injury producing event at the time it occurred and were aware defendant's conduct was causing injury to the victim. While plaintiffs contend they were present and aware their mother was in pain or lacked hydration, there is no evidence that at that time they were aware defendants' conduct was causing injury to their mother. To the contrary, plaintiff Christopher Alexander later reviewed the medical records after this lawsuit was filed and determined that adequate pain medication and fluids had not been given.

This ruling disposes of the case in its entirety as against defendants Scripps Health dba Scripps Memorial Hospital, La Jolla, Shawn Evans M.D., Ayana Boyd King D.O. Ernest Pund M.D., Charles Ettari, Karen Knight and Donald Ritt M.D.

IT IS SO ORDERED.



Judge Randa Trapp