

***Brooks v. Dignity Health-Marian Regional Medical Center et al. (24CV00242)***

Hearing Date: May 27, 2026

Nature of Proceeding: Motion for Summary Judgment by defendant Mark Ziemba M.D.

**Attorneys:**

*For plaintiff:* Hodes Milman by Daniel M. Hodes, John D. Schumacher

*For defendant Mark Ziemba M.D.:* Skane Mills LLP by Stephen L. Hewitt, Stacy L. Raphael, Marissa Feinstein

**Tentative Ruling:**

For all the reasons discussed below, the evidentiary objections are denied. The motion is denied.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara.](#))

**Background**

According to the undisputed facts,<sup>1</sup> Bruce Brooks (decedent) presented to his primary care doctor, Dr. Brian Desmond, on October 12, 2022, with complaints of recent weight loss. His past medical history included hypertension, diabetes mellitus, elevated prostate-specific antigen (PSA), and chronic kidney disease. Dr. Desmond ordered CT scans of Decedent's chest, abdomen, and pelvis. On October 21, 2022, Dr. Mark Ziemba interpreted the CT scan of Decedent's chest, abdomen, and pelvis and noted no suspicious mass or lymphadenopathy, among other findings.

On November 10, 2022, decedent presented to the emergency department of defendant Marian Regional Center ("Marian Regional") with complaints of weakness, falling in the shower, and dark stools. He was treated empirically with fluids and antibiotics and transfused with two units of blood. According to his discharge documentation on November 12, 2022, he was diagnosed with SIRS/sepsis, the source of which remained unknown, severe anemia, fever of unknown origin, transaminitis, Type 2 diabetes, hypertension, and history of arrhythmia. At discharge he was instructed to have a close follow-up with hematology/oncology.

On November 14, 2022, Dr. Ziemba prepared an Addendum to his October 21, 2022, imaging report and added there were prominent lymph nodes of the right axillary space measuring up to 1.8 centimeters.

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<sup>1</sup> The court relied on the undisputed facts presented by the defendant, and notes that plaintiff's objection as to the completeness of the statement does not create a genuine dispute of material fact for purposes of summary judgment. The court notes further that plaintiff's statement of additional facts was unopposed. The court thus regards them as undisputed and relies on them here.

On November 16, 2022, decedent was seen by Dr. Desmond who was able to palpate the lymph nodes on his examination. Dr. Desmond ordered a core needle biopsy of the lymph node in the right axillary area. On November 17, 2022, decedent was in consultation with oncologist Dr. Wei Bai, who noted decedent's clinical presentation and imaging studies were suspicious for lymphoma.

On November 18, 2022, decedent underwent an ultrasound-guided needle biopsy at Marian Regional. The results from the biopsy were reported that same day by pathologist Dr. Kevin Ferguson as containing predominantly necrotic malignant cells favoring CD30-positive non-Hodgkin's lymphoma. Dr. Ferguson also noted that findings were not conclusive for B or T-cell non-Hodgkin's lymphoma, and he recommended an excisional biopsy for diagnostic confirmation and definitive subclassification.

On November 26, 2022, decedent was admitted to Marian Regional where he stayed until his discharge on December 28, 2022. On November 29, 2022, decedent was seen by Dr. Bai, who noted that pathology from his November 18, 2022, lymph node biopsy showed possible CD30-positive non-Hodgkin Lymphoma - though T-cell lymphoma could not be completely ruled out and they likewise couldn't discern with confidence his exact type of lymphoma. Per Dr. Bai, lymphoma could cause symptoms similar to decedent's current presentation, however, the regimen for aggressive B-cell lymphoma was different from T-cell lymphoma. Therefore, an excisional lymph node biopsy was needed to determine course of care. On November 30, 2022, an excisional lymph node biopsy was done at Marian Regional. Slides were collected and sent to Stanford Health Care.

On December 1, 2022, a CT guided bone marrow biopsy was performed. He was seen that same date by Dr. Bai, who indicated that the pathology from the excisional biopsy completed on November 30, 2022, was more consistent with Hodgkin Lymphoma. If so, they would consider chemotherapy with ABVD regimen. Conversely, if it was confirmed B-cell Non-Hodgkin Lymphoma, they might consider another form of chemotherapy. On December 6, 2022, Dr. Bai saw decedent and noted that they were awaiting secondary consult at Stanford to confirm the diagnosis. In the meantime, decedent was experiencing altered mental status with hallucinations, disorientation, and non-responsiveness. His participation in occupational therapy was limited.

On December 16, 2022, preliminary results of Stanford Health's outside pathology consultation indicated immunophenotype of CD30-positive lymphoma, favoring Classic Hodgkin Lymphoma. Stanford indicated it needed to initiate further studies to evaluate the lymphoma.

On December 20, 2022, Dr. Onfiali documented that decedent's prognosis was poor and that, although the oncologist had indicated that chemotherapy would be started after rehabilitation – he continued to do poorly overall and clinically. On December 22, 2022, Stanford confirmed a diagnosis of Hodgkin Lymphoma. In order to receive treatment, decedent needed to be transferred to an SNF, which was not possible due to lockdowns and lack of availability.

The decedent's family ultimately decided to transition him to comfort care. He was discharged from Marian Regional on December 27, 2022, with hospice care. Decedent's

discharge diagnoses included Hodgkin's lymphoma, encephalopathy severe protein-calorie malnutrition, severe depression and suicidal ideation, acute on chronic anemia, and diabetes mellitus. Decedent passed away on December 30, 2022. The Death Certificate listed the cause of death as Hodgkin's lymphoma. A definitive pathology report from Stanford University Hospital dated January 6, 2023, diagnosed the Decedent's lymphoma as Classic Hodgkin's Lymphoma.

The decedent's sole surviving child, plaintiff Courtney Brooks, filed this complaint against Dignity Health, Dr. Bai, and Dr. Ziemba, alleging wrongful death and medical negligence against all defendants.

Dr. Ziemba moves for summary judgment on the ground that no negligent act or omission by defendant Mark Ziemba, M.D. caused or contributed to the death of Bruce M. Brooks. Opposition and reply have been filed.

### Summary Judgment Standards

A trial court properly grants a motion for summary judgment only if no triable issue exists as to any material fact and the defendant is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c); *Salas v. Sierra Chemical Co.* (2014) 59 Cal.4th 407, 415.) "The moving party [here, the defendant] bears the burden of showing the court that the plaintiff 'has not established, and cannot reasonably expect to establish, a prima facie case . . .'" (*Bailey v. San Francisco Dist. Attorney's Office* (2024) 16 Cal.5th 611, 620.)

A defendant, as moving party, meets its burden of showing that a cause of action has no merit if it shows that "one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc., § 437c, subd. (p)(2), emphasis added; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849; see *Shiver v. Laramee* (2018) 24 Cal.App.5th 395, 400.) Once a defendant has carried that burden, the burden shifts to the plaintiff "to show that a triable issue of one or more material facts exists as to the cause of action [or the defense] . . ." (Code Civ. Proc., § 437c, subd. (p).) A court can find a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof. (*King v. United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426, 433.)

In 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. (*Hanson v. Grode* (1999) 76 Cal.App.4th 601, 606; *Avivi v. Centro Medico Urgente Medical Center* (2008) 159 Cal.App.4th 463, 468, fn. 2.)

Opinion testimony from a properly qualified witness is generally necessary to demonstrate the elements for medical malpractice claims. (*Barris v. County of Los Angeles* (1999) 20 Cal.4th 101, 108, fn. 1; *Avivi, supra*, 159 Cal.App.4th at p. 467, fn. 1.) Causation must be proven within a reasonable medical probability based upon competent expert testimony. (*Bromme v. Pavitt* (1992) 5 Cal.App.4th 1487, 1498-1499.) That is,

plaintiff will have to show that the decedent's death was "caused" by defendant's medical negligence within the meaning of the wrongful death statute (Code Civ. Proc., § 377), to a reasonable medical probability, i.e., the death was "more likely than not" the result of negligence. (*Bromme, supra*, at p. 1499; see also *Uriell v. Regents of University of California* (2015) 234 Cal.App.4th 735, 744 [jury properly instructed in standard terms of medical negligence when advancing a wrongful death cause of action].)

### Evidence:

#### 1. Failure to Comply with California Rules of Court

Unless they are submitted by a self-represented party, electronic exhibits must include electronic bookmarks with links to the first page of each exhibit with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit. (Cal. Rules Court, rule 3.1110(f).)

*Plaintiff has failed to include electronic bookmarks.* This is not a trivial matter in a record such as this. Plaintiff's evidence was filed on May 12, 2026. It contains 35 exhibits spanning 719 pages. Bookmarks are not only required by law, they are critical to efficient navigation of electronic documents, particularly in a case such as this one, where documents are essential to a ruling on the issues presented.

*Defendant has likewise failed to include electronic bookmarks.* Defendant's evidence is attached to the motion itself, preceded by a declaration from attorney Marissa Feinstein authenticating each one. There are 4 exhibits spanning 101 pages.

While the court will not pursue sanctions at this point, counsel is directed to ensure compliance with all such procedural rules in the future.

#### 2. Objection to Declaration of Michael Van Scoy-Mosher, M.D., M.A

Plaintiff objects to the declaration of Michael Van Scoy-Mosher, M.D., M.A, who opines that no negligent act or omission by Mark Ziemba, M.D. was a substantial factor or contributing cause of the death of the decedent, and that any delayed finding of the malignant lymph node of the right axillary was unrelated to decedent's clinical deterioration and death. Plaintiff argues that Dr. Van Scoy-Mosher failed to submit all necessary medical records that support his opinion. A medical expert's declaration stating an opinion based entirely on review of medical records cannot support summary judgment where the records are not attached to the declaration or otherwise before the court. (*Garibay v. Hemmat* (2008) 161 Cal.App.4th 735, 742-743.)

Van Scoy-Mosher testified that he reviewed "the complete medical records of Bruce M. Brooks . . ." (Van Scoy-Mosher Decl., ¶ 3.) However, only "selected medical records" were put before the court. (See Feinstein Decl., ¶¶ 3-4.)

Plaintiff argues that since only selected records were provided, rather than all the medical records reportedly reviewed by Van Scoy-Mosher, the motion cannot be granted.

In *Garibay*, ***none*** of the medical records reviewed by the testifying expert were put before the court. The court thus found the expert’s medical opinion to be without any evidentiary support. Here, plaintiff does not argue that defendant failed to submit the medical records that were relevant to Van Scoy-Mosher’s opinion, just that defendant didn’t submit all the records. She has cited no cases suggesting that all records must be submitted in every case. The court rejects this argument and finds Van Scoy-Mosher’s opinion to be supported. Plaintiff’s reliance on *Garibay* is therefore misplaced, and as she failed to explore the basis of the declaration based on the records that were submitted, the court rejects the argument.

Plaintiff also objects to Van Scoy-Mosher’s opinions based on a host of evidentiary reasons, such as inadmissible speculation, conclusory and improper expert testimony, improper legal conclusion, inadmissible hearsay, some of which appear to be dependent on the court’s ruling pursuant to *Garibay*. The court overrules these objections.

### 3. Objections to Declaration of Sean A. Fischer, M.D.

Defendant objects to the declaration of Sean A. Fischer, M.D., offered in opposition to the motion, on the basis that because he offered no opinion whether the staging of the cancer or the type of cancer or the treatment method (chemotherapy) would have been any different had the enlarged nodes been identified on October 21, 2022, his opinion addressing legal causation is speculative and lacks foundation and, therefore, should be stricken.

The rule is that a trial court must liberally construe the evidence submitted in opposition to a summary judgment motion. It applies in ruling on both the admissibility of expert testimony and its sufficiency to create a triable issue of fact. (*Jennifer C. v. Los Angeles Unified School Dist.* (2008) 168 Cal.App.4th 1320, 1332–1333; *Powell v. Kleinman* (2007) 151 Cal.App.4th 112, 125–126, 128–130.) In light of the rule of liberal construction, a reasoned explanation required in an expert declaration filed in opposition to a summary judgment motion need not be as detailed or extensive as that required in expert testimony presented in support of a summary judgment motion or at trial. (*Jennifer C.*, *supra*, at p. 1332; *Powell*, *supra*, at pp. 128–130.)

In this case, under the rule of liberal construction, the court finds the explanation provided for Dr. Fischer’s opinion was sufficient. Any gap in the evidentiary showing in the declaration goes to weight, not admissibility. The objection is overruled.

### Merits

In this case, defendant has presented competent expert testimony that “to a reasonable degree of medical probability, that no negligent act or omission by Mark Ziembra, M.D. was a substantial factor or contributing cause of the death of the decedent.” (Van Scoy-Mosher Decl., ¶ 5.) Dr. Van Scoy-Mosher also opines “to a reasonable degree of medical probability, that any delayed finding of the malignant lymph node of the right axillary was unrelated to decedent’s clinical deterioration and death.” (*Id.* at ¶ 7.)

Plaintiff has presented competent expert testimony that “to a reasonable degree of medical probability, Defendant, Mark Ziembra, M.D.’s failure to timely and

properly interpret, recognize, identify, diagnose, and report the abnormal presence of enlarged right axillary and right supraclavicular lymph nodes (measuring up to 1.8 cm) apparent on the Decedent, Bruce M. Brooks's chest, abdomen, and pelvis CT scan completed on October 21, 2022, caused a detrimental delay in diagnosis, evaluation, care, and treatment of the Decedent's active lymphoma – thereby allowing for further, unnecessary, and severely harmful progression and advancement of his disease and worsening condition – all of which was a substantial factor in causing the Decedent's claimed injuries/harm and eventual death on December 30, 2022.” (Fischer Decl., ¶ 51.)

Dr. Fischer adequately identified whether the staging of the cancer or the type of cancer or the treatment method (chemotherapy) would have been any different had Dr. Ziemba identified the enlarged nodes on October 21, 2022. Dr. Fischer states:

“Specifically, it is my expert medical opinion that as a direct result of Defendant, Mark Ziemba, M.D.'s failure to timely and properly interpret, recognize, identify, diagnose, and report the abnormal presence of enlarged right axillary and right supraclavicular lymph nodes (measuring up to 1.8 cm) apparent on the Decedent's chest, abdomen, and pelvis CT scan completed on October 21, 2022 – the assessment, evaluation, pathological diagnosis, care, and treatment of the Decedent's active lymphoma was detrimentally delayed to where the Decedent did not undergo lymph node biopsy until November 18, 2022 - followed by excisional biopsy on November 30, 2022, with no confirmed pathological diagnosis made until on or about December 22, 2022, during which time the Decedent's overall physical and mental health clinically deteriorated and declined on a near daily basis as the severe symptoms, issues, and conditions of his untreated lymphoma worsened until it was essentially too late – all of which was a substantial factor in causing the Decedent's claimed injuries/harm and eventual death on December 30, 2022.”

*(Id.)*

In addition, Dr. Fischer reviewed the decedent's deteriorating condition over the next 60 days and concluded: “All of this, however, could and would have been entirely avoided and/or circumvented had the abnormal presence of enlarged right axillary and right supraclavicular lymph nodes (measuring up to 1.8 cm) apparent on the Decedent's October 21, 2022 chest, abdomen, and pelvis CT scan been timely and properly recognized, identified, diagnosed, and reported by Defendant, Mark Ziemba, M.D. – at which point appropriate care and treatment could and would have been timely initiated – thereby facilitating earlier diagnosis, intervention, care and treatment of the Decedent's lymphoma.” *(Id. at ¶ 53.)*

The court finds this to be sufficient to raise an issue of material fact as to whether Dr. Ziemba's omission was a substantial factor or contributing cause of the death of the decedent.

The motion for summary judgment is denied.