Great American Ins. Co. v. Marian Regional Medical Center et al. Case No. 20CV02055
Hearing Date: March 12, 2024
Motion: Summary Judgment or SAI

Factual History

Adriana Velazquez was injured in a car accident on July 9, 2018 and was evaluated in the emergency department at Marian Regional Medical Center (Marian) by physician Noah Hawthorne, M.D. CT scans and X-rays were performed.

At 7:10 p.m., Ms. Velazquez was transported to the operating room where Dr. Nicholas King performed orthopedic surgery. At 8:24 p.m., neurosurgeon Nicholas Slimack, M.D. (the moving defendant), attempted to see Ms. Velazquez in her room but she had already been taken to the operating room. He noted that Ms. Velazquez had nonsurgical and stable issues that did not require any specific treatment. In the meantime, Ms. Velazquez tolerated the surgical procedure well but had pain overnight. At midnight, her Glasgow Coma Score was 15, which was within normal limits, and she had no neurological signs.

Ms. Velazquez's last known well time was on July 10, 2018 at 7:00 a.m. At 8:00 a.m., Tasya Gowing, R.N., noted that Ms. Velazquez had an altered level of consciousness. At approximately 8:15 a.m., a rapid response team ("RRT") was called and a stroke protocol was initiated. Nicholas Becketti, D.O., the attending internal medical resident, was contacted to see the patient regarding her unresponsive status. He ordered a CT angiogram and CT scan of the brain. Dr. Becketti reviewed the results and ordered Ms. Velazquez transferred to the Critical Care Unit for pain control.

Dr. Slimack came to Ms. Velazquez's room at approximately 11 a.m. to discuss the plan of care for the spinal fractures which were discovered on July 9, 2018. However, Dr. Slimack discovered that Ms. Velazquez was being transferred to the CCU after a Code Stroke. Although Dr. Slimack had only been consulted about the spinal fractures, he decided to review the CT angiogram and CT scan in case he could assist Ms. Velazquez. Dr. Slimack believed that the studies revealed an abnormality in the left vertebral artery, which extended up to the basilar artery. Dr. Slimack was concerned for a vascular insult to the brainstem or a possible dissection. After Ms. Velazquez was transferred to the CCU, Dr. Slimack spoke with a nurse and Ms. Velazquez's family members. At approximately 12:00 p.m., Dr. Slimack re-examined Ms. Velazquez, and she was moaning, groaning, and making incomprehensible sounds. She was not tracking and was not responding to commands. Dr. Slimack contacted the attending resident Dr. Becketti about his findings, and recommended that the patient be transferred to the care of

neurosurgeon Alois Zauner, M.D. at Cottage Hospital due to concern for a cerebrovascular dissection. That is not a condition that can be treated at Marian Regional Medical Center or by Dr. Slimack. In addition, Dr. Slimack recommended a stat MRI of the brain. Dr. Slimack spoke with Dr. Zauner, who reviewed the imaging and agreed that Ms. Velazquez had a possible dissection. Dr. Zauner reviewed the imaging from Marian Regional Medical Center, and he agreed that Ms. Velazquez should be transferred to Cottage Hospital for angiography and possible dissection repair, and/or thrombectomy.

After Dr. Slimack spoke with Dr. Zauner, Dr. Slimack told Dr. Becketti and the primary care team that Ms. Velazquez needed to be transferred to Cottage Hospital for further care. At approximately 5:28 p.m., Ms. Velazquez was transferred to Cottage Hospital via CalSTAR helicopter. She was unresponsive to verbal or tactile stimuli. Ms. Velazquez's condition was critical. Ms. Velazquez arrived at Cottage Hospital at 5:52 p.m.

After surgery, Ms. Velazquez was diagnosed with brainstem stroke syndrome. She was alert and able to communicate with eye blinks but had no motor function on command to all extremities. She remained "locked in" during her hospital stay. Ms. Velazquez remained hospitalized at Cottage until July 30, 2018 when she was transferred to St. John's Pleasant Valley Hospital pursuant to her insurance company's request for further care and treatment.

Procedural History

Ms. Velazquez and her spouse subsequently sued Corazon Del Campo, LLC, Lidia Bibiano, and Santa Maria Farms for motor vehicle negligence, general negligence, negligence per se, and loss of consortium. (Case No. 18CV03707, Judge Beebe.) Chubb Insurance Co., Everest Insurance Co. ("Everest"), and Great American Ins. Co. ("GAIC") provided defenses for their respective insured. On April 24, 2019, the Velazquezes resolved their claims for $20 million dollars. Pursuant to the terms of the comprehensive release negotiated between the parties, Chubb paid $3 million dollars, Everest paid $7 million dollars, and GAIC paid $10 million dollars on behalf of their insureds.

On June 11, 2020, Everest, GAIC, and Chubb Ins. Co. (plaintiffs or plaintiff insurers) filed a complaint alleging the following causes of action: (1) subrogation; (2) equitable comparative indemnity; and (3) declaratory relief. On May 15, 2023, the second cause of action for equitable indemnity was dismissed. On June 12, 2023, the court dismissed the declaratory relief cause of action. Thus, the sole remaining cause of action is for subrogation.

The remaining defendants include Marian Regional Medical Center (Dignity Health), Thomas Church, MD, Victor Pulido, DO, Nicholas Slimack, MD, Nicholas King, MD, Daniel Oh, MD.[1]

On Calendar

Nicholas Slimack, M.D. moved for summary judgment on the grounds that plaintiffs cannot establish any breach of the standard of care and/or any causation on his part that would make him liable for any damages claimed by the plaintiffs. Opposition was filed on February 27, 2024. Reply was filed on _____. All filings have been considered by the court.

Applicable Law

The defendant moving for summary judgment/adjudication has the burden of persuasion that "one or more elements" of the "cause of action cannot be established" or that there is a "complete defense," and the burden of production to make a prima facie showing of no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal 4th 826, 850.) Once the defendant has met this burden, the burden shifts to plaintiff to show that a triable issue of material fact exists as to that cause of action or defense. (Code Civ. Proc., § 437c subd. (p)(2).)

The elements of an equitable subrogation claim are: " '(1) [t]he insured has suffered a loss for which the party to be charged is liable, either because the latter is a wrongdoer whose act or omission caused the loss or because he is legally responsible to the insured for the loss caused by the wrongdoer; (2) the insurer, in whole or in part, has compensated the insured for the same loss for which the party to be charged is liable; (3) the insured has an existing, assignable cause of action against the party to be charged, which action the insured could have asserted for his own benefit had he not been compensated for his loss by the insurer; (4) the insurer has suffered damages caused by the act or omission upon which the liability of the party to be charged depends; (5) justice requires that the loss should be entirely shifted from the insurer to the party to be charged ...; and (6) the insurer's damages are in a stated sum, usually the amount it has paid to its insured, assuming the payment was not voluntary and was reasonable.' " (*Essex Ins. Co. v. Heck* (2010) 186 Cal.App.4th 1513, 1522-1523.)

Slimack impliedly argues the fourth element cannot be established because he was not responsible for any part of Ms. Velazquez' damages. Stated another way, he argues he was not medically negligent in his care and treatment of Ms. Velazquez. The elements of a cause of action for medical negligence are: (1) The

[1] The dismissed defendants include: William Wright, MD (dismissed 8/16/23); Anthony Minasaghanian, MD (dismissed 7/13/23); Alois Zaunder, MD (dismissed 3/16/22); Brian Fields, D.O. (dismissed 7/23/21), Cottage Health, Santa Barbara Cottage Hospital (dismissed 12/26/23).

duty of the professional to use the skill, prudence and diligence of other members of the profession commonly possess and exercise; (2) breach of the duty; (3) proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the negligence. (*Burgess v. Superior Court of Los Angeles County* (1992) 2 Cal.4th 1064, 1077.)

Qualified expert testimony is required to establish that a medical practitioner performed in accordance with the prevailing standard of care within the community. (*Zavala v. Board of Trustees of the Leland Stanford. Jr. University, et al.* (1993) 16 Cal.App.4th 1755, 1756; *Johnson v. Superior Court* (2006) 143 Cal.App 4th 297, 305). An expert opinion must be supported by reasons or explanations. (*Kelley v. Trunk* (1998) 66 Cal App 4th 519, 523). The plaintiff must then submit his or her own expert declaration in order to controvert defendant's expert relative to whether defendant breached the requisite duty and standard of care. (*Willard v. Hagemeister* (1981) 121 Cal.App.3d 406, 414.) Thus, to avoid summary judgment in a medical malpractice case, a plaintiff must produce expert testimony to rebut any defense expert who asserts the defendant acted within the standard of care. (*Jambazian v. Borden* (1994) 25 Cal.App.4th 836.) Furthermore, plaintiff must establish causation within a "reasonable medical probability" based upon competent expert testimony. (*Jones v Ortho Pharmaceutical Corp.* (1985) 163 Cal App.3d 396, 402-403; *Bromme v. Pavitt* (1992) 5 Cal App 4th 1487, 1504-1505.)

The evidence submitted in support of the motion and in opposition must be admissible evidence. (Code Civ. Proc., § 437c subd. (d).) Declarations submitted by the party opposing, once found admissible, are liberally construed, while the moving party's declarations are strictly construed (*Bozzi v. Nordstrom*, Inc. (2010) 186 Cal.App.4th 755, 761.)

Analysis

A medical practitioner is negligent if he or she fails to use the level of skill, knowledge, and care in diagnosis and treatment that other reasonably careful medical practitioners would use in the same or similar circumstances. This level of skill, knowledge, and care is referred to as "the standard of care." (CACI 501; see *Landeros v. Flood* (1976) 17 Cal.3d 399, 408.)

1. Standard of Care

The pleadings determine the scope of relevant issues on a summary judgment motion. (*Nieto v. Blue Shield of Calif. Life & Health Ins. Co*. (2010) 181 Cal.App.4th 60, 74.) Here, it is alleged that "Plaintiffs are informed and believe and based on such information alleged that a clot had developed in Ms. Velazquez' artery that supplied blood to the brain stem. Ms. Velazquez' doctors determined that her blood supply to the brain was "thready," but failed to move her immediately to a better-

equipped regional hospital. For a period of approximately ten (10) hours after the initial call for the stroke team at MARIAN, there was no substantial action to address the clot until after she was transferred to COTTAGE HOSPITAL." (Complaint, ¶ 23.) It's clear from the pleadings that plaintiffs' case relies on Dr. Slimack's failure to ensure that Ms. Velazquez's transfer occurred in a timely fashion so she could receive treatment that Cottage could provide.

Dr. Slimack offers the declaration of Arun Paul Amar M.D. in support of his motion. Dr. Amar is a board-certified neurosurgeon familiar with the medical standard of care regarding the management of patients like Adriana Velazquez. Amar opines:

- Dr. Slimack was not responsible for arranging Patient's transfer." (Amar Decl., ¶ 3.)
- " It is my opinion that the care and treatment Nicholas Slimack, M.D. provided to Ms. Velazquez was at all times appropriate and within the applicable standard of care as it existed in 2018.." (Amar Decl., ¶ 27.)
- "Dr. Slimack was only involved in Ms. Velazquez's case as a neurosurgical consultant. Once it was decided that no further neurosurgical treatment could be offered at Marian Regional Medical Center, and it was agreed that she would be transferred to Cottage Hospital, Dr. Slimack's role in Ms. Velazquez's care ended. Therefore, as of 1:00 p.m., Dr. Slimack's care of Ms. Velazquez ended as there were no further neurosurgical care that could be rendered at Marian Regional Medical Center. At that point, it was the responsibility of Dr. Becketti, Dr. Fields, Dr. Pulido, and the primary service team to facilitate the transfer of Ms. Velazquez to Cottage Hospital." (Amar Decl., ¶ 33.)
- ". . . to a reasonable degree of medical probability, no alleged standard of care violation by Dr. Slimack was a substantial factor in causing or contributing to Ms. Velazquez's alleged injuries. Moreover, no act or omission by Dr. Slimack either caused or contributed to any of Ms. Velazquez's claimed injuries." (Amar Decl., ¶ 34.)

Plaintiffs object to these opinions on the basis that they lack foundation since the premise of Amar's opinion that Dr. Slimack did not breach the standard of care is based on the presumption that Dr. Slimack was not responsible for Ms. Velzquez's transfer. These objections must be sustained.[2] "The law is clear that [the] moving party's burden ... cannot be satisfied by an expert declaration

[2] The court sustains Objection No. 1, No. 3, and Nos. 5 and 6, to the extent they opine it was not Dr. Slimack's role to commence or facilitate transfer.

consisting of ultimate facts and conclusions that are unsupported by factual detail and reasoned explanation, even if it is admitted and unopposed." (*Good Samaritan, supra*, 23 Cal.App.5th at p. 657.) " " "[B]ecause an expert opinion is worth no more than the reasons and facts on which it is based," "" an expert opinion rendered without a reasoned explanation of why the underlying facts lead to the ultimate conclusion has no evidentiary value. (*Id.* at p. 662.) "[E]xpert testimony must be based on such matters as may be reasonably relied upon by an expert in forming an opinion on the subject. With regard to a standard of care derived from a professional practice 'the induction of a rule from practice necessarily requires the production of evidence of an ascertainable practice.'" (*Johnson v. Superior Court* (2006) 143 Cal.App.4th 297, 305.)

An example may be useful. In *Johnson*, a patient sued his physicians for malpractice, alleging that he was injured by excessive use of radiation during his treatment for prostate cancer. (*Id.* at pp. 299–300, 306.) The physicians moved for summary judgment, relying on a conclusory expert declaration stating that what was done was within the standard of care. (*Id.* at p. 306.) The trial court granted summary judgment because it found the plaintiff's competing expert declaration inadequate. (*Id.* at p. 299.) But the appellate court held that the bare conclusion of the defendants' expert, unsupported by reasons or explanations, was insufficient to show the defendants acted within the standard of care. (*Johnson, supra*, 143 Cal.App.4th at pp. 305, 307; see also *Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal.App.3d 1113, 1135 [value of opinion evidence rests not in the conclusion reached but in the factors considered and the reasoning employed].) Since a patient could be harmed by receiving too much radiation, an expert opinion that does not set forth the standard for determining a safe amount of radiation is legally insufficient to show the standard of care was met. (*Johnson, supra*, at p. 308.) And because the defendants did not meet their initial burden of production, they were not entitled to summary judgment, regardless of the adequacy of the plaintiff's opposition. (*Id.* at pp. 305, 308.)

This case is similar in that defendant Dr. Slimack did not meet his burden of production on whether he was responsible for arranging Velazquez's transfer and that instead it was the responsibility of Dr. Becketti, Dr. Fields, Dr. Pulido, and the primary service team to facilitate the transfer of Ms. Velazquez to Cottage Hospital. Dr. Slimack provides no factual evidence that this is the procedure or policy of Marian (or even perhaps all hospitals). For that reason, the declaration lacks foundation. Since Dr. Amar's opinion that Dr. Slimack's lacked responsibility to effect the transfer is unsupported, it is insufficient to show that he acted within the standard of care.

Even if the objections were overruled and/or Dr. Amar's opinions were adequately supported by factual evidence, plaintiffs' evidence sufficiently raises the following issues of disputed fact:

- Dr. Oh, as the admitting physician, testified that there was no particular doctor in charge of the management of the patient during the period of time on July 10 when the decision was made to transfer her and before she departed the hospital. He said "we function together as a team. So, the hospitalist and Dr. Slimack, I'm sure, were working together. Dr. Slimack was a member of the primary service team responsible for managing the patient's care before she exited the hospital . . . I was not the only person taking care of the patient. The other specialist and hospitalist were all still involved in managing the patient." (Deposition of Dr. Oh [Defense Exh. 4]; pp. 46:23-48:5.) This court can reasonably infer there is a disputed fact as to who is responsible for managing the transfer, and who is alleviated from responsibility.

- When Dr. Slimack saw the patient at 11 a.m., he correctly assessed that Marian was unable to provide the necessary care, he promptly communicated with Zauner at Cottage Hospital, and he was aware of the need for immediacy. (See Slimack's Consultation Report [Plaintiffs' Exhibit I]—"At that time everything was set in motion to get the patient transferred down to Cottage Hospital without delay.") According to plaintiffs' expert, even absent the responsibility to *arrange for* transfer "a reasonably careful doctor would have at that time [e.g., when Dr. Slimack saw Ms. Velazquez at 11 a.m.] raised alarms with Marian Regional doctors and staff, and taken all other reasonable measures needed in an effort to expedite the transfer. . . Instead, having observed her still in her bed now 5 hours [e.g., at 1 p.m.] after the Stroke Protocol was triggered, he walked away." (Maluste Decl., ¶ 7.) This raises a disputed issue whether Slimack's actions were within the standard of care.

- Dr. Slimack does not put into evidence the time he called Dr. Zauner about Ms. Velazquez's condition. The undisputed facts state that Dr. Slimack re-examined Ms. Velazquez at 12 p.m. and found she was moaning and groaning, not tracking, and not responding to commands. (Undisputed Fact. No. 17.) The undisputed facts next state: "Dr. Slimack spoke with Dr. Zauner, who reviewed the imaging and agreed that Ms. Velazquez had a possible dissection. Dr. Zauner reviewed the imaging from Marian Regional Medical Center, and he agreed that Ms. Velazquez should be transferred to Cottage Hospital for angiography and possible dissection repair, and/or thrombectomy." (Undisputed

Fact No. 18.) At no point do the facts, or the consultation report on which the fact relies, concretely state the time Dr. Slimack consulted with Dr. Zauner. The consultation report states merely: "At that time [e.g., when Dr. Slimack went back to re-examine the patient at noon], I promptly communicated with Dr. Alois Zauner who is neurosurgeon down at Cottage Hospital in Santa Barbara." (Slimack Consultation Report [Plaintiff's Exhibit I].) However, Dr. Zauner states that the call occurred "mid-afternoon," at 3:30 p.m. or 4 p.m. (Zauner Deposition, p. 42:19-25; p. 49:23; p: 22-25 [Plaintiffs' Exhibit 1].)[3] There thus remains the possibility that the contact with Dr. Zauner, and thus the decision to transfer Ms. Velazquez, did not occur for 3-4 hours *after* Dr. Slimack re-examined Ms. Velazquez at noon. This unresolved issue of fact undermines Dr. Amar's conclusion that the care and treatment provided by Dr. Slimack was within the applicable standard of care because Dr. Amar assumed that the call occurred before 1 p.m. (Amar Decl., ¶ 25—" After Dr. Slimack spoke with Dr. Zauner, Dr. Slimack told Dr. Becketti and the primary care team that Ms. Velazquez needed to be transferred to Cottage Hospital for further care. At approximately 1:00 p.m., Dr. Slimack's consultation with Ms. Velazquez was completed.") This factual gap creates an issue of fact that cannot be resolved by the present motion.

Objections to Maluste Declaration

Because the court finds that defendant has failed to produce evidence to satisfy his initial burden, the objections to plaintiff's expert are irrelevant. The court will nevertheless discuss them here.

1. Foundation

The objections based on foundation are overruled. Slimack argues that Maluste failed to identify what records he reviewed and the portions of the deposition transcripts he used to establish his opinion, undermining his entire opinion.

Maluste states: "My workup of this matter has included review of medical records of AdrianaV elazquez from Santa Barbara Cottage Health (SBCH) and Marian Regional Medical Center (MRMC) relating to her treatment after the car accident on July 9, 2018, to include the care and treatment she received on July 10, 2018 after onset of a stroke in her brain stem due to a basilar-artery occlusion. I

[3] This is corroborated by testimony from Lynnette Jessop, who was the supervisor of the patient transfer center at Cottage Hospital in July 2018. She confirms that Zauner called the Cottage Hospital transfer center at 4:05 p.m. in the afternoon to alert them that Patient Velazquez is coming in. Jessop Deposition, pp. 47:16-48:15 [Plaintiffs' Exhibit 3.)

also reviewed the radiology studies of Ms. Velazquez at MRMC and SBCH. I also conferred with retained neurologist Dr. Michael Gold regarding the Independent Medical Examination he performed on Ms. Velazquez on April 10, 2019. I have reviewed and assessed the Declaration of Dr. Arun Paul Amar served in support of Dr. Slimack's Motion for Summary Judgment. I also reviewed pertinent portions of the transcripts of the depositions of Defendants Dr. Daniel Oh and Dr. Nicholas Slimack--both being treating physicians at MRMC, as well as that of Dr. Alois Zauner, the surgeon at SBCH." (Maluste Decl., ¶ 3.) Dr. Slimack argues this is insufficiently specific, arguing that the expert needs to identify "identify exactly what records he reviewed, and portions of the deposition transcripts he used to establish his opinions." (Reply, p. 2, ll. 15-16.) The court disagrees that the case law requires the precision asserted by Slimack. The court is willing to accept a lesser showing of foundational requirements in dealing with declarations *opposing* a summary judgment motion. This is consistent with the view that opposition declarations are to be liberally construed, while the moving party's evidence is strictly scrutinized. (See *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.) In any event, Dr. Slimack has not demonstrated how any such failure has placed him at a disadvantage.

Slimack also argues that the records and deposition testimony upon which Dr. Maluste relied were not placed before the court. This objection is again somewhat nonspecific in that it fails to identify which records are missing. The court notes that a medical expert's declaration stating an opinion based entirely on review of medical records cannot support summary judgment where the records were not attached to the declaration or otherwise before the court. (*Garibay v. Hemmat* (2008) 161 Cal.App.4th 735, 742-743.) But a party opposing summary judgment need not file duplicate copies of medical records on which its expert relied in forming a disputed expert opinion when those records, properly authenticated, are already before the court in connection with the moving party's papers. (*Shugart v. Regents of Univ. of Calif.* (2011) 199 Cal.App.4th 499, 505-506.) Dr. Slimack entered medical records into evidence in connection with his motion. (See Defendant Nicholas Slimack, MD's Evidence in Support of Motion For Summary Judgment Or Alternatively Motion For Summary Adjudication, authenticated by Declaration of William A. Sulentor, Esq., both filed on filed on 12/22/23.) Plaintiffs likewise entered evidence of its own. (Plaintiffs' Appendix of Evidence in Support of Their Opposition to Defendants' Motion For Summary Judgment, or in the Alternative Summary Adjudication authenticated by Declaration of John Horwitz, both filed 2/27/24.) Dr. Slimack does not identify which records were not properly before the court or improperly authenticated. "Rule 3.1113 rests on a policy-based allocations of resources, preventing the trial court from being cast as a tacit advocate for the moving party's theories by freeing it from any obligation to comb the record and the law for factual and legal support that a party has failed to identify or provide."

(*Quantum Cooking Concepts, Inc. v. LV Associates, Inc*. (2011) 197 Cal.App.4th 927, 934.)

2. Qualifications

Dr. Slimack argues that Dr. Maluste is not qualified to render an opinion in this matter in part because he is a neurologist, not a neurosurgeon. The court also overrules this objection. There is no general requirement that a medical expert share the same subspecialty as the physician whose treatment is under scrutiny for breach of the standard of care. It is settled that a physician in one specialty area may be competent to testify about the standard of care of a physician in another specialty. "The unmistakable general trend in recent years has been toward liberalizing the rules relating to the testimonial qualifications of medical experts." (*Brown v. Colm* (1974) 11 Cal.3d 639, 645.) The determinative issue is whether the witness has sufficient skill or experience in the field so that his testimony would be likely to assist the jury in the search for the truth. Where a witness has disclosed sufficient knowledge, the question of the degree of knowledge goes more to the weight of the evidence than its admissibility. (*Mann v. Cracchiolo* (1985) 38 Cal.3d 18, 37.) Other authorities have held similarly, e.g., a pathologist was qualified to testify as to causes of aseptic necrosis (*Agnew v. City of Los Angeles* (1950) 97 Cal.App.2d 557, 566); an expert in otolaryngology to testify regarding plastic surgery (*Mirich v. Balsinger* (1942) 53 Cal.App.2d [103,] 105); a homeopathic physician and surgeon to testify on the degree of care required of a physician educated in the allopathic school of medicine (*Hutter v. Hommel* (1931) 213 Cal. 677, 681); a pathologist and professor of pathology to testify on the subject of gynecology (*Cline v. Lund* [(1973)] 31 Cal.App.3d [755,] 766)." (*Mann, supra*, 38 Cal.3d at pp. 37-38.)

Dr. Slimack further argues that Dr. Maluste "fails to affirmatively state that he is familiar with the standard of care for neurosurgeons in California as it existed in 2018." (Reply, p. 3, ll. 18-19.) He further points out that Dr. Maluste did not even start to practice until 2018. The test for whether a witness is qualified to testify as an expert is whether the witness possess the "special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates." (Evid.Code, § 720, subd. (a).) " ' "To qualify a witness as a medical expert it must be shown that the witness (1) has the required professional knowledge, learning and skill of the subject under inquiry sufficient to qualify him to speak with authority on the subject, and (2) is familiar with the standards required of physicians under similar circumstances." " " (*Chadock v. Cohn* (1979) 96 Cal.App.3d 205, 208-209.) The criteria for determining professional expertise are: "(1) occupational experience, the kind which is obtained casually and incidentally, yet steadily and adequately in the course of some occupation or livelihood; (2) basic education and professional training; and (3) practical knowledge of what is

customarily done by physicians under circumstances similar to those which confronted defendant." (*Evans v. Ohanesian* (1974) 39 Cal.App.3d 121, 128.)

The court is not convinced that Dr. Maluste's failure to state he was familiar with the standard of care as is existed in 2018 or that he started to practice in 2018 disqualifies him as an expert. Dr. Maluste declared he has had a California State Medical License since 2015; has clinical training in neurology and completed a stroke and vascular neurology fellowship; during his tenure at Lakewood Regional Center, the program successfully progressed from a primary stroke center to a thrombectomy capable center that regularly manages patients with large vessel occlusion strokes. His clinical experience includes assessment and treatment of over 3,000 patients affected by stroke, including at least 30 of whom who suffered acute basilar occlusions with outcomes varying from minor deficits to death. The court finds it was not necessary that he also state familiarity with the standard of care in 2018.

Conclusion

The court sustains the following objections to Dr. Amar's declaration: Objection No. 1, No. 3, and Nos. 5 and 6, to the extent they opine it was not Dr. Slimack's role to commence or facilitate transfer. The court denies the objections to Dr. Maluste's declaration based on foundation and qualifications.

The court denies this motion because the defendant failed to produce evidence supporting Dr. Amar's conclusion that the physician responsible for transferring the patient was "Dr. Becketti, Dr. Fields, Dr. Pulido, and the primary service team," and not Dr. Slimack. Alternatively, the court finds there are several issues of disputed facts raised by record.