

Tentative Rulings – September 25, 2003

To request a hearing on any matter on this calendar, you must call the Court at (209) 223-6360 by 4:30 p.m. today. Notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

Albiani v. Sutter Amador Hospital – 02CV2259 – Dr. Kerr's Motion for Summary Judgment

The unopposed motion for summary judgment of defendant DARREL KEITH KERR, M.D., is granted. The evidence in support of the motion, specifically the declaration of Dr. Furgaro, establishes that the treatment and care Dr. Kerr provided to the plaintiff's decedent was within the applicable standard of care. Furthermore, Dr. Furgaro opines the death of the plaintiffs' decedent is not attributable to the care and treatment she received from Dr. Kerr.

Dr. Furgaro's declaration negates essential elements of the plaintiffs' claim. The declaration establishes there was no breach of the applicable standard of care and therefore, Dr. Kerr was not negligent. The declaration also negates the causation element of the negligence claim.

Dr. Furgaro's declaration is sufficient to shift the burden to the plaintiffs to raise a triable issue of material fact. To raise an issue of fact, plaintiffs are required to come forward with competent medical evidence to show Dr. Kerr was negligent and his negligence was a substantial factor in the death of the plaintiffs' decedent. Plaintiffs filed no opposition to the motion.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.