

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

FRED BAUGHER,

Plaintiff and Appellant,

v.

ALTA BATES SUMMIT MEDICAL
CENTER et al.,

Defendant and Respondent.

A140386

(Alameda County
Super. Ct. No. RG09429206)

Fred Baugher appeals from a defense judgment after a jury rejected his medical malpractice claims against a hospital, a physician, and a nurse staffing agency. His precise claims are difficult to distill from his appellate briefs, but, as far as we can discern, this is principally a substantial evidence appeal based on theories that defendants failed to obtain his informed consent before administering a second dosage of a previously administered medication and then mishandled an adverse reaction to it. Neither this or his various other arguments present a basis to disturb the judgment.

BACKGROUND

Our discussion of the facts is guided by the established rules for substantial evidence review. “ ‘Where findings of fact are challenged on a civil appeal, we are bound by the “elementary, but often overlooked principle of law, that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,’ to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the

prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court.’ ” (*SFPF, L.P. v. Burlington N. & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 462.) “The question is not whether appellants can show that substantial evidence supports their factual assertions, but whether appellants have shown that the appellate record lacks any substantial evidence, contradicted or uncontradicted, to support the [jury’s] findings of fact.” (*Id.* at p. 476.) Adherence to these elementary principles explains why our review of the record and the pertinent evidence bears little resemblance to Baugher’s version, which flagrantly disregards them.

On March 17, 2008, Baugher was admitted to Alta Bates Summit Medical Center (Alta Bates) for evaluation and treatment of extreme low back pain. An attempted MRI on March 19 could not be done because Baugher was in too much pain to lie flat in the scanner, so the MRI was rescheduled for March 22, and Dr. Feei-Wen Hsiao ordered Dilaudid for pain and Ativan for anxiety to prepare him for the procedure.

On March 21 Dr. Hsiao explained to Baugher that the pre-MRI medications could cause respiratory depression or, more uncommonly, respiratory arrest, particularly in patients who, like him, also took fairly high-dose opiates. Baugher testified that he was made aware of those risks and gave his informed consent: “I said as long as you know you’re watching [for respiratory side effects] and you feel this is safe to do, then I’m on board with it.” Expert witnesses Drs. Harlan Watkins and Steven Fugaro both testified that Dr. Hsiao’s discussion of the risks of Dilaudid and Ativan was appropriate and consistent with the relevant standard of care.

At 8:15 a.m. on March 22, nurse Tammy Harris administered the drugs to Baugher in preparation for the MRI procedure scheduled for 9 a.m. Then, as often happens, the MRI was postponed and rescheduled until around noon, by which time the drugs would have worn off. Nurse Harris called Dr. Hsiao to request an order for a second dose of the premedication if Baugher needed it. Dr. Hsiao instructed Harris to give Baugher a second dose if he felt he needed it. Baugher asked for the second dose, and Nurse Harris gave it to him around 11:15 or 11:30 a.m. Dr. Hsiao and Nurse Harris testified that

Baughner never asked to speak with Dr. Hsiao before he was given the second dose. He remained awake and alert during the MRI procedure, then returned to his hospital room, ate lunch, and chatted with the nurses. Around 4:30 Nurse Harris observed that Baughner's oxygen level was a little low. So, she placed a nasal cannula on him to deliver extra oxygen to his lungs. Baughner testified that he lost consciousness shortly after that.

Dr. Hsiao checked on Baughner around between 5:00 and 5:15. He was "very lethargic" and snoring loudly. Dr. Hsiao sat him upright in his bed with a pillow under his side and adjusted his head and body so that his snoring stopped. Thinking that he might have been over-sedated, Dr. Hsiao asked Nurse Harris to prepare some Narcan, an opiate antidote, and take a complete set of vital signs. Nurse Harris put a pulse oximeter on Baughner's finger to continuously monitor his blood oxygen saturation. Baughner's heart rate, blood pressure and respiration were also continuously monitored from shortly after 5:00, and were stable and normal. Baughner's airway was open and he was adequately oxygenated.

Dr. Hsiao administered the Narcan. She cautiously administered the Narcan in multiple small doses over intervals because Baughner, who was a chronic pain patient, was at a high risk for opiate withdrawal as a side effect of the drug. Baughner responded partially but did not become fully alert, which Dr. Hsiao believed could have been caused by a number of things including the Ativan in his system, an infection, carbon dioxide buildup or other metabolic derangements.

Baughner remained lethargic, so Dr. Hsiao summoned a critical care physician and the hospital's Rapid Response Team to provide a higher level of care. The critical care specialist responded immediately. After looking at Baughner and consulting with Dr. Hsiao, he suggested giving Flumazenil to counteract the Ativan in Baughner's system. Baughner's vital signs were still normal. Dr. Hsiao ordered the Flumazenil but the Rapid Response Team arrived before it was administered, around 6 p.m. As the team started to evaluate Baughner, his condition changed. He became increasingly lethargic, his heart rate started dropping intermittently, and he developed difficulty breathing. The Rapid Response Team used a bag valve mask to force air into Baughner's lungs and called a

“code blue” team. Baugher was immediately intubated and transferred to the intensive care unit. He remained intubated for an hour and a half. The next day he reported feeling fine and back to normal.

Baugher testified at trial that after this incident he suffered from feelings of fear and betrayal, nightmares, crying spells, short-term memory problems, and swelling and loss of strength in his legs, although at his deposition he reported only some memory loss and possibly a skin infection. There was no mention of these symptoms in the medical records, and Dr. Watkins testified there was “[n]ot a shred” of medical evidence that Baugher was injured in the event. A complete neuropsychological evaluation conducted after Baugher was transferred from Alta Bates to a rehabilitation hospital indicated normal emotional function and no mental impairment.

The jury deliberated for 16 minutes before delivering its verdict. It found that neither Alta Bates, Dr. Hsiao or the nursing agency was negligent or committed a medical battery on Baugher. Baugher filed this timely appeal from the judgment entered against him and “any post-trial cost order thereafter.”

DISCUSSION

I. Substantial Evidence Supports The Verdict

Baugher contends the jury’s verdict was unsupported by the evidence. More specifically, as far as we can glean from his briefs, he claims there was no evidence he gave informed consent to the second dose of medication administered before his MRI because Dr. Hsiao did not discuss the risks of the medications with him a second time once the MRI was postponed. He also maintains there was no evidence to contradict his claim that the hospital had insufficient trained and qualified personnel to provide appropriate care when he did not respond to the Narcan. His contentions are meritless.

Baugher’s informed consent claim warrants only brief discussion. “[A] physician must disclose to the patient the potential of death, serious harm, and other complications associated with a proposed procedure. [Citation.] Expert testimony on the custom of the medical community is not necessary to establish this duty. [Citations.] Second, “[b]eyond the foregoing minimal disclosure, a doctor must also reveal to his patient such

additional information as a skilled practitioner of good standing would provide under similar circumstances.’ [Citation.] Therefore, expert testimony is relevant and admissible to determine the duty to disclose matters other than the risk of death or serious harm and significant potential complications.” (*Daum v. SpineCare Med. Group., Inc.* (1997) 52 Cal.App.4th 1285, 1301–1302.) Here, there is no dispute about the fact that Dr. Hsiao discussed the risks of Dilaudid and Ativan with Baugher and obtained his informed consent when she spoke with him on March 21. Dr. Hsiao and Baugher so testified, and even Baugher’s expert, Dr. Citek, agreed that Baugher consented to these medications. Both Dr. Watkins and Dr. Fugaro testified that Dr. Hsiao’s discussion of the risks of Dilaudid and Ativan was appropriate and consistent with the standard of care.

Baugher nonetheless asserts he did not give informed consent to the *second* dose of the same medications because Dr. Hsiao did not discuss the risks with him *again* between the first and second doses. This is immaterial. When asked at trial whether a doctor who has obtained informed consent to administer a medication must renew that consent every time the patient receives the same drug, Dr. Watkins testified: “No. Again, that would be highly inefficient. The original consent continues.” Baugher cites no evidence that the risks of the second dosage were any different or greater than the risks Dr. Hsiao had already described to him, and therefore that informed consent required disclosure of information that had not already been discussed. Nor does he identify any authority for his implicit theory, refuted by Dr. Watkins’s expert testimony, that consent must be obtained anew each time the same medication is administered. Nor would such a rule make sense. “To obtain the consent of the patient . . . for every dose of medication or every diagnostic or medical procedure would prevent the medical personnel from ever being able to administer those treatments or perform those procedures.” (*Piedra v. Dugan* (2004) 123 Cal.App.4th 1483, 1496–1497.)

Baugher also argues Dr. Hsiao was required to renew his consent to the medication because he told Nurse Harris that he wanted to speak with the doctor before she administered the second dose. The jury had ample grounds to reject that claim. When Baugher was asked in his deposition whether he objected or asked to speak with

Dr. Hsiao before receiving the additional medication, he testified: “No. I figured they were the staff. They knew what they were doing, so I just—you know, they just came in whenever they would come in and say we’re going to give you this or whatever, I would just—well, okay. They know what they’re doing. I would take it.” Dr. Hsiao testified that she was never told Baugher wanted to speak with her before the second dose, and that Nurse Harris later told her that when she asked Baugher about the additional medication he said “Okay, go ahead.” Moreover, the medical records show that the second dose was given “at the patient’s request” and contain no notation that Baugher asked to speak with Dr. Hsiao.

The trial record also dispenses with Baugher’s remaining, scattershot contentions that the defendants failed to adequately monitor him after the MRI, failed to keep accurate records of his condition, failed to have an adequate number of trained, qualified personnel available when he became unresponsive, and failed to administer Flumazenil as an antidote to Ativan. Dr. Fugaro, a specialist in internal medicine and primary care, testified that the level of monitoring was within the applicable standard of care, that Dr. Hsiao appropriately monitored all of Baugher’s vital signs during the relevant time period, and that she called in the rapid assessment team and, subsequently, the blue code team, when it was appropriate to do so. He also testified that Dr. Hsiao reasonably considered administering Flumazenil, but because of its significant and potentially dangerous side effects, “by no means was it below the standard of care not to give it.” In his opinion, Dr. Hsiao “escalated the care as needed, and it was exactly the right care to give.”

Dr. Watkins testified that the hospital, Dr. Hsiao and the nurses who provided Baugher’s care all met the applicable standard of care. In fact, he testified, Dr. Hsiao “was actually above standard. She did very, very good work.” Dr. Watkins also “totally disagree[d]” with Baugher’s contention that he should have been given Flumazenil: “I’ve seen a number of benzo overdoses, and I have never in my 45 years of clinical practice either used that drug myself or seen it used in the hospital setting. Never once. The reason being that the risks far outweigh the benefits for that drug. There’s a better way to

treat benzo overdose anyway, which is the way this patient was treated [by] [i]ntubation and ventilation.” Drs. Hsiao, Watkins and Fugaro elaborated that Flumazenil was contraindicated because it can induce seizures and counteract medications that are necessary when a patient has to be intubated.¹ The evidence amply supports the jury’s verdict that there was no negligence and no medical battery.

II. REMAINING THEORIES

Baughner also makes several purported claims of legal error and abuse of discretion. He asserts, with a remarkable paucity of citation to relevant authority and the trial record, that the court erred when it required expert testimony on whether the hospital had an adequate number of trained personnel available, denied his motion for judgment notwithstanding the verdict on lack of informed consent, battery, and failure to have adequate staff, and denied his request for special findings. He also asserts jury misconduct because the jury deliberated for less than 16 minutes before returning a defense verdict. But “[t]o demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.] When a point is asserted without argument and authority for the proposition, ‘it is deemed to be without foundation and requires no discussion by the reviewing court.’” (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) That is the case here. Baughner’s failure to advance any pertinent or intelligible legal argument on these points constitutes an abandonment of his claims of error. (*Id.* at p. 408; *Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1117.)

DISPOSITION

The judgment is affirmed.

¹ Even Dr. Citek conceded that Flumazenil can trigger seizures that would probably have made intubation impossible, placing Baughner in a “very, very bad situation.”

Siggins, J.

We concur:

Pollak, Acting P.J.

Jenkins, J.