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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

KEVIN DARNELL BRYANT,

Plaintiff and Appellant,

v.

KELLY HARRINGTON, et al.,

Defendants and Respondents.

F067290

(Super. Ct. No. CV-272692)

**OPINION**

**THE COURT**\*

APPEAL from a judgment of the Superior Court of Kern County. William D. Palmer, Judge.

Kevin Darnell Bryant, in propria persona, for Plaintiff and Appellant.

Beeson Terhorst, Jeffrey E. Beeson and Michael A. Terhorst, for Defendants and Respondents.

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Plaintiff Kevin Darnell Bryant (Bryant), an inmate at Kern Valley State Prison (KVSP), appeals, in propria persona (pro. per.), from the judgment entered after the trial

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\* Before Levy, Acting P.J., Cornell, J. and Gomes, J.

court granted summary judgment in favor of defendants and respondents Kelly Harrington, Sherry Lopez, Dr. Schaefer, Matthew Cate and J. Clark Kelso (collectively respondents).<sup>1</sup> We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Bryant initiated this action against respondents, in pro. per., in December 2010, and filed a first amended complaint (FAC) on June 6, 2011. In the FAC, Bryant alleges that the CDCR's statewide policy for medical management, which authorizes the administration of certain medications in crushed form, constitutes medical negligence and an intentional tort or fraud. In his first cause of action, Bryant alleges that staff at the KVSP medical facility forced him to take his prescribed pain medications, Gabapentin and Tramadol, as well as Tylenol with codeine, crushed and floating in water despite medical documents which state that these medications should not be crushed. He asserts this method of administration caused him severe erosive esophagitis and esophageal hemorrhaging, and that respondents committed medical malpractice by ignoring the medical information concerning the drugs and adhering to the CDCR's policy when administering the medications.

In his second cause of action, Bryant alleges he suffered "intentional personal injury" because, despite being aware that the drug manufacturers state the medications should not be "crushed and floated" and of the risks of administering medications in this

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<sup>1</sup> In their opening brief, respondents identify themselves as follows: Kelly Harrington was the warden at KVSP; Sherry Lopez, Doctor of Osteopathic Medicine, was employed by the California Department of Corrections (CDCR) as the Chief Medical Executive at KVSP with overall management of medical care at the prison; Sandra Schaefer, M.D. was employed by CDCR as a physician and surgeon; Matthew Cate was the director of the CDCR headquartered in Sacramento; and J. Clark Kelso was the receiver appointed by the U.S. District Court for administration of certain court orders relating to California state prisons.

manner, respondents forced him to take the medications in this way. Finally, Bryant alleges he is entitled to exemplary damages.

*The Motions to Compel*

On December 27, 2011, Bryant filed a motion to compel discovery from respondents. In their opposition, respondents argued the motion should be denied because Bryant failed to comply with California Rules of Court, rule 3.1345(a),<sup>2</sup> as he did not prepare a separate statement or, at a minimum, the court should stay its ruling until the January 26, 2012<sup>3</sup> hearing on Bryant's motion for leave to file a second amended complaint. At a February 9 hearing, the trial court denied the motion to compel.

On April 12, after respondents' summary judgment motion was filed, Bryant filed a second motion to compel, which included a separate statement. Respondents filed an opposition, which is not part of the appellate record. The trial court's ruling on the motion also is not part of the record, but the court's register of action shows it was denied on May 15.<sup>4</sup>

*The Summary Judgment Motion*

On April 9, respondents filed a motion for summary judgment, arguing they were entitled to judgment as a matter of law on the following grounds: (1) the elements of professional negligence may be established only by qualified expert testimony, and their expert's testimony, submitted with their motion, established that the CDCR policy and administration of medication to Bryant in crushed form, were medically sound, consistent

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<sup>2</sup> All further references to Rules are to the California Rules of Court.

<sup>3</sup> Subsequent references to dates are to dates in 2012 unless otherwise indicated.

<sup>4</sup> In an apparent attempt to provide a complete record of the trial court's rulings, Bryant has attached to his opening brief purported copies of minute orders from three hearings. Bryant has not asked us to take judicial notice of these documents or to augment the record with them. We note that the May 15, 2012 minute order shows that the trial court denied the motion to compel, but does not state the reason for its denial.

with the standard of care and not the cause of Bryant's medical ailments; (2) there is no evidence of any intentionally false or fraudulent misrepresentation to Bryant or any intentional tortious acts causing Bryant harm; and (3) the punitive damage claim fails as a matter of law because Bryant failed to comply with Code of Civil Procedure section 425.13, which requires leave of court before claiming punitive damages against defendants Schaefer and Lopez, who are health care providers, and there is no factual basis for such a claim. Respondents noted that their pending motion for judgment on the pleadings was set for hearing on April 19, which may resolve some of the claims against them.

Respondents' motion was based on the declaration of Glenn W. Thiel, D.O., Ph.D., who is licensed to practice medicine in California and was then employed with the CDCR as the Chief Medical Executive at Salinas Valley/State Prison, Soledad, California and the California Training Facility, overseeing 22 doctors who provide medication to inmates and two prisons with a total population of 10,000. A copy of Thiel's resume summarizing his employment experience, specialized training, professional memberships, publications, licenses and certificates held, and his education, was attached to the declaration.

On July 7, 2010, Bryant had surgery. While under medical care following the surgery, Bryant complained of "epigastric discomfort." He underwent an upper endoscopy at Mercy Hospital. The findings reported: "There was a large amount of coffee ground in the stomach" and "approximately 1600 ml. of coffee ground" was removed from his stomach. The report stated "this speaks for gastroparesis." Thiel explained that gastroparesis is a condition that reduces the stomach's ability to empty its contents; it is a common complication of diabetes and can be a complication of some surgeries.

Thiel was familiar with the CDCR policy for inmate medication management. He explained that CDCR had experienced a long-term problem with inmates not taking and

hoarding medication so it could be taken later in non-prescribed dosages, sold, or otherwise improperly distributed or used. To prevent hoarding, selling or improper use of medications, CDCR's medication management policy allows inmates' medications to be administered either in liquid form or, if they in a tablet or capsule form, to be crushed or emptied into water or juice, unless prohibited by specific medication requirements. As a general principle, most immediate release drugs can be crushed; drugs that cannot be crushed are extended or controlled release drugs, drugs with enteric coating, or drugs with a specific prohibition. The Institute for Safe Medication Practices maintains a "do not crush" list; the non-extended release versions of Tramadol, Gabapentin and Tylenol with codeine are not on the list.

Thiel further explained that the Federal Bureau of Prisons accounts for Tramadol, a centrally acting analgesic used to help relieve moderate to moderately severe pain that is similar to narcotic analgesics, as a controlled substance and its policy is to crush it before administration. Gabapentin, an anticonvulsant or antiepileptic drug, is used with other medications to prevent and control seizures, relieve nerve pain following shingles in adults, to relieve other pain conditions, and to treat restless legs syndrome. Bryant was prescribed Tramadol, Gabapentin and Tylenol with codeine, which were given to him in crushed form. The administration of these medications in crushed form is consistent with the approved CDCR medical policy.

Based on his education, training and experience, Thiel is familiar with the standard of care for physicians prescribing these medications within California and, in his opinion, compliance with CDCR medical policy allowing use of these medications in crushed form is an acceptable medical practice consistent with the standard of care and does not increase risk to the health of the patient, and is not a cause or contributing factor to internal bleeding or hemorrhaging to the esophagus or stomach. Respondents argued that Thiel's declaration conclusively established that when respondents followed the CDCR medication management policy, they met the standard of care in providing medical

treatment to Bryant and the use of medications in crushed form was not a cause or contributing factor to any internal bleeding or hemorrhaging to the esophagus or stomach. Respondents further argued there was no evidence of fraud or intentional tort to support Bryant's second cause of action.

Bryant presented no documents or other evidence from any physician or medical expert supporting his allegations that administration of medication in crushed form violated the medical standard of care or caused any of his ailments.

*The Trial Court's Rulings on Other Motions*

On April 19, the trial court partially granted respondents' motion for judgment on the pleadings – it granted the motion as to Cate and Kelso, and as to the punitive damage claim, but denied it as to the remaining defendants.

Thereafter, Bryant filed a motion for leave to amend the FAC to “correct mistakes” in the drafting and wording of the complaint, and in response to the trial court's ruling on the motion for judgment on the pleadings. Bryant sought to add a claim for punitive damages, to possibly add the CDCR as a defendant, and to add causes of action for failure to obtain informed consent and failure to summon needed emergency medical care. Attached to the motion were six proposed amended and additional causes of action consisting of (1) personal injury, (2) professional negligence, (3) failure to obtain informed consent, (4) fraud, (5) intentional infliction of emotional distress, and (6) failure to summon medical care for a prisoner, as well as an exemplary damages attachment. Respondents filed an opposition to the motion, which is not part of the appellate record.

On May 11, Bryant filed a motion for court-appointed expert pursuant to Evidence Code section 730, on the grounds that (1) he is indigent and (2) respondents filed a motion for summary judgment based on Thiel's declaration which Bryant, as a lay person, could not rebut or understand. He asserted that, in the interests of justice and fundamental fairness, he required the appointment of an expert witness to oppose the

summary judgment motion and prepare for trial. Bryant admitted he needed an expert witness to rebut Thiel's declaration and, without it, respondents would be entitled to judgment as a matter of law. Bryant asserted the court had appointed expert witnesses for other indigent plaintiffs in civil actions, and asked the court to appoint one for him under Evidence Code sections 730 and 731. Respondents filed an opposition to the motion, which is not part of the appellate record.

At a June 12 hearing, the trial court denied Bryant's motions for a court-appointed expert and for leave to amend.

#### *Summary Judgment Hearing*

Hearing on the summary judgment motion was held on June 28. The trial court granted the motion, finding respondents met their burden of showing there is no triable issue of fact on the issues of negligence, causation or intentional tortious behavior towards Bryant. The trial court vacated all scheduled hearing dates and the trial date of July 30, and dismissed the matter with prejudice. Judgment was entered on August 6.

Two days before the summary judgment hearing, on June 26, Bryant served on the court and parties a motion for leave to file another motion to compel documents, with a hearing date of July 20.<sup>5</sup> Bryant asked the trial court to reconsider and rehear his prior motions to compel, as Thiel's declaration showed respondents had committed "extrinsic fraud under oath" in their discovery responses and answer to the FAC. In an August 7 minute order, the trial court noted Bryant had filed numerous matters with the court regarding "motions to compel, points and authorities, etc." The trial court stated that by granting the summary judgment motion on June 28, the case had ended.

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<sup>5</sup> The register of action does not show that this document was filed with the trial court.

## DISCUSSION

Bryant raises the following contentions in this appeal: (1) the trial court abused its discretion when it denied his two motions to compel; (2) the trial court abused its discretion in denying his request for a court-appointed and funded expert witness; (3) the trial court abused its discretion in denying him leave to amend his complaint; (4) the trial court erred in granting summary judgment because Thiel is incompetent to render an opinion in this matter and there are triable issues of fact; (5) the trial court abused its discretion in denying him leave to file another motion to compel discovery; and (6) the trial court abused its discretion in failing to consider or provide him any remedy or relief for the deliberate bad faith obstruction of his court access by KVSP prison officials.

As a threshold matter, we note that in conducting our appellate review, we presume that a judgment or order of a lower court is correct. “All intendments and presumptions are indulged to support [the judgment] on matters as to which the record is silent, and error must be affirmatively shown.” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; see also *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) Therefore, a party challenging a judgment or an appealable order “has the burden of showing reversible error by an adequate record.” (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574.)

“A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be affirmed.” (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416 (*Gee*); see also *Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187; *Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502 (*Hernandez*) [record lacked copies of motion and opposition; issue resolved against appellant due to inadequate record].) Thus, where the appellant fails to provide an adequate record as to any issue the appellant has raised on appeal, the issue must be resolved against the appellant. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295–1296.)

Though he is representing himself on appeal, Bryant is not exempt from compliance with the rule that an appellant must provide an adequate record. “Under the law, a party may choose to act as his or her own attorney. [Citations.] “[S]uch a party is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys.”” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246–1247.) Thus, a self-represented litigant is not entitled to lenient treatment. (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984–985.)

With these principles in mind, we turn to Bryant’s contentions.

#### *The Motions to Compel*

Bryant first contends the trial court abused its discretion in denying his December 27, 2011 and April 12, 2012 motions to compel. Bryant points to the principle that a summary judgment motion should not be granted when the opposing party has been thwarted in the attempt to obtain evidence that might create an issue of material fact. (*Krantz v. BT Visual Images, L.L.C.* (2001) 89 Cal.App.4th 164, 174.) From this, he argues respondents’ failure to provide him with documents regarding CDCR’s official policy or to confirm that they had obtained FDA approval to change the administration direction of the drugs as required by federal law should have precluded them from asserting in their summary judgment motion that the CDCR policy was an acceptable standard of care of physicians in the community.

Bryant’s December 27, 2011 motion to compel was properly denied because he failed to comply with rule 3.1345, which requires the filing of a separate statement with motions to compel further discovery responses. (Rule 3.1345(a).) Bryant does not contend otherwise.

With respect to his second motion to compel, respondents’ opposition to the motion is not included in the clerk’s transcript, as Bryant did not designate it for inclusion. Without the opposition, “we cannot review the basis of the [trial] court’s decision” and the issue must be resolved against Bryant. (*Hernandez, supra*, 78

Cal.App.4th at p. 502.) The reasoning of *Hernandez* applies here, as we do not know what issues respondents raised in their opposition to the motion to compel. This is particularly true in light of respondents' contention on appeal that the trial court did not err because Bryant's motion was untimely under Code of Civil Procedure section 2031.310, subdivision (c). Without the opposition, we cannot evaluate the merits of this claim. The inadequate record precludes relief to Bryant on appeal.

*Motion for Court-Appointed Expert*

Bryant contends the trial court abused its discretion when it denied his motion for a court-appointed expert witness under Evidence Code sections 730<sup>6</sup> and 731 to assist with his opposition to the summary judgment motion and to testify at trial, which he filed after respondents filed their summary judgment motion. The trial court did not err in denying this motion.

First, we note that respondents' opposition to the motion is not in the appellate record. Without the opposition, we cannot review Bryant's claim of error. (*Hernandez, supra*, 78 Cal.App.4th at p. 502.) But even were we to consider Bryant's contention on its merits, there is no abuse of discretion. An indigent prisoner "who is a defendant in a bona fide civil action threatening his or her personal or property interests has a federal and state constitutional right, as a matter of due process and equal protection, of meaningful access to the courts in order to present a defense. [Citations.] A prisoner also has a statutory right under Penal Code section 2601, subdivision (e) to initiate civil

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<sup>6</sup> Evidence Code section 730 provides, in pertinent part: "When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion . . . may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required. The court may fix the compensation for these services, if any, rendered by any person appointed under this section, in addition to any service as a witness, at the amount as seems reasonable to the court."

actions. In the case of an indigent prisoner initiating a bona fide civil action, this statutory right carries with it a right of meaningful access to the courts to prosecute the action.” (*Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 792, fn. omitted (*Wantuch*)). Therefore, a “prisoner may not be deprived, by his or her inmate status, of meaningful access to the civil courts if the prisoner is both indigent and a party to a bona fide civil action threatening his or her personal or property interests.” (*Id.* at p. 792.) However, “[m]eaningful access to the courts by an indigent prisoner ‘does not necessarily mandate a particular remedy’ to secure access.” (*Ibid.*)

The trial court determines the appropriate remedy to secure access in the exercise of its sound discretion. (*Wantuch, supra*, 32 Cal.App.4th at p. 794.) We will not overturn this exercise of discretion on appeal “unless it appears that there has been a miscarriage of justice.” (*Ibid.*) There was no miscarriage of justice here.

Assuming Bryant is entitled to these access rights, the trial court had no authority to order an expert appointed on Bryant’s behalf to be paid for by the state. It is well established that a trial court “do[es] not possess the power to require expenditure of public funds” for the purpose of providing appointed counsel to indigent prisoners in civil matters. (*Jara v. Municipal Court* (1978) 21 Cal.3d 181, 184.) If the trial court does not possess the power to require that public funds be expended for the appointment of counsel, it similarly does not have the power to require that those funds be expended on the appointment of an expert witness.

Bryant contends the trial court had such power under Evidence Code section 731, and asserts that another judge provided funding for a medical expert witness for a KSVP inmate in another case. As to criminal actions, Evidence Code section 731, subdivision (a) provides that “the compensation fixed under Section 730 shall be a charge against the county in which such action or proceeding is pending and shall be paid out of the treasury of such county on order of the court.” But a different rule may apply in civil actions. “In any county in which the board of supervisors so provides, the compensation fixed under

Section 730 for medical experts appointed in civil actions ... shall be a charge against and paid out of the treasury of such county on order of the court.” (Evid. Code, § 731, subd. (b).) In all other civil actions, “the compensation fixed under Section 730 shall, in the first instance, be apportioned and charged to the several parties in a proportion as the court may determine and may thereafter be taxed and allowed in like manner as other costs.” (Evid. Code, § 731, subd. (c); see Code Civ. Proc., § 1033.5, subd. (a)(8) [allowable costs include “[f]ees of expert witnesses ordered by the court”].)

Bryant has not shown that the Kern County Board of Supervisors has provided for the payment of medical experts in civil actions under Evidence Code section 730. Accordingly, he would be expected to pay for any court-appointed expert himself. That another inmate may have been provided a court-funded expert witness has no bearing here, since Bryant has not provided any evidence concerning that appointment.

In sum, the trial court did not abuse its discretion when it denied this request.

*Motion for Leave to Amend*

Bryant contends the trial court abused its discretion when, on June 12, it denied his motion for leave to amend the FAC. Bryant asserts that the trial court denied his prior attempts to amend the FAC because they did not comply with Rule 3.1324. He argues this motion to amend was in complete compliance with this rule, as it included as exhibits those causes of action he wanted to remove and those he wanted to add, and if the proposed amendments were inadequate, the court should have granted him leave to amend. Respondents argue there was no abuse of discretion, as the motion was filed late in the proceedings, and Bryant had not satisfied the mandatory requirement of completing a government claim for the new defendants and claims.

Once again, we do not have an adequate record to review Bryant’s claim because respondents’ opposition to the motion is not part of the appellate record. Without the opposition, we cannot tell the bases for the trial court’s decision to deny the motion and determine whether the trial court abused its discretion. Accordingly, this claim fails.

### *The Summary Judgment Motion*

We review an order granting summary judgment de novo. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 860 (*Aguilar*); *Scheidig v. Dinwiddie Construction Co.* (1999) 69 Cal.App.4th 64, 69.) A defendant moving for summary judgment has the initial burden to show that a cause of action lacks merit because one or more of its elements cannot be established or it is subject to an affirmative defense. (Code Civ. Proc., § 437c, subd. (o); *Aguilar, supra*, at p. 850.) If the moving papers make a prima facie showing that justifies a judgment in the defendant's favor, the burden shifts to the plaintiff to show the existence of a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar, supra*, at p. 849.) We review the evidence in the light most favorable to Bryant as the party opposing summary judgment, and construe his submissions liberally while we strictly construe respondents' showing. (See *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768-769.) "However, to defeat the motion for summary judgment, the plaintiff must show "specific facts," and cannot rely upon the allegations of the pleadings." (*Horn v. Cushman & Wakefield Western, Inc.* (1999) 72 Cal.App.4th 798, 805.)

"The standard of care in a medical malpractice case requires that medical service providers exercise that reasonable degree of skill, knowledge and care ordinarily possessed and exercised by members of their profession under similar circumstances. The standard of care against which the acts of a medical practitioner [is] to be measured is a matter peculiarly within the knowledge of experts; it presents the basic issue in a malpractice action and can only be proved by their testimony, unless the conduct required by the particular circumstances is within the common knowledge of laymen." (*Alef v. Alta Bates Hospital* (1992) 5 Cal.App.4th 208, 215; accord, *Barris v. County of Los Angeles* (1999) 20 Cal.4th 101, 108, fn. 1.) "When a defendant moves for summary judgment and supports his motion with expert declarations that his conduct fell within the community standard of care, he is entitled to summary judgment unless the plaintiff

comes forward with conflicting expert evidence.” (*Munro v. Regents of University of California* (1989) 215 Cal.App.3d 977, 984-985 (*Munro*).

In both of Bryant’s causes of action, one for medical negligence and the other for “personal injury,” Bryant admitted in his FAC that respondents were acting in accordance with the CDCR’s established policy for administering medication in crushed form. Thus, to prevail on these claims, Bryant must establish, through specific evidence, that CDCR’s medical policy authorizing the administration of his medication in crushed form was not medically sound and inconsistent with the standard of care for physicians. As respondents point out, the dispositive issue is whether they were negligent because they followed the policy.

Here, respondents’ expert, Thiel, explained that he is familiar with the CDCR policy for medication management, why the policy was adopted, and that administering Bryant’s medications in crushed form was consistent with that policy. Thiel opined this administration was an acceptable medical practice consistent with the standard of care, does not present an increased risk to the patient’s health, and is not a cause or contributing factor to internal bleeding or hemorrhaging to the esophagus or stomach. Because Bryant offered no expert declaration in opposition to the motion for summary judgment, no triable issue of fact was presented regarding respondents’ compliance with the relevant medical standard of care. The only evidence was provided by respondents’ expert. (See *Munro, supra*, 215 Cal.App.3d at p. 984.) The summary judgment for the respondents must therefore be affirmed.<sup>7</sup> (*Ibid.*)

On appeal, Bryant contends that during the hearing on the summary judgment motion, he objected to the trial court considering Thiel’s declaration. He argues the trial

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<sup>7</sup> Summary judgment was granted properly on Bryant’s causes of action for medical negligence and personal injury, because they are based on the same pattern of allegedly negligent conduct by respondents.

court should have disregarded Thiel's declaration because he is not an expert or specialist in gastroenterology, and his opinion contradicts warning labels on the Federal Drug Administration's website that state that abdominal pain, gastrointestinal bleeding, and gastrointestinal disorders are potential side effects of those medications. Bryant asks us to take judicial notice of the warning labels. He asserts he should prevail on appeal because he has proven general causation pertaining to taking these drugs "crushed and floated" has the capacity to cause the harm alleged in the complaint.

There is nothing in the appellate record before us, however, that shows Bryant raised this challenge in the trial court. Bryant has not provided us with the reporter's transcript of the summary judgment hearing and therefore we cannot determine whether an objection was made or the trial court's response to any such objection. Bryant did not submit an expert declaration of his own or any other admissible evidence to controvert Thiel's declaration.

Even were we to consider Bryant's claims, they fail. That Thiel is not a gastroenterologist does not preclude him from testifying about the standard of care, since a physician testifying as an expert witness need not be a specialist so long as he has knowledge of the standard of care in any given field. (*Evans v. Ohanesian* (1974) 39 Cal.App.3d 121, 128-129.) While Bryant asks us to take judicial notice of the FDA warning labels, those documents were not before the trial court in ruling on the summary judgment motion, and therefore cannot be included as part of the record on appeal. (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1 (*Doers*)). We recognize that we may take judicial notice of matters not before the trial court specified in Evidence Code section 452, however, we need not give effect to such evidence. (*Doers, supra*, 23 Cal.3d at p. 184, fn 1.) Although the warning labels Bryant quotes may state that Bryant's symptoms are potential side effects of his medications, they do not establish that administering those medications crushed instead of whole could cause his

symptoms. For this reason, the warning labels do not establish Thiel's incompetency as an expert witness.

This is not a case where the alleged professional negligence involves *res ipsa loquitur* or a matter obvious to laymen. (Cf. *Flowers v. Torrance Memorial Hosp. Med. Center* (1994) 8 Cal.4th 992, 1001 [classic example of common knowledge exception to expert opinion requirement is an X-ray showing a scalpel left in a surgery patient's body].) Bryant's citations to FDA warning labels are inadequate to create a triable issue of material fact sufficient to conflict with Thiel's testimony regarding the applicable standard of care.

In asserting that the trial court erred in granting the motion on its merits, Bryant raises a host of arguments, asserting there are triable issues of fact because (1) respondents clearly foresaw that inmates could be harmed by the CDCR policy, yet implemented it anyway; (2) the risks of taking the medications in crushed form were concealed from him and respondents did not obtain his informed consent; (3) his bleeding problem did not begin until he took the medications in crushed form; (4) when he complained of bleeding, the prison doctor should have referred him to a gastroenterologist or changed the way the drugs were administered; and (5) respondents deliberately failed to follow the FDA-approved manufacturers' directions with respect to these medications. Bryant, however, presented no admissible evidence to support these claims, most of which are not alleged in the FAC, or in opposition to the motion. More importantly, he did not present expert testimony to support his claim that respondents acted below the standard of care or that administering his medications in crushed form caused his symptoms. In sum, Bryant has not shown on appeal that the entry of summary judgment for respondents was improper.

*The June 2012 Motion to Compel*

Bryant contends the trial court erred when it denied his June 2012 motion to compel. Bryant asserts he filed the motion on June 26, and the trial court abused its

discretion in denying it because none of the information provided in support of respondents' summary judgment motion was disclosed in discovery. Bryant has not shown error. First, the register of action does not show that this motion was ever filed with the trial court. Even if it were, however, the trial court did not abuse its discretion in denying it because the case was resolved against him on summary judgment before any hearing on the motion was held.

#### *Court Access*

Bryant argues the trial court abused its discretion in failing to consider or provide him with any remedy or relief for “the deliberate bad faith obstruction of his court access by KVSP prison officials to damage his case.” He asserts that prison officials disrupted his access to the court from February 2012 to January 2013 by restricting his access to the prison law library and threatening to assault him if he went there.<sup>8</sup> Bryant claims he attempted to explain to the trial court in opposition to the summary judgment motion and his motion for reconsideration how KVSP prison officials were conspiring to obstruct his court access in this case. He cites to a declaration of a KSVP law library clerk, an inmate, signed on July 28, who claimed that his supervisor in the law library, Robin Tinsley, lied to Bryant by claiming the photocopy machine did not work and told others she was going to withhold his legal documents so he could not timely file them. Bryant asserts that if his motions to amend and compel discovery or his opposition to the summary judgment motion were inadequate or not in compliance with court rules, it was due to the continuous obstruction of prison officials.

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<sup>8</sup> Bryant has attached to his opening brief two declarations from an inmate stating that prison officials told him to assault Bryant. There is nothing to suggest these documents were presented to the trial court. “[D]ocuments not before the trial court cannot be included as a part of the record on appeal.” (*Doers, supra*, 23 Cal.3d at p. 184, fn 1.)

We do not have a sufficient record to review Bryant's claim. According to the register of action, Bryant filed a motion for an extension of time to serve his legal papers due to the deliberate bad faith obstruction of his court access by KVSP prison officials on April 6. At a May 15 hearing, the trial court denied the motion. The motion is not part of the appellate record. On June 22, respondents filed a supplemental declaration of R. Tinsley, who presumably is the prison law library supervisor, in support of their objection to any continuance of the summary judgment hearing, which is not part of the appellate record. Bryant's opposition to the summary judgment motion was not filed<sup>9</sup> and we do not have the reporter's transcript of the June 28 summary judgment hearing to determine whether Bryant raised the issue of obstruction at that hearing or any ruling by the trial court on that issue. Without any of these documents, we cannot review Bryant's claim that the trial court erred in failing to provide him with any relief.

#### **DISPOSITION**

The judgment is affirmed.

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<sup>9</sup> There is a purported copy of Bryant's opposition to the summary judgment motion in the clerk's transcript, which the trial court apparently did not accept for filing. The opposition does not raise the issue of obstruction.