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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION

KELLI THOMAS,

Plaintiff,

v.

SAMPATH SURYADEVARA, M.D.;
 SHELLY KRUSE, M.D.; ERNEST REEVES,
 M.D.; LORAIN GOODWIN, M.D.;
 CHARLES UGWU-OJU, M.D.; MADERA
 COMMUNITY HOSPITAL, a California
 Corporation,

Defendants.

Case No. 1:06-CV-00215-OWW

**ORDER ON DEFENDANT CHARLES
 UGWU-OJU, M.D.'S MOTIONS IN
 LIMINE NOS. 1 THROUGH 11**

ACTION FILED: February 24, 2006
 TRIAL DATE: September 1, 2009

On August 17, 2009, the matter of Defendant Charles Ugwu-Oju, M.D.'s ("Defendant") Motions in Limine Nos. 1 through 11 came on for hearing in Department 3 of the above-entitled court. Jennifer B. MikoLevine of the law firm of Bingham McCutchen LLP appeared on behalf of Plaintiff Kelli Thomas ("Plaintiff"). William M. White and Sherrie M. Flynn of the law firm of Baker Manock & Jensen, PC appeared on behalf of Defendant.

After full consideration of the written and oral submissions of the parties

IT IS HEREBY ORDERED that

1. Defendant's Motion in Limine No. 1 to Preclude Reference to Insurance is **GRANTED** and Plaintiff is prohibited from introducing testimony, documents, or other

1 evidentiary materials that make reference to or would suggest that Defendant has medical
2 malpractice insurance or that Defendant's witnesses have been hired or contacted by her
3 insurance company. Plaintiff's counsel shall instruct Plaintiff's witnesses accordingly.

4 2. Defendant's Motion in Limine No. 2 to Preclude Any Reference During
5 Trial to the \$250,000.00 Limit on Non-Economic Damages is **GRANTED** and Plaintiff is
6 prohibited from introducing at trial testimony, documents, or other evidentiary materials
7 that make reference to, or would suggest, that California Civil Code section 3333.2,
8 subdivision (b) provides that in any action for injury against a health care provider based
9 on professional negligence, the injured plaintiff shall not be entitled to recover non-
10 economic damages in excess of \$250,000.00. Plaintiff's counsel shall instruct Plaintiff's
11 witnesses accordingly;

12 3. Defendant's Motion in Limine No. 3 to Preclude Reference to Any Other
13 Medical Malpractice Action is **GRANTED**, without prejudice. Unless and until such time
14 that Plaintiff is able to show some permissible basis for allowing such reference, Plaintiff is
15 prohibited from introducing testimony or other evidence regarding prior or current medical
16 malpractice cases involving Defendant. Plaintiff's counsel shall instruct Plaintiff's
17 witnesses accordingly;

18 4. Defendant's Motion in Limine No. 4 to Preclude Evidence of Reputation or
19 Specific Past Instances of Conduct is **GRANTED** and Plaintiff is prohibited from
20 introducing testimony or offering other evidence relating to the Defendant's reputation
21 and/or specific instances of prior conduct involving third parties. Plaintiff's counsel shall
22 instruct Plaintiff's witnesses accordingly;

23 5. Defendant's Motion in Limine No. 5 to Preclude Reference During Trial to
24 Personal Preferences of Treatment of Expert Medical Witnesses is **GRANTED** and
25 Plaintiff is prohibited from introducing testimony or other evidence regarding individual
26 personal preferences for care and treatment of designated experts that could have been used
27 in the care and treatment of Plaintiff. Plaintiff's counsel shall instruct Plaintiff's witnesses
28 accordingly;

1 6. Defendant's Motion in Limine No. 6 to Exclude Expert Opinions and
2 Conclusions Not Included in an Expert Report or Deposition is **GRANTED** and Plaintiff
3 and her experts are precluded from mentioning or conveying to the jury any expert
4 opinions and conclusions not previously testified to in an expert report or in a deposition,
5 excepting that Plaintiff's expert, Dr. Anne Foster-Rosales may testify to the opinions
6 disclosed in her declaration submitted in support of Plaintiff's opposition to Defendant's
7 motion for summary judgment. Plaintiff's counsel shall instruct Plaintiff's witnesses
8 accordingly;

9 7. Defendant's Motion in Limine No. 7 to Preclude Plaintiff's Claim as an
10 Abused Spouse is **GRANTED** and Plaintiff and Plaintiff's attorney are precluded from
11 claiming, or depicting the Plaintiff as being an abused spouse. Further, Defendant may
12 question Plaintiff regarding the fact that she was incarcerated on a felony conviction, only
13 as to court, date of conviction, and crime, but is precluded from offering evidence or
14 questioning Plaintiff regarding the specific crime Plaintiff committed or the details thereof;
15 Plaintiff's counsel and Defendant's counsel shall instruct their witnesses accordingly;

16 8. Defendant's Motion in Limine No. 8 to Exclude Hearsay Statements by
17 Kathy Hill is **DENIED** to the extent that Plaintiff may offer the hearsay statements for the
18 limited purposes of showing knowledge and/or notice or bias, but may not offer the
19 statements for the truth of the matter asserted;

20 9. Defendant's Motion in Limine No. 9 to Preclude Non-Disclosed Witnesses
21 From Testifying at Trial and to Preclude Reliance on Any Documents or Hearsay Opinions
22 From Such Witnesses is **GRANTED** and Plaintiff is prohibited from introducing at trial
23 witnesses that have not been disclosed to Defendant during pre-trial discovery. Plaintiff's
24 counsel shall instruct their witnesses accordingly;

25 10. Defendant's Motion in Limine No. 10 to Preclude Damage Claims Plaintiff
26 Cannot Causally Support With Expert Testimony is **GRANTED** and Plaintiff may only
27 testify about things observable to and within a layperson's knowledge, such as her own
28 sensations related to the surgery, but may not opine on the cause of her alleged injuries.

1 Plaintiff's counsel shall instruct their witnesses accordingly;

2 11. Defendant's Motion in Limine No. 11 to Preclude Evidence Related to
3 Plaintiff's Claims or Contentions That Defendant Caused Plaintiff Injury or Damage by
4 Prescribing Premarin is **GRANTED** and Plaintiff may not offer evidence or make
5 reference to Premarin as bearing on the standard of care or causation. However, parties
6 may introduce Defendant's prescription of Premarin for other purposes, including but not
7 limited to demonstrating Defendant's knowledge of Plaintiff's post-surgery menopausal
8 condition. Plaintiff's counsel shall instruct Plaintiff's witnesses accordingly; and

9 12. Defendant's Objections to Plaintiff's Rule 26(a)(3) Pretrial Disclosures are
10 **SUSTAINED** and Plaintiff may not offer deposition testimony set forth in Plaintiff's Rule
11 26(a)(3) Pretrial Disclosures as evidence at trial except for the limited purposes of
12 contradiction or impeachment of witnesses, unless and until Plaintiff makes a showing of
13 unavailability of the witness or some other permitted use of such testimony at trial pursuant
14 to the Federal Rules of Civil Procedure and Evidence and, if and when Plaintiff makes
15 such showing, Defendant may introduce other parts of the deposition testimony of Sampath
16 Suryadevara, M.D. in rebuttal, as designated by Defendant on or before August 18, 2009.

17 IT IS SO ORDERED.

18 **Dated:** August 29, 2009

19 /s/ Oliver W. Wanger
20 UNITED STATES DISTRICT JUDGE