

1 At 8:47 a.m., Plaintiff refused to monitor the baby with belts. (CHMC pgs. 89,130.) Dr.  
2 Su stated it was okay to monitor the fetal heart tones with doppler as Plaintiff refused to monitor  
3 the baby on the electronic fetal monitors. (CHMC pgs. 89,130.)

4 At 8:53 a.m., DR. TILLEY assessed Plaintiff at her bedside. She reported that her pain  
5 was a 10 out of 10, sharp, constant pain in her back. Pain medication had been given, but no  
6 relief was obtained. It was not clear whether the pain was related to contractions. (CHMC pgs.  
7 89,130.)

8 At 9:11 a.m., DR. TILLEY ordered Plaintiff to be admitted to the antepartum unit. He  
9 also ordered Morphine 2 mgs every two hours as needed for severe pain, and Zofran 8 mg IV  
10 every 8 hours as needed for nausea. He also ordered serial cervical and abdominal examinations  
11 and requested her prenatal records. (CHMC pgs. 79, 89,130.) He noted that Plaintiff had been  
12 admitted to the hospital with the diagnosis of inability to tolerate by mouth and abdominal pain  
13 of uncertain etiology. The plan was for IV fluids, symptomatic treatment and additional  
14 evaluation of the abdominal pain, including serial abdominal exams and imaging. (CHMC pg.  
15 105, 130, 246.)

16 DR. TILLEY performed a baseline abdominal exam that showed diminished bowel  
17 sounds, general abdominal and uterine tenderness, and a moderately tense uterus, but no vaginal  
18 bleeding. (CHMC pg. 105, 130, 246.) DR. TILLEY ordered a formal ultrasound which found  
19 no fetal cardiac activity and placental abruption.(CHMC pg. 78, 105.)

### 20 **III. CONTENTIONS**

#### 21 **A. Plaintiff's Contentions**

22 The crux of plaintiff SHIRLEY DOTSON's allegations against the various defendants  
23 is that they negligently failed to make the timely diagnosis of placental abruption and failed to  
24 provide the timely and appropriate care to prevent fetal demise. Further Plaintiff SHIRLEY  
25 DOTSON alleges that DR. TILLEY failed to appropriate supervise the care and treatment  
26 provided by the resident physicians, and that DR. TILLEY'S care and treatment of SHIRLEY  
27 DOTSON fell below the standard of care in the community. Plaintiff further contends that DR.  
28 TILLEY'S negligence caused or significantly contributed to the death of Plaintiff SHIRLEY

1 DOTSON's fetus.

2 **B. Defendant's Contentions**

3 DR. TILLEY contends that his care and treatment comported with the standard of care  
4 applicable to patients such as SHIRLEY DOTSON. Based upon the information reported to  
5 DR. TILLEY regarding Plaintiff by the resident physicians, the care and treatment provided by  
6 DR. TILLEY was within the standard of care for an attending physician in like circumstances.  
7 DR. TILLEY therefore contends that no breach in the standard of care by DR. TILLEY caused  
8 the injuries claimed by plaintiff in this claim against Defendants.

9 **IV. SUMMARY JUDGMENT MUST BE GRANTED AS A MATTER OF LAW**  
10 **WHEN NO TRIABLE ISSUE AS TO ANY MATERIAL FACT EXISTS**

11 Code of Civil Procedure §437c(a) provides that a party may bring a motion for summary  
12 judgment where the action has no merit or there is no defense thereto. The motion shall be  
13 granted if all the papers submitted show there is no triable issue as to any material fact and that  
14 the moving party is entitled to judgment as a matter of law. Subsection (o) states:

15 A defendant . . . has met his or her burden of showing that a cause  
16 of action has no merit if the party has shown that one or more  
17 element of the cause of action, even if not separately pled, cannot  
18 be established or that there is a complete defense to that cause of  
19 action. Once the defendant . . . has met that burden, the burden  
20 shifts to the plaintiff . . . to show that a triable issue of one or more  
21 material facts exist as to that cause of action. . . . The plaintiff may  
22 not rely upon the mere allegations or denials of its pleadings to  
23 show that a triable issue of fact exists, but, instead, shall set forth  
24 the specific fact showing that a triable issue of material fact exists  
25 as to that cause of action or defense thereto. C.C.P. §437c(o)(2).  
26 Once defendant has shown that one or more elements of a cause of  
27 action in a complaint cannot be established, the evidentiary burden  
28 shifts to the plaintiff who must produce prima facie evidence on  
each element of every cause of action asserted. If plaintiff fails to  
produce this evidence, summary judgment in favor of defendant is  
proper. Union Bank v. Superior Court (1995) 31 Cal.App.4th 573,  
583-584.

25 Although summary judgment has long been considered a "drastic" remedy because it  
26 dispenses with a need for a full trial on the merits, recent cases have given favorable treatment  
27 to the motion, particularly in light of the 1992 and 1993 amendments to Code of Civil Procedure  
28 §437c. (Union Bank v. Superior Court, (1995), 31 Cal.App.4th 573.)