

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Jacob Amrani,)	2:12-cv-2583 (JWS)
)	
Plaintiff,)	ORDER FROM CHAMBERS
)	
vs.)	Findings of Fact and
)	Conclusions of Law
United States of America,)	
)	
Defendant.)	
_____)	

I. INTRODUCTION AND STATEMENT OF JURISDICTION

This Federal Tort Claims Act medical malpractice action was tried to the court from February 9, 2015, through February 20, 2015, in Phoenix Arizona. It is undisputed that the medical care, which is the subject of this action, was rendered by agents of the United States acting within the scope of their authority, and that the United States is responsible for its agents' actions. A timely administrative claim was filed. This court has subject matter jurisdiction pursuant to 28 U.S.C. § 2671, *et seq.* and 28 U.S.C. § 1346(b)(1)

Pursuant to Federal Rule of Civil Procedure 52, the court sets out its findings of fact and conclusions of law below.

II. FINDINGS OF FACT

At docket 202, the parties stipulated to and in reliance thereon the court finds the following facts:

1. All necessary conditions precedent to the filing of this action have been satisfied.
2. Defendant United States of America is a body politic and governmental entity that, at all times material hereto, through its Department of Veterans Affairs (“VA”), owned and operated the Phoenix Veterans Affairs Health Care System (hereinafter, “VA Hospital”), located in Phoenix, Arizona.
3. At all times material hereto, defendant United States of America provided health care and hospital and medical services to eligible members of the public at the VA Hospital.
4. Dr. Christopher Cranford (“Dr. Cranford”) was at all times material hereto, a health care provider, licensed and authorized to practice medicine and orthopedic surgery in the State of Arizona.
5. At all times material hereto, when Dr. Cranford provided care and treatment to plaintiff Dr. Jacob Amrani (“Dr. Amrani”), he was an employee and/or agent of defendant United States of America.
6. Further, at all times material hereto, Dr. Cranford was an employee of defendant United States of America or was acting on behalf of the VA Hospital, a federal agency, in an official capacity, temporarily or permanently, in the service of the United States, and was acting within the scope of his employment or office and for the

benefit of said defendant at the time he provided medical care, services, and treatment to Dr. Amrani alleged hereafter.

7. Defendant United States of America is liable for the acts and omissions of Dr. Cranford alleged hereafter.

8. Dr. Cranford's acts and omissions are imputed to the defendant as a matter of law.

9. On July 7, 2011, Dr. Amrani consulted his primary care physician, Dr. William Gabbert ("Dr. Gabbert"), a VA employee at the VA clinic in Anthem, Arizona. Dr. Gabbert ordered an MRI of the right shoulder.

10. On August 5, 2011, Dr. Amrani underwent an MRI of the right shoulder at the VA facility in Anthem, Arizona.

11. On August 9, 2011, Dr. Gabbert discussed the MRI report of the shoulder with Dr. Amrani.

12. Dr. Amrani was treated by Dr. Cranford at the VA Hospital on October 20, 2011, November 10, 2011, November 17, 2011, December 1, 2011, January 5, 2012, and February 23, 2012.

13. During the surgery on November 17, 2011, Dr. Cranford repaired the right rotator cuff and removed a mass from the same shoulder.

14. Dr. Cranford knew from the pre-operative evaluation that the radiologist had diagnosed Dr. Amrani with a soft tissue mass ("the mass") in his right shoulder that Dr. Cranford interpreted as joint debris and documented in the medical records as "some fluid collection laterally likely pseudo capsule".

15. During the procedure, Dr. Cranford chose to surgically remove the right shoulder mass.

16. At all times material hereto the mass was benign.

17. Dr. Cranford could have chosen to biopsy the mass.

18. Dr. Cranford knew or should have known that if the mass was removed vital nerves could be damaged and the function of Dr. Amrani's arm could be critically impaired.

19. At all times material hereto, Dr. Cranford knew or should have known that:

a) Dr. Amrani was a medical doctor and board certified orthopedic surgeon with subspecialty training in spine surgery;

b) Dr. Amrani devoted his medical practice to spine surgery and orthopedic injuries relating to the spine;

c) A spine surgeon needs to use his arms in performing spine surgery;

d) It was foreseeable that if he surgically removed the mass he could damage the axillary nerve and harm Dr. Amrani;

e) It was foreseeable that if he damaged Dr. Amrani's axillary nerve that Dr. Amrani would have difficulty using his arm; and

f) It was foreseeable that if he damaged Dr. Amrani's axillary nerve that Dr. Amrani would have functional limitations that would impair activities of daily living.

20. Dr. Cranford had a duty to timely evaluate Dr. Amrani to determine whether a deficit existed or refer Dr. Amrani for such an evaluation.

21. Dr. Cranford knew or should have known that if damage had occurred to Dr. Amrani's axillary nerve, time was of the essence.

22. Dr. Cranford was required to examine, evaluate, assess, diagnose, care for, manage, and operate on and treat Dr. Amrani with the care, skill, learning, and diligence expected of a reasonable and prudent healthcare provider in the profession or class to which each such physician belongs within the State, in the same or similar circumstances.

Based on the court's evaluation of the evidence presented at trial, the court also finds that the following facts have been established:

23. During the surgery on November 17, 2011, Dr. Cranford damaged that portion of the axillary nerve which enervates the middle and anterior deltoid muscles of Dr. Amrani's right shoulder.

24. Dr. Amrani's right anterior deltoid muscle has suffered very substantial and permanent atrophy as a result of damage to the nerve tissue which enervates that muscle.

25. The atrophy of the right anterior deltoid muscle is visible upon viewing Dr. Amrani's right shoulder.

26. After considering all of the expert testimony offered on the extent of the damage to the portion of the axillary nerve which enervates the right middle and anterior deltoid muscles, the court concludes that the nerve was compressed, stretched, or partially severed to such an extent that Dr. Amrani has suffered substantial damage to the nerve which is permanent and not reparable.

27. Enervation of the middle deltoid muscle has recovered to a level approaching its condition prior to surgery.

28. Enervation of the anterior deltoid muscle is 10% to not more than 30% of its condition prior to surgery and will not improve.

29. Born on July 1, 1958, Dr. Amrani graduated from Cornell University with a B.S. in chemistry and biochemistry and graduated from the New York University School of Medicine. Dr. Amrani, who became interested in the field of orthopedics during medical school, completed a fellowship in orthopedics at the University of Vermont. Dr. Amrani then went to Emory University where he completed a fellowship in spine surgery.

30. Dr. Amrani was board certified in orthopedic surgery in 1993, and subsequently re-certified. His most recent re-certification was in March of 2012.

31. Dr. Amrani testified that during re-certification, because he has a sub-specialty in spinal surgery, ninety percent of the questions on the re-certification exam are related to the spine and only ten percent to general orthopedics. The court does not believe that testimony. Rather, the court believes the testimony of board certified orthopedic surgeons Dr. Cranford and Dr. Stephen Kay to the effect that when an orthopedic surgeon re-certifies as a sub-specialist, about forty percent of the questions on the exam relate to general orthopedics.

32. Following his fellowship, Dr. Amrani practiced in Tennessee for three years, and then moved to Wichita, Kansas, where both he and his then wife, a colorectal surgeon, could both find work. Dr. Amrani practiced spine surgery in Kansas until 2005.

33. Following a divorce from the colorectal surgeon, Dr. Amrani moved to Phoenix, Arizona, in January of 2006. He selected Phoenix because his two daughters were at that time students at Arizona State University. At the time of trial, neither daughter was living in Arizona.

34. Dr. Amrani has been an avid weight lifter for about 30 years. In December 2010, Dr. Amrani was bench-pressing. He was working up from 185 pounds. When he attempted to press 245 pounds he felt a snap in his right shoulder accompanied by pain in that shoulder.

35. Dr. Amrani did not seek medical care at the time of the injury. However, he avoided weight-lifting for a period of time, contenting himself with cardio workouts. He avoided upper body exercises for 2 or 3 weeks. He took Naproxin, an anti-inflammatory drug. Dr. Amrani retained a full range of motion in his right shoulder. He continued all of his former activities with the exception of bench-pressing. Of particular significance, Dr. Amrani continued to perform instrumented spine surgery after the injury. The last instrumented case Dr. Amrani performed prior to the surgery was performed the day before his own surgery.

36. Some time after the shoulder injury, Dr. Amrani noticed a lump on his right shoulder. The lump was not painful and did not interfere with his activities.

37. As a veteran, Dr. Amrani was eligible for and did obtain his own medical care through the VA. He regularly went to a VA facility in Anthem near his own clinic. The Anthem facility is part of the VA network headquartered in Prescott.

38. Dr. Amrani's primary care physician at the Anthem VA was Dr. Gabbert. Dr. Amrani saw Dr. Gabbert on July 7, 2011, for his annual physical. Dr. Amrani

complained of pain in his right shoulder upon strenuous exercise and pain at night if he lay on his right side. He did not complain to Dr. Gabbert about the lump. Dr. Gabbert noted that Dr. Amrani had lost 15 pounds since his previous physical. Dr. Gabbert noted that Dr. Amrani had a full range of motion in his right shoulder. Dr. Gabbert noted a negative “empty can sign,” and the presence of crepitus in the right shoulder.

39. Dr. Gabbert referred Dr. Amrani for an MRI, which was done at the Prescott VA on August 5, 2011. Dr. Sakowicz, a VA radiologist, interpreted the MRI to show a rotator cuff tear and the presence of a mass in the subdeltoid area which he considered most likely to be a pigmented villonodular synovitis (“PVNS”), a type of soft tissue tumor. The dimensions of the mass were 5.7 cm. x 2.2 cm. x 3.7 cm.

40. Dr. Gabbert called Dr. Amrani on August 9, 2011, to advise him that the MRI showed a large rotator cuff tear and a 5 centimeter mass under his deltoid. A disc copy of the MRI was mailed to and received by Dr. Amrani shortly thereafter.

41. Dr. Gabbert told Dr. Amrani that he would recommend a fee-based orthopedic referral so that Dr. Amrani could see an orthopedic surgeon in the Phoenix area.

42. Dr. Amrani had become acquainted with orthopedic surgeon Dr. Cranford at the Banner Thunderbird Hospital where they both had staff privileges. From time to time, Dr. Amrani also saw Dr. Cranford at a gym in the Villages at DC Ranch where they both worked out.

43. Dr. Cranford is an orthopedic surgeon. He graduated with a B.S. in chemistry from the College of Charleston, graduated from Northwestern University School of Medicine in Chicago, where he also completed an orthopedic residency, and

completed a fellowship in sports medicine at New England Baptist Hospital, which is associated with Tufts University. The Sports Medicine sub-specialty focuses on joint surgery, including shoulder, knee, and ankle surgery. Dr. Cranford was first board certified in orthopedic surgery in 2009, and has been re-certified since then. He considers himself an expert in shoulder surgery and presently does all the complex shoulder surgeries performed at the Phoenix VA Hospital.

44. In August 2011, Dr. Cranford was in private practice in Phoenix, but he also worked one day a week at the Phoenix VA, seeing patients and performing surgery.

45. On one occasion before Dr. Amrani had the rotator cuff surgery, Dr. Cranford saw Dr. Amrani at the gym and remarked that he had not seen Dr. Amrani at Banner Thunderbird for some time. Dr. Amrani responded that he had moved his surgeries to a Scottsdale hospital where he was doing more spinal stimulator implants. Dr. Amrani acknowledged that the implant procedures did not pay as well as instrumented surgeries, but also indicated that they were less stressful.

46. Not long after speaking to Dr. Gabbert about the MRI, Dr. Amrani saw Dr. Cranford at the gym and asked him if he would look at the MRI. Dr. Cranford said he would. Thereafter, Dr. Amrani brought the disc to the gym and gave it to Dr. Cranford. A couple of days after that, the two doctors spoke again at the gym. Dr. Cranford told Dr. Amrani that the MRI showed a massive rotator cuff tear which he thought he could repair.

47. During a conversation at the gym, after Dr. Cranford had reviewed the MRI, Dr. Amrani asked Dr. Cranford if he would remove the PVNS during the surgery.

Dr. Cranford responded that the mass was not PVNS, but fluid containing joint debris. He said he would remove it during surgery.

48. Initially, the VA indicated that Dr. Amrani must have his rotator cuff repair in Prescott, because the Phoenix VA was too busy to take on Prescott patients. The VA also denied the request for a fee-based surgery.

49. Dr. Amrani wanted Dr. Cranford to perform the surgery on a fee basis. However, because Dr. Cranford worked one day a week at the Phoenix VA, it was possible for him to do the surgery at the Phoenix VA without a fee-based referral. Eventually, the VA determined that Dr. Amrani could have Dr. Cranford perform the surgery at the Phoenix VA.

50. Dr. Cranford's notes of the preoperative examination are very brief. However, they do show that Dr. Cranford found a full range of motion in Dr. Amrani's right shoulder, with good strength, and the presence of crepitus. The preoperative notes do not mention excising the mass. The treatment plan simply states "submit for rotator cuff repair."

51. Dr. Cranford interpreted the mass shown on the MRI as a fluid-filled pseudocapsule containing joint debris. This conclusion was at odds with the conclusion of the radiologist. However, Dr. Cranford did not discuss the matter with the radiologist; Dr. Cranford did not request a biopsy of the mass; and Dr. Cranford did not consult with the musculoskeletal radiologist who was available at the VA.

52. In conversations with Dr. Amrani, Dr. Cranford said that he would remove the fluid-filled mass containing joint debris during the rotator cuff surgery. Dr. Cranford did

not discuss any other type of mass with Dr. Amrani and did not seek consent to remove any other type of mass.

53. The consent form selected by Dr. Cranford was a VA form relating to a Bankhart repair, a shoulder stabilization procedure. However, Dr. Cranford indicated on the form that the patient was to have a rotator cuff repair. Nothing on the form suggests that Dr. Amrani consented to the removal of the type of mass actually encountered during surgery. However, the form, which Dr. Amrani signed, does refer to numerous risks, including possible nerve injury and unexpected conditions encountered during surgery.

54. On the day of the surgery, Dr. Cranford discussed his operative plan with his supervisor, Dr. Harold Gene Dossett (“Dr. Dossett”), a board certified orthopedic surgeon. He also discussed it with Dr. Sumit Dewanjee (“Dr. Dewanjee”), a board certified orthopedic surgeon whom Dr. Cranford had asked to assist him with the Amrani surgery. They saw the MRI, and concurred in Dr. Cranford’s surgical plan.

55. Dr. Dewanjee first saw the MRI just before the surgery. Dr. Cranford told him that the mass shown on the MRI was a pseudocapsule containing joint debris.

56. Dr. Cranford commenced the surgery with an arthroscopic view of the area involved. He then proceeded with the surgery. He encountered the mass and discovered it was a soft tissue mass, not the fluid-filled pseudocapsule he had expected. Neither Dr. Cranford nor Dr. Dewanjee saw any nerve tissue on the mass.

57. Knowing that the axillary nerve is highly likely to be more than 5 centimeters below the acromion—the “safe zone” is the area less than 5 centimeters below the acromion—Dr. Cranford measured and marked the 5 centimeter limit with a surgical

pen. The mass extended below the safe zone, so in an effort to avoid damage to structures below the safe zone, Dr. Cranford bluntly dissected the tissues and pulled the mass up into the safe zone as he excised it.

58. After removing the mass, Dr. Cranford and Dr. Dewanjee completed the rotator cuff repair.

59. Postoperatively Dr. Cranford ordered a biopsy of the mass which was inconclusive, but indicative that the mass was not likely malignant. Eventually, the mass was determined to be non-malignant by pathologists at the Mayo Clinic.

60. Following the surgery, Dr. Amrani experienced diminished enervation to his middle deltoid and his anterior deltoid. Eventually, the anterior deltoid atrophied to a very substantial extent, but the middle deltoid was not significantly affected.

61. Dr. Amrani worked assiduously on rehabilitation after the surgery. Eventually he attempted to perform an instrumented spine surgery. He discovered that he could not apply sufficient forward force to the instrument used to set the opening in the vertebral body of the patient to accept surgical screws. He could only do so by leaning into the instrument. Using the surgeon's own weight to drive the instrument forward is an exceedingly dangerous practice due to the risk of injury to the patient's spinal column should the instrument slip from its intended course. The instrumented surgery Dr. Amrani attempted was not successful. Dr. Amrani testified, and the court finds, that he is no longer competent to perform instrumented spine surgery.

Dr. Amrani retains the ability to perform non-instrumented spine surgeries.

62. The parties stipulated that Dr. Amrani's expert witnesses, Dr. Scott Nelson, Dr. Stephen Kay, Dr. Corrie Yablon, Dr. David Mohler, Dr. Andrew Haig, and damages

expert Larry Stokes; and defendant's expert witnesses, Dr. Neil Rokowitz, Dr. Todd Levine, Dr. Bhattacharyya, and damages expert Paul Bjorklund, were all qualified to offer expert opinion testimony in their respective areas of expertise. The court accepted this stipulation, because all of the witnesses were adequately qualified in their fields and opinion testimony in those fields would be helpful to the trier of fact. It is not necessary to set out specific findings of fact as to each of the expert's qualifications. Suffice it to say that all of the experts are qualified, and the medical experts are particularly well qualified, for they are eminent practitioners of their respective medical specialties.

63. Dr. Amrani did not agree that defendant's expert, Dr. Shyam Shridharani ("Shridharain"), was qualified to offer opinion testimony. Prior to trial the court ruled that Shridharani, a board certified orthopedic surgeon at the University of Arizona, was qualified to testify about short courses of instruction available to Dr. Amrani which could increase his earning potential. After hearing Shridharani's trial testimony, the court ruled that he was not qualified to offer broader opinion testimony regarding what Dr. Amrani could earn as a non-instrumented spine surgeon in Phoenix for the reasons stated on the record at trial and in a post-trial order denying defendant's motion for reconsideration.

64. Dr. Amrani's expert witness regarding the standard care which Dr. Cranford was required to meet was Dr. Stephen Kay ("Dr. Kay"). Defendant's witness regarding the standard of care was Dr. Neil Rockowitz ("Dr. Rockowitz").

65. Dr. Kay testified to a reasonable degree of medical certainty that Dr. Cranford violated the standard of care in several ways. Dr. Rockowitz testified to the contrary that Dr. Cranford met the standard of care.

66. Having considered the testimony of Dr. Kay and Dr. Rockowitz, as well as the pertinent testimony from the other medical experts upon whose opinions Dr. Kay and Dr. Rockowitz relied in some respects, the court finds that Dr. Cranford fell below the standard of care in the following particulars: (1) Failure to consult with the radiologist pre-operatively; (2) Failure to order a biopsy of the mass preoperatively; (3) Failure to seek the opinion of the musculoskeletal radiologist available at the VA preoperatively; (4) Diagnosing the mass as a fluid-filled pseudocapsule; (5) Failure to advise Dr. Amrani that the surgery would involve removal of a mass that was not a fluid-filled pseudocapsule; and (6) Injuring the axillary nerve, the risk of which could have been avoided with a proper preoperative work up and consideration of an alternative surgical plan informed by the proper work up.

67. Dr. Cranford's failure to meet the standard of care caused permanent and irreparable damage to that portion of Dr. Amrani's axillary nerve which enervates the anterior deltoid.

68. The atrophy of Dr. Amrani's anterior deltoid muscle was caused by substantially diminished enervation resulting from the damage to the axillary nerve. Atrophy of the anterior deltoid caused Dr. Amrani to lose the capacity to perform instrumented spine surgery. Dr. Amrani's delay in seeking medical care for the torn rotator cuff reduced the prospects for a good rotator cuff repair, as did the delays Dr. Amrani encountered at the VA. However, these delays played no role in the

damage to the axillary nerve which is the cause of Dr. Amrani's inability to perform instrumented spine surgery.

69. Dr. Amrani has suffered non-economic damages caused by Dr. Cranford's failure to meet the standard of care, including some pain and suffering, some loss of the enjoyment of life, and slight disfigurement to the extent that his right anterior deltoid appears atrophied. Dr. Amrani's testimony exaggerated the extent of these damages. His request for an award of \$1,750,000 in non-economic damages is not supported by the evidence and is grossly excessive. The pain and suffering is relatively modest. Atrophy of the anterior deltoid does not warrant a large award for disfigurement. Dr. Amrani's loss of enjoyment of life consists of an inability to perform all of the weight lifting exercises previously performed, and his loss of prestige and perceived self-worth associated with being an instrumented spine surgeon. The loss of satisfaction and pleasure in performance of some weight lifting exercises is real, but alone cannot raise a heavy award of damages. Dr. Amrani can and does engage in an impressive and strenuous weight lifting regimen using weight machines. The loss of prestige and perceived self-worth is more serious, but is ameliorated to some degree by the fact that the injury cannot diminish Dr. Amrani's ability to appreciate the substantial accomplishments achieved in his career prior to the injury. A fair, just, and reasonable award for all of Dr. Amrani's non-economic damages is \$300,000.

70. Dr. Amrani has suffered a loss of earning capacity as a result of his inability to perform instrumented spine surgery.

71. At the time of trial, Dr. Amrani was employed as a non-instrumented spine surgeon by Arizona Pain Specialists ("APS"), a medical group engaged in the treatment of chronic pain.

72. Dr. Amrani is the first orthopedic surgeon hired by APS. He was hired on a trial basis to do non-instrumented spinal procedures, primarily to implant spinal stimulators which can provide relief to some patients with chronic back pain.

Dr. Amrani had done such implants previously, and after he moved his practice to the Scottsdale hospital, he had begun to increase the portion of his practice involving spine stimulator implants.

73. Dr. Amrani's employment contract with APS is for a period of one year. It pays him an annual salary of \$100,000 per annum plus a "production bonus." The production bonuses for the pain specialist physicians (anesthesiologists and physiatrists with additional training in pain management) who are employed by APS can be very substantial, but the production bonus that can be earned by Dr. Amrani, who is not a pain specialist, is much lower. His actual bonus for the first four months he worked at APS, the only months for which figures were available at the time of trial, was \$8,160. That amounts to \$24,480 per annum.

74. At APS, Dr. Amrani depends on referrals from the pain specialists. Were he self-employed, he would also need patient referrals from pain specialists, primary care physicians, and internists. When he first moved to Phoenix, Dr. Amrani worked diligently at obtaining referrals for his spine surgery practice from other physicians. He was successful. Dr. Amrani could do so again if he were to leave APS, but the task would be more difficult, because he could not solicit referrals for all types of spine

procedures, for he would have to limit himself to referrals not involving instrumented procedures. It would be inconvenient for the referring physicians to parse their patients' problems to look for those within Dr. Amrani's diminished range of capabilities.

Dr. Amrani could seek additional training to expand the range of procedures he performs. He could engage in private practice if he leaves APS. Dr. Amrani could not significantly improve his earnings above the level he has achieved at APS.

75. A reasonable estimate of Dr. Amrani's earning capacity is \$125,000 per year.

76. Defendant's economic damages expert Paul Bjorklund ("Bjorklund") assumed in making his projections that Dr. Amrani would likely earn a bonus from APS of about \$60,000 per quarter. That assumption is not supported by the evidence.

77. Using the only data on work-life expectancy, which is generally accepted by both Bjorklund and Dr. Amrani's economic damages expert Larry Stokes ("Stokes"), Dr. Amrani has a work-life expectancy taking him out to about age 69 and a half, or through the end of 2028. In his calculations, Bjorklund assumed a shorter work-life expectancy, but the court finds that the shorter work-life expectancy is not supported by reliable evidence. Stokes assumed a work-life expectancy through 2028.

78. Stokes calculated Dr. Amrani's pre-surgery income based on his tax returns for the years 2008, 2009, and 2010. Stokes did not consider Dr. Amrani's 2011 income. The court agrees with Bjorklund that, as a cash basis taxpayer who would experience the delay in payment of medical bills common in medical practices, Dr. Amrani's 2011 income should be considered even though Dr. Amrani had surgery on November 17, 2011. Stokes also failed to account for the fact that Dr. Amrani had

begun to modify his practice after moving to the Scottsdale hospital by increasing the proportion of his practice devoted to lower revenue spine stimulator procedures.

79. Based on Dr. Amrani's work-life expectancy, after taking into account the APS bonus of about \$25,000 per year, but not considering the 2011 income or any modification in the mix of Dr. Amrani's surgical procedures, Stokes testified that the difference between Dr. Amrani's pre-surgery earning capacity and his post-surgery earning capacity net-of-income taxes and reduced to present value was \$3,180,856 to which interest of \$54,810 would be added. Using those assumptions, the present value of the economic loss suffered by Dr. Amrani would be \$3,235,666 net-of-income taxes.

80. The \$3,235,666 figure is too high due to Stokes' failure to consider Dr. Amrani's 2011 income and the changing mix of procedures performed by Dr. Amrani which had commenced prior to the surgery. With those considerations taken into account, the present value of the total economic loss net-of-income taxes is reasonably estimated to be \$2,900,000.

81. The total amount which will fairly compensate Dr. Amrani for all of his non-economic and economic injuries caused by Dr. Cranford's failure to comply with the applicable standard of care is reasonably calculated to be \$3,200,000.

III. CONCLUSIONS OF LAW

1. The substantive law which applies is the law of the State of Arizona where the events took place. 28 U.S.C. § 2674 (United States liable in same manner and to same extent as private litigant in same circumstances).

2. Under Arizona law, to recover damages on a medical malpractice claim, a plaintiff must prove by a preponderance of evidence the applicable standard of care, a

breach of the standard of care, and damages caused by the breach. *Seisinger v. Siebel*, 203 P.3d 483, 492 (Ariz. 2009) (en banc); A.R.S. § 12-563.

3. Dr. Amrani has proved by a preponderance of the evidence that the applicable standard of care was breached by defendant's agent, Dr. Cranford, in those particulars set out in the findings of fact above.

4. Dr. Amrani has proved by a preponderance of the evidence that Dr. Cranford's violation of the standard of care caused him to suffer damages.

5. Defendant has not proved by a preponderance of the evidence that Dr. Amrani's delay in seeking treatment for his shoulder injury was a factor which contributed to the injury to the anterior deltoid muscle which, in turn, has caused Dr. Amrani's damages.

6. Defendant has not proved by a preponderance of the evidence that Dr. Amrani has failed to mitigate his damages.

7. A medical malpractice claim based on lack of informed consent requires the plaintiff to prove that he would have declined treatment had there been adequate disclosure and that the treatment proximately caused plaintiff's injury. *Rice v. Brakel*, 310 P.2d 16, 22 (Ariz. App. 2013). Dr. Amrani has not proved by a preponderance of the evidence that he would have declined the surgery if he had been adequately informed. On the other hand, defendant has not proved by a preponderance of the evidence that Dr. Amrani assumed the risk of the surgery.

8. Dr. Amrani has proved by a preponderance of the evidence economic damages having a present value net-of-income taxes in the amount of \$2,900,000.

9. Dr. Amrani has proved by a preponderance of the evidence non-economic damages in the amount of \$300,000

10. Dr. Amrani is not entitled to recover costs, because a plaintiff in a Federal Tort Claims Act case may not recover costs from the United States. *Anderson v. United States*, 127 F.3d 1190, 1191-92 (9th Cir. 1997).

IV. DIRECTION FOR ENTRY OF JUDGMENT

The Clerk of Court will please enter judgment that plaintiff Jacob Amrani recover damages from the United States in the total amount of \$3,200,000, and recite in the judgment that this total is comprised of economic damages of \$2,900,000 and non-economic damages of \$300,000.

DATED this 1st day of April 2015.

/s/ JOHN W. SEDWICK
SENIOR UNITED STATES DISTRICT JUDGE