

Arbitration: Nursing Home's Arbitration Clause Thrown Out, Ruled Unenforceable.

While residing in a nursing home the patient contracted a urinary tract infection which caused his death.

The patient's daughter, as personal representative of his probate estate, filed a lawsuit against the nursing home for negligence. The nursing home countered the lawsuit by demanding that the court stop all legal proceedings in court and refer the case to binding arbitration by an out-of-court arbitrator in accordance with the arbitration agreement contained in the patient's admission paperwork.

The District Court of Appeal of Florida looked at the circumstances surrounding the signing of the paperwork, looked at the arbitration agreement itself, threw out the arbitration agreement, and put the lawsuit back on track for a civil jury trial in the local county circuit court.

Circumstances of Signing Court Sees Unfairness

According to the court, the patient's daughter was hurried into signing numerous documents which were not explained to her, while her father was en route to the facility, which she was told were necessary before her father could be admitted.

Agreement Tried To Limit Basic Legal Rights

The court observed that the nursing home residents' rights laws amount to a legislative statement of public policy against abuse and neglect of vulnerable adults residing in nursing homes. The right of such persons to bring legal claims against nursing homes is intended to help protect this vulnerable population.

It is not appropriate, the court ruled, for a nursing home to attempt to limit the full range of legal remedies the law gives to its residents. The nursing home was wrong to have a resident's representative sign a contract limiting damages for negligence to \$250,000. No such limitation exists in the state nursing home residents' rights statute. **Prieto v. Healthcare and Retirement Corp. of America**, __ So. 2d __, 2005 WL 3479850 (Fla. App., December 21, 2005).

An arbitration agreement in nursing-home admission papers is subject to the same legal rules of interpretation as any other contract.

When any contract is found to be unconscionable, the court can decline to enforce it.

To determine whether an arbitration agreement is unconscionable, the court looks at the agreement's procedural and substantive aspects.

That is, the court looks at the circumstances surrounding the signing of the contract to see if the circumstances were fair, equitable and reasonable, or if one side unduly took advantage of the other.

Did the patient and/or the family have a reasonable opportunity to understand the terms of the agreement and did they have a realistic choice whether or not to accept it?

The court also looks at the agreement itself.

Does the agreement attempt to limit the patient's or family's basic legal rights that are guaranteed by law?

DISTRICT COURT OF APPEAL
OF FLORIDA
December 21, 2005