Clinic Nurse Found Negligent: Arbitrator's Ruling Upheld.

It was the third time the patient had come back to the clinic with intense pain following lithotriptic treatment for kidney stones a few days earlier

As it was just after closing time at the clinic, the nurse told the patient he would probably have to go to the emergency room at a nearby hospital. The clinic receptionist then let him drive himself to the emergency room. She and the patient both misinterpreted what the nurse was saying.

In fact, the nurse could have found a physician at the clinic, phoned a physician for a narcotic order or at least got someone to drive him to the nearby hospital E.R., that is, if the nurse had not already said something about him having to leave.

The patient's health plan requires arbitration of negligence claims.

The arbitrator found the HMO negligent, ruled in the patient's favor and awarded $2,700 in damages.

The arbitrator's award is binding on both sides.

COURT OF APPEAL OF CALIFORNIA
UNPUBLISHED OPINION
July 30, 2003

The Court of Appeal of California, in an unpublished opinion, upheld the mandatory arbitration clause in the patient's health plan and the arbitrator's award of $2,700 for pain and suffering, $1 per second for the extra forty-five minutes it took the patient to get an analgesic med at the nearby hospital. A $750,000 jury verdict for pain and suffering in a case the patient's lawyer argued was comparable was not a controlling precedent, the court said. **Ash v. Kaiser Foundation Health Plan, Inc., 2003 WL 21751207 (Cal. App., July 30, 2003).**

Nursing Home Negligence: Court Upholds Arbitration Clause In Admission Papers.

The arbitration clause in the nursing home admission contract is valid. The lower court should have stopped court proceedings and ordered binding arbitration of the family's case against the nursing home.

The nursing home admission agreement required the nursing home to provide appropriate care to the resident. The dispute is about whether or not the nursing home provided appropriate care.

It does not matter that the family is making a claim for negligence rather than breach of contract. There is still a strong interrelationship between the admission contract and the issues in this case.

The resident's fifty year-old son had previously been designated as the her surrogate decision-maker for healthcare decisions.

He could sign on her behalf. It is not important that he did not read the agreement before signing it, or that there was fine print or that it was a pre-printed form drawn up by the nursing home's lawyers.

DISTRICT COURT OF APPEAL
OF FLORIDA
July 30, 2003

The District Court of Appeal of Florida recently ruled valid the arbitration clause in a nursing home's admission contract over the objections of the resident's surviving family members who filed a civil lawsuit for damages against the nursing home alleging substandard care.

That is, the Court of Appeal ruled the local judge was in error setting the case on track for a civil jury trial instead of stopping further court proceedings and ordering binding arbitration. The Court of Appeal did not comment on the underlying allegations of substandard care.

Resident's Surrogate Did Not Read Before Signing

The court noted the resident's fifty year-old son had a college education and had taught school for eleven years. He already had been acting as her duly-appointed healthcare decision-making surrogate. He had no physical or mental incapacity that prevented him from understanding what he was doing.

His signing the admission papers without reading them did not invalidate the nursing-home admission agreement as a whole or the arbitration clause.

Arbitration Clause Was Optional

The arbitration clause was highlighted in bold type and designated as optional. That is, the nursing home did not insist on people agreeing to arbitration as a condition of getting themselves or their relatives admitted. There was a box on the form for an X to cancel the arbitration clause if the person signing did not want it.

The court pointed out this was praiseworthy but not mandatory. That is, it is permissible for a nursing home to insist on someone signing an arbitration clause at the time of admission, the court said.

There is also nothing wrong with a nursing home admission contract being a pre-printed legal form drawn up by the home's lawyers, the court pointed out. **Consolidate Resources Healthcare Fund I, Ltd. v. Fenelus, __ So. 2d __, 2003 WL 21750370 (Fla. App., July 30, 2003).**