

Nursing Home Liability: Court Throws Out Admission Contract's Arbitration Clause.

The executor of a deceased nursing home patient's probate estate filed a civil lawsuit against the nursing home for abuse and neglect and infliction of mental and physical suffering upon the deceased. No court as yet has decided the core issue whether these allegations are true.

The preliminary issue in the litigation has been whether the case should be heard in court before a judge and jury, or referred out of the court system for binding arbitration by an outside arbitrator selected by the parties to the case.

The Court of Appeals of Tennessee ruled for the family that there are grounds to throw out the arbitration clause in the nursing home's admission contract and to keep the case within the court system.

Arbitration Clauses Usually Enforced

The court acknowledged it is a rare instance when an arbitration clause is not enforced. Arbitration is widely used in business and labor disputes to reduce the substantial costs and delays inherent in full-blown court proceedings.

Basic rules of contract law, however, point to special circumstances where an arbitration agreement or arbitration clause in a larger agreement will not be enforced.

Contract of Adhesion

Contract of adhesion is the legal term for a contract that is unenforceable because there was an inequitable disparity of bargaining power between the parties at the time of signing. The family in this case had no choice but to sign the admission papers as they had to get their family member into a nursing home at once.

Arbitration Not Fully Explained

In addition, the arbitration clause was buried at the end of the admission contract. It is an important feature that should be highlighted at the beginning of a document and fully explained by the facility's representative, the court ruled, including an express warning that the right to jury trial is being signed away. **Howell v. NHC Health-care-Fort Sanders, Inc.**, 2003 WL 465775 (Tenn. App., February 25, 2003).

State law and the Federal Arbitration Act strongly favor arbitration of private civil disputes.

The courts must enforce arbitration contracts and arbitration clauses in commercial contracts by staying court proceedings and ordering arbitration, unless there are legal or equitable grounds to throw out the contract as unenforceable.

However, there are several reasons why the arbitration clause in this nursing home's admission contract is not enforceable.

The patient had to be placed in a nursing home and the admission contract was handed to the family on a take-it-or-leave-it basis. There was no room for negotiation.

The arbitration clause was buried on page ten of the eleven-page document and was not fully explained.

The patient's surviving family members can sue in court for abuse and neglect and infliction of mental and physical suffering upon the deceased and will recover damages if the judge and jury determine their allegations have substance.

COURT OF APPEALS OF TENNESSEE
February 25, 2003

Nursing Home Liability: Court Upholds Validity Of Arbitration Agreement.

The Court of Appeal of California, in an opinion that has not been officially published, noted that California has statutes that deal expressly with arbitration of disputes between health care providers and patients in general and a statute that deals expressly with arbitration of nursing home liability cases in particular.

The nursing home's arbitration agreement was on a form completely separate from the nursing home's admission contract.

The arbitration agreement contained spaces for signatures by the patient and a representative of the nursing home separate from the signatures on the admission contract itself.

The nursing home's arbitration agreement is valid.

The lower court did not abuse its discretion by ordering the lawsuit put on hold pending arbitration.

COURT OF APPEAL OF CALIFORNIA
OPINION NOT OFFICIALLY PUBLISHED
December 20, 2002

As patient-friendly as California law is on this subject, the court still ruled the nursing home's arbitration form was valid.

Arbitration was dealt with in a completely separate document apart from the detailed admission contract and it required separate signatures by the resident and his family. It was fully explained to the resident and his family. The resident was not legally incompetent when he signed it. **Flaum v. Superior Court**, 2002 WL 31852905 (Cal. App., December 20, 2002).