

## Arbitration: Parent Can Lawfully Agree On Behalf Of Child.

The District Court of Appeal of Florida has ruled that parents, by signing nursing-home admission papers on behalf of a minor child, can lawfully agree to arbitration and are bound by arbitration as a means of alternative dispute resolution. The child had to go into a nursing home for care for catastrophic injuries not specified in the court record. After the child died the parents wanted to sue the nursing home in court. They did not want to go to arbitration.

As a general rule a minor cannot lawfully sign a contract and can disaffirm a contract once signed without incurring any legal obligations. The traditional common law made an exception for contracts for medical services, which minors or those who sign on their behalf cannot disaffirm. Otherwise it might be difficult for minors to obtain necessary care. In this case the court extended the logic of the common-law rule to the issue of binding arbitration. MN Medinvest Co. v. Estate of Nichols, \_\_ So. 2d \_\_, 2005 WL 1225432 (Fla. App., May 25, 2005).

## No Legal Right Of Control: Nurse Anesthetist Ruled Independent Contractor.

The Court of Appeals of Texas has ruled that a nurse anesthetist associated with a physicians' anesthesia group is an independent contractor and not an employee of the physicians' group. The question of negligence has not yet been decided for the patient's death in this case, but the court did rule that the medical group will not be liable if negligence is established.

The crux of the legal test for employee status is the right of an employer to control the manner and progress of an employee's work. Because of the high degree of independent professional judgment inherent in his work, the nurse anesthetist is his own boss and he is an associate rather than an employee of the physicians in the group. Cook v. Nacogdoches Anesthesia Group, \_\_ S.W. 3d \_\_, 2005 WL 1303300 (Tex. App., May 31, 2005).

## Arbitration: Patients Entitled To Full Range Of Legal Remedies, Arbitration Clause Thrown Out.

The District Court of Appeal of Florida has ruled that the arbitration rules of the National Health Lawyers Association (NHLA) are contrary to the legislature's intent expressed in the Nursing Home Residents Act and are therefore void and unenforceable.

The court sided with the family of a deceased nursing home resident and ruled that they are entitled to sue in civil court and are not required to go to arbitration under the NHLA rules.

### Clear and Convincing Evidence Of Intentional or Reckless Misconduct

According to the court, the arbitration rules of the NHLA, the ground rules for arbitration under the arbitration clause contained in the nursing home's admission papers, permit a resident or the family to claim damages

***If nursing home residents were forced to arbitrate under NHLA rules, some of the legal remedies provided by law for negligence would be substantially affected, that is, to all intents and purposes eliminated.***

***The arbitration clause requiring arbitration under those rules is accordingly contrary to the public policy behind the law and is therefore void.***

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only when there is clear and convincing evidence of intentional or reckless misconduct, language specifically crafted to make it very difficult to prove a claim against the nursing home.

On the other hand, the Nursing Home Residents Act permits nursing home residents, and the families of deceased residents, to claim damages when it is more likely than not that a violation of a resident's rights or negligence has caused injury or death.

The court voided the NHLA arbitration rules. It runs contrary to public policy for patients and their families not to be fully able to claim damages as per the state's Nursing Home Residents Act. Blankfeld v. Richmond Health Care Inc., \_\_ So. 2d \_\_, 2005 WL 1226070 (Fla. App., May 25, 2005).