

# Arbitration: Court Sees No Unfairness, No Reason Not To Enforce Arbitration Clause.

In an effort to control healthcare costs healthcare facilities are trying to minimize the financial impact of malpractice lawsuits filed by patients and their families by placing arbitration agreements in their admitting documents.

If the patient or family should at some point decide to go ahead with a legal claim for damages against the facility, the case is heard by a panel of one to three experienced lawyers who make a binding decision which, if necessary, can be converted into a judgment in a court of law.

Arbitration has basic cost advantages.

Legal expenses are dramatically reduced. A malpractice trial before a jury can take weeks while the same case in arbitration might take only a few days.

More importantly, the risk of a huge runaway jury verdict for non-economic damages is far less if a case heard by professional arbitrators. Unlike a jury of lay persons from the community, arbitrators are generally not swayed by emotion and generally will give rational consideration to the impact their decisions can have on caregiving individuals and institutions.

Predictably, patients' lawyers resist arbitration of their clients' cases.

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***The arbitration agreement was not buried in the admission papers. It was a separate document.***

***The family members were told it was their choice whether or not to sign the arbitration agreement and that refusal to sign would not prevent the patient from being admitted. She could even opt out during the three-day revocation period and still stay.***

***The patient needed to go into a nursing home but did not have to go into that particular nursing home that particular day. There was time to shop around.***

***Contrast this with other cases where a family member is told they have to sign the arbitration agreement while the patient is en route from the hospital or already admitted. Any such duress over signing an arbitration agreement can cause a court to disregard it.***

DISTRICT COURT OF APPEAL  
OF FLORIDA  
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Healthcare workers who deal with patient admissions need to understand how the courts differentiate cases in which arbitration is upheld *versus* cases where it is disallowed in favor of a jury trial.

The circumstances of signing rather than how the lawyers have drafted the paperwork often makes the difference.

In a recent case, the District Court of Appeal of Florida upheld an arbitration agreement signed along with nursing-home admission papers and ordered arbitration of a nursing-home negligence case.

The nursing home staff spent two hours going over the paperwork, fully explaining everything to the elderly patient's daughter. Before signing the papers she was given the opportunity to ask questions, even to get outside advice if she chose. She was not rushed or forced to sign anything she did not agree with.

The patient's admission was not tied to the patient or a family member having to sign an arbitration agreement. There were three days post-admission to opt out of the arbitration agreement but the patient could still stay in the nursing home.

The court contrasted other cases where the families were told they had to sign arbitration agreements under pressure because the patient was already en route from the hospital or already admitted. In cases where the patient or family signs under duress the arbitration agreement is usually thrown out as fundamentally unfair, and any negligence case against the facility goes before a jury. ***Bland v. Health Care and Retirement Corp.***, \_\_ So. 2d \_\_, 2006 WL 1235910 (Fla. App., May 10, 2006).