LEGAL EAGLE EYE NEWSLETTER
For the Nursing Profession

Arbitration: First Agreement Applied To Later Readmission.

When she first entered the nursing home the resident herself signed all the admissions paperwork, including an agreement to arbitrate any future disputes that might arise between herself or her heirs and the nursing home.

The agreement expressly stated that, if not cancelled by the resident, the agreement applied to any and all subsequent readmissions without any further need for renewal.

A second arbitration agreement was, in fact, signed after she was readmitted after a hospitalization. However, this second arbitration agreement was not valid because it was signed by her son who did not have power of attorney.

After the resident passed away her son as probate administrator sued the nursing home for negligence. The District Court of Appeal of Florida ruled the first arbitration agreement signed by the resident herself was valid and applied to her care in the nursing home after the second admission. There was no need for the resident to have signed a new arbitration agreement. **4927 Voorhees Road v. Mallard, __ So. 3d __, 2015 WL 1874452 (Fla. App., April 24, 2015).**

Arbitration: Health Care Power Of Attorney Not Enough.

When he was admitted to a nursing and rehabilitation facility the adult patient's sister who was his primary caregiver signed an arbitration agreement for him.

At the time of his admission the facility also obtained a copy of the health care power of attorney the patient had signed naming the sister as his surrogate healthcare decision maker. That document was later submitted to the court by the facility along with the arbitration agreement after the patient's lawsuit was filed and the facility needed to petition the court to order arbitration.

The US District Court for the Northern District of Mississippi ruled the arbitration agreement was not valid and the case belonged in civil court, not in arbitration as the facility wanted.

A healthcare power of attorney gives a surrogate decision maker legal authority to consent to medical care or to decline medical care on behalf of a patient who can no longer make his or her own treatment decisions. However, it does not confer authority to consent to arbitration on the patient's behalf. **Morton v. Grace Health, 2015 WL 2163827 (N.D. Miss., May 7, 2015).**

Patient Fall: Facility Cited, CNA Failed To Provide Adequate Supervision To Total-Care Resident.

A nursing facility was cited and was assessed a substantial civil monetary penalty by state inspectors for violation of 42 CFR 483.25(h)(2).

That Federal regulation requires nursing facilities to ensure that the resident environment remains as free of accident hazards as possible and that residents receive adequate supervision and assistance devices to prevent accidents.

A ninety-seven year-old resident fell during a transfer assisted by a CNA.

The resident was basically comatose due to dementia and a recent stroke. She was totally dependent on her caregivers for assistance with ambulation, transfers, personal hygiene and repositioning in bed.

She had a history of falls at a previous nursing facility placement.

The CNA testified the resident rolled herself from the center to the edge of the bed and then off the bed as the CNA quickly checked to see that the wheelchair wheels were locked.

That is inconsistent with any physical maneuver the resident was able to accomplish on her own.

The only logical explanation for the resident's fall is inadequate supervision.

CALIFORNIA COURT OF APPEAL
April 27, 2015

The CNA who was with her the day of her fall had cared for her before. The resident weighed less than 100 lbs and was cleared for one-person assists.

The nursing facility argued in its defense there was nothing incorrect in the resident's fall-risk assessment or the care planning done for her, specifically the plan for single-person assists which had been carried out before for six months without any problems.

The CNA was fully trained, had cared for this resident many times before and was standing close by at the time as required by the care plan.

Nevertheless, the California Court of Appeal said the CNA's testimony was not credible. Inadequate supervision was ruled the only credible explanation for the resident's fall. **Cottage Park v. Dept. of Public Health, 2015 WL 1887087 (Cal. App., April 27, 2015).**

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