

Power Of Attorney: Grandson Had No Authority To Agree To Arbitration.

Two years before entering a nursing home the patient signed a document giving her daughter and her grandson power of attorney to make her healthcare decisions for her after she was no longer able to make such decisions for herself.

When she finally went into the nursing home her grandson signed all the papers, including an agreement to refer any and all legal disputes into arbitration rather than filing suit in civil court.

One week into her stay in the nursing home she fell, broke her hip and soon died.

Patient Was Fully Competent

Power of Attorney Was Not In Effect

The nursing home physician's admitting health assessment described the patient's cognitive functioning as good. Her being alert and oriented meant there was no legal basis for the grandson to take over the patient's healthcare decisions, according to the Court of Appeals of Ohio.

The mentally competent patient should have been asked to sign the arbitration agreement herself. Because she did not sign it herself, it was invalid and did not preclude the family's civil lawsuit. McFarren v. Emeritus, __ N.E. 2d __, 2013 WL 4822908 (Ohio App., September 9, 2013).

Involuntary Commitment: Nurse Who Objected Was Whistleblower.

The whistleblower law that applies to this case prohibits employer retaliation for any communication by an employee which the employee reasonably believes shows either -

A violation of any law, rule or regulation, or

Gross mismanagement, gross waste of funds, an abuse of authority or a substantial and specific danger to public health or safety.

The employee has the burden of proof to show that whistle-blowing was the reason for discipline lodged against the employee.

That usually means the alleged employer reprisal must occur soon after the whistle-blowing activity, but that is not necessarily so in each and every case.

Civil service employees must exhaust grievance procedures before suing.

UNITED STATES DISTRICT COURT
MAINE

August 23, 2013

An RN who worked as a case manager in a Veterans Administration mental health intensive case management program was ordered by her supervisor to file papers with the local authorities for involuntary psychiatric commitment of a veteran with a gambling addiction.

Although the patient's addiction was problematic, the nurse did not believe it rose to the level of imminent danger to self or others that would justify involuntary psychiatric commitment proceedings.

The nurse complained to her supervisor that going ahead with legal proceedings under these circumstances would violate state law.

The supervisor demanded that the RN nevertheless go ahead. The nurse went ahead and filed the papers that day with the court as she was told.

Reprisals After the Fact Nurse Was A Whistleblower

For questioning her orders the nurse's supervisor twice brought the nurse before a disciplinary board. The first hearing determined she acted properly by following orders even though the orders from her supervisor were most likely illegal.

However, after a second disciplinary hearing over her continuing complaints that the first proceeding was retaliation by her supervisor, she was terminated.

The US District Court for the District of Maine ruled the nurse had rights as a Federal employee under the Federal Whistleblower Protection Act which is analogous to whistleblower laws in most US states. Murphy v. Dept. of Veterans Affairs, 2013 WL 4508346 (D. Me., August 23, 2013).

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