

Nursing Home Abuse, Neglect, Negligence: Court Upholds Arbitration Agreement.

The family of a deceased nursing home patient sued the nursing home for abuse and malpractice. The allegations included charges the nursing home was understaffed and did not treat her urinary tract infection by encouraging hydration and by seeing that the physician was notified so he could prescribe medications.

The issue before the Court of Appeal of California at this stage of the litigation is whether the Los Angeles County Superior Court was correct to order arbitration by an independent outside arbitrator instead of a jury trial. The Court of Appeal ordered arbitration.

Durable Power of Attorney For Healthcare Decisions

Before her Alzheimer's took its toll, the resident had signed a durable power of attorney for healthcare decisions. Among other things it allowed the patient's surrogate decision maker, her daughter, to give informed consent and to withhold artificial life support. The court pointed out it also gave the daughter authority to sign a binding arbitration agreement at the time of admission to the nursing home.

Arbitration Agreement Was Voluntary

The arbitration clause in the admission agreement was conspicuously marked in capital letters as voluntary and its optional nature was explained to the daughter at the time of admission before she signed anything.

An arbitration agreement forced upon a resident or the family as a condition of admission or buried in the fine print in a complicated legal document the resident or family does not understand would not be valid, the court pointed out, but that was not the case here.

Other Important Rights Not Violated

The arbitration agreement pertained only to what lawyers would call common-law malpractice issues. It specifically did not attempt to limit the resident's legal recourse under the state nursing home residents' bill of rights or her rights under Federal regulations allowing her to protest and request a hearing over an involuntary transfer from the nursing home or disputes over financial issues under the state's Medicaid program. Garrison v. Superior Court, 33 Cal. Rptr. 3d 350 (August 29, 2005).