

Power Of Attorney: Daughter Did Not Have Authority To Sign Arbitration Agreement.

The elderly patient died shortly after discharge from a month-long stay in a skilled nursing facility, and the family decided to sue.

Before getting to the allegations of negligence raised in the family's lawsuit, the facility's first line of defense was to petition the court to dismiss the lawsuit from the jury-trial docket and refer the case to out-of-court arbitration where the facility's lawyers believed they would obtain a more favorable outcome.

The patient's daughter signed an arbitration agreement at the time of her mother's admission to the facility. The patient had already named the daughter as her surrogate in a durable power of attorney the patient had signed well before her admission to skilled nursing.

The patient's power of attorney stated that, whether or not the patient still had the capacity to make her own decisions, her daughter was empowered to make any and all healthcare decisions for her as her healthcare surrogate. More specifically, the surrogate was empowered to consult with health care providers, sign informed consent documents, apply for Medicare, Medicaid and other insurance benefits, have access to

personal financial information, have access to confidential medical records and billing information and withdraw life-prolonging or death-delaying medical procedures.

The power of attorney, however, made no express mention whatsoever about arbitration of disputes with health care providers.

The District Court of Appeal of Florida noted at the outset of its decision that arbitration is the preferred method of resolving liability disputes between patients and health care providers, but if and only if the patient or someone duly authorized to speak for the patient agrees.

An agreement to arbitrate must be in writing and it must be signed by the patient or an authorized surrogate with an understanding of what is being agreed upon. A surrogate's authority to sign an arbitration agreement under a power of attorney must be clearly spelled out in the power of attorney. A catch-all grant of miscellaneous legal powers is not sufficient, the Court said.

In short, the facility should have had the patient herself sign the arbitration agreement along with the other admission papers. Estate of Irons v. Arcadia Healthcare, __ So. 3d __, 2011 WL 3300218 (Fla. App., August 3, 2011).

Abandonment: Court Refuses To Dismiss Home Health Nurse's Wrongful Termination Lawsuit.

An RN employed by a nursing agency was providing twice-weekly wound care to a homebound patient pursuant to an order from the patient's physician.

The nurse was told by his supervisor to discontinue the patient's care immediately. The reason which came to light later was that the company had decided it was leaving the business of providing home health care.

The nurse was fired for alleged insubordination after he continued going to the patient's home and providing wound care because he believed the physician's order was still in effect.

He believed it would be illegal patient abandonment to cease taking care of her until arrangements were made to continue her nursing care or the physician ordered it discontinued.

The nurse claimed in his lawsuit that, if he had followed orders from his employer to discontinue the patient's care, he would have violated the state's nurse practice law.

If an employer fires an employee for a reason that violates a clear mandate of the law, the terminated employee has the right to sue the former employer for wrongful termination.

UNITED STATES DISTRICT COURT
SOUTH CAROLINA
July 25, 2011

The state's nurse practice act prohibits a nurse from abandoning a patient without making sure that arrangements are made for continuation of care after accepting a patient assignment and establishing a nurse/patient relationship with a patient.

The US District Court for the District of South Carolina agreed with the nurse. As a general rule an employee can be terminated at the will of the employer if the employee does not have rights under an employment contract or a union collective bargaining agreement. However, a major exception to the general rule has been carved out by the courts to protect an employee who is terminated for refusing to follow an order from the employer which would amount to a clear violation of the law. Patterson v. Gentiva Health, 2011 WL 3235466 (D.S.C., July 25, 2011).