

Quality Review: Peer Review Privilege Given To Nurse Testing Forms.

The District Court of Appeal of Florida did not go into the clinical specifics of the case except to say the patient's lawsuit alleged nursing negligence in the administration of analgesia and sedation.

The preliminary issue to be resolved was whether the patient's lawyers were entitled to access to blank copies of confidential test forms used by the hospital internally to assess nurses' clinical competency in the use of analgesia and sedation.

The hospital uses these test forms for peer review.

Even the blank forms not specifically related to this case must be kept confidential to promote full, frank and honest internal quality review that is essential to the best possible patient care.

DISTRICT COURT OF APPEAL
OF FLORIDA
October 15, 2003

The court ruled that blank forms used to test nursing competency in a specific clinical specialty come under the legal rubric of medical peer review documents. As such they cannot be admitted into evidence and cannot even be obtained by the patient's lawyers in pre-trial discovery.

Assuming there is no vital information about the case the patient cannot find in sources other than peer review materials, the legal system will not intrude into the internal quality review process. Self-policing was judged extremely important by legislative policy makers who enacted peer-review confidentiality into law. Tenet Health System v. Taitel, __ So. 2d __, 2003 WL 22336129 (Fla. App., October 15, 2003).

Nursing Home Negligence: Court Throws Out Arbitration Agreement In Nursing-Home Admission Paperwork.

Courts as a rule uphold arbitration clauses and decline to schedule civil trials when they can order arbitration instead. Resolving disputes quickly and economically out of court has a compelling value in the legal system.

However, there are limits. An arbitration agreement in nursing-home admission papers will not be enforced if it is unconscionable.

An arbitration agreement must be explained and the resident or family member must have a realistic option whether or not to sign.

An arbitration agreement in nursing home admission paperwork cannot take away any of the important legal rights a nursing home resident would have when suing in court under the state's Nursing Home Residents' Bill of Rights.

Punitive damages and reimbursement of the resident's attorney fees from the nursing home must be in the arbitrator's arsenal for cases when the resident's claim is validated.

DISTRICT COURT OF APPEAL
OF FLORIDA
October 1, 2003

Going against the current legal trend in favor of pro-arbitration language in nursing-home admissions contracts, the District Court of Appeal of Florida ruled a resident's claim for damages under the state's Nursing Home Residents' Bill of Rights should be decided in civil court before a judge and jury.

The court strongly suspected unfairness in the circumstances under which the arbitration agreement was signed. The arbitration agreement itself was also invalid in important respects even if the resident and her family member completely understood it and freely agreed to sign it.

**Unfairness Found In
Circumstances of Signing**

The resident fell in her home, sustained a non-operable hip fracture, could not be cared for by her elderly husband and had to be admitted immediately. The paperwork was presented to them after she was already in the nursing home. No explanation was given of the six-page agreement to arbitrate and no meaningful choice was offered whether or not to sign the arbitration agreement.

**Denial of Legal Rights
Punitive Damages / Attorney Fees**

The law protects nursing home residents with states' nursing home residents' bill-of-rights legislation by allowing punitive damages and attorney fees to be awarded to residents with validated claims of nursing-home abuse or negligence.

According to the court, if the arbitration agreement had allowed the arbitrator to award punitive damages and attorney fees, the arbitration agreement would be valid and the case should properly have been remanded out of court to arbitration.

Because those two important rights were left out, the arbitration agreement had to be invalidated in favor of a court trial before a judge and jury. Romano v. Manoro Care, Inc., __ So. 2d __, 2003 WL 22240322 (Fla. App., October 1, 2003).