

Southern Trial Lawyers Association 20th Annual Conference

Enforcing and Defeating Arbitration Clauses in Nursing Home Admission Agreements

Nursing Home Decisions in 2007 – 2008

Christopher Hopkins – hopkins@csklegal.com

Frank Petosa – fmpetosa@petosalawfirm.com

RESIDENT SIGNS

Vicksburg v. Mason (Miss.App.2007) – Resident who had the flu signed contract but did not initial all of the pages. Court held SNF did not have to explain terms.

Difference between failure and refusal to sign (11/29/07)

Beverly Enterprises-Miss v. Powell (5th Cir.)(unpublished) – illiterate SNF resident signs but family disputes signature and district court questions not explaining

Failure to Explain = Losing Argument?... Unless Illiterate (11/1/07)

Manley v. Personacare (Ohio.App.2007) – competent resident from hospital signs admission agreement but arbitration not enforced because she was “frightened” and had conditions which could have caused confusion (lacked bargaining power).

Resident... Competent but Not Capable (4/25/07)

POWER OF ATTORNEY SIGNS

McKibbin v. Alterra (Fla.2d DCA 2008) – Son with POA signed for Resident; POA deemed not broad enough to include non-health care decision but court fails to explain why

Check the wording of the Power of Attorney (1/24/08)

Carraway v. Beverly Enterprises-Ala. (Ala.2007) – brother signs competent sister into SNF; she later signs over a POA; court finds “agency” because he held himself out as agent, she later ratified with POA and she never objected.

Brother as Agent / Authorized Representative (9/13/07)

Tallmadge v. Beverly Enterprises-Missouri (Ms.App.2007) – adult child signs resident into SNF; later becomes POA; *ex post facto* POA not sufficient (ratification? Laches?)

Power of Attorney – after the fact (6/6/07)

HEALTH CARE PROXY/SURROGATE SIGNS

Kindred v. Luttrell (Duncan) (Ky.App.2007) – daughter with limited education was not agent of parent/resident; not a health care surrogate decision under Kentucky statute (8/14/07)

Cityview Care v. Fryer (Tx.App.2007) – daughter signed competent resident into facility; dtr was “medical power of attorney” but terms required mom to be incapacitated. (8/9/07)

Hogan v. Country Villa Health (Ca.App.2007) – adult child with health care directive / health care POA had authority to make “health care decision,” including whether or not to admit to a facility with an arbitration clause (5/29/07)

Magnolia Health Care v. Barnes/Grigsby (Miss.2008) – cousin's wife could bind resident to arbitration because she fit under HC surrogate statute & resident was incompetent [dissent]

Miss. Care Center v. Hinyub/Wyse (Miss.2008) – signor had POA but was not part of appellate record; signor not HC surrogate because no evidence of resident's incapacity

Covenant Health/Picayune v. Brown (Miss.2007) – incompetent resident could have adult child agree to arbitration under Miss Health Care Surrogate Statute (5/2/07)

Grenada Living Center v. Coleman (Miss.2007) – competent resident could not have sibling sign because surrogacy statute required patient to be incompetent

“AGENT” SIGNS

Clinton Health v. Barber (Miss.App.2007) – Unauthorized family member does not have power as health care surrogate; arbitration enforced under third party beneficiary
Third Party Beneficiary (but not health care surrogate) (11/6/07)

Ruesga v. Kindred (Az.App.2007) – wife of incompetent SNF resident can sign because she held herself out as agent, had signed for him in past – no discussion of principal holding out wife as agent?
Spouse as Apparent Agent (8/29/07)

Flores v. Evergreen at San Diego (Ca.App.2007) – resident with dementia (but not incompetent) was not forced to arbitrate due to signature of husband; marriage not enough; no proof resident could act as principal
Spouse Not Agent (5/4/07)

Buie/McKnuckles v. Mariner (S.D.Miss.2007) – Adult child signed for competent resident but no evidence resident present or gave agency
Agency... Resident in the Room? (4/27/07)

Linton v. Alterra (Fla.1st DCA 2007) – Son with no POA signs for Resident; non-signatory intended third party beneficiary is bound by terms of the contract containing arbitration clause.
Third Party Beneficiary (3/1/07)