

**ARBITRATION CLAUSE IN NURSING HOME
ADMISSION APPLICATION RULED UNCONSCIONABLE**

Small v. HCF of Perrysburg, Inc. (2004), 159 Ohio App. 3d 66

The Wood County Court of Appeals ruled late last year that a nursing home's admission application containing a clause requiring all disputes with the nursing home to be subject to arbitration in lieu of civil action with jury trial is unconscionable because: (1) the proposed nursing home resident was not given the option of rejecting the arbitration clause; (2) the arbitration clause provided for an award of attorney fees to the prevailing party that would discourage the resident from pursuing a claim; and (3) the proposed resident's wife signing the agreement was under a great amount of stress as her husband appeared to be unconscious, the agreement was not explained to the wife, the wife had no attorney present, the wife had no particular legal expertise, and the wife was elderly (sixty-nine years old). Thus, the nursing home admission form could not condition admission to the nursing home upon agreeing to the arbitration clause unless the proposed resident be given a fair opportunity to negotiate either a rejection of the arbitration clause or the particular terms of it.

Essentially, requiring arbitration as a condition for admission to a nursing home does not appear to be fair especially when an award of attorney fees to the prevailing party in the arbitration might discourage residents from pursuing otherwise valid claims. Moreover, the proposed resident's bargaining power is in many cases negligible to nonexistent when the proposed resident is seriously ill and the resident's representative is under considerable stress. At a minimum, a nursing home should probably engage in extensive explanation of the arbitration clause, offer the resident the ability to retain counsel or otherwise counsel the resident in a non-stressful environment.

Philip J. Weaver, Jr.
Smith Marshall, LLP
April 2005

This article contains legal analysis and comment. No attempt should be made to solve specific legal problems on the basis of its content. If you have any questions concerning a legal issue, please contact a member of Smith Marshall, LLP.