



vital signs

DIAGNOSING THE CHANGING

STATE OF MEDICAL MALPRACTICE & NURSING HOME LIABILITY

Questionable Validity of Admission Agreement Arbitration Clauses

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SECRET WARDLE NOTES

This decision by the Massachusetts appellate court suggests that absent a valid Power of Attorney (not limited to health care), the person signing the nursing home admission agreement/contract may not automatically bind the nursing home resident to the arbitration process in the event of a claim against the nursing home. Nursing homes, and other providers, may want to address who is signing agreements containing arbitration clauses on behalf of patients and residents, particularly with regard to whether they have the legal authority to bind the patient/resident to the provisions of the agreement.

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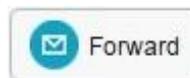
Typically, when a patient is admitted into a nursing home the admission agreement contains an arbitration clause. This clause is intended to limit the resolution of disputes to arbitration only, rather than through the courts. As is also quite typical, the person signing the agreement is not the resident, but a family member.

In Massachusetts, a nursing home resident was allegedly murdered by her roommate. On admission, her son had signed the admission agreement which had an arbitration clause “buried in the fine print.” The son initiated suit in the state court, and ultimately, a Massachusetts appellate court ruled that he did not have authority to bind his mother to the arbitration clause contained in the admission agreement even though he was her designated health care proxy. Accordingly, the son is allowed to pursue his mother’s claim in the state court.

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