

Client Alert

A report
for clients
and friends
of the firm May 2003

Alabama Court Upholds Arbitration Clause For Medical Malpractice Claims

Last week the Alabama Supreme Court held that an arbitration agreement between a nursing home and a resident of the home was enforceable and required the resident to arbitrate her medical malpractice claim against the nursing home. *See McGuffey Health and Rehabilitation Center v. Gibson*, No. 1020289 (Ala. May 9, 2003). The decision is important and useful for nursing homes and other health care providers who would benefit from arbitration as a more equitable forum than jury trials for the adjudication of medical malpractice and other claims.

Under the Federal Arbitration Act [9 U.S.C. § 1 *et seq.*], arbitration agreements must be enforced, provided that the agreement relates to a transaction involving interstate commerce. Despite the Federal Arbitration Act's policy favoring arbitration, many claimants and state government agencies that regulate health care providers have asserted that it is against public policy to force a claimant to arbitrate his or her medical malpractice claim. Such arguments have been based, at least in part, on the proposition that the enforceability of arbitration agreements is a matter for state regulation, outside the reach of the Federal Arbitration Act. Thus, health care providers seeking to enforce arbitration agreements must demonstrate that the agreements involve interstate commerce. If an arbitration agreement is subject to the Federal Arbitration Act, the agreement is enforceable under federal law, despite any state law to the contrary.

In the *McGuffey* case, the Alabama Supreme Court held that the nursing home's admission agreement containing the arbitration clause had a substantial effect on interstate commerce. This conclusion was based on the fact that: (1) items used at the nursing home, e.g., beds, wheelchairs, food, and cleaning sup-

plies were manufactured out of state and shipped to Alabama, and (2) the nursing home received substantial Medicare funds that were transmitted from outside the State of Alabama. Because the admission agreement had a substantial impact on interstate commerce, the nursing home resident was required to arbitrate her medical malpractice claim.

Given the nature of health care delivery systems in the U.S. today, many health care providers conduct business in a manner which involves interstate commerce and which permits the enforcement of arbitration agreements under the Federal Arbitration Act. Most providers receive at least some supplies from outside the state in which they do business. In addition, most providers receive at least some payments from out-of-state insurers. Most providers also participate in federal health care programs involving the receipt of funds from out-of-state intermediaries or carriers. And some providers deliver care to patients who reside outside the state in which the providers do business. These factors could support the enforceability of agreements that require the arbitration of medical malpractice claims. Furthermore, as the U.S. Supreme Court has recently concluded, even if there is some question about the enforceability of an arbitration agreement, providers who are parties to arbitration agreements are entitled to have that question resolved in the first instance by an arbitrator. *See PacifiCare Health Systems, Inc. v. Book*, 123 S. Ct. 1531 (2003).

There are several important benefits to providers who can require the arbitration of medical malpractice claims, such as the elimination of jury trials and the potential for reduced litigation costs. For those segments of the health care industry facing escalating malpractice claims and malpractice insurance costs, the use of arbitration as a strategic business decision should be considered. However, in assessing changes to their contractual agreements with patients, health care providers should carefully evaluate whether their particular business operations would benefit from arbitration agreements and whether their businesses are conducted in a manner that would make an arbitration agreement enforceable under the Federal Arbitration Act.

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Health Law Alert

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