

The Real Life Consequences of Mandatory Arbitration Clauses in Nursing Home Contracts

When faced with the very difficult decision on how best to care for a loved one who can no longer care for themselves, many Americans turn to professional nursing homes. They do so with the expectation that these nursing homes will provide adequate care and a safe environment. However, this is not always the case. With a high ratio of turnover, underpaid and untrained staff, nursing homes are rampant with instances of negligence, neglect, and even wrongful death. The only remedy injured patients and their families have is the ability to hold them accountable in a court of law.

Mandatory arbitration clauses take away this ability. With little or no oversight, nursing homes have no incentive to prevent the horrible cases seen here from being repeated.

John Donahue Massachusetts

John Donahue was a 93-year-old resident of Embassy Care Nursing Home, later purchased by Kindred Healthcare Inc., in Massachusetts. While a resident there, he experienced an eye injury so severe that it required removal of his eye, and the infection caused by this injury later killed him.

While Mr. Donahue was being transferred to his bed by mechanical lift, the certified nurse's aide failed to follow the standard policy, and caused the lift to puncture Mr. Donahue's left eye. With his eye bleeding and dripping clear fluid, Mr. Donahue was taken to the New England Medical Center, diagnosed with Vitreous hemorrhage and ruptured cataract, and his left eye was removed. He later died as a result of this eye infection, and his daughter brought suit against the nursing home corporation. The nursing home responded to the initial complaint by sending a letter in which they promised to "defend any lawsuit with the utmost vigor." However, once Mr. Donahue's daughter hired an attorney to pursue the case on behalf of her father's estate, the nursing home presented what it claimed to be a document, which Mr. Donahue, at age 91 and without any family members or any other witnesses present, had supposedly signed four years after becoming a resident of the nursing home.

It is claimed that the admissions coordinator gathered a bunch of residents in the activities room and read them the arbitration agreement and then invited each resident to come up and sign. The nursing home alleges that Mr. Donahue voluntarily and eagerly signed the agreement, although there is doubt as to whether it is even Mr. Donahue's signature. This document contains a binding mandatory arbitration clause, which the nursing home corporation is trying to use to force Mr. Donahue's family to go into mandatory arbitration on its terms. The case is currently pending.

William Kurth Wisconsin

At age 84, William Kurth, a WWII veteran from Racine County, Wisconsin passed away as a direct result of lack of care and treatment while he was a resident at Mount Carmel Medical and Rehabilitation Center, which is owned by Kindred Healthcare Inc. After his wife of 63 years, Elaine Kurth could no longer care for him at their home, she and her family made the difficult decision to admit Mr. Kurth into a nursing home. The problem was that the only nursing home in their town, Mount Carmel, had no openings at that time, so Mr. Kurth was put on a waiting list and had to be admitted into another nursing home approximately 20 miles away from Mrs. Kurth. When Mount Carmel contacted Mrs. Kurth to tell her that Mr. Kurth could move there, she was elated because Mrs. Kurth did not drive, and so it was very difficult for her to visit her husband in the other nursing home. Mount Carmel was within walking distance of Mrs. Kurth's home.

On October 29, 2004, when Mrs. Kurth went to Mount Carmel to help her husband admit himself into the nursing home, she found that Mr. Kurth was not there, as she had expected. Instead of waiting for Mr. Kurth to arrive, the admissions coordinator rushed Mrs. Kurth through over 50 pages of admissions documents within approximately one hour. Mrs. Kurth was also taking prescription medication at that time. She was not given an opportunity to read the multiple pages of text; instead the admissions coordinator used her own words to explain what the documents meant. At the end of that 50-page agreement was a mandatory binding arbitration agreement. The admissions coordinator described the mandatory agreement as necessary in order to admit Mr. Kurth into the nursing home.

After being discharged back to Mt. Carmel following hip surgery to repair a broken hip, he was virtually immobile and therefore at risk for pressure ulcers. Despite this knowledge, the nursing home did not update or change his care plan in any way. As a direct result, Mr. Kurth lost substantial amounts of weight, developed 10-11 stage 4 pressure ulcers, which the staff entirely failed to prevent and treat. These pressure sores were so severe that they left bone and organs exposed. During this period of time, Kindred transitioned from a wound care team of multiple caretakers to a single wound care nurse, who was responsible for all of the wound care for 155 residents. The wound care nurse failed to treat any of the pressure ulcers. Due to this severe understaffing, failure to train, and failure to supervise staff, Mr. Kurth suffered from untreated pressure ulcers, dehydration, and malnutrition. These factors directly led to his death.

After his death, Kindred officials offered to pay for half of his funeral costs and claimed that they felt somewhat responsible for his death. When the Kurth family rejected this offer, Kindred offered to pay all of the funeral expenses, and the Kurth family again rejected this offer. The Kurth family then requested multiple copies of Mr. Kurth's medical charts and all documents related to his care, but Kindred did not present a copy of the arbitration contract to the Kurth family until after they filed a claim against the nursing home corporation. The Kurth family filed a claim in Racine County Circuit Court, and shortly thereafter Kindred moved to dismiss the lawsuit and force the family into binding mandatory arbitration. The judge ruled that the case must be arbitrated

under the terms that Kindred put in its contract, solely on the basis of the signed arbitration agreement. The Kurth family intends to appeal this decision.

**L.C. Gould
Florida**

In November of 2005, at age 85, Ms. L.C. Gould was admitted to Tandem Health Care Inc in Pensacola, Florida. Prior to her admission, Ms. Gould was cared for by her family. However, when it became clear to them that they could no longer adequately care for her, they made the difficult decision to place her in a nursing home. During the admission process, a family member signed a number of documents on behalf of Ms. Gould, one of which contained a mandatory binding arbitration clause.

Ms. Gould suffered from dementia, and a number of other health problems, all well-documented upon her admission to Tandem. Only five days after she was admitted to Tandem, she had to be hospitalized for hypothermia. Approximately one month later, Ms. Gould fell from her bed, which was low to the ground so she suffered no severe injuries. However, one month later, despite a history of being unable to move well on her own and written care orders stating that Ms. Gould should be assisted at all times while using the bathroom and moving around, she was left alone while using the restroom. Because she was left unattended, she fell while trying to stand up and fractured her hip, which required surgery. Following the surgery, Ms. Gould suffered from an infection, which Tandem failed to properly assess or respond to within a reasonable amount of time. Ms. Gould passed away as a result of the infection and other complications from the surgery only a month later. Tandem is trying to force Ms. Gould's family into arbitration. The case is currently pending.

**Sandra Fisher
Florida**

Sandra Fisher has Alzheimer's, and as her disease has progressed, her husband could no longer care for her on his own. She was admitted to Quality Health of Fernandina Beach, which is an M-K Management Services facility in Amelia Island, Florida. While in the home, a nurse's aide was giving her a shower, and the shower was in complete disrepair. After the aide turned on the hot water, the handle broke off, severely scalding Mrs. Fisher quite severely. The nursing home originally said that it had insurance and it would cover Mrs. Fisher's injuries via mediation. They then changed their tune and refused to pay, claiming the insurance policy was only a few thousand dollars, so they were going to insist on arbitration. The case is still pending.

**Irene Hight
Mississippi**

In 2002, Irene Hight entered a nursing home in Kosciusko, Mississippi. Her daughter, Janice, was rushed to complete the admission forms with no explanation of the mandatory arbitration clause that was included. In September of 2003, Janice and her siblings noticed Irene's deteriorating health. One day, Janice called her mother who said she was not feeling well so Janice hurried over. Irene's skin was drawn and taught against her bones, her eyes were bulging and her mouth was sunken in.

Irene had not had any fluids in 24 hours, she was not urinating and she suffered from diarrhea. When Janice arrived she could barely recognize her mother because of her mother's horrible physical condition. Janice told the nurses to call the ambulance, but they refused. The nurses said that they could not call an ambulance unless it was an emergency because Medicare would not cover the expense. Janice pleaded for help, and the charge nurse told Janice to wheel Irene to the hospital in a wheelchair on her own. Janice asked the charge nurse if an aide could go with her to help. The charge nurse asked an aide to accompany Janice. However, the aide said that she was too busy, so Janice wheeled her mother from the nursing home, up a hill, and to the hospital across the street. Before leaving, the nursing home asked Janice to make sure she brought the wheelchair back!

Irene died eight hours later while in the emergency room. Janice and her family did not want anyone else to suffer from negligent treatment as her mother had suffered, so they sued the nursing home. They quickly discovered that they had signed away their right to a trial by jury and were forced to settle the dispute in mandatory binding arbitration.

**Charles Miller
Massachusetts**

Charles Miller Jr. filed suit in January 2005 in Worcester Superior Court alleging that his 91-year-old father, Charles Miller Sr., received negligent care while a resident of the Birchwood Care Center, a nursing home in Fitchburg. His father died as a direct result of the grossly inadequate care received from his physician, Eric Cotter, and the staff at the nursing home.

On the date of his admission in October 2003, Charles Miller Jr. and his wife met with a representative from the facility and signed a number of documents including an arbitration clause. Charles Miller Sr. was admitted, but he was not evaluated by a physician until three weeks after his admission. During that time he lost 19 pounds, suffered from dehydration and worsening pneumonia, all of which led to his death.

Charles Miller Jr. brought suit as representative of his father's estate, but the nursing home argued that the valid arbitration clause compelled dismissal. The courts decided that the plaintiff could go to court against the negligent doctor and nurse but had to go to arbitration against the nursing home. This result not only harmed and inconvenienced the plaintiff but also the defendants who may have benefited from going to court jointly with the nursing home.

Charles McAlister
Mississippi

After being hospitalized, sixty-five-year-old veteran Charles McAlister was taken to a nursing home owned by Beverley Enterprises. Charles had no legs, he was illiterate, he could not hear or see well and he suffered from the early stages of dementia. While being admitted, he was given a binding mandatory arbitration contract. Instead of reading the clause to Charles, one of the employees paraphrased it in a misleading way. Since Charles is illiterate, the only way he could sign the contract was to make his mark. The mark found on the contract was later determined not to be Charles'.

Charles developed serious, debilitating bed sores on his right and left hips. One of the sores had a foul odor and became severely infected. The negligent care of the nursing home led to his death on May 8, 2003. His family attempted to sue the nursing home for the negligent care he received, but they were forced into arbitration and initially lost. They later went back to arbitration and recovered from the nursing home. However, these unsafe, unfair and deceptive practices are likely to continue because arbitration is a secret process and the arbitrator did not have the authority to make the nursing home change their policies.

Sarah Hogan
California

In January 2001, Sarah Hogan named her daughter, Barbara, as her agent, granting her power of attorney. In May 2004, when Sarah was suffering from Stage II Alzheimer's disease, Barbara admitted her to Country Villa Plaza Healthcare Center, a skilled nursing care facility. At the time of admission, Barbara signed two arbitration agreements. Both were optional and each contained a 30-day rescission right. Unknown to Barbara, County Villa Services had implemented a plan to under-staff their nursing homes in order to increase profits. While in the facility, Sarah received substandard infection protection and she was not hydrated properly. She suffered severe dehydration and infections of the blood and urine, which led to her death on July 10, 2004. In July 2005, Barbara and her three brothers filed a complaint for wrongful death, elder abuse and violation of patient rights, but Country Villa forced them into arbitration. This is currently under appeal.

Dortha Bagley
Indiana

Dortha Bagley, suffering from Alzheimer's disease, was forced to move after her nursing home shut down its Alzheimer's unit. During her admission to Castleton Care Center facility, her daughter, Cheryl Sanford, had three grandchildren with her, adding to the

high level of stress of checking in her mother. She quickly signed the admission forms, unaware that the contract contained an arbitration agreement.

The Center failed to provide adequate care to Dortha. Dortha fell twice, due to lack of assistance from the staff. She was taken to the local hospital with a fractured hip and a urinary tract infection. Dortha died 21 days after her admittance into the facility following her hip surgery. Cheryl tried to hold the negligent Center accountable through the courts. However, the court upheld the arbitration agreement, and the case was settled soon after. After suffering through the pain of losing her mother, Cheryl had to go to court just to fight to have her case heard by a jury of her peers. Arbitration added an additional layer of lawsuits by adding a contract case that must be resolved before any other proceedings can continue.

**Elwood Bennett
Texas**

When Onita Bennett was forced to place her husband Elwood in the Pine Forrest Nursing & Rehabilitation Center of Jefferson County, Texas, she did so with orders that he be restrained at all times when he was in his wheelchair. Pine Forrest failed to do so. As a result, Mr. Bennett fell out of his chair on several occasions. One fall resulted in a broken hip, while another caused a brain hemorrhage. He suffered major complications following these injuries which ultimately led to his death. When Mrs. Bennet attempted to file a wrongful death case against the nursing home, she was informed that she had signed an arbitration clause and could not take them to court. This case is still pending.