

## Summaries of Selected Arbitration Cases

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**1. In re Nexion Heath at Humble, Inc. d/b/a Humble Healthcare Center, Relator, No. 04-0360 (Texas Supreme Court) May 27, 2005**

*Texas Supreme Court Holds Payment of Medicare Funds Sufficient to Invoke the Federal Arbitration Act (FAA)*

The Family of a deceased nursing home resident filed suit against the nursing home under the Texas Wrongful Death Act and the Texas Survival Statute. The nursing home filed a motion to compel arbitration. The trial court denied the motion under the Texas Arbitration Act (TAA). The nursing home filed a motion to reconsider arguing that since Medicare paid for the services rendered to the resident, the FAA controlled. This was denied as well. A subsequent petition for a writ of mandamus filed in the Fourteenth Court of Appeals was also denied. The nursing home then filed an interlocutory appeal in the First Court of Appeals pursuant to the TAA and a petition for a writ of mandamus in the Texas Supreme Court under the FAA.

The Family argued that there was insufficient evidence of interstate commerce to compel arbitration under the FAA. The Supreme Court disagreed, holding that because “commerce” is broadly construed, the Medicare payments made on behalf of the resident was in and of itself sufficient to establish interstate commerce and the FAA’s application. The Court further held that the FAA preempts the TAA if the agreement was (1) in writing, (2) involved interstate commerce, (3) could withstand scrutiny under traditional contract defenses and (4) state law affects the enforceability of the agreement. Examining those factors in light of the facts of the case, the Court found factors 1 and 3 were undisputed and in favor of the nursing home under number 2 because of the Medicare payments. The Court then found factor 4 present in that the TAA interfered with the enforceability of the arbitration agreement by adding an additional requirement in person injury cases – the signature of a party’s counsel.

**2. In re Margarite Kepka, Relator, --- S.W..3<sup>rd</sup> ---, 2005 WL 1777996 (Tex.App.-Hous. (1 Dist.)) July 28, 2005**

*Texas Appeal Court Holds the McCarran-Ferguson Act (MFA) Prevented Preemption by the Federal Arbitration Act (FAA) of State Statute on Arbitration Notice Requirements*

Nursing home Southfield Healthcare Center sought to enforce an arbitration agreement signed by the deceased resident’s wife. The nursing home argued that the FAA controlled as agreed to in the signed arbitration agreement and preempted any condition required under the Texas General Arbitration Act (TAA) which had been revised at the time of the hearing. Plaintiff Kepka argued that the McCarran-Ferguson Act “reverse preempts” the FAA, preventing the FAA from preempting the former sections of the TAA. The MFA prevents Congress from enacting laws that impair or invalidate a state’s ability to regulate insurance. Reading the former TAA statute as part of the whole purpose of the law, rather than in a vacuum as suggested by Southfield, the court found that the statute was enacted to control escalating costs of professional medical liability insurance through modifications of the insurance, tort, and medical malpractice systems. With this

finding, the court held that the MFA prevents the FAA from preempting Texas' notice requirement for an arbitration agreement. The court also held that Kepka signed the agreements in her representative capacity only when she signed on a line that indicated the signature was by "Resident and/or the Legal Representative." Therefore, her individual claims were not subject to arbitration either.

**3. Mariner Healthcare, Inc. Village Square Puffer, Slip Copy, 2005 WL 1711665 (N.D.Miss) July 21, 2005**

*Son Who Signed an Arbitration Agreement in His Representative Capacity was Held To Agreement Although Son Alleged an Indispensable Party Was Not Part of the Agreement or Suit*

Jimmy Puffer signed an arbitration agreement in his representative capacity for his mother. After her death, nursing home filed an action seeking a declaration that the arbitration agreement was valid under the FAA. The agreement provided that the parties therein submit to binding arbitration "all disputes against each other and their representatives, affiliates, governing bodies, agent and employees arising out of or in any way related or connected to the admission agreement and all matters related therein, including matters involving the resident's stay and care provided at the facility, including, but not limited to, any disputes concerning alleged personal injury to the resident caused by improper or inadequate care. . . ." Execution of the agreement was not a precondition to admission or receiving medical treatment.

The defendants argued that there was no subject matter jurisdiction since the nursing home's administrator was an indispensable party and was not joined in the petition. Further, defendants argued that the administrator should have been made a party to the arbitration agreement.

The court found the arbitration agreement valid under the FAA. "A party to a contract containing an arbitration clause may not simply ignore the clause and resort to the courts." The court also relied on general contract law that a person is bound by the contract he signs, whether he reads it or not.

**4. Finney v. National Healthcare Corp., \_\_\_ S.W.3d \_\_\_, 2006 WL 1030323 (Mo. App. S.D.)(April 20, 2006)**

*Arbitration Agreement Unenforceable Against Daughter Who Was Not A Signatory to Contract*

Resident's granddaughter executed on behalf of resident a contract which contained an arbitration agreement. After the resident died the resident's daughter filed suit for wrongful death. Daughter was not a signatory to the contract, only granddaughter. Almost two years later, the Nursing Home filed a motion to compel arbitration, which the trial court denied. The trial court held that there was no Missouri case supporting the proposition that the Missouri arbitration statute is preempted by the Federal Arbitration Act. The trial court also found that there was no basis to conclude that interstate commerce was involved. Therefore, the Federal statute did not preempt Missouri's. Since that arbitration clause did not comply with Missouri law, it was held unenforceable. Nursing home appealed.

The appeals court upheld the trial court but on different grounds. The appeals court stated it did not need to address the preemption issue because the case could be decided on other grounds – that is – that Daughter was not a signatory to the contract. Because the daughter was not a signatory to the contract, Daughter was not bound by its provisions, regardless of any decision regarding its enforceability. Nursing Home argued that Daughter was bound by the contract signed on Decedent's behalf, that but for Decedent's death, there would be no cause of action. Nursing Home argued that Daughter stands in the shoes of the Resident as a party to the contract and that the cause of action for wrongful death belongs to the Decedent. The appeals court held this was a misstatement of the law. A wrongful death claim does not belong to the decedent or her estate. Instead, it is based on a new cause of action not found in common law.

The appeals court held that the damages under Missouri's wrongful death statute are different from those allowed to the decedent. Since the cause of action for Daughter was totally separate from Decedent, for Daughter to have been bound by the arbitration agreement, she would have had to have been a party to the contract. Since she was not, the agreement did not apply to Daughter.

**5. Estate of Lee Williams v. Manor Care of Dunedin, Inc., 923 So.2d 615 (Fla. Dist. Ct. App. March 29, 2006**

*Right to Arbitration Is Waived If Not Asserted At the Earliest Opportunity*

Lee Williams was admitted with Alzheimer's disease to Manor Care by his wife, who signed the admission agreement on his behalf. The admission agreement contained an arbitration agreement. Following Williams' death, his estate filed suit. Manor Care answered, demanding a jury trial and neglecting to mention arbitration. Nine days later Manor Care filed a motion to compel arbitration. The circuit court granted the motion after a hearing. The Estate appealed the trial court's ruling that: (1) Manor Care had not waived its right to arbitration, (2) that the arbitration agreement was binding on the Estate and (3) that it was neither substantively or procedurally unconscionable.

The appeals court did not reach the second and third issues, finding that Manor Care waived its right to arbitrate. The court examined the three elements necessary to determine a motion to compel arbitration: (1) whether there is a valid reason to arbitrate, (2) whether an arbitratable issue exists; and (3) whether the right to arbitration is waived. The court held that ManorCare waived its right to arbitrate because it answered the complaint rather than demanding arbitration. The court also held that a motion to compel arbitration after it has been waived is ineffective to reclaim the right.

**6. Garrison, et al., v. Superior Court of Los Angeles County (Country Villa Belmont Heights HealthCenter , Real Party in Interest), --- Cal.Rptr.3d ---, 2005 WL 2064077 (Cal.App. 2 Dist.) August 29, 2005**

*California Court Compels Arbitration When Daughter Signs Admission Agreement Pursuant to a Durable Power of Attorney*

This court found that attorney-in-fact Garrison under a durable power of attorney was authorized to sign on behalf of her mother the two arbitration agreements and ordered the case referred to binding arbitration. The DPOA authorized the attorney-in-fact to act on behalf of her mother, Ms. Needham, to make all health care decisions for her to the

extent Needham would make for herself if she had the capacity, and all rights granted as an agent including deciding where Needham should live. To the extent Needham's wishes were not known, the attorney-in-fact was authorized to make decisions in accordance with what the agent thought to be in Needham's best interest. Nowhere in the DPOA was Garrison's authority as Needham's agent restricted from entering into an arbitration agreement on Needham's behalf.

The arbitration agreements contained the state required language in boldface and all capital letters that by signing the arbitration agreement the resident does not waive his/her right to bring a lawsuit in court against a facility for violations of the Patient's Bill of Rights, concerning transfer or discharge and claims relating to disputes about payments owed the facility. The arbitration agreements also required that the arbitration be conducted by one or more arbitrators selected by the American Arbitration Association in Los Angeles and pursuant to California law. The court did not find persuasive Garrison's arguments that no one told her that signing the arbitration agreement was optional or could be rescinded within 30 days, that she did not have her glasses with her so she was unable to read the document, was distraught and preoccupied by her mother's health and was in no condition to make rational informed decisions when she signed the admitting documents. Instead, the court reaffirmed California black letter law which holds that an agent or fiduciary that contracts for medical treatment on behalf of the beneficiary retains the authority to enter into an agreement requiring arbitration for medical claims.

*An arbitration agreement will be upheld even though signed by an attorney-in-fact if it contains the appropriate language and the DPOA gives the attorney-in-fact broad powers.*

**7. Blankfeld v. Richmond Health Care, Inc., 902 So.2d 296, 30 Fla. L. Weekly D1325 (Ct. App. Fla. 4 Dist.) May 25, 2005**

*Arbitration Agreement Held Void as Contrary to Public Policy Which is Different from Finding It Unconscionable*

Husband of a senile resident signed an arbitration agreement which required binding arbitration administered by the National Health Lawyers Association (NHLA) (now American Health Lawyers Association). The NHLA's procedures required clear and convincing evidence of intentional or reckless misconduct. The Florida 4<sup>th</sup> District Court of Appeals found these procedures effectively eliminated recovery for negligence provided for in the Nursing Home Residents Act. As such, the procedures, and hence the agreement, defeated the remedial provisions of the statute, violated public policy and were unenforceable. The court also refused to uphold the requirement to arbitrate by severing the procedures section. The court made clear that its decision to hold a contractual provision unenforceable for violating public policy is separate and distinct from finding a provision unenforceable because it is unconscionable. Finally, the court also noted that the husband's authority to sign the arbitration agreement was at best as a statutory health care proxy. That statute did not authorize a proxy to make decisions or enter into contracts not strictly related to health care matters. The court held a statutory proxy cannot waive a person's constitutional rights.

*These two cases, although one was decided under law no longer in effect, represent the creative arguments made to avoid arbitration. All possible arguments against*

*enforcement under state and federal law should be considered and addressed if possible when drafting such clauses.*

8. **Bedford Care Center-Monroe Hall v. Lewis, -- So.2d --. 2006 WL 60774 (Miss., Jan. 12, 2006)**

*Arbitration Clause is Not Enforceable if Resident or Resident's Legal Authority Does Not Sign Specific Arbitration Agreement*

We Care Homes' admission agreement contained an arbitration clause. The arbitration portion of the admission agreement had a place for the resident or representative to initial that they had read the arbitration clause and contained a separate signature line indicating agreement with the arbitration clause. The resident's legal conservator signed the admission agreement at the end of the contract on page seven but did not sign the arbitration section on page five. The lower court and the court of appeals found that because the conservator did not sign the on the signature line for the arbitration section, the conservator could not be compelled to arbitrate her claims of negligence and gross negligence.

9. **Broughsville v. OHECC, LLC., No. 056CA008672 (Ohio Ct. App. Dec. 21, 2005)**

*Arbitration Agreement Upheld Against Allegations that Agreement was Procedurally and Substantively Unconscionable*

The arbitration clause in this case was upheld. The agreement had been signed by the resident's daughter in the resident's presence. No one objected at the time either to the agreement or to the daughter's authority, so the court concluded that the defendant nursing home had no reason to believe that the daughter did not have authority to bind the mother.

The daughter argued that the agreement was procedurally and substantively unconscionable. The court rejected both arguments. On the procedural claim, the court reviewed the circumstances and found against the daughter – this was not an emergency, no evidence of pressure was adduced, the mother was elderly but competent, the daughter was a registered nurse, and the agreement itself was written in plain language and set out in bold letters. Furthermore, and perhaps most critical, the provision clearly stated it was not a condition of admission, however the daughter never complained or asked to have it removed.

The court did not reach the issue of substantive unconscionability because it found the agreement procedurally acceptable. The daughter also argued the agreement was unenforceable that because AHLA was designated as the arbitrator and will no longer accept pre-claim agreements. The court resolved this claim by severing this provision.

Finally, the court joined the many other courts that have rejected the argument that arbitration agreements constitute "additional consideration" and therefore are illegal under federal Medicaid law. The court noted that the daughter cited no authority for this proposition.

10. **Prieto v. Healthcare & Ret. Corp. of Am., No. 3D03-3244, 2005 WL 3479850 (Fla. Dist. Ct. App. Dec. 21, 2005)**

*Arbitration Clause Unenforceable as it was Procedurally and Substantively Unconscionable*

In this case, the appellate court in Florida found both procedural and substantive unconscionability and refused to enforce an arbitration agreement despite the fact that it could be rescinded within 3 days of signing.

Procedural unconscionability was present because the father/resident was on his way in an ambulance to the nursing home when the papers were presented to the daughter who signed them. The court determined that this constituted some degree of unfairness, that she never had the opportunity to read or understand the provisions in the agreement.

Probably of greater significance were the terms of the agreement – which limited non-economic damages, eliminated punitive damages and restricted discovery. The court found that these provisions “appreciably diminish” the resident’s statutory rights under Florida’s nursing home resident’s rights statutes and deprived him of significant remedies. Thus, the agreement was substantively unconscionable.

It should be noted here that merely having the agreement be rescindable may not save it if the terms of the agreement are otherwise unconscionable, as the court here willingly stretched a bit to find the procedural element needed to refuse to enforce the agreement.

11. **Garrison v. Superior Court of Los Angeles County, 33 Cal. Rptr. 3d 350 (Cal. Ct. App. Aug. 29, 2005)**

This court found that attorney-in-fact Garrison under a durable power of attorney was authorized to sign two arbitration agreements on behalf of her mother and ordered the case referred to binding arbitration. The DPOA authorized the attorney-in-fact to act on behalf of her mother, Ms. Needham, to make all health care decisions for her to the extent Needham would make for herself if she had the capacity, including all rights granted as an agent including deciding where Needham should live. To the extent Needham’s wishes were not known, the attorney-in-fact was authorized to make decisions in accordance with what the agent thought to be in Needham’s best interest. Nowhere in the DPOA was Garrison’s authority as Needham’s agent restricted from entering into an arbitration agreement on Needham’s behalf.

The arbitration agreements contained the state required language in boldface and all capital letters that by signing the arbitration agreement the resident does not waive his/her right to bring a lawsuit in court against a facility for violations of the Patient’s Bill of Rights, concerning transfer or discharge and claims relating to disputes about payments owed the facility. The arbitration agreements also required that the arbitration be conducted by one or more arbitrators selected by the American Arbitration Association in Los Angeles and pursuant to California law. The court did not find persuasive Garrison’s arguments that no one told her that signing the arbitration agreement was optional or could be rescinded within 30 days, that she did not have her

glasses with her so she was unable to read the document, was distraught and preoccupied by her mother's health and was in no condition to make rational informed decisions when she signed the admitting documents. Instead, the Court reaffirmed California black letter law which holds that an agent or fiduciary that contracts for medical treatment on behalf of the beneficiary retains the authority to enter into an agreement requiring arbitration for medical claims.

**12. Vicksburg Partners, L.P. v. Stephens, 911 So.2d 507 (Miss. Sept. 22, 2005)**

For some reason, the facility resident and the responsible party signed two different admission agreements, one on the date of admission and another two weeks later. The arbitration clauses in the two agreements differed. Among other differences, the clause in the second agreement disallowed punitive damages and limited recovery for actual damages.

The responsible party later filed several claims against the facility and other individual and corporate defendants relating to the resident's care, including negligence, medical malpractice, fraud, breach of fiduciary duty, and statutory survival and wrongful death claims. The facility moved to stay proceedings and to enforce the second arbitration clause.

The court held that admission agreements between a facility and its residents affect interstate commerce and, therefore, the FAA applies to their arbitration agreements. However, the facility could not establish any instance when a resident was admitted to the facility after declining to agree to arbitration. Thus, the court found that the contract was one of adhesion but that the adhesive nature of the contract did not *per se* render the contract unconscionable or invalidate the arbitration clause.

The court examined the circumstances, including the lack of exigency in the resident's admission and the visual presentation of the arbitration clause in the agreement, and held that the arbitration clause was procedurally valid. The court considered the placement of the arbitration clause within the agreement, that it appeared in bold-faced type, that the type size was equal or greater than that in the rest of the document, and the proximity of the clause to the signature lines for the resident and responsible party, who executed both agreements together.

In evaluating the substantive validity of the arbitration clause, the court held that it was enforceable as it merely provided a mutually agreeable forum for the parties. The limited liability and punitive damages provisions, however, were substantively unconscionable and, as a result, unenforceable. The limited liability provision limited the recovery on behalf of the resident but not that of the facility and was therefore "unilaterally oppressive in its effect." Similarly, although both the facility and the resident waived the right to recover punitive damages under the arbitration clause, the court found the benefit of the clause inured solely to the facility as a practical matter.

The court invalidated only the unconscionable provisions of the agreements in lieu of striking the agreements in their entirety.

**13. Broughsville v. OHECC, LLC, No. 056CA008672 (Ohio Ct. App. Dec. 21, 2005)**

The arbitration clause in this case was upheld as well. The agreement had been signed by the resident's daughter in the resident's presence. No one objected at the time either to the agreement or to the daughter's authority, so the court concluded that the defendant nursing home had no reason to believe that the daughter did not have authority to bind the mother.

The daughter argued that the agreement was procedurally and substantively unconscionable. The court rejected both arguments. On the procedural claim, the court reviewed the circumstances and found against the daughter – this was not an emergency, no evidence of pressure was adduced, the mother was elderly but competent, the daughter was a registered nurse, and the agreement itself was written in plain language and set out in bold letters. Furthermore, and perhaps most critical, the provision clearly stated it was not a condition of admission, however the daughter never complained or asked to have it removed.

The court did not reach the issue of substantive unconscionability because it found the agreement procedurally acceptable.

The daughter also argued the agreement was unenforceable that because AHLA was designated as the arbitrator and will no longer accept pre-claim agreements. The court resolved this claim by severing this provision.

Finally, the court joined the many other courts that have rejected the argument that arbitration agreements constitute "additional consideration" and therefore are illegal under federal Medicaid law. The court noted that the daughter cited no authority for this proposition.

**14. Care Center of Kansas City v. Horton, 173 S.W.3d 353 (Mo. Ct. App. 2005) Sept. 20, 2005**

Following a resident's death the nursing home sent the daughter attorney-in-fact under a durable power of attorney a statement for \$14,773.23 for care provided to her father. The daughter returned the statement marked "Deceased, not responsible for bills." The nursing facility filed suit. Upon the resident's admission, the attorney-in-fact signed the facility's "Conditions of Admission" and agreed to its terms, including "whether he/she signs as agent or as resident . . . he/she hereby individually obligates himself/herself to pay the account of the facility in full" and "to pay all cost(s), charges and expense incurred on behalf of the resident."

The court held that the contract should be enforced as written because, based on the plain and ordinary meaning of its language, the financial terms in the Conditions of Admission were neither uncertain nor capable of conflicting interpretations.

**15. Green Tree Financial Corp.-Alabama v. Randolph, 531 U.S. 79, 90 (2000)**

Noting that "[i]t may well be that the existence of large arbitration costs could preclude a litigant . . . from effectively vindicating her federal statutory rights in the arbitral forum".

**16. Health & Rehab. Ctr. v. Gibson, No. 1020298, 2003 WL 21040590 (Ala. May 9, 2003)**

Holding that a contract with a patient had a substantial effect on commerce, where two-thirds of all funds for the care of the patient were paid by Medicare and out-of-state materials were purchased to pay for the patient's care.

**17. Timms v. Greene, 427 S.E.2d 642, 644 (S.C. 1993)**

Pre-*Allied* case holding that a resident/nursing home contract did not involve interstate commerce.

**18. Smithson v. Integrated Health Servs. of Lester, Inc., 1999 WL 33523121, at \*3 (E.D. Ky. 1999)**

(unpublished opinion) (upholding an arbitration agreement between a resident and a nursing home).

**19. Romano v. Manor Care, 861 So.2d 59 (Fla. 4th DCA 2003)**

Finding an agreement unconscionable where the agreement to arbitrate was submitted to the resident's husband as simply another part of the admission process; the appellants were elderly and did not understand the rights being waived; and the husband was not informed that his failure to sign an arbitration agreement would not affect the resident's care or her ability to stay in the facility.

**20. Cmty. Care of America v. Davis, 850 So.2d 283, 286-87 (Ala. 2002).**

**21. McGuffey Health & Rehab. Ctr., 2003 WL 21040590, \*2.**

In that case, the court held that Medicare funds should be considered in determining whether the admission agreement had a substantial effect on interstate commerce.

**22. In re Northport Health Services, Inc.** (found at [http://www.nslc.org/news/03/03/northport\\_DECORDER\\_TXT.doc](http://www.nslc.org/news/03/03/northport_DECORDER_TXT.doc))

The Arkansas Department of Human Services concluded that the admission of a Medicaid recipient did not constitute consideration to support an agreement to arbitrate.

**23. Gainesville Health Care Ctr., Inc. v. Weston, 857 So.2d 278 (Fla. 1st DCA 2003)**

The Florida Appellate Court reversed a lower court decision and compelled arbitration, holding that the plaintiff failed to establish that the arbitration agreement at issue was unconscionable. The court noted, "Arbitration agreements are a favored means of dispute resolution, and doubts concerning their scope should generally be resolved in favor of arbitration." Gainesville, 857 So.2d at 289

**24. Tatham v. Hoke, 469 F. Supp. 914, 919 (W.D.N.C. 1979)**

Arbitration paragraph containing exculpatory clause and thirty-day notice of claim provision was unenforceable.

**25. Estate of Chapman, No. 01-2001-CA-3277, slip op. at 4, 7**

Arbitration agreement that allowed the nursing home to take disputes to court but required a resident to arbitrate was held unconscionable.

- 26. Raiteri ex rel. Mary Helen Cox v. NHC Healthcare/Knoxville, Inc., 2003 Tenn. App. LEXIS 957 (Tenn. Ct. of Appeals 2003)**

Refusing to enforce an arbitration clause where the resident, who was deemed lucid at the time of admission, was not involved in agreeing to the arbitration terms. This case also held it was the nursing home's burden to prove capacity.

- 27. Owens v. Coosa Valley Health Care, Inc., --- So.2d ----, 2004 WL 260969, \*3 (Ala. Feb. 13, 2004)**

Holding that a resident is bound by an arbitration agreement entered into with the facility by her guardian, where the agreement read "between Coosa Valley Health Care, Inc .... and the undersigned Patient, Guardian and Sponsor (hereinafter known as 'Patient')".

- 28. Briarcliff Nursing Home, Inc. v. Turcotte, --- So.2d ---, 2004 WL 1418698, \*2-3 (June 25, 2004)**

The Alabama Supreme Court reversed a lower court decision and compelled arbitration in a consolidated appeal of two wrongful death actions brought by the estates of former nursing home residents. After examining the facts, the Court held that the arbitration agreements involved in the case were neither unconscionable nor unfairly entered into by residents lacking choice. Briarcliff, 2004 WL at \*4. This holding was despite the fact that the arbitration clause at issue was part of the nursing home admission form. Id. at \*1.

- 29. Allen v. Pacheco, 71 P.3d 375, 380 (Colo. 2003)**

- 30. Buckner v. Tamarin, 119 Cal. Rptr. 2d 489, 490 (Cal. Ct. App. 2002)**

Generally speaking, one must be a party to an arbitration agreement to be bound by it.

- 31. Pagarigan v. Libby Care Ctr., Inc., 120 Cal. Rptr. 2d 892, 894 n.1 (Cal. Ct. App. 2002)**

The rule may be different, however, when the adult children sue not on their own cause of action but as successors in interest to the deceased parent's causes of action.

- 32. Phillips v. Crofton Manor Inc., 2003 Cal. App. Unpub. LEXIS 4770 (May 15, 2003, as modified without change June 13, 2003).**

- 33. Consol. Resources Healthcare Fund I, Ltd. v. Fenelus, 853 So.2d 500 (Fla. 4th DCA 2003)**

Holding that signing the arbitration agreement in the wrong place, or failing to sign the arbitration agreement, is not fatal where the facility's performance indicated that it assented to the contract.

- 34. IHS v. Lopez-Silvaro, 827 So.2d 338 (Fla. 3d DCA 2002),**

Holding that signing the arbitration agreement in the wrong place, or failing to sign the arbitration agreement, is not fatal where the facility's performance indicated that it assented to the contract.

**35. Howell v. NHC Healthcare – Fort Sanders, Inc., 109 S.W.3d 731 (Tn. Ct. App. 2003).**

**36. Buracznski v. Eyring, 919 S.W.2d 314 (Tenn. 1996)**

The Tennessee Supreme Court held that arbitration can be as beneficial in the healthcare industry as in any other industry. The court also found that "arbitration agreements between physicians and patients are not per se void as against public policy.

**37. Owens v. NHC, No. M2005-01272-COA-R3-CV (Tenn. Ct. App.) (June 30, 2006)**