

Pennsylvania Superior Court Rules that Wife Cannot Bind Husband to Nursing Home Arbitration Agreement

Articles May 31, 2018

The never-ending saga over nursing home arbitration agreements continues. On May 30, 2018, a panel of the Pennsylvania Superior Court ruled in *Gross v. Genesis Healthcare, Inc., et al.*, No. 2022 EDA 2017 that a wife was not authorized to execute an admissions agreement (including an arbitration clause) on behalf of her husband, who had dementia.

The facts of this case demonstrate a less than ideal admissions situation. The new resident suffered from dementia. The parties did not execute the admissions agreement until a week and a half after the resident's admission. The resident did not sign the admissions agreement. Rather, his wife signed it on his behalf. At the time of the admission, wife was not the resident's agent under Power of Attorney, nor was she his guardian. Nearly a year after his admission, resident executed a Power of Attorney instrument naming his wife as his agent.

After resident's death, wife filed a negligence lawsuit. Genesis filed preliminary objections to force arbitration. The wife opposed, arguing that the arbitration clause was invalid as she had lacked authority to bind the resident. The court denied the preliminary objections, and Genesis appealed.

In its appeal, Genesis argued that the wife had the resident's "express, implied and apparent authority" to enter into the agreement and bind resident because of the marital relationship and resident's dementia. Genesis admitted that resident was not qualified to execute the agreement himself due to his dementia. The Superior Court found that these arguments had no basis in the law, because "[a]gency is not assumed merely because one person does an act for another." Further, the marriage relationship does not create an agency relationship, and this does not change with resident's dementia.

Genesis also argued that the Power of Attorney instrument that resident later executed showed that he approved of wife's acting on his behalf at the time of his admission. However, the Court points out that nothing in the Power of Attorney instrument ratifies past actions of the wife on resident's behalf. While the Superior Court does not get to the question of whether the Power of Attorney instrument was valid itself, it may not have been due to resident's dementia.

For these reasons, the Superior Court decided that a valid agreement to arbitrate did not exist.

What does this mean for facilities?

Though this is a non-precedential decision, it will undoubtedly be influential on future cases. The Superior Court pointed out that the facility "chose to enter into the Admission Agreement without seeking to obtain a guardian or use reasonable diligence to ensure that [wife] had authority to bind [resident]."

Under this line of thinking, if someone other than the resident is executing the admissions agreement, the facility must determine whether that person had the authority to do so. That authority could be through an existing Power of Attorney instrument or guardianship. A facility cannot assume that a spouse has the authority to act as agent for the resident. The Superior Court seems to state that if there is no one that can legally sign the admissions paperwork on the resident's behalf, that the facility or family must seek a guardianship. As those who have been through the process know, the guardianship process takes time and money.

Be forewarned. If you allow someone to sign your admissions paperwork that does not have authority to do so, you may be unable to enforce the provisions of that agreement (including arbitration) down the road.

You can view a copy of the Superior Court opinion here:

<https://cases.justia.com/pennsylvania/superior-court/2018-2022-eda-2017.pdf?ts=1527704716>

If you have additional questions, or need assistance with determining whether an individual has authority to act on behalf of one of your residents, please contact us.

Danielle Dietrich is a long term care and litigation attorney in Tucker Arensberg's Long Term Care Practice Group. She is licensed to practice law in Pennsylvania, Ohio and West Virginia. Danielle can be reached via email: ddietrich@tuckerlaw.com, telephone: 412-594-5605 or on Twitter at @DLDietrich.