

Jonathan Rosenfeld's Nursing Homes Abuse Blog

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[Ohio Supreme Court Uphold Nursing Home Arbitration Agreement In Negligence Case](#)

Thanks to Sarah Cole at the ADR Blog for addressing the Ohio Supreme Court's decision in [Hayes v. Oakridge Home](#), (slip opinion No. 2009-Ohio-2054). I believe this decision represents a major setback for the rights of nursing home residents who sustained injuries due to the negligence of the facility.

In Hayes, a 95-year-old woman signed an arbitration agreement at the the time she was admitted to Oakridge Home, a Cleveland nursing home. The arbitration agreement stated that disputes (injuries) between the parties were to be resolved via binding arbitration as opposed to jury trail. Further, the arbitration clause stated that Hayes could not claim punitive damages or attorneys fees.

Shortly after her admission, the Hayes suffered serious injuries due to a fall from a wheelchair due to the alleged negligence of the facility. Subsequently, the woman died and the executor of her estate filed a nursing home negligence lawsuit against the nursing home in state court.

The facility claimed that the the lawsuit was inappropriate and the exclusive means of resolving the negligence claim was via arbitration as stated by the admission document. Although the lower courts ruled the arbitration agreement to be unconscionable due to Hayes' age and the unequal bargaining power of the nursing home vs. elderly, the Ohio Supreme Court ruled the agreement to be enforceable.

As Cole succinctly points out, the primary issues presented before the court were Hayes' age and the 'procedural and substantive unconscionably' of the arbitration clause. In my practice, I see firsthand how skilled nursing facilities take advantage of elderly nursing home patients and their families by burying arbitration agreements in stack of other types of admission paperwork.

Unfortunately, this decision stresses the need for families to become aware of the legal pitfalls that accompany nursing home life. Therefore, I suggest, striking any arbitration agreements on all admission paperwork to protect the rights of your loved one.