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Legal victory for nursing home residents: State laws can supersede

Posted on: 6.18.2009 1:05:18 PM Posted by Jonathan Rosenfeld, LTC Advocate

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agreements in nursing home negligence cases.

In *Sue Carter v. SSC Odin Operating Company, LLC*, (885 N.E. 2d 1204, 319 Ill.Dec. 524 [2008]), the daughter of a nursing home resident brought a wrongful death and survival cause of action under the Illinois Nursing Home Care Act against the nursing home where her mother was a resident. Despite the fact that Ms. Carter executed a 'Health Care Arbitration Agreement' on her mother's behalf when she admitted her mother to the facility, the Appellate Court ruled that state law preserved her right to a jury trial.

The nursing home operator appealed the Appellate Court decision, claiming the mandatory arbitration clause, pursuant to the Federal Arbitration Act, should overrule any state law as the federal legislation should take precedent.

Consequently, nursing home arbitration agreements in Illinois will likely be a thing of the past. Perhaps this action by the court will dissuade other states from enforcing similar agreements.

Jonathan Rosenfeld is a lawyer who represents people injured in nursing homes and long-term care facilities. Visit his personal blog at www.nursinghomesabuseblog.com.

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