

Arbitration Agreement Update

By:

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As part of the legislature's efforts to provide some tort reform, the legislature has authorized the use of arbitration agreements for malpractice claims. Under the statute, a patient and physician can agree in advance of a claim to arbitrate malpractice claims in the future provided that the agreement is in writing and follows the language spelled out in the statute. Physicians cannot refuse to treat patients who decline to agree to mandatory arbitration. Most patients however as a part of completing the initial paperwork associated with becoming a patient in a practice including the patient history, insurance, HIPAA compliance and the like, are more likely than not to approve the Arbitration Agreement at the time of their first visit.

While no Ohio cases have yet been decided as to the enforceability of the statutory arbitration provision, a recent decision by the Court of Appeals for the Fifth Appellate District, which includes Stark County, does provide some insight to whether courts will uphold the enforceability of Arbitration agreements related to claims for malpractice. In the case of Fortune v. Castle Nursing Homes, Inc., the court was asked to consider whether an arbitration clause, which had been included in a general admission agreement for a patient being admitted to a nursing facility was enforceable. The patient suffered some injuries at the nursing home after a fall. In reviewing the specific language of the agreement involved in the case, the court concluded that because the paragraph was incorporated into a multi-page agreement covering many topics, that the agreement was not enforceable as to the patient to this case.

The Court of Appeals however did specifically find that Arbitration agreements in a medical setting could be enforceable if it contained specific elements, including: (a) one-page contract; (b) clear explanation of the purpose of the agreement; (c) a sufficient sized print; and (d) that the patient could revoke the agreement within a thirty-day period after originally signing. While the Court of Appeals did not reference the Ohio statute, each of the elements mentioned by the Court are specifically contained in the language spelled out in the Ohio statute. Based upon this Court's decision, it appears at least in our area, that Courts are likely to enforce Arbitration agreements prepared in accordance with the Ohio statute.

Arbitration agreements seem to be most viable for physicians in an office-base practice where patients routinely would be completing forms in the physicians office in a non-crisis setting. To the extent that the use of Arbitration agreements can reduce even a portion of the potential risks of litigation and trial expense, we believe they should be carefully considered as one element in a risk management program for professional practices in Ohio.

If you have any questions concerning Arbitration agreements or their implementation, please contact Scott P. Sandrock via telephone at 1-877-902-8145 or via email at spsandrock@bmdllc.com.