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What Businesses Need to Know About Arbitration and Wrongful Death Claims

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According to a report released in 2012 by the Georgetown University Center on Education and the Workforce, the fastest growing industry in the state of Georgia between 2010 and 2020 will be health care, with nearly 150,000 jobs expected to be added during the period. That's a 38 percent growth rate compared to a 20 percent growth in other industries. The health care industry encompasses more than just hospitals; it includes hospice, home health care, and nursing homes, among others.

While this news is great for the economic development of our state, there are many legal issues the owners of these healthcare-related businesses should be aware of regarding wrongful death lawsuits. While no business is immune from a wrongful death lawsuit, the health care industry (especially businesses providing end-of-life care), may be more susceptible than others.

In Georgia, a wrongful death claim arises when someone dies from injuries sustained as a result of the criminal or negligent conduct of another. What is not as widely understood, however, is that there are actually two unique claims that can arise: a wrongful death claim and an estate claim. The wrongful death claim, which very often is the more lucrative claim from a damages perspective, belongs to certain “beneficiaries” defined by Georgia law and is measured by the full value of the life of the deceased. An estate claim can only be pursued by the representative of the deceased's estate. Georgia law permits the personal representative of the estate to recover for funeral, medical, and other necessary expenses resulting from the death, as well as pre-death pain and suffering.

A recent case decided by the Georgia Court of Appeals, Norton v. United Health Services Inc., held that a nursing home could not compel the arbitration of a wrongful death claim pursuant to an arbitration provision contained in an admission contract signed by the patient's power of attorney. Arbitration is a binding form of alternative dispute resolution where the parties agree to present their case to and accept the decision of an impartial third party or panel as opposed to a jury or a judge in a court of law. A mandatory arbitration agreement, many of which are signed when

patients enter nursing home care, is a contract where the parties agree to resolve all existing or future disputes in arbitration.

In the Norton case, the decedent's daughter, as power of attorney for the deceased, signed an arbitration provision that specifically stated that any wrongful death claim for the decedent, a resident of a long-term care facility, would be resolved in arbitration. After her death, the decedent's husband, again through the decedent's daughter as power of attorney, sued the facility for medical malpractice and wrongful death, among other claims. Although the trial court compelled arbitration for all claims asserted in the suit, the Court of Appeals reversed the lower court's ruling with respect to the wrongful death claim.

The Court reasoned that the beneficiaries of the wrongful death claim — the surviving spouse, children, and descendants of the children — did not consent to arbitration and the deceased's consent to arbitration, through her power of attorney, had no authority to bind the survivors. The nursing home has asked the Georgia Supreme Court to review the decision of the Court of Appeals. If the Supreme Court considers this case, the decision could have far-reaching implications for health care arbitration claims in Georgia, particularly if the Supreme Court upholds the decision of the Court of Appeals. Specifically, claims could be split between those subject to arbitration and those that are not.

If a valid arbitration agreement is present, courts generally refer cases to arbitration for dispute resolution. However, owners of businesses that regularly face wrongful death claims or use arbitration agreements need to be aware of this change in Georgia law. In the case of many patients and residents of nursing homes, hospice care, and home health care, spouses and children of the patient/resident are involved in the medical decision-making. In such cases, and in other cases where practical, when someone signs an arbitration provision, it may be prudent to also have their spouse and/or children also sign the agreement as these are the most common wrongful death beneficiaries.

Consult with an experienced attorney when drafting an arbitration agreement that will best address any claims that may arise. In so doing, you will be prepared for potential litigation and can protect your business when potentially actionable incidents occur.

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