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ELDER LAW MINUTE

During the past month, I have had three experiences with nursing homes which highlight how important it is to know your resident's rights.

I have a client at a facility in Buckhead who asked me to update her Advance Directive so that she could name a successor health care agent in case her cousin in Massachusetts was not available. When I arrived at the home to facilitate the execution of the document the nurse manager on the floor would not allow the resident to sign the document. First she argued that it was their policy to not allow residents to sign documents without the responsible party present. Then she argued that the facility had determined that my client was not mentally competent. I explained that she had not been adjudicated incompetent and appeared perfectly lucid. And since she was competent, she had the right to meet with me and sign the document. After contacting the Director of Nursing, we were able to get the AD signed.

Shortly after that experience, I was at a facility in downtown Atlanta helping an adult daughter sign her mother in. When I advised the daughter not to sign the binding arbitration agreement, the admission director told us that everybody is required to sign it. I suggested that if that were the case, then the facility would be violating federal and state laws. After a meeting with the Assistant Administrator who tried to convince me that arbitration was not intended to be mandatory, they agreed to admit my client without that document being signed.

The final episode revolved around a nursing home in Decatur which told my client's family that she no longer needed skilled rehabilitation and that they did not have any long-term care beds available. The facility refused to return my phone calls, so I faxed the administrator a note which informed her that discharging a resident due to a change in payment source was a crime. After receiving my FAX, the facility agreed to keep my client.

These three vignettes illustrate how important it is to have an advocate on your side when dealing with nursing homes.