



Center for Justice & Democracy
80 Broad St., 17th Floor
New York, NY 10004
Tel: 212.267.2801
Fax: 212.764.4298
centerjd@centerjd.org
<http://centerjd.org>

NEWS RELEASE

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CONTACT:
Joanne Doroshow, 212/267-2801

CONSUMER GROUP CALLS ON AMERICAN MEDICAL ASSOCIATION TO STOP DOCTORS' USE OF ANTI-PATIENT ARBITRATION AGREEMENTS;

NEVADA DOCTORS ARE COERCING PATIENTS TO SIGN AGREEMENTS THAT AMA CONSIDERS FUNDAMENTALLY UNFAIR

The Center for Justice & Democracy today called on the American Medical Association to demand that Nevada doctors immediately stop coercing patients into signing away their rights to jury trial in the event of medical malpractice. Recent reports indicate that Nevada doctors are starting to compel patients into signing mandatory binding arbitration agreements as a prerequisite for patients to receive medical treatment. These agreements force patients to sign away their legal rights to hold negligent doctors accountable in court in the event the patient is killed or injured due to malpractice.

This is in direct violation of AMA policy, which says that such agreements are fundamentally unfair to patients. The AMA view was most recently articulated in a 1998 report released jointly by the AMA, the American Bar Association and the American Arbitration Association, which studied such agreements, entitled *Health Care Due Process Protocol*. As a result of this study, the American Arbitration Association affirmed in its Health Care Policy Statement that it will not participate in arbitration between a patient and health care provider if the patient was forced to give up their rights before malpractice occurred.

In the report's recommendations, the organizations jointly found that any alternative resolution process (ADR), like arbitration, must abide by due process considerations and must be fundamentally fair. Specifically, they found:

The agreement to use ADR should be knowing and voluntary. Consent to use an ADR process *should not be a requirement for receiving emergency care or treatment*. In disputes involving patients, binding forms of dispute resolution *should be used only where the parties agree to do so after a dispute arises*. (emphasis added).

According to recent news reports, some Nevada doctors are flaunting that policy, now forcing patients to sign arbitration agreements simply to get medical care and before any “dispute arises,” i.e., malpractice has occurred. This policy is in direct contradiction to AMA policy.

“In what could be the kick-off of a new national strategy to eliminate civil jury trials in cases involving medical malpractice, Nevada doctors have begun forcing patients to completely relinquish their rights to go to court against culpable physicians,” said Joanne Doroshov, Executive Director of the Center for Justice & Democracy. “Mandatory binding arbitration severely obstructs a patient’s path to justice. Even the American Medical Association, which is pushing for legislation to restrict patients’ legal rights, considers such coercion fundamentally unfair. The AMA should at once denounce use of these agreements in Nevada and bring this practice to an immediate halt.”

Under mandatory binding arbitration, access to the courthouse door is blocked. Disputes must be resolved by arbitrators. Arbitrators are not required to have any legal training. They may be biased, or even under contract with an insurance company or health care provider. Delays are common. The discovery process, whereby parties obtain information from one another, is extremely limited. Rules of evidence do not apply. Arbitrators issue no written legal opinions, so no legal precedent or rules for future conduct can be established. Costs must generally be split between the injured victim and the insurance company, including arbitrator’s fees which can be hundreds or thousands of dollars per hour. And there is no right to appeal.

A December 2000 report by the California Research Bureau, the state legislature’s research arm, shows the extent to which the mandatory arbitration process contains an inherent bias against medical malpractice victims. Looking at California data, the Bureau found that “arbitration is expensive, at least for patients on normal budgets,” with arbitrators typically charging \$250 to \$400 per hour, not to mention the additional costs of renting a hearing room, attorney’s fees and related administrative expenses. The report points out that most states lack uniform professional standards and licensing requirements for arbitrators, allowing the health care industry to have claims decided by repeat arbitrators who tend to rule in their favor.

The Center for Justice & Democracy is a national consumer rights organization that is dedicated to educating the public about the importance of the civil justice system. For more information, contact the Center for Justice & Democracy, www.centerjd.org.

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