Medical Malpractice and Mandatory Arbitration: A One-Two Punch to the Injured Patient

Rosa Milon dresses her husband James, who was paralyzed from the waist down by "routine" prostate surgery.

In December 1998, James Milon, a 53-year-old independent truck driver from Louisburg, was admitted to Duke University Medical Center for what he was told would be routine prostate surgery. Instead, he suffered a "spinal cord stroke" and left the hospital paralyzed.

James Milon drove a long-haul truck for 30 years, spending the week on the road and returning home on the weekends to be with his family. At the time of his catastrophic injury, he was married with two dependant children and one in college.

In 1998, Mr. Milon was diagnosed with prostate cancer and surgery was scheduled for December of that year. Despite a number of pre-existing medical conditions, including diabetes, arteriosclerosis, a bad back, 50 extra pounds, and a pack-a-day cigarette habit, the prostate surgery was performed in a way that was dangerous for Mr. Milon; he was positioned on his back, face up, with his hips raised above the height of his shoulders and his feet in stirrups above his head. During surgery, his blood pressure dropped considerably lower than 100 for more than 90 minutes, and Mr. Milon suffered what was, in effect, a "spinal cord stroke" that left him paralyzed from the waist down.

To add insult to injury, Duke Hospital responded to the Milon's institution of a malpractice lawsuit by claiming that Mrs. Milon had signed a binding agreement to arbitrate all past or future claims against Duke.

Hospitals and medical practices nationwide have recently begun asking patients to sign arbitration agreements. While arbitration is a decades-old tool usually used to settle commercial disputes, patients who sign an arbitration agreement give up their constitutional right to sue for malpractice or any other complaint about their care and have a trial by jury. By signing an arbitration agreement, patients agree to a private conference in which a hired referee decides the case and both parties must abide by the decision. Arbitration favors the defendant because it is less expensive and time-consuming than a trial, and the proceedings are confidential and afford medical providers who are being sued for malpractice with privacy.

Duke apparently inserted the one-paragraph binding arbitration agreement between pages of paperwork patients routinely sign regarding insurance and financial responsibility. The Milon's meritorious lawsuit was put on hold for more than two years while Duke argued that the mandatory arbitration clause that Mrs. Milon unknowingly signed was enforceable.

In the end, the North Carolina Supreme Court unanimously affirmed that the arbitration agreement was unenforceable and Mr. Milon's case could proceed.

It is estimated that 1,200 to 2,800 North Carolinians die each year as a result of preventable medical mistakes. Already, injured patients have to jump through a series of hoops before they can even file a claim for medical negligence. Due to the insertion of a mandatory arbitration clause into the mounds of paperwork patients must sign, the Milons had to wait an extra two years before they could get their constitutionally-guaranteed trial by jury. Now, the insurance and medical associations are lobbying for arbitrary legislative caps on non-economic damages, such as the pain and suffering endured by the Milons as legal institutions debated whether or not their case could proceed. How many more barriers to justice will be put in the way of North Carolina's citizens? ■

James Milon has been represented by John E. Bugg of Durham. For more information, contact him at 919-383-9431.