

Health Law: Quality & Liability

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Treatment Relationship:
Limiting Duties



Waivers must be

1. Knowing
2. Voluntary
3. Consistent with
public policy



Knowledge

Understand risks

Appreciate

consequences



Voluntariness

PTF agree freely, has choice

PTF bargaining power

PTF need for service

PTF relative vulnerability



One-Year Contract Policy Change QRG

Launching April 17, 2011



| Scenario | |
|---|--|
| Questions | VZW Response |
| Mrs. Jones has been a Verizon Wireless customer for ten years. For her last three upgrades, she chose a one-year contract. Her last one-year contract has just expired and she wants to purchase a new device with a new one-year contract. | |
| I was able to renew my one-year contract last year! Why do you guys always change your policies? Do you just like to confuse us? | Oh no, Mrs. Jones, we are not trying to confuse you. We have changed our policy to simplify our contract options. |
| It is important for me to have the latest device. What can you do for me? | I understand, Mrs. Jones; allow me to walk you through your options. We do have a month-to-month contract available. It gives you the flexibility to upgrade to a new device at anytime. |
| Do I have another choice? | Yes, Mrs. Jones, you also have the option to select our two-year contract. |
| The device with a two-year contract sounds great, but I still want to upgrade more frequently. Don't I have any other options? | If you select a two-year contract, you will be eligible to purchase a new phone with the upgrade after 20 months. If you would like to change devices more frequently, you can purchase a device without a contract at any time. |

NOTE: The Verizon Wireless Trade In Program is available for customers to help recycle their devices and receive rebate cards. They can use these rebate cards towards their monthly bill. For additional information on the Verizon Wireless Trade-In Program, refer customers to www.trade-in.vzw.com.



Tunkl

v.

UCLA





RELEASE: The hospital is a nonprofit, charitable institution. In consideration of the hospital and allied services to be rendered and the rates charged therefor, the patient or his legal representative **agrees to** and



hereby **releases** . . . the hospital from **any and all liability** for the negligent or wrongful acts or omissions of its employees, **if** the hospital has used due care in selecting its employees.



The waiver bars the
malpractice suit

So, attack the waiver



Waivers must be

1. Knowing
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Partial waivers



Tunkl waivers
prohibited

But **PARTIAL** waivers
allowed



Discharge

AMA



DISCHARGE - AGAINST MEDICAL ADVICE

I, _____, am voluntarily leaving and signing out
(Name of patient)

(OR)

I, _____, am voluntarily taking _____
(Name of person signing) (Name of patient)

from the Medical Center, contrary to the advice of the medical staff in attendance. This is to certify that I, in so doing, assume full responsibility for any and all risks of this action, and hereby agree to hold the Medical Center and its' staff free from any liability of any consequences that may result directly or indirectly by reason of such removal.

(Signature of patient or person assuming responsibility)

(Relationship of person assuming responsibility)



Other partial
waivers
allowed



Patient insists on
medical treatment
for **religious**
reasons



NO BLOOD



**ADVANCE DECISION TO REFUSE
SPECIFIED MEDICAL TREATMENT**



Patient
participates in
experiment



A research study for Irritable Bowel Syndrome (IBS).

**Frustrated by your
IBS and endless
bathroom stops?**

**A local research study
seeks people with
Irritable Bowel Syndrome.**

- ✓ No-cost investigational medication
- ✓ No-cost study-related care

SEE IF YOU QUALIFY. CLICK HERE

www.StudyIBS.com



Arbitration



Cal Civ. Proc. Code 1295(a)

“Any contract for medical services which contains a provision for arbitration . . . professional negligence . . . shall have . . . as the **first article** of the contract . . . in the following language:”



"It is understood that any dispute as to medical malpractice, . . . will be determined by submission to **arbitration** . . . and not by a lawsuit or resort to court process"



(b) Immediately before the signature line . . . in at least 10-point bold **red** type:

“NOTICE: BY SIGNING THIS CONTRACT YOU ARE AGREEING TO HAVE ANY ISSUE OF MEDICAL MALPRACTICE DECIDED BY NEUTRAL ARBITRATION AND YOU ARE GIVING UP YOUR RIGHT TO A JURY OR COURT TRIAL”



Cal Civ. Proc. Code 1295(e)

Such a contract is **not** a contract of adhesion, nor unconscionable nor otherwise improper, where it complies with subdivisions (a), (b), . . .

