



## ALERTS

### Court Reiterates Exclusive Arbitration Agreement May Override Indiana Medical Malpractice Act

September 4, 2020

On Sept. 2, 2020, in [Estate of King v. Aperion Care](#), the Indiana Court of Appeals remanded to the trial court a case involving a malpractice claim filed by the estate of a nursing home resident with instructions to grant the estate's motion to compel arbitration.

The estate initially filed the malpractice claim with the Indiana Department of Insurance because the nursing home was a qualified provider under Indiana's Medical Malpractice Act. However, the estate moved to compel arbitration when it discovered the nursing home's admission agreement provided the "exclusive means for resolving *any* claims was arbitration."

The Court suggests qualified providers "could if they wished, make the right to seek arbitration subject to a condition precedent" such as presentation of malpractice claims to a medical review panel. However, this suggestion followed the court's reiteration of its warning in [Sanford v. Castleton Health Care Ctr., LLC](#), that overbroad exclusive arbitration provisions could contractually preempt the medical review panel process.

In light of exclusive arbitration clauses, like the one at issue, we query whether qualified medical health care providers retain the ability to avail themselves of the provisions and attendant benefits of the Medical Malpractice Act, including a limitation on the amount of the provider's liability . . . and review of the plaintiff's claim by a medical review panel.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work or Michael Grubbs at 317-231-7224 or [michael.grubbs@btlaw.com](mailto:michael.grubbs@btlaw.com).

© 2020 Barnes & Thornburg LLP. All Rights Reserved. This page, and all information on it, is proprietary and the property of Barnes & Thornburg

## RELATED PEOPLE



### J. Michael Grubbs

Partner  
Indianapolis

P 317-231-7224

F 317-231-7433

[michael.grubbs@btlaw.com](mailto:michael.grubbs@btlaw.com)

## RELATED INDUSTRIES

Healthcare

*LLP. It may not be reproduced, in any form, without the express written consent of Barnes & Thornburg LLP.*

*This Barnes & Thornburg LLP publication should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer on any specific legal questions you may have concerning your situation.*