

Testimony of

David Kurth

June 18, 2008

Testimony of David W. Kurth

of Burlington, Wisconsin

On the Fairness in Nursing Home Arbitration Act of 2008

(S. 2838)

Before the Senate Committee on the Judiciary Subcommittee on Antitrust, Competition and Consumer Rights and the

Special Committee on Aging

United States Senate

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Chairman Kohl, Ranking Members Hatch and Smith, and distinguished Members of the committees, thank you for the invitation to speak to you today about my family's experiences with nursing home care and mandatory arbitration. I would also like to acknowledge my sister Kim and my mother Elaine, who have both accompanied me here today.

I would like to express my family's strong support of S.2838, the "Fairness in Nursing Home Arbitration Act," a bill that would stop nursing homes from using mandatory predispute arbitration clauses in their contracts. I would also like to thank Senators Martinez and Kohl for introducing the bill.

My name is David William Kurth. My family and I have lived in Burlington, Wisconsin for more than 50 years. My mother has recently moved to Haines City, Florida to live with and be cared for by my sister Kim and her husband John. I am an Engineering Project Manager and employed by MedPlast, at their facility in Elkhorn, Wisconsin.

My father's name was William F. Kurth. He loved our country and served many years as an officer in both the United States Army and Wisconsin National Guard. He prepared on two different occasions to fight and give his life to protect this country. My father was an Eagle Scout, and a Boy Scout Leader. He

served as a volunteer Fireman for our community for more than 25 years. He taught his children and many others to love and serve this country as well. He taught us to obey its laws, respect its traditions, and to uphold the rights of others. He was an honest man who taught us never to lie, neither by omission nor by commission. He was a mentor to many people. He was a good man. He served his country and its people in his work all the days of his life.

My father entered Mount Carmel Nursing Home in Burlington, Wisconsin in October 2004. One Saturday morning in February 2005, he fell and complained that his hip hurt. He complained about the pain in his hip throughout the day. Late Saturday evening, someone from the staff thought it might be a good idea to perform an x-ray to investigate the cause of the pain. It was then that they found he had broken his left hip. He spent several days in the Burlington Hospital having his hip repaired.

Shortly after returning to Mount Carmel Nursing Home, his left leg was broken again during physical therapy that was improperly applied. My mother said that during this session of therapy, the therapist insisted that my father's leg must be fully straightened. My mother said that my father was screaming in pain and trying his best to resist their efforts. Yet they didn't listen and as a result they broke his leg halfway between the hip and knee. It was at this time he contracted MRSA infection. During this same time his healthcare coverage was changed from Medicare to Medicaid. The very day his coverage changed, he was moved from his private room in the Medicare wing to a shared room in the Medicaid wing of the nursing facility. The staff did not perform any cleaning to his new room prior to his arrival. His new room was filthy and smelled of feces. The bed he was placed in was coated with dirt. My wife and I had to clean his room and bed the Sunday after he was transferred to the Medicaid wing. His room never was properly cleaned throughout the duration of his stay in the Medicaid wing. The bathroom he shared with three other men had not been properly cleaned in weeks, possibly months. On one occasion upon entering my father's room, I found the room to reek of feces. There was a rag with feces, next to my father's face, on his feeding table. His clean clothes were on the floor intermingled with several changes of soiled bed sheets.

Even though my father had contracted the MRSA infection, the staff at the nursing home made no attempt to protect his roommates, his visitors, or even their own staff from contracting this very communicable disease. The nursing home staff never alerted anyone to the dangers of contracting MRSA. The staff members that worked with my father very seldom wore protective apparel or gloves. Our family members never saw any staff members wash their hands before or after handling my father's wounds or undergarments.

In late April 2005, Dr. Rein, a doctor who examines patients once every 30 days, found 2 or 3 small bedsores on my father's backside and instructed the Wound Care Nursing Team to give special attention to these wounds.

What we didn't was that around this same time the management of the nursing home had made a cost-cutting move and disbanded the five-member team assigned to all wound care for the facility. This team was replaced with two nurses dedicated to wound care. However, one of these two nurses was also several months pregnant and within days of her reassignment she went on maternity leave. What this meant was that the wound care for several hundred aged and infirm patients that had previously been done by a team of five people was now to be attended by only one person. Court records show that the nursing home administrator did little more than ask this last remaining Nurse to let her know if she was having any trouble, or getting behind on her workload. It is inconceivable to us now that anyone in administrative authority could possibly think that one person could replace the effort of five people working as a team with internal oversight.

The court records and testimony show that this sole wound care nurse never attended my father's wounds during the months of April and May 2005, even after it was brought to her attention by the visiting doctor in late April. My father never complained of pain because he spent the majority of the time sleeping due to the heavy sedation that he was under. None of us had any idea that he was in such poor condition.

The visiting Doctor examined my father again on the Thursday prior to Memorial Day. At that time, upon seeing the progression of my father's illness, the Doctor had my father rushed by ambulance to the emergency room at Burlington Hospital. My father was admitted to the hospital that very morning. The following morning my mother and I had a chance to discuss my father's condition with the doctor. He told us how shocked he was at the poor care my father had received at the nursing facility. The doctor expressed how disappointed he was that the nursing staff could let someone deteriorate to such an extent. It was also at this time that the doctor told us that my father was terminally ill and that he did not have much chance of surviving his infections. My father was admitted to the hospice section of the hospital and a few days later he was transferred to a special Hospice in Wauwatosa, Wisconsin. During this time my father was given excellent care.

He died on June 25th, 2005 from sepsis of the blood due to infections caused by 13 bedsores. Most of these bedsores ran deep into the bones of his hips and pelvis. The infections were caused by the excrement and urine that was not cleansed from the wounds for days at a time. The bedsores were caused by neglect. The wound care nurse that was responsible for caring for my father has been charged and found guilty of criminal neglect by the State of Wisconsin for her actions. Further investigation on our part has revealed scores of other accounts of neglect at this same home.

During the months of April and May my father was not provided proper food or even water for days at a time. However, the nursing home's own records document that they were aware enough of my father's illnesses and debilitation to bill Medicaid for the extra care and services required to address the increased needs of these very afflictions. How is it that no one on the entire nursing staff could see or treat my father's bedsores, yet they could be aware enough of them to bill Medicaid for their

treatment? And how does a nursing home get away with billing for these services while never actually providing the services? As of the time I submitted my statement to the committee we are unaware of any investigation for any of the fraudulent claims made and paid to Mount Carmel Nursing Home.

On the day of my father's memorial service, a woman representing Kindredcare, the corporation that owns Mount Carmel, contacted me to express her concerns for my family and for the way my father suffered and died. She said that they at Kindredcare felt responsible for all that had happened and wanted to express their regrets by paying for my father's funeral expenses. I told her thank you but no thank you; I said if she truly wanted to express the regrets of the corporation that they should write my mother a letter stating what she had just said. She told me she would get back to me on that. I never heard from her again.

As revolting as all of these ordeals for my father and mother sound, this is not the most shocking part of their tale. My father's ordeal is being hidden from the light of day by an arbitration clause which he himself never signed. My mother was instructed to sign it by the Admission Clerk at the Nursing Home. The parent corporation of the nursing home, "Kindredcare" is hiding behind this document to prevent the light of truth from being shed on their corrupt management policies for nursing homes.

How ironic is it that William Kurth, a Captain in the United States Army, who had prepared to serve his country to the death, died of infections due to neglect caused by the unscrupulous cost cutting measures of a large nursing home corporation that has been cited for neglect many times over the last several years? How disgusting is it that the very system of justice and laws my father fought to protect are now acting to prevent our family from having our day in court?

Distinguished Senators, my father's story is not an isolated case. You can bet that it's probably happening at the majority of Kindredcare's facilities across America. This is because Kindredcare can hide behind these arbitration clauses by coercing the unknowing elderly who apply for care to sign these documents without explaining to them, or to anyone else, what they actually mean.

How can anyone in good conscience argue that it should be perfectly legal to trick frail, elderly, infirm senior citizens experiencing the most stressful time in their lives into waiving their legal rights? This practice of coercing our senior citizens who enter nursing homes to sign binding mandatory arbitration clauses has allowed nursing home corporations to minimize the level of care they provide. It also allows them to do so without anyone finding out about it.

The care that our family witnessed was disturbing. In the case of Mount Carmel, it seemed to us that all levels of care were understaffed. Patients would often wait for 30 to 45 minutes to be helped to and

from the toilet and the nurses often complained of working 60 hour work weeks. The food appeared to be atrocious.

What was once intended as an alternative dispute resolution process for business to business disagreements has become a shield for these large corporations to hide behind and decrease the quality of care. In the case of Kindredcare, it is economically more profitable to let people like my father suffer than to provide proper care. And now that our family is trying to hold the nursing home corporation accountable for its actions, Kindredcare is trying to bury our case by forcing us into a mandatory, secret, and binding arbitration process that they chose!

Ladies and Gentlemen of the Senate, my mother and sister and I are here today to plead with you to help right a great wrong that is being perpetrated on the elderly and infirm of America. If you, in your wisdom, can see fit to ban the use and practice of these arbitration clauses upon the elderly entering nursing homes you will be helping to prevent and expose the mismanagement of their care. Without these contracts to hide behind, nursing homes will have a greater incentive to provide the quality of care that families and legislators expect from them. The entire industry will have to reassess their poor practices and actually provide the care they are paid to give.

This country was built upon the retired and infirm who now reside in these nursing homes. The Veterans who fought for us, the teachers that provided us knowledge, the carpenters that built our homes and businesses, the little old ladies that taught us Sunday school, live in these nursing homes. Why should they have to forgo their legal rights in order to receive care? They took care of us, and now it time we took care of them in a manner that is worthy of the sacrifices they have made.

I know that Washington is a very busy place and that you are all very busy people. But I am encouraged that you found it in your hearts to make this cause worthy of your time and commitment. It is by God Almighty's Hand that you have come to your position this day for such a time as this. You are a light on a hill. Please let that light shine on those who must be protected. Please don't let my father's story be allowed to happen to another innocent American.

Thank you for your time.