



# KNECHT MEDICAL ARBITRATION AGREEMENT™

\* \* \* ATTENTION: FOR IMMEDIATE RELEASE! \* \* \*

## **Fourth District Court of Appeal Upholds The KNECHT MEDICAL ARBITRATION AGREEMENT™ Fair & Reasonable for Both Patient & Physician** *(First & Only, Physician Arbitrated, Medical Arbitration Agreement)*

**PALM BEACH COUNTY, Florida** - In one of the most closely watched medical malpractice cases in Florida, and one that will dramatically change the way medical malpractice cases are resolved, **the Fourth District Court of Appeals has upheld the KNECHT MEDICAL ARBITRATION AGREEMENT™ (KMAA™)** which is the first and only, physician arbitrated, medical arbitration agreement to be affirmed by Florida's Trial and Appellate Courts.

*Stuart and Carol Goldberg v. David R. Simpson, M.D., and Center for Bone & Joint Surgery of the Palm Beaches, P.A., 15<sup>th</sup> Judicial Circuit for Palm Beach County, Florida, Case No. 50-2009-CA-031697-XXXXMB AF, affirmed, Fourth District Court of Appeal, Case No. 4D10-813 (Fla. 4DCA December 15, 2010).*

For the first time in medical arbitration, there is an agreement that allows both the patient and the physician to choose qualified physicians, in the treating physician's area of specialty, to decide whether there is medical malpractice. With the KNECHT MEDICAL ARBITRATION AGREEMENT™ the patient and physician no longer have to endure years of litigation and the expense of hiring "professional" experts to explain the medical malpractice issues to a jury. No more jury trials, no more experts, and no more years of protracted litigation, since the parties finally have a forum and process that is fair and reasonable to both sides, and has been affirmed by the Florida Trial and Appellate Courts.

### **KMAA™ IS FAIR AND REASONABLE FOR BOTH THE PATIENT AND PHYSICIAN**

In the related case, after the patient signed the KMAA™, he later decided that he and his wife did not want to submit their claims to binding arbitration with the three qualified physicians. Instead, they filed suit against the physician and demanded a jury trial. In upholding the KMAA™, the trial court found that the KMAA™ was fair and reasonable under Florida law since it did "not consider the [Knecht] Medical Arbitration Agreement to be procedurally or substantively unconscionable."

After hearing from both sides during a full evidentiary hearing, the trial court overruled the patient's objections and agreed that the three qualified physicians in the treating physician's area of expertise must decide the medical malpractice issues, not a jury. After carefully reviewing all of the patient's objections, the appellate court likewise upheld the KMAA™ and affirmed the trial court's ruling.

In addressing whether the KMAA™ was fair and reasonable under Florida law, and otherwise in the best interest of the patient and the physician, the Fourth District Court of Appeal affirmed the trial court's decision upholding the KMAA™, after a close review of each and every objection raised by counsel for the patient and spouse, to wit:

- The KMAA™ is unenforceable since patient failed to read it before signing it. (*OVERRULED*)
- No one explained the KMAA™ to patient. (*OVERRULED*)
- The KMAA™ is deceptive and unfair. (*OVERRULED*)
- Three doctors cannot serve as arbitrators. (*OVERRULED*)
- Three doctors will be inherently predisposed to find no liability. (*OVERRULED*)
- Arbitrators should not be board certified in same specialty as defendant doctor. (*OVERRULED*)
- The KMAA™ is overwhelmingly tilted in favor of the defendant doctor. (*OVERRULED*)
- Forcing family members to comply with KMAA™ is against public policy. (*OVERRULED*)
- Allowing doctors to avoid Florida's "Three Strike" rule is against public policy. (*OVERRULED*)
- Capping non-economic damages to \$250,000 is against public policy. (*OVERRULED*)
- Bar on punitive damages is against public policy. (*OVERRULED*)
- The KMAA™ violates Florida's Medical Malpractice Act. (*OVERRULED*)
- The KMAA™ is otherwise against public policy. (*OVERRULED*)

## **APPELLATE COURT AFFIRMS KMAA™ AGREEMENT**

Understanding that medical malpractice reform is a complex issue in Florida, and acknowledging that there is no perfect solution, the appellate court affirmed the trial court's order, finding that the parties were bound by the KNECHT MEDICAL ARBITRATION AGREEMENT™. As for what this means for the patients and physicians that use the KMAA™ in Florida:

- Arbitration under the KMAA™ is a fair and reasonable forum for resolving disputes.
- Liability is no longer decided by a jury.
- Liability is now decided by three "Qualified" physicians.
- "Qualified" physician means arbitrators must be qualified in physician's area of expertise.
- The patient and physician each choose a "qualified" physician to decide liability.
- The parties no longer need to retain expensive "professional" experts.
- Non-economic damages are capped at \$250,000.
- No more multi-million dollar awards for pain and suffering.
- Patient's family members and their claims are covered under the KMAA.
- Physician can avoid Florida's "Three Strike" rule which is in everyone's best interest.
- The KMAA™ significantly reduces the costs and expenses for the patient and physician.
- Patients and physicians can resolve disputes in 3 – 6 months vs 2 – 3 years in court.

## WHAT DOCTORS ARE SAYING

**Dr. G. Clay Baynham** is past president of the Palm Beach County Medical Society. A leading spine surgeon in South Florida he extols the benefits of the KNECHT MEDICAL ARBITRATION AGREEMENT™:

*“You cannot practice medicine without it. Malpractice insurance is not only expensive, but often unavailable. With the KMAA™, resolution of patient grievances has been expedited and the costs dramatically reduced, compared with a jury trial. For the first time, decisions will be made by qualified experts in an objective fashion, based on the medical facts. The KMAA™ retains the equitable principles and elevates the high standards of arbitration to the benefit of both parties.”*

**Dr. John Schilero** is a highly experienced, board certified foot and ankle surgeon with over 15,000 surgical procedures performed throughout his more than thirty years of practice. A much sought after speaker, Dr. Schilero has delivered lectures on the latest foot surgical techniques to some of the largest foot and ankle scientific conferences in the U.S.

*“The Knecht Medical Arbitration Agreement™ is a home run! It is the most effective risk management tool I have ever encountered. The KMAA™ is the tool I feel most comfortable with, and the one I rely on everyday in my practice.”*

**Dr. Frank Cook** is a nationally recognized Sports Medicine Orthopedic Surgeon. Dr. Cook serves as Orthopedic Consultant for some of sport’s top professional organizations including the Florida Marlins and the St. Louis Cardinals. He is currently Chief of Surgery at Jupiter Medical Center:

*“We finally have what we’ve always asked for in a simple agreement. There is no doubt that the Knecht Medical Arbitration Agreement™ will revolutionize medical malpractice in Florida. My patients have embraced it.”*

## ATTORNEY’S RESEARCH AND GROUNDBREAKING CONCEPTS LEADS TO KMAA™

“No one could explain to me why doctors couldn’t serve as arbitrators,” explains KMAA™ creator and trial attorney Michael C. Knecht. As far back as 2003, Knecht began researching the issue by reading through hundreds of Florida appellate and Supreme Court decisions on arbitration. “I found there was no law stating that attorneys and administrative law judges were the only ones that could serve as arbitrators. It was just an accepted norm.”

As he discovered in his research, there was nothing preventing doctors from serving as arbitrators for their peers. “The medical community and patients deserved an arbitration agreement that was fair and equitable to both sides. The KMAA™ eliminates the stress, time, and money spent on a long, drawn out jury trial.” In 2004 he created the KNECHT MEDICAL ARBITRATION AGREEMENT™, and now the Florida trial and appellate courts have upheld his KMAA™ for the patients and physicians that have embraced it.

## **A SIMPLE SOLUTION TO A COMPLEX PROBLEM**

For information on how to obtain a License & Subscription for the **KNECHT MEDICAL ARBITRATION AGREEMENT™** contact **Felix Santiago**, Director of Sales & Marketing at the Law Office of Michael C. Knecht, P.A., **(561) 337-5789** or toll-free **(877) 214-8580**. You can also visit the KNECHT MEDICAL ARBITRATION AGREEMENT™ website at [www.maa-md.com](http://www.maa-md.com). The KMAA™ was created by contract expert and trial attorney Michael C. Knecht, is proprietary and subject to federal intellectual property protection.

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