PHYSICIAN-PATIENT ARBITRATION AGREEMENTS

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I. INTRODUCTION

Over the last few years, there has been a considerable increase in the frequency and impact of medical malpractice litigation. Each year, approximately fifteen claims are filed for every one hundred physicians in the United States, and 30% of those claims result in an insurance payment.[1] As illustrated in a study conducted by the Joint Economic Committee of the United States Congress, this consistent influx of insurance claims has increased the value of malpractice insurance premiums for health care providers, which in turn has led to higher costs for the health care system as well as reduced access to medical services.[2] Attention has been given to the use of pre-dispute arbitration agreements as an alternative to traditional litigation of medical malpractice disputes.[3]

Pre-dispute binding arbitration agreements are contracts in which both patients and physicians irrevocably commit to an arbitration process before any dispute has arisen regarding the medical care provided.[4] It functions as an alternative to judicial litigation in that it provides binding determinations through presumably less expensive, more efficient and expert, and nonetheless fair proceedings.[5] By entering a contract of arbitration, both physicians and patients voluntarily abandon their right to submit their claims before a court of law, agreeing instead to submit the medical claim before a panel of arbitrators.[6]

Initially, arbitration agreements were encouraged for use primarily in commercial contexts. However, due to the strong public policy favoring arbitration both at federal and state level, the use of pre-dispute arbitration agreements has increased dramatically over the last decade.[7] Thus, pre-dispute arbitration clauses can now be found in a wide range of noncommercial contracts, such as contracts between investors and broker dealers, credit card agreements, employee handbooks and contracts, purchase contracts, cell phone bills, home mortgages,[8] and health care contracts.[9]

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[1] Jonathan Todres, *Towards Healing and Restoration for All: Reframing Medical Malpractice Reform*, 39 CONN. L. REV. 667 (2006).

[2] STAFF OF H.R. JOINT ECON. COMM., 108TH CONG., LIABILITY FOR MEDICAL MALPRACTICE: ISSUES AND EVIDENCE 1 (Comm. Print 2003), http://www.danmiller.org/pubs/MedMal_2003.pdf.

[3] Nancy M. Simone, *Medical Malpractice Litigation: A Comparative Analysis of United States and Great Britain*, 12 SUFFOLK TRANSNAT'L L. REV. 577, 597 (1989).

[4] Kenneth A. DeVille, *The Jury is Out: Pre-Disputes Bidding Arbitration Agreements for Medical Malpractice Claims*, 28 J. LEGAL MED. 333, 334 (2007).

[5] *Id.* at 333.

[6] *Id.*

[7] Elizabeth K. Stanley, *Parties' Defenses to Building Arbitration Agreements in the Health Care Field & the Operation of the Mccarran-Ferguson Act*, 38 ST. MARY'S L. J. 591, 592 (2007).

[8] DeVille, *supra* note 4, at 334.

[9] Stanley, *supra* note 7, at 592.

Medical malpractice arbitration agreements between physicians and patients are prohibited in Puerto Rico. In *Martínez Marrero v. González Droz*, the Supreme Court of Puerto Rico (hereinafter, Supreme Court of P.R.) held that physician-patient medical malpractice arbitration agreements are void for being against public policy, therefore rendering them unenforceable.[10] The Court relied upon Puerto Rico's Commercial Arbitration Act and supported its ruling by invoking Puerto Rico's policy favoring the judicial resolution of medical malpractice claims. It is important to note, however, that even though the defendant's counsel argued that this type of arbitration agreement is within the scope of the Federal Arbitration Act (FAA), nowhere in the Court's opinion was this statute mentioned.[11] By ignoring the potential impact and application of the FAA, the Supreme Court of PR saw no barrier in establishing a categorical rule prohibiting arbitration of medical malpractice disputes in Puerto Rico.

This paper addresses the preemptive effect of the FAA and examines medical malpractice arbitration agreements in light of said statute, concluding that Puerto Rico's prohibition against physician-patient arbitration, as set forth in *Martínez Marrero*, is preempted and invalidated by the FAA and Supreme Court of the United States (hereinafter, U.S. Supreme Court) precedents. Part II of this article will provide a brief history of arbitration in the United States, detailing the preemptive nature of the FAA. Part III will discuss several cases that interpret the legality of physician-patient arbitration agreements under the FAA. Throughout such discussion, Part III seeks to demonstrate that, under current federal law, there should be no doubt that medical malpractice arbitration agreements are valid. Finally, Part IV will briefly summarize the arguments and conclusions of this paper.

II. THE FEDERAL ARBITRATION ACT AND PREEMPTION

The FAA, enacted by Congress in 1925, establishes and governs the duty to honor agreements to arbitrate disputes.[12] Congress designed the FAA to overrule the judiciary's longstanding reluctance to enforce agreements to arbitrate and to put such agreements on the same footing as other contracts.[13] For this reason, it is often claimed that the FAA's main purpose is to make agreements to arbitrate enforceable to the same extent as other contracts. The most important provision of the FAA states that "[a] written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist in law or in equity for the revocation of any contract."[14]

DeVille points out that prior to the 1990's, the FAA was applied exclusively in federal courts to contracts involving large and sophisticated commercial parties.[15] It was not aimed at disputes between individual citizens related to private law claims.[16] Thus, the FAA's strong protection of arbitration could not be imposed on medical malpractice claims litigated in state courts. However, this changed with subsequent decisions of the U.S. Supreme Court that not only clarified its policy favoring arbitration, but also made clear that the Court views the FAA as

[10] Martínez Marrero v. González Droz, 180 DPR 579, 595 (2011).
[11] José J. Álvarez González & Luis M. Pellot Juliá, *Responsabilidad Civil Extracontractual*, 81 REV. JUR. U.P.R. 661, 672 (2012).
[12] Moses H. Cone Memorial Hosp. v. Mercury Constr., 460 U.S. 1, 25 (1983).
[13] Green Tree Financial Corp. v. Randolph, 531 U.S. 79, 89 (2000).
[14] 9 U.S.C. § 2.
[15] DeVille, *supra* note 4, at 334.
[16] *Id.*

preempting contradicting state law. As a result of such evolution, the attitude towards arbitration in the physician-patient context changed.[17]

In *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, the US Supreme Court held that Section 2 of the FAA is Congress' declaration of a liberal federal policy favoring arbitration agreements.[18] Further, the Court recognized that the FAA requires that any doubt concerning the scope of arbitrable issues should be resolved in favor of arbitration.[19] The U.S. Supreme Court continued to build on this foundation and in *Southland Corp. v. Keating*, for the first time the FAA was used to overrule and preempt a California court ruling on a state investment law, using the Commerce and Supremacy Clauses of the United States Constitution.[20] In its opinion, the US Supreme Court reasoned that "[i]n enacting §2 of the Federal Act, Congress declared a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration."[21] Therefore, the Court held that with the FAA, Congress intended to prevent state legislative attempts to undercut the enforceability of arbitration agreements, and thus, the California law was declared unconstitutional under the Supremacy Clause of the United States Constitution.[22]

The FAA does not, however, preempt all laws regulating arbitration nor arbitration agreements. In *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University*,[23] the US Supreme Court reasoned that, "the FAA contains no express pre-emptive provision, nor does it reflect a congressional intent to occupy the entire field of arbitration."[24] Rather, the Act's purpose is more restrictive, addressing only those laws discriminating against arbitration agreements. In *Allied-Bruce Terminix Companies, Inc. v. Dobson* the US Supreme Court said:

> States may regulate contracts, including arbitration clauses, under general contract law principles and they may invalidate an arbitration clause "upon such grounds as exist at law or in equity for the revocation of any contract." What States may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause. The Act makes any such state policy unlawful, for that kind of policy would place arbitration clauses on an unequal "footing," directly contrary to the Act's language and Congress' intent. [25]

Nevertheless, the US Supreme Court has cautioned that even when Congress has not completely displaced state regulation in an area, state law may nonetheless be preempted to the extent that it actually conflicts with federal law — that is, to the extent that it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.[26] Hence, when considering whether the FAA preempts state laws, the primary question is whether

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[17] *Id.* at 343.
[18] *Moses*, 460 U.S. at 25 (1983).
[19] *Id.*
[20] Southland Corp. v. Keating, 465 U.S. 1 (1984).
[21] *Id.* at 10.
[22] *Id.* at 16.
[23] Volt Info. Sciences v. Bd. of Trustees, 489 U.S. 468 (1989).
[24] *Id.* at 477.
[25] Allied-Bruce Terminix Companies, Inc. v. Dobson, 513 U.S. 265, 281 (1995).
[26] *Volt*, 489 U.S. at 477 (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)).

the state law "undermine[s] the goals and policies of the FAA," which, as already stated, relate to seeing that arbitration agreements are enforced according to their terms.[27]

III. MEDICAL MALPRACTICE ARBITRATION IN LIGHT OF THE FAA

Despite the U.S. Supreme Court's position that the FAA preempts and overrides virtually any state attempt to limit, regulate, or restrict arbitration, when interpreting arbitration agreements in the health care context, state courts have tended to jealously protect patients' access to courts. As a result, many state courts have resolved that this type of arbitration is void as not in the best interest of public policy, and Puerto Rico is one of them. In *Martínez Marrero v. González Droz*, the Supreme Court of P.R. determined that physicians and patients cannot voluntarily agree to submit to arbitration for future disputes arising during the course of medical care, since said agreements are contrary to the state's public policy.[28] In that case, a patient sued her plastic surgeon in federal court for malpractice relating to a breast augmentation and abdominoplasty surgery. The following arbitration clause was a part of the patient contract:

> I voluntarily agree and accept to submit before an Arbitration Panel, and not before a Judicial Court, State or Federal, any claim I might have against Dr. González because of any adverse result that may arise out of this surgery . . . . Said arbitration panel shall consist of five doctors and lawyers expert in the field and active in practice, which will be selected by the parties involved in the dispute . . . .[29]

The physician-defendant filed a motion to dismiss the case arguing that the patient-plaintiff agreed to arbitrate any claim resulting out of alleged medical malpractice. The Supreme Court of PR, in response to a certification question from the United States District Court regarding the legality of physician-patient arbitration agreements, refused to enforce the arbitration clause according to its terms and to compel arbitration of the patient's medical malpractice claim.[30] In its opinion, the Court held that physician-patient pre-dispute arbitration agreements are void and against public policy since the deprive the patient of seeking judicial remedy in the event of suffering an injury due to medical malpractice.[31] The Court reasoned that the integrity of a patient who seeks the services of a doctor to improve his or her health outweighs the contractual freedom and the sound policy favoring arbitration that permeates our legal system.[32]

Furthermore, the Supreme Court of P.R. determined that according to its ruling in *Vélez Ruiz v. E.L.A*, only a court of law has the power to view medical malpractice cases and to resolve them in their merits.[33] However, it should be noted that *Vélez Ruiz* had nothing to do with voluntary arbitration agreements. *Vélez Ruiz* merely held that a statute that compelled Puerto Rico courts to refer medical malpractice claims to an arbitration panel for a complete and final adjudication was unconstitutional as contrary to Article V of the Commonwealth Constitution.[34]

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[27] *Id.* at 478.
[28] *Martínez Marrero*, 180 DPR at 595.
[29] *Id.* (translation by author).
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] Vélez Ruiz v. E.L.A., 111 DPR 752 (1981).
[34] *Id.*

Thus, the *Vélez Ruiz* ruling did not apply to *Martínez Marrero*, where the parties had voluntarily agreed to assign any claim to an arbitration panel. Nonetheless, the Supreme Court of PR concluded that in this jurisdiction every medical malpractice claim must be initiated by filing a complaint in a competent court.[35] In such reading of the physician-patient relation, the Supreme Court found company.

In *Brown v. Genesis Healthcare Corp.*, the West Virginia Supreme Court held that agreements to arbitrate malpractice claims in nursing home contracts were invalid in light of West Virginia's public policy.[36] This case involved three separate lawsuits brought against a nursing home in West Virginia in which the family member bringing the suit alleged that the nursing home's negligence caused their family member's death. In each case, the arbitration agreements were signed by a family member on behalf of the patient requiring nursing care. The Supreme Court of West Virginia held that "as a matter of public policy under West Virginia Law, an arbitration clause in a nursing home admission agreement adopted prior to an occurrence of negligence that results in a personal injury or wrongful death, shall not be enforced to compel arbitration of a dispute concerning the negligence."[37] In support of this ruling, the West Virginia court stated:

> Congress did not intend for the FAA to be, in any way, applicable to personal injury or wrongful death suits that only collaterally derive from a written agreement that evidences a transaction affecting interstate commerce, particularly where the agreement involves a service that is a practical necessity for members of the public.[38]

However, in *Marmet Health Care Center Inc. v. Brown*, the U.S. Supreme Court overturned the West Virginia Court's interpretation of the FAA as both incorrect and inconsistent with clear instructions in prior precedents of the highest court.[39] In its opinion, the US Supreme Court noted that the FAA contains no exception for malpractice claims and that the state court's public policy grounds for non-enforcement constituted "a categorical rule prohibiting arbitration of a particular type of claim," which the Court held contrary to the terms and coverage of the FAA and, therefore, preempted by the federal statute. [40] Additionally, the U.S. Supreme Court reiterated that "when state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: the conflicting rule is displaced by the FAA."[41]

In truth, long before the *Marmet* ruling, several state courts had rejected arguments similar to those presented in *Martínez Marrero* and *Brown*.[42] For example, the orthopedic surgeons in *Buraczynski v. Eyring* required their patients to sign pre-dispute arbitration agreements before undergoing surgery.[43] A patient died after surgical complications and her family filed a suit.[44] In

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[35] *Martínez Marrero*, 180 DPR at 595.
[36] Brown ex rel. Brown v. Genesis Healthcare, 724 S.E.2d 250, 292 (W. Va. 2011).
[37] *Id.*
[38] Marmet Health Care Center, Inc. v. Brown, 132 S. Ct. 1201, 1203 (2012).
[39] *Id.* at 1202.
[40] *Id.*
[41] *Id.*
[42] Courts have traditionally upheld physician-patient arbitration agreements. *See* also Leong v. Kaiser Foundation Hospitals, 788 P.2d 164 (Haw. 1990); University of Miami v. Echarte, 618 So.2d 189, (Fla. 1993) (holding that arbitration of medical malpractice claims do not violate constitutional provisions guaranteeing access to the courts and trial by jury); McKinstry v. Valley Obstetrics-Gynecology, 380 N.W.2d 93 (Mich. Ct. App. 1985) (holding that medical malpractice arbitration agreements are valid waivers of the right to a jury trial).
[43] Buraczynski v. Eyring, 919 S.W.2d 314, 319 (Tenn. 1996).
[44] *Id.*

an attempt to avoid arbitration, the deceased's family claimed that pre-dispute arbitration agreements were void as against public policy when applied in the medical setting.[45] The Tennessee Supreme Court disagreed and ruled that, despite the acknowledged "unique nature of the physician-patient relationship," the public policy favoring arbitration outweighs any concerns regarding the physician-patient relationship.[46] Noting that no court had ever reached the broad conclusion that public policy precludes physician-patient arbitration agreements, the Tennessee court concluded that there was no public policy reason why arbitration should not be as good in medical relationships as it is in ordinary commercial relationships.[47]

In *Madden v. Kaiser Foundation Hospitals*, the court compelled arbitration of a medical malpractice claim brought by a state employee against a healthcare provider, honoring the agreement to arbitrate entered by the State of California and the healthcare provider.[48] In said holding, the Court stated, "arbitration has become an accepted and favored method of resolving disputes . . . praised by the courts as an expeditious and economical method of relieving overburdened civil calendars."[49]

In *Morrison v. Colorado Permanente Medical Group*, the plaintiffs brought claims against the medical providers in relation to the treatment of their deceased relative.[50] The plaintiffs argued that the arbitration agreement between the patient and the hospital was invalid under Colorado law since it did not comply with the required statutory language.[51] However, the Court not only enforced the arbitration agreement, but also declared invalid said statutory requirement. The court reasoned, that the practical effect of requiring specific statutory language to be printed in every health care arbitration agreement was to place such agreements in a distinct class, not only from "any contract," but also from all other arbitration agreements.[52] Accordingly, the Court concluded that said state statute was preempted by the FAA.

As it can be seen, courts have moved to provide unambiguous protection to arbitration agreements between physicians and patients. As one scholar notes, "United States Supreme Court and state cases authorizing the routine use of arbitration have removed any real doubt about the availability of arbitration cases even in the medical malpractice context."[53] Moreover, U.S. Supreme Court and state court rulings have made it clear that challenges to medical malpractice arbitration agreements based solely on public policy arguments are destined to lose. After *Marmet*, there is simply no basis under the FAA for treating health care contracts differently from other contractual agreements subject to arbitration. Most importantly, *Marmet's* decision eliminates all substantive restrictions against the arbitration of medical malpractice claims, including those derived by statute or deemed to exist by state common law.

The conclusion is unavoidable: the rule established by the Supreme Court of PR in *Martínez Marrero* should no longer be an obstacle to enforce arbitration agreements between physicians and patients in Puerto Rico. Since medical malpractice claims are within the scope of the FAA pursuant to US Supreme Court precedents, Puerto Rico's policy prohibiting said agreements is contrary to the FAA and, therefore, preempted by the federal statute. The same

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[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] Madden v. Kaiser Foundation Hospitals, 552 P.2d 1178 (Cal. 1976).
[49] *Id.*
[50] Morrison v. Colorado Permanente Medical Group, 983 F.Supp. 937, 939 (D.Colo. 1997).
[51] The Colorado statute in question required specific statutory language to be printed in every arbitration agreement in at least ten-point bold type.
[52] *Morrison*, 983 F.Supp. at 939.
[53] Thomas Metzloff, *The Unrealized Potential of Malpractice Arbritation*, 31 WAKE FOREST L. REV. 203, 211 (1996).

principle applies to the requirement that every medical malpractice case in Puerto Rico must be resolved by a court of law. As the U.S. Supreme Court has explained, when Congress enacted the FAA, it withdrew the power of the states to require the judicial forum for the resolution of claims that the contracting parties have agreed to resolve by arbitration.[54] Accordingly, *Martínez Marrero's* requirement that every medical malpractice claim must be initiated in state court may also be displaced by the FAA given the fact that it discriminates against the arbitration of particular kinds of claims, thereby undermining the FAA's main purpose.

It is important to note, however, that the FAA will apply and thus preempt Puerto Rico law only if the contract in question evidences "a transaction involving [interstate] commerce".[55] This means that for the FAA to apply to a particular medical relationship and the accompanying arbitration agreement in Puerto Rico, the physician would have to demonstrate that his practice or the treatment of his patients could have an effect on interstate commerce. I will now address this issue.

Courts have generally held that activities in the health care industry constitute interstate commerce and, therefore, virtually all arbitration agreements in the industry, including those between physicians and patients, are subject to FAA guidelines.[56] In reaching this conclusion, the courts found that the shipping medical of supplies, the performance of certain laboratory tests, and the receipt of Medicare funds often take place across state lines.[57]

For instance, in *McGuffey Health & Rehabilitation Center v. Gibson*, the Alabama Supreme Court had to determine whether a clause in a nursing home admission agreement requiring medical malpractice claim arbitration "evidenced a transaction that substantially affect[ed] interstate commerce" such that the FAA preempted an Alabama statute that prohibited arbitration.[58] The court concluded that the FAA preempted the Alabama statute based on the nursing home's receipt of Medicare funds and certain materials, which came from out-of-state sources. Similarly, in *In re Nexion Health*, the court held that Medicare funds crossing state lines constitutes interstate commerce, thereby bringing the arbitration agreement signed by the patient within the FAA's protection.[59]

The Texas Court of Appeals reached a similar conclusion in the case *Kroupa v. Casey*.[60] In that case, a patient sued his doctor for malpractice for failure to order an X-ray and the improper manipulation of his spine. A binding arbitration agreement was part of the patient contract. The trial court refused to order arbitration because the transaction did not involve interstate commerce and, therefore, the FAA did not control. The Court of Appeals reversed the judgment and explained that the health care provider produced evidence of the fact that he used equipment, materials, and services acquired from out of state in his delivery of health care services, made out-of-state transactions through interstate forms of communications, and received most of his insurance payments from out of state.[61] Therefore, the FAA applied and arbitration was compelled.

After this line of cases, one can conclude with certainty that the requirement that the transaction involves or affects interstate commerce is rarely an issue that defeats the application

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[54] *Southland Corp.*, 465 U.S. at 10.
[55] 9 U.S.C. § 2.
[56] *Morrison*, 983 F.Supp. at 943-944; *See also* Toledo v. Kaiser Permanente Medical Group, 987 F.Supp. 1174, 1180 (N.D.Cal. 1997).
[57] *Morrison*, 983 F.Supp. at 944.
[58] McGuffey Health and Rehab. Center v. Gibson, 864 So.2d 1061, 1062 (Ala. 2003).
[59] In re Nexion Health at Humble, Inc., 173 S.W.3d 67 (Tex. 2005).
[60] Kroupa v. Casey, No. 01-05-00224-CV, 2005 WL 3315279 (Tex. App. Dec. 8, 2005).
[61] *Id.*

of the FAA to an arbitration agreement in the health care context. This is particularly true in a place like Puerto Rico due to the fact that 90% of what is used or consumed in the island is imported. [62] For this reason, in any given transaction in Puerto Rico, it is relatively easy to conclude that there is a substantial relation to interstate trade, and difficult to think of trading activities that have nothing to do with interstate commerce.[63]

IV. CONCLUSION

Medical malpractice litigation has been criticized, debated, and defended from a variety of perspectives in both public and political forums. As a result, Congress and many state legislatures have deliberated over, and in some cases adopted, measures of tort reform to include medical malpractice arbitration provisions. Despite the numerous legislative and executive reform attempts, the continuing increase in the number of medical malpractice suits in recent years, combined with the time and expense associated with prolonged court adjudication, has led all parties to agree that the system is in need of reform.[64] As a result, a lot of attention has been given to the use of pre-dispute arbitration agreements as an alternative to traditional medical malpractice litigation.

As evidenced by several important rulings of the US Supreme Court, the historic suspicion of arbitration agreements in the health care context is a thing of the past. Currently, arbitration is recognized as an equitable and efficient tool for resolving medical malpractice disputes.[65] Nonetheless, in Puerto Rico, the courts remain hostile towards the use of medical malpractice arbitration agreements. After the *Martínez Marrero* ruling, physicians and patients are required to submit any medical malpractice claim to a court of law for a complete and final adjudication of the same, even if they had agreed to arbitrate said dispute. Such ruling is not only contrary to the terms of the FAA, but it is also inconsistent with clear instructions in the precedents of the US Supreme Court.[66]

In *Marmet*, the U.S. Supreme Court reaffirmed a rule that had been established more than thirty years ago — that is, states are not allowed to require the judicial forum for the resolution of claims that the contracting parties have agreed to resolve by arbitration.[67] Furthermore, the U.S. Supreme Court made quite clear that the FAA's text includes no exception for malpractice claims, but rather it requires courts to enforce the agreement of the parties to arbitrate.[68] Puerto Rico's

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[62] Salvador Antonetti Zequeira, *Arbitraje Comercial en Puerto Rico:¿Solución o Problema?*, 11 REV. ACAD. P.R. JURIS. & LEG. 1, 8 (2013).

[63] *Id.*

[64] David Zukher, *The Role of Arbitration in Resolving Medical Malpractice Disputes: Will a Well-Drafted Arbitration Agreement Help the Medicine Go Down?*, 49 SYRACUSE L. REV. 135, 136 (1998).

[65] *Id.* at 174.

[66] To date, the *Martínez Marrero* ruling has not been analyzed or applied by any state court.

[67] *Marmet*, 132 S. Ct. at 1203.

[68] The *Marmet* ruling has forced many state courts to declare invalid substantive restrictions against the arbitration of medical malpractice claims. *See generally* THI of New Mexico at Hobbs Center, LLC v. Patton, 741 F.3d 1162 (10th Cir. 2014) (regarding *Marmet's* decision, the court held that just as the FAA preempts a state statute that is predicated on the view that arbitration is an inferior means of vindicating rights, it also preempts state common law, including the law regarding unconscionability that bars an arbitration agreement because of the same view); Brookdale Senior Living Inc. v. Stacy, 27 F.Supp.3d 776 (E.D. Ky. 2014) (court rejected plaintiff's argument that Kentucky's public policy forbids mandatory arbitration agreements in the context of nursing home contracts and it compelled arbitration in light of the *Marmet* ruling.); Brookdale Senior Living Inc. v. Hibbard, No. CIV.A. 5:13-289- KKC, 2014 WL 2548117 (E.D. Ky. June 4, 2014) (holding that "the Supreme Court's logic in *Marmet* applies with just as much force in the present case. Hibbard contends that Kentucky's public policy forbids mandatory arbitration agreements in the context of nursing home contracts. But such a state law that singles out arbitration as applied to a particular

prohibition against physician-patient arbitration, as set forth in *Martínez Marrero*, is preempted and invalidated by the FAA and U.S. Supreme Court precedents.

class of claims is preempted by the FAA. Thus, even if the public policy of Kentucky would render a mandatory arbitration agreement for admission to a nursing home unenforceable, the FAA controls.")