Arbitration: Only Signature Page Was Kept In Chart.

The patient herself signed the admission documents, including an arbitration agreement, when she entered a long term care facility.

After she passed away the administrator of her probate estate sued the facility claiming that injuries suffered in the nursing facility caused her death.

The facility requested the court refer the case to arbitration rather than jury trial.

The patient's estate's lawyers demanded complete copies of all the documents the patient signed at the time of her admission.

However, the nursing facility's practice was to keep only the signature pages of the admissions documents, including the seven-page arbitration agreement.

Consequently the nursing facility is unable to prove the existence of a valid arbitration agreement.

DISTRICT COURT OF APPEAL
OF FLORIDA
January 23, 2015

The District Court of Appeal of Florida refused to order arbitration.

The nursing facility's practice was to retain in the chart only the signature pages of the legal documents signed at the time of the patient's admission.

That practice ran afoul of the legal doctrine that the party who requests the court to refer a case into arbitration must be able to prove the existence and the terms of a valid arbitration agreement.

In this case the patient did sign an arbitration agreement. However, the Court said it was impossible to determine if the agreement was valid or to set the terms and conditions for the arbitration to proceed, because six of the seven pages of the arbitration agreement were missing. **Davis v. Hearthstone, __ So. 3d __, 2015 WL 292039 (Fla. App., January 23, 2015).**

Arbitration: Wife Had No Authority To Sign.

Following a stroke the patient had to be admitted to a skilled nursing facility.

Days prior to his admission the patient's wife completed all the admissions paperwork. Among other things, she signed an arbitration agreement.

The wife had no power of attorney for her husband.

After he passed, the wife as administrator of his probate estate sued the facility for negligence and wrongful death.

The patient himself never communicated to the nursing home staff that he had appointed his wife as his agent for legal matters.

His wife signed all the paperwork before he arrived at the nursing home from the hospital.

He was aware his wife had signed the paperwork, but he never knew specifically that the paperwork contained an agreement to arbitrate potential legal disputes with the nursing home.

COURT OF APPEALS OF KENTUCKY
February 6, 2015

The Court of Appeals of Kentucky ruled against the nursing facility. The arbitration agreement was not valid and the case belonged on the local county circuit court civil jury trial docket.

The husband had never signed a power of attorney and had never said or done anything himself to communicate to the nursing facility staff that he had appointed his wife as his agent for legal matters.

The Court ruled it was not relevant one way or the other whether the husband was competent at the time of admission. That in and of itself would not have conferred legal authority on his wife to agree to arbitration. **Diversicare v. Higgins, 2015 WL 509633 (Ky. App., February 6, 2015).**

Arbitration: Son Had No Authority To Sign.

The patient's adult son signed an arbitration agreement when his mother was admitted to a long-term care facility.

The patient had never signed a power of attorney or a durable power of attorney appointing her son or anyone else as her attorney-in-fact.

After his mother passed away in the nursing home the son sued the nursing home for wrongful death, in his capacity as administrator of her probate estate.

The courts in Mississippi do not recognize informal proof as sufficient to establish that one person has legal authority to act as another's legal agent, absent a formal document like a power of attorney or a durable power of attorney.

UNITED STATES DISTRICT COURT
MISSISSIPPI
February 3, 2015

The US District Court for the Northern District of Mississippi ruled against the nursing facility. The arbitration agreement was not valid and the case belonged on the civil trial docket.

The Court ruled it was irrelevant that the mother had given her son and his brother general authority to manage her financial affairs. The sons both could access her bank accounts and sign checks.

The son testified his mother was in full agreement with the decision to go into the nursing home and had given him permission to sign the necessary paperwork. The son testified he believed he was acting as his mother's agent during the nursing home admission process.

However, the Court ruled that to sign an arbitration agreement on behalf of another person the signer must have a formal power of attorney from the other person, according to court case precedents in this state. **Gross v. GGNSC, __ F. Supp. 3d __, 2015 WL 424437 (N.D. Miss., February 3, 2015).**

Arbitration: Power Of Attorney Gave Spouse Authority.

When the patient was admitted to long term care her husband signed the admission paperwork, including an arbitration agreement.

His authority to sign legal documents for his wife stemmed from a durable power of attorney the wife had signed some time earlier naming him as attorney-in-fact.

The patient passed away six months after entering the nursing facility. Her widower then sued the facility claiming that violations of the patient's rights under the Kentucky Long Term Care Residents' Rights Act led to falls, pressure sores, blisters, bruises, respiratory tract infections, renal failure, sepsis, dehydration, pneumonia and generally poor hygiene.

The power of attorney expressly gave the husband authority to enter into contracts, file litigation and compromise legal disputes.

COURT OF APPEALS OF KENTUCKY
January 23, 2015

The Court of Appeals of Kentucky ruled the nursing facility was entitled to have the case removed from the local county circuit court's civil jury trial docket to be heard in arbitration.

According to the Court, a durable power of attorney is different from a health care proxy. The wife had signed a durable power of attorney, not a health care proxy.

A durable power of attorney comes into play after the person who signed it is no longer able to manage his or her own affairs. It allows the person named as attorney-in-fact to make decisions and take action affecting the other's finances, property and legal affairs, including signing an arbitration agreement.

A health care proxy, on the other hand, allows a surrogate decision maker to make health care decisions and consent to treatment on another's behalf but has nothing to do with finances, property or legal rights and remedies. **Bardstown v. Dukes, 2015 WL 300677 (Ky. App., January 23, 2015).**

Arbitration: Costs Prohibitive, Case Belongs In Court.

The daughter of a patient suffering from dementia voluntarily signed an arbitration agreement several days after her father was admitted to a nursing facility.

Her authority to sign the agreement stemmed from a durable power of attorney her father had signed some time earlier before the onset of his dementia.

The patient passed away more than three years after being admitted to the facility.

After his death his daughter, as administrator of his probate estate, filed a lawsuit against the nursing facility on behalf of the estate and herself and other family members who were her father's legal heirs.

The lawsuit alleged that violations of the patient's rights under the Arizona Adult Protective Services Act led to the patient's death. The nursing facility responded to the lawsuit by demanding arbitration instead of a jury trial in civil court.

The court can throw out an arbitration agreement if the costs to arbitrate are so excessive that the patient, the estate or the family are essentially denied the ability to enforce their legal rights.

COURT OF APPEALS OF ARIZONA
January 22, 2015

The Court of Appeals of Arizona ruled the arbitration agreement was unconscionable, that is, it was so fundamentally unfair that it was not valid.

The agreement required the family to pay the fee for one of the arbitrators. In that location they charge $300 to $475 per hour, meaning that a five-day hearing would cost the probate estate at least $28,500, not to mention substantial additional costs for expert witnesses.

If arbitration was the only recourse, since the probate estate did not have sufficient assets, the estate would be basically unable to enforce the now-deceased patient's rights guaranteed by law. **Estate of Harmon v. Avalon, 2015 WL 302292 (Ariz. App., January 22, 2015).**

Patient's Fall: Expert Testimony Required.

A lawsuit was filed by the family of a now-deceased nursing home resident alleging that the resident fractured her left knee and femur as a result of either being dropped or allowed to fall.

As in most states, in Texas a healthcare negligence lawsuit is subject to summary dismissal if a competent expert's report is not filed in court along with the filing of the lawsuit.

In this case the family's expert had an M.D. degree but had only worked as a patient care tech in various hospital settings.

Sometimes a patient's fall is an unavoidable accident or the even patient's own fault. Sometimes a fall is the result of negligence by the patient's caregivers.

The patient or family need an expert who is familiar with the standard of care.

COURT OF APPEALS OF TEXAS
February 11, 2015

The Court of Appeals of Texas dismissed the family's lawsuit.

The family's expert was not qualified to give an expert opinion. In his report he merely recited generic allegations that the facility failed to meet acceptable nursing standards and that "carelessly" dropping a patient or allowing the patient to fall is by itself evidence of substandard care.

Injury From a Fall Does Not Prove Negligence

The mere fact a patient sustains an injury in a fall does not imply or much less prove negligence by caregivers.

A legal case for a patient's fall requires a careful analysis of the nursing assessment the patient required and the assessment the patient actually received, the care planning that the assessment mandated and the care planning that was actually done, and the specific measures that were called for but not implemented which directly led to the patient's fall. **Millbrook v. Edwards, 2015 WL 558305 (Tex. App., February 11, 2015).**