

## Arbitration: Son Lacked Legal Authority To Sign For The Patient.

The patient was admitted to long-term care after the onset of paraplegia from a subarachnoid hemorrhage.

Her adult son signed the admission paperwork, including an alternative dispute resolution agreement. The son's signature attested that he was duly authorized to sign as the patient's legal representative.

Nineteen days later the patient signed a durable power of attorney appointing the same son as her attorney-in-fact. The document she signed expressly gave the son authority to sign an arbitration agreement on his mother's behalf.

After the patient died, the son sued the facility as personal representative of his mother's probate estate.

The facility defended by asking the court to order arbitration.

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***The son had no legal authority to sign an arbitration agreement.***

***There is no evidence that the mother's signing a durable power of attorney after the fact was intended by her to ratify the arbitration agreement signed earlier by her son, which she did not even know he had signed allegedly on her behalf.***

COURT OF APPEALS OF GEORGIA  
November 7, 2014

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The Court of Appeals of Georgia ruled the alternative dispute resolution agreement was not valid. The son had no legal authority to sign it for his mother.

The power of attorney signed by the mother after the fact did not matter. Nor did the son's having signed the arbitration agreement prevent him from filing a civil suit, rather than requesting arbitration, after he became the probate personal representative. McKean v. GGNSC, \_\_ S.E. 2d \_\_, 2014 WL 5784474 (Ga. App., November 7, 2014).

## Arbitration: Patient Lacked Mental Capacity To Sign A Legal Contract.

The eighty-five year-old end-stage renal disease patient was in the hospital for placement of a dialysis catheter when he fell out of bed and broke his neck.

The hospital defended the family's lawsuit by asking the court to refer the case to arbitration rather than jury trial, pursuant to the arbitration agreement the patient signed during his admission through the emergency department.

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***It is elementary law that capacity, both legal and mental, is a necessary element of a legal contract like an agreement to arbitrate.***

***While the hospital physician certainly may have found the patient was alert, awake, oriented and cooperative at the time of examination, what constitutes being alert, oriented and communicative for medical purposes is not necessarily co-extensive with being alert, oriented and communicative for legal matters.***

COURT OF APPEALS OF KENTUCKY  
October 24, 2014

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The Court of Appeals of Kentucky ruled the arbitration agreement was not valid. The patient lacked sufficient mental capacity to enter into a complex legal contract when he signed it.

The Court ruled that the emergency department physician's note that the patient was alert, oriented and communicative was not the final word on whether this elderly man in very poor health was able to understand and voluntarily agree to a complex legal document like the arbitration agreement that was presented to him. Pikeville v. Bevins, \_\_ S.W. 3d \_\_, 2014 WL 5420002 (Ky. App., October 24, 2014).

## Arbitration: Patient Lacked Mental Capacity To Sign A Legal Contract.

The eighty year-old patient was admitted to skilled nursing care for stroke rehab.

The patient spoke only Spanish and could not read English, let alone understand a legal agreement printed in English.

Her daughter who is fluent in English and Spanish went over the admissions paperwork with her and had her sign everything, except the arbitration agreement.

Three days later a facility employee, without the daughter present, spoke with the patient in Spanish and got her to sign the arbitration agreement, apparently without explaining it to her.

The patient sued for allegedly substandard treatment. The facility defended by insisting the court order arbitration.

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***A person lacks mental capacity to sign a legal contract if the person is substantially unable to manage his or her own financial resources or unable to resist fraud or undue influence.***

CALIFORNIA COURT OF APPEAL  
November 6, 2014

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The California Court of Appeal ruled the patient did not have the legal capacity to sign a contract, which meant the arbitration agreement she signed was not valid.

The Court did not take issue with the Spanish vs. English language barrier. That is not grounds for a court to void an otherwise valid legal contract.

Instead, one of the tests for legal incapacity is that the person is unable to make decisions and unable to manage his or her own financial resources or resist fraud or undue influence.

The facility's own assessment of the patient indicated that due to her recent stroke and the meds she was taking she was unable to make decisions or to manage her own affairs. Rodriguez v. Windsor, 2014 WL 5765084 (Cal. App., November 6, 2014).