# Arbitration: Family Members Had No Authority To Sign For The Patient.

The Court of Appeals of North Carolina recently ruled that an arbitration agreement was not valid that was signed by the patient's family members at the time of the patient's admission to a nursing home.

The family's lawsuit over pressure ulcers suffered by the patient before her death is to remain on the civil jury trial docket and will not be heard in arbitration.

The Court pointed out that on the day of admission the patient herself was awake, alert, lucid and responsive to questions. She was being admitted to the nursing home following discharge from the hospital after surgery for a fractured femur.

More importantly, there was no basis for the nursing home staff to believe, due simply to the fact the patient's husband and daughter accompanied her to the nursing home, that they had been given any authority by the patient to act on her behalf as her legal representatives.

The admission coordinator simply handed a packet of documents, including the arbitration agreement, to the family for them to sign, with no consideration why the patient could not sign for herself. **Bookman v. Britthaven, __ S.E. 2d __, 2014 WL 1464144 (N.C. App., April 15, 2014).**

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E. Kenneth Snyder, BSN, JD
Editor/Publisher

PO Box 4592
Seattle, WA 98194–0592
(206) 718-0861

kensnyder@nursinglaw.com
www.nursinglaw.com

# Arbitration: Patient Lacked Mental Competence To Sign Agreement.

***The Court is inclined to place considerable weight on the unbiased admission assessment documented by the patient's nurse.***

***The patient's nurse was performing a routine medical examination without any consideration of how the results of her examination might be used in a future lawsuit.***

***It is doubtful the nursing home would have assigned an employee to assess the patient's mental status who was not qualified professionally for that duty.***

***The patient's physician's present testimony is biased by the fact the physician is now aware he is a defendant in the family's lawsuit.***

***The family's nursing expert, unlike the patient's nurse, arrived at her conclusions only after being hired for the litigation.***

UNITED STATES DISTRICT COURT
MISSISSIPPI
April 11, 2014

In an effort to lessen legal exposure, healthcare facilities often request their patients to agree, before any legal claim has had time to arise, to submit such claims that might arise to arbitration as an alternative method of dispute resolution, rather than trial by jury in a civil courtroom.

The rationale is that arbitration drastically reduces litigation costs and often protects the defendant from the possibility of an excessive runaway jury verdict.

Arbitration is appropriate, however, only when the patient or someone with legal authority to act for the patient has knowingly and willingly agreed to arbitration and signed an arbitration agreement.

**Patient Lacked Mental Capacity Arbitration Agreement Signed By Patient Is Not Valid**

In a recent case the US District Court for the Northern District of Mississippi refused a nursing home's request to dismiss a civil negligence lawsuit filed by the family of a deceased former resident and declined to refer the matter to arbitration.

The most telling evidence of the patient's lack of mental competence, according to the Court, was the nursing assessment documented the day he was admitted and signed the document in question.

The patient had not been able to manage his own affairs and had been relying upon a family members. He did not even know what year it was and also displayed very poor short term memory, being unable to recall a set of three simple words with clues to help him. **Liberty Health v. Howarth, __ F. Supp. 2d __, 2014 WL 1396210 (N.D. Miss., April 11, 2014).**