

Arbitration: Daughter Had No Authority To Sign, Case Will Go To Jury.

In an effort to reduce litigation costs and to control runaway jury verdicts in medical negligence cases, hospitals, nursing centers and many other healthcare facilities are offering their patients the option of so-called alternative dispute resolution.

Alternative Dispute Resolution Requires Valid Arbitration Agreement

Arbitration of a civil dispute is appropriate as an alternative to trial by jury only when both sides have knowingly and voluntarily agreed to arbitration. In healthcare settings that means that the patient or the patient's authorized representative already signed an arbitration agreement at the time of admission, before the dispute over the quality of care came up.

In a recent case, the adult daughter was asked to sign the arbitration agreement when the elderly patient was being admitted to long-term care for Alzheimer's and other debilitating medical conditions.

The daughter said she was willing to agree to arbitration, but she protested that her mother was the person named in her father's power of attorney. The facility's admissions counselor told her it was all right for her to sign anyway and she did.

After the patient passed away in the facility his widow, acting as personal representative of his probate estate, sued the facility for negligence.

The Court of Appeals of Kentucky had to decide only the preliminary issue whether the case belongs in arbitration. The strength of the underlying allegations of negligence remains to be determined.

The court threw out the arbitration agreement. Facility staff obtained a legally invalid signature on the arbitration agreement from a person they knew had no legal authority to sign for the incapacitated patient. **Beverly Health and Rehab v. Smith**, ___ S.W. 3d ___, 2009 WL 961056 (Ky. App., April 10, 2009).

Prenatal Care: Student Nurse Misread Fetal Monitor.

The mother went to the hospital after she awoke with nausea and started vomiting. She was also having mild labor contractions.

A student nurse put the patient on a fetal monitor, saw nothing in the monitor tracings to indicate a problem with the mother's pregnancy and sent her home with a sleeping medication.

Two days later the mother awoke in labor. She went to the hospital again and this time had an emergency cesarean. The baby suffered significant oxygen deprivation at birth. The child died from cerebral palsy at four years of age.

A student nurse at the hospital apparently looked at the monitor tracing as a contraction stress test.

During a contraction stress test, no change in the fetal heart rate is considered normal and reassuring.

The student nurse did not look for or did not understand the ominous significance of late decelerations of the fetal heart rate.

COURT OF COMMON PLEAS
YORK COUNTY, SOUTH CAROLINA
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The jury in the Court of Common Pleas, York County, South Carolina awarded the parents \$4,405,000 from the hospital for the student nurse's negligence.

The same ob/gyn who delivered the baby saw the mother when she came in two days earlier. The judge ruled the ob/gyn was not negligent and blamed only the student nurse for not reporting accurately to him. **Wilson v. Piedmont Med Ctr.**, 2009 WL 754849 (Ct. Com. Pl. York Co., South Carolina, February 13, 2009).

Disabled Adult: Supervision Faulted, Jury Awards Large Verdict.

A thirty-six year-old brain-injury victim lived at home for ten years following his motor vehicle accident before his wife admitted him to an assisted-living facility.

His wife reportedly informed facility staff responsible for his care plan that he had a history of ingesting non-food items. He once put five packages of crackers in his mouth and swallowed them whole with the wrappers still on.

At the facility he reportedly swallowed large pieces of plastic sheets, paper towels, unopened ketchup packets and a candy wrapper. He vomited twice but no physician was notified and he died that evening.

The coroner ruled the death accidental. Nevertheless a jury in the Superior Court, Maricopa County, Arizona awarded the widow \$11,000,000 based failure to train staff and negligent supervision. **Scherrer v. Liberty Manor**, 2009 WL 94397 (Sup. Ct. Maricopa Co., Arizona, March 19, 2009).

Labetalol: Nurse Not Negligent.

The E.R. physician ordered labetalol for the patient, thirty-eight weeks pregnant. The drug was given IV by a nurse.

The patient's BP crashed, she arrested and died. Her ob/gyn was able to save the baby with an emergency c-section.

The jury in the Superior Court, Essex County, Massachusetts faulted the E.R. physician but not the nurse. Labetalol is contraindicated with congestive heart failure, but it was the physician's responsibility to consult with the ob/gyn who was more familiar with the patient and/or a cardiologist for an accurate diagnosis before ordering the drug. **Jardine v. Knee**, 2009 WL 903939 (Sup. Ct. Essex Co., Massachusetts, January 22, 2009).