

## 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).