

Arbitration: Family Member Cannot Sign For Patient.

In an effort to control litigation costs and to prevent runaway jury verdicts, many healthcare facilities are including arbitration agreements in their admissions paperwork.

If the patient later decides to pursue a legal claim against the facility or its staff, the facility or staff can insist on removing the case from the civil court system and submit it to binding arbitration, usually before a panel of healthcare attorneys or a retired judge.

That is possible if, and only if, the patient has actually agreed to arbitration.

Arbitration is appropriate only if the patient has agreed to arbitration.

A family member must have express authorization from the patient, a patient who is competent to give such authorization, to sign an arbitration agreement.

UNITED STATES DISTRICT COURT
MISSISSIPPI
December 29, 2006

The US District Court for the Southern District of Mississippi has ruled, like some courts in other states, that a relative who has legal authority to make other surrogate healthcare decisions for the patient nonetheless cannot legally consent to arbitration on the patient's behalf without express authorization from the patient.

The court ruled this is true even if the same relative becomes the probate administrator *post mortem* and sues on behalf of the probate estate and wishes to disavow the arbitration agreement he or she has signed on the basis of having had no such authority to sign it in the first place. **Buie v. Mariner Health Care, Inc.**, 2006 WL 3858330 (S.D. Miss., December 29, 2006).