

## **Arbitration: Patient Did Not Sign, Spouse Had No Authority, Case Will Go To Jury.**

The deceased resident's widow sued the nursing home where he died, alleging negligence, malpractice and fraud.

The nursing home's first line of defense, before responding to the allegations, has been to insist the case should be decided by an arbitrator, not by a jury. The Supreme Court of Mississippi has ruled there was no valid agreement to arbitrate. The case, therefore, will go before a jury.

### **Spouse Had No Authority To Sign An Arbitration Agreement**

As much as the law favors arbitration of civil disputes, arbitration is fundamentally appropriate only when both sides have agreed to arbitration.

In the context of an individual being admitted for treatment in a healthcare facility such as a nursing home, the arbitration agreement in the admissions papers usually must be signed by the patient. The patient must be fully informed and the signature must be completely voluntary.

A spouse, as a general rule, does not have legal authority to consent to arbitration for the other spouse.

Exceptions to the general rule exist when the patient is now incompetent and the spouse happens to be the person who was named in the patient's durable power of attorney or is the court-appointed legal guardian.

A financial responsibility agreement was signed by the spouse in this case, but, according to the court, that conferred no authority upon her to agree on behalf of the patient to give up his right to sue in civil court.

If an illiterate patient signs with an "X" there must be documentation that the agreement was explained, that the patient agreed and that the mark was intended as a legal signature. Trinity Mission v. Lawrence, \_\_\_ So. 2d \_\_\_, 2009 WL 331629 (Miss., February 12, 2009).