

## Arbitration: Patient Not Competent, Agreement Invalid.

The family sued the nursing home for negligence after the resident died. The nursing home insisted the claim belonged in arbitration, not in civil court.

The US Court of Appeals for the Eleventh Circuit agreed with the family that the case did not belong in arbitration. The arbitration agreement was invalid because the patient did not have the legal capacity to sign a contract when she signed it.

A person is presumed to be mentally competent when signing a contract. A contract is invalid only if there is evidence the person could not understand the nature and effect of the contract being signed.

On the portions of the intake form for cognitive status the nurse who admitted the patient noted that the patient was oriented only to person and was confused. She was distraught, anxious, frail and suffering from dementia, according to her initial nursing assessment.

She had been declining into a state of dementia for a couple of years and was on anti-psychotic medication to control her hallucinations. The reason for her admission was that she basically could no longer manage her own affairs independently or even take care of herself. Gilmore v. Life Care Centers, 2011 WL 5089821 (11th Cir., October 27, 2011).

## Patient Suicide: Nurse Not At Fault.

*The patient, in addition to her psychiatric issues, was tachycardic and had had to be intubated for her breathing difficulties. Restraints were only appropriate as a last resort, in her physician's judgment.*

*The hospital's nurse was not required to advocate with the physician for restraints, as there was nothing the nurse knew that the physician did not know and had not considered.*

*The nurse fulfilled his legal responsibility by informing the ambulance crew of her recent suicide attempts. Beyond that he had no authority to order or any duty to advise the ambulance crew to restrain her, the physician not having ordered restraints for the trip.*

*A tragic outcome alone does not determine whether healthcare providers' judgment was appropriate before the fact.*

The patient was admitted to the hospital after a suicide attempt at home and then had two more attempts in the hospital.

Her physician decided to have her transported by ambulance to a mental health facility for treatment.

A hospital nurse told the ambulance crew who came to get her that the patient had made several suicide attempts and was expressing suicidal ideation.

Minutes into the trip the patient undid the seatbelts on the gurney, stood up, opened the back door, jumped out of the speeding ambulance and was killed.

### Nurse Did Not Advise

#### Restraining Patient For the Trip

The family's lawsuit tried unsuccessfully to fault the hospital's nurse for failing to tell the ambulance crew to restrain the patient above and beyond fastening the regular seatbelts on the gurney.

The New York Supreme Court, Appellate Division, pointed out that a nurse does not have the authority or the responsibility to order a patient restrained if the physician has not ordered restraints.

A thought-out decision was made not to restrain the patient in the hours before the transfer because she had been sedated and was calm and was not acting out as long as someone sat with her. Her tachycardia and breathing problems could threaten her physical wellbeing if she were to become agitated from being restrained.

Not restraining her was an appropriate exercise of professional judgment under the circumstances, the Court said, notwithstanding 20/20 hindsight as to the unfortunate ultimate outcome. Dumas v. Adirondack Med. Ctr., \_\_ N.Y.S.2d \_\_, 2011 WL 5221270 (N.Y. App., November 3, 2011).

LEGAL EAGLE EYE NEWSLETTER  
For the Nursing Profession  
ISSN 1085-4924

© 2011 Legal Eagle Eye Newsletter

Indexed in  
Cumulative Index to Nursing & Allied  
Health Literature™

Published monthly, twelve times per year.  
Mailed First Class Mail at Seattle, WA.

E. Kenneth Snyder, BSN, RN, JD  
Editor/Publisher  
PO Box 4592  
Seattle, WA 98194-0592  
Phone (206) 440-5860  
Fax (206) 440-5862  
kensnyder@nursinglaw.com  
www.nursinglaw.com

NEW YORK SUPREME COURT  
APPELLATE DIVISION  
November 3, 2011

Clip and mail this form. Or if you prefer, order online at [www.nursinglaw.com](http://www.nursinglaw.com).

Print \$155/year \_\_\_\_\_ Online \$95/year \_\_\_\_\_ Phone 1-877-985-0977  
Check enclosed \_\_\_\_\_ Bill me \_\_\_\_\_ Credit card \_\_\_\_\_ Fax (206) 440-5862  
Visa/MC/AmEx/Disc No. \_\_\_\_\_  
Signature \_\_\_\_\_ Expiration Date \_\_\_\_\_

Name \_\_\_\_\_  
Organization \_\_\_\_\_  
Address \_\_\_\_\_  
City/State/Zip \_\_\_\_\_  
Email (If you want Online Edition\*) \_\_\_\_\_

\*Print subscribers also entitled to Online Edition at no extra charge.  
Mail to: Legal Eagle Eye PO Box 4592 Seattle WA 98194-0592