

Power Of Attorney: Patient Was Not Mentally Competent, Arbitration Agreement Ruled Invalid.

After the patient died the family filed suit against the nursing home for alleged abuse and neglect.

The nursing home's first line of defense to the lawsuit, before the litigation process began to assess the underlying allegations of abuse and neglect, was to insist that the family's case be taken off the county circuit court jury trial docket and heard by an outside arbitration panel, based on the arbitration agreement signed by the patient's sister at the time the patient was admitted to the nursing home.

The patient's sister was the person named as the patient's surrogate decision maker in a durable power of attorney the patient had signed while he was undergoing treatment in a hospital's geriatric psychiatric unit three weeks before he was admitted to the nursing home.

Patient Was Not Mentally Competent Patient's Power of Attorney Not Valid Arbitration Agreement Not Valid

The Court of Appeals of Tennessee ruled that the patient was not mentally competent at the time he signed the durable power of attorney.

The durable power of attorney being invalid, the patient's sister had no authority to sign an arbitration agreement, or for that matter, any other binding legal documents on his behalf.

The arbitration agreement itself was thus null and void and the family's lawsuit stayed on the jury-trial docket, not the result the nursing home's lawyers believed was in their client's best interests.

Patient's Medical/Psychiatric Background

The patient had Alzheimer's disease. For two years he had been running away from home and getting lost. He had been unable to use the telephone for six months. Due to the fact he did not recognize even his closest family members he sometimes became violent in their presence.

One day he held a gun to the head of his wife of thirty years and threatened to kill her. Sheriff's deputies were called and took him to the emergency room where he assaulted a deputy and ran away.

After being re-apprehended, he was admitted to the hospital involuntarily for psychiatric treatment.

A durable power of attorney is a document through which an individual may designate another person to make decisions and to enter into binding legal contracts on the individual's behalf after the individual has lost the mental capacity to do those things for himself or herself.

A durable power of attorney is valid only if the individual still had the mental capacity to enter into a binding contract when he or she signed the durable power of attorney.

If the durable power of attorney is not valid, the person named in it has no legal authority and his or her signature is not binding on the individual's behalf.

If a durable power of attorney is challenged, the legal issue is the individual's mental capacity at the moment he or she signed the durable power of attorney.

All that is required is that the person signing the durable power of attorney knew and understood the nature, extent and legal effect of the document he or she was signing.

That can be proven by the testimony of those present at the signing, family members, a notary public or professional caregivers.

COURT OF APPEALS OF TENNESSEE
March 14, 2011

Two and one half weeks into his stay in the geriatric psychiatric unit he signed a document titled "General Durable Power of Attorney" naming his sister as his surrogate decision maker. The document was notarized by a hospital employee.

At the time he signed the power of attorney he was not able to conduct a meaningful conversation. He would nevertheless often smile, nod and answer "Yes" when questions were posed to him.

He was told he was signing papers so that his sister could discuss his medicines with the doctor and make arrangements so he could go home. He reportedly said, "OK," and signed as he was told. He did not read the document and, in fact, could not read at that time.

That same day he was upset because he thought \$500 had been stolen from him, but he calmed down after he was given five \$1 bills, believing he had received all of his money back.

Psychiatric Evaluation

The psychiatrist testified the patient was "obviously very confused" when he was admitted to the geriatric psychiatric unit, basically catastrophically impaired in his ability just to stay organized and understand what is going on around him.

Nurses had tried on two occasions to administer mini mental status exams and documented that they were unable to do so. He was only vaguely oriented to place, date and time, was aggressive toward other patients, seemed to be hallucinating and was voicing paranoid delusions about having been kidnapped.

The nursing progress notes were admitted into evidence for the day he signed the document. He was agitated, acting out aggressively and pacing the floor in a bizarre manner early in the morning. Later that morning the nurses noted he was calm and pleasant when the family came in to have him sign the document.

He was discharged from the hospital that day against the psychiatrist's recommendation, came back to the hospital and then was transferred to the nursing home in question because of insurance coverage issues affecting hospital reimbursement. **Duke v. Kindred Healthcare, 2011 WL 864321 (Tenn. App., March 14, 2011).**