

Arbitration: Family Member Did Have Authority To Agree.

The resident's widow sued the nursing facility alleging violation of the deceased resident's statutory rights as a nursing home resident, negligence and wrongful death.

The patient had signed a durable power of attorney prior to entering the nursing home authorizing his wife to manage his affairs. The document expressly authorized her to make decisions on her husband's behalf with regard to claims and litigation. The document also expressly did not authorize her or anyone else to make health care decisions on his behalf.

Although he had signed a durable power of attorney, the husband never signed a health care proxy authorizing anyone to act as his surrogate health care decision maker.

The District Court of Appeal of Florida ruled in the nursing home's favor that the durable power of attorney gave the wife legal authority to sign the arbitration agreement she signed when her husband was admitted. The fact there was no signed health care proxy was irrelevant. Zephyr Haven v. Estate of Clukey, __ So. 3d __, 2014 WL 1016201 (Fla. App., March 14, 2014).

Arbitration: Family Member Had No Authority To Agree.

When the resident was admitted to long term care she was no longer mentally competent to make her own decisions or to manage her own legal affairs.

Before becoming mentally incapacitated the resident never signed a durable power of attorney or a health care proxy.

Among her living relatives her sister was defined by state law as the one closest to her. The sister was the person authorized by law to act as surrogate decision maker in making health care decisions that would most closely reflect what would have been the patient's own wishes.

The sister's authority extended to making a decision to admit her to the nursing home placement she decided was most appropriate for her.

However, the Supreme Court of South Carolina ruled the sister's authority as health care surrogate decision maker did not authorize her to sign the arbitration agreement she signed when her sister was admitted. The probate estate's lawsuit would remain on the civil jury trial docket. Estate of Coleman v. Mariner Health, __ S.E. 2d __, 2014 WL 949429 (S.C., March 12, 2014).

Lack Of Appropriate Professional Boundaries: Board Suspends Home Health Nurse's License.

A home health nurse's license was suspended after she obtained more than \$22,000 in cash and other items purchased for her by an elderly client.

By the time the family filed a complaint the nurse had taken over management of his finances and had access to his bank accounts and possession of his credit cards.

The nurse claimed in her defense the elderly gentleman, a retired businessman, was mentoring her in the start of her own business in which he was a silent partner.

The Court of Appeal of Louisiana upheld suspension of the nurse's license, but ruled at the same time the Board lacked the authority to impose a blanket restraining order preventing any and all further contact between the nurse and her former patient.

The State Board of Nursing relied on the expert opinion of a nurse educator.

According to the Board's expert, the rule of thumb for appropriate nurse/patient boundaries is that if an interaction involves something the nurse would not document in the nursing progress notes, there has likely been a violation of appropriate professional boundaries.

COURT OF APPEAL OF LOUISIANA
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Appropriate Professional Boundaries

The Board relied on the opinion of a nursing educator as an expert on the definition of appropriate nurse/patient professional boundaries.

Boundary issues or violations arise when a nurse is trying to get the nurse's own needs met rather than striving to meet the needs of the patient. It is the nurse's responsibility to exercise diligence to maintain appropriate boundaries with the nurse's patients.

Not only was the nurse's acceptance of money from her patient problematic, there also was excessive self-disclosure by the nurse of the details of her own life through which she improperly led the patient to become genuinely interested in a business mentoring relationship with her. Thigpen v. Bd. of Nursing, __ So. 3d __, 2014 WL 585283 (La. App., February 14, 2014).