

## Arbitration: Health Care Proxy Does Not Give Authority To Sign Arbitration Agreement.

The surviving spouse filed a civil lawsuit against the nursing facility where the patient spent his final days. The lawsuit alleged negligence and sought damages for wrongful death.

To try to mitigate its exposure, the nursing facility's first line of defense to the lawsuit was a petition to the local county superior court to remove the lawsuit from the jury trial docket and refer it to an outside panel of arbitrators.

Arbitration is appropriate only if both sides have agreed to arbitration. The Supreme Judicial Court of Massachusetts ruled that the patient's wife had no authority to sign an arbitration agreement on her husband's behalf when he was admitted to the nursing facility, so the arbitration agreement she signed for her husband was null and void. Therefore her lawsuit belonged on the civil jury trial docket and her case did not have to go into arbitration.

### Agreement to Arbitrate Is Not a "Healthcare Decision"

Before his admission to the nursing home the patient had signed a healthcare proxy naming his wife as his healthcare agent to make any and all healthcare decisions on his behalf.

According to the Court, a healthcare proxy document is meant to protect an incompetent individual from non-consensual invasion of his or her bodily integrity and to guard his or her right to human dignity and self-determination to the same extent as a competent individual.

Unlike a durable general power of attorney, a healthcare proxy does not bestow wide-ranging authority on the person named in the document to conduct the individual's business affairs, sell the individual's property, manage the individual's finances or arrange for adjudication of the individual's legal rights.

Healthcare decision-making by a proxy, unlike the exercise of a general durable power of attorney, deals only with informed consent to invasive medical procedures and does not involve decisions about property or legal rights.

The Court pointed out that the majority of US states' courts that have considered the issue have ruled that a healthcare proxy does not give the proxy holder authority to sign a valid and binding arbitration agreement on the individual's behalf. Johnson v. Kindred Healthcare, Inc., 466 Mass. 779, \_\_\_ N.E. 2d \_\_\_, 2014 WL 92187 (Mass., January 13, 2014).

## Nurse's Breach Of Medical Confidentiality: No Grounds To Sue Medical Facility, Court Says.

A nurse recognized a clinic patient as her sister-in-law's boyfriend.

The nurse was not involved in his care, but just to indulge her own curiosity she accessed his records and learned he was being seen for a sexually-transmitted disease.

The nurse quickly texted her sister-in-law, who in turn quickly texted the patient while he was still in the waiting area prior to his appointment, letting him know that a clinic nurse was making fun of him.

The patient later met with a clinic administrator to complain about the nurse's behavior. The president and CEO of the clinic sent a letter of apology and had the nurse fired.

The patient sued the clinic, but the Court of Appeals of New York ruled for dismissal of the lawsuit.

***The patient himself admitted in his lawsuit that the nurse was motivated by purely personal reasons which had nothing to do with his care and treatment.***

***A healthcare facility can be held liable if it can be proven the facility was negligent in hiring or supervising its employees or failed to establish adequate policies and procedures to safeguard confidential patient information.***

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The Court acknowledged that healthcare facilities generally are found liable in patients' civil lawsuits for wrongful conduct by facility employees.

However, this was not the usual case because the nurse's wrongful conduct fell outside the scope of her employment. Her actions did not pertain to her employer's interest in providing care for the patient, but instead involved only her own personal interest in satisfying her own personal curiosity.

It was not an issue one way or the other in the lawsuit against the clinic whether the patient could have sued the nurse if he had so chosen.

The Court also ruled that what the nurse did was not foreseeable by the clinic. "John Doe" v. Guthrie Clinic, Inc., \_\_\_ N.E. 2d \_\_\_, 2014 WL 66644 (N.Y., January 9, 2014).