

## Arbitration: Patient's Mental Competency Proven By Nursing Assessment Data.

After the resident died the family sued the nursing home for negligence.

The lawsuit alleged the nursing home's nurses failed to monitor the diabetic patient's glucose levels and allowed him to fall into an irreversible hypoglycemic coma from which he died.

The nursing home's lawyers' first line of defense was to insist the lawsuit be transferred off the civil court jury trial docket to be heard by an arbitrator, according to the alternative dispute resolution agreement signed by the patient at the time of his admission to the nursing home.

### **Nursing Assessment Data Critical to Court's Ruling**

The US District Court for the Southern District of Mississippi looked to the nursing assessment data recorded at the time of admission, concluded the patient did not lack the mental capacity to sign a valid contract and ordered the case into arbitration as the nursing home wanted.

The sixty-seven year-old patient was discharged to the nursing home after a ten-day hospital stay for septicemia. His medical diagnoses in the hospital included rheumatoid arthritis, hyperpotassemia, failure to thrive, dehydration, sacral decubitus, scrotal edema, anemia, coronary artery disease, uncontrolled Type II diabetes and altered mental status.

The LPN who admitted him to the nursing home found him oriented to time, place and person. He responded when called by name, was able to make himself understood and verbalized an understanding why he was in the nursing home.

A week into his stay his long-time personal physician noted he was fully oriented, could communicate and understand others and did not have Alzheimer's or any other cognitive impairment indicating a need for further testing.

The physician later testified equivocally that he had doubts whether the patient had the capacity to sign a legal contract, but the Court was nevertheless satisfied that the nursing assessment data positively answered that question in the affirmative.

**Dillard v. Covenant Health**, 2012 WL 1067910 (S.D. Miss., March 29, 2012).

***The patient required considerable assistance with all his physical activities of daily living such as bathing, eating, toileting, dressing and mobility.***

***However, despite his serious health issues, the nursing documentation in the chart showed that his mental faculties were intact.***

***He was alert and oriented the day he was admitted and signed the arbitration agreement.***

***Earlier that day he was able to participate in a meaningful discussion at the hospital with his family and his caregivers on the issue of going to a nursing home. Although he voiced considerable resistance he did understand the reason for going and eventually did express his reluctant agreement.***

***He would not necessarily be able to comprehend the arbitration agreement if it was simply handed to him for signature, but he was able to understand the explanation given to him by the facility administrator and was able to ask questions for clarification of how the agreement would affect his legal rights.***

UNITED STATES DISTRICT COURT  
MISSISSIPPI  
March 29, 2012

## Marriage: Patient's Mental Capacity Proven By Nursing Notes.

The fifty year-old patient had end-stage tongue cancer that had spread to her lymph nodes.

Ten days before she died she and her long-time boyfriend were married in the hospital. One of the witnesses for the wedding was a hospital nurse.

The next day an attorney came to the hospital so that the patient could sign a durable power of attorney naming her mother as her surrogate decision-maker.

After the patient died her family filed a lawsuit to have her marriage annulled, presumably so that they rather than the husband would inherit her property.

***A wedding ceremony is presumed to create a valid marriage relationship.***

***A marriage can be annulled, that is, ruled never to have existed at all, if either party lacked the mental capacity to enter into a valid contract at the time of the wedding ceremony.***

COURT OF APPEALS OF MICHIGAN  
April 17, 2012

The Court of Appeals of Michigan looked at the nursing notes for the evening of the wedding ceremony and the next day and found proof that the patient was mentally competent to be wedded.

The patient was oriented to time, place and person and her affect, appearance and behavior were appropriate. The nurse that evening noted expressly that the patient had a real interpretation of the event [wedding] and understood the procedure.

The next morning another nurse noted the patient was alert and oriented x3, and also that her family members were "complaining, controlling, demanding, hovering, uncooperative" and the patient was tired of the family demanding her for responses. **Mullin v. Duenas**, \_\_ N.W. 2d \_\_, 2012 WL 1319420 (Mich. App., April 17, 2012).