

## Arbitration: Patient's Son Held Valid Power Of Attorney, Case Taken Off Court Docket.

When the elderly patient was admitted to the nursing home her son signed all the admission documents on her behalf, including an arbitration agreement.

The son had been named in a general power of attorney signed by the patient which gave him authority to sign contracts on her behalf.

A general power of attorney is not the same as a durable power of attorney which the patient signs while still competent but which goes into effect only after the patient is no longer competent. A durable power of attorney for healthcare decisions or a living will pertains only to healthcare decisions and not to legal affairs in general.

### Patient's Claim For Nursing Negligence Pacemaker Battery Had Gone Dead

After the patient got a pacemaker three and one-half years after admission her physician wrote specific orders for monitoring of the pacemaker. About a year after that she began to have shortness of breath, wheezing and lethargy and her heart rate dropped. She had to be taken to the hospital, where it was discovered that the battery in her pacemaker had been dying or completely dead for several months.

### Court Orders Case Into Arbitration

The patient survived but continues to experience diminished mental acuity. She herself filed a lawsuit against the nursing home alleging that her residual problems were the result of nursing negligence for which she is entitled to compensation from the nursing home.

The United States District Court for the Northern District of Mississippi did not decide the underlying issue of nursing negligence one way or the other, but ruled in the facility's favor that the case did not belong in civil court but instead would go into arbitration for a decision.

It did not matter that the patient herself never agreed to arbitration and never signed the arbitration agreement and did not want her case to go into arbitration when the time came to present her legal claim against the nursing home.

She had named her son in a properly executed general power of attorney and his signing the arbitration agreement as her attorney-in-fact required her to go to arbitration rather than filing a civil court suit against the nursing home. The law strongly favors alternative methods of dispute resolution. Myers v. GGNSC Holdings, 2013 WL 1913557 (N.D. Miss., May 8, 2013).

## Arbitration: Power Of Attorney Was Valid, Case Taken Off Civil Court Docket, Sent To Arbitrators.

Before going to the nursing home the patient had signed a general power of attorney giving another individual authority to sign any and all contracts or agreements on his behalf.

The individual's familial or other relationship to the patient was not spelled out in the court record.

After the patient fell in the nursing home, he filed a lawsuit for negligence.

The nursing home countered the patient's lawsuit by insisting that the case be referred to binding arbitration, pursuant to the arbitration agreement the patient's attorney-in-fact had signed at the time he was admitted to the nursing home.

The US District Court for the Western District of Kentucky agreed with the nursing home's position, ordered arbitration and dismissed the suit.

***Examining the general power of attorney in this case, it is apparent that the patient had given his attorney-in-fact the very broad authority to enter into contracts on his behalf, which would include signing an arbitration agreement with a healthcare provider.***

***The power of attorney was not limited only to specific legal matters or healthcare decisions.***

UNITED STATES DISTRICT COURT  
KENTUCKY  
May 3, 2013

The general power of attorney in this case was worded much more broadly than those in other case precedents where arbitration was denied, the Court pointed out.

If the power of attorney only relates to specific legal matters such as managing the patient's real estate, investments or bank accounts, it would not grant legal authority to the attorney-in-fact to enter into an arbitration agreement with a healthcare provider.

If the power of attorney pertains only to healthcare decisions, such as consenting to surgery or being placed on DNR status, it would not grant legal authority to the patient's surrogate decision maker to enter into a valid and binding arbitration agreement with a healthcare provider. Oldham v. Extendicare, 2013 WL 1878937 (W.D. Ky., May 3, 2013).