

Arbitration: Family Member Had No Authority To Sign For Patient, Estate's Case Will Go To Court.

In an effort to control damage awards and litigation expenses, many health-care facilities are offering arbitration agreements to their patients.

In a recent case, however, the Court of Appeals of Georgia ruled the son's civil lawsuit against a nursing home seeking damages on behalf of the probate estate for his mother's death was not appropriate for arbitration and instead would be bound over for jury trial.

The Patient Never Agreed To Arbitration

Fundamental to arbitration of civil health care negligence cases is the requirement that the patient knowingly and voluntarily agree to arbitration.

In this case the patient's husband signed all the admission paperwork with the admissions counselor, includ-

The nursing home could not prove that the patient gave her husband authority to sign an arbitration agreement on her behalf giving up her right to sue the nursing home in civil court.

The arbitration agreement does not bind the patient's son as executor of her estate any more than it would have bound the patient.

The case belongs in court before a civil jury.

COURT OF APPEALS OF GEORGIA
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ing the facility's arbitration agreement, while other staff and family members were getting her settled in the facility.

There was no proof, the court said, that the husband had authority from his wife to sign a contract on her behalf.

The authority of an agent to act on behalf of a principal, the law says, must be made apparent by the statements or conduct of the principal, not the agent.

The facility could point to nothing that the patient herself had done, signed or said to a facility representative that would have conferred authority on her husband to sign on her behalf.

The husband himself was admitted to the facility for dementia soon thereafter and pre-deceased his wife. ***Ashburn Health Care Center, Inc. v. Poole***, ___ S.E. 2d ___, 2007 WL 1764217 (Ga. App., June 20, 2007).