

## Power Of Attorney Not Valid: Patient Was Competent To Make Her Own Decisions.

The day before the patient was admitted to a skilled nursing facility she signed a Durable Power of Attorney for Health Care naming her son as her attorney-in-fact.

The wording of the document was taken directly from the state's durable power of attorney statute. The statute allows an individual to sign a document authorizing another to make his or her health care decisions after he or she has been determined to be incapable of making such decisions on his or her own.

At the time of her admission to skilled nursing the son signed all the admission documents on his mother's behalf, including financial responsibility forms and an arbitration agreement.

After his mother died the son was appointed personal representative of her probate estate and on behalf of the estate filed a lawsuit against the facility seeking damages for alleged negligence in his mother's care.

The facility's first line of defense to the lawsuit, before delving into the negligence allegations, was to insist the case belonged in arbitration, not on the local county court's jury trial docket. The nursing facility filed suit in the US

District Court for the District of Nebraska to enforce the arbitration agreement signed by the patient's son. The suit cited the US Federal Arbitration Act which creates a strong Federal public policy in favor of arbitration.

### **Patient Was Not Incompetent**

### **Power of Attorney Was Not In Force**

The Court was forced to rule against the nursing facility.

The durable power of attorney by its express wording gave authority to the son to make decisions for his mother as her attorney-in-fact only after her physicians had certified that she was incompetent to make her own decisions.

She was competent and was fully capable of making her own decisions when the arbitration agreement was signed by someone else, albeit a close family member, who at that point had no legal authority. She never agreed to arbitration. She never signed anything to that effect.

Arbitration is strongly favored by the law for resolution of civil damages cases in and out of the health care arena, but only when both sides have validly agreed to arbitration, which was not the situation here. [GGNSC v. Pavich](#), 2012 WL 2121868 (D. Neb., June 5, 2012).

## Dishonesty: Court Sees No Pretext For Illegal Discrimination Behind Nurse's Termination.

Some of the workers on the night shift complained that two patient care techs routinely slept at the nurses station, sometimes for hours at a stretch.

Questioning of a number of other personnel on the unit confirmed to management's satisfaction that the accusations were true and the two techs were terminated.

One of the charge nurses, when confronted, denied she was letting employees under her direct supervision get away with sleeping for hours at a time at the nurses station.

Her superiors, however, trusted that the evidence gathered in their investigation was overwhelming to the contrary and believed that the charge nurse must be lying. She was terminated for dishonesty.

***The nurse was fired for her dishonesty in responding untruthfully to a complaint about her performance.***

***The Court will not quibble with the wisdom of the employer's decision to fire her.***

***The issue for the Court is only to look to see if there is a plausible business justification behind the employer's action.***

***Suffice it to say it was not a pretext for discrimination.***

UNITED STATES DISTRICT COURT  
ALABAMA  
May 24, 2012

The fired charge nurse sued her former employer for age and disability discrimination. The US District Court for the Northern District of Alabama dismissed her case.

Another charge nurse on the same unit admitted she let subordinates sleep on the job. She was written up but not fired. According to the Court, that did not lend credence to the fired nurse's case but corroborated that dishonesty was the real reason for her termination.

The Court refused to substitute its own judgment as to whether the facility should have fired the charge nurse.

A court deciding a case where discrimination is alleged looks only to see if the explanation offered by the employer is so flimsy that it can only be a pretext for discrimination. [Henson v. Healthsouth](#), 2012 WL 1952382 (N.D. Ala., May 24, 2012).