

Arbitration: Patient Was Incompetent, Wife Held Power Of Attorney, Case Ordered Into Arbitration.

The deceased's patient's wife sued the nursing home alleging negligence in his care.

The Court of Appeal of Tennessee ruled in favor of the nursing home that the issues will be decided in arbitration, not before a jury in civil court. That is, the arbitration agreement was valid.

The wife signed the agreement as the person named in the durable power of attorney for healthcare decisions the patient signed before he succumbed to Alzheimer's. The power of attorney became active when the patient became incompetent to make his own decisions.

The arbitration agreement was presented to the wife as optional. It was explained to her before she signed.

The arbitration agreement was a separate document from the admissions contract.

The durable power of attorney gave the patient's wife the authority to make decisions for him in the event he became incapacitated.

There is no question the patient was not competent to make his own decisions, being afflicted with Alzheimer's and a stroke.

The patient's incompetence triggered his wife's authority to act on his behalf.

COURT OF APPEALS OF TENNESSEE
November 19, 2008

The wife herself had her own issues at the time she signed, that is, she was in chemotherapy for cancer.

However, the court said, her medical issues did not prevent her from understanding what she was doing. She had no solid medical evidence that she herself was legally incompetent at the time she signed.

The arbitration agreement, as drafted by the lawyers, did not attempt to alleviate the nursing home from its basic duty to provide safe and effective care or attempt to limit the legal consequences in the event the nursing home breached its duties to the patient.

The agreement merely shifted the forum for disputes from jury trial in civil court to so-called alternative dispute resolution. **Mitchell v. Kindred Healthcare, 2008 WL 4936505 (Tenn. App., November 19, 2008).**