

Arbitration: Court Voids Admission Contract Signed By Family.

The adult children filed suit against the nursing home after their mother's death, alleging negligence, abuse, neglect and fraud. The court has not ruled if those allegations can be substantiated.

The preliminary issue is the nursing home's petition to uphold the arbitration clause in the admissions papers instead of allowing a jury trial. The Court of Appeals of Tennessee ruled the case belonged in court before a civil jury.

The seventy-five year-old patient was admitted for rehab after a hospital stay.

There was nothing wrong with her mental faculties.

Her husband could not care for her at home.

Her husband signed the admission papers containing the arbitration clause, but he could not validly sign away her right to sue the nursing home in court.

COURT OF APPEALS OF TENNESSEE
December 30, 2003

The court editorialized, expressing its consternation with a one-sided arbitration clause buried on page nine of a complicated eleven-page admission contract.

However, the basis for the court's ruling was that the signature of a family member on a legal document that substantially affects a nursing home resident's legal rights should never be substituted for the resident's own signature when the resident is fully competent to make decisions and sign for herself. Raiteri v. NHC Health-care/Knoxville, Inc., 2003 WL 23094413 (Tenn. App., December 30, 2003).

Preeclampsia: Nurses Failed To Advocate For Patient, Punitive Damages Allowed.

The nurses did nothing to advocate or intervene while their patient's preeclampsia signs and symptoms progressed to a brain hemorrhage, coma and death.

Nurses have an absolute legal duty to advocate for their patients with their physicians and if necessary must intervene by going up the chain of command.

When nurses know something is seriously wrong with the care a patient is getting from the physician and fail to intervene to correct the situation, it can go beyond mere negligence.

Mere negligence is not what the legal system contemplates as grounds for punitive damages, money awarded in addition to the money that will fairly and adequately compensate the patient for the actual harm to the patient.

A party to a civil case has to pay punitive damages only when the party has been guilty of malice.

However, legal malice does exist when a nurse or other healthcare professional shows reckless indifference to a patient's health or safety.

SUPREME COURT OF OREGON
December 26, 2003

The patient's ob/gyn was out of the office for two weeks while a nurse practitioner took over her care. During this time she began to develop signs and symptoms of preeclampsia or pregnancy-induced hypertension.

On his return to the office the ob/gyn had her admitted to the hospital and later the same day had her transferred out of the labor and delivery unit into the postpartum unit where she would not be monitored closely for her preeclampsia.

Two days later, with her preeclampsia reaching a critical stage, her ob/gyn decided to induce labor, which would take about six to eight more hours to result in a vaginal delivery.

During labor she had a brain hemorrhage, lapsed into coma and died. The baby was delivered by cesarean while she was still in coma.

Nurses Failed to Advocate / Intervene

The Supreme Court of Oregon made a preliminary ruling that concerns only the hospital as the labor and delivery nurses' employer. In addition to the major allegations of negligence against the ob/gyn the husband can claim punitive damages from the hospital for the nurses' misconduct in failing to advocate and intervene.

There is no cure for preeclampsia but to deliver the fetus. The mother had severe high blood pressure accompanied by headaches, visual disturbances and epigastric pain, likely signs of end-organ failure, for which the physician ordered antacids and pain medication and did not order anti-seizure medication or medication to lower her blood pressure or a cesarean.

All the while the nurses did not question his orders or advocate for the patient or go over the doctor's head within the nursing chain of command to get something done. The court saw this as reckless indifference to their patient's health and safety, more serious than civil negligence. Johannesen v. Salem Hospital, 336 Or. 311, ___ P. 3d ___, 2003 WL 23011802 (Or., December 26, 2003).