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Prospective Client

Via Download

RE: Medical Evidence Required for Guardianship

Dear Prospective Client,

In order to obtain a Guardianship, we must provide the Probate Court with proof that the Proposed Ward is an incapacitated person. An “incapacitated person” is an adult individual who, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter for himself or herself, to care for his or her own physical health, or to manage his or her own financial affairs. The mere ability to state a preference does not constitute mental capacity. If a person is substantially unable to exercise a right acting on his or her own, that person is deemed to be unable to exercise that right.

The easiest way to provide the required proof to the Court is to obtain a letter from a psychologist who is licensed to perform this type of examination by the Texas Department of Aging and Disability Services.

Collin County

Lifepath Systems

Intake Specialist

972.727.9133

Dallas County

Metrocare Services

Eligibility Determination

214.333.7000

Tarrant County

MHMR of Tarrant County

Intake and Admission

817.569.4000

Camp, Delta, Ellis, Franklin, Hopkins, Hunt, Kaufman, Lamar,
Morris, Navarro, Rockwall, and Titus Counties

Lakes Regional MHMR Center

Intellectual and Developmental Disability Services

866.508.0236

You may also have your family physician complete a form letter. I have enclosed a blank Physician’s Certificate of Medical Examination that is approved for use by the Courts. If you choose to use the Certificate, there are some specific rules that must be followed:

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1. The Certificate must be completely filled out.
2. A physician must sign the Certificate. A Medical Doctor (“M.D.”), Doctor of Osteopathic Medicine (“D.O.”) or a Psychiatrist (usually an M.D.) may sign the Certificate. **A letter signed by a Physician’s Assistant (“P.A.”) or a Nurse (“R.N.”) will not be accepted by the Court.** Similarly, a Certificate signed by a psychologist that this not working for a state agency will not be accepted by the Court.
3. The Certificate must be based upon an exam occurring within the 120 days of filing the application. So that we have time to get the application prepared, signed, and filed, we recommend that the exam occur within 90 days of filing.
4. An Application for Guardianship cannot be filed prior to a proposed ward turning 17 and a half years of age. Therefore, the examination should not occur until the proposed ward turns 17 years, three months of age.

Please do not hesitate to contact me should you have any questions.

Sincerely,

Michael A. Duran

Michael A. Duran

Physician's Certificate of Medical Examination

Revision October 2016

In the Matter of the Guardianship of _____,
an Alleged Incapacitated Person

For Court Use Only
Court Assigned: _____

To the Physician

This form is to enable the Court to determine whether the individual identified above is incapacitated according to the legal definition (on page 3), and whether that person should have a guardian appointed.

1. General Information

Physician's Name _____ Phone: (____) _____
Office Address _____

YES NO I am a physician currently licensed to practice in the State of Texas.

Proposed Ward's Name _____
Date of Birth _____ Age _____ Gender M F

Proposed Ward's Current Residence: _____

I last examined the Proposed Ward on _____, 20____ at:

a Medical facility the Proposed Ward's residence Other: _____

YES NO The Proposed Ward is under my continuing treatment.

YES NO Before the examination, I informed the Proposed Ward that communications with me would not be privileged.

YES NO A mini-mental status exam was given. If "YES," please attach a copy.

2. Evaluation of the Proposed Ward's Physical Condition

Physical Diagnosis: _____

a. Severity: Mild Moderate Severe

b. Prognosis: _____

c. Treatment/Medical History: _____

3. Evaluation of the Proposed Ward's Mental Functioning

Mental Diagnosis: _____

a. Severity: Mild Moderate Severe

b. Prognosis: _____

c. Treatment/Medical History: _____

If the mental diagnosis includes dementia, answer the following:

YES NO ---- It would be in the Proposed Ward's best interest to be placed in a secured facility for the elderly or a secured nursing facility that specializes in the care and treatment of people with dementia.

YES NO ---- It would be in the Proposed Ward's best interest to be administered medications appropriate for the care and treatment of dementia.

YES NO ---- The Proposed Ward currently has sufficient capacity to give informed consent to the administration of dementia medications.

d. Possibility for Improvement:

YES NO ---- **Is improvement in the Proposed Ward's physical condition and mental functioning possible?**

If "YES," after what period should the Proposed Ward be reevaluated to determine whether a guardianship continues to be necessary? _____

4. Cognitive Deficits

- a. The Proposed Ward is oriented to the following (check all that apply):
 Person Time Place Situation
- b. The Proposed Ward has a deficit in the following areas (check all areas in which Proposed Ward has a deficit):
 --- Short-term memory
 --- Long-term memory
 --- Immediate recall
 --- Understanding and communicating (verbally or otherwise)
 --- Recognizing familiar objects and persons
 --- Solve problems
 --- Reasoning logically
 --- Grasping abstract aspects of his or her situation
 --- Interpreting idiomatic expressions or proverbs
 --- Breaking down complex tasks down into simple steps and carrying them out
- c. YES NO -- The Proposed Ward's periods of impairment from the deficits indicated above (if any) vary substantially in frequency, severity, or duration.

5. Ability to Make Responsible Decisions

Is the Proposed Ward able to initiate and make responsible decisions concerning himself or herself regarding the following:

- YES NO ---- Make complex business, managerial, and financial decisions
 YES NO ---- Manage a personal bank account
 If "YES," should amount deposited in any such bank account be limited? YES NO
 YES NO ---- Safely operate a motor vehicle
 YES NO ---- Vote in a public election
 YES NO ---- Make decisions regarding marriage
 YES NO ---- Determine the Proposed Ward's own residence
 YES NO ---- Administer own medications on a daily basis
 YES NO ---- Attend to basic activities of daily living (ADLs) (e.g., bathing, grooming, dressing, walking, toileting) without supports and services
 YES NO ---- Attend to basic activities of daily living (ADLs) (e.g., bathing, grooming, dressing, walking, toileting) with supports and services
 YES NO ---- Attend to instrumental activities of daily living (e.g., shopping, cooking, traveling, cleaning)
 YES NO ---- Consent to medical and dental treatment at this point going forward
 YES NO ---- Consent to psychological and psychiatric treatment at this point going forward

6. Developmental Disability

- YES NO ---- Does the Proposed Ward have developmental disability?
 If "NO," skip to number 7 below.
 If "YES," answer the following question and look at the next page.

Is the disability a result of the following? (Check all that apply)

- YES NO ---- Intellectual Disability?
 YES NO ---- Autism?
 YES NO ---- Static Encephalopathy?
 YES NO ---- Cerebral Palsy?
 YES NO ---- Down Syndrome?
 YES NO ---- Other? Please explain _____

Answer the questions in the "Determination of Intellectual Disability" box below only if both of the following are true:

- (1) The basis of a proposed ward's alleged incapacity is intellectual disability.
and

(2) **You are making a “Determination of Intellectual Disability” in accordance with rules of the executive commissioner of the Health and Human Services Commission governing examinations of that kind.**

If you are not making such a determination, please skip to number 7 below.

“DETERMINATION OF INTELLECTUAL DISABILITY”

Among other requirements, a Determination of Intellectual Disability must be based on an interview with the Proposed Ward and on a professional assessment that includes the following:

- 1) a measure of the Proposed Ward’s intellectual functioning;
- 2) a determination of the Proposed Ward’s adaptive behavior level; and
- 3) evidence of origination during the Proposed Ward’s developmental period.

As a physician, you may use a previous assessment, social history, or relevant record from a school district, another physician, a psychologist, an authorized provider, a public agency, or a private agency if you determine that the previous assessment, social history, or record is valid.

1. Check the appropriate statement below. If neither statement is true, skip to number 7 below.

- I examined the proposed ward in accordance with rules of the executive commissioner of the Health and Human Services Commission governing Intellectual Disability examinations, and my written findings and recommendations include a determination of an intellectual disability.**
- I am updating or endorsing in writing a prior determination of an intellectual disability** for the proposed ward made in accordance with rules of the executive commissioner of the Health and Human Services Commission by a physician or psychologist licensed in this state or an authorized provider certified by the Health and Human Services Commission to perform the examination.

2. What is your assessment of the Proposed Ward’s level of intellectual functioning and adaptive behavior?

<input type="checkbox"/> Mild (IQ of 50-55 to approx. 70)	<input type="checkbox"/> Moderate (IQ of 35-40 to 50-55)
<input type="checkbox"/> Severe (IQ of 20-25 to 35-40)	<input type="checkbox"/> Profound (IQ below 20-25)

3. Yes No ---- Is there evidence that the intellectual disability originated during the Proposed Ward’s developmental period?

Note to attorneys: *If the above box is filled out because a determination of intellectual disability has been made in accordance with rules of the executive commissioner of the Health and Human Services Commission governing examinations of that kind, a Court may grant a guardianship application if (1) the examination is made not earlier than 24 months before the date of the hearing or (2) a prior determination of an intellectual disability was updated or endorsed in writing not earlier than 24 months before the hearing date. If a physician’s diagnosis of intellectual disability is not made in accordance with rules of the executive commissioner — and the above box is not filled out — the court may grant a guardianship application only if the Physician’s Certificate of Medical Examination is based on an examination the physician performed within 120 days of the date the application for guardianship was filed. See Texas Estates Code § 1101.104(1).*

7. Definition of Incapacity

For purposes of this certificate of medical examination, the following definition of incapacity applies:

An “**Incapacitated Person**” is an adult who, because of a physical or mental condition, is substantially unable to:

- (a) provide food, clothing, or shelter for himself or herself;
- (b) care for the person’s own physical health; or
- (c) manage the person’s own financial affairs. Texas Estates Code § 1002.017.

8. Evaluation of Capacity

YES NO ---- Based upon my last examination and observations of the Proposed Ward, it is my opinion that the Proposed Ward is incapacitated **according to the legal definition in section 1002.017 of the Texas Estates Code, set out in the box above.**

If you indicated that the Proposed Ward is incapacitated, indicate the level of incapacity:

- Total** ----- The Proposed Ward is totally without capacity (1) to care for himself or herself and (2) to manage his or her property.
- Partial** ----- The Proposed Ward lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property.

Evaluation of Capacity (continued)

If you indicated the Proposed Ward’s incapacity is partial, what specific powers or duties of the guardian should be limited if the Proposed Ward receives supports and services? _____

If you answered “NO” to all of the questions regarding decision-making in Section 5 (on page 2) and yet still believe the Proposed Ward is **partially** incapacitated, please explain: _____

If you answered “YES” to any of the questions regarding decision-making in Section 5 (on page 2) and yet still believe the Proposed Ward is **totally** incapacitated, please explain: _____

9. Ability to Attend Court Hearing

- YES NO ---- The Proposed Ward would be able to attend, understand, and participate in the hearing.
- YES NO ---- Because of the Proposed Ward’s incapacities, I recommend that the Proposed Ward not appear at a Court hearing.
- YES NO ---- Does any current medication taken by the Proposed Ward affect the demeanor of the Proposed Ward or his or her ability to participate fully in a court proceeding?

10. What is the least restrictive placement that you consider is appropriate for the Proposed Ward:

- Nursing home level of care --- Assisted Living Facility
- Group Home --- Memory care unit
- Own Home or with family --- Other _____

11. Additional Information of Benefit to the Court: If you have additional information concerning the Proposed Ward that you believe the Court should be aware of or other concerns about the Proposed Ward that are not included above, please explain on an additional page.

Physician’s Signature

Date

Physician’s Name Printed

License Number

Revised October 2016