

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

For Court Use Only
Court Assigned: _____

The purpose of this certificate is to enable the Court to determine whether the individual identified above is incapacitated according to the legal definition, and whether a guardian should be appointed to care for him or her.

LEGAL DEFINITION OF INCAPACITY

For purposes of this certificate, 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 the individual's own physical health, or to manage the individual's own financial affairs." Texas Probate Code § 601(14).

GENERAL INFORMATION

Proposed Ward's Name _____
Date of Birth _____ Age _____ Gender [] M [] F
Current Location of Ward: _____
Physician's Name _____ Phone: (____) _____
Office Address _____

- [] YES [] NO -- I am a physician currently licensed to practice in the State of Texas.
I have been the doctor for the Proposed Ward since _____
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 -- Prior to 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.

Based upon my last examination of the Proposed Ward, I provide the following information:

1. EVALUATION OF THE PROPOSED WARD'S PHYSICAL CONDITION

Physical Diagnosis: _____
Conditions underlying diagnosis: _____
a. Prognosis: _____
b. Severity: [] Mild [] Moderate [] Severe
c. Treatment: _____

2. EVALUATION OF THE PROPOSED WARD'S MENTAL FUNCTION

Mental Diagnosis: _____
Conditions underlying diagnosis: _____
a. Prognosis: _____
b. Severity: [] Mild [] Moderate [] Severe
c. Treatment: _____

- [] YES [] NO --- A summary of Proposed Ward's medical history is attached (if reasonably available).
[] YES [] NO --- Would the Proposed Ward benefit from supports and services that would allow the individual to live in the least restrictive setting?
[] YES [] NO --- Does this mental diagnosis include dementia?

2. EVALUATION OF THE PROPOSED WARD'S MENTAL FUNCTION, continued

- YES NO --- Would the Proposed Ward benefit from placement 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 --- Would the Proposed Ward benefit from medications appropriate for the care and treatment of dementia?
- YES NO --- Does the Proposed Ward have sufficient capacity to give informed consent to the administration of dementia medications?

3. DECISION MAKING

Alertness, Attention, and Deficits

Alertness: Alert Lethargic Stupor
 Proposed Ward is oriented to the following (check all that apply):

- Person Time Place Situation

In my opinion, the ability of the Proposed Ward to make or communicate responsible decisions concerning himself or herself is affected by the Proposed Ward's deficits and abilities as indicated:

Deficit(s) (check all that apply): Short-term memory Long-term memory Immediate recall

- YES NO --- Able to understand or communicate (verbally or otherwise)
- YES NO --- Able to recognize familiar objects and persons
- YES NO --- Able to perform simple calculations
- YES NO --- Able to reason logically
- YES NO --- Able to grasp abstract aspects of his or her situation or to interpret idiomatic expressions or proverbs
- YES NO --- Able to break complex tasks down into simple steps and carry them out
- YES NO --- The Proposed Ward's periods of impairment from the deficits indicated above (if any) vary substantially in frequency, severity, or duration

In my opinion, the Proposed Ward is able to make or communicate responsible decisions concerning himself or herself regarding the following:

A. Business and Managerial Matters; Financial Matters

- YES NO --- Contract and incur obligations; handle a bank account; apply for, consent to and receive governmental benefits and services; accept employment; hire employees; sue and defend on lawsuits; make gifts of real or personal property?
- YES NO --- If "YES," should amount deposited in any such bank account be limited?
- YES NO --- Execute a Durable Power of Attorney?
- YES NO --- Execute a Health Care Power of Attorney?

B. Personal Living Decisions

- YES NO --- Determine own residence?
- YES NO --- Safely operate a motor vehicle?
- YES NO --- Vote in a public election?
- YES NO --- Make decisions regarding marriage?

C. Medical Decision-Making

- YES NO --- Consent to medical, dental, psychological, and psychiatric treatment?
- YES NO --- Administer own medications on a daily basis?

D. Daily Life Activities

Administer daily life activities (e.g., bathing, grooming, dressing, walking, toileting):
 YES, independently YES, with assistance NO, requires total care

4. DEVELOPMENTAL DISABILITY

YES NO --- Does the Proposed Ward have developmental disability?

If "NO," skip to number 5 on the next page.

If "YES," is the disability a result of the following? (Check all that apply)

- YES NO --- Autism?
- YES NO --- Static Encephalopathy?
- YES NO --- Cerebral Palsy?
- YES NO --- Down Syndrome?
- YES NO --- Intellectual Disability (MR)**?
- YES NO --- Other? Please Explain _____

**If "the basis of a proposed ward's alleged incapacity is mental retardation"¹, please answer the questions in the box below only if you are making a "Determination of Mental Retardation" in accordance with Section 593.005, Texas Health & Safety Code. If you are not making such a determination, please skip to number 5 on the next page.

"DETERMINATION OF MENTAL RETARDATION" (It is not required that you complete this box; see ** above.)

A "Determination of Mental Retardation" made in accordance of § 593.005 of the Texas Health & Safety Code requires that the determination be based on an interview with the Proposed Ward and on a professional assessment that, at a minimum, must include:

- 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, a public agency, or a private agency if you determine that the previous assessment, social history, or record is valid.

By checking the boxes below, you are representing that you have made a "Determination of Mental Retardation" in accordance with § 593.005 of the Texas Health & Safety Code.

1. What is your assessment of the Proposed Ward's level of intellectual functioning and adaptive behavior?
 - Mild (IQ of 50-55 to approx. 70) Moderate (IQ of 35-40 to 50-55)
 - Severe (IQ of 20-25 to 35-40) Profound (IQ below 20-25)
2. Yes No - Is there evidence that the intellectual disability originated during the Proposed Ward's developmental period?

Note to attorneys: If a physician makes a "Determination of Mental Retardation" in accordance with Texas Health & Safety Code § 593.005 – see box above – a Court may grant a guardianship application if the "Determination of Mental Retardation" is based on an examination made not earlier than 24 months before the date of the hearing. But if a physician's diagnosis of intellectual disability is not made in accordance with Texas Health & Safety Code § 593.005 – 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 Probate Code § 687(c)(A) & (a).

¹ In H.B. 1481, the 2011 Legislature directed the Legislature and Texas Legislative Council to avoid using the term "mental retardation" in new statutes and to change that term as existing statutes are otherwise amended. Because the Probate Code still refers to "mental retardation" as a basis for a guardianship, and Health & Safety Code still requires a "determination of mental retardation" (§ 593.001 et seq.), this form quotes that phrase from the statutes when necessary.

5. EVALUATION OF CAPACITY

YES NO --- Based on the information above, it is my opinion that the Proposed Ward is incapacitated according to the legal definition given at the top of page 1.

If "YES," please indicate the level of incapacity

PARTIAL* TOTAL

*If you answered "NO" to all of the questions regarding decision-making in Section 3 (on page 2) and believe the Proposed Ward is partially incapacitated, please explain: _____

If you answered "YES" to any of the questions regarding decision-making in Section 3 (on page 2) and believe the Proposed Ward is totally incapacitated, please explain: _____

6. ABILITY TO ATTEND COURT HEARING

If a hearing on an application for the appointment of a guardian is scheduled in court:

YES NO --- The Proposed Ward would be able to attend, understand, and participate in the hearing.

YES NO --- Because of his or her incapacities, it would not be advisable for the Proposed Ward to appear at a Court hearing because the Proposed Ward would not be able to understand or participate in the 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

7. 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:

Physician's Signature

Date

Physician's Name Printed

General Information

Change of Address. You must notify your attorney of any change in the mailing address of either you or the Ward, and your attorney should notify the Court. You may not move to another state or be absent for this state for more than three months without Court permission. If the Ward moves from this County, Consult with you attorney about whether the guardianship should be transferred.

For parents who are Guardians of the estate of their minor child: Note that the natural parents of a minor are obligated to support that child and may not spend any guardianship funds – corpus or income – without a Court order.

For the Guardian of any estate: If you have a Court – ordered allowance, you do not need to get further Court approval before spending those funds. **But never spend any other Guardianship funds unless you first obtain, through your attorney, a written order of this Court authorizing such expenditures.** Consult your attorney about the few instances when the law allows such expenditure without Court Order.

Place all Guardianship funds in insured accounts in the name of the Guardianship. Retain in a checking account only such funds as are reasonably necessary for the current support and maintenance of the Ward. Place all additional funds in interest-bearing accounts at the highest interest rate then available, unless you have an approved Investment Plan that allows another investment.

Maintain an accurate record of all Guardianship income and all expenditures of Guardianship funds. Keep and organize all receipts and bank records.

Preserve, protect, and insure (if insurable) all non-cash assets of this Guardianship.

Obtain a written order of this court before attempting to sell, transfer, lease for more than one year, or otherwise dispose of any non-cash asset of this Guardianship.

Consult with your attorney on any matter regarding this Guardianship that you do not understand. Failure to follow any of the statutory procedures may lead to your removal as Guardian and you may be held personally liable.

David Gonzales, III, Presiding Judge
County Court at Law #3
Cameron County, Texas

I, the Guardian of this person and estate, attest that I have read the above and understand its contents.

Guardian

Date

Informe General

Cambio de dirección. Usted debera avisar a su abogado de cualquier cambio de dirección postal, ya sea que usted o el pupilo se hayan mudado y su abogado debera avisar a la Corte. Usted no podrá mudarse a otro Estado o abandonar el estado por mas de tres meses, sin el permiso del Juez. En el caso que el pupilo se mudase del Condado, primero debera consultar esto con su abogado para determinar si dicha tutela deber ser transferida.

Lo siguiente aplica a los padres Tutores de la Propiedad de los hijos menores de edad: Los padres naturales de un hijo menor se obligan a mantener a este hijo y no deberán gastar los fondos monetarios de la tutela, capital del patrimonio, o ingresos sin previa orden del Juez.

Lo siguiente aplica al Tutor de cualquier propiedad: En el caso de que un Juez le haya asignado a usted una mensualidad monetaria, usted no necesitara una aprobación adicional mediante un Juez para usar dichos fondos monetarios. Se le prohíbe gastar cualquier otro fondo monetario proveniente de la Tutela, a menos que usted primero obtenga, mediante su abogado, una orden por escrito, del Juez autorizando dichos gastos. Consulte con su abogado en relación a las escasas excepciones donde la ley permite que se realicen dichos gastos sin una orden del Juez.

Se pondran todos los fondos monetarios de la Tutela en cuentas aseguradas a nombre de la Tutela. Mantenga una lista solamente de las cuentas monetarias que hayan sido razonablemente necesarias para la manutención y mantenimiento actual del Pupilo. Todo fondo monetario adicional se pondrá en una cuenta que genere intereses al mas alto interés posible en ese momento disponible, amenos que usted obtenga un plan de inversión autorizado que permitiese otra inversión.

Mantenga un informe fiel y correcto de los ingresos de la Tutela y todos los gastos provenientes de los fondos monetarios de la Tutela. Guarde y organice todos los recibos y estados de cuentas del banco. Preserve, proteja, y asegure (si es asegurable) todo los bienes (que no sean dinero en efectivo) de las propiedades de dicha Tutela.

Obtenga previa orden del Juez antes de intentar vender, transferir, rentar, por mas de un ano, o de disponer de algún bien (propiedad que no sea dinero en efectivo) de la actual Tutela.

Consulte con su abogado si tiene alguna duda sobre algún asunto en relación a dicha Tutela. Incumplimiento de los procedimientos legales podrían causar que usted pierda su derecho a la Tutela y usted podría ser el responsable ante la ley.

David Gonzales, III, Juez en Turno
Juzgado No. 3 del Condado
Condado de Cameron, Texas

Yo, como tutor de esta persona y de su propiedad, doy fe que he leído el documento que antecede y entiendo su contenido

Tutor

Fecha