

**IN THE COURT OF COMMON PLEAS, CHESTER COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION**

IN THE MATTER OF: _____, an incapacitated person

Docket no. 15- _____ - _____

FINAL ORDER APPOINTING GUARDIAN

_____ Person
_____ Estate

AND NOW, this ____ day of _____, _____, following a hearing held
_____, 20____ pursuant to proper notice to the alleged incapacitated person
(Respondent), who was represented at the hearing by _____,

Esquire and who:

_____ appeared/attended the hearing in person/

_____ appeared/attended the hearing through remote means (____ video/ ____ telephone)

_____ failed to appear/attend the hearing because: _____

_____, and

after giving full consideration to the factors set forth in Chapter 55 of the Probate, Estate and
Fiduciaries Code, 20 Pa.C.S. §5501, *et seq.*, and in accordance with the following Findings of

Fact:

**Findings of Fact Pursuant to
PEF Code, 20 Pa. C.S. §5512.1**

1. The nature of the condition or disability which impairs Respondent's capacity to make
and communicate decisions is _____

_____;

2. The extent of Respondent's capacity to make and communicate decisions is:

___ Totally impaired and there was no evidence presented indicating capacity may change.

___ Partially impaired and there was no evidence presented indicating capacity may change.

___ Totally impaired and there was evidence presented indicating capacity may change.

NOTE: an automatic review hearing must be ordered to be held no later than one year from the date of this order. The review hearing will be to hear evidence to determine whether the guardianship continues to be necessary.

___ Partially impaired and there was evidence presented indicating capacity may change.

NOTE: an automatic review hearing must be ordered to be held no later than one year from the date of this order. The review hearing will be to hear evidence to determine whether the guardianship continues to be necessary.

3. Considering all the credible evidence and testimony presented, this court has determined that Respondent:

___ is adjudicated to be an incapacitated person.

___ is not found to be an incapacitated person.

4. Credible evidence was presented of the existence of:

___ an advance directive (*durable power of attorney or trusts*),

___ an advance health care directive:

___ a health care power of attorney,

___ living will,

___ a written combination of a health care power of attorney and living will.

___ a healthcare representative,

___ a financial power of attorney,

___ a trust,

___ a special needs trust,

___ a representative payee for Social Security benefits,

_____ a PA ABLE savings program account), and/or

_____ a mental health advance directive.

5. Based upon the evidence of record there:

_____ is an absence of sufficient family, friends, or other supports which offer any less restrictive alternatives to assist Respondent in making decisions.

OR

_____ is not an absence of sufficient family, friends or other supports which offer less restrictive alternatives to assist Respondent in making decisions.

6. After full consideration of the credible testimony and evidence as to the availability of family, friends, and other supports to assist Respondent in making decisions it is found guardianship services _____ are / _____ are not needed.

7. Based upon the nature of the condition or disability and the Respondent's capacity to make and communicate decisions Respondent is found to need the following guardianship services:

- a. _____ limited guardianship of the person,
- b. _____ limited guardianship of the estate,
- c. _____ plenary (full) guardianship of the person,
- d. _____ plenary (full) guardianship of the estate

8. The duration of such guardianship shall be _____,

IT IS hereby **ORDERED** and **DECREED** as follows:

I. Guardian of the Person

_____ is/are appointed as:

_____ A. Limited Guardian(s) of Respondent's Person – with the following authority:

_____ a. Provisions for care, maintenance and custody: _____

_____ b. Place where Respondent shall live: _____

_____ c. Provisions for training, education, medical and psychological services,
social and vocational opportunities, including: _____

_____ d. Authority to execute consents or approvals on behalf of Respondent,
including: _____

_____ e. Other: _____

OR

_____ B. Plenary Guardian(s) of Respondent's Person

Additional Powers pursuant to 20 Pa.C.S. § 5521(d)¹
(Specific proof and findings of fact are required)

The Guardian(s) of the Person shall have, in addition to the powers granted above, the following authority:

_____ To consent to (abortion) (sterilization) (psychosurgery) (electroconvulsive procedure) (removal of healthy body organ/s) (other: _____).

_____ To prohibit marriage.

_____ To consent to divorce.

_____ To consent to performance of experimental biomedical or behavioral medical procedure or participation in any biomedical or behavioral experiment.

Powers of Attorney

1. Any general or limited powers of attorney (other than a health care power of attorney) previously executed by the Respondent are hereby revoked and vacated.

a. _____ The Guardian(s) of the Person is hereby authorized to revoke the appointment of the health care agent.

b. _____ The court hereby revokes the health care power of attorney.

c. _____ The court authorizes the continuance of the health care power of attorney.

2. If there is an existing health care power of attorney which was not revoked in paragraphs 1(a) or (b) above, the health care agent is advised, pursuant to 20 Pa.C.S.

¹ (d) Powers and duties only granted by court.--Unless specifically included in the guardianship order after specific findings of fact or otherwise ordered after a subsequent hearing with specific findings of fact, a guardian or emergency guardian shall not have the power and duty to:

- (1) Consent on behalf of the incapacitated person to an abortion, sterilization, psychosurgery, electroconvulsive therapy, or removal of a healthy body organ.
- (2) Prohibit the marriage or consent to the divorce of the incapacitated person.
- (3) Consent on behalf of the incapacitated person to the performance of any experimental biomedical or behavioral medical procedure or participation in any biomedical or behavioral experiment.

§5460(a), that he or she is accountable to the Guardian(s) of the Person as well as the Respondent (the principal).

HIPAA Personal Representative

The Guardian(s) of the Person shall be deemed to have authority to act on behalf of Respondent, as personal representative for the purposes of the Health Care Insurance Portability and Accountability Act of 1996 (HIPAA), for the duration of the Guardianship. As the personal representative for HIPAA purposes, the Guardian(s) of the Person shall be treated the same as Respondent by any health care related person or entity and shall have access to all protected health information of Respondent.

II. Guardian of the Estate

_____ is/are appointed as

_____ A. Limited Guardian(s) of Respondent's Estate – with the following authority:

_____ a. Portion of assets or income subject to Guardian's control: _____

_____ b. To gather, prepare and submit, on Respondent's behalf, all applications and documentation necessary for _____ benefits.

_____ c. Other: _____

OR

_____ B. Plenary Guardian(s) of Respondent's Estate

Additional Guardian of the Estate provisions

1. The Guardian(s) of the Estate may petition the court for allowances to pay for other fees, costs, or expenses incurred in providing services hereunder.
2. Except as authorized below, the Guardian(s) of the Estate shall not use principal without first petitioning the court and obtaining approval, therefore.
3. The Guardian(s) of the Estate is authorized to expend the principal from the Respondent's account(s) as follows:

_____ To establish a burial fund or purchase pre-paid funeral expenses in the event the same do not currently exist.

_____ To: _____

_____ To: _____

4. The Guardian(s) of the Estate may use the Respondent's income to pay for the Respondent's expenses without obtaining court approval.
5. The Guardian(s) of the Estate shall take all actions necessary to obtain and/or maintain medical insurance for the Respondent.

The Guardian(s) of the Estate, once Respondent's assets have been depleted for his/her care and maintenance, shall then take all actions necessary to obtain and/or maintain appropriate care and maintenance for the Respondent, including if applicable, under the Medical Assistance Program.
6. The Guardian(s) of the Estate shall file a copy of the Will of Respondent (if any) with the Chester County Clerk of the Orphans' Court within three (3) months of the date of this order, that is by _____.

7. All banks and other financial institutions maintaining Respondent's accounts shall provide the Guardian(s) of the Estate with all requested account related information pertaining to all account assets held in the Respondent's name, including jointly held accounts. If requested by the Guardian(s) of the Estate, said banks and other financial institutions shall transfer to the Guardian(s) of the Estate all account assets held solely in Respondent's name.
8. All financial institutions, including without limitation, banks, savings and loans, credit unions, and brokerages, shall grant to the Guardian(s) of _____ [Respondent's] estate access to any and all assets, records, and accounts maintained for the benefit of Respondent, and the Guardian(s) of Respondent's estate shall be entitled to transfer, retitle, withdraw, or to otherwise exercise dominion and control over any and all said assets, records, and accounts. The failure of any financial institution to honor this order may lead to contempt proceedings and the imposition of sanctions.

Bond

The Guardian(s) of the Estate (_____ shall / _____ shall not) post a bond with surety.

If bond is required, it shall be posted within ten (10) days from the date of this Order in the amount of \$ _____. The cost of the bond may be paid from the Estate assets.

Firearms

In order to comply with 18 Pa.C.S. §6105(c)(4) of the Pennsylvania Uniform Firearms Act, the Guardian(s) of the Estate shall inquire about the ownership and/or possession of any firearms by the incapacitated person and, within sixty (60) days of the Adjudication, shall arrange for the sale or

transfer of the incapacitated person's firearms to another eligible person who is not a member of the prohibited person's household.

A person adjudicated incapacitated is not permitted to obtain a license to carry a firearm. Any existing license issued to the incapacitated person shall be returned to the issuing authority.

III. Compensation of Guardian

_____ Person _____ Estate

Payment amount:

_____ none (\$ 0.00)

_____ \$ _____ monthly (Medical Assistance cases)

_____ \$ _____ hourly (if not Medical Assistance case)

_____ "initial/start up fee", \$ _____ ; _____

_____ monthly amount permitted from principal: _____

_____ other _____

Billing schedule:

_____ semi-annually (no more than two (2) times per year)

_____ other _____

Billing requirements:

1. Payment to the Guardian(s) for compensation must be preceded by the filing of a petition by the Guardian(s) with the Chester County Clerk of the Orphans' Court and the court's approval of that petition. The petition must detail the time and type of services rendered by the Guardian(s) which justifies the requested payment.

2. Compensation for the Guardian(s) must be taken from the Respondent's income, not from his/her assets (*i.e* not from investment account principal), without prior court approval having been obtained.

IV. Review Hearing

A Review Hearing in the above matter shall be held:

_____ within _____ months;

_____ on _____, 20____;

_____ upon request of Respondent

_____ upon petition of guardians or any party in interest

_____ by further order of court.

V. Reports

The Guardians (Person *and* Estate) shall file the following reports with the Clerk of the Orphans' Court, via the statewide Guardianship Tracking System ("GTS"):

1. An inventory by the Guardian(s) of the estate within 90 days of this decree;
2. An annual report by the Guardian(s) of the estate one year after appointment and annually thereafter;
3. An annual report by the Guardian(s) of the person one year after appointment and annually thereafter;
4. A final report by the Guardian(s) of the person *and* the estate within 60 days of the death of the incapacitated person, an adjudication of capacity, a change of guardian, or the expiration of an order of limited duration;
5. A final report from the Guardian(s) of the person and the estate upon receipt of the provisional order from another state's court accepting transfer of a guardianship.

6. Notice of the filing of the above reports, using Form G-07, shall be given to the following: _____

VI. Notice of Right to Appeal

_____ **Read to Respondent in Court**

_____ **To be read to Respondent by: _____
& an affidavit of service/verification filed with the Clerk of the Orphans' Court within 10 days of this Order.**

_____ [Respondent] is hereby notified of the right to seek reconsideration of this Order pursuant to Pennsylvania Orphans' Court Rule 8.2 and the right to appeal this Order within 30 days from the date of this order by filing a notice of appeal with the clerk of the Orphans' Court.

Respondent may also petition the court at any time to review, modify, or terminate the guardianship due to a change in circumstances. Respondent has a right to be represented by an attorney to file a motion for reconsideration, an appeal, or seek modification or termination of this guardianship. If the assistance of counsel is needed and Respondent cannot afford an attorney, an attorney will be appointed to represent Respondent free of charge.

BY THE COURT:

_____ J.