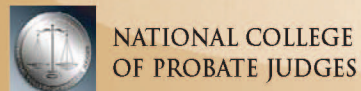
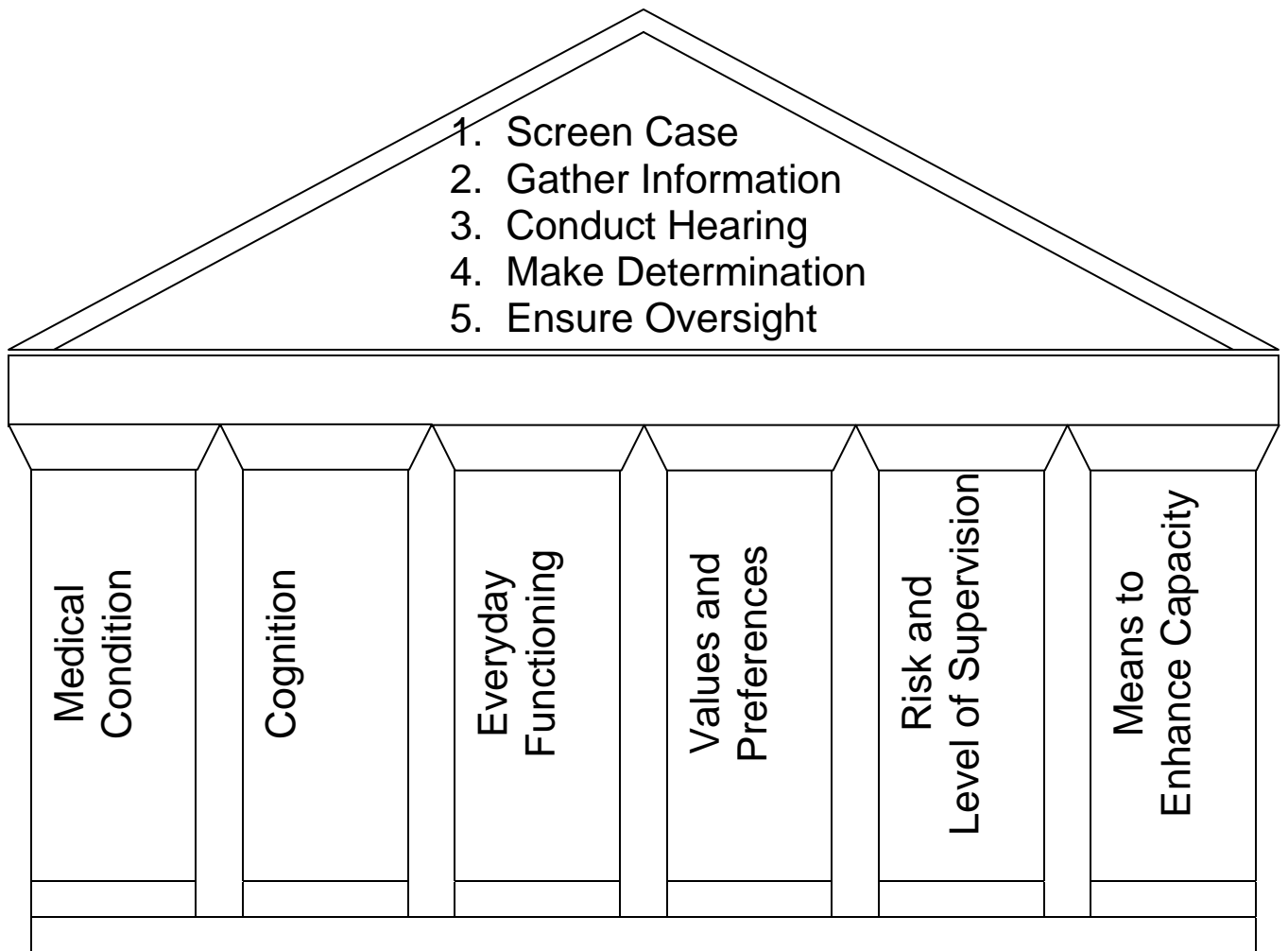


A HANDBOOK FOR JUDGES

JUDICIAL DETERMINATION
OF **CAPACITY OF**
OLDER ADULTS
IN GUARDIANSHIP PROCEEDINGS



Judicial Determination of Capacity of Older Adults in Guardianship Proceedings



American Bar Association
Commission on Law and Aging

American Psychological Association

National College of Probate Judges

Judicial Determination of Capacity of Older Adults in Guardianship Proceedings

Disclaimer

The views expressed in this document have not been approved by the governing or policy-setting bodies of the American Bar Association, the American Psychological Association, or the National College of Probate Judges, and should not be construed as representing policy of these organizations. Materials in this book were developed based on the consensus of a working group.

This document is not intended to establish a standard of practice against which juridical or clinical practice is to be evaluated. Rather, it provides a framework that judges may find useful and effective in capacity determination.

Although the principles presented herein are intended to be generally relevant across all legal jurisdictions, law and practice differ across state jurisdictions and sometimes even across county lines. **Thus, this book is intended to supplement (and cannot substitute for) a judge's working knowledge of the capacity and guardianship statutes and case law specific to his/her jurisdiction.** This book focuses on issues in capacity determination, not all of adult guardianship.

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Judges are not like baseball umpires, calling strikes and balls or merely labeling someone competent or incompetent. Rather, the better analogy is that of a craftsman who carves staffs from tree branches. Although the end result—a wood staff—is similar, the process of creation is distinct to each staff. Just as the good wood-carver knows that within each tree branch there is a unique staff that can be ‘released’ by the acts of the carver, so too a good judge understands that, within the facts surrounding each guardianship petition, there is an outcome that will best serve the needs of the incapacitated person, if only the judge and the litigants can find it.¹

Acknowledgements

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**APPENDIX 2: FACT SHEETS AVAILABLE ONLINE AT
<http://www.abanet.org/aging>; <http://www.apa.org/pi/aging>; AND <http://www.ncjp.org>.**

Capacity

Clinical Professionals

Clinical Evaluation Report Instructions

Cognition and Cognitive Testing

Everyday Functioning and Functional Assessment

Guardianship Monitoring Practices

Hearing: Maximizing Participation

Hearing: Examination of the Healthcare Professional

Jury Instructions

Less Restrictive Alternatives to Guardianship

Limitations to Guardianship

Means to Enhance Capacity

Medical Conditions Affecting Capacity

Role of Judges in Capacity Determinations

Strategies for Improving Practice in Your Court



Temporary and Reversible Causes of Confusion

Useful Web Sites

Values

Introduction



Background

- Guardianships for older adults are **increasing**.
- Guardianship law and practice is undergoing **dramatic revision**. 
- Definitions of capacity have **evolved** to reflect modern understandings of the brain dysfunction, functional abilities, and the law:
 - ▶ Capacity is task specific, not global.
 - ▶ Capacity can fluctuate.
 - ▶ Capacity is situational.
- ▶ Capacity is contextual. 
- Determining capacity in older adults with complex impairments can be **difficult**.
- Limited guardianships based on partial loss of capacity can be **challenging** to craft.

Goals of This Book





- To provide **practical tools** for capacity determination.
- To address the needs of a **wide audience** of judges.
- To **improve communication** between judges and healthcare professionals.
- To provide resources useful in identifying **less restrictive alternatives** and fashioning **limited guardianship**, while recognizing that plenary guardianship often may be appropriate.
- To call attention to **temporary and reversible causes of impairment** in older adults.
- To assist courts in **enhancing the capacity** of older adults.

Use of This Book

- Forms and resources referenced herein are **available online** to download for ready use and modification at <http://www.abanet.org/aging>; <http://www.apa.org/pi/aging>; and <http://www.ncpj.org>. The symbol “” indicates that additional information can be found in the online version of the book.
- Forms and resources **may be reproduced** for use in guardianship proceedings (for other uses, refer to copyright page).
- Although the forms are generally relevant, each form will need to be modified to suit local practices. Judges are encouraged to **freely adapt** forms to jurisdictional needs and laws.
- This book is generally **consistent with the *Uniform Guardianship and Protective Proceedings Act*²** or **UGPPA**. 

The Role of Judges in Capacity Determinations

Judges Balance Multiple Goals

- Decide capacity in a manner that balances well-being and rights.
- Promote self-determination.
- Identify less restrictive alternatives to guardianship. 
- Provide guidance to guardians. 
- Make determinations of restoration. 
- Craft limited guardianship when appropriate. 

What Is Limited Guardianship?

- A limited guardianship is a relationship in which the guardian “is assigned only those duties and powers that the individual is incapable of exercising.”³
- The concept of limited guardianship is promoted in the UGPPA⁴ and the *National Probate Court Standards*, which directs probate judges to “detail the duties and powers of the guardian, including limitations to the duties and powers, and the rights retained by the individual.”⁵
- In some cases, such as coma or advanced dementia, individuals are totally impaired by their medical condition. In other cases, a fine tuned assessment may help to identify specific areas—**even if relatively small in scope**—in which the individual may retain rights.
- Examples of limitations to guardianship include rights retained by an individual to:
 - Determine living arrangements.
 - Spend small amounts of money.
 - Make and communicate choices about roommates.
 - Initiate and follow a schedule of daily and leisure activities.
 - Establish and maintain personal relationships with friends and relatives.
 - Determine degree of participation in religious activities.



Benefits of Limited Guardianship

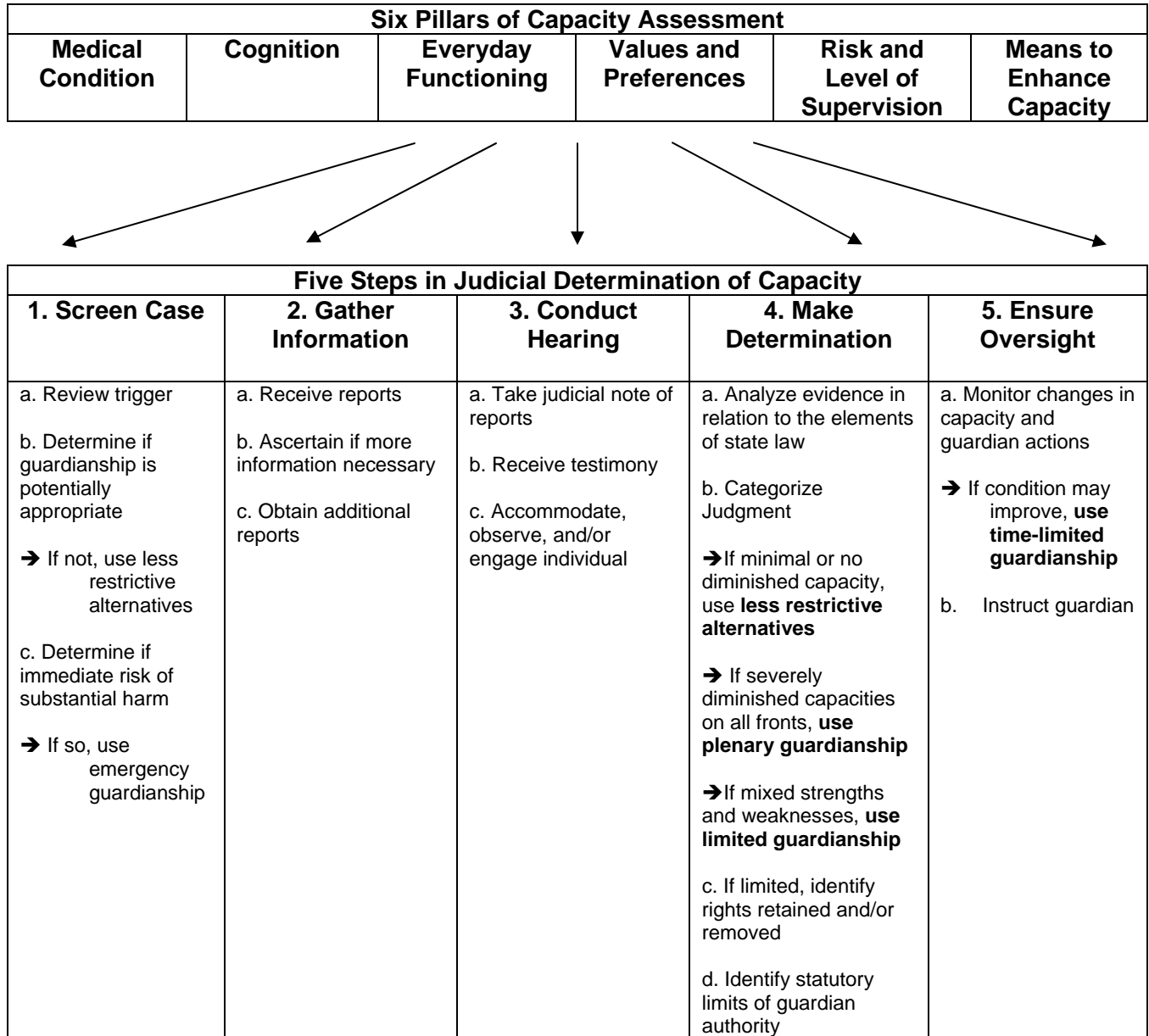
- Maximizes the autonomy of the person with diminished capacity.⁶
- Is directly responsive to the concept of the least restrictive alternative.
- Supports an individual’s mental health.⁷
- Encourages the guardian to take into account the wishes of the individual, moving the relationship more toward collaboration and compromise.

Risks of Limited Guardianship

- In some cases, the elder is at risk for or has been subject to abuse, and the use of limited guardianship could keep the elder at some degree of continuing risk. In these cases, plenary guardianship may be the appropriate protective mechanism.



Overview of Capacity Assessment

A comprehensive assessment of capacity for guardianship proceedings requires collecting information on six factors. In this book, these factors will be referred to as the “Six Pillars of Capacity Assessment.” Information about these factors may be obtained from healthcare professionals, court investigators, guardians ad litem, family members, adult protective service workers, and other involved parties. This book describes the six pillars of capacity assessment and how they inform each judicial action step in adult guardianship proceedings. Links to related model forms and resources are provided throughout the book.




Six Pillars of Capacity


1. Medical Condition Producing Functional Disability

- Historically, many state statutes included “physical illness” or “physical disability” as a sufficient disabling condition, and some opened a very wide door by including “advanced age” and the catch-all “or other cause.” Such amorphous and discriminatory labels invited overly subjective judicial determinations.
- Today, judges require information on the specific disorder causing diminished capacity. With aging, a wide range of neurological and psychiatric conditions may impact capacity. 
- Some conditions are temporary and reversible. 


2. Cognitive Functioning Component

- “Cognitive functioning” is a component of statutory standards for capacity in many states.
- The 1997 UGPPA defines an incapacitated person as an individual who ... is **unable to receive and evaluate information or make or communicate decisions to such an extent** that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance.⁸
- Cognitive functioning includes alertness or arousal, as well as memory, reasoning, language, visual-spatial ability, and insight. Neurological as well as psychiatric or mood disorders may impact information processing. 


3. Everyday Functioning Component

- Until recent years, the everyday functioning tests found in state law were fairly vague and subjective, such as “incapable of taking care of himself”;⁹ “unable to provide for personal needs and/or property management”;¹⁰ or “incapable of taking proper care of the person’s self or property or fails to provide for the person’s family.”¹¹
- Vague standards invite judgments of incapacity based upon the court’s opinion of the reasonableness of one’s behavior—essentially, a subjective test.
- Many states now set a higher and more objective bar for weighing functional behavior by focusing only on one’s ability to provide for one’s “essential needs,” such as “inability to meet personal needs for medical care, nutrition, clothing, shelter, or safety.”¹²
- Healthcare professionals divide everyday functioning into the “activities of daily living” or “ADLs” (grooming, toileting, eating, transferring, dressing) and the “instrumental activities of daily living” or “IADLs”—abilities to manage finances, health, and functioning in the home and community. 




4. Consistency of Choices with Values, Preferences, and Patterns

- Capacity reflects the consistency of choices with the individual’s life patterns, expressed values, and preferences. Choices that are linked with lifetime values are rational for an individual even if outside the norm.
- Knowledge of values is not only important in determining capacity, but also in the guardianship plan. The UGPPA provides that a guardian must “consider the expressed desires and personal values of the [individual] to the extent known to the guardian.”¹³
- Core values may affect the individual’s preference for who is named guardian, as well as preferences concerning medical decisions, financial decisions, and living arrangements. 

5. Risk of Harm and Level of Supervision Needed

- Most state statutes require that the guardianship is necessary to provide for the essential needs of the individual (i.e., there are no other feasible options), or that the imposition of a guardianship is the least restrictive alternative for addressing the proven substantial risk of harm.¹⁴
- The social and environmental supports may decrease the risk. Lack of supports may increase risk. In this manner, the degree of risk is not merely a consideration of the condition and its effects, but the consideration of these within the environmental supports and demands.
- The level of supervision determined by the judge must match the risk of harm to the individual and the corresponding level of supervision required to mitigate that risk.
- In some cases, the risk is low and the need can be addressed through a less restrictive alternative or limitation to guardianship. In other cases, less restrictive alternatives have failed or are inappropriate, and a plenary guardianship is necessary to protect the well being of the elder. 

6. Means to Enhance Capacity

- The judge must be vigilant for means to enhance capacity through practical accommodations and medical, psychosocial, or educational interventions. 
- The mere existence of a physical disability should not be a ground for guardianship, since most physical disabilities can be accommodated with appropriate medical, functional, and technological assistance directed by the individual.
- Information about enhancing capacity informs many judicial actions:
 - **Hearing.** How to maximize capacity at the hearing. 
 - **Review Period.** What is the appropriate period for judicial review, especially if **restoration** of capacity through treatments is possible.
 - **Plans.** What treatments, services, habilitation should be detailed in the guardianship plan. 

Step One: Screen the Case


1a. Review Trigger

- *What is bringing this case to court now?*
- Identify the immediate issue or occurrences that brought the case to court at this time—for example, a question of institutional placement, sale of property, medical treatment, or financial exploitation.
- Ensure that the triggering issue concerns protection of the individual, and is not for the convenience or benefit of a third party, such as a family, heir, hospital, or nursing home. Judges may address the concerns of other parties, but “the interests of the incapacitated person should take precedence.”¹⁵

1b. Determine if Guardianship Is Potentially Appropriate

- *Have all procedural requirements been met?*
 - Is venue proper?
 - Are notice and service proper?
 - Has counsel been appointed if required or if needed?
 - Has individual been informed of hearing rights?
- *Is guardianship necessary and helpful in this case?*

Put a mechanism in place to screen out cases that are inappropriate for guardianship. Some courts have designated staff to work with petitioners, ensuring that cases that come before the court for judicial intervention are necessary and that petitioning the court for guardianship is, in reality, a last resort. Seek to determine that:

 - ▶ There are no **less restrictive alternatives**. Perhaps the individual has executed durable health care and financial powers of attorney, and there is no allegation of abuse of those powers. Perhaps the only issue is authority for medical treatment and the state has a default surrogate law allowing family members to make health care decisions. Perhaps a more supervised housing setting or intensive in-home services would abrogate the need for a guardian. 
 - ▶ A guardian **would solve the issue**. There are some situations where putting a guardian in place would not address the problem at hand. “Guardianship is not appropriate in some circumstances. A probate guardian cannot make a person reveal where assets, such as vehicles are hidden, cannot [in some instances] force mental health treatment, cannot provide personal services if the person is never at home, is threatening, locks caregivers out of the home, or is homeless by choice.”¹⁶

1c. Determine if Immediate Risk of Substantial Harm

- *Is this a case of “emergency” guardianship?*
- A guardianship case may come before the judge as a petition for emergency guardianship. For example, there is need for an urgent medical procedure and no one to provide informed consent, or there is a family dispute and someone is seeking to “kidnap” the individual to an unknown location. Most states, as well as the UGPPA¹⁷ and the *National Probate Court Standards*¹⁸ have provisions for emergency guardianship.
- In some states, and in the *UGPPA*, the appointment of an emergency guardian is *not a finding of diminished capacity*, or evidence that a permanent guardian is needed.
- Because time is of the essence, procedural requirements for emergency guardianships are less than for permanent guardianship. Thus, it is important to exercise **caution**.
- Be sure the case presents a **true emergency** according to state law. That is, the individual’s health, safety, or welfare will be substantially harmed over the time it takes for compliance with regular guardianship procedures.
- Be sure the emergency guardianship does not become an **automatic doorway** to permanent guardianship that bypasses procedural safeguards.

Step Two: Gather Information

2a. Receive Reports

- Information about the case may be brought by many parties.
- A **Court Investigator Report** (a guardian ad litem or other court investigator or visitor—the use of these terms varies by jurisdiction) may be required or requested.


As the eyes and ears of the court, the investigator can identify the triggering issue, less restrictive alternatives, risk of harm, whether there is a need for clinical evaluation, whether the individual requires counsel, the family situation, who might provide important testimony, and suggestions for limitations to guardianship and/or elements of a guardian plan, as well as evaluate the six pillars of capacity.

 - See page 20 for a model court investigator report.
- A **Clinical Evaluation Report** may be required or requested.

A comprehensive evaluation will cover all six pillars of capacity, namely: the medical condition, cognitive functioning, everyday functioning, values and preferences, risk and level of supervision needed (including social support), and means to enhance capacity at the hearing and later.

 - See page 23 for a model order for clinical evaluation.
- Families and other lay persons may submit affidavits providing important information.

2b. Ascertain if More Information Is Necessary

- After reviewing the information, further assessment or investigation may be necessary for the following reasons:
 - ▶ **State statutory requirements.** State statutes set out the necessary elements of a clinical evaluation, which generally reflect the elements in the state definition of “incapacitated person.”¹⁹ For specific statutory requirements of clinical evaluations, see <http://www.abanet.org/aging/guardianship.html>.
 - ▶ **Red flags signaling need for more in-depth information.** If the individual has temporary or reversible causes of cognitive impairment or other mitigating factors that have not been addressed, a more sophisticated and in-depth evaluation is warranted. 
 - ▶ **Clinical statement appears one-sided.** A clinical evaluation secured by the petitioner is for the purpose of supporting the petition and may lack attention to the individual’s areas of strength, a prognosis for improvement, or important situational factors. An independent assessment can flesh out skeletal or purely one-sided information.

2c. Obtain Additional Reports

- If a review of the information reveals that information is not available on all six pillars of capacity assessment or has other shortcomings, then more information must be obtained from the clinician, court investigator, family, or other informants. a model order for independent evaluation.
- A judge may need to order an independent and more comprehensive evaluation by a clinical professional. See page 23 for a model order for independent evaluation.

Step Three: Conduct Hearing

3a. Take Judicial Note of Reports

The judge by his or her own motion may recognize the report of the guardian ad litem, or physician's report or other clinical statement, and admit them into evidence.

3b. Receive Testimony

The judge may receive testimony from witnesses, such as relatives, friends, neighbors, care providers, geriatric care managers, or others, called by the petitioner or the individual who is the subject of the petition. The individual, him or herself, may or may not speak. In some jurisdictions and in some cases, the guardian ad litem or court investigator makes a statement.

3c. Accommodate, Observe, and/or Engage the Individual

- The individual has a **right** to be present at the hearing.
- About half of the state laws and the UGPPA **require** that the individual be present unless good cause is shown.
- **The individual's presence is encouraged as it:**
 - Allows his or her involvement in the proceedings. Often, people may want their "day in court" and feel more satisfaction from the hearing if they are present and involved, whether a guardian is appointed or not.
 - Allows the judge an opportunity to observe, personally, the individual.
 - May shed a different light on the case.
- **The individual may not be present if:**
 - A medical condition prevents it (e.g., person is in a coma).
 - The individual does not wish to come.
- To determine if the individual can attend, obtain clinical or court investigative reports concerning the individual's presence at the hearing. Assessments of whether attendance at the hearing would be harmful or not realistically possible may be included in the petition, clinical evaluation form, or court investigator report.
- **The following questions may guide this process:**
 - Does the individual want to be present?
 - Would it be harmful in any way?
 - Would the individual understand at least some of the proceeding?
 - Would the individual be able to communicate in court?
 - What accommodations are needed (e.g., hearing amplifier, move location of hearing) to maximize participation?

The individual and his or her attorney will determine whether the person becomes a witness. However, in an uncontested case, the judge may gain insight and/or may make the person feel involved by engaging him or her with a few questions.

Step Four: Make Determination

4a. Analyze Evidence in Relation to Elements of State Law

1. The Medical Condition

What is the medical cause of the individual's alleged incapacities and will it improve, stay the same, or get worse? Based on up-to-date clinical reports, determine the cause of the diminished capacity. Depression and delirium are often mistaken for dementia and need to be ruled out.

2. Cognitive Functioning

In what areas is the individual's decision-making and thinking impaired and to what extent? Consider whether the individual is lucid or confused, alert or comatose, or can understand information, communicate, or can remember information over time. Consider areas of strength and weakness and the severity of impairment.

3. Everyday Functioning

What can the individual do and not do in terms of everyday activities? Does the individual have the insight and willingness to use assistance or adaptations in problem areas? Can the person:

Care of Self

- Maintain adequate hygiene, including bathing, dressing, toileting, dental
- Prepare meals and eat for adequate nutrition
- Identify abuse or neglect and protect self from harm

Financial

- Protect and spend small amounts of cash
- Manage and use checks
- Give gifts and donations
- Make or modify a will
- Buy or sell real property
- Deposit, withdraw, dispose, or invest monetary assets
- Establish and use credit
- Pay, settle, prosecute or contest any claim
- Enter into a contract, financial commitment, or lease arrangement
- Continue or participate in the operation of a business
- Resist exploitation, coercion, undue influence

Medical

- Make and communicate a healthcare decision or medical treatment
- Choose health facility
- Choose and direct caregivers
- Make an advance directive
- Manage medications
- Contact help if ill or in a medical emergency

Home and Community Life

- Maintain minimally safe and clean shelter
- Be left alone without danger
- Drive or use public transportation

- Make and communicate choices about roommates
- Initiate and follow a schedule of daily and leisure activities
- Travel
- Establish and maintain personal relationships with friends, relatives, co-workers
- Determine his or her degree of participation in religious activities
- Use telephone
- Use mail
- Avoid environmental dangers, such as the stove and poisons, and obtain appropriate emergency help

Civil or Legal

- Retain legal counsel
- Vote
- Make decisions about legal documents
- Other rights under state law

4. Consistency of Choices with Values, Patterns, and Preferences

Are the person's choices consistent with long-held patterns or values and preferences? Each of the above factors must be weighed in view of the individual's history of choices and expressed values and preferences. Do not mistake eccentricity for diminished capacity. Actions that may appear to stem from cognitive problems may in fact be rational if based on lifetime beliefs or values. Long-held choices must be respected, yet weighed in view of new medical information that could increase risk, such as a diagnosis of dementia.

Key areas to consider include matters such as:

- Does the individual want a guardian?
- Does the individual prefer that decisions be made alone or with others?
- Whom does the individual prefer to be guardian/make decisions?
- What makes life good or meaningful for an individual?
- What have been the individual's most valued relationships and activities?
- What over-arching concerns drive decisions—e.g., concern for the well-being of family, concern for preserving finances, concern for maintaining privacy, etc.?
- Are there important religious beliefs or cultural traditions?
- What are the individual's strong likes, dislikes, hopes, and fears?
- Where does the individual want to live?

5. Risk of Harm and Level of Supervision Needed

What is the level of supervision needed? How severe is the risk of harm to the individual? Determine what degree of supervision will address the individual's needs and mitigate the risk of harm.

6. Means to Enhance Functioning

What treatments might enhance the individual's functioning? Consider if treatments for the underlying condition might improve functioning. Notice whether the individual might be able to use technological aids to maintain independence. Key interventions are:

- Education, training, or rehabilitation
- Mental health treatment
- Occupational, physical, or other therapy
- Home or social services
- Medical treatment, operation, or procedure
- Assistive devices or accommodation

4b. Categorize Judgment and Make Findings

- There is no simple formula that will help judges make the determination. The following broad classification could serve as an initial schema:
 - If **minimal or no** incapacities, petition not granted, use less restrictive alternative.
 - If **severely diminished** capacities in all areas, or if less restrictive interventions have failed, use plenary guardianship.
 - If **mixed strengths and weaknesses**, use limited guardianship.
- When appropriate (or if required by law), a concise written record of the key findings and rationale for the judge’s decision will serve as:
 - the basis for any appeal;
 - the basis for limiting the guardianship order; and
 - the basis for an effective plan to serve the individual’s needs.

4c. If Limited Order, Identify Rights Retained and/or Removed

- The cases in which there are “mixed areas” of strengths and weaknesses present the greatest challenge—and the greatest opportunity—for the “judge as craftsman” to tailor a limited order to the specific needs and abilities of the individual.

4d. Identify Statutory Limits of Guardian’s Authority

- State guardianship statutes, honed by state case law, will set the start-point on which to base the scope of the court order. Statutes vary in the extent of rights and duties automatically transferred to the guardian.
- In many states, most or all rights are transferred to the guardian unless retained with the incapacitated person by court order.
- In other states, all rights are retained unless specifically transferred to the guardian by court order.
- Some statutes carve out basic rights that are retained by the individual unless the court orders otherwise—such as the right to vote or the right to make a will.

Step Five: Ensure Court Oversight

5a. Monitor Changes in Capacity and Guardian Actions

- Court monitoring of guardianships has many critical functions, one of which is monitoring changes to the individual's level of capacity.
- **Short-term Review of Capacity**
If the individual's level of capacity may improve soon with treatment (e.g., for subdural hematoma after a fall), the guardianship should be referred for review within a short time period.
- **Annual Review of Capacity**
Unlike with probate of decedents' estates, in guardianship there is a living being whose needs may change over time, may last for many years, and may include excruciatingly complex decisions about medical treatment, placement, and trade-offs between autonomy and beneficence. An initial assessment on which the court made an original order may no longer be valid and a re-assessment may be required. A limited order or guardianship plan may require revision. Annual reports should note changes in capacity.
- See page 37 for a model annual report.

5b. Instruct Guardian

- The guardian can be provided immediate instructions by the court, which may include the frequency of reporting and the requirement to submit a guardianship plan.
- A guardianship plan, required in some jurisdictions, is a forward-looking document in which the guardian describes to the court the proposed steps to be taken for care of the individual. A guardianship plan provides an avenue to promote individual autonomy and rights, as well as to strengthen accountability. Guardianship plans are useful because they²⁰:
 - ▶ Establish a baseline against which subsequent reports can be measured.
 - ▶ Reflect care-planning for nursing home residents under federal regulations.²¹
 - ▶ Allow for minor changes without consulting the court, but would require court approval for any substantial adjustments.
- Guardianship plans should involve the incapacitated person to the extent possible to outline the services and strategies that will be used to implement the order, including, most importantly, how those rights retained in limited orders will be ensured. Even where legal consent is not possible, the assent of the person should be sought.
- Guardianship plans can detail treatments and services and the values that should guide future decisions as have been discovered in the clinical and court investigative reports.
- See page 35 for a model guardianship plan.

APPENDIX 1: MODEL ORDERS AND FORMS

These materials are available online at <http://www.abanet.org/aging>;
<http://www.apa.org/pi/aging>; and <http://www.ncpj.org>.

**These forms match the general framework
presented in this book.**

**Revise these forms according to your
jurisdictional needs and laws.**

Model Form for Confidential Judicial Notes

| | |
|--|---|
| State of | In the XXX Court of Justice XXX Division |
| County of | File No. |
| In the Matter of: | |
| Procedural | |
| Procedural Requirements. | |
| Is venue proper? | [] yes [] no |
| Are notice and service proper? | [] yes [] no |
| Has counsel been appointed if required or if needed? | [] yes [] no |
| Has individual been informed of hearing rights? | [] yes [] no |
| Appropriateness of Guardianship. | |
| Will guardianship solve this problem? | [] yes [] no |
| Have all less restrictive alternative been exhausted? | [] yes [] no |
| <i>If emergency guardianship requested</i> | |
| Is there immediate risk of substantial harm? | [] yes [] no |
| Would individual be harmed if regular guardianship procedures used? | [] yes [] no |
| Clinical Reports. | |
| Does it meet state requirements? | [] yes [] no |
| Is it balanced (vs. one sided)? | [] yes [] no |
| Are reversible causes of impairment / mitigating factors considered? | [] yes [] no |

Determination

The Medical Condition

What is the medical condition affecting functioning?

How long has it been going on and other historical facts?

How severe is the condition?

Will it improve with time or treatment?

What are the reversible or mitigating factors?

Cognitive Functioning

In what areas are the individual's decision-making and thinking impaired and to what extent?

Everyday Functioning

Financial Strengths:

Weaknesses:

Health Care Strengths:

Weaknesses:

Personal Safety and Hygiene Strengths:

Weaknesses:

Home and Community Strengths:

Weaknesses:

Other Civil Matters Strengths:

Weaknesses:

Consistency of Choices with Values, Patterns, and Preferences

Does the individual want a guardian? If so, whom?

How does the person prefer decisions are made (alone or with others)?

Where does the person want to live? Why?

What makes life meaningful or good?

What factors are of greatest concern to this person in making decisions?

Are there any religious or cultural beliefs to be considered?

Risk of Harm and Level of Supervision Needed

What are the risks to the individual?

What social factors protect or increase risk?

How significant is this risk? How likely is the risk?

What level of supervision is needed to ensure safety while preserving autonomy?

Means to Enhance Functioning

What treatments or accommodations might enhance the individual's functioning?

Categorization of finding

[] **Minimal or no diminished** capacity → **less restrictive alternatives, dismiss petition.**

[] **Severely diminished** capacities on all fronts → **plenary guardianship.**

[] **Mixed** strengths and weaknesses → **limited guardianship.**

Limits, special:

Limits, statutory requirements:

Oversight

Period of Review

Condition may improve

Time-limited guardianship → guardianship will expire in ___ days.

or

Short-term review → guardian to file inventory/appraisal
 report on medical status
in ___ days.

or

Annual review → guardian to file report in 12 months.

Guardian Report

Bond/Sureties:

Inventory/Appraisal:

Financial Accounting:

Guardianship Plan – Elements of Care Planning:

Treatments to be considered:

- Education, training, or rehabilitation
- Mental health treatment
- Occupational, physical, or other therapy
- Home or social services
- Medical treatment, operation, or procedure
- Assistive devices or accommodation

Notes on plan:

Medical needs:

Personal needs:

Financial needs:

Values to be considered:

Model Court Investigator Report

| | |
|-------------------|---|
| State of | In the XXX Court of Justice XXX Division |
| County of | File No. |
| In the Matter of: | |

1. Screen Case

1a. Review Trigger

What brings the case to court now?

1b. Appropriateness of Guardianship

Have all procedural requirements been met? yes no

Will guardianship solve this problem? yes no
If not, why not?

Have less restrictive alternatives been explored? yes no
If not, suggest less restrictive alternatives to try:

1c. Appropriateness of Emergency Procedures (if Emergency Guardianship Requested)

Is there immediate risk of substantial harm? (medical emergency, abuse) yes no
Describe:

Would individual be harmed if regular guardianship procedures were used? yes no
How?

2. Gather Information

2a. Receive Reports

Who has submitted affidavits or reports?

- Individual (alleged incapacitated person) Family
 Healthcare Professionals Adult Protective Service
 Other: _____

2b. If a Healthcare Professional Has Submitted a Report

Does it meet state requirements? yes no

Is it balanced (vs. one sided)? yes no

Is information sufficient for capacity? 

- Medical conditions Severity Prognosis Reversible causes of dementia
 Cognitive and emotional functioning Everyday functioning
 Values and preferences Risk of harm
 Treatments, accommodations, or devices that may improve capacity

2c. If Additional Information Is Needed, Obtain Additional Information

- Written reports by the individual, family, healthcare professionals
 Interviews with individual, family, healthcare professionals

Notice

Who served notice?

Where was notice served?

Describe how the individual's rights were communicated and the method (written, verbal) and language used:

What was the individual's understanding of the concept of guardianship?

good fair poor unable to determine

What was the individual's attitude towards guardianship?

consenting opposed unable to determine

Interview

Date and place of interview:

Physical health: excellent good fair poor

Comments:

Mental health: excellent good fair poor

Comments:

Cognitive functioning: excellent good fair poor

Comments:

Emotional functioning: depressed anxious manic psychotic

Comments:

Everyday abilities (ability to care for self, make financial and medical decisions, live independently):

Recommendations for the Hearing

Is the individual able to attend the hearing?

If yes, what accommodations should be made for the individual?

What needs are there regarding representation of the individual by counsel?

Who should testify at the hearing?

Recommendations for the Guardianship Order

Is guardianship needed?

Can this order be limited in any way? If yes, how?

Recommendations for the Guardianship Plan

What education, training, treatment, procedure, devices, or living situation might help the individual?

Supplemental Attachment for Court Investigator Report Capacity Checklist

Use this checklist to determine if there is sufficient information regarding the individual's capacity.

1. Medical Condition

What are the physical diagnoses? How severe are they? Might they improve? When?
What are the mental diagnoses? How severe are they? Might they improve? When?
When did the problem start, how long has it been going on, are there any recent medical or social events, what treatments and services have been tried?:
What are the medications, including dosage? Could medications make capacity worse?
Have all temporary or reversible causes of cognitive impairment been evaluated and treated?
Are there any mitigating factors (e.g., hearing loss, vision loss, bereavement) that may cause the person to appear incapacitated and could improve with time or treatment?

2. Cognitive Functioning

What is the individual's level of alertness/arousal, orientation, memory and cognitive abilities, psychiatric and emotional state?

3. Everyday Functioning

What can the individual do in terms of taking care of self? Making financial decisions? Making medical decisions? Taking care of the home environment and functioning independently in the community?
What is the level of functioning related to any other specific legal matters in this case (e.g., sale of home, move to nursing home)?

4. Values

Does the person want a guardian? If yes, who does the person want to be guardian?
Where does the person want to live? What is important in a home environment?
What makes life good or meaningful for an individual? What have been the individual's most valued relationships and activities?
Does the individual prefer that decisions be made alone or with others? If others are involved, with whom does the individual prefer to make decisions?
What over-arching concerns drive decisions—e.g., concern for the well-being of family, concern for preserving finances, worries about pain, concern for maintaining privacy, etc.?
Are there important religious beliefs or cultural traditions? What are the individual's strong likes, dislikes, hopes, and fears?
Are there any specific preferences regarding decisions for personal care, financial, medical, or living situation?

5. Risk of Harm and Level of Supervision Needed

Is there immediate risk of substantial harm? Is there an ongoing level of risk of harm to the individual or others? How/why? Has the individual been victim to abuse, neglect, or exploitation? What level of supervision and what level of guardianship is needed to protect the individual?

6. Means to Enhance Capacity

Can the individual attend the hearing?
Are any accommodations necessary for the hearing, such as change of location, adjusting approach for hearing, visual, cognitive loss? Holding the hearing at bench or in chambers?
In the future, would any education, training, treatment, assistive device, or housing arrangement benefit the individual?

Model Order for Clinical Evaluation


| | |
|-------------------|---|
| State of | In the XXX Court of Justice XXX Division |
| County of | |
| In the Matter of: | File No. |

1. Provide a clinical evaluation of (*name*) for the purposes of guardianship.
2. The purpose of this evaluation is to enable to the court to determine whether the individual identified above is incapacitated according to (*state*) definition, and requires a guardian. (*Add any other issues that are also facing the court, e.g., issues requiring special powers.*)
3. This individual is being evaluated for guardianship due to (*give any background information that is essential to understanding the case*).
4. Additional historical information that may be helpful to you in understanding the case is (*cite examples of problem behavior, social, medical, or legal background factors*).
5. For the purpose of guardianship in this state, the following definition of incapacity applies: (*cite statutory standard for an incapacitated person*).
6. Whenever possible, this court seeks to limit any guardianship orders, providing the guardian with authority only in the areas in which the individual needs decisional or functional assistance.
7. In your report, please address the following elements:
 - (i). Describe mental or physical conditions impacting everyday functioning, including: diagnosis, severity of illness, prognosis, history, medications. Describe any medical or psychosocial factors that may be the cause of temporary and reversible impairment, such as depression, malnutrition, dehydration, transfer trauma, polypharmacy, alcohol use, or other factors that require immediate attention.
 - (ii). Describe the level of alertness/arousal, cognitive functioning, and psychiatric or emotional symptoms.
 - (iii). Describe the individual's strengths and weaknesses in the following areas:
 - Care of self
 - Financial
 - Health care
 - Home and community life
 - Civil matters

- (iv) Indicate extent to which current choices are consistent with the individual's long-held commitments and values. Is there any information about the individual's values or preferences that should be considered in the guardianship determination and plan? Do educational potential, adaptive behavior, or social skills enhance current or future functioning?
 - (v) Given the above diagnosis and functional strengths/weaknesses, what is the immediate and ongoing risk of harm to the individual? What social and environmental demands/supports increase or decrease risk? What level of supervision is needed to prevent serious harm?
 - (vi) What treatments and services might help the person? What is the most appropriate housing situation? Can any needs can be met with any less restrictive alternatives to guardianship?
 - (vii). Can the individual attend the hearing? If so, what accommodations should be considered to maximize the individual's participation?
8. Record the results of your evaluation on the enclosed form.
 9. Indicate your professional licensure and professional expertise.
 10. Note that a court-ordered clinical evaluation for guardianship is a statement signed under the penalties of perjury.

Model Clinical Evaluation Report

| | |
|--|--|
| State of | In the XXX Court of Justice XXX Division |
| County of | File No. |
| In the Matter of: | THIS SECTION TO BE COMPLETED BY THE COURT |
| Definition of Incapacity in the State of ____: | |

See  for instructions.

Note, text boxes appear in online form and will expand to size of text.

1. PHYSICAL AND MENTAL CONDITIONS

A. List Physical Diagnoses:

Overall Physical Health: Excellent Good Fair Poor

B. List Mental (DSM) Diagnoses:

Overall Mental Health: Excellent Good Fair Poor

Overall Mental Health will: Improve Be stable Decline Uncertain

If improvement is possible, the individual should be re-evaluated in _____ weeks.

Focusing on the mental diagnose(s) most impacting functioning, describe relevant history:

C. List all Medications:

| Name | Dosage/Schedule |
|------|-----------------|
| | |

These medications may impair mental functioning: Yes No Uncertain

D. Reversible Causes. Have temporary or reversible causes of mental impairment been evaluated and treated? Yes No Uncertain

Explain:

E. Mitigating Factors. Are there mitigating factors (e.g., hearing, vision or speech impairment, bereavement, etc.) that cause the person to appear incapacitated and could improve with time, treatment, or assistive devices? Yes No Uncertain

Explain:

2. COGNITIVE AND EMOTIONAL FUNCTIONING

A. Alertness/Level of Consciousness

Overall Impairment: None Mild Moderate Severe Non Responsive

Describe:

B. Memory and Cognitive Functioning

Overall Impairment: None Mild Moderate Severe

Describe below or in Attachment

C. Emotional and Psychiatric Functioning

Overall Impairment: None Mild Moderate Severe

Describe below or in Attachment

D. **Fluctuation.** Symptoms vary in frequency, severity, or duration: Yes No Uncertain

3. EVERYDAY FUNCTIONING. Describe below or in Attachment the individual's strengths and weaknesses.

A. Activities of Daily Living (ADL'S)

Ability to Care for Self (bathing, grooming, dressing, walking, toileting, etc.)

Level of Function: Independent Needs Support Needs Assistance Total Care

Describe:

B. Instrumental Activities of Daily Living (IADL'S)

Financial Decision-Making (bills, donations, investments, real estate, wills, protect assets, resist fraud, etc.)

Level of Function: Independent Needs Support Needs Assistance Total Care

Describe:

Medical Decision-Making (express a choice and understand, appreciate, reason about health info, etc.)

Level of Function: Independent Needs Support Needs Assistance Total Care

Describe:

Care of Home and Functioning in Community (manage home, health, telephone, mail, drive, leisure, etc.)

Level of Function: Independent Needs Support Needs Assistance Total Care

Describe:

Other Relevant Civil, Legal, or Safety Matters (sign documents, vote, retain legal counsel, etc.)

Level of Function: Independent Needs Support Needs Assistance Total Care

Describe:

4. **VALUES AND PREFERENCES.** Describe below or in Attachment relevant values, preferences, and patterns. Note whether the person accepts/opposes guardianship, goals for where/how life is lived, religious or cultural considerations.

5. **RISK OF HARM AND LEVEL OF SUPERVISION NEEDED**

- A. **Nature of Risks.** Describe the significant risks facing this person, and note whether these risks are due to this person's condition and/or due to another person harming or exploiting him or her.

- B. **Social Factors.** Describe the social factors (persons, supports, environment) that decrease the risk or that increase the risk.

- C. How **severe** is risk of harm to self or others: Mild Moderate Severe

- D. How **likely** is it Almost Certain Probable Possible Unlikely

- E. **Level of Supervision Needed.** In your clinical opinion:

- Locked facility 24-hr supervision Some supervision No supervision

Needs could be met by: Limited Guardianship Less Restrictive Alternative
If checked, Explain:

6. **TREATMENTS AND HOUSING.** The individual would benefit from:

- | | | | |
|---|------------------------------|-----------------------------|------------------------------------|
| Education, training, or rehabilitation | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Uncertain |
| Mental health treatment | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Uncertain |
| Occupational, physical, or other therapy | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Uncertain |
| Home and/or social services | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Uncertain |
| Assistive devices or accommodations | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Uncertain |
| Medical treatment, operation or procedure | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Uncertain |
| Other: _____ | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Uncertain |

Describe any specific recommendations:

7. **ATTENDANCE AT HEARING**

- The individual can attend the hearing Yes No Uncertain

If no, what are the supporting facts:

If yes, how much will the person understand and what accommodations are necessary to facilitate participation:

8. CERTIFICATIONS

I am a Physician Psychologist Other _____ licensed to practice in the state of _____

Office Address:

Office Phone:

This form was completed based on:

- an examination for the purpose of capacity assessment
 my general clinical knowledge of this patient

Prior to the examination, I informed the patient that communications would **not** be privileged:

- Yes
 No

Date of this examination or the date you last saw the patient:

Time spent in examination:

Other sources of information for this examination:

- Review of medical record
 Discussion with health care professionals involved in the individual's care
 Discussion with family or friends
 Other

List any tests which bear upon the issue of incapacity and date of tests:

I hereby certify that this report is complete and accurate to the best of my information and belief. I further testify that I am qualified to testify regarding the specific functional capacities addressed in this report, and I am prepared to present a statement of my qualifications to the Court by written affidavit or personal appearance if directed to do so.

SIGNATURE of CLINICIAN

DATE

Print name

License type, number, and date

Supplemental Attachment/Links for Clinical Evaluation Report

These rating categories MAY be used in more complex cases when more detail is DESIRED by the clinician or court.

Cognitive Functioning

1. Sensory Acuity (detection of visual, auditory, tactile stimuli)

Level of impairment: None Mild Moderate Severe Not eval.
Describe:

2. Motor Activity and Skills (active, agitated, slowed; gross and fine motor skills)

Level of impairment: None Mild Moderate Severe Not eval.
Describe:

3. Attention (attend to a stimulus; concentrate on a stimulus over brief time periods)

Level of impairment: None Mild Moderate Severe Not eval.
Describe:

4. Working memory (attend to verbal or visual material over short time periods; hold ≥ 2 ideas in mind)

Level of impairment: None Mild Moderate Severe Not eval.
Describe:

5. Short term/recent memory and Learning (ability to encode, store, and retrieve information)

Level of impairment: None Mild Moderate Severe Not eval.
Describe:

6. Long term memory (remember information from the past)

Level of impairment: None Mild Moderate Severe Not eval.
Describe:

7. Understanding (“receptive language”; comprehend written, spoken, or visual information)

Level of impairment: None Mild Moderate Severe Not eval.
Describe:

8. Communication (“expressive language”; express self in words, writing, signs; indicate choices)

Level of impairment: None Mild Moderate Severe Not eval.
Describe:

9. Arithmetic (understand basic quantities; make simple calculations)

Level of impairment: None Mild Moderate Severe Not eval.
Describe:

10. Verbal Reasoning (compare two choices and to reason logically about outcomes)

Level of impairment: None Mild Moderate Severe Not eval.
Describe:

11. Visual-Spatial and Visuo-Constructional Reasoning (visual-spatial perception, visual problem solving)

Level of impairment: None Mild Moderate Severe Not eval.
Describe:

12. Executive Functioning (plan for the future, demonstrate judgment, inhibit inappropriate responses)

Level of impairment: None Mild Moderate Severe Not eval.
Describe:

Emotional and Psychiatric Functioning

1. Disorganized Thinking (rambling thoughts, nonsensical, incoherent thinking)

Level of impairment: None Mild Moderate Severe Not eval.

Describe:

2. Hallucinations (seeing, hearing, smelling things that are not there)

Level of impairment: None Mild Moderate Severe Not eval.

Describe:

3. Delusions (extreme suspiciousness; believing things that are not true against reason or evidence)

Level of impairment: None Mild Moderate Severe Not eval.

Describe:

4. Anxiety (uncontrollable worry, fear, thoughts, or behaviors)

Level of impairment: None Mild Moderate Severe Not eval.

Describe:

5. Mania (very high mood, disinhibition, sleeplessness, high energy)

Level of impairment: None Mild Moderate Severe Not eval.

Describe:

6. Depressed Mood (sad or irritable mood)

Level of impairment: None Mild Moderate Severe Not eval.

Describe:

7. Insight (ability to acknowledge illness and accept help)

Level of impairment: None Mild Moderate Severe Not eval.

Describe:

8. Impulsivity (acting without considering the consequences of behavior)

Level of impairment: None Mild Moderate Severe Not eval.

Describe:

9. Noncompliance (refuses to accept help)

Level of impairment: None Mild Moderate Severe Not eval.

Describe:

Values

1. Values about guardianship

Does the person want a guardian?

If yes, who does the person want to be guardian?

2. Preferences for how decisions are made

Does the individual prefer that decisions be made alone or with others?

3. Preferences for habitation

Where does the person want to live?

What is important in a home environment?

4. Goals and Quality of Life

What makes life good or meaningful for an individual?

What have been the individual's most valued relationships and activities?

5. Concerns, Values, Religious Views

What over-arching concerns drive decisions—e.g., concern for the well-being of family, concern for preserving finances, worries about pain, concern for maintaining privacy, desire to be near family, living as long as possible, etc.?

Are there important religious beliefs or cultural traditions?

What are the individual's strong likes, dislikes, hopes, and fears?

Model Order for Guardianship of Person and Estate¹

| | |
|--|--|
| State of _____ County of _____ | In the XXX Court of Justice XXX Division File No. _____ |
| In the Matter of: | I. Order on Petition For Adjudication of Incapacity And Order Appointing Guardian |
| This matter is before the court on a petition for an adjudication of incapacity and appointment of a guardian for the individual. The court has read the petition and held a hearing to determine whether the court should enter the order requested in the petition. | |
| THE COURT FINDS: | |
| 1. JURISDICTION, VENUE, AND NOTICE. A. This court has jurisdiction of the subject matter and of the person of the individual. B. This court is a proper venue. C. Notice was properly served. | |
| 2. MEDICAL CONDITION AND CAPACITY. Upon presentation of (<i>cite standard of evidence</i>) evidence, the above named individual by reason of the following medical conditions: ___ Is not incapacitated. The petition is dismissed. ___ Is an incapacitated person (<i>cite statutory standard for incapacity</i>). ___ Is a partially incapacitated person. <u>Care of Self</u> Retained Capacities: <u>Financial Decisions</u> Retained Capacities: <u>Health Care Decisions</u> Retained Capacities: <u>Living in the Home and Community</u> Retained Capacities: <u>Other Civil Matters</u> Retained Capacities: | |
| 3. VALUES AND PREFERENCES. Relevant values, preferences, and patterns of past choices of the individual considered: A reasonable effort was made to question the individual and he/she indicated: [] no preference as to who should be appointed guardian. [] that he/she preferred _____ to serve as guardian. | |

¹ This is a model form for guardianship of person and estate. For a model form for guardianship of estate, often called conservatorship, the form could include the same elements, but focus only on financial capacities and related actions of the conservator.

IT IS ORDERED:

4. **APPOINTMENT.** The court appoints (*name of guardian*) of (*address*) as guardian and directs issuance of letters of guardianship.

5. **LIMITATIONS AND POWERS.** The guardianship is

Unlimited (Plenary).

Limited. The above named individual shall retain the following legal rights and privileges (*cite all rights retained or removed*).

Further,

Statutory Restrictions. The guardian does not have the authority to (*cite any statutory or court-ordered restrictions, such as admission to mental health facility, modification of DNR, etc.*):

Special Powers Granted. The guardian has the authority to (*cite any powers being granted that require special court authority, such as admission to mental health facility, modification of DNR, etc.*):

6. **BOND**

The guardian must file a bond in the amount of \$ with the Clerk of the Court, Probate Register, before issuance of the letters.

Bond is not required and is waived.

7. **INVENTORY AND PLAN.** The guardian is instructed to

Inventory and Appraisal. Within 90 calendar days, and with each required annual report, the guardian must prepare and file with the Clerk of the Court a detailed inventory of the individual's assets.

Plan. Within 90 calendar days, and with each required annual report, the guardian must prepare and file with the Clerk of the Court a plan detailing a plan of care for the individual and for the estate. The guardian shall consider the individual's values and preferences in making decisions.

Report. Annually the guardian must prepare and file with the Clerk of the Court a report.

8. **CHANGE OF ADDRESS.** The guardian shall immediately notify in writing to the court of any change in the address of him or herself or of the incapacitated person.

9. **REVIEW.** In addition to the annual review, it is further ordered, setting this matter for internal review within (no of days) to determine

compliance with inventory and plan.

possible change in level of capacity.

10. **COSTS.** Pursuant to § , costs are: waived taxed to: petitioner individual

11. This order is the least restrictive alternative consistent with the court's finding, is necessitated by the individual's limitations and demonstrated need, and is designed to encourage the development of maximum self-reliance and independence.

Date:

Signature:

Model Plan for Guardian of Person and Estate²

| | |
|-----------------------------------|--|
| State of _____ County of _____ | In the XXX Court of Justice XXX Division File No. _____ |
| In the Matter of: | I. Order on Petition For Adjudication of Incapacity And Order Appointing Guardian |

Health Care Plan

1. Provide name of the person's physician:

2. Provide name(s) of other key healthcare professionals:

3. What instructions (such as advance directives) has this person provided about medical treatment?

4. Describe medical services to be provided (e.g., primary care visits, specialists, equipment, new medications, dental, etc.)

Personal Care Plan

1. Where is the person residing now and what kind of facility is it? (For example, is it a private residence, assisted living, or nursing home, etc.?)

2. Do you anticipate needing to change the person's residence? If so, when and why?

3. Describe social services and activities to be provided (e.g., home care workers, religious services, visits with friends/family, education/recreation).

² This is a model form for a plan of guardianship of person and estate. For a plan for guardianship of estate, often called conservatorship, the form could focus only on financial capacities and related actions of the conservator.

Financial Care Plan

1. Describe the person's estimated monthly income, monthly expenditures, and estimate total assets (tangible and monetary):

2. Describe how the person's financial needs will be met:

3. In view of the needs of the protected person at this time, what assets will need to be sold in the coming year?

4. Are there debts owed to the person to be pursued? If so, how do you intend to pursue those claims (note whether litigation is necessary)?

5. Are there bills, claims, or debts by the person to another unpaid at this time? If so, how do you intend to discharge those obligations?

6. Describe how funds for the support, care, and welfare of others entitled to be supported by the protected person will be administered: (If not applicable, so state).

7. Describe the estate plan, if any, and how you intend to preserve it.

| | |
|-----------------------------------|------|
| | |
| Signature of Guardian | Date |
| Address and Telephone of Guardian | |

Model Annual Report for Guardian of Person and Estate³

| | |
|-----------------------------------|--|
| State of _____ County of _____ | In the XXX Court of Justice XXX Division File No. _____ |
| In the Matter of: | I. Order on Petition For Adjudication of Incapacity And Order Appointing Guardian |

1. PERIOD OF REPORT

This is a full and true statement of account in the above matter, covering the period of

_____ day of _____ (month), _____ (year) to _____ day of _____ (month), _____ (year).

2. CONTACT

Approximate number of times the guardian had contact with the person during the reporting period:

Nature of those contacts (phone, in person, other):

Date last seen by the guardian:

3. ADDRESS OF INCAPACITATED PERSON

Street
City, State, Zip Code
Telephone

These living arrangements are best described as:

- Own apartment or home
- Private home or apartment of
 - guardian
 - relative, whose name and relationship is:
 - non-relative, whose name is:

OR

- Foster, group, or boarding home
- Nursing home
- Assisted living
- A medical facility or state institution

The name of the home, facility, or institution:

The name of an individual at the home, facility, or institution who has knowledge and is authorized to give information to the court:

The individual has been at the present residences since:

If moved within the past year, state the changes and reason for the change:

I rate the living situation as: excellent average below average (explain:)

I believe the adult is: content unhappy with the living situation

I recommend a more suitable living arrangement as follows:

³ This is a model form for a report of guardianship of person and estate. For a model form for report on guardianship of estate, often called conservatorship, the form could focus only on financial capacities and related actions of the conservator.

4. HEALTH

The individual's physical conditions are:

The individual's mental conditions are:

Overall health excellent good fair poor

During the past year, overall health has improved worsened remained the same

During the past year the individual has been diagnosed with a terminal illness yes no

5. FUNCTIONING

The individual's cognitive and emotional functioning are:

The individual's everyday functioning (ability to care for self, make financial and medical decisions, live independently) is:

During the past year, overall functioning has improved worsened remained the same

6. TREATMENTS

During the past year, the individual has seen a doctor:

| Date | Doctor Name | Reason | Findings |
|------|-------------|--------|----------|
|------|-------------|--------|----------|

During the past year, the individual has received other treatments (list any education, training, therapy, assistive devices, recreational and social activities, or other treatments received):

7. FINANCIAL ACCOUNTING

Are you in control of any tangible property of the incapacitated person? yes no
If yes, describe

Are you in control of any other assets for the incapacitated person? yes no
If yes, describe

Have you paid to others any fees for the care of the individual or property? yes no
If yes, describe and attach accounting and receipts

Have any assets or items been transferred to you during the reporting time? yes no
If yes, describe and attach accounting and receipts.

Have any fees been paid to you in your role as guardian? yes no
If yes, describe and attach accounting and receipts.

| SUMMARY OF ASSETS AND EXPENDITURES | | |
|--|-----------|--|
| Beginning fair market value of non-cash assets | \$ | |
| Beginning balance of cash (savings, checking, stocks, bonds, etc.) assets | + \$ | |
| Plus money received (pension, disability, interest, etc.) from any source on behalf of the person | + \$ | |
| TOTAL | \$ | |
| Less total fees to other for care of person or estate | - \$ | |
| Less assets transferred to guardian | - \$ | |
| Less total fees paid to guardian | - \$ | |
| TOTAL CURRENT VALUE OF ESTATE | \$ | |
| The Guardian (or Conservator) represents that this account contains a correct statement of all receipts and disbursements and that its contents are true to the best knowledge and belief. | | |

I have on file a surety bond approved by the court [] yes [] no
 If yes, the penal sum of the bond is \$ _____ with the _____ company as surety.

9. RECOMMENDATIONS

The guardianship should be continued [] yes [] no
 Because:

The guardianship should be modified as follows:

Other recommendations:

| | |
|-----------------------------------|------|
| | |
| Signature of Guardian | Date |
| Address and Telephone of Guardian | |

Sworn to me

| | |
|-----------------------|------|
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Glossary⁴

“**Activities of Daily Living**” means the basic tasks of everyday life, such as eating, bathing, dressing, toileting, and transferring.

“**Accommodations**” means adjustments or modifications to enable people with disabilities to enjoy equal opportunities.

“**Acuity**” means acuteness of perception. It may also refer to the immediate seriousness of an illness.

“**Affect**” refers to the expression of a person’s feelings, tone, or mood. For example, a person may be sad if their mood is depressed.

“**Assistive Devices**” means items or equipment that is used to increase, maintain, or improve functioning of individuals with disabilities.

“**Autonomy**” means a person’s ability to make independent choices.

“**Clinical**” means pertaining to or founded on observation and treatment of individuals, as distinguished from theoretical or basic science.

“**Clinician**” refers to any healthcare professional.

“**Cognitive**” means relating to thinking and information processing in the brain.

“**Conservator**” means a person who is appointed by a court to manage the estate of a protected person. The term includes a limited conservator.

“**Court Investigator**” means a person appointed by the court to investigate the merits of the guardianship petition. In some states such a person may be referred to as a guardian ad litem.

“**Dementia**” means a medical condition characterized by a loss of memory and functioning.

“**Domain**,” when used in cognitive assessment, refers to a category of brain functioning, often associated with a specific region in the brain. For example a domain of cognitive assessment could be memory after a time delay, which is localized to the temporal lobe of the brain.

“**Guardian**” means a person who has qualified as a guardian of an incapacitated person pursuant to appointment by the court. The term includes a limited, emergency, and temporary substitute guardian, but not a guardian ad litem.

“**Guardian ad litem**” means a person appointed by the court to represent and protect the interests of an incapacitated person during a guardianship proceeding.

“**Incapacitated person**” means an individual who, for reasons other than being a minor, is unable to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance.

⁴ This glossary is meant to define terms **as used in this book**, and is not meant to define terms more universally. The glossary uses definitions from the UGPPA where available, and otherwise definitions are based on the consensus of the working group. Definitions of common mental disorders appear in the fact sheet on medical conditions.

“Instrumental Activities of Daily Living” means activities related to independent living, and include preparing meals, managing money, shopping for groceries or personal items, performing light or heavy housework, and using a telephone.

“Least Restrictive Alternative” means an intervention that causes the least disruption or change in a person’s circumstances and that maximizes the person’s independence and freedom.

“Limited Guardianship” means a guardianship appointment in which the guardian is assigned only those duties and powers that the incapacitated or partially incapacitated individual is incapable of exercising, rather than the full authority that could be assigned by the court.

“Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

“Plenary Guardianship” means a full guardianship of the person and property in which all duties and powers concerning an individual under state law are assigned by the court to the guardian.

“Polypharmacy” means the unwanted duplication of drugs, which often results when patients go to multiple physicians or pharmacies. Polypharmacy occurs when prescribed medications duplicate or interact with each other.

“Prognosis” means the probable outcome of a disease.

“Psychopathology” refers to the manifestation of a mental disorder.

“Reality Testing” refers to the ability of a person to distinguish between the real in the external world and their internal world. For example, a person who has delusional thoughts (e.g., false beliefs that a person is trying to harm him or her) and cannot distinguish this from reality is said to have poor reality testing.

“Respondent” means an individual for whom the appointment of a guardian or conservator or other protective order is sought. In this book, we use the word “individual” when referring to the respondent.

“Transfer Trauma” means relocation stress and accompanying symptoms resulting from a transfer from one environment to another—as from one community residence to another, from a community residence to an institution or from one institution to another.

“Ward” means an individual for whom a guardian has been appointed. In this book, we use the word “individual” or “person” when referring to the respondent.

End Notes

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- ¹ Lawrence A. Frolik, *Promoting Judicial Acceptance and Use of Limited Guardianship*, 31 *Stetson L. Rev.* 735 (Spring 2002).
- ² *Uniform Guardianship and Protective Proceedings Act* (1997).
- ³ Bruce D. Sales, Matthew Powell, Richard Van Duizend & Associates, *Disabled Persons and the Law: State Legislative Issues* (ABA 1982).
- ⁴ *Supra* n. 2.
- ⁵ Commission on National Probate Court Standards and Advisory Committee on Interstate Guardianships, *National Probate Court Standards* (1999) (which directs probate judges to “detail the duties and powers of the guardian, including limitations to the duties and powers, and the rights retained by the respondent”).
- ⁶ Sally Balch Hurme, *Current Trends in Guardianship Reform*, 7(1) *Maryland J. of Contemporary Legal Issues: Guardianship* 143-189 (1995-96); Frolik, *supra* n. 1; Mary Joy Quinn, *Guardianships of Adults: Achieving Justice, Autonomy, and Safety* (Springer 2005).
- ⁷ Peggy Dervitz, Shashi Jain & Joan Kakascik, *Preference/Choice/Decision: A Model for Limited Guardianship* (Guardianship Assoc. of N.J. 2003).; Peggy Dervitz, Shashi Jain & Joan Kakascik, *Assessing Capacity for People with Developmental Disabilities: Implementing the Model for Limited Guardianship* (Guardianship Assoc. of N.J. 2004).
- ⁸ *Supra* n. 2, at § 102(5).
- ⁹ Mass. Gen. Laws Ann. ch. 201, § 6 (West 1999).
- ¹⁰ N.Y. Mental Hyg. Law, § 81.02(b) (McKinney 1999).
- ¹¹ Ohio Rev. Code Ann. § 2111.01(D) (Anderson 1999).
- ¹² *See, e.g.*, Idaho Code § 15-5-101(a)(1) (1999); Minn. Stat. Ann. § 525.54, subd. 2 (West 1998); N.H. Rev. Stat. Ann. § 464-A:2(XI) (1999).
- ¹³ *Supra* n. 2, at § 314(a).
- ¹⁴ Charles P. Sabatino & Susanna L. Basinger, *Competency: Reforming Our Legal Fictions*, 6 *J. of Mental Health and Aging* 119 (2000).
- ¹⁵ *Supra* n. 1, at 737-738.
- ¹⁶ Quinn, *supra* n. 6, at 133.
- ¹⁷ *Supra* n. 2, at § 312.
- ¹⁸ *Supra* n. 5, at Standard 3.3.6.
- ¹⁹ Michael Mayhew, *Survey of State Guardianship Laws: Statutory Provisions for Clinical Evaluations*, 26 *Bifocal*, (newsletter of the ABA Comm’n on Law and Aging) 1 (Oct. 2005).
- ²⁰ Sally Balch Hurme & Erica Wood, *Now and Then: Factoids on Adult Guardianship Statutory Reform* (2001) (unpublished paper available through the ABA Comm’n on Law and Aging).
- ²¹ 42 C.F.R. § 483.20.