

**MEETING OF THE COUNCIL OF THE  
PROBATE AND ESTATE PLANNING SECTION  
OF  
THE STATE BAR OF MICHIGAN**

**March 16, 2013  
Lansing, Michigan**

**Minutes**

**I. Call to Order**

The Chair of the Section, Mark K. Harder, called the meeting to order at 10:29 a.m.

**II. Attendance**

**A. The following officers and members of the Council were in attendance:**

Harder, Mark K.	Kerr, J. David
Imami, Shaheen I.	Lucas, David P.
Morrissey, Amy N.	Lentz, Marguerite M.
Steward, James B.	Murkowski, Hon. David M.
Sweeney, Thomas F.	O'Brien, Hon. Darlene
Allen, Susan M.	Ouellette, Patricia M.
Ard, W. Josh	Skidmore, David L.
Ballard, Christopher	Taylor, Robert M.
Brigman, Constance L.	Welber, Nancy H.
Clark-Kreuer, Rhonda M.	

A total of 19 council members and officers were present representing a quorum.

**B. The following officers and members of the Council were absent with excuse:**

Bearup, George F.	Spica, James P.
Rebecca A. Schnelz	Teahan, Marlaine C.

**C. The following officers and members were absent without excuse:**

None.

**D. The following ex-officio members of the Council were in attendance:**

Phillip E. Harter	Michael McClory
Nancy Little	

**E. Others in attendance:**

Nazneen H. Syed  
Rick Mills  
Kathleen Goetsch  
Sharri L. Rolland Phillips  
Loukas P. Kalliantasis  
Mark E. Kellogg  
Amy Tripp  
Angela Swanberg  
J.V. Anderton  
Mieke V. Weissert  
Katie Lynwood

Keven DuComb  
Laura Radle  
Melissa M. W. Mysliwicz  
Robert Tiplady  
Steve Elkins  
Michael Lichterman  
Julie Paquette  
Lisa M. Damphousse

**III. Minutes of the February 16, 2013, Meeting of the Council**

Shaheen I. Imami presented the minutes of the February 16, 2013, Council meeting. Shaheen I. Imami moved for approval with support from Thomas F. Sweeney. The motion was approved on a voice-vote with no nays or abstentions.

**IV. Treasurer's Report**

James B. Steward presented the Treasurer's report. Receipts and expenditures remain on track with the budget.

**V. Chairperson's Report – Mark K. Harder**

Mark K. Harder presented the Chairperson's report:

- Noted number of visitors and expressed that the Section encourages participation. He asked for feedback from those who feel otherwise or unwelcomed.
- Noted Project Wildcat letter and thanked Amy N. Morrissey and Thomas F. Sweeney, as well as Council participation in electronic vote.

**VI. Report of the Committee on Special Projects – Marlaine C. Teahan**

Mark Harder reported that CSP heard from the Domestic Asset Protect Trust Committee ("DAPT") regarding comments on Sections 5.d through 5.h of the draft legislation.

**VII. Standing Committee Reports**

**A. Internal Governance**

1. Budget – Shaheen I. Imami

Budget remains on track per Treasurer's report. Discussion led by Keven DuComb regarding Young Lawyer's division's request for modest funding for an event. Amy Morrissey made a motion to increase "Other" line item by \$750.00 for Keven's request, with support and friendly amendment by Shaheen I. Imami to increase such line item to \$1,000.00, with an allocation of \$750.00 to support the Young Lawyer's conference. Council voice vote passed with no nays or abstentions.

2. Bylaws – Nancy H. Welber

Nancy H. Welber reported that a meeting to review bylaws occurred, with the goal of overhauling during the current year. Thomas F. Sweeney noted that the mission statement may be too long. Ms. Welber will review the language and noted that it is skewed toward wills/trusts, but probably needs more emphasis on guardianships, conservatorships, and lifetime planning.

3. Awards – Douglas A. Mielock

No report.

4. Planning – Thomas F. Sweeney

Thomas F. Sweeney reported on the SBM chair-elect lunch. The SBM wants to be supportive, including providing social media training and conferencing technology. He noted a wide-range of participation among various sections' liaisons and that the SBM noted that there should be some level of participation by the liaisons.

5. Nominating – Harold G. Schuitmaker

Mark Harder noted that some council positions will be opening.

6. Annual Meeting – Thomas F. Sweeney

No report.

**B. Education and Advocacy Services for Section Members**

1. *Amicus Curiae* – David L. Skidmore

David L. Skidmore and Patricia M. Ouellette noted that the committee will be meeting today to discuss an amicus request. Mark K. Harder noted that the request involves his firm, so any discussion will have to exclude Mr. Skidmore and himself.

2. Probate Institute – Amy N. Morrissey

Amy N. Morrissey reminded everyone about the dates and sign-up for the Probate Institute. Mark K. Harder noted the Jonathon Blattmacher presentation. Ms. Morrissey and Lynn Chard discussed the mentoring session for new lawyers.

3. State Bar and Section Journals – Amy N. Morrissey

No report.

4. Citizens Outreach – Rebecca A. Schnelz

Thomas F. Sweeney noted the internet-based program request by SBM and others. The program specifically revolves around requests for content to be used by lay-users and based on fill-in-the-blank programs. James B. Steward noted that the Elder Law Section is not inclined to participate. Mark K. Harder noted that the SBM is persistent in trying to get the Section participate and he wants to develop a policy. Robert Tiplady noted that drafting requires experience and depends on circumstances, so the proposed idea is poor. J. David Kerr noted that if a document is going to be reviewed immediately, then it might be acceptable, but not otherwise. Nancy H. Welber noted possible use of decision trees. The Hon. Darlene O'Brien suggested the inclusion of statutory will form which already exists. Janet Welch from SBM noted that Michigan Legal Help Online is initiative separate from the SBM and is intended to provide a Michigan alternative to LegalZoom. The site went live in August 2012.

5. Electronic Communications – William J. Ard

No report.

**C. Legislation and Lobbying**

1. Legislation – Christopher A. Ballard

Christopher A. Ballard reported on the following:

- SB 236 relates to the minimum and maximum fees for publishing notices in newspapers and proposes to index them for inflation. He recommended that no position be taken by the Section.
- HB 4264 relates to jail terms relating to convictions for exploitation of elderly. He recommended that no position be taken by the Section.

Rebecca Bechler reported that SB 31 and 32 (insurable interest legislation) have been passed out of committee. She also reported that hearings related to the proposed do-not-resuscitate legislation will be held soon, with Constance L. Brigman planned to testify (HB 4382-4384).

2. Updating Michigan Law – Marguerite Munson Lentz

No report.

3. Insurance Committee – Thomas F. Sweeney

Thomas F. Sweeney discussed some issues with trustee liability in context of ILITs, but he suggested that it be taken up next year.

4. Artificial Reproductive Technology – Nancy H. Welber

Nancy H. Welber reported on establishment & mission of committee. She suggested that the committee also may look at 2008 amendments to Uniform Probate Code.

**D. Ethics and Professional Standards**

1. Ethics – J. David Kerr

J. David Kerry noted that Nazneen Syed has joined committee.

2. Unauthorized Practice of Law & Multidisciplinary Practice – Robert M. Taylor

Robert M. Taylor noted that a victim is necessary to pursue unauthorized practice of law claims.

3. Specialization and Certification – James B. Steward

No report.

**E. Administration of Justice**

1. Court Rules, Procedures and Forms – Marlaine C. Teahan

Mike McClory noted that he is meeting with representative from the Michigan Judges Association regarding the proposed amendment of MCR 5.801 and the handling of probate appeals.

2. Fiduciary Exception to Attorney Client Privilege – George F. Bearup

No report.

**F. Areas of Practice**

1. Real Estate – George F. Bearup

No report.

2. Transfer Tax Committee – Nancy H. Welber

Nancy H. Welber noted that George W. Gregory joined committee and wants to resuscitate the Tax Nugget.

3. Charitable and Exempt Organization – Christopher A. Ballard

No report.

4. Guardianship, Conservatorship, and End of Life Committee – Constance L. Brigman

Constance L. Brigman reported regarding:

- Discussed forms & notice regarding appointment of foreign guardian - referred to CSP materials (Attachment 2). James B. Steward requested insertion of "proposed" in MCR 5.108(B)
- Proposed amendments to MCR 5.125(C)(19), (22), & (24)
- MCR 5.403 related to temporary guardianships
- Changes to PC 625, 639, and 651 to include "application" to address foreign guardians & other changes to deal with foreign guardians.
- The foregoing are to implement PA 545 regarding foreign guardians and conservators.
- Mark K. Harder discussed letter to Carl Ver Beek & POLST (sent to Council via separate email). Mr. Harder received an email response from Mr. Ver Beek and intentions of Making Choices Michigan of only identifying patient advocate designations. Mr. Ver Beek asked Section for some financial assistance for "training" purposes. Ms. Brigman noted "POLST" v. "POST" terminology - scope was discussed and "LaCrosse" program. Apparently, certain materials circulated from within the Long Term Care Ombudsman's office have been removed from "POST" materials. She also noted that Michigan doesn't have a "family consent" law to permit hospitals to create an appropriate policy. Questions were raised as to why health care providers are pushing for POLST in light of lack of family consent law. Some voiced concerns that it was posited to permit end of life decisions for those with dementia without probate court involvement. A discussion ensued about the letter to Mike Gadola (Governor's Legal Services Division) regarding Ombudsman issues and Project Wildcat. James B. Steward stated that Elder Law Section is not really taking a position on the letter; however, it may want to revise the letter and send its own version.
- The Hon. David M. Murkowski reported on SB 144, 176 and 177 - the first two are the same and relate to developmental disability ("DD") guardianship cases. Each allows the filing of petition at 17.5 years of age for DD guardianships to prevent lapse of guardianship supervision. This was reported during February 2013 meeting, as well. MPJA has signed off on the legislation. SB 177 is the child of Hope Network and an attempt to expand to legally incapacitated individual guardianships. It appears that SB 177 will die in committee. Ms. Brigman made a motion to support SB 144 and 177, with support by W. Josh Ard. The motion was approved on a Council vote of 19-0, with no abstentions. This is a PUBLIC POLICY POSITION to be reported to the SBM.

**G. Liaisons**

1. Alternative Dispute Resolution Section Liaison – Sharri L. Rolland Phillips

No report.

2. Business Law Section Liaison – John R. Dresser

No report.

3. Elder Law Section Liaison – Amy R. Tripp

Amy R. Tripp reported on HB 4013. She stated that the bill makes it clear that a pooled account trust can be used by person who is 65 or older. J. David Kerr made a motion to support the passage of HB 4013, with support from Constance L. Brigman. A discussion ensued regarding inconsistencies in policy at federal level. Some additional discussion regarding whether there should be a competency component included. A friendly amendment was introduced by Ms. Brigman to permit Ms. Tripp to testify and approve non-substantive changes to enhance or improve language of the bill. The motion was approved on a Council vote of 18-0 (one council member left early), with no abstentions. This is a PUBLIC POLICY POSITION to be reported to the SBM.

4. Family Law Section Liaison – Patricia M. Ouellette

No report.

5. ICLE Liaison – Jeanne Murphy

No report.

6. Law Schools Liaison – William J. Ard

No report.

7. Michigan Bankers Association Liaison – Susan Allan

No report.

8. Michigan Probate Judges Association Liaison – Hon. Judge David M. Murkowski/Hon. Darlene O'Brien

No report.

9. Probate Registers Liaison – Rebecca A. Schnelz

Mike McClory reported on pending legislation regarding online access to court files.

10. SCAO Liaisons – Marlaine C. Teahan

The Hon. David M. Murkowski reported that he discussed with Chad Schmucker (at SCAO) the idea of meeting more often (i.e., two times per year) or to call for additional meetings as necessary to address new legislation.

11. Solutions on Self-Help Task Force Liaison – Rebecca A. Schnelz

No report.

12. State Bar Liaison – David R. Brake

No report.

13. Taxation Section Liaison – Frederick H. Hoops, III

No report.

**VIII. Other Business**

None.

**IX. Hot Topics**

None.

**X. Adjournment**

Meeting adjourned by Mark K. Harder at 12:32 p.m.

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# **ATTACHMENT 1**

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**PROBATE & ESTATE PLANNING SECTION**

OFFICERS

CHAIR

Mark K. Harder  
Warner Norcross & Judd LLP  
85 E 8th St Ste 310  
Holland, MI 49423-3528

CHAIR ELECT

Thomas F. Sweeney, Birmingham

VICE CHAIR

Amy N. Morrissey, Ann Arbor

SECRETARY

Shaheen I. Imami, Farmington  
Hills

TREASURER

James B. Steward, Ishpeming

COUNCIL MEMBERS

Susan M. Allan, Bloomfield Hills  
William J. Ard, Williamston  
Christopher A. Ballard, Ann Arbor  
George F. Bearup, Traverse City  
Constance L. Brigman, Wyoming  
Rhonda M. Clark-Kreuer, St. Louis  
J. David Kerr, Mount Pleasant  
Marguerite Munson Lentz, West  
Bloomfield  
David P. Lucas, Battle Creek  
Hon. David M. Murkowski, Grand  
Rapids  
Hon. Darlene A. O'Brien, Ann  
Arbor  
Patricia M. Ouellette, Lansing  
Rebecca A. Schnelz, Pontiac  
David L. Skidmore, Grand Rapids  
James P. Spica, Detroit  
Robert M. Taylor, Kalamazoo  
Marlaine C. Teahan, Lansing  
Nancy H. Welber, West Bloomfield

IMMEDIATE PAST CHAIR

George W. Gregory, Troy

COMMISSIONER LIAISON

David R. Brake, Lansing

February 26, 2013

Members of the Representative Assembly  
State Bar of Michigan  
Michael Franck Building  
306 Townsend St.  
Lansing, MI 48933-2012

Re: Inventory Attorney

Ladies and Gentlemen:

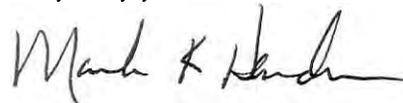
At its Spring Meeting the Representative Assembly will consider the Inventory Attorney proposal made by the Master Lawyer's Section.

If the inventory attorney concept is approved by the Representative Assembly, the Council of the Probate and Estate Planning Section requests that all proceedings involving a disabled or deceased attorney under MCR 9.119(G) be heard in the Probate Court and not in the Circuit Court. The Council believes that any guardianship, conservatorship, or probate proceedings involving the disabled or deceased attorney already will be in the Probate Court and that if proceedings under the proposed MCR 9.119(G) are initiated, the Probate Court is the most logical Court for those proceedings.

The Probate and Estate Planning Section has taken no position whether the Inventory Attorney proposal should be adopted.

If Members of the Representative Assembly have questions or would like further information, please contact me, or J. David Kerr of Mt. Pleasant, who serves as the Chair of the Ethics Committee of the Probate and Estate Planning Section.

Very truly yours,



Mark K. Harder  
Chair

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# **ATTACHMENT 2**

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**PROBATE & ESTATE PLANNING SECTION**

February 26, 2013

OFFICERS

CHAIR

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85 E 8th St Ste 310  
Holland, MI 49423-3528

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VICE CHAIR

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Nancy H. Welber, West Bloomfield

IMMEDIATE PAST CHAIR

George W. Gregory, Troy

COMMISSIONER LIAISON

David R. Brake, Lansing

Mr. Carl E. Ver Beek  
Making Choices Michigan, Inc.  
c/o Varnum LLP  
PO Box 352  
Grand Rapids, MI 49501

Dear Mr. Ver Beek:

Thank you for the opportunity to talk about the Making Choices Michigan, Inc. program. My purpose in writing to you is to give you the perspective of the Probate and Estate Planning Section of the State Bar of Michigan concerning some issues raised by your initiative.

The Council of the Probate and Estate Planning Section supports and encourages the use of advance directives as authorized by Michigan law. The Council believes that Michigan law authorizes patient advocates and guardians to make medical decisions on behalf of patients who are unable to make or communicate these decisions for themselves. The Council has not found authority under Michigan law to authorize any third party, other than a patient advocate, court appointed guardian, or parent of a minor child, to make medical decisions on behalf of a person who cannot make medical decisions for himself or herself.

The Council is concerned that past Michigan POLST initiatives have obscured these fundamental requirements of Michigan law and sought to permit third parties to make end of life and other medical decisions without legal authority grounded in an appointment of a patient advocate, a court appointed guardian, or as parent of a minor child. The Council believes these well-intentioned, but misguided, initiatives present risks to the well-being of Michigan's residents as well as to the medical providers who act on the basis of a misunderstanding or misinterpretation of Michigan law. As a result, the Council has declined to support past POLST initiatives.

In 2012, the Michigan POLST coalition asked the Council of the Probate and Estate Planning Section to endorse their form. The form allowed for surrogate consent or refusal to medical treatment. After much discussion of these issues, the Council declined to endorse the POLST form.

This year, it has come to our attention that the Michigan POLST program has published guidelines for a new form that relies on materials published by the Long Term Care Ombudsman's Office. Although the Council has not taken any specific position on them, based on prior experience I do not expect that the Council would support these guidelines either.

Mr. Carl E. Ver Beek  
Making Choices Michigan, Inc.  
February 26, 2013  
Page 2

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I am sure that you appreciate our position. The Probate and Estate Planning Section and its Council cannot endorse creating a doctor's order that asks for third party consent or refusal to medical treatment, if there is no Michigan precedent or statute that allows a third party to commit that act. To the extent the initiative of Making Choices Michigan, Inc. promotes or encourages such actions, the Council is unlikely to support and mostly likely will oppose the initiative. To the extent the initiative encourages appointments of patient advocates, the Council will continue to be supportive of such efforts.

Connie Brigman is chair of the Section's Guardianship, Conservatorship, and End of Life Committee. If you have further questions about the Council's position or history in dealing with POLST, or if you wish to discuss the initiative in greater detail, I encourage you to contact Connie at 616.949.1900.

Very truly yours,



Mark Harder  
Chair

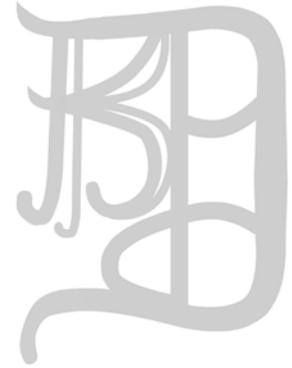
c: Connie Brigman

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**ATTACHMENT 3**

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# memo



## DuComb Law, PLLC

To: MI Probate & Estate Planning Council  
From: Keven DuComb  
CC:  
Date: 3/16/2013  
Re: Funding Request: Young Lawyers Section Summit

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**OVERVIEW:** The Young Lawyers Section of the State Bar of Michigan is holding its annual Young Lawyers Summit on June 8, 2013 at the Greektown Casino in Detroit. They have solicited partnerships from other sections. Partnership involves staffing a table and providing information to attendees about the Probate & Estate Planning (P&EP) Section, its benefits, and activities. At the February 16, 2013 meeting of the P&EP Council, some members expressed interest in having the Section participate due to an apparent increase in younger attorneys taking on estate planning and probate work. I volunteered to look into the options and draft a funding proposal for the activity.

**PARTNERSHIP:** There are three “partnership” levels. The standard “vendor” level seems sufficient for the Section’s purposes. This level provides the Section with a table and admission for one Section member to serve as representative of the Section.

### FUNDING:

- “Vendor” Level - \$100
- Vinyl Banner for the Section - \$20-\$50 (3’x6’)
- Printing P&EP Section pamphlets - \$100 (?)
- Printing ICLE pamphlets - \$100 (?)
- Optional “swag” (i.e., freebies like flash drives) and/or printing alternative – 100 flash drives for \$390

### DISCUSSION:

- Partnership fee is mandatory.
- It is possible that the Section has a banner available for table events, if any member recalls its location. Otherwise, the idea would be that this would be available for any similar events. Large vinyl banners to attach to the front of the table are cheaper (and likely more durable) than cardboard “table-top” type

# memo

- signage. Available from [bannersonthecheap.com](http://bannersonthecheap.com). Is there a section logo saved in a .jpeg or .png file?
- Discussion with Rebecca Schnelz regarding the potential availability of the newly revamped Section pamphlets: they are still under review. Update from Rebecca? Estimate of printing costs?
  - Discussion with ICLE (Jeff/Jeanne) regarding potential participation in the event or whether they would want to provide any materials advertising the Institute or Certificate program. Update from Jeanne? Does ICLE have some of these materials made already? Cost estimate?
  - Addition/Alternative – Branded Flash Drive. Many of us are familiar with the “branded” thumb drive concept from the Institute where ICLE provides a thumb drive containing all of the printed materials. This “preloading” feature is an option for promotional materials, as well. For instance, we could load the updated pamphlets onto flash drives rather than printing the pamphlets. That way, participants get a “freebie” in addition to having some information.
  - There were 106 attendees at last year’s YLS Summit, which is why I used the quote for 100 flash drives. However, we probably need some printed materials on the table, as well, just to fill the space.

## FUNDING REQUEST:

- Option 1: open-ended request for discretionary use of no more than \$600 to cover the partnership fee, banner and flash drives. Dependent on ICLE “donating” some additional printed materials for the table.
- Option 2: Fine tune the request based upon discussion at 3/16/13 Section meeting or through updated written proposal supplied at the 4/13/13 Section meeting.
- Additional thoughts/motions.

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**ATTACHMENT 4**

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**Probate and Estate Planning Council**  
**Treasurer's Report**  
**for 3-16-2013**

**Income/Expense Report**

Attached is the income and expense report for January 2013 (unaudited). The dues revenue at the end of January 2013 is about \$700 higher than January 2012, and we remain on target with the projected revenue as shown in the budget.

Travel expenses continue to run higher than last year, but we budgeted more for that expense this year, so we remain within budget at present. I will continue to watch that expense item.

The lobbying expense line includes the February payment, because that was made at the end of January and so shows up on this report. It also includes November, because that billing that misdirected. Overall that expense line remains as budgeted.

Also note that the names of the "listserv" line has been changed to "electronic communications" and will include e-blast expenses which were previously under "other".

I've also included a note about our "Amicus fund" item which is now allocated from our fund balance to cover extra amicus brief expenses that could arise in excess of the regular budgeted amicus brief line item due to expected litigation over interpretation questions involving the new Michigan Trust Code.

**Expense Reimbursement Requests**

Please keep in mind that the State Bar wants all expenses submitted to the State Bar of Michigan within 30 days of when the expense was incurred.

Also, as previously noted, the Bar has revised the expense reimbursement form to include the new mileage rate on some of the lines. This is available on the State Bar website at:

<http://www.michbar.org/generalinfo/pdfs/sectexp.pdf>

**Hearts and Flowers Fund:**

We received a Thank You card from the Dresser family for our donation of \$100 to the Sturgis Area Community Foundation in memory of Raymond H. Dresser, Jr.

Jim Steward  
Council Treasurer

**Probate and Estate Planning Section  
Treasurer's Report as of January 1, 2013**

	November	December	January	FY to Date Actual	Budget 2012-13	Variance	Year to Date Percentage
<b>Revenue</b>							
Membership Dues	\$ 43,050	\$ 6,580	\$ 3,220	\$ 115,150	\$115,000	\$ 150	100%
Publishing Agreements				\$ -	\$350	\$ (350)	0%
Other				\$ -	\$350	\$ (350)	0%
<b>Total Receipts</b>	<b>\$43,050</b>	<b>\$6,580</b>	<b>\$3,220</b>	<b>\$ 115,150</b>	<b>\$115,700</b>	<b>\$ (550)</b>	<b>100%</b>
<b>Disbursements</b>							
Journal			\$ 3,750	\$ 3,750	\$27,500	\$ (23,750)	14%
Chairperson's Dinner	\$ 4,406			\$ 4,406	\$6,500	\$ (2,094)	68%
Travel	\$ 3,269	\$ 1,083	\$ 2,143	\$ 6,494	\$18,000	\$ (11,506)	36%
Lobbying		\$ 2,500	\$ 7,500	\$ 12,500	\$30,000	\$ (17,500)	42%
Meetings	\$ 2,414			\$ 2,414	\$12,000	\$ (9,586)	20%
Long-range Planning				\$ -	\$1,000	\$ (1,000)	0%
Publishing Agreements				\$ -	\$0	\$ -	0%
Support for Annual Institute			\$ 250	\$ 250	\$13,000	\$ (12,750)	2%
Amicus Briefs				\$ -	\$10,000	\$ (10,000)	0%
Electronic Communications*	\$ 75		\$ 75	\$ 225	\$1,400	\$ (1,175)	16%
Postage				\$ -	\$100	\$ (100)	0%
Telephone		\$ 49		\$ 49	\$250	\$ (201)	20%
Other**			\$ 75	\$ 150	\$100	\$ 50	150%
<b>Total Disbursements</b>	<b>\$10,164</b>	<b>\$3,632</b>	<b>\$13,793</b>	<b>\$30,238</b>	<b>\$119,850</b>	<b>\$ (89,612)</b>	<b>25%</b>
Increase				\$ 84,912	\$ (4,150)	\$ 89,062	

**Additional Information**

Fund Balance\*\*\*                   \$ 285,917

\*includes e-blast & other electronic communications to members

\*\*includes copying costs

\*\*\*includes \$25,000 allocated to "Amicus Fund" for extra amicus brief expenses in excess of current budget amount

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# **ATTACHMENT 5**

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**A. Amend court rules to include “Application” to transfer a foreign guardianship or conservatorship to Michigan.**

- I. My committee was unanimous in favor of the proposed rule changes. Connie submitted them to Marlaine Teahan.
- II. My committee has no objection to amending the petitions for guardianship and conservatorship with “application.” Connie submitted proposed form changes to Marlaine Teahan.

**B. Recommendation on SB 176 and 177 (sponsor Sen. Hildenbrand-R)**

**I. We recommend SB 176.** (Sen. Hildenbrand- R)

SB 176 is identical to SB 144 (Sen. Glenn Anderson- D).

- a. SB 144 is in the Senate Families, Seniors & Human Services Committee since 2-5-13.
- b. SB 176 is in the same committee since 2-12-13.
- c. The bills are identical. Both bills establish that a person interested in the welfare of a vulnerable young adult may petition for a finding of incapacity and appointment of guardian effective on the minor's 18th birthday during the six months prior to that birthday, and allow a court to set a hearing during that six month period.
- d. SB 176 and SB 144 amend sections 609, 614, and 618 of the mental health code.
- e. All of the following are in support of SB 144: PAPPAGEORGE, JONES, BIEDA, NOFS, KOWALL, HOPGOOD, CASWELL, COLBECK, HOOD, GREGORY, PROOS, HUNTER, YOUNG, SMITH, WHITMER, JANSEN and MOOLENAAR

**II. We do not recommend SB 177** (Sen. Hildenbrand- R)

SB 177 amends sections 5303 and 5306 of EPIC. It is not tie-barred to SB 176 after all.

Why amend EPIC instead of the mental health code? Apparently, the 18 year old individual has a disability that is not expected to continue indefinitely.

If a disabled 18 year old needs a guardian to make an immediate medical decision to prevent serious injury, illness or death, then the petitioner needs to file for immediate appointment of a temporary guardian. MCL 700.5312, 5313.

A temporary guardian is appointed for up to 28 days pending a hearing to appoint a permanent guardian. The applicable court rule is MCR 5.403(C):

(C) Temporary Guardian for Incapacitated Individual Where no Current Appointment; Guardian Ad Litem. A petition for a temporary guardian for an alleged incapacitated individual shall specify in detail the emergency situation requiring the temporary guardianship. For the purpose of an emergency hearing, the court shall appoint a guardian ad litem unless such appointment would cause delay and the alleged incapacitated individual would likely suffer serious harm if immediate action is not taken. The duties of the guardian ad litem are to visit the alleged incapacitated individual, report to the court and take such other action as directed by the court. The requirement of MCL 700.5312(1) that the court hold the fully noticed hearing within 28 days applies only when the court grants temporary relief.

Connie asked Sen. Hildenbrand's office for case studies to explain why an amendment to EPIC is necessary. None were received. Connie spoke with the legislative assistant in Sen. Hildenbrand's office. A constituent asked for it and the senator allowed for it. "Wait and see what happens in committee."

**C. Protecting the rights of a ward or protected person. (Josh Ard will present). We agreed on four position statements. We will ask the Council to vote on the proposed changes.**

1. **A GAL is not a substitute for legal counsel.** Fix MCL 700.5306a(1)(e) which is repeated in PC 626 as follows: You have the right to have a guardian ad litem appointed to represent you if you are not represented by an attorney.

2. **A visitor needs liability protection.** Amend MCL 691.1407(6) to include "visitor" as a person who is protected from liability if he or she is acting within the scope of his or her authority as a visitor.

3. **Legal counsel for the ward.** The court cannot be commanded by a ward to appoint legal counsel for a ward regardless of their counsel's qualification or willingness to serve. Amend MCL 700.5306a(d):

5306a(d) To have legal counsel of his or her own choice, if suitable and willing to serve, represent him or her on the petition to appoint a guardian, as provided in sections 5303, 5304, and 5305.

4. **Payment of court-appointed attorney. We would like to add a seventh duty for a GAL.** MCL 700.5305 currently lists 6 GAL duties to the proposed ward: (1) personally visit the individual; (2) explain the effects of having a guardian appointed; (3) explain

the hearing procedure; (4) report to the proposed ward who the petitioner is; (5) ask the proposed ward how much cash they have in their estate; and, (6) determine and inform the court as to whether the proposed ward wants a guardianship and what the GAL recommends in that regard.

Add the following 7th duty:

(d) Explaining to the individual that all costs associated with the hearing, including payments to attorneys, experts, and visitors, will normally be charged to the individual.

#### **D. Guardians and DNR bill.**

I received an email 2-22-2013 that the bill is ready to be introduced in the House Judiciary Committee by Rep. Cotter. Becky Bechler has the details.

#### **E. "Making Choices."**

In Grand Rapids, there is a group that has an "almost the same but not quite" name as the "Respecting Choices" program under the Gundersen Lutheran Medical Foundation. The Gundersen Lutheran Medical Foundation is a POLST program in Wisconsin.

The promoters of this program state that their program has nothing to do with a POLST. Instead, they are telling us that they want to follow the LaCrosse Wisconsin program.

Well, that program IS a POLST program. It serves as a model for the "Respecting Choices" website. See the attached article, second page, third paragraph under "Spreading the Practice."

Once again, we have the same lack of transparency problem. The promoters of the program ask for our support while intentionally withholding information from us that they know we will find objectionable.



## In La Crosse, WI, End-of-Life Planning Begins Early

By Lola Butcher

The dearth of dialogue between caregivers and renal patients is what prompted health care leaders in La Crosse, WI, to develop an end-of-life care program more than 20 years ago.

Bernard J. Hammes, PhD, a clinical ethicist for the Gunderson Lutheran Health System in La Crosse, initiated the program in 1986 after participating in some painful discussions that could have been prevented. Over a period of a few months, he was called on three separate occasions to do ethics consults with family members of hemodialysis patients who had become incapacitated. His job was to help the family work through the decision of whether to continue dialysis treatments.

"In each and every case, the family had no idea what the patient's values and goals were in terms of treatment because they had never previously discussed the matter," he said. "It was disturbing to me, not only because we couldn't talk with the patient and weren't sure what the patient's wishes were, but because I saw how distressing this was for the family."

Dr. Hammes started researching the literature about end-of-life care in dialysis patients and learned that the decision to stop dialysis is frequently made for patients who are incapacitated and unable to express their preferences.

"This seemed particularly troubling because we all know that dialysis will stop sometime, and the literature suggests that at least half the time the patient wouldn't make that decision for him or herself," he said.

He began working with dialysis patients and health care professionals to design a program to engage dialysis patients in end-of-life discussions. Within two years of the program's inception, the prevalence of end-of-life care plans for

dialysis patients at Gunderson Lutheran soared—from just 2% of patients having a written plan to 45%. While some patients and family members declined to participate, such resistance has become ever rarer.



*"We all recognize that there are huge variations in what people want and will value at the end of their life. Some people might want quite aggressive care, while other people might want a hospice approach. The tragedy comes when we mistreat people, either by providing too much care or by providing too little care."—Bernard J. Hammes, PhD*

"Most families and patients, when approached over some period of time, are willing to sit down and have these discussions," Dr. Hammes said. "And it is possible to create plans that are specific enough so that when a bad thing happens to the patient and they're not going to recover, families are prepared to make those decisions in a way that honors what the patient wants and lowers the distress and mental anguish that families have in making these decisions."

Continued on page 12

### • NATIONAL KIDNEY FOUNDATION SPRING CLINICAL MEETINGS •

## Rehabilitation Effective in Older Dialysis Patients, Single-Center Data Shows

By Michelle Hogan

ORLANDO, FL—For older patients who do start dialysis, rehabilitation can improve functional ability, according to single-center data presented here at the National Kidney Foundation Spring Clinical Meetings.

"It is, I think, the way of the future for some of our patients," said Vanita Jassal, MD, MSc, Associate Professor of Medicine at University Health Network in Toronto, in her presentation of the data.

In its seven years of operation, the geriatric dialysis rehabilitation program at the Toronto Rehabilitation Institute has had 456 admissions of 440 patients. The program provides rehabilitation services and on-site short-daily dialysis.

"Our patients are patients that you see all the time," Dr. Jassal said. Mean age is 74.5, 52% are male, and 52% have diabetes.

"What's different about my population in the rehab unit is that their comorbidity scores are phenomenal," she noted. The mean Charlson Comorbidity Index (CCI) is 8.4, while the mean CCI for patients on hemodialysis is about 4.7.

Functional Independence Measure (FIM) scores also were calculated at patient admission and discharge. The FIM score consists of 18 items—13 motor and five cognitive—and patients are given a score of one to 7 for each of the 18 domains. A fully independent patient would score 126, and the lowest possible score is 18.

At admission, the mean FIM score in these geriatric rehabilitation patients was 75.7. "By the time patients are discharged, FIM scores can be drastically shifted," Dr. Jassal said, with 95% of patients showing some improvement.

"The most impact that we have on the patient is actually in the ability to walk indoors and the ability to dress themselves, both upper and lower body, with much less of an impact on things like climbing stairs or the ability to bathe independently," Dr. Jassal said.

At admission, 13.3% of patients were classified as being able to walk indoors independently, compared with 59.3% at discharge. The corresponding proportions for lower-body dressing were 11.7% at admission and 52.2% at discharge, and, for upper-body dressing, 18.3% at admission and 61.6% at discharge. For bathing, on the other hand, the proportion of independent patients only increased from 23.5% at admission to 27.3% at discharge, and, for climbing stairs, from 4.3% to 27.4%.

While programs like Dr. Jassal's and others have shown that rehabilitation can be successful in these older patients, a lot of patients aren't being referred for such therapy, said Manjula Kurella Tamura, MD, MPH, who co-moderated the session during which the data were presented. Dr. Kurella Tamura is Assistant Professor of Medicine in the Division of Nephrology at Stanford University School of Medicine, and her research focuses on chronic kidney disease (CKD) management and outcomes in elderly patients.

"I think the take-home message is first and foremost to think about rehabilitation. ... We're really focused on what happens within the dialysis unit, and sometimes we don't really think about what happens outside the dialysis unit," she said in a phone interview after the meeting.

There also may be structural barriers to referral, she said.

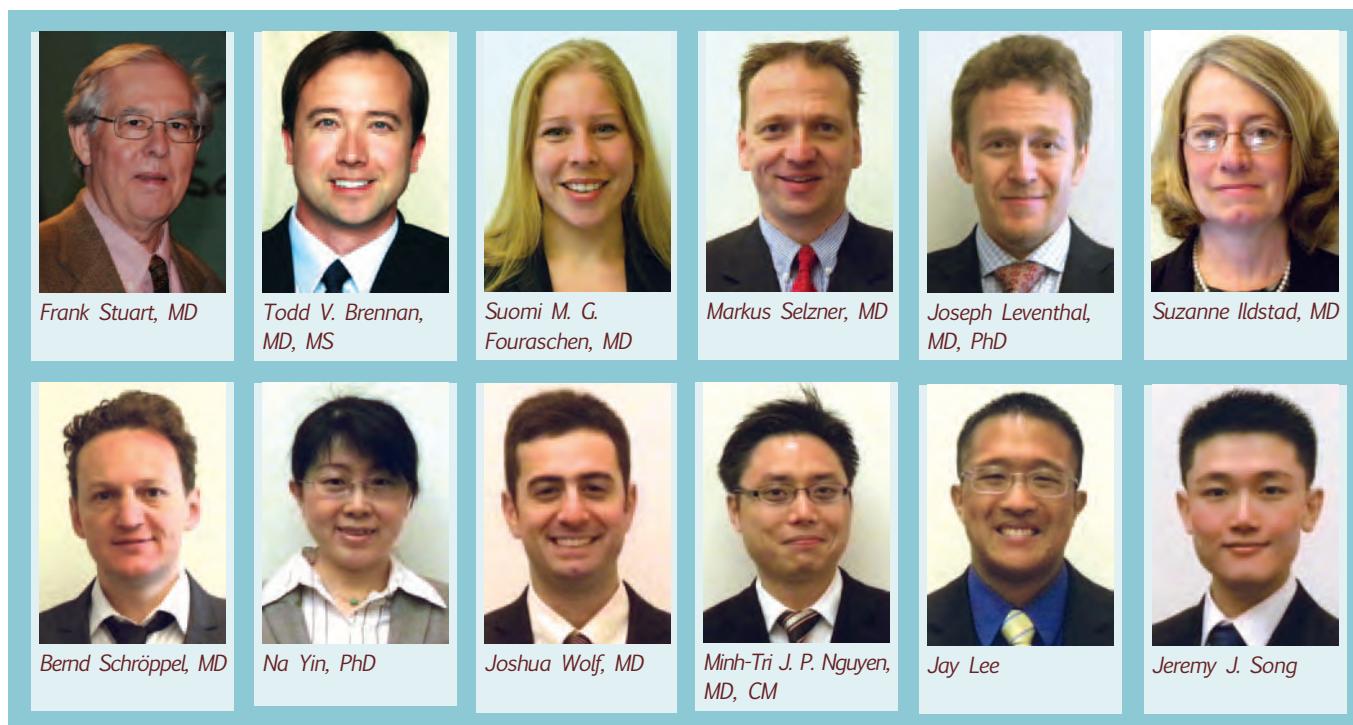
"Not a lot of rehab facilities have dialysis capabilities within the nursing home or rehab program, so patients have to go back and forth, and then that creates problems for the patient. That may be part of the reason, but I think we need to figure out why people who might benefit from rehab aren't being referred." •

# ASTS and AST Recognize Award and Grant Recipients at American Transplant Congress

SAN DIEGO—Achievements in basic and clinical science, mentorship, and service were honored here at the American Transplant Congress, the joint annual meeting of the American Society of Transplant Surgeons (ASTS) and the American Society of Transplantation (AST), with the presentation of awards and grants.

The ASTS recognized the following individuals with awards:

- **Frank Stuart**, MD, Professor Emeritus, Northwestern University Feinberg School of Medicine: ASTS–Genentech Pioneer Award.
- **Todd V. Brennan**, MD, MS, Duke University Medical Center, and **Dana K. Perry**, MD, Mayo Clinic: ASTS Vanguard Prize.
- **Suomi M. G. Fouraschen**, MD, Department of Surgery, Erasmus MC, Rotterdam, the Netherlands: ASTS–ESOT (European Society for Organ Transplantation) Exchange Grant.
- **Markus Selzner**, MD, University of Toronto and Toronto General Hospital: ASTS–Astellas Faculty Development Award.
- **Joseph Leventhal**, MD, PhD, Northwestern University, and **Suzanne Ildstad**, MD, University of Louisville: ASTS–Pfizer Collaborative Scientist Award.
- **Bernd Schröppel**, MD, Mount Sinai School of Medicine: ASTS–Pfizer Mid-Level Faculty Award.



- **Na Yin**, PhD, Mount Sinai School of Medicine, and **Joshua Wolf**, MD, Johns Hopkins Hospital: ASTS–Genentech Laboratories Scientist Scholarship.
- **Minh-Tri J. P. Nguyen**, MD, CM, McGill University: ASTS–NKF (National Kidney Foundation) Folkert Belzer, MD, Research Award.
- **Andrew Adams**, MD, PhD, Massachusetts General Hospital: ASTS Fellowship in Transplantation.

- **Jay Lee**, University of Michigan; **Jeremy J. Song**, University of California, Irvine, School of Medicine; **Rafael A. Vega**, PhD, University of Illinois College of Medicine; and **Matthew Zhang**, MS, Thomas E. Starzl Transplantation Institute: Genentech Presidential Student Mentor Award.

In addition, **Ronald W. Busuttil**, MD, PhD, of the University of California,

Los Angeles, and **Mark Hardy**, MD, of Columbia University Medical Center, were presented with the ASTS Francis Moore Excellence in Mentorship in Transplantation Surgery Award at the society's "State of the Art" Winter Symposium.

The AST honored the following individuals with awards and grants:

*Continued on page 13*

## La Crosse

*Continued from page 9*

### Engaging the Patient and Family

In the La Crosse model, called Respecting Choices, end-of-life planning for renal patients typically begins a few months after dialysis treatment starts so that the patient has had time to adjust to the new routine but is still fairly healthy.

The topic usually is broached during a patient's care conference. "Someone will say, 'Would you be willing to have this conversation?'" Dr. Hammes said. "If so, we would like you to identify the people whom you would like to have present, and we'll set up a time."

The patient and family members meet with a nurse or social worker who has been trained to help them work through a set of questions that will elicit their preferences for end-of-life care.

"Our focus is not on just kind of technically filling out legal documents but really engaging patients and their families

*"Our focus is not on just kind of technically filling out legal documents but really engaging patients and their families in this increased understanding, improved reflection, and more thorough discussion. Then we create a plan and make sure that this plan is put in the medical record in such a way that it is easily found."*

in this increased understanding, improved reflection, and more thorough discussion," Dr. Hammes said. "Then we create a plan and make sure that this plan is put in the medical record in such a way that it is easily found."

### Spreading the Practice

What started out as a program for dialysis patients has grown to become standard practice for the entire La Crosse community and to be replicated around the world.

In 1991, Gunderson Lutheran and the city's other health system, Franciscan

Skemp, collaborated to take the end-of-life initiative community wide. A task force chaired by Dr. Hammes created a set of standards to help patients—regardless of their health issues or health status—and their families plan for future health care decisions, and the task force established a system that made sure those plans were used.

In fact, a study of 400 deaths in La Crosse County over seven months in 2007 and 2008 found that 96% of the patients had either a written advance directive or a Physician Order for Life-Sustaining Treatment that identified the patient's choices

about medical treatments at the end of life.

"The plans are virtually always available at the right place, and when we look at the relationship between the plans and the medical treatment decisions made in the last 30 days of life, we find a 99% consistency between plans and decisions," Dr. Hammes said.

In addition to the United States, Dr. Hammes and other Respecting Choices staff members have consulted with health care organizations in Australia, Singapore, Canada, Germany, and other parts of the world.

"We all recognize that there are huge variations in what people want and will value at the end of their life," he said. "Some people might want quite aggressive care, while other people might want a hospice approach. The tragedy comes when we mistreat people, either by providing too much care or by providing too little care."

"At least one thing we can do to avoid that mismatch is talking with people about what they would consider to be good care if they couldn't tell us and particularly if they are not likely to recover." •

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**ATTACHMENT 6**

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The following changes to court rules and forms are proposed to accommodate the new foreign guardianship laws.

Also, please find attached relevant statutory sections.

Rule 5.108 Time of Service

- (A) Personal. Personal service of a petition or motion must be made at least 7 days before the date set for hearing, or an adjourned date, unless a different period is provided or permitted by court rule. This sub-rule applies regardless of conflicting statutory provisions.
- (B) Mail. Service by mail of a petition, or motion must be made at least 14 days before the date set for hearing, or an adjourned date. Service by mail of an application by a foreign guardian or conservator of another state must be made at least 14 days following the guardian or conservator's appointment in this state.
- (C) Exception: Foreign Consul. This rule does not affect the manner and time for service on foreign consul provided by law.
- (D) Computation of Time. MCR 1.108 governs computation of time in probate proceedings.
- (E) Responses. A written response or objection may be served at any time before the appointment, hearing or at a time set by the court.

Rule 5.125(C) Interested Persons Defined

(1)-(18)[Unchanged.]

- (19) The persons interested in a petition or application for appointment of a guardian for a minor are
- (a) the minor, if 14 years of age or older;
  - (b) if known by the petitioner, each person who had the principal care and custody of the minor during the 63 days preceding the filing of the petition;
  - (c) the parents of the minor or, if neither of them is living, any grandparents and the adult presumptive heirs of the minor~~;~~];
  - (d) the nominated guardian~~;~~]; and
  - (e) if known by the petitioner, a guardian or conservator serving under an appointment from another state.

(20)-(21)[Unchanged.]

- (22) The persons interested in a petition or application for appointment of a guardian of an alleged incapacitated individual are
- (a) the alleged incapacitated individual,
  - (b) if known, a person named as attorney in fact under a durable power of attorney,
  - (c) the alleged incapacitated individual's spouse,
  - (d) the alleged incapacitated individual's adult children and the individual's parents,
  - (e) if no spouse, child, or parent is living, the presumptive heirs of the individual,
  - (f) the person who has the care and custody of the alleged incapacitated individual,~~and~~
  - (g) the nominated guardian~~;~~]; and

- (h) if known by the petitioner, a guardian or conservator serving under an appointment from another state.

(23)[Unchanged.]

- (24) The persons interested in a petition or application for the appointment of a conservator or for a protective order are
- (a) the individual to be protected if 14 years of age or older,
  - (b) the presumptive heirs of the individual to be protected,
  - (c) if known, a person named as attorney in fact under a durable power of attorney,
  - (d) the nominated conservator, ~~and~~
  - (e) a governmental agency paying benefits to the individual to be protected or before which an application for benefits is pending [,] and
  - (f) if known by the petitioner, a guardian or conservator serving under an appointment from another state.

(25)-(33)[Unchanged.]

Note: Same comment as before that we add the “application” to incorporate the application for appointment as a foreign guardian or conservator to the list of interested persons.

We added the foreign guardian or conservator to persons that a petitioner would need to need to notify, because a foreign guardian or conservator cannot apply for transfer if they know of a pending petition in this state.

Rule 5.403 Proceedings on Temporary Guardianship

(A) Limitation. The court may appoint a temporary guardian ~~only~~ pursuant to an application to transfer a foreign guardianship or in the course of a proceeding for permanent guardianship.

(B)-(D)[Unchanged.]

Note: Since the foreign guardian is a temporary guardian until the 28-days notice period is up, this limitation must be amended. See section 5202a(2). The guardian is merely a temporary guardian until 28-day notice period has passed.

STATE OF MICHIGAN  
PROBATE COURT  
COUNTY OF

APPLICATION/

PETITION FOR  
APPOINTMENT OF GUARDIAN OF  
INCAPACITATED INDIVIDUAL

FILE NO.

- A** In the matter of \_\_\_\_\_, Alleged incapacitated individual XXX-XX-  
Last four digits of SSN
- |               |      |     |   |
|---------------|------|-----|---|
| Date of birth | Race | Sex | Address of alleged incapacitated individual where now found |
|---------------|------|-----|---|
- C** 1. I, \_\_\_\_\_, am interested in this matter  
Name (type or print)  
and make this petition as \_\_\_\_\_.  
State interest/relationship
- D**  2. An action within the jurisdiction of the family division of circuit court involving the family or family members of the person named above has been previously filed in \_\_\_\_\_ Court, Case Number \_\_\_\_\_, was assigned to Judge \_\_\_\_\_, and  remains  is no longer pending.
- E** 3. The adult is a resident of \_\_\_\_\_, \_\_\_\_\_  
City, village, or township County State  
and has a home address and telephone number of \_\_\_\_\_  
Address  
\_\_\_\_\_  
City State Zip Telephone no.
- The individual is a citizen of the following foreign country: \_\_\_\_\_
- F** 4. The adult has  a patient advocate/power of attorney for health care. (Specify name and address below.)  
 a power of attorney. (Specify name and address below.)  
 a conservator. (Specify name and address below.)  
\_\_\_\_\_  
Name and address
- G**  5.  The patient advocate designation was not executed in compliance with MCL 700.5506.  
 The patient advocate is not complying with the terms of the designation or of MCL 700.5506 to MCL 700.5512.  
 The patient advocate is not acting consistent with the ward's best interests.
- H** 6. The adult lacks sufficient understanding or capacity to make or communicate informed decisions because of  
 mental illness.  mental deficiency.  physical illness or disability.  
 chronic intoxication.  chronic drug use.  \_\_\_\_\_.
- I** 7. Specific facts about the adult's recent condition or conduct that lead me to believe the adult needs a guardian are  
(Attach a separate sheet if more space is needed.)  
\_\_\_\_\_  
\_\_\_\_\_
- J** 8. The name, address, and telephone number of the person/agency (if any) who currently has care and custody of the adult are \_\_\_\_\_.

(SEE SECOND PAGE)

USE NOTE: If this form is being filed in the circuit court family division, please enter the court name and county in the upper left-hand corner of the form.

Do not write below this line - For court use only

**K** 9. The adult  is  is not entitled to receive Veterans Administration benefits. The Veterans Administration claimant number is \_\_\_\_\_.

- L** 10. The alleged incapacitated individual has
- a spouse whose name and address are listed below.
  - adult child(ren) whose name(s) and address(es) are listed below.
  - living parent(s) whose name(s) and address(es) are listed below.
  - no spouse, child(ren), or parent(s). The names and addresses of presumptive heirs are listed below.
  - none of the above (must notify Attorney General - see instructions for the address of the Attorney General).

NAME	ADDRESS AND TELEPHONE NUMBER				RELATIONSHIP	AGE/DOB (if minor)
	Street address					
	City	State	Zip	Telephone no.		
	Street address					
	City	State	Zip	Telephone no.		
	Street address					
	City	State	Zip	Telephone no.		

**M** 11. None of the adults named above is under any legal incapacity except \_\_\_\_\_  
Give name, legal incapacity, and representative of the person, if any

**N** 12. **I REQUEST** that the court determine the adult is an incapacitated individual and appoint \_\_\_\_\_ Name  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
City \_\_\_\_\_, who has priority as  
\_\_\_\_\_  
Zip \_\_\_\_\_ Telephone no. \_\_\_\_\_  
Priority relationship \_\_\_\_\_,  full guardian with all powers provided by statute.  
 limited guardian with the following powers:

guardian appointed in another state

**O**  13. No other person appears to have authority to act in the circumstances. I request that a temporary guardian be appointed pending a hearing on this petition because of the following emergency:

← 14. I am not aware of any pending petitions for the appointment of a guardian for the alleged incapacitated individual in this state. I am a guardian appointed in another state and I request to be appointed guardian in this state.

I declare under penalty of perjury that this petition has been examined by me and that its contents are true to the best of my knowledge and belief.

**P** Attorney \_\_\_\_\_ Date \_\_\_\_\_  
Attorney \_\_\_\_\_ Bar no. \_\_\_\_\_ Petitioner signature \_\_\_\_\_  
Attorney \_\_\_\_\_ Petitioner address \_\_\_\_\_  
City, state \_\_\_\_\_ Telephone no. \_\_\_\_\_ City, state, zip \_\_\_\_\_ Telephone no. \_\_\_\_\_

**Q**  14. **I ALLEGED INCAPACITATED INDIVIDUAL** In the event the court finds that I require a \_\_\_\_\_  
name, address, and telephone no. \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of alleged incapacitated individual

# INSTRUCTIONS FOR COMPLETING "PETITION FOR APPOINTMENT OF GUARDIAN OF INCAPACITATED INDIVIDUAL"

Please type or print neatly using black or blue ink.

Items A through Q must be read and filled in (when required) before your petition can be filed with the court. Please read the instruction for each item. Then fill in the correct information for that item on the form.

- A** Enter the name of the individual who you believe needs a guardian.
- B** Enter the date of birth, race, and sex of the individual named in **A**. Enter the address where the individual is currently located. This address may or may not be the home of the individual. For example, if the individual is currently in the hospital, enter the address of the hospital.
- C** Enter your name in the first line and your relationship to the individual (or your interest) on the second line.
- D** Check this box if there is or has been a case in the family division of the circuit court involving the individual in **A**. Examples of a family division case are personal protection, abuse or neglect, or a name change. If you have checked this box, enter the name of the court, the case number of the action, the name of the judge assigned to that case. Then place a check in the box indicating whether that case is still pending or not.
- E** Enter the city, village, or township and county and state the individual is a resident of and the full home address and telephone number of the individual.
- F** Check the boxes that apply and provide the name(s) and address(es).
- G** If the individual has a patient advocate and you believe there is a problem, check only the boxes that apply.
- H** Check the boxes that you believe apply to the individual.
- I** **Explain in as much detail as possible** specific examples of the individual's conduct that lead you to believe he or she needs a guardian. Give specific examples of his or her conduct that supports what you checked in **H** and that demonstrate the need for a guardian. **This information is extremely important for the court in making a decision about the need to appoint a guardian.** Use additional sheets of paper if needed.
- J** Enter the name, address, and telephone number of the person or agency who currently has care and custody of the individual. If there is no one, leave blank.
- K** Check whether the individual is or is not entitled to receive Veterans Administration benefits. If you checked that the individual is entitled to benefits, enter his or her VA claimant number.
- L - M** Check all the boxes that apply and enter the names, relationships, addresses and telephone numbers of each relative of the individual. If any of the adults named in **L** are under legal incapacity, enter the names in **M**. If you check the last box in **L** (item 10), you must notify the Attorney General by sending a copy of this form to: Attorney General, Public Administration, PO Box 30755, Lansing, Michigan 48909.
- N** Enter the name, address, and telephone number of the person you want to be appointed as guardian of the individual. Enter the relationship, if any, that this person has to the individual. Check the box for either a full guardian or a limited guardian.
- O** Check the box if there is an emergency requiring the appointment of a temporary guardian before the hearing on this petition is held.
- P** Enter today's date, sign your name, and enter your address and telephone number.
- Q** If the individual wants to nominate someone to be his/her guardian, check the box and enter the name, address, and telephone number of the person the individual is nominating. The individual must sign and date the form.

STATE OF MICHIGAN  
PROBATE COURT  
COUNTY OF

APPLICATION/ →

PETITION FOR  
 APPOINTMENT OF CONSERVATOR  
 PROTECTIVE ORDER

FILE NO.

**A** Estate of \_\_\_\_\_ XXX-XX-  
Individual alleged to need protection Last four digits of SSN

**B** 1. I, \_\_\_\_\_, am interested in this matter  
Name  
and make this petition as \_\_\_\_\_  
State interest/relationship

**C** 2. The individual was born \_\_\_\_\_, resides in \_\_\_\_\_ County  
Date  
at \_\_\_\_\_  
Address  
\_\_\_\_\_ and has property in \_\_\_\_\_ County.  
City, state, zip

**D**  3. An action within the jurisdiction of the family division of circuit court involving the family or family members of the above individual has been previously filed in \_\_\_\_\_ Court, Case Number \_\_\_\_\_, was assigned to Judge \_\_\_\_\_, and  remains  is no longer pending.

**E** 4. The individual has  a power of attorney. (Specify name and address below.)  
 a guardian. (Specify name and address below.)  
 a representative payee for social security. (Specify name and address below.)

\_\_\_\_\_  
Name and address

**F** 5.  a. The individual is an adult unable to manage his/her property and business affairs effectively because of  
 mental illness  chronic use of drugs  detention by a foreign power  
 mental deficiency  chronic intoxication  disappearance  
 physical illness or disability  confinement  \_\_\_\_\_  
and either  
 the adult has property that will be wasted or dissipated unless proper management is provided, or  
 the adult or his/her dependents are in need of money for support, care, and welfare, and protection is necessary to obtain or provide money.  
 b. The adult petitioner is mentally competent but because of age or physical infirmity is unable to manage his/her property and affairs effectively, and recognizing the disability, requests appointment of a conservator.  
 c. The individual is a minor who  
 owns money or property that requires management or protection that cannot otherwise be provided.  
 has or may have business affairs that may be jeopardized or prevented by minority.  
 needs money for support and education, and protection is necessary or desirable to obtain or provide money.  
 d. I am the guardian of the ward and it is in the ward's best interests to sell or otherwise dispose of the ward's real property or interest in real property.

**G** 6. The statements in item 5 are supported by the following facts: \_\_\_\_\_  
(Attach a separate sheet.)

(SEE SECOND PAGE)

**USE NOTE:** If this form is being filed in the circuit court family division, please enter the court name and county in the upper left-hand corner of the form.

Do not write below this line - For court use only

**H** 7. The individual to be protected has an estate approximately valued at:

\$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_  
Real property Personal property Insurance Monthly income

**I** 8. The individual to be protected is receiving the following benefits from governmental agencies:  
 Social Security \$ \_\_\_\_\_  SSI \$ \_\_\_\_\_  Veterans Administration \$ \_\_\_\_\_, claimant number \_\_\_\_\_  
 MDHS \$ \_\_\_\_\_  Other: \_\_\_\_\_ \$ \_\_\_\_\_

**J** 9. The individual to be protected has  
 a spouse whose name and address are listed below.  
 child(ren) whose name(s) and address(es) are listed below.  
 descendants of deceased child(ren) whose name(s) and address(es) are listed below.  
 if no child(ren) or descendants of deceased child(ren), parents whose name(s) and address(es) are listed below.  
 if none of the above, presumptive heirs whose name(s) and address(es) are listed below.  
 none of the above (must notify the Attorney General - see instructions for the address of the Attorney General).

NAME	ADDRESS AND TELEPHONE NUMBER				RELATIONSHIP	AGE/DOB (if minor)
	Street address					
	City	State	Zip	Telephone no.		
	Street address					
	City	State	Zip	Telephone no.		

**K** 10. None of the persons named above are under any legal incapacity except \_\_\_\_\_  
Name, incapacity, and representative of the person, if any

**L** 11. The individual is currently found at \_\_\_\_\_  
Address or location Telephone no.

**M**  12. It is necessary that a preliminary protective order be entered pending the regular hearing because \_\_\_\_\_

**I REQUEST** that the court:

**N**  13. Appoint \_\_\_\_\_,  
Name, address, and telephone no.  
who has priority as \_\_\_\_\_, as conservator of the estate to be protected.  
Priority relationship

**O**  14. Preserve and apply the individual's property pending the appointment of a conservator as follows:  
\_\_\_\_\_

**P**  15. Enter a protective order that provides \_\_\_\_\_

**Q**  16. Appoint the guardian as special conservator with authority to sell or otherwise dispose of the ward's real property or interest in \_\_\_\_\_  
I declare under penalty of perjury that this petition has been examined by me and that its contents are true to the best of my information and belief.

**R** Attorney signature \_\_\_\_\_ Date \_\_\_\_\_  
Attorney name (typed) \_\_\_\_\_ Bar no. \_\_\_\_\_ Petitioner signature \_\_\_\_\_  
Attorney address \_\_\_\_\_ Petitioner address \_\_\_\_\_  
City, state, zip \_\_\_\_\_ Telephone no. \_\_\_\_\_ City, state, zip \_\_\_\_\_ Telephone no. \_\_\_\_\_

**S**  17. **NOMINATE TO BE PROTECTED:** I am 14 years of age or older. I nominate as my conservator \_\_\_\_\_  
Name, \_\_\_\_\_

\_\_\_\_\_ Date

\_\_\_\_\_ Signature of person to be protected

I am not aware of any pending petitions for the appointment of a conservator for the protected individual in this state. I am a conservator appointed in another state and I request to be appointed conservator in this state.

## INSTRUCTIONS FOR COMPLETING "PETITION FOR APPOINTMENT OF CONSERVATOR"

**Please type or print neatly in black or blue ink.** Items A through S must be read and filled in (when required) before your petition can be filed with the court. Please read the instruction for each item. Then fill in the correct information for that item on the form.

- A** Enter the name of the individual who you believe needs a conservator.
- B** Enter your name in the first line. Enter your relationship to the individual (or your interest) in the second line.
- C** Enter the date the individual was born; what county the individual is a resident of; the address of the place where the individual normally lives, and the county the individual's property is in.
- D** Check this box if there is or has been a case in the family division of the circuit court involving the individual in **A**. Examples of a family division case are personal protection, abuse or neglect, or a name change. If you have checked this box, enter the name of the court, the case number of the action, the name of the judge assigned to that case. Then place a check in the box indicating whether that case is still pending or not.
- E** Check the boxes that apply and provide the name(s) and address(es). If the individual has a power of attorney and you have a copy of the document, make a copy for the court.
- F** Check the boxes that you believe apply to the individual.
- G** **Explain in as much detail as possible** the specific facts about the individual's conduct or condition that lead you to believe he or she needs a conservator. Give specific examples of his or her conduct that supports what you checked in **F** and that demonstrate the need for a conservator. **This information is extremely important for the court in making a decision about the need to appoint a conservator.** If you are the guardian asking for authority to sell or otherwise dispose of your ward's real property, state the reasons why it is in the ward's best interest to do so.
- H** Specify the approximate value of any real property, personal property, insurance, and monthly income of the individual. An example of real property is a house. Examples of personal property are home furnishings, bank accounts, and checking accounts.
- I** Check whether the individual is currently receiving benefits from governmental agencies and the amount(s).
- J-K** Check all the boxes that apply and enter the names, relationships, addresses and telephone numbers of each relative of the individual. If any of the adults named in **J** are under legal incapacity, enter the names in **K**. If you check the last box in **J** (item 9), you must notify the Attorney General by sending a copy of this form to: Attorney General, Public Administration, PO Box 30755, Lansing, Michigan 48909.
- L** Enter the address and telephone number where the individual is currently located. This address and telephone number may or may not be the home of the individual. For example, if the individual is currently in the hospital, enter the name, address, and telephone number of the hospital.
- M** If there is an emergency that requires that a preliminary protective order be entered before the hearing, check the box and state the reason(s).
- N** Enter the name, address, and telephone number of the person you want to be appointed as conservator of the individual. Enter the relationship, if any, that this person has to the individual. If you are the guardian asking for authority to sell or otherwise dispose of your ward's real property, leave this blank and complete **Q**.
- O** Check this box only if you checked **M**.
- P** Check this box if you want the individual's property protected but you do not want a conservator appointed.
- Q** Check this box if you want the the guardian appointed special conservator to dispose of real property.
- R** Enter today's date, sign your name, and enter your address and telephone number.
- S** If the individual wants to nominate someone to be the conservator, check the box and enter the name, address, and telephone number of the person the individual is nominating. The individual must sign and date the form.

**STATE OF MICHIGAN  
PROBATE COURT  
COUNTY OF**

**PETITION FOR APPOINTMENT OF  
GUARDIAN OF MINOR**

**FILE NO.**

In the matter of \_\_\_\_\_, a minor  
Last four digits of SSN **XXX-XX-**

**USE NOTE:** If a parent is incarcerated and under the jurisdiction of the Michigan Department of Corrections, the petitioner must comply with MCR 2.004(B).

1. I, \_\_\_\_\_, am interested in the welfare of the minor and make this  
Name (type or print)  
petition as \_\_\_\_\_.  
Relationship to minor (i.e. grandparent, uncle, friend, limited guardian, etc.)

2. The minor was born \_\_\_\_\_, is  female,  male, is unmarried, resides in \_\_\_\_\_  
Date County  
at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Address City/Township State Zip  
and is presently located in \_\_\_\_\_ at \_\_\_\_\_  
County Address (if different than above)  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
City/Township State Zip

The minor is a citizen of the following foreign country: \_\_\_\_\_

3.  The minor is a member of an Indian tribe, or is eligible for membership in an Indian tribe and is a biological child of a member of an Indian tribe. The name of the tribe is \_\_\_\_\_.  
 The minor is not an Indian child as defined in MCR 3.002(5).  
 It is unknown whether the minor is an Indian child as defined in MCR 3.002(5).

4. The persons interested in this proceeding are:

NAME	RELATIONSHIP	ADDRESS AND TELEPHONE NUMBER				
		Street address	City	State	Zip	Telephone no.
	Father/DOB _____	Street address				
		City	State	Zip	Telephone no.	
	Mother/DOB _____	Street address				
		City	State	Zip	Telephone no.	
	Conservator	Street address				
		City	State	Zip	Telephone no.	
	Guardian	Street address				
		City	State	Zip	Telephone no.	
	Person with care/ custody of minor*	Street address				
		City	State	Zip	Telephone no.	

\* Also list persons who had principal care and custody of the minor during the 63 days before filing the petition.

(SEE SECOND PAGE)

**USE NOTE:** If this form is being filed in the circuit court family division, please enter the court name and county in the upper left-hand corner of the form.

Do not write below this line - For court use only

4. (continued) If neither parent is living, the names and addresses of the minor's grandparents and nearest of kin who are adults are:

NAME	ADDRESS AND TELEPHONE NUMBER				RELATIONSHIP
	Street address				
	City	State	Zip	Telephone no.	
	Street address				
	City	State	Zip	Telephone no.	

None of these persons is under any legal incapacity except \_\_\_\_\_  
Name, incapacity, and representative of the person, if any

5. An action within the jurisdiction of the family division of circuit court involving the family or family members of the minor has been previously filed in \_\_\_\_\_ Court, Case Number \_\_\_\_\_, was assigned to Judge \_\_\_\_\_, and  remains  is no longer pending.

6. The minor is in need of a guardian because  
 a.  the parental rights of both parents or of the surviving parent have been terminated or suspended by  
 death.  a previous court order other than an order appointing a limited guardian of the minor.  
 disappearance.  judgment of divorce or separate maintenance.  
 confinement in a place of detention.  
 judicial determination of mental incompetency.

**OR**  
 b.  the parent(s) permit(s) the minor to reside with another person and the parent(s) do/does not provide the other person with legal authority for the care and maintenance of the minor and the minor is not residing with a parent at this time.

**OR**  
 c.  the biological parents of the minor were never married to each other and \_\_\_\_\_, the custodial parent  died  has disappeared since \_\_\_\_\_, and the other parent has not been granted legal custody by court order. The proposed guardian is related to the minor within the fifth degree by marriage, blood, or adoption.

7. A temporary guardian is necessary because \_\_\_\_\_.

**IREQUEST:**

8. \_\_\_\_\_, whose address and telephone number are \_\_\_\_\_  
Name Address  
 \_\_\_\_\_, be appointed guardian of the minor.  
City/Township State Zip Telephone no.

9. The court order \_\_\_\_\_  reasonable support for  parenting time with  contact with the minor.  
 I declare under the penalty of perjury that this petition has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date		Date	
Signature of petitioner		Signature of petitioner	
Address		Address	
City, state, zip	Telephone no.	City, state, zip	Telephone no.

10. I am 14 years of age \_\_\_\_\_ as my guardian,  
Name  
 who lives at \_\_\_\_\_  
Address City State Zip

Date		Signature of minor
Attorney signature	Address	
Attorney name (type or print)	Bar no. City, state, zip Telephone no.	

10. I am not aware of any pending petitions for the appointment of a guardian for the minor in this state. I am a guardian appointed in another state and I request to be appointed guardian in this state.

- (e) a governmental agency paying benefits to the individual to be protected or before which an application for benefits is pending [,] and
- (f) if known by the petitioner, a guardian or conservator serving under an appointment from another jurisdiction.

(25)-(33)[Unchanged.]

Act No. 545  
Public Acts of 2012  
Approved by the Governor  
January 2, 2013  
Filed with the Secretary of State  
January 2, 2013  
EFFECTIVE DATE: January 2, 2013

**STATE OF MICHIGAN  
96TH LEGISLATURE  
REGULAR SESSION OF 2012**

Introduced by Senator Schuitmaker

**ENROLLED SENATE BILL No. 539**

AN ACT to amend 1998 PA 386, entitled "An act to codify, revise, consolidate, and classify aspects of the law relating to wills and intestacy, relating to the administration and distribution of estates of certain individuals, relating to trusts, and relating to the affairs of certain individuals under legal incapacity; to provide for the powers and procedures of the court that has jurisdiction over these matters; to provide for the validity and effect of certain transfers, contracts, and deposits that relate to death; to provide procedures to facilitate enforcement of certain trusts; and to repeal acts and parts of acts," by amending sections 5313 and 5433 (MCL 700.5313 and 700.5433), section 5313 as amended by 2000 PA 463, and by adding sections 5202a and 5301a.

*The People of the State of Michigan enact:*

*\**

Sec. 5202a. (1) If a guardian has not been appointed in this state and a petition for the appointment of a guardian is not pending in this state, a guardian appointed, qualified, and serving in good standing in another state may be appointed immediately as temporary guardian in this state on filing with a court in this state an application for appointment, an authenticated copy of the guardian's appointment in the other state, and an acceptance of appointment. Letters of guardianship for the temporary guardian expire 28 days after the date of appointment.

(2) Within 14 days after appointment as temporary guardian under subsection (1), the guardian shall give notice to all interested persons of his or her appointment and the right to object to the appointment. On filing proof of service of the notice with the court, the temporary guardian shall be appointed full guardian and the court shall issue letters of guardianship accordingly.

(3) If an objection is filed to a guardianship under this section, the guardianship continues unless a court in this state enters an order removing the guardian.

*\**

Sec. 5301a. (1) If a guardian has not been appointed in this state and a petition for the appointment of a guardian is not pending in this state, a guardian appointed, qualified, and serving in good standing in another state may be appointed immediately as temporary guardian in this state on filing with a court in this state an application for appointment, an authenticated copy of the guardian's appointment in the other state, and an acceptance of appointment. Letters of guardianship for the temporary guardian expire 28 days after the date of appointment.

(2) Within 14 days after appointment as temporary guardian under subsection (1), the guardian shall give notice to all interested persons of his or her appointment and the right to object to the appointment. On filing proof of service of the notice with the court, the temporary guardian shall be appointed full guardian and the court shall issue letters of guardianship accordingly.

(3) If an objection is filed to a guardianship under this section, the guardianship continues unless a court in this state enters an order removing the guardian.

*\**

Sec. 5313. (1) The court may appoint a competent person as guardian of a legally incapacitated individual. The court shall not appoint as a guardian an agency, public or private, that financially benefits from directly providing housing, medical, mental health, or social services to the legally incapacitated individual. If the court determines that the ward's

property needs protection, the court shall order the guardian to furnish a bond or shall include restrictions in the letters of guardianship as necessary to protect the property.

(2) In appointing a guardian under this section, the court shall appoint a person, if suitable and willing to serve, in the following order of priority:

(a) A person previously appointed, qualified, and serving in good standing as guardian for the legally incapacitated individual in another state.

(b) A person the individual subject to the petition chooses to serve as guardian.

(c) A person nominated as guardian in a durable power of attorney or other writing by the individual subject to the petition.

(d) A person named by the individual as a patient advocate or attorney in fact in a durable power of attorney.

(3) If there is no person chosen, nominated, or named under subsection (2), or if none of the persons listed in subsection (2) are suitable or willing to serve, the court may appoint as a guardian an individual who is related to the individual who is the subject of the petition in the following order of preference:

(a) The legally incapacitated individual's spouse. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased spouse.

(b) An adult child of the legally incapacitated individual.

(c) A parent of the legally incapacitated individual. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased parent.

(d) A relative of the legally incapacitated individual with whom the individual has resided for more than 6 months before the filing of the petition.

(e) A person nominated by a person who is caring for the legally incapacitated individual or paying benefits to the legally incapacitated individual.

(4) If none of the persons as designated or listed in subsection (2) or (3) are suitable or willing to serve, the court may appoint any competent person who is suitable and willing to serve, including a professional guardian as provided in section 5106.



Sec. 5433. (1) If a conservator has not been appointed in this state and a petition in a protective proceeding is not pending in this state, a conservator appointed, qualified, and serving in good standing in another state may be appointed immediately as temporary conservator in this state on filing with a court in this state an application for appointment, an authenticated copy of letters of appointment in the other state, and an acceptance of appointment. Letters of conservatorship for the temporary conservator expire 28 days after the date of appointment.

(2) Within 14 days after appointment as temporary conservator under subsection (1), the conservator shall give notice to all interested persons of his or her appointment and the right to object to the appointment. On filing proof of service of the notice with the court, the temporary conservator shall be appointed full conservator and the court shall issue letters of conservatorship accordingly.

(3) If an objection is filed to a conservatorship under this section, the conservatorship continues unless a court in this state enters an order removing the conservator.

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate

*Jay E. Randall*

Clerk of the House of Representatives

Approved

Governor

**ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)**  
**Act 386 of 1998**

**700.5212 Court appointment of guardian of minor; qualifications; priority of minor's nominee.**

Sec. 5212. The court may appoint as guardian a person whose appointment serves the minor's welfare, including a professional guardian described in section 5106. If the minor is 14 years of age or older, the court shall appoint a person nominated by the minor, unless the court finds the appointment contrary to the minor's welfare.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 463, Eff. June 1, 2001.

**Popular name:** EPIC

**ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)**  
**Act 386 of 1998**

**700.5409 Appointment of conservator.**

Sec. 5409. (1) The court may appoint an individual, a corporation authorized to exercise fiduciary powers, or a professional conservator described in section 5106 to serve as conservator of a protected individual's estate. The following are entitled to consideration for appointment in the following order of priority:

(a) A conservator, guardian of property, or similar fiduciary appointed or recognized by the appropriate court of another jurisdiction in which the protected individual resides.

(b) An individual or corporation nominated by the protected individual if he or she is 14 years of age or older and of sufficient mental capacity to make an intelligent choice, including a nomination made in a durable power of attorney.

(c) The protected individual's spouse.

(d) An adult child of the protected individual.

(e) A parent of the protected individual or a person nominated by the will of a deceased parent.

(f) A relative of the protected individual with whom he or she has resided for more than 6 months before the petition is filed.

(g) A person nominated by the person who is caring for or paying benefits to the protected individual.

(h) If none of the persons listed in subdivisions (a) to (g) are suitable and willing to serve, any person that the court determines is suitable and willing to serve.

(2) A person named in subsection (1)(a), (c), (d), (e), or (f) may designate in writing a substitute to serve instead, and that designation transfers the priority to the substitute. If persons have equal priority, the court shall select the person the court considers best qualified to serve. Acting in the protected individual's best interest, the court may pass over a person having priority and appoint a person having a lower priority or no priority.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 463, Eff. June 1, 2001.

**Popular name:** EPIC

old 5313

**ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)**  
**Act 386 of 1998**

**700.5313 Guardian; qualifications.**

Sec. 5313. (1) The court may appoint a competent person as guardian of a legally incapacitated individual. The court shall not appoint as a guardian an agency, public or private, that financially benefits from directly providing housing, medical, mental health, or social services to the legally incapacitated individual. If the court determines that the ward's property needs protection, the court shall order the guardian to furnish a bond or shall include restrictions in the letters of guardianship as necessary to protect the property.

(2) In appointing a guardian under this section, the court shall appoint a person, if suitable and willing to serve, designated by the individual who is the subject of the petition, including a designation made in a durable power of attorney. If a specific designation is not made or a person designated is not suitable or willing to serve, the court may appoint as a guardian a person named as attorney-in-fact through a durable power of attorney.

(3) If a person is not designated under subsection (2) or a person designated under subsection (2) is not suitable or willing to serve, the court may appoint as a guardian an individual who is related to the individual who is the subject of the petition in the following order of preference:

(a) The legally incapacitated individual's spouse. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased spouse.

(b) An adult child of the legally incapacitated individual.

(c) A parent of the legally incapacitated individual. This subdivision shall be considered to include a person nominated by will or other writing signed by a deceased parent.

(d) A relative of the legally incapacitated individual with whom the individual has resided for more than 6 months before the filing of the petition.

(e) A person nominated by a person who is caring for the legally incapacitated individual or paying benefits to the legally incapacitated individual.

(4) If none of the persons as designated or listed in subsection (2) or (3) is suitable or willing to serve, the court may appoint any competent person who is suitable and willing to serve, including a professional guardian as provided in section 5106.

**History:** 1998, Act 386, Eff. Apr. 1, 2000;—Am. 2000, Act 54, Eff. Apr. 1, 2000;—Am. 2000, Act 312, Eff. Jan. 1, 2001;—Am. 2000, Act 463, Eff. June 1, 2001.

**Popular name:** EPIC

4

old 5433

**ESTATES AND PROTECTED INDIVIDUALS CODE (EXCERPT)**  
**Act 386 of 1998**

**700.5433 Foreign conservator; proof of authority; bond; powers.**

Sec. 5433. If a conservator has not been appointed in this state and a petition in a protective proceeding is not pending in this state, a conservator appointed in the state in which the protected individual resides may file in a court of this state, in a county in which property belonging to the protected individual is located, an authenticated copy of letters of appointment and of any bond. After the filing, the domiciliary foreign conservator may exercise as to property in this state all the powers of a conservator appointed in this state and may maintain an action or proceeding in this state subject to any conditions imposed upon nonresident parties generally.

**History:** 1998, Act 386, Eff. Apr. 1, 2000.

**Popular name:** EPIC

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**ATTACHMENT 7**

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## Prologue

Traditional terminology in courts has a three-way distinction. Michigan uses all three terms, but not in the traditional way. Traditionally,

- A court-appointed **attorney** acts as an attorney for purposes of all rules and statutes. That is, rules and statutes do not distinguish between an attorney privately hired to represent a person and an attorney appointed by a court. Courts do not appoint attorneys unless law compels them to. Although typically mediated through statutes, the rationale is that due process requirements compel the appointment of an attorney. I am not aware of a circumstance where Michigan laws compels appointments appointment of an attorney when constitutional due process concerns acting alone would not.
- A **guardian-ad-litem** represents the interests of a person. This may be in a situation where due process concerns do not require appointment of a court-appointed attorney. This may be found in juvenile matters, as in MCR 3.916. The rationale is that these hearings do not risk deprivation of a fundamental right or liberty, because juveniles lack legal capacity. Another situation is where a party lacks legal capacity but does not have a conservator. See MCR 2.201<sup>1</sup>. That rule covers civil actions<sup>2</sup> where the government itself is not seeking to deprive an individual of rights or liberties. Such individuals have fewer due process rights.
- A **visitor** is a person appointment by a court largely as a conduit. The visitor is a reporter and an investigator. The visitor may provide information from the court or to the court. The visitor may present reports to the court on what was found.

The ethical rules are different. Attorneys must be attorneys, of course. A guardian-ad-litem limited to the duties above is normally an attorney and must be one if duties including representing the person in court. If the duty is only to decide whether a settlement is in the person's best interest, there is nothing I am aware of that precludes a non-lawyer serving. Advice of this sort is not necessarily the

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<sup>1</sup> That rule is actually rather narrow. It seems to allow appointment of a GAL only for defendants, although (E)(4) may apply for plaintiffs whose incapacity arises after the onset of litigation. The rule is construed by the court of appeals in *Redding v Redding*, 214 Mich App 639, 543 NW2d 75 (1995). Note further that the rule is expressly limited to "proceedings [not] under chapter 5," which means that it does not apply to probate litigation, including guardianships and conservatorships.

<sup>2</sup> It may be possible to use MCR 5.121 in what was originally a non-probate proceeding. If the capacity of a party is questioned, the court's analysis in *Redding* is to have a review in probate court. Perhaps the probate court could resolve the issue by appointing a guardian ad litem rather than a conservator. MCR 5.121 says "the court may appoint a guardian ad litem to appear for and represent the interests of any person in any proceeding."

practice of law. A visitor need not be an attorney and there are good arguments about why social workers might be better at communicating with people with communicative challenges.

In terms of representation, an attorney is subject to all ethical and court rules. The attorney should counsel her client but has to defer to client wishes even if the attorney believes that they are detrimental to her client. Her only alternative is to seek to withdraw. All communications between an attorney and client are privileged. A visitor has a duty to accurately convey information to and from a court and a respondent in a hearing. There is no privilege and the visitor may convey information to the court that the respondent objects to. For example, the visitor may comment on behaviors that indicate a lack of capacity and may recommend to a court that protection is necessary although the respondent is vehemently opposed. Guardians ad litem occupy a middle ground. If the person objects strongly to what is proposed and the guardian ad litem believes that the proposal is really in the person's best interest a reasonable step is to inform the court that a conservator should be appointed and remind the person that she can object to the petition.

Michigan has taken some of the functions traditionally assigned to visitors and named the person who performs those functions *guardian ad litem*. For example, the Uniform Probate Code uses the term *visitor* in section 5305, which is very close otherwise to MCL § 700.5305. This has created considerable confusion. As noted above, a guardian ad litem traditionally represents the best interests of a person, while a visitor does not.

## Proposed Changes

### **700.5303 Court appointment of guardian of incapacitated person; petition; alternatives to appointment of full guardian; hearing.**

(1) An individual in his or her own behalf, or any person interested in the individual's welfare, may petition for a finding of incapacity and appointment of a guardian. The petition shall contain specific facts about the individual's condition and specific examples of the individual's recent conduct that demonstrate the need for a guardian's appointment.

(2) Before a petition is filed under this section, the court shall provide the person intending to file the petition with written information that sets forth alternatives to appointment of a full guardian, including, but not limited to, a limited guardian, conservator, patient advocate designation, do-not-resuscitate declaration, or durable power of attorney with or without limitations on purpose, authority, or time period, and an explanation of each alternative.

(3) Upon the filing of a petition under subsection (1), the court shall set a date for hearing on the issue of incapacity. Unless the allegedly incapacitated individual has legal counsel of his or her own choice, the court shall appoint ~~a guardian ad litem to represent the person in the proceeding~~ a visitor with duties provided under section 5305.

### **700.5305 ~~Guardian ad litem; Visitors; duties; compensation; legal counsel.~~**

(1) The duties of a ~~guardian ad litem~~ appointed ~~for~~ when an individual is alleged to be incapacitated include all of the following:

(a) Personally visiting the individual.

(b) Explaining to the individual the nature, purpose, and legal effects of a guardian's appointment.

(c) Explaining to the individual the hearing procedure and the individual's rights in the hearing procedure, including, but not limited to, the right to contest the petition, to request limits on the guardian's powers, to object to a particular person being appointed guardian, to be present at the hearing, to be represented by legal counsel, and to have legal counsel appointed for the individual if he or she is unable to afford legal counsel.

(d) Explaining to the individual that all costs associated with the hearing, including payments to attorneys, experts, and visitors, will normally be charged to the individual.

~~(d)~~ (e) Informing the individual of the name of each person known to be seeking appointment as guardian.

~~(e)~~ (f) Asking the individual and the petitioner about the amount of cash and property readily convertible into cash that is in the individual's estate.

~~(f)~~ (g) Making determinations, and informing the court of those determinations, on all of the following:

(i) Whether there are 1 or more appropriate alternatives to the appointment of a full guardian or whether 1 or more actions should be taken in addition to the appointment of a guardian. Before informing the court of his or her determination under this subparagraph, the ~~guardian ad litem~~ visitor shall consider the appropriateness of at least each of the following as alternatives or additional actions:

(A) Appointment of a limited guardian, including the specific powers and limitation on those powers the ~~guardian ad litem~~ visitor believes appropriate.

(B) Appointment of a conservator or another protective order under part 4 of this article. In the report informing the court of the determinations under this subdivision, the ~~guardian ad litem~~ visitor shall include an estimate of the amount of cash and property readily convertible into cash that is in the individual's estate.

(C) Execution of a patient advocate designation, do-not-resuscitate declaration, or durable power of attorney with or without limitations on purpose, authority, or duration.

(ii) Whether a disagreement or dispute related to the guardianship petition might be resolved through court ordered mediation.

(iii) Whether the individual wishes to be present at the hearing.

(iv) Whether the individual wishes to contest the petition.

(v) Whether the individual wishes limits placed on the guardian's powers.

(vi) Whether the individual objects to a particular person being appointed guardian.

(2) The court shall not order compensation of the ~~guardian ad litem~~ visitor unless the ~~guardian ad litem~~ visitor states on the record or in the visitor ~~guardian ad litem's~~ written report that he or she has complied with subsection (1).

(3) If the individual alleged to be incapacitated wishes to contest the petition, to have limits placed on the guardian's powers, or to object to a particular person being appointed guardian and if legal counsel has not been secured, the court shall appoint legal counsel to represent the individual alleged to be incapacitated. If the individual alleged to be incapacitated is indigent, the state shall bear the expense of legal counsel.

(4) If the individual alleged to be incapacitated requests legal counsel or the ~~guardian ad litem~~ visitor determines it is in the individual's best interest to have legal counsel, and if legal counsel has not been secured, the court shall appoint legal counsel. If the individual alleged to be incapacitated is indigent, the state shall bear the expense of legal counsel.

(5) If the individual alleged to be incapacitated has legal counsel appointed under subsection (3) or (4), the appointment of a ~~guardian ad litem~~ visitor terminates immediately and no reports to the courts will be made by the visitor.

**700.5306a Rights of individual for whom guardian is sought or appointed; form.**

(1) An individual for whom a guardian is sought or has been appointed under section 5306 has all of the following rights:

(a) To object to the appointment of a successor guardian by will or other writing, as provided in section 5301.

(b) To have the guardianship proceeding commenced and conducted in the place where the individual resides or is present or, if the individual is admitted to an institution by a court, in the county in which the court is located, as provided in section 5302.

(c) To petition on his or her own behalf for the appointment of a guardian, as provided in section 5303.

(d) To have legal counsel of his or her own choice, if suitable and willing to serve, represent him or her on the petition to appoint a guardian, as provided in sections 5303, 5304, and 5305.

~~(e) If he or she is not represented by legal counsel, to the appointment of a guardian ad litem to represent the individual on the petition to appoint a guardian, as provided in section 5303.~~

*Alternative A.*

(e) If he is or she is not represented by legal counsel, to the appointment of a visitor as provided in section 5303.

*Alternative B.*

(e) If he or she is not represented by legal counsel, to the appointment of a guardian ad litem to represent his or her interests.

(f) To an independent evaluation of his or her capacity by a physician or mental health professional, at public expense if he or she is indigent, as provided in section 5304.

(g) To be present at the hearing on the petition to appoint a guardian and to have all practical steps taken to ensure this, including, if necessary, moving the hearing site, as provided by section 5304.

(h) To see or hear all the evidence presented in the hearing on the petition to appoint a guardian, as provided in section 5304.

(i) To present evidence and cross-examine witnesses in the hearing on the petition to appoint a guardian, as provided in section 5304.

(j) To a trial by jury on the petition to appoint a guardian, as provided in section 5304.

(k) To a closed hearing on the petition to appoint a guardian, as provided in section 5304.

(l) If a ~~guardian ad litem~~ visitor is appointed, to be personally visited by the ~~guardian ad litem~~ visitor, as provided in section 5305.

(m) If a ~~guardian ad litem~~ visitor is appointed, to an explanation by the ~~guardian ad litem~~ visitor of the nature, purpose, and legal effects of a guardian's appointment, as provided in section 5305.

(n) If a ~~guardian ad litem~~ visitor is appointed, to an explanation by the ~~guardian ad litem~~ visitor of the individual's rights in the hearing procedure, as provided in section 5305.

(o) If a ~~guardian ad litem~~ visitor is appointed, to be informed by the ~~guardian ad litem~~ visitor of the right to contest the petition, to request limits on the guardian's powers, to object to a particular person being appointed guardian, to be present at the hearing, to be represented by legal counsel, and to have legal counsel appointed if the individual is unable to afford legal counsel, as provided in section 5305.

(p) To be informed of the name of each person known to be seeking appointment as guardian, including, if a ~~guardian ad litem~~ visitor is appointed, to be informed of the names by the ~~guardian ad litem~~ visitor as provided in section 5305.

- (q) To require that proof of incapacity and the need for a guardian be proven by clear and convincing evidence, as provided in section 5306.
- (r) To the limitation of the powers and period of time of a guardianship to only the amount and time that is necessary, as provided in section 5306.
- (s) To a guardianship designed to encourage the development of maximum self-reliance and independence as provided in section 5306.
- (t) To prevent the grant of powers to a guardian if those powers are already held by a valid patient advocate, as provided in section 5306.
- (u) To periodic review of the guardianship by the court, including the right to a hearing and the appointment of an attorney if issues arise upon the review of the guardianship, as provided in section 5309.
- (v) To, at any time, seek modification or termination of the guardianship by informal letter to the judge, as provided in section 5310.
- (w) To a hearing within 28 days of requesting a review, modification, or termination of the guardianship, as provided in section 5310.
- (x) To the same rights on a petition for modification or termination of the guardianship including the appointment of a visitor as apply to a petition for appointment of a guardian, as provided in section 5310.
- (y) To personal notice of a petition for appointment or removal of a guardian, as provided in section 5311.
- (z) To written notice of the nature, purpose, and legal effects of the appointment of a guardian, as provided in section 5311.
- (aa) To choose the person who will serve as guardian, if the chosen person is suitable and willing to serve, as provided in section 5313.
- (bb) To consult with the guardian about major decisions affecting the individual, if meaningful conversation is possible, as provided in section 5314.
- (cc) To quarterly visits by the guardian, as provided in section 5314.
- (dd) To have the guardian notify the court within 14 days of a change in the individual's residence, as provided in section 5314.

(ee) To have the guardian secure services to restore the individual to the best possible state of mental and physical well-being so that the individual can return to self-management at the earliest possible time, as provided in section 5314.

(ff) To have the guardian take reasonable care of the individual's clothing, furniture, vehicles, and other personal effects, as provided in section 5314.

(2) A ~~guardian ad litem~~ visitor shall inform the ward in writing of his or her rights enumerated in this section. The state court administrative office and the office of services to the aging created in section 5 of the older Michiganians act, 1981 PA 180, MCL 400.585, shall promulgate a form to be used to give the written notice under this section, which shall include space for the court to include information on how to contact the court or other relevant personnel with respect to the rights enumerated in this section.

#### **700.5319 Appointment of conservator or protective order; report of amount of additional cash or property.**

(1) If the court determines that financial protection is required for the ward, the court may order the guardian to petition for the appointment of a conservator or for another protective order under part 4 of this article in relation to the ward's estate.

(2) If a conservator has not been appointed for a ward's estate and the guardian determines that there is more cash or property that is readily convertible into cash in the ward's estate than was estimated by the ~~guardian ad litem~~ visitor and reported to the court, the guardian shall report the amount of the additional cash or property to the court.

#### **700.5406 Procedure concerning hearing and order on original petition.**

(1) Upon receipt of a petition for a conservator's appointment or another protective order because of minority, the court shall set a date for hearing. If, at any time in the proceeding, the court determines that the minor's interests are or may be inadequately represented, the court may appoint an attorney to represent the minor, giving consideration to the minor's choice if 14 years of age or older. An attorney appointed by the court to represent a minor has the powers and duties of a guardian ad litem.

~~(2) Upon receipt of a petition for a conservator's appointment or another protective order for a reason other than minority, the court shall set a date for hearing. Unless the individual to be protected has chosen counsel, or is mentally competent but aged or physically infirm, the court shall appoint a guardian ad litem to represent the person in the proceeding. If the alleged disability is mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication, the court may direct that the individual alleged to need protection be~~

~~examined by a physician or mental health professional appointed by the court, preferably a physician or mental health professional who is not connected with an institution in which the individual is a patient or is detained. The individual alleged to need protection has the right to secure an independent evaluation at his or her own expense. The court may send a visitor to interview the individual to be protected. The visitor may be a guardian ad litem or a court officer or employee.~~

#### *Alternative A*

(2) Upon receipt of a petition for a conservator's appointment or another protective order for a reason other than minority, the court shall set a date for hearing. Unless the individual to be protected has chosen counsel, or is mentally competent but aged or physically infirm, the court shall appoint a guardian ad litem to represent the person in the proceeding. If the alleged disability is mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication, the court may direct that the individual alleged to need protection be examined by a physician or mental health professional appointed by the court, preferably a physician or mental health professional who is not connected with an institution in which the individual is a patient or is detained. The individual alleged to need protection has the right to secure an independent evaluation at his or her own expense. The court may send a visitor to interview the individual to be protected. ~~The visitor may be a guardian ad litem or a court officer or employee.~~

#### *Alternative B*

(2) Upon receipt of a petition for a conservator's appointment or another protective order for a reason other than minority, the court shall set a date for hearing. ~~Unless the individual to be protected has chosen counsel, or is mentally competent but aged or physically infirm, the court shall appoint a guardian ad litem to represent the person in the proceeding.~~ If the alleged disability is mental illness, mental deficiency, physical illness or disability, chronic use of drugs, or chronic intoxication, the court may direct that the individual alleged to need protection be examined by a physician or mental health professional appointed by the court, preferably a physician or mental health professional who is not connected with an institution in which the individual is a patient or is detained. The individual alleged to need protection has the right to secure an independent evaluation at his or her own expense. The court ~~may~~ must send a visitor to interview the individual to be protected unless the individual to be protected has chosen counsel or is mentally competent but aged or physically infirm and may, in its discretion, appoint such a visitor in other situations. ~~The visitor may be a guardian ad litem or a court officer or employee.~~

(3) The court may utilize, as an additional visitor, the service of a public or charitable agency to evaluate the condition of the individual to be protected and make appropriate recommendations to the court.

(4) A ~~guardian ad litem~~, physician, mental health professional, or visitor appointed under this section who meets with, examines, or evaluates an individual who is the subject of a petition in a protective proceeding shall do all of the following:

(a) Consider whether there is an appropriate alternative to a conservatorship.

(b) If a conservatorship is appropriate, consider the desirability of limiting the scope and duration of the conservator's authority.

(c) Report to the court based on the considerations required in subdivisions (a) and (b).

(5) The individual to be protected is entitled to be present at the hearing in person. If the individual wishes to be present at the hearing, all practical steps must be taken to ensure the individual's presence including, if necessary, moving the site of the hearing. The individual is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including a court-appointed physician or other qualified person and a visitor, and to trial by jury. The issue may be determined at a closed hearing or without a jury if the individual to be protected or counsel for the individual so requests.

(6) Any person may request for permission to participate in the proceeding, and the court may grant the request, with or without hearing, upon determining that the best interest of the individual to be protected will be served by granting the request. The court may attach appropriate conditions to the permission.

(7) After hearing, upon finding that a basis for a conservator's appointment or another protective order is established by clear and convincing evidence, the court shall make the appointment or other appropriate protective order.

#### **Rule 5.121 Guardian Ad Litem; Visitor**

(A) Appointment.

(1) Guardian Ad Litem. The court shall appoint a guardian ad litem when required by law. If it deems necessary, the court may appoint a guardian ad litem to appear for and represent the interests of any person in any proceeding. The court shall state the purpose of the appointment in the order of appointment. The order may be entered with or without notice.

(2) Visitor. The court may appoint a visitor when authorized by law.

(B) Revocation. If it deems necessary, the court may revoke the appointment and appoint another guardian ad litem or visitor.

(C) Duties. Before the date set for hearing, the guardian ad litem or visitor shall conduct an investigation and shall make a report in open court or file a written report of the investigation and recommendations. The guardian ad litem or visitor need not appear personally at the hearing unless required by law or directed by the court. Any written report must be filed with the court at least 24 hours before the hearing or such other time specified by the court.

(D) Evidence.

(1) Reports, Admission Into Evidence. Oral and written reports of a guardian ad litem or visitor may be received by the court and may be relied on to the extent of their probative value, even though such evidence may not be admissible under the Michigan Rules of Evidence.

(2) Reports, Review and Cross-Examination.

(a) Any interested person shall be afforded an opportunity to examine and controvert reports received into evidence.

(b) The person who is the subject of a report received under subrule (D)(1) shall be permitted to cross-examine the individual making the report if the person requests such an opportunity.

(c) Other interested persons may cross-examine the individual making a report on the contents of the report, if the individual is reasonably available. The court may limit cross-examination for good cause.

(E) Attorney-Client Privilege.

(1) During Appointment of Guardian Ad Litem. When the guardian ad litem appointed to represent the interest of a person is an attorney, that appointment does not create an attorney-client relationship. Communications between that person and the guardian ad litem are not subject to the attorney-client privilege. The guardian ad litem must inform the person whose interests are represented of this lack of privilege as soon as practicable after appointment. The guardian ad litem may report or testify about any communication with the person whose interests are represented.

(2) Later Appointment as Attorney. If the appointment of the guardian ad litem or visitor is terminated and the same individual is appointed attorney, the appointment as attorney creates an attorney-client relationship. The attorney-client privilege relates back to the date of the appointment of the guardian ad litem or visitor.

## **GOVERNMENTAL LIABILITY FOR NEGLIGENCE (EXCERPT)**

Act 170 of 1964

**691.1407 Immunity from tort liability; intentional torts; immunity of judge, legislator, official, and guardian ad litem; definitions.**

(1) Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function. Except as otherwise provided in this act, this act does not

modify or restrict the immunity of the state from tort liability as it existed before July 1, 1965, which immunity is affirmed.

(2) Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency, each volunteer acting on behalf of a governmental agency, and each member of a board, council, commission, or statutorily created task force of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service or caused by the volunteer while acting on behalf of a governmental agency if all of the following are met:

(a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.

(b) The governmental agency is engaged in the exercise or discharge of a governmental function.

(c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

(3) Subsection (2) does not alter the law of intentional torts as it existed before July 7, 1986.

(4) This act does not grant immunity to a governmental agency or an employee or agent of a governmental agency with respect to providing medical care or treatment to a patient, except medical care or treatment provided to a patient in a hospital owned or operated by the department of community health or a hospital owned or operated by the department of corrections and except care or treatment provided by an uncompensated search and rescue operation medical assistant or tactical operation medical assistant.

(5) A judge, a legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority.

(6) A guardian ad litem or visitor is immune from civil liability for an injury to a person or damage to property if he or she is acting within the scope of his or her authority as guardian ad litem or visitor. This subsection applies to actions filed before, on, or after May 1, 1996.

(7) As used in this section:

(a) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

(b) "Search and rescue operation" means an action by a governmental agency to search for, rescue, or recover victims of a natural or manmade disaster, accident, or emergency on land or water.

(c) "Search and rescue operation medical assistant" means an individual licensed to practice 1 or more of the occupations listed in subdivision (e), acting within the scope of the license, and assisting a governmental agency in a search and rescue operation.

(d) "Tactical operation" means a coordinated, planned action by a special operations, weapons, or response team of a law enforcement agency that is 1 of the following:

(i) Taken to deal with imminent violence, a riot, an act of terrorism, or a similar civic emergency.

(ii) The entry into a building, area, watercraft, aircraft, land vehicle, or body of water to seize evidence, or to arrest an individual for a felony, under the authority of a warrant issued by a court.

(iii) Training for the team.

(e) "Tactical operation medical assistant" means an individual licensed to practice 1 or more of the following, acting within the scope of the license, and assisting law enforcement officers while they are engaged in a tactical operation:

(i) Medicine, osteopathic medicine and surgery, or as a registered professional nurse, under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(ii) As an emergency medical technician, emergency medical technician specialist, or paramedic under part 209 of the public health code, 1978 PA 368, MCL 333.20901 to 333.20979.

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**ATTACHMENT 8**

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## HOUSE BILL No. 4013

On January 22, 2013 the legislation on Pooled Account Trusts was re-introduced by Rep. Heise (R-Plymouth) and was referred to the newly created House Financial Liability Reform Committee chaired by Rep. Earl Poleski (R-Jackson).

The bill will amend section 106 of "The Social Welfare Act". Section 106A describes the subrogation right of the State to recover medical costs paid from State funds when people who have sustained injuries and file suit. Amendments to this section are refining language without substantive changes.

Section 106B establishes the use of a pooled special needs trust in the State of Michigan. 42 USC §1396(p)(D)(4), subparagraph (c) describes the elements of a pooled special needs trust. There is no requirement that the person with a disability be under age 65 unlike the Self-Settled (D)(4)(a) Special Needs Trust. The pending bill will help resolve a continuing problem for individuals, who are over the age of 64, attempting to create and fund a pooled trust account.

A pooled trust is an arrangement with a non-profit organization to administer assets of people with disabilities. The Michigan Department of Human Services (DHS), implemented the federal statute through BEM 401, called an Exception B trust. Historically, the Department of Human Services allowed the transfer of assets into a pooled special needs trust without regard to age or imposing a penalty (period of disqualification) on such transfer. However, within the last few years a penalty on such transfers has been imposed. As a result, many appeals and even litigation has ensued. The passage of 4013 would eliminate these appeals and sources of litigation as the State would definitively set forth statutory guidance to state agencies and the judiciary.

Currently 17 states allow transfers to pooled account trust for a person over the age of 64 to occur without a penalty.

The pooled trust allows for the blend of public benefit programs and private dollars which result in an increased quality of life for persons with disabilities.

# HOUSE BILL No. 4013

January 22, 2013, Introduced by Rep. Heise and referred to the Committee on Financial Liability Reform.

A bill to amend 1939 PA 280, entitled  
"The social welfare act,"  
by amending section 106 (MCL 400.106), as amended by 2006 PA 144,  
and by adding section 106b.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 106. (1) A medically indigent individual is defined as:

2       (a) An individual receiving family independence program  
3 benefits or an individual receiving supplemental security income  
4 under title XVI or state supplementation under title XVI subject to  
5 limitations imposed by the director according to title XIX.

6       (b) Except as provided in section 106a, an individual who  
7 meets all of the following conditions:

8       (i) The individual has applied in the manner the ~~family~~  
9 ~~independence agency~~ **DEPARTMENT** prescribes.

1           (ii) The individual's need for the type of medical assistance  
2 available under this act for which the individual applied has been  
3 professionally established and payment for it is not available  
4 through the legal obligation of a public or private contractor to  
5 pay or provide for the care without regard to the income or  
6 resources of the patient. The state department is subrogated to any  
7 right of recovery that a patient may have for the cost of  
8 hospitalization, pharmaceutical services, physician services,  
9 nursing services, and other medical services not to exceed the  
10 amount of ~~unds~~**MONEY** expended by the state department for the care  
11 and treatment of the patient. The patient or other person acting in  
12 the patient's behalf shall execute and deliver an assignment of  
13 claim or other authorizations as necessary to secure the right of  
14 recovery to the department. A payment may be withheld under this  
15 act for medical assistance for an injury or disability for which  
16 the individual is entitled to medical care or reimbursement for the  
17 cost of medical care under sections 3101 to 3179 of the insurance  
18 code of 1956, 1956 PA 218, MCL 500.3101 to 500.3179, or under  
19 another policy of insurance providing medical or hospital benefits,  
20 or both, for the individual unless the individual's entitlement to  
21 that medical care or reimbursement is at issue. If a payment is  
22 made, the state department, to enforce its subrogation right, may  
23 do either of the following: (a) intervene or join in an action or  
24 proceeding brought by the injured, diseased, or disabled  
25 individual, the individual's guardian, personal representative,  
26 estate, dependents, or survivors, against ~~the~~**A** third person who  
27 may be liable for the injury, disease, or disability, or against

1 contractors, public or private, who may be liable to pay or provide  
2 medical care and services rendered to an injured, diseased, or  
3 disabled individual; (b) institute and prosecute a legal proceeding  
4 against a third person who may be liable for the injury, disease,  
5 or disability, or against contractors, public or private, who may  
6 be liable to pay or provide medical care and services rendered to  
7 an injured, diseased, or disabled individual, in state or federal  
8 court, either alone or in conjunction with the injured, diseased,  
9 or disabled individual, the individual's guardian, personal  
10 representative, estate, dependents, or survivors. The state  
11 department may institute the proceedings in its own name or in the  
12 name of the injured, diseased, or disabled individual, the  
13 individual's guardian, personal representative, estate, dependents,  
14 or survivors. As provided in section 6023 of the revised judicature  
15 act of 1961, 1961 PA 236, MCL 600.6023, the state department, in  
16 enforcing its subrogation right, shall not satisfy a judgment  
17 against the third person's property that is exempt from levy and  
18 sale. The injured, diseased, or disabled individual may proceed in  
19 his or her own name, collecting the costs without the necessity of  
20 joining the state department or ~~the~~**THIS** state as a named party.  
21 The injured, diseased, or disabled individual shall notify the  
22 state department of the action or proceeding entered into upon  
23 commencement of the action or proceeding. An action taken by ~~the~~  
24 **THIS** state or the state department in connection with the right of  
25 recovery afforded by this section does not deny the injured,  
26 diseased, or disabled individual any part of the recovery beyond  
27 the costs expended on the individual's behalf by the state

1 department. The costs of legal action initiated by ~~the~~**THIS** state  
2 shall be paid by ~~the~~**THIS** state. A payment shall not be made under  
3 this act for medical assistance for an injury, disease, or  
4 disability for which the individual is entitled to medical care or  
5 the cost of medical care under the worker's disability compensation  
6 act of 1969, 1969 PA 317, MCL 418.101 to 418.941; except that  
7 payment may be made if an appropriate application for medical care  
8 or the cost of the medical care has been made under the worker's  
9 disability compensation act of 1969, 1969 PA 317, MCL 418.101 to  
10 418.941, entitlement has not been finally determined, and an  
11 arrangement satisfactory to the state department has been made for  
12 reimbursement if the claim under the worker's disability  
13 compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941, is  
14 finally sustained.

15 (iii) The individual has an annual income that is below, or  
16 subject to limitations imposed by the director and because of  
17 medical expenses falls below, the protected basic maintenance  
18 level. The protected basic maintenance level for 1-person and 2-  
19 person families shall be at least 100% of the payment standards  
20 generally used to determine eligibility in the family independence  
21 program. For families of 3 or more persons, the protected basic  
22 maintenance level shall be at least 100% of the payment standard  
23 generally used to determine eligibility in the family independence  
24 program. These levels shall recognize regional variations and shall  
25 not exceed 133-1/3% of the payment standard generally used to  
26 determine eligibility in the family independence program. **FOR**  
27 **PURPOSES OF THIS SUBPARAGRAPH, ANNUAL INCOME DOES NOT INCLUDE**

1 **INCOME ASSIGNED TO A POOLED TRUST DESCRIBED IN SECTION 106B.**

2 (iv) The individual, if a family independence program related  
3 individual and living alone, has liquid or marketable assets of not  
4 more than \$2,000.00 in value, or, if a 2-person family, the family  
5 has liquid or marketable assets of not more than \$3,000.00 in  
6 value. The state department shall establish comparable liquid or  
7 marketable asset amounts for larger family groups. Excluded in  
8 making the determination of the value of liquid or marketable  
9 assets are the values of: the homestead; clothing; household  
10 effects; \$1,000.00 of cash surrender value of life insurance,  
11 except that if the **INSURED'S** health ~~of the insured~~ makes  
12 ~~continuance of~~ **CONTINUING** the insurance desirable, the entire cash  
13 surrender value of life insurance is excluded from consideration,  
14 up to the maximum provided or allowed by federal regulations and in  
15 accordance with state department rules; the fair market value of  
16 tangible personal property used in earning income; an amount paid  
17 as judgment or settlement for damages suffered as a result of  
18 exposure to agent orange, as defined in section 5701 of the public  
19 health code, 1978 PA 368, MCL 333.5701; ~~and~~ a space or plot  
20 purchased for the purposes of burial for the person; **AND ASSETS,**  
21 **WITHOUT REGARD TO VALUE, HELD BY, OR TRANSFERRED TO, A TRUSTEE OF A**  
22 **POOLED TRUST AS DESCRIBED IN SECTION 106B FOR THE BENEFIT OF THE**  
23 **INDIVIDUAL.** For individuals related to the title XVI program, the  
24 appropriate resource levels and property exemptions specified in  
25 title XVI shall be used.

26 (v) The individual is not an inmate of a public institution  
27 except as a patient in a medical institution.

1           (vi) The individual meets the eligibility standards for  
2 supplemental security income under title XVI or for state  
3 supplementation under the act, subject to limitations imposed by  
4 the director according to title XIX; or meets the eligibility  
5 standards for family independence program benefits; or meets the  
6 eligibility standards for optional eligibility groups under title  
7 XIX, subject to limitations imposed by the director according to  
8 title XIX.

9           (2) As used in this act:

10           (a) "Medicaid contracted health plan" means a managed care  
11 organization with whom the state department contracts to provide or  
12 arrange for the delivery of comprehensive health care services as  
13 authorized under this act.

14           (b) "Medical institution" means a state licensed or approved  
15 hospital, nursing home, medical care facility, psychiatric  
16 hospital, or other facility or identifiable unit of a listed  
17 institution certified as meeting established standards for a  
18 nursing home or hospital in accordance with the laws of this state.

19           (c) "Title XVI" means title XVI of the social security act, 42  
20 USC 1381 to ~~1382j~~ and ~~1383~~ to ~~1383f~~. **1385.**

21           (3) An individual receiving medical assistance under this act  
22 or his or her legal counsel shall notify the state department when  
23 filing an action in which the state department may have a right to  
24 recover expenses paid under this act. If the individual is enrolled  
25 in a medicaid contracted health plan, the individual or his or her  
26 legal counsel shall provide notice to the medicaid contracted  
27 health plan in addition to providing notice to the state

1 department.

2 (4) If a legal action in which the state department, a  
3 medicaid contracted health plan, or both ~~has~~**HAVE** a right to  
4 recover expenses paid under this act is filed and settled after  
5 November 29, 2004 without notice to the state department or the  
6 medicaid contracted health plan, the state department or the  
7 medicaid contracted health plan may file a legal action against the  
8 individual or his or her legal counsel, or both, to recover  
9 expenses paid under this act. The attorney general shall recover  
10 any cost or attorney fees associated with a recovery under this  
11 subsection.

12 (5) The state department has first priority against the  
13 proceeds of the net recovery from the settlement or judgment in an  
14 action settled in which notice has been provided under subsection  
15 (3). A medicaid contracted health plan has priority immediately  
16 after the state department in an action settled in which notice has  
17 been provided under subsection (3). The state department and a  
18 medicaid contracted health plan shall recover the full cost of  
19 expenses paid under this act unless the state department or the  
20 medicaid contracted health plan agrees to accept an amount less  
21 than the full amount. If the individual would recover less against  
22 the proceeds of the net recovery than the expenses paid under this  
23 act, the state department or medicaid contracted health plan, and  
24 the individual shall share equally in the proceeds of the net  
25 recovery. As used in this subsection, "net recovery" means the  
26 total settlement or judgment less the costs and fees incurred by or  
27 on behalf of the individual who obtains the settlement or judgment.

1           SEC. 106B. (1) THE STATE DEPARTMENT SHALL ESTABLISH RULES,  
2 REGULATIONS, AND POLICIES THAT ARE IN COMPLIANCE WITH, AND NOT MORE  
3 RESTRICTIVE THAN, EXISTING FEDERAL LAW, REGULATIONS, AND POLICIES  
4 WITH REGARD TO THE TREATMENT OF A POOLED TRUST DESCRIBED IN THIS  
5 SECTION.

6           (2) THE STATE DEPARTMENT SHALL NOT IMPOSE A PENALTY ON AN  
7 INDIVIDUAL, OR DELAY ELIGIBILITY FOR MEDICAL ASSISTANCE, FOR  
8 ENTERING INTO A JOINDER AGREEMENT, TRANSFERRING ASSETS TO A POOLED  
9 TRUST, OR BOTH.

10           (3) A JOINDER AGREEMENT MAY BE ENTERED INTO BY A DISABLED  
11 INDIVIDUAL OF ANY AGE, OR ON BEHALF OF A DISABLED INDIVIDUAL, BY  
12 ANY OF THE FOLLOWING:

13           (A) WITH THE PERMISSION OR CONSENT, OR BOTH, OF THE DISABLED  
14 INDIVIDUAL, A PARENT.

15           (B) WITH THE PERMISSION OR CONSENT, OR BOTH, OF THE DISABLED  
16 INDIVIDUAL, A GRANDPARENT.

17           (C) A GUARDIAN.

18           (D) A CONSERVATOR.

19           (E) A COURT.

20           (F) A PERSON NAMED AS ATTORNEY-IN-FACT THROUGH A DURABLE POWER  
21 OF ATTORNEY THAT AUTHORIZES THE ATTORNEY-IN-FACT TO ENTER INTO A  
22 JOINDER AGREEMENT OR SIMILAR AGREEMENT.

23           (4) AS USED IN THIS SECTION:

24           (A) "BENEFICIARY" MEANS A DISABLED INDIVIDUAL WHO HAS THE  
25 RIGHT TO RECEIVE SERVICES AND BENEFITS OF A POOLED TRUST.

26           (B) "DISABILITY" MEANS A PHYSICAL OR MENTAL IMPAIRMENT AS  
27 DESCRIBED IN SECTION 1614 OF THE SOCIAL SECURITY ACT, 42 USC 1382C.

1 (C) "DISABLED INDIVIDUAL" MEANS AN INDIVIDUAL WITH A  
2 DISABILITY.

3 (D) "JOINDER AGREEMENT" MEANS AN AGREEMENT BETWEEN A TRUSTEE  
4 AND A BENEFICIARY THAT CONTAINS THE TERMS AND CONDITIONS OF THE  
5 RELATIONSHIP BETWEEN THE TRUSTEE AND THE BENEFICIARY.

6 (E) "POOLED TRUST" MEANS A TRUST THAT MEETS ALL OF THE  
7 FOLLOWING CRITERIA:

8 (i) THE TRUSTEE MAINTAINS AN ACCOUNT FOR EACH BENEFICIARY.

9 (ii) THE TRUSTEE POOLS ACCOUNTS FOR PURPOSES OF INVESTMENT AND  
10 MANAGEMENT OF FUNDS.

11 (iii) THE TRUSTEE USES FUNDS IN THE BENEFICIARY'S ACCOUNT FOR  
12 THE SOLE BENEFIT OF THE BENEFICIARY.

13 (iv) UPON THE DEATH OF A BENEFICIARY, THE TRUSTEE MAY RETAIN  
14 ASSETS THAT REMAIN IN THE BENEFICIARY'S ACCOUNT, WITHOUT LIMIT TO  
15 DOLLAR AMOUNT, IN THE POOLED TRUST. WITH RESPECT TO ASSETS THAT  
16 REMAIN IN THE BENEFICIARY'S ACCOUNT AND THAT ARE NOT RETAINED BY  
17 THE TRUST, THE TRUSTEE SHALL REIMBURSE THIS STATE IN AN AMOUNT  
18 EQUAL TO THE TOTAL AMOUNT OF MEDICAL ASSISTANCE PAID BY THIS STATE  
19 ON BEHALF OF THE BENEFICIARY BEFORE DISTRIBUTING THOSE ASSETS TO  
20 OTHER INDIVIDUALS OR USING THOSE ASSETS FOR ANY OTHER PURPOSE.

21 (F) "TRUSTEE" MEANS A NONPROFIT ORGANIZATION THAT MANAGES A  
22 POOLED TRUST. A DETERMINATION OF THE INTERNAL REVENUE SERVICE, THE  
23 DEPARTMENT OF TREASURY, OR BOTH, REGARDING THE NONPROFIT STATUS OF  
24 AN ORGANIZATION OPERATING A POOLED TRUST IS SUFFICIENT TO SATISFY  
25 THE NONPROFIT REQUIREMENT OF 42 USC 1396P(D)(4)(C).