



Filing a Guardianship/Conservatorship Action

- A. Summons and Dual Petition for Appointment of Guardian and Conservator** (Form #520GC--- to make both healthcare and financial Decisions)
- B. Notice of Right to Counsel** (Form #524GC)
- C. Examiner's Report & Affidavit Regarding Capacity**
(Form #539GC--- will need 2 – from different examiners)
- D. Applicant's Credit Report.**
- E. Applicant's Criminal Background Check**
(which is a SLED check for S.C residents or a check from the state of residence for out-of-state residents)
- F. Filing fee of \$150.00.**

**Chester County Probate Court
1476 J A Cochran Bypass
P O Box 580
Chester, SC 29706
803-385-2604**

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE MATTER OF:

Decedent Alleged Incapacitated Individual

PROBATE COURT USE ONLY
--

IN THE PROBATE COURT
CASE NUMBER _____

vs. Petitioner(s),

SUMMONS

Respondent(s).*

*For Guardianship/Conservatorship matters, you must include the alleged incapacitated individual as a Respondent.

TO THE RESPONDENT(S) LISTED ABOVE:

YOU ARE HEREBY SUMMONED and required to Answer the Petition in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the Petitioner(s) listed above at the following address(es):

Please Type or Print.

(Name of Petitioner/Attorney for Petitioner)

(Street Address or Mailing Address)

(City, State, and Zip Code)

Your Answer must be served on the Petitioner at the above address within **thirty (30) days** after the service of this Summons and Petition upon you, exclusive of the day of such service; and if you fail to answer the Petition within that time, judgment by default will be rendered against you for the relief demanded in the Petition.

Signature of Petitioner(s)/Attorney for Petitioner(s)

Date:

Case Number: _____

**INSTRUCTION SHEET FOR FORM #520GC
DUAL PETITION FOR APPOINTMENT OF GUARDIAN AND CONSERVATOR (FOR ADULT)**

This Dual Petition is intended to be used when a Petitioner is seeking the appointment of both a Guardian and Conservator for an alleged incapacitated individual (A.I.I.). The following actions may be requested and considered with the filing of the attached Petition:

- **Finding of Incapacity**
 - The Petitioner may be seeking to have the A.I.I. found to be incapacitated for the purpose of a protective proceeding, appointment of a Guardian, appointment of a Conservator, or the appointment of both a Guardian and a Conservator. This is determined by the court based on a physician's examination and report and other relevant evidence. Generally, if there is no finding of incapacity, the court will not be able to proceed with any other action regarding the person who is alleged to be incapacitated.
- **If authority is needed to manage financial affairs, please read below for available options and check the appropriate box(es) in the Petition:**
 - **PROTECTIVE ORDER** - Can be used to establish incapacity, allow for appointment of a Special Conservator, establish a Special Needs Trust, or to have a Durable Power of Attorney for business and/or financial affairs ratified by the Court.
 - **APPOINTMENT OF SPECIAL CONSERVATOR** - Can be used to request appointment of an individual or professional fiduciary to complete specific tasks within a specific period of time.
 - **APPOINTMENT OF CONSERVATOR (including appointment on an EMERGENCY OR TEMPORARY basis; see Forms #512GC and #513GC)** - Can be used to request permanent appointment of an individual or professional fiduciary and, if needed, appointment of a Conservator on a temporary basis before the permanent appointment can be made.
 - **APPOINTMENT OF SUCCESSOR CONSERVATOR** - Can be used to request appointment of a successor to the permanent Conservator.
- **If authority is needed to make decisions regarding the physical person of an individual and his/her health care, please read below for available options and check the appropriate box in the Petition:**
 - **APPOINTMENT OF GUARDIAN (including appointment on an EMERGENCY or TEMPORARY basis; see Forms #512GC and #513GC)** – Can be used to request permanent appointment of an individual or professional guardian and, if needed, appointment of a guardian on a temporary basis before the permanent appointment can be made.
 - **APPOINTMENT OF SUCCESSOR GUARDIAN** – Can be used to request appointment of a successor to the permanent guardian.
 - **IF NOMINATED TO SERVE IN A WILL** - Based on the facts of the case and the filings of the parties, pursuant to S.C. Code Ann. § 62-1-100, it is within the court's discretion to determine whether a testamentary guardian designation in the Will of a parent or spouse prior to January 1, 2019, the effective date of the revisions to Article 5 of the S.C. Probate Code, will fall under the processes and procedures of the 1987 Code or under the processes and procedures enacted by the 2017 amendments. (See S.C. Code Ann. § 62-5-301 of the 1987 Code versus the changes to S.C. Code Ann. § 62-5-301 enacted by the 2017 amendments.)
- **Rights and Powers of the Alleged Incapacitated Individual**
 - S.C. Code Ann. §§ 62-5-303(B)(7) and 62-5-403(B)(7) require that the Petitioner must indicate in this Petition what rights the court is being asked to remove from the A.I.I. Those rights are stated in S.C. Code Ann. §§ 62-5-304A and 62-5-407(B). The burden of proof will be on the Petitioner to show why certain rights should be removed.
 - If the A.I.I. is found to be incapacitated based on mental illness, "mental deficiency," "mental defect," or an impairment other than solely a physical impairment or disability, the probate court is required to report the name of the incapacitated individual to the S.C. State Law Enforcement Division (SLED), pursuant to S.C. Code Ann. § 23-31-1020. **He or she will not be allowed to purchase, possess, or have access to firearms or ammunition, pursuant to S.C. Code Ann. § 23-31-1040(A).**

Case Number: _____

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

IN THE MATTER OF:

_____,
an alleged incapacitated individual.

<p>IN THE PROBATE COURT CASE NUMBER _____</p>

Petitioner(s),
vs.

Respondent(s).*

*You must include the alleged incapacitated individual (A.I.I.) as a Respondent.

PETITION FOR *(check all that apply):*

1. FINDING OF INCAPACITY
2. If authority is needed to manage financial affairs, see below and check the appropriate box(es):
 - PROTECTIVE ORDER
 - APPOINTMENT OF SPECIAL CONSERVATOR
 - APPOINTMENT OF CONSERVATOR
 - APPOINTMENT OF TEMPORARY or LIMITED CONSERVATOR
 - APPOINTMENT OF SUCCESSOR CONSERVATOR
3. If authority is needed to make decisions regarding the physical person of an individual and his/her health care, see below and check the appropriate box:
 - APPOINTMENT OF GUARDIAN
 - APPOINTMENT OF TEMPORARY GUARDIAN
 - APPOINTMENT OF SUCCESSOR GUARDIAN

4. ALL PETITIONERS MUST COMPLETE THIS SECTION.

A. Petitioner(s):
Relationship to the A.I.I., if any, or interest in this proceeding:

B. Information about A.I.I.

Name: _____ Age: _____

Date of Birth: _____

Last 4 digits of Social Security Number: XXX-XX-_____

Address: _____

City/State/Zip: _____

Telephone: (Preferred): _____ (Secondary): _____

Email: _____

The address provided for the A.I.I. is his/her: Home a Facility Other (please specify)

Case Number: _____

C. Existing legal documents and/or legal appointments relating to the A.I.I.

To my knowledge, the A.I.I.:

- Does have Does not have a Will
- Does have Does not have a General Durable Power of Attorney (POA)
- Does have Does not have a Health Care POA
- Does have Does not have a Living Will
- Does have Does not have a Guardian
- Does have Does not have a Conservator or Trustee

If the A.I.I. does have any of the above-named documents, copies must be provided with this Petition or an explanation provided as to why the document is not available.

D. Jurisdiction:

The A.I.I. has been physically present in South Carolina for the six (6) month period immediately preceding the filing of this Petition or for at least six (6) consecutive months ending within the six (6) month period immediately preceding the filing of this Petition.

If the A.I.I. has not been physically present in South Carolina for the period of time described above, explain what connections the A.I.I. has to South Carolina. Please refer to S.C. Code Ann. §§ 62-5-700 through 62-5-711.

E. Venue. Venue for this proceeding is proper in this county because the A.I.I. (*check all that apply*):

- resides in this county and has resided in this county for more than six (6) months;
- resides in this county (this is his/her county of residence);
- is physically present in this county at this time;
- is admitted to an institution in this county pursuant to an order of a court of competent jurisdiction, but this is not the county of residence;
- does not reside in this state but owns real or personal property in this county; or
- does not reside in this state but has the right to take legal action in this county (a copy of the pleadings will be required).

If the A.I.I. has not resided in this county for the six (6) months preceding this action, state the address where the A.I.I. did reside or where he/she is currently residing:

F. Information about family of the A.I.I. – You must provide information about the spouse and any children of the A.I.I.; if there is no spouse or adult children, then list his/her parents. If no parents are living, then list the closest adult relative(s).

****Spouse:**

Address:

City/State/Zip:

Telephone: (Preferred): (Secondary):

Email:

****If deceased, a certified death certificate is required.**

Children of A.I.I.:

Name	Address	Year of Birth
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Case Number: _____

(IF REQUIRED) Living Parents of A.I.I.:

Name _____ Address _____

(IF REQUIRED) Closest Living Adult Relative(s) of A.I.I. – use additional paper if needed:

Adult Relative:

Address:

City/State/Zip:

Telephone: (Preferred): _____ (Secondary): _____

Email:

G. Information about any other interested parties such as a Guardian, Conservator, Trustee, representative payee, agent under a general durable power of attorney, or a health care agent under a health care power of attorney.

Name _____ Address _____ Relationship to A.I.I. _____

H. Rights and Powers of the A.I.I. (See S.C. Code Ann. §§ 62-5-304A and 62-5-407(B).)

(If you are the A.I.I. in this matter, you should be prepared to defend the assertion that any of the following rights should be removed; however, the burden is on the Petitioner to show why.)

Do you believe the A.I.I. should **retain** the following rights to:

- | | | |
|---|------------------------------|-----------------------------|
| i. Buy, sell, or transfer real property? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| ii. Buy, sell, or transfer personal property? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| iii. Make, modify, or terminate contracts having to do with obligations of A.I.I.? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| iv. Make significant purchases? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| v. Transact business of any type? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| vi. Bring or defend a lawsuit?* | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| vii. Create a will? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| viii. Create a trust? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| ix. Pay his or her bills? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| x. Make gifts? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xi. Make decisions about health care and medical treatment, including consents? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xii. Choose a physician? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xiii. Make end-of-life decisions? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xiv. Consent to or refuse hospitalization, discharge, or transfer to residential, group home, or other? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xv. Authorize disclosure of confidential health or medical information? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xvi. Choose where to live? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xvii. Participate in social, religious, and political activities? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xviii. Consent to visitation with family, friends, others? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xix. Consent to or refuse educational services? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xx. Make, modify, or terminate contracts having to do with duties of the guardian? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xxi. Contract for marriage? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xxii. File for divorce? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xxiii. Travel independently? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xxiv. Be employed without guardian consent? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xxv. Operate a vehicle? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| xxvi. Vote? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |

Case Number: _____

If you answered NO to any of the rights listed in Question H., please explain:

- I. Any other rights and powers not specifically stated here that the Court should address:

- J. List any of the rights in Question H. you believe should be given to the Guardian or Conservator (*vested in the Guardian or Conservator*) to exercise on behalf of the incapacitated individual and/or for which the written consent of the Guardian or Conservator should be obtained prior to exercising such right. Some rights, such as voting, cannot be given to the Guardian or Conservator.

5. THE AUTHORITY TO MANAGE FINANCIAL AFFAIRS OF THE A.I.I.

A. Why do you believe the A.I.I. needs a Conservator or protective order? Provide a brief description of the nature and extent of the alleged incapacity. (See S.C. Code Ann. § 62-5-403(B)(6)).

B. Is there a less restrictive alternative? If so, please explain.

C. In what ways is the A.I.I. able to provide for health, education, maintenance, and support for himself/herself and his/her dependents?

D. Is any type of emergency or temporary proceeding needed to protect the funds, assets, or business affairs of the A.I.I.? (If temporary or emergency relief is sought, use Form #512GC or Form #513GC.)

No. Yes. If yes, please explain:

E. Has the A.I.I. been rated incapable of handling his/her estate and monies after examination by the Department of Veterans Affairs (VA)? (See S.C. Code Ann. § 62-5-403(B)(9)).

No. Yes. If yes, please explain:

F. The following is a list of the real and personal property owned by the A.I.I., business affairs of the A.I.I., funds available to the A.I.I., or legal action necessary for the benefit of the A.I.I. and an estimate of the value: (An *Inventory & Appraisal*, Form #550GC, shall be completed and filed with the Court within thirty (30) days of the date of appointment.)

Description

Value

Case Number: _____

G. I request the appointment of (if other than Petitioner):

Name:

Address:

City/State/Zip:

Telephone: (Preferred) : (Secondary):

Email:

H. Priority of appointment for the proposed appointee (Petitioner or person listed in 5G., above) to serve as Conservator:

- Previously appointed Conservator/Guardian of Property by a Court of another county or state;
- Individual nominated by the A.I.I., who is deemed mentally capable of making such choice;
- Spouse of A.I.I.;
- Adult Child of A.I.I.;
- Adult Sibling of A.I.I. (specify relationship): ;
- Closest Adult Relative (specify relationship): ;
- Person with whom the A.I.I. resides (specify relationship): ;
- Nominee of any of the above (specify who made nomination): ;
- Other (specify): .

I. Does the proposed Conservator plan on receiving any fees for serving as Conservator?

No Yes

If Yes, indicate the hourly rate or desired compensation amount: \$

Occupation of proposed Conservator:

6. AUTHORITY TO MAKE DECISIONS ABOUT HEALTH CARE OR MEDICAL TREATMENT, AND PLACEMENT FOR THE A.I.I.

A. Why do you believe the A.I.I. needs a Guardian/Successor Guardian to provide continuing care and supervision? Provide a brief description of the nature and extent of the alleged incapacity. (See S.C. Code Ann. § 62-5-403(B)(6)).

B. In your opinion, are less restrictive options than Guardianship available or appropriate?

No Yes Please explain:

C. In what ways is the A.I.I. able to provide for health, education, maintenance, and support for himself/herself and his or her dependents?

D. Is any type of temporary or emergency proceeding needed to protect the physical person of the A.I.I. or to make emergency health care decisions for the A.I.I.? (If temporary or emergency relief is sought, use Form #512GC or Form #513GC.)

No Yes If yes, please explain:

Case Number: _____

E. Despite his/her alleged incapacity, can the A.I.I., with assistance, guide or direct decisions about his/her physical person, health care, and medical treatment?

No Yes Please explain:

F. To what extent should the Guardian be permitted to give consents or approvals that may be necessary to enable the A.I.I. to receive medical or other professional care, counsel, medical treatment, or services?

G. Are you aware of a Will that nominates a Guardian?

No Yes If yes, please explain and provide a copy of the Will:

H. I request the appointment of (*if someone other than Petitioner*):

Name:

Address:

City/State/Zip:

Telephone: (Preferred): (Secondary):

Email:

I. Priority of appointment for the proposed appointee (*Petitioner or person listed in 6H., above*) to serve as Guardian is:

- Previously appointed Guardian, Guardian of the Person, Conservator (of the person) appointed by a Court of another County or State;
- Individual nominated by the A.I.I., who is deemed mentally capable of making such choice;
- Spouse of A.I.I.;
- Adult Child of A.I.I.;
- Adult Sibling of A.I.I. (*specify relationship*): _____ ;
- Closest Adult Relative (*specify relationship*): _____ ;
- Person with whom the A.I.I. resides (*specify relationship*): _____ ;
- Nominee of any of the above (*specify who made nomination*): _____ ;
- Other (specify): _____ .

7. ALL PETITIONERS MUST COMPLETE THIS SECTION (*Check all that apply*).

- A. I request that the Court set a date, time, and place for a hearing on this Petition and that the Court find whether the A.I.I. is incapacitated.
- B. I believe that this is an uncontested matter and request that the Court consider making an appointment without a holding a formal hearing or that it consider holding an informal proceeding.
- C. I request that if the Court finds that the A.I.I. is incapacitated, that a determination be made of what rights should be retained and what rights should be removed as a result of the finding of incapacity and, further, what rights should be vested in a Guardian or Conservator, as appropriate.
- D. I request that if the Court finds that the need for appointment of a Special Conservator or Conservator is proper, that the Court appoint _____ as the Special Conservator or Conservator for the above person and that letters of Special Conservatorship or Conservatorship be issued, along with a protective order.

Case Number: _____

- E. I request that if the Court finds that the need for appointment of a Guardian or Co-Guardians is proper, that the Court appoint _____ as the Guardian or Co-Guardians for the A.I.I. and that letters of Guardianship or Co-Guardianship be issued.

SEE NEXT PAGE FOR SIGNATURE BLOCKS

Case Number: _____

VERIFICATION

The Petitioner, being sworn, states: That the facts set forth in the foregoing Petition are true to the best of the Petitioner's knowledge, information, and belief.

SWORN to before me this _____ day of _____, 20____.

Signature: _____
Print Name: _____
Address: _____

Print Name: _____
Notary Public for: _____ (State)
My Commission Expires: _____ (Date)

Preferred Telephone: _____
Secondary Telephone: _____
Email: _____

SWORN to before me this _____ day of _____, 20____.

Signature: _____
Print Name: _____
Address: _____

Print Name: _____
Notary Public for: _____ (State)
My Commission Expires: _____ (Date)

Preferred Telephone: _____
Secondary Telephone: _____
Email: _____

This section is to be signed by the individual(s) nominated to serve in one of the roles listed below.

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I agree to serve as appointed and to perform the duties and discharge the trust of the office of (check the applicable choices): Conservator, Special Conservator, Successor Conservator, Guardian, Limited Guardian, Successor Guardian, or Successor Limited Guardian for _____ (Name of A.I.I.).

Executed this _____ day of _____, 2020.

Signature: _____
Printed Name: _____
Requesting Appointment as: _____

Signature: _____
Printed Name: _____
Requesting Appointment as: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)
)
IN THE MATTER OF:)
_____,)
an alleged incapacitated individual.)



)
) IN THE PROBATE COURT
) CASE NUMBER _____
)

)
) **EXAMINER REPORT AND AFFIDAVIT**
) **REGARDING CAPACITY**
)
)

Please answer the following questions concerning the alleged incapacitated individual (hereinafter, "patient") and provide explanations or additional comments and details at the end of this form or on an attached sheet of paper.

- 1. Patient's name:
- 2. Have you treated the patient previously? Yes No
If yes, how long?
- 3.
 - a) Date(s) and place(s) of all examination(s) within previous ninety (90) days:

 - b) Date(s) and place(s) of all examination(s) relied upon in making this report:
- 4. Please provide a diagnosis and assessment of the patient's mental and physical condition, including whether he/she is taking any medications that may affect his/her actions:

Are additional tests or assessments, such as lab tests, neuroimaging/MRI, neuropsychological testing, or other tests needed in order to give a more definitive diagnosis? If so, what further tests or examinations are needed?

- 5. Please specify which diagnoses and/or condition(s) are progressive, permanent, or temporary.
Progressive:
Permanent:
Temporary:
- 6. Please describe the nature and extent of any incapacity, including specific impairments:

7. Please describe the nature and extent of the patient's abilities, including those that would allow him/her to accomplish certain tasks with reasonably available "supports and assistance"¹:
8. Does the patient have the capacity to retain the following rights (If you cannot attest to yes or no, please explain what additional test/s can be done to achieve that information):
- a) Marry or divorce? Yes No Unknown
 - b) Reside in a place of his/her choosing, and consent or withhold consent to any residential or custodial placement? Yes No Unknown
 - c) Travel without the consent of a guardian? Yes No Unknown
 - d) Give, withhold, or withdraw consent and make other informed decisions relative to medical, mental, and physical examinations, care, treatment, and therapies? Yes No Unknown
 - e) Make end-of-life decisions including, but not limited to, a "do not resuscitate" order or the application of any medical procedures intended solely to sustain life, and consent or withhold consent to artificial nutrition and hydration? Yes No Unknown
 - f) Consent or refuse consent to hospitalization and discharge or transfer to a residential setting, group home, or other facility for additional care and treatment? Yes No Unknown
 - g) Authorize disclosures of confidential information? Yes No Unknown
 - h) Operate a vehicle*? Yes No Unknown
 - i) Vote? Yes No Unknown
 - j) Be employed without the consent of a guardian? Yes No Unknown
 - k) Consent to or refuse educational services? Yes No Unknown
 - l) Participate in social, religious or political activities? Yes No Unknown
 - m) Buy, sell, or transfer real or personal property or transact business of any type? Yes No Unknown
 - n) Make, modify, or terminate contracts? Yes No Unknown
 - o) Bring or defend any action at law or equity? Yes No Unknown
 - p) Any other rights and powers? Please list.

COMPLETE EXPLANATION(S) FOR QUESTIONS a) through p) HERE.

If more space is required, use additional sheets and attach.

(*If you answered "yes" to h), please state below whether a full driving evaluation has been conducted.)

¹ As defined in S.C. Code Ann. § 62-5-101(23), "Supports and assistance" includes:

(a) systems in place for the alleged incapacitated individual to make decisions in advance or to have another person to act on his behalf, including, but not limited to, having an agent under a durable power of attorney, a health care power of attorney, a trustee under a trust, a representative payee to manage social security funds, a Declaration of Desire for Natural Death (living will), a designated health care decision maker under Section 44-66-30, or an educational representative designated under Section 59-33-310 to Section 59-33-370; and

(b) reasonable accommodations that enable the alleged incapacitated individual to act as the principal decision maker, including, but not limited to, using technology and devices; receiving assistance with communication; having additional time and focused discussion to process information; providing tailored information oriented to the comprehension level of the alleged incapacitated individual; and accessing services from community organizations and governmental agencies.

9. Would the patient benefit from:

- a) Therapy or treatment? Yes No
- b) Medical aids or equipment? Yes No
- c) An operation or medical procedure(s)? Yes No
- d) Psychiatric treatment? Yes No

10. Has the patient had in the last six months:

- a) Hospitalization(s)? Yes No
- b) Therapy or treatment? Yes No
- c) Inpatient or outpatient surgery? Yes No
- d) Major medical test(s)? Yes No
- e) Psychological or psychiatric testing? Yes No

11. In your opinion, does the patient have the ability to:

- a) effectively manage his/her property or individual financial affairs, provide for his/her support, or for the support of his/her legal dependents? Yes No

If yes, is the ability limited in any way? Please explain:

- b) meet the essential requirements for his/her physical health, safety, or self-care. Yes No

If yes, is the ability limited in any way? Please explain:

12. The patient continues to perform the following activities of daily living:

13. Does the patient have:

- a) A power of attorney? Yes No Unknown
- b) A healthcare power of attorney? Yes No Unknown
- c) A "living will"? Yes No Unknown

14. Does the patient have any of the following coverages?

- a) Health insurance? Yes No Unknown
- b) Medicare? Yes No Unknown
- c) Medicaid? Yes No Unknown
- d) Veteran's health care? Yes No Unknown

15. Does the patient have a primary caregiver?

Yes No

If yes, provide caregiver's name, address, and relationship to the patient.

16. Please identify the persons with whom you met or consulted regarding the patient's mental or physical condition:

17. **BASED UPON MY EVALUATION OF THIS PATIENT:**

- a. I **DO NOT** BELIEVE THIS PATIENT IS "INCAPACITATED."² I do not find that he/she lacks the ability to effectively receive, evaluate, and respond to information or make or communicate decisions such that a person, even with appropriate, reasonably available support and assistance cannot:
 - a) meet the essential requirements for his/her physical health, safety, or self-care, necessitating the need for a guardian; or
 - b) manage his/her property or financial affairs or provide for his/her support of for the support of his/her legal dependents, necessitating the need for a protective order.

- b. I **DO** BELIEVE THIS PATIENT IS "INCAPACITATED" to such an extent, that he/she lacks the ability to effectively receive, evaluate, and respond to information or make or communicate decisions such that a person, even with appropriate, reasonably available support and assistance cannot:
 - a) meet the essential requirements for his/her physical health, safety, or self-care, necessitating the need for a guardian; or
 - b) manage his/her property or financial affairs or provide for his/her support of for the support of his/her legal dependents, necessitating the need for a protective order.

Use this space to provide explanations or additional comments.

SWORN to before me day of
this 20 .

Examiner's Signature: _____

Print Name: _____
Credentials: _____

(e.g., M.D., Ph.D., D.O., R.N.)

Print Name: _____

Address: _____

Notary Public for: _____
(State)

Telephone: _____

My Commission Expires: _____
(Date)

²As defined in S.C. Code Ann. § 62-5-101(13), "Incapacity" means the inability to effectively receive, evaluate, and respond to information or make or communicate decisions such that a person, **even with appropriate, reasonably available support and assistance cannot:**

a) meet the essential requirements for his/her physical health, safety, or self-care, necessitating the need for a guardian; or
b) manage his property or financial affairs or provide for his support of for the support of his legal dependents, necessitating the need for a protective order.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)
)
IN THE MATTER OF:)
)
_____,)
an alleged incapacitated individual.)

▲ PROBATE COURT USE ONLY ▲

)
)
,)
Petitioner(s),)
vs.)
,)
Respondent(s).)

IN THE PROBATE COURT
CASE NUMBER _____

NOTICE OF RIGHT TO COUNSEL

You, the alleged incapacitated individual, have the right to choose your own attorney to represent you in the above matter.

If a notice of appearance by your own attorney has not been received by the Court within fifteen (15) days from the filing of the proof of service in this matter, the court will appoint an attorney for you.

Executed this ____ day of _____, 2020.

Signature: _____
Print Name: _____
Address: _____

Preferred Telephone: _____
Secondary Telephone: _____
Email: _____

Attorney Signature: _____
Print Name: _____
Firm Name: _____
Bar Number: _____
Address: _____

Telephone: _____
Email: _____
Attorney for: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)
)
IN THE MATTER OF:)
)
_____,)
)
an alleged incapacitated individual.)

▲ PROBATE COURT USE ONLY ▲

IN THE PROBATE COURT
CASE NUMBER _____

**EXAMINER REPORT AND AFFIDAVIT
REGARDING CAPACITY**

Please answer the following questions concerning the alleged incapacitated individual (hereinafter, "patient") and provide explanations or additional comments and details at the end of this form or on an attached sheet of paper.

- 1. Patient's name:
- 2. Have you treated the patient previously? Yes No
If yes, how long?
- 3.
 - a) Date(s) and place(s) of all examination(s) within previous ninety (90) days:

 - b) Date(s) and place(s) of all examination(s) relied upon in making this report:
- 4. Please provide a diagnosis and assessment of the patient's mental and physical condition, including whether he/she is taking any medications that may affect his/her actions:

Are additional tests or assessments, such as lab tests, neuroimaging/MRI, neuropsychological testing, or other tests needed in order to give a more definitive diagnosis? If so, what further tests or examinations are needed?

- 5. Please specify which diagnoses and/or condition(s) are progressive, permanent, or temporary.
Progressive:
Permanent:
Temporary:
- 6. Please describe the nature and extent of any incapacity, including specific impairments:

7. Please describe the nature and extent of the patient's abilities, including those that would allow him/her to accomplish certain tasks with reasonably available "supports and assistance"¹:
8. Does the patient have the capacity to retain the following rights (If you cannot attest to yes or no, please explain what additional test/s can be done to achieve that information):
- a) Marry or divorce? Yes No Unknown
 - b) Reside in a place of his/her choosing, and consent or withhold consent to any residential or custodial placement? Yes No Unknown
 - c) Travel without the consent of a guardian? Yes No Unknown
 - d) Give, withhold, or withdraw consent and make other informed decisions relative to medical, mental, and physical examinations, care, treatment, and therapies? Yes No Unknown
 - e) Make end-of-life decisions including, but not limited to, a "do not resuscitate" order or the application of any medical procedures intended solely to sustain life, and consent or withhold consent to artificial nutrition and hydration? Yes No Unknown
 - f) Consent or refuse consent to hospitalization and discharge or transfer to a residential setting, group home, or other facility for additional care and treatment? Yes No Unknown
 - g) Authorize disclosures of confidential information? Yes No Unknown
 - h) Operate a vehicle*? Yes No Unknown
 - i) Vote? Yes No Unknown
 - j) Be employed without the consent of a guardian? Yes No Unknown
 - k) Consent to or refuse educational services? Yes No Unknown
 - l) Participate in social, religious or political activities? Yes No Unknown
 - m) Buy, sell, or transfer real or personal property or transact business of any type? Yes No Unknown
 - n) Make, modify, or terminate contracts? Yes No Unknown
 - o) Bring or defend any action at law or equity? Yes No Unknown
 - p) Any other rights and powers? Please list.

COMPLETE EXPLANATION(S) FOR QUESTIONS a) through p) HERE.

If more space is required, use additional sheets and attach.

(*If you answered "yes" to h), please state below whether a full driving evaluation has been conducted.)

¹ As defined in S.C. Code Ann. § 62-5-101(23), "Supports and assistance" includes:

(a) systems in place for the alleged incapacitated individual to make decisions in advance or to have another person to act on his behalf, including, but not limited to, having an agent under a durable power of attorney, a health care power of attorney, a trustee under a trust, a representative payee to manage social security funds, a Declaration of Desire for Natural Death (living will), a designated health care decision maker under Section 44-66-30, or an educational representative designated under Section 59-33-310 to Section 59-33-370; and

(b) reasonable accommodations that enable the alleged incapacitated individual to act as the principal decision maker, including, but not limited to, using technology and devices; receiving assistance with communication; having additional time and focused discussion to process information; providing tailored information oriented to the comprehension level of the alleged incapacitated individual; and accessing services from community organizations and governmental agencies.

9. Would the patient benefit from:

- a) Therapy or treatment? Yes No
- b) Medical aids or equipment? Yes No
- c) An operation or medical procedure(s)? Yes No
- d) Psychiatric treatment? Yes No

10. Has the patient had in the last six months:

- a) Hospitalization(s)? Yes No
- b) Therapy or treatment? Yes No
- c) Inpatient or outpatient surgery? Yes No
- d) Major medical test(s)? Yes No
- e) Psychological or psychiatric testing? Yes No

11. In your opinion, does the patient have the ability to:

- a) effectively manage his/her property or individual financial affairs, provide for his/her support, or for the support of his/her legal dependents? Yes No

If yes, is the ability limited in any way? Please explain:

- b) meet the essential requirements for his/her physical health, safety, or self-care. Yes No

If yes, is the ability limited in any way? Please explain:

12. The patient continues to perform the following activities of daily living:

13. Does the patient have:

- a) A power of attorney? Yes No Unknown
- b) A healthcare power of attorney? Yes No Unknown
- c) A "living will"? Yes No Unknown

14. Does the patient have any of the following coverages?

- a) Health insurance? Yes No Unknown
- b) Medicare? Yes No Unknown
- c) Medicaid? Yes No Unknown
- d) Veteran's health care? Yes No Unknown

15. Does the patient have a primary caregiver?

Yes No

If yes, provide caregiver's name, address, and relationship to the patient.

16. Please identify the persons with whom you met or consulted regarding the patient's mental or physical condition:

17. **BASED UPON MY EVALUATION OF THIS PATIENT:**

- a. I **DO NOT** BELIEVE THIS PATIENT IS "INCAPACITATED."² I do not find that he/she lacks the ability to effectively receive, evaluate, and respond to information or make or communicate decisions such that a person, even with appropriate, reasonably available support and assistance cannot:
 - a) meet the essential requirements for his/her physical health, safety, or self-care, necessitating the need for a guardian; or
 - b) manage his/her property or financial affairs or provide for his/her support of for the support of his/her legal dependents, necessitating the need for a protective order.

- b. I **DO** BELIEVE THIS PATIENT IS "INCAPACITATED" to such an extent, that he/she lacks the ability to effectively receive, evaluate, and respond to information or make or communicate decisions such that a person, even with appropriate, reasonably available support and assistance cannot:
 - a) meet the essential requirements for his/her physical health, safety, or self-care, necessitating the need for a guardian; or
 - b) manage his/her property or financial affairs or provide for his/her support of for the support of his/her legal dependents, necessitating the need for a protective order.

Use this space to provide explanations or additional comments.

SWORN to before me this _____ day of _____, 20____.	Examiner's Signature: _____ Print Name: _____ Credentials: _____ (e.g., M.D., Ph.D., D.O., R.N.) Address: _____ _____ Telephone: _____ _____
_____ Print Name: Notary Public for: _____ (State) My Commission Expires: _____ (Date)	

²As defined in S.C. Code Ann. § 62-5-101(13), "Incapacity" means the inability to effectively receive, evaluate, and respond to information or make or communicate decisions such that a person, **even with appropriate, reasonably available support and assistance cannot:**

a) meet the essential requirements for his/her physical health, safety, or self-care, necessitating the need for a guardian; or
b) manage his property or financial affairs or provide for his support of for the support of his legal dependents, necessitating the need for a protective order.