

NOTICE!!!

TO: Prospective Guardians and Conservators

No order appointing a guardian or conservator may be issued until the prospective guardian and/or conservator has accomplished the following:

1. The guardian or conservator has subscribed to and filed an oath promising to faithfully perform the duties of the office in accordance with the law.
2. Post of any bond required.
3. Completion of mandatory education as required under Section 44A-1-10, West Virginia Code, unless waived by the court

**WEST VIRGINIA
GUARDIAN AND/OR CONSERVATOR
ONLINE EDUCATION**

Whether you are a potential appointee as guardian or conservator who is being required by court order to complete mandatory education, a current guardian or conservator who would like to review your training, or just an interested person who would like more information on being a guardian or conservator, you can now go to the website or the West Virginia Supreme Court of Appeals at www.courtswv.gov and click on the link for the guardian/conservatorship online training to access an online tutorial. If you don't have internet access yourself, contact your nearest public library for information on the closest library with free internet access!

**NEW APPOINTEES MUST COMPLETE MANDATORY
EDUCATION WITHIN 30 DAYS!!**

IN THE CIRCUIT COURT OF MASON COUNTY, WEST VIRGINIA

IN RE: _____

Case No.: - G26-

Date: _____

AN ALLEGED PROTECTED PERSON

PETITION FOR THE APPOINTMENT OF A GUARDIAN/CONSERVATOR

[West Virginia Code: § 44A-1-1, et seq.]

INSTRUCTIONS TO APPLICANT

- A. All information must be printed or typed and be clearly readable.
 - B. All information requested *MUST* be provided, if known. If unknown, you must state it is unknown.
 - C. Any petition which does not provide the necessary information, or is unreadable, may be dismissed for incompleteness. Please be sure you read and answer all questions.
 - D. In this document, the PROTECTED PERSON is the person for whom a guardian or conservator is sought. The person requesting the appointment is the PETITIONER. (Two or more petitioners may apply to serve as co-guardians or co-conservators. If so, the required information must be completed for all petitioners.)
 - E. Answers to some questions may require more space than provided. If so, attach additional pages as needed and label each response of such page(s) with the number of the applicable question. *[If completing this form on the computer, continuation sheets are provided for you at the end of this form (following the filing notes).]*
 - F. Additional guidelines and instructions are contained on Pages 8 and 9. Please read these instructions carefully since substantial delays may result from failure to perform all the requirements of law.
 - G. **WARNING: If a guardian or conservator is appointed for an individual who is unable to handle their affairs due to mental illness or insanity, the individual will be:**
 - (1) prohibited from possessing and receiving firearms and ammunition, in some cases for his or her entire life,**
 - (2) required to immediately surrender ANY firearms owned or in his or her possession,**
 - (3) reported to both federal and state database registries used for firearm purchases and permits/licenses to carry concealed weapons, and**
 - (4) subject to future criminal charges for possession or receipt of firearms or ammunition.****Conviction in West Virginia can result in a fine up to \$1,000.00 or jail time of up to one year. Federal conviction is a FELONY and can result in fines and jail time up to TEN years. (See, W.Va. Code § 61-7-7 and 18 U.S.C.A. § 924(a)(2))**
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PART I
INFORMATION ABOUT THE PETITIONER

1. PETITIONER'S [your] FULL NAME: _____
2. PETITIONER'S [your] PLACE OF RESIDENCE: _____
3. PETITIONER'S [your] POST OFFICE ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____
- TELEPHONE NUMBER: WORK: _____ HOME: _____
4. WHAT IS YOUR RELATIONSHIP TO THE PROTECTED PERSON: _____

PART II
INFORMATION ABOUT THE PROTECTED PERSON

5. FULL NAME OF PROTECTED PERSON: _____
6. PROTECTED PERSON'S DATE OF BIRTH [MM/DD/YYYY]: _____
7. PROTECTED PERSON'S PLACE OF BIRTH [state or country]: _____
8. PROTECTED PERSON'S RESIDENCE ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____
9. PROTECTED PERSON'S CURRENT LOCATION: _____
10. PROTECTED PERSON'S POST OFFICE ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____
11. PROTECTED PERSON'S GENDER [initial one]: _____ male or _____ female
12. PROTECTED PERSON'S RACE [initial one]: _____ American Indian or Alaska Native,
_____ Asian, _____ Black or African American, _____ Hispanic or Latino,
_____ Native Hawaiian or Other Pacific Islander, or _____ White
13. PROTECTED PERSON'S HEIGHT: _____ feet, and _____ inches
14. PROTECTED PERSON'S NATURAL EYE COLOR [initial one]: _____ black, _____ blue,
_____ brown, _____ gray, _____ green, _____ hazel, _____ maroon,
_____ multicolored, or _____ pink

PART III

INFORMATION ABOUT THE PROTECTED PERSON'S RELATIVES

You are required to provide information about the Protected Person's nearest relatives. You must answer each question fully and completely. If additional space is needed, attach additional page(s) as necessary.

15. DOES THE PROTECTED PERSON HAVE A SPOUSE AND/OR CHILDREN? YES NO
If you have answered "YES," complete the following and then go to PART IV. If you have answered "NO," go to question 16.

SPOUSE'S FULL NAME: _____

SPOUSE'S POST OFFICE ADDRESS: _____

FULL NAME(S) AND POST OFFICE ADDRESSES OF EACH OF PROTECTED PERSON'S CHILDREN:

16. DOES THE PROTECTED PERSON HAVE PARENTS, BROTHERS AND/OR SISTERS? YES NO
IMPORTANT NOTE: *Provide the following information ONLY if you have answered "NO" to question 15 above. If you have answered "YES," to this question, complete the information requested below and go to PART IV. If you have answered "NO," go to question 17 below.*

FULL NAME(S) AND POST OFFICE ADDRESSES OF EACH OF PROTECTED PERSON'S PARENTS AND BROTHERS AND SISTERS:

17. ***IMPORTANT NOTE:*** *Provide the following information ONLY if you have answered "NO" to BOTH questions 15 and 16 above.*

LIST THE PROTECTED PERSON'S NEAREST KNOWN RELATIVES, **AND THE POST OFFICE ADDRESS(ES) FOR EACH**, WHO WOULD BE ENTITLED TO SUCCEED TO THE PROTECTED PERSON'S ESTATE BY INTESTATE SUCCESSION AS SET FORTH IN *WEST VIRGINIA CODE: § 42-1-11, et. seq.:*

**PART IV
OTHER REQUIRED INFORMATION**

18. LIST ANY INDIVIDUAL AND/OR FACILITY, INCLUDING ANY PERSON ACTING AS A DE FACTO GUARDIAN, DE FACTO CONSERVATOR, MEDICAL POWER OF ATTORNEY, REPRESENTATIVE, OR APPOINTED SURROGATE, THAT IS RESPONSIBLE FOR THE PROTECTED PERSON'S CARE OR CUSTODY.

NAME OF THE INDIVIDUAL OR FACILITY: _____

INDIVIDUAL'S OR FACILITY'S PLACE OF RESIDENCE OR LOCATION: _____

INDIVIDUAL'S OR FACILITY'S POST OFFICE ADDRESS: _____

IMPORTANT NOTE: If you have named any individual and/or facility in this question, you **MUST** provide a detailed listing of the acts performed by any and all such persons and/or facilities on behalf of the protected person on a separate sheet which **MUST** be attached to this petition.

19. HAS ANY PERSON BEEN DESIGNATED AS A SURROGATE DECISION MAKER FOR THE PROTECTED PERSON? *A "surrogate decision maker" is an adult individual or individuals who are reasonably available, are willing to make health care decisions on behalf of an incapacitated person, and are identified as such by the person's attending physician in accordance with West Virginia Code: § 16-30B-3(p).* YES NO

If "YES," provide information requested below. If "NO," go to question 20.

NAME(S) OF THE SURROGATE DECISION MAKER(S): _____

SURROGATE(S) PLACE OF RESIDENCE(S): _____

SURROGATE(S) POST OFFICE ADDRESS(ES): _____

20. DOES THE PROTECTED PERSON HAVE A REPRESENTATIVE OR REPRESENTATIVES DULY APPOINTED UNDER A DURABLE POWER OF ATTORNEY, MEDICAL POWER OF ATTORNEY AND/OR A LIVING WILL? YES NO

If "YES," complete the information requested below AND attach a copy of any such document with this petition. If "NO," go to question 21.

NAME(S) OF REPRESENTATIVE(S): _____

REPRESENTATIVE(S) PLACE OF RESIDENCE OR LOCATION: _____

REPRESENTATIVE(S) POST OFFICE ADDRESS(ES): _____

21. WILL THE PROTECTED PERSON'S INCAPACITY PREVENT THE PROTECTED PERSON FROM ATTENDING THE HEARING ON THIS PETITION? YES NO

If "YES," you must provide the reason(s) in the space below.

REASON(S): _____

[IMPORTANT NOTE: The Court cannot conduct a hearing on the merits of this petition without the presence of the protected person unless one of the following is submitted to the Court at the beginning of the hearing: (1) a physician's affidavit (GC Form 5), (2) qualified expert testimony or, (3) evidence that the person refuses to appear. SEE: West Virginia Code: § 44A-2-9(c).]

22. WHAT TYPE OF GUARDIANSHIP OR CONSERVATORSHIP IS BEING REQUESTED? *Check all appropriate spaces:* TEMPORARY GUARDIANSHIP LIMITED GUARDIANSHIP
 GUARDIANSHIP TEMPORARY CONSERVATORSHIP
 LIMITED CONSERVATORSHIP CONSERVATORSHIP

LIST THE REASON OR REASONS SUPPORTING THE TYPE OR TYPES OF GUARDIANSHIP OR CONSERVATORSHIP REQUESTED: _____

23. IF A LIMITED **GUARDIANSHIP** IS BEING REQUESTED, INDICATE THE SPECIFIC AREAS OF PROTECTION AND ASSISTANCE TO BE INCLUDED IN THE ORDER OF APPOINTMENT:

24. IF A LIMITED **CONSERVATORSHIP** IS BEING REQUESTED, INDICATE THE SPECIFIC AREAS OF MANAGEMENT AND ASSISTANCE TO BE INCLUDED IN THE ORDER OF APPOINTMENT:

25. NAME OF THE PROPOSED GUARDIAN:

PROPOSED GUARDIAN: _____

POST OFFICE ADDRESS: _____

IF AN INDIVIDUAL IS BEING PROPOSED, PROVIDE THE FOLLOWING INFORMATION ABOUT THE INDIVIDUAL:

AGE: _____ OCCUPATION: _____

RELATIONSHIP TO PROTECTED PERSON: _____

26. NAME OF THE PROPOSED CONSERVATOR:

PROPOSED CONSERVATOR: _____

POST OFFICE ADDRESS: _____

IF AN INDIVIDUAL IS BEING PROPOSED, PROVIDE THE FOLLOWING INFORMATION ABOUT THE INDIVIDUAL:

AGE: _____ OCCUPATION: _____

RELATIONSHIP TO PROTECTED PERSON: _____

27. HAS THE PROTECTED PERSON NOMINATED A GUARDIAN OR CONSERVATOR DIFFERENT FROM THE PROPOSED GUARDIAN OR CONSERVATOR? YES NO

NOMINATED GUARDIAN: _____

POST OFFICE ADDRESS: _____

IF AN INDIVIDUAL IS BEING PROPOSED, PROVIDE THE FOLLOWING INFORMATION ABOUT THE INDIVIDUAL:

AGE: _____ OCCUPATION: _____

RELATIONSHIP TO PROTECTED PERSON: _____

NOMINATED CONSERVATOR: _____

POST OFFICE ADDRESS: _____

IF AN INDIVIDUAL IS BEING PROPOSED, PROVIDE THE FOLLOWING INFORMATION ABOUT THE INDIVIDUAL:

AGE: _____ OCCUPATION: _____

RELATIONSHIP TO PROTECTED PERSON: _____

28. PROVIDE THE NAME(S) AND ADDRESS(ES) OF ANY GUARDIAN OR CONSERVATOR CURRENTLY ACTING ON BEHALF OF THE PROTECTED PERSON IN WEST VIRGINIA OR ELSEWHERE:

ACTING GUARDIAN: _____

POST OFFICE ADDRESS: _____

ACTING CONSERVATOR: _____

POST OFFICE ADDRESS: _____

29. HAS ANY INDIVIDUAL PROPOSED, NOMINATED OR ACTING GUARDIAN OR CONSERVATOR, WHOSE NAME IS LISTED IN ANY OF THE ANSWERS TO QUESTIONS 25 THROUGH 28, EVER BEEN CONVICTED OF A CRIMINAL OFFENSE OTHER THAN A TRAFFIC OFFENSE? *[check one]*
 YES NO *If the answer to this question is "YES," list the name of each such individual AND provide the CRIMINAL HISTORY of that individual:* _____

I, the Petitioner named in the foregoing *Petition for the Appointment of a Guardian/Conservator* hereby respectfully request that the Circuit Court set this matter for hearing and, following such hearing, appoint a guardian and/or conservator for the protected person named herein as requested and petitioned.

Given under my hand this _____ day of _____ *[month]*, _____ *[year]*.

Signature of Petitioner

Signature of Petitioner's Counsel

Bar ID: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____

ALL PETITIONERS MUST NOTE THE FOLLOWING MATTERS ABOUT FILING THIS PETITION:

1. This petition must be filed in the Office of the Clerk of the Circuit Court of the County in West Virginia where the Protected Person resides, **OR** the County where the Protected Person has been admitted to a health care or correctional facility **OR**, in the case of a missing person (a person who is absent from his or her usual place of residence in West Virginia and whose whereabouts are unknown for a period of six months or more), the petition must be filed in the County in which the missing person last resided. If this is not the case, ask for assistance from the Circuit Court Clerk.
2. You are required to pay a filing fee of \$110.00 to the Clerk of the Circuit Court upon filing of this petition. As the Petitioner, you are responsible for the payment of this fee and any other fees required for service of process, court costs, and for copies of court documents and transcripts. Once a guardian or conservator has been appointed, such fees may be reimbursed by the Protected Person's estate, but only if an appointment is made and only if funds are available for reimbursement. *West Virginia Code: §§ 44A-2-1(c) and 59-1-1, et. seq.*, provide that if you are pecuniarily unable to advance these fees, you will not be required to pay the fees and costs. Ask the Court Clerk for assistance if you are unable to advance these fees and costs.
3. You are required to submit additional documents with this petition. Unless the Court, for good cause shown, has waived it, you **MUST** file an **EVALUATION REPORT**, GC Form 4, which is a required evaluation and report on the condition of the Protected Person which must be completed by a licensed psychologist or physician. If you do not have this report, you may obtain a blank form from the Circuit Court Clerk. It is your responsibility to arrange for an examination and completion of this form prior to filing. You may also be required to file a **PHYSICIAN'S AFFIDAVIT**. See the note to Question 21. If the Protected Person has executed a durable power of attorney, a medical power of attorney or a living will, you must attach copies of these documents to this petition as directed by Question 20.
4. Upon proper and complete filing of the Petition, the Court will issue a **NOTICE OF HEARING** that establishes the date, time and location of the hearing on the Petition. It is the **PETITIONER'S** responsibility to insure that the following parties are served with a copy of court documents as follows:

- (a) The Protected Person must be served by **Personal Service of Process** not later than fourteen (14) days prior to the date of the hearing. The documents which must be served upon the Protected Person are:
 1. The Notice of Hearing, and
 2. This Petition, and
 3. The Evaluation report.

Upon request and payment of the appropriate fee, the Court Clerk can arrange to have this accomplished by the County Sheriff. As an alternative, you may employ a private process server to effect service, provided that service is made as required by law.

- (b) You must also serve every individual who has reached the age of seven (7) years or older, and every entity whose names and post office addresses appear in the Petition. The documents required to be served upon these individuals/entities are:
 1. The Notice of Hearing, and
 2. This Petition.

This service is made by sending each Notice and Petition by certified mail, return receipt requested, **at least** fourteen (14) days before the hearing. **You are further required to submit the certified mail return receipts to the Court Clerk for filing on or before the hearing date.** It is your responsibility to obtain proper service and file the required documentation with the Circuit Clerk **BEFORE** the hearing.

IMPORTANT NOTE: *A failure by the Petitioner to properly serve the Protected Person and/or other individuals as required by law will likely result in delay of the hearing or, possibly, dismissal of the petition. Make sure ALL parties are served as required. The Protected Person cannot waive this requirement. If you have questions, consult an attorney for advice.*

5. Under *West Virginia Code*: § 44A-2-7, the Circuit Court is required to appoint an attorney to represent the Protected Person. You have the right to retain an attorney of your choosing to represent you in this matter, which is not mandatory, but is mentioned merely to insure that you understand that you have the right to be represented by an attorney at this hearing.
6. If you are seeking the appointment of a conservator, you ***MUST*** file a "Statement of Financial Resources" with the Court any time ***prior to the hearing***. The Circuit Clerk has a blank form which you may obtain for completion before the hearing.
7. A person who is appointed as a guardian or conservator will be required to complete mandatory education within thirty days of a finding that he or she should be appointed as a guardian or conservator and must file an affidavit indicating that such education has been completed. If you are unsure about any matter contained in these instructions, you may ask the Circuit Clerk for assistance. However, the Court and Clerk are prohibited from providing legal advice. ***If you need legal advise, you should contact an attorney.***

IN THE CIRCUIT COURT OF MASON COUNTY, WEST VIRGINIA

For Clerk's Use Only

IN RE: _____, AN ALLEGED PROTECTED PERSON

DATE FILED: _____ CASE NUMBER _____ - G - _____

STATEMENT OF FINANCIAL RESOURCES

[West Virginia Code: § 44A-2-4]

The Petitioner, in any case where the appointment of a *conservator* is requested, is required to submit a reasonably detailed statement of the financial resources of the alleged Protected Person. ***This form does not need to be completed or filed if the only relief requested is for the appointment of a guardian.*** This form must be completed in its entirety and filed with the Clerk of the Circuit Court *prior to the hearing* to be held on the petition to appoint a conservator. The Petitioner should make a reasonable investigation into the Protected Person's real and personal assets and income, no matter where those assets may be located, and report the findings in this Statement. *Attach additional pages as necessary.*

1. ALLEGED PROTECTED PERSON'S SOCIAL SECURITY NUMBER _____ - _____ - _____

2. TO THE EXTENT KNOWN, WHAT IS THE FAIR MARKET VALUE OF THE PROTECTED PERSON'S REAL ESTATE OR REAL PROPERTY? *[check whether each parcel of real estate is improved or unimproved and give a brief description of the land (size) and improvements (if any), the location of the parcel (state, county, district), and the fair market value of the parcel]*

PARCEL 1: Improved? _____ Yes _____ No. Description: _____

Location: _____ VALUE \$ _____

PARCEL 2: Improved? _____ Yes _____ No. Description: _____

Location: _____ VALUE \$ _____

[Describe any additional parcels on a separate sheet using the format above, then add the values of all parcels and enter the total in the space below.]

COMBINED VALUE OF ALL REAL ESTATE VALUE \$ _____

3. TO THE EXTENT KNOWN, WHAT IS THE APPROXIMATE VALUE OF ALL THE PROTECTED PERSON'S PERSONAL PROPERTY? [*Personal property includes cash on hand or in bank (or other) accounts, stocks, bonds, furniture, automobiles, jewelry, debts due from others (notes/accounts receivable) and other assets not considered to be real estate. List each item or classification of personal property*]

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

ITEM(S): _____ VALUE \$ _____

[Describe any additional personal property on a separate sheet using the format above, then add the values of all the listed items and enter the total in the space below.]

COMBINED VALUE OF ALL ITEMS OF PERSONAL PROPERTY VALUE \$ _____

4. TO THE EXTENT KNOWN, WHAT IS THE ANTICIPATED ANNUAL GROSS INCOME OR OTHER RECEIPTS OF THE PROTECTED PERSON? [*List each source of income and the anticipated annual amount of income from that source*]

SOURCE: _____ ANNUAL INCOME: \$ _____

SOURCE: _____ ANNUAL INCOME: \$ _____

SOURCE: _____ ANNUAL INCOME: \$ _____

[List any additional sources of annual income on a separate sheet using the format above, then add the income from all sources and enter the total in the space below.]

TOTAL ANNUAL INCOME FROM ALL SOURCES: \$ _____

5. SUMMARY OF ASSETS & ANNUAL INCOME

COMBINED VALUE OF ALL REAL ESTATE (Question 2 total) \$ _____
COMBINED VALUE OF ALL ITEMS OF PERSONAL PROPERTY (Question 3 total) + \$ _____
TOTAL ALL ASSETS (Real Property + Personal Property) \$ _____

TOTAL ANNUAL INCOME FROM ALL SOURCES \$ _____

I, _____, the Petitioner in the foregoing matter, hereby certify that I have conducted a reasonable investigation into the assets and income of the alleged protected person named in this Statement, that the foregoing Statement of Financial Resources is true, complete and correct to the best of my knowledge, information and belief, that I have included within the foregoing Statement, and any and all attachments thereto, all items of real property, personal property and all sources of income of the alleged protected person which are known, or have been disclosed, to me.

Given under my hand this _____ day of _____ *[month]*, _____ *[year]*.

PETITIONER'S SIGNATURE

IN THE CIRCUIT COURT OF MASON COUNTY, WEST VIRGINIA

For Clerk's Use Only

IN RE: _____ CASE NUMBER _____ - G - _____
AN ALLEGED PROTECTED PERSON

AFFIDAVIT OF PHYSICIAN
[West Virginia Code: § 44A-2-9(c)]

STATE OF _____,
COUNTY OF _____, to-wit:

This day, personally appeared before me the undersigned physician who, having been first duly sworn, says, represents and certifies as follows:

I, _____, a licensed physician in the State of _____, hereby certify that I have examined and/or evaluated the condition of *[insert name of alleged protected person here]* _____, and that in my expert opinion, this individual cannot attend the hearing addressing whether a guardian or conservator should be appointed for this individual for the following reasons *[check applicable reasons and provide supporting facts in spaces provided and attach additional pages, if necessary]*:

_____ The presence of the individual is not possible due to a physical inability. The basis for this opinion is as follows: _____

_____ Requiring the presence of the individual would significantly impair the individual's health.
Explain : _____

Other Reason(s): _____

Given under my hand this _____ day of _____ [month], _____ [year].

SIGNATURE OF PHYSICIAN

The foregoing affidavit was taken, subscribed and sworn to before me by the said _____, in my said County and State on this, the _____ day of _____ [month], _____ [year].

Given under my hand and **NOTARIAL SEAL**
[AFFIX NOTARIAL SEAL]

NOTARY PUBLIC

My Commission Expires: _____

EVALUATION REPORT OF LICENSED PHYSICIAN/PSYCHOLOGIST

INSTRUCTIONS FOR COMPLETION OF REPORT

- A. This form is a required submission under *West Virginia Code*: § 44A-2-3 in a case seeking the court appointment of a guardian and/or conservator for an alleged "protected person" and must be completed by a licensed physician or psychologist. Since the law requires that this report address certain matters contained in the Petition seeking such appointment, it will be necessary for you to have a true copy of the completed Petition before you complete this form. Please insure that the Petitioner has provided you with a copy of the Petition intended to be filed.
- B. All information provided in this report must be printed or typed and be clearly readable.
- C. All information requested *MUST* be provided, if known. If unknown, you must state it is unknown.
- D. Please be sure you read and answer all questions carefully and in as much detail as possible.
- E. Answers to some questions may require more space than provided. If so, attach additional pages as needed and label each response on such page(s) with the number of the applicable question.

I, _____, a licensed [*check category*] _____ physician
_____ psychologist, in the State of _____, license number _____,
hereby certify that I have examined and/or evaluated the condition of [*insert name of alleged Protected Person here*]
_____, and that the examination(s) or assessment(s) performed
which form the basis of this report were conducted on the following date(s): _____
_____, and hereby submit this report and evaluation with the
following findings:

1. *West Virginia Code*: § 44A-1-4(13) defines a "protected person" as an adult individual, eighteen years of age or older, who has been found by a court, because of mental impairment, to be unable to:
 - (a) receive and evaluate information effectively, ***OR***
 - (b) respond to people, events and environments to such an extent that the individual lacks the capacity to ***either***:
 - (i) meet the essential requirements for his or her health, care, safety, habitation, or therapeutic needs without the assistance or protection of a ***guardian, OR***
 - (ii) manage property or financial affairs or provide for his or her support or for the support of legal dependents without the assistance or protection of a ***conservator***.

This same section also provides that even if the Court determines that the person displays poor judgment, this finding alone is not sufficient evidence to determine that the person is a "protected person" as defined above.

CONSIDERING THIS DEFINITION, IN MY OPINION, I FIND THE ALLEGED PROTECTED PERSON [*initial appropriate finding*]:

_____ **IS NOT** INCAPACITATED [*If you have initialed this finding, go to Question 2*]

_____ **LACKS** CAPACITY [*If you have initialed this finding, complete Questions 1a and, 1b below*]

1a. DESCRIBE THE NATURE, TYPE AND EXTENT OF THE PERSON'S INCAPACITY:

1b. THE PERSON'S SPECIFIC COGNITIVE AND FUNCTIONAL LIMITATIONS ARE:

2. MY EVALUATION OF THE PERSON'S MENTAL AND PHYSICAL CONDITION IS AS FOLLOWS [*Where appropriate, include an evaluation of the Person's educational condition, adaptive behavior and social skills*]:

3. IS THE PERSON UNABLE TO HANDLE HIS OR HER OWN AFFAIRS DUE TO MENTAL ILLNESS OR INSANITY? [*initial appropriate response*] _____ YES _____ NO

If "Yes", what is the mental illness or insanity diagnosis?

If the person is unable to handle his or her own affairs due to mental illness or insanity, please provide the following:

3a. The gender of the Respondent is [*initial one*] _____ male or _____ female.

3b. The race of the Respondent is believed to be [*initial one*] _____ White, _____ Black or African American, _____ Hispanic or Latino, _____ Asian, _____ American Indian or Alaska Native, or _____ Native Hawaiian or Other Pacific Islander, or _____ unknown.

3c. The height of the Respondent is _____ feet, and _____ inches.

3d. The natural eye color of the Respondent is _____ brown, _____ blue, _____ green, _____ hazel, or _____ other.

4. IF THE PETITION CONTAINS A REQUEST FOR A GUARDIAN, TEMPORARY GUARDIAN AND/OR, LIMITED GUARDIAN, DESCRIBE THE SERVICES, IF ANY, CURRENTLY BEING PROVIDED FOR THE PERSON'S HEALTH, CARE, SAFETY, HABILITATION OR THERAPEUTIC NEEDS. INCLUDE A RECOMMENDATION AS TO THE MOST SUITABLE LIVING ARRANGEMENT AND, WHERE APPROPRIATE, THE MOST SUITABLE TREATMENT OR HABILITATION PLAN AND THE REASON'S FOR SUCH RECOMMENDATION(S):

5. IT IS MY OPINION THAT THE APPOINTMENT OF *[initial appropriate office]*

_____ A GUARDIAN

_____ A CONSERVATOR

_____ A GUARDIAN AND A CONSERVATOR

IS NECESSARY FOR THIS PERSON.

6. THE TYPE AND SCOPE OF GUARDIANSHIP AND/OR CONSERVATORSHIP NEEDED, AND THE REASONS THEREFOR, ARE AS FOLLOWS:

7. IF THE PETITION STATES THAT THE PERSON'S INCAPACITY WILL PREVENT THE PERSON'S ATTENDANCE AT THE HEARING *[SEE: Petition for Appointment of Guardian/Conservator, Page 4, Question 16]*, IT IS MY OPINION THAT SUCH ATTENDANCE AT THE HEARING *[initial appropriate finding]*:

_____ **WOULD** BE DETRIMENTAL TO THE PERSON'S HEALTH, CARE AND/OR SAFETY.

_____ **WOULD NOT** BE DETRIMENTAL TO THE PERSON'S HEALTH, CARE AND/OR SAFETY.

IMPORTANT NOTE: If a protected person is unable to appear at the hearing, the law requires that one of the following be submitted to the Court at the beginning of the hearing: (1) a physician's affidavit (*GC Form 5*), (2) qualified expert testimony, or (3) evidence that the person refuses to appear. *SEE: West Virginia Code: § 44A 2-9(c)*. This Evaluation Report is **NOT** the required physician's affidavit. The affidavit is a separate form which may only be completed by a physician.]

8. IF IT APPEARS THE PERSON WILL ATTEND THE HEARING, IS THE PERSON ON ANY MEDICATION(S) THAT MAY AFFECT THE PERSON'S ACTIONS, DEMEANOR, AND PARTICIPATION AT THE HEARING?

_____ YES _____ NO *[If "YES," describe the medication and the affect(s) such medication(s) may have]*

I, the undersigned evaluating physician/psychologist named on page 1 of this Report, do hereby certify that the foregoing report is complete and accurate to the best of my information and belief. I further certify that other individuals [*initial appropriate category*] _____ DID _____ DID NOT perform, supervise or review the assessment(s) or examination(s) upon which this Report is based, or otherwise made substantial contributions toward this Report's preparation. [*If you initialed "DID," see note below and secure signatures of all such individuals on page 5.*]

Given under my hand this _____ day of _____ [month], _____ [year].

EVALUATING PHYSICIAN/PSYCHOLOGIST

[West Virginia Code: § 44A-2-3(7) also requires the signatures of ". . . any other individuals who performed, supervised or reviewed the assessments or examinations upon which the report is based. . . ." or of any other person who made substantial contributions towards the report's preparation.]

We, the undersigned individuals, hereby certify that each individual signatory executing this Report below performed, supervised and/or reviewed the assessment(s) and/or examination(s) upon which the foregoing report is based, or made a substantial contribution toward the preparation of this Report, and that by signing below, each individual further certifies that to the best of his or her information and belief, the information contained in the foregoing report is complete and accurate.

_____ DATE	_____ SIGNATURE	_____ PRINT NAME AND TITLE
_____ DATE	_____ SIGNATURE	_____ PRINT NAME AND TITLE
_____ DATE	_____ SIGNATURE	_____ PRINT NAME AND TITLE
_____ DATE	_____ SIGNATURE	_____ PRINT NAME AND TITLE
_____ DATE	_____ SIGNATURE	_____ PRINT NAME AND TITLE