

STANDING ORDER 5-08
MEDICAL CERTIFICATES AND CLINICAL TEAM REPORTS

Deleted with the adoption of Standing Order 1-09, adopted effective July 1, 2009

STANDING ORDER 1-09
IMPOUNDMENT OF PERSONAL MEDICAL INFORMATION

IT IS HEREBY ORDERED THAT:

1. Whenever a Medical Certificate or Clinical Team Report is required to be filed under Article V of G. L. c. 190B, it must be in the possession of the Court or accompany the petition or motion. The Medical Certificate must be dated and an examination must have taken place within 30 days of the filing of the petition or motion or, in the case of a person alleged to be mentally retarded, the Clinical Team Report must be dated and an examination must have taken place within 180 days of the filing of the petition or motion.
2. The Court may waive or postpone the requirement of filing of a Medical Certificate or Clinical Team Report upon the filing of a statement that it is **impossible** to obtain a Medical Certificate or Clinical Team Report. Such a statement of impossibility shall be supported by an affidavit or affidavits meeting the requirements set forth in Massachusetts Rules of Civil Procedure 4.1(h).
3. All Medical Certificates, Clinical Team Reports, treatment plans and medical affidavits shall be impounded and kept separate from other papers in the case and shall not be available for public inspection. These documents shall be available for inspection to authorized Court personnel, the Respondent, the attorneys who have filed an appearance in the case, all persons named in the petition who make a written request, and any Guardian *ad litem* appointed in the case. They may not be copied without further order of the Court, but Registry staff may scan them into an impounded computer file.
4. Authorized Court personnel, parties, attorneys, and Guardians *ad litem* with access to a Medical Certificate, Clinical Team Report, treatment plan or medical affidavit are prohibited from using or disclosing the information on the form for any purpose other than the Guardianship or Conservatorship case for which it was filed.

Effective July 1, 2009

STANDING ORDER 2-09
APPLICATION OF G. L. c. 190B, ARTICLE V
TO GUARDIANSHIP AND/OR CONSERVATORSHIP CASES
PENDING ON JULY 1, 2009 OR
WITH A DECREE ISSUED PRIOR THERETO

On July 1, 2009, certain provisions of the Massachusetts Uniform Probate Code, G. L. c. 190B (“the Code”), become effective. The provisions are primarily contained in Article V of the Code, Protection of Persons under Disability and Their Property. The Code significantly reforms the practice of Guardianship and Conservatorship law.

The Probate and Family Court interprets the Massachusetts Uniform Probate Code to apply to any Guardianship and Conservatorship case:

- (a) pending on July 1, 2009 without a permanent decree having entered;
- (b) where a permanent decree has previously entered and the Guardianship or Conservatorship has not terminated; or
- (c) commenced on or after July 1, 2009.

Accordingly:

1. PENDING CASES WITH NO PERMANENT DECREE

Any Petition for Guardianship of the person and/or estate or Conservatorship filed prior to and pending as of July 1, 2009 generally does not need to be amended. If the petitioner seeks authority to admit the alleged incapacitated person to a nursing facility and such authorization was not explicitly requested on the petition, the petition must be amended to include a request for such authorization and a new citation must issue.

Any citation issued before July 1, 2009 shall be accepted by the Court after July 1, 2009 as sufficient even if the return date is after July 1, 2009. Any citation issued after July 1, 2009 must be served in accordance with the notice requirements of the applicable MUPC sections.

Any Petition for Guardianship of the person and/or estate or Conservatorship filed prior to and pending as of July 1, 2009 must be accompanied by the new Medical Certificate or Clinical Team Report form.

Any Petition requesting the appointment of a Guardian of the estate pending as of July 1, 2009 shall be treated as a Petition for the Appointment of a Conservator. At the time of allowance, an Order and Decree of Appointment of Conservator shall be issued (in addition to an Order and Decree of Appointment of Guardian if appointment of a Guardian of the person was also requested) and docketed in a Conservator file. The Conservator case file shall include a copy of the Petition for Guardianship docket sheet up to the time of appointment. There shall be no

fee charged when a new Conservator case initiation is required. Thereafter, the Conservator shall file any and all required Financial Plan, Inventory and Accounts in the Conservator file.

2. CASES WHERE A GUARDIAN OF THE PERSON AND/OR ESTATE OR A CONSERVATOR WAS APPOINTED PRIOR TO JULY 1, 2009

a. Issuance of Letters of Appointment.

When any party seeks a certified copy of the Decree appointing the Guardian of the person, a Letter of Appointment of Guardian shall be issued in accordance with the prior Decree and the Code.

When any party seeks a certified copy of the Decree appointing the Guardian of the estate or the Conservator, a Letter of Appointment of Conservator shall be issued indicating all powers vested in the Conservator in accordance with the prior Decree and the Code and a new Conservator file opened.

The Letter of Conservatorship shall be placed in the new case file. The new case file shall include a copy of the Petition for Guardianship docket sheet up to the time of the issuance of the Letter of Conservatorship. There shall be no fee charged if a new Conservator case initiation is required.

b. Reporting Requirements

Guardians of Incapacitated Persons are required to file a Care Plan/Report within 60 days following their appointment. All Guardians of Incapacitated Persons and Guardians of Wards, regardless of the date of appointment, must file a Report annually thereafter. G. L. c. 190B, § 5-309(b). Whenever any Guardian of the person is before the Court, the Court shall insure the timely filing and review of any and all Care Plans/Reports. If Care Plans/Reports have not been filed, the Court shall order the filing of a Care Plan/Report.

A Conservator may be required to file a Conservator Financial Plan for managing, expending and distributing the assets of the estate. G. L. c. 190B, § 5-416(c). Whenever any Guardian of the estate or Conservator is before the Court, the Court may order the filing of a Conservator Financial Plan.

c. Accounting Requirements

Any Guardian of the estate or Conservator is subject to the accounting requirements of G. L. c. 190B, § 5-418 of the Code. Whenever any Guardian of the estate or Conservator is before the Court, the Court shall insure the timely filing and review of any and all required Inventory and Accounts.

d. Nursing Facility Admissions

Any nursing facility admission made by a Guardian before July 1, 2009 shall continue to be considered a valid admission after July 1, 2009 without the need for further Court authorization. If the incapacitated person is temporarily

hospitalized, the Guardian may readmit the incapacitated person to the nursing facility the incapacitated person was in immediately before being hospitalized, without further authorization, notwithstanding the fact that this admission may be considered a new admission due to the length of hospitalization and/or loss of the prior bed. However, if the incapacitated person is being admitted to a nursing facility other than one the incapacitated person was in immediately before being hospitalized or, if it is a first-time admission after July 1, 2009, Court authorization for admission must be sought by the filing of a General Petition.

e. Previous Authority to Admit/Commit

Beginning July 1, 2009, the Probate and Family Court no longer has the authority to authorize a Guardian to admit or commit an incapacitated person to a mental health facility or a mental retardation facility as defined in the regulations of the department of mental health. G. L. c. 190B, § 5-309(f). In addition, beginning July 1, 2009, the Probate and Family Court will no longer have the authority to review or extend an admit/commit order previously authorized by the Court. An initial commitment order is generally valid for six months, and subsequent commitment orders are valid for one year. G. L. c. 123, § 8(d). Guardianship of Weedon, 409 Mass. 196 (1991).

If the authority to admit/commit is in an existing decree allowed before July 1, 2009, but the incapacitated person is not admitted/committed before July 1, 2009, this authority shall be considered to have expired on July 1, 2009 and the authority to admit/commit may not be relied upon after July 1, 2009. A new order must be sought through the appropriate District Court proceeding.

If the authority to admit/commit is in an existing decree allowed before July 1, 2009, and the incapacitated person is admitted/committed before July 1, 2009, this authority shall continue to be valid, but will expire six months after the date of admission/commitment.

If the authority to admit/commit issued before July 1, 2009 has expired, it cannot be relied upon nor can the Probate and Family Court review or extend the prior authorization. Any such order must now be sought through the appropriate District Court proceeding.

3. STANDBY OR EMERGENCY GUARDIANSHIP PROXY

The current provisions of G. L. c. 201, § 2(A)-(H) regarding Standby or Emergency Guardianship Proxies will be repealed as of July 1, 2009. Under G. L. c. 190B, § 5-202(a) and (b), a parent or a current Guardian may appoint a Guardian for any minor child in a writing that must be attested to by at least two witnesses. This requirement is similar to the requirements of G. L. c. 201, § 2B, which provides that the standby Guardianship proxy must be in writing, designate an adult and be "witnessed by two or more persons, at least eighteen years of age, neither of whom is to be designated as the proxy." Therefore, the Court shall deem designations executed in accordance with G. L.

c. 201, § 2B valid parental or Guardian appointments under G. L. c. 190B, § 5-202 regardless of the date of execution.

STANDING ORDER 3-09
NOTICE IN GUARDIANSHIP OF INCAPACITATED PERSONS AND
CONSERVATORSHIP MATTERS

In all Guardianship of incapacitated person and Conservatorship matters, notice pursuant to G. L. c. 190B, § 1-401(c) will be presumed insufficient unless:

- 1). Proof of mailing is provided for all notice given by first-class mail; and
- 2.) Proof of publication is provided for all cases where there are interested persons whose address or identity is not known or cannot be ascertained with reasonable diligence.

This Standing Order does not preclude the Court from requiring additional proof of notice as the case requires.

STANDING ORDER 4-09
NOTICE IN GUARDIANSHIP OF MINORS MATTERS

Pursuant to G. L. c. 190B, § 1-401 (b) of the Massachusetts Uniform Probate Code, to promote the well-being of the children of the Commonwealth who are the subjects of Guardianship proceedings, the Probate and Family Court establishes the following order for notice to parties in all Petitions for Appointment of Guardian of a Minor proceedings.

Petition for Appointment of Guardian of a Minor

Notice to Interested Parties

Definitions:

Interested Parties under G. L. c. 190B, § 5-206:

- (1) The minor, if the minor is 14 or more years of age and is not the petitioner;
- (2) Any person who has been awarded care or custody of the minor by a Court of competent jurisdiction, who is alleged to have had the principal care or custody of the minor, or with whom the minor has resided during the 60 days preceding the filing of the petition, excluding foster parents. If the Department of Children and Families has custody of the minor, it must be served;
- (3) Any living parent of the minor, excluding a parent whose parental rights have been terminated or a parent who has signed a voluntary surrender or, if none, brothers and sisters 18 years or older or, if none, heirs apparent or presumptive;
- (4) The spouse if the minor is married;
- (5) Any person nominated as Guardian by the minor if the minor has attained 14 years of age;
- (6) Any parental or Guardian appointee whose appointment has not been prevented or terminated under G. L. c. 190B, § 5-203;
- (7) Any Guardian or Conservator currently acting for the minor in this Commonwealth or elsewhere; and
- (8) The United States Veterans Administration or its successor if the minor is entitled to any benefit, estate or income paid or payable by or through said Administration or its successors.

Order:

Upon the filing of the Petition for Appointment of Guardian of a Minor, the Court shall establish a date for hearing on the Petition and enter this date on the "Order and Notice."

For Petitions that also include a request for the appointment of a temporary Guardian (either with notice or *ex parte*), the date for hearing on the Petition shall be on or before the expiration of the temporary Guardianship. For all other Petitions, the date for hearing on the Petition shall be at least twenty-one (21) days after the filing of the Petition, but no more than thirty-five (35) days after the filing of the Petition.

Except as provided for in subsection “c” of this order, following the filing of Petition, the petitioner shall cause an “Order and Notice” and a copy of the Petition to be served by a constable, deputy sheriff, sheriff or other person approved by the Court on all interested parties. The Order and Notice shall be on a form issued or approved by the Court and shall be served with a copy of the Petition in the following manner:

(a) If the place of residence or whereabouts of an interested party is known, service shall be accomplished on the interested party by:

- (i) Delivery in hand to the party at least fourteen days before the date of hearing for the Petition. If the minor is above the age of fourteen years and has not nominated the Guardian proposed in the petition in conformance with the requirements of G. L. c. 190B, § 5-207, then service shall be made in the same manner on the minor; or
- (ii) Written and duly notarized endorsement of the party’s acceptance of service on the Order and Notice of hearing, whether within or without the Commonwealth.

(b) If the place of residence or whereabouts of an interested party is known, but the petitioner has been unable to accomplish service by delivery despite efforts to do so, the Court, on a written motion of the petitioner with an affidavit setting forth the efforts made, may order that service be accomplished on that interested party, either within or without the Commonwealth, by leaving a copy of the Petition and Order and Notice at his or her last and usual place of residence, and by mailing by first-class mail copies to the interested party at least fourteen (14) days before the date of the hearing for the Petition, or by some other method as ordered by the Court.

(c) If the place of residence or whereabouts of an interested party is not known or cannot be ascertained with reasonable diligence, the Court shall order that service be accomplished on that interested party, either within or without the Commonwealth, by mailing by first-class mail to the interested party at his or her last known address, at least fourteen (14) days before the date of the hearing for the Petition, or by some other method as ordered by the Court. In addition, the Court shall issue an Order for Service by Publication, and the petitioner shall cause notice to be published at least one time in the newspaper or newspapers designated by the register of probate having general circulation in the county where the proceeding is pending, the publication to appear at least seven days before the date of the hearing for the Petition, unless otherwise directed by the Court.

(d) If the identity of an interested party is not known, service shall be accomplished on that interested party by publication as follows: the Court shall issue an Order for Service by Publication, and the petitioner shall cause notice to be published at least one time in the newspaper or newspapers designated by the register of probate having general circulation in the county where the proceeding is pending, the publication to appear at least seven days before the date of the hearing for the Petition, unless otherwise ordered by the Court .

(e) If the minor is entitled to any benefit, estate, or income paid or payable through the United States Veterans Administration or its successor, service shall be made on the Veterans Administration by regular first-class mail at least seven days before the date of the hearing for the Petition.

(f) If the minor is in the custody of the Department of Children and Families, service shall be made on the Department of Children and Families by regular first-class mail at least seven days before the date of the hearing for the Petition.

(g) No notice need be given in the following circumstances:

(1) to a person entitled to notice under this rule who has consented in writing to the allowance of the Petition, if the consent is filed in Court;

(2) to a parent who signed a voluntary surrender in conformance with G. L. c. 210, § 2, or

(3) if the Court has terminated parental rights pursuant to G. L. c. 210, § 3.

(h) The officer or other person making service in accordance with this rule shall make a return of service on a copy of the Order and Notice, which the petitioner shall promptly file with the Court.

APPLICABILITY OF ORDER TO OTHER PROCEEDINGS

This order for notice shall apply to all petitions relating to the Guardianship of a minor, including, but not limited to, Petitions for Termination of Appointment of Guardian of a Minor.

**STANDING ORDER 5-09
MEDICAL CERTIFICATES IN
CONSERVATORSHIP OF MINOR MATTERS**

No Medical Certificate or Clinical Team Report shall be required in proceedings for Conservatorship of a minor filed pursuant to G. L. c. 190B, § 5-401(b) unless ordered by the Court.