

The Mental Health Association

Of Greater Houston

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Guardianship Handbook

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Professional

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- FOR -

HEALTH CARE PROVIDERS

HOW TO INITIATE GUARDIANSHIP

For Health Care Providers

TEMPORARY / EMERGENCY

A temporary/emergency guardianship shall be granted if the Court has probable cause to believe that the person, the person's estate, or both, requires the immediate appointment of a guardian. Simply stated, this type of guardianship will be considered if

*THE PROPOSED WARD IS IN A LIFE-THREATENING SITUATION
OR IF THE ESTATE OF THE WARD IS BEING MISAPPROPRIATED.*

The DANGER MUST BE IMMINENT. Temporary/Emergency guardianships will not be granted for placement purposes only. However, the Court recognizes the difference between an abandoned patient and a placement issue.

NOTE: All documentation submitted to the Court should clearly delineate the factors that are considered IMMEDIATE DANGER.

ABUSE

“Willful infliction of injury, unreasonable confinement, or cruel punishment...”

- Scratches, cuts, bruises, burns
- Welts, scalp injury, gag marks
- Sprains, punctures, broken bones, bedsores
- Confinement
- Rape, other forms of sexual abuse
- Verbal, psychological abuse

NEGLECT

“The failure to provide for one's self the goods or services which are necessary to avoid physical harm, mental anguish, or mental illness or the failure of a caretaker to provide such goods or services...”

- Malnourishment, dehydration
- Over/under medication
- Lack of heat, running water, electricity
- Unsanitary living conditions
- Lack of medical care
- Lack of personal hygiene, clothes

EXPLOITATION

“The illegal or improper act or process of using the resources of an elderly or disabled person for monetary or personal benefit...”

- Taking Social Security or SSI check
- Abusing joint checking account
- Taking property or other resources

The Process – Temporary / Emergency

1. Filing the Request

A physician request (see attached) and social history may be filed by delivery to 1115 Congress Ave., Houston, TX 77002. When a request is received from a hospital, nursing home, agency or other source, it is rotated between the four Probate Courts. The Courts suggest that a SOCIAL HISTORY be attached to the application for temporary/emergency guardianship. If there is information, which is relevant and is not included in the application or social history, a cover letter may be attached.

NOTE: If there is additional information which may be helpful to the Court such as allegations concerning possible abuse, include this in the cover letter.

2. Investigation

After receiving the request (usually within 24 hours), an order will be issued to investigate the need for guardianship.

The investigator (or Attorney Ad Litem) will report to the Court, usually within one day. Based on this report, the Court will determine if a temporary/emergency guardianship is needed.

3. Determination

Once a hearing has been held and a determination is made that a temporary/emergency guardianship is appropriate, the guardianship should be in place within 24 hours.

If the patient is indigent, the guardianship will be referred to the Harris County Guardianship Program (HCGP). If the Patient has assets and there are no family members qualified and willing to serve as the guardian, the guardianship will be referred to a private attorney.

NOTE: If the proposed ward's status as indigent is questionable, an attorney may be appointed pending final determination.

4. Affirmation Hearing

The patient will receive written notification of all hearings through the constable's office. A hearing to determine a temporary guardianship will be held ten (10) days from the initial application.

5. Terms of Temporary/Emergency Guardianships

A temporary/emergency guardianship will continue for no longer than sixty (60) days.

Permanent

A permanent guardianship will be considered if need exists and imminent danger is not a factor.

The Process

1. Filing the Request

A family or physician request (see attached) may be filed by delivery to 1115 Congress Ave., Houston, Texas 77002. When a request is received from a hospital, nursing home, agency or other source, it is rotated between the four Probate Courts. If there is information, which is relevant and is not included in the application, a cover letter may be attached.

NOTE: If there is additional information which may be helpful to the Court (such as allegations concerning possible abuse) include this in the cover letter.

2. Investigation

- ◆ An investigator will be appointed and will report to the Court.
- ◆ If the proposed ward is indigent the case will be referred to HCGP. If assets exist, a referral to a private guardian will be made.
- ◆ An application and order for permanent guardian will be filed by HCGP if appropriate.
- ◆ An Attorney Ad Litem will be appointed by the Court to represent the proposed ward. Within a reasonable time before the court hearing, the “Ad Litem” will interview the patient to discuss the law and the facts of the case and review the application, the current physical, medical and intellectual examinations and all relevant medical, psychiatric and psychological testing records.
- ◆ It is required by law that the proposed ward be personally served with notice of the guardianship.
- ◆ Immediate Family members must also be give notice of an application for guardianship.

3. Hearing

- ◆ Once service has been obtained, the hearing for a permanent guardianship can be set the Monday on or after following ten (10) days.

NOTE: Normally, this process should not take more than five to six weeks to complete.

When the permanent guardianship is pending, should an emergency occur, a temporary guardianship can be initiated.

Hints For Making The Process Work:

1. For Temporary/Emergency guardianship, provide clear and complete information regarding the nature of imminent danger.
2. The Courts will not grant a temporary/emergency guardianship for placement unless current placement is in a dangerous setting. However, abandonment is recognized as a problem which may generate a need for a temporary/emergency guardianship. Thorough explanations concerning the circumstances, including supporting documents that all other efforts have been exhausted, will allow the Court to investigate appropriately.
3. If you have reason to believe that abuse may be occurring or has occurred, it should be reported to the court. This information may come from sources other than the patient and the Court will consider such information. If the information is not in the social history or physician statement, include it in a cover letter.
4. If you have questions concerning the guardianship process, the Probate Court staff is available to assist you. (See attached list of contact resources).

PROBATE COURT RESOURCES

Probate Court Number One
713-755-6084

Probate Court Number Two
713-755-6090

Probate Court Number Three
713-755-6953

Probate Court Number Four
713-755-5959

HARRIS COUNTY PROTECTIVE SERVICES FOR CHILDREN AND ADULTS

2525 Murworth
Houston, Texas 77054

(713) 363-

Guardianship Program
Contact Information

The Guardianship Program of the Harris County Protective Services for Children and Adults provides 24-hour coverage for its wards through a system of teams of case managers assigned to each of the four Probate Courts. Each worker on the team can provide assistance with any case on the team's caseload.

After hours and on weekends contact can be made through the county operator at (713)755-5000. If, during regular hours, none of the members of a team can be reached within a reasonable time, the following options are available.

1. Lisa LeVrier
Program Monitor
(713) 363-2331

2. Jim McLaughlin
Program Director
(713) 363-2320

CAPACITY ASSESSMENT

Date: _____

Physician Name: _____

Physician Address: _____

Telephone Number: _____

Judge (Judge)
Probate Court (C#)
Family Law Center, (5th/6th) Floor
1115 Congress, Houston, Texas 77002

RE: Guardianship of (WARD)
Cause No. (0)

Your Honor:

I am a physician currently licensed in the State of Texas. I have been the doctor for (WARD) (Proposed Ward) since _____, _____. I have examined the Proposed Ward on _____, _____. Based upon that examination and my observations, it is my opinion that the Proposed Ward is incapacitated as described in my answers to the following questions:

1. What is the general nature and degree of the incapacity?

2. What is the Proposed Ward's medical history as it is related to the incapacity?

3. What is the prognosis, including the estimated severity, of the capacity?

4. How and in what manner does the Proposed Ward's physical and mental health affect the Proposed Ward's ability to make or communicate responsible decisions concerning himself or herself?

5. Does any current medication affect the demeanor of the Proposed Ward? _____ (Yes / No) Would this medication affect the Proposed Ward's ability to participate fully in court proceedings? _____ (Yes / No) Please describe these medications.

6. Is senility a diagnosis of the Proposed Ward's incapacity? _____ (Yes / No) If so, please describe the precise physical and mental conditions underlying this diagnosis.

7. Is mental retardation the basis of the Proposed Ward's incapacity? _____ (Yes / No) If yes, was the examination conducted according to the rules adopted by the Texas Department of Mental Health and Mental Retardation? _____ (Yes / No)

8. Is the Proposed Ward capable of operating a motor vehicle? _____ (Yes / No)

9. Is the Proposed Ward capable of making an informed decision concerning matters decided by a public vote? _____ (Yes / No)

10. It is my opinion that the Proposed Ward is incapable of personally handling or making decisions concerning the following matters which are marked NO below, and that the Proposed Ward is capable of personally handling and making decisions concerning the following matters which are marked YES below:
 - _____ a. to handle a bank account; if YES, should the Court limit the amount in such account? _____
 - _____ b. to contract and incur obligations
 - _____ c. to collect and file suit on debts, rentals, wages and other claims due Proposed Ward
 - _____ d. to pay, compromise and defend claims against the Proposed Ward
 - _____ e. to apply for or consent to governmental services
 - _____ f. to apply for and to receive funds from governmental sources
 - _____ g. to enroll in public or private residential care facilities
 - _____ h. to make employment decisions
 - _____ i. to apply for psychological and psychiatric tests and evaluation
 - _____ j. to consent to disclosure of psychological and medical records
 - _____ k. to make decisions related to military service
 - _____ l. to enter into insurance contracts of every nature
 - _____ m. other _____
 - _____ n. other _____

THEREFORE, it is my opinion that the Proposed Ward is incapacitated as stated in this letter and that a guardian should be appointed and granted the powers necessary to act on the Proposed Ward's behalf and to make decisions for the Proposed Ward concerning the matters which are marked NO above.

FURTHERMORE, (answer YES to one of the following):

_____ by responding NO to all of the matters listed above, it is my opinion that the Proposed Ward is entirely without capacity.

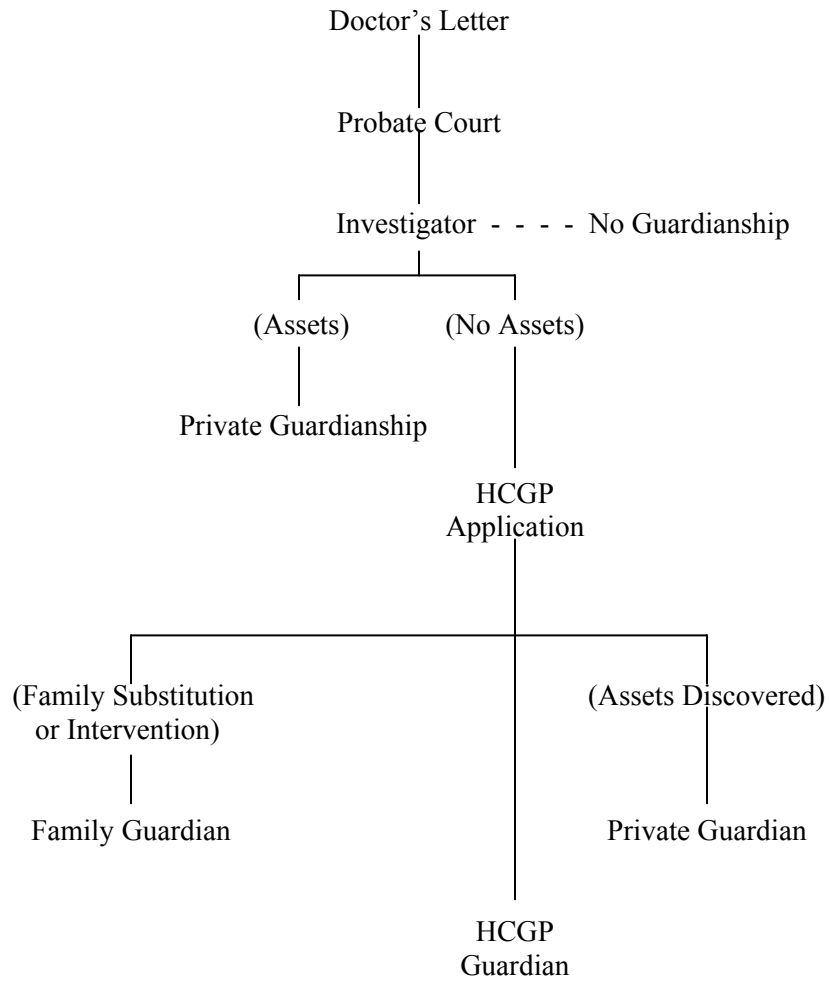
_____ by responding both YES and NO to the matters listed above, it is my opinion that the Proposed Ward is partially incapacitated.

I believe that the Court should also be aware of the attached additional information, if any, which concerns the Proposed Ward and which is not included above, but which may be of interest to the Court.

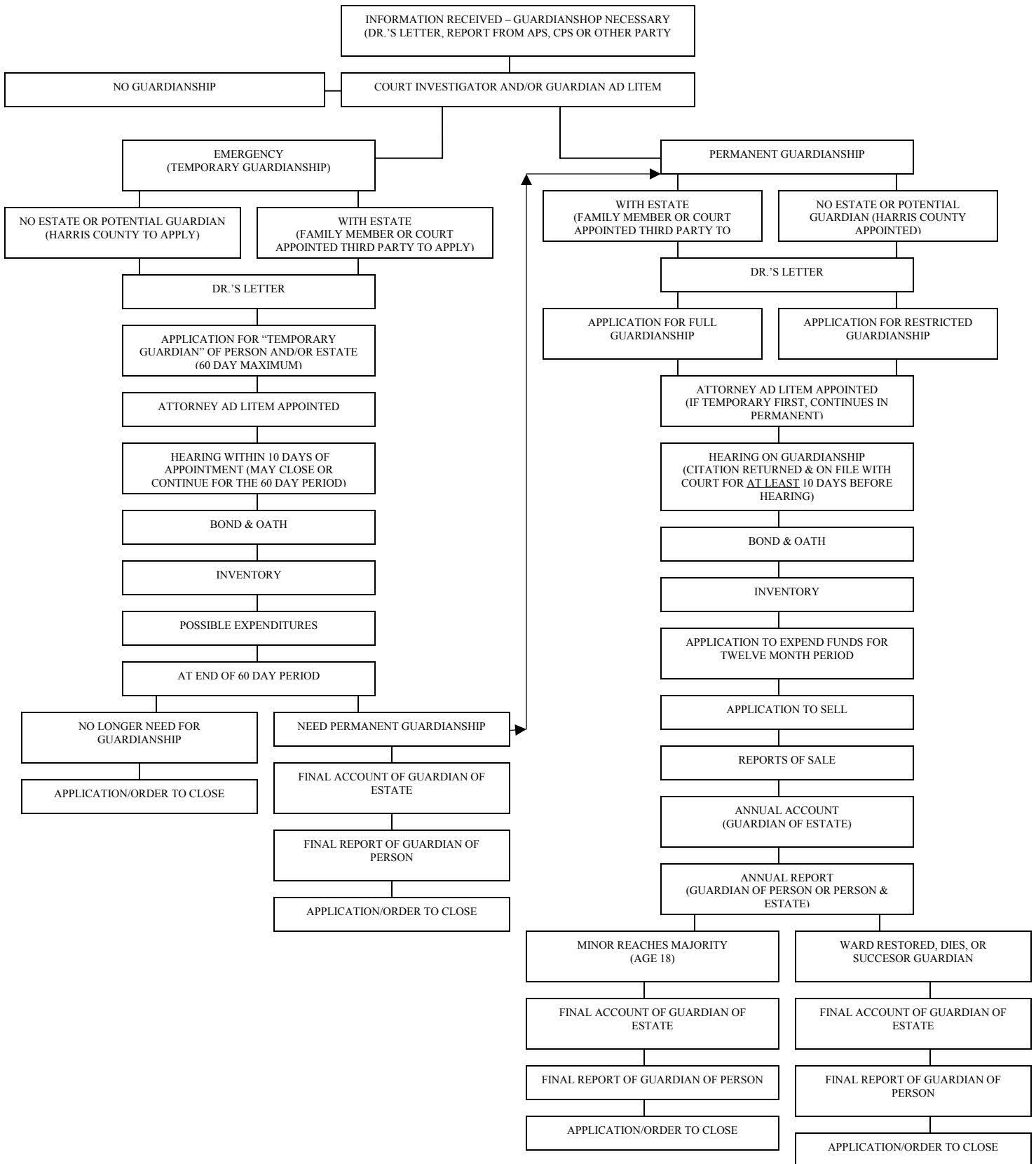
Sincerely,

(Physician Name) M.D.

**HARRIS COUNTY GUARDIANSHIP PROGRAM
GUARDIANSHIP FUNDAMENTALS
REFERRAL FLOWCHART**



THE GUARDIANSHIP PROCESS



FAMILY

INFORMATION

POWERS OF ATTORNEY and GUARDIANSHIP

Suggestions to help a person who is mentally incapacitated:

I. Plan Ahead

- ◆ Obtain Durable Power of Attorney and Medical Power of Attorney if person has mental capacity.
- ◆ If mental incapacity is questionable, ask the person's medical physician to give an opinion as to mental capacity to execute the Powers of Attorney.
- ◆ ***Durable Power of Attorney***- Another person is appointed to handle land, money, benefits, and anything dealing with property. Prepared by an attorney and filed in the county deed records if used for real property.
- ◆ ***Medical Power of Attorney***- Another person is appointed to handle all decisions involving health, including medical and custodial. Available free at many hospital and nursing home admission offices and through the Texas Medical Association (512) 370-1300.
- ◆ ***Directive to Physician***- Document used for the person to make wishes known where issues of a terminal or irreversible condition exists.
- ◆ ***HIPAA*** – Health Insurance Portability and Accountability Act (“HIPAA”) limits disclosure of protected medical information without the patient's advance authorization.

II. Determine if Guardianship is Needed

- ◆ Proceed with Guardianship, only if there is NEED, meaning there is no other means to handle the person's estate or medical decisions.
- ◆ Guardianship of Person and Estate is based on mental incapacity determined by medical opinion. Seek the advice of the person's doctor as to whether the person is mentally incapacitated and request a medical doctor's letter indicating mental incapacity. (See attached “Capacity Assessment” form). Seek guardianship of an estate only if the person has assets.

III. Begin Guardianship

- ◆ Seek help of an attorney familiar with elder law. *If you have no attorney and are unable to locate one, you may seek assistance through the Houston Lawyer Referral (713) 237-9429.*
- ◆ Discuss cost and fees with an attorney. *Attorney fees are billed at an hourly rate; Court approval is necessary if this is to be paid from the Ward's estate.*
- ◆ Filing fee-approximately \$ 212.00
- ◆ Attorney Ad Litem for Ward- fees are billed hourly, Court approval is necessary.
- ◆ Bond premium – amount depends on the liquid assets of the estate

IV. Procedure to be followed by you and your attorney

- *Interview-* Gather history, facts, medical opinion, family information, and value of the estate; take this information with you to the interview to reduce the amount of time spent gathering information.
- *File Application with the Court.*
- *Court Investigator Appointed-* Investigator will contact the person (“Ward”), you (“Guardian”), and the ward’s doctor and will file a court report.
- *Attorney Ad Litem for Ward-* Appointed by the Court to protect the Ward’s legal interests, investigate, and appear at the hearing.
- After, the proposed *Ward is served* by the Constable, a hearing can be set for ten (10) days later.
- *Hearing* held in Court. The Ward may be present unless he/she chooses not to attend, or the Attorney Ad Litem advises against it. It takes at least 3-4 weeks to complete the process and 5-6 weeks is not unusual.
- If need is determined by the courts, a *Guardian will be appointed* and bond set on amount of liquid assets.
- The Guardian seeks a *bonding agent* for bond and pays an annual premium (For example on a \$ 10, 000 bond the annual premium is \$ 95.00. Frequently the bonding agent requests a 3-5 year premium prior to issuing the bond.)
- Attorney files the Bond and Oath for the Guardian, the Judge signs it, and the Guardian is “qualified”- *now the Guardian has the power to act for the Ward.*
- Guardian files the *Inventory, Appraisal, and List of Claims* which is a picture of the assets in the estate on the date of qualification. This is filed within 30 days of qualification.
- Guardian files statutory *Notice to Creditors.*
- Guardian files *Application to Expend Funds for Twelve Months* and other expenditures seeking Court authority always before money is spent (except tax and insurance).
- *Guardian files an Annual Account-* keep accurate records and all receipts.

- *Guardian files a Final Account.*
- *Ward can be restored to mental capacity if mental condition changes.*

V. **Temporary Guardianship**

This is used in the four Harris County Probate Courts only if there is imminent danger. The Courts are very conservative in the use of this procedure.

Example: Person – need for immediate medical attention.

Example: Estate – someone is misusing the prospective ward's money.

A Temporary/Emergency Guardianship is not approved for placement transfer from hospital to nursing home.

- * Attorney prepares Application and files it with the Court for immediate appointment of Guardian.
- * A hearing is set within ten (10) days where the Ward, Court Investigator and Attorney Ad Litem are present at the affirmation hearing of the Temporary Guardianship.
- * One reason to try to avoid Temporary Guardianship is that often a Permanent Guardianship is also needed. The Temporary Guardianship lasts only 60 days. If a Temporary Guardianship is obtained when a Permanent Guardianship is really needed, court costs and procedures are unnecessarily duplicated.
- * Only those powers that are immediately needed are given for the Temporary Guardianship.

VI. Guardianships are handled by private attorneys if the Ward has assets. If the Ward is indigent (“Medicaid qualified”), ask the hospital or doctor to prepare a letter to the Court. Call (713-755-5000) if you are seeking help in establishing the guardianship.

FAMILY MEMBERS AS GUARDIANS

1. If a family member is interested in becoming the guardian, he/she may contact one of the following agencies for legal assistance in indigent cases. Remember, these are volunteer organizations and each organization has strict qualifications and may have a waiting list.

Houston Volunteer Lawyers Program, Inc.
(713) 228- 0732

University of Houston Legal Aide Clinic
(713) 743- 2094

NAACP Legal Clinic
(713) 526- 3389

Gulf Coast Legal Foundation
(713) 652- 0077

For non-indigent cases, a private attorney may be contacted.

2. If the family fails to initiate guardianship in the time allowed by the Court, (which is approximately 10 days), the case will be referred to the appropriate party to file the necessary papers.
3. Family members must be able to qualify as guardians. A family member is ineligible if he/she is :
 - * A minor;
 - * A person whose conduct is notoriously bad;
 - * An incapacitated person.

If a bond is required there will be a credit check by the bonding company on the proposed guardian.

Once the initial investigation by the court investigator is completed, the investigator's job is complete. Should you have any questions concerning the status of the case you may contact the Guardianship Coordinator. You may also refer family members to the Guardianship Coordinator with any questions. (See attached contact sources.)

PROBATE COURT RESOURCES

Probate Court Number One
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Probate Court Number Two
(713) 755- 6090

Probate Court Number Three
(713) 755- 6953

Probate Court Number Four
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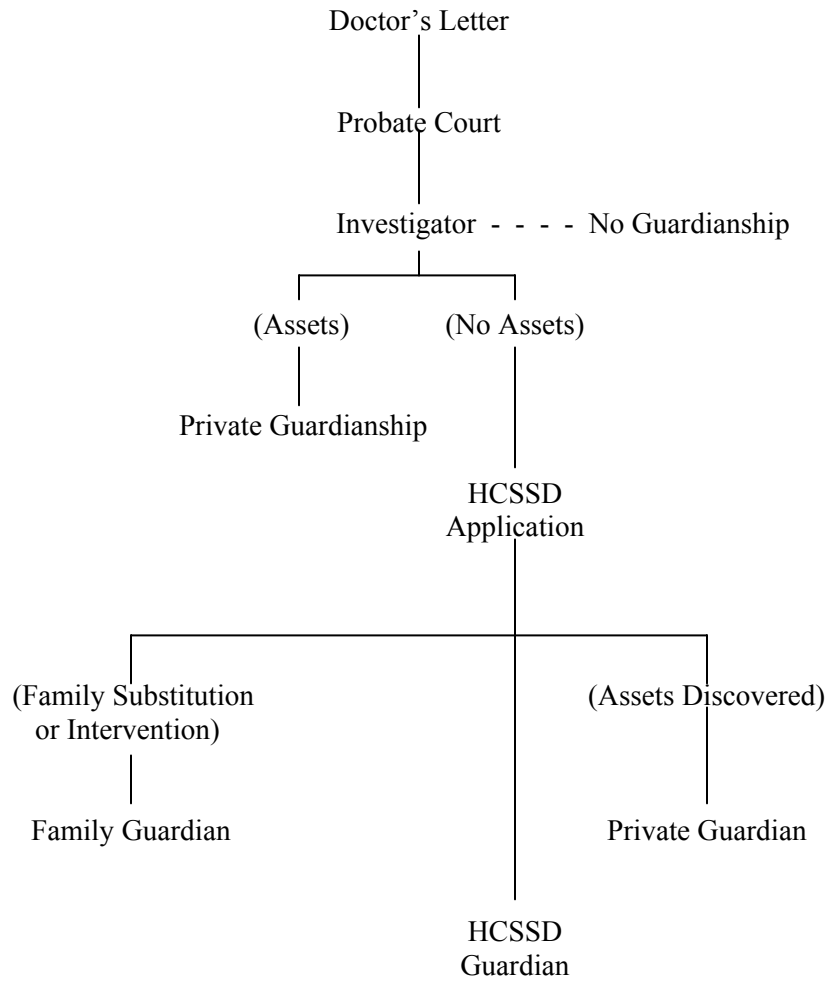
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Program Director
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**HARRIS COUNTY GUARDIANSHIP PROGRAM
GUARDIANSHIP FUNDAMENTALS
REFERRAL FLOWCHART**



CAPACITY ASSESSMENT

Date: _____

Physician Name: _____

Physician Address: _____

Telephone Number: _____

Judge (Judge)
Probate Court (C#)
Family Law Center, (5th/6th) Floor
1115 Congress, Houston, Texas 77002

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 - _____ a. to handle a bank account; if YES, should the Court limit the amount in such account? _____
 - _____ b. to contract and incur obligations
 - _____ c. to collect and file suit on debts, rentals, wages and other claims due Proposed Ward
 - _____ d. to pay, compromise and defend claims against the Proposed Ward
 - _____ e. to apply for or consent to governmental services
 - _____ f. to apply for and to receive funds from governmental sources
 - _____ g. to enroll in public or private residential care facilities
 - _____ h. to make employment decisions
 - _____ i. to make employment decisions
 - _____ j. to apply for psychological and psychiatric tests and evaluation
 - _____ k. to consent to disclosure of psychological and medical records
 - _____ l. to make decisions related to military service
 - _____ m. to enter into insurance contracts of every nature
 - _____ n. other _____
 - _____ o. other _____

THEREFORE, it is my opinion that the Proposed Ward is incapacitated as stated in this letter and that a guardian should be appointed and granted the powers necessary to act on the Proposed Ward's behalf and to make decisions for the Proposed Ward concerning the matters which are marked NO above.

FURTHERMORE, (answer YES to one of the following):

_____ by responding NO to all of the matters listed above, it is my opinion that the Proposed Ward is partially without capacity.

_____ by responding both YES and NO to the matters listed above, it is my opinion that the Proposed Ward is partially incapacitated.

I believe that the Court should also be aware of the attached additional information, if any, which concerns the Proposed Ward and which is not included above, but which may be of interest to the Court.

Sincerely,

(Physician Name) M.D.