ADVANCED CLNC®
Practice-Building Program

Dig Up Unusual Suspects in Will Contests and Guardianship Revocation

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THE PIONEER OF LEGAL NURSE CONSULTING
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DIG UP UNUSUAL SUSPECTS AND UNUSUAL CASES IN WILL CONTESTS AND GUARDIANSHIP REVOCATION

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I. INTRODUCTION

A. Populations with Mental Illness and Addiction, Cognitive and Developmental Disorders Increasing
   1. Centers for Disease Control and Prevention (CDC) statistics.
      a. Every year 57.7 million Americans, or one in four, are diagnosed with a mental illness.
         (1) Alzheimer’s disease is recognized as a mental illness.
      b. One in seven people have a serious mental illness.
      c. Two thirds of nursing home residents have a mental illness.
      d. In 2006-2008, one in six children had a developmental disability.
      e. One in 88 children have an autism spectrum disorder.

B. Cases Related to Diminished Capacity Increasing Due to Alzheimer’s Disease and Other Dementias
   1. In 2011, 5.2 million Americans 65 and older had Alzheimer’s disease.
   2. Age 65 and older: 13 percent.
   3. Age 85 and older: 43 percent.

C. Cognitively Impaired Population Increasing Due to Lower Mortality Rates for Traumatic Brain Injury
   1. 1.7 million people per year sustain a traumatic brain injury (TBI).
   2. Falls are the leading cause of TBI, particularly in adults over 75.

D. CDC Statistics Support a Growing Need for CLNC® Consultants in the Legal Arenas of Capacity, Diminished Capacity and Incapacity
II. LEGAL STANDARDS FOR CAPACITY, DIMINISHED CAPACITY AND INCAPACITY

A. Legal Capacity

1. A person must be of “sound mind.”
2. The ability to know, understand and interrelate relevant facts or elements to make a rational decision and to comprehend the cause and effect of that decision.
   a. Determines sanity or insanity.
   b. Dependent on state statute and/or case law.
3. Must meet specific legal qualifications, such as age, to engage in activities with legal consequences.
   a. Event or transaction specific.
   b. Dependent on state statute and/or case law.

B. Criminal Capacity

1. The ability to determine right from wrong and to be held accountable for any criminal acts or behavior.
   a. Criminal law distinguishes a guilty act, or actus reus, from a guilty mind, or mens rea.
2. Diminished capacity.
   a. Results in the inability to determine “intent” due to mental impairment or disorder.
   b. Differs from “not guilty by reason of insanity.”
   c. Results in conviction of a lesser offense.
3. Reduced mental ability plays a role in diminished capacity.
   a. Alcohol or drug abuse and addiction.
   b. Cognitive impairment disorders and diseases.
   c. Mental retardation and developmental disorders.
   d. Mental illness.
   e. Injury.

C. Testamentary Capacity

1. Having the mental competency to execute a will at the time the will was signed and witnessed. To have testamentary capacity the author of the will must understand the nature of making a will, have a general idea of what he/she possesses, and know who are
members of the immediate family or other “natural objects of his/her
bounty.”

2. Mental ability and comprehension, or “sound mind,” must be
affirmed at the time of the testamentary document’s execution.

3. Does not require the ability to manage all affairs or day-to-day
business actions.

4. Does not require capacity over time, only at the time of document
execution.
a. Signing a testamentary document may take place during a
“lucid interval.”

5. May be challenged by the establishment of an “insane delusion.”
a. Irrational perceptions of particular persons or events.
b. Delusion must affect the will or testamentary document.
c. May result in negating the finding of capacity, invalidating the
document.

D. Contractual Capacity

1. The ability to understand the nature and effect of the act and the
business transaction.
a. The level of understanding is relevant to the complexity of
the transaction.

2. Capacity and diminished capacity are dependent on the type of
transaction and the decision being considered.

E. Capacity for Power of Attorney

1. A power of attorney is a right given by one competent person to
another competent person to perform a specific act or acts.
a. Ceases when the principle competent person revokes the
right, becomes incapacitated or dies.

2. The standard is based on contractual capacity.
a. Testamentary capacity is used in some courts and states.

F. Capacity for Durable Power of Attorney

1. Determined by a competent person, prior to incapacitation, and
provides for another competent person to act on their behalf when
they are unable to manage their own affairs.
2. Provides for guardianship without petitioning the court in the event of incapacity or medical deterioration from illness or injury.

G. Capacity for Healthcare Decisions

1. The ability to comprehend the benefits, risks and alternatives to healthcare proposals and to make and communicate decisions on healthcare choices according to the Uniform Healthcare Decisions Act.

2. Dependent on state statute and most often uses advanced directive laws.

3. Rooted in informed consent, which requires competent, voluntary and informed consent to treatment.

4. The capacity standard for healthcare decisions is similar to contractual capacity, but the nature, complexity and consequences of these actions necessitate additional resources such as the clinical models of capacity.

H. Guardianship

1. Provides the right and duty for a competent person (guardian) to act on the behalf of an incapacitated person (ward), making all decisions, including management of daily affairs (medical, legal and financial).

2. Maintains the presumption of capacity with the burden of proof requiring the petitioner to establish diminished capacity.
   a. Determined by state statute.

3. A finding of diminished capacity, or incapacity, allows the state to take command of an individual’s right to decision-making and choose a guardian or conservator to act as a surrogate in all or part of the person’s affairs.

4. In the 1960s a two-pronged test of capacity included two findings.
   a. Disabling mental condition, but could include a physical disability, advanced age or other cause.
   b. The condition results in an inability to manage one’s affairs.
5. Recent changes have included three additional tests.
   a. An individual’s functioning in society.
   b. The ability to provide essential needs, such as healthcare, food, clothing, shelter or safety.
   c. Cognitive functioning.


7. Currently state guardianship laws use a combination of four tests.
   a. Disabling condition.
   b. Functional behavior as to essential needs.
   c. Cognitive functioning.
   d. Guardianship is necessary to provide essential needs and is the least restrictive alternative.

8. State laws reflect a preference for limited forms of guardianship, maintaining an individual's optimum independence.

I. Undue Influence

1. A relationship between an individual and another person in which the individual’s will is subjected to and substituted for the will of the other person.
   a. Financial exploitation.
   b. Fraud.
   c. Executing a will, contract or conveying property.
   d. Sexual abuse.
   e. Criminal cases and homicide.

III. CLINICAL MODELS OF CAPACITY

A. Causal Component

1. Diagnosis related to the question of diminished capacity or incapacity.
   b. Schizophrenia.
2. Important to understand prognosis of diagnosis and symptomatology.
   a. Temporary impairment.
   b. Permanent impairment.
   c. Possibility of improvement with treatment.

3. Assessment by psychiatrist or other clinician to establish diagnosis.

B. Cognitive Functioning
2. Legal standard based on guardianship law.
   a. Receive and understand information.
   b. Make and communicate decisions.

3. Assessment.
   a. Neuropsychological or neurological testing.

C. Functional Behavior
1. Must assess the individual's capacity for the specific transaction, acquiring and merging cognitive and functional performance information.
2. Legal standard based on guardianship law.
   a. Ability to manage one's person or property.
   b. Possession of specific skills pertaining directly to the transaction.

3. Assessment.
   a. Family reports.
   b. Direct observation by clinicians and attorneys.
   c. Testing.

D. Interactive
1. Merges the personal, psychosocial, physical and situational aspects impacting how the individual relates to the transaction.
   a. Available resources.
   b. Potential risks.
   c. Values and preferences.

2. Legal standard based on guardianship law.
   a. Attaining the least restrictive alternative.
3. Assessment.
   a. Client questioning.
   b. Family input, if possible.
   c. Clinician and attorney.

E. Specific Domain Models

1. Consent capacity.
   a. Requires understanding, reasoning, appreciation and expressing choice.

2. Financial capacity.
   a. Requires knowledge, skill and judgment.

3. Independent living.
   a. Determining ability for safety, independent activities of daily living (IADLs) and judgment.

IV. FRAMEWORK FOR A CAPACITY ASSESSMENT

A. Legal Standard

1. Founded in legal standard for the type of capacity at issue.

2. Psychologists and clinicians form opinions based on capacity assessments using a battery of tests and evaluations.

3. Assessment of receiving, evaluating and communicating information.

B. Functional Elements

1. Assessment of ADLs and IADLs.

2. Tailor assessment specific to type of capacity.

C. Diagnoses

1. Acknowledgment of causal factor is key.

2. Determine course of problem, treatment and prognosis.
D. Cognitive Elements

1. Neuropsychological testing including evaluations of language, memory and executive functioning.

2. Observational signs of potential cognitive impairment.
   a. Short-term memory loss.
   b. Communication problems.
   c. Comprehension problems.
   d. Difficulty with mental flexibility.
   e. Calculation difficulties.
   f. Disorientation.

3. Focus must be on decisional abilities, not on being cooperative or easy going.

E. Psychiatric or Emotional Elements

1. Degree of psychiatric diagnosis, response to treatment and potential prognosis.

2. Degree of emotional distress or lability.

3. Behavioral signs such as delusions or hallucinations.

F. Characteristics and Preferences

1. Race.

2. Ethnicity.

3. Culture.

4. Religion and spiritual beliefs.

5. Sex.


G. Risk of Harm and the Need for Supervision

1. Assessing any potential for harm or concern for safety requires recommendations for intervention or supervision to mitigate the risk at the least restrictive solution.
2. Concerned with reducing risk to self, but must include avoiding serious risks to others.

H. Enhancing Capacity
1. Assessing capacity must include interventions to improve outcomes and capacity.

I. Clinical Judgment
1. Consider all data and findings to arrive at an informed opinion.
2. May delineate capacity for specific tasks and not for others.

V. COMMON DIMINISHED CAPACITY CASES

A. Insanity v Diminished Capacity: McNaughton Case

B. Estate Planning

C. Elder Abuse and Fraud

D. Post Traumatic Stress Disorder (PTSD)
   1. PTSD is uncommon, but on the rise.

VI. COMMON PLAINTIFF ALLEGATIONS FOR DIMINISHED CAPACITY CASES

A. Decedent Was Subject to Undue Influence in the Execution of the Will

B. Decedent Was Suffering from a Weakened Intellect at the Time the Will Was Executed
C. Decedent Was Unable to Manage His Affairs and Make Decisions

D. Decedent Was Unable to Administer to His Essential Needs

VII. COMMON DEFENSES FOR DIMINISHED CAPACITY CASES

A. Decedent Was Able to Communicate His Thoughts and Needs to Others

B. Decedent’s Cognitive Functioning Was Congruent with His Age

C. Decedent Was Able to Make Financial Decisions for Himself at the Time the Will Was Executed

D. Decedent Was Administering to His Essential Needs

VIII. THE ROLE OF THE CERTIFIED LEGAL NURSE CONSULTANT CM IN DIMINISHED CAPACITY CASES

A. Review and Analyze Medical and Other Pertinent Records

1. Illuminate elements of capacity assessments in the records including all past medical records.
   a. Admissions and discharges.
   b. Diagnoses and disorders.
   c. Cognitive, functional and psychosocial status.
   d. Medications.
   e. Conditions, symptoms and treatments.

2. Neuropsychological testing and psychological history.

3. Rehabilitation and long term care facilities.

4. Educational, foster care, juvenile and arrest records.

5. Guardian or conservator records.

B. Prepare a Chronological Timeline

C. Outline the Issues

D. Educate the Attorney
   1. Significance of cognitive, functional and psychosocial status and impairments.
   2. Current literature review, research and summary pertaining to specific case issues.

E. Market Your Unique CLNC® Expertise
   1. Networking.
      a. NACLNC® Conferences.
      b. Local bar association's continuing education meetings.
      c. Caregiver and eldercare conferences.
      d. National and state attorney conferences.
   2. Presentations.
      a. NACLNC® Conferences.
      b. Legal conferences.
      c. Paralegal conferences.
      d. Local caregiver support groups and organizations.
   3. Develop a professional resume that emphasizes neuropsychological experience and expertise.
   4. Brand your CLNC® business.
      a. Focus on your mission and vision statements.
      b. Use content and visuals to communicate your expertise.

IX. INTERROGATORIES AND REQUESTS FOR PRODUCTION

A. Interrogatories Directed to the Defense (Will Contest and Guardianship Cases)
   1. Please identify the name and title of the person completing these interrogatories.
2. Please list all healthcare providers at (Facility) __________ involved in the treatment and examination of (Deceased) __________ from (Date) __________ to (Date) __________.
   a. Name of provider.
   b. Address of provider.
   c. The nature of the treatment or examination.
   d. The diagnosis for each treatment or examination.
   e. Date of each treatment or examination.
   f. Charges incurred for each treatment or examination.
   g. Date of discharge from any treatment or examination.

3. Please identify all expert witnesses the defense intends to call in this case and include:
   a. Name of expert.
   b. Area of specialty.
   c. Expertise, training and affiliations.
   d. Opinions rendered and factual basis for each.
   e. A copy of the expert's report.
   f. A copy of the expert's curriculum vitae.

4. Please identify any insurance policies in effect from (Date) __________ to (Date) __________ providing coverage for the (Deceased) __________ and include:
   a. Full name of the insurance carrier.
   b. Address of insurance carrier.
   c. The policy number.
   d. Effective dates of the policy.
   e. Policy limits.

5. Please identify any and all persons known to have personal knowledge of the facts surrounding the will contest of (Deceased) __________ and include:
   a. Name of witness.
   b. Address of witness.
   c. Witness's role in the incident.
   d. Describe substance of their knowledge and testimony.

6. Please identify the steps and actions undertaken by (Defendant) __________ to assess (Incapacitated Person) __________ to determine whether person's status and condition permitted a return home.
7. Please identify all persons and occasions and provide all facts related to any assessment of (Incapacitated Person) __________ regarding person’s status and condition which would permit a return home.
   a. Name of provider.
   b. Address of provider.
   c. The nature of the treatment or examination.
   d. The diagnosis for each treatment or examination.
   e. Each treatment or examination date.
   f. Charges incurred for each treatment or examination.
   g. Date of discharge from any treatment or examination.

8. Please identify all persons and describe each occasion in which the home of (Incapacitated Person) __________ was inspected or assessed to determine a suitable and safe return to the residence.
   a. Name of assessor or inspector.
   b. Address of assessor or inspector.
   c. Qualifications, including expertise, training and affiliations.
   d. Identify and describe findings, conclusions and opinions rendered.
   e. Identify and describe all documents, reports and summaries pertaining to each inspection and provide a copy of any and all documents.

9. Please identify and describe all facts related to the contention that the (Plaintiff) __________ failed to properly provide care and safety for (Incapacitated Person) __________ at person’s home.

10. Please list any financial compensation received by the guardian for any and all guardianship services rendered for (Incapacitated Person) __________ from (Date) __________ to (Date) __________, including:
    a. The parties from whom the compensation was received.
    b. The amount of compensation received.
    c. The dates of compensation payments.
    d. A description of any document signed regarding the terms of compensation and payment.

B. Interrogatories Directed to the Plaintiff (Will Contest and Guardianship Cases)

1. Please list the following information for (Plaintiff) __________:
   a. Full name.
   b. Date of birth.
   c. Place of birth.
d. Current address.
e. Driver's license number.
f. Date of each marriage.
g. Name and age of each dependent child.

2. Please list the following information for (Plaintiff) __________:
a. Names of all educational institutions attended.
b. Addresses of all educational institutions attended.
c. Diplomas or degrees achieved.

3. Please list the employment history for (Plaintiff) from (Date) __________ to (Date) __________ including:
a. Name of employer.
b. Address of employer.
c. Name of supervisor.
d. Address of supervisor.
e. Date employment began.
f. If employment was terminated, date of termination.
g. Job description, duties or type of work performed.
h. Average weekly wage.

4. Please identify all expert witnesses being named in this case by plaintiff and include:
a. Name of expert.
b. Area of specialty.
c. Expertise, training and affiliations.
d. Opinions rendered and factual basis for each.
e. A copy of the expert's report.
f. A copy of the expert's curriculum vitae.

5. Please identify any insurance policies providing coverage for (Deceased) __________ and include:
a. Full name of the insurance carrier.
b. Address of insurance carrier.
c. The policy number.
d. Effective dates of the policy.
e. Policy limits.

6. Please list all healthcare providers involved in the treatment and examination of (Deceased) __________ from (Date) __________ to (Date) __________.
a. Name of provider.
b. Address of provider.
c. The nature of the treatment or examination.
d. The diagnosis for each treatment or examination.
e. Each treatment or examination date.
f. Charges incurred for each treatment or examination.
g. Date of discharge from any treatment or examination.

7. Please identify any and all persons known to have personal knowledge of the facts surrounding the will contest of (Deceased) __________ and include:
   a. Name of witness.
   b. Address of witness.
   c. Witness’s role in the incident.
   d. Describe substance of witness’s knowledge and testimony.

8. Please list any and all wills written or executed for (Deceased) __________ by legal counsel from (Date) __________ to (Date) __________.

9. Please list and describe any financial compensation, gain, gifts, loans or payments made by (Incapacitated Person) __________ to (Guardian) __________.
   a. Amount received.
   b. Dates of payments.
   c. A description of any document signed regarding the terms of compensation and payment.

10. Please list and describe any and all assessments performed on (Incapacitated Person) __________ including, but not limited to, capacity, physical, neuropsychological, psychosocial, functional and behavioral from (Date) __________ to (Date) __________.

C. Requests for Production Directed to the Defense (Guardianship Revocation Case)

1. Please provide any and all documents referenced within the interrogatories, including the following detailed information:
   a. Date of the document.
   b. Identity of the person who wrote the document.
   c. Identity of the person to whom such documents were sent and the date the documents were sent.
   d. Date the documents were received by the recipient, if known.

2. Please provide all written reports by the expert witnesses, including:
   a. Curriculum vitae.
   b. All documents the expert used to formulate an opinion.
c. All notes, correspondence, invoices, diagrams, photographs and other documents reviewed or prepared by the expert.

3. Please provide all invoices for payment for performance of expert witness services for the defendant including, but not limited to:
   a. Medical examination fees.
   b. Record review.
   c. Pretrial preparation.
   d. Telephone conferences.
   e. Pretrial meetings.
   f. Trial testimony.

4. Please provide all written, recorded or signed statements of all parties involved in or pertaining to this action, including:
   a. Plaintiff.
   b. Defendant.
   c. Witnesses.
   d. Investigators.
   e. Representatives or employees.

5. Please provide all insurance documents, pertaining to (Incapacitated Person) _________ in the possession of the defendant that were in effect from (Date) _________ to (Date) _________.

6. Please provide any and all medical records, pertaining to (Incapacitated Person) _________ in the possession of the defendant that were billed for from (Date) _________ to (Date) _________.

7. Please provide copies of pertinent authoritative documents to be used in the defense of this case, including, but not limited to:
   a. Industry standards and codes.
   b. Legal authority.
   c. Rules, case law or statutes.

8. Please provide copies of any and all guardianship documents pertaining to services rendered for (Incapacitated Person) _________ from (Date) _________ to (Date) _________ including:
   a. Medical records, including physician and long term care providers.
   b. Guardianship notes, care plans and visit records.
   c. Financial records.
   d. Contracts, informed consents and subcontracts with other providers.
9. Please provide a copy of any and all assessments and inspections, including reports, photographs, videos and computerized reenactments, contracts and financial records, pertaining to the assessment and inspection of the home of (Incapacitated Person) __________ from (Date) __________ to (Date) __________.

10. Please provide copies of all documents related to the contention that (Defendant) __________ failed to properly provide care and safety for (Incapacitated Person) __________ at home.

D. Requests for Production Directed to the Plaintiff (Guardianship Revocation Case)

1. Please provide any and all documents referenced within the interrogatories and include the following:
   a. Date of the document.
   b. Name of the person who wrote the document.
   c. Name of the person to whom such documents were sent and the date the documents were sent.
   d. Date the documents were received by the recipient, if known.

2. Please provide all written reports of the expert witnesses, including:
   a. Curriculum vitae.
   b. All documents the expert used to formulate an opinion.
   c. All notes, correspondence, invoices, diagrams, photographs and other documents reviewed or prepared by the expert.

3. Please provide all invoices for payment for performance of expert witness services for the plaintiff including, but not limited to:
   a. Medical examination fees.
   b. Record review.
   c. Pretrial preparation.
   d. Telephone conferences.
   e. Pretrial meetings.
   f. Trial testimony.

4. Please provide all written, recorded or signed statements of all parties involved in or pertaining to this action, including:
   a. Plaintiff.
   b. Defendant.
   c. Witnesses.
   d. Investigators.
   e. Representatives or employees.
5. Please provide employment history for (Plaintiff) __________ from (Date) __________ to (Date) __________ including:
   a. Job descriptions.
   b. Specific work-related tasks.
   c. Employee health and illness records.
   d. Work schedule, including overtime.

6. Please provide any previous and current neuropsychological, psychosocial and rehabilitation evaluations and facility records for (Plaintiff) __________ from (Date) __________ to (Date) __________ including:
   a. Rehabilitation.
   b. Drug and alcohol.
   c. Mental health.

7. Please provide complete education records for (Plaintiff) __________.

8. Please provide copies of any and all documents related to the contention that (Incapacitated Person) __________ wishes to return home with (Plaintiff) __________.

9. Please provide dates and times, with any supportive documentation, listing all plaintiff’s visits, telephone calls and correspondence pertaining to (Incapacitated Person) __________ after (Date) __________.

10. Please provide copies of pertinent authoritative documents to be used in the pursuit of this case, including, but not limited to:
    a. Industry standards and codes.
    b. Legal authority.
    c. Rules, case law or statutes.

X. RECOMMENDED QUALIFICATIONS FOR CLNC® SUBCONTRACTORS FOR DIMINISHED CAPACITY CASES

A. Three to Five Years Clinical Experience in Neurological, Neuropsychological, Geriatric and Cognitive Decline Disorders

B. Three to Five Years Clinical Experience in Skilled Care Facilities, Long Term Rehabilitation or Neuro-Rehabilitation
C. CLNC® Consultant with Experience in Diminished Capacity

1. Ability to interpret complex medical and other records.
   a. Records related to cognitive, functional and psychosocial functioning.
   b. Previous medical history.

2. Ability to develop detailed chronologies of events.

3. Ability to conduct literature research.

XI. CASE STUDIES

A. Criminal: Twinkie Defense

1. In 1979, the plea of diminished capacity took on a whole new meaning in California v White. In this notorious case, Dan White, a fired city supervisor, shot and killed San Francisco Mayor George Moscone and city supervisor Harvey Milk. Although clear evidence of premeditation was presented, White’s attorneys argued diminished capacity due to a diet of only junk food causing a chemical imbalance (Twinkie defense) and depression over his job loss.

2. The jury rejected first-degree murder and convicted White of voluntary manslaughter, the least serious of all possible charges.

B. Will Contest: Mr. Bob Cook

1. This case involved contestants (petitioners) not named as beneficiaries in Mr. Cook’s last will, who sued the named beneficiaries (respondents) in Orphan’s Court. The contestants claim the decedent (Mr. Cook) was subject to undue influence by the beneficiaries during the execution of his current will and two previous wills. If the contestants prove the three wills are invalid, the decedent will be deemed to have died intestate and the assets would be divided among all parties, as they are all Mr. Cook’s relatives. My attorney-client represented the beneficiaries.

2. The case goal: identify facts that prove or disprove a “weakened intellect” or diminished capacity.
3. Complete medical record review.
   a. Identify medical and psychological diagnoses and conditions, functional capacity, cognitive ability or impairment, judgment and decision-making, psychosocial issues and ability to communicate.
   b. Identify family and friends involved in Mr. Cook’s care or decision-making.
   c. Identify and recommend medical care providers who possess knowledge and information specific to Mr. Cook to serve as witnesses.

4. Detailed chronology. (Exhibit A)
   a. Present facts supporting the case goals.
   b. Structure chronology to illuminate facts related to each of the three wills.
   c. Provide medical concepts education.

5. Research.
   c. Dementia.

6. Determine missing records.

7. Detailed case summary (Exhibit B)
   a. Examine all health records over three-year period.
   b. Focus on supporting case goal.
   c. List potential witnesses.

8. Custom chronology for all potential witnesses. (Exhibit C)

C. Guardianship Revocation: Ms. Anne Wilson

1. This case involved a grandson’s petition to remove You’re in Good Hands Consulting Company as guardian of his grandmother, and to be appointed as successor guardian of the person; Ms. Anne Wilson. My attorney-client represented the grandson.

2. The case was complicated by multiple facts.
   a. Grandson and granddaughter were presumptive intestate heirs.
   b. Extreme family discord and conflict between grandson and granddaughter.
c. An order of the court finding Ms. Wilson incapacitated and appointing You’re in Good Hands Consulting Company the plenary guardian of the person and the estate.

d. Following appointment, the guardian removed Ms. Wilson from her home, where she lived with her grandson, and placed her in an assisted living facility.

e. The grandson wanted Ms. Wilson to return home, the granddaughter wanted her to stay in the assisted living facility and the guardian was preparing to sell the home.

f. Ms. Wilson’s complex family dynamics, psychosocial issues, medical conditions and mental health diagnoses complicated determinations of her expressed wishes and rights.

3. The case goal: Identify facts that support or deny the petition’s assertion that You’re in Good Hands Consulting Company did not properly consider or evaluate Ms. Wilson’s expressed wishes to return home and therefore did not act in her best interests and failed to fulfill its guardianship obligations.

4. Complete medical record review.
   a. Identify medical and psychological diagnoses and conditions, functional capacity, cognitive ability or impairment, judgment and decision-making, psychosocial issues and ability to communicate.
   b. Identify any and all assessments and evaluations performed or requested by You’re in Good Hands Consulting Company, by Ms. Wilson’s physicians or by the assisted living facility.
   c. Identify all facts pertaining to the quality, safety, comprehensiveness, coordination and continuity of care provided Ms. Wilson at the assisted living facility, by her guardian, by her physicians and in the home setting.

5. Detailed chronology. (Exhibit D)
   a. Present facts supporting the case goals.
   b. Structure chronology to illuminate facts related to medical standard of care deviations, patient rights violations and National Guardianship Association standards of practice.
   c. Include You’re in Good Hands Consulting Company’s deposition questions and answers in timeline.

6. Research.
   a. Assisted living state regulations through the Department of Welfare.
   b. Outcome and Assessment Information Set (OASIS).
   c. State bill of rights for patients.
   d. State guardianship laws.

f.  You’re in Good Hands Consulting Company’s website.

g.  Ms. Wilson’s assisted living facility’s website.

h.  Neuropsychological testing.

i.  Elderly depression, dementia and mental health disorders.

7.  Additional CLNC® services.

   a.  Review and collaborate on deposition testimony.

   b.  Locate fact witness to describe benefits of home care v institutional care.


**XII. RESOURCES**

**A. Associations and Organizations**

    
    [aan.com](http://aan.com)

2.  American Association of Neuroscience Nurses (AANN).
    
    [aann.org](http://aann.org)

    
    [americanbar.org](http://americanbar.org)

    
    [americanbar.org/content/dam/aba/directories/policy/1993_am_108.authcheckdam.pdf](http://americanbar.org/content/dam/aba/directories/policy/1993_am_108.authcheckdam.pdf)

5.  American Brain Foundation.
    
    [americanbrainfoundation.org](http://americanbrainfoundation.org)

6.  American College of Trust and Estate Counsel.
    
    [actec.org](http://actec.org)

7.  National Academy of Certified Care Managers (NACCM).
    
    [naccm.net](http://naccm.net)

    
    [guardianship.org](http://guardianship.org)
B. Authoritative Textbooks


C. Journal Articles


D. Websites

1. Assistant Secretary for Legislation (ASL), Department of Health and Human Services. [hhs.gov/asl](http://hhs.gov/asl)
2. Brain Source. 
   brainsource.com
3. CDC: National Center for Injury Prevention and Control (NCIP). 
   cdc.gov/injury/index.html
   cms.gov
5. ClinicalKey® (MD Consult). 
   clinicalkey.com
   law.cornell.edu
   nlm.nih.gov/medlineplus
8. National Care Planning Council Long Term Care Link. 
   longtermcarelink.net
   ncal.org
    nih.gov
    ninds.nih.gov
## Exhibit A
### Detailed Fact Chronology – Mr. Cook

<table>
<thead>
<tr>
<th>DATE &amp; TIME</th>
<th>KEY FACTS</th>
<th>CLNC® COMMENTS</th>
<th>CO.</th>
<th>FU.</th>
<th>CA.</th>
<th>DE.</th>
<th>KEY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thu 04/09/0000 4:22pm ET</td>
<td>ATTENDED: Religious services PARTICIPATION: Active</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Fri 04/10/0000 to Fri 04/17/0000</td>
<td>Rehab Potential for Stated Goals: Good Positive Indicators for Achieving Goals: Cooperative Patient/Caregiver Education: Describe Reasons for Continued Skilled Therapy Services: Pt to benefit from continued OT tx to address deficits (with) ADLs, functional (?), mobility. Barriers to Progress: Patient Response to Care: Cooperative Activities of daily living (ADL)</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fri 04/10/0000 12:10pm ET</td>
<td>OVERALL PSYCHOLOGICAL STATUS: Resident returned from hospital on 4/1/09. He appears to have readjusted to facility. Resident is participating in therapy. Discharge plan remains for resident to return home. Sw to work with family on discharge planning.</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fri 04/10/0000 1:21pm ET</td>
<td>NOTE: Resident awake, alert, oriented. OOB to w/c can propel self short distances. Amulated to and from dining room with walker and supervision. Tolerated well. Visiting with son this shift.</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sun 04/12/0000 9:49pm ET</td>
<td>COMMENTS: Family in to discuss Doppler results. Going to doctors on Tuesday. Cooperative, had large incontinent bowel movement tonight. Emotional support given over this.</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Mon 04/13/0000</td>
<td>Third will</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

**CO:** cognitive functioning  
**FU:** functional behavior  
**CA:** casual/physical behaviors  
**DE:** decedents relationships  
**Key:** key facts
Exhibit B
Will Contest Case Summary Excerpts

Case: Mr. Cook

Mr. Cook’s first experience with the healthcare system was on April 00, 0000 when he was hospitalized following a motor vehicle accident. In the emergency department his cognitive status was described with conflicting statements such as: alert and oriented; normal logical associations; normal reasoning pattern; appropriate coherent speech and “reliable exam was not possible due to the patient’s acuity and mental status.” In addition, his physical appearance was documented with conflicting statements, such as: well developed; well nourished; and “generally debilitated;” “failure to thrive.” In multiple notations his poor personal hygiene and grooming habits were described. It is important to consider this initial picture as Mr. Cook’s “normal” baseline condition for his cognitive, physical and functional state. At the time of his accident, he was “living alone, working five days a week and driving a car.”

He was discharged to his granddaughter’s home with home healthcare, including physical and occupational therapy. He did not return to work and retired.

On July 00, 0000, Mr. Cook appointed his niece as his power of attorney. Over the next few months, Mr. Cook was assisted by members of the niece’s family in accessing ongoing healthcare, assessing his ability to drive and providing care at home. Although Mr. Cook failed his driver’s exam in November 0000 for poor judgment, his ulcers were healing and his health status had improved. The first will was written on December 00, 0000.

In early January 0000, Mr. Cook’s diabetes was controlled. Dr. Brain administered a Mini Mental® State Examination (MMSE), which he passed (no cognitive impairment).

On January 00, 0000, Dr. Daley noted increased swelling and weight gain. Mr. Cook was diagnosed with a small pleural effusion in February. By July, he was diagnosed with anemia and B_{12} deficiency. The second will was written on January 00, 0000.

In summary, although Mr. Cook was at times documented to be confused, a “poor historian” and forgetful, he was always described as alert and oriented. He consented to procedures, learned how to manage his medical conditions, insisted on having life saving measures and enjoyed music, religion and his family. He fell frequently, exercising his independence. He defied his many debilitating medical conditions, repeatedly engaging in physical therapy, occupational therapy and other activities. Mr. Cook was a hard-working, independent man, who “advocated for himself” throughout his healthcare journey.
## Exhibit C
### Custom Fact Chronology
#### for Potential Witnesses – Mr. Cook

<table>
<thead>
<tr>
<th>DATE &amp; TIME</th>
<th>KEY FACTS</th>
<th>CLNC® COMMENTS</th>
<th>CO.</th>
<th>FU.</th>
<th>CA.</th>
<th>DE.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fri 04/03/0000 2:04pm ET</td>
<td>NOTE: Resident awake, alert, oriented. Assist of 1 for ADLs. OOB to w/c propels self very short distances.</td>
<td>x x x x</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fri 04/10/0000 1:21pm ET</td>
<td>NOTE: Resident awake, alert, oriented. OOB to w/c can propel self short distances. Ambulated to and from dining room with walker and supervision. Tolerated well. Visiting with son this shift.</td>
<td>x x x x</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thu 04/16/0000 1:40pm ET</td>
<td>NOTE: Rec'd resident OOB in w/c start of shift. Awake, alert. Ambulates from room to dining room with staff and walker. Appetite good for meals. Feeds self with set up assist. Off household most of shift with family.</td>
<td>x x x x x x</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fri 04/17/0000 1:19pm ET</td>
<td>NOTE: Resident awake, alert. OOB in w/c at start of shift. Ambulated to dining room with walker and staff supervision x2. Feeds self meals with min. set up assist. Occas incontinent of urine. B/L legs with edema. No c/o pain or discomfort.</td>
<td>x x x x</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fri 04/24/0000 10:54am ET</td>
<td>NOTE: ambulated to dining room with walker and staff supervision. Out of facility with sister for vascular appt.</td>
<td>x x x x</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

CO: cognitive functioning  
FU: functional behavior  
CA: casual/physical behaviors  
DE: decedents relationships
### Exhibit D
#### Fact Chronology – Ms. Wilson
Filter: Key = Yes (3 of 340)

<table>
<thead>
<tr>
<th>DATE &amp; TIME</th>
<th>KEY FACTS</th>
<th>SOC DEVIATIONS</th>
<th>CLNC® COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mon 11/09/0000</td>
<td>You’re in Good Hands Consulting Company Monthly Visitation Form</td>
<td>National Guardianship Association Standard 12 – Duties of the Guardian of the Person</td>
<td>This notation was not completed.</td>
</tr>
<tr>
<td></td>
<td>Have changes been indicated on care plan? Service plan has not</td>
<td>National Guardianship Association Standard 13 – Guardian of the Person: Initial and Ongoing Responsibilities</td>
<td></td>
</tr>
<tr>
<td>#1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mon 11/09/0000</td>
<td>....PCP appt?? Spoke (with) Administrators, re: these concerns. She was going to look into it. Informed me that there are now psych services coming in. Spoke (with) Anne about if she would like to keep going out for appt. or have different people see her there. She expressed that she doesn't like going out. So we are looking into changing psych services. I expressed my other concern about does she still need to be seeing the psychologist because she gets so anxious going out + she's not remembering the visits. That's what started the psych conversation.</td>
<td>§ 5100.53 Bill of rights for patients: Section 1. b, 5.</td>
<td>This is not providing continuity of medical care, which is in Ms. Wilson's best interest. In addition, there is no documentation that Ms. Wilson was counseled on the consequences of the decision to change her &quot;psych services.&quot; From a health and wellness standpoint and preservation of her cognitive functioning, engaging in social activities and going out in the community is recommended. &quot;Not going out&quot; and &quot;not remembering visits&quot; should not determine the disruption of an elderly client's continuity of care.</td>
</tr>
<tr>
<td>#3</td>
<td></td>
<td>National Guardianship Association Standard 5 – The Guardian’s Relationship with Other Professionals and Providers of Service to the Ward</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>National Guardianship Association Standard 6 – Informed Consent</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>National Guardianship Association Standard 7 – Standard for Decision-Making</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>National Guardianship Association Standard 8 – Least Restrictive Environment</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>National Guardianship Association Standard 9 – Self Determination of the Ward</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>It is unfortunate that Dr. Mind's psychiatric care was stopped, because Ms. Wilson had a longstanding, trusting relationship with this care provider.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>It is clear there is a pattern in the choices that You're in Good Hands Consulting Company is making in relationship to</td>
</tr>
<tr>
<td>DATE &amp; TIME</td>
<td>KEY FACTS</td>
<td>SOC DEVIATIONS</td>
<td>CLNC® COMMENTS</td>
</tr>
<tr>
<td>--------------</td>
<td>---------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>National Guardianship Association Standard 12 – Duties of the Guardian of the Person</td>
<td>Ms. Wilson’s care. They are discontinuing her longstanding providers, who know the complexities of Ms. Wilson’s complex medical and psychiatric history, and replacing them with inhouse providers.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>National Guardianship Association Standard 14 – Decision-Making About Medical Treatment</td>
<td>This allows You’re in Good Hands Consulting Company and the assisted living facility more control over Ms. Wilson’s healthcare and how it is managed.</td>
</tr>
<tr>
<td>Mon 11/09/0000 2:45pm ET.</td>
<td>Res. LLE: +2/+3 ankle, calf, pedal edema noted w/area of warmth + pink, just above lateral halleolus + skin area. appt sched...assisted living facility physician</td>
<td>§ 5521. Provisions concerning powers, duties and liabilities (a) Duty of guardian of the person</td>
<td>Another two weeks have passed without the assisted living facility seeking care for Ms. Wilson’s worsening condition.</td>
</tr>
</tbody>
</table>

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