

Physician Letter Proving Incapacity for Guardianship

In order to grant guardianship, the court must find the adult in question is “incapacitated,” and the attorney or parents must show “clear and convincing” evidence of incapacity. The physician report is the most important and often only piece of evidence for the judge. If available, a psychological report that states IQ and other functional scores as evidence to establish incapacity may be used.

- Incapacity is measured by the person’s inability, even with technological assistance to:
 - receive and evaluate information, or
 - make and communication decisions, or
 - provide for necessities such as food, shelter, clothing, health care or safety
- The physician letter should be signed, on the physician’s letterhead, dated, and optimally stating the following:
 - The child’s birth date
 - That the child is a patient of the physician
 - The child’s diagnosis: e.g., Jane has been diagnosed with Prader-Willi syndrome, autism, pervasive developmental disorder, and intellectual impairment
 - A statement that the child has been or currently is participating in special education programs through the school
 - A statement of the full-scale IQ, if possible

Detailed information needed in the letter

- Statements such as: Jane’s decision-making abilities are severely impaired. Her ability to function in society without significant and constant assistance is low. She has poor judgment and difficulty recognizing social cues. She is unable to care for her personal safety or property and is not able to provide for her own housing, food, or clothing.
- Jane will always require assistance when handling money or making purchases

and if left alone to make purchases requiring an exchange of money, she will most likely be taken advantage of.

- In my professional opinion, Jane is an incapacitated person who, even with technological assistance, is unable to receive and evaluate information, make and communicate decisions, care for her health, and manage her personal property and affairs effectively. She cannot manage her medications or make reasoned medical decisions on her own behalf.
- In my professional opinion, the appointment of a full guardian is appropriate because Jane is fully incapacitated and unable to make decisions on her own behalf. Nothing less than a full guardianship would be appropriate.
- In providing treatment to Jane, I have interacted with her mother, _____, and I find her to be genuinely concerned for Jane's welfare and to be capable of making reasoned, appropriate, and careful decisions relating to her care and treatment.

Thanks to Lisa Thornton, JD, Attorney, Lisa Thornton Law, President of the Utah Prader-Willi Syndrome Association. October 2022