

Commonwealth of Massachusetts
 Bristol County Probate & Family Court



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**INSTRUCTIONS TO CLINICIANS FOR COMPLETING THE MASSACHUSETTS
 MEDICAL CERTIFICATE FOR GUARDIANSHIP OR CONSERVATORSHIP**

Do I tell the individual that I am evaluating their capacity and completing the medical certificate?

Prior to completing an evaluation of capacity for the purposes of guardianship or conservatorship, the individual must be informed of the purpose of the evaluation and the potential that the evaluation will be used to form a legal finding of incapacity, potentially removing the individual’s rights to make personal or financial decisions in whole or part. The process of disclosure and the patient’s understanding of it, should be documented in the clinical record. If you did not provide this disclosure to the individual for good clinical reason (e.g., the person is in a coma), check “no” and explain the reason.

Under the law, the patient must be personally examined within 30 days of the hearing.

Note that under the Health Insurance Portability and Accountability Act protected information can be provided to courts for guardianship proceedings. HIPAA protects the privacy of health information, but it cannot be used as a barrier to providing required information to a court.

What is the legal standard?

The legal standard for guardianship and conservatorship has three main parts.

Form Section	Component	Guardianship Standard	Conservatorship Standard
1	A diagnosis	“clinically diagnosed condition”	“clinically diagnosed condition”
2	A decision making problem	“an inability to receive and evaluate information or make or communicate decisions”	“an inability to receive and evaluate information or make or communicate decisions”
3	A Functional Problem	“lacks the ability to meet essential requirements for physical health, safety or self-care”	“unable to manage property or business affairs effectively and/or has property that will be wasted or dissipated unless management is provided.

How do I complete each section?

Section 1: Clinically Diagnosed Condition

Provide the name and a brief history of the condition(s) that are causing the decisional and/or functional problem(s). When did the problem start? What caused it? List the person's medications or attach the list. (The court will accept an attached list.)

For some individuals the cause of incapacity is a temporary one – a psychotic episode, a severe depression, a recent stroke. For other individuals the cause of incapacity may be more permanent but the functional level appears worse than it is because of factors such as poor hearing or the recent death of a loved one. Describe these, if applicable.

The judge needs to know how long the order for guardianship should remain in effect and when the case should be reviewed. The judge is not a clinician and does not know the usual prognosis associated with various medical conditions. Using your best clinical judgment, check whether the condition may improve, worsen, or stay the same. If improvement is possible, advise when the person might be so improved that the guardianship order should be reviewed by the court.

Section 2: Decisional Impairment

The standard for guardianship emphasizes decisional impairment – namely how the clinically diagnosed condition is resulting in an inability to “receive or evaluate information or make or communicate decisions.” Several clinical factors may lead to decisional impairment. Some individuals are unconscious or for other reasons are simply not alert enough to communicate a decision. Other individuals have neurological conditions, such as dementia, causing problems in memory, reasoning, judgment which impairs decision making. Other individuals have psychiatric or emotional conditions, such as schizophrenia, that may impair decision making. Describe how these factors are affecting decision making abilities.

Section 3: Functional Impairment

3.1 Guardianship.

The standard for guardianship states that the individual is unable “to meet essential requirements for physical health, safety, or self care.” The court must strongly consider if the guardianship order can be “limited” which means the court can reserve the person's legal rights in specific areas. Therefore, carefully describe the areas in which the person has retained abilities (part A) and the areas in which the person has impairments (part B). Think about specific aspects of ADL's or IADL's that the person can still do, such as:

- Maintain adequate hygiene, including bathing, dressing, toileting, dental
- Prepare meals that provide adequate nutrition
- Identify abuse or neglect and protect self from harm
- Give/ Withhold medical consent
- Choose and direct caregivers
- Manage medications

- Contact help if ill or in medical emergency
- Choose/establish abode
- Maintain reasonably safe and clean shelter
- Be left alone without danger
- Drive or use public transportation
- Make and communicate choices about roommates
- Initiate and follow a schedule of daily and leisure activities
- Travel
- Establish and maintain personal relationships with friends, relatives, coworkers
- Determine his or her degree of participation in religious activities
- Use telephone
- **3.2 Conservatorship.**

The standard for conservatorship states that the individual is “unable to manage property or business affairs effectively” or that the person has “property that will be wasted or dissipated unless management is provided.” The court must strongly consider if the conservatorship order can be “limited” which means the court can reserve the person’s legal rights in specific areas. Therefore, carefully describe the areas in which the person has retained abilities (part A) and the areas in which the person has impairments (part B). Think about specific aspects of financial decision making the person can still do versus areas in which the person needs protection, such as:

- Protect and spend small amounts of cash
- Manage and use/write checks
- Give gifts and donations
- Buy or sell real property
- Deposit, withdraw, dispose, invest monetary assets
- Establish and use credit
- Pay, settle, prosecute, or contest any claim
- Enter into a contract, financial commitment, or lease arrangement
- Continue or participate in the operation of a business
- Employ persons to advise or assist him/her
- Resist exploitation, coercion, undue influence

Section 4: Values

A capacity finding is never merely about the facts of the individual’s decisional or functional impairments, but how these interact with the person and his or her environment. *This is addressed in Section 4 and 5.* Tell the court what you know about this person – specific values, preferences, where the person wants to live, does the person want a guardian or conservator, religious or cultural views. If these factors are largely unknown to you and the person cannot communicate them to you know, let the court know that as well.

Section 5: Social and Risk Factors

Some individuals are closely attended to by family and friends who mitigate their risk. Other individuals have few or no family or friends – or their family or friends have taken advantage of

their incapacity. Describe the social situation and the person's risks, and whether the social factors are increasing or decreasing risk. At times some may worry or even overreact to a potential or theoretical risk, while at other times a significant risk (such as theft of a large sum of money) has already occurred. Describe how severe the risk is and how likely it is.

Section 6: Recommendations for Level of Care or Supervision

The law for guardianship requires the clinician to provide recommendations for treatment. *This is addressed in Sections 6 and 7.* Section 6 addresses the placement issues. If no placement is being sought, check "none", and skip to the next section.

Section 7: Recommendations for Treatment

Will any treatments be helpful to the patient? If so, check yes.

Section 8: Attendance at the Hearing

If it would be clinically harmful for the patient to attend the hearing, please describe why. The individual has the right to attend the hearing. If accommodations would enable the individual to attend the court hearing, please describe.

Section 9: Certifications

Complete as directed. The form does not need to be notarized.

Please be advised that the information in this pamphlet is provided as a service of the Bristol County Probate & Family Court Registry and does not constitute legal advice which can only be given to you by an attorney.

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