

# An Un-Review: Involuntary Mental Health Treatment Powers For Advance Medical Directive Agents And Guardians

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- I. Mental health involuntary caseload statistics.<sup>1</sup>
  - A. 45,000 cases in 2012.
- II. Absence of authority unless expressly granted.
  - A. Agency.
    1. Virginia Code § 54.1-2986.2 (A, E).<sup>2</sup>
  - B. Guardianship.
    1. Virginia Code § 37.2-805.1 (B).
- III. Granting Authority: Advance Medical Directive Agents
  - A. Virginia Code § 37.2-805.1 (A).
  - B. Form.<sup>3</sup>
- IV. Granting Authority: Guardianship.
  - A. Virginia Code § 37.2-805.1 (B), Virginia Code § 64.2-2009.
  - B. Necessity of pleading.<sup>4</sup>
  - C. Forms.<sup>5</sup>
    1. Petition clause.
    2. Order clause.
    3. Practitioner's Certification.

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<sup>1</sup> Appendix I, Virginia civil commitment / judicial authorization hearing statistics, 2009-2010, and 2012.

<sup>2</sup> Appendix II, statutes.

<sup>3</sup> Appendix III, Form of Supplemental Advance Medical Directive for psychiatric treatment.

<sup>4</sup> "The law in Virginia is well established that a court cannot enter judgment based on facts that are not alleged in the parties' pleadings: 'A litigant's pleadings are as essential as his proof, and a court may not award particular relief unless it is substantially in accord with the case asserted in those pleadings.' Brooks v. Bankson, 248 Va. 197, 206, 445 S.E.2d 473, 478 (1994); Gwinn v. Collier, 247 Va. 479, 484, 443 S.E.2d 161, 164 (1994); Ted Lansing Supply Co. v. Royal Aluminum & Constr. Corp., 221 Va. 1139, 1141, 277 S.E.2d 228, 229 (1981). **Thus, a court is not permitted to enter a decree or judgment order based on facts not alleged or on a right not pleaded and claimed.** Hensley v. Dreyer, 247 Va. 25, 30, 439 S.E.2d 372, 375 (1994); Harrell v. Woodson, 233 Va. 117, 121, 353 S.E.2d 770, 773 (1987); Ted Lansing Supply Co., 221 Va. at 1141, 277 S.E.2d at 229; see Ainslie v. Inman, 265 Va. 347, 356, 577 S.E.2d 246, 251 (2003); Smith v. Sink, 247 Va. 423, 425, 442 S.E.2d 646, 647 (1994)." *Dabney v. Augusta Mutual Insurance Co.*, 282 Va. 78, 86, 710 S.E.2d 726 (2011) (emphasis supplied).

<sup>5</sup> Appendix IV.

V. Continuing Treatment After Ten Days.<sup>6</sup>

VI. Pending in the 2014 General Assembly.<sup>7</sup>

A. Guardianship.

1. [HB413](#) ..Incapacitated persons; filing of evaluation reports, requirement for filing. Requires that medical evaluation reports filed in guardian or conservator proceedings before the circuit court be filed under seal. The bill also requires that a copy of the report be provided to the guardian ad litem, the respondent, and all adult individuals and entities whose names and post office addresses appear in the petition within a reasonable time prior to the hearing on the petition.

2. [HB543](#) ..Security freezes; protected consumers. Establishes a procedure by which a protected consumer's representative may request that a consumer reporting agency place a security freeze on the credit report of an incapacitated person for whom a guardian or conservator has been appointed. If a freeze is established for a protected consumer, a consumer reporting agency is prohibited from releasing the protected consumer's credit report, any information derived from it, or any record created for the protected consumer, unless the freeze is removed. A fee of up to \$5 may be charged for placing or removing a freeze, except identity theft victims and persons under age 16 for whom the agency has a credit report are not required to pay a fee. Penalties and enforcement mechanisms are identical to those provided for nonprotected consumers under the existing security freeze statute ([59.1-444.1](#) and [59.1-444.2](#)).

(also see [HB934](#), to same effect).

3. [SB346](#) ..Wills, trusts, and fiduciaries; increasing various allowances and other threshold amounts. Increases the amounts of various allowances, threshold amounts, and other dollar-based provisions in Title 64.2 (Wills, Trusts, and Fiduciaries) to account for the effect of inflation. The bill also provides that a commissioner of accounts has the same authority to determine the amounts, recipients, and proportions of any gifts made from the estate of an incapacitated person for whom a conservator has been appointed, provided that the total gifts authorized shall not exceed \$25,000 in a calendar year and the commissioner shall report to the circuit court his determination as to such gifts.

B. Involuntary Civil Commitment.

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<sup>6</sup> *Civil Mental Health Law: A General Practitioner's Practical Guide to Civil Commitment Rules in Virginia* (2012), <http://www.majette.net/documents/EmergLaw.pdf>. Compiled Virginia General District Court Forms: <http://www.courts.state.va.us/courtadmin/aoc/legalresearch/resources/manuals/dcforms/dc4000sadultmentalhealth.pdf>. These forms, and others, arrayed differently, <http://www.majette.net/judcon1.htm>.

<sup>7</sup> These summaries are effective January 9, 2014. An internet review can be conducted at the venue.

1. 33 separate bills (some of which mirror another in another chamber) are presently filed, most in response to the Creigh Deeds tragedy in late 2013.

2. HB 479 is noteworthy. It provides "that a person held pursuant to a temporary detention order shall be held for at least 24 hours but no more than 72 hours. Currently, a person may be held pursuant to a temporary detention order for up to 48 hours." The new requirement that a patient be held for at least 24 hours before a hearing may be held is constitutionally and fiscally troublesome; at a time in which the mental health system is apparently bereft of sufficient bed space, the bill will cause *civilly* detained citizens to remain in whatever hospital beds do exist even when there may be a claim of actual mistake ("You got the wrong Shawn! I'm Jr., not Sr."), false accusations ("Take my wife, please!"), or transience ("I was drunk when I said those things and now I'm sober!"). Worse, hapless citizens detained on any Thursday will wait *at least* 72 hours (until Monday, or for several months, until Tuesday, owing to Monday holidays<sup>8</sup>) right to judicial presentation, a remarkable contrast with the right to **immediate** judicial presentation enjoyed by one accused of crime.<sup>9</sup>

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<sup>8</sup> <http://www.dhrm.virginia.gov/payandholidaycalendar.html>.

<sup>9</sup> "Whenever a person is arrested upon a warrant ... the law-enforcement officer or jail officer making the arrest shall either (i) bring the accused **forthwith** before a judicial officer in the locality where the arrest was made or where the charge is to be tried or (ii) commit the accused to the custody of an officer from the county or city where the charge is to be tried who shall bring the accused **forthwith** before a judicial officer in the county or city in which the charge is to be tried. The judicial officer before whom the accused is brought **shall immediately** conduct a bail hearing and either admit the accused to bail or commit him to jail for transfer forthwith to the county or city where the charge is to be tried." Virginia Code § 19.2-76.

Appendix I. Involuntary Mental Commitment and Related Mental Health Hearings in Virginia.<sup>10</sup>

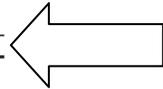
JUDICIARY'S YEAR IN REVIEW 2010

Table 49  
*Involuntary Mental Commitment Annual Statistics*  
 Fiscal Years 2009 and 2010

| Summary                         | FY 2009 Services Provided | FY 2010 Services Provided | Percent Change |
|---------------------------------|---------------------------|---------------------------|----------------|
| <b>Type of Service Provider</b> |                           |                           |                |
| Special Justice Services        | 28,714                    | 28,560                    | -0.5%          |
| Attorney Services               | 29,592                    | 28,993                    | -2.0%          |
| Physician Services              | 21,445                    | 23,787                    | 10.9%          |
| Interpreter Services            | 123                       | 127                       | 3.3%           |
| Witness Services                | 10                        | -                         | -100.0%        |
| <b>Total</b>                    | <b>79,884</b>             | <b>81,467</b>             | <b>2.0%</b>    |

| Activity                                    | General District Courts | J&DR District Courts | Combined District Courts | Total         |
|---|-------------------------|----------------------|--------------------------|---------------|
| <b>Commitment or Certification Hearings</b> |                         |                      |                          |               |
| -- Special Justice                          | 19,006                  | 1,063                | 2,440                    | 22,511        |
| -- Attorney                                 | 18,578                  | 1,776                | 2,635                    | 22,989        |
| -- Physician                                | 18,359                  | 1,042                | 2,216                    | 21,617        |
| -- Interpreter                              | 83                      | 7                    | 0                        | 90            |
| -- Witness                                  | 0                       | 0                    | 0                        | 0             |
| <b>Total Commitment Hearings</b>            | <b>56,026</b>           | <b>3,890</b>         | <b>7,291</b>             | <b>67,207</b> |
| <b>Recommitment Hearings</b>                |                         |                      |                          |               |
| -- Special Justice                          | 2,359                   | 8                    | 567                      | 2,934         |
| -- Attorney                                 | 2,270                   | 21                   | 516                      | 2,807         |
| -- Physician                                | 1,842                   | 5                    | 78                       | 1,925         |
| -- Interpreter                              | 30                      | 0                    | 0                        | 30            |
| -- Witness                                  | 0                       | 0                    | 0                        | 1             |
| <b>Total Recombitment Hearings</b>          | <b>6,501</b>            | <b>34</b>            | <b>1,161</b>             | <b>7,696</b>  |
| <b>Appeal Hearings</b>                      |                         |                      |                          |               |
| -- Attorney                                 | 134                     | 0                    | 10                       | 144           |
| -- Physician                                | 7                       | 0                    | 0                        | 7             |
| -- Witness                                  | 0                       | 0                    | 0                        | 0             |
| <b>Total Appeal Hearings</b>                | <b>141</b>              | <b>0</b>             | <b>10</b>                | <b>151</b>    |
| <b>Authorization for Medical Treatment</b>  |                         |                      |                          |               |
| -- Special Justice                          | 2,013                   | 4                    | 440                      | 2,457         |
| -- Attorney                                 | 2,268                   | 2                    | 435                      | 2,705         |
| <b>Total Consent for Medical Treatment</b>  | <b>4,281</b>            | <b>6</b>             | <b>875</b>               | <b>5,162</b>  |
| <b>Other</b>                                | <b>654</b>              | <b>510</b>           | <b>87</b>                | <b>1,251</b>  |
| <b>Grand Total</b>                          | <b>67,603</b>           | <b>4,440</b>         | <b>9,424</b>             | <b>81,467</b> |



<sup>10</sup> Virginia 2010 State Of The Judiciary Report Supreme Court Of Virginia.

\*\*\*\*\* STATE COURT TOTALS \*\*\*\*\*

|                                 |        |
|---------------------------------|--------|
| ----- GD MISCELLANEOUS -----    |        |
| GD WARRANTS WRITTEN             | 0      |
| GD APPEALS PROCESSED            | 36,217 |
| GD RECEIPTS WRITTEN             | 0      |
| GD CHECKS WRITTEN               | 0      |
| GD MENTAL COMMITMENT HEARINGS   | 45,438 |
| ----- J&DR MISCELLANEOUS -----  |        |
| J&DR APPEALS PROCESSED          | 11,883 |
| J&DR RECEIPTS WRITTEN           | 0      |
| J&DR CHECKS WRITTEN             | 0      |
| JUV. OPER. LICENSES ISSUED      | 0      |
| JUV. WORK PERMITS ISSUED        | 0      |
| J&DR MENTAL COMMITMENT HEARINGS | 2,171  |
| SPOUSAL ABUSE                   | 5,291  |

About 47,500 total civil commitment / medical consent hearings in 2012. Note that about 5% of these cases were for juveniles.

2012 Source: Virginia Supreme Court, Office of the Executive Secretary, Caseload Statistical Information, <http://www.courts.state.va.us/courtadmin/aoc/judpln/csi/home.html#dccc>, compiled January 9, 2014.

**Agent Cannot Contravene Principal's Direction.**

§ 54.1-2986.2. Health care decisions in the event of patient protest.

A. Except as provided in subsection B or C, the provisions of this article shall not authorize providing, continuing, withholding or withdrawing health care if the patient's attending physician knows that such action is protested by the patient.

B. A patient's agent may make a health care decision over the protest of a patient who is incapable of making an informed decision if:

1. The patient's advance directive explicitly authorizes the patient's agent to make the health care decision at issue, even over the patient's later protest, and the patient's attending physician or licensed clinical psychologist attested in writing at the time the advance directive was made that the patient was capable of making an informed decision and understood the consequences of the provision;
2. The decision does not involve withholding or withdrawing life-prolonging procedures; and
3. The health care that is to be provided, continued, withheld or withdrawn is determined and documented by the patient's attending physician to be medically appropriate and is otherwise permitted by law.

C. In cases in which a patient has not explicitly authorized his agent to make the health care decision at issue over the patient's later protest, a patient's agent or person authorized to make decisions pursuant to § [54.1-2986](#) may make a decision over the protest of a patient who is incapable of making an informed decision if:

1. The decision does not involve withholding or withdrawing life-prolonging procedures;
2. The decision does not involve (i) admission to a facility as defined in § [37.2-100](#) or (ii) treatment or care that is subject to regulations adopted pursuant to § [37.2-400](#);
3. The health care decision is based, to the extent known, on the patient's religious beliefs and basic values and on any preferences previously expressed by the patient in an advance directive or otherwise regarding such health care or, if they are unknown, is in the patient's best interests;
4. The health care that is to be provided, continued, withheld, or withdrawn has been determined and documented by the patient's attending physician to be medically appropriate and is otherwise permitted by law; and
5. The health care that is to be provided, continued, withheld, or withdrawn has been affirmed and documented as being ethically acceptable by the health care facility's patient care consulting

committee, if one exists, or otherwise by two physicians not currently involved in the patient's care or in the determination of the patient's capacity to make health care decisions.

D. A patient's protest shall not revoke the patient's advance directive unless it meets the requirements of § [54.1-2985](#).

E. If a patient protests the authority of a named agent or any person authorized to make health care decisions by § [54.1-2986](#), except for the patient's guardian, the protested individual shall have no authority under this article to make health care decisions on his behalf unless the patient's advance directive explicitly confers continuing authority on his agent, even over his later protest. If the protested individual is denied authority under this subsection, authority to make health care decisions shall be determined by any other provisions of the patient's advance directive, or in accordance with § [54.1-2986](#) or in accordance with any other provision of law.

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### **Authorization for Involuntary Admission by Surrogate: Agent and Guardian**

§ 37.2-805.1. Admission of incapacitated persons pursuant to advance directives or by guardians.

A. An **agent** for a person who has been determined to be incapable of making an informed decision may consent to the person's admission to a facility for no more than 10 calendar days if (i) prior to admission, a physician on the staff of or designated by the proposed admitting facility examines the person and states, in writing, that the person (a) has a mental illness, (b) is incapable of making an informed decision, as defined in § [54.1-2982](#), regarding admission, and (c) is in need of treatment in a facility; (ii) the proposed admitting facility is willing to admit the person; and (iii) the person has executed an advance directive in accordance with the Health Care Decisions Act (§ [54.1-2981](#) et seq.) authorizing his agent to consent to his admission to a facility and, if the person protests the admission, **he has included in his advance directive specific authorization for his agent to make health care decisions even in the event of his protest as provided in § [54.1-2986.2](#)**. In addition, for admission to a state facility, the person shall first be screened by the community services board that serves the city or county where the person resides or, if impractical, where the person is located.

B. A **guardian** who has been appointed for an incapacitated person pursuant to Chapter 20 (§ [64.2-2000](#) et seq.) of Title 64.2 may consent to admission of that person to a facility **for no more than 10 calendar days** if (i) prior to admission, a physician on the staff of or designated by the proposed admitting facility examines the person and states, in writing, that the person (a) has a mental illness, (b) is incapable of making an informed decision, as defined in § [54.1-2982](#), regarding admission, and (c) is in need of treatment in a facility; (ii) the proposed admitting facility is willing to admit the person; and (iii) the guardianship order specifically authorizes the guardian to consent to the admission of such person to a facility, pursuant to § [64.2-2009](#). In addition, for admission to a state facility, the person shall first be screened by the community

services board that serves the city or county where the person resides or, if impractical, where the person is located.

C. A person admitted to a facility pursuant to this section shall be discharged no later than 10 calendar days after admission unless, within that time, the person's continued admission is authorized under other provisions of law.

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§ 64.2-2009. Court order of appointment; limited guardianships and conservatorships.

....

C. Unless the guardian has a professional relationship with the incapacitated person or is employed by or affiliated with a facility where the person resides, the court's order may authorize the guardian to consent to the admission of the person to a facility pursuant to § [37.2-805.1](#), upon finding by clear and convincing evidence that (i) the person has severe and persistent mental illness that significantly impairs the person's capacity to exercise judgment or self-control, as **confirmed by the evaluation of a licensed psychiatrist**; (ii) such condition is unlikely to improve in the foreseeable future; and (iii) the guardian has formulated a plan for providing ongoing treatment of the person's illness in the least restrictive setting suitable for the person's condition.

Appendix III. A Form of Protest Advance Directive.<sup>11</sup>

**VIRGINIA ADVANCE DIRECTIVE SUPPLEMENT FOR MENTAL HEALTH CONDITIONS**

I, \_\_\_\_\_, willingly and voluntarily make known my wishes in the event that I am incapable of making an informed decision about my health care. This document is intended to supplement my advance directive for health care, which I executed on \_\_\_\_\_.

This document includes specific instructions to govern my health care if I am experiencing a mental health crisis.

**I: SPECIAL POWERS OF MY AGENT TO AUTHORIZE HEALTH CARE OVER MY OBJECTION**

This section includes my specific instructions about my health care if I am objecting to health care that my health care agent and my physician believe I need.

*(CROSS THROUGH ANY POWERS YOU DO NOT WANT TO GIVE YOUR AGENT.)*

The powers of my agent shall include the following:

1. To authorize my admission to a health care facility for the treatment of mental illness as permitted by law, even if I object.
2. To authorize other health care that is permitted by law and that my health care agent and my physician believe I need, even if I object. This would include **any** type of health care unless I have indicated otherwise by my specific instructions written in this document, in my advance directive, or in the space below.

\_\_\_ I do not authorize these specific types of health care:

\_\_\_\_\_  
\_\_\_\_\_

*[TO GIVE YOUR AGENT ANY OF THE POWERS SET FORTH ABOVE, YOUR PHYSICIAN OR LICENSED CLINICAL PSYCHOLOGIST MUST SIGN THE STATEMENT IN THE BOX BELOW.]*

I am a physician or licensed clinical psychologist familiar with the person who has made this advance directive supplement for health care. I attest that he or she is presently capable of making an informed decision and that he or she understands the consequences of the special powers given to his/her agent by this Section I of this advance directive supplement.

**Printed Name of Individual Making This Supplement for Mental Health Care (Declarant):**

\_\_\_\_\_  
**Insert Date:** \_\_\_\_\_

<sup>11</sup> This is one of several forms published by the Virginia Hospital & Healthcare Association, <http://www.vhha.com/healthcaredecisionmaking.html>. The font is reduced for this presentation's pagination.

Physician or Licensed Clinical Psychologist Signature / Date

Physician or Licensed Clinical Psychologist Printed Name and Address

**II: ADDITIONAL MENTAL HEALTH CARE INSTRUCTIONS, IF ANY<sup>12</sup>**

*(IF YOU WANT TO GIVE ADDITIONAL INSTRUCTIONS ABOUT YOUR MENTAL HEALTH CARE, YOU MAY DO SO HERE. YOU MAY USE THIS SECTION TO DIRECT YOUR MENTAL HEALTH CARE EVEN IF YOU DO NOT HAVE AN AGENT. IF YOU DO NOT GIVE SPECIFIC INSTRUCTIONS, YOUR MENTAL HEALTH CARE WILL BE BASED, TO THE EXTENT ALLOWED BY LAW, ON YOUR VALUES AND WISHES, IF KNOWN, AND OTHERWISE ON YOUR BEST INTERESTS.)*

A. I specifically direct that I receive the following mental health care if it is medically appropriate:

\_\_\_\_\_  
\_\_\_\_\_

B. I specifically direct that I not receive the following mental health care:<sup>13</sup>

\_\_\_\_\_  
\_\_\_\_\_

*C. [INSTEAD OF WRITING INSTRUCTIONS ON THIS FORM, YOU MAY DIRECT THAT YOUR MENTAL HEALTH CARE BE PROVIDED IN ACCORDANCE WITH A CRISIS PLAN. IF YOU HAVE PREPARED A CRISIS PLAN, CHECK THE FOLLOWING BOX AND ATTACH THE CRISIS PLAN TO THIS DOCUMENT.]*

\_\_\_\_\_ I direct that my care be provided in conformity with the preferences I have expressed in the accompanying crisis plan to the extent authorized by law.

**AFFIRMATION AND RIGHT TO REVOKE:** By signing below, I affirm that I understand this advance directive supplement for mental health care and that I am willingly and voluntarily executing it. I also understand that I may revoke all or any part of it at any time as provided by law.

**Date Signature of Declarant**

The declarant signed the foregoing advance directive in my presence. *[TWO ADULT WITNESSES NEEDED]*

\_\_\_\_\_  
\_\_\_\_\_

<sup>12</sup> For reasons implied by limitations in Virginia Code § 37.2-1102, the declarant should address his wishes regarding electroconvulsive therapy and medications. One approach - as seen in the draft language of the order and petition clauses - is to authorize consent for electroconvulsive therapy and anti-psychotic medications which the declarant does not specifically refuse in the instrument.

<sup>13</sup> Be judicious. Inartfully completed, this clause causes mischief.

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**NOTE: THIS ADVANCE DIRECTIVE SUPPLEMENT FOR MENTAL HEALTH CARE SHOULD BE KEPT WITH YOUR GENERAL ADVANCE DIRECTIVE.**

*This form satisfies the requirements of Virginia's Health Care Decisions Act. If you have legal questions about this form or would like to develop a different form to meet your particular needs, you should talk with an attorney. It is your responsibility to provide a copy of your advance directive to your treating physician. You also should provide copies to your agent, close relatives and/or friends. For information on storing this advance directive in the free Virginia Advance Health Directive Registry, go to <http://www.VirginiaRegistry.org>. This form is provided by the Virginia Hospital & Healthcare Association as a service to its members and the public. (June 2012, [www.vhha.com](http://www.vhha.com))*

Witness Signature Witness Printed

Witness Signature Witness Printed

Appendix IV. Suggested Guardianship Pleading Clauses.

**A. Complaint.**

[¶ \_\_\_\_] It is in the best interest of JCS that a limited guardian as defined in *Va. Code* §64.2-2000 be appointed for him, that the specific areas of protection and assistance he requires and which should be addressed in the order of appointment relate to his health care and living arrangements, and none other; and that the powers and responsibilities of the limited guardian to address these specific areas be specified by this Court and limited to the following, and none other:

....

[ sub ¶ \_\_\_\_] to consent, or to delegate to any third party the power to consent, to the admission of JCS to a facility pursuant to Virginia Code § 37.2-805.1 and Virginia Code § 64.2-2009, and while therein admitted, subject to the time limitation of the statutes, to consent to medical and psychiatric treatment, including but not limited to administration of anti-psychotic medications and administration of electro-convulsive therapy which may be recommended by the physicians treating him;

**B. Order.**

[¶ \_\_\_\_] For the term of the appointment made pursuant to this Order, in addition to the powers set forth in *Va. Code* § 64.2-2025, the exclusive powers and the sole duties and responsibilities of the limited guardian appointed by this order are limited to the following and none other under any provision of law:

[ sub ¶ \_\_\_\_] the power and sole discretion to consent, withhold consent, suspend consent, or terminate consent as to medical treatment and procedures affecting JCS with regard to mental health treatment for him, which consent may include restraints, transportation (by the limited guardian or any person or entity authorized by the limited guardian), medications and therapy (including but not limited to antipsychotic medications and electroconvulsive therapy ("ECT")), even if contrary to the expressed wishes of JCS, or otherwise protested by him, it being the express intent of the Court, pursuant to Virginia Code § 37.2-805.1 (B) and Virginia Code § 64.2-2009, to authorize the limited guardian to provide such admission as an alternative to, and in order to avoid the necessity of, involuntary commitment proceedings under the provisions of Chapter 8 of Title 37.2 of the Virginia Code, or judicial consent to forced medication or ECT administration otherwise required pursuant to Chapter 11 of Title 37.2 of the Virginia Code, and to facility such intent, to induce any health care provider to admit or treat JCS for mental health treatment, to waive any claim which he or any fiduciary for him might otherwise assert based upon a failure to pursue involuntary admission or judicial consent process pursuant to Chapters 8 or 11 of Title 37.2 of the Virginia Code, and, at the sole risk, cost and expense of the estate of JCS, to indemnify any health care provider for damages it may incur by reason of any such claim; and

C. **Psychiatrist Certification.**

**CERTIFICATION OF SEVERELY IMPAIRING MENTAL ILLNESS**

Pursuant to Virginia Code § 37.2-805.1 and Virginia Code § 64.2-2009, the undersigned hereby certifies the following as a supplement to the report of the evaluation of JCS in this proceeding:

1. The undersigned is a psychiatrist licensed by the Commonwealth of Virginia.
2. Based upon the personal evaluation by the undersigned, and to the best information and belief of the undersigned after inquiry:
  - a. JCS suffers from a severe and persistent mental illness that significantly impairs his capacity to exercise judgment or self-control;
  - b. such condition is unlikely to improve in the foreseeable future; and
  - c. the proposed guardian in the pleadings concurs with the plan recommended for providing ongoing treatment of the illness in the least restrictive setting suitable for JCS, being at the present time care in a licensed facility during such times as JCS is not otherwise so impaired that he meets the criteria for in-patient mental health treatment by reason of danger to the person of JCS or others, as reported by the professional staff at any such licensed facility.
3. The undersigned recommends that the proposed guardian be granted the authority to consent to admission of JCS to a mental health facility, as defined in Chapter 8 and otherwise in Title 37.2 of the Virginia Code, willing to admit him, for no more than 10 calendar days upon any admission if prior to admission, a physician on the staff of or designated by the proposed admitting facility examines JCS and states in writing, that at the time of evaluation, JCS:
  - a. has a mental illness;
  - b. is incapable of making an informed decision, as defined in Virginia Code § 54.1-2982, regarding admission, and
  - c. is in need of treatment in a facility.

\_\_\_\_\_,M.D. \_\_\_\_\_  
Signature of Psychiatrist Printed Name of Evaluator

Date report executed: \_\_\_\_\_.