

INSTRUCTION SHEET FOR FORM #530GC
PETITION FOR FINDING OF INCAPACITY, APPOINTMENT OF GUARDIAN (or CO-GUARDIANS), APPOINTMENT OF SUCCESSOR GUARDIAN, ORDER RATIFYING EXISTING HEALTH CARE POA

This petition is intended to be used when a petitioner is seeking the appointment of a Guardian for an alleged incapacitated individual (A.I.I.). The following actions may be requested with the filing of the attached Petition:

• **FINDING OF INCAPACITY**

- The Petitioner may seek to have the A.I.I. found to be incapacitated for the purpose of the appointment of a Guardian or to assist in ratifying a valid, existing Health Care Power of Attorney (HCPOA). Incapacity is determined by the court based on a medical examination and report and other relevant evidence. Generally, if there is no finding of incapacity, the court will not be able to proceed with any other action regarding the person who is alleged to be incapacitated.
- A finding of incapacity may be made by the court because of the A.I.I.'s inability to meet the essential requirements for his or her physical health, safety, or self-care and/or the inability to manage his or her property or financial affairs or provide for his or her support or for that of his or her legal dependents. This could be because of allegations that are based on, but not limited to, mental illness, significant intellectual disability, physical illness or disability, brain injury, chronic use of and/or addiction to illicit or prescription drugs, or chronic intoxication and/or addiction to alcohol. The presence of one or more of these conditions does not automatically prove incapacity, but it may be what prompts the filing of the petition.

• **If authority is needed to make decisions regarding health care, medical treatment, medical decisions, or appropriate placement for the A.I.I., please read below for applicable situations and check the appropriate box(es) in the Petition:**

- **APPOINTMENT OF GUARDIAN (including appointment on an EMERGENCY or TEMPORARY basis; see Forms 512GC and 513GC)** – Can be used to request permanent appointment of an individual or professional guardian and, if needed, appointment of a Guardian on a temporary basis before the permanent appointment can be made.
- **APPOINTMENT OF SUCCESSOR GUARDIAN** – Can be used to request appointment of a successor to the previously appointed permanent Guardian.
- **IF NOMINATED TO SERVE IN A WILL** - Based on the facts of the case and the filings of the parties, pursuant to S.C. Code Ann. § 62-1-100, it is within the court's discretion to determine whether a testamentary guardian designation in the Will of a parent or spouse prior to January 1, 2019, the effective date of the revisions to Article 5 of the S.C. Probate Code, will fall under the processes and procedures of the 1987 Code or under the processes and procedures enacted by the 2017 amendments. (See S.C. Code Ann. § 62-5-301 of the 1987 Code versus the changes to S.C. Code Ann. § 62-5-301 enacted by the 2017 amendments.)
- **RATIFICATION OF EXISTING HEALTH CARE POWER OF ATTORNEY (HCPOA)** - An existing, valid HCPOA creates the presumption that there is a "support and assistance" (see Section 62-5-101(23)) in place that would eliminate the need for guardianship. The Petitioner may seek an order ratifying (confirming) the HCPOA. Otherwise, the Petitioner must show by clear and convincing evidence why that document is not valid, is not sufficient to meet the needs of the A.I.I., or present other issues that would support voiding that document if the appointment of a Guardian is requested.

• **RIGHTS AND POWERS OF THE ALLEGED INCAPACITATED INDIVIDUAL**

- S.C. Code Ann. § 62-5-303(B)(7) requires that the petitioner must indicate in the petition what rights the Court is being asked to remove from the A.I.I. For guardianships those rights are stated in S.C. Code Ann. § 62-5-304A. The burden of proof will be on the petitioner to show why certain rights should be removed. Rights not asked to be removed or not stated as being removed in the court order will be retained.
- If the A.I.I. is found to be incapacitated based on mental illness, "mental deficiency," "mental defect," or an impairment other than **solely** a physical impairment or disability, the court is required to report the name of the incapacitated individual to the State Law Enforcement Division (SLED), pursuant to S.C. Code Ann. § 23-31-1020. **He or she will not be allowed to purchase, possess, or have access to firearms or ammunition, pursuant to S.C. Code Ann. § 23-31-1040(A).**

STATE OF SOUTH CAROLINA)
COUNTY OF _____)

IN THE MATTER OF:)
_____,)
an alleged incapacitated individual.)

_____,)
Petitioner(s),)

_____,)
Respondent(s).*

▲ PROBATE COURT USE ONLY ▲
IN THE PROBATE COURT
CASE NUMBER -GC- -
PETITION FOR: (Check Appropriate Boxes)
 FINDING OF INCAPACITY
 APPOINTMENT OF:
 GUARDIAN(S)
 TEMPORARY GUARDIAN(S) (On an
Emergency or Temporary Basis)
 SUCCESSOR GUARDIAN(S)
 ORDER RATIFYING AN EXISTING
HEALTH CARE POWER OF
ATTORNEY

*You must include the alleged incapacitated individual (A.I.I.) as a Respondent.

1. Information about Petitioner(s):

Petitioner(s): _____
Address(es): _____
Telephone (preferred): _____ Telephone (secondary): _____
Email: _____
Relationship to A.I.I. or proceeding: _____

2. Information about A.I.I.:

A.I.I. Full Legal Name (include all known names): _____
Date of Birth: _____ Last 4 digits of Social Security #: XXX-XX-_____
Address: _____
This address is a: Private Home Facility Other (specify): _____
Telephone (preferred): _____ Telephone (secondary): _____
Email: _____
Hair Color: _____ Eye Color: _____
Height: _____ Weight: _____

3. Existing legal documents and/or legal appointments relating to the A.I.I.:

To my knowledge, the A.I.I.:
 Does have Does not have a Will
 Does have Does not have a general Durable
Power of Attorney (POA)
 Does have Does not have a Health Care POA
 Does have Does not have a Living Will
 Does have Does not have a Guardian
 Does have Does not have a Conservator or Trustee

If the A.I.I. does have any of the above-named documents, copies must be provided with this Petition or an explanation provided as to why the document is not available. The Petitioner has the burden of showing why guardianship is needed if the A.I.I. has a HCPOA.

4. **Jurisdiction:**

The A.I.I. has been physically present in South Carolina for the six (6) month period immediately preceding the filing of this petition or for at least six (6) consecutive months ending within the six (6) month period immediately preceding the filing of this petition.

If the A.I.I. has not been physically present in South Carolina for the period of time described above, explain what connections the A.I.I. has to South Carolina. Please refer to SC Code §§ 62-5-700 through 62-5-711.

5. **Venue** (check all that apply):

Venue for this proceeding is proper in this county because the A.I.I.:

- resides in this county and has resided in this county for more than six (6) months;
- resides in this county (this is his/her county of residence);
- is physically present in this county at this time; or
- is admitted to an institution in this county pursuant to an order of a court of competent jurisdiction, but this is not the county of residence.

If the A.I.I. has not resided in this county for the six (6) months preceding this action, state the address where the A.I.I. did reside or where he/she is currently residing:

6. **Information about family of the A.I.I.** – You must provide information about the spouse and any children of the A.I.I.; if there is no spouse or adult children, then list his/her parents. If no parents are living, then list the closest adult relative(s).

Spouse:**

Address:

Year of Birth:

**If deceased, a certified death certificate is required.

Children of A.I.I.:

| Full Legal Name | Year of Birth | Full Address |
|-----------------|---------------|--------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

See attached for additional children (check if applicable).

(IF REQUIRED) Living Parents of A.I.I.:

| Full Legal Name | Year of Birth | Full Address |
|-----------------|---------------|--------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |

(IF REQUIRED) Closest Living Adult Relative(s) of A.I.I. – use additional paper if needed:

Name: _____
Address: _____
Relationship to A.I.I.: _____

7. Information about any other interested parties such as a Guardian, Conservator, Trustee, representative payee, agent under a general durable power of attorney, or a health care agent under a health care power of attorney.

| Name | Relation to A.I.I. | Full Address |
|-------|--------------------|--------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |

8. **Rights and Powers of the A.I.I.** (See § 62-5-304A.)

(If you are the A.I.I. in this matter, you should be prepared to defend the assertion that any of the following rights should be removed; however, the burden is on the Petitioner to show why.)

Do you believe the A.I.I. should **retain** the following rights to:

- | | | |
|--|------------------------------|-----------------------------|
| A. Make decisions about health care and medical treatment? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| B. Choose a physician? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| C. Make end-of-life decisions? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| D. Authorize disclosure of confidential information? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| E. Choose where to live? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| F. Participate in social and religious activities? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| G. Vote? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| H. Consent to or refuse educational services? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| I. Contract for marriage (<i>i.e.</i> , get married)? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| J. File for divorce? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| K. Travel independently? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| L. Be employed without consent of a Guardian? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| M. Operate a vehicle? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| N. Pay his or her bills? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| O. Enter into contracts? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| P. Bring or defend a lawsuit? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |
| Q. Make gifts? | <input type="checkbox"/> YES | <input type="checkbox"/> NO |

If you answered NO to any of the above-listed rights, please explain:

9. Any other rights and powers not specifically stated here that the Court should address:

10. Please note any of the rights in Question 8 you believe should be given to the Guardian (*vested in the Guardian*) to exercise on behalf of the incapacitated individual and/or for which the written consent of the Guardian should be obtained prior to exercising such right. Some rights, such as voting, cannot be given to the Guardian.

11. **Authority to Make Decisions About Health Care, Medical Treatment, and Placement for the A.I.I.:**

A. Why do you believe the A.I.I. needs a Guardian/Successor Guardian/Temporary Guardian to provide continuing care and supervision? Provide a brief description of the nature and extent of the alleged incapacity. (See 62-5-403(B)(6)). _____

B. Is there a less restrictive alternative? If so, please explain.

C. In what ways is the A.I.I. able to provide for health, education, maintenance, and support for himself/herself and his or her dependents?

D. Is it necessary to hold any type of emergency or temporary proceeding to protect the physical person of the A.I.I., to make immediate decisions concerning health care or medical treatment, or is the appointment of a temporary Guardian necessary before a final hearing can be held on this Summons and Petition? (If seeking emergency or temporary relief, use Form #512GC or Form #513GC.)

NO. YES. If yes, please explain:

E. Why does the A.I.I. need a Guardian to give consents or approvals that may be necessary to enable the A.I.I. to receive medical or other professional care, counsel, treatment?

F. What does the A.I.I. need for care, assistance, protection, or supervision on a daily basis?

G. Has a Guardian appointed by a will accepted such appointment?

NO. YES. If yes, please explain and provide a copy of the will.

H. I request the appointment of (if someone other than Petitioner):

Name:

Address:

Preferred Phone:

Email:

Relationship to A.I.I.:

I. Priority of appointment for the proposed Guardian (*Petitioner or person(s) named in 11H., above*):

- A previously appointed Guardian or his/her nominee;
- Person nominated to serve as Guardian by the A.I.I., if A.I.I. has sufficient mental capacity to make a reasoned choice;
- An agent designated in a recorded Power of Attorney whose authority includes powers relating to the care of the A.I.I. or his/her nominee;
- Spouse of the A.I.I. or person nominated as testamentary Guardian in the probated will of the spouse or their nominee;
- Adult child of the A.I.I. or their nominee;
- Parent of the A.I.I. or person nominated as testamentary Guardian in the probated will of the parent or his/her nominee;
- Closest adult relative to the A.I.I. (*specify relationship*) _____;
- Person with whom A.I.I. resides (*does not include health care facility, group home, homeless shelter, prison*);

- Person nominated by a health care facility caring for the A.I.I.; or
- Other (*specify*): _____.

J. What does the A.I.I. own?

- Real property - Address: _____
- Vehicle - Make/Model/Value: _____
- Bank Account - Bank and current balance: _____
- Monthly Income – Source and amount: _____
- Other: _____

VERIFICATION

The Petitioner, being sworn, states: That the facts set forth in the foregoing Petition are true to the best of the Petitioner's knowledge, information, and belief.

SWORN to me this ____ day of _____, 20__

Signature of Petitioner: _____
 Printed Name: _____
 Address: _____

Signature: _____
 Printed Name of Notary: _____

Preferred Telephone: _____
 Secondary Telephone: _____
 Email: _____

Notary Public for State of: _____
 My commission expires: _____

SWORN to me this ____ day of _____, 20__

Signature of Co-Petitioner: _____
 Printed Name: _____
 Address: _____

Signature: _____
 Printed Name of Notary: _____

Preferred Telephone: _____
 Secondary Telephone: _____
 Email: _____

Notary Public for State of: _____
 My commission expires: _____

This section is to be signed by the individual(s) nominated to serve in one of the roles listed below.

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I agree to serve as appointed and to perform the duties and discharge the trust of the office of (*check the applicable choices*): Guardian(s); Successor Guardian; or Temporary Guardian

Executed this ____ day of _____, 20__.

Signature: _____

Printed Name: _____

Signature: _____

Printed Name: _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF _____)
)
 IN THE MATTER OF:)
)
 _____,)
 an alleged incapacitated individual.)
)
 _____,)
)
 vs.)
)
 _____,)
)
 Respondent(s).)

▲ PROBATE COURT USE ONLY ▲
 IN THE PROBATE COURT
 CASE NUMBER -GC- -
NOTICE OF RIGHT TO COUNSEL

You, the alleged incapacitated individual, have the right to choose your own attorney to represent you in the above matter.

If a notice of appearance by your own attorney has not been received by the Court within fifteen (15) days from the filing of the proof of service in this matter, the court will appoint an attorney for you.

Executed this _____ day of _____, 20_____.

Signature: _____
 Print Name: _____
 Address: _____

 Preferred Telephone: _____
 Secondary Telephone: _____
 Email: _____

Attorney Signature: _____
 Print Name: _____
 Firm Name: _____
 Bar Number: _____
 Address: _____

 Telephone: _____
 Email: _____
 Attorney for: _____

Note: This form must be served on the Alleged Incapacitated Individual, along with your Summons and Petition.